
Appeal Decision

Hearing Held on 2 October 2019 and 22 January 2020

Site visit made on 22 January 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/A5270/W/19/3227828 134-136 Broadway, West Ealing W13 0TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Shahram Sabbaghi of Bower Terrace Ltd against the decision of the Council of the London Borough of Ealing.
 - The application Ref 183569FUL, dated 27 July 2018, was refused by notice dated 23 April 2019.
 - The development proposed is construction of a part five-storey and part six-storey building comprising 19 flats, 17 x one bedroom, 1 x two bedroom and 1 x studio; A1 shop unit on ground floor (following demolition of the existing buildings).
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Decision

1. The appeal is allowed and planning permission is granted for construction of a part five-storey and part six-storey building comprising 19 flats, 17 x one bedroom, 1 x two bedroom and 1 x studio; A1 shop unit on ground floor (following demolition of the existing buildings) at 134-136 Broadway, West Ealing W13 0TL in accordance with the terms of the application, Ref 183569FUL, dated 27 July 2018, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Shahram Sabbaghi of Bower Terrace Ltd against the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

Procedural Matters

3. I have taken the description of development above from the decision notice. While different to that given on the application form, it is the one stated on the appeal form. It is also indicated that it was altered with the Council's agreement at the time of the application being registered.
4. At the first day of the Hearing a signed and dated 2 October 2019 planning obligation was submitted. The unilateral undertaking (UU) related to funding towards renewable and low energy measures, health care provision, air quality improvements, education services, the provision of 2 disabled parking bays and the West Ealing regeneration scheme. The provision of a car club was also included.

5. At the second day of the Hearing, the Council confirmed they had no objection to the content/drafting of the UU except seeking the inclusion of a late stage review mechanism relating to affordable housing.
6. Following discussions at the Hearing, a timetable for the submission of a unilateral undertaking to include a late stage review for affordable housing and the receipt of comments on it was set out. Subsequently a separate unilateral undertaking (UU2) dated 30 January 2020 was provided. After the Hearing and the submission of further details by the Council regarding the other obligations sought UU3 was provided (dated 20 February 2020).
7. In light of the above, there would be no prejudice were I to take the obligations into account in my decision. Where comments have been made regarding these obligations and their compliance with the CIL Regulations, these have been taken into account in my reasoning.
8. Between the first and second day of the Hearing documents were provided by the main parties that narrowed the areas of dispute with regard to viability¹. In addition, an amended Schedule of Agreed Inputs was provided at the second day of the Hearing by the appellant. The Council were satisfied with the content of the document.
9. At the Hearing the main parties confirmed that while not included in the decision notice or suggested conditions, plan reference 579-112 did form part of the proposal and the assessment of the scheme. They also confirmed that the original versions of plans reference 579-100, 579-104, 579-106, 579-108 and 579-111 were the relevant plans.

Main Issue

10. The main issue of the appeal is whether the development would make appropriate provision for affordable housing.

Reasons

Development Plan Context

11. The current development plan comprises the Ealing Development Strategy 2026 Development Plan Document adopted April 2012 (EDS), the Ealing Development Management Development Plan Document adopted December 2013 (DPD) and the London Plan March 2016 (LP).
12. The London Plan – Intend to Publish version (DLP) was considered to be relevant, in particular with regard to Policies H4, H5 and H7 by the parties in relation to affordable housing. While the Statement of Common Ground indicated that both parties considered significant weight should be given to the DLP, at the Hearing the appellant considered it should be given lesser weight.
13. The National Planning Policy Framework (Framework) states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework (paragraph 48).

¹ Statement of Common Ground, Agreed Responses to Inspector's Questions and Addendum to Statement of Common Ground Areas of Agreement / Summary Input Table

14. No inconsistencies between the DLP and the Framework were brought to my attention. However, the appellant highlighted the Mayor's response to the Panel's recommendations on the DLP's housing strategy as a whole and how this may lead to wider changes to other policies. In light of the above, I have given the DLP moderate weight.

Affordable Housing Provision

15. Policies 3.11 and 3.12 of the LP, H4 of the DLP and Policy 1.2(a) of the EDS along with the SPG² seek to maximise affordable housing provision and include exceptions for cash in lieu contributions, rather than on site provision, where justified. The Council calculated that an on-site contribution would be in the form of 1 no 1-bedroom unit. Housing associations subsequently indicated to the Council that they were less willing to take any units on given it would be more costly to do so due to the scale of the development and that only a single unit would be provided.
16. On this basis, the main parties agreed that in this instance, if it were viable to do so, any affordable housing contribution should be in the form of a financial contribution. This would subsidise and better deliver affordable housing elsewhere in the borough. From the evidence before me, I consider that in this instance the individual circumstances of the case justify a cash in lieu contribution, if viable to do so.

Residential Values

17. The appellant has submitted a viability appraisal of the scheme. The comparison method was used by both main parties in calculating the residential values of the proposed units and it was agreed that the size, type and location of comparable properties were relevant factors.
18. Valuations from 2 local estate agents supported the appellant's calculations. I appreciate that there may be different methods, motives and experiences between professionals such as estate agents and surveyors. Nevertheless, there is no clear evidence before me that the valuations provided were not genuine and based on knowledge of the local housing market. Full details of the methods used by the estate agents are not before me. However, I give these valuations moderate weight.
19. Despite many of their comparable properties being second hand, the appellant put greater weight on units that were located in a similar position to the appeal site, fronting on to busier roads such as Broadway. The noise and disturbance associated with the greater level of traffic and nearby commercial uses were seen to reduce values. In addition, the lack of on-site parking, facilities and more limited communal outdoor space were seen as important considerations.
20. Having visited the appeal site and surrounding area at different times of day, I appreciate that away from main roads such as Broadway, there is a considerable reduction in noise and disturbance. While set back above ground floor level and with a double aspect, the proposed units at the front block would experience noise and disturbance similar to those at 90-94 and 143-145 Broadway. However, the rear units would not be affected in the same way as the front block. This difference would be a factor that would influence the value

² The Mayor of London's Homes for Londoners – Affordable Housing and Viability Supplementary Planning Guidance 2017

of the rear units. In regard to their location and surrounding environment, those at the rear block would be comparable to units at Redwell House close by. While rooms may be darker due to their orientation, the value of the rear block would reflect the quieter location.

21. The SPG states that market evidence relating to comparable new build properties within a reasonable distance from the site should be used to justify assumptions on development values. While in terms of location the Broadway examples are directly comparable and not of considerable age, they are second hand properties. Moreover, while I appreciate it was indicated that a 10% new build premium was added to the value of the proposed units, it is unclear how such a figure was reached. Furthermore, it was not disputed that, as reflected in the construction costs, the proposed development would be of a relatively high specification. This would increase the difference in value of the proposed units to second-hand ones.
22. From the information presented to me, the units at Redwell House form part of a larger development than the appeal scheme. Unlike several of the second-hand units highlighted, the Redwell House properties are examples of 2 person, 1 bedroom properties at similar floor levels to the appeal scheme, close to the site. While I understand that there may be additional costs associated with the use of the onsite facilities and designated parking at Redwell House, they do present potential options for buyers that the appeal site does not. They would have some influence on the desirability and therefore price of the units.
23. I appreciate that the consultants advising the Council have experience in the area and information relating to incentives and sales at nearby developments as well as the previously approved scheme at the site. However, much of the evidence was said to be confidential and was not before me.
24. The Council suggest there are further new build examples that could have been used as comparables. However, they have not provided details of these. Notwithstanding this, I do not have full details of all the comparable properties put to me by the parties. This includes floor areas, floor levels and what, if any, incentives or additional facilities/services were included in the sale prices. Consequently, I cannot be sure that they are directly comparable or how any adjustments should be made to reflect the value of the proposed units.
25. The viability and deliverability of the scheme has been disputed. The appellant stated that the scheme would still be deliverable, although at a less profitable level. Offers of a contribution towards affordable housing were made in relation to the application subject to this appeal, the previous and pending application at the site. However, no contribution is now put forward as part of this appeal.
26. Regardless of the source or reason for any previous offers I am required to consider the viability of the scheme on the evidence before me. I am not entirely convinced by either main party with regard to their residential value calculations. The weight of evidence indicates that the values may lie somewhere between the two valuations. Nonetheless, the inclusion of a late stage review in UU2 would require the provision of more accurate evidence in regard to all elements of the scheme. This would be in line with development plan policies³ and would ensure that if there was any value or uplift from the scheme this would be captured and avoid the concerns regarding viability.

³ Policies 3.11 and 3.12 of the LP; H5 and H7 of the DLP, Policy 1.2(a) of the EDS and the SPG

Ground Rent

27. I acknowledge the comments from the appellant regarding the Government's commitment to introduce legislation to reduce or eliminate ground rent⁴. Therefore, a cautious approach and reluctance to include revenues from this in valuations and lending is understandable. Furthermore, I can appreciate how this potential change would lead to uncertainty and resistance from buyers to the previous norms in terms of lease time frames and ground rent values.
28. Notwithstanding this, I cannot be sure that such legislation will come into force, and if it does, when this would be or what the legislation would entail. While there may be impending changes, at the time of the application and the Hearing there is no legislation in place to prevent ground rent being sought and collected.
29. The proposed late stage review would allow greater certainty as to the legal status of ground rent incomes at a time when the scheme has progressed. There would be greater clarity over the potential effects of any legislation on property values, interest payments or other aspects of development. Therefore, any upward or downward effect of potential future legislation could be considered as part of the overall viability of the scheme.

Affordable Housing Conclusion

30. Having taken all the viability matters raised in the round, I have found neither approach totally convincing. Nonetheless, a late stage review, secured in UU2, would allow a more accurate assessment to be made at a time when there would be greater clarity over the areas of dispute. This would ensure that the development would make appropriate provision for affordable housing. Consequently, the proposal would accord with Policy 3A of the DPD, Policies 1.2(a) and 6.4 of the EDS, Policies 3.3, 3.10, 3.11, 3.12, 3.13 of the LP and Policies H4, H5 and H7 of the DLP and the SPG. These, in part, seek to ensure the maximum reasonable contribution towards affordable housing is secured, that cash in lieu payments are fully justified and that review mechanisms ensure any improvement in viability is captured.

Planning Obligations

31. Documents UU3 and UU2 have been provided by the appellant. These include a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and the Framework.
32. As outlined above, the development may be able to provide a financial contribution towards affordable housing in the borough. This is secured in UU2 with the provision of a late stage review mechanism. Certain elements are excluded from the build costs. Nonetheless, this would not have the effect of reducing any potential contribution. Details provided separately justify the stipulated contribution cap. As there would be a cash in lieu contribution, if viable, and based on the individual circumstances of this scheme, an early stage review is not necessary. Therefore, this obligation would be fairly and

⁴ 'Implementing reforms to the leasehold system in England', 'Summary of consultation responses and Government Response' and Twelfth Report of Session 20-17-2019 'Leasehold Reform'

- reasonably related to the development proposed and it passes the relevant tests.
33. Policies 1.2(d) and 6.2 of the CS provides a context for contributions towards education and health facilities. These have been derived from the relevant formulae and where applicable take into account the proposed type of units and number of bedrooms. The contribution would be directed towards increasing the capacity of the named schools and health facilities to accommodate the additional demands from the scheme. Given the size of the proposed development, the number of units involved and existing capacity issues, I consider that these obligations would pass the tests.
34. The Highway Authority have identified locations in the vicinity of the site for disabled parking bays and junction improvements. Additional residents and customers resulting from the scheme would be likely to increase the need for disabled spaces and evidence of pedestrian incidents in the area have been highlighted. The works have been costed and I see no reason to question the amounts. These are a necessary provision and relevant to the development proposed.
35. Contribution towards Renewable and Low Carbon Energy and Air Quality Monitoring would align with the aims of Policy 5.2 of the LP and Policy 1.2(d) of the CS where it seeks to minimise carbon dioxide emissions. Details of the calculations of sums and how they would be spent have been provided. The scheme would give rise to effects that the contributions would seek to address by increasing residents, visitors and traffic leading to the associated potential impacts from air quality and energy use. Consequently, they are necessary, directly related to the development and fairly and reasonable related to it in scale and kind.
36. The introduction of a car club scheme at the appeal site would support sustainable residential travel. This is encouraged in the LP and CS. The main parties considered a period of 3 years would be sufficient to establish travel patterns of residents of the site. I see no reason to reach a different finding. This element of the planning obligation is relevant to the development proposed, necessary to make the schemes acceptable in parking and transport terms and proportionate to what is proposed.

Other Matters

37. I acknowledge comments made by third parties during the application and appeal process on matters other than the main issue.
38. The proposed building would be of a greater height than, and not replicate the appearance of the existing building, the previously approved one at the site and some of those nearby. The scale of the buildings would be obvious from Broadway. Nevertheless, there is variety to the scale, materials and design of the built form in the area. This includes recent developments of taller buildings than that proposed. Consequently, it would not appear out of keeping with the streetscene of Broadway or Singapore Street. Moreover, it would respect the building line, be set back at upper floor levels as the adjacent properties are and a condition is imposed requiring the agreement of the external materials.
39. Some overlooking between properties is inevitable and tolerable in residential areas. This already exists given the close proximity of buildings along

Broadway and behind. Windows and outdoor areas currently allow views into other properties and plots. The proposed development would provide similar separation distances and often views would be at an oblique angle. In addition, privacy screens would be added to balcony areas to further limit views from them.

40. The Daylight and Sunlight Report showed there would be a reduction in light to certain windows in nearby properties. Nevertheless, it stated that other than at a small number of windows the Building Research Establishments guidance would be achieved. As a result of the existing scale and position of built form in the area, it is to be expected that there will be some shadowing and impacts on light from nearby/adjacent development. The Framework refers to a flexible approach in applying policies or guidance relating to daylight and sunlight. Given the nature of the rooms, the number and orientation of the windows affected and the degree of impact from the scheme, I consider acceptable living standards would be retained.
41. There is no clear evidence that the development would lead to any considerable additional noise or light disruption and there is already a building on site which could give rise to such impacts. Disruption from the construction process would be short-term and would be mitigated by a demolition and construction management plan.
42. I am mindful of the previously approved scheme which represents a fallback position for a multi storey commercial and residential building at the site. On the basis of all the evidence I have seen and heard I consider that the scheme would not unacceptably harm the living conditions of the occupiers of nearby properties.
43. Two of the ground floor units would not have a dual aspect. However, this relates to only a small number of the overall units. The internal and outdoor space for the proposed units exceeds the policy requirements. In this instance, I consider appropriate living conditions would still be provided. The privacy screens would also limit overlooking between the different blocks in the development.
44. The content and suggestions made in the pre-application advice have been referred to and that the scheme would set a precedent. Nonetheless, I have made my assessment on the basis of the individual circumstances of the case and found it would not result in unacceptable harm.

Conditions

45. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.
46. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
47. In order to protect the character and appearance of the area, I have also imposed a condition requiring details of the external materials to be agreed. At the Hearing it was agreed that for this and several other conditions, demolition could take place before the submission and agreement of the details.

48. I have also imposed conditions to ensure refuse storage to ensure adequate facilities are provided, as well as a cycle store to facilitate sustainable transport options in accordance with the floor plan prior to occupation of the units. A condition requiring information relating to potential contamination is imposed in order to reduce risks from pollution. This is required prior to the commencement of the development as it may have implications for the initial works and demolition.
49. In the interest of highway safety and the free flow of traffic a condition is imposed requiring the submission and agreement of a delivery service plan prior to the occupation of the retail unit. For the same reasons and to protect living conditions of nearby occupiers a condition is imposed regarding a construction management plan. As this will in part relate to the initial works the details are required prior to commencement.
50. To ensure appropriate living conditions for the future occupiers of the residential units are provided, conditions are necessary in relation to ventilation, air quality, sound insulation and plant/machinery. Some of the suggested conditions have been merged and re-worded where appropriate. To protect living conditions of future and nearby occupiers a condition is added in relation to privacy screens to the proposed outdoor areas.
51. The Energy Statement and Sustainability Statement already provided indicate that further information would be required at the detailed design stage. To ensure appropriate sustainability measures and energy efficiency, conditions are included requiring final statements for the different uses. The timing of the initial information relates to the need to investigate measures early on. Specific reference to Green Man Lane are not included as this may relate to land and requirements outside the appellant's control. The condition precludes occupation until approved measures are in place.
52. I have not imposed a condition requiring the scheme to be in accordance with Secure by Design standards as it is not clear whether this would result in alterations to the scheme. Moreover, it has not been demonstrated that this, or a condition relating to non-road mobile machinery are reasonable or necessary. A car-free condition is not reasonable or relevant given the site is not within a controlled parking zone.

Conclusion

53. I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

Stuart Willis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gavin Johnson	Johnson Associates
Petrina Froud	Kempton Carr Croft
Michael Darroch	Kempton Carr Croft
Ashley Bowes	Barrister
Jim Bailey	Pegasus Group
Shahram Sabbaghi	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Murphy	Barton Wilmore
Oliver Dawson	Barton Wilmore
Natalie Hinds	Ealing Council
James Young	Ealing Council
John Robertson	Ealing Council
Darrin Quane	Lambert Smith Hampton

DOCUMENTS SUBMITTED AT THE HEARING:

UU dated 2nd October 2019

Costs application by appellant

Amended Summary of Inputs

Copies of plans ref 579-100, 579-104, 579-106, 579-108 and 579-111

Schedule of 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: 579-01; 579-02; 579-03; 579-04; 579-05; 579-06; 579-07; 579-08; 579-09; 579-100; 579-101; 579-102; 579-103; 579-104; 579-105 Rev C; 579-106; 579-107 Rev A; 579-108; 579-109 Rev A; 579-110; 579-111; 579-112; SK-01 and SK-02 Rev A.
- 3) Other than demolition, no development shall commence until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 4) Prior to the occupation of the residential units hereby approved, refuse and recycling storage as shown on drawing no 579-100 shall be provided, retained thereafter and not used for any other purpose.
- 5) Prior to the occupation of the residential units hereby approved, cycle storage as shown on drawing no 579-100 shall be provided, retained thereafter and not used for any other purpose.
- 6) No development shall commence until:
 - a) A desktop study has been carried out which shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and other relevant information. And using this information a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors has been produced.
 - b) A site investigation has been designed for the site using the information obtained from the desktop study and any diagrammatical representations (Conceptual Model). This shall be submitted to, and approved in writing by, the local planning authority prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable: - a risk assessment to be undertaken relating to groundwater and surface waters associated on and off the site that may be affected, and - refinement of the Conceptual Model, and - the development of a Method Statement detailing the remediation requirements.
 - c) The site investigation has been undertaken in accordance with details approved by the local planning authority and a risk assessment has been undertaken.
 - d) A Method Statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters, using the information obtained from the Site Investigation has been submitted to the local planning authority. This shall be approved in writing by the local planning authority prior to that remediation being carried out on the site.
- 7) Prior to the occupation of the retail unit hereby approved a delivery and servicing plan for the retail element of the development detailing

servicing arrangements, times and frequency and operational details, including swept path analysis, shall be submitted to and approved in writing by the local planning authority. The servicing of the retail element of the development shall be operated strictly in accordance with the approved details.

- 8) Prior to the occupation of the residential units hereby approved, details shall be submitted to and approved in writing by the local planning authority for a ventilation system to provide fresh air to habitable rooms on the Broadway elevation of the development, the air intake(s) to be located at the rear of the units concerned. The approved details shall be implemented prior to the first occupation of the dwellings and retained thereafter.
- 9) Prior to the occupation of the residential units hereby approved details shall be submitted to and approved in writing by the local planning authority to demonstrate that the development complies with the 'air quality neutral' Building Emissions Benchmark for the proposed C3 use at Appendix 5 of the Sustainable Design and Construction (2014) Supplementary Planning Guidance, London Plan 2011.
- 10) Prior to the occupation of the residential units hereby approved details shall be submitted to and approved in writing by the local planning authority of the sound insulation of the building envelope including glazing specifications, and of acoustically attenuated mechanical ventilation and cooling as necessary as well as the floor/ceiling/wall structures separating different types of rooms/uses within the building. The approved details shall be implemented prior to occupation of the residential units and retained thereafter.
- 11) Prior to the occupation of the residential units hereby approved details shall be submitted to and approved in writing by the local planning authority, of the external sound level emitted from plant/ machinery/ equipment and mitigation measures as appropriate, as measured at/ calculated to the nearest and/or most affected noise sensitive premises. The measures shall ensure that the external sound level LAeq emitted from plant, machinery/ equipment will be lower than the lowest existing background sound level LA90 (measured at the South of the built development) by at least 5 dBA at the most noise sensitive receiver location in the surrounding area. The assessment shall be made in accordance with BS4142:2014, with all machinery operating together at maximum capacity. The approved details shall be implemented prior to occupation of the residential units and retained thereafter.
- 12) No development shall commence until details have been submitted to and approved in writing by the local planning authority of a demolition and construction management plan including dust and noise/vibration mitigation measures. The approved plan shall be implemented as agreed.
- 13) Prior to the occupation of any part of the development hereby approved details shall be submitted to and approved in writing by the local planning authority of all boilers accommodated in the plant room to serve the energy requirements of the development, including space heating and hot water to the dwellings and hot water to the nondomestic spaces. The approved details shall be implemented prior to occupation of the development and retained thereafter.

- 14) Other than demolition, no development shall commence until a report, which includes full details and drawings of the energy and sustainability measures that are to be incorporated into the development, shall be submitted to, and approved in writing by the local planning authority. These shall include final details of the measures required to ensure the targets set out in the Sustainability Statement (14 July 2018) and supplementary information (28 November 2017), Energy Strategy Report (17 July 2018) and Thermal Modelling Report (12 December 2017) are met. The approved details shall be implemented prior to occupation of the development and retained thereafter.

No residential units shall be occupied until Energy Performance Certificates and modelling output reports from the "as built stage" have been submitted to the local planning authority to confirm compliance in terms of savings achieved through energy efficiency measures.

The retail unit shall not be occupied until Energy Performance Certificates and modelling output reports from the "as built stage" have been submitted to the local planning authority to confirm compliance in terms of savings achieved through energy efficiency measures.

- 15) Prior to the occupation of the residential units hereby approved, details of the privacy screens for the proposed balconies shall be submitted to and agreed in writing by the local planning authority. The approved details shall be implemented prior to the occupation of the unit the screen relates to and retained thereafter.