

## Appeal Decision

Hearing held on 6 February 2017

Site visit made on 6 February 2017

**by R J Jackson BA MPhil DMS MRTPI MCM**

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

**Decision date: 03 March 2017**

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**Appeal Ref: APP/H5390/W/16/3158169**

**Broadmead House, 10-24 Auriol Road, London W14 0SS**

- 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 Permaform Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
  - The application Ref 2016/00254/FUL, dated 20 January 2016, was refused by notice dated 22 April 2016.
  - The development proposed is demolition of the unlisted existing buildings on site containing 17 existing residential units (Class C3) and construction of a 5 storey building with lower ground floor comprising 24 residential units (Class C3), car and cycle parking, refuse storage, amenity space and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing four storey building and ancillary structures to the rear and erection of a replacement 5 storey plus basement level building comprising 24 self-contained residential flats (Class C3); with rear roof terraces, cycle parking, refuse storage, external amenity space, landscaping and two off-street car parking spaces at Broadmead House, 10-24 Auriol Road, London W14 0SS in accordance with the terms of the application, Ref 2016/00254/FUL, dated 20 January 2016, subject to the Undertaking made under Section 16 of the Greater London Council (General Powers) Act 1974 (as amended) dated 6 February 2017, and subject to the conditions in the Schedule to this decision.

### Procedural matters

2. When the Council registered the application it set out a different description of development to that given on the application form which I have used in the heading. On the decision notice refusing the application the Council utilised a different description again. The main parties agreed that the use of that last description was appropriate and I have used it in the formal decision.
3. The Council notified interested parties of the appeal when it was first lodged and a number of representations were received. It then sent out a second letter advising of the arrangements for the Hearing. In accordance with the relevant legislation<sup>1</sup> this should have been sent out at least two weeks prior to the Hearing, but the letter was only sent out one week in advance. Three

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<sup>1</sup> The Town and Country Planning (Hearings Procedure) (England) Rules 2000

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members of the public attended the Hearing and, in response to my question, confirmed that their attendance was as a result of the second letter from the Council. I therefore took the view that as members of the public had received the communication and had been able to attend there would be no prejudice in continuing with the Hearing.

4. After the Hearing, a third party, who had written at the application and appeal stage on behalf of the owners of an adjoining property, wrote indicating that he had only just received the second notification letter and the failure to send out the second letter in accordance with the Rules prejudiced local residents and landowners. Given that some local residents had attended following the second notification letter it is clear that this communication was, at least, partially successful. In order to avoid any prejudice this third party was given an additional period in which to make any further additional written comments he wanted and these were circulated to the appellant and the Council for final comment and I have taken all of this correspondence into account in this decision. In light of this I consider that the interests of the local landowners who instructed the third party were not prejudiced by the second notification letter being sent late.
5. The appellant promoted amended plans as part of the appeal process. These would have the effect of leaving the northern vehicular access in its existing location rather than moving it, and shortening the length of two single storey elements on either end of the building. Public consultation was undertaken by the appellant on these changes allowing interested parties to make representations as part of the appeal process. The proposed changes are not significant and those who may have wanted to comment were given the opportunity to so comment, and some did, and would not be disadvantaged by the changes. I therefore accepted these amended plans for consideration at this appeal stage
6. The application drawings did not include a southern elevation of the proposal. One was submitted as part of the appeal process, and as it was a 'hand' of the northern elevation and all parties, including members of the public, who attended the Hearing accepted that this could have been implied from the original documentation. I am satisfied that no party would be disadvantaged by me using that plan in my consideration and I intend to do so.
7. Once I had agreed that the amended and additional plans would be used as the basis of my consideration the Council formally withdrew two of the reasons for refusal. These related to the effect of the development on the Gunter Estate Conservation Area (the GECA) and the settings of the Fitzgeorge and Fitzjames Conservation Area (the FFCA) and the Dorcas Estate Conservation Area (the DECA), and the effect of the development on the living conditions of the occupiers of adjoining properties. However, local residents who attended the Hearing, and written representations submitted at the appeal stage, maintained their objections to the proposal because of, as they saw it, the effect on the living conditions of the occupiers of adjoining properties.
8. At the Hearing the appellant submitted two legal documents relating to how the development would take place, both by way of Unilateral Undertaking and dated 6 February 2017. One, under Section 106 of the Town and Country Planning Act 1990 (as amended), related to a contribution towards the provision of affordable housing and the other, under Section 16 of the Greater

London Council (General Powers) Act 1974 (as amended), related to parking. I will discuss them below.

9. At the site visit, which took place towards the end of but part of the Hearing, the Council accepted that the current use of the existing building on site was as dwellinghouses<sup>2</sup>, rather than as Houses in Multiple Occupation<sup>3</sup> (HMOs), as had been the case in the past. The appellant also accepted that there were only 16 such dwellinghouses and not 17 as given on the description of the proposal on the application form and set out in the heading. Although not formally withdrawn as a reason for refusal the Council's acceptance of the existing use as dwellinghouses meant that its opposition to the proposal on the basis that it represented the undesirable loss of HMOs fell away as there were no HMOs on site.
10. In addition to the formal site visit, which took place when the Controlled Parking Zone (CPZ) covering the area including the appeal site was in operation, I also, informally, visited the vicinity of the appeal site during the afternoon of the previous day, a Sunday, when the CPZ was not in operation.

### **Main Issues**

11. That being the case the main issues have been reduced from those I set out at the opening of the Hearing and are:
  - the effect on highway safety and the convenience of residents of nearby properties in terms of parking;
  - whether the proposal makes adequate provision for affordable housing; and
  - the effect on the living conditions of the occupiers of adjoining properties, in particular but not limited to 8 and 26 Auriol Road and in Munden Street, by reason of privacy, light and outlook.

### **Reasons**

#### *Parking*

12. The appeal site lies in an area where parking is regulated through a CPZ. This restricts where and when parking can take place in the area. The proposal provides for two spaces on site; whether only for those with 'Blue Badges' or as unrestricted parking I will discuss later.
13. The appellant and the Council undertook surveys in the area covering different distances from the appeal site and utilised different periods of collection for the data with each criticising the others approach. However, in reality both surveys showed similar results. These were that there were approximately 32 to 34 spare on-street parking spaces from 62 within 100 m of the appeal site during evening hours when the CPZ was not in operation. For convenience and given that the figures are dynamic, changing as people move their cars, I will use the 'average' figure of 33 spaces.

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<sup>2</sup> As defined in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO)

<sup>3</sup> As defined in Class C4 of the UCO

14. Local residents maintained that these figures underestimated the amount of parking available in the area, particularly referring to the nearby Olympia exhibition and events centre, which they indicated exacerbated their concerns. This had been made the more so since the recent closure of the Earl's Court Exhibition Centre and the relocation of events to Olympia. However, while these events do take place on a regular basis the appeal site is some distance from Olympia and while some customers of Olympia will attend by car, I am satisfied that the surveys provide a robust base against which to consider parking stress, and reflected what I saw at my site visits.
15. The appellant based their consideration of the likely need for parking generated by the development on the 2011 Census data across the whole of the Borough but factored up to a 2020 figure based on the Department of Transport's TEMPRO (Trip End Model Program) analysis. This, it asserted, would give rise to a need for 11 spaces<sup>4</sup> from the development, meaning that when the two on-site spaces were accounted for there would be a need for 9 cars to be parked on the public highway.
16. Development Plan Policies for parking are contained in both the London Plan (the LP) and the Hammersmith and Fulham Development Management Local Plan (the DMLP) and utilise the same parking standards set out in Table 6.2 of the LP. This indicates that in areas of good public transport accessibility in all parts of London developments should aim for significantly less than 1 space per unit. However, it indicates that adequate parking spaces for disabled people must be provided on site and that 20% of spaces should be for electric vehicles.
17. The National Planning Policy Framework (the Framework) indicates that in setting local parking standards for residential development local authorities should take account of the accessibility of the development, the type, mix and use of development, the availability of and opportunities for public transport, local car ownership levels, and an overall need to reduce the use of high-emission vehicles. In addition account should be taken of the Written Ministerial Statement of 25 March 2015 which indicates that local planning authorities should only impose local parking standards for residential and non-residential development where there is clear and compelling justification that it is necessary to manage their local road network
18. The main parties agree that the site is very well located in relation to public transport having a Public Transport Accessibility Level (PTAL) of 6a representing an excellent level of accessibility to public transport.
19. The proposed development mix would be six 1-bedroom, ten 2-bedroom and eight 3-bedroom dwellings. When compared with the size of dwellings set out in the LP and the nationally described space standard (the NDSS) all are generous<sup>5</sup>. All of the proposed flats exceed the NDSS with only two of the 1-bedroom flats and four of the 2-bedroom flats being within 10% of the national standard. The six 3-bedroom 'City Houses' all exceed the NDSS standard by over 90%<sup>6</sup>, and four others<sup>7</sup> exceed the NDSS by over one-third. These 3-

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<sup>4</sup> 24 dwellings at 0.457 spaces per dwelling.

<sup>5</sup> Figures set out in paragraph 4.19 of the Council's Statement

<sup>6</sup> The reduction in size of these properties through the amended plans would reduce the floor areas when compared to the figures in the Council's Statement by just over 4 m<sup>2</sup>

<sup>7</sup> Flats 14 to 17 inclusive

- bedroom properties are therefore highly likely to be occupied by families, and the 2-bedroom properties are likely to be occupied by families.
20. The Council has referred to the Small Output Area (SOA) data from the 2011 Census for different types of occupier. This indicates that of married or same-sex civil partnership couples with dependent children 76.98% have at least one car, and for cohabiting couples with dependent children this is 63.94%. As the Council emphasised these are an 'at least' figure with some households having more than one car.
  21. Neither the appellant figure nor the Council case takes account of the different sizes of the dwellings, rather using an average. The approaches therefore do not fully accord with the Framework to take account of the mix of the properties. In any case, the need for parking will depend on the needs of the individuals and families who would occupy the dwellings and will vary over time. Overall, because of the generous size of the individual units and the size of the 3-bedroom units<sup>8</sup> in particular, and that the census data is derived on an 'at least' basis I conclude that a figure of 0.7698 spaces per dwelling would be appropriate across the whole development. Rounding down this would give rise to a need for 18 car parking spaces.
  22. Currently the curtilage of the existing building is used for parking. The parties disagreed as to how many vehicles could be parked in the area as it was not formally laid out. The appellant considered that 18 spaces were available and the Council 22 spaces. My own view was that 20 cars could be parked which also is the average of these two figures.
  23. The parking is currently used by those unconnected with the occupation of the existing dwellings, although there is nothing to prevent occupation by the residents. The evidence to the Hearing was that eleven spaces are let out, with four being to a department store for its staff and seven to a local business. This parking would therefore be displaced. The appellant argued that other, commercial, parking would be utilised instead, but inevitably there would be some displacement.
  24. The occupants of the recent previous use of the building as HMOs were less likely to use cars than the occupiers of the current use as flats. The change of use to dwellings has only recently taken place and the surveys pre-dated the change of use. Therefore, there should not be any credit based on the existing use of the building.
  25. At a worst case all 20 spaces would be displaced onto the local network, but taking account of the current occupation and the date of the surveys my view is that a figure of 11 spaces would be appropriate to include in the final assessment.
  26. Finally, there is the nature of the proposed two on-site parking spaces. There was some confusion as to the precise intention of the appellant for these spaces. In the discussions in the section of the Hearing dealing with conditions in the event that the appeal was to be allowed, it was indicated that these spaces should only be for those with disabilities, but also an acknowledgment that if these were not needed by such residents then it would be undesirable for them to be left unoccupied. It was also accepted that the two spaces did

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<sup>8</sup> Flats 14, 17 and the City Houses

not meet the space requirements for parking for those with disabilities as there was insufficient circulation space around them. My overall conclusion is that although they might be used by those with disabilities, and one of them should be of a size so that it could be so used, these two spaces should be considered as conventional parking, and are likely to be utilised by occupiers of the dwellings on site.

27. Taking this all together my view is that the development would give rise to a need for 18 spaces, 2 of which are provided on site. However, on top of this should be the 11 spaces displaced. This would mean that there would be another 27 cars on the network seeking parking spaces.
28. The Council took the view that if the level of parking exceeded 80% of the available spaces within 100m then parking stress would occur, meaning that local residents would be unable to easily find parking spaces detrimental to their living conditions and that double parking while unloading, or other undesirable behaviours would occur detrimental to highway safety. The appellant took the view that this would occur at 90%.
29. Starting from the 62 spaces within 100 m, the surveys show 33 empty spaces. Reducing this by the 27 cars would lead to 6 empty spaces, which would mean that there would be just over 90% utilisation. I therefore consider that unconstrained the development would lead to unacceptable parking stress in the area. This evidence appears to me to be clear and compelling.
30. In the event that I concluded that there would be parking stress the appellant submitted a Unilateral Undertaking under Section 16 of the Greater London Council (General Powers) Act 1974 (as amended). This states that the occupiers of certain flats would be prevented as part of their leases from applying for a parking permit. The Council was content with this as a mechanism to prevent parking stress and accepted that this Undertaking would be enforceable. I note local residents concern that such a scheme would be enforceable, but this approach is used in many locations and I am satisfied that such a scheme would be practical.
31. The Undertaking gave three alternative figures as to the number of dwellings which would be 'permit free'. The first of these was 8, being based on the difference between the number of existing flats and those proposed. However, as I have identified the existing flats should not be taken into account. The third was that all 24 flats should be 'permit free', but the evidence shows that there are spaces within the local vicinity which are available, and such a restriction would not be reasonable or necessary. The second option was that 16 of the units would be 'permit free' corresponding to the number of 1- and 2-bedroom units. This would reduce the number of cars from the development by approximately 6 which would reduce the parking stress indicator to just over 80%.
32. Given the degree of uncertainty of these figures, and that the 3-bedroom properties as family properties are the more likely to have cars, I consider that this middle option is the appropriate one to ensure that parking stress would not occur.
33. Therefore, subject to the occupiers of 16 of the properties in the development being unable to apply for a parking permit, I am satisfied that the proposed development would not have a detrimental effect on highway safety and the

convenience of residents of nearby properties. That being the case the development would comply with Policy T1 of the Hammersmith and Fulham Local Development Framework Core Strategy 2011 (the CS) which seeks to ensure appropriate parking is provided to meet the essential needs of the development. It would also comply with Policy DM J2 of the DMLP which requires development to conform to its car parking standards. It would also comply with Policy 6.13 of the LP which indicates the parking standards that should be the basis for considering applications. Finally it would comply with paragraph 39 of the Framework as set out above.

### *Affordable Housing*

34. Policy H2 of the CS seeks to improve the mix of affordable housing in the borough for those who cannot afford market housing. The policy then indicates that on sites of 10 or more self-contained dwellings affordable housing should be provided. While there was a dispute between the parties as to how parts of the policy should be interpreted, there was agreement over other parts, and due to this it is not necessary for me to resolve the areas of difference.
35. The parties agreed, in line with criterion d) of Policy H2, that regard should be taken to the financial viability of a scheme. It was thus agreed that if a scheme would not be financially viable if a contribution towards affordable housing was made then such a contribution should not be sought.
36. The appellant put forward a Viability Assessment Report (the VAR), the contents of which showed that the scheme as promoted would not be viable if a contribution was made towards affordable housing. The contents of the VAR were agreed by the Council, and there was no evidence to the contrary in front of me. I therefore accept its conclusions.
37. The Council, however, wished to have the viability situation reviewed at a later date in case financial conditions had improved and the scheme could deliver a contribution towards affordable housing. The Council advised that it had secured this review mechanism on other schemes. However, the Council confirmed that this approach was not set out in any local or national policy as set in the Framework or the national Planning Practice Guidance (the PPG).
38. However Policy 3.12 of the LP does allow for provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'). The supporting text<sup>9</sup> states that "boroughs may consider whether it is appropriate to put in place provisions for re-appraising the viability of schemes prior to implementation". As there is no local policy to this effect it would appear that the Council has not taken up this option. In addition, the text of the policy should be read in context. This is "the implications of phased development including the provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations')". It therefore seems that the primary use of this type of review mechanism would be in phased developments. As a scheme for 24 dwellings in a single building this proposal would not represent a phased development and I therefore conclude that in this case such a review is not necessary. Consequently I give the Planning Obligation no weight in my decision, and the condition requested by the Council to ensure its implementation is not necessary to make the development acceptable.

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<sup>9</sup> Paragraph 3.75

39. I am therefore satisfied that within itself the proposal makes appropriate provision for affordable housing. It would therefore comply with Policy H2 of the CS as set out above and Policies 3.11 and 3.12 of the LP which seek to maximise affordable housing provision having regard to the specific circumstances of individual sites taking account of development viability.

*Living conditions*

40. The appeal site is in a highly urbanised area with existing buildings in close proximity one to another. There is already an existing level of overlooking between properties, particularly from within the rear elevation of the existing building towards the flats behind located on Munden Street. The issue is whether the proposals would make the current situation materially worse in terms of overlooking leading to a loss of privacy, light or outlook.
41. The existing building has habitable accommodation within the rear of the building and this would be replicated in the proposal. The Council's guidance indicates that there should be an 18 m separation between properties to avoid unacceptable overlooking, which would be marginally breached for some of the upper storeys. However, guidance is just that and need to be considered in the light of the actual circumstance.
42. On the ground floor these windows would be closer than the existing building, but any views to the rear would be of the boundary wall. At first and second floor the design has a number of small and secondary windows which are shown to be obscure glazed for those windows closest to the boundary and the main windows set at angles so any overlooking would be at an oblique angle. This would prevent any direct overlooking. Above the second floor the windows in the rear elevation are set further away from the boundary so as to ensure that there was no unacceptable overlooking. Throughout the design there are a number of privacy screens proposed and, subject to an appropriate condition over their design and to ensure that they are installed, this would ensure that no unacceptable overlooking leading to a loss of privacy would occur for residents of the flats in Munden Street or at 8 and 26 Auriol Street.
43. Local residents are concerned that although there would be obscure glazing to prevent actual overlooking the windows themselves there would still give the perception of overlooking. However, given the existing situation where clear glazed windows result in a degree of overlooking the change to obscure glazing would be an improvement and while there may be some perception of overlooking, this would not be at such a level that it would result in an unacceptable relationship between properties.
44. A balcony has recently been constructed on an extension at the rear of 8 Auriol Road, and objections stated that there would be views from one of the balconies of Flat 14. The balcony of No 8 has a considerable parapet. I am therefore satisfied that this parapet would ensure that there was no unacceptable overlooking given the angle between the two balconies.
45. As part of the appeal documentation the appellant submitted a Supplementary Daylight/Sunlight Report which led to the amended plans reducing the depth of the two ground floor elements on either end of the proposal. The Report used the Building Research Establishment guidelines and shows that the proposal would ensure that the rear garden of 8 Auriol Street would receive adequate sunlight and that the windows facing to the rear would receive adequate



daylight so as not to lead to an unacceptable loss of daylight for the occupiers of those dwellings.

46. The proposal would result in building closer to a number of windows in the side elevation of No 8 but I am satisfied that in this urban location there would be sufficient separation to ensure that the proposal did not result in an unacceptable loss of sunlight or daylight, and that there is sufficient separation not to adversely affect the use of the balconies on the rear of No 8 through loss of light.
47. In relation to 26 Auriol Road this property is not orientated with 90° of south so would not be materially affected as regards sunlight. As regards daylight the Supplementary Daylight/Sunlight Report does indicate that there would be some reduction but within acceptable levels. I concur that the amount of daylight reaching this property would be still be at acceptable levels as a result of the proposed development.
48. With the reduction in size of the single storey elements in the amended plans I am satisfied that the proposal would not give rise to an unacceptable overbearing effect for the occupiers of either Nos 8 or 26.
49. Local residents were concerned about the effects of construction on their living conditions, particularly through noise and disturbance, and highway safety. While these effects would be over a number of months they would be temporary and I am satisfied that subject to a Construction Management Plan, which could be secured by condition, that these effects could be mitigated so that they did not have an unacceptable effect on living conditions.
50. As such the proposal would not have an unacceptable effect on the living conditions of the occupiers of adjoining properties. As such the proposal would comply with Policies DM A9 and DM G1 of the DMLP which seek to ensure no detrimental impact on privacy, daylight and sunlight, and outlook in adjoining properties, and the principles of good neighbourliness. It would also comply with paragraph 17 of the Framework which seeks a good standard of amenity for all existing occupiers of land and buildings.

### **Other matters**

51. The appellant accepted that as recently as December 2015 the existing building was occupied as HMO accommodation, and the Council considered that when it had previously visited the site in April 2016, as part of the consideration of the application, this remained the situation. However, since then there have been changes to how the properties are occupied and at the site visit a random quarter of the existing units were visited. The Council accepted, and I agree, that the existing current use of the building is as single dwellinghouses and that the change of use had lawfully taken place as permitted development<sup>10</sup>. That being the case the proposal would not involve the loss of HMOs.
52. The Council also refused the development for its effects on the GECA and the settings of the FFCA and the DECA, which are both close by. This was because it considered that the proposal, by relocating one of the dropped kerbs, would adversely affect one of the street trees which add beneficially to the character

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<sup>10</sup> Under Class L of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

and appearance of the area. The amended plans resolved the Council's concerns subject to the imposition of an appropriate condition.

53. The main parties and local residents who attended the Hearing agreed that, at best, the existing building was a neutral feature in the GECA and that the architectural design of the proposed building would enhance the character and appearance of the conservation area. However, a third party is concerned that the palette of materials set out in the drawings would be out of keeping with the area. I am satisfied that subject to the use of appropriate materials, which could be secured by condition, that the building would enhance the character and appearance of the GECA and the settings of the nearby FFCA and DECA.
54. The Council's report on the application made reference to concerns about air quality as the site is in an Air Quality Management Area (AQMA), although this did not represent a reason for refusal. The appellant submitted an Air Quality Assessment as part of the appeal documentation and the Council accepted that, subject to appropriate conditions, that the proposal would not have an adverse effect on air quality in the area.
55. Local residents are concerned about the location of the proposed surface water holding tanks. This could be satisfactorily dealt with by condition without causing harm to the GECA or protected trees in a location at the rear of the building where it could be incorporated within a landscaping scheme. For the same reason, while the location of the refuse storage is shown, details of the bin storage enclosures need to be resolved by condition.

### **Conditions**

56. I have considered the conditions put forward by the Council and discussed at the Hearing against the requirements of the PPG and the Framework. The numbers of the conditions are given in brackets. In addition to the standard timescale condition (1), I have imposed a condition specifying the relevant drawings (2) as this provides certainty.
57. The southern car parking space needs to be amended to allow disabled persons to be able to use it; details to this need to be agreed prior to construction works (3). Requiring the northern parking space to be so enlarged could compromise the health and longevity of the adjacent tree, and therefore would not be acceptable. In order to protect all the trees in the vicinity of site the development needs to take place in accordance with the submitted Arboricultural Method Statement and Tree Protection Plan (4).
58. I have also imposed a condition requiring a contract to be let for the construction of the proposed building prior to the existing building being demolished to ensure the character and appearance of the GECA and the settings of the nearby FFCA and DECA are not adversely affected by a vacant site (5).
59. As discussed above there is a need for a Construction Management Plan in order to protect the living conditions of nearby residents and highway safety (6). The Council requested separate demolition and construction, logistics and management plans and an air quality dust management plan but I am satisfied that these can all be considered within a single plan.
60. Although not in an area where land contamination is expected, because the use history of the site is not known prior to the existing building and there would be

- excavation of deliver the lowest floor, contamination studies need to be undertaken and remediation implemented if necessary in order to protect the living conditions of any occupiers (7, 8, 9, 10).
61. The appellant confirmed at the Hearing that piling may be used on site, and in order that such piling does not adversely affect the living conditions of adjoining occupiers or cause a risk to sewerage utility infrastructure, a piling method statement is required (11).
62. As noted above the site is in an AQMA and consequently details of the plant and equipment to be used during construction and in the communal plant on site needs to ensure low emissions. To this effect a Low Emissions Strategy needs to be submitted and approved prior to development taking place (12).
63. A Flood Risk Assessment was submitted with the application which broadly showed that the scheme was not prone to Flood Risk. As the site is in Zone 2 of the Environment Agency's maps additional information is needed to protect the basement areas from potential flooding. The necessary details need to be agreed prior to any construction works commencing (13).
64. Under the terms of Policy DM G1 of the DMLP development should respect Secured by Design principles. To ensure that the development would be safe and secure details of how these principles are to be achieved need to be submitted and thereafter implemented prior to above ground works commencing (14).
65. The Council requested a condition to orientate rooms away from major noise sources. However, as a full application the internal layout is fixed and it has not been demonstrated that there are such sources. However, because the layout does involve bedrooms above/below living rooms and habitable rooms adjacent to the communal plant room additional acoustic and vibration insulation is necessary in these locations (15).
66. In order to ensure a satisfactory external appearance details of materials and outstanding details of the surface water drainage storage tanks, window bays, bin stores, balustrades and doors need to be submitted prior to any above ground construction works taking place (16, 17).
67. To ensure that the scheme is appropriate to the locality and to protect the living conditions of the occupiers of neighbouring properties details of hard and soft landscaping needs to be submitted and approved prior to any above ground construction works with the hard landscaping being completed prior to first occupation and the soft landscaping completed in the first planting and seeding seasons following first occupation (18, 27).
68. In order to protect the living conditions of occupiers of the adjoining dwellings details of the privacy screens need to be agreed and the screens themselves installed prior to any of the dwellings being occupied (20). Also, for the same reason the windows indicated to be obscure glazed need to be so glazed and maintained as such (21).
69. Storage for cycles is shown on the approved plan, in my view in a satisfactory location, and to ensure its implementation to provide transport choice this needs to be delivered prior to the dwellings being occupied (22). Similarly, provision for waste and recycling needs to be delivered prior to occupation.

- The Council indicated that the details on the plans may not meet its standards to maximise recycling, so these details need to be submitted and agreed (19).
70. The LP includes requirements to ensure, where appropriate, the optional Building Regulation access standards are delivered. In order to ensure that the dwellings meet these optional standards and the development is thus accessible, a condition is required to deliver this (24). The Council asked that the wheelchair accessible units be subject to a marketing exercise and while the appellant was content with this I do not consider that such an exercise is necessary to make the development acceptable. However, to ensure that the development meets CO<sub>2</sub> targets the development needs to be constructed in accordance with the details included with the application (25).
71. The design of the external appearance of the building could be compromised by the inappropriate use of extract flues or pipes or the introduction of air conditioning plant harmful to the character and appearance of the GECA. To prevent this occurring a condition is necessary to ensure no such equipment can be installed on the front elevation (26).
72. In order to comply with development plan policies set out above the two parking spaces need to have active electric charging points delivered and maintained (23). In order to ensure that the privacy of neighbouring residents was not compromised by the creation of additional balconies no further parts of the roof should be used as a terrace or other amenity space (28).
73. The Council requested that permitted development rights be removed for the erection of external telecommunications receiving equipment, various extensions and gates, fences, walls or other means of enclosure. The PPG indicates<sup>11</sup> that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. Permitted development rights for telecommunications receiving equipment are more limited inside conservation areas than outside and I therefore consider that there is no need for such a condition. Flats do not have permitted development rights to allow extensions so such a condition is also not necessary. While permitted development rights would allow the erection of gates, fences, walls or other means of enclosure subject to various limitations, I am satisfied that there is no exceptional circumstances which would require the restriction of this normal right.
74. The Council also asked that details of any external lighting scheme be submitted and approved. The reason for this was to protect the living conditions of adjoining occupiers. However, I do not consider such a condition to be necessary as it would duplicate other legislation. I also consider that construction details of the dropped kerb replacement should not be dealt with by planning condition as this would also duplicate other legislation.
75. Local residents were concerned that the development may interrupt television signals to their properties and thus sought a condition to provide a replacement if necessary. I do not have any evidence that such an occurrence is likely, the proposed building is not very tall and, as such, I do not consider such a condition is necessary.

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<sup>11</sup> Reference ID: 21a-017-20140306

76. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

**Conclusion**

77. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

*RJ Jackson*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

|            |                                         |
|------------|-----------------------------------------|
| 0100 Rev - | Site Location Plan                      |
| 1001 Rev M | Proposed Lower Ground Floor             |
| 1002 Rev O | Proposed Ground Floor Plan              |
| 1003 Rev I | Proposed First Floor Plan               |
| 1004 Rev H | Proposed Second Floor Plan              |
| 1005 Rev I | Proposed Third Floor Plan               |
| 1006 Rev I | Proposed Fourth Floor Plan              |
| 1007 Rev - | Proposed Roof Plan                      |
| 2000 Rev J | Proposed Section AA                     |
| 2001 Rev D | Proposed Section BB                     |
| 2002 Rev C | Proposed Section CC                     |
| 3000 Rev B | Proposed Front Elevation                |
| 3001 Rev B | Proposed Rear Elevation                 |
| 3002 Rev B | Proposed Side Elevation                 |
| 3003 Rev B | Proposed Front & Rear Street Elevations |
| 3004 Rev - | Proposed South Elevation                |
| 4000 Rev - | Front Elevation Bay Study               |
| 4001 Rev - | Typical Detailed Section A-A            |
| 4002 Rev - | Typical Detailed Section                |

- 3) Notwithstanding condition 2, the southern parking space shall be constructed to allow access by a person with disabilities. The details of which shall be submitted to and approved in writing by the local planning authority prior to any above ground works commencing on site and those details, as well as the northern parking space, shall be completed in accordance with the approved details as well prior to any dwelling being occupied. The parking spaces shall thereafter be retained for such a purpose.
- 4) No equipment, materials or machinery shall be brought on site in connection with the development hereby permitted, and no works, including site clearance or any other preparatory works, undertaken until the tree protection measures set out in the Treeventures Limited report titled "BS5837 Tree Survey" reference K493AIA dated 26 November 2015 have been erected on site in accordance with the report and a Tree Protection Plan submitted to, approved, and agreed in writing as complete by the local planning authority. The protection shall be retained until the development is complete and nothing shall be placed within the fencing, nor shall any ground levels be altered or excavations made without the prior written consent of the local planning authority.
- 5) No demolition shall take place until arrangements have been put in place to secure the construction of the development approved under this permission and details of these arrangements have been submitted to and approved in writing by the local planning authority. The arrangements shall include details of the timescale for carrying out the redevelopment approved under this permission.

- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) loading and unloading of plant and materials;
  - ii) storage of plant and materials used in constructing the development;
  - iii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) measures to monitor noise, vibration, dust, dirt and other emissions including air quality, and actions required to rectify any breaches; and
  - vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the local planning authority. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.
- 8) No development shall commence until a site investigation scheme is submitted to and approved in writing by the local planning authority. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.
- 9) No development shall commence until, a remediation method statement is submitted to and approved in writing by the local planning authority. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.
- 10) No development shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing, by the local planning authority. This report shall include: details of the remediation works

carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the local planning authority is to be informed immediately and no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the local planning authority. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004) or the current UK requirements for sampling and testing.

- 11) No development shall commence until a piling method statement, detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to sub-surface sewerage infrastructure, and the programme for the works, has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 12) No development shall commence until a Low Emission Strategy has been submitted to and approved in writing by the local planning authority. The Low Emission Strategy must detail the remedial action and mitigation measures that will be implemented to protect receptors (e.g. abatement technology for energy plant, design solutions). This Strategy must make a commitment to implement the mitigation measures (including NO<sub>x</sub> emissions standards for the chosen energy plant) that are required to reduce the exposure of future residents to poor air quality and to help mitigate the development's air pollution impacts, in particular the emissions of NO<sub>x</sub> and Particulates from on-site transport during construction and operational phases e.g use of Low Emission Vehicles and energy generation sources. The strategy must assess air quality in accordance with the Mayor of London Supplementary Planning Guidance 'Sustainable Design and Construction' (April 2014). The development shall only be carried out and operate in accordance with the approved details.
- 13) No development shall take place until a revised flood risk assessment has been submitted and approved in writing by the local planning authority which to provide further mitigations measures in regard to the basement level to ensure that the basement is not affected by flooding. The development shall only be implemented in accordance with the approved details, and shall be so maintained for the lifetime of the development.
- 14) No work of construction shall take place until a statement of how Secured by Design requirements are to be achieved has been submitted to and approved in writing by the local planning authority. The approved details shall be completed before the building is first occupied.
- 15) No work of construction shall take place until details of an enhanced sound insulation value  $D_{nT,w}$  (Weighted Standardized Level Difference) of at least 5 dB above the Building Regulations value, for the floor/ceiling/wall structures



separating different types of rooms in adjoining dwellings, namely where a living room and/or kitchen is above or below a bedroom of a separate dwelling or adjacent to a room containing plant and machinery, have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to occupation of the development and thereafter shall be retained.

- 16) No above ground development shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 17) No above ground construction works shall take place until details of the surface water storage tanks, window bays at a drawing scale of no less than 1:20, bin stores, balustrades and doors have been submitted to and approved in writing by the local planning authority. The development shall take place in accordance with the approved details.
- 18) No above ground construction works shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. The scheme shall include means of enclosure and hardsurfacing materials. The development shall take place in accordance with the approved details with all hard landscaping completed prior to the development being first occupied.
- 19) No above ground construction works shall take place until details of the bin storage areas for the storage and household waste and recycling have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved details have been fully implemented and they shall be thereafter retained.
- 20) Prior to the occupation of any of the dwellings, details of the privacy screens to the roof terraces as indicated on the approved drawings shall be submitted to and approved in writing by the local planning authority. The approved details shall be fully installed prior to the occupation of the units and shall be retained thereafter.
- 21) The building hereby permitted shall not be occupied until the windows shown to be obscure glazed on the approved drawings have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 22) The development hereby permitted shall not be occupied until the cycle storage shown on the approved plans has been constructed and the area shall thereafter be kept available for such purposes.
- 23) The two off-street car parking spaces hereby approved shall be fitted with 'active' electric charging points prior to the first occupation of the development and these points shall thereafter be maintained.
- 24) Residential units City House 2, 4 and 5 hereby approved shall meet M4(3) Category 3: Wheelchair Users dwellings of the Building Regulations 2010 Access to and Use of buildings, 2015 edition standards, and shall be permanently retained as such thereafter.

The dwellings hereby approved, with exception of City Houses 2, 4 and 5, shall meet M4(2) Category 2: Accessible and adaptable dwellings of the Building Regulations 2010 Access to and Use of buildings, 2015 edition standards, and shall be permanently retained as such thereafter.

- 25) The development hereby permitted shall be carried out in accordance with the measures outlined in CarbonPlan Limited 'Sustainability Strategy and Energy Strategy' Revision A dated October 2015 relating to the site and shall thereafter be maintained in accordance with that document.
- 26) No air conditioning units, plumbing, extract flues or pipes other than rainwater pipes shall be fixed on the front elevation of the development hereby approved.
- 27) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the building. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 28) With the exception of the balconies and terraces indicated on the approved drawings, no part of any other roof of the approved building shall be used as a terrace or other amenity space.

END OF SCHEDULE

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                |                                               |
|----------------|-----------------------------------------------|
| Gwion Lewis    | of Counsel, instructed by Mr Clive Leventine, |
| Mia Scaggianti | Maxwell Winward, Solicitors                   |
|                | Savills                                       |

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

|                 |                      |
|-----------------|----------------------|
| Barry Valentine | Planning             |
| Leticia Maudra  | Legal                |
| Nora Begolli    | Highways             |
| Rizwan Yunus    | Environmental Health |

### **INTERESTED PERSONS:**

|               |                |
|---------------|----------------|
| Tracey Gahoor | Local Resident |
| Avlon Rowley  | Local Resident |
| Michael Chard | Local Resident |

## **HEARING DOCUMENTS**

- 1 Draft Planning Obligation under Section 106 Town and Country Planning Act 1990 (as amended)
- 2 Draft Undertaking under Section 16 of the Greater London Council (General Powers) Act 1974 (as amended)
- 3 Section 16 of the Greater London Council (General Powers) Act 1974
- 4 Appeal Decision APP/K5600/W/15/3004566
- 5 Extract from LocalGovernmentLawyer website
- 6 Transcript of judgement *Westminster City Council v Secretary of State for Communities and Local Government and another* [2013] EWHC 690
- 7 Transcript of judgement *The Queen on the application of Isaac Youssef Khodari v Royal Borough of Kensington and Chelsea* [2015] EWHC 4084
- 8 Updated Schedule of Tenancies
- 9 Schedule of tenancies in vicinity of appeal site
- 10 Chapter J Hammersmith and Fulham Development Management Local Plan – July 2013
- 11 Extracts from The London Plan dealing with Transport and Parking
- 12 Completed Planning Obligation under Section 106 Town and Country Planning Act 1990 (as amended)
- 13 Completed Undertaking under Section 16 of the Greater London Council (General Powers) Act 1974