



Appeal Decision

Site visit made on 27 August 2019

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 12th September 2019

Appeal Ref: APP/K5600/W/18/3217957

141-163 Freston Road, London W10 6TH

- 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 Freston Property Bard Ltd; against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/18/01906, dated 23 March 2018, was refused by notice dated 13 September 2018.
 - The development proposed is demolition of existing buildings and construction of a new mixed use building comprising 293 sqm retail floorspace at ground floor level (flexible A1-A5 uses), 17,425 sqm office floorspace at part ground floor and all upper floors (use class B1) and 209 sqm flexible multi-use floorspace (B1/D1) at part ground floor level together with ancillary accommodation at part ground floor, basement and sub-basement level, associated landscaping, parking and servicing.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The applicant name was incorrect on the submitted application form. However, the correct name of Freston Property Bard Ltd was confirmed before the application was determined. Although the application was accompanied by Certificate A in respect of ownership there were other ownership interests within the application/appeal site. Notice was subsequently served both on London Underground Limited and Transport for London. On the basis of the evidence before me, I have no reason to suppose that any party with an interest in the land was unaware of the proposals at least 14 days prior to the decision being made by the Council.
3. The appeal was accompanied by a draft Agreement under s106 of the Town and Country Planning Act 1990 containing obligations in relation to infrastructure and mitigation necessary to make the development acceptable in planning terms. The Council anticipated that appropriate planning obligations could have been agreed during the appeal process to address the fourth reason for refusal. However, although I allowed additional time for completion, the s106 Agreement has not been finalised. As can be seen from what follows, I find the proposal to be unacceptable for other substantive reasons. Accordingly, allowing further time for completion of the obligation would be unproductive in this instance.
4. The development plan includes the London Plan 2016 and the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 (the CLP). Since the

refusal notice was issued, the Local Plan Partial Review (the LPPR) has progressed and is to be considered for adoption by the Council on 11 September 2019. The CLP Policies in reasons for refusal one to three would be unchanged by the LPPR. A draft New London Plan (the NLP) has been published for consultation. However, as its Policies remain subject to change it does not attract much weight in the context of this appeal.

Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the area and the effect on the special interest and significance of heritage assets;
- the effect of the proposed development on the living conditions of occupiers of Cian House taking particular account of outlook and daylight; and
- the effect of the proposed development on the users of The Curve Community Centre (The Curve) taking particular account of the development period.

Reasons

6. The appeal site is a few minutes' walk from the Hammersmith and City Latimer Road station on Bramley Road. The proposed development would deliver additional flexible office floorspace in the Freston Road/Latimer Road Employment Zone that would help to meet the need for office space in the Borough. The proposed gym would complement the office use and the flexible retail floorspace would serve users of the proposed building and the general public, as well as providing some employment. The evidence indicates that the proposed multi-purpose space could be available for hire for community led events. I conclude that, as a matter of principle, the proposed uses would be acceptable in this location.

Character and appearance

7. The site is bounded by Freston Road, Bard Road and the elevated viaduct of the Hammersmith and City rail line. The West Cross Route lies behind Bard Road. The surrounding area is a mix of light industrial, offices, storage, shops, cafes, community facilities and residential. Buildings are a mix of ages and heights. Many are of substantial scale and of a geometric block style including: the eight storey White and seven storey Yellow Buildings; the Studio Building and Cian House off Bard Road which are up to 22m high; on the northern side of the railway viaduct the new 30m high residential extension to the Silchester Estate; and the much taller Frinstead House at 20-22 storeys.
8. Smaller scale buildings nearby include two and three storey business and warehouse units and the former Thomas Jones Primary School at five storeys. At the southern end of Freston Road, building heights are typically lower (two/three storey) although higher buildings are present in the local area. Beyond the West Cross Route in the White City Opportunity Area, a number of high rise residential and commercial projects, up to 50-60m tall, are under construction/proposed.

9. The proposed development would replace a four storey office/two storey industrial building and walled compound, all of no particular architectural merit, with a large building comprising four joined blocks. In external views these would appear as a group of six, seven, eight and nine storey blocks, plus rooftop plant or roof terraces. The use of double-storey bay heights in part would increase the overall bulk of the building. The highest, north-west block, which would include plant above the nine storeys of accommodation, would be some 43m above ground level. Internally there would be a mezzanine floor and two basements. The façades would have a geometric appearance with strong horizontal and vertical detailing arising from the overt expression of the structural grid, creating an appearance of stacked cubes. There would be some public realm introduced around parts of the building.
10. Bard Road is relatively narrow cul-de-sac, which curves around the southern part of the site and then passes northward under the viaduct. The north-west block would adjoin Bard Road (west) near the viaduct, with one corner very close to the edge of the Bard Road (west) footpath. It would be effectively be ten storeys, taking into account the full height rooftop plant. It would be the tallest commercial building within the Freston Employment Zone. The longer element of the 43m high block would face the viaduct. From there, it would appear tall and block-like and would over whelm The Curve building on Bard Road in terms of its shape, scale and proximity. Although the form of this block would be relatively slender compared to the more substantial mass forms of the White, Yellow and Studio Buildings, I remain of this view as these are lower and further away.
11. The scale of the north-west block, so close to the back edge of the relatively narrow Bard Road, would not relate well to the much lower curved roof of Cian House or to the low-rise Shurgard Building. As viewed from the curved alignment of Bard Road and from Cian House it would appear prominent, overly dominant and oppressive. Although this part of the site could be described as being 'to the rear,' the relationship with other buildings on Bard Road is an important consideration.
12. The south-west elevation would face The Curve building. About half of the site frontage would be taken up by the north-west block and the remainder by the south-west block. The latter would be about 27m high plus roof garden. The building line would be at an angle with Bard Road and the south-west block would be inset from the north-west block. However, the southernmost corner of the south-west block would be very close to the edge of the Bard Road footpath. I conclude that, in combination, the height, length and mass of the proposed building, in such close proximity to Bard Road, would be overly dominant, oppressive and obtrusive in its surroundings.
13. The built form would be brought forward towards the road for approximately two-thirds of the frontage along Freston Road, although room for some tree planting would be retained. The south-east block would be a 7 storeys tall with a shoulder height similar to the parapet height of the former Phoenix Brewery warehouse across the relatively narrow Freston Road. However, the bulk of the proposed building in views from Freston Road would be partially offset by the inset terrace at fifth floor level. This would also ease the transition of scale southwards along Freston Road towards its junction with Bramley Road, where the shoulder line would visually pick up on the rooflines of the Cath Kidston building and former Bramley Arms public house in the townscape view.

14. The north-east corner block would be 35m high adjacent to Freston Road and the viaduct, with the two upper floors recessed where it would face the viaduct. Although this block would appear tall in close view from Freston Road, it would sit within the context of the new 9 storey building on the Silchester Estate which comes briefly into view diagonally across the viaduct.
15. The vehicle entrance and servicing bay would be on Bard Road (west). The main office entrance would be from Freston Road. Along the northern third of the frontage to Freston Road the existing perimeter wall would be removed and new public realm introduced. Public open space with a publicly accessible route between Freston Road and Bard Road would be created next to the viaduct, and a route for a planned footbridge over the West Cross Route to eventually link with the White City area would be safeguarded. A double height colonnade at the site's north-eastern corner would widen the public realm and there would be a secondary entrance into the building from the new public space. However this space would, at ground level, be sandwiched between the viaduct and a very tall building with only space for one raised planter, which the submitted Landscape Design indicates would be used as a raised seating bed with evergreens bulbs and flowers.
16. A further colonnaded space would be provided at the south-west corner facing Bard Road (south) with some limited space for tree planting. Although there would be access into this colonnade from Bard Road, the limited open areas along the street would be dominated by hard surfacing, basement hatches/vents, cycle parking, and the access to service yard roller shutter doors. There would be space only for very limited raised seating bed planted with evergreens bulbs and flowers.
17. The scale of commercial buildings in particular in the local area is large and the proposed building would not be dissimilar in large footprint and massing. The fractured form, with stepped heights and façades, multiple entrances and colonnades would help break up the single solid block and would appear as a modern interpretation of the industrial heritage of the area. An appropriate palette of materials could be secured. The building would sit in the wider townscape of fractured buildings of a variety of heights and shapes. Some closer views of the building would be truncated or oblique due to intervening transport infrastructure and existing/proposed buildings. In parts the building edges would be set back, taking advantage of the site's irregular shape and introducing some new public realm and planting. The proposed co-working office facility; multi-functional space and commercial retail uses would help animate the Freston Road and part of the Bard Road (south) frontages.
18. However, the proposed changes to urban structure and built form would have a significant presence in and impact on the local townscape character. Along Bard Road in particular the proposed development, due to the height, length and mass of the proposed building in such close proximity to the road, would be overly dominant, oppressive and obtrusive. The open areas around the building would be small compared to the scale of the building leading to a cramped appearance. Although some new tree planting could take place this would be relatively limited and there would be very little scope for planting of sufficient scale to soften the edges of the development. In these respects I conclude the proposal would not amount to the good design sought by the development plan and the National Planning Policy Framework 2019 (the Framework).

19. None of the identified conservation areas (CAs) or Grade II listed buildings in the wider area would be directly affected by the proposed development. However, there would be some inter-visibility between the site and heritage assets, with the site forming part of their wider, dense and varied London settings. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the setting of listed buildings. Whilst no statutory protection is afforded to the setting of other heritage assets, including CAs, Part 16 of the Framework requires an assessment of the significance of heritage assets that might be affected by a development proposal, including any contribution to their significance made by the setting of those assets.
20. The Avondale and Avondale Park Gardens CAs are located a short distance to the south-east and are separated from the appeal site by streets and buildings. Their Conservation Area Appraisal 2015 describes their characters.
21. The Avondale CA is an attractive residential area which was primarily developed from around 1860 to 1895. The cluster of buildings comprise modest Victorian terrace houses, a church and school with a village-like atmosphere, which is different from the more historically affluent areas of the Borough of larger and grander terraces and municipal buildings. The area forms an important part of the Borough's architectural history and is a visual reminder of the different social dynamics within the Borough at that time.
22. The Avondale Park Gardens CA is an attractive inter-war residential enclave of simple artisans' cottages set around mature green space. Despite some redevelopments, the original "Homes for Heroes" character remains.
23. From the Avondale and Avondale Park CAs there are likely to be occasional glimpsed views, particularly in winter, of the roofline of the proposed development seen beyond the trees and roofs of buildings. It would form a small element in the background view and the setting of these CAs would be largely unchanged.
24. The Wood Lane CA is some distance to the west, beyond the West Cross Route. It has a complex character with strong north/south linkages along Wood Lane, but only limited east/west routes because of the significant transport infrastructure and large institutional complexes which dominate the area. The grade II listed BBC TV Centre is the focus of the CA. The appeal site is relatively remote from this CA, separated by the physical barriers of transport infrastructure. This CA does not share any historical or architectural links with the site beyond remote shared views which would be largely unchanged.
25. Overall, I conclude that the effect of the proposed development on the way in which the CAs are experienced would be neutral. In terms of the statutory objectives a development which leaves character or appearance of a CA unharmed amounts to its preservation.
26. There are several Grade II listed buildings in the vicinity. To the north are the Harrow Club, formerly Holy Trinity Church, the "building to the west" and No 189 Freston Road. This groups' special interest derives from its design by and/or association with Richard Norman Shaw, a leading proponent of the 'Olde English' Revival and Arts and Crafts architecture, in the late 19th century. The Harrow Club forms the centrepiece of a picturesque group of buildings. It was converted to a club in 1976 and remains in community use. Constructed of red

brick, its most prominent element is its strong form, derived from the substantial gable and pitched roof, and elaborate east front with reticulated Decorative tracery, divided by substantial mullions. The "building to the west" and No 189 Freston Road, originally the Vicarage, share materiality and architectural character with the Harrow Club. Also of Arts and Craft character they complement that of the Harrow Club.

27. Diagonally opposite is the Latimer Education Centre based in the former Thomas Jones Primary School which is a handsome example of a late Victorian Board School in the Queen Anne Revival 'house style'. It has a varied, informal and picturesque composition with an interesting silhouette and roofscape arising from its chimneys and Dutch gables. Its historic interest derives from its associations with E.R. Robson and the London School Board, which reflected the growing late 19th century concern with the improvement of education provision and universal elementary education. The scale of this building, its prominent roofscape, and its legibility against the sky, means that the school is a significant element at the northern end of Freston Road. The Caretakers House is a small property of domestic character which derives its architectural and historic interest from the strong group value with the wider school complex. The School Room is of some historic interest as a minor, but integral, part of the school complex.
28. The above listed buildings together are experienced, principally, as part of an attractive enclave of late 19th century institutional/civic buildings. Being located at the end of the cul-de-sac means that there is limited traffic moving through the area, although there is a sense of activity derived from the use of these and other nearby buildings. They are seen from Freston Road in the context of the later 20th century transport infrastructure and tall residential blocks and from vehicles on the elevated Westway and trains using the viaducts.
29. The appeal site is some distance away from these listed buildings and inter-visibility between them is limited by modern large buildings, the viaduct and street trees. The proposed building would be more prominent than the existing site building, the Shurgard storage building and the viaduct. However, it would appear not dissimilar to other backdrop buildings in the wider view. Together with the separation distance this means the proposed development would have a neutral effect on the surroundings in which the above listed buildings are experienced.
30. The architectural interest of the relatively modest Church of St Clement in Treadgold Street is derived from its picturesque and additive composition and the spatial qualities of the interior and historical fixtures and fittings. The resultant composition is a skilful and unusual treatment of a mid-19th century Anglo-Catholic Church that forms a local landmark in the then poorer quarter of Notting Dale. Its historic interest derives from its strong associations with the 19th century ecclesiastical architect J.P. St Aubyn, and can be regarded as a reflection of the growing tolerance of Roman Catholic worship in 19th century England. Surrounded by a housing estate it is an impressive local land mark experienced as part of a fragmented wider townscape of larger more dominant buildings.
31. The architectural interest of Nos 1-2 Whitchurch Road derives from their idiosyncratic form and appearance, representing a free interpretation of Gothic and Romanesque elements, for which the architect, J.F. Bentley, was well-

known. It represents a striking contrast to the Classical building tradition for substantial townhouses in the locality. The building stands isolated on a corner plot but there are historical and functional connections with the nearby 19th century townscape and a visual connection with the contemporaneous Church of St Clement.

32. Due to the separation distance and the intervening buildings and trees the proposed building would have a neutral effect on the surroundings in which the above Church and Nos 1-2 Whitchurch Road are experienced.
33. The People's Hall at 2 Olaf Street in Freston Road can be regarded as a local non-designated heritage asset. Constructed in the early 20th it is an isolated reminder of the more historic townscape and has modest aesthetic merit. The proposed development would be separated from it by a number of other buildings and would have a neutral effect on the surroundings in which it is experienced.
34. To conclude on this issue, notwithstanding my finding of a neutral effect on the special interest and significance of the identified heritage assets I consider, for the reasons set out above, that the proposed development would nonetheless have a significant and harmful effect on the character and appearance of the area. That brings the scheme into conflict with Policies CL1 and CL2 of the CLP, which seek the highest quality design that respects the townscape including through scale, height, bulk and mass, views, vistas and open space. It would not amount to the good design sought by the Framework.

Living conditions

35. Cian House, directly across Bard Road from the appeal site, has 14 residential Units on floors three to six. It has façades facing west and north across the West Cross Route towards White City and east towards the appeal site. The appeal is accompanied by additional/updated Daylight and Sunlight Reports and a Residential Visual Amenity Assessment, dated December 2018, in respect of these Units. The appellant states that the floor plans used in the assessment have been confirmed as accurate. In addition visits were made to Units 1 and 5 and to stairwell and lobby areas on floors three to six.
36. Many of the windows facing towards the appeal site are to shared or private stairwell/lobby areas which are less sensitive in terms of light and outlook for planning policy purposes. However, there are 12 windows/openings facing the appeal site which serve habitable rooms and a number of balconies on the northern elevation which are at about 90 degrees to Bard Road. The proposed 43m high part of the development would be some 21m at the closest point from the balconies on the northern elevation and the closest window of habitable rooms in Units at the northern end of Cian House. The six storey block would be some 28m from windows in habitable rooms at the southern end of Cian House.
37. The existing outlook from the balconies facing north and the windows facing the site is urban in character, predominantly of buildings and road/rail infrastructure. However, the near outlook is quite open in character, particularly as the living accommodation is above street level. Views look towards the open areas of the site with buildings some distance away and taller development a considerable distance away.

38. There are two windows to bedroom one in Units 1, 6 and 10, on the third, fourth and fifth floors, and one lounge/dining/kitchen window in Unit 13, on the sixth floor, facing the site. The closest point would be the corner of the six storey block, at some 28m distance. There would be more oblique views of the tallest block and more distant views of the seven and eight storey blocks. There would be some view retained along the southern part of Bard Road towards the Former Phoenix Brewery building on Freston Road. However, this would be very constrained by the proposed building and even more so taking account of the permitted five storey development at Nos 137-139 Freston Road which will stretch from the curve of Bard Road to Freston Road. I acknowledge that the room affected in Unit 3 also has a window facing west. However, this does not justify such a deterioration in the outlook from the east facing window.
39. Units 5, 9, 12 and 14 have north facing habitable rooms (lounge/dining/kitchen and, in the case of Units 5 and 9, a bedroom) with access to balconies on the north elevation. The closest block would be 43m high. The proposed development would result in a significant adverse interruption of the outlook from these windows and balconies due to the narrowness of Bard Road, the height and length of the proposed building and the relatively close distance between them. The view from the bedroom window in Unit 12, which faces the side elevations of the north-west and south-west blocks, would be the most directly and adversely affected of all.
40. The proposed development would result in a high magnitude of change in the outlook from the above windows and balconies. I fully appreciate that there is no right to a view¹. However, the proposed development would result in a significant adverse effect on outlook because of the undue obtrusiveness and overbearing impact of a building of the proposed height, length and position in such close proximity. Occupants of all of Units served by the above windows and balconies would experience a materially increased sense of enclosure and oppressiveness. Although the rest of the windows to habitable rooms in these Units would be substantially unaffected, I consider the presence of such tall wide building blocks in such close proximity would be unpleasant, overwhelming and oppressive, making the properties unattractive places to live².
41. The Vertical Sky Component loss assessment (the VSC), which is measured at the window face, gives an indication of the effect of a proposed development on daylight in a room. The VSC indicates that bedrooms in Units 1, 6, 10 and 12 would experience some daylight loss as a result of the proposed development. A bedroom in Unit 12 would experience the most extreme loss at some 33%. A bedroom in Unit 1 would experience about 21% loss and a bedrooms in Units 6 and 10 would lose between about 14% and 18%.
42. The BRE Guidelines Site Layout Planning for Daylight and Sunlight Good Practice advise that bedrooms are less important for daylight than living rooms and that a loss of about 20% of daylight would normally not be too noticeable. On this basis only one bedroom would experience an unacceptable loss of daylight. This in itself might not amount to sufficient reason to refuse the

¹ APP/X1545/A/06/2023805

² Landscape Institute Technical Information Note – Residential Visual Amenity Assessment (Draft 13 February 2018)

proposal³ particularly as the annual and winter sunlight to the windows would meet the BRE criteria. However, taken together with the loss of outlook identified above, I conclude that the proposed development would have an unacceptably harmful effect on the living conditions of occupants of Cian House.

43. The proposal would replace older buildings and a yard with more modern development. However, those buildings are at the Freston Road end of the site and do not unduly affect the outlook from the Units in Cian House. The public realm improvements of new paving and planting would be relatively minor, particularly along Bard Road. None of these matters lead me to any different conclusion in respect of outlook from the residential Units.
44. In having such a harmful effect on living conditions of existing occupants, the proposed development would not amount to good design. Accordingly the proposal would conflict with Policy CL5 of the CLP, which requires good living conditions for occupants of new, existing and neighbouring dwellings, with good standards of light and no harmful increase in the sense of enclosure of existing buildings.

The Curve

45. A devastating fire occurred in 2017 at Grenfell Tower, some 300m away from the appeal site. As part of the Council's response to the disaster, a community centre was set up on the lower floors of Cian House, providing the bereaved and survivors with therapeutic services, community spaces for meetings and social activities, leisure and training opportunities. It is clearly a valuable resource for the community. The accommodation is light and spacious inside, even though the windows facing the appeal site are obscure glazed. Many rooms have windows facing the West Cross Route, including most of the therapy rooms. Although there is significant noise from the West Cross Route traffic, there is air conditioning so windows can be kept closed. Substantial numbers of people use the facilities every day.
46. The proposed development would not have a direct physical effect on The Curve and the way it is used. However, during demolition and construction, those coming and going to The Curve would experience noise and dust arising from demolition, excavation, and construction works, as well as disruption by way of closure of parts of the highway from time to time and construction traffic movements.
47. The appeal is accompanied by revised evidence regarding the management of the development process which, due to the scale of the proposal, would take some years. The proposed arrangements would be for the vast majority of vehicles and operatives to enter the site from Freston Road only, and for pedestrian access to The Curve building to be retained at all times. Other mitigation measures could include acoustic barriers; limiting the hours of noisier activities; and positioning site offices and welfare facilities away from the Bard Road boundaries. In addition, community liaison measures are proposed including: regular up-date meetings with The Curve users and with various nearby residents' associations and landlords; on site liaison managers together with apprenticeships and training schemes; 'back to work' and support

³ I find no conflict with the precedents cited by the appellant at The Saga Centre/Old Gramophone Works, Kensal Road and Lucan Place

initiatives; and the Contractor would join the Considerate Contractor Scheme. In addition all construction works could cease on the 14 June, the anniversary of the Grenfell Fire, and could also do so at other specific and sensitive days/times that could be agreed in advance.

48. Whilst there is no doubt that the process of re-development would cause significant disturbance, the suggested mitigation measures could provide an acceptable balance between the need to protect the health and well-being of users of The Curve, particularly during the development period, and the advantage of making more efficient use of the appeal site. Absent any means of securing necessary mitigation, the effect of the appeal scheme on the users of The Curve would not be acceptable. Had the appeal proposal been acceptable in all other respects, I would have sought the views of the parties on the way in which the necessary mitigation measures could be secured and implemented throughout the development process.

Other Matters

49. The appellant received positive pre-application advice from Officers and the detailed design was endorsed by the Council's Architectural Panel. However, pre-application advice is not binding on the outcome of a formal application. The Planning Committee refused the application contrary to the advice given by Officers. I have reached my own conclusions based on my observations during my site visit and the planning merits of the case as set out in the evidence before me.

Planning balance and conclusion

50. I have found that the proposed development would have a significant and harmful effect on the character and appearance of the area; would have an unacceptably harmful effect on the living conditions of occupants of Cian House and that, absent any means of securing necessary mitigation during the demolition and construction period, it has not been demonstrated that the effect on users of The Curve would be acceptable. All in all therefore, it would not amount to good design. In these respects I find conflict with the development plan. I give these matters great weight in the context of this appeal as the proposed building would have a permanent and long-lasting adverse effect.
51. The proposed development would make more efficient use of land. It would provide much needed and flexible office space in an accessible location, in a contemporary building with active commercial ground floor uses in an area that would benefit from the additional vitality. The appellant anticipates this could support over 1,000 long term jobs. Through the Construction Management Plan employment and training for the local community could be provided during the construction process. There would also be a multi-function space, gym and roof terraces as well as some accessible public realm including a footpath between Bard Road and Freston Road. Land within the site could be safe guarded for the route to a new pedestrian/cycle bridge to the White City Opportunity Area in the future and a contribution made towards its costs. These are substantial benefits. However, they could be achievable in other less harmful ways.
52. In the overall planning balance, I conclude that the benefits in this case are not sufficient to outweigh the significant adverse effects that I have identified. In conflicting with Policies CL1, CL2 and CL5 of the CLP the proposal cannot

comply with the development plan as a whole. I find no other material considerations to indicate the decision should be other than in accordance with the development plan. The appeal is dismissed.

S Harley

INSPECTOR