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## Appeal Decision

Inquiry held on 20 and 21 April 2021

Site visits made on 8 April and on 26 April 2021

**by Peter Rose BA MRTPI DMS MCSI**

an Inspector appointed by the Secretary of State

**Decision date: 16 August 2021**

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### **Appeal Ref: APP/A5270/W/20/3264195 92-100 Warwick Road, Ealing W5 5PT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Walker Warwick Limited against the Council of the London Borough of Ealing.
  - The application Ref: 172559FUL, is dated 28 April 2017.
  - The development proposed is described as 'demolition of existing buildings and redevelopment to provide a mixed-use development extending to 5 storeys in part comprising 20 residential apartments and 5 mews houses (Class C3); 95 sqm of commercial floorspace (flexible Class A1, A2, D1 or B1 use), together with associated landscaping, cycle and refuse storage, parking and new access arrangements from Warwick Road'.
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### **Decision**

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and redevelopment to provide a mixed-use development extending to 5 storeys in part, comprising of 20 residential units and 5 mews houses (Class C3); 95 square metres of flexible commercial floorspace (Classes E(f) or F.1), with associated landscaping, cycle and refuse storage, parking and new access arrangements from Warwick Road, at 92-100 Warwick Road, Ealing W5 5PT in accordance with the terms of the application Ref: 172559FUL, dated 28 April 2017, and subject to the conditions set out in the attached Schedule.

### **Applications for costs**

2. Applications for costs have been submitted by both main parties. These applications are the subject of separate Decisions.

### **Preliminary matters**

#### *Description of development*

3. The application form refers to Use Class A1, A2, D1 and B1 and the submission was publicised on those terms. In September 2020, changes were made to the Use Classes Order<sup>1</sup> and relevant aspects arise in relation to new Classes E and F. The parties have agreed a partly amended description to the effect of: '95 square metres of flexible commercial floorspace (Classes E(f) or F.1)'. This represents a reduction in the range of commercial and other uses previously

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<sup>1</sup> Town and Country Planning (Use Classes) Order 1987 (as amended)

identified and I am satisfied the revision falls within the terms of the original description as publicised and that no prejudice arises. I consider the proposal on those terms.

*National Planning Policy Framework (the Framework)*

4. On 20 July 2021, the Government published post-Inquiry its revised Framework. This represents the Government's up-to-date planning policies for England and sets out how they should be applied. The revised Framework is a material consideration in this appeal and the views of the main parties regarding possible implications for this proposal have been sought.

*Background*

5. Following receipt of the appeal, the Council indicated objections based upon two matters. The first concerned questions of financial viability and the implications arising for provision of affordable housing. The second involved 'loss of social infrastructure'.
6. Following further discussions between the parties, the opening of the Inquiry was advised by the Council that the second concern had been resolved through a proposed restriction upon the non-residential floorspace so as to safeguard community use. A compromise had also been achieved in relation to the first objection and which involved payment of a fixed commuted sum and commitments to early and late-stage reviews.
7. In accordance with agreed arrangements, contact continued after the Inquiry between the appellant and the Council in response to issues around the draft terms of the proposed undertaking as they related to legal arrangements for management of parking permits, and regarding details of the review mechanisms for affordable housing.
8. The appeal is now supported by a completed unilateral undertaking (the undertaking) from the appellant dated 20 May 2021 and made pursuant to section 106 of the Act and other legislation. The Council supports the undertaking except in relation to detailed aspects of the review mechanisms for contributions to affordable housing and, post-Inquiry, opposes the development on that basis.

**Main issues**

9. Notwithstanding agreement reached between the Council and appellant on all matters except the review mechanisms for contributions to affordable housing, significant other objections were received from local interested parties.
10. The issues in this appeal remain:
  - whether or not the proposal would make appropriate provision for affordable housing;
  - the implications of the scheme for local traffic and parking;
  - the effect of the development upon the character and appearance of the appeal site and its surroundings, and with particular regard to its design and scale;

- whether or not the scheme would preserve or enhance the character or appearance of the Ealing Green Conservation Area;
- the effect of the scheme upon the living conditions of adjoining occupiers and with particular regard to light, outlook and privacy.

## Reasons

### ***Affordable housing***

11. The main parties accept that the viability of the scheme is incapable of delivering a full on-site provision of affordable housing as otherwise required by the development plan.
12. To ensure delivery of the proposal, it is further agreed that, in principle, the scheme could provide the maximum viable contribution to affordable housing through arrangements involving early and late-stage review mechanisms in accordance with Policies H4 and Policy H5 of The London Plan<sup>2</sup>, and as set out in its accompanying Viability SPG.<sup>3</sup>
13. Policy 1.2 of the Council's Core Strategy<sup>4</sup> indicates to similar effect that contributions from private residential and mixed use schemes will be negotiated on the basis of seeking the maximum reasonable amount of affordable housing, taking account of the specific circumstances of the site and including financial viability.
14. The broad terms of the review mechanisms were presented to the Inquiry as agreed, and components were set out within the 'Compromised Area of Common Ground Affordable Housing Financial Viability' (Table 3.0).<sup>5</sup> The intended accompanying undertaking was not completed at the closure of the Inquiry and the appellant has presented further details and evidence subsequent to Table 3.0 around those terms and to which the Council has raised a number of specific concerns. These include the need to achieve a surplus prior to any further contribution, a wider definition of 'build costs', possible delay to the early-stage review, and accompanying implications for the scale of any subsequent contribution arising from a surplus value.
15. The appellant has indicated how funders are generally relaxed about review mechanisms, but only if they allow schemes to generate a full level of normal profit before any additional payments become due. I appreciate the potential risk to the scheme of an additional affordable housing contribution becoming due in circumstances where the scheme might otherwise remain in deficit, and the possible adverse impact this requirement could have upon the scheme's ability to secure funding. Implications would therefore arise for the deliverability of the proposal.
16. Further, evidence has been provided of how the Greater London Authority also recognises shortcomings in this aspect of its own review formulae and how they can be, and have been, amended to address schemes which are in deficit.
17. The Viability SPG further states that applicants should demonstrate that their proposal is deliverable and that their approach to viability is realistic. As such,

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<sup>2</sup> The Spatial Development Strategy for Greater London March 2021

<sup>3</sup> Affordable Housing and Viability Supplementary Planning Guidance 2017

<sup>4</sup> Development Strategy 2026 Development Plan Document Adopted 3 April 2012

<sup>5</sup> See Statement of Common Ground signed and dated 16 April 2021

appraisals would normally be expected to indicate that the scheme does not generate a deficit, and that the target profit and benchmark land value can be achieved with the level of planning obligations provided. In relation to review mechanisms, it states that if a scheme provides a higher proportion of affordable housing to that which has been demonstrated to be viable at application stage, it may be necessary to specify that a deficit is overcome before any surplus value is used towards the provision of additional affordable housing.<sup>6</sup>

18. The Viability SPG indicates that 'build costs' has a range of components and is not just confined to base build (construction) costs.<sup>7</sup> Similarly, the Planning Practice Guidance (the Guidance) advises that, for the purposes of viability, costs should cover a range of items and inclusive of professional fees. It further confirms how costs should include the total cost of all relevant policy requirements including contributions towards affordable housing and infrastructure.<sup>8</sup> I also note that the appellant's previous viability evidence has similarly identified construction costs as only one element of total costs. Importantly, the undertaking also defines build costs on broadly consistent terms throughout the review stages.
19. I do not have any particular unease regarding adjustments to the wording of the substantial implementation target date, and nor accommodation for matters outside the developer's control. The Viability SPG underlines the importance of delivery by explaining how the early review should occur where an agreed level of progress has not been reached after a period of two years of the permission being granted, or on such terms as otherwise agreed.<sup>9</sup>
20. More generally, the accompanying narrative to Policy H4 offers important context to the detailed matters of dispute, and explains how the London Plan's threshold approach provides the opportunity to move away from protracted viability debates. It seeks to create certainty in terms of affordable housing requirements, and offer a clear incentive for developers to increase affordable housing delivered through the planning system above the level in planning permissions granted in recent years.<sup>10</sup> The Guidance further advises that viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability.<sup>11</sup>
21. Notwithstanding the Council's concerns and the agreed absence of any surplus at application stage, Schedule 1 to the completed undertaking still includes the appellant's proposed 'goodwill' affordable housing commuted sum contribution of £100,000.<sup>12</sup> This would be paid to the Council upon occupation of 75% of the open market units and has been offered in an attempt to secure some degree of certainty for the developer. Schedule 2 includes clear arrangements for the early and late-stage reviews. The former, amongst other things, would serve to incentivise delivery, and the latter would capture any subsequent surplus profit for the benefit of affordable housing. Significantly, the appellant's evidence

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<sup>6</sup> Footnote 29

<sup>7</sup> Paragraph 3.51

<sup>8</sup> Paragraph: 012 Reference ID: 10-012-20180724

<sup>9</sup> Paragraph 3.56

<sup>10</sup> Paragraph 4.4.2

<sup>11</sup> Paragraph: 002 Reference ID: 10-002-20190509

<sup>12</sup> Agreed to be reduced by the authority in its compromise position from some £400,000

post-Inquiry includes support from a second specialist viability consultant and draws upon further discussion with the Greater London Authority.

22. I consider the overall terms of the completed undertaking in relation to affordable housing to be appropriate in the circumstances and that, taken in the round, the scheme is likely to deliver the maximum reasonable amount of affordable housing in that context. In particular, a deficit-generating scheme would provide a significant voluntary commuted payment and would offer some prospect of further contributions through the review mechanisms proposed and in a manner not jeopardising overall delivery. The need to ensure delivery was also a matter particularly underlined by the authority at the Inquiry.
23. I therefore conclude that the proposal would make appropriate provision for affordable housing. It would thereby generally accord with Policies H1, H2, H4, H5, H10, and GG4 of The London Plan, with Policy 1.2 of the Core Strategy, and with Policy 3A of the Council's DPD<sup>13</sup>. These policies, amongst other things, generally seek to ensure provision of the maximum reasonable amount of affordable housing but in the context of each scheme. The proposal would also accord with the government's Framework commitment to address the needs of people who require affordable housing.

### ***Traffic and parking***

24. The appeal site is located within the Thames Valley University Controlled Parking Zone (CPZ), and this designation serves to both limit and regulate parking of vehicles in streets around the appeal site.
25. The scheme would deliver seven off-street car parking spaces, two of which would be wheelchair accessible, five would be associated with the mew houses, and all would benefit from access to an electric vehicle charging point. This provision would generally accord with the standards set out in Policy T6.1 and Table 10.3 of the London Plan and Policy 6.13 of the DPD.
26. Additionally, the undertaking contains provision to limit further demands upon existing parking capacity within the CPZ by way of restrictions to ensure a low car development. In particular, except for any Blue Badge Holders, future occupiers would not be eligible for CPZ parking permits from the Council.
27. The site enjoys very good public transport connections and is well placed to support, and to be served by, a range of local services and other facilities. These features would all help to reduce car-dependency.
28. I therefore conclude that the proposal would not cause harm for local traffic and parking. It would thereby accord with Policies T4, T6 and T6.1 and the accompanying Table 10.3 of the London Plan and with Policy 6.13 of the DMD. These policies require, amongst other things, that development mitigates transport impacts, that car parking should be restricted in line with levels of existing and future public transport accessibility and connectivity, and that car-free development should be the starting point for all development proposals in places that are well-connected by public transport. It would also accord with the Framework which requires development to promote sustainable transport and for significant development to be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

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<sup>13</sup> Development Management Development Plan Document Adopted 10 December 2013

### ***Design and scale***

29. The immediate Warwick Road streetscape has very contrasting components. It reflects an historic suburban character to the east of the appeal site, located outside the Ealing Green Conservation Area (the Conservation Area), but larger-scale contemporary development immediately to the north and west and which fall within the Conservation Area.
30. The university campus opposite, by virtue of its scale and modern design, dominates and encloses the street frontage on the facing side of Warwick Road. The imposing adjacent form of The Curve, a large residential block of flats also of contemporary design, and including other ground floor uses fronting St Mary's Road, is similarly prominent on the southern side of the street.
31. To the east, the character and appearance of the streetscape is of a late Victorian and Edwardian London suburb, and the architecture is of a far more traditional domestic scale and form. This includes two terraces of two-storey cottages at Warwick Place immediately adjacent to, and running parallel to, the appeal site.
32. The development would face the campus and sit between the considerable bulk and scale of The Curve, and the more modest presence of the cottages. In response to this varied and challenging context, the scheme proposes a gradual stepping down in height eastwards towards the cottages, thereby reducing any harsh transition between The Curve and Warwick Place.
33. The scale and design of Block A would relate much more closely to the adjacent development of The Curve and to the campus opposite. A connecting three-storey element (Block B) of contrasting design would provide an effective visual transition in scale and design down towards Warwick Place where the scheme would provide a two-storey form echoing in design the adjacent cottages.
34. The mews houses to the rear would be relatively enclosed. They would read as relatively modest buildings with two storeys and mansard roofs broadly respecting the scale of adjacent buildings in Warwick Place and St Mary's Road.
35. Whilst presenting an unbroken frontage to Warwick Road, the scheme comprises three constituent elements of contrasting scale and form. This would serve to introduce an interesting and distinctive presence to the street-scene but also variously characteristic of its surroundings.<sup>14</sup>
36. The density of the scheme is some 185 units per hectare, slightly above an identified range of 45 to 170 units set out in the relevant Housing SPG.<sup>15</sup> Even so, the Housing SPG explains how, in assessing individual residential proposals, such ranges should be used as a starting point and guide rather than as an absolute rule so as to also take proper account of other objectives, including local character and context. It further confirms that there are circumstances where densities above the ranges in the matrix may be appropriate subject to design and other matters.
37. Further, Policy GG2 of the subsequent London Plan sets out the expectation to create successful sustainable mixed-use places that make the best use of land.

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<sup>14</sup> This is particularly demonstrated by Proposed CGI Rendering 01

<sup>15</sup> Mayor of London's Housing Supplementary Guidance (2016). See Table 3.2

Amongst other factors, it encourages promoting higher density development, particularly in locations that are well-connected to jobs, services, infrastructure and amenities by public transport, walking and cycling, and by applying a design-led approach to determine the optimum development.

38. The site occupies a sustainable location, the scheme generally follows the principles of the design-led approach highlighted in Table 3.2 of the London Plan, and is an appropriate architectural response to the local area taking into account its constraints and character. The Framework also expects planning decisions to support development that makes efficient use of land.
39. I therefore conclude that the proposal would not cause harm to the character or appearance of the appeal site or its surroundings, and with particular regard to its scale and design. It would thereby accord with Policies D1, D3, D4, D6 and Table 3.2 of the London Plan, and with Policies 7.4 and 7B of the DPD. These policies require, amongst other things, that development should deliver high quality design and should optimise site capacity through a design-led approach. It would also accord with the Framework which requires development to be sympathetic to local character and history.

### ***Conservation Area***

40. The appeal site is located at the eastern boundary of the Conservation Area. The heritage asset's boundary clips the south-west corner of the site and so includes a very small portion of the appeal land. That portion is largely enclosed by other sites and so affords little public exposure.
41. The significance of the Conservation Area is as an area of varied architectural heritage with buildings largely dating from the eighteenth century. Building types and uses are wide-ranging and illustrate how the area has generally expanded and flourished as a London suburb.
42. This part of the Conservation Area falls within Sub Area 1 (Ealing Green and St Mary's Road) as defined by the asset's accompanying Appraisal.<sup>16</sup> The Appraisal identifies Sub Area 1 as reflecting a gradual development in which buildings have been arranged according to an informal layout following the line of streets or other property boundaries.
43. The setting of this part of the Conservation Area along Warwick Road is principally shaped by the historic suburban character to the east and by the larger-scale modern development of The Curve and the campus. This setting is of significance to the special interest of the Conservation Area insofar as it affords gateway views of the asset along the road and thereby offers some appreciation of the asset's character and appearance relative to development of the wider surrounding area of which it also forms a part.
44. The existing site content is undistinguished in its form and history. It comprises a varied collection of ad-hoc structures of dissimilar forms, and incidental open areas. It displays little aesthetic or functional relationship to The Curve, to the campus, or to the adjacent cottages. The appeal site itself has little heritage value and does not contribute coherently or positively to either the street-scene or to the setting of the adjacent Conservation Area.

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<sup>16</sup> Ealing Green Conservation Area Appraisal March 2008

45. The development would add relevant architectural interest at an important and sensitive gateway entrance to the Conservation Area. It would help to frame key views into and out of the Conservation Area along Warwick Road and, in so doing, would enhance the setting of the Conservation Area by better reflecting and highlighting the prevailing local architectural context and the gradual historic pattern of development.
46. In terms of both setting, and more directly in terms of the small portion of the site which falls within the Conservation Area itself, I therefore conclude that the proposal would preserve and enhance the character and appearance of the Conservation Area. It would thereby accord with Policies D1 and HC1 of the London Plan, with Core Policy 1.1, and with Policies 7.4 and 7C of the DPD. These policies require, amongst other things, that the significance of heritage assets should be understood and be conserved when applying sustainable and inclusive design principles and measures, and that harm to any heritage asset should be avoided.
47. These policies are consistent with the Framework which advises how great weight is to be given to the significance of a designated heritage asset when considering the impact of a proposed development. It requires proposals that preserve those elements of a setting that make a positive contribution to the asset, or which better reveal its significance, to be treated favourably. The Framework also seeks to ensure that development should establish or maintain a strong sense of place, and emphasises how heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.

### ***Living conditions***

#### *i) The Curve*

48. Existing non-residential buildings within the appeal site abut the side flank wall of The Curve. Those buildings would be cleared and this neighbouring boundary would contain Block A and mews houses. Block A would not extend beyond the depth of the existing flank wall to The Curve, and the rear gardens of the mews houses would adjoin the appeal site boundary further to the south. In principle, Block A should not generally impede light or outlook to or from The Curve. Rather, a more open outlook would be achieved by the rear gardens. This benefit would also apply in relation to the properties in St Mary's Road.
49. The scheme would, however, involve a wall some one metre from the balcony to the existing third floor flat in the rear south-east corner of The Curve, and this would be part of a similar configuration to The Curve. This would have some implications for existing outlook and lighting, including for east-facing balcony doors from the existing flat, but the doors would not be unduly enclosed and would still draw light, and the flat would generally have a more open outlook to the south. The doors occupy a significant proportion of the flank wall and already face towards a lower enclosure of the balcony itself. They also serve as a secondary, non-main window and there would be no impact upon the flat's separate primary window which is south-facing. The Council raises no objection in this regard, and identifies the similar 'corner-cut' form of this part of the scheme to that of the adjacent flat. On balance, I find the implications for the balcony and its associated flat not to be unduly harmful and that available light and outlook would be appropriate to the context.

50. The scheme is accompanied by a technical assessment of the daylight, sunlight and overshadowing implications of the development for the relevant windows of all adjacent properties.<sup>17</sup> Whilst confirming some impact upon Vertical Sky Component and sunlight to the balcony openings of the particular corner flat identified, it shows how all main neighbouring windows to the development would still accord with the relevant guidelines, including flats in The Curve. This evidence has not been significantly challenged and no other technical submission has been provided to the contrary.
51. Blocks B and C have been designed to ensure that the number of windows or balconies that would look towards The Curve is minimised. For those which would face in that direction, privacy screens and obscure glazing would be used to restrict such views. The only windows or amenity spaces likely to allow a direct view of windows at first floor and above at the rear of The Curve would be the gardens of the first and second mews houses and views from the second mews house itself. The views from the gardens would involve looking up from below the windows in The Curve, and those from the mews house located some 15 metres to the south-east would be through the rooflights and at an acute angle. Specific design details to further mitigate and safeguard in this regard could be subject to a planning condition should the appeal be allowed.
52. Balconies to the front of The Curve are not included within the formal definitions which accompany the appellant's technical assessment but, given their northern outlook and the relative positions and orientations of the balconies and of Block A and the proposed common building line, I find little reason the scheme should significantly impede light. I would also envisage little impact upon overall outlook from the balconies.
53. Privacy screens are suggested by the appellant to avoid any intrusive views between the two sets of balconies. Whilst I do not find significant harm needing to be mitigated, I agree such screens as proposed could be beneficial for residents and appropriate. The appellant's intention is for these to be glass and fritted (or etched), thereby allowing sunlight and daylight to penetrate. The final form, design and fixing of any screens would require further consideration and such details could be the subject of a planning condition should the appeal be allowed.

*ii) St Mary's Road*

54. To the west are the rear spaces and outbuildings of properties at Nos 33-43 St Mary's Road.
55. No 35 has the closest rear elevation to the appeal site boundary. The proposal would provide a distance between the nearest first floor window of No 35 and the rear elevation of the proposed mews houses of some 16.75-17 metres. The scheme proposes oriel windows at first floor level on the three closest mews houses at the northern end of the terrace and which would include opaque glass and directional glazing. The first floor rooms within the mews houses would be bedrooms, and also therefore less likely to be occupied regularly during daylight hours.
56. The distance between the rooflights of the second and third mews houses and the rear first floor of No 35 would be at least a further 0.5 metre. Future

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<sup>17</sup> Daylight and Sunlight Study (Neighbouring Properties) by Right of Light Consulting dated 18 April 2017

residents would be physically unable to look down into the first-floor windows and rear space of No 35 from within the bedrooms of the mews houses. The view from these bedrooms would be of the skyline above No 35.

57. The Housing SPG states that, in the past, planning guidance for privacy has been concerned with achieving visual separation between dwellings by setting a minimum distance of 18-21 metres between facing homes (between facing habitable rooms as opposed to between balconies or terraces or between habitable rooms and balconies/terraces).<sup>18</sup> Whilst recognising these can still be useful yardsticks for visual privacy, it explains how adhering rigidly to these measures can limit the variety of urban spaces and housing types in the city, and can sometimes unnecessarily restrict density.
58. The rear space of No 35 is currently the subject of some shadow resulting from the existing buildings and which would be cleared. The mews houses would have pitched roofs and would be some six metres further removed from the common boundary. The shadow that would be cast is likely to be no greater than by the existing buildings, and the immediate outlook would be more open.
59. The appellant's technical assessment of daylight and sunlight implications, whilst identifying some reduction in Vertical Sky Component, finds no breaches of the guidelines for the main windows of properties in St. Mary's Road, including in relation to overshadowing, and no specific technical evidence has been provided to the contrary.
60. The Council also identifies the existing compact pattern of local development as a further factor to be considered and I agree the scheme would be characteristic in that regard, but not harmfully so.

*iii) Warwick Place*

61. The site is bounded to the east by the rear gardens and outbuildings to the terrace of cottages at Nos 10-15 Warwick Place. No adverse implications for the enjoyment of those properties by their occupiers have been identified and I consider none appear likely to arise.

*iv) Other properties*

62. Given the distances between the development and other nearby properties, including Sayers Court to the south, I conclude there would be no adverse implications for the enjoyment of those properties by their occupiers.

*v) General noise and disturbance*

63. The development would replace a site currently occupied as a school and inclusive of a rear play area. The residential use would be generally less intensive in its activity and less open in its physical form. If allowed, conditions could be considered to ensure appropriate noise insulation/attenuation.
64. Block A would include sedum roofs to the rear and they would not be used as amenity space to overlook adjacent properties. Conditions could also be used to safeguard against any such possible intrusion.

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<sup>18</sup> Paragraph 2.3.36

*vi) Summary*

65. Subject to appropriate conditions to mitigate aspects of overlooking and other detailed implications as identified, I conclude that the proposal would not cause undue harm to the living conditions of adjoining occupiers and with particular regard to light, outlook or privacy. It would thereby accord with Policy D6 and Table 3.2 of the London Plan, and with Policy 7B of the DPD. These policies require, amongst other things, that new development achieve a high standard of amenity for users, and that the design of development should provide sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context. It would also accord with the Framework which requires development to create places with a high standard of amenity for existing and future users.

**Other matters**

*Social infrastructure*

66. The site has previous permissions for various forms of community use, although questions have been raised regarding the lawful status of the existing occupier. To safeguard a continuing opportunity for community use, the scheme includes some 95 square metres of floorspace to be restricted for use as a creche, day-nursery or day-centre or for learning and non-residential institution purposes. This agreed range of uses has also been reduced to help safeguard community activities at the expense of other commercial occupiers. The use would enjoy an accessible ground floor location and with a convenient frontage to Warwick Road. The extent of floorspace would represent a trade-off with housing, and would also relate to wider issues of scheme viability.
67. I conclude there would not be harm arising in terms of loss of social infrastructure. The scheme would thereby accord with Policy S1 of the London Plan and with Core Policy 6.2. These policies seek, amongst other things, to develop social infrastructure. It would also accord with the social objective of the Framework which requires development to support strong, vibrant and healthy communities and to support communities' health, social and cultural well-being.

*Other concerns raised by local interested parties*

68. A number of other issues have been raised, including implications for schools, and for ecology. The undertaking includes specific mitigation in relation to local primary and secondary education. No other concerns previously raised have been substantiated, none are supported by the authority, and I find no reason to conclude harm on any of those terms.

*Five-year housing land supply (5YHLS)*

69. The Council has confirmed it is unable to demonstrate a 5YHLS and has not produced any up-to-date evidence of the current position. As such, the tilted balance of paragraph 11d) is thereby engaged by virtue of Footnote 8.
70. The appellant suggested a figure of 2.8 years' supply<sup>19</sup>, but this has not been substantiated in detail and was not tested in evidence at the Inquiry.

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<sup>19</sup> Mr Kenworthy's proof at paragraph 4.4

71. The scheme would make a significant contribution to both market and affordable housing for Ealing consistent with the social objective of the Framework. It would support the government's objective of significantly boosting the supply of homes and help to meet local housing needs.
72. In this context, the scheme's housing delivery would represent a very significant benefit.

*Unilateral undertaking*

73. The undertaking makes various commitments to mitigation, additional to arrangements for affordable housing, for car-free development, and for education. These include contributions to health, parks and transport facilities, and measures relating to air quality, Co2 emissions, energy, and support for a travel plan.
74. The mitigations are consistent with Policy DF1 of the London Plan and with Core Policy 6.4. These seek to ensure that development proposals should provide the infrastructure and meet the other relevant policy requirements necessary to ensure proposals are sustainable and support delivery of the development plan.
75. I am satisfied with the form and content of the undertaking as a deed. I find the undertaking to be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and to be generally fit-for-purpose. Accordingly, I take into account the commitments and accompanying terms as considerations of my decision.

*Other factors*

76. The site is brownfield land and its development draws support from the Framework in that regard.
77. The economic benefits of development would include investment in construction and related employment for its duration, and an increase in subsequent local household expenditure and demand for services.
78. I disregard any suggestion of financial contributions to the local authority through Council tax receipts or similar as a possible benefit of the scheme. The Guidance states that whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms.<sup>20</sup> Further, it advises that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority or other government body.

**Overall assessment**

*i) The development plan as a whole*

79. I consider the policies which are most important are those referred to and variously applied in my assessment of the main issues and other considerations. Notwithstanding the absence of a 5YHLS, I regard this overall basket of most important policies to be in substance up-to-date, and have found no significant conflict or harm in those regards.

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<sup>20</sup> Paragraph: 011 Reference ID: 21b-011-20140612

80. Of particular overarching relevance are Policy GG2 of the London Plan, and Policy EA of the DPD. The former seeks to create successful sustainable mixed-use places that make the best use of land. The latter seeks, when considering development proposals, to take a positive approach that reflects the presumption in favour of sustainable development set out in the Framework. It identifies proactive and joint working with applicants to find solutions to enable proposals to be approved wherever possible, and to secure development that improves economic, social and environmental conditions in the area. I consider the scheme to be compliant with both policies.
81. Set within the wider basket, I conclude the proposal would involve broad compliance on a range of important matters and would so accord with the development plan as a whole.

*ii) Other considerations*

82. The scheme would not give rise to any significant harm which could not be addressed by either planning conditions or mitigation as set out in the undertaking.
83. The collective benefits of the development would amount to very significant weight in favour of the proposal. These would include housing delivery, environmental improvement and economic benefits as identified. As such, any possible adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The scheme therefore benefits from the presumption in favour of sustainable development and which is a further material consideration.

*iii) Final planning balance*

84. The proposal would accord with the development plan as a whole and other material considerations do not indicate a decision other than on those terms. Accordingly, planning permission should be granted, subject to conditions.

**Conditions**

85. I have considered as a starting point the suggested list of conditions put forward and agreed by both main parties. I have had regard to the advice set out in the Guidance and in the Framework, and have reviewed and adjusted detailed recommendations in terms of the necessity for, and reasonableness of, individual conditions and aspects thereof, and to ensure clear and enforceable wording and general consistency.
86. For reasons of certainty, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings.
87. To ensure the continued availability of social infrastructure, a condition is necessary to safeguard use of the 95 square metres of flexible commercial floorspace for appropriate community-related purposes.
88. To safeguard the character and appearance of the appeal site and its surroundings, and to preserve and enhance the setting of the Ealing Green Conservation Area, conditions require details to be submitted of external materials and of landscaping.

89. To ensure a satisfactory living environment for both occupiers and neighbours, a condition requires details to be approved of proposed drainage. Conditions similarly require details of refuse storage, of privacy screens and of obscure-glazed openings, and of arrangements to mitigate any possible site contamination. It is also necessary to prevent inappropriate use of roof spaces.
90. To safeguard living conditions for future occupiers, a condition is necessary to ensure fire safety. Appropriate schemes of sound insulation and ventilation are required for Blocks A and B. To prevent any noise disturbance, restrictions are placed upon the external doors of the non-residential floorspace. I do not consider it necessary or reasonable to require non-opening windows within that space.
91. To protect the living environment of neighbours during construction, it is necessary for the works to be undertaken in accordance with a Construction Method Statement. A separate condition has been suggested to regulate implications of piling, and a reference is instead included within the terms of the Construction Management Statement.
92. To ensure the free and safe movement of vehicles and pedestrians at and in the vicinity of the site, provisions for off-street parking, cycle storage and servicing are required to be made prior to occupation of dwellings. An updated travel plan is also required to promote sustainable means of travel, and arrangements for electric vehicle charging.
93. To contribute to a sustainable development, conditions require arrangements for regulating Co2 emissions, for preventing overheating of buildings, for efficient use of water, for energy monitoring, and for ensuring that no adverse implications for air quality arise from boiler emissions or other fume extraction.
94. To safeguard any hitherto unrevealed heritage interest within the site, a scheme of archaeological investigation is necessary.
95. To meet local housing needs, a condition requires dwellings to be accessible and adaptable to the requirements of people with different physical capabilities, and for a proportion of the dwellings to be designed as accommodation for wheelchair users.
96. Matters relating to contamination, drainage, archaeology, and the Construction Method Statement are all to be addressed before development commences. This is necessary given the importance of those matters and the implications which could otherwise arise should works proceed in the absence of their resolution.

### **Conclusion**

97. For the above reasons, I conclude the appeal should be allowed subject to the conditions identified.

*Peter Rose*  
INSPECTOR

## **SCHEDULE OF CONDITIONS**

### **Time limit**

1. The development hereby permitted shall begin not later than 3 (three) years from the date of this decision.

### **Details and drawings**

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

2842/PL 000; 2842/PL 101 Rev. B; 2842/PL 102 Rev. A;  
2842/PL 103 Rev. A; 2842/PL 105 Rev. C; 2842/PL 109;  
2842/PL 110 Rev. A; 2842/PL 111 Rev. C; 2842/PL 112 Rev. B;  
2842/PL 113 Rev. C; 2842/PL 114 Rev. C; 2842/PL 115 Rev. C;  
2842/PL 116; 2842/PL 117 Rev. A; 2842/PL 118 Rev. A;  
2842/PL 119 Rev. A; 2842/PL 120 Rev. A; 2842/PL 121 Rev. A;  
2842/PL 122 Rev. A; 2842/PL 123 Rev. A; 2842/PL 130 Rev. B;  
2842/PL 131 Rev. A; 2842/PL 132 Rev. D; 2842/PL 133 Rev. A;  
2842/PL 134 Rev. A; 2842/PL 135 Rev. B; 2842/PL 136 Rev. C;  
2842/PL 137 Rev. B; 2842/PL 138 Rev. B; 2842/PL 150; 2842/PL 151;  
2842/PL 152; 2842/PL 153 Rev. A; 2842/PL 154; 2842/PL 155 Rev. A;  
2842/PL 156 Rev. B.

### **Pre-commencement**

3. No development shall take place until a Construction Method Statement has been submitted to and been approved in writing by the local planning authority. The statement shall include, as a minimum, provision for:
  - a) parking of vehicles of site operatives and visitors, arrangements for delivery/unloading of plant and materials, and associated arrangements for site access and vehicle manoeuvring;
  - b) storage of plant and materials;
  - c) erection and maintenance of site hoardings, site offices and external lighting;
  - d) wheel washing facilities;
  - e) measures to control the emission of dust and dirt during construction;
  - f) a scheme for recycling/disposal of waste resulting from construction works;
  - g) delivery and construction working hours;
  - h) a piling method statement, including relevant safeguarding of existing service infrastructure, and appropriate mitigation measures in relation to any other works below ground level as may be required;
  - i) details of public engagement both prior to and during construction works, including transmission of information and arrangements for liaison and contact during the course of the development.

The approved Construction Method Statement shall be implemented and adhered to throughout the construction period, and the Statement shall be accompanied by appropriate details of the phasing of all relevant works.

4. No development shall take place until an investigation of the nature and extent of any existing contamination within the site has been carried out in accordance with a methodology which has previously been submitted to and been approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority and a consequent remediation scheme and accompanying programme of works shall have been submitted to and been approved in writing by the local planning authority before any development begins.

The remediation scheme shall be carried out in accordance with the details and the programme as approved.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this further source of contamination shall be submitted to and be approved in writing by the local planning authority. Works shall be immediately halted in the area/part of the development affected until such time as the further remediation works have been agreed and which shall be implemented as approved and in accordance with an agreed programme.

Following completion of all measures identified in the approved remediation schemes, verification reports demonstrating that full details and specifications of the approved measures have been implemented shall be prepared in accordance with an agreed timescale and be approved in writing by the local planning authority.

5. No development shall take place until full technical details of a scheme of sustainable surface water drainage to serve the development have been submitted to and been approved in writing by the local planning authority, and the scheme shall be implemented in accordance with the details as approved and an accompanying programme. The submitted details shall include a management and maintenance plan for the lifetime of the development and which shall set out arrangements for adoption by any public authority or statutory undertaker and any other arrangements necessary to secure the operation and maintenance of the scheme.
6. No development shall take place until a scheme of archaeological investigation has been submitted to and been approved in writing by the local planning authority. The scheme shall include:
  - a) a programme and methodology of site investigation and recording;
  - b) arrangements for post-investigation assessment;
  - c) provision for publication and dissemination of the analysis and records of the site investigation and for archive deposition;
  - d) nomination of a competent person or persons/organisation to undertake the works to be set out within the approved scheme.

The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow that person to observe the excavations and record items of interest and finds.

Any historic or archaeological features not previously identified which are subsequently revealed when carrying out the development hereby permitted shall be retained in-situ and shall be reported in writing to the local planning authority. Works shall be immediately halted in the area/part of the development affected until provision has been made for retention and/or recording in accordance with details that have been submitted to and been approved in writing by the local planning authority.

All aspects of the scheme of archaeological investigation, and including arrangements for any agreed additional measures as may become necessary during the course of development, shall be implemented as approved and in accordance with an agreed programme.

### **Pre-occupation**

7. No part of the development shall be occupied until a scheme has been submitted to and been approved in writing by the local planning authority setting out details of how 10% (ten per cent) of the approved dwellings will be designed and constructed to meet Approved Document M (Volume 1: Dwellings), Part M4(3) (Wheelchair user dwellings) of the Building Regulations 2015. The scheme shall also demonstrate that 90% (ninety per cent) of the approved residential dwellings will be designed and constructed to meet Approved Document M (Volume 1: Dwellings), Part M4(2) (Accessible and adaptable dwellings) of the Building Regulations 2015. The scheme shall be implemented in accordance with the details as approved and the corresponding works shall be completed prior to any occupation of each dwelling and be maintained and retained thereafter.
8. No part of the development shall be occupied until the corresponding provision for refuse storage and collection for each dwelling shown on the drawings hereby approved have been provided and are available for use to those residents, and the approved provision shall thereafter be maintained and remain available for such purposes.
9. No part of the development shall be occupied until the corresponding arrangements for vehicle parking for each dwelling shown on the drawings hereby approved have been provided and are available for use to those residents, and the approved provision shall thereafter be maintained and remain available for such purposes.
10. No part of the development shall be occupied until full details of the relevant corresponding arrangements for electric vehicle charging as indicated on the approved drawings have been submitted to and been approved in writing by the local planning authority and those arrangements have been implemented in accordance with the approved details. Such arrangements shall be maintained and retained thereafter as approved.

11. No part of the development shall be occupied until the corresponding arrangements for cycle parking for each dwelling shown on the drawings hereby approved have been provided and are available for use to those residents, and those approved arrangements shall thereafter be maintained and remain available for such purposes.
12. No part of the development shall be occupied until detailed arrangements for deliveries and service vehicles attending the development reflecting the principles set out in the appellant's Transport Statement (April 2017) have been submitted to and been approved in writing by the local planning authority and the corresponding arrangements have been implemented in accordance with the approved details. The approved arrangements shall thereafter be maintained and remain available for such purposes.
13. No part of the development shall be occupied until an updated travel plan has been submitted to and been approved in writing by the local planning authority. The plan shall include measures to promote and raise awareness of local opportunities for sustainable transport, and arrangements for monitoring implementation of the plan. The travel plan shall be implemented in accordance with the approved details and an agreed programme.
14. No part of the development shall be occupied until full details of all obscured-glazed privacy screens and of obscured-glazed and non-opening rooflights/windows as indicated on the drawings hereby approved have been submitted to and been approved in writing by the local planning authority. The details of all such screens and rooflights/windows shall be designed with particular regard to mitigating all potential overlooking from the dwellings proposed towards existing properties in The Curve and in St. Mary's Road. The openings shall be installed as approved, and shall be obscure-glazed and in non-opening forms as indicated unless those parts of the window that can be opened are more than 1.7 metres above the floor level of the room which it serves. The corresponding screens and rooflights/windows shall be implemented in accordance with the approved details prior to the occupation of each dwelling and be thereafter maintained and retained as approved.
15. No part of the development shall be occupied until full details of hard and soft landscape works, and of all associated enclosures, structures and equipment, have been submitted to and been approved in writing by the local planning authority. The works shall be implemented in accordance with the details as approved and within the first planting season following the commencement of the development or such other period as may be agreed in writing by the local planning authority, and shall be maintained and retained in accordance with an approved management plan. Any trees or plants which die within 5 (five) years of planting, or which are removed, or which become seriously damaged or diseased, shall be replaced with others of the same size and species and in the same positions within the next planting season.

16. No part of the development shall be occupied until full details of proposed boiler installations and accompanying emissions for each dwelling have been submitted to and been approved in writing by the local planning authority. The relevant corresponding facilities shall be implemented in accordance with the approved details prior to first occupation of each dwelling. The equipment or similar shall be maintained and retained thereafter in accordance with the details as approved.
17. No part of the development shall be occupied until full details of proposed fume extraction serving each dwelling have been submitted to and been approved in writing by the local planning authority. The relevant corresponding equipment shall be installed in accordance with the details as approved prior to first occupation of each dwelling. The equipment or similar shall be maintained and retained thereafter in accordance with the details as approved.
18. No dwellings within Block A or Block B shall be occupied until full details of proposed arrangements for appropriate sound insulation and ventilation, and including details of any necessary noise and vibration mitigation associated with such equipment, have been submitted to and been approved in writing by the local planning authority and have been implemented in accordance with the agreed particulars. The measures shall be maintained and retained thereafter in accordance with the details as approved.
19. No part of the development shall be occupied until a fire safety statement produced by a suitably qualified independent assessor in accordance with the requirements of Policy D12 of the London Plan has been submitted to and been approved in writing by the local planning authority. The statement shall detail how the development will ensure occupants' safety, including means of escape, and relevant aspects of construction and other features necessary to reduce risk to life. The development shall be implemented in strict accordance with the approved statement and an accompanying programme, and any specified measures shall be maintained and retained thereafter.
20. No part of the development shall be occupied until details of the following arrangements, and including a programme for implementation, have been submitted to and been approved in writing by the local planning authority:
  - a) measures to regulate and monitor Co2 emissions generated by the scheme;
  - b) measures to prevent over-heating of the development and of individual dwellings;
  - c) measures to ensure efficient use of water within each dwelling;
  - d) measures to monitor performance of the photovoltaic panels and ensure their efficient operation and maintenance.

The above arrangements shall also include subsequent monitoring of those measures and make provision for any possible ameliorative action following occupation of the development should that be required.

Each set of measures shall be implemented in accordance with the approved details, and shall be maintained and retained thereafter in accordance with the relevant particulars.

**Other**

21. Prior to the construction of any external surfaces to any buildings, full details of all external materials shall be submitted to and be approved in writing by the local planning authority and the works shall be implemented in accordance with the details as approved.
22. Aside from the roof balconies and terraces as formally shown on the drawings hereby approved, no other parts of the rooftops of the development shall be used as or be altered to form a balcony, roof garden, roof terrace or similar amenity area. The rooftops shall not be accessed or used except for maintenance or emergency purposes.
23. Notwithstanding provisions of the Town and Country Planning (Use Classes) Order 1987 or the Town and Country Planning (General Permitted Development) (England) Order 2015 (and nor any re-enactments or amendments thereto), the 95 square metres of flexible commercial floorspace hereby approved shall not be used for any purpose other than as a creche, day-nursery, or day-centre as defined by Class E(f), or other than as a learning and non-residential institution use as defined by Class F.1.
24. Occupation of the 95 square metres of flexible commercial floorspace shall not commence until all external doors to this area have been fitted with self-closing devices, and which shall be maintained and retained in an operational condition thereafter, and at no time shall any external door within that space be fixed in an open position.

End of conditions 1-24.

## **APPEARANCES**

### **For the local planning authority:**

Richard Langham of Counsel, instructed by the Director of Legal and Democratic Services, London Borough of Ealing

He called:

Demetri Prevatt - Planning Officer, London Borough of Ealing

### **For the appellant:**

Kevin Leigh of Counsel, instructed by Walker Warwick Limited

He called:

Justin Kenworthy - Partner, Barton Willmore LLP

### **Interested parties**

Nick Walford - local resident

## INQUIRY DOCUMENTS

The following documents were submitted to and accepted by the Inquiry:

Reference	Title
ID1	Opening submissions by Mr Langham
ID2	Appellant's draft unilateral undertaking
ID3	Copies of previous planning permissions relating to 92-98 Warwick Road, and to 100 Warwick Road
ID4	Land Registry Official Copy of Title Plan
ID5	Closing submissions by Mr Langham
ID6	Closing submissions by Mr Leigh

The following documents were submitted in accordance with agreed arrangements after closure of the Inquiry:

Reference	Title
ID7	Inspector's post-Inquiry note of outstanding actions dated 21 April 2021
ID8	Appellant's confirmation of arrangements for site inspection by email dated 21 April 2021
ID9	Copies of email correspondence between advocates dated 22 April 2021 relating to proposed arrangements for parking permits
ID10	Suggested revised conditions attaching to the Council's email of 28 April 2021 and the appellant's email of the same date
ID11	Density and car parking policy position note attached to the appellant's email of 29 April 2021, and subsequent correction received by email from the appellant dated 14 May 2021
ID12	Confirmation of wording of amended description of development and recommended conditions by the Council's email dated 29 April 2021 and the appellant's email of the same date
ID13	Appellant's further draft undertaking and supporting material received by email dated 17 May 2021
ID14	Council's response to draft undertaking attaching to email dated 21 May 2021
ID15	Appellant's completed undertaking dated 20 May 2021
ID16	Appellant's response to Inspector questions by email dated 2 June 2021
ID17	Council's response to Inspector questions by email dated 2 June 2021
ID18	Final comments from the appellant by email dated 4 June 2021
ID19	Application for costs from the Council attaching to email dated 2 June 2021, and subsequent comments from the parties
ID20	Applications for costs from the appellant attaching to email dated 11 June 2021, and subsequent comments from the parties
ID21	Revised National Planning Policy Framework July 2021 and responses from the parties