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## Appeal Decision

Hearing Held on 24 and 25 February 2021

Site visits made on 3 and 9 March 2021

**by D.R McCreery MA BA (Hons) MRTPI**

**An Inspector appointed by the Secretary of State**

**Decision date: 25 March 2021**

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### **Appeal Ref: APP/V5570/W/20/3256284 30-40 Vale Royal, Islington, London N7 9AP**

- 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 City and Provincial Properties Investments Limited against the decision of the Council of the London Borough of Islington.
  - The application Ref P2019/2702/FUL, dated 4 September 2019, was refused by notice dated 21 January 2020.
  - The development proposed is demolition of existing buildings and structures and erection of a part 4 and part 5 building to create Class B1 floorspace; service yard; cycle parking; plant refuse / recycling facilities; and associated works.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. The Hearing sat for 2 days. Unaccompanied site visits were undertaken on separate days which included visits to viewpoints suggested by those who attended the Hearing.
3. The Council considered the original planning application against policies in the London Plan (March 2016) that have been superseded by the London Plan (March 2021). Appeals are decided on policies in the development plan that is in force at the time of the appeal decision. I have therefore considered the proposed development against the 2021 London Plan (London Plan), in addition to the Islington Core Strategy (Core Strategy) and the Development Management Policies Plan (Development Management Plan).
4. Certified and duly executed planning obligations were submitted under section 106 of the Town and Country Planning Act 1990 (s106). The s106 relates to carbon offsetting, green performance, decentralised energy, highway and footway reinstatement, construction management, accessible parking, travel plans, employment and training, and local procurement.
5. The Council has provided rationales for the obligations as part of their Statement of Case, which were discussed in turn at the Hearing. Paying regard to the comments made and other evidence, I am satisfied that the s106 meets the tests in paragraph 56 of the National Planning Policy Framework (the Framework) and can be taken into account in reaching my decision.

6. The Council have confirmed that the s106 addresses the issues raised in their reasons for refusal numbers 6 and 7 which relate to carbon emissions and local infrastructure provision and mitigation.
7. An overarching Statement of Common Ground (SOCG) was submitted in advance of the Hearing, in addition to an issue specific Transportation Statement of Common Ground (Transport SOCG).
8. The SOCG indicates that, following consideration of the Appellant's appeal evidence, the Council no longer wishes to maintain their reasons for refusal numbers 2 (in relation to effects on a Site of Importance for Nature Conservation) and 3 (regarding effects on light conditions of occupiers of surrounding commercial properties). Nevertheless, there was opportunity for parties to address these issues at the Hearing and the Council reconfirmed their position of not wishing to defend the reasons for refusal.
9. The description of development in the appeal decision header above reflects the contents of the planning application and the appeal forms. It differs from the Council's decision notice, which refers to a 'a part 4, part 6 storey building'. This is a technicality that has not affected my decision.

### **Main Issues**

10. The main issues in the appeal are:

- Whether the proposed development includes the erection of a tall building for the purposes of planning policy.
- The effect of the proposal on the character and appearance of the surrounding area, including on views of the Caledonian Market Tower.
- The effect in terms of highway safety, in particular whether it would make adequate provision for servicing and delivery vehicles.
- Whether it would unduly prejudice the satisfactory operation of the adjoining Henson Freezer Site.

### **Reasons**

#### *Planning policy –tall building*

11. Amongst the Council's reasons for refusal is conflict with policy on tall buildings in the London Plan and the Development Management Plan. The question of whether the proposed development constitutes a tall building, within the meaning given to the term by those plans, is a matter of dispute between the Appellant and the Council.
12. Policy D9 of the London Plan says that development plans should define what is considered a tall building for specific localities. Paragraph 3.9.3 emphasises that Boroughs should provide such definitions.
13. Policy DM2.1(c) of the Development Management Plan offers specific policy for tall buildings in Islington, including where they might be suitable. Paragraph 2.18 says that tall buildings are defined as those over 30 metres in height. This is above the minimum requirement of not less than 6 stories or 18 metres as set out in Policy D9 of the London Plan.

14. The Development Management Plan therefore provides a definition of a tall building that can be used for deciding whether both DM2.1(c) and also Policy D9 of the London Plan are relevant. As such, it is not necessary to apply the fallback provision in paragraph 3.9.3 of the London Plan that is designed for where there is no local definition.
15. Although DM2.1(c) was adopted prior to the current London Plan, there is no conflict between the definition it provides and the requirements of Policy D9.
16. The 29.35 metre maximum height of the proposed development is a figure that is not disputed by the Council and falls just below the 30 metre minimum threshold set out above.
17. I accept that planning policy should not be applied rigidly and there could be legitimate reasons for flexibility based on the specific context. In this case there is nothing in the evidence or the context of the area, which I describe in more detail below, to justify departing from the minimum threshold in the Development Management Plan.
18. Consequently, the proposed development does not constitute a tall building and there is no conflict with Policy DM2.1(c) of the Development Management Plan or Policy D9 of the London Plan which relate to the locations and design of tall buildings.
19. For the avoidance of doubt, my conclusions on this matter should be read as relating simply to whether tall building policy is relevant. It has no effect on my consideration of design and other policies that are relevant to this appeal.

#### *Character and appearance*

20. The appeal relates to a roughly triangular shaped site that fronts Vale Royal at its intersection with Tileyard Road. Noteworthy features adjoining other boundaries include the open railway land to the rear, and a Council depot and industrial buildings to the sides, including the vacant Henson Freezer site.
21. The site is within the Vale Royal/Brewery Road Locally Significant Industrial Site (LSIS). The surroundings are consistent with an industrial character in an area of renewal, with vacant or underused buildings sitting alongside regenerated areas such as the Tileyard Creative Quarter.
22. A range of vacant single to three storey buildings current occupy the site and predominately front Vale Royal. The majority of the remainder of the site is an open yard to the rear that is reached from Vale Royal via a short private entrance road. It is common ground between the Council and the Appellant that none of the existing buildings are worthy of retention.
23. The principle of developing the site for employment related uses is accepted by the Council. The aim of supporting the intensification of such uses in the LSIS would accord with Policy CS6 of the Core Strategy and DM5.3 of the Development Management Plan. Optimising the capacity of sites as part of a design led approach would also be consistent with the requirements of Policy D3 of the London Plan and Paragraph 127 of the Framework.

24. Notwithstanding the general support for the principle of development, the question is whether the proposed building would make a positive contribution to the local character and distinctiveness of the area and otherwise deliver the high quality standard of design required by policies in the Development Plan and the Framework.
25. The focus of the Council's evidence is on how the proposal would be experienced from within the more immediate confines of the LSIS, in particular in views from Vale Royal and Tileyard Road, and the effects in a broader context, principally in views across the railway land to the rear.
26. In relation to effects on the more immediate surroundings, it is notable that building heights in the vicinity of the site are mostly of between two and four storeys. This general pattern is evidenced in the Council's Vale Royal / Brewery Road LSIS Height Study (Height Study) and was also notable when I visited the site.
27. There are exceptions to this pattern, some falling outside the immediate context of the site that are of more limited relevance. However, the 7-9 storey Fitzpatrick building at the junction of Vale Royal and York Way and, to a lesser degree, the buildings associated with the Maiden Lane estate, including the tower, are worthy of note.
28. These buildings substantially address York Way, where they adopt a gateway position. The busy arterial throughfare of York Way presents a clearly distinct character to Vale Royal and the connecting Tileyard Road. The distinctions in character between the two locations include, in relation to Vale Royal/Tileyard Road, lower pedestrian and traffic activity, narrower street widths, and the more modest scale and appearance of buildings and other structures.
29. Nevertheless, the scale of the Fitzpatrick and Maiden Lane estate buildings is such that they form part of the visible backdrop of the site as seen from Vale Royal. The Fitzpatrick building also has a flank elevation along part of Vale Royal, albeit stepped down in height from York Road.
30. Notwithstanding the above, the appeal site has a very limited direct relationship with these York Road buildings. This is because the site adopts a materially different position that is deeper within the LSIS and therefore has a more direct relationship with the lower rise buildings that lie closer to the intersection with Tileyard Road.
31. The main element of the proposed building would rise well above others in this part of the LSIS. Even allowing for the rising land on Tileyard Road and the filtered nature of some views by surrounding buildings, the height of the building in relation to others would be very apparent. This includes public views of the front elevation from Tileyard Road and the front and one side of the building when travelling along Vale Royal.
32. The height of the main element would combine with the width to produce a significant built form and single mass of building that would be out of context within this part of the LSIS. It would neither offer material benefits in terms of assisting with waymarking through the LSIS nor be interpreted as an effective bookend to the Fitzpatrick building. It would instead be viewed as an anomaly within this part of Vale Royal and Tileyard Road and would therefore be contextually incongruous.

33. The Appellant has clearly given careful consideration to the detailed design of the proposal, as discussed in detail at the Hearing and is notable in the accompanying evidence.
34. The degree of articulation within the elevations of the main structure, emphasis of vertical and horizontal components, and variety in fenestration at different levels, would assist with breaking up the mass of the main building to some degree. However, these design elements would be too subtle to reduce the impact of the development. The choice of materials for much of the external walls would further serve to reinforce the scale of the proposal by drawing the eye rather than assisting with integrating it into the area.
35. Overall, I am not satisfied that the scale of the proposed development, coupled with the individual design elements, would work together to produce an outcome that would make a positive contribution to the local character and distinctiveness of the area or result in a high standard of design.
36. I recognise that the proposal would bring with it elements that would be beneficial to the street scene, in particular the opportunity to bring about greater activation along the Vale Royal frontage. However, these benefits do not overcome my fundamental concerns about the overall built form.
37. There is no one defining building typology or material pallet within the LSIS. In this regard the Council overstates the level of homogeneity to buildings within the immediate area. There must also be some opportunity for architectural flair and distinction as part of creating a place that provides visual delight and interest.
38. I also acknowledge that the site sits within an area of change, and in one of the few locations in the Borough that is relatively free from heritage and other constraints. As part of that change it is likely that the scale of buildings would need to increase in order to achieve the Council's intensification ambitions for the LSIS. As such, my conclusions on this matter should not be interpreted as meaning that a building that rises to some degree above its neighbours could not be accommodated on this site. However, based on the specific evidence of this appeal the detailed proposal does not represent an appropriate form of development in design terms.
39. Turning to effects in wider views from the rear. The proposed development would be extensively visible due to the openness provided by the railway lines and associated infrastructure. The character of these surroundings is substantially different to those described above in relation to the experience from within the confines of the LSIS. In these views the proposed development would be viewed as part of a more open and extensive context that would include a more direct visual relationship with the Fitzpatrick and Maiden Lane buildings and nearby railway buildings. Overall, the proposal as seen in these views would not result in harm to the character and appearance of the surroundings.
40. In reaching my conclusions on this matter I have paid limited regard to the specific recommendations of the Height Study which expresses clear preferences for building heights across the LSIS. The recommendations do not represent adopted policy and, as such, are only useful as a guide to the general context of the area.

41. I have considered the planning history of the area referred to by the parties, including the 3 appeal decisions<sup>1</sup> presented by the Council which they say guided their approach to appraising the design. Whilst this history is useful for context, there is little of direct comparison to this proposal which fundamentally must be assessed on its own merits and based on the evidence that has been presented.
42. In conclusion, the proposed development would have a harmful effect on the character and appearance of the surrounding area. Consequently, I find conflict with policies in the Development Plan, in particular Policies CS8 and CS9 of the Core Strategy, Policy DM2.1 of the Development Management Plan and Policy D3 of the London Plan, which collectively seeks to ensure that development makes a positive contribution to the local character and distinctiveness of the area and achieves a high standard of design.

*Views of the Caledonian Market Tower*

43. Policy DM2.5 of the Development Management Plan seeks to protect views of well known local landmarks and exercise stringent controls over development which blocks or detracts from important or potentially important views.
44. One such landmark is the Grade II Listed Caledonian Market Tower (the Tower), which is specifically identified as LL5 within Policy DM2.5. The Council are concerned about the effect on views from Randell's Road looking north across the railway land towards the tower.
45. From my site visit I observed that the Tower was visible in the distance from a number of vantage points on Randell's Road, although only the upper part of the tower and the clock face could be seen. The extent of views would be further limited if other planned development in the area is carried out, reducing the view from Randell's Road to one primarily of the clock face. The Appellant's evidence indicates that the proposed development itself would obscure the view of the Tower completely from Randell's Road.
46. The Council draw my attention to their Height Study as a source of evidence for considering whether the views from Randell's Road are important or potentially important, and therefore should gain protection under Policy DM2.5. The Height Study provides limited rationale for the importance of the view, beyond it existing as part of a viewing corridor across the LSIS. It is also noted that the Height Study does not represent adopted policy and, as it dates from 2016, it does not fully consider the effect of more recent development.
47. Weighing this issue up, and considering the Appellant's and the Council's other points on the matter, the evidence does not indicate that the view from Randell's Road of the Tower is important or potentially important.
48. As such, the proposed development would not have a harmful effect on views of the Tower. Consequently, there is no conflict with Policy DM2.5 of the Development Management Plan which seeks to protect views of well known local landmarks.

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<sup>1</sup> APP/V5570/W/17/3186143, APP/V5570/A/12/2188520, APP/V5570/W/19/3224373

*Servicing and delivery vehicles*

49. The Transport SOCG submitted shortly before the Hearing indicates a degree of consensus between the Appellant and the Council about the servicing and delivery needs of the proposal. The information suggests that up to 32 deliveries per day could be generated by the new use, the majority of which being light vehicles accommodated off street.
50. Some off street provision would also be made for a small number of larger vehicles over 3.5 tons. Very large vehicles over 7.5 tons would need to make deliveries on street. It is an agreed position that the site may need to accommodate up to 3 vehicle deliveries at any one time.
51. The general arrangements for off street servicing and delivery would be similar to those associated with the current buildings, with the rear yard area accessed via a short entrance road from Vale Royal. However, the scale of the proposed development points towards an intensification of vehicular, pedestrian, cyclist, and other activity within the site.
52. The plans also indicate that the rear yard would be reduced in size as a result of the greater rearwards projection of the proposed building at ground floor level. A portion of the remainder of the yard would also be covered at upper levels, with pillars at ground floor level creating an undercroft available for vehicle and other activity.
53. I have carefully considered the Appellant's transport evidence, including plans and swept path analysis that aim to show how vehicles could enter and exit the site in forward gear, as required by Policy DM8.6(a) of the Development Management Plan.
54. Much of the analysis is focused on specific scenarios that, critically, only show a single vehicle isolated from other activity. This information is too limited to demonstrate compliance with the policy as it makes no allowance for vehicle and other activity within the site. It also falls well short of showing that worst case scenarios have been assessed and their impacts mitigated, as required by Policy DM8.6(d).
55. Further drawings showing up to 3 vehicles parked within the rear yard were included as part of the Transport SOCG, although the Council highlight that they were only recently provided and do not meet their concerns. Given the timing for submission of these drawings that are of a technical nature, I have concerns about whether admitting them would accord with the principles of fairness due to the lack of opportunity for the Council and other parties to consider them.
56. Notwithstanding this, the drawings only consider parking of a limited combination of specific vehicle sizes, with some changes required to the layout of the rear yard in order to facilitate them. Even in the scenario presented it shows that manoeuvrability within the rear yard would be heavily constrained, principally due to space and the locations of pillars. Within this there would be a very small margin for driver error and it is unclear whether there would be space around the vehicles for loading and unloading and for safe pedestrian and cyclist activity.

57. Taking these factors as a whole, and considering the requirements of Policy DM8.6 and other evidence on this matter, it has not been demonstrated that Policy DM8.6(a) has been met. Further, the evidence does not indicate that this matter could be adequately addressed using planning conditions aimed at managing activity within the rear yard or that requiring the layout to be agreed at a later point would be appropriate. The Delivery and Service Plan submitted as part of the planning application also does not go far enough to address this issue.
58. Policy DM8.6(a) of the Development Management Plan contains a presumption that delivery and servicing should be provided off street. Where on street provision is proposed Policy DM8.6(b) requires demonstration that off street provision is not practical and to show that arrangements would be safe and not cause traffic obstruction or nuisance.
59. In the case of the proposed development, it is an agreed position between the Council and the Appellant that deliveries involving larger vehicles would need to take place on street outside the site on Vale Royal. The Appellant's transport evidence demonstrates that the main obstacle to such vehicles accessing the site, and therefore being able to make deliveries off street, would be limitations on turning due to the presence of parking bays opposite.
60. The Council indicated at the Hearing that they may be receptive to removing the bays in order to facilitate access. However, there is no substantive evidence to indicate that this represents a formal position. As such, I cannot conclude with reasonable certainty that removal of the parking bays is a realistic prospect.
61. Considering the limitation discussed above and the other evidence on this matter, it has been demonstrated that off street access for some larger vehicles is not practical.
62. The Transport SOCG points towards levels of on street deliveries that would be similar to those reasonably associated with the current building in full lawful occupation. Although I accept that the current building has been vacant since 2017, the Council have provided no substantive evidence to show that on street deliveries associated with the current building resulted in complaints or other action to indicate that it was unsafe or causing traffic obstruction or nuisance.
63. I have carefully considered the evidence on this matter, including the Appellants transport evidence and path analysis, levels of traffic flow, and the position of the site in relation to the access to the Council's depot. Overall, the details provided by the Appellant demonstrates that on street deliveries associated with the proposed development would be safe and not cause traffic obstruction or nuisance. As such, I do not find conflict with Policy DM8.6 (b) of the Development Management Plan.
64. In overall conclusion on this issue, the proposal would not make adequate provision for servicing and delivery vehicles. Consequently, I find conflict with Policy DM8.6(a) of the Development Management Plan which requires demonstration that servicing and delivery vehicles can enter and exit the site in forward gear.

### *Operation of the adjoining Henson Freezer Site*

65. It is common ground between the Appellant and the Council that the proposal intends for access to continue to the 2 loading bays of the landlocked Henson Freezer site (Freezer Site) which are located at the back of the rear yard area. The question at issue is whether the practical accessibility of the bays would be negatively impacted to a degree that would constitute undue prejudice to the satisfactory operation of the Freezer Site, contrary to design policy in DM2.1A(xi) of the Development Management Plan.
66. The loading bays are intended to serve a substantial industrial building, which I inspected as part of my site visit. The Freezer Site has been vacant for some time and, as such, its operational needs cannot be clearly established. Its complete redevelopment is also a plausible scenario given that it sits within an area of change.
67. The Appellant's evidence indicates that the proposal would have some effect on the ability of vehicles to access both loading bays at the same time, depending on factors such as the size and position of the vehicles using them. There may also be more general limitations associated with intensification in use of the site, which is to a degree linked to the issues discussed above about access for delivery and service vehicles.
68. Notwithstanding this, the Council's position that there should be no reduction in accessibility to the bays represents an overextension of the requirements of Policy DM2.1(xi), particularly given the lack of evidence relating to the operational needs of the Freezer Site and uncertainty around its future.
69. Weighing the evidence up, it demonstrates with sufficient certainty that the proposal would not unduly prejudice the satisfactory operation of the adjoining Freezer Site. Consequently, there is no conflict with Policy DM2.1A(xi) of the Development Management Plan which requires development proposals to not unduly prejudice the satisfactory operation of adjoining land.

### **Conclusions**

70. I have identified harm in relation to the effect of the proposal on the character and appearance of the surrounding area and provision for servicing and delivery vehicles. There is consequent conflict with policies in the Development Plan that arises from this harm.
71. The general principle of the proposal is aligned with policies that support the intensification of employment and other related uses, as well as sector growth and cluster opportunities, which I have paid regard to.
72. I also acknowledge that the Framework seeks to promote the effective use of land, which is particularly relevant to proposals in the LSIS as an area that is the only locally significant concentration of such employment uses in the Borough. The Framework also recognises that need to support economic growth is a matter on which significant weight should be placed.
73. The provision of flexible workspace has the potential to meet a broad range of needs, including those of small and medium sized enterprises, and supporting the general growth of the Tileyard creative cluster. There would also be knock on benefits such as spend in the local economy and additional business rate revenue.

74. I have considered the Appellant's point that a reduced scale of development would represent only a relatively small uplift in the floorspace on the site, making redevelopment potentially unworthwhile. However, as I have limited detailed evidence before me on that matter it is something that I can give limited weight to.
75. Weighing the benefits and other evidence up, the material considerations in this case do not justify granting planning permission. In final conclusion, and having regard to all other matters raised, the appeal should be dismissed.

*D.R. McCreery*

INSPECTOR

## **Appearances at the Hearing**

### *For the Appellant*

- Victoria Hutton (of Counsel)
- Charles Moran (CMA Planning)
- Adam Williams (CMA Planning)
- Christophe Egret (Studio Egret West Architects)
- Daniel Mahony (Studio Egret West Architects)
- Stuart Davies (TTP)
- Jen Parker (TTP)

### *For the Council*

- Melissa Murphy (of Counsel)
- Thomas Broomhall
- Linda Aitken
- Adrian Cole (Steer)
- Charlotte Coyle
- Nicholas Linford

### *Other Interested Parties*

- Alice O'Reilly (Antony Gormley Studio)