



Appeal Decision

Hearing Held on 8 August 2017

Site visit made on 8 August 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 31 August 2017

Appeal Ref: APP/V5570/W/17/3173204

Legard Works, 17A Legard Road, Islington, London N5 1DE

- 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 Paul Whitley of Re-Creo (Legard Works) Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2583/FUL, dated 14 June 2016, was refused by notice dated 6 October 2016.
 - The development proposed is the creation of 10 residential units (Units A1, A2, A3, A4, A5, A6, A7, A8, A9 and B6 by way of both extensions to the existing buildings and change of use of the existing floorspace. The demolition of a single storey building to create a central landscaped area. An extension to an existing residential unit (Unit B5) to provide an additional double bedroom and external alterations including minor remodelling and repositioning of fenestration.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A second appeal¹ has been made for a redevelopment of the appeal site and this was considered at the same hearing. This will be the subject of a separate decision letter. At the hearing I was provided with additional evidence from both the Council and appellant. These documents are listed at the end of this decision. Following adjournments I accepted the late evidence as no party was prejudiced by this course of action. This is because it did not significantly alter the proposal, was relevant to my considerations and the parties present were able to address it.
3. During the hearing the Council confirmed that there were some errors in the reasons for refusal with a number of relevant policies omitted and an erroneous reference to insufficient daylight to neighbouring properties. I have considered the appeal on the basis of these corrections.

Main Issues

4. The main issues in this appeal flow from the Council's decision notice and can be summarised as follows: 1) The cumulative effect of the proposed development on the living conditions of neighbours with particular reference to sunlight, privacy, outlook and noise and disturbance; 2) Whether the proposal would provide adequate living conditions for the future occupants with particular reference to

¹ APP/V5570/W/17/3178307

sunlight, outlook, inclusive access and privacy; and 3) The effect of the appeal scheme on the supply of local employment floor space.

Background

5. Legard Works is a roughly triangular shaped employment site accessed from Legard Road along a narrow entrance track. The site includes a workshop and office building along the eastern boundary of the appeal site. This building is Block A. Along the southern boundary of the appeal site is a second, smaller building and this is Block B. The site used to have a covered central courtyard and a detached toilet block (Block C). These structures have been demolished as has the western single storey section of Block B.
6. To the north of the appeal site is Century Mews, a small development of 'contemporary' town houses. To the south is Pitt House, which is a modern flatted development recently completed and arranged over five storeys but with a sunken ground floor. To the immediate west of the appeal site is a terrace of three properties (15 - 18 Elphinstone Street) and the rear garden of 1 Elphinstone Street. The appeal site is on notably higher ground than the neighbouring properties to the north and west. To the immediate east is a terrace of properties fronting Legard Road (Nos 17 -31) with rear gardens adjacent to Block A.
7. It is important to note at this stage that a residential prior approval² has been granted by the Council for the change of use of the existing floor space in Block B to create five homes³. Since the Council refused the appeal scheme in October 2016 a residential prior approval has been granted⁴ for the change of use of the first floor of Block A to create four homes. Subsequent to this, planning permission was granted for further operational development including the repositioning of windows.
8. The effect on the living conditions of residents is not a matter for consideration through the prior approval process. Nevertheless, this does not alter the fact that the residential change of use is a lawful fall-back position. This is because these permissions could be implemented in the event the appeal was unsuccessful. I consider this to be a likely prospect as the proposals are set out in some detail, have been the subject of numerous applications and works have commenced⁵. This fall-back position is therefore a material consideration of significant weight which needs to be considered when addressing the shortcomings alleged by the Council. I have set this out at the outset of this decision letter as it is a recurring theme I return to throughout my decision.

Reasons

The cumulative effect on the living conditions of neighbours

The effect on the outlook from the 17 - 31 Legard Road and Pitt House

9. The rear gardens of 17 – 27 Legard Road are short and the outlook from both the gardens and those internal rooms with a westerly aspect are dominated, and thereby compromised, by the eastern wall of Block A. As such, the outlook, and

² Under Part 3, Class O of the General Permitted Development Order 2015 (as amended)

³ Council Reference P2016/2554/PRA approved July 2016

⁴ Council Reference P2016/4428/PRA

⁵ Builders are on site undertaking works to both Building A and B

thus living conditions, of the occupants of these properties are sensitive to cumulative change⁶.

10. It is unlikely the roof extension to Block A would be visible from the main body of the gardens of 19 – 27 Legard Road due to the eaves height of Block A and the shallow depth of much of the gardens. The new 'cat slide' roof would however dominate the entire garden of 17 Legard Road and much of that serving the occupants of 19 Legard Road. Moreover, the roof extension to Block A would be visible from a combination of the ground, first and second floor rooms of 17 - 27 Legard Road and the sections of the rear gardens within side returns.
11. The combined effect of the extra height and length of the roof extension, and its proposed siting relative to the properties in Legard Road, would result in the outlook from these dwellings being compromised further than they already are. The sense of Block A towering over these properties would be increased and this would reinforce the existing presence of Block A as an unavoidable and overbearing structure. Such an impact would significantly harm the living conditions of the occupants of 17-27 Legard Road. The pitch of the roof extension would be angled away from the boundary and this would soften the impact. However, this would not provide sufficient mitigation given the overall height of Block A in combination with the proposed roof extension.
12. There is some merit in the appellant's proposition that access to natural daylight, and views of the sky, are components of outlook. The proposed roof extension to Block A would not be harmful in these respects. However, a consideration of outlook has some subjectivity and factors such as the height of existing and proposed structures/buildings, the distances in-between them, the surrounding context, the existing arrangement of the built form and the magnitude of change are factors that need to be weighed together.
13. In this instance, the proposed roof extension would add to an already tall structure located in close proximity to dwellings. It has not been adequately demonstrated that the proposed arrangement is typical of the area and, whilst the magnitude of change may not be great, it is significant given the existing impacts. These factors are not outweighed by the residual access to natural daylight and views of the sky that would remain in spite of the proposed roof extension.
14. The ground floor flats in Pitt House are partially sunken and located in close proximity to Blocks A and B. The outlook from the ground floor flats of Pitt House is already restricted and, like the properties in Legard Road, is sensitive to further change. The roof extensions to both Block A and B would be flush with the lower floors and this increase in height without any relief would increase the sense of bulk and massing. The combined effect of the increase in height and the lack of relief in the massing would result in the roof extensions harming the outlook from the adjacent flats on the lower floors of Pitt House.
15. The outlook from the garden of 1 Elphinstone Road (No 1) would be affected by the construction of Unit B3 but I was advised at the hearing that this already has planning permission. In any event, the outlook and privacy from No 1 would be improved by the appeal scheme relative to how it was. This has been demonstrated by the visualisation on page 59 of the Design and Access Statement which shows a soften angle to the roof and fewer windows.

⁶ Nos 29 and 31 Legard Road do not face directly onto Block A and therefore the proposed alterations would not harm the living conditions of the occupants of these two properties.

The effect on sunlight penetration into the rear gardens of 17 – 31 Legard Road

16. The appellant provided evidence at the hearing from Mr Fogarty of Cundall⁷ that considered the appeal scheme's effect on the extent of sunlight that would penetrate the rear gardens of Nos 17-31 Legard Road. This additional information considered the effect on a garden by garden basis and therefore corrects the failings in the previous assessment submitted with the appellant's appeal statement, which considered the impacts collectively.
17. The relevant Building Research Establishment (BRE) guidance⁸ suggests that a new development should be designed so that the level of sunlight entering neighbouring properties does not fall below 20% of the pre development level when measured on the 21 March. The new data submitted at the hearing demonstrates that most of the adjacent properties in Legard Road would experience a loss of sunlight as a result of the appeal scheme but the percentage reduction on the current situation would be in the region of 1.3% to 6.6%. The occupant of 19 Legard Road would be the most effected, with a reduction of 13.4%. There is nothing before me to suggest the methodology applied by Mr Fogarty was incorrect and therefore I afford it significant weight as an indication of the appeal scheme's likely effect on sunlight.
18. Following a short adjournment to consider the data, the Council confirmed that the effect on sunlight demonstrated in the memorandum was not sufficient to refuse the planning application. In effect, the new evidence had alleviated its concerns although the Council did not consider the effect should be disregarded. Nevertheless, I am content the new evidence demonstrates that the magnitude of change would not be harmful on the living conditions of the occupants of 17-31 Legard Road.

The privacy of the occupants of Pitt House, Elphinstone Street and Century Mews

19. The appeal scheme would include roof terraces on the northern elevation of Block A serving the future occupants of Units A9 and A7. These are not consented as part of the residential prior approval. These elevated terraces would provide views towards 4 Century Mews. Having stood outside this property, and with regard to the photographs taken from inside it and submitted at the hearing, I am satisfied the proposed roof terraces would result in a harmful level of overlooking of the ground and first floor. This would harmfully reduce the level of privacy currently afforded the occupants of 4 Century Mews. Given the angled orientation, this would not be the case with 5 Century Mews.
20. Pitt House is a block of flats located to the south of Block A and within 18 metres of its southern elevation⁹. The appeal scheme includes a south facing window and roof terrace in Unit A8. Both the window and the terrace would allow future occupants of this property an aspect towards the windows of Pitt House. The proposed window would be narrow and would be obscured at the bottom. Nevertheless, the obscuring would angle the aspect through the window upwards, but this would not prevent direct and unreasonable overlooking of the upper floor windows in Pitt House and overlooking in reverse into Block A. However, it would be possible and reasonable to provide a privacy screen to prevent southern views from the outdoor terrace.

⁷ Memorandum dated 7 August 2017

⁸ Site layout Planning for Daylight and Sunlight 2011

⁹ 18 metres is the Council's distance standard for space between windows

21. First floor windows within Unit A5 serving a bedroom and ensuite would face south towards Pitt House and this would result in harmful overlooking. However, the Council were unable to demonstrate that the windows in the appeal scheme would result in a materially worse effect on the privacy of the occupants of Pitt House than the residential prior approval. The presence of this fall-back position is a material consideration that justifies the harmful overlooking that would occur from the first floor windows in the southern elevation of Block A.
22. For similar reasons, the overlooking that would occur towards Pitt House from the south facing windows within Unit B5 does not justify the appeal being dismissed and a privacy screen would prevent overlooking from the terrace serving Unit B5. The south facing window in Unit B6 would be obscured and a privacy screen would prevent overlooking towards Pitt House from the roof terrace serving this flat. Privacy screens are a common feature in the more recent development around the appeal site and in this respect their use would be consistent.
23. Residential windows in the northern elevation of Block B would look towards the rear gardens and elevations of 15-18 Elphinstone Street but the first floor windows are approved through the residential prior approval and the second floor window would have the lower section obscured. Given the siting of the Elphinstone Street properties on notably lower ground, this mitigation through design would prevent direct overlooking.
24. The removal of Block C has (and would) opened up views from the first and proposed second floors of Block A towards the rear gardens and elevations of 15-18 Elphinstone Street and 6 Century Mews. The intervening distance would be below the Council's 18 metre standard towards the northern end of Block A. Nevertheless, the proposed second floor roof extension would be set back from the eaves and behind a parapet wall and this, along with the change in ground levels and the position of windows, would ensure the aspect from the second floor of Block A would not be angled downwards and thus include the private space of 15-18 Elphinstone Street or 6 Century Mews.
25. Again, as the first floor of Block A has the fall-back of a residential prior approval, and it has not been demonstrated the appeal scheme would have a greater effect than this fall-back position, any overlooking from within the first floor of Block A towards Elphinstone Street or 6 Century Mews, which would be more intense than the employment use but similar to the residential prior approval, could not reasonably feature as a reason to dismiss the appeal.

Noise and disturbance from the use of the proposed roof terraces and the siting of extraction equipment

26. Following discussions at the hearing it was agreed that a planning condition could be imposed in the event the appeal was successful to secure details of how fumes would be extracted from the kitchens and bathrooms within Block A. As such there would be no odour impacts on the occupants of Legard Road.
27. Elevated terraces are common place additions to properties in the vicinity of the appeal site, including properties within Pitt House, Century Mews and Elphinstone Road. I have not been presented with substantive evidence to suggest these existing terraces have presented a problem to the living conditions of neighbours through noise and disturbance. In this context, it is unclear why those proposed at the appeal scheme would.

28. Furthermore, terraces are encouraged within the Council's guidance as a means of providing outdoor amenity space. For these reasons the provision and use of elevated terraces within the appeal site would not be inherently harmful to neighbouring residents through any noise and disturbance arising from their reasonable use. It is also important to note that the area around the appeal site is a dense and busy residential area and any noise needs to be considered in this context, including any noise from deliveries and associated vehicles such as taxis.
29. Although not raised by the Council, interested parties are concerned by the position of the refuse enclosure and the proximity of the bathroom and bedroom in Unit A1 to the garden of 19 Legard Road. The refuse enclosure would run along the entire flank of 17 Legard Road and therefore noise and activity from residents using this space would arise. However, it would be possible to enclose the area and this would attenuate some of the noise. Furthermore, the use of the bin store would be intermittent. On balance, the siting and use of the bin store would not harm the living conditions of neighbours. The bathroom and bedroom in Unit A1 would be insulated to modern standards and therefore I am satisfied the use of these rooms would not harm the living conditions of the occupant of 19 Legard Road.

Conclusion on the effect on the living conditions of neighbours

30. In conclusion, the appeal scheme would result in a loss of privacy for some of the occupants of 4 Century Mews. The outlook from the adjacent properties in Legard Road and the neighbouring ground floor flats in Pitt House would also be compromised. As a consequence, the appeal scheme would significantly harm the living conditions of neighbours and this would be an impact inconsistent with the requirements of Policies 3.5, 7.6 and 7.15 of the London Plan 2015 (LP) and Policy DM2.1 of the DMP¹⁰.

The adequacy of the living conditions of future occupants

The living conditions of the occupants of Unit B6

31. There would be the potential for an unreasonable extent of inter overlooking between the terrace serving Unit A6 and the living area of Unit B6, which would have large east facing windows. The appellant's solution to this is to obscure much of the east facing glazing in unit B6. This would be in addition to the windows in the north and south elevation, which would be partially obscured. This would restrict the outlook from the living area of Unit B6 to an area over the access drive into the site, from where it would be possible to look into the flat. The extent of obscured glazing that would be necessary to prevent overlooking and protect the privacy of future occupants is excessive and would provide an oppressive internal environment. As a consequence, the occupants of Unit B6 would have inadequate living conditions.

The effect on the privacy of future occupants

32. I have previously concluded that the appeal scheme would result in unreasonable overlooking of 4 Century Mews from Units A7 and A9. The same impacts could be suffered in reverse. However, it is unlikely occupants of 4 Century Mews would be able to see into Units A7 and A9 with any overlooking being limited to the terraces. Given that the terraces would be in a dense urban location where there is a

¹⁰ Islington Local Plan Development Management Policies 2013

reduced expectation that outside space serving flatted schemes would be entirely private, I do not consider this to be a harmful impact.

33. It would be possible for the occupants of Pitt House to see into the first floor of Block A and the southern rooms of Block B (where there is no obscured glazing). However, it has already been established that the flats proposed within the existing floor space of Block A and Block B have a residential prior approval and these would be implemented if the appeal scheme was unsuccessful. As there is a reasonable prospect of the prior approval scheme materialising the appeal scheme would have to be worse than this fall-back position to result in planning permission being withheld. It has not been demonstrated by the Council that this would be the case and therefore the effect on the privacy of the occupants of the flats also covered by the residential prior approval is not a reason to dismiss the appeal.
34. Due the parapet wall to the second floor, the occupants of 6 Century Mews and Elphinstone Road would not be able to see into Units A8 and A9, which would be the flats within the roof extension of Block A.

The adequacy of day and sunlight penetration

35. During the hearing the appellant confirmed that the Annual Daylight Factor (ADF) calculations for the internal rooms, including those on the ground floor of Block A, had been assessed and adhered to the BRE guidance, even with the measures to protect the privacy of neighbours and future occupants (the louvered screens). The Council did not challenge this point or provide alternative evidence. Furthermore, Mr Grayson confirmed that he was unable to identify the inconsistency in ADF measurements set out in Paragraphs 5.48 of the Council's delegated report.
36. Unit A4 has been singled out by the Council in particular as one that would potentially having a poor level of light penetration due to the shape of the rooms and the presence of a louvered timber screen on the south-west facing window. However, the appellant's confirmed that this would be retractable and could be omitted in any event¹¹ and this, taken together with the roof light serving the flat, would provide ample day and sunlight penetration. The Council conceded these points and therefore light penetration in Unit A4 is no longer a point in dispute between the Council and appellant. Consequently, and following discussions on these points at the hearing, the Council withdrew its objections in respect of the levels of day and sunlight entering the proposed flats. I have no reason to arrive at a different conclusion.

Inclusive access

37. Policy 3.8 of the London Plan seeks to secure compliance with Parts M4(2) and M4(3) of the Building Regulations. However, the policy makes it clear that these requirements do not generally apply to conversions and changes of use. The appeal scheme is both an application for a residential change of use and extensions. Based on the evidence before me I consider the appeal scheme can be categorised as a conversion and therefore Parts M4(2) and M4(3) of the Building Regulations need not be applied.
38. Notwithstanding the above, it was agreed at the hearing that Unit A4 could be rearranged so that it could become a wheelchair accessible home. In this respect the proposal would adhere to some of the requirements of Policies DM2.2 and

¹¹ It was agreed this was unnecessary as there would be no overlooking from, or into, this window.

DM3.4 of the DMP and 3.8 of the LP. This could have been secured by condition in the event the appeal had been otherwise successful.

The outlook from Units A8 and A9

39. The outlook from many of the proposed properties would be constrained in an attempt to prevent overlooking of neighbouring properties. Within the second floor extension proposed for Block A, a parapet wall would be constructed and this would prevent overlooking of the properties in Elphinstone Street. The same design solution is proposed for the living room and terrace in Unit B6. The result of this is that much of the outlook from these properties would be towards the sky.
40. I share the Council's concerns that a property should not have an outlook that would only take in the sky as this would result in visual disconnection with the surrounding area. Nevertheless, whilst the parapet walls and set back would prevent near distance downward views, they would not be higher than necessary and consequently there would still be an outlook over the surrounding roof scape when looking west towards large structures such as the former Highbury football ground. This has been demonstrated in visualisations and cross sections within the Design and Access Statement (p65 and p67). As such, I am satisfied the outlook from the flats within the second floor of Block A and Unit B5 would be acceptable.

The adequacy of single aspect flats

41. It has already been established through BRE testing that the flats would receive adequate day and sunlight even though some would be single aspect. In respect of ventilation it was explained by the appellant's environmental consultant at the hearing that wind speeds in the area were low so enhanced ventilation would be provided through roof lights. The Council were unable to challenge this expert view and therefore I afford it significant weight. Due to the single aspect arrangement of some of the proposed flats the only outlook would be towards the shared courtyard, however given the constraints of the site there is little option but to angle some of the properties in such a way. Taking these points together, the single aspect outlook from flats A2, A3, A4 and A6¹² would be acceptable in the context of Policy DM3.4 when considering light, ventilation and outlook.

Play and amenity space

42. In its appeal statement the Council has conceded that there is no requirement for play space given the low child yield figures provided by the appellant. This is a conclusion I share.
43. In respect of private amenity space, those homes where there is not a residential prior approval as a fall back would be provided with amenity space in accordance with the size requirements set out by the Council¹³. In this respect the Council's standards are met, although I acknowledge the terraces serving Units A7 and A9 would result in overlooking of 4 Century Mews. This is however, a separate matter weighing against the appeal scheme. The extent of private amenity space is nevertheless acceptable in the context of Policy DM3.5.
44. Units A5 and A6 would be devoid of private amenity space and the courtyard would not mitigate for this deficiency as it would be more of a circulation space

¹² Unit A6 is a first floor flat that has a residential prior approval in any event.

¹³ 15 square metres for ground floor properties and 5 square metres for homes on the upper floors

than somewhere to sit out or dry washing. Nevertheless, these flats would occupy the first floor and there is already a residential prior approval for flats in the same position as Units A5 and A6. Thus, this is not a failing of the appeal scheme that justifies the withholding of planning permission in this instance.

Overall conclusion on the living conditions of future occupants

45. In conclusion, the living conditions of the occupants of Unit B6 would be unacceptable due to a loss of privacy caused by inter overlooking with neighbouring properties or by an unacceptable outlook. This would result in an oppressive internal arrangement. This would amount to significant harm and therefore the appeal scheme would provide inadequate living conditions for future occupants. Therefore, the proposal would be contrary to Policy 3.5 of the LP, Policy CS12 of the CS¹⁴, and Policies DM2.1 and DM3.4 of the DMP as supported by the Housing SPG and London Housing Design Guide, which seek to secure a good level of residential amenity.

The effect on the supply of local employment floor space

46. As part of an overarching economic strategy for the Borough, Policy CS13 of the CS seeks to safeguard existing employment floor space. There is nothing before me to suggest this aim is inconsistent with the National Planning Policy Framework (the 'Framework') and therefore I afford it significant weight. Policy DM5.2 of the DMP flows from the CS and applies a greater level of detail to the broad strategic aims. It states that proposals that would result in the loss or reduction of business floor space¹⁵ will be refused unless exceptional circumstances can be demonstrated.
47. For the purposes of Policy DM5.2, exceptional circumstances can be demonstrated through the submission of clear and robust evidence that there is no demand for the business floor space. The evidence must demonstrate that the floor space in question has been vacant and continuously marketed for a period of two years. In exceptional circumstances, where the vacancy is less than two years the submission of a market demand analysis may be acceptable to supplement the evidence.
48. It is important to consider the requirements of the above policies in the context of current trends in the demand and supply of employment land in the Borough. The Islington Employment Land Study 2016 indicates that there has been a loss of 12,000 square metres of office floor space and the new office floor space¹⁶ in the pipeline will not come close to addressing this loss and the forecasted target for business floor space. The Core Strategy refers to a need for at least an additional 20% business floor space by 2026. As such, there is the potential for cumulative harm to the overall provision of business floor space if existing floor space is lost without adequate justification. This would be the case even if the floor space was relatively small in scale. It is also important to recognise that secondary floor space, such as the appeal site, can serve a particular market¹⁷ which may not always be catered for in newer developments.

¹⁴ Islington Core Strategy 2011

¹⁵ Defined in the DMP as a use falling within a B1 use class

¹⁶ The appellant referred to a report by Ramidus which indicates a net increase of 71,123 square metres of B1 floor space in the Borough between 2005 and 2015

¹⁷ Including those on more restricted budgets or where a Category A office is not essential for their business model

49. The Council and appellant do not agree on the extent of the loss of business floor space proposed in the appeal scheme. Nevertheless, there is agreement that there would be a net loss. The minimum figure provided by the appellant was 220 square metres (the ground floor of Block A). In this respect the requirements in Policy DM5.2 to provide evidence of vacancy and marketing are engaged.
50. The appeal site was last occupied by Peter Bedford Housing Association (PBHA). It is understood that they vacated the building in April 2015. The appeal site is currently vacant and there is no evidence before me that the appeal site was commercially occupied between April 2015 and the present. The appeal site has therefore been vacant for at least two years. There are many reasons why a commercial site may be left vacant so it is of greater significance in testing the demand for the appeal site as employment floor space to establish whether the appeal site has been adequately marketed in line with the guidance set out in Appendix 11 of the DMP. To this end the appellant has provided a Marketing Summary Report (MSR) prepared by Strettons. This report divides the marketing into four phases.
51. Phase 1 of the marketing commenced in September 2013 following the decision of PBHA to relocate to a new site. It was open to PBHA to commence marketing then, but in the absence of a vacancy the marketing was inconsistent with Policy DM5.2 and Appendix 11 of the DMP. The Council confirmed that this is an intentionally onerous requirement due to local land values and thus the potential for property speculation. The occupation by PBHA could have presented an obstacle to any potential new occupants seeking to move into the site immediately. This is therefore a limitation that may have restricted the pool of potential tenants.
52. The site was offered at a guide rent of £20 per square feet and supported by marketing material in the form of particulars and details which were available on the internet through relevant websites. The Council have not raised concerns with the guide rent or particulars. Nevertheless, although the guide rent and particulars in the Phase 1 marketing were apparently reasonable, the marketing was unsuccessful. The strategy was therefore changed in May 2014 to also offer the site for sale. The freehold marketing details made it clear that the site was a gated office complex and that it might suit a residential conversion subject to planning. Consequently the site was not marketed solely as a residential redevelopment opportunity during this period.
53. Appendix 11 of the DMP enables a site to be offered for sale or rent. It does not require both but does require evidence that the rent or asking price is reasonable. The freehold of the site was offered with a guide price of £2million. The Council have suggested that this did not reflect the values of business floor space in this location but has not provided any comparables or a revised valuation. The £2million figure was a professional valuation by Strettons, a local agent, and as seven of the subsequent offers met or exceeded this figure¹⁸ it appears reasonable. Furthermore, the marketing resulted in an offer by the appellant in October 2014 to purchase the site as an office complex. This was the highest and most credible offer and therefore it was accepted. In this respect the marketing demonstrated that there was a demand for the appeal site.
54. The appellant is however primarily a residential developer and therefore the marketing continued into a third phase in an attempt to justify a lack of demand for the appeal site as employment floor space. However, to my mind, as Phase 2

¹⁸ Including offers from potential owner occupiers

had resulted in a successful sale of the appeal site when it was in a B1 use the marketing by the appellant is a 're-set' and therefore a new two year period of clear and robust marketing must be demonstrated from this point (October 2014).

55. The new period of marketing by the appellant commenced in October 2014¹⁹. The marketing details were refreshed and the guide price of £20 per square foot retained even though the market had seen an apparent uplift in rents. Again, the Council do not dispute the adequacy of the rental price, the marketing or the terms of the rental. Nevertheless, the guide price was queried by interested parties present at the appeal. It was suggested that it was high given the condition of the site and that similar sites elsewhere were renting for £11 per square feet. The details of these sites were not presented but following discussions it was agreed these were probably subsidised rents. As such, I do not have substantive evidence before me to suggest the £20 figure was unreasonable high or did not reflect the poor condition of the site.
56. The site was not offered for freehold during this new period of marketing, which may have otherwise resulted in a similar interest from owner occupiers, as it did in Phase 2. However, there is not a requirement in Appendix 11 of the DMP for an employment site to be offered for freehold. The requirement is for marketing for freehold and/or rent.
57. The Council's main concern with the appellant's marketing from October 2014 was that the site was leased back to PBHA on a short term lease. I have already found that the occupation of the site by PBHA during the Phase 1 marketing was a limitation and the same applies to the Phase 3 marketing between October 2014 and April 2015. Moreover, occupancy by PBHA is arguably an indication that there was a demand to use the building for an employment use. Although I accept this was a short term and pragmatic arrangement because the premises PBHA was moving to had flooded.
58. In April 2015 the appellant secured prior approval for the residential change of use of those parts of the site that fell within use class B1(a). This is a matter of some significance as the marketing was altered so that only the ground floor was offered 'to let' as the rest of the site had a residential planning permission.
59. The change of use would not take effect until the buildings within the site are occupied and this was not the case during my site visit. Nevertheless, the appellant has a clear intention to implement the prior approvals. It would be unreasonable to expect the appellant to market the floorspace as B1(a) office accommodation when there is an extant permission for a change of use of the same floorspace to residential accommodation. I accept that this would frustrate the aims of Policy DM5.2 but the presence of the permission is a matter of fact that must be afforded significant weight as a material consideration in establishing whether the marketing was reasonable. Consequently, I consider it was reasonable to narrow the scope of the marketing to only the ground floor of Block A.
60. It is probable that the appellant's intention to implement the prior approval scheme would have put off prospective tenants due to the effect of construction works and the uncertainty over the long term future of the site. However, the appellant's intention to implement a lawful planning permission cannot be held against him as the change of use of office floor space to dwellings is encouraged

¹⁹ It was not agreed in advance by the Council and progress reports do not appear to have been submitted. But these are not requirements of Appendix 11 of the DMP.

by the government. It would be unreasonable to expect the appellant to implement the prior approval scheme and then market the remaining floor space. This is especially so given the comprehensive nature of the appeal scheme.

61. At the time of the Council's decision in October 2016, the appellant had marketed the site for a reasonable guide price with acceptable marketing material for a period of 2 years (October 2014 – October 2016) but without success. However, as PBHA was in residence until April 2015 the appellant has not marketed the site whilst vacant for a period of 2 years. In this respect the marketing should have run until April 2017 and therefore requirements of Policy DM5.2 and Appendix 11 of the DMP were not, and have not, been met.
62. The marketing details and schedule of interest for the period October 2016 to the present, which is the period following the Council's assessment of the planning application, have not been provided. Mr Cuthbert explained at the hearing that the marketing of the ground floor is ongoing and his email of the 28 November 2016 to Ms Polonsky confirms this, as does the presence of a 'to let' board at the site entrance. I have no reasons to doubt Mr Cuthbert's confirmation that the marketing is ongoing. However, in the absence of an updated MSR covering this period I cannot afford any marketing undertaken after October 2016 anything more than limited weight and must therefore focus my assessment on the information I have, which covers the period up to 2016.
63. Vacancy and marketing evidence covering a two year period has not been demonstrated but there is vacancy and marketing evidence covering a period of around 18 months (April 2015 – October 2016). The feedback from the marketing identified a number of themes suggesting the condition of the site, its position, its configuration and the proximity to public transport had been factors putting potential tenants off. In this respect, the marketing provides clear and sustained evidence that there may be inherent problems with the site and this has resulted in an absence of offers, which is evidence of insufficient demand for the employment floor space in question.
64. However, in spite of this analysis it became apparent at the hearing that there had been some local interest in occupying the appeal site but this may not have been followed up vigorously by the appellant's agent. The email from Mr Cuthbert to Ms Polonsky suggests there may have been a failure to log and respond to calls. It is unclear whether this was an isolated incident or an indication of a 'policy of disengagement'. I am reluctant to come to the conclusion that it is the latter as I do not have the evidence before me that demonstrates with a reasonable degree of certainty that this was the case. In any event, no offers were forthcoming from local residents and I am unaware of any viewing being undertaken.
65. It was also suggested at the hearing that the marketing board at the appeal site was removed prematurely only to be reinstated recently. This was given as evidence that the marketing was not genuine. The appellant was unable to explain why the board was missing for part of the campaign but confirmed he had given no instructions for its removal. Whatever the reasons for its temporary removal, the board served its purpose to an extent as local residents were aware of the site's availability. Moreover, the board is a secondary marketing tool to mailing and the internet, both of which occurred and it is from these sources that most interest would have occurred.
66. The Council are concerned that the marketing details on the websites of Stretton and Currell were incomplete. However, the Council have not provided evidence to

support this contention, such as print outs, to refute what has been set out in the MSR. Therefore, on the balance of probabilities I am unable to conclude that the marketing details on the websites were below the expectation set out in Appendix 11 or differ to that appended to Stretton's MSR.

67. As the period of marketing and vacancy evidence is below that required in Policy DM5.2, it is not sufficient in itself to demonstrate there was, and is, no demand for the appeal site as employment floor space. However, Policy DM5.2 allows marketing evidence to be supplemented by a market demand analysis when there are exceptional site specific circumstances. In this instance, given the deteriorating condition of the site and the extant prior approval it is reasonable to consider, exceptionally, the appellant's market demand analysis (MDA)²⁰.
68. The MDA was prepared by experienced chartered surveyors and echoes many of the findings set out in the MRS. In particular, that the appeal site is poorly located with a limited presence and surrounded by residential properties. It is opined that these are limitations of the appeal site that would suppress demand.
69. However, there may be some interest for the site as secondary space, perhaps by artists or businesses that do not require a 'presence'. The Council refers to workspace at Highbury Grove as evidence of this potential. Furthermore, due to the close proximity of Arsenal tube station I do not accept the site is poorly connected to public transport. It also has a high PTAL. Therefore, I do not consider the appeal site is inherently unsuitable as employment floor space, which is suggested in the Currell report. However, the marketing was unsuccessful over a period of 18 months and this suggests otherwise. Significantly, the condition and configuration of the site is poor and requires a notable level of investment to bring it up to a standard whereby it could be tenanted, even as secondary space.
70. In this respect, the MDA concludes that an upgrade of the ground floor workshop to offices would be unviable. This conclusion was based on conversion costs of £710,000, which would provide a Category A office. A Category A conversion is unnecessary given the secondary location but it was confirmed by Ms Genis that even a conversion to a lower specification would be unviable. This was not disputed by the Council at the hearing and it is a proposition supported by the Council's viability advisors. Therefore, it is unlikely the office floor space could be viably upgraded. As such, the poor condition and configuration of the appeal site could not be viably remedied and this means the appeal site is unlikely to be occupied. Instead, the floor space would in all probability remain vacant and therefore continue to deteriorate. Consequently, the MDA supports the findings of the truncated marketing campaign that it is unlikely that there is or would be a demand for the employment floor space at the appeal site.
71. In summary, it is necessary for me to focus on the two year marketing period following the appellant's purchase of the appeal site in October 2014. The marketing during this period was 'to let' and this was for an apparently reasonable guide price supported by appropriate marketing material. The marketing generated some interest, which suggests it was robust in spite of the concerns raised by local residents and the Council in respect of whether it was genuinely pursued. However, the interest did not result in any offers with a number of recurring themes given for this.

²⁰ Prepared by Currell

72. The marketing did not cover a two year period and therefore cannot in itself demonstrate compliance with Policy DM5.2. However, when taken with the MDA, particularly the viability analysis, I am satisfied the appellant has demonstrated that the loss of the business floor space can be exceptionally justified due to lack of demand and the prospect that this is unlikely to change without an unviable level of investment.
73. I therefore conclude that the appeal scheme would not harm the supply of local employment floor space as there is no apparent demand for the appeal site as an employment site. Consequently, the proposal adheres to Policies CS13 and DM5.2 of the DMP, which seek to refuse applications resulting in a loss of business floor space unless exceptional circumstances can be demonstrated.
74. The Council has referred me to appeal decision APP/V5570/W/16/3165171 but there is no inconsistency between my findings above and those in that appeal decision. This is because the marketing and market demand analysis in appeal APP/V5570/W/16/3165171 did not demonstrate exception circumstances justifying the loss of employment floor space whereas the evidence in respect of Legard Works has.

Other Matters

75. I have been presented with a unilateral undertaking but given my findings above it is unnecessary for me to consider this in detail, including whether the 'car free' obligations adhere to recent case law²¹. For similar reasons it is unnecessary for me to address the concerns of interested parties in detail, including those in respect of highway safety, parking, the alleged loss of community space and the impact on bats.
76. As a material consideration it is important to acknowledge that the appeal scheme would have a number of benefits. It would recycle previously developed land within an urban area for which there is apparently insufficient demand in its current employment use. It would also deliver housing in a location accessible to services and facilities. These benefits would have a number of social and economic benefits including to the construction industry and the circulation of funds.
77. The appellant has also suggested the appeal scheme would be an improvement on the residential prior approvals. As this is a likely fall-back position, it is a point of weight. However, many of the concerns I have identify relate to those parts of the scheme where there is no fall-back position and this harm is not outweighed by improvements relative to the fall-back position elsewhere in the scheme.
78. The benefits identified in the preceding paragraph would be achieved at the expense of the living conditions of neighbours and the quality of the living conditions of future occupants. These impacts would be contrary to the development plan. An application should be determined in accordance with the development plan unless material considerations indicate otherwise. The benefits of the scheme are not matters of sufficient force to outweigh the significant harm I have identified. As such, the proposal would not be sustainable development.

Conclusion

79. I have concluded that the appeal scheme would not harm the supply of local employment floor space and some of the harm alleged by the Council in respect of

²¹ *R (oao Khodari) v Royal Borough of Kensington and Chelsea and Cedarpark Holdings Inc* [2017] EWCA Civ 333

living conditions has not been substantiated, would be mitigated or is outweighed by the presence of a fall-back position (the residential prior approval). Nevertheless, the absence of demonstrable harm in these respects does not outweigh the harm I have identified. The proposal would therefore be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

APPEARANCES

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Tom Broomhall

Principal Planner, LB of Islington
Planning Officer, LB of Islington

INTERESTED PARTIES

Galina Ward
Nicole Polonsky
Susanna Longley

Local Resident
Local Resident
Local Resident and chair of the Residents
Association
Local Resident
Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Cundall memorandum dated 7 August 2017 for Scheme 5
2. Photographs towards Block A taken from 4 Century Mews
3. Email from Jon Cuthbert to Nicole Polonsky dated 28 November 2016
4. Statement of Common Ground
5. A completed Unilateral Undertaking
6. Appeal decision APP/V5570/W/16/3165171
7. Extract from LB Islington Employment Land Study
8. Extract from a report prepared for the GLA by Ramidus Consulting Limited