



Appeal Decision

Inquiry Held on 26-29 May, 1 June and 18-22 October 2021

Site visit made on 4 June 2021

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/V5570/W//21/3267951 87 Sunnyside Road, London N19 3SL

- 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 Sunnyside Road Land Ltd against the decision of London Borough of Islington.
 - The application Ref P2020/2232/FUL, dated 1 September 2020, was refused by notice dated 25 November 2020.
 - The development proposed is the restoration of the locally listed Coach House Building and change of use to Use Class E (commercial, business and service) providing 135sqm of floorspace, clearance of wider site and construction of 2no. residential apartment blocks (4 storeys and 3 storeys high) providing a total of 19no. residential units (comprising of 7no. 1bedroom flats, 8no. 2bedroom flats and 4no. 3bedroom flats), with associated cycle parking, landscaping and private amenity space.
-

Decision

1. The appeal is allowed and planning permission is granted for the restoration of the locally listed Coach House Building and change of use to Use Class E (commercial, business and service), providing 135sqm of floorspace, clearance of wider site and construction of 2no. residential apartment blocks (4 storeys and 3 storeys high) providing a total of 19no. residential units (comprising of 7no. 1bedroom flats, 8no. 2bedroom flats and 4no. 3bedroom flats), with associated cycle parking, landscaping and private amenity space at 87 Sunnyside Road, London N19 3SL in accordance with the terms of the application, Ref P2020/2232/FUL, dated 1 September 2020, subject to the attached schedule of conditions.

Procedural Matters

2. The Inquiry was initially held in May and June 2021, and then adjourned to October 2021. It formally closed on 10 November 2021 following the submission of closing statements in writing. During the interim, updates were provided in respect of the viability evidence and housing land supply position. I have had regard to the revised evidence in my determination.
3. The Government published its revised National Planning Policy Framework (the Framework) on 20 July 2021. Parties were given the opportunity to comment on any relevant implications for the appeal and I have taken account of these.
4. A planning obligation was submitted in draft form, discussed at the Inquiry and subsequently redrafted and finalised as a unilateral undertaking (UU) with written input from both parties. I have had regard to it.

5. The Council's reasons for refusal included matters relating to energy performance and a lack of a planning obligation in respect of highways matters, employment and training, carbon offsetting and a travel plan. Parties resolved these matters in light of the UU and the proposed conditions, and as such reason for refusal 4 was uncontested.

Main Issues

6. The main issues are:
 - i) The effect on the character and appearance of the area including the effect on designated and non-designated heritage assets.
 - ii) Whether the development would provide appropriate levels of affordable housing in accordance with local policy.

Reasons

Planning Policy Context

7. The development plan comprises the London Plan 2021 (LP), the Islington Core Strategy 2011 (ICS) and the Islington Development Management Policies 2013 (IDMP). Policies in the LP supersede those cited in the Council's decision notice, which was issued prior to its adoption in March 2021.
8. The Islington Draft Local Plan examination took place between 13 September-1 October 2021 and the Inspector's report is currently awaited. Considering the extent of unresolved objections and ahead of the report and any modifications, parties agreed that moderate weight is attached to its policies at this stage.¹ I agree, however, neither party relied on any specific policies in support of their respective cases.

Site and Area Description

9. The site is around 0.15 hectares and comprises a workshop, storage building, forecourt (including canopy) of a former petrol station; a part single, part 2-storey recording studio; and a former Coach House with attached rear workshop building. The site is partially used as a hand car wash and for storage. Some of the buildings are unused, derelict and in a dilapidated condition. The recording studio was one such building, however following my site visit it has been let. Mature trees are located to the north-western boundary of the site, and just outside of the site with overhanging canopies.
10. The site is located to the western side of Sunnyside Road towards the junction with Hornsey Lane. The area is hilly and Sunnyside Road slopes down from Hornsey Lane towards the south. To the northern boundary of the site is 148 Hornsey Lane, a modern 3 storey property. To the west are semi-detached 4-storey Victorian Villas and a modern 3-storey development which back onto the site from Hazellville Road. Redwood Court, a 10-storey tower block is located to the south. To the east, is 'The New Orleans Estate' which is a relatively large area of 4-8 storey flatted accommodation blocks. The wider area is largely residential in character, with a combination of historic terraced properties, 20th century tower blocks and mansion blocks.
11. The site is within the Whitehall Park Conservation Area (CA). The Coach House within the site is 'locally listed' and a building of merit in the CA.

¹ As agreed in INQ26

Proposals

12. The application seeks to restore the Coach House and change its use to Class E (commercial, business and service), demolishing the rear workshop area. The remainder of the site would be cleared for the erection of 2 apartment blocks, one to the rear of the Coach House, which would be 3-storey in height (Block C), and a 4-storey block fronting Sunnyside Lane (Block A).
13. A total of 19 market dwellings would be created, and the remainder of the site would be landscaped to provide amenity space for the future residents. The development would be car-free. Secure cycle storage would be provided within the site and the mature trees would be retained.

Character and Appearance

14. The works to the Coach House and Block C are not disputed by the Council and thus I do not consider these in any detail. The removal of the former petrol station and its associated visual clutter is an enhancement to the character and appearance of the CA.
15. The issue in contention relates to Block A. Disputed matters related to its layout and grain, bulk, scale and massing, height, articulation, vertical/horizontal emphasis, materials, orientation, locality and its effect upon the setting of the Coach House and the CA².

Significance of the CA and Coach House

16. Historically, the area contained detached mansions, high status semi-detached and terraced properties, along with largescale workhouse blocks, an asylum and an orphanage, typically dating from the Victorian period. The site is in the grounds of the former Huntingdon House, to which the existing Coach House served.
17. Today, the CA is characterised by residential buildings typifying various phases of development 'boom' periods, including Victorian 3/4/5+ storey terraced properties, pre and inter-war apartment blocks (including Manchester Mansions 1924 and Hornsey Lane Estate 1938/39). The area was also developed in the post war period, including the New Orleans Estate and Redwood Court.
18. While these 20th Century developments replaced some of the Victorian stock, as well as the workhouse, orphanage and asylum, they are representative of periods of great social change. In particular, the earlier Manchester Mansions and Hornsey Lane Estate are positive examples of the architectural and historic evolution of the CA. There are also other examples of modern 21st Century developments which, while adding to the architectural tapestry, are neutral in terms of the significance of the CA. It is a matter of common ground that Redwood Court does not make a positive contribution to the CA.
19. The Coach House is constructed from buff London stock brick with a clay tile roof, scalloped barge boards, central lantern, pilasters, carved keystones and curved windows. Its ornate detailing is indicative of the high status of Huntingdon House. It is in poor condition and contains unsympathetic alterations such as the modern steel door and roller shutter. However, it

² As set out in 'Design and Heritage; Summary of Round Table Issues'

retains significance and is correctly identified as a locally listed building, making a positive contribution to the character of the CA.

Bulk, scale, massing & height

20. Block A would be the largest unit, at around 18m along the street frontage, around 15m deep and 4-storeys in height with a flat roof. The 4-storey height would be wholly compatible with the heights of buildings in the immediate locality of the site, particularly when factoring in the topography.
21. A set-back of the upper floors, as a common design technique to soften and reduce bulk and massing would not be required. On the contrary, this could result in a confused design on what would be a relatively modest building in its wider context.
22. Similarly, the width and form of the building would also be entirely compatible in its context given the widths of the historic villas and the 20th Century developments in the vicinity.
23. Rather than being a rectangular design, the development would include a chamfered corner to its principal façade. This would give a sense of space to the Coach House and would allow for greater views of it to be taken when looking south down Sunnyside Road. Further detailed design elements, as discussed below, also ensure that visually Block A would not be read as monolithic and wide. I am thus satisfied that the development would not be perceived as overly bulky or dominant in its scale, massing or height.

Articulation and Vertical/Horizontal Emphasis

24. Design features of Block A would include recessed balconies, floor to ceiling windows within inset reveals headed by deep rusticated textured red brick detailing, slim concrete horizontal banding, and thick vertical brick piers.
25. Taken together, these inflections would work in harmony and achieve architectural and visual interest, but in a simple and unassuming form. Rather than the string courses giving an overly horizontal emphasis, the proportioning of the vertical and horizontal elements would balance each other out. The vertical elements ensure that the width of the building is not exaggerated and would also have the effect of reducing any perception of bulkiness.
26. There would be a general repetitiveness in the design, but this reflects the symmetry and repetition experienced in most of the historic Victorian Villas, as well as the 20th century blocks and thus would be compatible with the character of the CA. The main façade also would have variety and interest in the projecting porch and chamfer.
27. Balconies and associated balustrading would give the building a distinct domestic residential character and the development would thus not appear to be institutional in its appearance.

Materials

28. Block A would be constructed entirely of red brick, with some concrete in the string bands and porch. The Coach House is constructed from yellow London 'stock' brick and Block C would reflect this.

29. The immediate locality contains a wide palette of materials including stock brick to No 148 Hornsea Lane, dark brown brick in Redwood Court, and light brown bricks to the New Orleans Estate. Nos 71-77 are in red brick, along with Manchester Mansions. Properties along Hazellville Road are predominantly stock brick, with some rendering and red brick buildings. This variety is characteristic in the wider CA.
30. Given this richness and diversity in materials, I find the use of red brick to be acceptable in Block A. Moreover, I am mindful that the bricks could be subject to a condition to ensure that the final type of brick and its precise red colouration would be acceptable in this context.
31. Furthermore, and in spite of the Statement of Common Ground (SOCG) that the works to the Coach House are acceptable, the Council belatedly expressed concern regarding the use of concrete to replace missing parts of historic fabric i.e. the ground floor frontage in replacement of the shutters. However, this would be a relatively simple treatment which would undoubtedly improve the appearance of the building from its current form. I consider it to be an appropriate response which would give a clue as to the evolution of the building, while also preserving it.
32. The works would not represent a restoration of the Coach House, however, there was limited evidence before the Inquiry as to what a restoration would be based on, as I saw no evidence of what the Coach House originally looked like. Any such 'restoration' would thus be speculative which gives weight in favour of a simpler treatment.
33. I do, however, consider that in light of the locally listed status of the Coach House, and based on the level of submitted detail, a condition specifying a detailed schedule of works would be necessary to ensure that an appropriate balance is struck in repairing existing historic fabric, and the new works involved. This would also include external materials.

Layout and Grain

34. The proposed set back from the highway would be around 6-7 metres which reflects the setback of Redwood Court and 148 Hornsea Lane, albeit these buildings present flank elevations to Sunnyside Lane.
35. The Council consider that the set-back should respond to the Victorian and Edwardian Villas in the vicinity of the site. Nos 71-77 as 2 pairs of semi-detached buildings do appear to sit slightly further back. However, Sunnyside Road has a varied building line, and to take the building line from Villas located away from the site would be illogical.
36. Instead as the site is located between No 148 and Redwood Court, the positioning of Block A would effectively harmonise their variances in building line and would be an appropriate response. As already referenced, the chamfered corner of the building would also give a sense of space to the Coach House and in combination with the recessed balconies, Block A would not present a hardened line to the street scene.

Orientation

37. Block A would have a clear and distinguishable principal façade, fronting Sunnyside Road. This is aided, in part, by the rhythm of the horizontal and vertical design elements and the porch.
38. The side elevation facing the Coach House would contain deep balconied recesses above ground level. However, these would be a recessive feature, giving no primacy to that elevation over the main front façade and providing visual interest. These would also assist in reducing any lingering concerns relating to the width and massing of Block A. The large inset balconied areas would visually give more space to the Coach House, allowing appreciation of its form and cupola, rather than detracting from or competing with it.

Locality

39. Mature trees contribute positively to the character of the CA and are particularly prominent along Sunnyside Road. Trees within and surrounding the site would be protected by the proposed development and the verdant character preserved.
40. The retention of these, along with the scale, positioning and design detailing of the new development would preserve a sense of the scale of the former Huntingdon House and give visual clues to the former context of the Coach house, which has long since been eroded.
41. The development would strike an appropriate balance of a suitable use of the site, while retaining a moderate sense of spaciousness akin to what it once would have been. Soft landscaping proposals to the frontages of Block A and the Coach House would also contribute to that character. It would certainly be a marked improvement to the current arrangement of buildings at the site.

Overall effect on setting of the Coach House and the CA

42. Today, there can be no doubt that the Coach House is a historic relic in an area which has been subjected to much change. It has been badly affected by inappropriate alterations and is currently somewhat lost in a sea of clutter and poor-quality buildings.
43. Its presence in the street scene is poor and while it warrants protection as a locally listed building and is a positive aspect of the CA, development at the site presents a significant opportunity for its enhancement, and an overall enhancement of the character and appearance of the CA.
44. In light of my findings set out above, the scale and siting of Block A are appropriate to the Coach House and rather than diminishing its significance further, there would be enhancement and opportunity for greater views and experienced appreciation.
45. The Council referred to a connection of the Coach House with No 148 Hornsea Lane which occupies the plot of the former Huntingdon House, and the importance of a visual connection with it. However, that relationship has long been severed and there is no spatial or visual connection. Creating a relationship with No 148 would be entirely contrived. Moreover, as a relic, any new development at the site would also always be unconnected to the Coach House and it would be difficult to replicate otherwise.

46. Instead, the detailed design elements of Block A would represent a sensitive and appropriate response and would give the Coach House visual space, something it is not currently afforded and an opportunity to sensitively repair the locally listed building.
47. Concern was raised by the Council and the Islington Society regarding the lack of consideration of the scheme by the Design Review Panel, who have been proactively involved in previous iterations of the scheme. This is something encouraged by paragraph 133 of the Framework. From what I have seen and heard, efforts have been made to address the concerns and comments made by the Panel and incorporated into the final scheme. While this lack of involvement at the latter design stage is regrettable, I do not consider that this would count against the scheme.
48. Overall, the scheme represents high quality design and it would be wholly appropriate in its immediate setting and wider context. The proposal would enhance the setting of the Coach House and the character and appearance of the CA. This would be in accordance with ICS Policies CS8 and CS9 and IDMP Policies 2.1 and 2.3. Together these require enhancement of local character, good design and the protection of the historic environment and heritage assets.
49. The development would also meet LP Policies GG2, D4, and HC1 which seek to make the best use of land, deliver good design and protect and conserve heritage assets. There would also be no conflict with the Conservation Area Design Guidelines (2002) and the Islington Urban Design Guide (2017). Finally, there would be no conflict with the Framework which has recently bolstered its emphasis on design and beauty as a key aspect of sustainable development.

Affordable Housing

Policy Basis

50. Within the ICS, affordability is identified as being a major issue and there is a significant need in the Borough. Policy CS12 requires 50% affordable housing. Specifically, Part G of the policy seeks the maximum reasonable amount of affordable housing, subject to a financial viability assessment. IDMP Policy 9.2 relates to the use of planning obligations to deliver sustainable development. Affordable housing is typically secured via such means.
51. The LP sets out a strategic target of 50% affordable housing across London (Policy H4) and a threshold approach to that delivery (Policy H5), which also includes viability assessments to ascertain the maximum level of affordable housing deliverable on a scheme. This should be undertaken in a transparent way in line with the Mayor's Affordable Housing and Viability SPG (2017). Viability tested schemes will also be subject to early and late-stage viability reviews within a set time. Policies H6 and H7 also relate to tenure and monitoring of affordable housing.
52. The Framework seeks to boost significantly the supply of homes, including affordable housing. Paragraph 58 requires applicants to demonstrate viability and that it is a matter for the decision maker, having regard to all circumstances of the case. All such assessments should reflect the recommended approach in national guidance, and Planning Practice Guidance

(PPG) provides clear and detailed guidance on standardised inputs to give transparency to the process.

53. Accordingly, there is a clear policy consensus in the Borough, and indeed across London and nationally, for the provision of affordable housing, but allowances can be made for lesser provision where a clear case of viability can be made.

Background

54. Nil provision of affordable housing is proposed as part of the scheme, due to viability. Accordingly, the UU makes no provision for affordable housing, however it does set out review clauses. The Council held that, based on their own viability calculations, 4 shared ownership units (which would amount to around a 21% level) would be possible and meet the policy tests, despite not reaching the full specified 50% target.
55. A great number of documents and evidence was submitted as part of the original application as well as to the Inquiry on this issue. Further updated inputs and changes to the assessments were also made because of the adjournment and were presented following resumption, with the positions of the respective parties evolving during the Inquiry.
56. In some ways, this assisted my understanding and parties reached agreement on several areas³. However, on outstanding disputed matters, this has made what should be a relatively transparent process more difficult and convoluted, with sums, and assumptions underpinning them, contained across numerous reports, proofs, rebuttals, and inquiry documents.
57. As demonstrated in the updated SOCG⁴ differences in Benchmark Land Value (BLV), development value and other cost assumptions (such as professional fees and marketing) plus differences in residual profit percentages resulted in a purported shortfall by the appellant, and a surplus by the Council.
58. These represent the extrapolated figures to which I have based my assessment on. To assist, scenarios were also provided, at my request, by way of testing the differences between parties on the Coach House BLV, 'Rest of Site' BLV and profit differences.⁵ I shall deal with each matter in turn.

Benchmark Land Value

59. As set out by PPG, BLV should be based on the existing use value (EUV) of land, plus a premium for the landowner. This approach is often called 'existing use value plus' (EUV+).⁶ EUV is not the price paid for land or hope value.
60. PPG also notes that alternative use value (AUV), which refers to the value of land for uses other than its existing use can be informative in establishing BLV, but it should be limited to uses which would fully comply with development plan policy (and evidenced as such). Evidence might include, if it can be demonstrated that the alternative use can be implemented, a market demand and if there is an explanation of why an alternative use has not been pursued. Where it is assumed that an existing use will be refurbished or redeveloped this

³ INQ22, p2 sets out areas of agreement in detail.

⁴ INQ22

⁵ INQ25

⁶ Paragraph: 013 Reference ID: 10-013-20190509

will be considered as an AUV when establishing BLV. Valuations based on AUV includes the premium to the landowner and thus cannot be double counted.⁷ The SPG also sets out that detailed proposals need to be provided to support AUV and states that sites should have a realistic prospect of achieving planning permission if consent is not granted.

61. The Council has used the EUV in its calculation, and even taking into consideration new leases granted during the period of adjournment of the Inquiry, considers the value to be low or nil for many of the site components. This is due to the dilapidated state of the buildings (for example, the building to the rear of the Coach House) and results in a net BLV of £562,208.
62. The Appellant adopted an EUV approach as part of the original application, with a valuation of around £1,100,000.⁸ Mr Brown, for the appellant, sought to make the assessment in several different ways, including AUV, and ultimately concluding on a revised BLV of £1,000,000.
63. The difference between parties is thus around £437,792 with differences in calculations in terms of the BLV of the Coach House and from the rest of the site.
64. As part of the appellant's various assessments, other evidence was applied, including a viability report for the draft local plan in 2018 which gives an EUV at £726,960⁹ for site 24 (agreed to be the appeal site) albeit based on a fully cleared site. The study also concludes that 50% affordable housing could be achieved. A Viability Topic Paper Update 2021¹⁰ identifies a mixed used site 'N' in the same postcode and applies the value per square meterage to the appeal site, deriving a value of £1.37million. Guidance from GLA in 2016 has also been applied also giving a BLV of around £1.075million, albeit it is recognised that this data is of some age.
65. BLV is clearly a matter of judgement based on evidence. The site is made up of several differing components and it is the somewhat mechanistic treatments of these in the base calculations which has led, in part, to the disagreement between parties. This has resulted in a particularly forensic approach with protracted arguments at every corner.
66. On the one hand, the Council refer to the unacceptability of the existing uses in a residential area, as supported by various documents of the appellant¹¹ yet it then does not appear to support the principle of using AUV to establish BLV at the site.
67. In terms of EUV, new leases and the increases in rent also demonstrate the demand and rental incomes for the elements of the site. These have increased even above the assumptions from the appellant's original case. The sustainability of those increases is questioned by the Council but there is limited evidence to support these claims; these are newly signed leases which reflect the current market. Energy Performance Certification (ECP) may have

⁷ Paragraph: 017 Reference ID: 10-017-20190509

⁸ CD1.22.1 Montague Evens Report March 2020

⁹ CD9.13 London Borough of Islington: Draft local Plan Viability Study, BNP Paribas December 2018

¹⁰ CD9.12

¹¹ Including CD1.15 (Marketing letter by Hartnell Taylor Cook) CD1.16 (Savills Market Demand Analysis) and CD1.25 (Planning Statement).

an input in the future, but the evidence suggests that costs would not be prohibitive to secure an upgraded rating to allow for future letting.¹²

68. In my view the Council have adopted an overly stringent view on the evidence base requirements of AUV. It is true that no other planning permission exists at the site, but that is not a policy requirement, nor does the PPG or SPG specifically require that. Extant B2, B8 and *sui generis* uses exist which the appellant has utilised to justify their BLV. The Council have also dialled back from their position in the Officer Report that the Coach House is Class E when it could reasonably be such a use. Thus, I consider that the AUV approach adopted by the appellant to this element to be appropriate.
69. Moreover, the valuations derived from the topic paper update and GLA are more tenuous as these relate to typologies and broad assumptions rather than making full site-specific assessments. That said, they do establish that there would be a general trend for a higher BLV than the Council's figure.
70. The Council's nil value of some elements of the site is also unusual, even when accounting for the poor condition of the site. The site would require remediation, given its uses and condition, but even the Council's own evidence for the Local Plan sets a higher valuation for a cleared site that would include remediation costs.
71. Overall, therefore, I am satisfied that the appellant's BLV of £1,000,000 is appropriate.

Development Value

72. The remaining difference between parties in respect of the net development value at the site (for both residential and commercial elements) is around £500,000. Build costs were agreed by the parties in light of the well documented increases in materials and labour costs. There were, however, several other differences between parties relating to other cost assumptions.
73. The biggest area relates to residential sales and the sum of £19,000 for legal fees which the Council does not account for. At £1000 per unit, I do not consider this to be an unreasonable sum, and I note that the Council's professional witness has allowed for such fees in other schemes.
74. However, in respect of commercial fees no detailed evidence has been put before me to justify the 3% fee plus legals. The Council's 1.5% suggestion would equate to around £10,000, and given that the commercial element is small-scale, this would be a sensible figure. I also agree with the Council that the gross internal area to net lettable area should be 100%, rather than the 85% claimed by the appellant due to circulation spaces. This is, however, a relatively minor point.
75. Sales values for flats have decreased in London, due to the pandemic and the trend to relocate to houses with gardens and rural areas. How long this position will last was debated, considering that there is likely to be an upward trend again in the future. However, the appellants figures are based on up-to-date evidence, even if there is a lag period in the data. I admire the Council's cautious optimism but given that the pandemic appears to be ongoing, there is considerable uncertainty around this.

¹² INQ19, Appendix 2.

76. Professional fees were also different with the appellant applying 5.5% and the Council 3.5%. The Council's position on this changed from 7.5% as part of their original viability assessments due to allowances being included as part of other calculations. The appellant's allowance was also originally 7.5% but has been revised downwards by a way of trying to reach common ground. I consider the appellant's position to be reasonable given that the types of fee incurred are likely to be greater¹³.

Overall Residual Profit

77. Using the Council's figures, the overall residual profit would be £2,293,791 which, on applying a 17% private residential gross development value (GDV) and 15% GDV on commercial, would result in a surplus of £500,493. The appellant's calculations would be £977,908 residual profit, and in applying an 18% allowance on overall GDV and/or 20% on costs, this would result in a shortfall of £834,403. This represents some £1.3 million difference between parties.

78. Profit target values supported by both parties fall within the advice of the PPG which specifies 15-20%. In general, 18-20% margin is standard. The Council's figures, which given the current risk factors around the economy, do seem to be overly low.

79. However, in some respects, this line of dispute takes me nowhere because taking the appellant's position, the development would only achieve a 10% profit margin which is below both parties identified profit levels. Taking the appellant's profit margin and applying that to the figures of the Council would, however, still generate less of a surplus.

80. I am, however, mindful that it is somewhat inconsistent for the appellant to argue for a higher profit rate based on risk, yet at the same time putting forward a scheme which would achieve only a 10% return. Indeed, based on this low profit margin, the Council raised broad concerns over the overall deliverability of the site, particularly given that the purchase price for the site in 2019 was over £2,000,000. For the avoidance of any doubt, that payment has never been factored into the viability calculations, in accordance with the PPG. I shall return later to the deliverability argument presented by the Council.

Conclusions

81. Drawing everything together, I have found in support of the appellant's BLV, but there is more of a 'mixed bag' in terms of my findings on development values, albeit this wouldn't make a great difference to the net outputs in any case. The appellant's profitability target is also preferred, although I recognise that this would not be reached based upon their figures.

82. Based on my findings I am thus satisfied that the site cannot viably sustain any affordable housing, which is largely because the BLV is £1,000,000 and the Council's profit targets are overly low.

83. In reaching my conclusions, I am also mindful that the scenarios presented¹⁴ show a limited surplus for the Council, particularly scenario's B and D, which

¹³ As evidenced by Mr Brown's original proof of evidence.

¹⁴ INQ25.

utilise the appellant's profit margin, but differing BLV's for the Coach House and rest of site. If these were realised, the case for affordable housing would be marginal, and limited to one or possibly 2 units. Moreover, the mid-point between the respective viability positions would still generate a nil affordable housing contribution.

84. In any case, as viability is not an exact science, there is a review mechanism built into the UU which, after protracted discussions now follows the SPG, and should offer some comfort should viability improve at the site, or if any of my findings in favour of the appellant's case do not come to fruition.
85. I accept that a finding of no affordable housing for a site in London is somewhat unusual, particularly in Islington where affordable housing need is acute. This is somewhat regrettable. However, my conclusions are that the site would not be viable were it to provide affordable housing at this time. To that end, and given the viability review mechanisms contained within policy, there is no conflict with ICS Policy CS12 and LP Policies H4 and H5. The review mechanisms contained within the UU are also compliant with LP Policy H7 and the SPG.
86. Finally, in respect of deliverability, some profit would be generated, albeit not to usual levels and I note that the price paid for the site was high. However, this is a scheme that the appellant has expended considerable resources defending and questions over deliverability would not justify refusal of the scheme which is compliant with the development plan.

Planning Obligation

87. The UU commits to providing contributions towards accessible transport, carbon offsetting and employment and training. A green performance plan, car free dwellings and, as previously discussed, affordable housing early and late stage review are also incorporated, including monitoring clauses. The drafting of the UU involved several iterations. I am satisfied that the engrossed version deals with the Council's outstanding concerns.¹⁵
88. I consider all the obligations would be necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind. They comply with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) and paragraph 57 of the Framework.

Conditions

89. A list of planning conditions was drawn up by the main parties, discussed at the Inquiry and subsequently amended¹⁶. My consideration has taken account of paragraph 56 of the Framework and advice in the PPG. The conditions which are pre-commencement are necessary due to their nature i.e. for dealing with contamination. The appellant has confirmed their agreement to the imposition of these.
90. In addition to the conditions, I have referred to above, I have imposed the plans condition for certainty. A condition restricting occupancy of the dwellings before the works to the Coach House are completed is necessary to secure the restoration of the locally listed building. I have taken this from INQ21, rather

¹⁵ As set out in INQ28, and INQ30-32.

¹⁶ See INQ21 and INQ27.

than the later set of conditions in INQ27. This is because the later draft changes this to restricting occupation of the Coach House itself, rather than the development and would not secure its repair before completion of the residential units. The repair of the Coach House is a fundamental part of the development and securing this is essential.

91. A condition is necessary for drainage, including an updated appraisal, to prevent surface water flood risk and for sustainable water management. Conditions relating to green roofs and bird and bat boxes are also necessary for biodiversity. Protection of existing trees during construction is also necessary to preserve the character of the CA along with a condition securing the implementation of landscaping with approved details and maintenance.
92. The site's current use means that contamination investigation and remediation will certainly be necessary, and the pre-commencement condition will ensure this is undertaken correctly.
93. Conditions securing the implementation of cycle parking and refuse storage are necessary for accessibility and local amenity. Details of external plant noise are also required to protect nearby residents, as is a condition for external lighting.
94. The construction period would inevitably cause some disturbance and inconvenience to those living and working in the area, as well as road users. A condition requiring a management plan for demolition, construction and the environment is therefore necessary.
95. Removal of permitted development rights for the office use is reasonable and necessary to enable the Council to assess the impacts of any future loss of office floorspace, as well as amenity issues. The protection of neighbouring amenity through restriction of the use of roofs and gardens is also appropriate. Secured by design details and compliance is necessary in the interests of safety and security in the urban environment.
96. Conditions relating to energy efficiency, communal heating and district heating network are imposed. These are necessary to ensure sustainability and compliance with IDMP Policies DM7.1, DM7.2, DM7.3 and DM7.5 which set energy and environmental standards. Duplication from the planning obligation and conditions has been removed by deleting references from the UU.
97. Finally, a Grampian condition for highways works and the submission of a Travel Plan would be necessary for highway safety and sustainable travel. Again, the latter was removed from the UU as it is better dealt with by condition.

Conclusion

98. I have found no harm to the character and appearance of the area, including the Coach House as a non-designated heritage asset and the CA. I have also found nil provision of affordable housing to be justified. The development is thus in accordance with the development plan.
99. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

C Searson
INSPECTOR

ANNEX 1: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Morgan of Counsel	Instructed by Peter Fehler, Acting Director of Law & Governance, London Borough of Islington
He called:	
Jonathan Gibb MRTPI	Planning Policy Team Leader
Frances Madders	Principle Urban Designer
BSc(Hons), BArch, MSc	
Andrew Jones BSc MRICS	Director, BPS Chartered Surveyors
Roger Peters	Senior Quantity Surveyor, Geoffrey Barnett Associates
	Viability Officer
Gareth Reeves MPLAN, Licentiate Member of the RTPI	
Simon Roberts	Principal Planning and Development Officer – Major Applications
MA(Hons), Licentiate Member of the RTPI	
Penelope Parkinson	Principal Planning & Development Lawyer, London Borough of Islington
	Energy Conservation Officer, London Borough of Islington
Steven Henn	

FOR THE APPELLANT:

Sasha White QC aided by Anjoli Foster	Instructed by Sunnyside Road Land Ltd
They called:	
Alun Evans BA (Hons) MRTPI	Director, ROK Planning
Kenneth Brown MRTPI	Managing Director, Townscape Solutions Ltd
BSc (Hons) MA	
Steven Handforth BA (Hons), MSc	Divisional Partner, Bidwells
James R Brown BSc (Hons) MRICS	Director, James R Brown & Company Ltd
Marcus Claridge BA (Hons) RIBA ARB	Director, Claridge Architects
Robin Church	Solicitor

INTERESTED PERSONS:

Emma Smith	Islington Society
Oliver Rivers	Local Resident

ANNEX 2: INQUIRY DOCUMENTS

- INQ1: Appellant's Opening Statement
- INQ2: Council's Opening Statement
- INQ3: Written Transcript – Emma Smith (Islington Society)
- INQ4: Note on Viability and Affordable Housing – James Brown 25 May 2021
- INQ5: Comparative Viability Positions Table
- INQ6: Response by Roger Peters to James Brown's Viability Note – 28 May 2021
- INQ7: Final Draft S106 Agreement
- INQ8: Council's draft text for schedule 9 of the s106 agreement, accompanying explanatory note + appendix
- INQ9: Note 2 on Build Costs/Residential Values – James Brown 1 June 2021
- INQ10: Site Visit Itinerary
- INQ11: Roger Peters Update Statement – 30 September 2021
- INQ12: Andrew Jones Response to Factual Information Update and Initial Comment (undated)
- INQ13: Islington Housing Land Supply Update
- INQ14: Islington NPPF 2021 Update
- INQ15: Viability and Affordable Housing Updated Proof James Brown - 1 October 2021
- INQ16: Updated Planning Proof of evidence Alun Evans – 1 October 2021
- INQ17: Andrew Jones Response to James Brown further Proof 1 October 2021 (undated)
- INQ18: Statement of Common ground & Issues in relation to Financial Viability Matters – 13 October 2021
- INQ19: Viability and Affordable Housing Final Notes James Brown – 15 October 2021
- INQ20: Summary of Remaining Issues as at 18 October 2021 (& SOCG)
- INQ21: Updated Schedule of Suggested Conditions – 1 October 2021
- INQ22: Updated Statement of Common Ground & Issues in relation to Financial Viability Matters – 19 October 2021
- INQ23: Updated SoCG & Viability Sensitivity Tests Note by James Brown – 20 October 2021
- INQ24: Andrew Jones Response to James Brown note of 20 October
- INQ25: Agreed reconciliation of Sensitivity Test Descriptions and Figures – 21 October 2021
- INQ26: Agreed Benefits/weighting table – Alun Evans and Simon Roberts – 22 October 2021
- INQ27: Schedule of suggested Conditions – updated 27 October 2021
- INQ28: Unilateral Undertaking and Revised Draft Conditions Explanatory Note – ROK Planning November 2021
- INQ29: Energy Policies (DM7.1-7.5) from Islington Development Management Policies (2013)
- INQ30: Council's Closings Submissions 5 November 2021 (plus annex)
- INQ31: Council's comments on the draft Unilateral Undertaking (29/10/21) and on INQ28
- INQ32: Appellant's tracked changes/comments to INQ31.
- INQ33: Completed Unilateral Undertaking 10 November 2021
- INQ34: Appellant's Closing Submissions 10 November 2021

ANNEX 3: SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
19009-CAL-DE.00 - Demolition Ground Floor Plan;
19009-CAL-DE.01 - Demolition 1st Floor Plan;
19009-CAL-EX.00 - Existing Ground Floor Plan;
19009-CAL-EX.01 - Existing 1st Floor Plan;
19009-CAL-EX.02 - Sunnyside Road Existing Elevation;
19009-CAL-EX.03 - Coach House Existing Elevations;
19009-CAL-GA.00 - Ground Floor Plan;
19009-CAL-GA.01 - 1st Floor Plan;
19009-CAL-GA.02 - 2nd Floor Plan;
19009-CAL-GA.03 - 3rd Floor Plan;
19009-CAL-GA.04 - Roof Plan; 19009-CAL-GE.01 - Sunnyside Road Street Elevations 1;
19009-CAL-GE.02 - Sunnyside Road Building Elevations 1;
19009-CAL-GE.03 - Sunnyside Road Building Elevations 2;
19009-CAL-GE.04 - Rear Apartment Building Elevations;
19009-CAL-GE.05 - Coach House Proposed Elevations;
19009-CAL-GS.01 - Site Section A; 19009-CAL-GS.02 - Site Section B;
19009-CALS.00 - Location Plan;
19009-CAL-S.01 - Existing Site Plan;
19009-CAL-S.02 - Proposed Site Plan;
D0401_001_E - Hardworks Ground Floor;
D0401_002_C - Softworks Ground Floor; and Accommodation Schedule dated 27.07.2020
Sunnyside Road_VIEW 1_300720 2;
Sunnyside Road_VIEW 2_300720 2;
Sunnyside Road_VIEW 3_300720 2.
- 3) Details and samples of all facing materials including samples shall be submitted to and approved in writing by the local planning authority prior to any works commencing on site.
The details and samples shall include:
 - a) brickwork, bond and mortar courses for all facing bricks (sample panels to be provided on site showing plain facing brick, rusticated brick lintels and concrete string courses;
 - b) windows and doors;
 - c) roofing materials,
 - d) balcony balustrading; and
 - e) any other materials to be used on the exterior of the development.A Green Procurement Plan for sourcing the materials here by approved shall be submitted to and approved in writing by the Local Planning Authority prior to installation of the materials.
The development shall be carried out strictly in accordance with the details and samples so approved, shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the local planning authority.
- 4) Prior to the commencement of works to the Coach House, a schedule of works including the detailed repair and restoration of the heritage asset

shall first be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved schedule.

- 5) No occupation of the permitted new dwellings shall take place before written notification of the completion of the works to the Coach House approved under condition 4 has been provided to the local planning authority with such notification providing not less than 14 days' notice prior to the occupation.
- 6) No development shall take place unless and until details of an updated drainage strategy (in accordance with principles established in the Drainage Strategy & SUDS Appraisal prepared by Syntegra dated July 2020), inclusive of detailed implementation, maintenance and management plan, has been submitted to and approved in writing by the local planning authority.
The updated details shall be based on an assessment of the potential for disposing of surface water by means of appropriate sustainable drainage systems and be designed to minimise flood risk and maximise water quality, amenity and biodiversity benefits in accordance with DM Policy 6.6.

The submitted details shall include:

- a) the scheme's peak runoff rate and storage volume and demonstrate how the scheme will aim to achieve the greenfield runoff rate;
- b) provide information about the design storm period and intensity, and the methods employed to delay and control the surface water discharged from the site, including consideration of blue roof attenuation;
- c) provide information about the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- d) include a timetable for its implementation; and
- e) provide a management and maintenance plan for the lifetime of the development which shall specify who is responsible for the on-going maintenance of the system and include any other arrangements necessary to secure the operation of the system throughout the lifetime of the development.

No building(s) hereby approved shall be occupied unless and until the approved sustainable drainage scheme for the site has been installed/completed strictly in accordance with the approved details. The scheme shall be implemented and thereafter be managed and maintained in accordance with the approved details.

- 7) Further details (to the Drainage Strategy & SUDS Appraisal prepared by Syntegra dated July 2020) of the biodiversity-based green roof(s) shall be submitted to and approved in writing by the local planning authority prior to any superstructure works commencing on site. Notwithstanding the hereby approved details, green roof(s) shall be installed on all available roof space (excluding the Locally Listed Coach House Building), subject to other planning considerations (for example the provision of solar panels).
The submitted details shall demonstrate that the green roofs will maximise benefits for biodiversity, sustainable drainage and cooling. The green roof(s) shall be:

- a) biodiversity based with extensive substrate base (varied depth between 80- 150mm); and
- b) planted/seeded with an agreed mix of species within the first planting season following the practical completion of the building works (the seed mix shall be focused on wildflower planting, and shall contain no more than a maximum of 25% sedum).

The biodiversity (green/brown) roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair, or escape in case of emergency. The biodiversity roof(s) shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 8) Details of bird and bat nesting boxes/bricks shall be submitted to and approved in writing by the local planning authority prior to any superstructure works commencing on site, in accordance with the details included within the Preliminary Ecological Assessment and Bat Emergency Survey (September 2020) submitted at the application stage. The details shall include the number, exact location, specification and design of the nesting boxes/bricks, and include integrated bat boxes and swift bricks. The details shall be based on advice from a suitably qualified ecologist and be in accordance with CIEEM and other relevant best-practice guidance. The nesting boxes/bricks shall be provided strictly in accordance with the details so approved, installed prior to the first occupation of the building to which they form part or the first use of the space in which they are contained and shall be maintained as such thereafter.
- 9) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority. This should be in accordance with the Arboricultural Impact Assessment prepared by Landmark Trees. Specific issues to be dealt with in the TPP and AMS:
 - a) Location and installation of services/ utilities/ drainage.
 - b) Methods of demolition within the root protection area (RPA) (as defined in BS 5837: 2012) of the retained trees.
 - c) Details of construction within the RPA or that may impact on the retained trees.
 - d) a full specification for the installation of boundary treatment works.
 - e) a full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.
 - f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
 - g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.

- h) a specification for scaffolding and ground protection within tree protection zones.
- i) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
- j) details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires
- k) Boundary treatments within the RPA
- l) Methodology and detailed assessment of root pruning
- m) Reporting of inspection and supervision
- n) Methods to improve the rooting environment for retained and proposed trees and landscaping.

The development thereafter shall be implemented in strict accordance with the approved details.

- 10) The development shall be carried out strictly in accordance with the approved landscaping details and shall be maintained as such thereafter. The approved details are: -

dwg no. D0401_001 E - Landscape Proposal Ground Floor Hardworks; D0401_002 C – Landscape Proposal Ground Floor Softworks; and SP0401_001: Maintenance and Management Plan).

The landscaping and tree planting shall have a two-year maintenance / watering provision following planting and any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of completion of the development shall be replaced with the same species or an approved alternative to the satisfaction of the local planning authority within the next planting season.

The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 11) Prior to the commencement of development the following assessment in response to the NPPF and in accordance with CLR11 and BS10175:2011 shall be submitted to and approved in writing by the local planning authority.

- a) A land contamination investigation. The investigation shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing. Following the agreement to details relating to point a); details of the following works shall be submitted to and approved in writing by the local planning authority prior to any superstructure works commencing on site.
- b) A remediation method statement of any necessary land contamination remediation works arising from the land contamination investigation. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved site investigation. The

development shall be carried out strictly in accordance with the investigation and any scheme of remedial works so approved and no change therefrom shall take place without the prior written approval of the local planning authority. If, during development, contamination not previously identified is found to be present at the site, the local planning authority is to be informed immediately and no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the local planning authority. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

- c) Following completion of measures identified in the approved remediation scheme a verification report, that demonstrates the effectiveness of the remediation carried out, must be produced which is subject to the approval in writing of the local planning authority in accordance with part b). This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

The development shall be carried out strictly in accordance with the investigation and any scheme of remedial works so approved and no change therefrom shall take place without the prior written approval of the local planning authority.

- 12) The bicycle storage area(s) hereby approved (drawing ref. 19009_GA.00), shall be provided prior to the first occupation of the development hereby approved and maintained as such thereafter.
- 13) The dedicated refuse / recycling enclosure(s) shown on the approved plans (drawing ref. 19009_GA.00) shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter.
- 14) In accordance with the approved Noise Impact Assessment (dated July 2020 and prepared by Syntegra), the design and installation of new items of fixed plant shall be such that when operating the cumulative noise level LAeq Tr arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 2014. A report is to be commissioned by the applicant, using an appropriately experienced & competent person, to assess the noise from the proposed mechanical plant to demonstrate compliance. The report shall include site

measurements of the plant in situ. The report shall be submitted to and approved in writing by the local planning authority prior to first occupation of the development hereby approved.

- 15) Details of any general / security lighting measures shall be submitted to and approved in writing by the local planning authority prior to the completion of the approved development.
- 16) Notwithstanding the details submitted with the application, a Demolition, Construction and Environmental Management Plan (DCEMP) shall be submitted to and approved in writing by the local planning authority prior to the commencement of development.
The DCEMP should be in accordance with the Council's Code of Practice for Construction Sites. The report shall assess the impacts during the preparation/demolition, excavation and construction phases of the development on the surrounding roads, together with means of mitigating any identified impacts. The report shall also identify other local developments and highways works, and demonstrate how vehicle movements would be planned to avoid clashes and/or highway obstruction on the surrounding roads.
The demolition and development shall thereafter be carried out in accordance with the details and measures approved in the DCEMP. The development shall be carried out strictly in accordance with the details so approved and no change therefrom shall take place without the prior written consent of the local planning authority.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or the provisions of any Order revoking and re-enacting that Order, no change of use of the approved E (g)(i) office floorspace to any other use within Class E of the Schedule to the Town and Country Planning (Use Class) Order 1987 as amended 2005 (or the equivalent use within any amended/updated subsequent Order) or any other uses within any other use Class, unless otherwise agreed in writing by the local planning authority.
- 18) The flat roofs of the development hereby approved, including the identified green roofs, shall not be used as amenity spaces and shall not be accessed other than for maintenance.
- 19) Prior to occupation of the development hereby approved, details of the development achieving 'Secured by Design' (Residential Guide 2019 and Commercial Guide 2015) accreditation for both the residential and non-residential elements, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter
- 20) Prior to implementation of the development further details of the energy efficiency measures and renewable energy technologies shall be submitted to the local planning authority for approval and the approved Energy Strategy (version 1.5, prepared by JAW Sustainability) updated to include the details so approved:
 - a) Design and specification of the communal heating system to be installed; Updated 27/10/2021 - Appendix 3

- b) The District Heating connection point (if this is demonstrated to be feasible within 3 years of the grant of planning permission) ; and
- c) The safeguarded route for the pipework and space provision within the Site (including plant room details).

The final agreed scheme shall be installed and in operation prior to the first occupation of the development. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 21) Prior to occupation of the development a Communal Heating System in accordance with the details approved in the Energy Strategy version 1.5 prepared by JAW, dated 13/04/2021 – and any subsequent updates - shall be installed in the development and be operational.
- 22) Prior to occupation of the development a scheme to allow for the feasibility of connecting the development to any district heating network shall be submitted to the local planning authority for approval. The development shall be carried out in accordance with the approved scheme. No requirement to connect to a district heating network exists where the submitted scheme demonstrates: -
 - a) No plans exist for District Heating Network pipework to be extended to within 500 metres of the Development by the expiry of 3 years from the date of the planning permission; or
 - b) The proposed connection charges to a District Heating Network are unreasonable; or
 - c) The agreement proposed by the District Heating Provider for the supply of heating energy from the District Heating Network to serve part of all of the Heat Demand of the Development is unreasonable.
- 23) The development shall not be implemented until the applicant has entered into a S278 agreement with the Council to ensure that the necessary highway works required are carried out. The works include highway/footway reinstatement and removal of the existing crossovers.
- 24) Prior to first occupation of the development, a Full Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan should be prepared in accordance with the ATTrBuTE assessment criteria, Transport for London's guidance document "Travel Planning for new Development in London" and the Council's relevant planning policies tailored to the occupiers and users of the Development, and which includes a full travel survey. Upon approval, the applicant shall ensure that all owners and occupiers of the development are made aware of the Travel Plan and that the Travel Plan is implemented in full.