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Appeal Statement

19 South End, London, W8 5BU

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Contents

1. Introduction ........................................................................................................................................ 3
2. Site and Surroundings ..................................................................................................................... 5
3. Proposals ........................................................................................................................................ 9
4. Planning History ............................................................................................................................ 10
5. The Lawful Use of the Property ..................................................................................................... 15
6. Planning Considerations ................................................................................................................ 16
7. Response to Historic Third Party Objections ............................................................................ 29
8. Grounds of Appeal and Application for Costs .......................................................................... 30
9. Conclusion ...................................................................................................................................... 31
10. Appendices .................................................................................................................................. 32
1. Introduction

1.1 This Appeal Statement has been prepared in support of a planning appeal against the non determination by the Royal Borough of Kensington and Chelsea ("RBKC") of an application for planning permission reference number PP/14/07791 registered on 4 November 2014, for the following works to 19 South End London W8 5BU ("the Property"):

“Demolition of building and construction of replacement dwelling above and associated change of use of land from B8 storage to C3 residential”

1.2 This Appeal Statement sets out the Appellant’s case in support of the proposed demolition of the existing building and the erection of a new building and the associated change of use.

1.3 This Statement should be read in conjunction with the application drawings and reports, which accompany this Appeal submission as follows:

- Existing and proposed drawings prepared by BLDA Architects;
- Design and Access Statement prepared by BLDA Architects;
- Planning Statement prepared by Savills;
- CIL form
- Tree Report
- Proposed Landscape Details
- Proposed Cycle Storage
- Ecological Report prepared by Lindsay Carrington Ecological Services Ltd;
- Environmental Noise Survey prepared by Paragon Acoustic Consultants;
- Structural Engineer Drawings prepared by Michael Barclay Partnership;
- Structural Engineer’s Specification prepared by Michael Barclay Partnership;
- Daylight and Sunlight study prepared by Delva Patman Redler Chartered Surveyors; and
- Code for Sustainable Homes Pre-Assessment Report prepared by Price and Myers.
- Energy statement by Slender Winter Partnership Ltd.
- Construction Traffic Management Reports
1.4 This statement provides a description of the development and an assessment of the proposals in relation to planning policy and other material considerations and is set out under the following further sections:

- **Section 2** outlines the site and its context within the surrounding area
- **Section 3** provides an outline of the proposals
- **Section 4** provides an overview of the planning history
- **Section 5** analyses the lawful use of the Property
- **Section 6** examines the main planning considerations in connection with the appeal
- **Section 7** is a response to historic objections raised by third parties
- **Section 8** provides Grounds of Appeal and the Appellant’s application for costs
- **Section 9** draws our conclusions in respect of the proposals
- **Section 10** contains the appendices
2. Site and Surroundings

2.1 19 South End is a 3 storey mid terrace painted brick building in use as a Class B8 storage facility for antiques and furniture. Prior to the commencement of storage use in August 2013 the building was vacant, its prior lawful use being an office which use terminated in June 2011, the then occupants having given notice in May 2010.

2.2 The building is not listed, but lies within the Kensington Square Conservation Area. The site does not fall under any other proposals map designations.
2.3 19 South End is not explicitly singled out by the Conservation Area Proposals Statement, but the wider street is discussed as follows:

“15-20 South End were originally stables belonging to the houses on the south side of the [Kensington] Square; although little is known about the date of the present studios, it seems very unlikely that they retain anything of their late 17th century fabric. No.17 for example, was extensively altered for the occupant of 17 Kensington Square in 1908. This little enclave with its primary school and its own shops was described as still a village by the Evening News in February 1939.”

2.4 The building is located on the north side of South End. The adjacent properties are in residential use, and South End and the surrounding area is predominantly residential in nature. The land use survey below demonstrates how, with the exception of the school at the western end of South End, only the Property is in non-residential use.
2.5 The building is ‘deep’ relative to its narrow width and frontage on to the street. At ground floor level it extends rearwards a considerable distance, over 120 ft, and featuring a walled garden to the rear.

2.6 Arranged over 3 floors, the photographs below show the current lawful use of the Property for antique and furniture storage.
2.7 The local area is predominantly residential in nature, and the amenities and transport links of Kensington High Street are a short walk to the north and those of Gloucester Road a short walk to the east.
3. Proposals

3.1 It is proposed to create a high quality single family dwelling at the Property.

3.2 This will involve the demolition of the existing building on the Property, and the creation of a new replacement dwelling.

3.3 The redevelopment of the Property will enable the provision of a family dwelling better suited to the site and to the prevailing land use in the vicinity, replacing the existing much altered and unremarkable building with a traditional in appearance “mews style” property.

3.4 The new building will be built to modern standards of insulation and energy saving.

3.5 The new building will comprise a 4 bedroom family-sized dwelling arranged over 3 floors, including the smaller second floor level within the new mansard roof.

3.6 A new mansard roof with dormer windows forms the second floor of the new dwelling, situated behind the parapet above the first floor level.

3.7 The new building will be positioned on the footprint of the existing building, retaining the front and rear building lines. The garden area at the rear is retained but landscaped.

3.8 It will be traditional in appearance, reflecting the local built environment.

An artists’ impression of the proposed new building at 19 South End
4. Planning History

4.1 There is a long and diverse planning history associated with the Property, this section of the Appeal Statement will detail this history, split into planning use prior to planning control, longer term planning history and recent planning history that relates to the Appellant’s proposals for the Property.

Planning Use Prior to Town and Country Planning Act 1947

4.2 The original building was built at the southern end of the garden of 15 Kensington Square and was in the same ownership and used as ancillary accommodation.

4.3 From at least 1760, the original building was used as stables and residential.

4.4 From 1906 to 1926 the building was extended and used as a sculptor's studio and residential.

4.5 From 1924 to at least 1937 there are electoral roll records for residents.

4.6 From 1935 – 1937 the lower part was in use as an antique workshop.

4.7 From 1943 – 1965 the building was used as a woodwork and joinery workshop for John Barkers.

1965 - 1988 Planning History

4.8 18 January 1965 planning permission was granted for “the use of No.19 as the postal course section of the College of Estate Management for a limited period.”

4.9 The documentation on file for that application (Appendix 1) discusses the local area as being “predominantly residential in character” and that it “is zoned as such in the Development Plan.” The report states:

“It would, therefore, be contrary to the Council’s policy to grant permission for an office user in this situation. In this instance, however, the premises enjoy use rights for general industrial purposes .. the Committee may feel therefore that the proposed office use would be less likely to interfere with the amenities of the area, and should accordingly be approved.”

4.10 It is an early example of the then Council acknowledging the sensitivity of the site, its reluctance to permit office use and the need to consider the preferred use and residential character and amenity of the area.

4.11 2 June 1965 Planning permission was granted - limited to 31 December 1974 - for the erection and retention for a limited period of a single storey rear extension and its use for a like period for purposes in connection with the permitted use of the existing building as the postal course section of College.”

4.12 4 August 1971 a section 37 was issued for “part use of 19 South End as offices”.

19 South End, London, W8 5BU | Appeal Statement
Page 10 of 32
4.13 20 September 1971 planning permission was granted for “the permanent use for office purposes and for the permanent retention of the extension subject of the planning permission granted on 02/06/65.”

4.14 1971 15 Kensington Square sold off 19 South End and the latter was no longer used in conjunction with 15 Kensington Square.

4.15 11 March 1972 planning permission was granted for “alterations to the front elevation and the reconstruction of the central block.”

4.16 13 October 1972 planning permission was refused for “the erection of an additional storey of office accommodation at the rear.”

4.17 17 January 1975 planning permission was granted for “the retention of an air conditioning plant room and outside access ladder.”

4.18 16 May 1978 a personal planning permission (TP/78/0297) was granted for the “change of use from offices to training school.”

4.19 The officer’s report to this personal planning permission (Appendix 2) discusses the amenity impact of the (then) existing office use, and the potential amenity impact of the new use.

“The present office use has caused some nuisance to local residents with deliveries from a van causing blockage to the road and general congestion due to parked cars … It is thought that less students would travel by car and that museum visits and an educational calendar would amount to a less intensive use of the premises and consequently less disturbance.”

4.20 It concludes:

“It is recommended that the permission be granted personal to Sotheby, Parke Bernet and Co., and that the hours of opening to be limited.”

4.21 This is indicative of the continued long-term sensitivity of the Property in the context of its surroundings, and the need to ensure the use of the building is not intrusive or the cause of adverse amenity impact to its residential surroundings.

4.22 15 August 1978 a personal personal planning permission (TP/78/0680) was granted - limited to 25 March 1995 - for the “change of use from offices to training school.”

4.23 25 May 1988 planning permission (TP/88/0011) was refused for the “change of use from educational with ancillary offices to mixed office and/or education use.”

4.24 29 June 1988 planning permission (TP/88/0641) was granted for the “change of use from educational with ancillary offices to mixed office and/or educational use”

4.25 14 October 1988 planning permission was granted (TP/88/1520) for the “change of use to an office within Class B1 of the Town and Country Planning (Use Classes) Order 1987.”
Recent Planning History Particular to the Appellant

4.26 1 May 2013 (FIRST APPLICATION) an application (PP/13/02128/Q18) was registered for the construction of a double storey subterranean extension to existing office building with associated air ducts to rear garden. It was refused by RBKC on 26 June 2013 on the expressed grounds that:

“The basement floorspace by reason of its size and layout, subterranean siting and design, with no natural light or ventilation would provide a substandard form of office accommodation in the Borough, contrary to guidance in the NPPPF and policies with the development plan, in particular policies CL2 and CL5 of the Core Strategy adopted 8 December 2010”

4.27 29 May 2013 (SECOND APPLICATION) an application (PP/13/02935) was registered for the “change of use from office (use class B1) to residential (use class C3). Excavation of double storey subterranean extension and replacement of single glazed windows with double glazed windows.” It was refused on 24 July 2013 by RBKC on the following grounds:

1. The proposed loss of the ‘medium’ office (Use Class B1) floorspace in an ‘accessible’ area would deprive the Royal Borough of this valued floorspace which contributes to the range of business premises within the borough which allows businesses to grow and thrive, contrary to policies of the development plan, in particular policy CF5 of the Core Strategy adopted 8 December 2010

2. The proposed application is for a new residential unit and a s106 planning obligations agreement has not been entered into to secure education, health and community facilities revenue contributions or a ‘parking permit free’ agreement, failing to mitigate the impact of the proposals on the infrastructure of the Royal Borough, contrary to policies of the development plan, in particular policies C1 and CT1 of the Core Strategy adopted 8 December 2010

3. In the absence of a landscaping scheme to secure the planting of at least one medium sized tree to replace the two existing trees to be lost as part of the construction process, the application fails to demonstrate that the proposals would not result in the loss without adequate replacement of trees of amenity value and is therefore contrary to policies of the development plan, in particular policies CR6 and CL2 of the Core Strategy adopted 8 December 2010

4.28 17 October 2013 an appeal (A/13/2204526) in relation to the refusal of the Second Application was submitted to the Planning Inspectorate by the Appellant (“the First Appeal”).
4.29 9 July 2014 the First Appeal was allowed and planning permission granted for a change of use from office Use Class B8 to residential Use Class C3; double storey subterranean extension; and replacement of single-glazed windows at 19 South End. A copy of the Inspector’s decision notice in respect of the First Appeal is attached (Appendix 3). The First Appeal decision was subject to a Section 288 Statutory Challenge by a third party on procedural grounds. This challenge succeeded and the First Appeal decision is now quashed and returned to the Secretary of State for re-determination. The Appellant is in the process of seeking permission to appeal the High Court’s decision to the Court of Appeal.

4.30 16 October 2013 (THIRD APPLICATION) an application (CL/13/04986) was registered for a Certificate of Lawfulness of Existing Use for “use of the property as use class B8 (storage and distribution)”.

4.31 10 December 2013 it was refused on the stated grounds that:

“On the balance of probabilities, the existing use of 19 South End has not been proved to be Use Class B8 (storage and distribution) as defined by The Town and Country Planning (Use Classes) Order 1987 (as amended)”.

4.32 This has not so far been appealed, as events overtook it, but the Appellant is not out of time to do so.

4.33 2 December 2013 (FOURTH APPLICATION) an application for planning permission (PP/13/07133) was registered for the “demolition of existing building and erection of dwelling new (sic) including excavation of basement”. Officers recommended approval of the Fourth Application. A copy of the Officer’s report is attached (Appendix 4).

4.34 16 May 2014 RBKC’s Planning Committee resolved to refuse the Fourth Application on the expressed grounds that

““The proposal would undermine the Council’s ambition to foster the Borough’s vitality through the protection of a variety of commercial uses which provide for a diversity of uses within the Borough and which contribute to its character and to the local and wider economy. As such the proposal is contrary to Policies CO2 and CF5 of the Core Strategy”.

4.35 16 July 2014 the Appellant submitted an appeal against RBKC’s refusal of the Fourth Application (APP/K5600/A/14/2221982) (“the Second Appeal”). The Second Appeal was allowed on 13 January 2015. Planning permission was granted for the demolition of the existing building, the excavation of a new basement, the construction of a replacement dwelling above and the associated change of use of the land from B8 storage to C3 residential. The decision notice is attached (Appendix 5) together with the costs decision (Appendix 6) The Second Appeal is also subject to a Section 288 Statutory Challenge by the same third party who had challenged the First Appeal decision.
4.36 28 August 2014 *(FIFTH APPLICATION)* an application (pp/14/06107) was registered for the “demolition of existing building, excavation of basement, construction of replacement dwelling and associated change of use of the land from B8 storage to C3 residential”. This was a duplicate of the Fourth Application and registered on the basis that this would be determined earlier than the appeal to the Fourth Application as RBKC had confirmed that it would not be defending the Second Appeal.

4.37 The Executive Director of Planning at RBKC confirmed that the Fifth Application would be determined within the 8 week statutory deadline. Notwithstanding that confirmation, the Fifth Application has not been determined as of 25 February 2015, almost 6 months later.

4.38 4 November 2014 *(SIXTH APPLICATION)* an application (pp/14/07791) was registered for “demolition of existing building and construction of replacement dwelling and associated change of use of land from B8 storage to C3 residential). The Sixth Application is the subject of this appeal.
5. The Lawful Use of the Property

5.1 The Property has lawfully been used for storage purposes (Use Class B8) since August 2013 and continues to be used for that purpose. As is explained at paragraph 4.30 above on 16 October 2013 the Appellant submitted an application for a Certificate of Lawfulness (Third Application). This application was refused by RBKC on 10 December 2013.

5.2 Following RBKC’s refusal of the Third Application the Appellant obtained a written opinion from Timothy Morshead QC attached (Appendix 7). This opinion highlighted the entirely erroneous nature of RBKC’s decision to refuse the Third Application and the legal shortcomings which vitiated its conclusion. Leading Counsel’s opinion was that RBKC had refused the Third Application as it was concerned over the implications of granting a Certificate of Lawfulness for a B8 use rather than on the merits of the application.

5.3 Attached (Appendix 8) is the RBKC’s 9 week statement on the First Appeal as sent to the Planning Inspectorate on 18 December 2013. It enclosed the refusal of the CLEUD as “evidence” that the Property was not in B8 use, which would appear to support Mr Morshead’s opinion that the LPA was concerned at the implications of granting the CLEUD rather than the merits of the application itself.

5.4 In the context of RBKC’s consideration of the Fourth Application a planning officer undertook a site inspection of the Property on 17 January 2014 with two witnesses from Savills present. In turn Leading Counsel’s opinion was sent to RBKC on 27 January 2014. Since that site visit and following receipt of Leading Counsel’s opinion RBKC has no longer denied that the lawful use of the Property is B8.

5.5 RBKC’s position in respect of the lawful use of the Property was confirmed by its determination of the Fourth Application in May 2014. The Planning Officers issued two reports to committee in respect of the Fourth Application. Both reports recommended approval on the basis that the current lawful use of the Property was B8 and that there were no policy objections to the proposed change of use from B8 to C3. Whilst the Committee refused the Fourth Application against officers’ recommendation (discussed in detail below) it accepted that the lawful use was B8 – at no point since the determination of the Fourth Application has RBKC sought to argue that the lawful use of the Property is not B8.

5.6 The Valuation Office has confirmed the B8 use from 1 August 2013 (Appendix 9). Against this background, whilst a neighbouring objector continues to contend that the Property is not in B8 use, that stance is not credible in view of the fact that the position has been accepted by both RBKC as the statutory planning authority and the Valuation Office.
6. Planning Considerations

6.1 This chapter sets out the main issues upon which this appeal should be considered, under the following headings:

- Planning Policy Context
- Agreed Matters
- The Principle of change of use from B8 to C3

Planning Policy Context

6.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

6.3 The development plan in this case comprises:

- The London Plan (2011)
- The Royal Borough of Kensington and Chelsea’s Adopted Core Strategy (2010)
- The ‘saved’ policies from the Unitary Development Plan (UDP) (2002, as amended September 2007). The policies in the UDP should not now be given full weight but rather due weight according to their consistency with the NPPF.

6.4 Also of relevance is The National Planning Policy Framework (NPPF) (2012),

6.5 With regard to decision-taking, the NPPF advises that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development and should look for solutions rather than problems. Decision-takers at every level should seek to approve applications for sustainable development where possible (paragraphs 186 and 187).

6.6 The presumption in favour of sustainable development is the golden thread that runs through the NPPF. One of the core principles of the NPPF given in paragraph 17 is that planning should not simply be about scrutiny but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives.
**Agreed Matters**

The following elements of the proposed development are those which have previously been agreed. Because no decision has yet been issued on the Sixth Application it cannot be stated that these are agreed between the parties in respect of this appeal, however they stand as a record to all those matters previously agreed by the parties. The Fourth Application proposed a basement, where as the current appeal scheme does not. In all other respects the proposals are identical.

**Demolition of the Existing Building**

6.7 Paragraph 6.8 of the Officer’s report (Appendix 4) in respect of the Fourth Application sets out the following:

“The building would be demolished. The building is of limited architectural merit and contributes little to the character and appearance of the conservation area. Its demolition and replacement with the proposed building is acceptable and the character and appearance of the conservation area would be preserved as a result.”

**Design of the Replacement Building**

6.8 In relation to the design of the mansard roof paragraph 6.9 of the report on the Fourth Application sets out that

“The appearance at the front would largely be changed by the provision of a mansard with dormer windows within the new building, which would better reflect the architectural treatment to the roofs of the neighbouring buildings than the existing roof design and are therefore supported.”

6.9 In relation to other design aspects associated with the replacement building paragraph 6.9 goes on to set out that:

“The second floor closet wing and first floor elements would remain subservient to the main building as their footprints would reduce as they rise up the building and because they would run alongside the existing bulk of the neighbouring building to the north, and although higher than that building at first floor level, this would mask their evident bulk. They would be of traditional design and materials, reflecting the character of the neighbouring buildings. The only extensive glazing would be at lower ground floor level to the rear, which is the appropriate location for such detailing.”

**Amenity Impacts**

6.10 The above ground mass of the building proposed as part of this appeal exactly mirrors that set out within the Fourth Application, and was not the subject of any objections by RBKC in its determination of that application.

6.11 Paragraph 6.12 of the Officer’s report confirms RBKC’s lack of objection in respect of residential amenity and sets out the following:
“There is an existing terrace to the rear above the ground floor and there are windows as existing to first floor level to the side elevation, allowing for overlooking of the neighbouring property. The proposals would provide a new terrace in the same location and would introduce windows in a new location to the side elevation at second floor level. The new windows would only afford lesser overlooking at a more oblique angle than the existing first floor windows. The new building would be used for residential floorspace which would increase the potential for loss of privacy. However, given the existing relationship and levels of overlooking, this increase would not give rise to an unacceptable loss of privacy to neighbours.”

It is proposed that the terrace be planted and provide “green screening” so that the possibility of overlooking would be lessened and as it will only be entered from a bedroom, the use is likely to be considerably less than when it was part of an office.

6.12 Paragraph 6.13 states:

“The proposals would increase the bulk and mass of the building, both through the increased footprint and by proposing a taller building to the rear. This would reduce the levels of sunlight, daylight and overshadowing to neighbouring properties. The applicant has assessed this and found that this impact would not lead to a material reduction in sunlight or daylight to any neighbouring windows. The increase in bulk of the building would not materially worsen the living conditions of neighbouring occupiers.”

Loss of Trees

6.13 Paragraph 6.3 of the Officer’s report in respect of the Fourth Application sets out the following:

“There are two small trees in the rear garden - a robinia frisia and a young sorbus aria - both of which are proposed to be removed. The trees are of relatively low quality and their loss is acceptable subject to the planting of at least one medium sized tree, which could be secured by recommended condition 10.”

6.14 Additionally it is proposed to plant two new trees within the re-landscaped garden following the completion of the works proposed as part of this application.

The Principle of the Change of Use from B8 to C3

6.16 The sole reason for refusal of the Fourth Application (see paragraph 4.34 above) related to the principle of change of use of the building from B8 to C3

6.17 RBKC’s expressed reasons for the refusal of a change of use from B8 to C3 focus on the loss of a “variety” of commercial uses which provide for a diversity of uses within the Borough and which contribute to its character and to the local and wider economy. Reference is made in the refusal notice to two policies which are:-
CO2 - Strategic Objective for Fostering Vitality

Our strategic objective to foster vitality is that the quality of life of our predominantly residential Borough is enhanced by a wide variety of cultural, creative and commercial uses which can significantly contribute to the well-being of residents and to the capital’s role as a world city.

Policy CF5 - Location of Business Uses

The Council will ensure that there is a range of business premises within the Borough to allow businesses to grow and thrive; to promote the consolidation of large and medium offices within town centres; support their location in areas of high transport accessibility; and protect and promote employment zones for a range of small and medium business activities which directly support the function and character of the zone.

Policy CF5 then goes on to list a series of land uses (“offices”, “light industrial”, and “employment zones”) each with specific policies on how the policy will be delivered. Class B8 Storage use is not listed, and is absent from Policy CF5.

Policy Application

6.18 In examining the policies of the Core Strategy it is necessary to explain how the document is structured.

6.19 Section 1 of the Core Strategy contains the Spatial Strategy for the Borough, and this includes a “Vision” (CV1) with supporting “Strategic Objectives”.

6.20 Section 2 of the Core Strategy sets out the Delivery Strategy for the Borough, including “Policies and Actions” in Section 2B which “contains the policies that will be used in determining planning applications (Development Management).”

6.21 The Executive Summary of the Core Strategy, ‘A Guide to the Structure of the Plan’, is located at (Appendix 10) for reference, including the Strategic Vision and the Strategic Objectives.

6.22 It is obvious from this structure and this explanation that the Vision, the Strategic Objectives and the Policies and Actions each have different roles in the Core Strategy document. The Vision (CV1) is a broad, long term spatial vision for the area, deriving from the discussion in the analysis in the “Spatial Portrait” section of the document. It is not a Development Management policy for use in determining planning applications. The Strategic Objectives (including CO2) are to support the Vision.

6.23 As the name implies, these are of a strategic aim and not Development Management policies for use in determining planning applications. It is the ‘Policies and Actions’ in Section 2B that are the Development Management policies to be used in determining planning applications.

>“The second section, the Delivery Strategy, sets out Policies and Actions (Section 2B). This contains the policies that will be used in determining planning applications (Development Management), and other Corporate and Partner Actions that will deliver the objectives of the plan.” (our emphasis)

6.25 In a plan-led system, it is important that the words and intentions of the policies contained within the Development Plan are clear, and are not stretched to cover situations to which their scope was not intended. In this case, it is clear how the Core Strategy is to be applied to planning applications – the overarching Vision and its supporting Strategic Objectives are not to be used in determining planning applications, but rather Section 2B of the Core Strategy which “contains the policies that will be used in determining planning applications.”

6.26 Whilst the Vision and the Supporting Objectives are relevant in a general sense (since the Policies have been designed to deliver them), the role of determining planning applications is expressly given to the Policies and Actions in section 2B. The Policies in Section 2B have been formulated in light of, and to ensure the delivery of, the Strategic Objectives and thereby contributing to achieving the Vision (see also paragraph 29.1.1). Compliance with these policies will support and deliver the Strategic Objectives and the Vision. Thus, if a proposal accords with the Policies in Section 2B of the Core Strategy it cannot be said to offend the Strategic Objectives or to detract from the Vision.

6.27 This was the clear view of Officers at RBKC in the report on the Fourth Application (Appendix 4):

“There are no policies protecting storage floorspace and residential use is encouraged. The loss of class B8 floorspace and the provision of a residential property is therefore acceptable.”

Compliance of the Proposals with Core Strategy Policies CF5 and CO2

6.28 Neither RBKC, nor the third party, has ever identified which part of Policy CF5 prohibits the change of use from B8 to C3. Policy CF5 specifically relates to offices and light industrial uses. As explained in Paragraph 5.6 above and (Appendix 9), the Property is classified as a ‘storage or distribution’ (B8) use by the Valuation Office and this use has been accepted by RBKC.

6.29 It is clear that Policy CF5 does not explicitly or implicitly seek to protect “storage or distribution” (B8) uses. Indeed, the only reference to storage or distribution uses in the Core Strategy is at paragraph 31.3.32 which sets out the following;

“for industry and warehousing, the forecast is for a small reduction of required stock of just 4,500m2 (50,000 ft) or just 180 jobs.” (our emphasis).

6.30 RBKC’s 2013 Annual Monitoring Report does not provide an update to these figures and this is therefore considered to be the most up to date position within the Borough. It is clear that RBKC has not considered there is a need to protect B8 Uses to achieve its objective of ensuring there is a variety of commercial uses or to contribute to the character of the Borough.
6.31 RBKC has recently undertaken detailed reviews of parts of the Core Strategy. Policy; CF5 is not one of the policies reviewed and therefore Policy CF5 remains the current policy position in relation to the specified business uses.

6.32 In light of the above, Core Strategy Policy CF5 is not relevant to the proposals.

6.33 Consequently for the reasons set out at paragraph 6.26 above, Policy CO2 (the strategic policy associated with Policy CF5) also does not apply.

6.34 There are no other policies within RBKC’s Core Strategy which restrict a change of use from B8 to C3.T

Compliance of the Proposals with The London Plan

6.35 The London Plan is undergoing revision and the new updated version (Further Alterations to the London Plan December 2014) is expected to be adopted at the beginning or March. The Inspectors report has been received and the required changes made, therefore this document carries significant weight in the decision making process.

6.36 Paragraph 1.24A of the FALP states that; “London looks set to lose employment in ‘transport and storage sectors’ (-66,000); ‘wholesale”

6.37 Policy 2.12 protects ‘Strategic Industrial Locations’ (SILs). Paragraph 2.79 notes that SILS include Preferred Industrial Locations (PLL’s) and that “it is these locations which are particularly suitable for general industrial, light industrial, storage and distribution, waste management, recycling, utilities, wholesale markets and other industrial related activities”. The appeal site does not fall within a SIL or PIL.

6.38 Policy 2.7(e) states that ‘the Mayor will and borough should….rise above its long term economic trends by’; “ensuring that appropriate weight is given to wider economic as well as more local environmental and other objectives when considering business and residential development proposals”.

6.39 The appeal site is not located within an SIL or a PIL, it is a property which was originally used as a residential dwelling and stables and has been used for a variety of purposes since. The proposal to change the use of the property from B8 to residential is entirely within character of its immediate surroundings, which is overwhelmingly residential in nature. The London Plan confirms that there is set to be a decline in a requirement for storage type uses (paragraph 1.24A) and does not seek to protect B8 uses outside of the designated areas. The appeal site is not within a designation area and the loss of the current B8 storage use will not adversely impact the wider economic objectives of the plan. Conversely, London and the Borough have an overwhelming need for additional dwellings. The change of use of this property will assist in meeting that demand. Therefore the appeal proposal has considered and meets the aims of policy 2.7.

The National Planning Policy Framework

6.40 Paragraph 14 of the NPPF states (in part), with regard to “the presumption in favour of sustainable development”: 
“approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless 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” (our emphasis)

6.41 With regard to the lawful use of the Property, Paragraph 51 of the NPPF states:

“They [local planning authorities] should normally approve planning applications for change of use to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.”

6.42 There are no economic reasons, let alone strong ones, why the loss of the existing use would be inappropriate, and this is reflected by the absence of any policy protection for B8 storage uses within the Development Plan.

6.43 With regard to the loss of B8 Use in this location, the proposals accord with the development plan. The development plan is absent and silent in respect of the protection of B8 use in this location, and therefore if all other aspects of the scheme are acceptable then planning permission should have been granted.

Recent decisions within the Borough relating to the loss of B1 and B8 Use

6.44 The following case studies provide recent examples of planning applications for a change of use from ‘storage or distribution’ (B8) or offices (B1) use to residential (C3) in RBKC. In the case of the loss of B8 use, the officer’s reports do not make reference to the application of Core Strategy Policy CF5 or CO2 to the proposals and in relation to the first example of a loss of B1 use define more narrowly the scope of CF5 rather than extending it.

**PP/13/04726 Young Street Car Park**

6.45 A planning application was approved on 21 January 2014 for the demolition of the RBKC owned multi storey 250 space car park, the loss of a total of 1212 sqm of B1 office space and its replacement with an up to 8 storey building above ground with 2 levels of basement with 53 residential dwellings and 25 parking spaces and 55 cycle parking spaces.

6.46 The Officer’s report to Committee (Appendix 11)
“There is an existing office on the roof of the car park and at ground/lower ground floor level. The roof level office is ancillary to the function of the car park and does not therefore provide market office accommodation protected by Policy CF5. The ground/lower ground floor office is a class B1 office with a floor area of 972 sqm. The office was originally constructed as ancillary accommodation to the public car park (specifically as an RBKC and NPC Parking Shop office) and the lease history shows it operated as such until 2011 when it was temporarily leased to Holland Park School to provide exam space. The office is now vacant. The office has never contributed to the Borough’s general market office stock and in light of its split level floor plan would not offer attractive commercial office space. The loss of the B1 office would not result in a loss of employment opportunities and would be acceptable within the context of the development proposed……”

6.43 As the report by Knight Frank, commissioned by RBKC on a previous planning application for the Young Street site PP/11/00422 (Appendix 12) and the Planning Officer's Report (Appendix 13) on the same site makes clear the office space had not always been used by RBKC and had been used as retail space; nor is a resident parking permit office an ancillary use to a public car park as is demonstrated by the fact that that office now survives in the Town Hall itself.

6.44 The office space had not been used as offices for some time, but there is no evidence that RBKC attempted to market them as such. In respect of the Young street site RBKC did not apply Policy CF5 to protect what is described as non-market office accommodation. It also considered that the poor floor plan was relevant to the acceptability of the loss of B1 use of 972 sqm in an highly accessible location.

6.45 A clear comparison can be drawn between the Young Street Car Park application and the current appeal. Prior to the change of use to B8 the Property also did not provide market office space, that use having ceased 3 years ago, and the witness statement (Appendix 14) of Jerry Bridge Butler, partner in the former commercial occupants of the Property, makes clear as to the inadequacy of the accommodation, owing amongst other matters to the floor-plate; the witness statement also refers to the fact that it had never provided local employment. The rebuilding and refurbishing estimate of OLF (Appendix 15) shows that the cost of putting it into order to be used as offices were commercially unrealistic and would not happen. That would be so, even if there were a demand for such office, which the report of Mark Gilbart-Smith (Appendix 16) showed there is not and it was simply not viable to refurbish it for office use.

A/10/2122174  16 Princedale Road

6.46 This was an application for the change of use of basement and ground floors, currently offices within Class B1 (Business Use) use, to provide additional residential accommodation within Class C3 (dwelling house). It was refused by RBKC on the grounds that the loss of a small office unit was in conflict with Policy CF5.

6.47 An appeal was submitted against RBKC’s refusal of the application. The Inspector’s decision on the appeal (Appendix 17) states
“5. Notwithstanding all that, it is also clear that for a period the basement and ground floor areas of the property have been in office use, although there appears to be nothing in the planning history that sanctioned such activity. That use finished some three or more years ago and since that time the premises appear to have become disused, although they appeared to me to be in a sound condition.

6. I am informed by the Appellant that there is absolutely no intention by the owners of the property to offer the appeal premises for a renewed office use. They contend that the logical and sustainable use of the space is for it to be accommodated into the residential fabric of the building to become, or resume C3 usage.

7. Council policy CF5 of its Core Strategy seeks to retain small offices for small businesses within the borough. The logic behind that is laudable and clear – to support a diverse economy and provide a range of premises where small businesses can start and develop. The Council argues that the appeal premises are an example of a small business opportunity, and as they were last used as such they should be retained for that purpose.

8. Clearly the adopted policy should be supported unless material considerations or circumstances indicate that an alternative judgement can be entertained. In this case given the somewhat obscure planning history, the close and connected internal relationship of the accommodation to the rest of the house that I observed on my site visit, and the overriding nature of the road in which it is located, I consider that a case of this kind can be made.

9. A resurrected office use at this location would now represent a distinctly non-conforming activity within the road, particularly given the loss of the public house, and would be somewhat incongruous with its surroundings. I am informed that the uncertainty arising from the planning refusal is preventing the parent house being let. As such a perfectly viable house remains vacant and unused. This is regrettable.

10. I have also noted that paragraph 22 of the National Planning Policy Framework (NPPF) which is more recent even than the Council’s Core Strategy, states that planning policies should avoid long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose.”

6.48 Whilst not exactly analogous with the Property, there are points of comparison. The office use ceased over 3 years ago; The Owner will not permit the Property to revert to B1 use. Any commercial use of the site is non-conforming to the residential nature of the road (but the current B8 use is in any event not protected). A resumption of the historic residential use will allow for the improvement by a replacement building of the streetscape.
**PP/14/01279 Garages adjacent to 6a Munro Mews**

6.49 Planning permission was granted on 2 May 2014 for the ‘demolition of existing garages and erection of four two-storey town houses’. The Committee Report (Appendix 18) sets out that in relation to the loss of the garages:

“The garages have been vacant for several years and are in a poor state of repair. The loss of the garages would not conflict with policy CF4 (Street Markets). Given the condition of the garages they also presently offer no opportunity for use as storage and in any case there are no planning policies that protect storage uses in the Borough. In light of this the redevelopment of the site for residential use would accord with the Core Strategy.” (our emphasis)

**PP/13/02659/Q06 Clearings 1&2 Draycott Avenue**

6.50 A planning application was granted (Appendix 19) on 19 November 2013 for the following:

‘Demolition of Clearings 1 & 2, Leverett Street and Denyer Street depot (collectively known as Clearings site), redevelopment to provide 69 residential units comprising 62 apartments and 7 town houses, with ancillary facilities for residents, basement car parking, landscaping, and walkway between Mossop Street and Denyer Street and a replacement RBKC street cleaning facility on part of depot site (Major Application)’

6.51 The proposal seeks the demolition of the Clearings depot which is part class B1 office/studio space (4,225.85 sqm) (3,034 sqm replaced elsewhere) and part B8 storage space (14,724.15 sqm) and replacement of the depot with residential use (Class C3).

6.52 The Committee report sets out that Policy CF5 of the Core Strategy does not afford Class B8 uses any protection and therefore the loss of the storage or distribution (Class B8) use complies with Core Strategy Policy CF5:

“Principle of Land Use

1.4 Clearings 1 & 2 comprise 18,950sqm of business floorspace (Class B1 office/studio space occupying 22.3% and Class B8 storage occupying 77.7% of the floor area). Clearings 2 will be demolished under phase 1 of the redevelopment to facilitate the interim school. Planning permission is not required for this demolition. The proposal will therefore result in the loss of Clearings 1 only (12,439sqm GEA).

Loss of Storage

4.5 Core Strategy policy CF5 relates to employment and the Council’s approach to the preservation and expansion of employment opportunities. While Class B8 storage generates some employment, policy CF5 does not afford it any protection. Therefore, the loss of the storage complies with policy CF5.” (our emphasis)
PP/12/03289 302 Westbourne Grove

6.53 A planning application for ‘change of use of the lower ground floor from commercial storage to residential’ was refused on 13 November 2012. The officer’s report and the decision notice (Appendix 20 of this report) sets out the reasons for refusal, which are not in relation to the loss of the B8 storage use but set out at 4.9:

“The proposal would not involve any operational development. It is not considered that the change of use of the basement from retail to residential would materially affect the mixed-use character of this part of the conservation area. The proposal would preserve the character and appearance of the conservation area.”

6.54 The decision notice sets out the following reasons for refusal:

“1. The applicant has failed to demonstrate by way of a poor layout and lack of information, in particular Average Daylight Factor data, that the proposed residential unit would benefit from adequate levels of natural ventilation or natural light and as such the proposed dwelling would provide a sub-standard level of living accommodation, contrary to policies of the development plan, in particular policy CL5 of the Core Strategy adopted 8 December 2012 and London Plan policy 3.5 adopted July 2011 and the Council’s Supplementary Planning Guidance on Housing Standards adopted July 2002.

2. In the absence of a suitable legal agreement to secure contributions to local infrastructure and to ensure that residents of the proposed additional residential unit (other than those residents with disabilities who are purple badge holders) have no entitlement to a parking permit, the proposal would result in an unacceptable impact on local infrastructure and increased on-street parking pressure in the locality, contrary to policies of the development plan, in particular policies C1 and CT1 of the Core Strategy adopted 8 December 2010 as well as the Planning Obligations Supplementary Planning Document adopted 17 August 2010 and the Transport Supplementary Planning Document adopted 10 December 2008.

6.55 The above makes clear that the reasons for refusal of the application were in relation to poor residential amenity and the absence of a legal agreement. The Officer’s report makes no reference to the loss of the B8 use or the failure of the proposals to comply with Core Strategy policy CF5 or indeed C02.

PP/10/01631 1,2,3 Glynde Mews, 58 Walton Street

6.56 A planning application was approved on 16 November 2010 for ‘erection of 4 new dwelling houses above a shared basement car park and ancillary basement spaces for houses 1 and 2, new vehicular access form Yeoman’s Row and pedestrian access from Walton Street. Change of use of B8 storage to residential”.

6.57 The officer’s report (Appendix 21) sets out the following in relation to the loss of the B8 use:
“UDP Policy E13 and Core Strategy Policy CF5, inter alia, encourages the provision of premises for small locally based service industries and offices. However, the loss of this small commercial storage use of only twenty five square metres within a primarily residential mews is not considered to have a material impact and the proposal is thus considered to comply with UDP Policy E13 and Policy CF5.” (our emphasis)

6.58 The Officer’s report sets out that the proposals to lose the storage use is not considered to have a material impact on the surrounding area and complies with Core Strategy policy CF5.

6.59 The Property is similarly located in an area characterised by residential uses (as illustrated on the Land use survey of South End in chapter 2, paragraph 2.4 of this statement) and the loss of the B8 unit would not have a material impact on the character of the local area.

6.60 It is also noteworthy that in none of the above cases is any reference made to CO2, principally because it was not considered relevant in the decision making process.

**PP/10/027334 Prince of Wales Public House (14 Princedale Road)**

6.61 We have found only one application where RBKC has sought to rely on Strategic Objectives; an application to change a public house to residential use. The Officer’s report (Appendix 22) relies on CO1 in refusing change of use from a Public House to residential dwellings. RBKC in its appeal statement (Appendix 23) dealt at length with the “vision” and the “objectives” claiming that

> “4.25 …….It would be possible for a decision maker to take the vision, and titles of the strategic objectives, and use this alone as a guide. This is the approach that is adopted as part of the policy justification for this appeal.”

6.62 This Humpty Dumpty approach “*When I use a word it means just what I choose it to mean………..the question is which is to be master – that’s all!”* was given short shrift in the Inspector’s Report allowing the appeal (A/11/2152776) (Appendix 24); in dealing with this elastic approach, he said at

> “10…….. The decision notice refers to CS Policy CV 1, which sets out the overall vision for the Borough, and CS Policy CO 1, which is a strategic objective relating in part to “keeping life local’. However, the CS indicates that Section 2B of the Strategy “contains the policies that will be used in determining planning applications”. The policies in that section have been formulated in the light of the Vision and Objectives. As the proposal would not conflict with the detailed CS Policies CK1 and CK3 that support Policy CO1 and in turn Policy CV1 it would be illogical to claim that the proposal would do anything other than comply with the Objective or Vision. The proposal would accord with the aims of the recently adopted CS.”

6.63 It had been made very clear to RBKC that it could not rely upon either the Vision or the Objectives and we can find no case where it has done so since the Prince of Wales Public House case, save in rejecting the Fourth Application in respect of the Property.
Conclusion on the Principle of Change of Use from B8 to C3

6.64 The London Plan cites a decline in employment in the storage sector and additionally has no policies to protect B8 Storage uses, unless such uses are located within particular zones, which the appeal site is not.

6.65 Local RBKC Policy CF5 specifically does not seek to protect B8 uses. Furthermore the Core Strategy predicts a small reduction in the required stock of storage space, this chimes with the London Plan.

6.66 RBKC has recently reviewed its Core Strategy and has not sought to widen the scope of Policy CF5.

6.67 Policy CO2 is a strategic objective and not a planning policy to be used in determining planning applications. Adopting the approach taken by the Inspector on the Prince of Wales public house appeal on the basis that there is no breach of Policy CF5 there is no conflict with the strategic objective set out by Policy CO2.

6.68 There are no other planning policies in the RBKC Development Plan [or the London Plan] that would prevent a change of use from B8 to C3 at the Property.

6.69 The appeal is therefore in accordance with the Development Plan and should be approved in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. There are no other material considerations that weigh in favour of refusing the appeal.
7. **Response to Historic Third Party Objections**

7.1 In the Statutory Challenge to the First Appeal the neighbouring objector alleged that he was denied the opportunity of making a number of submissions. In the legal proceedings these were noted as follows:

7.1.1 That the Property is not in B8 use;

7.1.2 On the merits of a change from B8 to C3;

7.1.3 That the Appellant had exploited a ‘loophole’ by changing the use from B1 to B8 in order to circumvent Policy CF5. The exploitation of this loophole should be taken into account as a material consideration weighing in favour of refusal of the appeal;

7.1.4 That the change of use would be contrary to Strategic Objective CO2;

7.1.5 That it would cause a permanent loss of B1 office accommodation;

7.1.6 That it would be contrary to the London Plan’s protection of commercial uses.

7.2 Point 7.1.1 is addressed in full at Section 5 above. There is no dispute over the lawful use of the Property. It has been used (and continues to be used) for storage purposes since August 2013. This has been accepted by RBKC and the Valuation Office.

7.3 Points 7.1.2 and 7.1.4 are addressed in full in Section 6 above. Neither Policy CF5 nor CO2 have an application to this appeal. This is also the view of Council officers as evidenced by their recommendation in respect of the Fourth Application.

7.4 In respect of Point 7.1.3 there has been no exploitation of a loophole. It was entirely lawful for the Appellant to change the use from B1 to B8. There were sound commercial reasons for doing so and it meant a building that would otherwise have lain empty had some use. In turn she is entitled to seek planning permission for change of use from B8 to C3. This is not capable of amounting to a material consideration to outweigh the fact that the appeal proposals are in compliance with the Development Plan for the purpose of Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

7.5 In respect of Point 7.1.5, the current lawful use of the Property is B8. The B1 use ceased in June 2011. The Appellant has made clear that even if the appeal were refused it will not result in the return to B1 offices. The Property is not suitable or viable for office uses. The approval of the appeal with therefore in no way cause a permanent loss of B1 office accommodation. That loss has occurred and will not be reversed.

7.6 In respect of Point 7.1.6, neither the London Plan or RBKC’s Core Strategy contain any policy which prohibits the change of use of the Property from B8 storage use to C3.
8 Grounds of Appeal and Application for Costs

8.1 The grounds of appeal are the failure of the LPA to determine the application within the statutory 8 week period. It is considered that, taking into account the acceptability of the proposals and the history of this site, that consent should have been forthcoming within the 8 week period. The LPA has given no planning related reasons for the non determination of this case. The appellant’s supporting planning statement, submitted with the planning application now subject to this appeal sets out the full planning considerations of the proposed development at the time of making the application.

8.2 Should the LPA defend its non-determination and/or give grounds for refusal of this Appeal, the Appellant will make any necessary representations in response at the 9 week stage.

Application for costs – Grounds for Award of Costs

8.3 The LPA was unreasonable in its non-determination of planning permission PP/14/07791.

8.4 National Planning guidance states that the aim of the cost regime is to (our emphasis);

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections

8.5 The guidance goes on to note that cost may be awarded where;

- A party has behaved unreasonably; and
- The unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process

8.6 In this instance the non-determination of the application has forced the applicant to resort to the appeals system, thereby incurring unnecessary cost and delay.

8.7 No formal reason has been given for the delay in determination. However the Appellant submits a sworn witness statement and exhibit (Appendix 25) on the background to the delays in determining this application.
9 Conclusion

9.1 There are no policies in the Core Strategy which seek to protect B8 Storage uses. This is confirmed by the planning history associated with the Property and set out in the planning statement submitted with the application.

9.2 Given the above, planning permission for the application should have been granted within the statutory time period.

9.3 A costs appeal is made in conjunction with this planning appeal, given that the non-determination of the application has caused delay to the process.

9.4 Two previous Inspector’s on the First and Second Appeal concluded that the change of use from B8 to C3 was acceptable. The Appellant agrees with and supports these conclusions. However in light of the statutory challenges to the two previous appeal decisions the Appellant respectfully requests that the Inspector dealing with this Appeal should deal with it solely on its merits, without relying upon the opinions of the previous Inspectors.

9.5 In compliance with the requirements of Appeal Statements, it has been necessary for this Statement to refer to earlier appeals and their outcome as part of the history of the planning on this site, but the Appellant believes that there is no requirement for the Inspector on this Appeal to refer to or rely upon those previous decisions.

9.6 The Appellant is content, and indeed would request, that the Inspector should rely solely upon his own judgment in determining whether:

- The property is current in B8 use
- A change of use from B8 to C3 is acceptable
- Demolition of the current building is acceptable
- The proposed new building is acceptable.
10. Appendices

1. 19 South End – Documentation re 18 January 1965 planning permission
2. 1978 Documents
3. 9th July Appeal Decision
4. Fourth Application - Officers Report to Committee
5. 13 January 2015 Appeal Decision
6. 13th January 2015 Costs Letter
7. Tim Morsehead Q.C Opinion
8. Councils 9 Week Statement – 13/02935
9. Valuation Office rating for the Property
10. RBKC Core Strategy Extract
11. Young Street Car Park Report
12. Knight Frank report to RBKC
14. Statement by Jeremy Bridge – Butler
15. OLF building estimate
16. Mark Gilbart-Smith report
17. Appeal Decision – 16 Princedale Road
18. Munro Mews Report
19. Clearings 1 & 2 Report
20. Westbourne Grove Report
22. Prince of Wales Pub – Committee Report
23. Prince of Wales Pub – Councils Statement of Case
24. Prince of Wales Pub – Appeal Decision /13/2204526 RBKC’s 9 week statement
25. Sworn Witness Statement of Zipporah Lisle-Mainwaring