



Appeal Decision

Site visit made on 8 September 2020

by G Rollings BA (Hons) MAUD MRTPI

An Inspector appointed by the Secretary of State

Decision date: Tuesday, 06 April 2021

Appeal Ref: APP/K5600/W/20/3253655

201-207 Kensington High Street, London, W8 6BA

- 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 Huwaylan UK Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/07210, dated 21 October 2019, was refused by notice dated 23 March 2020.
 - The development proposed is redevelopment of the site involving retention and restoration of the front facade of the building, erection of two additional storeys and alteration and extensions to the rear at first and second floor levels to provide 19 residential units (3 x studios, 9 x 1 bed, 6 x 2 beds and 1 x 5 beds), creation of an additional basement level to provide for a new gym, alteration of existing basement level to provide improved retail floorspace and provision of new shop fronts.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site involving retention and restoration of the front facade of the building, erection of two additional storeys and alteration and extensions to the rear at first and second floor levels to provide 19 residential units (3 x studios, 9 x 1 bed, 6 x 2 beds and 1 x 5 beds), creation of an additional basement level to provide for a new gym, alteration of existing basement level to provide improved retail floorspace and provision of new shop fronts at 201-207 Kensington High Street, London, W8 6BA in accordance with the terms of the application, Ref PP/19/07210, dated 21 October 2019, subject to the attached List of Conditions.

Procedural matters

2. New plans have been submitted indicating the proposed cycle and showering provision. Changes on the revised plans submitted with the appeal are minor and will not prejudice the interests of any party, and the additional plans provide further detail without altering the nature of the development or raising new issues. Along with the inclusion of a proposed planning condition, I am satisfied that the Council's second reason for refusal has been satisfactorily addressed. Both main parties are content that this is no longer a matter in conflict. I am content that the facilities can be suitably provided and I shall make no further reference to the matter.
3. Since I undertook the site visit, the Mayor of London has adopted a revised version of *The London Plan* (2021) which supersedes the previous version and was in submission stage when the appeal was lodged. A signed and dated unilateral undertaking has also been submitted by the appellant.

Main Issues

4. The main issues are:

- the effect of the proposed development on the local housing supply, with particular reference to affordable housing; and
- whether the submitted Unilateral Undertaking would secure the mitigation measures and infrastructure which are necessary to make the development acceptable.

Reasons

Affordable housing

5. The Council granted permission in 2017¹ for the development of the site for a mix of uses including 14 residential units. This permission (hereafter referred to as the 'implemented scheme') is the subject of a planning obligation for a commuted sum of £233,558 in lieu of on-site provision of affordable housing. Given that it has been implemented and constitutes a 'fallback' position for the appellant were the present appeal to fail, it carries substantial weight in my decision.
6. The proposal before me (the 'appeal scheme') was initially submitted to the Council with no proposed new contribution towards affordable housing provision, citing a lower residual value than the previous site use and that it would be viable only with a nil contribution. This was subsequently revised, as set out below. A viability statement commissioned by the Council² disputes the appellant's viability estimates with regard to expected sale value, construction costs, profit and finance, with a rebuttal by the appellant³.
7. Part of the appellant's evidence was based on depressed property values resulting from the Covid-19 pandemic, but there is limited evidence available to indicate that this will represent a long-term reduction or lead to continuing uncertainty, particularly given the Council's comparisons that show stability in the area.
8. I have taken into account the limited information available for construction costs (residential fit-out) in Kensington, and that this would be at the higher end of the market. I would expect some increase in costs since the appellant's 2019 estimate, and although there has been a negligible increase in the relevant inflation indicators, I have no evidence to suggest that there are inaccuracies within the appellant's updated estimate.
9. The appellant proposes a profit of 15% on the commercial and 20% of the residential elements of the scheme, the latter being greater than the Council's expectation of 17.5% on a scheme with only a moderate level of risk. Whilst I accept that there may be a higher risk than in 2019 owing to greater uncertainty within the industry, the national and London-wide guidance on this matter calculates risk within the suggested scales, and I have only minimal evidence and no comparison schemes to suggest that this would justify the proposed increase. For similar reasons I am not convinced by the proposed 0.25% finance increase, particularly in light of the recent national interest base rate reduction, but acknowledge that there is some uncertainty between the parties on this issue.

¹ Council ref: PP/16/01412.

² Dated 25 August 2020, prepared by BPS Chartered Surveyors.

³ Dated September 2020, *Savills Response to BPS Appeal Statement*.

10. Having considered the viability information, I am not fully convinced by the appellant's evidence but acknowledge that there has been some negative movement since consideration of the implemented scheme. It is therefore unreasonable to expect that a comparison of the implemented and appeal schemes would result in vastly different scenarios with regard to affordable housing provision.
11. Nonetheless, during the course of the appeal, the appellant provided a planning obligation which proposed the payment of £233,558 towards the provision of affordable housing. This is in addition to the payment in respect of the implemented scheme and effectively doubles the affordable housing contribution for development on the site.
12. Since permission was granted for the implemented scheme, the Council has adopted a new *Local Plan* (September 2019), with a 25% affordable housing target in Local Plan Policy CH2, and the 2021 London Plan sets a strategic target of 50% affordable housing provision (policy H4), subject to viability considerations. A payment in lieu of onsite or offsite provision is appropriate in exceptional circumstances. The appeal scheme represents an increase of five dwellings more than the implemented scheme. If I were to consider the affordable housing provision proportionate to the number of new flats in a comparison between the implemented and appeal schemes, the additional contribution for the appeal scheme is substantial. Given the fallback position and the likelihood of it being constructed should the appeal scheme be dismissed, the additional affordable housing provision represents a significant beneficial gain over the implemented scheme. I give this consideration substantial weight in my decision. The implemented scheme's proposal of an in-lieu payment is carried over to the appeal scheme and I consider that this represents the exceptional circumstances required for such provision.
13. My findings on the appellant's viability assessment suggest that an argument against additional affordable housing contribution is marginal at best, and the strong policy weight for provision is a balancing factor. However, the additional contribution and fallback positions, together with the benefits that would arise from the additional affordable housing provision in the borough, weigh in favour of the proposal.
14. I therefore conclude that the proposed development would have a positive effect on the local housing supply, with particular reference to affordable housing. There would be no overall conflict with Local Plan Policy CH2 and London Plan Policy H4, for the reasons set out above, or the development plan for the area. I have also had regard to the Mayor of London's Affordable Housing Supplementary Planning Guidance (2017) and the *National Planning Policy Framework* (2019) ('the Framework'), which is broadly consistent with the local plan.

Unilateral Undertaking

15. A signed and dated obligation has been submitted. In addition to the affordable housing commitment set out above, the document includes the financial heads of terms as set out by the Council. Disagreement between the parties remains in terms of the lack of an affordable housing review mechanism and details regarding a training, employment and business strategy (TEBS). Given the small number of new dwellings, I do not consider that a review mechanism would be appropriate. The Undertaking sets out contributions for construction phase and

end user employment and training which appear to go some way to satisfying the Council's TEBS requirement.

16. Other omissions and corrections are set out by the Council which the Undertaking does not incorporate. However, these are minor in nature. I am not convinced that any harm arising from these, or the absence of a TEBS, would be of substantial a nature to warrant dismissal of the appeal, or outweigh the benefit provided by the affordable housing contribution.
17. Having considered the obligation, I am satisfied that it meets the tests set out in paragraph 56 of the Framework. I therefore conclude that the submitted Unilateral Undertaking would secure the mitigation measures and infrastructure which are necessary to make the development acceptable. There would be no overall conflict with Local Plan Policies C1 and CT1 of the Local Plan, or London Plan Policy DF1. Together, these allow for the use of obligations to deliver infrastructure and policy requirements, including limiting car use, amongst other considerations.

Other considerations

18. The appeal property is within the Edwards Square / Scarsdale & Abingdon Conservation Area. There is no dispute between the parties that the proposed development would not have an adverse effect on the character or appearance of the Conservation Area. Having considered the proposal and visited the site I concur with that view. Accordingly, it is my view that the development proposed would preserve the character and appearance of the designated heritage asset.

Conditions

19. The Council has provided a list of suggested conditions which I have assessed against the tests set out in the Planning Practice Guidance (PPG)⁴. I have taken into account the comments of both parties. Certain conditions suggested by the Council were additional to those included in the implemented scheme's permission. There is justification for some of these to be included as a result of the updated Policy framework, as set out below.
20. Condition No. 2 is included for the absence of doubt and to ensure certainty. I agree with the Council that including references to other conditions may introduce ambiguity, and consider that the details shown in the plans submitted with the appeal scheme should be implemented in full. I have included condition No. 3 to ensure control of the use of the intended gym space, given the Council's concern that previous Use Class Order references should be implemented as intended, particularly given the inclusion of the gym use in the description of development. Condition No. 4 is required to preserve the character and appearance of the area, and condition Nos. 5, 6, 8, 12, 13, 17 and 18 are required to preserve the living conditions of surrounding occupiers. Additionally, condition No. 6 is required to ensure the scheme complies with Policy CL7 of the Council's Local Plan, and No. 8 to maintain highway safety. Condition No. 7 is required to ensure proper engineering monitoring of the construction phase.
21. I do not have full details as to why a tree retention condition was not included in the implemented scheme. However, given the comments of the Council and what I saw on site, I am satisfied that condition No. 9 (13 in the Council's list) is required to ensure the trees' protection. Condition No. 10 has been included to

⁴ PPG reference ID: 21a-003-20190723; revision date: 23 07 2019.

- mitigate against potential flooding, and No. 11 to promote sustainable travel choices.
22. I have considered the Council's comments on potential land contamination, but am not satisfied that, given the previous studies and consent, that additional conditions are now necessary. I am content that proposed condition No. 14 ensures that any unexpected contamination would be appropriately managed, and have therefore declined to impose the Council's suggested conditions 19, 20 and 21.
23. Condition No. 15 (23 in the Council's list) requires measures additional to those set out in the *Construction Phase Health, Safety, Environment and Quality Plan (CPHSQ&E Plan)* appeal document, including detailed prevention relating to construction, in line with updated Council and Mayoral guidance. I have therefore included it to ensure that suitable air quality measures are maintained during the construction phase, to protect local living conditions. Condition No. 16 (24 in the Council's list) is also included to protect living conditions. The suggested alternative (condition No. 17 in the implemented scheme) does not meet the test of preciseness.
24. Condition No. 19 has been included to ensure that suitable waste arrangements are in place prior to the occupation of the development, and to preserve the living conditions of occupiers. I have altered the wording as agreed by both main parties (27 in the Council's list) to ensure that the work is undertaken prior to occupation. Condition Nos. 20 and 21 are included to ensure satisfactory provision for people with disabilities and meet the changing needs of households.
25. I acknowledge the Council's concerns that the sustainable drainage requirements have been updated by the Local Plan. However, a similar condition on the implemented scheme has been discharged within the implemented scheme in accordance with the previously accepted standards. A further discharge of condition would be onerous and I have not included the Council's suggested condition 15.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

G Rollings

INSPECTOR

(List of conditions follows overleaf.)

LIST 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: 3185-A-1000; 3185-A-1001 rev. L02; 3185-A-1080 rev. L03; 3185-A-1081 rev. L03; 3185-A-1082 rev. L03; 3185-A-1083 rev. L03; 3185-A-1084 rev. L03; 3185-A-1085 rev. L03; 3185-A-1086 rev. L03; 3185-A-1087 rev. L03; 3185-A-1088 rev. L03; 3185-A-1100 rev. L05 (Proposed Basement Floor Plan); 3185-A-1101 rev. L02 (Proposed Lower Ground Floor Plan); 3185-A-1102 rev. L02 (Proposed Ground Floor Plan); 3185-A-1103 rev. L05 (Proposed Mezzanine Plan); 3185-A-1104 rev. L04 (Proposed First Floor Plan); 3185-A-1108 rev. L02 (Proposed Roof Plan); 3185-A-2001 rev. L05; 3185-A-2002 rev. L08; 3185-A-3001 rev. L05; 3185-A-3002 rev. L03; 3185-A-3007 rev. L03.
- 3) The gym space identified on drawing 3185-A-1100 rev. L05 at the basement floor of the building approved under this permission shall not be used, at any time, for purposes other than a gym within part (e) of Class E of the Town and Country Planning (Use Classes) Order 2020.
- 4) No development shall commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved:
 - (a) external facing brickwork (sample panel to show colour, texture, facebond and pointing);
 - (b) details and sample of new window and door frames;
 - (c) details of shopfronts;
 - (d) details of metal balustrades;
 - (e) details of balcony means of enclosure; and
 - (f) details of louvres.
- 5) No development shall commence until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission.
- 6) No development shall commence until:
 - (a) a Code of Construction Checklist and Site Construction Management Plan (SCMP) for the development have been approved, in writing, by the Council's Construction Management Team; and then
 - (b) copies of the approved Checklist and Plan, and their written approval, have been submitted to the local planning authority to be placed on the property record.

7) No development shall commence until:

- (a) a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed for the duration of building works and their appointment confirmed in writing to the Local Planning Authority; and
- (b) the name, and contact details of the person supervising engineering and construction on site for the duration of building works have been confirmed in writing to the Local Planning Authority.

In the event that either the Appointed Engineer or Appointed Supervisor cease to perform that role for whatever reason before the construction works are completed, those works shall cease until a replacement chartered engineer of the afore-described qualification or replacement supervisor has been appointed to supervise their completion and their appointment confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer and supervisor are at that time currently appointed and their appointment has been notified to this Authority in accordance with this condition.

8) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The statement should include:

- a) routing of demolition, excavation and construction vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;
- b) access arrangements to the site;
- c) the estimated number and type of vehicles per day/week;
- d) details of any vehicle holding area;
- e) details of the vehicle call up procedure;
- f) estimates for the number and type of parking suspensions that will be required;
- g) details of any diversion or other disruption to the public highway during preparation, demolition, excavation and construction work associated with the development;
- h) work programme and/or timescale for each phase of preparation, demolition, excavation and construction work associated with the development;
- i) details of measures to protect pedestrians and other highway users from construction activities on the highway; and
- j) where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, position of nearby trees in the highway or adjacent gardens, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

The development shall be carried out in accordance with the approved Construction Traffic Management Plan. A one page summary of the requirements of the approved CTMP shall be affixed to the frontage of the site for the duration of the works at a location where it can be read by members of the public.

- 9) No development shall commence until full particulars of the method(s) by which all existing trees on the site and adjacent land are to be protected during site preparation, demolition, construction, landscaping, and other operations on the site including erection of hoardings, site cabins, or other temporary structures, shall be submitted to and approved in writing by the local planning authority and the development shall be carried out only in accordance with the details so approved.
- 10) Prior to first occupation of the building hereby approved, the basement shall be fitted with a positively pumped device designed to remove sewer floodwater from the building, which shall be maintained and functional at all times.
- 11) Notwithstanding condition 2, detailed drawings of cycle storage to include layout and access arrangements shall be submitted to and approved in writing by the local planning authority before the relevant work is begun and the works shall not be carried out other than in accordance with the details so approved.

The development shall not be occupied until the cycle storage facilities indicated on the approved plans have been fully implemented and made available for immediate use. The cycle facilities shall thereafter be retained for use at all times.

- 12) Noise emitted by all building services plant and vents shall not exceed a level 10dBA below the existing lowest LA90(10min) background noise level at any time when the plant is operating, and where the source is tonal it shall not exceed a level 15dBA below. The noise emitted shall be measured or predicted at 1.0m from the facade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced regularly in accordance with the manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is determined by the local planning authority to be failing to comply with this condition, it shall be switched off upon written instruction from the local planning authority and not used again until it is able to comply.
- 13) The plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
- 14) a) If during development work unexpected contamination is encountered or suspected, on each occasion development work shall cease in the affected area, other than for actions to make the area safe and prevent further contamination or pollution occurring. Unexpected contamination shall be reported to the Council within 2 working days or as soon as possible if there are significant risks to people or the environment.
b) Further Site Investigation (FSI) shall be undertaken and a Remediation Statement (RS), addressing the unexpected contamination and to include details of monitoring and maintenance, shall be submitted to and approved in writing by the local planning authority.
- 15) No development shall commence until a site-specific Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The shall comply with and follow the chapter order (4-7) and appendices (5, 7,8,9) of the Mayors of London 'The Control of Dust and Emissions during Construction and Demolition', SPG, July 2014 Majors SPG. The CEMP should include an Inventory and Timetable of dust generating activities

during demolition and construction; Dust and Emission control measures including on-road construction traffic e.g. use of Ultra Low Emission Vehicles; Non-Road Mobile Machinery (NRMM). Air quality monitoring of NO₂ and PM₁₀ should be undertaken where appropriate and used to prevent levels exceeding predetermined Air Quality threshold trigger levels. Developers must ensure that on-site contractors follow best practicable means to minimise dust and emissions at all times. The works shall only be carried out in accordance with the approved plan.

- 16) No development shall commence until details of a system of mechanical ventilation, with filtration to remove airborne pollutants, for receptor locations shall be submitted to and agreed in writing by the LPA. The details should be supported with dispersion modelling and onsite monitoring to predict façade concentrations at sensitive receptor locations and specify the ventilation requirements to ensure that where possible the National Air Quality Objectives for Nitrogen Dioxide (NO₂) and the WHO Guideline Values for Particulate Matter (PM₁₀ & PM_{2.5}) are met at each inlet location. The details will set out the information to be provided on an annual basis within an annual report to demonstrate that the system is being appropriately maintained and is fully functional.

The approved system shall be installed and be operational before occupation of the development. The system shall be checked and maintained in accordance with the manufacturers specification, filtration media replaced as necessary and an annual report submitted to the LPA for approval until such a time that all National Air Quality Objectives and WHO Guideline Values are complied with at the property and regular pollution episodes do not occur within the borough. Where an annual report identifies that the mechanical ventilation filtering system is not functioning fully, corrective action will be taken to ensure it is fully operational.

- 17) Before the use hereby permitted commences, the residential premises shall be sound insulated so as to prevent the transmission of excessive airborne and impact noise from and between the adjoining dwellings in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority. The sound insulation shall be installed only in accordance with the details so approved and shall be so maintained.
- 18) No development shall take place before a scheme of sound insulation, designed to prevent the transmission of excessive airborne and structure-borne noise between the proposed non-residential and residential uses has been submitted to and approved in writing by the Local Planning Authority. The sound insulation shall be installed and maintained only in accordance with the details so approved. The residential dwellings shall not be occupied until the approved scheme has been fully implemented.
- 19) Detailed drawings of refuse and recycling storage shall be submitted to and approved in writing prior to any occupation or the first use of the development, and the works shall not be carried out other than in accordance with the details so approved.

The development shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for immediate use. The facilities shall thereafter be retained for use at all times.

- 20) All dwellings except 1.3, 2.3 and 3.3 as identified on the approved plans shall achieve compliance with optional requirement M4(2) of the building regulations and none of the specified units shall be occupied until Building Regulations approval has been issued certifying that these criteria have been achieved.
- 21) Dwellings 1.3, 2.3 and 3.3 as identified on the approved plans shall achieve compliance with optional requirement M4(3)(2)(b) of the building regulations and none of the specified units shall be occupied until Building Regulations approval has been issued certifying that these criteria have been achieved.

(End of list.)