



Appeal Decision

Site visit made on 20 May 2025

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2025

Appeal Ref: APP/U5360/W/24/3350984

92-96 Curtain Road, London EC2A 3AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Nisal Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/1118.
 - The development proposed was originally described as part retention, part reconfiguration and part redevelopment to provide a mixed-use scheme, increasing the Class E commercial floorspace (from 199 sqm to 288 sqm GIA) and Class C3 residential dwellings (from 9 to 13 homes), associated landscaping and cycle parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A different description, to that used in the header above, was given on the appeal form and decision notice. However there is nothing inaccurate in the original description used on the application form, and so I have used that.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the character and appearance of the South Shoreditch Conservation Area (SSCA), the non-designated heritage asset (NDHA) on the site, and the setting of a nearby listed building;
 - ii) whether the proposal would provide an appropriate amount of commercial floorspace;
 - iii) whether the proposal would provide a suitable mix of housing;
 - iv) the effect of the proposal on the living conditions of the occupiers of neighbouring properties with respect to their privacy;
 - v) whether the proposal would provide acceptable living conditions for its future occupiers with respect to accessibility, internal living space, light, and privacy;
 - vi) whether the proposal would provide appropriate facilities for waste;
 - vii) whether the proposal would provide appropriate facilities for cycle parking;
 - viii) the effect of the proposal on flooding; and
 - ix) whether the proposal would provide appropriate contributions towards affordable housing and carbon offset.

Reasons

Character and appearance

4. The appeal site accommodates two distinct parts. The first part is a terrace of three properties fronting Curtain Road with commercial use at ground floor (and associated basements) and five residential units over three floors above. The second part is an 'L' shaped building to the rear, separated from the front part by a central courtyard, and accommodates four flats over two floors.
5. It is located in a dense urban area, with residential flats to the rear and ground floor commercial units to each side along the Curtain Road frontage. Opposite the site, at 40 Great Eastern Street, is a Grade II listed building, and below ground at the site are the remains of The Theatre, which is a scheduled ancient monument. The buildings at the site are on the 'local list' and so constitute Non-Designated Heritage Assets (NDHA).
6. The NDHA generally date from the mid-19th century and were originally in use in connection with the furniture trade that was based around this area of London at that time. The frontage buildings were in use as shops with accommodation above, whilst the rear building was used as a workshop and sawmill, and the courtyard as a timber yard. A brick chimney within the rear building, which served a boiler which powered wood cutting equipment, remains. In addition, the buildings have retained their original footprint and some of their original fabric, and parts of the cobbled courtyard and undercroft access to it are also still in situ. The ground floor level shopfronts are modern alterations as is the timber faced first floor extension to No 96. Mansard roof extensions have been provided at all three frontage buildings. It is also recognised that both buildings at the site have been subject of numerous alterations, particularly internally.
7. However, the hierarchy of the taller public facing building at the front with the lower more industrial building to the rear is distinctive and, with the cobbled courtyard, is redolent of its historic use. Moreover, both the frontage and rear buildings are considerably shorter than their neighbours. These factors, along with the retained layout of the site, contribute strongly to the significance of the NDHA. Furthermore, in addition to the contrasting heights when seen in the Curtain Road street scene, the contrast between the façade of the frontage buildings above ground floor level, with the buildings at the appeal site having smaller and fewer windows than the buildings to either side, is stark. This allows the extensive use of yellow London stock brick to dominate. The distinctiveness of the brick façade also contributes to the significance of the NDHA.
8. The proposal, at the front, would involve new shopfronts of a more traditional design, replacing the windows with traditional sash windows with brick lintels and stone cills, and the removal of the first floor timber clad extension. The eaves level would be maintained and brickwork would remain, as would the cobbled undercroft passageway. The existing mansard roof extensions would effectively be replaced with a part two storey/part three storey extension set back marginally behind the existing parapet wall and with the third storey above Nos 92-94 set back further into the site. This rooftop extension would largely be finished in zinc and quartz with a section of timber framed glazing.
9. The provision of two complete storeys, in contrasting contemporary materials, would compete with the retained brick façade below such that it would no longer

predominate and its significance would be severely diminished. Indeed, the extension would appear far more prominently than the existing mansards, which are set further back from the frontage. The very top floor at No. 92-94 would not be likely to be appreciated from street level and I accept that the resultant building would remain to be subservient to the buildings to either side in terms of its height and, with respect to 96a, by being set back slightly behind it. However the greater height of the resultant building means that subservience is reduced, and the development would appear as a disproportionately large and prominent extension. Whilst I understand the materials are intended to provide a contrast to the host and neighbouring buildings, they accentuate the prominence of the extension.

10. My attention was drawn to other buildings nearby where upward extensions have been granted permission. The extensions at Nos 96a, 131 and 151-153 Curtain Road and at Coronet Street, Provost Street, and East Road/Vestry Street all retain the prominence of the brick façade on their lower floors. The development at French Place is a much smaller scheme overall. The development at 141-145 Curtain Road does involve a substantial and prominent three storey extension on top of a brick building below. However as that building is not locally listed, less bearing can be given to its significance and the value of its existing design and scale. As such, none of these examples are directly comparable to the current proposal.
11. At the rear, the proposal would involve renovating the western arm of the building with its form remaining largely as it is. The northern arm would be rebuilt and increased from two storeys to five. Its design would take little influence from the existing building or that part being retained. Moreover, the extension, at five storeys high, would compete with the frontage building, and views of the chimney from within the courtyard would be lost.
12. It is appreciated that the chimney, the cobbled passageway and the courtyard would be retained and that the scheme would allow for views of the chimney from some flats. Nonetheless, the vertical scale of the northern arm extension would result in the loss of subservience to the frontage building and so would considerably harm one of the key characteristics of the NDHA and its significance.
13. I recognise that in previous appeals¹, the Inspector found no harm to the significance of the buildings on site. However the Council advise that at that time they were Buildings of Townscape Merit which is a lower level of value than they are now. As their significance is greater now, they are more sensitive to harm.
14. Turning to the South Shoreditch Conservation Area (SSCA), its significance is largely informed by the former furniture and printing trade and the buildings that served those trades including large showroom-warehouses and smaller workshops.
15. The SSCA Appraisal and Management Plan specifically identifies the buildings at the appeal site as positively contributing to the historic interest of the area and that they are a good example of a mixed light industrial and housing use in the area. The Appraisal also refers to the threats to the SSCA and sets out that many upward extensions have been set back from parapets ensuring subservience or even that they are hidden from view. This would not be the case in the proposal. Also, the Appraisal identifies that the townscape is characterised by a variety in building heights. Although the proposal would preserve a degree of difference in building

¹ Refs APP/U5360/W/17/3183396 & APP/U5360/W/17/3183397

heights between the buildings to either side, the difference would be reduced. The reinstatement of more historically appropriate shopfronts is supported by the appraisal. Nonetheless overall, the development would cause harm to some of the key characteristics of the SSCA and therefore would adversely affect its significance.

16. The harm to the SSCA would be less than substantial but still of a moderate level. There would be some public benefits including heritage benefits such as the works to reinstate No 96 as a separate unit, removal of the timber clad first floor extension to No 96, more traditional shop fronts and window design, increased appreciation of archaeological work, and increased views into the courtyard from Curtain Road. In addition, wider public benefits include the provision of additional dwellings, a contribution towards affordable housing and carbon offset in the Borough, greater quantity and quality of commercial floor space, more landscaping in the courtyard, improvements to surface water discharge rates and an improvement to the energy efficiency of the buildings. However these are all small-scale benefits in terms of the physical works to the buildings and in terms of the modest increase in dwellings and commercial floorspace. They do not outweigh the great weight that should be given to the conservation of the SSCA.
17. The Council do not consider there to be any harmful impact on the setting of the Grade II listed building opposite. Given the significance of that building primarily stems from its architectural appearance, its setting in an urban environment plays little part in its significance. In any case, the development would preserve the urban setting so could have no adverse impact on the significance of that heritage asset. The Council also consider there would be no harm to the scheduled ancient monument, and with appropriate conditions in place, I have no reason to consider otherwise.
18. In summary, the development would harm the character and appearance of the SSCA and the NDHA. It would therefore fail to accord with policy HC1 of the London Plan (2021) ('LP') which seeks to ensure that development conserves the significance of heritage assets, and policies LP3 and LP4 of the Hackney Local Plan (2020) ('HLP') which say that development involving less than substantial harm to a heritage asset will not be permitted unless the public benefits outweigh the harm, and that development specifically affecting NDHA should conserve and reveal the significance of the asset. It would also conflict with LP policy D3 and HLP policies LP1 and LP17 which together require development to be of high quality design and respond to local character and context.

Office space

19. The site is located within a Priority Office Area (POA) as designated in the HLP, and the Central Activity Zone (CAZ) as set out in the LP. Policy LP27 of the HLP refers to development within the POA and sets out that new development must be employment led where B1 Use Class² is the primary use, subject to viability. The policy goes on to add that within the Shoreditch Action Area Plan (SAAP) area, within which the site is located, 60% of the floorspace across the whole area should be employment floorspace. The SAAP is still in draft form, but policy NO2 within that document also advises that office space should comprise at least 60% of floorspace within all development.

² Now Class E Uses

20. Although the development would provide an increase in commercial floor area (primarily at basement level) of around 45%, only 22% of the development's floor area in total would be within Class E use. I have no evidence regarding the amount of employment floorspace across the SAAP area. Nonetheless even if 60% across the whole of the SAAP area is achieved, that is a minimum requirement and it does not negate the need for the development to be employment led with Class E being the primary use. By representing only 22%, the employment floorspace in the scheme would conflict with policy LP27.
21. However the requirement is subject to viability. The appellant has provided an assessment showing that a scheme providing 60% would not be viable. Indeed it shows that it would only be viable for 32% of the floorspace to be in commercial use, and even at that proportion there would be no developer profit. However, aside from the need to provide developer profit, I see no reason why a proportion of office space greater than the 22% proposed would not be viable.
22. The marketing evidence suggests currently there is significant competition and high levels of vacancy rates locally for office space, particularly for properties under 3,000sqft. However the development, at 3099sqft, would provide more than that. In addition although the evidence advises against the provision of additional commercial space behind the frontage building, it does not consider the use of the upper floors of the frontage building, which would not suffer from the same disadvantages highlighted for commercial space to the rear. There is no evidence to demonstrate the development could not provide commercial floorspace at first floor.
23. It is recognised that the development would provide an enhanced quality of commercial floorspace compared the existing provision, and that residential uses, as part of a mixed use scheme, are not discouraged. Nonetheless, the predominance of the residential element in this proposal would mean the development is not employment led.
24. Overall, the commercial floorspace provided would fall short of the policy requirement, and I am not satisfied that the evidence provided justifies the development. As such the development would fail to accord with HLP policies LP26 and LP27 which require development within POAs to be office led. It would however accord with LP policies SD4, SD5 and E1 which generally support an increase in office accommodation.

Housing mix

25. Policy LP14 of the HLP sets out that a third of the market units on developments should be 3 beds or more. In the proposal, only two of the 13 proposed would meet the criteria, which is around half that is necessary.
26. The appellant suggests that the fabric of the building inhibits the feasibility of providing more larger units. However the plans show that existing doorways at first and second floors between Nos 96 and 94 would be closed up. Although I recognise the heritage benefits for this, were this not to happen, larger, albeit fewer, units could result. I have no clear evidence to suggest fewer residential units would make the proposal unviable. Moreover, there is likely to be even more potential in the rear building to provide larger units given how little existing fabric of that building would remain.

27. I recognise that the site has excellent accessibility to public transport and is in a highly commercial area. However, I see no reason why that renders the site more suitable for smaller units than family units. Moreover the proposal would provide more family units than currently exists and more two bedroom units, which is supported by policy LP14. Nonetheless the failure of the proposal to provide a sufficient number of family units results in it having an inappropriate housing mix to reflect the diverse housing needs in the Borough and there is no robust evidence to support the provision of fewer family units. It would hence conflict with HLP policy LP14 as set out above and LP policy H10 which also requires development to provide an appropriate mix of unit sizes.

Living conditions – neighbours

28. In the rear building, units 7 and 9 would be located at second and third floor levels respectively, and unit 13 would be a duplex unit split over floors four and five. Units 7 and 9 would include small balconies on their front elevations accessed via patio doors. Unit 13 would have a larger roof terrace on its front, again accessed via patio doors.
29. The adjacent building at 7, New Inn Broadway is a six storey building which appears to accommodate flats. At the time of my site visit there was scaffolding covering the rear elevations of the building, but there did appear to be balconies at most of the flats, and these are shown on the plans. This neighbouring building and the proposal abut the common boundary and, from the plans, the distance between the neighbouring balconies and those proposed would be around three metres. Although these balconies would not directly face each other, clear views would be possible into the neighbouring dwellings and at such close distance such that the occupants of the flats would suffer a severe loss of privacy.
30. It is noted that the boundary wall would extend up to the level of unit 7, which may inhibit the view from this unit. Nonetheless from the plans, particularly the proposed section CC drawing, a view over it into the corresponding neighbouring flat at this level would be possible.
31. Likewise a balcony at unit 11 would be approximately 3 metres from the windows in the north elevation of the adjacent building at Nos 86-90 which I also understand to be in residential use. There would be a slight difference in floor levels such that the proposed balcony would not be directly level with the neighbouring windows. Nonetheless it would still provide a close view down into the flat at second floor level and up slightly into the flat at third floor.
32. Privacy screens, as shown on the appellant's annotated plans, could assist in reducing the overlooking impact. However, I consider the screens would need to be more extensive than shown because of the proximity and angle of the view. Such screens could affect light received by the rooms they would serve. This, along with the number of them that would be needed, lead me to consider that it would be a fundamental alteration to the scheme that could not be addressed by condition.
33. A degree of overlooking to nearby flats already exists from the external staircase behind No 96. However this staircase is primarily a route of access and is unlikely to be used for sitting out, as the proposed balconies could. In any case, the proposed staircase would offer a similar opportunity for overlooking, with the views from the balconies being an additional source of overlooking.

34. As such, the development would most likely compromise the privacy of the occupiers of neighbouring dwellings. This would unacceptably harm their living conditions. It would therefore conflict with LP policy D3 which states that development should deliver appropriate privacy and HLP policy LP2 which specifically seeks to ensure that development does not have a significant adverse effect on the amenity of neighbours including through visual privacy.

Living conditions – proposed units

35. Policy D7 of the LP identifies that at least 10% of the units should be 'wheelchair user dwellings'. Unit 1 in the proposal would meet this requirement, which only amounts to 8%. However I acknowledge the appellant's suggestion that the duplex unit 2 could be readily adapted so as to include a lift making it accessible for wheelchair users. Such internal details could be secured by condition and would ensure the 10% requirement is met.
36. Notwithstanding that, LP policy D5, which also relates to inclusive design, requires development to be able to be accessed easily and without additional undue effort, taking account of London's diverse population. The development would provide two four bed units at fourth floor level. These would be more suitable for families, which could include young children in prams or pushchairs, than any of the one or two bedroom units on the floors below. I accept that the provision of a lift up to the fourth floor in the front building would be an inelegant solution, given the spatial constraints within the building and in the courtyard, and the likely visual impact this would have. Nonetheless I see no reason why lift access within the rear building could not be provided, particularly as little remaining fabric of that building would remain, nor why family units could not be closer to ground level where accessibility would be easier.
37. Turning to internal space, LP policy D6 gives minimum sizes for dwellings and the bedrooms within them, based on their occupation. From the measurements given on the plans, all the flats meet the minimum sizes given in the policy. In particular, although the Council consider units 3, 4, 8, 10 and 13 could accommodate an extra person each, the plans show that the smallest bedroom in each unit would not meet the minimum size for a double bedroom, so should be considered as a single bedroom. There are no measurements shown for unit 2, but the second bedroom is clearly smaller than some of the single bedrooms in other units. As a result the development would provide sufficient internal living space for its future occupants.
38. With respect to outlook, units 1 and 2 at ground floor level would have habitable rooms that would be served by windows facing into the courtyard. The courtyard is bounded, to its north side, by the flank wall of the adjacent building at No 96a. This wall is substantial in terms of its height and depth and the outlook from units 1 and 2 would be poor because of it. Indeed the appellants Sunlight and Daylight Amenity Report shows that these ground floor windows and the rooms they serve would receive substandard amounts of light.
39. However, unit 2 would result from the renovation of flat G so would maintain the same outlook. Furthermore the outlook from unit 1 would be better than that from flat F as it would have larger windows and the existing external staircase which serves the first floor flats, would be removed. Moreover it is unlikely, given the high rise nature of the surrounding buildings, that any residential accommodation at ground floor level would receive the recommended amounts of daylight. Overall,

given the existing development on site and the urban context, I do not consider the development would fail to provide an unacceptable outlook for its future occupiers.

40. The Council refer to overlooking between units in their reasons for refusal and in the officer report they consider the relationship between units 3 and 4, units 7 and 8, and units 9 and 10 would fail to provide the occupiers of those units with sufficient privacy. However they accept that obscure glazing could be used to mitigate that effect.
41. In summary, although the development would provide acceptable internal living space and outlook, and satisfactory privacy and wheelchair access could be achieved subject to further details, it would fail to provide inclusive access for occupiers of its family sized units. As such there would be conflict with LP policy D5 and HLP policy LP1 which together seek to ensure that development is inclusive and accessible. It would also conflict with the Mayor of London's Housing Supplementary Planning Guidance ('SPG') which supports inclusive residential development, and HLP policy LP17 which requires adherence to the SPG. There would be no direct conflict with LP policy D6 insofar as the proposal would provide sufficient internal living space, or LP policy D7 insofar as 10% of the units could be wheelchair user dwellings.

Waste

42. The plans indicate a bin store area with space for two 1100L bins and a 140L food waste bin. The Refuse and Recycling Storage Requirements (2021) indicate that for the 13 flats there would be a need for waste storage capacity of 1025L for residual waste and 1675L for dry mixed recyclable waste as well as a 140L food waste bin. As such, the development would fail to provide sufficient capacity for dry mixed recycling waste, and given the tight constraints of the waste storage area shown, I could not be confident that a larger or additional bin to provide the required capacity could be readily accommodated.
43. The appellant states that commercial waste would be stored in the basement, but that details of this are yet to be finalised until the occupiers of the unit are known. It is clear that there would be sufficient space within the basement for bin storage. As such, I consider that final details of the commercial bin storage and private collection arrangements could be secured by a condition.
44. Nonetheless, the development would fail to provide adequate facilities for the storage of waste. It would therefore fail to accord with LP policy D8 which sets out that development should be of high quality that facilitates efficient servicing, and with The Refuse and Recycling Storage Requirements as set out above. I find little direct conflict with Policy LP57 given that some details for waste facilities are shown, and the North London Waste Plan has not been put before me.

Cycle parking

45. Cycles are currently parked informally in the courtyard. A total of 36 cycle parking spaces would be provided, consisting of 7 spaces for the commercial units, of which 3 would be short-stay spaces for customers, and 29 for the residential units.
46. As the cycle parking would be beyond the entrance gate to the courtyard, it is likely in my view that customers would not use these spaces. However there are cycle

stands outside Nos. 86-90 which would more readily be used and would be sufficient.

47. Staff at the commercial units would use the cycle parking in the courtyard, which would be close to that used by residents. But rear access to the commercial units, which staff would most likely use regularly, would also be from the courtyard. So the provision of staff cycle parking here would be reasonable.
48. The cycle parking would therefore be acceptable, and the development would accord with policies LP42 and LP43 of the HLP and policies T1, T4 and T5 of the LP which together generally seek to ensure cycling and active travel modes is prioritised and appropriate parking facilities are provided.

Flooding

49. As the site currently accommodates commercial properties with associated basements and with residential units above and behind, and the proposal would do the same, only with more residential units and an enlarged commercial floorspace, there would be no change to the uses on site. In particular, no dwellings would be created at basement level so there would be no change in the site's flood vulnerability classification, as set out in Annex 3 to the National Planning Policy Framework (the 'Framework').
50. The site is within flood zone 1 and the appellant's Flood Risk Assessment (FRA) shows the site to be at low risk of flooding. Furthermore, as the site is wholly developed, and would continue to be so, there would be no increase in the impermeable area. However, an attenuation tank would be provided at the rear of the proposed basement. This would accept water from the courtyard and the roofs of the buildings. This would ultimately discharge via a pumping station into the combined sewer at a rate of 1.5l/s
51. HLP policy LP53 states that all developments should achieve greenfield runoff rates, unless shown to be unfeasible, in which case flood risk should be reduced. Although 1.5l/s is greater than the greenfield runoff rates for a site of this size as set out in the FRA, it is lower than the existing run-off rates and is the smallest practically maintainable pump. Consequently, achieving the greenfield runoff rate would be unfeasible.
52. The basement itself would be engineered to be structurally waterproof and use flood resilient construction techniques to provide protection against potential groundwater flooding. A water butt would also be provided, as part of biodiversity measures, to serve planting in the courtyard.
53. Overall, the development would be at no greater risk of flooding than the existing development, and surface water discharge rates to the mains combined sewer would be improved. The proposal would therefore accord with policy LP53 as set out above.

Planning obligation

54. It is not disputed that the development generates a need to provide contributions to the provision of off-site affordable housing. The S106 Planning Contributions Supplementary Planning Document says that developments should ensure 50% of the units on site are affordable or a payment made for provision off site. In those circumstances, for schemes of up to nine units in this City Fringe area, a figure of

£60,000 per unit is applicable. The completed planning obligation refers to an affordable housing contribution of £240,000 or £420,000 depending on whether the development is considered to comprise four or seven additional units respectively. It also refers to a requirement of £350,000 but this, though taken from the officer's report, would erroneously apply the wrong rate of £50,000 per unit.

55. Overall, the scheme would provide four additional units. The rear building would be substantially demolished, and this results in the Council considering the proposal totals the six constructed units in the rear building plus the additional unit in the frontage building, making a total of seven new units. However there is nothing in the SPD or policy that supports this view, and in other parts of HLP policy LP13, which relates to affordable housing, reference is made to net dwellings. Conversely the appellant draws my attention to another development³ where the Council have calculated affordable housing contributions on a net basis. Therefore I consider the proposal on the same basis and as the development would provide a net increase of four dwellings, the appropriate contribution would be £240,000.
56. It is accepted that the development could not achieve net zero. As such, the obligation secures a total contribution of £11,130 for the Carbon Offset Fund comprised of figures for the residential and commercial parts of the development. The Council do not dispute these figures and I have no reason to consider otherwise. The legal agreement also secures the payment of monitoring fees.
57. These contributions have been justified and I consider them to be reasonable in scale and kind to the development, are directly related to the development, and are necessary to make the proposal acceptable in planning terms. I consider therefore that they meet the three requirements of Regulation 122 of the CIL Regulations and I have therefore taken them into account.
58. As such, the development would accord with policies LP13 of the HLP and H4 of the LP which allows for payments in lieu of affordable housing on site, and HLP policy LP55 and LP policy SI 2 which allows for carbon off setting payments to be made via a legal agreement.

Other Matters

59. The Council cannot demonstrate a sufficient supply of housing land. As such, paragraph 11d) of the Framework should be considered. This sets out that in such circumstances, the most important policies are considered to be out of date and planning permission should be granted unless the application of policies in the Framework that protect assets of particular importance give a strong reason for refusing the development. Such policies include those relating to designated heritage assets.
60. In this case the policies in the Framework which seek to preserve designated heritage assets give a strong reason to refuse the scheme, given the harm that would be caused to the SSQA. As such the development would fail to benefit from the presumption in favour of sustainable development.
61. Nonetheless, other benefits of the scheme are set out in paragraph 16 above and include the additional four residential units at a time when there is a shortfall, improvements to the quality and quantity of the commercial floorspace,

³ Application Ref 2020/4129

improvements to the quality of the retained residential units and the buildings generally, contributions to affordable housing, increased surface water discharge rates and landscaping in the courtyard. However, these are all limited benefits and even in combination only amount to moderate weight.

62. Against the scheme are the harms in respect of heritage assets, insufficient commercial space, inappropriate housing mix, living conditions of neighbours, inclusive access, and waste provision. These collectively are of considerable weight and so outweigh the benefits of the development.

Conclusion

63. The proposal would conflict with the development plan taken as a whole. There are no other considerations that lead me to a decision other than in accordance with the development plan. The appeal is therefore dismissed.

A Owen

INSPECTOR