



Appeal Decision

Site visit made on 6 December 2024

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19th December 2024

Appeal Ref: APP/G5750/W/24/3349871

Glory House, 2 Tabernacle Avenue, London E13 8EG

- 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 Mazel Estates Limited against the decision of the Council of the London Borough of Newham.
 - The application Ref 24/00192/FUL, dated 24 January 2024, was refused by notice dated 17 April 2024.
 - The development proposed is demolition of existing church buildings and erection of new mixed use development of 3, 5 and 6 storeys to provide a community use (Use Class E), 80 self-contained residential apartments, amenity space, refuse storage and cycle parking.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing church buildings and erection of new mixed use development of 3, 5 and 6 storeys to provide a community use (Use Class E), 80 self-contained residential apartments, amenity space, refuse storage and cycle parking at Glory House, 2 Tabernacle Avenue, London E13 8EG in accordance with the terms of the planning application Ref 24/00192/FUL and the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. The LPAs decision notice listed 6 grounds for refusal. Following the submission of the appeal, it was initially determined that an Inquiry would be necessary, particularly regarding respective positions on viability and affordable housing provision. In light of the LPAs statement of case, and positive discussion at the Case Management Conference (CMC) on 9 October 2024, I agreed that an Inquiry would no longer be necessary, but that on a precautionary basis a single day Hearing would be required, nonetheless.
3. A signed Statement of Common Ground (SoCG) was provided on 14 November 2024, confirming that following the exchange of additional evidence by both main parties, there were no matters remaining in dispute. The SoCG confirmed that the LPA no longer sought to pursue any of its 6 reasons for refusal. Having regard to the additional evidence provided, the SoCG, a schedule of agreed suggested conditions, a draft Section 106 (S106) agreement and a CIL Compliance Statement, I no longer considered a hearing to be necessary to determine the appeal. There has been negligible wider public interest in the appeal proposal. Accordingly, I confirmed with the main parties on 27 November 2024, that I would determine the appeal on the written material

before me. As agreed with the main parties at the CMC, I have conducted an unaccompanied site visit.

4. As part of the appeal process it has been confirmed that the proposal would result in a likely significant effect (LSE) on qualifying features of the Epping Forest Special Area of Conservation (SAC). In accordance with the Habitats Regulations, it is necessary, as part of an appropriate assessment, to consider whether the LSE can be mitigated effectively. The LPA has clarified matters in this regard and provided a copy of correspondence from Natural England dated 28 February 2024. I have taken this into account together with the relevant obligations in the agreed S106 agreement. I return to this matter later in the decision.
5. Following receipt of the signed SoCG, the appellant has confirmed¹ that they no longer wish to pursue the costs application as originally submitted with the appeal in August 2024. I have dealt with the appeal on that basis and there is no separate costs decision.
6. A final draft Section 106 agreement was provided on 22 November 2024. Given the various changes in appeal procedure, and recognising that this is a relatively complex scheme, and the obligations reflect this, I afforded the appellant appropriate time to finalise the S106 agreement. Consequently, a final signed S106 agreement was received on 18 December 2024. I deal with its contents in the decision below.
7. On 12 December 2024, the National Planning Policy Framework (NPPF) was updated. I have carefully considered the revised content having regard to both the main issue for this appeal and other matters raised by third parties at the planning application stage. In my assessment, national planning policy as it relates to the main matters in this appeal has not materially changed. Accordingly, there is no procedural necessity or benefit in inviting the main parties to provide views on the updated NPPF for this appeal. For the avoidance of doubt, all references to the NPPF in this decision are to the December 2024 version.

Main Issue

8. The main issue in this appeal is whether in the absence of an affordable housing contribution, the appeal proposal would accord with the development plan, and otherwise amount to sustainable development.

Reasoning

9. Planning permission has recently been granted on the appeal site in 2023 for a comparable scheme for 80 self-contained residential apartments and community use (Use Class E), under reference 21/00830/FUL. This scheme would have made provision for affordable housing, albeit for viability reasons, at a lower percentage (12.5%) than required by development plan policy, with a review mechanism were viability to improve. As such the principle of the scale, massing and design of the residential-led development on the appeal site has recently been accepted. There remains an extant planning permission at the time of this appeal, which is capable of being implemented. This is an important material consideration². The principal difference between this

¹ Email dated 22 November 2024

² As per *Mansell v Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314

implementable planning consent and the appeal scheme would be an absence of affordable housing provision, save for a review mechanism which would be secured by way of an obligation within the submitted S106 agreement.

10. The appellant's viability evidence for the appeal is comprehensively set out³ and asserts that since the grant of planning permission in February 2023 viability has worsened, from what the appellant considers was already a challenging position. The principal driver for this is the increase in build costs which have not been offset by any commensurate increases in expected sales revenues. I share the appellant's assessment that the appeal location, whilst close to the vibrant cluster establishing at Canning Town a short distance to the south-west, is nonetheless a different market proposition. Whilst the appeal proposal and the adjacent L&Q scheme opposite on Tabernacle Avenue would consolidate to raise the profile and quality of residential development at the appeal location, they are nascent modern apartment schemes in this part of Barking Road. Accordingly, I prefer the appellant's cautious outlook on private residential sale revenues informing the Gross Development Value (GDV). There appears to be some consensus between the main parties that the GDV has not materially changed since the LPA made its decision (April 2024).
11. Following its decision, as part of the appeal proposal, the LPA has revisited its evidence on viability and the outcomes have been shared with the appellant. The October 2024 viability update for the LPA prepared by BNP Paribas Real Estate (BNPP) clarifies that since their previous viability advice of March 2024, the then identified surplus of £995,674 against the viability benchmark has been eroded on two fronts. Firstly, the Council's estimated cost of the construction had increased to reflect current day costs (as per the BCIS All In Tender Price Index). Secondly, indicative Mayoral and Borough Community Infrastructure Levy (CIL) costs had increased by 75% and 81%, to £247,134 and £510,293 respectively⁴.
12. Additionally, the treatment of the existing use value (EUV) and any premium for the landowner had been an area of significant difference in the respective viability appraisals of the main parties prior to the appeal. Overall, I find the appellant's position on the EUV to be more persuasively reasoned, reflecting the scale of the site and its commercial value in being able accommodate large indoor gatherings. Furthermore, the structure and character of the site would lend itself to uncomplicated sub-division into individual sites if required, further adding to the overall value of the site. The appellant's EUV figure of £7.85million is now shared by BNPP in their October 2024 update, in marked contrast to the circa 40% discount applied in their previous viability appraisal in March 2024. Given the agreed position, I have no reason other than to conclude that the figure of £7.85million should be accepted as the EUV.
13. Whilst Bidwells for the appellants had applied a 15% premium to the EUV to incentivise the release of the site, the BNPP update does not apply this and records that "the viability benchmark has been agreed between the parties to equate to £7.85million." To my mind, establishing the EUV in this case has not been straightforward due to the limited comparable transactional data to draw upon. Whilst I understand the premium to be applied to an EUV requires an

³ Financial Viability Response – Bidwells 24 May 2024

⁴ For the avoidance of doubt, the BNPP document of 23 October 2024, emphasises that these CIL costs are indicative estimates and not binding on the CIL Collecting Authority. Nonetheless they are values that the LPA has relied upon for the purposes of revisiting the viability appraisal for this appeal.

element of judgment, I am concerned that the EUV in this case may be closer to an Alternative Use Value (in terms of capturing an element of 'hope value'). As such I would caution in this case that applying a further premium may result in an element of double counting. Therefore, I have adopted the approach in the BNPP update and a 15% landowner premium should not be applied.

14. Drawing this altogether, the BNPP update concludes that the appeal proposal would generate a residual land value of £4.280million resulting in a deficit of some £3.569million against the agreed viability benchmark. On this basis, I am satisfied that the scheme cannot viably provide any affordable housing.
15. A review mechanism as part of the S106 is still recommended in the October 2024 BNPP viability update. Provision for this is contained within the submitted S106 and would comprise a two stage process (the early stage review and the late stage review). Formula is set out in the submitted S106 for undertaking these reviews and mechanisms thereafter were it to be determined that some form of affordable housing provision becomes viable. Overall, I find the obligation in the S106 for review mechanisms would meet the necessary tests and ensure that any viability improvement is captured given the site meets the thresholds for affordable housing provision as set out at Policy H5 of the London Plan (2021). The proposed approach for early and late stage reviews would also accord with the Mayoral Supplementary Planning Guidance on Affordable Housing and Viability (2017).
16. Policies H4 and H5 of the London Plan (2021) and Policy H2 of the Newham Local Plan 2018 (the NLP) set out the relevant development plan policy for affordable housing provision. NLP Policy H2(2)(a) provides that qualifying proposals delivering below the required affordable housing percentage must be accompanied by a detailed viability appraisal. That would be the case here. Similar is also required through Policy H5(F) of the London Plan 2021 with the requirement that viability tested schemes will be subject to the review mechanisms contained in a S106 agreement. Again, as set out above, that would be the case here.
17. As such I find the absence of an affordable housing contribution, subject to review mechanisms, to be justified on the detailed viability evidence provided. On this basis the appeal proposal, despite not providing affordable housing, albeit subject to review, would nonetheless accord with Policy H5 of the London Plan and NLP Policy H2.
18. As set out above, the principle of a residential-led redevelopment of the appeal site has recently been accepted. The site is sustainably located in an area with a good Public Transport Accessibility Level (PTAL) rating. Whilst the site is used as a community church (Glory House), it is not conferred any particular status or designation in the development plan. The appeal proposal would comprehensively redevelop the site, including the large single and two storey mid Twentieth Century utilitarian buildings fronting onto Tabernacle Avenue and backing onto Chargeable Lane together with the cluttered arrangement of buildings fronting onto Barking Road. In its current form the appeal site does not represent an efficient use of land or make a positive contribution in various street scenes, particularly Chargeable Lane and Tabernacle Avenue. Overall, the appeal proposal would represent a high quality optimisation of previously-developed land to provide a significant number of much needed new homes in a sustainable location.

19. Elements of the appeal proposal would comprise 6 storey buildings, which the London Plan at Policy D9 and NLP Policy SP4 define as a threshold for 'tall buildings'. The proposed top storey element would be stepped back from the principal elevations such that in various perspectives it would not be obvious that there were 6 storeys, including within Barking Road. The overall height of the appeal scheme would only be moderately taller than the adjoining five storey building under construction adjacent to the appeal site on Tabernacle Avenue. The proposed scale and massing of the appeal scheme would provide an appropriate transition from the density and mixed character of Barking Road as a principal thoroughfare, towards the lower rise residential development to the west on Chargeable Lane. Overall, I find the proposed height and massing of the appeal scheme would not be harmful to the character and appearance of this part of the Borough.
20. Whilst the scheme cannot viably support affordable housing, it would provide a mix of housing, including a higher quantum of family sized homes (41%⁵) compared to NLP policy requirement. Whilst the scheme would not provide generous public realm it would significantly improve active frontages onto Barking Road, Chargeable Lane and Tabernacle Avenue. These would be notable public benefits in support of the proposed moderately taller buildings. The proposed massing would also optimise the potential of the site for residential in an area with a good PTAL rating (PTAL4). As such I consider, on balance, the proposed taller buildings would accord with NLP Policy SP4(2)(c).
21. The appeal proposal would result in a significant reduction of community floorspace. However, the principle of this reduction has already been established through the existing planning consent. The appeal site is not located in a Community Facilities Opportunity Area or in a designated town centre. At the time the LPA made its decision there was dispute as to whether evidence of demand for the proposed community use floorspace from the previously approved application remained valid. During the appeal process the appellant has provided up-to-date evidence of a viable interest in the proposed community use floorspace within the appeal scheme⁶. The LPA has confirmed through the SoCG that this is recent correspondence would be sufficient to demonstrate that proposed community use would have a reasonable prospect of being utilised. Accordingly, there would be no conflict with Policy S1 of the London Plan and NLP Policy INF8.
22. I therefore conclude, having regard to the matters that were in dispute at the time the LPA made its decision, and in light of the additional evidence provided as part of this appeal, that despite an absence of affordable housing provision, the appeal proposal would comprise sustainable development. Accordingly, the appeal proposal would accord with the relevant policies of the London Plan and the NLP. There would be no conflict with London Plan Policies H4, H6, S1, D3, D4 and D9 and NLP Policies H1, H2, INF8, S1, S6, SP1, SP3 and SP4 as identified in the LPAs decision notice. The appeal proposal would accord with the objectives in the NPPF to deliver a sufficient supply of homes, promote vibrant communities, make an effective use of land and achieve well-designed places.

⁵ 33 of the proposed units would be 3 bedroom – suitable for accommodation by 4, 5 or 6 person households.

⁶ Correspondence from ReSpace Projects, provided 14 November 2024.

Other Matters

Technical Matters

23. At the time the LPA made its decision, there were reasons for refusal on the validity of technical evidence relating to the Urban Greening Factor (UGF), Transport Assessment and Energy Statement. The appellant has provided additional information to confirm the scheme would meet the London Plan UGF Target of 0.4, which has been accepted by the LPA. I have no reason not to arrive at a similar conclusion. Implementation is addressed through a proposed condition below. With regards to the Transport Assessment, further information and updated survey work has been completed to the satisfaction of the LPA to confirm that the proposed car-free approach would continue to be acceptable at the appeal location. This would be consistent with the already consented scheme on the site (under reference 21/00830/FUL). An addendum to the Energy Statement has also been produced to demonstrate that there would be compliance with low carbon design requirements. This would require a carbon offset payment which is addressed below as part of the assessment of the submitted S106 agreement. Taking this all into the account, the appeal scheme would not conflict with Policies G5, T2, T4, SI2 and SI4 of the London Plan or NLP Policies INF2, SC1 and SC2 as identified in the LPAs decision notice.

Heritage

24. Directly opposite the appeal site on Barking Road is Fairbairn Hall, a Grade II listed building. The heritage significance of this late Victorian building is its architectural quality in terms of the neo-Tudor design and detailing, the internal fabric of the building, together with its historical association as a philanthropic "settlement" funded by Mansfield College, Oxford University. The appeal proposal would not harm the building or the ability to appreciate its heritage significance as a former "settlement" or Boys' Club building.
25. In terms of setting, whilst Fairbairn Hall is an imposing, tall 3 to 4 storey building fronting onto Barking Road, it is separated from the appeal site by a busy, wide three lane public highway including broad pavements. As such the proposed height and massing of the appeal building, including the proposed taller 6 storey elements, would not dominate or detract from the scale and architectural quality of the Listed building. There are other tall modern residential buildings within the immediate setting of Fairbairn Hall including the adjacent 4 storey building at No.308 Barking Road and the 5 storey L&Q site under construction at the corner of Barking Road and Tabernacle Avenue, adjacent to the appeal site. Taking account of the height and massing of the Red House (formerly the Northumberland Arms public house) and the emerging L&Q development, the appeal proposal would appropriately assimilate into a grouping of taller buildings opposite Fairbairn Hall on Barking Road. The appeal proposal would represent a significant visual improvement compared to the existing cluttered and unsympathetically modified arrangement of buildings on the appeal site, facing towards Fairbairn Hall.
26. Having regard to the duties imposed by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am satisfied that the appeal proposal, whilst introducing change within the setting of Fairbairn Hall, would not result in any harm to the significance of this designated heritage asset. Consequently, there would be no conflict with Policy HC1 of the London Plan

and NLP Policy SP5 both of which seek to ensure the conservation and enhancement of heritage assets and their settings.

Habitats Regulations

27. The appeal proposal is within 6.2 kilometres of the Epping Forest Special Area of Conservation (SAC) site. As such there would be a likely significant effect arising from residents of the appeal proposal being attracted to visit this large scale natural greenspace for recreation. This would contribute to identified harms on the qualifying features of the SAC site due to visitor pressure and disturbance. There is an agreed mechanism through the Epping Forest SAC Strategic Access Management and Monitoring Strategy (SAMMS)⁷ to secure a proportionate financial contribution on a per property basis to collectively contribute towards ongoing access and management measures at the site⁸. The S106 agreement contains an obligation for the SAMMS payment at £50.26 per property (index linked) prior to the implementation of the development. I am satisfied that the obligation meets the necessary tests, being fairly and reasonably related in scale and kind to the development and necessary to make the development acceptable. With the obligation in place, I can conclude, as the competent authority for the purposes of the Habitats Regulations, that there would be no adverse effect on the integrity of the Epping Forest SAC in allowing the appeal proposal. With the secured obligation for the SAMMS payment mitigating any potential harm on the SAC there would be no conflict with Policy G6 of the London Plan and NLP Policy SC4.

Planning Obligations

28. The submitted S106 agreement would provide for various planning obligations and is submitted in the form of a deed, binding those with an existing and future interest in the land. The agreement allows me to discount any obligation that does not the three statutory tests at Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), which are also set out at NPPF paragraph 58.

29. I have separately dealt with the affordable housing review mechanism and the financial contributions to mitigate the effects of the development on the Epping Forest SAC above and found that these would meet the necessary tests. The appeal proposal would be a car free development, which would be appropriate for its sustainable location within a good PTAL rating. To ensure this, there are obligations to provide three years free membership to a Car Club for each dwelling, together with a £50 credit to incentivise and initiate use. Additionally, there is an obligation to pay £2000 to cover the Council's costs of administering (restricting) applications for parking permits within the controlled parking zone at this location. To further ensure the effectiveness of the appeal proposal as a car free development, a fee to cover the monitoring of the Travel Plan, at £1,500, is provided for. All these obligations are necessary to ensure the proposal would accord with Policies T4 and T6 of the London Plan and NLP Policies INF2 and SP8. The sums of money involved are modest such that they can reasonably be concluded to be fairly and reasonably related in scale and kind to the development.

⁷ Adopted by the London Borough of Newham in 2022.

⁸ For example, path maintenance, fire protection measures, signage, better car park management, wardens and visitor surveys.

30. An index linked contribution of £104,379 is set out for local employment and skills. This sum would be used during the construction phases to employ an appropriate proportion of local labour, including apprentices, as well as engaging local supply chain opportunities. The formula for the contribution is set out in the submitted CIL Compliance Statement from the Council. This demonstrates that the sum would be fair and reasonable. The requirement for the contribution is necessary and directly related to ensure the proposal would comply with Policy E11 of the London Plan and NLP Policies J1 and J3.
31. As set out above, the appeal proposal would represent a high-quality residential development through the considered architectural design of the buildings, including the prospective details and finishes. To ensure this, the S106 contains provisions that in the event that the design/architectural team engaged by the appellant in the conception of the appeal scheme were not involved in its implementation, then the appellant would need agreement from the Council on instructing a suitable alternative architect. If, for whatever reason, a subsequent architect resource cannot be reasonably agreed by the Council, the S106 contains provision to pay the Council a sum of £50,000 (index linked) to monitor compliance with the design quality anticipated of the scheme. In the overall GDV of the appeal scheme, I consider the obligation to be fairly and reasonably related in scale and kind. It would be necessary to ensure the proposal accords with London Plan Policies D4 and D9 and NLP Policies SP3 and SP4 on securing quality urban design, including ensuring tall buildings result in successful places.
32. The S106 also contains an obligation to contribute towards carbon offsetting as part of securing a low carbon design. Again, the Council's CIL Compliance Statement sets out the formula for how this is calculated and as such the obligation would be fairly and reasonably related in scale and kind. The obligation is necessary to ensure the proposal accords with Policies SI2 and SI3 of the London Plan and NLP Policies SC1 and SC2.
33. Finally, there are obligations to cover the Council's costs for monitoring and implementing the Deed. This is permissible under the amended CIL Regulations and confirmed in the PPG at paragraph 23b-036-20190901. The index linked sum of £4,000 is necessary and reasonably reflects officer time/costs to monitor compliance with the breadth of obligations contained within the Deed.
34. I am satisfied that all of the above planning obligations accord with the three tests in CIL Regulation 122. Therefore, I have taken these qualifying obligations into account.

Conclusion and Conditions

35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permissions be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst the proposal would not provide an affordable housing contribution, it would nonetheless, through detailed viability evidence, accord with London Plan Policy H5 and NLP Policy H2. In all other respects the appeal proposal would accord with the relevant development plan policies. On this basis I conclude that the appeal proposal would amount to sustainable development, for which there is a presumption in favour of.

36. I have taken into account all other matters raised, but there is nothing indicate other than that the appeal should be allowed, subject to the conditions explained below.
37. The LPA and the appellant provided⁹ what were presented as 'agreed' proposed conditions which are regarded as necessary were the appeal to be allowed. I have considered these in light of the content of the Planning Practice Guidance (PPG) on the use of conditions and paragraphs 56 and 57 of the NPPF. A number of the proposed conditions are necessarily required to be discharged at the pre-commencement stage. The appellant confirmed their written consent in relation to pre-commencement conditions in accordance with Sections 100ZA (4-6) of the Town and Country Planning Act 1990 (as amended) in an email dated 22 November 2024.
38. In addition to the standard time limit condition (1), a condition (2) requiring the development is carried out in accordance with the approved plans is needed in the interests of proper planning and for avoidance of doubt. I have amended proposed condition (2) to remove the long list of various supporting documents. The decision above describes the approval as "in accordance with the terms of the planning application Ref 24/00192/FUL". This would encompass all relevant documents provided as part of the planning application process. Other conditions and the S106 agreement reflect more recent documents submitted as part of the appeal.
39. In the interests of protecting the amenities of nearby residents and highway safety conditions (3 & 4) requiring a construction logistics plan and a construction and demolition environmental management plan are both necessary. Logically, these are necessarily pre-commencement conditions to secure the necessary safeguards to public health and safety, including for all users of the public highway, especially on Barking Road and Chargeable Lane. A further precautionary condition (5) is necessary to address any potential land contamination on this previously developed site, again this is necessarily a pre-commencement condition in order to protect neighbouring residents, future occupiers of the site and the wider environment. To ensure the development of the site does not exacerbate flood risk elsewhere a condition (6) requiring details of a Sustainable Urban Drainage System is necessary, as per Policy SI13 of the London Plan and NLP Policy SC3 and NPPF paragraph 181. Again, this is required as a pre-commencement condition so that it can be designed and detailed prior to construction.
40. A condition (7) requiring an appropriate approach to archaeological investigation is required so that any potential unidentified heritage assets on the site can be appropriately recorded. Again, this is necessarily a pre-commencement condition so that unintentional harm is avoided and appropriate arrangements for recording are established. Condition (8) is necessary to ensure that any scheme for piling has appropriate regard to underground utility infrastructure. To ensure the development appropriately avoids damage to subsurface infrastructure this is necessarily a pre commencement condition. I have amended the incomplete wording of the proposed condition as provided so that it is clear what is required. A further condition (9) requiring details of a waste and recycling plan to demonstrate how waste and refuse would be safely collected from the appeal proposal is

⁹ Via email of 14 November 2024

required in the interests of highway safety and public amenity. These details are necessarily required at the pre commencement stage to ensure that the design and layout of the scheme is practicable on this matter.

41. Notwithstanding, the approved plans, separate conditions (10, 11, 12, 13 and 27) relating to materials, landscaping and other design details are all necessary to ensure a satisfactory appearance and that the scheme results in a high-quality, well-designed development that adds to the overall quality of the area. Whilst a play area is shown on the approved plans, a separate condition (21) requiring details of the equipment and boundary treatments is necessary to ensure a high quality play area is secured.
42. To protect the amenity of existing and future residents on the appeal site and neighbouring residences, a condition (14) requiring a noise report and a separate condition (15) requiring an acoustic report to demonstrate that operational machinery on the development adheres to an appropriate background noise level are both necessary. For similar reasons, a condition (19) requiring demonstration that sound insulation between the residential and non-residential elements of the proposed scheme will be effective, is required.
43. To ensure the appeal development optimises its sustainable location and car free credentials, a condition (16) requiring details of cycle parking facilities is required prior to first occupation. Given the pedestrian environment around the appeal site, a condition (17) requiring detailed demonstration of how deliveries and other servicing would be implemented is necessary in the interests of highway safety. To comply with development plan policy¹⁰ and to ensure the proposed community use is energy efficient, a condition (18) requiring confirmation that BREEAM 'excellent' rating is necessary prior to first use of the proposed non-residential element. To ensure the proposed community element serves its intended function a condition (20) requiring details of its accessibility to community is required, including a periodic review mechanism.
44. In terms of ensuring the appeal development functions well over its lifetime, a condition (22) requiring details of the final positioning of solar panels and a condition (23) demonstrating that the appeal scheme would meet the principles of 'Secured By Design' are both necessary prior to first occupation. For similar reasons and notwithstanding the approved plans, conditions (24 and 25) are necessary to ensure that the residential development is constructed to the required M4(2) and M4(3) optional technical standards for accessibility as per development plan policy at London Plan Policy D7 and NLP Policy H1.
45. Given the proximity of nearby residential properties, a condition (26) to control the hours of construction and deliveries is necessary to protect the amenities of these residents. Finally, a condition (28) relating to requiring post implementation details that the urban greening factor has been achieved or that alternative arrangements need to be secured is necessary for compliance with development plan policy¹¹.

David Spencer

Inspector.

¹⁰ NLP Policy SC1

¹¹ London Plan Policy G5

SCHEDULE OF CONDITIONS

1. The development hereby approved must be commenced no later than the expiration of THREE YEARS from the date of this permission.
2. The development hereby approved shall only be carried out in accordance with the approved plans and documents listed below:

Drawings

A-P-EX-01 Location Plan
A-40-1-00-00 Site Plan
A-40-1-00-01 Site Ground Floor
A-40-1-00-02 Site Basement
A-40-1-00-10 Unit Types
A-40-1-01-00 Tabernacle Avenue Basement
A-40-1-01-01 Tabernacle Avenue Ground Floor Plan
A-40-1-01-02 Tabernacle Avenue First Floor
A-40-1-01-03 Tabernacle Avenue Second Floor
A-40-1-01-04 Tabernacle Avenue Third Floor
A-40-1-01-05 Tabernacle Avenue Fourth Floor
A-40-1-01-06 Tabernacle Avenue Fifth Floor
A-40-1-01-07 Tabernacle Avenue Roof Plan
A-40-1-02-00 Chargeable Lane Basement
A-40-1-02-01 Chargeable Lane Ground Floor
A-40-1-02-02 Chargeable Lane First Floor
A-40-1-02-03 Chargeable Lane Second Floor
A-40-1-02-04 Chargeable Lane Third Floor
A-40-1-02-05 Chargeable Lane Fourth Floor
A-40-1-02-06 Chargeable Lane Fifth Floor
A-40-1-02-07 Chargeable Lane Roof Plan
A-40-2-01-01 Section A-A
A-40-2-01-02 Section B-B
A-40-2-02-01 Section C-C
A-40-3-00-10 Street Elevations
A-40-3-01-01 Tabernacle Avenue South Elevation
A-40-3-01-02 Tabernacle Avenue North Elevation
A-40-3-01-03 Tabernacle Avenue West and East Elevations
A-40-3-02-01 Chargeable Lane South Elevation
A-40-3-02-02 Chargeable Lane North Elevation
A-40-3-02-03 Chargeable Lane West and East Elevations
A-40-4-01-01 T0.05, T0.06 Unit Floor Plans
A-40-4-01-02 T0.02 Unit Floor Plans
A-40-4-01-03 C0.07 Unit Floor Plans
A-40-4-01-04 T2.02, T2.05 Unit Floor Plans
A-40-4-01-05 C2.07, C2.08 Unit Floor Plans
A-40-5-01-01 M4(3) Units Tabernacle Avenue
A-40-6-01-01 Barking Road East Elevation Materials
A-40-6-01-02 Tabernacle Avenue South Elevation Materials
A-40-6-02-01 Chargeable Lane North Elevation Materials

A-40-6-02-02 Chargeable Lane South Elevation Materials
06-909-501 Rev B – Hard and Soft Landscape Proposals
06-909-701 Rev B – Soft Landscape Proposal
06-909-801 Rev D – Hard Landscape Proposal

3. The development hereby approved shall not commence unless and until a Construction Logistics Plan (CLP) has been submitted to and approved in writing by the Local Planning Authority. The CLP shall include details of the following:
- site access and exit arrangements including road cleaning and wheel washing facilities and sweptpaths where required;
 - parking of vehicles of site personnel and visitors;
 - storage of plant and materials used during construction activities;
 - details of disposal of waste arising from the construction programme, including final disposal points (the burning of waste on the site at any time is specifically precluded);
 - a survey of the existing conditions of adjacent public highways;
 - an assessment of the cumulative impacts of construction traffic, including details of construction phasing, the likely volume of construction trips and any mitigation measures;
 - vehicular routes, booking systems and an assessment for the scope of consolidating loads to reduce generated road trips;
 - proposed temporary access and parking suspensions and any temporary access and parking solutions required; and,
 - Site compound arrangements including arrival of vehicles, parking, loading, storage and waste arrangements; methods for protection of adjacent highway infrastructure.

Works shall be carried out in accordance with the approved CLP.

4. The development hereby permitted shall not commence unless and until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include details of:
- air pollution control measures compliant with the GLA SPG on 'The Control of Dust and Emissions During Construction and Demolition'. Specifically:
 1. an 'air quality and dust management plan'
 2. monitoring proposals
 3. Non-road mobile machinery emissions including registration of the site at the GLA web site: <https://www.london.gov.uk/what-we-do/environment/pollution-and-air-quality/nrmm>
 - An assessment of all matters as are likely to cause nuisance to adjoining occupiers (including but not limited to; noise, vibration, dust, smoke, odour control) accompanied by mitigation measures addressing all matters relevant to the site.
 - For the control of noise, reference shall be had to BS 5228 'Code of practice for noise and vibration control on construction and open sites'

- Hours of work on the site shall be 08:00-18:00 Monday to Friday; 08:00-13:00 Saturday and at no time on Sundays or Public Holidays.
- Community liaison to give clear information to residents and others in advance in writing about potential disturbances/disruptions from i.e. noise, dust, or disruption of traffic, incidents, etc
- Any other bespoke requirement.

The development shall be undertaken at all times in accordance with the approved Construction Management Plan.

5. In respect of land contamination:

- A) No development (except for demolition works) shall commence unless and until an investigation into ground conditions is undertaken in accordance with government guidance: Land Contamination Risk Management.

See <https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm> .

The report of the investigation and proposals for any remediation required shall be submitted to and approved in writing by the Local Planning Authority prior to construction works.

- B) All works shall be carried out/implemented in accordance with the details approved.
- C) As soon as reasonably practicable and before the occupation of any remediated area of the site, a validation report shall be submitted and approved by the Local Planning Authority in writing, demonstrating that remediation works were undertaken and completed in accordance with the approved remediation strategy.

6. In respect of Sustainable Urban Drainage Systems:

- a) The development hereby permitted shall not take place until a fully detailed surface water management scheme for the site has been submitted to and approved in writing by the Local Planning Authority.
- b) Post development peak runoff shall be restricted to a maximum of 2 l/s and to 1 l/s (long term storage volume) for all storm events up to and including the 1 in 100 year with an additional 40% allowance for future climate change.
- c) A completed 'London Sustainable Drainage Pro-forma' (Newham LLFA drainage pro-forma https://www.newham.gov.uk/public-health_safety/emergency21/plansadvice/4?documentId=185&categoryId=20023) shall be completed and submitted for approval before beginning of development.
- d) Detail of drainage scheme ownership, management and maintenance arrangements shall be submitted to the Local Planning Authority for approval before site occupation.

e) The development shall only be implemented in accordance with the approved detail.

f) A verification report demonstrating what works were undertaken and that the drainage scheme was completed in accordance with the approved surface water management scheme shall be submitted and approved by the Local Planning Authority in writing before site occupation.

7. No demolition or development shall take place until a stage 1 written scheme of investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works.

If heritage assets of archaeological interest are identified by stage 1 then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include:

A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works

B. Where appropriate, details of a programme for delivering related positive public benefits

C. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.

8. No piling shall take place until a PILING METHOD STATEMENT (detailing both the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
9. Prior to the commencement of the development hereby permitted, a detailed waste and recycling plan shall be submitted to and approved in writing by the local planning authority. Details shall include but not be limited to:
- the pull distance measured from the furthest point within the storage/collection area to the loading position at the back of the collecting vehicle.
 - Swept path analysis of the 180 degree turn in Tabernacle Avenue.
10. Above ground works shall not commence unless and until samples of the materials to be used in the construction of the external surfaces of the buildings hereby approved shall be submitted to and approved in writing by

the Local Planning Authority, with reference to Newham Design Review Panel where appropriate. This shall include a full size mock up façade panel for each block to be erected (on or off-site) for inspection to be approved in writing by the Local Planning Authority. This should include as a minimum typical window bay and surrounding brickwork/detailing. The development shall be carried out in accordance with the approved details and permanently retained thereafter.

11. Prior to the commencement of facade works, detailed drawings plan/section/elevation at 1:20 of the following shall be submitted to the Local Planning Authority for approval in writing:

- Typical window (reveal, header, sill);
- Doors and communal entrances;
- Canopies, boundary walls and railings;
- Typical Balcony/balustrade; and
- Parapets.

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

12. Prior to their installation, full details of glazing specifications for any bathrooms or w/c's shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and permanently retained thereafter.

13. Prior to the installation of hard and soft landscaping, a scheme of landscaping, detailing hard and soft landscape works, details of any lighting, landscape features or artworks, furniture, shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme as approved shall be carried out in the first planting season following the completion of the development hereby approved. Any trees, shrubs or plants that die within a period of five years from the completion of the development or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation.

14. Prior to the commencement of any above ground works on the development hereby permitted a noise report, including an external environmental noise survey and identification of noise mitigation measures, shall be submitted to and approved in writing by the Local Planning Authority demonstrating:

- good acoustic design of the development in line with the current ProPG: Planning and Noise, New Residential Development (May 2017);
- internal noise levels of the units comply with the requirements specified in BS8233 and WHO Community Noise guidance;
- external amenity areas have been designed according to BS8233 and ProPG.
- overheating has been considered in line with Building Regulation Approved Documents O: Overheating

Following detailed design and prior to its installation, details of all noise and overheating mitigation measures, demonstrating compliance with this condition, shall be submitted and approved in writing by the Local Planning Authority

The scheme as approved shall be installed prior to first occupation of the development hereby permitted and permanently maintained thereafter.

15. Prior to the installation of any mechanical plant associated with the development hereby permitted, an acoustic report demonstrating that at all times the operational plant on site shall not give rise to a BS4142 rating level greater than 10 dB below the background noise level at the nearest or worst affected property, shall be submitted to and approved in writing by the Local Planning Authority.

The scheme as approved shall be installed and permanently maintained thereafter.

16. Prior to occupation of the development, details for the provision of secure, integrated, and accessible cycle parking facilities in respect of that building shall be submitted to and approved in writing by the Local Planning Authority. Such provisions shall be made/constructed prior to the first occupation of the relevant building(s) and shall thereafter be made permanently available for the occupants of the relevant building(s).

17. No part of the development hereby permitted shall be first occupied unless and until a Delivery and Servicing Plan has been submitted to and approved in writing by the Local Planning Authority.

The development shall only be constructed in accordance with the approved details.

18. Prior to the occupation of the non-residential elements of development hereby approved, details of the final Building Research Establishment (BRE) certificate confirming that the development design for the relevant part of the permanent buildings each achieve a minimum BREEAM rating of 'EXCELLENT' in respect of the relevant unit shall be submitted to and approved in writing by the Local Planning Authority. The BREEAM Post Construction Assessment for Offices or Retail, whichever is relevant, shall be carried out on a sample of the relevant part of the development in accordance with an agreed methodology to ensure that the required rating has been achieved and can be maintained.

19. Prior to the occupation of any part of the development hereby permitted a report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates that sound insulation installed within the development meets the following standards:

Between residential and non-residential uses:

International Organization for Standardization Noise Rating curves (NR):

NR 25 in bedrooms (2300 to 0700)

NR 30 in all habitable rooms (0700 to 2300)

If there is a distinguishable tone the NR curves should be reduced to NR 20 and NR 25 respectively.

Noise Rating curves should be measured as a 15 minute linear Leq at the octave band centre frequencies 31.5 Hz to 8 kHz.

The scheme as approved shall be permanently maintained thereafter.

20. Prior to occupation of the commercial premises hereby permitted a Community Access Scheme shall be submitted to and approved by Local Planning Authority in writing. The Scheme shall include (but not be limited to):
- details of community access to community facilities to members of the public; details of the number of hours any community facility will be open and available for use by members;
 - of the public per week;
 - details of any proposed charges for the use of community facilities; and,
 - details of how the community facilities will be managed when open to members of the public.

The approved Community Access Scheme shall be implemented upon occupation of the development hereby permitted, and the applicant must notify the Local Authority of the date of occupation.

Following implementation of the approved Community Access Scheme, a report shall be submitted to the Local Planning Authority annually on 1 June, reporting on the performance and or compliance with the approved scheme during the previous calendar year.

The approved Community Access Scheme shall be reviewed not later than the 1st and 4th anniversary after its introduction and every 5th year thereafter. The reviews shall be submitted to the Local Planning Authority within 3 months of such review dates for approval and implemented on such approval.

21. Prior to the construction of the play areas hereby approved, a scheme detailing the play equipment, boundary treatment and ground surface area treatment of the outdoor play spaces shall be submitted to the local planning authority and approved in writing. The play equipment will be designed to be fully inclusive to ensure the areas are accessible to all and will be implemented upon occupation of the relevant part of the development in accordance with the approved plans, to be retained permanently thereafter.
22. No part of the development hereby permitted shall be first occupied unless and until details of the final location/positioning of photovoltaic (PV) Solar Panels are submitted to and approved in writing by the Local Planning Authority. These details shall accord with the details within the approved Energy and Sustainability Statement, prepared by MES Building Solutions (July 2020).

The development shall only be constructed in accordance with the approved details.

23. Prior to the commencement of the development hereby permitted, details of the measures to be incorporated into the development demonstrating how the principles and practices of the 'Secured by Design' scheme and local crime prevention measures have been included within the design and build shall be submitted to and approved in writing by the Local Planning Authority. Once approved in writing by the Local Planning Authority in consultation with the Metropolitan Police Designing Out Crime Officers, the development shall be carried out in accordance with the agreed details and maintained thereafter.

Prior to first occupation or public use, a SBD certificate or letter from Metropolitan Police Designing Out Crime Office showing full compliance to the agreed detail will be required.

24. 90% of the residential units hereby approved shall conform to the requirements of Category M4(2) ['Accessible and Adaptable Dwellings'] of Schedule 1 to the Building Regulations 2010 (HM Government 2015).
25. 10% of the residential units hereby approved shall conform to the requirements of Category M4 (3) ['Wheelchair User Dwellings'] of Schedule 1 to the Building Regulations 2010 (HM Government 2015).
26. No construction or building works shall be carried out on the site except between the hours of 0800 and 1800 on Mondays to Fridays and between 0800 and 1300 on Saturdays. No works shall be carried out on Sundays and bank/public holidays.
- Deliveries of construction and demolition materials to and from the site by road shall take place between the hours of 0800 and 1800 Monday to Friday and between 0800 and 1300 on Saturday and at no other time.
27. No rainwater pipes, vents, flues or grills other than those shown on the approved plans shall be installed without the consent of the Local Planning Authority.
28. Within 3 months of implementation of the approved soft landscaping schemes, an Urban Greening Factor Statement shall be submitted to and approved by the Local Planning Authority, confirming the minimum UGF score of 0.4 can be achieved, and any alternative planning arrangements to be proposed.

Schedule ends.