The Planning Inspectorate

Appeal Decision

Hearing held on 7 February 2017

Site visit made on 7 February 2017

by Graham Chamberlain BA MSc MRTPI

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

Decision date: 17th February 2017

Appeal Ref: APP/M5450/W/16/3160688
Churchill Hall, Hawthorne Avenue, Harrow HA3 8AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J De Swarte against the decision of the Council of the London Borough of Harrow.
- The application Ref P/5255/15, dated 9 November 2015, was refused by notice dated 26 May 2016.
- The development proposed is demolition of existing building and erection of a stepped 3 to 5 storey building to provide 37 self-contained flats, a Class D1/D2 ground floor unit, with a re-sited entrance on Hawthorne Avenue to provide access to bin & cycle stores and associated parking, amenity areas and landscaping.

Decision

1. The appeal is dismissed.

Application for Costs

2. At the Hearing an application for costs was made by Mr J De Swarte against the Council of the London Borough of Harrow. This application will be the subject of a separate Decision.

Preliminary Matters

3. The appeal scheme was amended during the course of the Council's assessment with the number of flats reduced to 37 from 39. I have therefore used the revised description. At the hearing I was advised by the Council and the appellant that they had been unable to agree a Statement of Common Ground (SCI). It was nevertheless confirmed that those matters outlined in the draft SCI were agreed save for the provision of affordable housing being included as an area of disagreement. I have considered the draft SCI on this basis.

4. It was also confirmed at the hearing that the site address should omit any reference to the 'Conservative Club', that I should disregard the erroneous 'not' in the Council's reason for refusal and that the Council's Urban Designer had not produced a written evaluation of the proposal. Nevertheless, Ms Mahanga's recommendation to the Council's Planning Committee was informed by the Urban Designer's advice, as was the appeal scheme at a pre-application stage.

5. It was agreed at the hearing that the Council should be afforded an opportunity to review and comment upon the Unilateral Undertaking submitted by the appellant

towards the end of the event[1]. Comments were received on the 9 February 2017. The appellant was afforded an opportunity to review the Council's comments. I have taken all further comments into consideration as well as the further revisions to the Unilateral Undertaking, the final version of which is dated 10 February 2017.

Main Issues

6. During the hearing the Council advised me that it did not consider that the provision of affordable housing was a matter in dispute and this was not a main issue that required discussion. This is because the appellant had previously agreed to provide 14 affordable housing units and the committee report reflected this. Nevertheless, the appellant had reserved his position in agreeing to the provision of 14 units and has subsequently presented a case that it is unviable to provide any affordable housing as part of the proposal. Consequently, the provision of affordable housing was included as a main issue for discussion at the hearing and is addressed as such in this decision letter.

7. The Council's decision notice refers to an adverse impact on 'neighbouring amenity'. The Council confirmed that this relates to the outlook from 1/1a Hawthorne Avenue (No 1) and 92/92a Kenton Road (No 92) and possible effects on the living conditions of nearby residents from any on-street parking stress that may materialise as a result of the appeal scheme.

8. Accordingly, the main issues in this appeal are:
   - Whether the 'car free' aspiration of the development is policy compliant and whether it would adversely affect highway safety and the living conditions of nearby residents;
   - The effect of the proposed development on the character and appearance of the area and the living conditions of the occupants of No 1 and No 92, with particular reference to outlook;
   - Whether the proposal would generate sufficient sales revenue to enable the provision of affordable housing: and
   - If affordable housing should be provided, what level this should be at with particular reference to the Unilateral Undertaking submitted and the appropriateness of a Vacant Building Credit.

Reasons

Whether the car free aspiration of the development is policy compliant and the effect on highway safety and living conditions

9. The proposed development would provide three off road parking spaces but to all intents and purposes it would be a 'car free' scheme with any resident parking having to take place off-site. Policy DM42 of the Development Management Policies 2013 (DMP) supports car free development in town centres. However, the appeal site is not located in a defined town centre. Nevertheless, Policy 6.13 of the London Plan (LP) states that car free development should be promoted in locations with high public transport accessibility. This suggests a broader scope of locations for car free development than just town centres in an attempt to support a modal shift away from cars towards other forms of transport.

[1] I was advised at the hearing that the unilateral undertaking tabled by the appellant carried over those obligations set out in the Council's draft s106 Agreement save for a viability review. Upon further inspection after the hearing it became apparent that this was not the case as a number of additional changes had been made. The Council were afforded an opportunity to comment on these changes and the appellant to respond to the Council's comments

10. The appeal site has a Public Transport Accessibility Level (PTAL) of 5 and with additional bus services this is set to increase to PTAL 6a. As such, the appeal site is in a location with good connectivity to public transport and services. As such, its location outside a town centre is not fatal to the principle of car free housing when applying the LP, which post-dates the DMP. Nevertheless, the concept and appropriateness of car free housing can be undermined if there would be ready access to on-street parking nearby, as future residents could park on-street and this could result in localised parking stress.

11. There was some debate at the hearing over the possible level of car ownership that could be associated with the occupation of the appeal scheme[2]. The Council suggested that the car ownership level could be as high as 39 cars. This analysis is based on 2011 census data, which confirms that vehicle ownership levels in Harrow average at one per household. However, this data includes all households, including larger households. I share the view of the appellant that it is more appropriate to consider the car ownership levels of the occupants of flats in the area. The 2011 census data relating to car ownership suggest that around 46% of residents of flats in the Borough do not have access to a car (thus 54% do).

12. The appellant has suggested that if future occupants of the appeal scheme were prevented from applying for parking permits in the London Borough of Harrow ('Harrow')[3], then car levels in the appeal scheme would be less than 54%. The appellant suggests that car ownership levels would be in the region of 34% of those residents that are likely to travel to work by car. In effect 10-12 cars or fewer, when applying 2011 travel to work census data. This, he opines, is because the existing parking restrictions in Harrow would prevent future residents from leaving their cars unattended throughout the day if they were prevented from applying for a parking permit, which can be secured through a planning obligation. This would also prevent any daytime parking stress on those streets in Harrow.

13. In addition, the close proximity of train stations and bus stops means that car ownership would be far from essential. The car club would also assist in reducing the need for future residents to own a car. As such, I am content to rely on the appellant's estimation that the development could generate a demand for 10-12 cars if future occupants are prevented from applying for parking permits. The demand could be much higher if they were not and this would have an undesirable impact upon the availability of on-street parking in nearby streets including Hawthorne Avenue and Ellwood Avenue.

14. However, a car ownership level of 10-12 cars is unlikely to result in evening parking stress within Harrow, as demonstrated through parking surveys, as there is evening capacity to accommodate the associated parking demands in those roads within Harrow that are close to the appeal site. The absence of an objection from the Council (as Highway Authority) supports this contention. Moreover, as there is capacity in Harrow for evening and night time parking at the level suggested by the appellant, any parking arising from the appeal scheme is unlikely

[2] There was also a discussion relating to parking demands for the D1/D2 unit on the ground floor and whether this would add to localised parking stress. However, the Council's Highway Officer is of the view that there is no specific car parking standards for this use class. Moreover, the unit would have similar parking demands to the existing businesses on Kenton Road for which there is generally no off-street parking provided. Visitors to the unit can park on-street using the pay and display bays and deliveries could take place within the proposed car park or on Kenton Road outside of restricted hours. As such, I am satisfied the D1/D2 unit would not result in parking stress.

[3] On street parking is restricted during the day in Hawthorne Avenue and those surrounding streets north of Kenton Road that fall within Harrow. This restriction is principally to prevent commuters from parking near to Kenton Station. Parking is restricted in Controlled Parking Zone 'S' to permit holders between 1100 and 1200 Monday to Friday

to spill over into streets within the London Borough of Brent ('Brent') in the evening. As such, an effective planning obligation that prevents future residents from applying for and owning parking permits is necessary.

15. There are no parking restrictions covering those streets on the southern side of Kenton Road that fall within Brent. Consequently, future residents of the appeal scheme could own a car and park it in Brent even if they did not intend to use it regularly, such as for work. Brent has objected to the proposal being of the view that the appeal scheme would add to the existing high levels of demand for on-street parking in the vicinity of the appeal site and thus the current parking stress already being experienced in Rushout Avenue, Churchill Avenue and Northwick Avenue. This situation could be addressed if Brent were to impose parking restrictions but this would follow a process separate to the planning system and cannot be relied upon as mitigation.

16. Nevertheless, I share the appellant's view that this is unlikely to be a regular occurrence if the suggested embargo on applying for a parking permit in Harrow was effective, as it would introduce a high level of inconvenience if future residents were to own a car. Especially if they did not need their car for work, as they would need to park away from the appeal site on the opposite side of Kenton Road and out of sight of their flats. The embargo would also generally suppress car ownership in the appeal scheme and thus overall parking demand. The availability of on street parking in Rushout Avenue, Churchill Avenue and Northwick Avenue is also limited due to the existing high demand and the number of dropped kerbs. As such, it is unlikely that car owners would wish to purchase or rent the proposed flats if it meant they had to park in Brent on a regular basis because of the parking restrictions in Harrow.

17. Consequently, whilst there is a potential for an adverse impact on the availability of on-street parking in Brent, I am not satisfied this would be an inevitable and harmful consequence of the proposal if future residents of the appeal scheme were prevented from applying for and owning parking permits. I have not been presented with a suitable planning condition that would secure this but a unilateral undertaken was submitted at the hearing in an attempt to address this matter. It was subsequently revised following the hearing.

18. The most recent obligation contained in the undertaking includes a requirement that future residents will not apply for parking permits. However, this does not fall within the scope of s106 (1) of the act[4] as it would not restrict the development or the use of the land. Instead, the appellant intends to secure the obligations relating to parking permits through s16 Greater London Council (General Powers) Act 1974. The Council has not objected to this. As such, there is no requirement to link any embargo relating to parking permits to the occupation of the flats for it to be technically sound in this instance.

19. Nevertheless, without linking the embargo on having a parking permit to the occupation of the flats there must be an obligation to ensure that any parking permits that are procured by future residents are surrendered to the Council upon request. The undertaking does not include this. This is necessary to ensure the enforceability of the embargo on residents having parking permits as otherwise they could breach the obligation and apply for and receive a permit without there being any sanction or consequence, as the permits would not have to be returned.

[4] The Town and Country Planning Act 1990 (as amended)

Furthermore, I favour the Council's wording in their draft s106 Agreement that advertising material should include a reference to residents being prevented from applying for parking permits, as this is the earliest opportunity to make this clear to prospective residents.

20. Consequently, I am not satisfied the planning obligations in the undertaking would be a suitable and effective barrier to car ownership that would prevent a significant number of future residents of the appeal scheme from both applying for and owning parking permits and thus discourage them from owning a car and parking on-street. The effectiveness of the 'car-free' aspiration would be significantly undermined. Any highway safety benefits from the revised position of the access and the car club would not outweigh this significant flaw in the appeal scheme.

21. In the absence of a suitable and effective means of preventing future residents of the appeal scheme from having access to parking permits, car ownership levels would be likely to be higher than that suggested by the appellant. A higher level of on street parking than that suggested by the appellant would significantly harm highway safety through localised congestion, the potential for inconsiderate parking and from additional vehicle movements as residents search for parking spaces. It would also harm the living conditions of the residents of the effected streets through a high level of inconvenience as the availability of the limited number of on-street parking spaces would come under sustained pressure.

22. I therefore conclude that the appeal scheme would harm highway safety and living conditions contrary to Policy DM42 of the DCP[5]. As the certainty over the development's ability to be car free is unresolved, it does not glean sufficient support from Policy 6.13 of the LP.

The effect on the character and appearance of the area

23. The appeal site is situated at the corner between Kenton Road and Hawthorne Avenue and is currently occupied by Churchill Hall, which is located back from Kenton Road towards the northern boundary of the appeal site. As such, it relates poorly to the street scene of Kenton Road and results in an incongruous gap, which is currently occupied by a car sales forecourt. It is common ground between the appellant and the Council that the redevelopment of the site represents an opportunity to enhance the street scene. Churchill Hall is taller than the houses and flats in Hawthorn Avenue but comparable in scale to many of the buildings located in Kenton Road.

24. Kenton Road is a busy thoroughfare which is flanked by buildings in a mixture of commercial and residential uses. These buildings are generally up to three storeys in height and are taller than those in the residential streets which radiate away from Kenton Road. These residential streets, including Hawthorne Avenue, are broadly characterised by two storey housing in more spacious plots. As such, Kenton Road has a more urban character than the more suburban character and appearance of the residential side streets.

25. The Council and the appellant agreed at the hearing that the section of Kenton Road in the vicinity of the appeal site can be broadly divided into three character 'zones'. Zone 1 is found to the west of the appeal site and is residential in character with a mix of houses and flats. The variety of flats and houses has given Zone 1 a diverse architectural character. Zone 2, which includes the appeal site, is

[5] The Council have referred to Policy DM26 but this relates to the conversion of houses to other residential premises and is therefore of limited relevance.

appreciated as a transition zone between the residential character of Zone 1 and Kenton District Centre, which is defined as Zone 3. Zone 3 commences at Churchill Avenue and includes development on the western side of the railway line. From what I observed during my site visit this zonal approach is a robust assessment of the character of Kenton Road.

26. The appeal scheme includes a 3-5 storey block of flats, the highest point of which would be the corner block. This is intended to act as a landmark delineating the entrance to Kenton District Centre whilst addressing the corner between Kenton Road and Hawthorn Avenue. The scale of the proposed building would decrease along Hawthorn Avenue to four and then three storeys in an attempt to respond to the two storey scale of houses along this road. The scale would also diminish along Kenton Road with the building dropping from five to four storeys in an attempt to respond to the scale of Kenton Court.

27. The building would employ a contemporary interpretation of modernist architect. The block like form and flat roof are the most apparent manifestations of this. Modernist architecture is not the predominant local style, which in broad terms can be described as the mid-20th Century 'Metroland' style. Nevertheless, the Metroland style is more evident along the suburban streets branching off Kenton Road. The building styles along Kenton Road are notably varied with flatted infill schemes from numerous periods. As a consequence, the area of Kenton Road in the vicinity of the appeal site can take a modernist insertion without it appearing discordant. On the contrary, it would continue the pattern of infill schemes along Kenton Road in the vicinity of the appeal site reflecting the architectural styles that are contemporary to their period, such as Pine Court to the west of the appeal site.

28. Additionally, the building would incorporate a consistent pattern in the placement of fenestration, which would echo that found on nearby buildings such as Churchill Parade. The entrance points would also be well defined and the D1/D2 use would provide an active street frontage. Again, these features echo that of nearby buildings. The recessed balconies would also provide some visual interest and relief to what could otherwise appear as utilitarian facades. The Council have suggested a suite of conditions to require appropriate design features such as deep window reveals, a parapet and door canopies. A condition has also been suggested to ensure an appropriate material finish is used. Taking these points together, I am satisfied the architectural approach of the appeal scheme would be appropriate for its context.

29. The eaves line of the proposed building would not align with Kenton Court or 1/1A Hawthorn Avenue. To an extent this would result in an awkward juxtaposition. However, the proposed building would be set lower than Kenton Court and only slightly higher than 1/1A Hawthorn Avenue and therefore the scale of the building would respond to its context and help tie the structure into the street scene.

30. The height and depth of the five storey corner block, when viewed from the east, would be higher and deeper than nearby buildings, including Churchill Parade. Moreover, the position of the five storey corner block forward of the building lines of Kenton Court and the properties in Hawthorn Avenue would increase the building's presence in the street scene. The appellant's architect indicated that the siting forward of neighbouring building lines was a deliberate intention to reinforce the buildings function as a landmark and to define the corner.

31. In this instance there is some merit in using the scale of the building to define the entrance to Kenton Road District Centre, which is a large commercial area which currently lacks a sense of arrival. On balance, the concept of a landmark building is a sound one. The stepped approach to the height and façade of the proposed building would also enable it to broadly relate to the scale and building lines of its immediate neighbours whilst being a feature at the corner between Kenton Road and Hawthorne Avenue.

32. The fenestration lines of the appeal building would also respond to that of neighbouring properties, which would assist in integrating the scale of the appeal building with its neighbours. Moreover, the three stepped approach along Hawthorn Avenue would enable the proposed building to respond to the transition from the urban character of Kenton Road to the suburban character and scale of development in Hawthorn Avenue. In this respect, the stepped approach, along with changes in facing materials, would ensure the building was not viewed as a single mass. It would also ensure the building would not appear discordant when viewed from Hawthorn Avenue when looking south towards the more urban character of Kenton Road.

33. The appeal scheme would also deliver some design benefits as it would enclose the existing unsightly gap in the Kenton Road street scene. At a street level the development would improve the public realm through the landscaped 'courtyard'. Moreover, the scale of the building, when viewed from the east, would broadly complement that of Kenton Court as both buildings would have a similar height. The proposed building would also have a better visual relationship with 1/1A Hawthorn Avenue than the existing Churchill Hall, as it would be lower. On balance, I am satisfied that the height, bulk and massing of the proposed building would not be excessive and would positively respond to the local context of the appeal site.

34. In reaching this view I have carefully considered the comments of Nicolas Tye, who is an architect and member of four design review panels. I have not been presented with anything to suggest the proposal has been the subject of any other design reviews as advocated in Paragraph 62 of the Framework. The Council's Urban Design Officer has had some input into the scheme, but without written comments this Officer's views on the scheme are unclear.

35. The design review by Nicolas Tye was a desk based exercise undertaken without meeting the appellant's design team. As such, the review can only be given moderate weight. Notwithstanding this, the view of Nicolas Tye is mixed, as he suggests there is a lot to be commended in the scheme, including the thoughtfulness of the architectural detail. He also agrees there is scope for the building to have a higher corner. Nevertheless, he is concerned by the eaves level and the overall bulk and mass of the proposed building and a number of suggestions are made to improve the scheme. Whilst I accept the suggestions made could improve the design, it does not automatically follow that the scheme as presented is unacceptable. For the reasons already given I am satisfied the bulk and massing of the building would be appropriate as would the architectural approach. Nicolas Tye's design review, which I have only afforded moderate weight, does not alter my findings on these matters.

36. I therefore conclude that the appeal scheme would not harm the character and appearance of the area. By doing so it would adhere to Policies 7.4 and 7.6 of the London Plan (LP) and Policy DM1 of the DMP. These policies seek high quality

design that has regard to the pattern and grain of existing streets and exhibit high quality architecture with appropriate massing and bulk. The appeal scheme would also adhere to Policy CS1.B of the Core Strategy (CS), which has similar aims in requiring a response to local context. This policy is consistent with Paragraphs 58-60 of the Framework and can thus be afforded significant weight.

The effect on the living conditions of the occupants of No 1 and No 92

37. Churchill Hall is a deep building which runs along the northern boundary of the appeal site with No 1. Although the height steps down, it is still a building of a notable scale. The proposed building would be higher and larger than Churchill Hall but it would be arranged in an 'L' shape. This would result in its massing being significantly further away from the boundary with No 1 than that of Churchill Hall. The three storey section of the proposed building would be broadly in line with the rear elevation of No. 1. As such, this part of the building would have no greater impact upon the living conditions of the occupants of No 1 than Churchill Hall. A three metre high bin store would be constructed along part of the common boundary with No 1, but this would not result in any harmful impacts as it would be a significantly smaller structure than Churchill Hall and would only just project past the rear elevation of No 1.

38. The level of day and sunlight entering No 1 would materially improve[6] as a result of the appeal scheme and the Council has not alleged any harmful loss of privacy. A conclusion I share given the orientation of the windows in the proposed building and their distance from neighbouring properties. Consequently, I am satisfied the appeal scheme would materially improve, rather than harm, the living conditions of the occupants of No 1.

39. The occupants of No 92 currently have an outlook, in part, towards the appeal site across Hawthorn Avenue. As a result of the appeal scheme, the outlook from this property would be towards the five storey corner block of the appeal building. The outlook from No 92 would undoubtedly be altered in a significant way but the distance between the appeal building and No 92, of approximately 20m, would be sufficient to ensure the outlook was not harmfully dominated.

40. Therefore, my conclusion on this matter is that the appeal scheme would safeguard the living conditions of the occupants of No 1 and No 92. As a consequence, the proposal would adhere to Policies 7.4 and 7.6 of the LP as well as Policy DM1 of the DMP, which together seek to secure developments which would not have detrimental impacts on the amenity of neighbours.

Whether the proposal would generate sufficient sales revenue to enable the provision of affordable housing

41. Policy CS1.J of the CS establishes an aim for 40% of new housing in the Borough to be affordable housing. It also states that the Council will seek the maximum reasonable amount of affordable housing in developments subject to scheme viability. This is an objective that is reinforced through Policy 3.12A/B of the LP. As such, a development can provide a level of affordable housing below 40% and still be consistent with the development plan policies if the reduced provision is a result of scheme viability.

42. To this end the appellant commissioned a viability assessment by Affordable 106 (A106), which has suggested the scheme would be unviable if affordable housing

[6] Through the removal of Churchill Hall, as demonstrated in the Daylight and Sunlight Assessment by AnsteyHorne

was provided as the sales values would be too low to cover the costs of the development, including affordable housing, and provide a meaningful profit. The Framework is clear that the scale of obligations should not prevent a willing land owner and willing developer from receiving a competitive return from a development.

43. An independent review of the A106 Viability Appraisal undertaken by BNP Paribas (BNP) concluded the scheme could provide both affordable housing and a competitive return and would thus be viable. Whilst BNP was not wholly convinced by the benchmark valuation used by A106 the main area of disagreement, as subsequently confirmed at the hearing, was the predicted sales valuations with BNP being of the view the valuations used by A106 were significantly below market value. As a result, some time was spent at the hearing discussing sales valuations and the evidence underpinning the figures used by both the Council and appellant.

44. The original report prepared by A106[7] used sales values prepared by Hamptons. These valuations assigned the proposed 1 bedroom flats a capital value of between £235,000 and £252,000 and the proposed 2 bedroom flats a value of between £305,000 and £342,000. For the purposes of the assessment this was given an average value of £4,587 per square meter (psm) and £426 per square foot (psf). Hamptons are local estate agents but it is unclear how they arrived at the valuation they did, having failed to refer to comparables or other data sources. The advice also infers a discount has been applied due to the lack of parking but this has not be quantified or justified. Moreover, the figures are now somewhat dated. As such, the Hampton valuations are not a robust baseline.

45. As part of its assessment, BNP discussed the local market with active agents and came to the view that the sales figures provided by Hamptons were conservative and significantly below market expectations. Nevertheless, BNP did not provide copies of the advice it received. However, it did provide a list of comparable schemes within 0.3 miles of the appeal site with values of between £285,000 and £290,000 for the 1 bedroom flats and £379,000 to £430,000 for the two bedroom flats. The comparable properties listed were considered by BNP to be of a lower specification than the proposed flats.

46. Upon a further examination of these comparables at the hearing it became apparent they were based on asking prices. Three of the one bedroom flats had not sold and the one that did sold for £250,000. Both the PPG[8] and the emerging Homes for Londoners SPD[9] suggest sales figures and transactions are preferable to asking prices when establishing possible sales values. The two more expensive two bedroom flats in Northwick Park Road sold, but they are located away from Kenton Road in a quiet suburban street. I therefore share the view of A106 that they would have a higher value than the appeal scheme flats, but the available evidence does not demonstrate that the proposed flats would be worth around £100,000 less than those in Northwick Park Road, which is the implication of the appellant's suggestion.

47. The last flat in the list, Nash Way, sold for £365,000 (£496psf). Nash Way is similar to Kenton Road. The flat has parking but was of a lower specification than the appeal flats would be. In my view, these factors balance each other out and therefore this is a useful comparable and an indication that the Hampton

[7] dated November 2015
[8] Paragraph 012 Reference ID: 10-012-20140306
[9] Homes for Londoners Draft Affordable Housing and Viability Supplementary Planning Guidance 2016 – p28

valuations were conservative and a value of something in the region of at least £365,000 or £496 psf for the two bedroom flats could be achievable[10].

48. BNP had given the development an average value of £560psf. The appellant suggests this would imply capital values of £325,000 to £458,000 for the proposed flats. BNP ultimately revised its valuation down to £500psf in response to the further evidence provided by the appellant. This revised valuation is in line with the Countrywide valuation of £483-492psf for the HA3 post code. It is unclear why the appeal scheme would be valued significantly below the average for the post code. The lack of parking would have some effect, as would the position on Kenton Road and above a ground floor commercial unit. However, this would be tempered by its position close to public transport, a new build premium and the high specification of the flats.

49. At the hearing a further list of comparable flats provided by BNP was analysed. These figures were all based on actual sales rather than valuations. The 2 bedroom flats referred to varied from £300,000 to £395,000. They all appeared to be reasonably old and of a lower specification than the proposed flats, which suggests the capital values are below what the appeal scheme flats would generate. However, the comparables were in post code HA1, which is a higher value area. The price psf also varied from £464 - £573, which is a significant range. As such, these comparable flats are of only moderate weight.

50. The appellant has referred to additional sales evidence from 2016[11] but this information is not presented in detail and therefore I am unable to gauge to what extent the properties referred to are comparable to the appeal scheme. It is therefore of limited weight. The same can be said of the list provided in Appendix 1 of the A106 response to the BNP review, dated February 2016, save for Baldwin House, which was discussed at the hearing.

51. Both the Council and appellant agreed that Baldwin House was a useful comparable as it is in the HA3 post code. This is an office to residential conversion where sold prices generally exceeded £250,000 for one bedroom flats with some as high as £287,000. This gave a sales value that was often in excess of £500psf. I share the view of BNP that the appeal scheme could generate similar values as it would comprise purpose built flats. The appellant takes the opposite view having applied a number of discounts, including one for a lack of parking. However the discounts were not supported by substantive evidence and thus I afford this analysis limited weight.

52. Generally, neither the Council nor the appellant have provided convincing evidence to support their respective sales values. This is to be expected as new build flats along Kenton Road are rare. The available evidence, including the average sale value for the HA3 postcode, as well as the flat at Nash Road and flats at Baldwin House suggests the proposed flats would sell beyond £439psf and could be nearer to £500psf. This would give capital values above that suggested by Hamptons and A106. As such, I am not satisfied that the appellant has demonstrated that it would be unviable to provide any affordable homes.

53. In reaching this conclusion it is important to note a further point. BNP undertook a sensitivity analysis[12] using the private residential values assumed by A106 and

[10] The appellant suggests the tenanted status could reduce the value but no substantive evidence was provided to justify this.
[11] Appendix 5 of the Sales Input Analysis circulated before the hearing opened
[12] See BNP Paribas letter dated 16 March 2016

concluded this would result in a 30% provision[13]. The appellant has not robustly challenged this analysis. I therefore conclude that the appellant has not demonstrated that the appeal scheme would be unviable with affordable housing. As such, a 'nil provision' would be contrary to Policy CS1.J of the CS, which is consistent with Paragraph 50 of the Framework and can thus be afforded significant weight. It would also be contrary to Policy 3.12A/B of the LP.

The level of affordable housing provision

54. The appellant has provided a unilateral undertaking which outlines three options relating to the provision of affordable housing. I have already discounted the first option of nil provision. The remaining options are therefore 14 units, which would give 37.8% affordable housing or 14 units with a Vacant Building Credit (VBC) applied, which would give 11 units.

55. The appellant suggests that these latter offers are a commercial decision to secure a planning permission. Nevertheless, these options are before me in a properly executed undertaking and thus I must have regard to them. As a 'nil provision' has not been demonstrated it is necessary to provide affordable housing as part of the scheme to meet the requirement of the development plan. Moreover, the provision of affordable housing would be directly related to the development. As the level of affordable housing would not exceed the upper threshold of 40% contained in the development plan, it would be fair in scale and kind. As such, the planning obligations, which would secure the provision of affordable housing, are ones I can take into consideration.

56. The Council have suggested that a policy compliant level of affordable housing would be 37.8% as this is the maximum reasonable level agreed due to scheme viability. This is the level contained within the planning obligation. The application should be determined in accordance with the development plan unless material considerations indicate otherwise. A material consideration of significant weight is the WMS[14], which introduces Vacant Building Credits (VBC) to incentivise the redevelopment of previously developed land. The application of a VBC would result in a reduction in the provision of affordable housing below the policy compliant level of 37.8%.

57. The Council is of the view that a VBC should not apply in this instance, stating that an incentive is not required to bring forward the development. The emerging Homes for Londoners SPD supports the Council's approach as it states that VBC will not apply in London in most circumstances. However, the SPD is in draft and sets out guidance that is inconsistent with the WMS, which has been translated into guidance in the Planning Practice Guide (PPG). The PPG states[15] that factors to consider when applying the VBC are whether the building is abandoned, whether it was made vacant for the sole purpose of re-development or whether there is already an extant planning permission. None of these apply in this instance and thus a VBC should be applied to incentivise the re-development of the appeal site. As such, I find that the level of affordable housing should be set at 11 units in accordance with Accommodation Schedule A in the appellant's Unilateral Undertaking.

[13] If there was a reduction in the profit on cost level for the affordable housing and the revenue for the affordable housing was received earlier in the development programme

[14] Written Ministerial Statement (WMS) by: The Minister of State for Housing and Planning 28 Nov 2014

[15] Paragraph 023 Reference ID 23b-023

58. The Council suggested at the hearing that even if VBC applied, the level of affordable housing should be 12 units as the deduction should be taken from 40% provision. However, as 37.8% was considered by the Council to be the maximum reasonable level, this is the policy compliant level from which the VBC should be deducted. The Council have also suggested that a viability review should be undertaken that factors in the VBC. I disagree, as in my view the VBC is an additional incentive to be applied once a policy complaint level of affordable housing has been established. Accordingly, I conclude that the provision of 11 affordable homes, which can be secured through the submitted planning obligation, would make sufficient provision for affordable housing. As such, the proposal would adhere to Policy CS1.J of the CS and Policy 3.12A/B of the LP.

Other Matters

59. The unilateral undertaking includes a planning obligation relating to a £500 administration fee, which is not a matter in dispute. However, given my findings on the main issues it is not necessary for me to consider this further or reach a conclusion on the necessity of this obligation. Moreover, the Council are seeking the provision of four Wheelchair Standard Homes through the planning obligation,. It is unclear what evidence and development plan policies underpin this requirement. I would therefore need to see further evidence before I was able to reach a conclusion on this matter.

Conclusion

60. I have found that the level of affordable housing proposed within the development would be acceptable and that no harm would arise to the character and appearance of the area or the living conditions of the occupants of No 1 and No 92. Nevertheless, this does not outweigh my findings that the car free nature of the development would significantly harm highway safety and the living conditions of nearby residents.

61. The appeal scheme is not without some benefits, including the provision of housing (with affordable housing), an improved access, the rehabilitation of the site, improvements to the living conditions of the occupants of No 1and benefits to the local economy. Nevertheless, these benefits are to be expected from any satisfactory redevelopment of the site and are therefore afforded only moderate weight. Alternatively, the harm I have identified is significant and is contrary to the development plan as a whole. A proposal should be determined in accordance with the development plan unless there are material considerations that indicate otherwise. As a material consideration, the significant harm I have identified is not outweighed by the benefits of the appeal scheme and thus the proposal is not sustainable development.

62. Accordingly, for the reasons given above, and having regard to all other matters raised, including the representations made by interested parties, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Jonathan Clay	Cornerstones Barristers
Richard Henley MRTPI	Preston Bennett Planning
Jeremy de Swarte	Bridgewood (Kenton Rd) Ltd/Appellant
Paul Engelberg	Highwood Developments
Patrick Eggenton	EAS
Miles Westgarth	KW Reed Associates
Mark Johnson	Preston Bennett Architects
Sean Phillips	Affordable 106

FOR THE LOCAL PLANNING AUTHORITY

Peter Higginbottom MRTPI	Planning Insight
Nick Ferguson	PMA Traffic
Justine Mahanga	Senior Planning Officer

DOCUMENTS

1. Homes for Londoners – Draft Affordable Housing and Viability Supplementary Planning Guidance 2016

2. An analysis of price per sq/ft in Harrow, prepared by Countrywide

3. Development Appraisal dated 7 February 2017 by Affordable 106

4. Email correspondence dated 8 April 2016 between Nicolas Pell of BNP Paribas and Sean Phillips of Affordable 106

5. Development Appraisal dated 8 April 2016 by Affordable 106

6. s106 Agreement drafted by the Council but unsigned

7. An executed Unilateral Undertaking submitted by the appellant and dated 7 February 2017

8. Drawing 109 F – Street Scene Elevation