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## Appeal Decision

Hearing Held on 8-9 August 2023 and 26 September 2023

Site visit made on 9 August 2023

**by R. Catchpole BSc (hons) PhD MCIEEM IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 October 2023**

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**Appeal Ref: APP/U5360/W/22/3292646**

**10-24 Lamb Lane, London, E8 3PL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Lamb Lane Partnership Ltd against the London Borough of Hackney.
  - The application Ref:2021/2518, is dated 12 August 2021.
  - The development proposed is the demolition of an existing building and construction of part six, part seven storey building, with basement, providing 32 residential units (18x1, 12x2 and 2x3 bed units) and 998 sqm of commercial floor over basement and ground floor levels including roof top terrace.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The proposal was amended following submission to the Council, during the course of the appeal. This change is reflected in a revision to the proposed floorplans. The appeal process should not normally be used to evolve a scheme. However, as this did not lead to significant changes in its scope and was clarificatory in nature, I am satisfied that no interested party would be prejudiced. Consequently, the appeal has been determined on the basis of the amended plans.
3. The appellant modified the description of development. As this more accurately reflects the scheme and is not disputed by the Council, I have used it for the purposes of this appeal.
4. As the proposal is in a Conservation Area and potentially affects the setting of a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

### Application for Costs

5. An application for costs was made by Lamb Lane Partnership Ltd against the London Borough of Hackney. This application was subsequently withdrawn.

### Main Issues

6. The Council failed to give notice within the statutory time period but has set out its putative reasons for refusal in a brief statement of case. Bearing this in

mind, as well as oral evidence during the course of the Hearing, I find the main issues to be:

- whether the site is an appropriate location for the proposed development having regard to local and national planning policies;
- the effect of the proposal on the character and appearance of the local area, bearing in mind the special attention that should be paid to the desirability of preserving or enhancing the character or appearance of the Mare Street Conservation Area and the setting of the nearby Grade II\* listed building, 'The New Lansdowne Club' (Ref: 1265590);
- the effect of the proposal on the living conditions of future occupants with regard to the ventilation of single aspect rooms and nearby residents with regard to daylight; and
- whether there are any other material considerations, including the housing land supply situation and benefits of the proposal, which would indicate that it should be determined other than in accordance with the development plan.

### **Reasons**

7. The appeal site is broadly rectangular and covers an area of approximately 673 m<sup>2</sup>. It is situated on the northern side of Lamb Lane, immediately to the east of a junction with Gransden Avenue. These roads define the extent of its southern and western boundaries. The eastern boundary of the site is adjacent to single storey development that is situated to the rear of buildings fronting onto Mare Street.
8. The northern boundary is adjacent to a recent mixed-use development, 39-45 Gransden Avenue. The closest element of this scheme, which abuts the boundary of the appeal site, comprises a 3-storey, rectangular block. The southern elevation of this block is largely blank, with the exception of three lightwells. The appeal site is situated within the Mare Street Conservation Area (CA), close to its western boundary which runs down the middle of Gransden Avenue.
9. The surrounding context of the site is undergoing change, not only in relation to the recent development immediately to the north, but also to the west. A contemporary development known as 'The Fisheries' faces the appeal site on the opposite side of Gransden Avenue. This building rises to seven storeys and is outside the CA.
10. The building currently occupying the appeal site is of no architectural merit and is unkempt. The proposals seek to demolish and replace it with a mixed-use scheme comprising workspaces on the basement and ground floor levels with residential units situated above.

### *Location*

11. The Council maintains that the proposal is a non-employment led scheme within a Priority Office Area (POA) because it would provide 605 m<sup>2</sup> of usable commercial floorspace and 1,955 m<sup>2</sup> of residential floorspace which would not comply with LP27 of the Hackney Local Plan 2033 (2020) (HLP). The POA is one of a number of designations that seek to protect a core reservoir of

- employment land within the Borough which cover approximately 6% of its area.
12. Undisputed plans<sup>1</sup> show that the net internal area of the existing building is around 787 m<sup>2</sup>, whilst the gross internal area of the employment led elements would be around 778 m<sup>2</sup>. Even though the residential floorspace would significantly exceed the proposed employment floorspace, the extent of the existing employment floorspace would be largely preserved by the proposal. It follows that it would be able to support similar opportunities for employment and would not significantly erode the underlying purpose of this policy.
  13. Policy LP27(C) of the HLP states that new development will be permitted where a B1 use class is the primary use, in line with specific thresholds, subject to viability. In this instance the relevant threshold in subsection (iii) requires at least 50% of the new floorspace to conform to the B1 use class. However, the appellant contends that the proposal would provide the maximum viable amount of non-residential floorspace and that the viability assessment demonstrates that this would be the case.
  14. Whilst the Council does not seek to challenge this evidence in any detail, it became clear that its main concern is founded on an acknowledged lack of any sensitivity testing. This led to the submission of further evidence<sup>2</sup> during the course of the Hearing and the Council subsequently accepted the viability assessment as robust. Consequently, specific thresholds do not need to be met in relation to this scheme and I am satisfied that the maximum viable amount of non-residential space would be provided.
  15. However, the fact remains that the proposal would fail to deliver an employment-led scheme and this requirement is additional to the need to deliver a maximum, economically feasible amount of employment floorspace within the POA. As such, I find that the proposal would conflict with policy LP27 of the HLP in this respect.

#### *Character and Appearance*

16. The Council considers the massing to be excessive in terms of the overbearing impact it would have on the 3 storey buildings fronting onto Mare Street, despite the subsequent reduction in height of the nearest element of the scheme to 6 storeys. It suggests that this impact would be further exacerbated by the high-level, clerestory windows and largely blank façade of its eastern elevation. It maintains that this massing would be incongruous within the context of Lamb Lane, particularly when viewed from Mare Street. It finds this unacceptable in design terms and that the flat roof element of the sixth floor, communal terrace would be incongruent. It also suggests that the fenestration of the eastern elevation could have been expressed in a more engaging manner in terms of design detailing, such as through the use of chamfered reveals.
17. The appellant maintains that the scheme responds to the 'New Hackney Vernacular' that characterises nearby buildings as well as the wider area. More specifically, that the set back of the upper 'industrial' elements from the lower

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<sup>1</sup> Existing floorplans showing NIA calculations: 801-010 P1 "Existing Ground Floor Plan"; 801-011 P1 "Existing First Floor Plan"; and 801-012 P1 "Existing Second Floor Plan". Proposed floorplans showing GIA calculations: 801-101 P3 "Proposed Basement Floor Plan"; and 801-102 P2 "Proposed Ground Floor Plan".

<sup>2</sup> HD14

gridded element, creates a design that responds to both the existing and emerging townscape context. It notes that the design steps down from the west to east, towards the rear of the historic buildings that front onto Mare Street and that there would only be glimpsed views from locations in and around the latter. I observed this to be the case when viewed from the three agreed Z-map locations<sup>3</sup>.

18. I accept that the wider area is experiencing a significant transition towards a more dense and gritty urban grain, most notably to the south of the appeal site. This is also expressed through the design of nearby development, such as 'The Fisheries'. The industrial palette of materials, articulated form and massing of the proposed scheme relates well to this development and clearly complements its bold expression.
19. Whilst the materials and form of the proposed scheme would not be at odds with the other nearby development, at 39-45 Gransden Avenue, it would nevertheless dwarf the nearest 3-storey element of this scheme and lead to an awkward and incongruent visual cliff. This effect would also occur, to a much greater and more prominent extent, in relation to the massing of the eastern element of the scheme. This is because its six storeys would dwarf the adjacent single-storey development.
20. The stark eastern elevation of this element, with its limited fenestration and lack of articulation, would lead to an overbearing effect. The clerestory windows would also give rise to the appearance of something akin to a defensible bunker rather than the more open and habitable appearance that would characterise the southern and western elevations of the scheme. As such, the architectural detail of this elevation lacks integration and would be at odds with the more legible, residential elements of the scheme as a whole.
21. Whilst views from Mare Street and adjacent roads would be highly constrained, this would not be the case when approaching the scheme from the east, along Lamb Lane, or from the south, along Elizabeth Fry Road. There would also be a significant step up in massing when approaching it from the north, along Gransden Avenue, although this would not be as jarring given the proximity of The Fisheries as well as the higher elements of the Gransden Avenue development. Whilst these views would be kinetic and transitory, the scheme would nevertheless lead to the creation of a prominent and intrusive building at odds with the scale of adjacent development, as well as the 3-storey industrial building facing it on the opposite side of Lamb Lane.
22. The appellant suggests that both this building and the single storey buildings to the east could accommodate higher density development of greater massing in the future. However, the Hearing established that there are no extant applications for any such development. As such, the incongruent, visual impact of the current scheme would not be subject to any tangible, future mitigation and falls to be evaluated solely against its existing context.
23. Given the above, I find that the height and design of the proposal would harm the character and appearance of the Lamb Lane townscape. This would be contrary to policy LP1 of the HLP and paragraphs 126 and 130(c) of the National Planning Policy Framework 2023 (the Framework). Together, they seek to ensure that development is compatible with the existing townscape and

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<sup>3</sup> Figures 31-33, Heritage Statement

is well designed and sympathetic to local character, including the surrounding built environment.

### *Heritage*

24. The New Lansdowne Club (the Club) is located a short distance to the northeast of the appeal site and fronts onto Mare Street. The Gransden Avenue development is situated in between the Club and the appeal site. The Club is a 3-storey building, with a basement, which is constructed from brick and surmounted by a parapet. It is the only surviving example on Mare Street of a late 17<sup>th</sup> to early 18<sup>th</sup> century, high status, Georgian town house.
25. The main architectural value of the building lies in the typical expression of its symmetrical front elevation which is set back from the road to denote its status. This also helps to frame the architectural composition of the main façade. Its historic value, according to the appellant, is associated with the fact that it is the only surviving example of an early 18<sup>th</sup> century gentlemen's residence fronting onto Mare Street as well as its role as the Elizabeth Fry Refuge from the second half of the 19<sup>th</sup> century.
26. The building was formerly associated with the village of Hackney which formed a ribbon settlement, as shown on John Rocque's map of 1769<sup>4</sup>. The rear of the property, at that time, was characterised by open fields. The map regression in the appellant's heritage statement shows that both the open fields and subsequent gardens on the western side of Mare Street were replaced by a dense urban grain by 1896. Consequently, the setting of this building has undergone significant change and is now dominated by a highly urbanised townscape to the rear. Nothing remains of its historic setting in this respect, apart from the immediate curtilage of the building itself.
27. Given the above and insofar as it relates to this appeal, I find that the position and setback of the building on Mare Street is the setting which contributes most to the understanding and legibility of its special interest as a high status, Georgian townhouse.
28. The CA was designated in 2000 and is an irregularly shaped area centred on the historic route of Mare Street, which is set out on a north-south axis. This early route into London was historically characterised by Georgian ribbon development of villas and houses set within fields and market gardens. Later Victorian and Edwardian development subsequently led to a more commercial and industrial character which was further reinforced by post-war development. The CA appraisal divides it into four Character Areas according to this historic layering with the appeal site being situated in Area 3.
29. The appraisal describes the contribution made by Lamb Lane as follows: "*It is an important pedestrian and cycle route to London Fields and is limited to other traffic beyond Elizabeth Fry Road. Lamb Lane is an important local route in Hackney and its environment should be improved*". The immediate area is dominated by late 19<sup>th</sup> and 20<sup>th</sup> century industrial development. The appellant notes that whilst Lamb Lane is a historic route, Gransden Avenue was inserted in the late 19<sup>th</sup> century and formed the spine for the development of former garden land to the rear of Mare Street. With the exception of No. 5A, the

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<sup>4</sup> Heritage Statement

- eastern side of the road, which is in the CA, is dominated by post-war, mixed development of little historic interest.
30. Given the above and insofar as it relates to this appeal, I find that the significance of the CA relates to the legibility of its historic routes and industrial character.
  31. The appellant maintains that the setting of the Club would not be affected because there is no historic functional or associative relationship with the appeal site. It also suggests that there would only be limited intervisibility between the main elevation of the Club and the proposed scheme. More specifically, that it would not be visible over the ridge line or parapet of this elevation and that it would only be glimpsed in oblique views, looking southwest, through a narrow gap between No. 193 Mare Street and the Club. It relies upon an undisputed Z-map analysis to demonstrate that it would sit below the parapets of the buildings in the foreground. As such, the appellant maintains that it would appear recessive and would not lead to an unduly dominant or distracting feature.
  32. Whilst the Council's statement of case did not identify any harm to the setting of the Club (or any other listed building), this matter was raised by the Hackney Conservation, Urban Design and Sustainability Team. It maintains that the oblique views would be harmful to the setting of the Club but offers no analysis of how the proposal would harm the special interest of the listed building. The Hearing established that the Council is concerned that the proposal would "*erode the space about the building*" and the "*view from Mare Street*". It also established that the Council considers this would lead to less than substantial harm, at the lower end of the spectrum.
  33. As setting is not a designation, harm falls to be considered in relation to the effect that development proposals have on the special interest of a listed building. In this respect, the Council offers no cogent analysis of any harm beyond the fact that the proposal would be visible. However, it is the space to the front of the building and the setback from Mare Street that contribute to its significance rather than any space to the rear which has long since been lost and replaced with a dense, urban grain. The proposal would not lead to any significant material change when viewed from the rear of the listed building given the orientation of the rear elevation of the Club, separation distance and intervening development of Gransden Avenue. I also observed that there would be no erosion of the architectural interest of the main elevation arising from the extremely limited, oblique view that would occur. The Council's concerns are consequently without merit.
  34. Given the above, I find that the special interest of the Club, as supported by its setting, would be preserved, thus satisfying the requirements of the Act and paragraph 199 of the Framework. The proposal would not conflict with policy LP3 of the HLP that seeks, among other things, to avoid less than substantial harm to heritage assets unless that harm is outweighed by public benefits.
  35. Turning to the CA, the appellant suggests that the existing building detracts from its character and appearance and that the surrounding area has changed significantly to the extent that it now only supports the fragmentary survival of heritage assets. The appellant acknowledges that the existing building has an industrial aesthetic which contributes to the historic character of this part of the CA, but that it does not make a positive contribution to its significance given its

- poor quality. It suggests that the proposal would lead to a higher quality structure which would deliver an overall enhancement to the CA.
36. The Council provided no detailed analysis of the impact of the scheme on the CA and simply maintained that the “*incongruous massing*” of the scheme, when viewed from Mare Street, would fail to preserve the significance of the CA. The Hearing established that it views the impact of the scheme as causing less than substantial harm to the CA, at the lower end of the spectrum. It also views the existing building as having a neutral effect on the character and appearance of the CA given the regular pattern of fenestration and its rectangular form. It maintains that the proposal would “*offend the vernacular, built form and massing*” that characterises the historic throughfare of Lamb Lane and that its proximity and visual impact on Mare Street would also be harmful.
37. I observed that views of the proposal from Mare Street would be highly constrained. One such view is from the junction of Mare Street and Well Street where the bulk of the building would be screened behind the buildings on the west side of Mare Street, unlike the taller buildings under construction to the southwest of that junction which loom over the historic street scene. Whilst there would be a small increase in visibility to the east of this junction, further along Well Street, the proposed building would nevertheless sit comfortably within the Mare Street frontage and would not lead to the creation of a visually distracting feature that would detract from its street scene.
38. However, these glimpsed views from Well Street would give way to more prominent views when entering Lamb Lane from the east. Although the massing of The Fisheries ameliorates the significant bulk of the proposal to a certain extent, there would, nevertheless, be an awkward and incongruent transition in scale which would persist as individuals move west. This would not resolve itself until a closer, visual juxtaposition with the Fisheries is reached. The incongruent bulk of the proposed scheme would be visually disruptive to the established scale of the CA at this point.
39. The proposal would also diminish the industrial character of Lamb Lane by introducing prominent residential elements comprising the balconies and roof terrace of the upper floors which would not be sufficiently modulated by the industrial aesthetic of the proposed design. Whilst I accept that the existing building is of no architectural interest, it nevertheless contributes to the existing, historical industrial character of the area. The positive elements of the scheme, in terms of the creation of an active frontage and the construction of a higher quality building would not outweigh its negative aspects and the diminution of its industrial character.
40. Given the above, I find that the proposal would harm the significance of the CA as a whole. I give this harm considerable importance and weight.
41. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification. Given the constrained visual impact, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.

42. Where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of that proposal. The appellant has identified a number of benefits in both written and oral evidence. Whilst it has not identified specific public benefits, it is clear that the following can be considered as such.
43. The proposal would contribute to the provision of market housing in the Borough within the context of a considerable shortfall in the deliverable housing land supply. The 2021 Housing Delivery Test places Hackney at 96% whilst the appellant's own analysis suggests that the net homes delivered may stand at 91%. Whilst an action plan may be required under such circumstances, this does not amount to a significant under delivery according to Footnote 41 of the Framework.
44. I accept that the scheme would deliver housing in an area with good access to existing services and alternative transport options. However, 32 units would represent a relatively modest contribution given the size of the shortfall. I accept that paragraph 69 of the Framework recognises that small to medium sized sites, which are suitable, can make an important contribution to meeting housing requirements. Consequently, I give this public benefit great weight.
45. A contribution of £150,000 towards affordable housing provision elsewhere in the borough would be secured through a completed Unilateral Undertaking (UU). The appellant maintains that the development would not generate a surplus over the benchmark land value to fund affordable housing on the site. However, this would be subject to an early-stage review mechanism which would have the potential to secure on-site affordable housing as well as an increase in affordable workspace provision. Bearing in mind the scale of the contribution in relation to the market value of dwellings within the Borough, as well as the considerable uncertainty associated with potential changes in the viability of the scheme, I give this public benefit limited weight.
46. A need for affordable workspaces would be met by the scheme but the Council observes that the quality of the spaces would be compromised by their basement location. However, I observe from the plans that natural light and access to an outdoor space would be provided by a lightwell. Furthermore, modern lighting, that can be conditioned, is capable of providing a full daylight spectrum which would supplement natural light levels. Bearing this in mind, as well as the undisputed need for such space, I give this public benefit moderate weight.
47. The appellant suggests that the co-location of residential and commercial space would limit the need of future occupants to commute to workplaces. Whilst hypothetically possible, I find it highly improbable that this would occur bearing in mind the range of different professions that would be associated with future occupants and the likelihood that any of these would correspond to the business needs of future commercial occupants. As such, I do not find that it would necessarily lead to a healthy, inclusive and safe place that would promote social interaction. Consequently, I give this public benefit negligible weight.
48. A number of other benefits are also highlighted in terms of the efficient use of land, townscape regeneration, sustainable drainage and biodiversity enhancement. However, I am not persuaded that these amount to anything

other than what would be expected from well-located and reasonably designed, urban development. Consequently, I give these public benefits limited weight.

49. Given the above, I find that the proposal would fail to preserve the special interest of the CA and that this harm would not be outweighed by the public benefits of the scheme. This would conflict with policy LP3 of the HLP which only permits development where less than substantial harm to designated heritage asserts is outweighed by public benefits. This would fail to satisfy the requirements of the paragraph 202 of the Framework and the Act. It would also conflict with policy HC1 of the LP that seeks to conserve the significance of heritage assets.

#### *Living Conditions*

50. The Council initially raised concerns about the number of single-aspect units (13 of 32), particularly the layout of units 1, 7, 13 and 19 where it identified that certain rooms would only be served by clerestory windows. It considered that this would result in substandard accommodation but acknowledged that all units and room sizes would nevertheless comply with the relevant space standards.
51. The Council resiled from the position it originally took with respect to daylight during the course of the Hearing. Consequently, the only remaining matter in dispute at close was whether the single aspect units would have adequate ventilation. Although all of the associated windows could be opened, the Council is concerned about the lack of adequate cross-ventilation in these units. In this respect, it highlights the requirements of policy D6 of The London Plan 2021 (LP) which addresses the provision of single aspect dwellings and the need for adequate passive ventilation.
52. The appellant suggests that only 10 out of 32 units could be described as being single aspect and notes that a clerestory window is also present in unit 25. It maintains that none of the specified units are single aspect. The appellant observes that policy D6 does not prevent the use of single aspect units except for north-facing rooms. It also highlights the finding of an overheating assessment which indicates that the scheme would address overheating risks, perform well under summer conditions and meet all the necessary standards.
53. Policy D6 of the LP states that single aspect dwellings should only be provided where it is considered a more appropriate design solution to dual aspect dwellings. It requires such dwellings to have adequate passive ventilation, daylight and privacy and that they avoid overheating. Paragraph 3.6.5 of the supporting text states that single aspect dwellings are more difficult to ventilate naturally and are more likely to overheat which is why they should normally be avoided.
54. This policy does not preclude the use of single aspect units except where, among other things, they are north facing. None of the proposed units would be precluded on this basis. It is also axiomatic that passive ventilation is the main consideration where overheating is likely to occur which is why they are linked in the supporting text. The Council took no issue with the overheating assessment and made no technical arguments to the contrary. As such, I find the objection to the one-bedroom, single aspect units to be unfounded.

55. Whilst suitable outlook is not explicitly linked to single aspect dwellings in policy D6, policy D3(D)(7) of the LP stresses that all development proposals should deliver, among other things, an appropriate outlook. During the Hearing, the Council highlighted the limited outlook from units 1 and 7 resulting from the use of clerestory windows. However, the appellant established that these units would also have floor-to-ceiling glass doors associated with respective balconies and that neither room would just be served by clerestory windows. As a result, the Council resiled from its position by the close of the Hearing.
56. Turning to how the daylight of neighbouring properties would be affected, the Council observes that dwellings at 36-45 Gransden Avenue and The Fisheries would experience a significant and discernible reduction in the Vertical Sky Component (VSC) which it considers to be unacceptable and contrary to LP2 of the HLP. Dr Krown, of 39 Gransden Avenue, is concerned about a loss of light to her property in Block 1 as well as a communal courtyard of this development. Ms Craig, of 171 Mare Street, is also concerned about a loss of light, as is Miss Dreyer, of 31 Gransden Avenue.
57. At the Hearing, the Council confirmed that its main concern only relates to the loss of daylight and that it did not dispute the values or the approach that was used by the appellant to analyse the impacts of the proposal on neighbouring properties. It also confirmed that it agreed that there would be no significant loss of daylight to Blocks 1 and 2 of the Gransden Avenue development. I have no substantiated technical evidence to the contrary before me to suggest otherwise and the available evidence suggests no significant impact on the communal courtyard would occur. This is also the case for 171 Mare Street which also passed all the necessary thresholds. The appellant confirmed that the impact of the proposal on 31 Gransden Avenue was not assessed because of the separation distance and the height of the intervening development. Bearing this in mind, as well as my own observations on site, I am satisfied that there would be no material change to the daylight or sunlight levels experienced by the occupants of this property.
58. The appellant accepts that there would be an adverse impact to some rooms in the neighbouring properties but that the Building Research Establishment's (BRE) guidance<sup>5</sup> should be applied flexibly according to paragraph 125(c) of the Framework. It notes that whilst the VSC target values may not typically be obtainable in dense urban areas, the majority of neighbouring windows and rooms would nevertheless conform to those values. It highlighted a number of exceptions in the analysis that was based on the 2011 BRE guidance. These relate to windows associated with lightwells serving Block 3 of the Gransden Avenue development and 10 windows in The Fisheries. This was summarised in evidence that was submitted to the Hearing which was subsequently revised in the light of more recent, 2022 BRE guidance<sup>6</sup>.
59. Paragraph 2.2.7 of the 2022 guidance states that if this VSC is greater than 27% then enough skylight should be available to the windows of existing buildings. It recommends that any reduction below this level should be kept to a minimum and notes that where VSC is less than 27% and the reduction is greater than 20% (one fifth) of its former value then this is likely to lead to a perceptible change. Whether or not this leads to an adverse effect is a matter

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<sup>5</sup> Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice, 2022 (3<sup>rd</sup> Edition)

<sup>6</sup> HD7 then HD22 and HD23

of judgement and the particular characteristics of the rooms that would be affected, as well as the magnitude of the change. Consequently, I accept that the evaluation of impact goes beyond a purely numerical evaluation of individual windows.

60. Policy LP2 of the HLP requires all new development to ensure that there is no significant, adverse impact on the amenity of neighbours in terms of, among other things, changes to the levels of daylight. The supporting text of this policy states that the BRE guidance will be used to evaluate impacts but acknowledges that target criteria may not be met in denser, 'inner urban' environments. As such, it states that the criteria should be operated on a flexible basis. This also reflects national policy, as set out in paragraph 125(c) of the Framework as well as paragraph 1.6 of the 2022 BRE guidance.
61. In relation to Block 3, there would be reductions in daylight exceeding the 20% threshold to four windows on the first and second floors which are, respectively, W1-W4 and W13-W16. However, the Hearing established that non-material amendments to the Gransden Avenue scheme means that it was not built according to plan and that none of the first floor rooms remain in scope because they have become non-habitable bathrooms.
62. The exceedance in the second floor windows would range between 3.6 and 4.3 times the threshold and would affect four out of six dwellings in Block 3. However, I note that all of the associated rooms would pass the daylight distribution test and that they are served by secondary windows on the north elevation of this development. This was further explored by the appellant through consideration of the overall VSC value of the affected rooms, as derived by weighting each VSC element in accordance with the proportion of the total glazed area represented by its windows (HD22). This allows the contribution of other windows to the overall quanta of skylight that a room receives to be considered, provided the secondary windows are within 5 m. On this basis, all of the affected rooms passed this assessment.
63. The Council observes that some of the secondary windows exceed the 5 m threshold and that the window proportions on the north elevation were subject to non-material amendments which led to smaller apertures. The appellant maintains that the separation distance threshold is only exceeded by a small amount and that the daylight distribution contours of the windows extend to the rear of the room which suggests that the north-facing windows make a material contribution to light levels throughout the room. The professional judgement of the appellant's expert witness is that neither the reduced size of the windows nor the minor exceedance of the separation threshold significantly alters the outcome of the test. As such, I am satisfied that the reduction in light would not have a significant impact on the living conditions of the affected dwellings in the absence of expert evidence to the contrary.
64. Turning to The Fisheries, there would be reductions exceeding 20% of the VSC threshold which would affect a total of 10 windows. This would comprise three windows on the first floor (W5-W7), two on the second floor (W4-W5), two on the third floor (W4 and W6) and three on the fourth floor (W4, W7-W8). This would affect a total of 6 out of 31 dwellings in The Fisheries. The exceedance would range between 1.2 and 3.3 times the threshold and two of the windows would also fail the daylight distribution test. The 'lit area' of these rooms would be reduced as follows: W7 (1<sup>st</sup> floor) - 94% to 57% and W6 (3<sup>rd</sup> floor) - 97% to

71%. The same rooms also failed the 2022 VSC room test, as did W5 (2<sup>nd</sup> floor). The first two windows serve bedrooms whilst the third (W5) serves a Living Kitchen Dining (LKD) room. The 20% threshold would be exceeded in a further two (bedroom) windows as well as five windows associated with LKD rooms.

65. I note that two of the affected first floor windows (W5 and W6) serve the same bedroom and that there is a further window that would retain a VSC greater than 27%. Bearing this in mind, as well as the scale of the impact on the affected windows (1.2 times the VSC threshold), I find that a significant adverse effect on the living standards of the associated dwelling would be unlikely. Even though the scale of the impact on the other first floor window would be greater (2.2 times the VSC threshold) and the 'lit area' of the affected room would also be reduced by around 37% I do not find that this would be significant. This is because more limited time would be spent in this room during daylight hours given its function as a bedroom. As such, I am satisfied that sufficient daylight would be maintained in the dwelling as a whole.
66. Given the above and bearing in mind the need for flexibility, I find that the proposal would be consistent with policy LP2 of the HLP as well as paragraph 125(c) of the Framework.

### **Other Matter**

67. A completed UU has been submitted. However, as I am dismissing the appeal for other reasons, I do not consider it further as it makes no difference to its outcome.

### **Planning Balance**

68. The Council accepts that it is unable to demonstrate a 5-year housing land supply (HLS) and that it is only able to demonstrate a 3.89-year HLS. As such, the following policies are considered to be out-of-date by the parties: LP2, LP12, LP13 and LP14 of the HLP and policies D6 and H10 of the LP. None of the key policies relevant to this proposal are considered to be inconsistent with the Framework. This is also common ground between the parties.
69. In these circumstances, the 'tilted balance', as set out in paragraph 11(d) of the Framework, is engaged unless specific policies indicate that permission should be restricted. However, the adverse effects on the character and appearance of the local area and the CA as well as the failure to deliver an employment-led proposal places it in clear conflict with policies LP1, LP3 and LP27 of the HLP. The harm to the CA also engages Footnote 7 of the Framework. I therefore conclude that the tilted balance does not apply in this instance.
70. It is not unusual for some tension to be found between different policies in a development plan when applied to a specific proposal. Although there would be compliance with some aspects of the development plan, such as LP26 and LP2 of the HLP, this is clearly outweighed by the conflict I have found with policies LP1, LP3 and LP27 of the HLP and policy HC1 of the LP to which I attach significant and considerable weight. Consequently, I have found that the proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight in this instance to

indicate that the decision should be made other than in accordance with the development plan.

**Conclusion**

71. For the above reasons and having regard to all other matters raised, I conclude that, on balance, the appeal should be dismissed.

*Roger Catchpole*

INSPECTOR

## **APPEARANCES**

### For the Council

Miss Anne Williams, of Counsel, instructed by Mr Woodhead, Hackney Borough Council

Miss Hauser - Major Projects Officer

Mr Brew - Major Projects Manager

Mr Dyer - Conservation and Design Officer

Mr Callam – Growth Team Leader

### For the Appellant

Mr Thomas Hill KC, of Counsel, instructed by Centro Planning Consultancy

Mr Zimmerman MA MSc MRTPI

Mr Lowrie BA (hons) DipArch ARB

Mr Cawood MRICS

Ms Burton IHBC MRTPI

Mr Griffiths MCIH

### Interested Parties

Dr Krown - local resident

Ms Craig - local resident

Miss Dreyer – local resident

## **DOCUMENTS SUBMITTED**

- HD1 - Costs Addendum with Enclosures A-H (Appellant)
- HD2 - Appeal Decision 3274580 (Appellant)
- HD3 - Internal Visualisations (Appellant)
- HD4 - North Wiltshire DC [1993] 65 P. & C.R. 137 (Appellant)
- HD5 - Note on Education and Open Space Contributions (Appellant)
- HD6 - Note on Single Aspect Units (Appellant)
- HD7 - Note on Vertical Sky Component (Appellant)
- HD8 - Key Viewpoints (Appellant)
- HD9 - Fisheries Committee Report (Appellant)
- HD10 - Gransden Avenue Committee Report (Appellant)
- HD11 - Updated Visualisation of Mare Street (Appellant)
- HD12 - Updated Draft Unilateral Undertaking – 4 August 2023 (Appellant)
- HD13 - Hackney HLS Assessment (Appellant)
- HD14 - Development Viability Sensitivity Test (Appellant)
- HD15 - Financial Contribution Calculations (Council)
- HD16 - Signed Unilateral Undertaking – 29 August 2023 (Appellant)
- HD17 - Proof of Evidence on HLS (Appellant)
- HD18 - Proof of Evidence on HLS (Council)
- HD19 - Rebuttal Proof (Appellant)
- HD20 - Rebuttal Proof (Council)
- HD21 – SoCG Housing Land Supply Addendum (Council and Appellant)
- HD22 – Revised Daylight Analysis and Site Inspection (Appellant)
- HD23 – Revised Room VSC Calculations (Appellant)
- HD24 – Site Layout Planning for Daylight and Sunlight, BRE (2022) (Appellant)