
Appeal Decision

Site visit made on 24 January 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 17th March 2017

Appeal Ref: APP/F5540/W/16/3162072
333-335 Bath Road, Hounslow, TW3 3DH

- 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 N Patel against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00083/333-335/P2, dated 11 June 2015, was refused by notice dated 29 April 2016.
 - The development proposed is redevelopment to provide mixed use development including flexible commercial space (uses A1, A2, A3, A5 and B1) and nine dwellings (use C3) comprising one one-bedroom, five two-bedroom and three three-bedroom flats, with cycle storage, car parking, new boundary wall, landscaping, amenity space and other associated works.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 22 February 2017.

Decision

1. The appeal is allowed and planning permission is granted for redevelopment to provide mixed use development including flexible commercial space (uses A1, A2, A3, A5 and B1) and nine dwellings (use C3) comprising one one-bedroom, five two-bedroom and three three-bedroom flats, with cycle storage, car parking, new boundary wall, landscaping, amenity space and other associated works at 333-335 Bath Road, Hounslow, TW3 3DH in accordance with the terms of the application, Ref 00083/333-335/P2, dated 11 June 2015, subject to the conditions contained within the Schedule attached to this decision.

Procedural Matters

2. I note that following the initial submission of the application amended plans were submitted and the Council determined the application on the basis of these amendments which, amongst other matters, included the omission of the A4 use and the inclusion of a B1 use. Accordingly, I have used the description of the development as set out in the Council's decision notice as it is a more accurate description than that set out in the application submission.

Preliminary Matters

3. Planning permission was granted in 2013 for the erection of a three-storey building comprising a total of nine apartments on the appeal site¹. The appellant

¹ LPA Ref 00083/333-335/P1

confirms that this permission was implemented in November 2016. However, it is not for me, under a section 78 appeal, to determine whether or not the permission has been implemented. To that end it is open to the appellant to apply for a determination under sections 191/192 of the Act and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome.

Main Issues

4. In their reasons for refusal, the Council referred to the effect of the proposal on the vitality and vibrancy of the adjacent neighbourhood centre. However, following the appeal submission and the accompanying neighbourhood centre health check, the Council no longer raise objection with regard to this matter. Based on the evidence before me, I find no reason to disagree with this view. Accordingly, the main issues are as follows:
 - (a) The effect of the development on the living conditions of the occupants of the neighbouring residential properties, with particular regard to daylight;
 - (b) The effect on the character and appearance of the area; and
 - (c) Whether the proposal would provide adequate living conditions for future occupants, with particular regard to outlook and odour.

Reasons

5. The proposed building would be within proximity of the block of three and four-storey flats to the north of the appeal site. A Daylight and Sunlight report (DSR), carried out by BVP, was submitted with the application. The report concluded that out of the 79 surrounding windows that were analysed, only four would receive a Vertical Sky Component (VSC) that would fall below the 27% guideline and be less than 0.8 times its former value as set out in the Building Research Establishment (BRE) Report 2011 *Site Layout Planning for Daylight and Sunlight*. These windows are considered to serve bedrooms and are referred to in the DSR as W1 and W2 on the ground and first floor at 32-59 Cranston Close. The Council have not disputed the accuracy of the information contained within the DSR and have not provided any technical evidence to the contrary.
6. The appellant argues that the primary source of the lack of daylight into these rooms is not a result of the proposed building but is due to the design of the existing block of flats. An element of the building projects out and creates a recess which reduces the daylight serving these windows. The appellant states that the BRE guidelines refer to 'projecting wings' causing an over exaggerated impact to neighbouring amenity. The BRE Guideline states that "*a larger relative reduction in VSC may also be unavoidable if the existing window has projecting wings on one or both sides of it*". However, the element of the building in question is positioned in front of, rather than to either side of, these windows. Therefore, I do not consider that it is a 'projecting wing'. I note that the independent review of the DSR and BVP's subsequent appeal statement carried out by Delva Patman Redler, dated 14 October 2016, similarly concludes on this matter. This highlights the caution to be attached to the assessment as it is based on an interpretation of the BRE guidance, which in any event should not be interpreted as planning policy.
7. The existing VSC for three of these windows already falls below the 27% guideline. In addition, it would also result in one of the windows falling below to the 27% guideline. However, the loss of light to these rooms would be relatively

limited and would comply with the BRE guidelines. I also note that the assessment of daylight distribution also found that the two ground floor rooms served by two of these windows would fall below the BRE guidelines. Whilst it would make the current substandard conditions for three of the windows worse, I do not consider that it would be to such an extent that the difference would be perceived by the occupants of the flats served by these windows.

8. Furthermore, these windows serve bedrooms, and therefore in accordance with the BRE guidelines the level of daylight serving them is not as important. Although there would be a minor adverse effect on the amount of daylight serving these windows, I do not consider that it would be significantly harmful to the occupants of the flats. Based on the evidence submitted I am satisfied that the DSR demonstrates that a loss of daylight would not be perceived by the occupants of the flats served by these windows and that the loss is acceptable as a whole when applying BRE guidance.
9. I find therefore that the proposal would not significantly harm the living conditions of the occupants of neighbouring residential properties due to the lack of adequate daylight. As such, it would comply with Policy CC2 of the London Borough of Hounslow Local Plan 2015-2030 (LP), which, amongst other matters, seeks to ensure that development ensures sufficient daylight to adjoining/adjacent dwellings.

Character and Appearance

10. This stretch of Bath Road predominantly comprises a mix of three and four-storey, commercial and residential properties. The existing site comprises a single-storey industrial building that is utilitarian in appearance and is set within a large curtilage. Immediately to the north and east of the site are blocks of three and four-storey flats.
11. To the west is the Hounslow West underground station ticket hall, a Grade II listed building designed by Charles Holden. The 1930s building is constructed of reinforced concrete with stone and granite facing the front and brick to the rear. The central element is a heptagonal, two-storey drum which is flanked by single-storey shops. Contrary to both the Council and the appellant's views, I find that the building does have architectural merit, albeit I accept that it may not be to everyone's taste. Its unusual design and striking form make it stand out as a landmark feature in the streetscene.
12. The proposed building would be predominantly four-storeys in height although the central stairwell and lift element would be higher. The ground floor would comprise commercial units and the upper floors would be residential apartments. The building would be positioned within proximity of the back of the pavement of Bath Road. It would be of a contemporary design and whilst wide, the central element and setback position of the upper floors would satisfactorily break-up its overall mass.
13. The Council raise concern that the proximity of the building to the road would appear as an anomaly. Generally, properties along the north side of Bath Road are set back. However, with the exception of the underground station, these are primarily residential properties. The ground floor of the building would be commercial units and as a result of its mixed use and proximity to other commercial units on the south side of Bath Road, the building would be read in the context of the neighbouring shopping area. In addition, the upper floors

would be setback from the ground floor, reducing the dominance the building would have on the streetscene. I have also had regard to then approved development, which would not be set significantly further back, certainly not to the extent of other properties on this side of the road.

14. Although the central element would be higher, the building would nevertheless be read as a four-storey building. As there are other four-storey properties within the vicinity of the site, including the apartments directly to the north, I do not consider that the height of the building would appear incongruous or overbearing on the streetscene.
15. The Council direct my attention to the relationship of the proposed development with the listed building. However, they provide no evidence as to how the setting of the listed building would be harmed by the proposal. Nevertheless, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting. This is also reflected in paragraph 132 of the National Planning Policy Framework. The proposed building would be approximately 44m from the underground station, with an open car park between them. Whilst it would be significantly higher and larger than the listed building, as are many other buildings within closer proximity, and would be read in the same streetscene context, I find that there would be sufficient distance between the two buildings to ensure that the proposal would not detract from the setting of the listed building.
16. The proposed building would be higher and wider than the approved development and would be closer to the road. Whilst it would therefore inevitably have a greater impact, I do not find that it would result in any significant harm to the character and appearance of the area and would preserve the setting of the listed building. As such it would comply with Policies CC1 and CC2 of the LP, which seek to ensure that new development responds meaningfully and sensitively to the site, its characteristics and constraints, and the layout, grain, massing and height of surrounding buildings; and, promote and support high quality urban design and architecture to create attractive, distinctive, and liveable places.

Living Conditions of Future Occupants

17. In their fourth reason for refusal the Council raise concern regarding the lack of detail submitted with the application with regard to the ventilation serving the ground floor commercial units. Due to the mixed use nature of the proposal, in the absence of such detail, external ventilation ducts could unacceptably harm the living conditions of the occupants in respect of outlook and could also have a detrimental effect on the appearance of the building and consequently the character and appearance of the area. Furthermore, in such proximity to residential properties they could potentially create harmful odours that would be detrimental to the living conditions of the occupants of the apartments.
18. In response to this, the appellant has submitted an indicative plan² which suggests that ventilation ducts could be installed internally. Based on this evidence, and in the absence of any evidence to the contrary, I see no reason why an internal ventilation system could not be installed. I am satisfied that such a system would mitigate the above concerns.

² Appellant's Rebuttal Statement of Case - Appendix 2

19. I find therefore, subject to an appropriately worded condition, a suitable ventilation system could be installed without resulting in unacceptable harm to the living conditions of the occupants of the apartments or the character and appearance of the area. As such, it would comply with Policies CC2 and EQ4 of the LP, which seek to ensure that development has a positive impact on the amenity of future residents and require mitigation measures to minimise adverse impacts, including odour pollution, on end users.

Other Matters

20. I acknowledge the concerns raised regarding traffic congestion and air pollution. However, there is no substantive evidence that the proposal would have any significant harm to highway safety or air pollution. I also note that the local highway authority have not objected to the proposal. I therefore attribute limited weight to these matters.

Conditions

21. I have had regard to the various conditions that have been suggested by the Council. For the avoidance of doubt it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
22. In the interests of the character and appearance of the area, conditions regarding external materials; fans, louvres, ducts, external plant; and, landscaping.
23. In the interests of the living conditions of neighbouring residents, conditions are necessary regarding the hours of use for the A1, A2, A3 and A5 uses; hours of deliveries; hours of operation during demolition; illumination of the site, noise, dust and mud during construction; and, a delivery and service plan.
24. To safeguard the living conditions of the occupants of the development, a condition regarding an acoustic insulation scheme is necessary.
25. In the interests of highway safety, conditions are necessary regarding vehicular access, parking, loading and turning spaces.
26. A condition is also necessary regarding the control of fumes and smells in the interests of safeguarding the living conditions of the occupants of the apartments.
27. For conciseness I have included details regarding boundary treatments in the landscaping scheme condition. I acknowledge the appellants objection to the need for a landscape management plan. However, I find it is necessary to ensure the landscaping is appropriately managed in the interests of protecting the character and appearance of the area.
28. I note the objection raised by the appellant with regard to the suggested condition requiring further site investigation works in respect of land contamination. Whilst surveys may have been undertaken in respect of the extant permission, there are no details of them before me or any evidence that their findings are satisfactory. Therefore, in the interests of public health, such conditions as suggested by the Council are necessary.
29. I note that the submission details include cycle parking provision. However, in the interests of the character and appearance of the area and to promote

sustainable methods of transport a condition is necessary regarding the appearance of the storage area.

30. A condition requiring the development to be carried out in accordance with the approved Energy Strategy is required to ensure that the building is built and occupied to meet the appropriate design specifications for sustainable buildings. Evidence of this is necessary to ensure that the development satisfactorily meets the requirements.
31. A Construction Environmental Management Plan and Construction Logistics Plan are necessary in the interests of highway safety and the living conditions of neighbouring residents. However, there is no evidence that the failure to adhere to a Considerate Contractor Scheme or similar would render the development unacceptable. Therefore I have omitted this element of the suggested condition.
32. The application submission included details of the proposed storage of waste and recyclables. The Council have raised no objection to these matters and I concur with this view. Accordingly, a condition requiring the submission of such details is unnecessary.
33. The Council have suggested a condition regarding safeguarding the London Underground. However, the appellant argues that there is no such requirement requested from London Underground Ltd. In addition, there is no evidence that such a condition was attached to the extant permission. Accordingly, I do not find that it is reasonable or necessary to impose such a condition.
34. I acknowledge the Council's suggested condition seeking effectively remove permitted development rights regarding changes of use. However, there is no clear evidence that the change of use of the approved uses would prejudice the amenities of the adjoining properties. The Planning Practice Guidance³ advises that conditions restricting the future use of permitted development rights or changes of use should only be used in exceptional circumstances. I am not satisfied that there are exceptional circumstances justifying the suggested condition.
35. The Council raise no objection to the number of car parking spaces proposed and there is no evidence indicating the site is within or near to a controlled parking zone (CPZ). Therefore a condition preventing residents obtaining a parking permit within any CPZ is unreasonable and unnecessary.
36. It is essential that the requirements of conditions 3, 10, 11, 13, 14, 15, 18 and 19 are agreed prior to the development commencing to ensure an acceptable form of development in respect of preserving the character and appearance of the area; safeguarding public health and highway safety; promoting sustainable forms of transport; and, protecting the living conditions of neighbouring residents and the future occupants of the apartments.

Conclusion

37. For the reasons given above, having regard to all matters raised, the appeal is allowed.

Alexander Walker

³ PPG Ref Paragraph: 017 Reference ID: 21a-017-20140306

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 15002_TP_001, 15002_TP_002G, 15002_TP_003D, 15002_TP_004A, 15002_TP_005B, 15002_TP_006B, 15002_TP_007A, 15002_TP_008A, 15002_TP_009A, 15002_TP_010, 15002_TP_011 and 15002_TP_012, 15002_TP_013 and 10700.Section
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the building 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.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fans, louvres, ducts or other external plant shall be installed on the building.
- 5) The A1 and A2 uses hereby permitted shall only take place between the following hours:
0700 - 2300 Monday - Saturday
0800 - 2200 Sundays and Public Holidays
- 6) The A3 and A5 uses hereby permitted shall only take place between the following hours:
0700 - 2300 Monday – Friday
0700 - Midnight Saturday
0800 - 2300 Sundays and Public Holidays
- 7) Deliveries shall be taken at or despatched from the site only between 0800 - 2200 on Mondays to Saturdays and not at any time on Sundays or on Bank or Public Holidays.
- 8) Demolition or construction works shall take place only between 0800 -1800 on Mondays to Fridays, 0900 – 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 9) Prior to the first occupation of the hereby approved residential units, equipment to control the emission of fumes and odour from the premises, including details of sound attenuation, shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 10) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) proposed finished levels or contours;

- ii) means of enclosure;
- iii) boundary treatments;
- iv) vehicle parking layouts;
- v) other vehicle and pedestrian access and circulation areas;
- vi) hard surfacing materials;
- vii) minor artefacts and structures [e.g. furniture, play equipment, refuse or other storage units, signs, etc.];
- viii) proposed and existing functional services above and below ground [e.g. drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports etc];
- ix) retained historic or other landscape features and proposals for restoration, where relevant;
- x) soft landscaping works (planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed number/densities where appropriate;
- xi) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 11) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all hard and soft landscape areas shall be submitted to and approved by the local planning authority prior to the first occupation of the hereby approved development. The landscape management plan shall thereafter be carried out as approved.
- 12) The parking, loading and turning spaces shown on the submitted drawings shall be constructed and available for use prior to the first occupation of any part of the development and such spaces shall not be used for any other purposes.
- 13) Before the development hereby permitted commences:
 - a. Details of an intrusive site investigation are required in addition to the phase 1 desk study previously submitted. These details shall be submitted to, and approved in writing by, the local planning authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.
 - b. If required, a scheme for decontamination of the site shall be submitted to the local planning authority, for written approval. The scheme shall account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied.
During the course of the development:
 - c. The local planning authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination, and shall submit appropriate amendments to the scheme for decontamination in

writing to the local planning authority for approval before any work on that aspect of development continues.

Before the development is first brought into use:

d. The agreed scheme for decontamination referred to in clauses b) and c) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the local planning authority for approval.

- 14) No development shall commence until a scheme has been submitted to and approved in writing by the local planning authority to cover the following matters:
 - (i) any external illumination of the site;
 - (ii) measures to ensure that all mud and other loose materials are not carried on the wheels and chassis of any vehicles leaving the site; and
 - (iii) measures to minimise dust nuisance caused by the operations and to ensure that no dust or other debris is carried on to the adjoining properties.The approved scheme shall be fully implemented during the construction of the development.
- 15) No development shall commence until full details of cycle parking provision (including enclosure details) have been submitted to and approved in writing by the local planning authority. The approved spaces shall be permanently available and not be used for any other purpose.
- 16) Prior to first occupation of the hereby approved development evidence (e.g. photographs, installation contracts and As-Built certificates under the National Calculation Method) shall be submitted to the local planning authority and approved in writing to show that the development has been constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions.
- 17) Prior to first occupation of the hereby approved development vehicular access and a loading bay shall be provided in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be made available for its intended purpose.
- 18) Prior to commencement of works above ground level a scheme of acoustic insulation shall be submitted to and approved by the Local Planning Authority. Such a scheme shall include details of measures to ensure the residential accommodation does not exceed the levels in Table 4 of BS8233:2014 and that through the application of good acoustic design, private amenity areas and external communal amenity areas do not exceed the noise levels set out in BS8233:2014. The details shall include material specification and predicted performance of the materials proposed. The approved scheme shall be completed, and measurement reports demonstrating compliance with it shall be submitted to and approved in writing by the local planning authority, prior to the first occupation of the hereby approved residential units.
- 19) No development shall take place until a Construction Environmental Management Plan and Construction Logistics Plan covering both the demolition and construction stages has been submitted to and approved in writing by the local planning authority. The plan shall cover:

- a. Parking of vehicles of site operatives and visitors;
- b. Pedestrian and cyclist protection;
- c. Proposed temporary traffic restrictions;
- d. Arrangements for turning vehicles;
- e. The routing of vehicles to the site, access and egress arrangements and waiting areas;
- f. Safety measures and strategy to segregate school pupils and construction vehicle route to minimise risks of conflicts during its construction phase
- g. Boundary treatment and measures to ensure they are maintained in a secure and tidy condition;
- h. The contractor's compound;
- i. Noise Mitigation measures in accordance with best practice as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites (to be used to minimise noise disturbance from construction works).

All work on site shall be carried out in accordance with the approved details.

- 20) Prior to first occupation of the hereby approved development a Delivery and Servicing Plan shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.