



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:
Weston Homes Plc

Proposal:
Details pursuant to the discharge of Condition 4 (Podium Access Plan) in relation to planning application reference 59872/APP/2020/342 approved 19-06-20 (Section 73 application to vary the approved plans list condition of application reference 59872/APP/2018/1107 dated 06/12/2018 (Reserved Matters Application regarding the appearance and landscaping for Phase 3B 'The Assembly Buildings' of The Old Vinyl Factory site, as required by Conditions 2 and 3 of planning permission ref. 59872/APP/2013/3775 dated 31/07/2014)).

Appeal Site:
The Assembly Buildings at The Old Vinyl Factory, Blyth Road, Hayes

Our Ref:
Your Ref:

59872/APP/2021/4268
APP/R5510/W/22/3295059

1. Introduction

- 1.1 This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant consent for the discharge of Condition 4 (Podium Access Plan) in relation to planning application reference 59872/APP/2020/342 approved 19-06-20 (Section 73 application to vary the approved plans list condition of application reference 59872/APP/2018/1107 dated 06/12/2018 (Reserved Matters Application regarding the appearance and landscaping for Phase 3B 'The Assembly Buildings' of The Old Vinyl Factory site, as required by Conditions 2 and 3 of planning permission ref. 59872/APP/2013/3775 dated 31/07/2014)).
- 1.2 The LPA refused planning permission on 14.01.2022 for the following reason (as stated on the decision notice):
 1. The submitted details, the proposed location for the public access to the rear of the building and the lack of accessibility, fail ensure that the development provides access to the podium to non-residents of the Assembly Buildings, ensuring integration with the wider site and creating an acceptable level of social infrastructure and quality of street design to comply with Policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020) and London Plan Policies S1 and S4 (2021).
- 1.3 The LPA's case is set out in the Planning Officer's delegated report, which should be read in conjunction with this statement. A copy of the delegated report is provided at Appendix 1. Copies of relevant planning policies are included at Appendix 2.
- 1.4 This statement will not repeat the delegated report and will focus on addressing matters raised in the Appellant's statement of case.

2. LPA Comments on Appellant's Statement of Case

- 2.1 The details provided within the Appellants Statement of Case regarding the management and hours of access were not provided as part of the submission to discharge the condition, despite the condition wording clearly requiring that these details be provided. As stated by the Appellant an additional application has now been made to discharge Condition 4 that includes these additional details (application reference 59872/APP/2022/638).
- 2.2 For clarity, the documents submitted to the LPA as part of the application to which this appeal relates were limited to the following;
 - Covering Letter (Dated: 19.11.2021),
 - Dwg. No. WH199/21/P/25.01d
 - Dwg. No. WH199/21/P/25.02d

- Dwg. No. WH199/21/P/25.03d
- Dwg. No. WH199/21/P/75.01

2.3 The additional information provided as part of this appeal is considered to be significantly different to the limited submission made to discharge the condition. As such the Appellant is not following due process and is in effect asking the Inspector to determine a different application (reference 59872/APP/2022/638), not the planning application subject to this appeal (reference 59872/APP/2021/4268).

2.4 In addition, the proposed change to the access arrangements for the podium are deemed to be significantly different to the consented development. As such they are considered to be so material as to require planning consent in their own right. As noted by the Appellant in their Statement of Case, a separate Section 96A Non-Material Amendment Application (reference 59872/APP/2022/270) has now been submitted to the LPA. The NMA application is yet to be determined, however it is recommended for refusal as the amendments are deemed to be material. In a departure from due process again, the Appellant at paragraph 1.7 of their Statement of Case requests that the Inspectorate also determines the NMA application.

2.5 As stated above and set out further in this statement, the proposed amendments to the consented development are so material as to require planning consent. It is noted that Government's Procedural Guide: Planning appeals – England, states that *'the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.'*

2.6 With regard to the 'Wheatcroft' judgment the High Court considered the issue of amendments in the context of conditions and established that *"the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation"*

2.7 It is the opinion of the LPA that the details presented are materially different to those submitted and considered when the application was determined. The NMA application (reference 59872/APP/2022/270) is yet to be determined, however it is recommended for refusal as the proposed amendments to the access arrangements for the podium are deemed to be materially different to the consented development. As such the amendments require planning consent. The correct process would be for the Appellant to apply for planning permission for the proposed amendments to allow the correct consultation process to be undertaken, and so as not to *"deprive those who should have been consulted on the changed development of the opportunity of such consultation."*

2.8 The Inspector is requested to determine the appeal based on the information submitted as part of the refused application. However, for the purpose of this appeal if the Inspector is minded to consider the additional details then the response of the LPA is provided below:

2.9 Access Proposals

- 2.10 Paragraphs 6.9 and 6.10 of the Appellant's Statement of Case asserts that the access onto the podium space is required to remain separate from the residential lobby for security and other purposes:
'As the residential lobby is also within the shared communal demise of the residential floorspace, this is subject to maintenance and security measures which, for example, includes cleaning and maintenance responsibilities paid for by residents who will reside within the apartments. Such measures will result in additional unreasonable living costs and would be likely to adversely affect the safety of the residents were this arrangement to occur if access through this route was to be unrestricted.'
- 2.11 The Appellant also highlights that Section 27.29 of the Secure by Design Homes 2019 Version (March 2019) Document highlights the potential issues of opening this area up to the public: *'Access to stairwells from the communal lobby should be restricted to residents to reduce the risk of anti-social behaviour or criminal activities'*
- 2.12 The submitted and approved scheme included access to the podium via a shared residential lobby, to state this is no longer possible because the cost of managing this arrangement would be pushed entirely onto future residents is not deemed sufficient justification to provide a separate, less appealing and less accessible access route. The guidance provided within Section 27.29 of the Secure by Design Homes 2019 Version (March 2019) Document is noted, but this remains guidance and it is considered possible that with appropriate management of the residential lobby Secured by Design accreditation could be achieved. A planning application for the proposed amendments would enable appropriate consultation with the Metropolitan Police Designing Out Crime Officer.
- 2.13 Paragraph 6.11 of the Appellant's Statement of Case refers to the other developments within the immediate locality not being required to provide access to their podiums for non-residents. The case officer's committee report for the reserved matters consent for the Assembly Building (application reference 59872/APP/2018/1107 – Appendix 3) clarified that the facing distances between the blocks of the Assembly Building were proposed to be below 21m, with habitable room windows which would be 18.8m apart and three sets of windows that would be 18.9m apart. Whilst this arrangement was contrary to Council guidance on privacy distances (Hillingdon Design and Access Statement SPD Residential Layouts at the time of the application, now para. 5.38 supporting text to adopted Policy DMHB 11), the case officer's report considered there to be overriding factors in place that constrain the development proposals. These were the extant permission and there being historic/conservation assets within the masterplan area that prevent the expansion of the footprint of the building.
- 2.14 In addition to the above the podium landscape was proposed to be accessible to residents and employees of the wider TOVF estate during working hours (Monday-Friday 9am-5pm). As such, weight was given to fact that by creating a wider degree of accessibility to this space it's character would be similar in some ways to an area of public realm/street rather than a private garden. It is common for such areas to have privacy distances below 21m. Appropriate arrangements to secure access to the podium by non-residents of the Assembly Building were therefore recommended to be secured by an appropriately worded condition (Condition 4).

2.15 Access to the podium by non-residents was therefore a significant consideration in determining the acceptability of the development, including the proposed separation distances for the blocks and the habitable room windows. Other buildings within The Old Vinyl Factory do not include primary habitable room windows with separation distances contrary to guidance. Therefore, the requirement to provide access for non-residents to the podium of the Assembly Buildings, as originally proposed, is justified. As other buildings in the locality are designed to accord with separation distance guidance, their lack of requirement to provide podium access to non-residents is immaterial.

2.16 Hours of Access

2.17 Paragraph 6.11 of the Appellant's Statement of Case advises that other than for residents of the Assembly Buildings, who would have 24hr access, residents and employees of the wider TOVF site are proposed to have access available Monday to Friday between the hours of 9am and 5pm. These details were not provided as part of the submission to discharge the condition but are considered to be in accordance with the Reserved Matters consent.

2.18 Management procedures for access to the proposed podium by non-residents of the Assembly Buildings and Accessibility.

2.19 Paragraphs 6.20 to 6.22 and Paragraphs 6.36 to 6.42 of the Appellant's Statement of Case refer to the management of the rear stairway access route and the additional actions required to gain access to the podium for those who require level access. These details were not provided as part of the submission to discharge the condition. As stated by the Appellant an additional application has now been made to discharge Condition 4 that includes these additional details (application reference 59872/APP/2022/638). The Council's Access Officer has considered these details and has commented that proposing an inaccessible route for non-residents, except by prior arrangement with the Management Companies is unacceptable:

'In exercising its public functions and Equality Act 2010 obligations, the Local Planning Authority must comply with the Public Sector Equality Duty. The LPA is required to ensure that its decisions seek to eliminate unlawful discrimination by removing or minimising disadvantages suffered by people due to their protected characteristics, which includes promoting equality of opportunity for disabled people where they can enjoy equal access to public life on par with non-disabled people.

Requiring non-resident disabled people to make special arrangements to gain access to the podium, they would not be able to act with the same degree of spontaneity as their non-disabled counterparts, resulting in undue separation and discrimination.

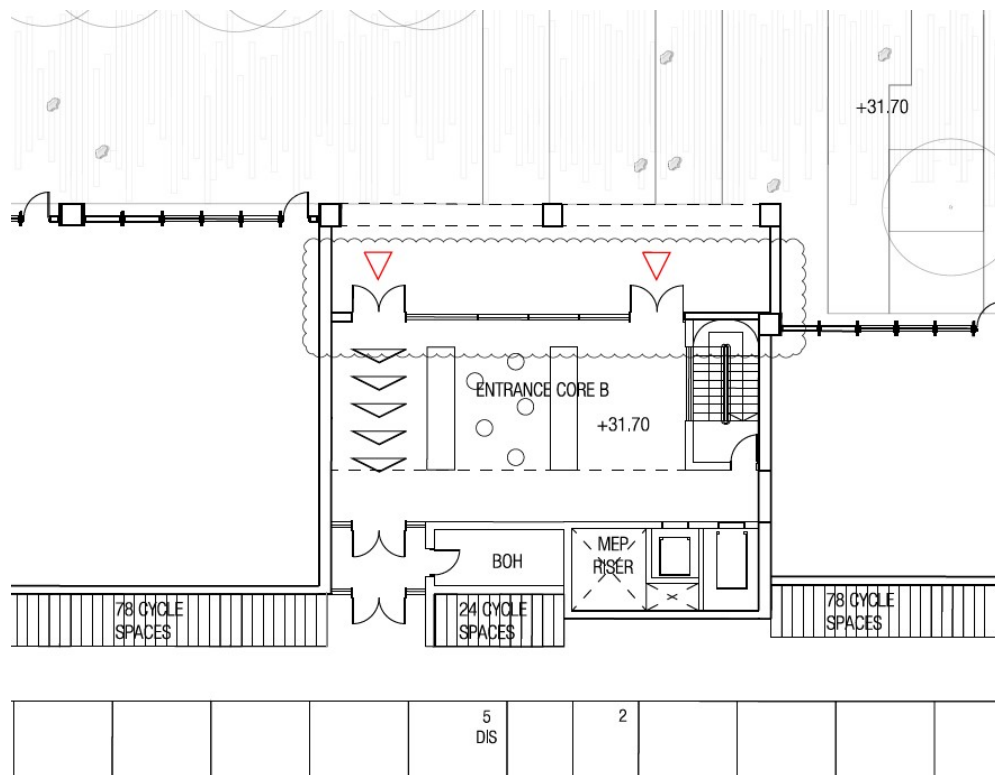
Given its status as a brand-new development, the proposed management procedure is wholly unacceptable. Podium access for non-residents must be freely accessible to everyone irrespective of disability or other personal circumstance, in line with 2011 London Plan policy 7.2 current at the time of the original approval.'

2.20 The Council Access Officer's comments provide a clear justification as to why the details are unacceptable to discharge Condition 4. Now that these details have been provided, it is considered that the proposals are contrary to Policies DMHB 10, DMHB 11, DMCI 3, DMCI 4 and DMT 1 of the Hillingdon Local Plan Part 2 (2020) and London Plan (2021) Policies D5, S1 and S4.

2.21 Location of the Proposed Staircase

2.22 Paragraphs 6.24 to 6.35 of the Appellant's Statement of Case relate to the location of the access stair. Paragraph 6.26 states '*The commercial properties located on the ground floor on the northern frontage is proposed to be taken up by retail space and as such it would not be possible to introduce any direct access here. Although this might have been the original intention, this was not a feature of the approved design.*'

The consented scheme (reference 59872/APP/2018/1107) includes access to the podium for non residents within the main access lobby to the building. It was therefore a feature of the approved design as shown below (extracts from approved dwg nos. A-2200 Rev C and A-2202 Rev A – Appendix 4):



Consented Ground Floor



Consented Podium Level

2.23 Paragraph 2.8 contends that the southern elevation of the Assembly Building is not the 'back of house'. This is despite the southern elevation being the access to car park and having no active units, unlike the other three elevations. Concerns remain that the proposed relocation of the access point for the podium away from the main entrance to the building and the primary pedestrian route through the wider site would make it a less appealing access to the podium and therefore one less likely to be utilised. There is a significant shortage of public open space within the locality of the site and the podium area provides an important contribution. The proposed location for the public access to the rear of the building is deemed to make the route undesirable and further from the main pedestrian route through the site, and as such is required to be considered as part of the correct planning process, including consultation.

2.24 Impact on tracking of vehicles in the car park

2.25 Paragraphs 6.46 of the Appellant's Statement of Case introduces the additional tracking plans that were not provided as part of the submission to discharge the condition. At ground floor level the proposed staircase would block the tracking route provided by the applicant in the Section 2.5 of the Design and Access Statement (Rev B June 2020) submitted with the Section 73 application (reference 59872/APP/2020/342). As part of the separate Section 96a (Non-Material Amendment) application reference 59872/APP/2022/270 that has been submitted for the staircase, these updated plans have been provided to demonstrate the tracking. These plans have also been included as an appendix to the Appellant's Statement of Case, despite them not forming part of the application subject to this appeal. The Council's Highways Officer has reviewed these plans as part of the

Section 96a application and raised concerns with regard to the proposed lane width. As such the proposed changes need to be considered as part of a full planning application and it remains the case that it has not been demonstrated that the proposed staircase would not have a detrimental impact on vehicle movements and therefore parking and servicing availability for the development.

2.26 Impact on Parking Spaces

2.27 Paragraphs 6.2 of the Appellant's Statement of Case states that Dwg. No. WH199_21_P_25.01d Rev A and Dwg. No. WH199_21_P_25.02d Rev B have been submitted in support of the appeal. These are revised drawings to those considered and refused under application subject to this appeal and show an amended parking layout. As noted above the Government's Procedural Guide: Planning appeals – England, states that 'the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority'.

3. Conclusion

- 3.1 It is the opinion of the LPA that the details presented are materially different to those submitted and considered when the application subject to this appeal was determined. The NMA application (reference 59872/APP/2022/270) is yet to be determined, however it is recommended for refusal as the proposed amendments to the access arrangements for the podium are deemed to be materially different to the consented development. As such the amendments require planning consent and therefore the correct process would be for the Appellant to apply for planning permission for the proposed amendments to allow the correct consultation process to be undertaken. This would ensure not to "deprive those who should have been consulted on the changed development of the opportunity of such consultation."
- 3.2 For the reasons set out in the delegated report and this statement, if the Inspector is minded to consider the revised submission, significant concerns remain with proposing an inaccessible route to the podium, except by prior arrangement with the Management Companies, and with regards to the proposed location for the non-resident's access route. The Inspector is therefore respectfully requested to dismiss the appeal.

Appendices

Appendix 1 – Planning Officer’s Delegated Report

Appendix 2 – Copies of Relevant Planning Policies

Appendix 3 – Reserved Matters Application reference 59872/APP/2018/1107
Case Officers Report

Appendix 4 – Drawing Numbers A-2200 – Rev C & A2202 Rev A