

9 September 2024



Christopher Brady  
Development Management  
Hillingdon Council  
Civic Centre  
High Street  
Uxbridge  
UB8 1UW

Kieran Wheeler  
E: KWheeler@savills.com  
DL: +44 (0) 78 0799 9239  
  
33 Margaret Street W1G 0JD  
T: +44 (0) 20 7499 8644  
F: +44 (0) 20 7495 3773  
savills.com

Dear Chris

**FORMER COMAG WORKS, TAVISTOCK ROAD, WEST DRAYTON, UB7 7QE**  
**Application under Section 73 of the Town and Country Planning Act 1990 (As Amended) (LPA Ref.24843/APP/2022/2403)**

I write on behalf of Bellway Homes Limited (North London) to update the application submission made on 27<sup>th</sup> August 2024 for the variation of conditions under Section 73 of the Town and Country Planning Act (1990) to the full planning permission granted on 11<sup>th</sup> June 2024 (LPA Ref.24843/APP/2022/2403). Bellway Homes Limited (North London) is now looking to build out the site.

This s73 application seeks minor amendments to various conditions and approved plans under the approved planning application (LPA Ref. 24843/APP/2022/2403). The nature of these changes are detailed below.

This application is supported by the following documents, enclosed under separate cover:

- Application Form, prepared by Savills;
- Planning Fire Safety Strategy, prepared by Ashton Fire;
- Suite of drawings, prepared by RM\_A;
- Summary of post-planning amendments, prepared by RM\_A; and
- Financial Viability Assessment, prepared by James R Brown & Company Ltd.

**Proposed Amendments**

For ease, please see the bullet point list below for the changes sought as part of this s73 application:

- Ground floor community hub replaced with residents lounge and ancillary space;
- Removal of separating wall between blocks B and C to allow corridor to be extended to enable two means of escape;
- Replacing 6 x 3-bedroom 5-person residential units with 6 x 3-bedroom 4-person residential units;
- Rear building line extension by 900mm for length of 15m (units B14 and B15 and above);
- Installation of external staircase from the roof terrace to level 6;
- Replacement of glazed balcony balustrades along Tavistock and Winnock Road with metal balustrades;
- Replacement of metal panels with brick panels;
- Reconfiguration of green roof layout;
- Lobby areas to Blocks B and C rearranged to provide direct access from car park to building cores;
- Cycle store layouts amended;
- Cycle store enclosure amended from brickwork to hit and miss brickwork to improve car park ventilation strategy;

- Balcony and window positions amended to reflect other scheme alterations;
- Lift overruns and roof vents amended to reflect detailed design; and
- Reduced affordable housing provision to 0%, which is supported by a Financial Viability Assessment.

The proposed amendments are set out in further detail in the subheadings below.

#### Ground Floor Residential Lounge

The non-residential floorspace on the ground floor will be removed and replaced with a residential lounge and associated ancillary space for residents to enjoy. This is achieved with minimal changes to the ground floor level elevation.

It was previously noted by officers that the location of the building away from the high street was not the most prominent location to accommodate a sizeable community hub, given the reduced level of footfall. There is no demand for a small community facility in this location and the space could be better utilised as additional amenity space for residents to enjoy.

#### Design Changes to Comply with Fire Safety Regulations

The majority of the above changes are required to ensure the scheme complies with new fire safety regulations.

The first amendment comprises a change to the residential common corridors to allow escape in more than one direction on every floor. This is achieved removing the party wall separating blocks B and C, creating one common corridor served by two means of escape. This also allows the future residents of both Blocks B and C access to the top roof terrace, and will also allow a direct access to these blocks from the ground floor car parking.

In addition, the new common corridor arrangement associated with the above can be accommodated by a minor alteration to the mix of approved accommodation. This amendment will comprise replacing a total of six 3 bedroom 5 person units with six 3 bedroom 4 person units. It should be noted this amendment does not lead to a reduction in family homes across the scheme.

Next, the s73 application proposes the residential unit layouts are adjusted by means of a minor extension of the rear building line by 900mm for a length of 15m. Please note all units and internal layouts will continue to meet the relevant standards. Additionally, the proposed amendments do not result in any material increase in residential floorspace with extension to the building line required to accommodate the extended length of corridor which forms part of the common area of the building.

An external escape stair has also been added to grant an alternative escape route from the top roof terrace. This stair will connect the top roof terrace at Level 7 to the residential corridor on the level below, and is set back from the main elevations on both Tavistock and Winnock Road, limiting any additional impact on neighbouring residential amenity.

In addition, the approved glazed balcony balustrades on Tavistock and Winnock Road are proposed to be replaced with laser-cut metal balustrades to improve their fire performance whilst also maintaining a high level of sound insulation against the nearby railway.

Minor adjustments have been made to the cycle store layout and the enclosure of the store has been changed to hit and miss brick work (as opposed to railings) in response to comments from officers. This ensures that the car park area can be ventilated naturally.

The layout of the roof has been amended to reflect the fire strategy requirements and includes a new footpath connecting to the proposed external staircase and the removal of extract vents. The green roof has been reconfigured to reflect the new layout. There has been no loss of green roof due to the proposed amendments.

Neither the Urban Greening Factor or the SUDS strategy change as a result of the reconfiguration of the roof layout of the building.

Finally, the metal panels set between some paired windows are proposed to be replaced with brick panels to again improve the fire performance of the building fabric.

Further details of the proposed design amendments can be found within the supporting suite of drawings and summary design document, prepared by RM\_A, attached under separate cover.

The above design changes are further supported by a Planning Fire Safety Strategy, prepared by Ashton Fire, which is submitted under separate cover. The Fire Safety Strategy found the proposed development to be compliant with London Plan policies (D12).

#### Amending the wording of Condition 2 (Approved Drawings)

This Section 73 application seeks to supersede the following drawings on the current approved drawing list to include the amendments outlined above. Please see table below which outlines the previous approved drawings (shown in red strike through) and the proposed drawings (shown in black).

| Previously Approved Drawing           | Proposed Drawing (to supersede currently approved) |
|---------------------------------------|--|
| <del>CWD-RMA-ZZ-00-DR-A-0100_P8</del> | CWD-RMA-ZZ-00-DR-A-0100_P10                        |
| <del>CWD-RMA-ZZ-00-DR-A-0200_P5</del> | CWD-RMA-ZZ-00-DR-A-0200_P7                         |
| <del>CWD-RMA-ZZ-00-DR-A-0201_P5</del> | CWD-RMA-ZZ-00-DR-A-0201_P7                         |
| <del>CWD-RMA-ZZ-07-DR-A-0107_P5</del> | CWD-RMA-ZZ-07-DR-A-0107_P8                         |
| <del>CWD-RMA-ZZ-08-DR-A-0108_P7</del> | CWD-RMA-ZZ-08-DR-A-0108_P9                         |

#### Amending the wording of Condition 3 (Approved documents)

Condition 3 currently stipulates that the development hereby permitted shall not be occupied until the following has been completed in accordance with the specified supporting plans and/or documents.

Due to the minor design changes required to comply with new fire safety regulations, a Planning Fire Safety Strategy has been prepared to reflect the scheme's latest design changes. Accompanying this application is the following document which should be listed under Condition 3:

- Planning Fire Safety Strategy, prepared by Ashton Fire (dated January 2024)

The Fire Safety Strategy confirms that the proposed development is compliant with London Plan policies (D12).

#### Affordable Housing

The approved scheme provides 23% affordable housing with a 61% (London Affordable Rent) and 39% (Shared Ownership) split. The Councils appointed viability consultant reviewed this offer and concluded that an early and late stage review mechanism be secured within the legal agreement.

Whilst the approved scheme does not provide a policy compliant level of affordable housing on site, the Development Plan permits the use of a Financial Viability Assessment (FVA) to ensure the maximum level of affordable housing can be secured.

Following approval of the proposed development earlier this year, Bellway has reviewed the deliverability of the scheme and concluded that it is not longer viable to provide 23% affordable housing provision as a result of range of economic factors. . The amendments proposed under this s73 application reduce the affordable housing provision to 0% to increase the schemes viability.

For s73 applications, any proposed amendments that result in a reduction in affordable housing, affordability or other obligations or requirements of the original permission should be rigorously assessed under the Viability Tested Route.

A FVA (Viability Study) has been prepared by James R Brown & Company Ltd in support of this application, which demonstrates that based on 0% affordable housing provision, the development still makes a small loss and cannot therefore viably sustain any affordable housing.

The applicant intends on submitting a new planning obligation pursuant to s106 of the Town and Country Planning Act (as amended) (TCPA) in the form of either a new bilateral agreement or a unilateral undertaking. The applicant is not seeking to modify the planning obligation pertaining to application (LPA Ref. 24843/APP/2022/2403) and therefore an application under s106A of the TCPA has not been made. This approach is further supported by recent caselaw.

The new planning obligation will carry 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 23% of the total number of homes. The review mechanisms will remain in place. The applicant has provided a viability case in support of this change.

#### *Planning Appeal Precedent*

We draw your attention to a recent appeal decision (Ref. APP/L5240/W/23/3332225) (copy attached) 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 (LPA Ref. 23/01729/CONR) under section 73 of the Town and Country Planning Act 1990 (as amended) against the London Borough of Croydon.

Although the appeal was lodged against non-determination, the Council confirmed that they would have refused the application nonetheless. This is because, as the Council's submitted, 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 main issue addressed in this appeal decision is whether, in this instance, a s73 application is an appropriate means to reduce the level of affordable housing previously secured.

The Inspector states that "*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.*"

The Inspector concludes, the s73 application is an appropriate means in this instance to reduce the level of affordable housing relative to that previously secured.

#### **Section 73 of the Town and Country Planning Act (1990)**

Section 73 of the Town and County Planning Act 1990 (as amended) allows for the following:

"Determination of applications to develop land without compliance with conditions previously attached.

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.



(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and — (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

Permission granted under s73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and un-amended.

In accordance with National Planning Practice Guidance ('NPPG'), this application seeks to amend the wording of a number of planning conditions and approved documents.

The differences between the extant planning permission (LPA ref.24843/APP/2022/2403) and the scheme amendments proposed as part of this application are considered to be minor in scale and nature and therefore permissible under the scope of s73.

### **Summary**

Please note that the requisite application fees for the application have been paid on the Planning Portal by the client.

I trust the enclosed is in order and I look forward to receiving confirmation that the application has been validated.

In the meantime, please feel free to contact my colleague Emily Brosnan (emily.brosnan@savills.com) in the first instance if you have any queries or would like to discuss the application in further detail.

Yours sincerely,

A handwritten signature in black ink that reads "Savills" above "Kieran Wheeler".

**Kieran Wheeler**  
Director

Enc As listed.



**APPEAL DECISION - APP/L5240/W/23/3332225**



## 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 decision<sup>1</sup>. 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.

---

<sup>1</sup> 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 TCPA<sup>2</sup>. 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 time<sup>3</sup>. 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 appeal<sup>4</sup>. An example being a change in policy which requires an increased level of affordable housing<sup>5</sup>. 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

---

<sup>2</sup> 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).

<sup>3</sup> Norfolk Homes Limited v North Norfolk District Council & another [2020] EWHC 2265

<sup>4</sup> Ibid – see Paragraphs 58 and 127 in particular

<sup>5</sup> 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 emanating 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 evidence<sup>6</sup>. 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

---

<sup>6</sup> Including alterations to the local employment and training strategy and the affordable housing review mechanism

## **APPEARANCES**

### **FOR THE APPELLANT**

|                              |  |
|------------------------------|--|
| Thomas Hill KC               | Counsel for the appellant                |
| Jeffrey Field MA MRTPI MRICS | Planning Director, Lambert Smith Hampton |
| Nick Bignall MRICS           | Partner, Turner Morum LLP                |
| Nick Lawrence MRTPI          | Appellant                                |
| Phoebe Juggins MRTPI         | Appellant                                |
| Mathew Evans                 | Counsel, Forsters LLP                    |

### **FOR THE LOCAL PLANNING AUTHORITY**

|                   |                                 |
|-------------------|---------------------------------|
| Ross Gentry       | Area Team Leader, LB Croydon    |
| Christopher Grace | Senior Town Planner, LB Croydon |
| Siddhartha Jha    | 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 approve 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, GAE-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**