Planning Inspectorate

Appeal Decision

Site visit made on 7 July 2025

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2025

Appeal Ref: APP/V5570/W/24/3354825
158-160 Pentonville Road, Islington, London N1 9JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Apex Capital Partners against the Council of the London Borough of Islington.
- The application Ref is P2024/1385/S73.
- The application sought planning permission for *Demolition of the existing building and erection of a part 4, part 5 storey building, with single basement level, comprising 487 sqm of office use (Class E(g)(i)) at the ground and basement levels and 9 residential units on the upper levels* without complying with a condition attached to planning permission Ref P2022/0547/FUL, dated 19 July 2022.
- The condition in dispute is No 2 which states that: *The development hereby approved shall be carried out in accordance with the following approved plans:*
  Plans:
  - *Proposed Basement & Ground Floor drawing number: 4962/PA/10C dated: 17/03/2022*
  - *Proposed Upper Floors drawing number: 4962/PA/11C dated: 15.03.2022 submitted: 23.03.2022*
  - *Proposed Roof Plan drawing number: 4962/PA/12B dated: 24.02.2022*
  - *Proposed Residential Layouts Unit 01, 02, 04, 05, 07, 08 drawing number: 4962/PA/13A dated: 24.02.2022*
  - *Proposed Residential Layouts Unit 03, 06, 09 drawing number: 4962/PA/14B dated: 24.02.22*
  - *Proposed Materials drawing number: 4962/PA/31A dated: 22.02.2022*
  - *Proposed Elevations drawing number: 4962/PA/20A dated: 22.02.2022*
  - *Proposed Section AA and West Elevation drawing number: 4962/PA/22A dated: 04.04.2022*
  - *Proposed Section BB, Section CC and Section DD drawing number: 4962/PA/21 dated: 11.02.2022*
  - *Existing and Proposed Street Elevation drawing number: 4962/PA/30 dated: 11.02.2022*
    Documents:
  - *158-160 Pentonville Road Fire Statement dated: 25.02.2022 prepared by: Marshall Fire*
    Fire Strategy Comments dated: 25.02.2022 prepared by: Marshall Fire
  - *Air Quality Assessment dated: 7th May 2021 prepared by: Apex Capital Partners Ltd*
  - *Construction Management Plan Version: 2.0 dated: 10.02.22 prepared by: entram*
  - *Construction Waste Management Plan Version: 2.0 dated: 10.02.22 prepared by: entram*
  - *Daylight and sunlight - prepared by GL Hearn Ltd*
  - *Design and Access Statement - prepared by gml architects - revision A*
  - *Flood Risk Assessment & Drainage Strategy Report document number: C2164-R1-REV-A - dated: July 2019 prepared by: Nimbus Engineering Consultants*
  - *FRA & Drainage Report Supplementary Statement dated: 11.02.22 prepared by: Apex Capital Partners Ltd*
  - *Planning Noise Assessment Acoustics Report A1721 R01b dated: 24.03.22 prepared by: ion acoustics*
  - *Office Market Assessment & Economic Regeneration Statement Version 2 dated: July 2021 prepared by: Savills*
  - *Overheating Assessment BRUKL Output Document Pentonville Offices dated:*

05.05.21
- *Technical Note: Cycle Parking Design & Management Plan - Version: B dated: 11.02.22*
- *Planning Obligations Statement dated: February 2022 prepared by: Centro Planning Consultancy*
- *Planning Statement dated: February 2022 prepared by: Centro Planning Consultancy*
- *Preliminary Ecological Appraisal dated: February 2022 prepared by: Apex Capital Partners*
- *Phase 1 Desk Study dated: June 2021 prepared by: Apex Capital Partners Limited*
- *Structural Method Assessment Revision P2 Dated: May 2021 prepared by: ads consultancy*
- *Sustainable Design and Construction Statement dated: 7th May 2021 prepared by: Apex Capital Partners Limited*
- *Transport Statement Version: D - dated: February 2022 prepared by: Apex Capital Partners Ltd*
- *Utilities and Foul Sewerage Statement Revision: P2 dated: May 2021 prepared by: XCO2 for Apex Capital Partners Ltd*
- *Urban Greening Factor submitted: 23.03.2022 prepared by: Centro Planning Consultancy*

- The reason given for the condition is: *To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.*

Decision

1. The appeal is dismissed and planning permission for Demolition of the existing building and erection of a part 4, part 5 storey building, with single basement level, comprising 487 sqm of office use (Class E(g)(i)) at the ground and basement levels and 9 residential units on the upper levels, is refused.

Preliminary Matters

2. This appeal was originally to have been determined by written representations. However, following further consideration of the issues, and under s319A of the Town and Country Planning Act 1990 (as amended) (the Act), I changed the procedure to that of a Hearing.

Background and Main Issues

3. The original planning permission[1] was granted subject to a s106 planning obligation, dated 12 July 2022. Amongst other things this obligation included a policy compliant financial contribution towards affordable housing in Islington of £450,000.

4. However, following the granting of planning permission, the appellant considered that economic circumstances deteriorated to the extent that the affordable housing contribution meant the approved scheme was no longer viable.

5. Consequently, on 26 April 2024, a s73 application was submitted to the Council to vary condition 2 of the original planning permission, so as to add a financial viability assessment report to the documents listed there, to support the appellant’s position. The associated planning obligation would also be varied in order to remove the affordable housing contribution.

6. The Council failed to determine this s73 application within the prescribed time period and the appellant has appealed on this basis. The Council has confirmed that had it determined the application it would have refused permission; the reason for this would be because it considers the development remains viable with the affordable housing contribution.

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[1] LPA Ref. P2022/0547/FUL

7. The application form for the original planning permission does not identify the applicant. Instead, the applicant is listed as being ‘C/O the agent’, at the agent’s stated address. Furthermore, the certificate of ownership (Certificate B) on the original application form lists ‘Apex Capital Partners Ltd’ as the owner of the application site, in addition to the (unnamed) applicant.

8. For the s73 application, the application form lists the applicant as ‘Apex Capital Partners’ of ‘101 New Cavendish Street, 1st Floor South, London W1W 6XH’ and the certificate of ownership (Certificate A) confirms the applicant is the sole owner of the site.

9. However, whilst the s73 appeal form also lists ‘Apex Capital Partners’ as the appellant, the address listed, ’64 New Cavendish Street, London W1G 8TB’, is different to the address on the s73 application form; the certificate of ownership (Certificate A) on the appeal form lists the appellant as the sole owner of the site.

10. In the signed s106 planning obligation dated 12 July 2022, and the draft Deed of Variation submitted with the appeal, Apex Capital Partners are not listed as the owner of the site, contrary to the ownership certificates on the application form and the appeal form.

11. Prior to the Hearing I drew these matters to the attention of the parties, and sought written clarification of the various companies listed on the application forms and appeal forms. Further information was provided at the Hearing itself and shortly afterwards.

12. Consequently, the main issues in this case are:

- Whether the appeal is valid; and,
- Whether the proposal would provide a suitable mix of housing in the area.

Reasons

Validity

13. Article 7 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (the DMPO) states ‘…an application for planning permission must—(a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);’ and ‘(b) include the particulars specified or referred to in the form’. The original application form does not list an applicant, despite this being one of the particulars specified on the application form.

14. At the Hearing, the Council advised that the original application had been validated on the basis of the details listed on the associated, and at that time draft, planning obligation, with ‘Pentonville 158 Ltd’ considered to be the applicant. However, there is no legislative basis for such an approach.

15. The appellant advised that ‘Apex Capital Partners’ were the applicant, not ‘Pentonville 158 Ltd’, who were the landowner. Furthermore, the appellant advised that whilst the original application form did not specify who the applicant was, other information submitted with the original application showed this to be ‘Apex Capital Partners’. However, none of this other information is in the evidence before me,

and I note the Council reached a different conclusion as to who the applicant was for the original application.

16. The appellant's stated position also conflicts with the signed certificate of ownership on the original application form. Certificate B has been signed which lists 'Apex Capital Partners Ltd' as the owner of the application site, separate to the (unnamed) applicant. Were 'Apex Capital Partners Ltd' the applicant, as the appellant claims, then Certificate A would have been signed.

17. With regard to the s73 application and appeal, the appellant has acknowledged that the address listed on the appeal form is inaccurate. Apex Capital Partners did occupy this address up until 5 April 2023, but had left before the s73 application was made in April 2024[2] and well before the s73 appeal was made in October 2024.

18. Furthermore, because 'Apex Capital Partners' does not own the site, Certificate B should have been signed on both the s73 application form and appeal form, instead of Certificate A, and notice served on the landowner. These mistakes are said to be 'oversights' by the appellant.

19. Whilst I accept that people do make mistakes, application forms and appeal forms are straightforward documents and the number of basic mistakes made with regard to this proposal by professional agents is unusual.

20. It is common ground between the Council and the appellant that the original planning permission is valid, having been granted in July 2022 and not subject to challenge by any relevant parties. I also note that the Council is engaging with the appellant on the basis that the original application is valid, including with regard to pre-commencement conditions, aspects of the associated planning obligation and that the appellant has served the CIL Compliance Notice stating development would commence on 7 July 2025.

21. With regard to the mistakes made on the s73 appeal form, I note the appellant served notice under Articles 13 and 14 of the DMPO, on the landowner, 'Pentonville 158 Ltd', on 20 March 2025, which retrospectively addresses these matters.

22. However, with regard to the mistakes made with the original application, whether the Council has validated an application and issued a decision notice is not determinative. Under s79(6)(a) of the Act, if the Secretary of State forms the opinion that planning permission for the development could not have been granted by the local planning authority, they may decline to proceed with the determination of the appeal.

23. In this case, a s73 application has been made to vary a condition attached to the original planning permission, the application for which was not validly made. Consequently, if the original planning permission is invalid, it would not be possible for the Council to grant planning permission for an application under s73 of the Act to vary a condition attached to the original planning permission.

24. Very little information is before me regarding the original planning permission, beyond the application form and the decision notice. It is not possible for me to know whether there were any objections to the original application. However, I note that no interested party representations have been received for the s73 application

[2] The s73 application form provides the correct address for the applicant.

or appeal, which is for the same development, but without the affordable housing contribution.

25. Both the Council and the appellant consider the original planning permission to be valid, and as mentioned above, work is ongoing with regard to pre-commencement conditions and CIL, amongst other things. At the Hearing it was also clear to me that the Council now understands who the original applicant was.

26. For the reasons given above, neither the original application nor the s73 application or appeal were validly made. Consequently, under s79(6) of the Act, I have the power to decline to proceed with the determination of this appeal. However, this is a discretionary power and given the particular circumstances of this case, including the importance of the delivery of housing and affordable housing in Islington, I have chosen not to exercise this power. In reaching this decision, I am satisfied the appeal can be determined without significant procedural unfairness to anyone who may have an interest in this matter.

Housing mix

27. The original permission includes nine units of market housing. Given the limited scale of the residential development, in lieu of any affordable housing at the site, the appellant agreed to a financial contribution of £450,000 towards the provision of affordable housing elsewhere in Islington, controlled by the planning obligation dated 12 July 2022. This approach is consistent with Policy H3 (genuinely affordable housing) of the Islington Local Plan Strategic and Development Management Policies September 2023 (SDMP) and would ensure a suitable mix of housing is delivered in the area.

28. In July 2022, the appellant accepted that the approved scheme was viable with an affordable housing contribution of £450,000. However, at some unspecified point between July 2022, and April 2024 when the s73 application was submitted, the appellant's position changed so that they considered any affordable housing contribution would make the scheme unviable. There has been no change to the scheme to be delivered at the site since the original planning permission was granted.

29. The appellant submitted a Financial Viability Assessment dated April 2024 (FVA) as part of their s73 application to support their position. Policy H3 (H) of the SDMP states that site-specific viability information will only be accepted in exceptional circumstances, such as (a) where a significant shift in macro-economic conditions has occurred which has had a demonstrable negative impact on the delivery of development.

30. Paragraph 59 of the National Planning Policy Framework December 2024 (the Framework) states that *It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.*

31. Both the Council and the appellant agree that there has been a change in macro-economic conditions that justifies the submission of the FVA for the proposal. Conditions are said to have changed for various reasons, including the 2016 Brexit vote, the 2017 Grenfell Tower fire, and the 2020/21/22 Covid-19 pandemic. The very recent tariff announcements by the government of the United States of America are also said to have had a contributory macro-economic effect, albeit one that was not present when the s73 application was made.

32. Linked to these events, interest rates and the rate of inflation both rose sharply although have now fallen back from their recent peaks. House price information from the Land Registry is said to show some differences between Islington and London as a whole, but for both, house prices have been generally falling in recent years; other data is said to show a steeper decline in house prices in Islington.

33. Most of the events that are said to have caused these macro-economic changes pre-date the grant of the original planning permission, which was considered viable with a £450,000 affordable housing contribution. They also pre-date the adoption of the SDMP in September 2023, which contains policies concerning affordable housing contributions.

34. These events are matters of public record and I do not dispute that they will have had some effect on costs and so on the viability of development schemes in recent years. However, no substantive evidence has been provided to show, with specific reference to the original grant of planning permission in July 2022, the adoption of the SDMP in September 2023, and the submission of the s73 application in April 2024, what the effects were.

35. Macro-economic conditions up until the grant of planning permission do not concern me because they did not affect the scheme's viability at that time. Furthermore, whilst the viability evidence that informed the SDMP is not before me, I consider it very likely that the prevailing macro-economic conditions would have helped inform the policies contained in the SDMP, including the financial contributions to affordable housing required by Policy H3.

36. I note that over the two years, between Q1 2022 and Q1 2024, tender prices are said to have increased by 11.75%[3], although contextual information regarding tender prices before or after this time is not provided.

37. I also note that the Residential Comparables listed at Appendix 4 of the FVA predate the original grant of planning permission, and in any event, it is not clear from the evidence how comparable they are to the appeal scheme.

38. From the evidence before me, I am not satisfied there have been significant changes in macro-economic conditions since the original planning permission was granted or since the SDMP was adopted. Despite this not being a matter of dispute for the parties, it is not clear to me that this is an 'exceptional case' to justify the submission of site-specific viability information consistent with Policy H3(H) of the SDMP.

39. Planning Practice Guidance (PPG) states that *where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then*[4]. However, no direct reference is made in the FVA to the viability assessment that informed the SDMP, what has changed since then, and when this occurred.

40. Following the submission of the FVA as part of the s73 application, there was an extended exchange of correspondence between viability consultants acting on behalf of the appellant and the Council. There is considerable agreement between the parties regarding the FVA and it is not disputed that over recent years build

[3] Paragraph 10.4 of the FVA
[4] PPG Viability - Paragraph: 008 Reference ID: 10-008-20190509 Revision date: 09 05 2019

costs have risen due to inflation and that sales values have also stagnated to an extent, due to reduced confidence in the residential market.

41. The outstanding area of disagreement between the parties concerns the extent to which the build costs associated with the scheme have risen. The Council considers that using the Building Cost Information Service (BCIS) Median rates, which are national rates that have been, in this case, rebased to Islington, is appropriate.

42. The appellant, whilst accepting that BCIS is a good starting point for costs, is concerned that BCIS rates do not always consider the site or project specifics, noting the appeal site is a tight infill site, with logistical challenges and requiring a basement to be formed. Furthermore, the appellant is concerned that because BCIS data is based largely on tender returns not final account figures, which are often submitted several months after tender submissions, they are somewhat out of date in comparison with the 'real' market. Given these concerns, the appellant has relied upon 'similar tendered schemes', which are said to reflect current market data.

43. However, PPG advises that *the assessment of costs should be based on evidence which is reflective of local market conditions...build costs* (should be) *based on appropriate data, for example BCIS*[5]. Furthermore, very few details of any of the 'similar tendered schemes' have been provided. At the Hearing, reference was made to the consultant's in-house benchmark data that was drawn from a range of different sources and 'standardised' to enable them to draw their professional opinions.

44. PPG also provides advice on 'standardised inputs' and states that *the government's recommended approach to viability assessment for planning…supports accountability for communities by enabling them to understand the key inputs to and outcomes of viability assessment…Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available*[6]*.*

45. I do not find the appellant's approach in this case to be transparent and the full data associated with the FVA is not in the evidence before me; furthermore, it is unlikely that such in-house data would be publicly available. Whilst this is a brownfield, infill site with associated constraints to development, such sites are not uncommon in urban areas and there is no compelling evidence that there would be abnormal costs beyond what could reasonably be anticipated. I also note that BCIS data is specifically referenced as being appropriate data in PPG, and that in this case it has been rebased to Islington.

46. It has not been demonstrated that there have been changes to macro-economic conditions, since the original grant of planning permission or the adoption of the SDMP, sufficient to justify a site-specific viability assessment.

47. Even if such changes had been demonstrated, paragraph 59 of the Framework states that *The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including*

[5] PPG Viability - Paragraph: 014 Reference ID: 10-012-20240214 Revision date: 12 02 2024
[6] PPG Viability - Paragraph: 010 Reference ID: 10-010-20180724 Revision date: 24 07 2018

whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.

48. The s73 application was made much less than a year after the SDMP was adopted and it has not been shown that the viability evidence that informed the relevant policies in the SDMP, is out of date. Furthermore, it is not clear that the appellant has considered the viability evidence that informed the SDMP, or that the FVA accords with the Framework and PPG in terms of ‘standardised inputs’, as set out above. Consequently, I attach very limited weight to the FVA.

49. For these reasons, it has not been demonstrated to my satisfaction that the scheme is not viable with a policy compliant affordable housing contribution. Without the affordable housing contribution the proposal would not provide a suitable mix of housing in the area. It would, therefore, conflict with Policy H4 (delivering affordable housing) of the Spatial Development Strategy for Greater London 2021, with Policies H1 (thriving communities) and H3 of the SDMP and with guidance contained in the Framework and PPG.

Other Matters

50. A signed Deed of Variation to the original s106 planning obligation, dated 10 July 2025, was submitted following the Hearing. This deletes the references to the affordable housing contribution from the planning obligation dated 12 July 2022, and would be engaged were the appeal to be allowed and planning permission granted. However, as I am dismissing the appeal, this matter falls away.

51. The appellant states that the Council’s deliverable housing land supply is only 4.9 years[7], which would mean the presumption in favour of sustainable development contained in the Framework would be engaged. However, no substantive evidence to show this has been provided and this matter is not addressed by the Council, or by the appellant in their final comments, and was not raised at the Hearing. Consequently, I am not satisfied the presumption in favour of sustainable development is engaged in this case.

Planning Balance and Conclusion

52. I have determined this appeal despite the original application, and the s73 application and appeal, being invalidly made.

53. The proposal would provide nine market homes, which is a priority for the Government, and an increase in commercial floorspace at the site. However, these benefits do not outweigh the harm that would be caused to the housing mix of the area as a result of the absence of the affordable housing contribution required by the Local Plan.

54. For the reasons given above, I conclude the appeal is dismissed and planning permission refused.

Andrew Parkin

INSPECTOR

[7] SoC paragraph 06.1.2

Appearances – 7 July 2025

For the Appellant:

- Tom Lawson – Rolfe Judd Planning
- Paul Benardout – Apex Capital Partners
- Barbara Nemeth – Redloft
- David Spiller – Potter Raper

For the Local Planning Authority:

- Simon Roberts – Principal Planning Officer
- Laura Avery – Lawyer
- Henry Paikin – Viability Planning Officer
- David Coate – Adams Integra
- Gavin Johnson – Johnson Associates
- Gareth Davies – Johnson Associates

Documents submitted following the Hearing:

- Covering letter accompanying the landowner notification dated 20 March 2025
- CIL commencement Notice dated 17 June 2025
- Deed of Variation to the original s106 planning obligation, dated 10 July 2025