

Appeal Decision

Site visit made on 20 December 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/V5570/W/21/3282001
109-110 Roman Way, London, N7 8UR

- 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 Mr Pieter Brons-Harper of The Four Brewers Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref: P2020/3091/FUL, dated 5 November 2020, was refused by notice dated 1 March 2021.
 - The development proposed is described as: Demolition of the existing building and erection of a new four storey plus basement building to provide a Public House use at (part) ground and basement levels with apartments on first, second and third floor levels (2 x 1 bed 2 person, 2 x 2 bed 3 person and 1 x 3 bed 5 person) with residential storage at basement level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The London Plan 2021 was published in March 2021 after the decision was made on the planning application but before the appeal was lodged. This new version of the plan superseded the policies in in London Plan 2016 cited on the decision notice. Both parties have made reference to the 2021 London Plan in their evidence. I have determined the appeal based on the policies in the most recent version of the London Plan.

Main Issues

3. The main issues in this appeal are:
 - Whether the development would provide suitable living conditions for the future occupiers of the residential accommodation with particular regard to noise;
 - The effect of the proposed development on the character and appearance of the area; and
 - The effect of the proposed development on the living conditions of the occupiers of nearby residential properties at Wellington Mews, with particular regard to privacy.

Reasons

Living conditions of future occupiers

4. The appeal proposal is for a mixed use building with a public house use at ground floor level and residential flats on the upper floors. The Council's principal objection is that insufficient information has been provided in respect of the plant and machinery and noise mitigation related to the public house use to determine the effect on the upper floor residential uses, and the consequential effect of any requirements to mitigate noise on the viable operation of the public house.
5. Policy HC7 of the London Plan 2021 (the London Plan) and Policy DM4.10 of the Islington Local Plan Development Management Policies 2013 (the DMP) when taken together seek, among other matters, to protect public houses and support proposals for new public houses.
6. The Council are concerned that noise generated by the public house use would adversely affect the proposed flats on the upper floors resulting in noise nuisance complaints. There is further concern that addressing any noise complaints may place restrictions on the public house, rendering its operation unviable.
7. The present building on the appeal site has a residential flat on the first floor above a ground floor public house use. The evidence indicates that this flat has been in separate occupation from the public house for some time and whilst the appellant suggests that there have not been any issues in respect of noise, the Council's Environmental Health Officer's comments note that there is a long history of noise complaints in respect of the public house use, although it is not specified at which properties these complaints originated. Although there is no substantiated evidence either way on this point, the juxtaposition of a public house and residential accommodation would inevitably give rise to the potential for noise disturbance to the residential units from the commercial use.
8. The evidence indicates that the appeal proposal would result in a new public house with a slightly smaller, but broadly similar in size, usable ground floor area than the existing public house. The proposal includes an external drinking area at the front of the premises similar to that which presently exists. The present public house also has a rear yard area that is used as an external drinking area. This latter is not present in the appeal scheme.
9. The planning application was accompanied by an Acoustic Report which indicated that a suitable internal noise climate could be achieved within the proposed new flats against existing external noise sources through the construction of the building, although this is caveated that the calculations were based on the windows being closed and the use of a mechanical ventilation and heat recovery system (MVHR). This strongly suggests that the ability to open the windows of the residential units would reduce the effectiveness of any mitigation measures. The Acoustic Report also concluded that through appropriate construction, there would not be intrusive transmission of internally generated noise from the public house through the floor of the upper flats or through the façade of the building. The originally submitted Acoustic Report did not, however, include an assessment of any externally located plant or equipment associated with the public house, or externally generated noise from patrons utilising the external drinking area.

10. The appellants statement of case did not include any additional technical information in respect of noise from proposed plant and machinery other than stating that this could be provided. Following the submission of the Council's statement, the appellant provided an addendum to the Acoustic Report at final comments stage. Although this notes that the proposed MVHR installation would require noise attenuation in order to mitigate noise levels experienced by residents in the area, the amended report still provides little detail on noise from mechanical plant for the bar beyond noting that acoustic enclosures would be provided for the rooftop installation if required. Nor is there any further information in respect of the proposed communal gas boiler or condensers/chillers for the public house, for which it is noted that noise levels will be checked following final selection.
11. With regard to noise mitigation, the Acoustic Report relies on closed windows and mechanical ventilation to achieve the stated indoor noise levels. Whilst the appellant states that the proposed Passivhaus construction would mitigate against external noise even with the windows open, no technical evidence has been provided which would demonstrate this, and the supporting Acoustic Report does not make reference to Passivhaus design in any of its sections.
12. The scheme does not propose non-opening windows for the residential units and the appellant notes that it would be preferable for residents to have the flexibility to open windows if they so choose. In support of this, my attention has been drawn to my decision on an appeal at Albion Court on Fredrick Street in Birmingham which proposed the conversion to residential use of an office building adjoining a public house in a mixed use area that contained other uses that generate noise into the evening and night. I noted in that case that regardless of the provision of mechanical ventilation, future occupiers may wish to open the windows for access to fresh air or other reasons. Whilst my observation still stands, the statement needs to be taken in context. My conclusion based on the evidence in the case at Albion Court was that the ability to open the windows would fatally undermine the effectiveness of the proposed mitigation scheme and, consequently, the appeal was dismissed for that reason.
13. The submitted drawings indicate that there is a proposed location for chiller units, immediately below the windows of the principal habitable room of a number of flats and their associated balconies, and the proposed location of roof top plant installation immediately above the bedrooms of flat 5. The principal habitable rooms of the upper floor flats would be served by full height sliding glass doors giving access to the rear facing balconies/terraces. These could not be sealed units as that would prevent access to the external amenity space to be provided for the flats. In the absence of any information regarding sound levels from such equipment, or technical evidence indicating that a suitable internal noise climate can be achieved with the windows open, there would clearly be a potential for disturbance to the new residential properties from equipment installed in this location. Similarly, there is no information in respect of any measures to prevent the transmission of noise or vibration through the roof of the building.
14. I have noted that the drawings are annotated to the effect that the condenser/chiller units and ventilation equipment would be installed "if required by public house operator". Nevertheless, the appellant's Statement of Case sets out in Section 2.1 that it is their intention that the current tenant of the public house would remain and operate the new premises. As the evidence also

indicates that the current tenant has been running the public house for more than 20 years, it is surprising that the future equipment requirements at the public house cannot be more clearly identified.

15. In addition, the Draft Noise and Nuisance Management Plan included in the Planning Statement with the application states that the public house element of the scheme would have non-openable windows and the submitted drawings show a kitchen and toilets among the other accommodation on the basement area. Although I accept that it may not currently be the intention to serve food at the new public house, the toilet areas at least would require mechanical ventilation, as the submitted drawings do not indicate any passive ventilation of the basement area. It is likely that the main ground floor area of the public house will also require mechanical ventilation given that it is to have non-openable windows.
16. I have noted that at present there is a residential flat above the public house and I have also had regard to the fact that the proposal would result in the current external drinking area to the rear of the public house being removed which would be an existing potential noise source. I am also mindful that elsewhere there are examples of public houses and residential accommodation co-existing within the same building. However, each case has to be looked at on its own merits and in this case an entirely new build development should be able to address balancing the requirement for plant and machinery with providing suitable living conditions for the future occupiers.
17. Consequently, I cannot be certain that the proposed scheme would suitably mitigate against external noise sources including existing noise sources in the area, patrons using the proposed external area to the front of the public house, or from plant and machinery associated with the public house use.
18. Matters relating to noise levels from plant and machinery are sometimes capable of being addressed through conditions and the appellant has suggested conditions relating to details of the chiller units and MVHR equipment be submitted for approval in addition to the conditions suggested by the Council with regard to sound insulation and details of plant and machinery.
19. Nevertheless, in this case the evidence provided does not provide sufficient detail to show that it would be at least theoretically possible to address the concerns set out in the reason for refusal. Granting planning permission subject to the conditions suggested by the appellant could give rise to the situation where the required noise levels cannot be practically achieved and result in a planning permission that is incapable of implementation.
20. Within the context set out above, I do not find it would be appropriate to address this matter through the use of conditions. I have noted that the Council has not raised concerns with regard to the proposed residential floor area, access to natural light, outlook, or the provision of amenity space. However, the effect of noise on residential accommodation is an important matter, and warrants refusing permission notwithstanding that the scheme may be acceptable in other respects.
21. In the absence of any substantiated technical information in respect of the any plant or equipment to be installed, it would be speculative to conclude that any mitigation measures that would need to be imposed to prevent a noise nuisance or to provide a suitable internal noise climate for the residential units would

render the public house operation unviable in the future. However, it is necessary to ensure that proposed new residential accommodation would provide suitable living conditions for the future occupiers and for the reasons set out above the submitted evidence does not make a persuasive case that this could be achieved.

22. I therefore conclude that it has not been demonstrated that the proposed development would provide suitable living conditions for the future occupiers of the residential accommodation with particular regard to noise. It would not comply with the relevant requirements of DMP Policy DM3.7 which expects all residential development proposals to demonstrate how potential adverse noise impact on and between dwellings will be mitigated by housing layout, design and materials and DMP Policy DM2.1 which seeks to ensure that new development provides a good level of amenity including, among other matters, consideration of noise and the impact of disturbance, hours of operation, vibration, pollution, fumes between and within developments.

Character and appearance

23. The appeal site is currently occupied by a two storey, pitched roof, building of traditional construction. The building has a three bay frontage with the central bay rising to a gable elevated slightly above the eaves level of the other two bays. The façade of the building has been painted grey and, although it has been altered, some parts of the historic public house frontage at ground floor level are still discernible. To the rear is a small yard area that is used in part as an outdoor drinking area and in part for refuse storage.
24. The appeal site is on Roman Way, a wide street linking Offord Road to the south with Caledonian Road to the north. The street has a mixed character with the high boundary wall of HMP Pentonville being a very prominent feature on the east side. The long façade of the four storey former prison staff accommodation at Wellington Mews, adjoining the prison site, is also a prominent feature in the street scene.
25. It was apparent from the site visit that the area to each side of the street has been subject to extensive redevelopment in the later twentieth century. Much of the housing dates from the 1970's and is three storey in red brick with a distinctive roof form that is partially flat, on the front section of the building, with a monopitch rear roof plane with its eaves at first floor level on the rear elevation. A short terrace of three of these houses is immediately adjacent to the appeal site, linked to it by a small infill development of more recent date, possibly an extension to the adjacent house. A short distance to the north of the appeal site, on the opposite side of Roman Way, is a small parade of shops with three storeys of residential accommodation above, built in a variation of the same architectural style. Immediately opposite the appeal site is a modern, four storey, block of flats in predominantly red brick with a pitched roof.
26. Among the more recent built form some elements of the earlier nineteenth century street remain, including the building on the appeal site, the high wall to the prison, and the adjacent former prison staff accommodation at Wellington Mews.
27. The appeal scheme proposes the demolition of the existing building and its replacement with a four storey plus basement block accommodating a public house use at ground floor level and five flats on the upper floors. The basement

would be split with approximately half used in connection with the public house use and the remainder as storage for the residential units.

28. Policy D3 of the London Plan 2021 sets out a design led approach to optimising site capacity. The policy expects consideration of design options to determine the most appropriate form of development that responds to a site's context and capacity for growth, and best delivers development which, amongst other matters, enhances local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance, and shape, and which provide active frontages and positive reciprocal relationships between what happens inside the buildings and outside in the public realm in order to generate liveliness and interest. It also expects new development to be of a high quality that responds to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality and which respects, enhances, and utilises the architectural features that contribute towards the local character.
29. When read together Policies CS8 and CS9 of the Islington Core Strategy 2011 and Policy DM2.1 of the Islington Development Management Policies 2013 expect, among other matters, that new development reflects the character of the area with new buildings sympathetic in scale and appearance, and complementary to the local identity. They also seek to ensure that new development provides coherent street frontages, and that new buildings fit into the existing context of facades and make a positive contribution to the local character and distinctiveness of an area, based upon an understanding and evaluation of its defining characteristics. Policy DM2.1 also requires development proposals to demonstrate, through the use of detailed drawings and a written statement how they have successfully addressed the elements of the site and its surroundings including urban form, such as building lines, frontages, plot sizes and patterns, building heights, storey heights; and massing architectural and design quality and detailing, such as colour, type, source and texture of detailing and materials used.
30. The Council's Urban Design Guide Supplementary Planning Document 2017 (the SPD) which is intended to be read alongside the design policies in the development plan provides further advice on the design of new developments. The SPD encourages active frontages and sets out that new development should create a scale and form of development that relates to the existing built form and provides a consistent and coherent setting for the space or street that it defines or encloses, while also enhancing and complementing the local identity of an area. It further states that high quality contemporary designs will normally be sought that are skilfully woven into their context and that respect the rhythm, scale and proportions of the existing street frontage.
31. The application was accompanied by a Design and Access Statement. Whilst Design and Access Statements are required to be submitted for major developments, and the appeal proposal falls outside this category, in this case one has been submitted and is used as an argument in support of the design.
32. Article 9 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out that, among other matters, a design and access statement must explain the design principles and concepts that have been applied to the development and demonstrate the steps taken to appraise

- the context of the development and how the design of the development takes that context into account.
33. The submitted Design and Access Statement provides only a cursory contextual analysis and appraisal of how the development takes into account the context, and there is nothing that explains the design principles and concepts that have been applied or why the design approach taken has evolved and been adopted. Consequently, it is not wholly clear how the design approach to the scheme was arrived at.
34. Within the street scene, buildings are generally three storeys in height, although the older three storey buildings exceed the height of the modern houses. Nonetheless, in the vicinity of the appeal site four storey buildings are present adjacent to and opposite the site, and the proposed new building would be seen in context with these. The present building on the appeal site is unusual in the street scene at only two storeys in height. Although the proposed replacement would be larger than the current building, the SPD accepts that there is scope for changes in roofline and facades within streets where there is a variety of frontages and building heights, as is the case with Roman Way. The height of proposed new building would balance the visual effect of the four storey building opposite and form a similar degree of enclosure to the street.
35. In terms of its massing, the proposed new building would not be as tall as the adjacent former prison accommodation, although the parapet height would exceed the height of the eaves of this building. Whilst the Council do not object to the overall height of the proposal it is concerned about excessive depth of plan. The proposed new building would have a larger ground floor footprint than the present building. At first and second floor levels, the new building would, excluding the rear balconies, have a similar depth to the current building, although the first and second storey floor area would be larger. The rear elevation of the top floor would be set back from the rear wall of the two floors below.
36. The ground floor of the current building is largely concealed by high yard walls and the built form of the buildings to either side, and its scale is not readily perceptible. The proposed new building would not be significantly different in this respect with new walls forming a similar degree of perceived enclosure at ground floor level. It is apparent from the submitted drawings and from what I saw when I visited the site that part of the second storey and all of the uppermost storey would be readily visible over the neighbouring buildings at 105 to 107 Roman Way in views looking south east on Roman Way. Whilst this would make the new building more visually prominent, it is clear from the submitted drawings that the depth of plan at top floor level, which would be the most visible, would be very similar to that of the adjoining former prison housing.
37. The overall massing of the building would be more evident from Armour Close, a short cul-de-sac that runs to the rear of numbers 105 to 107 Roman Way and the appeal site. Nevertheless, from this viewpoint the proposed new building would also be seen in context with the four storey block of Wellington Mews. As such the depth of plan would appear consistent with its surroundings.
38. Turning to the detailed design of the proposed new building, the ground floor public house frontage would comprise of a simple, rectangular opening in the base of wall, with a soldier course above, and aluminium framed glazing

reaching to ground level. The entrance door to the public house would be integrated with the street facing windows. Although this would provide a degree of active frontage as required by the SPD, the street level of the building façade would have minimal architectural detailing and very little articulation. The public house frontage would lack any distinctive architectural features and would be less visually rich than the existing building frontage even in its much altered and painted state. The integration of the entrance door with the other glazing would result in the public house not having a distinctive or legible entrance.

39. The entrance to the upper floor flats is similarly a simple opening in the wall of the building with a soldier course above and would lack any identifying features. Whilst it would be recessed behind the main façade, partly to accommodate bin storage for the flats, it would be concealed behind a high wall and gates projecting from the building frontage. Consequently, much of the visual effect of this would not be evident.
40. At upper floor level the fenestration would divide the façade into three unequal bays. The window openings would be slightly recessed, with the recesses carrying through all three upper floors, which would provide some vertical emphasis similar to the flats at Wellington Mews, although this would be undermined slightly by the windows themselves being almost as wide as they are high. However, this unequal bay width would contrast with regular and repeating arrangement of windows and balconies Wellington Mews, the symmetrical façade of Minerva Lodge opposite, and the slightly idiosyncratic, yet still regular, fenestration arrangement on the adjoining terrace.
41. Whilst much of the more recent development on Roman Way is built from red brick, the proposed cream/white brick to be used on the upper floors of the building would be similar in appearance to the yellow/buff stock brick used on Wellington Mews and other older buildings in the locality. It is proposed to use a green, glazed, brick at ground floor level. This would echo the green glazed bricks that were used on the current public house frontage, as shown in the image in the Design and Access Statement, which have subsequently been painted over. It is, however, not clear from the drawings or the documents the extent of this glazed brickwork, which is described in the Design and Access Statement as a plinth. The drawings do not show a plinth detail or, indeed, any differentiation in the brickwork on the front elevation, other than a soldier course above the window and door openings and a string course separating the ground and first floors. It is also not clear from the submitted drawings or the documentation provided what materials are proposed for the vertical detail at the head of the first and second floor level windows.
42. In the absence of any evidence setting out and explaining the design principles and concepts that have been applied to the development and due to the uncertainty in respect of some of the details of the scheme, I find that it has not been demonstrated how the proposal would successfully address the elements of the site and its surroundings in the manner expected by Policy DM2.1.
43. Whilst the height and massing of the proposed new building would not of itself cause harm to the character and appearance of the area, the principal public elevation would fail to create a coherent and legible façade that would integrate with or improve the quality of the street scene and I would agree with the Council's conclusion that the proposal would make a lesser contribution to the street scene than the building it is proposed to replace.

44. As a result, the proposed new building would not be well integrated with the surrounding buildings and would appear as an incongruous feature in the street scene that is unrelated to the nearby buildings and would not contribute to the distinctiveness of the area. This would be exacerbated by the overall height of the building, which whilst not harmful in itself would make the new building visually prominent, and, as a result, would be harmful to the street scene.
45. I therefore find that the proposed development would cause harm to the character and appearance of the area. It would not comply with the relevant requirements of Policy D3 of the London Plan, Policies CS8 and CS9 of the Islington Core Strategy 2011 and Policy DM2.1 of the Islington Development Management Policies 2013 and the SPD.

Living conditions of neighbouring occupiers

46. The rear elevation of the proposed new building would be adjacent to and project slightly beyond the rear elevation of the former prison staff accommodation at 1 to 16 Wellington Mews. It would also face towards the rear elevation of the flats at number 17 -28 Wellington Mews and the more recently built properties at numbers 12 -15 Armour Close both of which are located to the south west of the appeal site. Although the flats at Wellington Mews were not occupied at the time of my site visit, it is not in dispute that the residential use is likely to resume in the future. The proposed new building would have a number of large windows to the principal living accommodation, together with balconies and terraces, on the rear elevation.
47. A Daylight and Sunlight Report was submitted with the planning application. Although this was based on the now superseded British Standard and the methodology in the 2011 edition of the Building Research Establishment publication, *Site Layout Planning to Daylight and Sunlight A Guide to Good Practice*, which has also since been updated, it is still of assistance in assessing the proposal and I am also mindful that daylight and overshadowing are not matters in dispute between the parties. The Daylight and Sunlight Report concludes that there would only be noticeable reductions in light received to two windows in Wellington Mews, one at ground floor and one at first floor level at GF and 1F level. The Daylight and Sunlight Report also assessed the effect on properties at 106 and 107 Roman Way and 12 Armour Close and found no significant adverse effects.
48. From what I have read and from what I saw when I visited the site, I have no reason to find that the proposed new building would have an adverse effect on the residential accommodation at Wellington Mews, Roman Way or Armour Close in terms of access to sunlight or daylight.
49. The proposed scheme includes 1.8 metre high privacy screens to the side of the balconies and terraces at the rear of the building. Due to the relative positions of the proposed balconies/terraces and the rear elevation of the flats at 1-16 Wellington Mews, these would prevent any overlooking of windows within this block.
50. When I visited the site, I was able to view the rear elevation of the block of flats at 17 to 28 Wellington Mews from the existing flat roofed area at first floor level of the current building on the appeal site and also from Armour Close to the rear of the appeal site. I recognise that the existing first floor flat roof is located further from 17 -28 Wellington Mews than the proposed new balconies would

be, nonetheless, I am satisfied that the view from this position provided a sufficiently similar viewpoint to assess the effect of these.

51. I saw that, as a result of the orientation of the block at 17-28 Wellington Mews, views from the proposed balconies closest to this building would be at a very shallow angle and whilst it was possible to see partially into the closest rooms, visibility did not extend far beyond the internal window reveals. The potential for loss of privacy from causal overlooking is therefore small. Due to the degree of separation and the distance from the neighbouring building, the proposed balconies on the opposite side of the appeal building would be sufficiently far from any windows at Wellington Mews that there would not be any loss of privacy.
52. Given the above, I find that the proposed development would not cause harm to the living conditions of the occupiers of nearby residential properties at Wellington Mews, with particular regard to privacy. It would comply with the relevant requirements of London Plan Policy D3 and DMP Policy DM2.1 which seek to ensure, among other matters that new development provides a good level of amenity.

Other Matters

53. The appellant has submitted a completed Unilateral Undertaking (UU) which includes a financial contribution towards providing affordable housing of £50,000 per unit in the scheme, which is in line with the requirements of the Council's Affordable Housing Small Sites Contributions Supplementary Planning Document 2012. The provision of a financial contribution towards affordable housing is not a significant contested issue in this appeal, however, in his final comments the appellant questions whether this obligation in relation to the Appeal scheme would be compliant with Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) and notes that the Framework states that the provision of affordable housing should not be sought for residential developments that are not major developments (e.g. those of 10 or more dwellings). This latter point is also echoed in the Planning Practice Guidance (the PPG).
54. Paragraph 56 of the Framework sets out that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonable related in scale and kind to the development. Regulation 122(2) of the Community Infrastructure Levy Regulations sets out the circumstances where a planning obligation may constitute a reason for granting planning permission in the same terms.
55. The Council's approach to the provision of affordable housing is set out in Core Strategy Policy CS12 which requires, among other matters, that 50% of additional housing built in the borough be affordable housing. Policy CS12 also sets out that all sites capable of delivering 10 or more units gross to are required to provide affordable homes on-site and that schemes below this threshold will be required to provide financial contribution towards affordable housing provision elsewhere in the borough. London Plan Policy H4 also sets a strategic target of 50% of all new homes delivered across London to be genuinely affordable and requires major developments of 10 or more units to provide affordable housing. However, a footnote to the Policy sets out that

Boroughs may also require affordable housing contributions from minor housing development in accordance with Policy H2 Small sites.

56. London Plan Policy H2 supports the provision of well-designed new homes on small sites in order to meet a number of objectives including meeting London's housing needs, and diversifying the sources, locations, type, and mix of housing supply.
57. Both the Core Strategy and the London Plan pre-date the most recent version of the Framework, although the London Plan post-dates the relevant revision to the PPG. However, Paragraph 64 of the current Framework replicates Paragraph 63 of the 2019 version.
58. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the decision in this appeal must be in accordance with the development plan, including the London Plan and the Core Strategy, unless material considerations indicate otherwise. The Framework, as it is government policy and is more recent than the London Plan and Core Strategy, is a material consideration of considerable weight. Nevertheless, whilst Policy CS12 of the Core Strategy may be inconsistent with the Framework, this does not necessarily mean that it is out of date. London Plan Policy H4 was published under the 2019 version of the Framework, which included the same wording as Paragraph 63 of the current version.
59. The Council submit that due to the small and densely populated nature of the borough, a relatively large proportion of new housing delivery comes from sites of ten units or fewer and that the financial contributions from these developments fund a significant proportion of the Council's social rented new build programme. If the Council was unable to rely on this source of affordable housing supply, it would seriously compromise its ability to deliver its objectively assessed need for affordable housing and contribute towards the London-wide affordable housing delivery.
60. Neither party has submitted any substantive evidence in respect of the need for, or delivery of, affordable housing. However, the Council have drawn my attention to a large number of appeal decisions where the need to provide affordable housing in the borough has been established. I have also been provided with numerous appeal decisions that were made after the publication of the 2019 version of the Framework where the Inspectors have found that the development plan policies are not outweighed by the policy in the Framework. In the current case, no evidence has been put to me that would indicate that the circumstances in the borough have changed in any material way or that the Council's assertions in respect of the provision of affordable housing contributions from small sites are in any way incorrect.
61. Accordingly, the obligation is necessary, directly relates to the development, and is fairly and reasonably related in scale and kind to it. As such, it is compatible with Paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations.
62. Given the above, the provision of the contribution toward the provision of affordable housing is a material consideration that weighs in favour of the development. I have also noted that the development would give rise to a Community Infrastructure Levy contribution of approximately £165,000.

63. The appellant has drawn my attention to the results of the 2021 Housing Delivery Test which show that the Council was delivering 90% of its housing target. The Council's Statement however notes that the result of the 2022 Housing Delivery Test is that the Council delivered 104% of its target in the following year. There is no evidence that would indicate that the Council has delivered less than 75% of its housing requirement over the past three years. The Council also sets out that it can demonstrate a deliverable five year housing land supply and there is no substantive evidence that would contradict this. From the evidence before me, Paragraph 11(d) of the Framework is not engaged in this instance.
64. I have had regard to the representations made by interested parties both in respect of the original planning application and as a result of the notification of the appeal. Some of the concerns raised have been covered above, however, none of the other points raised would lead me to a different overall conclusion.

Conclusion

65. I have found that the proposed development would cause harm to the character and appearance of the area and that it has not been demonstrated that the proposed new dwellings would provide suitable living conditions for the future occupiers. As such the proposal would conflict with a number of policies in the development plan which are most important for determining the appeal.
66. These are important matters and accordingly, the proposal would conflict with the development plan when taken as a whole, notwithstanding that I have found no harm would be caused to the living conditions of the occupiers, or potential future occupiers, of neighbouring residential properties and that the proposal may comply with other policies in the development plan.
67. The proposal would contribute towards the provision of affordable housing in the borough, although in the absence of any information as to what number of affordable dwellings would be provided or the numbers of affordable dwellings that are required, I can only give this moderate weight.
68. The Community Infrastructure Levy contribution adds some further weight in favour of the scheme, although no information is provided in respect of schemes that it may be used for and, similarly, I can only give this moderate weight. Overall, neither of these considerations either individually or collectively would indicate that planning permission should be granted for a scheme that would cause serious and enduring harm to the character and appearance of the area and would not provide new housing with suitable living conditions for the future occupiers. No other material considerations have been identified that would warrant granting planning permission for a proposal which does not comply with the development plan.
69. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR