



Appeal Decision

Inquiry Held on 1-3 & 8 November 2017

Site visit made on 7 November 2017

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

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

Decision date: 20 November 2017

Appeal Ref: APP/N5660/W/17/3170507

5-6 Waterworks Road, Brixton, London, SW2 1SE

- 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 WMC Developments Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application ref. 16/04965/FUL, dated 18 August 2016, was refused by notice dated 1 December 2016.
 - The development proposed is: demolition of the existing buildings and the redevelopment of the site incorporating the erection of a building comprising basement, ground, plus 5 storeys for 28 Class C3 residential units, 1,626 sqm of B1 office accommodation and 182 sqm of flexible B1/D1 floorspace.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Nine refusal reasons are listed on the Council's decision notice. However, before the inquiry the main parties reached agreement on a number of matters, as is set out in the submitted Statement of Common Ground. In summary, the Council accepts that reasons for refusal nos. 2, 7, 8 and 9 (in respect of affordable housing, circulation space, waste/recycling storage and a number of other detailed matters) are overcome by the revised drawings and unilateral undertaking that have now been submitted, along with the imposition of appropriate conditions in the event that the appeal were to be allowed. I have no reason to take a different view.
3. The Council confirms that its reference to the Kennington Conservation Area in refusal reason no. 3 represents an error. The relevant conservation area (CA) is the Rush Common and Brixton Hill CA.
4. As noted above, a number of the drawings that were originally considered by the Council have been amended and new proposals for improvements to Waterworks Road in the site's vicinity (drawing no. 712440-10-01 Rev 04) have been submitted by the appellant. Both parties agree that the amended drawings¹ should form the basis of my decision, and I have determined the appeal on that basis. Given that the proposed highway works have been the subject of consultation I am satisfied that this course of action will not prejudice any parties' cases.

¹ Bundle in inquiry document 15.

5. The Council is also satisfied that the above-noted highway improvement works would be capable in principle of addressing the concerns raised in its 4th and 5th refusal reasons – relating respectively to the quality of the pedestrian and cyclist environment and servicing arrangements. However, concern remains about the appellant’s ability to secure these works and this is addressed in more detail below.

Main Issues

6. Bearing the above in mind, the main issues in this appeal are:
- (a) the effect of the proposal on the character and appearance of the Rush Common and Brixton Hill CA, with particular reference to the scheme’s relationship with the locally listed former George IV public house and the waterworks pump house which is proposed for local listing;
 - (b) its effect on the long term viability of the adjacent Key Industrial and Business Area (KIBA), as designated in the Lambeth Local Plan (LLP) (adopted 2015), and other nearby commercial uses;
 - (c) whether satisfactory living conditions would be created for the scheme’s occupiers in respect of the effects of noise and the scheme’s inclusion of a number of single aspect residential units; and
 - (d) whether the highway, parking and servicing arrangements that are now proposed could be secured in practice.

Reasons

Rush Common and Brixton Hill Conservation Area (CA)

7. Waterworks Road is a short cul-de-sac on the western side of Brixton Hill. The appeal site, which contains commercial buildings, is bounded by Waterworks Road to the north and Jebb Avenue to the south. To the east lies a tyre repair and vehicle service centre (ATS): the appeal site has access rights across part of the yard of these premises. The land to the west of the site comprises Brixton Waterworks including the pump house building that backs onto Jebb Avenue. Jebb Avenue is also a cul-de-sac, providing access to Brixton Prison. On the southern side of Jebb Avenue lies Renton Close, a flatted residential development with accommodation on five storeys (including within the roof level). This Edwardian development, erected in 1906, has an attractive appearance, reflecting an arts and crafts influence.
8. Along with land to the north of Waterworks Road, the appeal site forms part of an area of mixed commercial and industrial uses to the rear of properties fronting Brixton Hill. The frontage buildings are characteristically some 3-4 storeys in height, although the ATS building is a notably lower exception, providing a broadly consistent streetscape on the west side of this main arterial route. On the opposite (eastern) side of Brixton Hill lies Rush Common, a linear open space that comprises a fundamental feature of the CA’s character and appearance. Buildings on the western side of Brixton Hill therefore act to define the western edge of the common. Among these is the former George IV public house – now a Tesco Express with flats above – which has a distinctive Victorian character and exuberant detailing.
9. The Rush Common and Brixton Hill Conservation Area (CA) has a linear pattern that is centred upon Brixton Hill and Rush Common but includes other areas of land both to the east and west. In the appeal site’s vicinity, the CA includes

the waterworks pump house, land between the pump house and Brixton Hill (including the former public house), Renton Close and land to the north of Waterworks Road. Although the Council raises concerns about the appeal scheme's effects on the setting of the former public house, which is a locally listed building, and the waterworks pump house, which is proposed to be added to the local list, it was confirmed at the Inquiry that these comments are made in respect of the effect on the CA, and do not amount to separate refusal reasons. Therefore, while it is common ground that both of these buildings are non-designated heritage assets, I have considered the effect on their settings in terms of the significance of the CA.

10. The appeal scheme would comprise a single block occupying most of the site's footprint. The building would be a maximum of six storeys in height (plus a basement), with the top storey set back a small distance from the Waterworks Road façade and a larger distance from the Jebb Avenue frontage. On Jebb Avenue, the residential element of the building would be set back at an angle, with the lower two storeys abutting the footway. As a result of the site's sloping nature (a fall of some 2 metres from Jebb Avenue down to Waterworks Road), the building's ground floor would be sunk approximately half a storey below Jebb Avenue – creating an apparent 1½ storey section next to the road. Residential units, totalling 28 flats, would occupy the upper four storeys, with the remaining uses occupying the basement, ground and first floors.
11. The Council does not object to the principle of introducing a residential use into this location. Pre-application advice indicated that a four-storey scheme would be acceptable, with the possibility of a fifth storey if sympathetically modelled. The Council did not depart from this view at the inquiry. As such, it seems to me that there is some degree of agreement between the main parties about the broad form of development that would be acceptable on this site. What however is not agreed is the scale and massing of the present proposal, specifically in relation to the prevailing height of buildings in the industrial/commercial area to the west of Brixton Hill, and the scheme's effect on the settings of the pump house and former public house in terms of the CA's significance. I turn consider these matters in more detail.
12. The Council argues that the prevailing character of this part of the CA is of 3-4 storey structures fronting Brixton Hill, with 1 to 2½ storey light industrial blocks behind. However, while this might fairly describe many buildings to the north of Jebb Avenue, it ignores the flatted blocks of Renton Close which lie on the southern side of that street. Although Jebb Avenue affords some degree of separation between the appeal site and Renton Close, it is not identified as a particular character boundary in the CA Appraisal. It is therefore appropriate to consider Renton Close as part of the appeal site's surroundings in terms of the scheme's impact on the CA.
13. In views along Jebb Avenue, and in some views from Brixton Hill, the southern end of the appeal scheme would clearly be seen in the context of Renton Close. Although their profile and appearance would differ, the height of the new building would not differ substantially from these existing flatted blocks. The roofline of the five storey section of the development would be below the ridgeline of Renton Close, while the six storey section would be slightly higher.
14. In contrast, substantial residential buildings are not a feature of Waterworks Road, which is dominated by lower rise industrial and commercial structures –

the exception being the former public house on the corner with Brixton Hill (which as already noted contains a number of flats on its upper floors). With reference to the CA Appraisal, it seems to me that there is little evidence that the 'industrial enclave' in which the site is located, as described by the Council, is in itself an important element of the CA's significance. Indeed, it is common ground both that the existing buildings on the site are a negative feature within the CA and that the adjoining ATS building appears as an uncharacteristic element in the Brixton Hill frontage. It is clear from historical maps² that the existing buildings and uses are relatively recent: between 1869 and 1951 (at least) the site was partly occupied by a line of terraced houses.

15. Notwithstanding this, there is no substantive evidence to support the appellant's assertion that the appeal site has been included in the CA by 'default'. The site is clearly part of the CA as defined and must be treated as such, with particular attention being paid to the key features of significance as described. In that context, the scale and massing of the eastern elevation and northern end of the appeal scheme would differ markedly from that of surrounding buildings within the CA. I return to this point below when considering the scheme's effect with regard to the former public house and views from Brixton Hill/Rush Common. While I am aware that there are other substantial flatted developments within the wider locality, notably Calidore Close, Hyperion House and Dumbarton Court, these have a significant degree of visual separation from the appeal site. In particular, the first two blocks lie on the opposite side of Rush Common, and have been explicitly excluded from the CA, while the third lies some distance to the south on Brixton Hill. They do not therefore provide material justification for the present proposal.
16. Although it is not locally listed, the waterworks pump house is identified in the CA Appraisal as the most imposing of the 'interesting' group of waterworks buildings. It dates from around 1930 and is a substantial structure with classical-style elevations of red brick with Portland stone dressings. Its main (northern) elevation has very limited public views from the end of Waterworks Road. However, its southern elevation is a prominent feature on Jebb Avenue. Although lacking the formal entrance feature that is located on its northern side (a projecting portico), the building's southern elevation has clearly been designed as a public frontage that is to be viewed from the street. Its broadly symmetrical appearance, deriving from the pattern of windows, bays and two prominent chimneys, along with the presence of Portland stone detailing that contrast with the mainly brick walls, act to create a distinctive – and to my mind attractive – townscape feature.
17. The juxtaposition of the appeal scheme and the pump house would be apparent in views along Jebb Avenue from both directions. In views from the west (for example next to the wall of Brixton Prison³) the building would appear behind and to the right of the pump house. To my mind, the southern part of the five storey section of the proposed block (appearing as a 4½ storey feature on this elevation) would compete visually with the pump house's southern elevation, contrasting uncomfortably with the smaller scale of the projecting element in the centre of that elevation. Bearing in mind the relative proximity of the two buildings, the dominance of the pump house in views along Jebb Avenue would be therefore reduced. As such, its imposing effect would be diminished. A

² For example figures 10-12 of the appellant's Heritage Assessment.

³ For example, verified view 5: figure 11 of Mr Kane's proof of evidence.

similar effect would be apparent in views from the east on the approach along Jebb Avenue⁴, in which the appeal scheme would replace the pump house as the most prominent feature on the northern side of the street.

18. However, in views from the west along Jebb Avenue the chimneys of the pump house and the majority of the roof 'lantern' would remain silhouetted against the sky. Furthermore, in views from the east, the angled and set-back nature of the appeal building's upper floors would largely maintain views towards the pump house. In addition, the scale of the development would be viewed in the context of the Renton Close flats on the opposite side of the road. These factors would act to mitigate the adverse effects described above but would not remove them. As such, I feel that the proposal would create limited harm to the significance of the CA in terms of its effects in respect of the pump house.
19. The former George IV public house occupies a prominent position on the corner of Brixton Hill and Waterworks Road. It is common ground that the scale, design and position of this building contribute to the character and appearance of the western side of Rush Common. The Council raises a broadly similar concern in respect of this building to that discussed above in respect of the pump house, namely that the scale of the new block would dwarf and dominate the existing building to the detriment of the CA's character and appearance.
20. I have considered this matter carefully with particular regard to the viewpoints discussed by both main parties. In that context, I accept the appellant's assertion that the impression created by the submitted context east elevation drawing does not take into account either the degree of separation between the appeal site and the former public house or the effects of perspective when viewed from ground level. I therefore place more weight upon the 'wireframe images' that have been submitted by the appellant, as well as my own observations of the site and its surroundings. Although the appellant has also submitted a verified view looking along Waterworks Road⁵, this shows only part of the side elevation of the former public house and therefore gives a limited appreciation of the resulting relationship between the appeal scheme, the former public house and the CA.
21. Given the significance of Rush Common and the frontage on the western side of Brixton Hill, the key viewpoints in respect of the scheme's relationship with the former public house are all on the opposite (eastern) side of Brixton Hill. Three 'wireframe' images prepared by the appellant⁶ provide a representative sample of such views. Two of these are taken from the eastern footway of Brixton Hill, while the third is taken from Endymion Road which is flanked on either side by Rush Common.
22. In all three views, it is accepted that the new block would not intrude into the skyline of the former public house. In all three cases the distinctive corner turret of the public house, and its other roofline features, would remain visible against the sky. However, this is not the full extent of the relationship that would be created between the appeal scheme, the former public house and the Brixton Hill/Rush Common frontage.

⁴ For example, verified view 3: figure 9 of Mr Kane's proof of evidence.

⁵ Verified view 1 (figure 7 of Mr Kane's proof of evidence).

⁶ Sheets B to D in inquiry document 6.

23. In all three views, the scale and bulk of the appeal scheme would be clearly apparent. In such views, it is the side elevation of the new block that would be most prominent. In contrast to the eastward views along Jebb Avenue, most of the full length of the building would be apparent. This would create a built feature of 5-6 storeys in height extending much of the way between Jebb Avenue and Waterworks Road and lying broadly parallel to Brixton Hill. Although the public house would be clearly visible, it would be seen in the context of the substantially taller and longer side elevation to the rear. Irrespective of the retention of the former public house's skyline, as discussed above, I consider that the eye would be drawn to the bulky backdrop rather than the foreground feature. As a result, the prominence of the public house would be markedly diminished.
24. A fourth 'wireframe image' has also been submitted by the appellant, showing the view towards the site from Elm Park⁷. Although the scale and bulk of the appeal scheme would also be apparent from this position, the adverse effects described above would be less severe as a result of screening by trees. Indeed the former public house is not easily seen from this position.
25. Given the importance of buildings on the western frontage of Brixton Hill in effectively defining this side of Rush Common, which is acknowledged as a key feature of the CA's significance, it seems to me that the effects described above – specifically in respect of the first three 'wireframe images' discussed above – would create unacceptable harm. Notwithstanding the uncharacteristic ATS building, the western side of the common remains clearly defined by the former public house, as well as by other buildings to the south (notably Renton Close) and the north. As a result of its visibility from Brixton Hill and Endymion Road, the scale and orientation of the appeal scheme would distract from, and therefore disrupt, a settled visual relationship that forms a significant part of the CA's character.
26. It is accepted that redevelopment of the ATS site would act to reduce the prominence of the appeal development in some of these views – notably that from Endymion Road. However, I have seen no evidence that such a development is either presently proposed or likely in the future.
27. The appeal scheme would result in the removal of the site's existing buildings which, it is agreed by both main parties, currently detract from the CA's character and appearance. Nevertheless, for the above reasons, I conclude that the appeal scheme would result in limited harm to the significance of the CA in terms of its effects in respect of the pump house and unacceptable harm in terms of its relationship to the former public house and the western frontage of Brixton Hill/Rush Common. It would therefore fail to preserve or enhance the character or appearance of the CA.
28. The resulting effects would amount to less than substantial harm in the terms of the National Planning Policy Framework (the Framework). However, a finding of less than substantial harm should not be equated with a less than substantial planning objection. In this regard, the proposal would conflict with LLP policies Q5, Q7 and Q22 and policies 7.4, 7.6 and 7.8 of the London Plan.

⁷ Sheet A in inquiry document 6.

KIBA and Other Nearby Commercial Uses

29. Land on the opposite (northern) side of Waterworks Road from the appeal site lies within the Waterworks Road Key Industrial and Business Area (KIBA), as defined in the LLP. Neither the site itself nor the adjacent ATS garage lies within this policy area. The Council's concern with respect to this main issue refers to the 'agent of change principle': it considers that nearby businesses, or new business uses coming into the area, should not have unreasonable restrictions placed upon them by the introduction of new residential uses.
30. The Council has recently (October 2017) undertaken a review of KIBAs in which the Waterworks Road KIBA is proposed for de-designation. The mechanism for this policy change will be the ongoing Local Plan Review. This is at an early stage, and therefore in planning policy terms I can afford this proposal limited weight. However, there is no substantive dispute about the evidence base contained in the KIBA Review. Over 60% of the land area of the KIBA includes residential uses within a mixed use development. Given additional constraints arising from land within the curtilage of listed buildings, the Review identifies limited scope for further employment-only development in the KIBA. I have no reason to take a different view. Nevertheless, it is also clear that the future policy designation of this land (and indeed of land outside the KIBA) would not affect the activities and noise generation potential of any existing businesses.
31. The Council raises concerns about both the methodology and conclusions that have been reached in the appellant's noise evidence. Since the refusal of planning permission, that evidence has been augmented by additional survey work. This involved the installation of noise measuring equipment on the northern and eastern façades of the existing buildings, along with short duration noise measurements in the ATS yard.
32. In terms of the equivalent A-weighted sound pressure levels (L_{Aeq}), the survey indicated values of 56dB $L_{Aeq, 16hr}$ (daytime) for both façades and 51db and 52db $L_{Aeq, 8 hr}$ (night time) for the northern and eastern façades respectively. While the main parties disagree about the appropriateness of assigning specific values to the concepts of Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL), as set out in the Noise Policy Statement for England and Planning Practice Guidance (PPG), it is common ground that these L_{Aeq} readings fall between LOAEL and SOAEL. Adverse effects on the health and quality of life can therefore be detected. As such, mitigation would be required in order to ensure adequate living conditions for the residents of any new development on the site.
33. The appellant's data also allow an assessment to be made of the A-weighted maximum sound pressure levels (L_{Amax}) during the day and night. In respect of the northern façade, an L_{Amax} reading of 70db was equalled or exceeded 50 times during the day, 20 times during the evening and 24 times at night. The equivalent figures for the eastern façade were broadly similar: 54, 20 and 22 times respectively⁸.
34. Although the Council accepts that the appeal site has a complicated noise climate, it raises a particular concern that if the daytime L_{Amax} events can be attributed to particular activities on the KIBA or ATS and have any high level of repeatability then they are highly likely to result in complaints to which the

⁸ Table 1 of Mr Haddad's proof of evidence.

Council will be required to investigate under statutory nuisance legislation⁹. However, it has not provided any specific evidence about the likely source of the noise events that have been measured by the appellant.

35. Indeed, in respect of the KIBA, neither the Council nor the appellant have identified any potential noise generating activities at all. On-site observations by the appellant's noise consultant indicated that there was very little activity of any kind from the KIBA and that the main noise generators on the site's northern façade were traffic movements along Waterworks Road. These included large vehicles entering and exiting the waterworks, along with occasional deliveries to Tile Giant on the opposite side of Waterworks Road. My own observations on and around the site were consistent with this assessment.
36. As noted above, there are already a significant number of residential properties in and around the KIBA. The issue of noise in respect of either existing or future commercial uses in the KIBA does not appear to have prevented planning permission from being granted by either the Council or on appeal for recent developments in this context. For example, in respect of an appeal at 124-128 Brixton Hill relating to a mixed use scheme including residential units, the Inspector saw no reason why the proposal should significantly exacerbate the issue of future conflict between residential and commercial uses¹⁰. Bearing in mind that there is no evidence of any noise complaints arising from activities in the KIBA, I have no reason to take a different view in the present appeal.
37. With regard to ATS, the appellant's noise consultant accepts that a number of the peak noise events measured on the site's eastern façade related to the operation of that business. The use of airguns is identified as the main noise generator in this regard. However, this is a daytime activity and will not therefore generate noise at night. There is no evidence that the operation has given rise to noise complaints, despite the presence of existing residential units that overlook the ATS yard – both above Tesco Express and in Renton Close on the opposite side of Jebb Avenue. Nevertheless, it is common ground that such noise events would give rise to a need for mitigation in the appeal scheme.
38. The Council also raises concern about a lack of an assessment in line with BS4142:2014 *Methods for rating and assessing industrial and commercial sound*. Recent professional practice guidance in *ProPG: Planning & Noise: New Residential Development* (May 2017), to which both main parties attach weight, advises that such an assessment should be undertaken when industrial/commercial noise is 'dominant'. In the light of the evidence before me, I share the appellant's view that the dominant noise source in relation to the appeal site relates to traffic – both on Waterworks Road and Brixton Hill. Irrespective of some noise from the activities of ATS, as already mentioned, I consider that many of the louder noise events during the daytime – and most (if not all) of those during the night – are traffic related. Specific noise sources in that context include engines revving, the sound of reversing alarms and the sirens of emergency vehicles on Brixton Hill. The Council confirmed at the inquiry that noise from traffic sources would not in itself be a reason to refuse planning permission for the scheme.
39. As such, I see no reason why the absence of a BS4142:2014 assessment represents a flaw in the noise evidence before me. It is noted that the Council

⁹ Paragraph 4.7 of Mr Haddad's proof of evidence.

¹⁰ Appeal ref. APP/N5660/W/15/3128978.

did not request such an assessment at the application stage. While the Council argues that such an assessment would report a different noise climate to that measured using the L_{Aeq} 16 and 8 hour values, I am satisfied that the recording of L_{Amax} levels (as mentioned above) has provided an adequate assessment of the louder short duration noise events affecting the site. Furthermore, there is no dispute that the appellant has made appropriate reference to the advice in BS8233:2014 *Guidance on sound insulation and noise reduction for buildings*.

40. Notwithstanding the differences described above, it is clear from the statement of common ground that the fundamental matter that divides the two main parties in respect of noise relates to the scope of the works that would be required to mitigate noise impact on future occupiers. As already mentioned, it is common ground that such mitigation would be required. Both parties agree that with appropriate sound insulation and mechanical ventilation, internal noise levels below 45 dB L_{Amax} could be achieved in the proposed residential units. It is noted that this conclusion applies to any external noise source. Guidelines from the World Health Organisation state that sleep will generally not be affected if internal levels of 45 dB L_{Amax} are not exceeded more than 10-15 times a night.
41. The appellant proposes that a mechanical ventilation system with heat recovery would be installed, along the lines of the detailed specifications that were tabled at the inquiry¹¹. This would allow ventilation to be maintained when windows are closed. However, the ability to open windows would remain. The Council considers that this would be likely to give rise to the potential for noise-related complaints from the development's occupiers.
42. While this concern could in theory be addressed by the sealing of windows, the Council feels that this would result in poor living conditions for the occupiers of the units concerned. I share that view. Irrespective of the abilities of any mechanical ventilation system, it seems to me that there is merit in giving occupiers a choice as to whether they have their windows open or not.
43. However, it does not follow that the inclusion of openable windows would be likely to give rise to noise complaints. As already discussed, there is no evidence that noise has given rise to any complaints from existing residential uses in the site's vicinity. Residents would be aware that noise concerns could be remedied by closing windows and that adequate ventilation would be maintained. Furthermore, as has been established above, the majority of the louder noise events at the site derive from traffic in general rather than the activities of a specific business that could be the subject of a complaint.
44. Additionally, while noise is generated from the ATS site, this occurs during the daytime only and is at similar levels to that experienced in respect of traffic. Potential occupiers of the appeal scheme would be well aware of the presence of ATS and would be able to make a judgement about the likely noise climate accordingly. Furthermore, there is nothing in relevant guidance such as BS8233:2014 and the ProPG document to suggest that, as a matter of either policy or practice, reliance on closed windows to achieve satisfactory noise levels is unacceptable, providing that satisfactory ventilation and thermal comfort can be achieved.

¹¹ Inquiry document 17.

45. Drawing these matters together, I am satisfied that subject to the installation of noise mitigation measures and mechanical ventilation as proposed by the appellant, a satisfactory noise climate could be achieved in the proposed residential units. As such, and bearing in mind my comments above about the particular sources of noise in the site's vicinity, I conclude that the appeal scheme would not adversely affect the long term viability of the adjacent KIBA and other nearby commercial uses. In this regard, it would accord with relevant LLP policies, including policy ED2.

Living Conditions of the Scheme's Occupiers

46. For the reasons set out in respect of the previous main issue, I consider that adequate living conditions could be provided for the proposed residential occupiers in respect of noise. The remaining issue that separates the main parties in respect of living conditions therefore relates to the intended provision of a number of single aspect units within the appeal scheme.
47. Policy H5 of the LLP requires proposals for new residential development to provide dual-aspect accommodation, unless exceptional circumstances are demonstrated. Nine out of the 28 units now proposed would be single aspect – a mixture of 1 and 2-bedroomed dwellings.
48. It is common ground that the Nationally Described Space Standards would be achieved by the appeal development and, in the case of the two-bedroomed units, exceeded. The Mayor of London's supplementary planning guidance does not seek to preclude the inclusion of single aspect units, merely to minimise their provision. I am satisfied that the appeal scheme meets this requirement.
49. The LLP does not define what might comprise 'exceptional circumstances' in the context of policy H5. However, in the present case it seems to me that the narrow linear nature of the appeal site, along with the fact that entry to the site from the Jebb Avenue site is prevented by access restrictions, amount to particular and unusual constraints upon the site's development. Given that the principle of residential redevelopment on the site is not at issue, I feel that these factors are sufficient to amount to exceptional circumstances in this context. As such, the scheme would accord with policy H5.
50. In addition, it is clear that the detailed design and location of the single aspect units has been the subject of particular consideration. Notably, none would be north facing. The two-bedroomed single aspect units would include two external balconies allowing some measure of oblique views. Taking the above factors together I consider that the proposed single aspect units would not result in unsatisfactory living conditions for the scheme's intended residents.
51. For the above reasons, I conclude that satisfactory living conditions would be created for the scheme's occupiers. In this regard, the scheme would accord with LLP policies Q1, Q2 and H5 as well as with policies 3.5, 7.1, 7.2 and 7.15 of the London Plan.

Highway, Parking and Servicing Arrangements

52. As already noted, there is no dispute that the Council's in-principle concerns in respect of these matters are capable in principle of being addressed by the implementation of improvements to Waterworks Road in the site's vicinity, as set out in drawing no. 712440-10-01 Rev 04. These works, which would

include kerb build-outs with bollards, improved footways and the provision of two disabled parking spaces, would extend onto land that is outside the appeal site boundary. Such land is outside the control of the appellant.

53. It is common ground that Waterworks Road is not a public highway and its ownership is unknown. The appellant suggests that, were matters otherwise acceptable, this matter could be addressed by the imposition of a Grampian condition linked to the road's adoption as a public highway. I agree with that suggestion. Although there would clearly be various hurdles to surmount before adoption could take place, notably the completion of works to ensure that the road was of an adoptable standard (which may be over and above the works set out in the above-noted drawing), the appellant has stated its willingness both to fund and carry out the works concerned. Section 228 of the Highways Act 1980 gives the Council adoption powers in such circumstances.
54. With reference to the PPG¹² there is no evidence before me that there are no prospects at all of this action being performed within the time limit that would be imposed on any permission. Indeed, this was accepted by the Council at the inquiry. As such, a Grampian condition could appropriately be used in respect of this matter. Subject to that, I conclude that the proposed highway, parking and servicing arrangements could be secured in practice. In this regard the development would accord with LLP policies Q1, Q6, T2, T3, T6, T7 and T8 and London Plan policies 6.3, 6.7, 6.9, 6.10, 6.11, 6.13 and 7.5.

Other Matters

55. Concern has been raised by other parties about the scheme's effect on the setting of Brixton Windmill, a grade II* listed building located some distance to the north-west of the appeal site. However, while the upper part of the appeal scheme would be visible from the windmill's vicinity, it would be well separated and moreover would be seen in the context of existing nearby buildings. I agree with both main parties that the setting of the windmill would not be adversely affected. While private views towards the windmill from some properties in Renton Close would be blocked, this does not amount to a substantive planning objection to the scheme.
56. Other concerns raised about the relationship of the appeal scheme to Renton Close relate to overlooking, daylight, sunlight and noise. However, the new block would be sited opposite the gap that lies between Renton Close and the flatted building on the section of Jebb Avenue that runs south from the vicinity of the pump house. As already noted, the scheme's residential element would be set back from the Jebb Avenue frontage. As such, any views between the two buildings would be oblique. The degree of mutual separation – a minimum of some 20 metres in relation to the nearest corner balcony – accords with similar distances in the site's vicinity, such as that between blocks within Renton Close itself. This would be sufficient to prevent harmful overlooking.
57. In terms of daylight and sunlight, I have seen nothing to outweigh the conclusions of the appellant's assessment, undertaken in line with accepted BRE guidance, that relevant criteria would be respected. Although it has not been shown that the noise of children playing in the proposed outdoor amenity space would create material harm to neighbouring occupiers, it is noted that the noise mitigation scheme discussed above would also include the provision

¹² Reference ID: 21a-009-20140306.

of a screen around the amenity area. These matters do not affect my conclusions above.

58. Concern has also been raised about the effect of the scheme on the local demand for GP surgery facilities. However, given that health care facilities are on the Council's Community Infrastructure Levy (CIL) Regulation 123 list, it seems to me that any such shortfall would be a matter that is capable in principle of being addressed through CIL funding.

Overall Conclusion and Planning Balance

59. I have concluded above that the appeal scheme would not adversely affect the long term viability of the adjacent KIBA and other nearby commercial uses, that satisfactory living conditions would be created for the scheme's occupiers and that subject to the imposition of a Grampian condition the proposed highway, parking and servicing arrangements could be secured in practice. However, notwithstanding the removal of buildings that detract from the CA's character and appearance, I have also found that the appeal scheme would result in limited harm to the significance of the CA in terms of its effects in respect of the pump house and unacceptable harm in terms of its relationship to the former public house and the western frontage of Brixton Hill/Rush Common. As paragraph 132 of the Framework makes clear, when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation.
60. Given that the harm identified in respect of the CA would be 'less than substantial' in the terms of the Framework, it is necessary – in line with paragraph 134 of the Framework – that it should be weighed against the public benefits of the proposal. In that context, it is not disputed that benefits would arise from the appeal scheme. Most importantly, the development would make a material contribution towards providing housing, including affordable housing, within the Borough. The site is well located in respect of public transport and relevant facilities: it is common ground that it occupies an accessible location. Expenditure on construction would aid the local economy and local businesses would be supported. Business floorspace, along with the potential establishment of a class D1 use, would be put in place. The appellant states that over 130 new jobs could be provided. While the scheme would displace existing uses on the site, which I understand are of a temporary nature, this would still provide a significant net increase in local employment.
61. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. In the present case, I consider that the unacceptable harm to the significance of the CA that I have identified in terms of the appeal scheme's relationship to the former public house and the western frontage of Brixton Hill/Rush Common, amplified by the limited harm that would be caused in respect of the pump house, is of sufficient scale to overcome the scheme's benefits. In reaching this view I am aware that broadly similar benefits, albeit on a reduced scale, could also be likely to result from a reduced development on the appeal site along the lines that has been accepted in principle by the Council.
62. As such, the appeal proposal would not amount to sustainable development in the terms of the Framework and would not benefit from the presumption in favour of sustainable development set out in paragraph 14.

63. Although there is substantial agreement about the terms of the submitted unilateral undertaking, the main parties disagree on the acceptability of the fee of £2,250 that is included towards the costs of monitoring and implementing the deed. However, bearing the above in mind, it is not necessary for me to reach a view as to whether the relevant obligation accords with the Community Infrastructure Levy Regulations 2010.
64. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed.

M J Hetherington

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson	of Counsel
	Instructed by Ms Alison McKane, Head of Legal Services, London Borough of Lambeth
He called:	
Ms Nicola Xuereb BSc(Hons)	London Borough of Lambeth
Mr Richard Haddad BSc(Hons) MSc, DMS CMCIEH CMIOSH MIOA	Environmental Health Solutions and Training
Mr Richard Limbrick BA(Hons)	London Borough of Lambeth

FOR THE APPELLANT:

Mr Scott Lyness	of Counsel
	Instructed by Ms Jan Donovan, Rolfe Judd Planning
He called:	
Mr Peter Smith BSc DipArch RIBA	Stephen Davy Peter Smith Architects
Mr Laurence Hayes BA(Hons) IHBC MCIFA	RSK
Mr Nick Hawkins MSc MIOA	Hawkins Environmental
Mr John Osborn BA(Hons) MA MRTPI	Rolfe Judd Planning
Ms Christine Hereward LLB(Hons)	Pemberton Greenish LLP (planning obligations and conditions sessions only)

INTERESTED PERSONS:

Mr Alan Piper RIBA	Brixton Society
Ms Jean Kerrigan	Local resident

DOCUMENTS TABLED AT THE INQUIRY

- Document 1: Opening submissions on behalf of the appellant.
- Document 2: Opening submissions on behalf of the Council.
- Document 3: Statement by the Brixton Society.
- Document 4: Bundle of summaries of proofs of evidence from the appellant's witnesses.
- Document 5: Two e-mails in respect of potential business occupation.

- Document 6: 'Wireframe' images of four viewpoints.
- Document 7: Note (undated) from Pemberton Greenish LLP in respect of outstanding points regarding refusal reasons 4, 5 and 6.
- Document 8: Bundle of notification documents.
- Document 9: Lambeth Local Plan Review: Review of Key Industrial and Business Areas (KIBAs) (October 2017).
- Document 10: Draft unilateral undertaking.
- Document 11: Extract from BS8233:2014.
- Document 12: Extract from 'Possible Options for the Identification of SOAEL and LOAEL in support of the NPSE' (AECOM/DEFRA).
- Document 13: Extracts from decision for appeal refs. APP/G5750/A/05/1193216 & 1194327.
- Document 14: Bundle containing ProPG: Planning & Noise: New Residential Development with Supplementary Documents 1 and 2.
- Document 15: Bundle of agreed appeal drawings, with covering list.
- Document 16: Signed unilateral undertaking dated 8 November 2017.
- Document 17: Technical note on mechanical ventilation with heat recovery by Mr Peter Smith, plus appendix.
- Document 18: List of agreed drawings and conditions.
- Document 19: Note from London Borough of Lambeth regarding compliance with the Community Infrastructure Levy (CIL) Regulations 2010.
- Document 20: London Borough of Lambeth CIL Regulation 123 List.
- Document 21: Closing submissions on behalf of the Council.
- Document 22: Closing submissions on behalf of the appellant.