



Appeal Decision

Site visit made on 21 September 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2022

Appeal Ref: APP/L5810/W/21/3278412

St Clare Business Park and 7-11 Windmill Road, Hampton Hill TW12 1BP

- 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 Notting Hill Home Ownership Ltd against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 19/3201/FUL, dated 16 October 2019, was refused by notice dated 7 January 2021.
 - The development proposed is demolition of existing buildings to provide a mixed use building between three and five storeys plus basement in height comprising 98 residential flats (class C3) and 600 sq.m of commercial floorspace (class B1), a three storey building comprising 894 sq.m of commercial floorspace (class B1) and 14 residential houses (class C3), access, external landscaping and car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council refused planning permission due to loss of employment floorspace and in the absence of a legal agreement to secure affordable housing and various contributions to mitigate any adverse effects of the proposal including on climate change, traffic and local parking.
3. Paragraph C.5.1 of the *Procedural Guide: Planning Appeals – England* sets out that the appellant should respond to the reasons for refusal set out in the local planning authority's decision notice, any issues raised in the planning officer's report and / or committee minutes and should explain the basis on which they consider planning permission should be granted.
4. Neither character and appearance nor the effect of the proposal on the living conditions of neighbouring occupiers formed part of the Council's reasons for refusing the application. A number of third parties have raised significant concerns about these matters. Given this and the extent of change proposed, I consider these are material matters to the determination of this appeal and require consideration as main issues. I have therefore done so. In so doing, I am satisfied that this would not prejudice the main parties as these issues have been considered as part of their respective submissions.
5. During the course of the appeal, the appellant submitted a signed unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended). This deals with various matters including affordable housing, affordable workspace, contributions to car parking zone (CPZ) implementation and restrictions on residents parking permit for the CPZ, car

club provision and free car club membership, the provision of residential and commercial travel plans, provision of public access route, employment and skills plan and contributions to air quality, carbon emissions offsetting. I return to this later in my decision.

Main Issues

6. The main issues are:

- the effect of the proposed development on the character and appearance of the area, including on the Hampton Hill High Street Conservation Area;
- the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to outlook, overbearing effect, light, overlooking and disturbance; and
- whether or not the loss of employment land has been justified having regard to development plan policies.

Reasons

Character and appearance

7. The appeal site lies to the rear of mixed use development along High Street and the predominantly residential streets of Holly Road and Windmill Road. Numbers 7-11 Windmill Road (Nos 7-11) comprise a parking forecourt and car showroom set back from the street. This lies between a two-storey converted library building, the 'old library', and a single-storey commercial shop unit. The old library is designated as a building of townscape merit. The western site boundary is enclosed by a belt of trees and a railway line beyond.
8. The wider area is characterised by two-storey development, a number of which have been extended at roof level. In addition to the taller three-storey buildings within the appeal site, there are a limited number of taller buildings on High Street, including two relatively recent developments dating back to the 1980s or thereabouts, at Numbers 63 to 71 High Street (Nos 63-71). The plots of these buildings extend rearwards between The Mews and Penny Farthing Mews to the boundary of the appeal site.
9. With the exception of Nos 63-71, development in the surrounding area is generally of a traditional appearance, with some variation in architectural detailing and design. This prevailing character of the wider area is therefore of traditional and low rise development.
10. The proposed development would comprise the redevelopment of the site with a centrally located part four/part five-storey mixed residential and commercial block, two terraces of housing either side of this and a new commercial building fronting Windmill Road. A new route would be created through the site between Windmill Road and Holly Road.
11. The commercial building would be a substantial building of three-storeys with a front facing gable feature. It would occupy a prominent position at the corner of the site adjacent to a newly formed entrance off Windmill Road. The appellant has described this as providing a visual marker framing the development entrance.

12. There is no dominant building style along this section of Windmill Road, with buildings varying in height between single and two-storey with additional roof level accommodation. Although only one storey taller than tallest buildings along Windmill Road, the internal floor to ceiling heights in combination with the gable feature, would result in a building that would appear significantly taller and out of scale in comparison to other buildings within the street. This would be apparent in views in both directions along the road.
13. The design has sought to take inspiration from the adjacent old library from which it would be separated by the new access. The proposed building would be constructed in brickwork of the same colour, with detailing and fenestration patterns intended to reflect those of the old library but in a more simple and contemporary form. In this regard, the building would have a similar vertical emphasis as seen in the old library and the visual link would be apparent. However, the proposed building's excessive size and height would dominate rather than complement this locally important building.
14. The east facing flank wall of the proposed building would extend a significant distance into the site from the Windmill Road frontage. It would present to the street as a substantial brick wall punctured by narrow horizontal slot windows. This large expanse of brickwork would be visually uninteresting and not particularly attractive, appearing overbearing and unrelated to surrounding development. It would be clearly visible above the diminutive form of the adjacent single-storey property against which its significant proportions would be emphasised. It would also be prominent in views along Windmill Road from its junction with High Street.
15. The introduction of an active frontage at ground floor level would provide visual interest along Windmill Road. However, this would not overcome the harm to the character and appearance of the street scene that would occur due to the overly large size of this building, its failure to relate in scale to the more low-rise development along the street and its highly visible, eastern flank wall. Thus, whilst the building would become a landmark within the local area, it would not contribute positively to the area.
16. The main residential block would be set back into the site away from development fronting High Street. This would be taller than surrounding development, however, it would step down to four-storey along its elevation facing towards High Street, incorporating a three-storey element closest to the houses on Penny Farthing Mews, which due to their significant mansard roofs also have a three-storey appearance. Either side, there would be lower three-storey terraces set behind development along Holly Road and Windmill Road.
17. With the tallest building set back and some distance from the lower surrounding development in combination with the stepped design of this block and the lower heights of the proposed terraces, the scheme would provide a more gentle transition between the proposal and existing low-rise development. The set back position of the block of flats, would reduce its visual impact in long distant views of the site which together with its backland position away from main street frontages would make it less prominent.
18. As such, whilst the proposal would be of a different character to the more traditional form, its stepped form would respect the scale of surrounding development, which in combination with its position set back from the street

frontage development, would not appear unduly dominant nor out of place in this location.

19. The commercial building fronting Windmill Road would be the most visually prominent part of the development and harmful for the reasons I have set out. Much of the rest of the proposed development would be less prominent in views from the public realm, largely confined to glimpsed views between buildings, along access roads and the mews off High Street. It would be visible from the private gardens and properties surrounding the site, however, these are not public viewpoints.
20. I have been referred to an approved scheme for the redevelopment of Nos 63-71¹ with two buildings of between two and four-storeys in height. This scheme has not been implemented. The appellant has suggested that this is indicative of what is acceptable in the local context. However, interested parties have highlighted that the scheme has been identified as a detractor from the local conservation area and identified as such in the recently published Draft Conservation Area Appraisal and Management Plans for Public Consultation Teddington and Hampton 2022.
21. Whilst both points of view are noted, the scheme at Nos 63-71, had it been built, would have formed part of the frontage development along High Street. It would have therefore had a very different context to the appeal scheme. In this respect, I find it neither justifies nor provides a reason to reject the construction of a larger mixed use block on the appeal site. Any such proposal would need to be considered on its own merits, which I have done.
22. I have been referred to an appeal decision² in the same borough, where the Inspector considered the matter of a proposal establishing its own character. I agree with that Inspector that context is important and development proposals should be informed by that.
23. I recognise that the development proposal as a whole would have a different character to the more traditional low-rise character of the surrounding area. However, it seems to me that those elements of the proposal that would be positioned to the rear of and away from the established street pattern and frontage, would, to a degree, be able to establish its own character without unduly harming the character and appearance of the wider area. The detailing of the scheme has taken into account design features, materials and colours of the area. In this respect, it would link the proposal with the more traditional surrounding development and contribute to local distinctiveness. Notwithstanding my findings in this respect, for the reasons I have set out above, the commercial building fronting Windmill Road, would fail to respect the existing character.
24. I recognise that there are concerns that should this scheme be allowed this would set a precedent for taller buildings in the locality. Any development proposal would need to be judged on its own planning merits, taking into account the local context.
25. The appeal site adjoins the Hampton Hill High Street Conservation Area (the CA) which predominantly extends along High Street and a short way along Windmill Road. The CA is characterised by linear commercial and residential

¹ Council Ref: 16/4553/FUL

² APP/L5810/W/20/3249153

development with a traditional village high street character, which includes a number of buildings with original shopfronts and low-rise development. Buildings are predominantly constructed of London yellow stock bricks with others painted and rendered. These features contribute to the significance of the CA.

26. The site lies within its setting, however, the existing buildings on the site and their layout, which do not relate to the traditional pattern or form of development along High Street, are not visually prominent only being glimpsed between buildings on High Street or along Penny Farthing Mews and The Mews. They have a very limited impact on the CA and do not contribute to its significance.
27. The proposed development would be more prominent than existing given its height and extent but again mostly viewed between buildings and along the mews. The commercial building fronting Windmill Road would however be visually prominent within the setting of the CA where it would appear out of character. This would cause some limited harm to the character and appearance of the CA.
28. As such, the proposal would fail to preserve or enhance the character or appearance of the CA and would harm its significance. I attach considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
29. The harm the proposal would cause to the significance of the CA would be less than substantial. Paragraph 202 of the National Planning Policy Framework (the Framework) states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
30. The proposed development would provide a significant amount of housing of a mix of sizes including a large number of affordable units as well as 10% being provided as wheelchair accessible. A reduced amount of employment floorspace would be re-provided although it would be high quality, flexible and better suited to meet current commercial needs. The overall appearance of the site would be significantly improved through the replacement of the existing buildings and the provision of landscaping and ecological enhancements. A new public access through the site would be created which would improve connectivity with the area. The proposed development would additionally be more environmentally compatible with its surroundings.
31. The significant number of public benefits that the scheme would deliver carry considerable weight in its favour. This leads me to conclude that the public benefits of the scheme would outweigh the less than substantial harm to the significance of the CA that would arise. I, nonetheless, conclude that the proposed development would adversely affect the character and appearance of the area for the reasons set out.
32. Since harm to character and appearance did not form the Council's reason for refusal no policies have been cited, however, I have found conflict with Policies LP1, LP2 and LP39 of the Local Plan 2018 (the LP) cited by both interested parties and in the Council officer's report. These policies together seek new development of a high architectural and urban design quality, that respects and

contributes positively to its surroundings including through the use of appropriate building heights. It would also conflict with paragraph 130 of the Framework which requires, amongst other things, developments to be visually attractive as a result of good architecture, sympathetic to local character, including the surrounding built environment.

Living conditions

33. The appeal site is enclosed by a number of residential properties. The closest properties would be those within the block of flats on Library Mews which are positioned hard up to the site boundary. The four-storey section of the main block would be directly opposite part of the Library Mews building and rear facing windows within it. From the submissions it appears that these windows serve open plan living rooms and a kitchen which are dual aspect rooms.
34. The height and proximity of the main block, at around 14m away, would appear both overbearing when viewed from these properties and would lead to some loss of outlook for these occupants. Whilst the rooms may benefit from a dual aspect, this would not overcome the harm that would arise.
35. The appellant submitted a full daylight and sunlight analysis³. This followed the guidance set out in the BRE Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice 2011 (the BRE guidance). The BRE guidance suggests that no more than a 20% reduction in daylight should occur and that exceeding this, the change in daylight will be noticeable to occupants.
36. The appellant's assessment concluded that the loss of daylight and sunlight to nearby properties would meet the BRE guidance. The exception to this would be in relation to Numbers 1-3 Library Mews where a greater than 20% loss of light would occur. It has been argued that despite the threshold for light loss being breached, the reduction in light would not be significant as the rooms are either a kitchen or dual aspect. Whilst this internal arrangement may go some way to alleviate the loss of light to these properties, there would nevertheless be some deterioration in the level of light they receive.
37. The western flank of the detached commercial building would face towards the flank wall and front gardens and balconies of the Library Mews flats. These form the private amenity space for these properties. A considerable number of windows would overlook this area. Whilst a 2m high boundary wall is proposed to separate Library Mews from the new access into the appeal site, it would nevertheless be possible for occupants of the upper floors of the commercial building to look down into the private amenity space. This would cause an unacceptable loss of privacy, both perceived and actual, to these occupants.
38. When taken together with the loss of outlook and the overbearing nature of the proposed block, the loss of light and the loss of privacy to occupants of Library Mews would cause unacceptable harm to the living conditions of these occupants.
39. A minimum distance guideline of 20m between habitable rooms within residential development is required for privacy reasons. Whilst concerns have been raised about overlooking and loss of privacy, with the exception of the Library Mews properties, which I have addressed above, this minimum separation would be achieved.

³ St Clare Business Park Daylight and Sunlight Assessment, Point 2 Surveyors, October 2019

40. Notwithstanding the distance between facing windows and properties, a couple of flats at third floor would have windows and balconies facing towards but higher up than properties on Penny Farthing Mews. Future occupants of these upper floor flats would be able to look down into both the private gardens and rear windows causing some loss of privacy to these existing residential occupiers. I recognise that screening is proposed to the upper floor balconies, and a condition could be imposed to secure this. However, this would neither overcome the perception of being overlooked from the balconies nor prevent overlooking from windows. I am therefore not satisfied that the living conditions of these occupants would not be unduly harmed by the proposal.
41. Elsewhere around the site, neighbouring occupants would experience a change in their outlook and the views from their rear windows as a consequence of the scheme. However, the siting and stepped form of the proposed buildings provides the minimum separation between these and nearby residential properties and would not unacceptably reduce their outlook.
42. The flank wall to the terrace of properties within The Mews directly adjoins the existing access from Holly Road into the business park. Within this wall, there is a window facing into the site which the occupant has indicated serves a living room. The plans indicate two parking spaces directly adjacent to this flank wall. Whilst there is nothing to prevent vehicles from parking here presently, the space is not formerly designated for parking as it would be under the proposal. This would result in regular parking of vehicles here. Consequently, due to the proximity of the parking spaces to the window, this would be likely to cause some disturbance and potential loss of privacy to the occupants of this dwelling and would be harmful to their living conditions.
43. For these reasons, I find that the proposed development would harm the living conditions of neighbouring occupants, in respect of loss of outlook, the overbearing impact of the proposed block, loss of light, privacy and disturbance. Since this did not form the Council's reason for refusal no policies have been cited, however, I have found conflict with Policy LP8 cited by both interested parties and in the Council officer's report which seeks to protect neighbours from unreasonable impact from new development by reason of aspects including loss of privacy, loss of light and overbearing impact and requires no harm to the reasonable enjoyment of the use of buildings due to increases in parking and disturbance. It would also conflict with paragraph 130 of the Framework which requires development to create places with a high standard of amenity for existing users.

Employment land

44. The appeal site forms the St Clare Business Park and a car repair business, which occupies Nos 7-11. The site is currently in an employment use with existing floorspace comprising a mix of office and light industrial, warehousing/storage and a tyre facility. St Clare Business Park is identified under Policy LP42 of the LP as 'locally important industrial land and business parks' (LIILBP), equivalent to a 'locally significant industrial site' (LSIS) in the London Plan 2021.
45. The site currently provides a total of 3,798 square metres (sqm) of gross internal area (GIA). The appellant disputes this figure on the basis that the unit / building described as Atcost and providing some 656sqm is an open sided barn-like structure with an asbestos roof. It is stated that this does not attract a rateable

value. Whilst this is noted, this provides space for storage, B8 (storage and distribution) is recognised as employment floorspace for the purposes of the employment policies within the LP. I have therefore based my assessment on an existing floorspace of 3,798sqm.

46. Policy LP42 sets out that the existing stock of industrial premises to meet local needs will be protected, and where possible, enhanced. It sets out a presumption against loss of industrial land in all parts of the Borough, only permitting it where robust and compelling evidence is provided which clearly demonstrates that there is no longer demand for an industrial based use in the location and not likely to be in the foreseeable future. This must include evidence of a full and proper marketing exercise of the site at realistic prices both for the existing use or an alternative industrial use completed over a minimum period of two continuous years.
47. A sequential approach to redevelopment or change of use is applied based on redevelopment for office or alternative employment use, then mixed use including other employment generating or community uses, and then residential use providing it does not adversely impact on the other uses and maximises the amount of affordable housing delivered as part of the mix.
48. In the case of LIILBP, the policy resists the loss of industrial floorspace unless appropriate replacement floorspace is provided and proposals for non-industrial uses which would impact unacceptably on industrial activities will be resisted.
49. According to the Council and based upon both the Greater London Authority's (GLA) Industrial Land Supply and Economy Study 2015, there is a limited supply of industrial floorspace within the borough and demand for this type of land is high which is why it seeks to protect and where possible, enhance such sites where they exist.
50. The proposed development seeks the demolition of all the existing building and the erection of a mixed use building to contain ground floor commercial units of 600sqm and three to four storeys above this which would provide 98 residential flats. In addition, a three-storey building comprising 894sqm of commercial floorspace and a further 14 residential houses would be provided.
51. The proposed development would re-provide 1,494sqm of commercial floorspace. This would amount to a net loss of commercial floorspace of 2,304sqm. This would be contrary to Policy LP42.
52. The existing site is partially vacant, with some 57% of the floorspace indicated to be unoccupied. There is evidence that the existing units have been marketed since December 2017 through a combination of online listings on property portals, targeted mailing and advertising in the Estates Gazette. This has generated very limited interest and no lettings have been achieved for the existing industrial use. The Council does not dispute the level of vacancy, nor that a lengthy marketing exercise has been undertaken.
53. The outcome of the marketing exercise is at odds with evidence that there is demand for light industrial/workshop/studio and storage space which the GLA research indicates will increase over the period 2016 to 2041. The appellant has attributed a combination of reasons for this including Brexit, the age, condition and configuration of the buildings, as well as poor access and parking coupled with the high cost of building maintenance and refurbishment.

54. Access to the business park is from Holly Road. This is a residential street which I observed was heavily parked on both sides at the time of my site visit. There is no reason why it would not regularly be. The amount of parking and road width restricts the space for larger vehicles to access the site. This is likely to act as a deterrent to potential occupants. I also note that the poor and constrained access was picked up in the Council's 2017 Employment Sites and Premises Study⁴ as a fact that would be likely to lead to low interest from alternative occupiers as units within the business park are vacated.
55. It is not disputed that the various buildings on the site are approaching or have come to the end of their useful life. The appellant has submitted evidence which indicates that the feasibility of bringing the site up to a standard that would make it attractive to light industrial / commercial occupants is not feasible without a significant portion of residential development. Whilst evidence which informed the LP suggests industrial development is viable, the appellant's site specific viability assessment has demonstrated that in this location that is not possible. The appellant has considered whether the amount of commercial floorspace could be increased but considers this would make the scheme unviable. The Council has not disputed the viability assessment. I have no substantive evidence to reach a different conclusion.
56. The site is allocated for employment use within the Local Plan. However, the appellant has argued that there are other, preferable locations within the borough. There is compelling evidence that, despite a robust marketing exercise, interest in the site has been very limited. The lack of interest from potential occupants, despite the predicted continuing demand for industrial land and buildings over the period to 2041 within London, as identified by the GLA research, lends weight to the argument that the site is not suitable for the majority of industrial and related purposes.
57. This can be attributed to the poor condition of the existing units and the inconvenience of the existing site access via a heavily parked residential street. Furthermore, in terms of the location, whilst close to a local centre, the site itself is also close to many residential properties where certain industrial uses would be incompatible. This weighs in favour of the re-provision of modern and flexible floorspace as proposed which could be occupied by commercial uses that would likely be more compatible with surrounding residential area.
58. Whilst the need to retain industrial land in the borough is recognised, it seems to me that due to the poor condition of the buildings, the poor access and high vacancy rate, that in its current form, the appeal site makes a limited contribution towards meeting existing demand for this type of use. Without significant investment this is likely to continue to be the case.
59. Given the location and identified need within the borough, there is no justification of the loss of existing use in its entirety as it could meet the needs of businesses serving local catchments which only require small to medium sized buildings.
60. The scheme as proposed would include a reduced provision but in the form of a high quality flexible multi-functional spaces, with high ceilings, open street frontages, studio and office space. Office floorspace would occupy around 40%

⁴ London Borough of Richmond, Employment Sites & Premises Study 2017 Update – Peter Brett Associates, May 2017

of the new commercial space, with the remainder provided as research / light industrial floorspace. A minimum of 10% of the commercial/industrial floorspace would also be secured through the submitted planning obligation as affordable workspace. Access to the commercial premises would be off Windmill Road where there are currently a number of commercial units close to its junction with High Street. This access would be a significant improvement for commercial occupants compared to the existing.

61. A condition could be imposed to require the phasing of the development to secure the construction of the replacement employment floorspace prior to the occupation of the residential units.
62. Other factors weigh in favour of justifying the reduction in employment land including the provision of 50% affordable housing as well as commercial buildings that would both meet modern needs and conform with current energy and sustainability requirements. These could be achieved through a sustainable construction approach as proposed here and secured via condition.
63. On balance this leads me to conclude that the loss of employment land has been justified having regard to development plan policies. The proposal would therefore accord with Policy LP42 of the LP as referred to above, as well as Policy LP40 which supports a diverse and strong local economy and the retention of land in employment use, the provision of small units and flexible workspace and allows for mixed use development proposals where they enhance the level of existing employment floorspace. It would also comply with the Mayor of London's Land for Industry and Transport Supplementary Planning Guidance 2012 which supports a restrictive approach towards the transfer of industrial land to other uses until 2031.
64. The decision notice refers to the failure to comply with both the GLA Industrial Land Demand Study 2017 and the GLA Industrial Land Supply and Economy Study 2015. However, these are studies and do not provide policy or guidance. I find no specific conflict with them.

Other Matter

65. The appellant has submitted a UU. This sets out obligations in respect of affordable housing, affordable workspace, contributions to car parking zone (CPZ) implementation and restrictions on residents parking permit for the CPZ, car club provision and free car club membership, the provision of residential and commercial travel plans, provision of public access route, employment and skills plan and contributions to air quality and carbon emissions offsetting. The UU is complete. The Council has not confirmed that this resolves their concerns but given I am dismissing for other reasons it has not been necessary for me to consider this matter in any further detail.

Planning Balance

66. The scheme would provide 112 residential units, in a mix of sizes and would make a significant contribution to housing supply and the range of unit types to the local area. Of these, 50% would be affordable housing, making a significant contribution to the supply of affordable housing. 10% of the dwellings would also be built as wheelchair accessible. New, flexible and modern employment floorspace would be re-provided on site, albeit reduced in size in comparison to the existing amount of floorspace.

67. A number of environmental improvements would result from the proposal both in terms of the appearance of the site through the removal of the dated and out of condition buildings as well as providing for employment uses which would be more compatible with surrounding residential development in terms of noise, light pollution, air quality and vehicle movements. In combination with this, new landscaping and ecological improvements would enhance both the appearance and biodiversity on the site. A new public access through the site would also be provided. Together all these benefits, weigh significantly in favour of the scheme.
68. The contributions to air quality, carbon emissions offsetting and addressing traffic and car parking impacts would mitigate any adverse impacts of the proposal and would therefore be neutral factors in the balance.
69. My finding is that the significant harm to the character and appearance of the area and the harm to the living conditions of neighbouring occupiers would be in conflict with development plan policies. These environmental harms would not be outweighed by the benefits of the scheme. My conclusion is therefore that the scheme conflicts with the development plan as a whole.

Conclusion

70. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR