



Appeal Decision

Hearing Held and Site visit made on 10 September 2019

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Appeal Ref: APP/N5660/W/18/3219301

5 Waterworks Road, 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 18/00456/FUL, dated 23 January 2018, was refused by notice dated 3 October 2018.
 - 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 4 storeys for 20 Class C3 residential units and 2,043sqm of B1 office accommodation.
-

Decision

1. The appeal is allowed and planning permission is granted for Demolition of the existing buildings and the redevelopment of the site incorporating the erection of a building comprising basement, ground, plus 4 storeys for 20 Class C3 residential units and 2,043sqm of B1 office accommodation at 5 Waterworks Road, London, SW2 1SE in accordance with the terms of the application, Ref 18/00456/FUL, dated 23 January 2018, subject to the conditions in Annex A.

Main Issue

2. The main issue in the appeal is whether the scheme would make appropriate provision for affordable housing.

Reasons

3. Policy H2 of the Lambeth Local Plan (LLP) addresses the provision of affordable housing and seeks to achieve the maximum reasonable amount of affordable housing on sites. In particular on sites capable of accommodating 10 or more homes it sets criteria regarding the amount and tenure split that would be sought in each case. More specifically that in the first instance the provision should be made on site and 70 percent of the affordable homes should be for social or affordable rent and the remaining 30 percent as intermediate.
4. The LLP policies are underpinned by policies of the London Plan (LP), the Lambeth Viability SPD (SPD) and the London Plan Homes for London Affordable Housing and Viability SPG (SPG). Both the SPD and SPG make provision for the use of review mechanisms. The Council's own SPD was adopted after the LP SPG. Therefore, the Council confirmed at the hearing that it is primarily relying on the SPD. The policy provisions allow for the use of review mechanisms where a financial appraisal has been submitted. In this case a viability appraisal was submitted as part of the planning application process.

Two cost plans were provided and the Council had these independently reviewed. In this case the Council has undertaken a further review of the Paragon cost plan and considers that it has been demonstrated that the scheme would not be able to provide a policy compliant level of affordable housing. There is no dispute on this point and the Council confirmed this in its written submission and at the hearing. The points in dispute related to the detailed provision of the review mechanisms that are set out in the relevant policy.

5. The executed unilateral undertaking (UU) is worded to the effect that the appellants would not provide affordable housing on the granting of planning permission should this appeal be allowed. Thereafter the UU would obligate the appellants to undertake an early stage and/or late stage viability review. This is on the basis that the development might become viable post commencement and capable of delivering some affordable homes. Schedule 3 of the obligation contains the affordable housing obligations.
6. The UU's early stage review trigger requires the owner to notify the Council in writing when it considers that substantial implementation has been achieved by the substantial implementation target date. The substantial implementation target date is defined as '*...the date 24 months from but excluding the date of grant of the Planning Permission*'. It is required to be accompanied by full documentary evidence on an open book basis. This information would be assessed by the Council to determine whether affordable housing would be required. It allows for provision of an affordable housing scheme or for an affordable housing contribution to be used toward off site affordable housing.
7. The UU's late stage review mechanism is triggered by the '*late stage review date*'. This is defined as '*...the date on which 75 per cent of the market units have been disposed of*'. It would require the submission of development viability information to establish whether a late stage contribution is payable and the amount.
8. This approach would accord with the requirements of the SPD and LP as well as the aims of the National Planning Policy Framework (the Framework). I consider that this obligation would be necessary to secure the affordable housing requirements in perpetuity, directly related to the development and fairly and reasonably related in scale and kind to the development. There would be no conflict with Regulations 122 & 123 of the Community Infrastructure Regulations 2010 (as amended) (CIL Regs) or paragraph 56 of the Framework.
9. I therefore conclude that the scheme as presented, with the certified planning obligation would make an appropriate provision for affordable housing. It would be in accordance with LLP policies H2 and H4, LP policies 3.5, 3.8, 6.13, 7.1, 7.2, 7.15, 3.10, 3.11, 3.12 & 3.13, the Lambeth Viability SPD and the London Plan Homes for London Affordable Housing and Viability SPG.

Other matters

10. The officers report on the application outlines a number of additional planning infrastructure requirements. Planning obligation requirements are set out in LLP policy D4. The submitted obligation addresses these requirements and I will take each in turn.

11. Part (vi) of policy D4 sets out a requirement for the obligation to secure car club membership, parking restrictions (preventing parking permits, blue badge spaces and a contribution) and the provision of a travel plan. The LLP seeks to support employment and training schemes, maximise local employment opportunities and help address skills deficits in the local population. The Employment and Skills Supplementary Planning Document sets out how planning obligations would be sought to help deliver the policy aims. It sets out a formula to determine the monetary contributions.
12. Policy D4 (c) sets out that development should secure appropriate scheme implementation and control. In this case the Council is seeking to secure the considerate contractors scheme. In addition, part (b) (xvi) seeks development proposals to provide sustainability measures. In this case the scheme would provide sustainability measures in the form of consideration of feasibility of connection to a future heat network and a carbon offset contribution.
13. D4 (iv) allows schemes to secure necessary highway and traffic works associated with the scheme. In this case the highway works would include the upgrade of Waterworks Road. There is some disagreement about what should be required on this point. At the hearing the Council did not argue that planning permission would be refused if the highway works were not undertaken nor did it suggest that the Local Highway Authority had objected to the scheme. Nonetheless, it is common ground that Waterworks Road is not a public highway. The appellants indicated that Waterworks Road would either be brought to an adoptable standard and maintained long term and/or become adopted highway. Therefore, I consider that the approach adopted by the appellant in this case is proportionate.
14. The provision of the planning obligations detailed in the preceding paragraphs would accord with the requirements of the development plan as well as the aims of the Framework. I consider that these obligations would be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. There would be no conflict with Regulations 122 & 123 of the CIL Regs or paragraph 56 of the Framework.
15. I have carefully considered the points raised in representations submitted at the application stage. The effect of the scheme on the setting of Brixton Windmill, a Grade II* listed building has been raised. The building is located some distance to the north and west of the appeal site. As such it would be separated from the appeal scheme. Therefore, I consider that setting of the Windmill would not be adversely affected.
16. The next concern raised is the proximity of the appeal scheme to Renton Close. In particular the effect on the living conditions of the occupiers of these dwellings. The new building would be positioned on the opposing side of Jebb Avenue from Renton Close. The layout shows that the residential accommodation would be set back to a degree from the road frontage and off set from the position of buildings in Renton Close. As such the relationship would be at distance and oblique. Therefore, I consider that there would not be issues of overlooking or loss of daylight and sunlight resulting from the provision of the appeal scheme.
17. Concern has also been raised regarding the proximity of the scheme to HMP Brixton. The officers report on the scheme sets out the concerns as being about access, parking and security preventing criminal activity. Conditions are

attached to secure a method of demolition and construction statement and a to meet the requirements of LP policy 7.3 and LLP policy Q3 in regard to secure by design. The officer report considered that these measures would proportionately address these matters and I have no reason to reach a different conclusion.

18. The site is located within the Rush Common and Brixton Hill Conservation Area (CA). The 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. The Council does not object to the provision of the residential use on the site or the scale and massing of the building. In this regard I have no reason to disagree and the scheme would therefore preserve the character or appearance of the CA in which it is located.

Conditions

19. I have considered the conditions put forward and discussed at the hearing against paragraph 55 of the Framework, the Planning Practice Guidance and where necessary I have amended the wording in the interests of precision. Conditions 1 & 2 are required because they set the necessary time limit and the approved plans and documents as this provides certainty.
20. A condition requiring the submission of a scheme for contamination remediation is necessary to ensure that the future users of the site are protected from risks associated with contaminants. A condition to secure a construction method statement would be necessary in the interests of highway safety. To meet the requirements of LP policies 5.1, 5.2 and 5.3 a condition would be necessary to ensure that the scheme would meet energy efficiency requirements.
21. To manage the water environment of the development and mitigate the impact on flood risk and water quality a condition to secure the submission of a surface and foul water drainage strategy is necessary. In the interests of the living conditions of existing and future occupiers of the scheme conditions are necessary to secure the details of ventilation for refuse storage and internal and external plant equipment and trunking.
22. In the interests of the character and appearance of the area, which is a conservation area, a condition is necessary to secure the detail of the external finish of the building and the detail of the green roof and PV specification. It is necessary to ensure that the cycle parking is secured and that details of servicing and delivery are submitted for approval in the interests of highway safety.
23. The application was supported by a 'Sustainability & Energy Statement'. This included a BREEAM pre assessment. It demonstrated that the rating of 'Excellent' rating could be achieved. Therefore, the requirement for a condition to secure this is also reasonable in this case. Conditions regarding air quality and dust management as well as no road mobile machinery and the detail of the gas boiler system are also reasonable in this case to meet the requirements of LP policy 7.14.
24. LLP policy Q3 refers to secured by design and a condition to secure that the scheme would achieve accreditation is reasonable and necessary. The Council has specific policy requirements for mixed use development set out in LLP

policy ED2. Therefore, I consider that it is reasonable to control the provision of the non residential floor space and restrict future use.

25. I have not imposed suggested conditions regarding levels and internal access as I consider that these would duplicate the provision in condition 2 to undertake the scheme in accordance with the approved plans and documents.

Conclusion

26. Therefore, for the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

Annex A – Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Location Plan WWR-P051-S2-P0; Existing 3D Topographical Survey 7098/1 Rev0; Existing Ground Floor Plan 7098/4 Rev0; Existing First Floor Plan 7098/5 Rev0; Existing Outline Elevations 7098/1 Rev0; Existing Outline Elevations 7098/2 Rev0; Existing Outline Elevations 7098/3 Rev0; Proposed Site Plan WWR-P052-S2-P0; Proposed Basement Plan WWR-P150-S2-P0; Proposed Ground Floor Plan WWR-P151-S2-P0; Proposed First Floor Plan WWR-P152-S2-P0; Proposed Second Floor Plan WWR-P153-S2-P0; Proposed Third Floor Plan WWR-P154-S2-P0; Proposed Fourth Floor Plan WWR-P155-S2-P0; Proposed Roof Plan WWR-P160-S2-P0; Proposed Context Elevations Sheet 1 WWR-P220-S2-P0; Proposed Context Elevations Sheet 2 WWR-P220-S2-P0; Proposed Waterworks Road Elevation WWR-P250-S2-P0; Proposed East Elevation WWR-P251-S2-P0; Proposed Jebb Avenue Elevation WWR-P252-S2-P0; Proposed West Elevation WWR-P253-S2-P0; Proposed Section AA WWR-P350-S2-P0; Proposed Section BB WWR-P350-S2-P0; Proposed Bay Study WWR-P550-S2-P0; Design and Access Statement WWR-DS-01-ZZ-RP-A-P650-S2-P0 dated January 2018; Planning Statement ref RJP: P6044, Argent Blighton Associates Affordable Housing Viability Report dated 18th January 2018; WWRDS01-ZZ-SA-A-Z150-S0-P0 Accommodation Schedule; RSK Construction and Logistics Plan ref 712440 dated January 2018; Rolfe Judd Cover Letter Ref JO/P6044 dated 23 January 2018; BVP Daylight and Sunlight to Neighbouring Properties and Proposed Accommodation Addendum Report dated January 2018, RSK Basement Impact Assessment Ref 371700 - 01 (00) dated February 2018; RSK Flood Risk Assessment and Surface Water Drainage Strategy Ref 132811-R1(3)-FRA dated January 2018, RSK Heritage Statement Ref 660181 dated August 2016; RSK Heritage Statement Ref 660181 dated January 2018; RSK Preliminary Risk Assessment Ref 28503 R01(01) dated 23 January 2018; Hawkins Environmental Noise Assessment V01 dated 13th July 2016; Hawkins Environmental Addendum Noise Assessment dated 26th January 2018; Hawkins Environmental Proof of Evidence of Nick Hawkins - Noise dated 11th October 2017; Sustainability and Energy Statement Ref 712440R(05) dated 30th January 2018; Hawkins Environmental Air Quality Assessment dated 24th January 2018; Email from Agent confirming affordable housing dated 2nd August 2018, Email from Agent confirming highway improvement works Received 8th August 2018; 712440-10-01 rev06 Proposed Parking and Turning Head Pedestrian Improvements Received 8th August 2018.
- 3) A) No demolition, excavation or development shall commence until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved in writing by the local planning authority:
 - i) The results and detailed risk assessment resulting from the Site Investigation Scheme set out in the RSK Preliminary Risk Assessment;

- ii) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
 - iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in ii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The development shall thereafter be implemented in accordance with the details and measures approved.
- B) Prior to occupation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
- C) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted to and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination will be dealt with.
- 4) No demolition, excavation, or development shall commence until full details of the proposed demolition, excavation, and construction methodology, in the form of a Method of Demolition and Construction Statement, have been submitted to and approved in writing by the local planning authority. The Statement shall include details regarding:
 - a) The notification of neighbours with regard to specific works;
 - b) Advance notification of road closures;
 - c) Parking, deliveries, and storage;
 - d) Dust and particulate monitoring and mitigation;
 - e) Details of measures to prevent the deposit of mud and debris on the public highway;
 - f) The impact and mitigation of basement construction on flooding and drainage;
 - g) The impact and mitigation of basement construction on structural stability of the land and neighbouring properties;
 - h) The impact and mitigation of works on noise, disruption and vibration;
 - i) Any other measures to mitigate the impact of construction upon the amenity of the area and the function and safety of the highway network.
- 5) No demolition or development shall commence until provision has been made to accommodate all site operatives', visitors' and construction vehicles loading, offloading, parking and turning within the site or

- otherwise during the construction period in accordance with the approved details. The demolition and development shall thereafter be carried out in accordance with the details and measures approved in the Statement.
- 6) Prior to the commencement of the development hereby permitted, details shall be submitted to and approved in writing by the Local Planning Authority which demonstrate that the development will achieve a zero carbon rating (as defined in section 5.2 of the London Plan Housing SPG) for the residential part of the development and 35% below Part L 2013 for the commercial part of the development. The details shall include SAP and BRUKL calculations. The development shall thereafter be carried out in accordance with the approved details.
 - 7) No development shall take place until a scheme indicating the provision to be made for surface and foul drainage have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use and shall be retained thereafter.
 - 8) No above-ground construction works shall commence until details of the ventilation for the waste and recycling storage in the basement of the development have been submitted to and approved in writing by the local planning authority. The waste and recycling storage shall be provided and ventilated in accordance with the approved details prior to the commencement of the uses they serve, and shall thereafter be retained solely for their designated use.
 - 9) No above-ground construction works shall commence until details of internal and external plant equipment and trunking, including building services plant, ventilation and filtration equipment and commercial kitchen exhaust ducting/ventilation, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and all flues, ducting and other equipment shall be installed in accordance with the approved details prior to the use commencing on site and shall thereafter be maintained in accordance with the manufacturers' instructions.
 - 10) Prior to the commencement of the relevant part of the development hereby permitted, the following details of materials and construction detailing shall be provided to and approved in writing by the local planning authority. The development hereby permitted shall be thereafter built in accordance with the approved details. The following details are required:
 - a) brick and mortar sample (a sample panel can be provided on-site)
 - b) windows and doors, including reveal depths
 - c) balustrades and rails
 - d) balconies including soffits, fascias, and their means of drainage
 - e) materials and location of external rainwater pipes, services, and flues
 - f) external lighting
 - g) other materials used in the external elevations.

- 11) Prior to the installation of the green roof and PV panels, a detailed specification of them shall be submitted to and approved in writing by the local planning authority. The specification shall include details of PV layout including plans and elevations, the quantity, size, species, position and proposed time of planting of all elements of the green roof, together with details of their anticipated routine maintenance and protection. The green roof and PV panels shall be installed prior to the commencement of any of the uses hereby permitted, and thereafter maintained in accordance with the approved details.
- 12) The cycle parking shown on the approved plans shall be implemented in full prior to the commencement of the uses they serve, and shall thereafter be retained solely for their designated use.
- 13) Prior to the commencement of the uses hereby permitted, a Servicing and Delivery Management Plan shall be submitted to and approved in writing by the local planning authority. The uses hereby permitted shall thereafter be operated in accordance with the approved details.
- 14) No development shall commence at the site before an Air Quality and Dust Management Plan based on the Control of Dust and Emissions during Construction and Demolition SPG 2014, which shall incorporate the mitigation measures listed in section 9.4, has been submitted to and approved in writing by the Local Planning Authority. The Air Quality and Dust Management Plan shall include the details for mitigation and continuous monitoring, including detail of the location and frequency of monitoring throughout all construction phases. The development shall be carried out in accordance with the approved Plan.
- 15) Prior to the commencement of the commercial uses hereby permitted a final code certificate shall be obtained and submitted to the Local Planning Authority confirming the development hereby permitted has achieved a minimum BREEAM New Construction rating of 'Excellent'.
- 16) Prior to the occupation of the residential units hereby permitted a scheme and timetable for the fitting out of the office accommodation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a detailed schedule of works. The development shall be carried out in accordance with the approved scheme and timetable.
- 17) No non-road mobile machinery (NRMM) shall be used on the site unless it is compliant with the NRMM Low Emission Zone requirements (or any superseding requirements) and until it has been registered for use on the site on the NRMM register (or any superseding register).
- 18) The development shall be constructed and operated thereafter to 'Secured by Design Standards'. A certificate of accreditation to Secured by Design Standards shall be obtained prior to the residential occupation of the development and made available to the local planning authority on request.
- 19) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or the Town and Country Planning (General Permitted Development) Order 2015 (or any orders revoking and re-enacting those orders with or without modification), the areas shown as

B1 use at basement, ground and first floor, shall only be used as a B1 and for no other purpose.

- 20) Prior to installation full details of the final proposed gas boiler system should be submitted to the Council for approval. The details should demonstrate that the gas boiler system should meet the emission standards set out in the GLA's Sustainable Design and Construction Supplementary Planning Guidance 2014 (or any superseding requirements). The development should be carried out in accordance with the agreed details.

END

APPEARANCES

FOR THE APPELLANT:

Jan Donovan	Rolfe Judd Planning
Christine Hereward	Hereward Solicitors
Peter Smith	Davey Smith Architects
John Blighton	Argent Blighton
John Osborn	Rolfe Judd Planning

FOR THE LOCAL PLANNING AUTHORITY:

Cuma Ahmet	London Borough of Lambeth
Ross Whear	London Borough of Lambeth
Julian Maile	London Borough of Lambeth
Mack Heaney	London Borough of Lambeth

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Draft planning obligation
- 2 Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017
- 3 Lambeth Supplementary Planning Document Employment and Skills Feb 2018
- 4 Lambeth Supplementary Planning Document Development Viability Oct 2017
- 5 Lambeth Local Plan policies
- 6 Draft Schedule 3 Affordable Housing and Viability Review & BNP Paribas Development Appraisal dated 12 March 2018
- 7 Signed Statement of Common Ground

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1 Certified copy of the planning obligation