

DELEGATED DECISION

- Please select each of the categories that enables this application to be determined under delegated powers
 - Criteria 1 to 5 or criteria 7 to 9 must be addressed for all categories of application, except for applications for Certificates of Lawfulness, etc.

APPROVAL RECOMMENDED: GENERAL

Select Option

- | | |
|--|--------------------------|
| 1. No valid planning application objection in the form of a petition of 20 or more signatures, has been received | ☐ |
| 2. Application complies with all relevant planning policies and is acceptable on planning grounds | ☐ |
| 3. There is no Committee resolution for the enforcement action | ☐ |
| 4. There is no effect on listed buildings or their settings | ☐ |
| 5. The site is not in the Green Belt (but see 11 below) | ☐ |

REFUSAL RECOMMENDED: GENERAL

- | | |
|--|--------------------------|
| 6. Application is contrary to relevant planning policies/standards | ☐ |
| 7. No petition of 20 or more signatures has been received | ☐ |
| 8. Application has not been supported independently by a person/s | ☐ |
| 9. The site is not in Green Belt (but see 11 below) | ☐ |

RESIDENTIAL DEVELOPMENT

- | | |
|--|--------------------------|
| 10. Single dwelling or less than 10 dwelling units and/or a site of less than 0.5 ha | ☐ |
| 11. Householder application in the Green Belt | ☐ |

COMMERCIAL, INDUSTRIAL AND RETAIL DEVELOPMENT

- | | |
|--|--------------------------|
| 12. Change of use of retail units on site less than 1 ha or with less than 1000 sq m other than a change involving a loss of A1 uses | ☐ |
| 13. Refusal of change of use from retail class A1 to any other use | ☐ |
| 14. Change of use of industrial units on site less than 1 ha or with less than 1000sq.m. of floor space other than to a retail use. | ☐ |

CERTIFICATE OF LAWFULNESS

- | | |
|---|--------------------------|
| 15. Certificate of Lawfulness (for proposed use or Development) | ☐ |
| 16. Certificate of Lawfulness (for existing use or Development) | ☐ |
| 17. Certificate of Appropriate Alternative Development | ☐ |

CERTIFICATE OF LAWFULNESS

- | | |
|---|--------------------------|
| 18. ADVERTISEMENT CONSENT (excluding Hoardings) | ☐ |
| 19. PRIOR APPROVAL APPLICATION | ☐ |
| 20. OUT-OF-BOROUGH OBSERVATIONS | ☐ |
| 21. CIRCULAR 18/84 APPLICATION | ☐ |
| 22. CORPSEWOOD COVENANT APPLICATION | ☐ |
| 23. APPROVAL OF DETAILS | ☐ |
| 24. ANCILLARY PLANNING AGREEMENT (S.106 or S.278) where Heads of Terms have already received Committee approval | ☐ |
| 25. WORKS TO TREES | ☐ |
| 26. OTHER (please specify) | ☐ |

The delegation powers schedule has been checked. Director of Residents Services can determine this application.

Case Officer

Signature:

Date:

A delegated decision is appropriate and the recommendation, conditions/reasons for refusal and informatives are satisfactory.

Team Manager:

Signature:

Date:

The decision notice for this application can be issued.

Director / Member of Senior Management Team:

Signature:

Date:

NONE OF THE ABOVE DATES SHOULD BE USED IN THE PS2 RETURNS TO THE ODPM

Item No. **Report of the Head of Planning, Building Control, Sport & Green Spaces**

Address 585-591 UXBRIDGE ROAD HAYES

Development: Section 73 application to vary planning permission ref: 4404/APP/2014/2506, dated 19/06/15: Change of use of B1(c) floorspace to provide 12 additional residential units and associated ancillary works (Amendment to planning permission ref: 4404/APP/2011/2079, dated 30/03/12 (Application to replace extant planning permission ref: 4404/APP/2008/3558, dated 23/03/09); Redevelopment of site to provide replacement Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats with associated car parking, landscaping and amenity space) by deleting Condition 6 (Code for Sustainable Homes).

LBH Ref Nos: **4404/APP/2015/4472**

Drawing Nos: Agent's emails (2) dated 15/2/16
Agent's email dated 24/2/16
Agent's email dated 6/1/16
PL-100 Site Location Plan
PL-01(S4) Site Plan
PL-201 Proposed Ground Floor Plan and Elevations Block C
PL-202 Proposed Ground Floor Plan and Elevations Block D
PL-203 Proposed Ground Floor Plan and Elevation Block A2
PL-204 Proposed Ground Floor Plan and Elevations Block B
Design and Access Statement
Report on the Demand for Commercial Space on the Pronto Trading Estate
Economic Viability Assessment
Email re sound insulation dated 29/8/14
Noise Insulation Scheme

Date Plans received : 07/12/2015

Date(s) of Amendment(s):

Date Application Valid: 07/12/2015

1. SUMMARY

The proposal is for the removal of condition No. 6 (Code for Sustainable Homes) of planning permission reference 4404/APP/2014/2506 (dated 19/06/15).

The removal of the Code for Sustainable Homes condition would not demonstrate compliance with the requirements of The London Plan. The applicant has not provided any justified need for the removal of the condition through the submission of a scheme to demonstrate how sustainability and energy has been/ would be incorporated into the design and future operation of the approved residential units.

Given the above, the application fails to comply with the principles of the design stage certificate and would fail to reduce carbon emissions, and not promote higher standards of sustainable design.

2. RECOMMENDATION

REFUSAL for the following reasons:

1 NON2 Non Standard reason for refusal

In the absence of an alternative scheme to satisfy sustainability objectives, the removal of the condition fails to demonstrate that the development would satisfy relevant sustainable design criteria of the London Plan, including energy and water efficiencies. As such, the scheme fails to comply with Policies 5.1 and 5.3 of the London Plan (March 2015) and the National Planning Policy Framework (NPPF) (March 2012).

INFORMATIVES

1 I52 Compulsory Informative (1)

The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

2 I53 Compulsory Informative (2)

The decision to REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) as incorporated into the Hillingdon Local Plan (2012) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (2015) and national guidance.

NPPF1	NPPF - Delivering sustainable development
NPPF6	NPPF - Delivering a wide choice of high quality homes
NPPF10	NPPF - Meeting challenge of climate change flooding costal
LPP 3.4	(2015) Optimising housing potential
LPP 3.8	(2015) Housing Choice
LPP 3.10	(2015) Definition of affordable housing
LPP 3.11	(2015) Affordable housing targets
LPP 3.12	(2015) Negotiating affordable housing (in) on individual private residential and mixed-use schemes
LPP 3.13	(2015) Affordable housing thresholds
LPP 5.1	(2015) Climate Change Mitigation
LPP 5.2	(2015) Minimising Carbon Dioxide Emissions
LPP 5.3	(2015) Sustainable design and construction
LPP 5.7	(2015) Renewable energy
LPP 5.12	(2015) Flood risk management
LPP 5.13	(2015) Sustainable drainage
LPP 6.3	(2015) Assessing effects of development on transport capacity
LPP 6.9	(2015) Cycling
LPP 6.10	(2015) Walking
LPP 6.13	(2015) Parking
LPP 7.1	(2015) Lifetime Neighbourhoods
LPP 7.2	(2015) An inclusive environment
LPP 7.3	(2015) Designing out crime
LPP 7.14	(2015) Improving air quality

LPP 7.15	(2015) Reducing noise and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes.
BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE18	Design considerations - pedestrian security and safety
BE19	New development must improve or complement the character of the area.
BE20	Daylight and sunlight considerations.
BE21	Siting, bulk and proximity of new buildings/extensions.
BE23	Requires the provision of adequate amenity space.
BE24	Requires new development to ensure adequate levels of privacy to neighbours.
OE1	Protection of the character and amenities of surrounding properties and the local area
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures
OE5	Siting of noise-sensitive developments
OE8	Development likely to result in increased flood risk due to additional surface water run-off - requirement for attenuation measures
H4	Mix of housing units
LE4	Loss of existing industrial floorspace or land outside designated Industrial and Business Areas
R17	Use of planning obligations to supplement the provision of recreation, leisure and community facilities
AM2	Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity
AM7	Consideration of traffic generated by proposed developments.
AM9	Provision of cycle routes, consideration of cyclists' needs in design of highway improvement schemes, provision of cycle parking facilities
AM14	New development and car parking standards.
AM15	Provision of reserved parking spaces for disabled persons
HDAS-LAY	Residential Layouts, Hillingdon Design & Access Statement, Supplementary Planning Document, adopted July 2006
LDF-AH	Accessible Hillingdon , Local Development Framework, Supplementary Planning Document, adopted January 2010
SPD-NO	Noise Supplementary Planning Document, adopted April 2006
SPD-PO	Planning Obligations Supplementary Planning Document, adopted July 2008
SPG-AQ	Air Quality Supplementary Planning Guidance, adopted May 2002
SPG-CS	Community Safety by Design, Supplementary Planning Guidance, adopted July 2004

3 I59 Councils Local Plan : Part 1 - Strategic Policies

On this decision notice policies from the Councils Local Plan: Part 1 - Strategic Policies appear first, then relevant saved policies (referred to as policies from the Hillingdon

Unitary Development Plan - Saved Policies September 2007), the London Plan Policies (2015). On the 8th November 2012 Hillingdon's Full Council agreed the adoption of the Councils Local Plan: Part 1 - Strategic Policies. Appendix 5 of this explains which saved policies from the old Unitary Development (which was subject to a direction from Secretary of State in September 2007 agreeing that the policies were 'saved') still apply for development control decisions.

4

In dealing with the application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. The Council supports pre-application discussions in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition further guidance was offered to the applicant by officers during the processing of the application to identify the amendments to address those elements of the scheme considered unacceptable which the applicant chose not to implement.

3. CONSIDERATIONS

3.1 Site and Locality

The 0.49ha hectare site comprises an irregular 'L' shape residential infill re-development, located on the southern side of Uxbridge Road, Hayes, opposite its western junction with Park Road. The site extends to the rear of adjoining residential properties on Uxbridge Road and comprises seven detached residential blocks, with some parts of the scheme still under construction. Two blocks front Uxbridge Road, separated by the central access that serves the other residential blocks sited progressively towards the rear of the site.

The surrounding area consists of detached and semi-detached residential dwellings, generally two storeys in height, with large back gardens. At the rear of the site, to the east, is Rosedale Park and allotment gardens are located to the south and west.

The application site forms part of the 'developed area' as identified in the Hillingdon Local Plan: Part Two - Saved UDP policies (November 2012). Rosedale Park forms part of a green chain.

3.2 Proposed Scheme

This is a Section 73 application to remove condition 6 (Code for Sustainable Homes) from planning permission ref: 4404/APP/2014/2506, dated 19/06/15 for the change of use of B1(c) floorspace to provide 12 additional residential units and associated ancillary works (Amendment to planning permission ref: 4404/APP/2011/2079, dated 30/03/12 (Application to replace extant planning permission ref: 4404/APP/2008/3558, dated 23/03/09): Redevelopment of site to provide replacement Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats with associated car parking, landscaping and amenity space) by deleting Condition 6 (Code for Sustainable Homes).

The agents in their email dated 6/1/16 advise that although the ministerial statement advocates other sustainable requirements, it does nonetheless revoke the CfSH requirement. The specific conditions in question relate to the requirement to achieve CfSH level 4 only. In effect, therefore, these conditions are unenforceable because it stipulates a requirement that no longer forms part of development plan policy. They consider that the Borough has no grounds to resist the removal of the condition, a line which other Council's are taking.

Notwithstanding this, there is the intention of the Government to start to direct more of the control of energy performance and thermal efficiency requirements away from planning and into Building Regulations (as is logical) and that the London Plan requirements are inline with, and often exceeded by, current Building Regulation requirements. Accordingly, even with the removal of these conditions, the development still needs to meet up to date Building Regulation requirements.

Moreover, the agent claims that the development has been constructed to CfSH Level 4 standards, however, the reason for removing the conditions is that the company who undertook the interim code assessment no longer provides this service (on account of CfSH being revoked) and has no record of the 'inputs' they used when applying for the interim Certificates. The buildings have now been built which prevents the new Energy Consultant from being able to assess them for Level 4 compliance and therefore we cannot obtain completion certificates, however, the removal of the condition would not jeopardise the sustainability requirements as they have already been implemented throughout the development in compliance with Building Regulations and their design to meet CfSH level 4. Therefore, even with these Conditions removed, therefore, the development more than satisfies the sustainability requirements of the London Plan.

The agent in their two emails of 15/2/16 refute comments from the Council's Sustainability Officer, arguing that this is a planning matter, not a sustainability matter. The omission of the Code for Sustainable Homes (CfSH) is part of a fundamental review of the technical housing standards. The government has abolished the Code for Sustainable Homes as part of the Deregulation Act 2015 which is an Act of Parliament and therefore enshrined in law. This is not, therefore, merely a 'matter of political preference' it is a matter of planning law.

Further, whilst the Act makes provision for the 'management of legacy cases' it is a matter of fact that Councils can no longer apply CfSH requirements to new developments. This is an overriding material planning consideration for both new and extant development proposals. Furthermore, a condition which requires the applicant to meet an energy performance target which has been abolished is clearly 'ultra vires' in law and therefore cannot be enforced. Accordingly, given that the conditions are unenforceable, the applications to remove the conditions must succeed or otherwise face an Appeal that the Authority cannot win.

Unfortunately the conditions imposed by the Borough make no allowance for any other provision of replacement energy standards.

Accordingly, there is no mechanism within the conditions to require an alternative approach. Planning law is the overriding consideration and, for the reasons outlined above, the conditions are unenforceable and moreover, place a requirement to meet an abolished energy performance standard with no reference to planning policy.

Notwithstanding this, as you will be aware from the previous condition submissions, the development has achieved interim CfSH Level 4 and must meet current Building Regulation which has its own set of up to date energy requirements.

Furthermore, please be advised that refusing these applications would completely defy the stance taken by all other LPA's that we have experienced so far.

In email dated 24/2/16, the agent advises that the wording of the condition refers to the Code for Sustainable Homes only. The agent re-iterates that it is a matter of fact that the Government has withdrawn the Code for Sustainable Homes and therefore this condition cannot be applied to new development. As a result, the condition is considered to be 'ultra vires' on the basis that it refers to a withdrawn and therefore out of date energy standard.

We consider therefore that (i) the refusal of this application would not hold up to scrutiny at Appeal and (ii) the conditions are unenforceable.

The agent refers to a case at South Oxfordshire Council, an almost identical application when the Council was advised that it could not resist the removal of the condition and the committee report detailed that the Council had, at that time approved 20 similar applications. Importantly, the committee report clarifies that applications to remove planning conditions that require Code for Sustainable Homes do not fall within the definition of a "legacy case".

In light of this alone, the agent consider that the Borough have no grounds to resist approving the application and the removal of the condition should be granted without delay as required by the NPPF.

3.3 Relevant Planning History

Comment on Planning History

The permission to which this application proposal relates to is reference 4404/APP/2014/2506, which granted permission on 19/06/15 for the change of use of B1(c) floorspace to provide 12 additional residential units and associated ancillary works (Amendment to planning permission ref: 4404/APP/2011/2079, dated 30/03/12 (Application to replace extant planning permission ref: 4404/APP/2008/3558, dated 23/03/09): Redevelopment of site to provide replacement Class B1(c) light industrial space and 34 two-bedroom and 9 one-bedroom flats with associated car parking, landscaping and amenity space).

Condition 6 (Code for Sustainable Homes):-

The dwelling(s) shall achieve Level 4 of the Code for Sustainable Homes. No development shall commence until a signed design stage certificate confirming this level has been received. The design stage certificate shall be retained and made available for inspection by the Local Planning Authority on request.

The development must be completed in accordance with the principles of the design stage certificate and the applicant shall ensure that completion stage certificate has been attained prior to occupancy of each dwelling.

REASON

To ensure that the objectives of sustainable development identified in London Plan (July 2011) Policies 5.1 and 5.3.

4. Advertisement and Site Notice

4.1 Advertisement Expiry Date:- 9th February 2016

4.2 Site Notice Expiry Date:- Not applicable

6. UDP / LDF Designation and London Plan

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

PT1.E1 (2012) Managing the Supply of Employment Land

PT1.H2 (2012) Affordable Housing

PT1.BE1 (2012) Built Environment

PT1.EM1	(2012) Climate Change Adaptation and Mitigation
PT1.EM6	(2012) Flood Risk Management
PT1.EM8	(2012) Land, Water, Air and Noise
PT1.CI1	(2012) Community Infrastructure Provision

Part 2 Policies:

NPPF1	NPPF - Delivering sustainable development
NPPF6	NPPF - Delivering a wide choice of high quality homes
NPPF10	NPPF - Meeting challenge of climate change flooding costal
LPP 3.4	(2015) Optimising housing potential
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BE13	New development must harmonise with the existing street scene.
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BE19	New development must improve or complement the character of the area.
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BE21	Siting, bulk and proximity of new buildings/extensions.

BE23	Requires the provision of adequate amenity space.
BE24	Requires new development to ensure adequate levels of privacy to neighbours.
OE1	Protection of the character and amenities of surrounding properties and the local area
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In addition:

7. MAIN PLANNING ISSUES

7.1 Impact on the amenities of the occupiers of neighbouring residential properties

This was assessed in the consideration of the original planning permissions references 4404/APP/2014/2506, 2011/2079 and 2008/3558 and deemed to be acceptable. The proposed amendments to the scheme are not considered to have any material impact in this regard.

7.2 Impact on Street Scene

This was assessed in the assessment of the original planning permission references 4404/APP/2014/2506, 2011/2079 and 2008/3558 and deemed to be acceptable. The proposed amendments to the scheme are not considered to have any material impact in this regard.

7.3 Traffic Impact / Pedestrian Safety

Traffic and pedestrian issues were assessed in the assessment of the original planning permission references 4404/APP/2014/2506, 2011/2079 and 2008/3558 and deemed to be acceptable. The proposed amendments to the scheme are considered to not have any material impact in this regard.

7.4 Carparking & Layout

Car parking and layout were assessed in the assessment of the original planning permission references 4404/APP/2014/2506, 2011/2079 and 2008/3558 and deemed to be acceptable. The proposed amendments to the scheme are considered to not have any material impact in this regard.

7.5 Urban Design, Access and Security Considerations

Urban design, access and security issues were assessed in the assessment of the original planning permission references 4404/APP/2014/2506, 2011/2079 and 2008/3558 and deemed to be acceptable. The proposed amendments to the scheme are considered to not have any material impact in this regard.

7.6 Other Issues

CODE FOR SUSTAINABLE HOMES

Condition No. 6 was imposed to secure compliance of the scheme with Policies 5.1 and 5.3 of the London Plan and therefore, this is the test applied for the assessment of this S73 application.

Notwithstanding the withdrawal of the Code (the application form states that the reason for the application is that the condition no longer complies with national planning policy and therefore cannot be considered necessary or enforceable), transitional considerations, based on relevant planning policy remain valid.

The Ministerial Statement, dated 25/3/15 stipulates:-

'Where there is an existing plan policy which references the Code for Sustainable Homes, authorities may continue to apply a requirement for a water efficiency standard equivalent to the new national technical standard, or in the case of energy a standard consistent with the policy set out in the earlier paragraph in this statement, concerning energy performance.'

The starting point therefore (based on the Ministerial Statement and National Technical Standards (October 2015) is not supportive to the removal of the condition without other measures and mechanisms being in place to ensure compliance with relevant policy.

The London Plan (March 2015) does not make any changes to Policies 5.1 or 5.3 and therefore in policy terms, there is still a need to address the issues of sustainable design and decentralised or renewable energy.

As such, the removal of the Code for Sustainable Homes condition would not demonstrate compliance with the requirements of the London Plan. The applicant has not provided any other justified need for the removal of the condition through the submission of a scheme to demonstrate how sustainability and energy has been / would now be incorporated into the design and future operation of the approved residential units.

Given the above, the application fails to comply with the principles of the design stage certificate and would fail to reduce carbon emissions and promote higher standards of sustainable design.

8. Reference Documents

Hillingdon Local Plan: Part One - Strategic Policies (November 2012)
Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012)
The London Plan (March 2015)
National Planning Policy Framework
National Technical Standards (October 2015)

Contact Officer: Richard Phillips

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