

Paddington Packet Boat, High Street, Uxbridge UB8 2HT

Planning and Affordable Housing Statement

ON BEHALF OF PADDINGTON PACKET BOAT DEVELOPMENTS LTD

April 2024

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1. Introduction

- 1.1 This 'Section 73' planning application is submitted on behalf of Paddington Packet Boat Development Ltd ('the Applicant') for amendments to the scheme approved by reference 1058/APP/2021/3423 in September 2023 for the following development:

Demolition of the existing structure and erection of a scheme of purpose-built student accommodation, and associated common areas and facilities, landscaping, amenity space, bicycle and motorcycle parking, and refuse storage.

- 1.2 The amendments sought are minor in nature and are a consequence of revisions necessary to comply with Building Regulations. There would be no loss, or addition to the floorspace created when compared with the consented scheme.
- 1.3 The original planning permission was subject to a s106 agreement that secured various planning obligations. That agreement will need to be replaced at the point of this application being approved. The Applicant requires that alongside a replacement to the agreement to reflect the change in planning permission reference number, the obligation to provide affordable housing at the site is removed. This is because providing affordable housing at the site would render it financially unviable. This is evidenced by a Viability Report that is submitted in support of this application.

Scope of the Planning Statement

- 1.4 This Planning Statement is to appraise proposals in the context of the Development Plan and other material considerations. The Statement is set out as follows:

- Section 2 describes the site and surroundings.
- Section 3 identifies the Development Plan for the area.
- Section 4 describes the proposals.
- Section 5 assesses the proposals against relevant policy and other material considerations.
- Section 6 draws together the conclusion of the report.

Scope of the Supporting Information

- 1.5 Alongside this Planning Statement, the planning application comprises the following documents:

- Application Form.
- Site Location Plan.
- Approved and proposed plans and elevations.
- Financial Viability Report.

2. Site and Surroundings

Site Context

- 2.1 Paddington Packet Boat is located at a prominent site on the corner of High Street and Packet Boat Lane in Uxbridge, UB8 2HT. The vacant pub itself is a two-storey white rendered building set close to the road. The pub dates back to circa. 1826. The pub and its beer garden occupy the eastern side of the site fronting onto the High Road. A car park, to the rear, occupies the western half of the site.

Figure 2.1.1 Site Location



- 2.2 High Road is a busy road of 4 lanes of traffic that links Yiewsley in the south and Uxbridge in the north.
- 2.3 The existing built environment in the area ranges substantially in terms of height and appearance. On the opposite side of High Road are low-set single storey bungalows, while to the north of the site on the opposite side of Packet Boat Lane are a series of detached two storey dwellings. South of the site are flats ranging between 2 and 3 storeys. Directly west and adjoining the site is Packet Boat House, a 41 unit, 5 storey residential development.
- 2.4 Further along and on the north side of Packet Boat Lane is Union Park, a 133 unit residential development. The complex is comprised of buildings of 5 storeys set back from Packet Boat Lane, and with frontage to the canal.
- 2.5 The Paddington Packet Boat is also located within the setting of two grade II listed buildings to the north of the site. They are Barnacre, New Peachey Lane, a 17th-century timber-framed house, and the Old Cottage, High Road, a timber-framed late-medieval hall house.
- 2.6 With Brunel University campus located just 16 minute walk, a 7 minute cycle or a 13 minute bus trip from the site, this to be an excellent opportunity to provide much-needed student accommodation in the London Borough of Hillingdon. The

site would be served by two local parades and regular bus services to both Uxbridge and Yiewsley/West Drayton town centres, the latter of which will be served by a Crossrail Station providing good access to West and Central London.

Allocations and Designations

- 2.7 The site is not subject to any specific allocations or policy designations. It is not within a Conservation Area and there are no statutorily listed buildings at or within the vicinity of the site.
- 2.8 The site was however Locally Listed in 2017, due to it being a landmark corner building set at an angle to the junction, with origins dating back to ca. 1800. The original form was however much altered, but some original features remained.
- 2.9 The site is identified as being within Flood Zone 1 by the Environment Agency's Flood Mapping, representing the lowest risk of flooding. However, the site lies in close proximity to areas identified as Flood Zone 2 and Flood Zone 3.

Listing Application 2019

- 2.10 On the 12 June 2019, Hillingdon Council served a Building Preservation Notice over the site. Over the following six month period the site was assessed by Historic England (case no: 1465335) to confirm whether the building should be listed. Historic England concluded:

"After examining the available records and other relevant information and having carefully considered the architectural and historic interest of this case, the criteria for listing are not fulfilled. The Paddington Packet Boat Public House is therefore not recommended for listing".

- 2.11 Further analysis was provided in the Heritage Report prepared by Corrie Newell Historic Buildings Consultancy, which was submitted in support of the original application.

Planning History

- 2.12 Planning permission was granted at the site on 8th September 2023 for the following development:

Demolition of the existing structure and erection of a scheme of purpose-built student accommodation, and associated common areas and facilities, landscaping, amenity space, bicycle and motorcycle parking, and refuse storage.

- 2.13 That planning permission was subject to a s106 Agreement and various planning conditions. No pre-commencement conditions have yet been discharged.

3. Planning Policy

- 3.1 This section of the Planning Statement provides an overview of the key planning policies and other material considerations relevant to the proposals that are the subject of this planning application.

National Planning Policy Framework

- 3.2 The National Planning Policy Framework (NPPF) (2023) sets out the Government's planning policies for England and how these should be applied.
- 3.3 The Framework provides overarching support for the development of sustainable, previously developed sites like this one for housing.

The Development Plan

- 3.4 Section 38 (6) of the Planning & Compulsory Purchase Act 2004 requires that, when making a determination under the Planning Acts, that determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 3.5 The Development Plan for London Borough of Hillingdon comprises the following documents:
- London Plan (2021)
 - Hillingdon Local Plan: Part 1 – Strategic Policies (2012)
 - Hillingdon Local Plan: Part 2 – Development Management Policies (2020)
 - Hillingdon Local Plan Part 2 – Site Allocations and Designations (2020)

4. Proposed Amendments

- 4.1 Alongside changes to the quantum of affordable student accommodation provided by the development, this Section 73 application seeks approval for a series of minor revisions to the previously consented scheme.
- 4.2 The proposed minor amendments to the design of the development would assist in complying with that condition, through ensuring that the development is compliant with Building Regulations Part L.
- 4.3 The minor amendments proposed to the plans and drawings are summarised below (with reference to the plan or drawing that would be changed):

Current Drawing	Amended Drawing	Comment
02-91-100 – Site Location Plan	No change.	No change.
02-91-102 – Site Survey	No change.	No change.
02-91-103 – Existing Elevations	No change.	No change.
02-91-104 – Existing Street Elevation 1	No change.	No change.
02-91-105 – Existing Street Elevation 2	No change.	No change.
02-91-106 – Demolition Plan	No change.	No change.
02-02-101 (Rev. G) – Site Plan	No change.	No change.
02-03-100 (Rev. J) – Level 00 GA Floor Plan	No change.	No change.
02-03-101 (Rev. G) – Level 01 GA Floor Plan	No change.	No change.
02-03-102 (Rev. G) – Level 02 GA Floor Plan	No change.	No change.
02-03-103 (Rev. G) – Level 03 GA Floor Plan	02-03-103 (Rev. H) – Level 03 GA Floor Plan	Access door to roof and ladder added.
02-03-104 (Rev. G) – Level 04 GA Floor Plan	02-03-104 (Rev. H) – Level 04 GA Floor Plan	Doors, ladders and railings added for maintenance roof access.
02-03-105 (Rev. G) – Level 05 Roof Plan	02-03-105 (Rev. H) – Level 05 Roof Plan	PV area, railings, and access ladder to roof added.

02-02-111 (Rev. D) – Proposed Landscaped Site Plan	No change.	No change.
02-03-200 – Level 00 GA Affordable Room Plan	Omitted.	Omitted.
02-03-201 – Level 01 GA Affordable Room Plan	Omitted.	Omitted.
02-03-202 – Level 02 GA Affordable Room Plan	Omitted.	Omitted.
02-03-203 – Level 03 GA Affordable Room Plan	Omitted.	Omitted.
02-03-204 – Level 04 GA Affordable Room Plan	Omitted.	Omitted.
02-04-101 (Rev. D) – Section A-A	No change.	No change.
02-04-102 (Rev. D) – Section B-B	No change.	No change.
02-05-101 (Rev. G) - Elevation A-A	02-05-101 (Rev. H) - Elevation A-A	Railings and lift overrun added.
02-05-102 (Rev. F) – Elevation B-B	02-05-102 (Rev. G) – Elevation B-B	Railings and lift overrun added.
02-05-103 (Rev. E) – Elevation C-C	02-05-103 (Rev. F) – Elevation C-C	Access door, railings and lift overrun added.
02-05-104 (Rev. F) – Elevation D-D	02-05-104 (Rev. G) – Elevation D-D	Railings and lift overrun added.
02-05-105 (Rev. F) – Elevation E-E	02-05-105 (Rev. G) – Elevation E-E	Railings and lift overrun added.
02-05-106 (Rev. E) – Elevation F-F	02-05-106 (Rev. F) – Elevation F-F	Railings and lift overrun added.

4.4 The minor amendments proposed to the submitted documents are summarised below (with reference to the document that would be changed):

Current Document	Amended Document	Comment
Marketing Report (August 2021)	No change.	No change.
Marketing Evidence (13-12-21)	No change.	No change.
Marketing Evidence (20-07-22)	No change.	No change.

Student Accommodation Needs (August 2021)	No change.	No change.
Phase 1 Geoenvironmental Desk Study (June 2021)	No change.	No change.
Archaeological Desk-Based Assessment (June 2021)	Archaeological Desk-Based Assessment (February 2024)	Updated to reflect change in National Planning Policy position.
Air Quality Assessment (July 2021)	Air Quality Assessment (February 2024)	Updated to reflect change in National Planning Policy position.
Travel Plan Statement (May 2022)	Travel Plan Statement (February 2024)	Updated to reflect change in National Planning Policy position.
Transport Statement (May 2022)	Transport Statement (February 2024)	Updated to reflect change in National Planning Policy position.
Planning Statement (May 2022)	No change.	No change.
Car Parking Survey (05-04-22) (Ref: VRP1391-01)	No change.	No change.
Daylight and Sunlight Report (June 2022)	No change.	No change.
Daylight and Sunlight Supplementary Statement No. 2 (September 2022)	No change.	No change.
Design and Access Statement (Rev. J) (06-10-22)	Design and Access Statement (Rev. L) (27-03-24)	Updated to reflect change to design.
Updated Noise Assessment (Ref: 20/0043/R1) (Rev. 1) (January 2022)	Noise Break-In Assessment (January 2024)	Updated to reflect change in National Planning Policy position.
Draft Fire Statement Form (10-06-22)	No change.	No change.

- 4.5 Further to the supporting documents listed in Condition 2, the previously submitted Energy Statement (August 2021), has been updated to Energy Statement (March 2024), to comply with Part L requirements, and also reflects the change in National Planning Policy.
- 4.6 To meet The London Plan (2021) Be Green target under Policy SI2, the updated Energy Statement required Solar Photovoltaic to be incorporated into the scheme. This has been reflected in 02-03-105 (Rev. H) – Level 05 Roof Plan.
- 4.7 In order to accommodate these minor amendments to the approved scheme, Condition 2 will need to be varied to reflect the revised drawings, plans and documents. The current drafting is as follows:

The development hereby approved shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers:

02-91-100, 02-91-102, 02-91-103, 02-91-104, 02-91-105, 02-91-106, 02-02-101 (Rev. G), 02-03-100 (Rev. J), 02-03-101 (Rev. G), 02-03-102 (Rev. G), 02-03-103 (Rev. G), 02-03-104 (Rev. G), 02-03-105 (Rev. G), 02-02-111 (Rev. D), 02-03-200, 02-03-201, 02-03-202, 02-03-203, 02-03-204, 02-04-101 (Rev. D), 02-04-102 (Rev. D), 02-05-101 (Rev. G), 02-05-102 (Rev. F), 02-05-103 (Rev. E), 02-05-104 (Rev. F), 02-05-105 (Rev. F), and 02-05-106 (Rev. E).

And the submitted documents, titled:

Marketing Report (August 2021), Marketing Evidence (13-12-21), Marketing Evidence (20-07-22), Student Accommodation Needs (August 2021), Phase 1 Geoenvironmental Desk Study (June 2021), Archaeological Desk-Based Assessment (June 2021), Air Quality Assessment (July 2021), Travel Plan Statement (May 2022), Transport Statement (May 2022), Planning Statement (May 2022), Car Parking Survey (05-04-22) (Ref: VRP1391-01), Daylight and Sunlight Report (June 2022), Daylight and Sunlight Supplementary Statement No. 2 (September 2022), Design and Access Statement (Rev. J) (06-10-22), Updated Noise Assessment (Ref: 20/0043/R1) (Rev. 1) (January 2022), and Draft Fire Statement Form (10-06-22).

4.8 The proposed Condition 2 is as follows:

The development hereby approved shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers:

02-91-100, 02-91-102, 02-91-103, 02-91-104, 02-91-105, 02-91-106, 02-02-101 (Rev. G), 02-03-100 (Rev. J), 02-03-101 (Rev. G), 02-03-102 (Rev. G), 02-03-103 (Rev. H), 02-03-104 (Rev. H), 02-03-105 (Rev. H), 02-02-111 (Rev. D), 02-04-101 (Rev. D), 02-04-102 (Rev. D), 02-05-101 (Rev. H), 02-05-102 (Rev. G), 02-05-103 (Rev. F), 02-05-104 (Rev. G), 02-05-105 (Rev. G), and 02-05-106 (Rev. F).

And the submitted documents, titled:

Marketing Report (August 2021), Marketing Evidence (13-12-21), Marketing Evidence (20-07-22), Student Accommodation Needs (August 2021), Phase 1 Geoenvironmental Desk Study (June 2021), Archaeological Desk-Based Assessment (February 2021), Air Quality Assessment (February 2024), Travel Plan Statement (February 2024), Transport Statement (February 2024), Planning Statement (May 2022), Car Parking Survey (05-04-22) (Ref: VRP1391-01), Daylight and Sunlight Report (June 2022), Daylight and Sunlight Supplementary Statement No. 2 (September 2022), Design and Access Statement (Rev. L) (27-03-24), Noise Break-In Assessment (January 2024), Draft Fire Statement Form (10-06-22) and Energy Statement (March 2024).

5. Planning Considerations

- 5.1 This section assesses the minor material amendments in light of the relevant Development Plan policies. The key planning considerations comprise the Design and Quality of housing.

Design

- 5.2 The revisions to the design of the scheme are minor in nature and there would be no impact on the appearance of the development or the relationship between the scheme and the character and appearance of the area. The majority of the amendments are minor, and in relation to the roof, and roof access to comply with Building Regulations Part L as instigated by the updated Energy Statement.
- 5.3 The design of the development would continue to be of a high-quality, in accordance with the requirements of policies D2, D3, D4, D5, and D6 of the London Plan 2021 and policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020).

Affordable Housing

- 5.4 The original permission (LPA ref. 1058/APP/2021/3423), which was granted on 08 September 2023 for a purpose-built student accommodation scheme comprising 61 studios. The s106 Agreement attached to the original consent required that twenty-two of the studios (36%) were affordable student accommodation.
- 5.5 The viability context for development has changed significantly since the time that the planning application was prepared and submitted in 2021 and it is altogether more challenging.
- 5.6 The Applicant is committed to delivering this development, and the 61 purpose-built studios for students in the Borough that would be provided by it, but can only do so if the planning permission is for a viable form of development.
- 5.7 A detailed assessment of the viability of the development has been undertaken and is submitted in support of this application. The assessment concluded that *"...the scheme is unable to provide any on-site affordable housing on viability grounds given the projected scheme deficit £-1,162,013 when applying his aforementioned assumptions in respect of the proposed scheme and opinion of Benchmark Land Value" (ref: chapter 7, para. 1).*
- 5.8 This deficit will reduce profit levels to an unacceptably unviable level, as such, preventing this highly beneficial development from coming forwards.
- 5.9 The Applicant recognises that policy at all levels seeks to secure affordable student accommodation. However, that requirement evidently renders the development as a whole unviable and will prohibit any new student accommodation being delivered at the site.
- 5.10 Policy H15 of the London Plan 2021 seeks for the maximum level of accommodation to be secured as affordable student accommodation, following the Viability Tested Route set out in Policy H5 of the London Plan. Policy H5 recognises that there will be circumstances where an affordable housing provision will need to be varied or removed post the grant of an original consent and it accommodates for this eventuality, after a thorough interrogation of the scheme's viability. The Applicant recognises that the Council will likely want to independently verify the viability report submitted alongside this application.
- 5.11 Subject to agreement on the viability work undertaken, the development would be consistent with policies H5 and H15 of the London Plan, which supersede Policy DMH 5: Houses in Multiple Occupation (HMOs) and Student Accommodation of the Hillingdon Local Plan.

- 5.12 The Viability Report further suggests the removal of a Nominations Agreement from the application, to ensure unrestricted Market Rents. For the reasons set out in the Viability Report in detail, this will mean that there will not be a restricted tenure split through one higher education institution, opening up the rooms to any interested student. This again is a necessity to ensure the project's viability.

The Planning Balance

- 5.13 With the obligation to provide affordable housing in place, the development is unacceptably financially unviable, and the development cannot come forward. This means that 61 new student accommodation bedspaces in the Borough will not be provided. Removing the obligation for affordable student accommodation will allow the development to come forward.
- 5.14 This means that a high-quality, sustainable development providing new homes on a Brownfield site will come forward. Together with economic benefits associated with the construction, on-going employment from the servicing and maintenance of the property and ongoing use of the development, these represented compelling planning benefits that should outweigh any concern with regard to the reduction in affordable housing delivery – particularly in the context of the robust viability analysis and market testing that has been undertaken and submitted in support of this application.

6. Conclusions

- 6.1 This application has been submitted pursuant to S73 of the Town and Country Planning Act to secure consent for a series of minor material amendments to the approved development at the site. The design amendments would ensure that the development would comply with Building Regulations Part L (2021).
- 6.2 In addition, it is necessary replace the original S106 Agreement, which currently requires that twenty-two of the units are provided as affordable student accommodation units. This application is supported by a detailed Financial Viability Report which shows that to provide that affordable student accommodation would render the development unacceptably unviable and that would prevent the development from coming forward.
- 6.3 The provision of 61 student accommodation bed spaces is the equivalent of 24 net additional dwellings, that will support meeting the London Borough of Hillingdon's overall housing needs (based on the 2.5:1 ratio), helping to reduce general housing pressure within the private rented sector.
- 6.4 The benefits associated with bringing the development forward, and providing 61 new student accommodation bed-spaces on a Brownfield, sustainably located site would outweigh any concern with respect to reducing the affordable student accommodation provision and for these reasons, we respectfully request that the application is granted and the S106 is replaced.

Appendix A



Appeal Decision

Hearing held on 12 March 2024

Site visit made on 11 March 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2024

Appeal Ref: APP/L5240/W/23/3332225

20-24 Mayday Road, Thornton Heath, London CR7 7HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mayday Road (20-24) against the Council of the London Borough of Croydon.
 - The application Ref is 23/01729/CONR.
 - The application sought planning permission for the demolition of existing buildings and redevelopment of site to provide 3 no. replacement buildings ranging from one to five storeys in height, comprising 57 new dwelling, with associated access, parking and landscaping without complying with a condition attached to planning permission Ref 21/05412/FUL, dated 8 March 2022.
 - The condition in dispute is No 2 which states that: The development shall be carried out entirely in accordance with the approved drawings and supporting documents submitted with the application listed below: FT-A-01 rev.V56, FT-A-02 rev.V56, FT-A-03 rev.V56, FT-A-04 rev.V56, FT-A-05 rev.V56, FT-A-06 rev.V56, FT-A-07 rev.V56, FT-A-08 rev.V56, FT-B-01 rev. V56, FT-B02 rev. V56, FT-B-03 rev. V56, FT-B-04 rev. V56, FT-B-05 rev. V56, FT-B-06 rev. V56, FT-B-07 rev. V56, FT-B-08 rev. V56, FT-B-09 rev. V56, FT-B-10 rev. V56, FT-B-11 rev. V56, FT-B-12 rev. V56, FT-B-13 rev. V56, FT-B-14 rev. V56, FT-B-15 rev. V56, FT-C01 rev. V56, FT-C-02 rev. V56, FT-C-03 rev. V56, FT-C-04 rev. V56, FT-C-05 rev. V56, FT-C-06 rev. V56, FT-C-07 rev. V56, FT-C-08 rev. V56, GA-E-E-A rev. V56, GA-E-E-B rev. V56, GA-E-E-C rev. V56, GA-E-N-A rev. V56, GA-E-N-B rev. V56, GA-E-S-A rev. V56, GA-E-N-C rev. V56, GA-E-S-B rev. V56, GA-E-S-C rev. V56, GA-E-W-A rev. V56, GA-E-W-B rev. V56, GA-E-W-C rev. V56, GA-P-A-L00-L02 rev V56, GA-P-A-L03-R04 rev V56, GA-P-B-L00 rev V56, GA-P-B-L01 rev V56, GA-P-B-L02 rev V56, GA-P-B-L03 rev V56, GA-P-B-L04 rev V56, GA-P-B-R05 rev V56, GA-P-C-L00 - L003 rev. V56, GAP-C-R04 rev V56, GA-P-L00 rev V56, GA-P-L01 rev V56, GA-P-L02 rev V56, GA-PL03 rev V56, GA-P-L04 rev V56, GA-P-R05 rev V56, GA-S-EW rev V56, GA-S-NSA&C rev.V56, GA-S-NS-B rev.V56
 - The reason given for the condition is: For the avoidance of doubt, and to ensure that the development is carried out in full accordance with the approved plans in the interests of proper planning.
-

Decision

1. The appeal is allowed, and planning permission is granted for the demolition of the existing buildings and the redevelopment of the site to provide 3 no. replacement buildings ranging from one to five storeys in height, comprising 57 new dwellings, with associated access, parking and landscaping at 20-24 Mayday Road, Thornton Heath, London CR7 7HL, in accordance with the terms of the application, Ref: 23/01729/CONR, dated 3 May 2023, without

compliance with Condition 2 previously imposed on planning permission Ref: 21/05412 dated 8 March 2021 and subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the 'Framework') was published after the appeal was submitted. The parties had an opportunity to address the amendments in their submissions and again at the event. I have taken the site address from the appeal form as this corresponds with the original decision notice.

Background and Main Issues

3. The appellant has applied to vary Condition 2 with the intention that amended drawings are substituted for those originally approved. The proposed amendments can be summarised as internal and external changes to increase the number of three-bedroom homes from 23 (40% of the mix) to 29 (51% of the mix) and external alterations to the fenestration and elevations of all three blocks. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit this appeal. The Council confirmed in its submissions, and again at the hearing, that it does not object to the proposed amendments. I have no reason to find otherwise, as the changes would not have any adverse impacts on the character and appearance of the area or living conditions.
4. As part of the application, the appellant has submitted a new planning obligation pursuant to s106 of the Town and Country Planning Act (as amended) (TCPA) in the form of a unilateral undertaking. They are not seeking to modify the planning obligation pertaining to application 21/05412/FUL and therefore an application under s106A of the TCPA has not been made. The new planning obligation carries over all of the terms of the original agreement (with some minor updates) save for the provision of affordable housing. The level of affordable housing now being offered is 0% rather than 35% of the total number of homes. The appellant has provided a viability case in support of this change. The viability case has been independently reviewed and agreed by Council appointed specialists. Because of this, there is common ground between the Council and appellant that the appeal scheme would be unviable with affordable housing. I have no reason to disagree.
5. The failure to provide affordable housing would not adhere to Policy SP2.5 of the Croydon Local Plan 2018 (CLP), which requires a minimum of 15%. However, the appeal scheme would adhere with Policies H4 and H5 of the London Plan (LP), which allows lower levels of affordable housing if underpinned by viability testing and subject to review mechanisms. Section 38(5) of the Planning and Compulsory Purchase Act 2004 confirms that conflicts such as this must be resolved in favour of the policy in the most recent document to become part of the development plan, which in this instance is the LP. Indeed, the situation is similar to that in a relevant appeal decision¹. Thus, and in this instance, a 0% contribution towards affordable housing would not be at odds with the development plan taken as a whole, or the Framework. This is also a point the Council and appellant agree on.

¹ APP/L5240/W/20/3266186

6. Nevertheless, the Council has confirmed through a putative reason for refusal that had it been able to do so, it would have refused the application. This is because, the Council's submits, an application under s73 of the TCPA is not the correct legal mechanism to alter the level of affordable housing previously secured through a planning obligation in the form of a s106 Legal Agreement. The Council developed its argument further at the hearing and explained that its principal concern is the absence of a link between the alterations being sought to the drawings and the amended level of affordable housing now proposed in the planning obligation. Accordingly, the main issue in this appeal is whether, in this instance, a s73 application is an appropriate means to reduce the level of affordable housing previously secured.

Reasons

7. It is common practice to impose a condition on planning permissions requiring implementation in accordance with approved drawings. It is possible to amend these drawings via an application made under a s73 of the TCPA². A limitation being that the operative part of the permission (the description of development) cannot be amended. That would not be the case here. Section 73(2) explains that when considering such applications, the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted. The practical consequences of discharging or amending a condition(s) is a material consideration. If an application pursuant to s73 is approved, then a standalone planning permission is created. The implication being that an applicant can choose to implement either the original or the new consent.
8. Planning obligations are freestanding legal instruments that do not form part of a planning permission. Consequently, any planning obligation completed during the assessment of the original permission would not be binding on the new s73 permission unless it is specifically drafted to do so. Thus, when contemplating whether to permit a s73 application, it is necessary to consider the desirability of entering into a new planning obligation. Indeed, a planning obligation may be necessary to make the amended scheme acceptable in planning terms. This can be achieved by modifying the existing obligation or submitting a new one. As a result, there is no need for a s73 application to also be accompanied by an application under s106A of the TCPA.
9. Caselaw has confirmed that the desirability of entering into a planning obligation appropriate to the terms of the new permission should be a contemporaneous decision based on the circumstances at the time³. The judgment also explains that sometimes in the context of a s73 application it will be appropriate or even essential for a planning obligation to have different terms to the original, and any disagreement flowing from this can be resolved through an appeal⁴. An example being a change in policy which requires an increased level of affordable housing⁵. It is of note that this example flows from a change in circumstances unrelated to amended drawings. This is an indicator that material changes in circumstances that are wider in scope than

² This is often referred to as a 'minor material amendment', although the reference to 'minor' is superfluous as per *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 176 (Admin).

³ *Norfolk Homes Limited v North Norfolk District Council & another* [2020] EWHC 2265

⁴ *Ibid* – see Paragraphs 58 and 127 in particular

⁵ *Ibid* – see Paragraph 118

an alteration to the scheme drawings can result in an appropriate justification for entering into a planning obligation in different terms to the original.

10. In this instance, a change in policy has not made it appropriate or essential to amend the obligation. However, there has been a significant change in circumstances relating to the viability of the scheme. It seems to me that it is a matter of planning judgment whether the change in circumstances makes it appropriate, essential or desirable to enter into a planning obligation in different terms to the original. Given the case law outlined above, the terms of a new obligation may be connected to or intertwined with the amendments sought to the drawings, but there is nothing of substance to suggest they must. Consequently, it would be going too far to suggest an amended obligation must be a consequence of, or directly related to, changes flowing from the proposed alterations detailed on the new drawings.
11. There is no dispute between the Council and appellant that since the original permission was approved, and the evidence underpinning it prepared, construction costs have rapidly risen whilst house prices have remained static. This has had a significant impact on the viability of the scheme. As mentioned above, the situation is so altered that the Council and appellant agree the scheme can no longer provide affordable housing and remain viable. Moreover, there is also common ground that the provision of affordable housing is not a benefit, alone or taken with other factors, which is required to outweigh any harmful impacts emulating from the scheme. Indeed, the Council has only identified limited harm in respect of the housing mix, which is outweighed by other considerations in any event. In these circumstances, altering the level of affordable housing would not be a fundamental change to the proposal.
12. Therefore, the current circumstances are such that there is a need for a planning obligation in different terms to the original to facilitate delivery. The altered terms of the planning obligation would be consistent with the development plan taken as a whole. The consequence being that the change would not have a bearing on whether the scheme would be acceptable. Thus, the amended planning obligation is necessary, reasonable, supported by development plan policy and proportionate in the context of the prevailing circumstances. Therefore, it is desirable, essential and appropriate to consider a planning obligation in different terms to the original, namely the provision of 0% affordable housing with a review mechanism as required by the LP. In conclusion, the s73 application is an appropriate means in this instance to reduce the level of affordable housing relative to that previously secured.

Other Matters

13. Policy DM1.1 of the CLP requires schemes such as that proposed to provide, as a minimum, 60% of the homes with 3 bedrooms or more. This is to support the provision of accommodation which can be occupied by families. The appeal scheme would provide 51%, which is a shortfall of around five 3-bedroom homes. As such, the appeal scheme would be at odds with Policy DM1.1.
14. However, the number of 3-bedroom homes now proposed would be higher than that previously permitted. The appeal site is also close to an area with a Public Transport Accessibility Level of 4 (where a lower % is required). In addition, the proposal would have several benefits including the delivery of a large number of homes, construction and post occupation expenditure and the re-use of previously developed land where marketing for a commercial use has been

unsuccessful. When considered in the round, the Council and appellant ultimately agreed at the hearing that the modest conflict with Policy DM1.1 would be outweighed by these material considerations.

Planning Obligation and Conditions

15. The Council has submitted a 'CIL Regulations Compliance Schedule' which sets out the obligations it is seeking in order to make the s73 application acceptable. The appellant has addressed all of these in the unilateral undertaking with some amendments to reflect the current evidence⁶. The Council has not objected to the obligation save for the absence of affordable housing, which I have already addressed. I have carefully considered this document and the policies and justifications underpinning the requirements. I am satisfied from the evidence before me that all of the obligations are necessary, directly related to the proposal and fair and reasonable in scale and kind to the appeal scheme. As a result, I have taken the obligations into account as part of my overall conclusion that the appeal should be allowed.
16. In respect of conditions, I have carefully considered the list provided by the Council and the reasons given. I have reimposed a drawings condition listing the amended drawings for the avoidance of doubt, and in the interests of proper planning. Furthermore, the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under s73 should restate the conditions imposed on the relevant earlier permission that continue to have effect. The Council and appellant have agreed that the original conditions should be imposed albeit with some updating to reflect the appeal scheme and details that have been approved since the original permission was granted. The evidence before me indicates that the conditions are still necessary and therefore I have reimposed them.
17. The appellant has provided written agreement to the pre commencement conditions, which are necessary because the matters to be approved may affect the design and/or layout of the proposal or they seek to mitigate impacts arising during the construction phase.

Conclusion

18. The appeal scheme would be at odds with Policy DM1.1 of the CLP. But, for the reasons already given, the breach would be outweighed by material considerations. The proposal would otherwise align with the policies of the development plan, including those relating to affordable housing. As such, the appeal scheme would adhere to the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal succeeds.

Graham Chamberlain
INSPECTOR

⁶ Including alterations to the local employment and training strategy and the affordable housing review mechanism

APPEARANCES

FOR THE APPELLANT

Thomas Hill KC
Jeffrey Field MA MRTPI MRICS
Nick Bignall MRICS
Nick Lawrence MRTPI
Phoebe Juggins MRTPI
Mathew Evans

Counsel for the appellant
Planning Director, Lambert Smith Hampton
Partner, Turner Morum LLP
Appellant
Appellant
Counsel, Forsters LLP

FOR THE LOCAL PLANNING AUTHORITY

Ross Gentry
Christopher Grace
Siddhartha Jha

Area Team Leader, LB Croydon
Senior Town Planner, LB Croydon
Planning Lawyer, LB Croydon

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- Written copy of the legal submissions by Thomas Hill KC
- Copy of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor [2023] EWHC 176 (Admin)*
- Policy DM1 of the CLP
- Final copy of the Planning Obligation dated 14 March 2024
- Email dated 15 March 2024 from Jeffrey Field on behalf of the appellant providing written agreement to the pre commencement conditions.

Schedule of Conditions

1. The development hereby permitted shall be begun within three years from 8th March 2022.
2. The development shall be carried out entirely in accordance with the approved drawings and supporting documents submitted with the application listed below FT-A-01 rev.V56, FT-A-02 rev.V56, FT-A-03 rev.V57, FT-A-04 rev.V56, FT-A-05 rev.V57, FT-A-06 rev.V56, FT-A-07 rev.V56, FT-A-08 rev.V56, FT-A-09 rev.V57, FTB- 01 rev. V56, FT-B-02 rev. V57, FT-B-03 rev. V56, FT-B-04 rev. V56, FT-B-05 rev. V56, FT-B-06 rev. V56, FT-B-07 rev. V57, FT-B-08 rev. V57, FT-B-09 rev. V56, FT-B-10 rev. V56, FT-B-11 rev. V56, FT-B-12 rev. V56, FT-B-13 rev. V56, FT-B-14 rev. V56, FT-B-15 rev. V56, FT-C-01 rev. V56, FT-C-02 rev. V56, FT-C-03 rev. V56, FT-C-04 rev. V56, FT-C-05 rev. V57, FT-C-06 rev. V57, FT-C-07 rev. V57, FT-C-08 rev. V56, GA-E-E-A rev. V57, GA-E-E-B rev. V57, GA-E-E-C rev. V57, GA-E-N-A rev. V57, GA-E-N-B rev. V57, GA-E-S-A rev. V57, GA-E-N-C rev. V57, GA-E-S-B rev. V57, GA-ES-C rev. V57, GA-E-W-A rev. V57, GA-E-W-B rev. V57, GA-E-W-C rev. V57, GA-PA-L00-L02 rev V56, GA-P-A-L03-R04 rev V56, GA-P-B-L00 rev V57, GA-P-B-L01 rev V57, GA-P-B-L02 rev V57, GA-P-B-L03 rev V57, GA-P-B-L04 rev V57, GA-P-B-R05 rev V57, GA-P-C-L00 -L003 rev. V57, GA-P-C-R04 rev V56, GA-P-L00 -L002 rev V57, GA-P-L03-R04 rev V57 GA-P-R05 rev V57, GA-S-EW rev V56, GA-S-NS-A&C rev.V56, GA-S-NS-B rev.V56.
3. The development shall be carried in accordance with the details contained within the Construction Logistics Plan (CLP) Document 2207850 01C dated Jan 2023 as approved under application ref 23/00148/DISC dated 22.03.23.
4. The development shall be carried out in accordance with the approved details contained within Phase 2 intrusive site investigation Geo- Environmental and Geotechnical Report Assessment (Ground Investigation Report) 2782J1947/TE 19. 01.2021 V2.0 (as approved under application 22/05073/DISC dated 24.01.23) and Remedial Strategy and Verification Plan P2782J1947/TE 08.12.2022 (as approved under application 22/05134/DISC dated 24.01.23). The developer shall notify the Local Planning Authority of any on site contamination not initially identified by the site investigation, so that an officer of the Council may attend the site and agree any appropriate remedial action.
5. Prior to the commencement of development (excluding demolition) the details of the remediation strategy hereby approved under Condition 4 including remedial measures required to render the site suitable for its intended use must be carried out.
6. The development shall be carried in accordance with the details contained within the Arboricultural Method Statement and Tree Protection Plan dated 07.02.23 PJC 6242 23 01 REV (as approved under application ref 23/00536/DISC dated 27.03.23).
7. The development shall be carried in accordance with the details contained within Drawings 1019063 00 1/ 2 and 2/2, the Southern Piling Health and Safety Policy, the Working Platform Design (including ramps and access

points) and the Southern Piling Risk assessments and method statements 09.02.23 (as approved under application 23/00597/DISC dated 22.03.23).

8. Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
a) Details of all external facing materials including physical samples (a typical façade comprising of materials, detailing and finishes including sample pallet of bricks, mortar). In addition, the Local Planning Authority shall be invited to view and approve any façade fabrication mock-ups the developer or their contractor might build as part of the normal design and construction process that would be limited to the following:
 - a) A typical panel of principal elevation treatment including vertical format
 - b) A typical parapet treatment
 - c) A typical panel of main entrance
 - d) A typical balcony with balustrade
 - e) A typical doubled glazed window unitThe development shall be carried out strictly in accordance with the details thus approved.
9. Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Detailed drawings in plan/elevation and section at 1:5 of typical windows and door recesses
 - b) Detailed drawings in plan/elevation and section at 1:5 of obscured glazed windows.
 - c) Detailed drawings in elevation and section at 1:5 of typical balustradingThe development shall be carried out strictly in accordance with the details thus approved.
10. Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Detailed drawings in elevation and section at 1:5 of enclosure/screening to balconies
 - b) Details drawings in elevation and section at 1:5 of any blinds
 - c) Detailed drawings in elevation and section at 1:5 of photovoltaics on roofThe development shall be carried out strictly in accordance with the details thus approved.
11. Prior to the commencement of above ground works, full details of the following fire requirements shall be submitted to and approved in writing by the Local Planning Authority
 - Demonstration of tenable conditions during the escape and fire-fighting stage;
 - Details to ensure the staircase and waiting areas outside of lift doors remains smoke free in all three blocks
 - Details of a cut-off switch for photovoltaic panels on the roof;
 - Details of fire doors, emergency lighting & emergency signage;
 - Details of wayfinding signage;
 - Details of sprinkler cut-off switches and the duration plate, balconies fire resistance.
 - Fire service vehicle arrangement

- Details of operations management plan

The development shall be carried out strictly in accordance with the details thus approved.

12. Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
- a) Hard landscaping materials (including permeable samples as appropriate) to all external areas, vehicle access routes (constructed to public highway standards), communal garden and roof terrace areas.
 - b) Soft landscaping details, including landscaped roof terraces, playspaces/communal garden areas, new planting treatment including species, size and density, maintenance and new tree planting scheme.
 - c) Boundary treatments with neighbouring properties to the east, west and south and along the front boundary of the site.
 - d) Play equipment to communal garden area
 - e) Vehicle sight lines along Mayday Road including point of entry/exit and visibility splay

The details approved shall be provided and completed in accordance with this condition prior to the first occupation of the development, and maintained for the lifetime of the development with the exception of new planting which shall be provided and completed in accordance with this condition prior to the end of the first planting season following completion of the development, and maintained for a period of five years from the date of planting. Any new planting which dies, is severely damaged, becomes seriously diseased or is removed within that period shall be replaced by planting of a similar size and species to that originally planted.

13. Prior to the commencement of above ground works full details of the Biodiversity Enhancement Strategy for this site (including demonstration of how the scheme meets the 0.4 score Urban Greening Factor (UGF) and external lighting design to minimise light pollution) shall be submitted to and approved in writing by the Local Planning Authority:
The details approved shall be provided and completed in accordance with this condition prior to the first occupation of the development and maintained for the lifetime of the development.
14. Prior to the commencement of above ground works full details of the Public Art to be provided shall be submitted to and approved by the Local Planning Authority. This shall be dealt with alongside the appropriate schedule of the s.106 legal agreement. The development shall be carried out strictly in accordance with the details thus approved.
15. Prior to commencement of above ground works hereby authorised begins, details of security measures shall be submitted and approved in writing by the Local Planning Authority and any such security measures shall be implemented prior to occupation in accordance with the approved details which shall seek to achieve the 'Secured by Design' accreditation award from the Metropolitan Police.
16. Details confirming the number and location of water butts and raised planters included in the final drainage scheme, or a robust justification to be provided as to why these measures cannot be included within the final design; in

addition to provision of an updated Layout Plan of the final drainage scheme, confirming locations of the proposed water butts & raised planters shall be submitted to the local planning authority for approval before commencement of works above ground. The development shall be completed and subsequently maintained in accordance with the approved Flood Risk Assessment and drainage Strategy Report by Ardent (dated October 2021 (ref: 2000731- 04 no.2000731) for the lifetime of the development.

- 17 Prior to first occupation, a detailed landscape and public realm management plan strategy to include all external areas within the site shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include, but not limited to:
 - a) Public realm (including external parking areas)
 - b) All external garden and pathways to the front and rear of the proposed buildings
 - c) Species, planting density and size of proposed new planting, including girth and clear stem dimensions of trees (including any trees including details of planters and means of securing trees)
 - d) Hard landscaping materials (including samples which shall be permeable as appropriate), including dimensions, bonding and pointing.
 - e) Details of junctions with area of public realm including drainage
 - f) All boundary treatments within and around the developmentThe development to be maintained for in accordance with the approved details for its lifetime unless otherwise approved in writing.
- 18 The noise level from any air handling units, mechanical plant, or other fixed external machinery should not increase the background noise level when measured at the nearest sensitive residential premises. This means the noise level from any new units should be at least 10dB below existing background noise levels.
- 19 Prior to first occupation of the buildings, details of a cleaning and maintenance strategy for the building (including window cleaning equipment) shall be submitted to and approved in writing by the Local Planning Authority. These shall be cleaned and maintained for the life of the development in accordance with the approved details.
- 20 Prior to first occupation of the buildings, details and specifications of any external lighting (including that in the public realm area and lighting on the building) shall be submitted to and approved by the Local Planning Authority in writing. The external lighting shall be installed as approved prior to first occupation and shall be maintained for the lifetime of the development.
- 21 Prior to first occupation of the buildings, full details of a Delivery and Servicing Plan shall be submitted and approved by the Local Planning Authority in writing. Vehicles servicing the site shall do so in accordance with the approved details for so long as the development remains in existence.
- 22 Prior to first occupation of the buildings, full details of a Car Park Management Plan shall be submitted and approved by the Local Planning Authority in writing. Vehicles using the site shall do so in accordance with the approved details for so long as the development remains in existence.

- 23 Prior to first occupation of the buildings, full details of a Refuse Storage and Waste Management Plan for the flats shall be submitted and approved by the Local Planning Authority in writing. The development shall be carried out strictly in accordance with the details thus approved.
24. Prior to first occupation of the buildings full details of the proposed cycle storage facilities for the flats shall be submitted to and approved in writing by the Local Planning Authority. The approved details to be permanently retained thereafter for the users of the development.
- 25 Prior to first occupation, full details of the 3 active electric Vehicle Charging Points (all parking spaces) shall be submitted to and approved by the Local Planning Authority. The electric vehicle charging points/disabled parking spaces shall be installed as approved prior to first occupation of the site and shall be maintained for the lifetime of the development.
- 26 The development shall achieve a water use target of 110 litres per head per day.
- 27 The windows in the south-western elevation of both Blocks A and C, as well as the southeastern elevation of Block B (Flat Type 5 living room only) shall, at first floor and above, be obscurely glazed prior to occupation of the development and retained as such for the lifetime of the development.
- 28 The development shall be completed and subsequently maintained in accordance with the recommendations, proposals and specifications of the Ardent Noise Assessment Report ref 2000731-01 dated October 2021
- 29 The development shall be completed and subsequently maintained in accordance with the findings and conclusions of the JAW Overheating Assessment Report Version 1 dated 21st October 2021.
- 30 6 (10%) of the approved flats shall be designed to be Category Part M4 (3) 'wheelchair user dwellings', 1 flat to be M4(3) 'wheel chair adaptable'. All the remaining units to be accessible and adaptable M4(2) dwellings with accessible lift provision throughout. These units shall be provided prior to any residential occupation within the building and shall be retained as such for so long as the development remains in existence.
- 31 The development shall be completed and subsequently maintained in accordance with the recommendation, proposals and specifications of the JAW Energy and Sustainability Statement dated 21st October 2021
- 32 The development shall be completed and subsequently maintained in accordance with the methodology, proposals and actions of the JAW Life-Cycle Carbon Assessment dated 21st October 2021 (Version 1).
- 33 The development shall be completed and subsequently maintained in accordance with the recommendations, proposals and specifications of the JAW Circular Economy Statement Version 1 dated 15th October 2021.

- 34 The development shall be completed and subsequently maintained in accordance with the approved Air Quality Assessment Report by Ardent (dated October 2021 (ref: 2000731-02) for the lifetime of the development.

End of Schedule

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