
Appeal Decision

Inquiry held on 16-17 January 2017, 1-3 and 13-16 March 2017 and 27 April 2017
Site visit made on 27 April 2017

by Michael Boniface MSc MRTPI

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

Decision date: 19 June 2017

Appeal Ref: APP/V5570/W/16/3151698

Former Territorial Army Centre, Parkhurst Road, Islington, London, N7 0LP

- 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 Parkhurst Road Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/0275/FUL, dated 22 January 2016, was refused by notice dated 13 May 2016.
 - The development proposed is the demolition of existing buildings and erection of new buildings rising from 2 to 6 storeys, to deliver 96 new residential homes (use class C3), together with associated cycle parking, car parking, highways, landscaping and infrastructure works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council carried out the necessary statutory notifications for the inquiry but published notice of the reconvened inquiry during March a day late, allowing 13 days' notice rather than the requisite 14 days. Given that known interested parties to the appeal were notified individually and that a site notice was posted, I am content that no party was prejudiced by this error. This is particularly so, as the inquiry sat over a number of days, affording the opportunity for interested parties to attend after the 14 day period had elapsed.
3. This appeal follows another on the site which considered similar affordable housing provision and viability issues in September 2015¹. I have had regard to this decision in reaching my own conclusions.

Main Issues

4. The main issues are:
 - (a) whether the development would provide the maximum reasonable level of affordable housing in accordance with the development plan; and
 - (b) whether suitable planning obligations would be secured to mitigate the effects of the development.

¹ APP/V5570/A/14/2227656

Reasons

Affordable housing

5. It is common ground between the parties that there is a significant need for both market and affordable housing across London, including in the Borough of Islington. Policy 3.12 of the London Plan (2016) (LP) requires that the maximum reasonable amount of affordable housing should be sought from individual schemes having regard to a range of criteria, including development viability and the need to encourage rather than restrain residential development.
6. Policy CS 12 (G) of the Islington Core Strategy (2011) (CS) requires that 50% of additional housing to be built in the borough over the plan period should be affordable. There is no dispute between the parties that this is a borough wide strategic target and that this level of provision need not necessarily be delivered on every site to comply with the policy. For example, some schemes may provide more than 50% affordable housing or be exclusively affordable housing schemes. The policy does make clear, however, an expectation that many sites will deliver at least 50% of units as affordable.
7. This is a pertinent consideration given that the Council is not currently meeting its affordable housing requirements and its undisputed evidence that the need for affordable housing identified in the 2011 Strategic Housing Market Assessment (SHMA) represents more than half of the Council's overall housing target. The Council also suggests, having regard to its progress in updating the SHMA that this situation is likely to have worsened since that time. Clearly, if the pressing need for affordable housing in the area is to be met, delivery through individual schemes will need to be maximised.
8. During the course of the appeal, the appellant offered to provide 10% affordable housing (by unit), notwithstanding that this level of provision is said to make the scheme unviable in commercial terms. The Council argues that 34% provision (by unit) is the maximum reasonable level of provision on this particular site. Both parties have provided viability assessments to support their positions and both parties have changed their respective positions during the course of the appeal, the appellant shifting from an initial position of 0% provision and the Council from an initial expectation of 50% provision.
9. Paragraph 173 of the National Planning Policy Framework (the Framework) makes viability an important consideration, noting that development should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
10. Planning Practice Guidance (PPG) advises that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible².

² PPG Ref. ID: 10-001-20140306

Land Value

11. One of the key considerations in viability assessment is the Benchmark Land Value (BLV). PPG sets out three principles that should be reflected in determining a site value³. In all cases, land or site value should:
 - (a) Reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;
 - (b) Provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and
 - (c) Be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.
12. PPG gives further advice on the concept of a competitive return to developers and land owners⁴. In this case, the appellant seeks a profit on the private units of 18% (though a lower level has been accepted in its 10% affordable housing offer scenario) and this is not said to be unreasonable by the Council. As such, I take this to be a competitive return for the developer. With regards to the competitive return for the land owner, this is said to be the price at which a reasonable land owner would be willing to sell their land for the development proposed. The price would need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the existing use value of the land, or its value for a realistic alternative use that complies with planning policy.
13. The Council advocates a residual valuation approach, which compares the net development value with an Existing Use Value (EUV). This allows a comparison of the potential development value against the existing situation to establish whether the development would generate a competitive return to a willing developer and land owner. This is the same approach suggested by the Council in the previous appeal, where it was agreed between the parties that the EUV was not a reasonable basis by itself for establishing the BLV⁵. This is because the EUV was low, reflecting the restricted nature of the site as an army centre and the strong potential for residential development established by the residential site allocation⁶.
14. Since that time, the army centre use has ceased and the EUV is now described by the parties as negligible. Arguably, this makes the comparison even less relevant and the appellant suggests that a market valuation approach is the only reasonable means by which to establish the land value. I could see some logic in the appellant's position if the Council's methodology did not go beyond this comparison. However, what the Council is promoting is an 'EUV Plus' methodology, the Plus element representing a premium above the EUV to be paid to the land owner to incentivise release of the land for development in comparison with the other options available.
15. This approach is now firmly endorsed by the Mayor of London's Housing Supplementary Planning Guidance (March 2016) (Mayor's Housing SPG) and the Council's Development Viability Supplementary Planning Document

³ PPG Ref. ID: 10-023-20140306

⁴ PPG Ref. ID: 10-024-20140306

⁵ Para.61 of APP/V5570/A/14/2227656

⁶ Site NH5 of Islington's Local Plan, Site Allocations (June 2013)

(January 2016) (Development Viability SPD), both of which have been adopted since the previous appeal. These documents identify a concern that using a market value approach risks importing individual features and circumstances from other sites that may have a greater number of constraints, abnormal costs, higher EUV or valuable Alternative Use Value (AUV), amongst other variables. These issues are also noted in research for the RICS, in recently published research undertaken for a consortium of London authorities⁷ and by the Greater London Authority (GLA) in its Development Appraisal Toolkit Guidance Notes (2015) and the Draft Affordable Housing and Viability Supplementary Planning Guidance (2016).

16. It is accepted by both parties that there are no significant abnormal costs in this case and that the EUV is negligible. Clearly, the site allocation makes a residential use a highly likely alternative on the site, but any such scheme must comply with planning policy requirements, including the need to provide the maximum reasonable level of affordable housing.
17. The current proposal follows a range of previous schemes on the site, each having been reduced in scale and amount to address the concerns of the Council and the previous Inspector. It may be possible that further alternative schemes could come forward (including different residential schemes), noting that different developers will have different ideas and aspirations for a site. However, no alternative has been put forward in this case and there is no evidence before me to suggest that any more intensive residential scheme could be accommodated whilst complying with planning policy. Therefore, I consider the current appeal development to represent a good indication of the site's likely potential and there is no AUV that would justify inflation above a site valuation based on the current scheme at the present time.
18. These are matters that the PPG requires land owners to consider and it is clear that the PPG anticipates a willing land owner that is acting reasonably. Whilst there is no policy requirement for a 50% affordable housing provision on individual sites, this should always be the starting point, where the resulting land value is a price that incentivises release of the land for development. This is set out at paragraph 6.72 of the Development Viability SPD. In this case, the site has a negligible EUV, no AUV (other than the appeal proposal) and there are no abnormal costs or other factors identified that need to be built into any viability appraisal. As such, in order for the land value of other sites to be comparable they should reflect these circumstances, and it must also be possible to conclude that policy requirements have been met in such other cases, including the maximum reasonable level of affordable housing.
19. The Council's residual appraisal originally identified a land value of around £7.15M based on the provision of 50% affordable housing. However, following recognised changes to development costs during the course of the appeal, the residual land value fell to around £2.4M using this approach. The Council does not maintain, however, that this is the appropriate BLV and recognises that this would not be likely to incentivise the release of the land given the optionality available to the land owner, in this case, such options may include holding on to the land until a later date. No details of any other likely options have been put forward. Having engaged with market evidence, something that it failed to

⁷ Viability and the Planning System: The Relationship between Economic Viability Testing, Land Values and Affordable Housing in London, *Royal Agricultural University, Kingston University, University of Reading and Ramidus* (January 2017)

do in the previous appeal, the Council consider that a value of £6.75M is the appropriate BLV, including a significant uplift above the EUV, and representing the Plus element of the EUV Plus approach.

20. Both parties have sought to engage with market evidence to inform their respective cases. However, it is clear from the evidence submitted and from what I heard at the inquiry that finding truly comparable sites is extremely difficult, despite the large number of transactions in this busy urban area. The need to be comparable market-based evidence is, however, of critical importance. I heard from the appellant that the PPG assumes appropriate operation of the market and that the PPG's guidance to disregard transacted bids that are significantly above the market norm provided the intervention necessary to avoid an over inflation of land values at the expense of policy objectives.
21. However, there was a striking lack of truly comparable sites available in evidence and the number of adjustments suggested by the parties to allow such a comparison was vast. The RICS Information Paper, Comparable evidence in property valuation (IP26/2012) notes such difficulties. Adjustments between different sites require professional judgements, the potential difference between which was highlighted by the parties' opposing positions.
22. The PPG requires that site or land value be informed by market-based evidence wherever possible and this wording clearly anticipates circumstances where such a comparison will not be possible. Comparing transacted bids on sites that are not similar in terms of the existing EUV, available AUV or that are similarly unencumbered by constraints is, in my view, of little value. Furthermore, without knowing all of this information, or the assumptions and aspirations of the individual land owners and developers, it is impossible to know whether circumstances are comparable so that the price paid in one case should influence that paid for another site with entirely different circumstances.
23. Para.4.4 of the RICS Valuation Information Paper 12⁸, states "Generally, high density or complex developments, urban sites and existing buildings with development potential, do not easily lend themselves to valuation by comparison. The differences from site to site (for example in terms of development potential or construction cost) may be sufficient to make the analysis of transactions problematical. The higher the number of variables and adjustments for assumptions the less useful the comparison".
24. A reliance on the fact that transactions significantly above the market norm should be discounted requires true comparisons to be made and the price paid for another site will have been determined by a number of factors. In this case, the appellant has not provided as evidence the assumptions made in its viability appraisal supporting its winning bid for the site and this information is also unavailable for the other bidders, or any other 'comparable' site identified. Therefore, I treat the market evidence provided with some caution. That is not to diminish the importance of market evidence as a key consideration in determining land value, but it must be truly comparable and meet the other aspects of PPG guidance at paragraph 023 on viability.

⁸ Valuation of Development Land, March 2008

25. The RICS Professional Guidance, Financial Viability in Planning (GN94/2012) (RICS Guidance) is clear of the importance that viability assessments are supported by adequate comparable evidence. A range of methods have been put forward to allow some form of comparison between sites in this case.
26. A value per unit comparison, allowing a broad comparison of the unit values between various sites is one method. However, the sites put forward include various levels of affordable housing provision. The Council suggests that a simple division of the land value by the total number of units (market and affordable) allows comparison, but this attributes value to the affordable housing units (where provided) and it is agreed between the parties that the commercial value of these is limited. It can, therefore, have the effect of artificially reducing land or site values when comparing sites that provided affordable housing against those that did not.
27. The appellant seeks to discount the affordable housing units and divide the land value by the number of market units but this has the result of inflating the unit prices on schemes that have provided larger proportions of affordable housing, incorrectly giving an impression of higher land value. As the full circumstances that led to the various levels of affordable housing on other sites is unknown, neither of these methodologies is of particular value.
28. A more reliable comparison is the Council's methodology, which assumes a 50% affordable housing contribution for all transactions analysed (as the starting point in policy) and to divide the land purchase price by the remaining 50% market dwellings. Whilst actual affordable housing provision on various sites differs, this can be assumed to account for downward revisions from 50% affordable housing provision in light of site specific circumstances evidenced in those individual planning applications. Therefore, this method allows a comparison across sites without being affected by differing levels of affordable housing provision and avoids importing assumptions and circumstances from other sites that do not apply to the appeal site.
29. During cross examination, Mr Jones made reference to a weighting exercise but this had not been explained in written submissions. In any case, I consider that the figures resulting from the above methodology provide a useful output for comparison without the application of any subsequent weighting that might distort the results. Mr Jones' method of comparison can only be applied to sites that were purchased without planning permission, as is the case for the appeal site, noting that the certainty provided by a planning permission would influence land value.
30. Table 4 of Mr Jones' Proof of Evidence compares the appeal site to 12 others in the area, and clearly demonstrates that the land value attributed by the appellant is far in excess of the average across those sites and the highest value achieved elsewhere. In contrast, the Council's land value figure, whilst higher than the average, is more comparable⁹. There are of course limitations in this method of comparison, not least due to the selection of schemes chosen for comparison and the date of the transactions, particularly as the Council has sought to avoid distortion by using the actual sales values without indexation. However, keeping this in mind, the method does provide a broadly consistent basis on which to compare various sites without large numbers of adjustments that would be likely to result in uncertainty around the results.

⁹ See Table 4, of Proof of Evidence by Andrew Jones

31. The appellant uses a variety of methods to compare transaction evidence in addition to those discussed above, including price per acre, price per square foot, price per habitable room and land value as a percentage of Gross Development Value. Some 27 transactions are analysed, which are said to be all transactions in Islington involving developments of more than 20 units that have occurred since 2010.
32. Having compared the sites using the various methods explained, the appellant draws a conclusion that the site value of £13.26M is not at odds with the market, or at least the sites analysed. However, all the means of comparison tested compare a transacted land value without the adjustment necessary to make the sites comparable to one another. This analysis is highly affected by the varying levels of affordable housing in each case, 16% on average across the larger sample of sites considered, and the other variables I have discussed above. It is also highly pertinent that a large number of the sites selected provided no affordable housing at all, many of which were exempt from such a requirement as they involved changes of use from office to residential under permitted development rights. Many of the variables remain unknown and unaccounted for and so the exercise cannot provide a true picture for comparison to the appeal site.
33. The reliability of the data is further reduced given the number of adjustments made to allow effective comparison, involving adjustment by a range of indices. Whilst this approach can be effective in updating dated values to current day values, applying such adjustments adds a further layer of uncertainty.
34. A total of six transactions from the local area considered, by the appellant, to be particularly comparable are analysed in more detail, though one site (Altitude) was withdrawn during the Inquiry. The analysis of the five remaining sites suffers from the same issues as I set out above. However, the Coppetts Wood Hospital site does provide a level of affordable housing similar to the starting point in policy of 50%, in fact 54%. The site was purchased relatively recently (within the last two years) without planning permission and for a similar number of units (80) in a purely residential scheme. The site was purchased for £7.5M but applying the appellant's chosen indexation, this now equates to around £6.73M, extremely close to the Council's BLV for the appeal site of £6.75M.
35. The appellant specifically identifies this site as being a key comparable and of the five key comparable transactions relied upon, this is the only one which provides a level of affordable housing close to the strategic 50% target. To my mind, this provides support for the Council's position that land value is affected by the amount of affordable housing provision and that, having regard to planning policy and guidance, the land value in that case is reflective. The other key sites tend to have higher values against the methods of comparison put forward by the appellant, but provide much less affordable housing provision. This suggests that the BLV put forward by the Council is not significantly out of kilter with the market, when compared to a comparable site that has similar circumstances, albeit that the Council has increased the BLV from the residual valuation to take account of market evidence.
36. The appellant refers to the Lawn Road, Camden¹⁰ example where the Council's witness, Mr Jones, advised the Council that the EUV was not an appropriate

¹⁰ Planning Ref: 2014/6903/P

- BLV given the low existing use value of the site and its potential for residential development, accepting a market value approach. I have already established that there is more than one way to carry out a viability assessment and that reference to EUV is not always appropriate. However, this particular decision pre-dated the Mayor's Housing SPG and was taken by a different Council where the, now adopted, Development Viability SPD would not have applied in any case. The Tollington Way scheme is in Islington but provided in excess of 50% affordable housing and so this does not alter my conclusions on the appeal site.
37. In my view, the Council's approach is the only method before me that seeks to remove the significant distortion arising from the varied levels of affordable housing provision. Whilst not a perfect means by which to compare market data, this method is to be preferred to the others put forward, recognising the importance of some means of market testing.
38. There is no standard answer to questions of viability, nor is there a single approach for assessing viability. In addition to the guidance contained within the Framework and PPG, there is a range of sector led guidance on viability methodologies, notably the RICS Guidance. This document clearly establishes that site or land value should equate to the market value subject to the assumption that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan. This is consistent with PPG.
39. It seems to me that a purely market based approach to site valuation where there are no demonstrably comparable schemes available for benchmarking seeks to prioritise the third limb of paragraph 023 of the PPG dealing with viability. Such an approach simply allows for a comparison against other transacted bids which may or may not have had comparable attributes such as EUV, AUV or abnormal costs for example. Such an approach diminishes the importance of the first limb of the PPG guidance, which requires land value to be informed by policy. This position aligns with Paragraph 4.1.5 of the Mayor's Housing SPG which states that a market value approach should only be accepted where it can be demonstrated to properly reflect policy requirements and take account of site specific circumstances.
40. The site was purchased by the appellant for £13.25M in May 2013 and the previous appeal established that an updated figure of £13.26M was an appropriate land value at that time. However, as I have noted already, this was in light of the appellant's market evidence in a situation where no opposing evidence had been provided by the Council. The previous Inspector's conclusion also pre-dated the clear guidance now contained in the Mayor's Housing SPG and the Development Viability SPD that the EUV Plus method is usually most appropriate. Whilst neither document precludes other methodologies, in light of my considerations above I consider that the EUV Plus methodology is appropriate in this case and is to be preferred to a purely market value approach, allowing for value to have regard to the market as a consideration, rather than the determining factor.
41. I note that this differs from the approach taken by the Inspector in a relatively local appeal decision in 2014¹¹. However, in that case it is clear that there were a number of alternative potential uses for the site, some of which were valuable options that would allow true optionality to the land owner. That is

¹¹ APP/H5390/A/13/2209347 – 271-281 King Street, London

not the situation that I have established in this case on the evidence before me. Furthermore, the Inspector was clearly satisfied in that case that the BLV put forward by the appellant was in line with the market and development plan policy. As such, I do not consider this example to be directly comparable to the current appeal, not least given the recently adopted guidance on this topic contained in the Mayor's Housing SPG and the Council's Development Viability SPD that was not applicable previously.

42. Nevertheless, the purchase price is an important consideration and I attach moderate weight to the fact that the site transacted for this value and that the previous Inspector found this to be in line with the market, based on the evidence before him. It is not, however, determinative for the reasons I set out above and because the transaction now occurred some time ago. The PPG anticipates a notional land owner when considering viability in the present day.
43. The purchase price was the highest bid in a competitive bidding process during the sale of the site by the Ministry of Defence (MoD). A letter from the selling agent identifies that there were a number of bids within 13% of the winning bid and that the under bidder was just 2% below. The actual number of bids within this range is not specified, nor are the bidders detailed along with their assumptions about the amount, scale and type of development envisaged, expected profit or level of affordable housing provision, amongst other factors. Therefore, whilst I attach limited weight to the fact that a range of bids were placed at this level in 2013, the evidence cannot be relied upon as there remain too many unknowns.
44. The appellant suggests that some weight should be attached to the purchase price because the seller was a public body and bound to achieve best consideration for the site. This is a fact and I do not dispute the position of the appellant or the previous Inspector in concluding that the MoD can be regarded as a rational seller. However, its duties to maximise its return on the site do not, in my mind, support the appellant's position that the purchase price was appropriate; simply that it was the highest bid. There is no duty on the seller to verify that any purchaser has taken account of planning policy and guidance in their aspirations for the site and the amount that they are willing to pay. This is part of the developer's risk.
45. The Council also highlights variance between transacted sales prices and BLV's used for planning purposes. I attach only limited weight to this evidence because the Council has not identified the actual sites used as examples and has not provided evidence capable of proper interrogation by the appellant for confidentiality reasons. However, the one example that is provided relates to a site subject to a recent Section 106BC appeal¹². This highlights a significant discrepancy between the two figures, with a purchase price of £9.63M compared to a BLV at planning stage of £4.3M. The RICS Guidance cautions against a reliance on purchase price in arriving at a site value for assessment of financial viability, including having regard to the assumptions made by a developer, which might be unreasonable or overly optimistic. For the reasons set out above, I attach only limited weight to the purchase price in this case.
46. I have had regard to the unsolicited offer made by a major house builder of £15.75M in May 2015, but this transaction did not occur and provides only an

¹² APP/V5570/S/16/3155272 – 640-650 Holloway Road, London

indication of the value attached by one developer, again, based on an unknown set of assumptions for the development of the site.

47. The appellant provides a Valuation Report (November 2016) undertaken by CBRE on a 'Red Book' basis. This identifies a market value of £15.6M which the report states is primarily derived using comparable recent market transactions on arm's length terms. It assumes affordable housing provision at 16% but does not explain why this figure has been used, other than being similar to the level of provision proposed in a previous planning application. Given the development plan requirement to provide the maximum reasonable amount of affordable housing, the use of 16% provision without any detailed justification is inappropriate given the effect on land value that a higher level of provision would necessarily invoke.
48. Whilst I attach limited weight to the Red Book exercise, which is required to be in accordance with professional standards, it is a market valuation which does not, in my view, adequately demonstrate proper consideration of, or give adequate effect to, the guidance in PPG or the requirements of the development plan. I do not accept the appellant's position that the level of affordable housing provision is not relevant to determining land value, as any notional willing land owner is required to have regard to the requirements of planning policy and obligations in their expectations of land value. It is unknown what the expectations of the MoD were in this case, but it would obviously not refuse bids above that expectation.
49. The appellant's case relies to a large extent on the fact that the development plan does not require 50% affordable housing provision on individual sites. However, reliance on policy compliance at any level of provision underplays the strong policy imperative to ensure the 'maximum reasonable' provision with the strategic target in mind. The clear and unambiguous policy position, clarified by the guidance contained in the Council's Development Viability SPD is that 50% affordable housing provision is the starting point and that any provision below that level, whilst capable of being policy compliant, will require robust justification.
50. The majority of the evidence I have seen is not adequately comparable to fulfil this requirement. That which I have considered to be of value, demonstrates that the Council's BLV is not out of kilter with the market. In addition, this reflects planning policy requirements and would provide both a competitive return to the land owner and developer. Therefore, I consider that £6.75M is the appropriate BLV in this case. I have had regard to the need to encourage rather than restrain development, and the need for flexibility in the application of planning policy, but this should not be at the expense of delivering much needed affordable housing. Nor should an inflated land value be subsidised by a reduction in affordable housing. The approach that I have adopted applies the appropriate policy balance and I see no reason why it should restrain development.

Sales Values

51. The appellant suggests an average private residential sales value of £760/sq ft compared to the Council's figure of £800/sq ft. Whilst residential purchasers are more likely to buy on the basis of the unit price, with a budget in mind, both parties agree that the £/sq ft value serves as a useful basis for comparison. The difference in values arises from the respective parties'

- analysis of comparable market evidence from the local area and from their respective judgements on pricing the appeal scheme units based on a range of area and unit specific considerations.
52. A range of comparable schemes have been identified by the parties, the closest to the appeal site being the Harper Building, a conversion to flats from commercial use on Holloway Road; and the Land to the rear of the Odeon, a new build flatted scheme on Tufnell Park Road. Whilst a number of other developments have been referred to from further afield, I consider these to be the most relevant for comparison purposes given the close proximity to the appeal site and the relatively recent transaction data available.
53. Some reference has been made to second hand units, but I do not consider these to be particularly helpful given the premium that is generally expected to be paid for new build housing stock. The Council relies in a number of places on asking prices and these are clearly less reliable as a means of comparison, being demonstrably higher than completed transactions.
54. Sales data is provided for each of the key comparable developments. The average sale price achieved at the Harper Building is £868/sq ft according to the appellant, who utilises actual sale price data. For the rear of the Odeon, the appellant relies on a mix of actual sales data and asking prices but using this method, the average price is £822/sq ft. The appellant accepts that there is some consistency in sales values between the two schemes. The evidence provided, including actual sales evidence is highly supportive of the Council's average rate. It is also notable that many units transacted at levels significantly above £800/sq ft.
55. There is disagreement between the parties in relation to market conditions since the transactions identified took place. The Council suggests that there has been an increase in sale prices and there is some support for this view in both the Land Registry House Price Index (HPI) and the Knight Frank UK residential market update (November 2016) with particular reference to Islington. The appellant takes a contrary view, suggesting a fluctuating but flat market, but this refers largely to second hand stock which can attract a different market. Neither party suggest that there has been an overall downwards trend in new build house prices in this area recently. Therefore, I consider that the transaction data available can be viewed as a worst case scenario in the current market. In reality, prices are likely to have risen slightly.
56. There is wide variation between the £/sq ft achieved across units of different sizes, generally with the larger units achieving a lower rate. The appellant suggests that the reduction in £/sq ft value with size is pertinent because the appeal properties tend to be larger than those of the comparison schemes, including a large proportion of larger two-bed four-person units, meaning that they are likely to achieve lower values. There is acceptance that the appeal units are, in general, larger but there is little evidence to suggest that the appeal units are oversized and I place little weight on the fact that many units exceed the nationally prescribed minimum space standards contained in the Technical Housing Standards (March 2015). These are minimum standards (where properly adopted) and provide no indication of maximum space standards or the norm within the market.

57. Many of the smaller units within the Harper Building scheme are in fact smaller than these minimum standards notwithstanding that they have commanded a premium. Achieving the minimum space standards could, therefore, be seen as a positive factor for future purchasers that would raise the value of the units and the £/sq ft value. Also, it is notable that the average figure for one-bed units in the appeal scheme is affected by a small number of larger units, the majority being comparable to other schemes. Whilst the evidence does suggest that smaller units achieve a higher £/sq ft value, I do not consider that this is a significant factor in this case, as the proposed unit sizes are not excessive in comparison to others. Even if the size of the proposed flats in the appeal scheme were to adversely influence the £/sq ft value achieved, there is some scope for reduction whilst remaining in line with the Council's estimate.
58. Both parties have provided a schedule of prices for each individual unit within the appeal scheme that takes account of its individual circumstances. The greatest discrepancy arises from the one-bed two-person flats, which account for a significant proportion of the proposed units. This is partially affected by the appellant's view that these units are larger than they need to be and will not therefore attract the £/sq ft premium that might otherwise be possible.
59. For this reason, the appellant highlights the importance of considering the relative value of different types of unit. I agree that this is important, but the average prices recorded at the Harper Building are £1067/sq ft for studios, £881/sq ft for one-bed, £859/sq ft for two-bed and £815/sq ft for three-bed units. For the rear of the Odeon, the average prices recorded for one-bed units is £847/sq ft and £813/sq ft for two-bed units. Again, this is clearly more comparable to the Council's expected value than the appellant's.
60. Each unit has also been assessed based upon the position within the site (those furthest from the road being more valuable), level within the block (upper storeys agreed to be more valuable) and proximity to features such as bin stores, lifts, and orientation to sunlight amongst other matters. These are all highly subjective matters but can all influence likely sales values. They are also matters that are difficult to compare with other sites because each site is different. Both parties have adjusted their prices to account for the relative position within the block such as proximity to road and storey level, matters which are more transferrable between schemes.
61. All schemes will have a range of units that command different sales values for various reasons. This serves to highlight the benefit of using average values for comparison because, whilst like for like comparisons on individual units can be useful where available, this is rarely the case. Comparing average values on relatively similar schemes accounts for discrepancies between individual units. This gives me some comfort in utilising the average sales data for the comparable schemes discussed above, alongside average values for the appeal scheme. I have already determined that the Council's suggested average value better reflects the evidence on the comparable schemes and none of the individual values attributed appear unreasonable in light of this evidence.
62. The appellant identifies a range of 'weaknesses' from which the appeal scheme allegedly 'suffers'. This includes the proximity to local authority and low cost housing. Whilst there is a notable presence of this type of accommodation in the area, it is generally well-maintained and is relatively pleasant in appearance. Furthermore, an area of private housing at Moriarty Close is

directly adjacent to the site and I do not consider that the area could be described as dominated by low cost housing. Whilst a number of residential areas, including Moriarty Close are gated, there is no evidence to suggest significantly high crime rates in the area, nor is that the impression that I got on visiting the site.

63. It is also pertinent that the proposed development is of some scale, with areas of open space between blocks. I consider that this represents an opportunity to create its own environment, particularly for the large number of units that will be set back from the road frontage. The scheme would involve good quality modern architecture and would be likely to improve the image of the area. Arguably, the proposed development has a better opportunity for influencing its environment and mitigating the effect of road noise and disturbance than the Harper Building, which is a conversion on a busy road frontage, close to a railway line and other surrounding streets. I have also had regard to the recognised plans for redevelopment of the Holloway Prison site for around 5000 units. Clearly this has great potential to improve the appearance of the area and remove the appellant's concerns of negative connotations due to the presence of the prison.
64. There is a high volume of traffic on Holloway Road, close to the site, but this would equally impact upon units at both the Harper Building and the rear of the Odeon. The appeal site has a relatively small site frontage so the majority of the units would be set away from Parkhurst Road and the nearby influence of Holloway Road. It is also likely that the proposed affordable housing would be accommodated within the blocks closest to the road (blocks E and F) and this would minimise the effect on private sales values.
65. Concerns regarding the lack of modern retail offerings in the area and an abundance of tertiary low quality retailers are again equally relevant in relation to the comparable sites in the vicinity, Holloway Road providing the principal shopping area. In any case, I noted a mix of national and independent shops in the area and a good variety of retail and other commercial offerings. This, and the relatively close proximity to Holloway tube station (albeit slightly further away than from the Harper Building) are likely to be viewed as positive attributes to future purchasers. This will also go some way to offsetting the lack of car parking within the scheme and many purchasers would not expect such provision in such an accessible urban area.
66. It is also important to note that the appeal scheme benefits from communal open space and individual balconies in some cases. These are features that the Harper Building does not benefit from and which typically demand a premium in densely populated urban areas such as this in my experience.
67. Whilst there are some aspects of the appeal scheme that might not compare favourably to the other comparable schemes, I have seen nothing that leads me to believe the Council's expectations are overly optimistic. To the contrary, the most comparable market evidence available strongly suggests a local precedent for values more comparable to that purported by the Council as opposed to the appellant's figure. I also note that the Council's figure of £800/sq ft is very similar to the £795/sq ft used by CBRE in their Red Book appraisal, further supporting my conclusion.

Construction Costs

68. At the beginning of the appeal process there was agreement between the parties with regards to construction costs. However, during the course of the appeal the appellant re-evaluated the costs position and revised its figure upwards to £23,650,396 having carried out a fresh costs analysis using the same methodology previously accepted by the Council. As a result, both parties called a witness to give evidence on construction costs and the Council's position was also revised upwards to £22,164,985. This resulted in a difference in position of £1,485,411, around 6%. Despite agreement that this level of difference could be considered to fall within accepted tolerances for professional costs appraisal undertaken by different professionals, this remained an issue between the parties and I heard a significant amount of evidence on the matter.
69. Whilst there was potential for this matter to influence the outcome of the appeal, that is no longer the case given my conclusions on the matters of BLV and sales values. Even if I were to accept the appellant's position with regards to construction costs, it would not alter the outcome in respect of viability, since it is clear that a greater amount of affordable housing could reasonably be provided. Noting also, that construction costs change over time, as aptly highlighted during the course of the appeal, there would be little value in me reaching a detailed conclusion on this matter.

Affordable Housing Conclusion

70. Having determined that the Council's BLV and sales values are appropriate, it is clear that the appeal proposal would not provide the maximum reasonable level of affordable housing in accordance with Policies 3.12 of the LP and CS 12 of the CS. This is even when considering the appellant's proposed provision of 10% by unit which it considered to be unviable.

Planning Obligations

71. Policy 8.12 of the LP requires that development proposals address strategic as well as local priorities in planning obligations. Policy CS 18 of the CS states that the Council will seek contributions from new development to ensure that the infrastructure needs associated with development are provided for, and to mitigate the impacts of development. Policy DM9.2 of the Development Management Policies (June 2013) (DMP) sets out that planning obligations will be used to deliver sustainable development and, amongst other things, be used as necessary to make development acceptable in planning terms. The Council's Planning Obligations (Section 106) Supplementary Planning Document (December 2016) sets out detailed guidance on the use of planning obligations.
72. The appellant has provided a completed Unilateral Undertaking (UU) that makes provision for a range of planning obligations. Many of these are agreed between the parties and, given my conclusion on the first main issue, it is not necessary for me to consider these in more detail. However, there are a number of obligations that are in dispute and I consider these below.

Viability Review Mechanism

73. In support of the requirement to achieve the maximum reasonable level of affordable housing, the LP advises that boroughs should consider whether it is

appropriate to put in place provisions for reappraising the viability of schemes prior to implementation. To take account of economic uncertainties, and in respect of schemes presently anticipated to deliver low levels of affordable housing, these provisions may be used to ensure that maximum public benefit is secured over the period of the development.

74. The Mayor's Housing SPG further states that in order to maximise affordable housing output (and other public benefits) on schemes with long build out times, at times of economic uncertainty and/or where there are significant changes in costs or values, the LP provides support for the use of contingent obligations and review mechanisms.
75. PPG is clear that viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances¹³. However, it does allow for consideration of changes in the value of development and changes in the costs of delivery where a scheme requires phased delivery over the medium and longer term. Whilst the appeal scheme is likely to be undertaken in a single phase and could come forward relatively quickly, there has been a significant change in construction costs even during the course of the appeal and many of the other variables within the viability appraisal are highly sensitive to changes over relatively short periods of time in the London housing market. Whilst the policy and guidance discussed does not specifically anticipate the need for review mechanisms in smaller scale development, it does not preclude it.
76. The Council's Development Viability SPD, adopted since the previous appeal decision, requires that viability review mechanisms are in place for all major residential applications which do not meet the strategic affordable housing target and where policy requirements are not met in full at the time permission is granted. Any such scheme is to be subject to an advanced stage review to ensure that viability is accurately assessed and up to date. Given the highly changeable nature of the inputs into a viability appraisal and the very low level of affordable housing proposed by the appellant in the current scheme, it seems to me that there is good reason for requiring such a review in this case.
77. I do not accept that such a review mechanism should present any commercial difficulties in terms of lending or certainty as the mechanism would only require the provision of additional affordable housing (in the form of a financial contribution) where surplus profit became available above the target level agreed, in this case 20%. This level of profit, whilst typical, is in excess of the 18% sought in the current appeal and significantly above the level expected by the appellant for its scenario of 10% affordable housing provision. Furthermore, any surplus profits would be split 60%/40% between an additional affordable housing contribution and additional profit to the developer to provide continued incentive to increase the value of the development. For this reason, the review mechanism is no substitute for proper appraisal at the application stage.
78. The purpose of the mechanism is to ensure maximum public benefit from the development. This is an intervention in the free market by the planning system in the public interest so as to contribute to meeting the pressing need for affordable housing. Under such circumstances it is not at all appropriate to expect the Council to share the developer's risk, as suggested by the appellant.

¹³ PPG Ref. ID: 10-017-20140306

The review mechanism operates so that the developer's profit is protected and so it will only have any effect where surplus profits are available. Accordingly, I can see no justification for the appellant's provisions within the UU to set the developer's profit level at 22.5%. I can also see no justification for provisions to share surplus profit in advance of the target affordable housing level being achieved as this would allow for additional profit without the development first having delivered the maximum reasonable level of affordable housing, for which there is a pressing need. These matters alone render the submitted UU incapable of securing an appropriate review mechanism were the appeal to succeed.

79. I recognise that advanced stage review mechanisms have been rejected in previous appeal decisions¹⁴ but I do not know the full circumstances of these cases and insufficient information has been provided to allow me to make any direct comparison with the appeal proposal. Furthermore, the Council has identified a number of contrary decisions where such reviews have been supported on appeal¹⁵.
80. There is disagreement on the detailed wording of the review provisions and the appellant has sought to significantly alter the approach set out by the Council in accordance with the Development Viability SPD. Given my conclusions on the first main issue, the UU will not take effect and so I need not consider all of these matters in detail.
81. The UU also makes provision for a pre-implementation review in circumstances where the scheme is not substantially implemented within 24 months. The principle of this type of review was considered by the previous Inspector and found to be appropriate. I have no reason to take a different view on this matter but note that the current UU seeks to increase the period before which the review would be required from 12 months to 24 months.
82. This is said to be a response to wording in the Council's Development Viability SPD which has been used within the UU, referring to 'substantial implementation' within the time period, as opposed to 'implementation'. This is explained within the SPD to mean demolition, excavation, foundations and basement works, representing a more advanced stage of development than simple implementation. On this basis, I consider the increased timescale to be reasonable in this case.

Preventing Wasted Housing Supply

83. In light of the recognised need to boost significantly the supply of housing and the particular pressures facing Islington, the Council has sought to address a concern that new build dwellings are being purchased by investors that wish to benefit from rising capital values, simply holding on to the property without occupation ever occurring. In doing so, it has adopted the Preventing Wasted Housing Supply Supplementary Planning Document (July 2015). This seeks to require that all residential developments over 20 dwellings be subject to a planning obligation preventing such practices and ensuring that new dwellings are available for habitation by those that need them.
84. The SPD refers to a range of third party surveys from various sources and includes the Council's own analysis of data from the electoral register,

¹⁴ APP/Q1255/S/15/3005876, APP/E5330/S/16/3143743, APP/G5180/S/16/3144914 & APP/N0410/A/13/2207771

¹⁵ APP/T5150/A/14/2219081, APP/E5330/A/13/2198251, APP/W3710/A/12/2176750 & APP/U5930/A/12/2173087

indicating that a large proportion of new build properties are not occupied by anyone registered to vote. There is some evidence to support the Council's contention but it is by no means conclusive and Ms Gurda confirmed during her evidence that the Council was unable to quantify the number of houses affected by this scenario.

85. The obligation would require that dwellings are fully furnished and equipped for use as a home and that dwellings are not left unoccupied or unused for a period of 3 months or more. This would need to be highlighted in all leases, sub-leases and marketing and sales literature for the property so that any future occupier was fully aware. To allow these matters to be verified, owners would be obliged to provide reasonable evidence to the Council on request.
86. Aside from the difficulties the Council is likely to face in gathering the evidence necessary to conclusively determine that the property is unoccupied in contravention of the terms of the obligation, the enforceability of any such obligation is highly questionable. The only remedy would be to pursue the breach through the courts. This would mean asking the courts to require occupation or, alternatively, sale of the property. These would be quite extraordinary steps for a court to take and I have been provided no evidence to suggest any precedent.
87. Equally concerning is the potential impact of the provisions on genuine home owner occupiers that may wish to take extended holidays or work away for periods in excess of 3 months for example. The Council suggested during evidence that it would be flexible about such matters but there could not be any firm reflection of such flexibility in a planning obligation whilst continuing to have the desired effect. Ultimately then, it would become a matter for the Council to decide which circumstances it deemed an acceptable reason for leaving the property unoccupied. This would result in significant uncertainty for home owners and could well dissuade potential purchasers and/or lenders.
88. I can appreciate the Council's concerns and intentions but the proposed obligation would be a significant intervention in the rights of property owners and I am not convinced by the evidence available at this time that this is justified, or that the obligation could be properly and fairly enforced. As such, this aspect of the obligation would not accord with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and I afford it no weight in my consideration of this appeal.

Public access through the site

89. The Council is seeking a publically accessible through route across the site to link Parkhurst Road with Tufnall Park Road. This is a matter considered in the previous appeal where it was determined that provision was not necessary and that securing scope for future provision was sufficient. Again in this case, the absence of the route does not form a reason for refusal and it is not suggested that its absence would be sufficient to refuse planning permission. Therefore, I have no reason to reach a different conclusion from that of the previous Inspector and find that direct provision of the route is not necessary to make the development acceptable in planning terms. As such, it does not meet the requirements of Regulation 122 of the CIL Regulations and any obligation would be restricted to the future proofing of the route.

90. I note that the Metropolitan Police have now provided more favourable comments on an alternative through route suggested by the Council but that does not alter my conclusions on this matter.
91. The appellant has offered a sum of £20,000 towards the provision of the route but there is no evidence provided as to how this sum has been calculated or exactly how it would be spent. In any case, given my conclusion on the matter above, the contribution is not necessary.

Conclusions - Planning Obligations

92. The submitted UU would not ensure that the maximum reasonable level of affordable housing is achieved using an appropriate review mechanism. As such, it would be in conflict with Policy 8.12 of the LP which seek to address strategic priorities, Policy DM9.2 of the DMP which seek to deliver sustainable development and the Council's Development Viability SPD which requires advanced stage viability reviews for all major residential applications which do not meet the strategic affordable housing target and where policy requirements are not met in full at the time permission is granted.

Other Matters

93. The appellant has identified a range of benefits that would arise from the development, one of which being the delivery of housing. In the context of the Framework's objective to boost significantly the supply of housing, I attach this matter significant weight, notwithstanding the Council's undisputed position that it can demonstrate a deliverable five year housing land supply. I have also had particular regard to the need to encourage rather than restrain development and to apply planning policy flexibly where viability is in question.
94. However, it is also important to ensure that new development is sustainable, delivering the maximum reasonable level of affordable housing in all cases so as to meet the needs of all. I note the appellant's position that no affordable housing will come forward if the development is refused planning permission but this argument could be applied to any residential case and is not justification for allowing development that does not properly meet policy requirements and objectives.
95. There would be some improvements to the character and appearance of the area and some financial benefits to the Council through increased Council Tax receipts and the New Homes Bonus. However, the benefits identified, even cumulatively, do not outweigh my conclusions with regards to the main issues in this case.

Conclusion

96. The proposed residential development would accord with a number of development plan policies and objectives, particularly those that promote the delivery of housing. However, the appeal proposal would not provide the maximum reasonable level of affordable housing and the submitted planning obligation does not provide a suitable means for a viability review. This would be in conflict with Policies 3.12 and 8.12 of the LP, Policy CS 12 of the CS, Policy DM9.2 of the DMP. Having had regard to the development plan as a whole, the appeal proposal is in clear conflict.

97. In light of the above, and having considered all other matters, the appeal is dismissed.

Michael Boniface

INSPECTOR

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Jake Beaumont-Nesbitt

Local resident

Marian O’Gorman

Local resident

Marianne Delon

Local resident

Hannah Gousy

Crisis

Pauline Duffy

Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Planning Conditions (Day 1) with comments from parties
- 2 Appellant's Opening Submissions
- 3 Opening Submissions on behalf of the London Borough of Islington
- 4 Extract from PPG (Paras. 001-004 on Viability)
- 5 Mayor of London interested party statement
- 6 Crisis Written Statement for Planning Inquiry
- 7 BPS and Savills Unit Pricing Schedule (replacement for Appendix 2 of Supplementary Proof of Andrew Jones)
- 8 Unit Pricing comparison
- 9 House Prices Index (downloaded 27 February)
- 10 BPS Appraisal Summary (25 February 2017)
- 11 Unit price comparisons
- 12 Extract from PPG (Viability section)
- 13 BPS review of viability for 61 Craven Park Road
- 14 Update to Summary Proof of Evidence of John Wachter
- 15 BPS Appraisal Summary (residual appraisal assuming 50% AH)
- 16 E-mail from Ed Telepneff to Patrick Robinson (20 December 2016) concerning the draft Unilateral Undertaking
- 17 Site Value diagram (March 2017)
- 18 Comparable evidence in property valuation, RICS (IP 26/2012)
- 19 RICS response to the GLA's Draft Affordable Housing and Viability SPD
- 20 Appellant's Response to the Mayor of London's Statement
- 21 Appraisals requested by the planning inspector – Residual Approach
- 22 Section 106 Planning Obligations: Summary Schedule setting out the parties respective positions at close of the inquiry
- 23 Draft Unilateral Undertaking
- 24 Closing Submissions on behalf of the London Borough of Islington
- 25 Closing Submissions on behalf of the Appellant
- 26 Completed Unilateral Undertaking dated 27 April 2017