



LRJ PLANNING

PLANNING, DESIGN AND ACCESS STATEMENT



**PROPOSAL: CHANGE OF USE FROM A DWELLING (C3 USE) TO A 6
BEDROOM 6 PERSON HMO (C4 USE) INCLUDING CONSTRUCTION OF
REAR DORMER AND INSTALLATION OF TWO ROOFLIGHTS IN FRONT
ROOF SLOPE (RESUBMISSION OF PLANNING REFERENCE:
HGY/2022/1775)**

SITE: 37 BOUNDARY ROAD, LONDON, N22 6AS

DATE: MAY 2023



1.0 Introduction

- 1.1 This Planning, Design and Access Statement has been prepared by LRJ Planning Ltd to accompany the full planning application for the change of use from a dwelling (C3use) to a 6 bedroom 6 Person HMO (C4 use) including, rear dormer and installation of two rooflights in front roof slope at 37 Boundary Road, London, N22 6AS.
- 1.2 This Statement provides a planning analysis to demonstrate that the submitted proposal is acceptable in planning terms and in accordance with the relevant policy and guidance.
- 1.3 The application is supported by a site layout plan, floor plans and full elevational plans, which illustrates that the site is capable of the conversion.
- 1.4 The remainder of this Statement is structured as follows:
- Section 2: Site location and description
 - Section 3: Development Proposal
 - Section 4: Planning Policy Context
 - Section 5: Opportunities and Constraints
 - Section 6: Design and Access
 - Section 7: Planning Analysis
 - Section 8: Summary

2.0 Site Description

- 2.1 The application site comprises a substantial two-storey, bay fronted terrace property located on the north western side of Boundary Road. The surrounding properties are of a similar vintage. A number of the properties in the vicinity of the property have been altered/extended. Belmont Recreation Ground is located to the east.

- 2.2 The aerial photograph exhibited in figure 1 below illustrates the location of the site and nature of the surrounding development.

Figure 1 – Aerial View of Site



- 2.3 The site is not located within a Conservation Area or adjacent to any designated heritage assets.

3.0 Background and Proposal

- 3.1 Planning permission for the previous identical scheme under planning reference: HGY/2021/1930, dated 3 June 2021, was refused by notice dated 30 July 2021. A subsequent appeal (appeal reference: APP/Y5420/W/21/3281193) was dismissed on 30th May 2021. A full award of costs was allowed.



LRJ PLANNING

- 3.2 The Inspector found that the proposal would provide acceptable living conditions for future occupiers. In that regard, it would comply with the requirements for new housing to meet space standards and provide comfortable and functional layouts in Policy D6 (Housing Quality and Standards) of the LP 2021, Policies SP2 (Housing) and SP11 (Design) of the Haringey Local Plan Strategic Policies (2013, with alterations 2017) (LPSP) and Policy DM12 (Housing Design and Quality) of the Haringey Development Management Development Plan Document (2017) (DPD).
- 3.3 A further planning application was lodged (planning reference: HGY/2022/1775) for the change of use from a dwelling (C3 use) to a 6 bedroom 6 Person HMO (C4 Use) including rear dormer and installation of two rooflights in front roof slope was refused on 14/10/2022. A subsequent appeal (appeal reference: APP/Y5420/W/22/3311734) was dismissed by the Inspector and a partial award of costs was allowed.
- 3.4 The Inspector stated:
- “I have found that the proposal would provide acceptable living conditions for future occupiers. However, in the absence of a suitable planning obligation, the development would not facilitate car-free development. The proposal would therefore conflict with Policy T6 of the London Plan and Policy DM32 of the DPD. Although I have not found other conflicts with the development plan, this means that the proposal would conflict with the development plan as a whole. I have not found any material considerations to outweigh the conflict with the development plan. Therefore, I conclude that this appeal should be dismissed.”*
- 3.5 A copy of both appeal decisions and cost awards are attached to this Planning Statement.
- 3.6 The Inspector goes on to conclude when awarding full costs that in respect of the first appeal stated:



LRJ PLANNING

“While I have dismissed the appeal, this ultimately rests on the absence of a Section 106 to secure ‘car-free’ housing. I sympathise with the applicant in that respect as I see no reason why, if the Council had been more pro-active in considering matters relating to living conditions for future occupiers of the HMO, it could not have entered into discussions with the applicant to provide the necessary planning obligation. If this had happened the appeal could have been avoided.”

- 3.5 As a result of the above, full planning permission is sought for the change of use from a dwelling (C3 use) to a 6 bedroom 6 Person HMO (C4 Use) including, rear dormer and the installation of two rooflights in front roof slope
- 3.6 Internally, the accommodation will be arranged as follows:
- Ground floor – Two en-suite bedrooms and kitchen/;
 - First floor – Three en-suite bedrooms; and
 - Loft – One en-suite bedroom.
- 3.7 As is the existing situation an area will also be retained at the front of the site for the safe and secure storage of bins and recycling, as well as bikes.
- 3.8 The applicant confirms that he will enter into a S106 agreement and would be grateful if the Council could commence this process once the application has been validated to avoid any further unnecessary delays.

4.0 Planning Policy Context

- 4.1 In July 2021, the Government published the latest version of National Planning Policy Framework (NPPF). The NPPF took immediate effect. It sets out the Government’s planning policies for England and sets out how they are expected to be applied. In addition, the NPPF must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions, as are previous planning decisions and appeals.



LRJ PLANNING

- 4.2 Paragraphs 2 & 47 of the NPPF states that *“Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise”*. This plan-led approach to development is enshrined by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.
- 4.3 Paragraphs 7 and 8 confirm that the purpose of the planning system is to contribute to the achievement of sustainable development, which comprises economic, social and environmental dimensions.
- 4.4 Paragraphs 10 & 11 identify the presumption in favour of sustainable development, with Paragraph 11 reaffirming that *“applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise”*, and that development proposals which accord with the development plan should be approved without delay.
- 4.5 Importantly, Paragraph 11d also states that...
- “where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.*
- 4.6 It elaborates that ‘out-of-date’ includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites or where the Housing Delivery Test indicates that



LRJ PLANNING

the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

- 4.7 Paragraph 60 emphasises the Government's objective to significantly boost the supply of homes.
- 4.8 Paragraph 69 notes that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly.
- 4.9 Paragraph 38 of the NPPF relates to decision making and confirms that "*Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.*"
- 4.10 Paragraph 119 highlights that policies and decisions should promote an effective use of land in meeting the need for homes and other uses, maximising the use of brownfield land. Similarly, Paragraph 120d encourages decisions to promote and support the development of under-utilised land and buildings.
- 4.11 Paragraph 126 notes that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. It elaborates that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 4.12 Paragraph 130 seeks to ensure that developments will function well and add to the overall quality of the area, be visually attractive as a result of good architecture, and be sympathetic to local character and history, including the surrounding built environment



and landscape setting, while not preventing or discouraging appropriate innovation or change.

- 4.13 The Courts have held that Central Government's policy is a material consideration that must be taken into account by the decision maker, as are relevant appeal decisions.
- 4.14 Local Planning Policy relevant to this small scale development proposal is contained within the Haringey Local Plan and Haringey Development Management DPD and the London Plan. The following policies are considered to be relevant:

Haringey Development Management DPD

- Policy DM1: Delivering High Quality Design
- Policy DM2: Accessible and Safe Environment
- Policy DM10: Housing Supply
- Policy DM11: Housing Mix
- Policy DM12: Housing Design and Quality
- Policy DM17: Houses in Multiple Occupation

London Plan (2021)

- GG1 Building strong and inclusive communities
- GG4 Delivering homes Londoners need
- D1 London's form, character and capacity for growth
- D3 Optimising site capacity through the design-led approach
- D4 Delivering good design
- D5 Inclusive design



- D6 Housing quality and standards
- D7 Accessible housing
- H1 Increasing housing supply
- H9 Ensuring the best use of stock
- H10 Housing size mix
- T5 Cycling
- T6 Car Parking
- T6.1 Residential parking

5.0 CONSTRAINTS AND OPPORTUNITIES

5.1 The site represents an opportunity to create a high quality 6 bedroom HMO within the physical limits of a settlement that is, due to its accessibility and sustainability, a location where development is directed and encouraged to locate. Consequently, the proposal accords with the provisions of the development plan.

5.2 Paragraph 59 of the NPPF confirms that:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the LPA cannot demonstrate a five-year supply of deliverable housing sites”.

5.3 An opportunity exists to layout the building in a fashion that will retain and reflect the character of the street and the grain of the surrounding urban area. The separation distances required are considered achieved. For these reasons it is deemed that the proposal is acceptable in design terms with the rear dormer in character with the



LRJ PLANNING

surrounding area in compliance with the design policies of the development plan.

- 5.4 Taking account of national and local planning policy, including the 'weight' that should be afforded to such, we would submit that the balance of material considerations indicate that the proposed residential development is acceptable, in-principle.
- 5.5 There is no proposal to alter the levels upon the site. As such, topography does not therefore pose a constraint to development.
- 5.6 The site is in a sustainable location and is accessible by alternative modes of transport. It is also within close proximity to employment opportunities, as well as local facilities, including shops, schools, churches, restaurants, public houses and other local community facilities.
- 5.7 A safe and satisfactory access can be achieved to the development.

6.0 DESIGN AND ACCESS

- 6.1 The design related policies in the development plan identify that context and character are key considerations and that development in existing areas must respond to and respect inherent layout, density, scale, appearance, materials and access.

i) Layout

- 6.2 The layout of the building has been arranged to ensure an enhancement to the overall level of accommodation and ensure an efficient use of the space.
- 6.3 The en-suite rooms and communal areas have been carefully designed within the



building perimeters to ensure satisfactory living conditions for new residents, whilst also maintaining the amenity enjoyed by surrounding buildings.

ii) Density

- 6.4 The change of use will result in a scheme that is commensurate to the size of the property.
- 6.5 The change of use seeks to utilise the site with regard to the footprint, scale and mass, in particular levels and heights.

iii) Scale

- 6.6 There will be no unacceptable impact on surrounding residential properties as a result of the change of use to a small HMO. The scale of the development is consistent and respects the form of the surrounding development.

iv) Appearance

- 6.7 The proposed additions that are proposed will be in keeping with the overall character and appearance of the area.

v) Materials

- 6.8 Design features included with the development are: -
- Materials to match those used in the existing property.

vi) Access

- 6.9 No alterations to the existing access arrangements are proposed.
- 6.10 Having regard to the location of the site, which is within walking distance of local amenities and bus stops, it is considered that the site represents a sustainable location. The site has a PTAL rating of 4.

7.0 PLANNING APPRAISAL

- 7.1 This section seeks to highlight the main issues relevant to the determination of the application and assess the scheme against the local and national planning policies referenced in section 5.0 above.
- 7.2 The main issues that are considered to be relevant in this case include the following:
- The principle of development having regard to the criteria set out in Policy DM17 of the Haringey Development Management Policies Document;
 - The effect the rear dormer extension will have on the character and appearance of the property and surrounding area.

i) Principle of Development

- 7.3 This statement sets out the appellant's case against the Council's refusal of planning permission for this high-quality, sustainable development which would make a valuable contribution to the local housing stock. This is particularly pertinent as paragraph 11d of the NPPF is engaged given the Council's delivery of housing over the previous three years being substantially below its target.



LRJ PLANNING

7.4 The development makes the more efficient use of land and buildings in a sustainable and accessible area, makes a small but valuable contribution to the local housing stock and generates additional economic activity and expenditure.

7.5 The application property is located within an established residential area within walking distance of shops and services and has access to public transport. It is therefore considered that the site is sustainable in terms of its location.

7.6 Policy DM17 of the Haringey Development Management Policies Document states:

“Proposals for the conversion of larger homes to Houses in Multiple Occupation (HMO), including small HMOs (3-6 unrelated people) within the area covered by the Article 4 Direction (as shown in Figure 3.2), will only be permitted where:

a The gross original internal floor space of the existing dwelling is greater than 120m²;

b They do not give rise to any significant adverse amenity impact(s) on the surrounding neighbourhood, including cumulative impacts arising from an overconcentration of HMOs within an area;

c They are accessible by public transport, cycling and walking;

d They provide high quality accommodation that satisfies the relevant policies of the Local Plan, including internal space standards, provision of a satisfactory level of amenity space for occupants, and adequate and convenient refuse storage and collection; and

e Where non self-contained, have exclusive use of a kitchen or space within a shared kitchen for each household.”



a) Gross Floor Area

- 7.7 The property comprises a substantial two-storey dwelling where the gross original internal floor space of the existing dwelling was greater than 120m². The proposal is therefore compliant with this part of the policy.

b) Concentration Levels

- 7.8 The proposal will not result in any unacceptable overconcentration of HMO's within Boundary Road. The surrounding area is urban and built up with tight grain development close to a raft of local amenities.
- 7.9 There is no evidence to suggest that the use of the property as an HMO would have any impact on neighbour amenity. Indeed, there will be no material impact on the make-up of the area. The proposed use is commensurate to the size of the property, and would not undermine the amenity of the neighbouring properties, through any increase in noise and disturbance.

c) *Accessible by public transport, cycling and walking*

- 7.10 The site enjoys a PTAL rating of 4 that shows that the site is accessible by public transport. Further to this an area at the front of the property will be retained to allow the safe and secure storage of bikes. The applicant as discussed above will enter into a S106 Agreement to secure car free sustainable development. This fully addresses the previous reason for refusal.

d and e) Amenity for future occupants

- 7.11 All the rooms that are proposed will have en-suites and enjoy a good level of outlook. Further to this a large kitchen is proposed. Future occupants will enjoy access to a



communal garden area. All rooms comply with the Council's standards. Indeed the Inspector on this point confirmed in his appeal decision:

"There is no objective evidence before me to suggest that, the room sizes or Gross Internal Area (GIA) would not meet the minimum internal space requirements set out in the Government's 'Technical housing standards – nationally described space standard' (national standard) and Policy D6 (Housing quality and standards) of the London Plan 2021 (LP 2021). Indeed, in all instances, the proposed bedrooms would exceed the minimum GIA for a double bedroom. Therefore, I am satisfied that the proposed 6 bedroom, 6 person HMO would not be overcrowded."

- 7.12 A dedicated refuse/recycling storage area will also be retained at the front of the property.
- 7.13 Overall, as the Inspector confirmed in his appeal decision the HMO will be of a high quality and will offer a good level of amenity for future occupants that is compliant with the requirement of Policy DM17.

ii) Character and Appearance

- 7.14 Policy DM12 'Housing Design and Quality' states that extensions or alterations to residential buildings, including roof extensions will be required to be of a high, site specific, and sensitive design quality, and respect and/ or complement the form, setting, period, architectural characteristics, detailing of the original buildings, including external features such as chimneys, and porches. High quality matching or complementary materials should be used appropriately and sensitively in relation to the context. Policy DM1 'Delivering High Quality Design' requires development proposals to relate positively to their locality. Policy SP11 of the Local Plan requires



the highest standard of design that respects its local context and character and historic significance.

- 7.15 With regards to the proposed extensions they are of a design and scale, and one that respects the design of the existing property. They will appear as a high quality additions that are in keeping with the character of the property and surrounding area.
- 7.16 Overall, the proposal accords with local and national planning policy.

8.0 Conclusion

- 8.1 As demonstrated within this Planning Statement the site is located within a highly sustainable, built up residential area and would provide a mix of housing which is required and meet the needs of the community. The original gross internal floor space of the dwelling is greater than 120m² and there will not be an overconcentration of HMO's in the area.
- 8.2 The accommodation will be of a high quality, all with en-suites and access to a kitchen and external communal amenity space. As the Inspector found the quality of the internal accommodation will offer a high level of amenity for future occupants. The property falls within an area that benefits from a high PTAL rating of 4), so is accessible by public transport. The applicant will enter into a S106 Agreement to secure car free sustainable development. A draft copy of the S106 Agreement is attached to this statement.
- 8.3 As per the current arrangement a dedicated refuse store, as well as an area for the safe storage of bikes will be retained at the front of the property.



LRJ PLANNING

- 8.4 Finally, the extensions proposed are high quality additions that are in keeping with the character and appearance of the property.
- 8.5 This statement has identified that the proposed development complies with national and local planning policy. The Council's decision on the planning application must be taken in accordance with the development plan unless material considerations indicate otherwise. In light of the scheme's accordance with the development plan, it is respectfully requested that planning permission is granted.



Costs Decision

Site visit made on 11 April 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Costs application in relation to Appeal Ref: APP/Y5420/W/21/3281193 37 Boundary Road, Tottenham, London N22 6AS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs M Larijani - KIKS Group Ltd for a full award of costs against London Borough of Haringey.
 - The appeal was against a refusal to grant planning permission for change of use from a dwelling (C3 use) to a 6 bedroom 6 Person House of Multiple Occupation (HMO) (C4 Use) including rear dormer and installation of two rooflights in front roof slope.
-

Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG provides that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where an LPA has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations, where an LPA has made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis or where planning permission has been refused on a ground capable of being dealt with by condition.
3. In my appeal decision, I acknowledge that the Gross Internal Area (GIA) of the proposed bedrooms could facilitate greater levels of occupation than that detailed in the applicant's description of development. Even so, the Council's contention that the HMO would be overcrowded is not supported by any objective analysis particularly given that the room sizes would meet national and local standards and that occupation levels are a matter capable of being controlled by condition.
4. There is no evidence to suggest that the Council gave sufficient consideration to the waiver in The Haringey Standards for Houses in Multiple Occupation (2017) (HMO Standards) for a bedroom to be more than one floor away from a kitchen where an adequately sized dining area could be provided. The applicant has provided a copy of a planning permission on a different site in 2020 for a HMO for up to 9 individual occupiers. This indicates that a similar situation would occur in that instance in terms of there being a loft bedroom two-floors

from the kitchen¹. The kitchen in that instance was a similar size to the one before me and indicated a table and chairs could be accommodated. Without evidence to the contrary, this raises doubt in terms of whether the Council has determined similar cases in a consistent manner. Indeed, the Council has not sought to dispute the applicant's case through either an appeal statement or a response to the costs application.

5. While I have dismissed the appeal, this ultimately rests on the absence of a Section 106 to secure 'car-free' housing. I sympathise with the applicant in that respect as I see no reason why, if the Council had been more pro-active in considering matters relating to living conditions for future occupiers of the HMO, it could not have entered into discussions with the applicant to provide the necessary planning obligation. If this had happened the appeal could have been avoided.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that London Borough of Haringey shall pay to Mrs M Larijani - KIKS Group Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to London Borough of Haringey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Russell

INSPECTOR

¹ LPA Ref HGY/2020/2526



Appeal Decision

Site visit made on 28 April 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Appeal Ref: APP/Y5420/W/21/3281193

37 Boundary Road, Tottenham, London N22 6AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs M Larijani - KIKS Group Ltd against the decision of London Borough of Haringey.
 - The application Ref HGY/2021/1930, dated 3 June 2021, was refused by notice dated 30 July 2021.
 - The development proposed is change of use from a dwelling (C3 use) to a 6 bedroom 6 Person House of Multiple Occupation (HMO) (C4 Use) including rear dormer and installation of two rooflights in front roof slope.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs M Larijani - KIKS Group Ltd against London Borough of Haringey. This application is the subject of a separate Decision.

Background and Main Issues

3. The reason for refusal given on the Council's decision notice relates to the living environment that would be provided for future residents of the HMO. However, the Council's delegated report, which was incidentally provided by the appellant, includes reference to amongst other things, the comments of the Council's Transportation Team. These comments confirmed that no objection was raised on transport grounds, subject to amongst other things a Section 106 obligation being entered into to ensure that the HMO would be 'car-free'. No such obligation is before me. In the circumstances, it is incumbent on me to consider this matter in detail. Therefore, the main issues are:
 - (i) Whether the proposal would provide acceptable living conditions for future occupiers with particular regard to provision of internal space and facilities; and
 - (ii) Whether or not the proposal would facilitate car-free sustainable development that would encourage walking, cycling and the use of public transport.

Reasons

Living conditions for future occupiers

4. The Haringey Standards for Houses in Multiple Occupation (2017) (HMO Standards), sets out amongst other things requirements for kitchen facilities

within HMOs. Where some or all of the units of accommodation do not have exclusive kitchen facilities, the HMO Standards set out that shared facilities shall be provided in a ratio of one set of facilities to a maximum of three lettings.

5. The drawings provided illustrate that two sinks and two hobs would be provided. There is no indication that it would not be possible to provide sufficient worktop, refrigeration and freezer, cupboard and refuse disposal space. From what I saw during my site visit, there was ample room within the kitchen to provide such facilities. Therefore, I am satisfied that the kitchen facilities provided would be sufficient to cater for the proposed 6 residents.
6. With regards to the Council's concern that the proposed loft bedroom would be more than one floor away from the communal kitchen, the appellant has drawn my attention to Paragraph 3.5 of the HMO Standards. This confirms that this requirement may be waived where a suitable, adequately-sized dining room or dining area is provided for the occupiers of such lettings either on the same floor as, or no more than one floor distant, from a kitchen.
7. Given occupiers of HMO's more often live independently, it is unlikely that a large communal dining area would be necessary. From what I saw, the kitchen is of a size which could accommodate an adequately-sized dining area. Therefore, I am satisfied that the proposal could meet the HMO Standards in this regard.
8. There is no objective evidence before me to suggest that, the room sizes or Gross Internal Area (GIA) would not meet the minimum internal space requirements set out in the Government's 'Technical housing standards – nationally described space standard' (national standard) and Policy D6 (Housing quality and standards) of the London Plan 2021 (LP 2021). Indeed, in all instances, the proposed bedrooms would exceed the minimum GIA for a double bedroom. Therefore, I am satisfied that the proposed 6 bedroom, 6 person HMO would not be overcrowded.
9. I conclude, the proposal would provide acceptable living conditions for future occupiers. In that regard, it would comply with the requirements for new housing to meet space standards and provide comfortable and functional layouts in Policy D6 (Housing Quality and Standards) of the LP 2021, Policies SP2 (Housing) and SP11 (Design) of the Haringey Local Plan Strategic Policies (2013, with alterations 2017) (LPSP) and Policy DM12 (Housing Design and Quality) of the Haringey Development Management Development Plan Document (2017) (DPD). For reasons set out, the proposal would also comply with the Haringey Standards for Houses in Multiple Occupation (HMOs) (2017).

Whether or not the proposal would facilitate car-free sustainable development

10. The appeal site has no on-site parking facilities. During my site visit, I saw that the site is located within a Controlled Parking Zone (CPZ) with on-street parking reserved for permit-holders only Monday – Saturday 8am – 6.30pm. The evidence before me indicates that the area where the appeal site is located has a Public Transport Accessibility (PTAL) rating of 4 and therefore a good level of public transport accessibility.
11. The Transport Planning comments in respect of the appeal proposal take the above factors into account and confirm that the HMO would need to be a

car-free development. This aligns with Policy T6 (Car parking) of the LP 2021 states amongst other things that car-free development should be the starting point for all development proposals in places that are well-connected by public transport. It also accords with the aims of the National Planning Policy Framework (the Framework) which amongst other things promotes sustainable transport options and confirms that for development proposals opportunities to promote walking, cycling and public transport use should be identified and pursued.

12. Policy DM32 (Parking) of the DPD supports proposals for new development with no on-site parking in CPZs and the sub-text to this policy sets out that developments without parking are only likely to be viable in areas with a PTAL rating of 4 or above and where a CPZ is in existence. The DPD confirms that in such cases the Council will not issue residents with on-street parking permits and that landowners will be required to advise occupiers of a development's car-free status. The DPD also states that a section 106 or other legal agreement will be required for all new car-free developments of more than 4 residential units.
13. In order to ensure that no residents of the HMO would be entitled to apply for a resident's parking permit or visitor permit voucher and to be truly car-free, the Transport Planning comments advise that the appellant would be required to make a contribution of £4,000 towards the amendment of the Traffic Management Order (TMO) which controls on-street parking in the vicinity of the development. The payment of this contribution could only be secured with precision and enforceability as part of a planning obligation. In the interests of certainty, this would need to be in place before planning permission is granted. The necessity for a S106 car-free planning obligation is made clear in the delegated report and therefore the appellant will be aware of this but has not addressed the matter.
14. In addition, I have seen the concerns of third-parties in respect of the limited availability of on-street parking in the area. Without the necessary planning obligation, the proposal would also potentially add to parking-stress levels causing inconvenience for residents in the area.
15. I conclude, in the absence of a suitable planning obligation, the development would not facilitate car-free sustainable development. In that regard it would conflict with the sustainable transport requirements of Policies T1 (Strategic approach to transport), T4 (Assessing and mitigating transport impacts), T5 (Cycling) and T6 (Car parking) of the LP 2021, Policy DM32 (Parking) of the DPD, Policy SP7 (Transport) of the LPSP and the Framework.

Other Considerations

16. All the proposed bedrooms exceed the minimum GIA in the national standard of 11.5m² for a double (or twin bedroom), and in some instances by a considerable margin. Therefore, the Council's concern that the HMO would be capable of facilitating higher levels of occupation than that proposed is logical. If such a situation were to occur, I am not persuaded the internal living environment would be overcrowded given the compliance with the national standard.
17. However, while 6 occupants would be comparable to the levels of occupation associated with a single family unit, more intense levels of occupation have the

potential to materially increase levels of activity, such as comings and goings, and associated levels of noise and disturbance. Given the position of the proposed HMO with a terraced row, between dwellings in single family occupation, there is the potential that this would be highly discernible to neighbouring residential occupiers and would be detrimental to neighbouring living conditions.

18. Given the above, a condition restricting the maximum number of occupants to 6 persons would be reasonable in the interests of certainty and in order to protect neighbouring living conditions. However, I have not pursued any detailed wording for such a condition given my conclusion on the second main issue.
19. I have carefully considered the representations made by third-parties including matters not covered under the main issues. There is no objective evidence to suggest that the HMO would be detrimental to the security of neighbouring properties. No detailed evidence has been provided to demonstrate that the dwelling falls below the Gross Internal Area suitable for conversion when considered against the development plan nor that there is an overconcentration of HMOs in the area. I note the Council does not dispute these particular matters.
20. The only alteration to the built form of the host building would be a rear dormer. Given its scale and position within the roof slope, it is unlikely that there would be any material loss of light for neighbouring occupiers. I am also mindful that the Council has confirmed the dormer could be erected under permitted development rights. The relationship with neighbouring properties would not be materially different when considered against this fall-back position. Given the established relationships between neighbouring gardens and upper floor windows and that the number of occupants could be controlled by condition, I am satisfied that there would be no material loss of privacy for neighbouring occupiers.
21. As I have found that the internal living conditions provided would be acceptable, I am not persuaded that the HMO would lead to increased fire risk or health and wellbeing issues. The Council has raised no concerns in respect of the provision of external space and from what I saw the rear garden is of a sufficient size to accommodate the day-to-day needs of future occupiers of the proposed HMO including for example space to sit out and to hang out washing. Given the scale of the HMO there is unlikely to be a significant change from the existing situation in terms of the capacity for bins to be stored to the front of the host building within the associated front yard.
22. The proposal would make a modest but valuable contribution to the housing mix in the area. There is the potential for some limited social and economic benefits associated with the contribution and expenditure that individual residents of the HMO would make towards local services and facilities in the area. These are positive benefits to weigh in the balance.

Planning Balance and Conclusion

23. The undisputed evidence from the appellant is that in the last 3 years the Council has not met its housing requirements. While I have no comments from the Council in respect of this matter, I have nevertheless engaged paragraph 11d of the Framework. In the circumstances, planning permission should be

granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

24. I have found that the proposal would provide acceptable living conditions for future occupiers. However, in the absence of a suitable planning obligation, the development would not facilitate car-free sustainable development and would conflict with the sustainability aims of the development plan and national policy. This is a matter which weighs heavily against the proposal and which significantly and demonstrably outweighs the identified benefits of the proposal when assessed against the policies of the Framework.

25. Therefore, I conclude that this appeal should be dismissed.

M Russell

INSPECTOR



Appeal Decision

Site visit made on 7 March 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Appeal Ref: APP/Y5420/W/22/3311734

37 Boundary Road, Tottenham, London N22 6AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs M Larijani on behalf of KIKS Group Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2022/1775, dated 11 June 2022, was refused by notice dated 14 October 2022.
 - The development proposed is the change of use from a dwelling (C3 use) to a 6-bedroom, 6 Person HMO (C4 Use) including rear dormer and installation of two rooflights in front roof slope.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs M Larijani on behalf of KIKS Group Ltd against the Council of the London Borough of Haringey. This application is the subject of a separate decision.

Main Issues

3. The main issues of the appeal are:
 - Whether the proposal would comprise car-free development that would encourage walking, cycling and the use of public transport.
 - Whether the proposed development would provide satisfactory living conditions for future occupiers; and

Reasons

Car Free Development

4. The appeal site has no on-site parking facilities. The site is located within the Wood Green (Outer) Controlled Parking Zone (CPZ) with on-street parking reserved for permit-holders only from Monday to Saturday, between 8am and 6.30pm. The evidence before me indicates that the area where the appeal site is located has a Public Transport Accessibility (PTAL) rating of 4.
5. In order to ensure the safe and efficient operation of the highway network by managing access to parking in the vicinity of the site it would be necessary to ensure the development be car-free. The Council suggest that this would be achieved if residents of the HMO were not entitled to apply for a resident's parking permit or visitor permit voucher. The Council's Transportation Team

advise that the appellant would be required to agree this via a Section 106 agreement. The requirement for a completed planning obligation is made clear in the officer report and in the previous appeal decision¹.

6. I have had regard to the comments of the appellant that they would accept this requirement and have indicated that a S106 agreement would be submitted alongside the appeal. The legal certainty provided by a planning obligation makes it the best means of ensuring that these arrangements are effective. In the interests of certainty this would need to be in place before planning permission is granted. However, despite the appellants agreement to provide the necessary obligation, no such document has been submitted.
7. Therefore, in the absence of a suitable planning obligation, the development would not be car-free and would therefore not encourage the use of walking, cycling or the use of public transport over private vehicles. In that regard it would conflict with the sustainable transport requirements of the National Planning Policy Framework (the Framework), Policies T6 of the London Plan 2021 and DM32 of the Haringey Development Management Development Plan Document (2017) (DPD). These policies support car-free development in CPZs with a PTAL rating of at least 4.

Living Conditions – Future Occupiers

8. Policy D6 of the London Plan requires new housing development to be of high-quality design, providing comfortable and functional layouts, benefiting from sufficient daylight and sunlight, and to provide adequate outdoor amenity space.
9. The Haringey Standards for Houses in Multiple Occupation (2017) (HMO Standards) sets out amongst other things requirements for kitchen facilities within HMOs. It states that in circumstances where some or all of the units of accommodation do not have exclusive kitchen facilities, shared facilities shall be provided at a ratio of one set of facilities to a maximum of three lettings. The HMO Standards also states that where more than one set of shared kitchen facilities are required, these may be provided within one room, but must be arranged in distinct areas for the convenience of the occupiers.
10. The drawings provided illustrate that two sinks and two hobs would be provided and there is no evidence before me that it would not be possible to provide sufficient worktop, refrigeration and freezer, cupboard and refuse disposal space. I observed during my site visit, that there was sufficient space within the existing kitchen to provide such facilities. Therefore, I am satisfied that the kitchen facilities provided would be sufficient to cater for the proposed 6 residents.
11. One of the proposed bedrooms would be located within the loft space, in a newly created second floor of the property. With regard to the Council's concern that the proposed loft bedroom would be more than one floor away from the communal kitchen, the appellant has drawn my attention to Paragraph 3.5 of the HMO Standards. This confirms that this requirement may be waived where a suitable, adequately sized dining room or dining area is provided for the occupiers of such lettings either on the same floor as, or no more than one floor distant, from a kitchen.

¹ APP/Y5420/W/21/3281193

12. Although not expressly shown on the submitted drawings, I observed on my site visit that the existing kitchen would appear to be of ample size to provide a dining area. The previous appeal decision on this site² also found that adequate facilities could be provided. As such, the proposal would be in accordance with the HMO standards in this regard.
13. It is acknowledged that some of the bedrooms within the property exceed the minimum size requirement of 15m² for two-person occupation, which has given rise to concerns that the occupancy of the HMO will exceed 6 persons. Whilst this is not disputed, the application is seeking approval for a 6 person HMO, falling into Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The use of the property by more than 6 persons, would constitute a material change of use and could therefore be controlled by the Council.
14. I have had regard to the position of the Council in relation to the quality of accommodation to be provided and adherence to their standards; however, based on the information provided, I have not identified any conflict with the Council's HMO Standards. I have considered the proposal on the particular circumstances of the case.
15. Consequently, I conclude, that the proposal would provide satisfactory living conditions for future occupiers. It would comply with the requirements for new housing to meet space standards and provide comfortable and functional layouts in Policy D6 of the London Plan, Policies SP2 and SP11 of the Haringey Local Plan Strategic Policies (2013) (LPSP) and Policy DM12 of the DPD. For reasons set out, the proposal would also comply with the HMO Standards.

Other Matters

16. The evidence provided by the appellant states in the last 3 years the Council has not met its housing requirement. The Council have not provided any evidence to contradict this position. Accordingly, the Framework states that development plan policies which are most important for determining the application may be considered out-of-date. As a result, paragraph 11d(ii) of the Framework states that planning permission should be granted 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.
17. The proposal would make a modest contribution to the housing mix in the area. It would also be in a location that is accessible to local services, with a PTAL rating of 4 indicating good access to public transport. However, in the absence of a suitable planning obligation, the development would conflict with the aims of the development plan and national policy for the reasons set out above. This would significantly and demonstrably outweigh the identified benefits of the proposal when assessed against the policies of the Framework.

Conclusion

18. I have found that the proposal would provide acceptable living conditions for future occupiers. However, in the absence of a suitable planning obligation, the development would not facilitate car-free development. The proposal would therefore conflict with Policy T6 of the London Plan and Policy DM32 of the

² Appeal Reference: APP/Y5420/W/21/3281193

DPD. Although I have not found other conflicts with the development plan, this means that the proposal would conflict with the development plan as a whole. I have not found any material considerations to outweigh the conflict with the development plan. Therefore, I conclude that this appeal should be dismissed.

K Lancaster

INSPECTOR



Costs Decision

Site visit made on 7 March 2023

by K Lancaster BA (hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Costs application in relation to Appeal Ref: APP/Y5420/W/22/3311734 37 Boundary Road, Tottenham, London N22 6AS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs M Larijani on behalf of KIKS Group Ltd for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of planning permission for the change of use from a dwelling (C3 use) to a 6-bedroom, 6 Person HMO (C4 Use) including rear dormer and installation of two rooflights in front roof slope.
-

Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG¹ provides that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably with respect to the procedural matters, such as demonstrating a lack of co-operation with the other party, or in relation to the substance matter of the appeal, for example, by unreasonably refusing planning applications.
3. The applicant is seeking a full award of costs on both procedural and substantive grounds. In relation to the procedural matters, the applicant alleges that the Council failed to work collaboratively to address any concerns and issued a refusal notice without due regard to the previous appeal decision² and accompanying full award of costs. The appeal decision concluded that the scheme would provide adequate living conditions and found no conflict with the Council's policies or guidance in respect of this. On the basis that the schemes are identical, they allege that the Council has acted unreasonably by failing to sufficiently address the findings of appeal decision and the conclusions which were reached.
4. In relation to the substantive grounds, the appellant alleges that the Council failed to objectively assess the application and failed to substantiate their reasons for refusal. The appellant alleges that the Council have failed to assess similar proposals consistently, delaying granting planning permission for a development which accords with local and national policy.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

² APP/Y5420/W/21/3281193

5. In my appeal decision, I acknowledge the Council's concerns regarding the level of occupation of the property. However, in assessing the scheme, it is clear that the appeal is seeking approval for a 6 person HMO, falling into Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The use of the property by more than 6 persons, would constitute a material change of use and could therefore be controlled by the Council. Furthermore, the Council has provided limited evidence and analysis to support their assertion that the property would be occupied contrary to their guidance and licensing requirements.
6. In respect of the Haringey Standards for Houses of Multiple Occupation (2017) (HMO Standards), there is no evidence before me that the Council gave adequate consideration to the wording of the guidance, which allows a kitchen to be located more than one floor from a bedroom, where a dining area is provided. My attention has also been drawn to similar proposals whereby the Council has found these arrangements to be acceptable, which raises doubt as to whether the Council has applied the HMO Standards on a consistent basis, when considering similar cases.
7. In relation to the previous appeal decision, the Council has provided limited substantiated evidence to support their continued position in relation to the alleged conflict with their own guidance and policy. On this basis, I find that the Council has behaved unreasonably, by failing to substantiate their reasons for refusal.
8. The conclusions I have reached on this appeal, largely mirror those of the previous appeal decision, in that the only outstanding matter is the requirement for a Section 106 Agreement. However, the applicant has failed to provide the required planning obligation to address the second reason for refusal. In light of this, I do not find that the Council has acted unreasonably in respect of the second reason for refusal and the requirement for a planning obligation to secure car-free housing.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a partial award of costs is justified.

Costs Order

10. In exercise of the powers under Section 250 (5) of the Local Government Act 1972, Schedule 6 of the Town and Country Planning Act 1990 (as amended), and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Haringey shall pay to Mrs M Larijani (KIKS Group Ltd) the costs of the appeal proceeding described in the heading of this decision; limited to those costs incurred in contesting the first reason for refusal; such costs to be assessed in the Senior Courts Cost Office if not agreed.
11. The applicant is now invited to submit to London Borough of Haringey, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

K Lancaster

INSPECTOR



DATED 2023

**(1) THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HARINGEY**

and

(2) KIKS GROUP LTD

and

(3) KENSINGTON MORTGAGE COMPANY LIMITED

AGREEMENT RELATING TO LAND KNOWN AS

37 Boundary Road, London N22 6AS

**PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND SECTION 16 OF THE
GREATER LONDON COUNCIL (GENERAL POWERS) ACT 1974 AND ALL OTHER ENABLING POWERS**

London Borough of Haringey
Alexandra House
10 Station Road
Wood Green
London N22 7TR

Legal Ref: LEG/PP/JXF/70869
Planning Ref: HGY/2022/1775
Planning Appeal Ref: APP/Y5420/W/22/3311734

DATE

2023

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Civic Centre Wood Green London N22 8LE ("Council") of the first part;
- (2) **KIKS GROUP LTD** (company registration number 11945074) whose registered office is at 128 City Road, London EC1V 2NX ("Owner") of the second part; and
- (3) **KENSINGTON MORTGAGE COMPANY LIMITED** (Company Registration Number 03049877) whose registered office is at Ascot House, Maidenhead Office Park, Maidenhead SL6 3QQ ("Mortgagee") of the third part.

WHEREAS

- (1) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Property is situated.
- (2) The Owner is the owner with freehold title absolute of part of the Property registered at the Land Registry under title number NGL13825.
- (3) The Mortgagee holds a mortgage over the Owner's interest in part of the Property by virtue of a legal charge dated 22 June 2021 registered in the Charges Register of title number NGL13825 and is entering into this Agreement to give its consent to it and to bind its interest in the Property.
- (4) The Owner has applied to the Council for permission to develop the Property in accordance with the Application which was refused on 14 October 2022.
- (5) The Owner has submitted the Appeal in respect of the Council's refusal of the Application which the Planning Inspectorate shall determine under the written representations procedure.
- (6) The Parties acknowledge and agree that the Council and the Owner are entering into this Agreement without prejudice to their submissions as part of the Appeal.
- (7) The Council considers that in the event that the Appeal is granted that it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement.

NOW THIS DEED WITNESSETH as follows:

1. Enabling Powers and Interpretation

1.1. In this Agreement the following words and expressions have the following meanings:

"1972 Act"	Means the Local Government Act 1972 (as amended).
"1974 Act"	Means the Greater London Council (General Powers Act) 1974 (as amended).
"2011 Act"	Means the Localism Act 2011 (as amended).
"the Act"	Means the Town and Country Planning Act 1990 as amended from time to time or any subsequent re-enactment of that Act.
"Agreement"	Means this Agreement.
"Appeal"	Means the appeal (ref: APP/Y5420/W/22/3311734) submitted by the Owner pursuant to Section 78 of the 1990 Act on 22 November 2022 against the Council's decision to refuse the Application.
"the Application"	Means the planning application seeking planning permission for the Development bearing reference HGY/2022/1755 ("Application Reference").
"Blue Badge Holder"	Means a person who holds a disabled persons badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 (as amended).

"Car-free Dwellings"	Means all of the Dwellings "Car-free Dwelling" shall be construed accordingly.
"the Development"	Means the development of the Property consisting of the change of use from a dwelling (C3 use) to a 6 bedroom 6 Person HMO (C4 Use) including rear dormer and installation of two rooflights in front roof slope in accordance with the documents submitted with the Application and Planning Permission.
"Due Date"	Means the date upon which any payment due under any of the provisions of this Agreement is to be made.
"Dwelling"	Means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission.
"the Implementation Date"	Means the date of implementation of the Planning Permission by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly.
"Index"	Means the All-Items Index of Retail Prices issued by the Office for National Statistics or any replacement publication or index agreed by the Council in the event that the All-Items Index of Retail Prices becomes no longer maintained.

"Occupation Date"	Means the date on which any part of the Development (or any part or phase) is first occupied for the purposes set out in the Planning Permission excluding occupation for the purposes of fitting out or marketing the Development (or any part or phase) and the terms "Occupy", "Occupied", "Occupier" and "Occupation" shall be construed accordingly.
"the Parties"	Means the parties to this Agreement and their successors in title and the term Party shall be construed accordingly.
"Payment Form"	Means the form to be used by the Owner when making financial payments to the Council in accordance with this Agreement as set out in the Second Schedule of this Agreement.
"Planning Obligations Monitoring Officer"	Means an officer of the Council from time to time allocated to deal with and monitor all obligations.
"the Plan"	Means the plan annexed as the First Schedule to this Agreement.
"the Planning Permission"	Means the planning permission for the Development pursuant to the Application.
"the Property"	Means the land and premises known as 37 Boundary Road London N22 6AS shown indicatively edged in red on the Plan.
"Resident's Parking Permit"	Means a permit issued under the Traffic Management Order which permits the holder to park in accordance with the Traffic Management Order.

"the Traffic Management Order"	Means the relevant order for the time being in force made under the Road Traffic Regulation Act 1984 (as amended) which establishes a controlled parking zone in which the Property is situated.
"Traffic Management Order Contribution"	Means the sum of £4,000 to be pooled towards the costs associated with amending the Traffic Management Order and advertising the same which amendment shall remove the Development from those premises the residents of which may apply for a Resident's Parking Permit.
"Working Days"	Means any day except Saturday, Sunday, Christmas Day, Good Friday and any statutory bank holiday.

1.2. This Agreement is made pursuant to section 106 of the Act, section 111 of the 1972 Act, section 16 of the 1974 Act, section 1 of the 2011 Act and any other enabling statutory provisions.

1.3. Words importing the singular shall include the plural and vice versa.

1.4. Any reference to a specific statute or statutes includes any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute.

1.5. The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.

1.6. Unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.

1.7. Any obligation, covenant, undertaking or agreement by any Owner not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit or allow the doing of that act or thing.

2. Taking Effect

2.1 This Agreement shall have immediate effect save for clause 4 which shall take effect on the date on which the Planning Permission is granted by the Secretary of State.

2.2 In the event that the Secretary of State:

2.2.1 is not fully satisfied that one or more of the provisions of this Agreement comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010;

2.2.2 imposes a condition upon the Planning Permission instead of one or more of the obligations in this Agreement; and/or

2.2.3 considers that some alternative form of planning obligation would be more appropriate in relation to the matters dealt with in this Agreement

then the said provisions of this Agreement shall thereafter have no legal effect but the remainder of the planning obligations in this Agreement (if any) shall remain legally effective and binding.

3. Application of enabling powers

3.1. It is hereby agreed that the covenants and conditions in this Agreement are planning obligations for the purposes of Section 106 of the Act (save for 4.3 (car-free development) and clause 8.2 (payment of the Council's legal costs)) and that the Council is the local planning authority by whom they may be enforced and all covenants and conditions in this Agreement are enforceable by the Council pursuant to section 16 of the 1974 Act and all other enabling statutory provisions as noted above.

3.2. Both positive and restrictive covenants and undertakings herein on the part of the Owner are entered into with the intent that the same shall be enforceable without limit of time not only against the Owner but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Owner an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person.

3.3. No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Property but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

3.4. This Agreement shall cease to have effect (insofar only as it has not already been complied with and without prejudice to any subsisting liability) if the Planning Permission shall be quashed or revoked or otherwise withdrawn or shall expire prior without Implementation.

4. Obligations of the Owner

The Owner hereby covenants and undertakes for itself and its successors in title with the Council as follows:

4.1. General

4.1.1 Not to carry out continue or procure the Development without performing and observing the obligations stipulations and other matters set out in this Agreement and on the part of the Owner to be performed and observed unless otherwise agreed in writing by the Parties.

4.1.2 Subject to compliance with all health and safety requirements to permit the Planning Obligations Monitoring Officer access to the Property during the carrying out of the Development to inspect whether the provisions of this Agreement are being observed and performed in accordance with this Agreement.

4.1.3 Not to encumber or otherwise deal with their interest in the Property or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out.

4.2. The Contributions

4.2.1 On or prior to the Implementation Date to pay to the Council the Traffic Management Order Contribution.

4.2.2 Not to:

- (i) Implement, cause or permit Implementation;
 - (ii) Occupy or cause or permit the Occupation of the Development or any part thereof;
 - (iii) use or cause or permit the use of the Development or any part thereof;
- until such time as the Council has received the Traffic Management Order Contribution in full by direct bank transfer to the Council's bank in accordance with clause 7.1.

4.3 Car-Free Development

4.3.1 The Property shall not be used and/or Occupied by anyone who has a Resident's Parking Permit save for the application of clause 4.3.5.

4.3.2 In the event that a Resident's Parking Permit is issued in respect of the Car-free Dwellings it shall be surrendered to the Council within 7 days of a written demand therefor from the Council.

4.3.3 Prior to the Occupation of each Car-free Dwelling any resident shall be informed by the Owner of the contents of this Agreement and that as a result they shall not be entitled to apply for a Resident's Parking Permit from the Council and any disposal licence transfer lease or tenancy to any resident shall contain an obligation for the resident to comply with and raise no objection to the provisions of clauses 4.3.1 and 4.3.2 above in substantially the form set out below:

"the transferee/lessee for himself and his successors in title being the owner or owners for the time being of the terms of years hereby granted hereby covenant with the transferor/lessor and separately with the Mayor and Burgesses of the London Borough of Haringey ("the Council") not to apply for nor knowingly permit an application to be made by any person residing in the premises to the Council for a resident's parking permit in respect of such premises and if such a permit is issued then it shall be surrendered within 7 days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999, section 1 SAVE THAT any resident who holds a disabled persons badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 (as amended) shall be entitled to resident's parking permit."

4.3.4 Any advertisement in relation to the marketing or sale of any Car-free Dwelling within the Development is to include specific reference that the Development is a car-free Development.

4.3.5 The restrictions in clauses 4.3.1-4.3.4 shall not apply in respect of any Occupier or resident of the Development who is a Blue Badge Holder.

5 Council's Covenants

5.1 Purpose of Contributions

The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.

5.2 Discharge of Obligations

At the written request of the Owner, the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.

6 Notice to the Council/Other Matters

6.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken place or when it will take place.

6.2 If the Owner fails to give written notice of the Implementation Date to the Council in accordance with the above the Due Date for the contributions shall be the date the Planning Permission is issued.

6.3 Within 7 (seven) days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer quoting the Application reference the date upon which the Dwellings forming the Development are ready for Occupation.

6.4 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

6.5 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by the Agreement and further shall indemnify the Council for any expenses or liability arising to the Council in respect of any breach by the

Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.

- 6.6 Unless otherwise specified where any agreement consent approval confirmation or expression of satisfaction is to be obtained from any Party under the terms of this Agreement the Parties hereby agree that the same shall be in writing and not be unreasonably withheld or delayed.

7 Payments VAT and Index linking

- 7.1 Payment of financial contributions pursuant to the terms of this Agreement shall be made by the Owner to the Council sending the full amount by direct bank transfer to the Council's bank account in accordance with the Payment Form (amended to record such payment as applicable) and the Owner shall send the completed Payment Form the Planning Obligations Monitoring Officer.
- 7.2 All considerations given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 7.3 Any financial contributions referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be increased by a percentage equivalent to the percentage increase (if any) in the Index from the date of this Agreement to the date that the relevant contribution is paid.
- 7.4 All financial contributions costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the base rate of the Barclays Bank plc from time to time being charged from the Due Date until payment is made.

IT IS HEREBY AGREED AND DECLARED by the Parties hereto that:

8 Notices

8.1 The provision of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Haringey, Planning Obligations Monitoring Officer, quoting the planning reference number on the front page and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Development Management Unit.

8.2 Payment of Council's Costs

The Owner agrees to pay the Council its legal costs incurred in preparing and settling this Agreement on or prior to the date of completion of the Agreement.

8.3 Registration

8.3.1 This Agreement is a Local Land Charge.

8.3.2 The Owner hereby covenants with the Council that it will within 28 (twenty-eight) days from the date hereof apply to the Chief Land Registrar to register this Agreement in the Charges Register to the title to the Property and will furnish the Council forthwith on written demand with office copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property and the Owner covenants not to make any application to the Land Registry for the removal of any such registration without first obtaining the Council's approval.

8.3.3 Following the performance and satisfaction of all of the obligations contained in this Agreement the Council shall upon receiving a written request in writing from the Owner forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

8.4 Waiver

8.4.1 The failure by any party to enforce at any time or for any period any one or more of the terms and/or obligations of this Agreement including those contained in any Schedule of appendix hereto shall not be a waiver

of those terms and/or obligations or of the right at any time subsequently to enforce all terms of this Agreement.

8.4.2 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

8.4.3 If any provision in this Agreement shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

8.5 Third Party Rights

The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it (other than a successor in title or a successor in statutory function).

8.6 Dispute Resolution

Save as otherwise herein expressly provided any dispute or differences arising between the parties as to their respective rights duties or obligations and to any other matter or things in any way arising out of or in connection with the subject matter of this Agreement may be referred for the determination of an independent expert to be agreed upon by the parties or failing agreement by a person nominated by the President for the time being of the Law Society / Chartered Institute of Housing and the decision of the said expert shall be final and binding on the parties and the said expert's fees and expenses shall be payable as the expert directs provided that nothing in this clause shall fetter the Council in exercising its discretion in carrying out its functions.

8.7 Change in Ownership

The Owner shall provide the Council with a certified copy (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition ("Disposition") of all or any part of the Property (save to the owner and/or occupier of a single Market Housing Unit or mortgagee thereof) occurring before all the obligations under this Agreement have been discharged, including the name and address of the person to whom the Disposition was made and the nature and extent of the interests disposed of to them within 21 (twenty-one) days of such Disposition.

8.8 Non-Compliance

In the event of any non-compliance with any of the provisions of this Agreement the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy such non-compliance.

9 Confirmation of Interest

The Owner hereby warrants and confirms that apart from the Parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or proceeds of sale of the Property or any part thereof.

10 Mortgagee

The Mortgagee hereby consents to the First Owner entering into this Agreement and acknowledges that from the date hereof the Property shall be bound by the planning obligations restrictions and undertakings contained herein and if the Mortgagee becomes mortgagee in possession of the Property or any part thereof it shall be bound by the provisions of this Agreement as if it were a person deriving title from the First Owner and the Mortgagee further agrees that it will not carry out or procure the Development or any part of the Development without performing and observing the terms and obligations contained in this Agreement.

11 Jurisdiction

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

FIRST SCHEDULE

The Plan

H. M. LAND REGISTRY GENERAL MAP

GREATER LONDON

MIDDLESEX

SHEET

TQ 3189

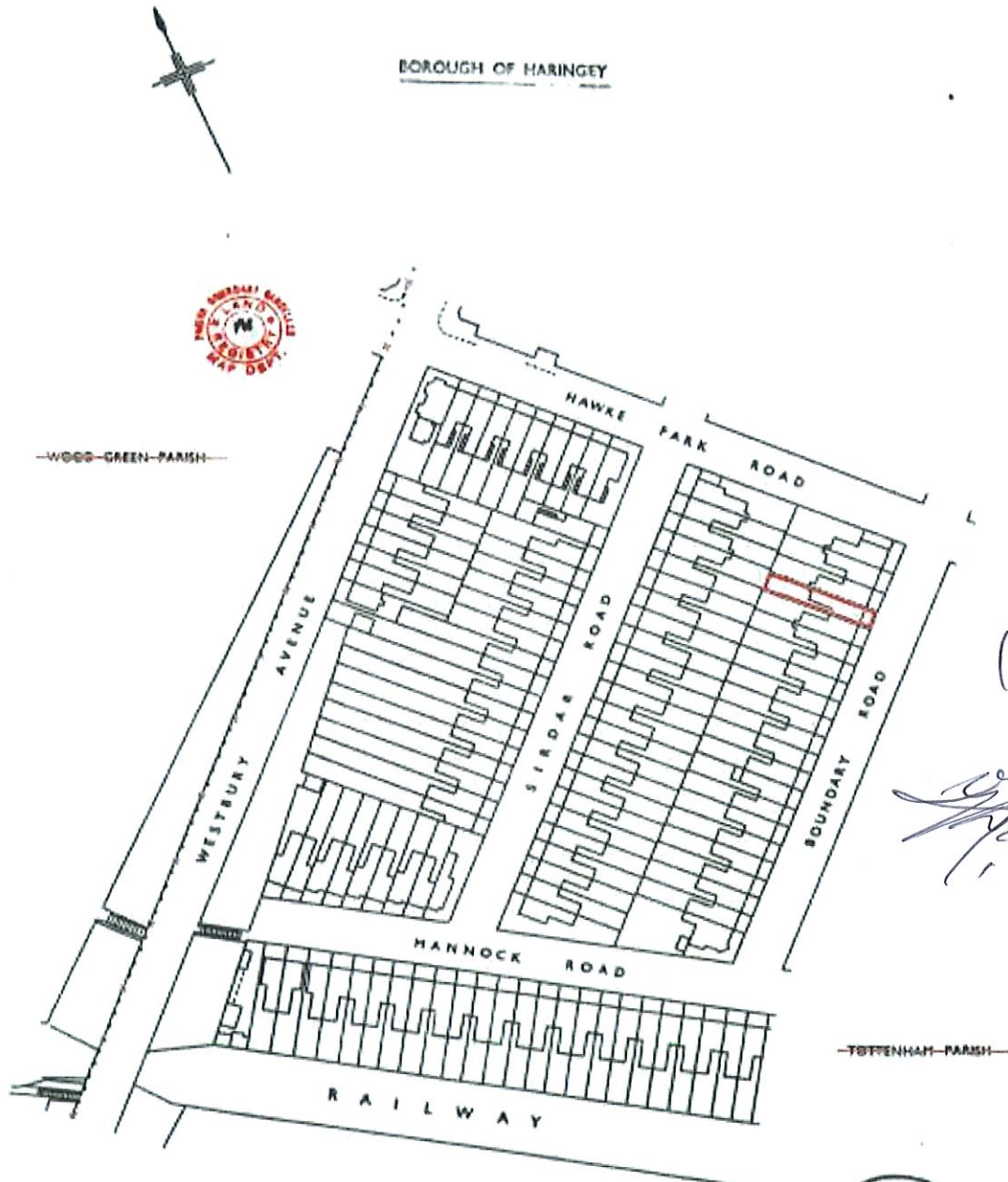
SECTION

AK

(NATIONAL GRID)

Scale 1/1250

BOROUGH OF HARINGEY



Original

[Signature]



Old Reference MIDDLESEX XI & Df
Made and printed by the Director
General of the Ordnance Survey,
Chertsey, Surrey, 1961 for H.M.L.R.
© Crown Copyright 1961



Filed Plan of Title No. **NGL 13825**

IN WITNESS whereof the parties have executed this instrument as a Deed the day and year first before written

THE COMMON SEAL OF

THE MAYOR AND BURGESSES OF THE

LONDON BOROUGH OF HARINGEY

was affixed by Order:

)

)

)

.....

Authorised Officer

EXECUTED AS A DEED by **KIKS GROUP LTD**

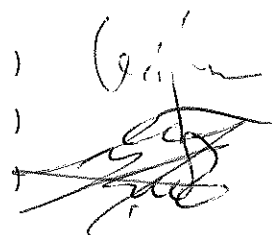
acting by two directors or a director and the

company secretary:

)

)

)



Director:

Director/Secretary:

EXECUTED AS A DEED by **KENSINGTON MORTGAGE**)
COMPANY LIMITED)
acting by)
in the presence of:)

Director:

Director/Secretary:

