
CD10.1g – 19 – 21 Western Road, Southall, UB2 (2014) – Appeal Ref: APP/A5270/A/14/2219147

Proof Reference – Paragraphs 5.2.17;

Relevant Appeal Decision Paragraphs – 13 – 16

This site is located in a **PTAL 4** location that was permitted with a single blue badge space for a development of 36 units (ratio of 0.02 spaces per unit), despite not being in a CPZ.

Appeal Decision

Hearing held on 19 August 2014

Site visit made on 19 August 2014

by Peter Rose BA MRTPI DMS MCMi

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

Decision date: 11 September 2014

Appeal Ref: APP/A5270/A/14/2219147

Albert Dane Centre, 19 Western Road, Southall, Middlesex UB2 5HA

- 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 Pocket Living (2013) LLP against the decision of the Council of the London Borough of Ealing.
 - The application Ref PP/2013/5461, dated 4 December 2013, was refused by notice dated 9 April 2014.
 - The development proposed is redevelopment of the site formerly occupied by the Albert Dane Centre (Use Class D1) to provide 39 x one bedroom affordable units (Use Class C3), incorporating ancillary landscaping, disabled car parking, refuse and cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment to provide 36 x one bedroom affordable units (Use Class C3), incorporating ancillary landscaping, disabled car parking, refuse and cycle storage of the site of the former Albert Dane Centre, 19-21 Western Road, Southall, Middlesex UB2 5HA in accordance with the terms of the application Ref PP/2013/5416, dated 4 December 2013, and subject to the conditions set out in the attached schedule.

Procedural Matters

2. Following submission of the application, the scheme has been modified. The revision included a reduction in the number of units proposed from 39 to 36. This was the basis upon which the Council took its decision and upon which I consider this appeal.
3. A Unilateral Undertaking dated 4 August 2014 has been submitted in support of the proposal and in response to objections raised in the Council's decision. I am satisfied that no interests would be prejudiced by having regard to the Undertaking in this appeal.
4. Both main parties also agreed at the Hearing that the site should be accurately described as 'site of the former Albert Dane Centre, 19-21 Western Road, Southall, Middlesex UB2 5HA'.

Application for Costs

5. At the Hearing an application for costs was made by Pocket Living (2013) LLP against the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:

- (a) the effect of the proposed development upon the character and appearance of the host site and surrounding area with regard as to whether the scheme would create a cramped and over-developed site out-of-character with the existing pattern of development in the neighbourhood, having particular reference to removal of trees, on-site servicing and provision for on-site disabled parking;
- (b) the appropriateness of the submitted Unilateral Undertaking as a means of mitigation in relation to matters of tree removal, affordable housing, education, highway works, air quality, energy and low car housing.

Reasons

7. The appeal site comprises a cleared area of land formerly occupied by a single storey building used as a day centre. The site has a main frontage to Western Road and occupies a relatively prominent position overlooking the junction with St. Johns Road. It forms part of an area of mixed use including both housing and a range of non-residential uses. Western Road itself is described by the Council as a busy main distributor. It is relatively narrow, accommodates bus routes and has waiting restrictions in the vicinity of the appeal site. The buildings fronting this part of Western Road are of mixed design and quality, with little distinct common character or appearance, and their form and use make for a fairly diverse setting.
8. At the Hearing, the Council explained that its objection related to the quantum, layout and siting of development proposed, and that the need to remove three large plane trees at the front of the site, the failure to provide satisfactory on-site servicing, and the failure to provide adequate on-site disabled parking were all symptomatic of these shortcomings. Since its decision, discussions have taken place which address the Council's objections to loss of trees and on-site servicing.

Loss of on-site trees

9. The existing frontage trees are extremely attractive features of the site and of the wider street-scene. The Unilateral Undertaking makes a commitment for replacement trees within the street-scene which I am satisfied mitigates the harm likely to be incurred by removal of the existing trees. I also find the Undertaking meets the relevant tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010, and accords with the advice of paragraph 204 of the National Planning Policy Framework (the Framework), and of the Government's Planning Practice Guidance (the Guidance). The replacements would also be part of a wider plan of tree works within the site involving some removal of poorer quality specimens and further planting.
10. I therefore conclude that the scheme would not be harmful in terms of loss of trees. Accordingly the development would not be contrary to Policy 7B of the Adopted Development Management Development Plan Document Rough Edit Version December 2013 (the DPD), to Policy 3.8 of the Adopted Development (or Core) Strategy Rough Edit Version 3 April 2012 (the Core Strategy), or to Policy 7.21 of the Mayor of London's London Plan, 2011. These seek, amongst

other matters, to ensure that existing trees of value are replaced or retained and that new development should generally provide a high standard of amenity and positive visual impact.

On-site servicing

11. Both main parties confirmed at the Hearing that the Council's objection could now be resolved by a condition requiring a management plan to be submitted setting out details of proposed arrangements for refuse collection. The Council confirmed it had no objection in principle to the scheme on this basis and I agree no harm would thereby arise.
12. I therefore conclude that the scheme would not be harmful in terms of on-site servicing. Accordingly, the development would not be contrary to Policy 7B of the DPD, or to Policy 1.1(g) of the Core Strategy. These seek, amongst other matters, to ensure that development achieves a high standard of amenity for users and protects communities.

Provision for disabled parking

13. The scheme is conceived as a generally sustainable, car-free development, but one off-street space would still be provided solely to serve the single wheelchair unit proposed.
14. Policy 6.13 of the DPD requires significantly more disabled parking than proposed and the Council has indicated a requirement for one dedicated space and three further enlarged but unmarked spaces. This would contrast with the London Plan which, in seeking to strike a balance between promoting new development and preventing excessive car parking, generally requires developments to provide at least one space for Blue Badge holders.
15. Whilst the scheme would not provide for any disabled visitor parking, I am generally satisfied that the proposed provision would meet the needs of the scheme and be adequate in this specific context. As a car-free scheme, three enlarged spaces would also be out of context with the principle of the design. The appellant further explained that there has, in any case, been very limited demand for wheelchair occupation in other schemes. The gross internal areas of the other non-wheelchair units proposed would also be too small for conversion into further wheelchair units, thereby limiting the future capacity for wheelchair based occupation. If unused, there should also be no reason why, in principle, the dedicated space proposed might not be considered for use by any Blue Badge-holding visitors.
16. I therefore conclude that the scheme would not be harmful in terms of provision for disabled parking. Accordingly, the development would not be contrary to the underlying aims of Policy 6.13 of the DPD, or to Policy 6.13 of the London Plan. These seek, amongst other matters, to ensure that development provides adequate parking spaces for disabled people. I am also mindful of the Framework's general commitment to promote sustainable development.

Overview- cramped and over-developed character

17. The main front elevation of the scheme would be 4-storeys and would be positioned close to the adjacent highway. Although the building would present a substantial bulk to the street-scene and would be of flat-roof design, the

height would broadly line through with the ridge line of the adjacent building and it would be set apart from adjacent properties in the frontage. Further, the scheme would introduce an attractive feature into a setting of otherwise limited townscape quality and also re-establish and reinforce the original building line. Whilst occupying a prominent position, I am satisfied the detailed design and overall form would provide a reasonable infill development within the street-scene.

18. I have noted the Council's concerns regarding the extension of the bulk into the site and the comparative impact of the previous single storey building. Whilst the extent of the footprint would be significant, it would still be set within open spaces to the rear and sides. I also note that the boundary treatment of the adjoining properties to the rear and sides is of limited quality and this relationship would not be harmed by the extent of development proposed.
19. The density of the development would exceed the suggested threshold for a 'Suburban' PTAL 4 location set out in Policy 3.4 of the London Plan and would fall within the recommended range for 'Urban' settings. Policy 1.2(h) of the Core Strategy advises, however, that the Council will support high densities in areas of good public transport accessibility taking into account various factors. These factors include the quality of the design, and I am generally satisfied in that regard.
20. The Framework also places great importance upon high quality design and local distinctiveness. I accept the proposal would be of a substantial bulk and would contrast in its detailed design with adjacent buildings but this would not be at the expense of local distinctiveness. Nor would it mitigate against the general need, as the various policies encourage, to improve the character and quality of the area and the way it functions.
21. I therefore conclude that the proposed development would not involve a cramped and over-developed site out-of-character with the existing pattern of development in the neighbourhood and would not thereby be harmful to the character and appearance of the surrounding area. Accordingly, the development would not be contrary to Policies 6.13, 7.1, 7.2, 7.4, 7.6 and 7.21 of the London Plan, 2011, to Policies 1.1(g), 1.2(h), 3.1(b) and 3.8 of the Core Strategy, or to Policies 6.13, 7.4 and 7B of the DPD. These seek, amongst other matters, to ensure that development complements the existing building pattern, and that it contributes high quality design which makes a positive contribution to a coherent public realm. I have also had regard to the Mayor of London's Housing Supplementary Planning Guidance November 2012.

The Unilateral Undertaking

22. In addition to the replacement trees, it is incumbent upon me to assess the other contributions required by the Council and set out in the Undertaking with regard to the tests identified in Regulation 122. Further, reference is again required to relevant advice set out in the Framework, in the Guidance, and to the general expectations of the Planning Inspectorate's Procedural Guide Planning Appeals England, published April 2014 (the Guide). Regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision that is capable of being charged CIL unless it meets three tests. These are that the obligation is necessary to make the proposal acceptable in planning terms, that it is directly related to the scheme, and that it is fairly and reasonably related in scale and kind to the development.

23. In relation to Part I, I am not satisfied that the additional 1-bedroom, non-family housing would be likely to place significant additional pressure on local schools. I note contributions have been required regarding air quality and energy and I am satisfied these are reasonable and generally supported by relevant policies. I am similarly satisfied of the need for a highway contribution to improve pedestrian safety immediately outside the site. The scheme is for affordable housing and I am satisfied by the terms of Part II.
24. Part III relates to 'low car housing'. The site is relatively well served by public transport and forms part of a Controlled Parking Zone (CPZ). The site represents a positive opportunity to promote sustainable development. Conversely, in the absence of appropriate restrictions, the potential vehicle generation could be considerable, with significant potential harm for the free and safe movement of vehicles and pedestrians in the vicinity arising from possible congestion, obstruction and related impacts.
25. Whilst the principle of a permit-free development is agreed between the main parties, paragraph N.6.7 of the Guide advises that care should be taken to ensure that obligations fall within the terms of section 106 of the Town and Country Planning Act 1990, and specific reference is made to *Westminster City Council v SSCLG and Mrs Marilyn Acons [2013] EWHC 690 (Admin)*. I have carefully noted the legal submissions in support made by both the main parties and, in particular, the shared view that the Undertaking is compliant with both section 106(1) and with relevant case law. Even so, although stated as a deed made under section 106, I have some concerns in this regard towards the particular wording of the Undertaking as an effective restriction on the use of land.
26. Nevertheless, additionally to section 106, the Undertaking is also expressed as being made pursuant to section 16 of the Greater London Council (General Powers) Act 1974. I am satisfied this aspect of the drafting meets the general terms of that provision and that the Undertaking would be registered as a land charge on those terms. Both the main parties have also put forward a planning condition requiring preparation of a Travel Plan designed to minimise car usage and promote alternative modes of transport, and for this to be approved by the local planning authority. Accordingly, I find the scheme would make reasonable arrangements for mitigating potential parking implications of the development.
27. I therefore conclude the required contributions to be unnecessary in relation to education, and I disregard that aspect of the Undertaking as a consideration in my decision. In relation to air quality monitoring, energy, affordable housing, highway works and low car housing, I conclude the commitments would be necessary in order to make the development acceptable in planning terms, that they would be directly related to the scheme, and would be fairly and reasonably related in scale and kind to the development, and would generally accord with the relevant advice.

Other Matters

28. I have considered all other matters raised, including concerns raised by interested parties regarding privacy, noise and overlooking. These are not identified as objections by the Council and I have little reason to conclude the scheme would be harmful in those regards.

29. I have noted that the scheme would make a significant contribution to meeting an important local need for affordable housing in accordance with the general expectations of the Core Strategy, of the London Plan, and of the Framework.
30. I further note that the Framework seeks to promote effective use of land, and particularly through re-use of brownfield sites, and that the scheme would be consistent with that expectation.
31. I have also had regard to the Mayor of London's Revised Early Minor Alterations to the London Plan published on 11 October 2013, and to the Draft Further Alterations dated January 2014.

Conditions

32. I have noted the list of conditions put forward by the Council and the appellant's general agreement to those suggestions. Nevertheless, I must have regard to the advice set out in both the government's Planning Practice Guidance (the Guidance) and in the Framework in terms of both the need for individual conditions and of appropriate wording.
33. For the avoidance of doubt and in the interests of proper planning, a condition is imposed to ensure the development is undertaken in accordance with the list of relevant drawings and documents as agreed by the main parties at the Hearing.
34. To ensure a satisfactory standard of external appearance, a condition is imposed requiring details to be agreed of external materials. For similar reasons, conditions are imposed regarding a landscaping scheme and boundary treatment.
35. To protect the living conditions of neighbouring and future occupiers, conditions are imposed to regulate possible noise disturbance from plant and machinery, and to ensure no nuisance from external lighting. Lighting is also required for the purposes of safety and security.
36. To protect the living conditions of neighbouring occupiers, a condition requires a Construction Method Statement to be followed.
37. To protect the living conditions of future occupiers, conditions require investigation of possible site contamination, and details of Crime Prevention measures.
38. To avoid harm to local traffic conditions, conditions are imposed to safeguard vehicular and pedestrian areas within the site. Details of visibility displays and of crossover arrangements are to be agreed by the local planning authority and to be implemented prior to first occupation. Details of servicing and parking management plans are also required.
39. To safeguard existing trees, conditions are imposed regarding measures for tree protection and retention.
40. To deliver sustainable development, conditions require the units to be constructed to the standards of Level 4 of the Code for Sustainable Homes and of Lifetime Homes. Details are similarly required of cycle parking, of drainage and of a Travel Plan. A condition also requires the ecological measures detailed in the submitted Ecological Appraisal to be implemented in accordance with an agreed programme.

41. Conditions have been suggested by the Council regarding details of ventilation and noise insulation but I am not satisfied these to be necessary. I am also not satisfied regarding the need for a condition relating to piling, or that it would be reasonable or necessary to require an annual monitoring report to be submitted to the local planning authority in relation to the Travel Plan.

Conclusion

42. For the above reasons, I conclude the appeal should be allowed.

Peter Rose

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 00686_S_00 P1; 00686_S_02 P1; 00686_S_03 P1; 00686_P_01 P2; 00686_P_00 P4; 00686_P_00_A P2; 00686_S_01 P3; 00686_E_01_A P2; 00686_E_01_B P2; 00686_E_00_A P4; 00686_E_00_B P4; 00686_E_02 P2; POC18930-03A; POC18930-11B; Planning Statement dated 4 December 2013; Design & Access Statement Addendum (Rolfe Judd Planning March 2014); Energy Strategy (Metropolis Planning & Design December 2013); Sustainability Statement (Metropolis Planning & Design December 2013); Environmental Noise Survey (Hann Tucker Associates December 2013); Air Quality Technical Note (XC02 Energy December 2013); Contaminated Land Assessment (Conisbee December 2013); Transport Statement (Transport Planning Practice December 2013); Daylight and Sunlight and Overshadowing Assessment (XC02 Energy March 2014); Tree Report (ACD Arboriculture November 2013); Arboricultural Impact Assessment Rev A (ACD Arboriculture 12 March 2014); Arboricultural Method Statement Rev A (ACD Arboriculture 12 March 2014); Ecological Appraisal (ACD Arboriculture November 2013); Construction Management Plan (Construction Planning Associates November 2013); and Ground Investigation Report (Conisbee January 2014).
3. No development shall take place until full details of the materials to be used in the construction of all external surfaces of the scheme hereby permitted, including all doors and windows, have been submitted to and been approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.
4. No development shall take place until a scheme of landscaping has been submitted to and been approved in writing by the Local Planning Authority. The scheme shall include details of soft and hard landscaping, including full details of tree removal/retention, planting plans, written specifications (including cultivation and other operations associated with tree, shrub and hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities.
5. All soft and hard landscaping work shall be completed in full accordance with the approved scheme, prior to the first occupation of any unit or in accordance with a programme to be agreed by the local planning authority. Any trees, shrubs or plants planted in accordance with this condition which are removed, die or become damaged or diseased within five years of planting shall be replaced within the next planting season by trees or shrubs of the same size and species.
6. All external surfaces to be used in connection with pedestrian and vehicle movements, including the parking space, shall be completed and be available for use prior to the first occupation of any unit and thereafter these areas shall not be obstructed or used for any other purposes.

7. No development shall take place until details of a car parking allocation and management plan in relation to all vehicular areas within the site have been submitted to and been approved in writing by the local planning authority, and the approved details shall be implemented prior to the first occupation of any unit and be thereafter retained.
8. The rating noise level emitted from any external plant and machinery at the proposed development, as assessed under British Standard 4142: 1997, shall be lower than the existing background noise level by at least 5 DBA, as measured at 3.5 metres from the nearest ground floor sensitive facade and 1 metre from upper floor noise sensitive facades, during the relevant periods of operation.
9. Each residential unit hereby permitted shall be constructed to achieve a minimum Level 4 standard of the Code for Sustainable Homes. Prior to the commencement of any development, or otherwise in accordance with a programme to be agreed by the local planning authority, details of an 'Interim Design Stage' assessment and related certification shall be submitted to, and be approved in writing by the local planning authority. Following the completion of the final residential unit, a Code for Sustainable Homes 'Post Construction Stage' assessment and related certification confirming the Code Level that has been achieved shall be submitted to and be approved in writing by the local planning authority. The measures and technologies necessary to achieve the minimum Code for Sustainable Homes Level 4 standard shall be implemented in accordance with the approved details and an accompanying approved programme and shall be thereafter retained.
10. No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and been approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and be approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and be approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
11. No development shall take place until a Travel Plan, designed to manage the transport needs of residents and visitors so as to minimise car usage and parking and to promote alternative sustainable modes of transport, has been submitted to and been approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented in accordance with a programme to be agreed by the local planning authority, and be thereafter retained.

12. The development shall be constructed to the standards of Lifetime Homes. No development shall take place until full details demonstrating proposed compliance with the appropriate standards have been submitted to and been approved in writing by the local planning authority and the development shall be undertaken and completed in accordance with the details as approved prior to the first occupation of any unit hereby approved and be thereafter retained.
13. No development shall take place until details of crime prevention measures to comply with the aims and objectives of Secured by Design have been submitted to and been approved in writing by the local planning authority. The approved details shall be implemented prior to the first occupation of any unit and be thereafter retained.
14. No development shall take place until full design details of vehicular access between the development and the adjacent highway, including details of the proposed visibility splays and crossover arrangements, have been submitted to and been approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and the approved works shall be completed prior to the first occupation of any unit and be thereafter retained.
15. No development shall take place until details of the positions, design, materials and type of all boundary treatment have been submitted to and been approved in writing by the local planning authority. The details shall be implemented as approved prior to the first occupation of any unit and be thereafter retained.
16. No development shall take place until details of site drainage, including connections with existing water and waste water infrastructure and details of sustainable surface water drainage measures, have been submitted to and been approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details which shall be completed prior to the first occupation of any unit and be thereafter retained.
17. No development shall take place until a servicing management plan, including refuse servicing management arrangements, has been submitted to and been approved in writing by the local planning authority. The development shall be implemented and operated in accordance with the approved details, and the approved arrangements shall be thereafter retained.
18. No development shall take place until full details of arrangements for cycle parking have been submitted to and been approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and the approved arrangements shall be in place prior to the first occupation of any unit and be thereafter retained.
19. No development shall take place until details of proposed external lighting have been submitted to and been approved in writing by the local planning authority. The lighting shall be installed as approved prior to the first

occupation of any unit, shall be operated in accordance with the details as approved and be thereafter retained.

20. No development shall take place until a Construction Method Statement has been submitted to and been approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide further details in relation to the following:
- a. parking of vehicles of site operatives and visitors
 - b. loading and unloading of plant and materials
 - c. storage of plant and materials used in constructing the development
 - d. erection and maintenance of security hoardings
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction
 - g. a scheme for recycling/disposing of waste resulting from construction.
21. Notwithstanding the submitted plans and information, the trees referenced T5, T6, T7, T8, T10, T11, T12, T15, T16, T17, T18, T19 and T21 in the submitted Tree Report and in plan Ref POC18930-03A shall not be removed from the site, there shall be no raising or lowering of soil levels under the crown spread of the trees, and no excavation shall be cut under the crown spread of those trees apart from the tree pruning works specified in the submitted Arboricultural Impact Assessment and Method Statement.
22. Notwithstanding the submitted plans and information, the trees referenced T1, T2, T3, T4, T9, T13, T14 and T20, which are shown to be removed from the site, shall only be removed outside bird nesting season using soft felling methods as indicated in the submitted Ecological Appraisal.
23. All trees to be retained on the site shall be protected in accordance with the requirements of British Standard 5837 and in accordance with the submitted Arboricultural Impact Assessment and Method Statement.
24. All of the ecological measures detailed in the submitted Ecological Appraisal shall be implemented in accordance with a programme and schedule of works to be submitted to and be approved in writing by the local planning authority prior to the commencement of any development. The details shall be implemented as approved and shall be thereafter retained.

APPEARANCES

FOR THE APPELLANT:

Paul Harbard	Pocket Living (2013) LLP
Graham Cook	Pocket Living (2013) LLP
Ceri Edmonds	Rolfe Judd Planning
Corey Russell	Transport Planning Practice
James Clark	Speechly Bircham Solicitors
Alice Milligan	John Thompson & Partners
Andrew Bigg	ACD (Ecology, Arboriculture and Landscape Architecture)

FOR THE LOCAL PLANNING AUTHORITY:

Robert Lester	Planning
Talia Hadi	Transport
Alison Luff	Legal

DOCUMENTS SUBMITTED AT THE HEARING

1. Updated Statement of Common Ground (still dated 15 August 2014)
2. Updated Arboricultural Impact Assessment dated 12 March 2014
3. Updated Arboricultural Method Statement dated 12 March 2014
4. Drawing POC18930-03A
5. Drawing 00686_S _01 P3
6. Email from Council's Regulatory Services dated 15 January 2014
7. Application for costs by Pocket Living (2013) LLP dated 18 August 2014