



Appeal Decision

Site visit made on 2 October 2025

by **H Jones BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th October 2025

Appeal Ref: APP/N5660/W/24/3358027

108A Landor Road, Lambeth, London SW9 9NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant 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 RIN Developments against the decision of the Council of the London Borough of Lambeth.
- The application Ref is 23/01487/VOC.
- The application sought planning permission for *refurbishment and change of use of the existing buildings (rear building - Use Class C2 and front building - Use Class B1) to provide 12 residential units (Use Class C3), including the erection of a 3-storey side extension to the front building, plus the erection of 2 new 2-storey single dwelling houses, together with provision of cycle/refuse stores, amenity spaces and landscaping (Re-submission)* without complying with conditions attached to planning permission Ref 19/01898/FUL, dated 18 November 2021.
- The conditions in dispute are Nos 2 and 36 which state that:
Condition 2:
The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to the conditions of this planning permission.
Condition 36:
The use hereby permitted shall not commence until details and full specifications of noise and vibration attenuation of any ventilation and roof top plantwork installed in the development have been submitted to and approved in writing by the local planning authority.
The use hereby permitted shall not commence until the approved details are fully implemented. The approved noise and vibration attenuation measures shall thereafter be retained and maintained in working order for the duration of the use in accordance with the approved details.
- The reasons given for the conditions are:
Condition 2:
For the avoidance of doubt and in the interests of proper planning.
Condition 36:
To ensure that no nuisance or disturbance is caused to the detriment of the amenities of future residential occupiers or of the area generally (Policies Q2 of the Lambeth Local Plan 2020-2035 (Adopted September 2021)).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On site, a residential development has been implemented. The residential development is in a substantially complete form. I undertook a comprehensive site visit, however, before me, I have only a selection of the plans which relate to the residential development and which have been approved via the existing planning permission referenced 19/01898/FUL (the existing planning permission) and the various types of application which the site has been subject to since. Therefore, I am unable to definitively determine that what has been built on site matches the

previously approved plans. Despite this, given the progression on site of a development at the least much akin to that the subject of the appeal, I consider it appropriate that, when referring to the approved residential development, my use of tense reflects that the development has taken place, rather than it being proposed.

3. Conversely, whilst I noted that some of the development amendments the subject of this appeal have been carried out on site, not all of the works match the approved plans or, at least, they have not yet been completed in accordance with those plans. For instance, the semi-vertical cycle parking proposed was not in situ. For the avoidance of doubt, I have based my decision on the development amendments the subject of the appeal on the plans before me, and I do treat these elements as being proposed.
4. Following the Council's decision, two unilateral undertakings (UUs) have been submitted. One is dated 21 May 2025. The principal purposes of this UU are to secure the residential development as a car-free development, to secure financial contributions towards play space provision, the implementation of employment and training initiatives and disabled persons parking provision, and to secure each occupier of the residential development with a free car club membership.
5. The other UU I have received is undated and is unexecuted. This draft UU seeks to secure obligations for the same purposes as the UU dated 21 May 2025 but, additionally, it seeks to secure a late-stage affordable housing review mechanism to determine whether an affordable housing contribution would be required.
6. The existing planning permission was the subject of a Section 106 agreement, dated 12 November 2021. The evidence submitted to me includes a pre-action protocol letter from the appellant setting out their view that the Section 106 agreement, dated 12 November 2021, is not enforceable in respect of the residential development implemented at the appeal site. The Council's response is also before me, setting out that it does not agree with the appellant's assertions.
7. However, it is not within my remit to formally determine whether the November 2021 Section 106 agreement is enforceable. As necessary, I refer to the various legal agreements before me elsewhere in my decision.

Background and Main Issues

8. The application the subject of the appeal sought planning permission for a number of amendments to the existing planning permission. Consequently, the appellant seeks the variance of condition 2 which requires the development to be carried out in accordance with the approved plans.
9. As articulated by its second reason for refusal, the Council objected to the amendments to the design of the cycle parking. Therefore, my first main issue is:
 - Whether the proposed amendments would ensure acceptable cycle parking provision.
10. Condition 36 of the existing planning permission concerns ventilation and roof top plant and any noise and vibration attenuation measures required in their respect. The appellant asserts that no roof top plant is required to serve the residential development and, therefore, removal of condition 36 is sought. As articulated by its

first reason for refusal, the Council objected to this citing concerns in respect of overheating. Therefore, my second main issue is:

- The effects of the removal of condition 36 on the living conditions of the occupants of the residential development with particular regard to the potential for overheating.
11. Amongst other matters, the Section 106 agreement dated 12 November 2021 secures the delivery of 3 affordable units on the appeal site or, subject to cascading provisions, an in-lieu affordable housing contribution together with early and late-stage affordable housing review clauses.
 12. The appeal is accompanied by a viability appraisal¹ which asserts that the development cannot deliver the affordable housing, and the UU dated 21 May 2025 does not include obligations to secure 3 affordable units on the appeal site, an in-lieu affordable housing contribution nor any affordable housing review mechanisms. Therefore, if I were to allow the appeal, a freestanding planning permission would be granted, and it would not be bound by the obligations within the Section 106 agreement dated 12 November 2021.
 13. Although the Council's reasons for refusal do not refer to affordable housing, the evidence before me demonstrates to me that the Council maintain that affordable housing obligations should still apply. Therefore, this is a key matter in dispute in the appeal. Consequently, my third main issue is:
 - Whether any affordable housing obligations are required, and, if so, whether these have been secured.
 14. As part of the application the subject of the appeal, as well as the variation of condition 2 and the removal of condition 36, the appellant sought the amendment of condition 11 of the existing planning permission so as to remove criterion g) which requires details of boundary treatments to be agreed. Criterion g) of condition 11 duplicates the control exerted by condition 13. Therefore, the Council raised no objection to the variance of condition 11 to enable criterion g) to be removed, and I have no reason to come to a different view. Consequently, condition 11 is not a disputed condition, it is not cited as being such in my banner heading above, and it is not the subject of a main issue in my decision.

Reasons

Cycle parking

15. As well as Policy T5 of the London Plan 2021 (the LP) and Policy T3 of the Lambeth Local Plan 2020-2035 (the LLP), cited within the Council's second reason for refusal, Policy Q13 of the LLP is before me. Together, these Policies concern cycling and cycle storage and, amongst other matters, they require the quantum of cycle parking to be provided in accordance with minimum standards. They are also concerned with cycle parking quality, requiring cycle parking to be fit for purpose and to be appropriately laid out, designed, secured, covered and accessible.
16. LLP Policy Q13 specifically relates to cycle storage. Policy Q13's supporting text refers to vertical storage, and it sets out that cycle storage which would entail cycles to be lifted off the floor will not be accepted. However, this text also sets out

¹ Financial Viability Appraisal dated 8 January 2024

that less accessible storage solutions, including some forms of vertical wall mounted storage, can be accepted.

17. The submitted plans show that 12 of the cycle parking spaces proposed would be of a semi-vertical type. Therefore, the plans indicate to me that, although of a less accessible type, these 12 parking spaces would not be the vertical storage type which would require the entirety of the cycle to be lifted off the floor. The spaces proposed are therefore not of the type which the supporting text to Policy Q13 sets out are unacceptable. Instead, they are a type of storage which, whilst not optimum, can remain an acceptable approach.
18. Appropriately, the amendments proposed would maintain that cycle parking would be arranged in clusters, pepper potted around the site so that it can be conveniently accessed. The approved plans I have before me depict a total of 26 cycle parking spaces. The proposed amendments depict the provision of 30 cycle parking spaces. Even if the cycle store proposed to house 5 cycles included a pillar which would make one of those spaces unusable, the omission of this space would still mean that an overall increase in the quantum of cycle parking spaces would arise as a result of the amendments proposed.
19. The proposed plans depicting the amendments do show that the ceiling heights of some stores would be somewhat constrained. However, users would be within the stores for short durations only, and there is no compelling evidence before me which indicates to me that cyclists would be unable to satisfactorily manoeuvre and secure their cycles within the stores.
20. Therefore, the proposed amendments to cycle parking provision would result in an increase in the quantum of cycle parking. Had I been minded to allow the appeal, I consider I could have imposed a condition which would enable certain matters of detail to be refined. This condition could resolve the precise design of the store affected by the pillar, potentially omitting the pillar or reducing its storage capacity, providing more detail on the means by which the cycles would be secured within the semi-vertical parking spaces and, more widely, confirmation on how cycles would be secured via locking mechanisms.
21. For these reasons, I am satisfied that the amendments proposed would ensure acceptable cycle parking provision. Consequently, the proposed amendments and variance of condition 2 comply with Policy T5 of the LP and Policies T3 and Q13 of the LLP.

Overheating

22. Condition 41 of the existing planning permission requires that the development be implemented in accordance with the noise mitigation measures set out within the noise assessment report dated April 2019². As well as proposing the use of acoustic screening, in order to mitigate noise emanating from the adjacent hospital, the noise assessment advocates a closed-window approach for the development with ventilation provided for via trickle ventilation. Therefore, condition 41 of the existing planning permission secures the residential development as a closed-window development, but the trickle ventilation provides some mitigation in order to manage heat risks.

² Noise Assessment P18-385-R01v2

23. Although condition 36 refers to measures like roof top plant, and the Council assert that the reason for condition 36 being imposed stemmed from managing heat risk, the wording of the condition does not demand that such plant be incorporated into the development. Therefore, the existing planning permission permits a development to be carried out without the plant to which condition 36 relates forming a necessary part of it.
24. The Council has placed emphasis upon the development's requirement to adhere to the revised approved document O of the building regulations and that, in this context, achieving satisfactory management of heat risk may entail the types of plant condition 36 refers to.
25. An overheating assessment is before me³. The assessment fails to take account of the closed-window approach requirements of the noise assessment, and it only analyses in detail the development's detached dwellings. However, the overheating assessment is predicated on meeting the approved document O provisions. The requirements of the revised approved document O of the building regulations were subject to transitional provisions. The appellant has set out that the revised approved document O requirements do not apply in this case because of the dates when the initial notice was given to the Council and when building work commenced on site. I have no substantive evidence before me which indicates to me that I should dispute the appellant's submissions in these regards. Therefore, since the revised approved document O requirements do not apply to the development, they cannot have a bearing upon the development's design.
26. The Council's first reason for refusal, and its reason for imposing condition 36, only refer to Policy Q2 of the LLP. Policy Q2 does concern living conditions, and it seeks to protect the living conditions of existing residents in the neighbourhood and of the prospective occupants of development. Read in conjunction with the extracts of supporting text I have before me, I am satisfied that Policy Q2 is relevant to this main issue. However, I also find it quite telling that, of the various matters referenced within the Policy which have a bearing upon living conditions, such as privacy and outlook, overheating or heat risk management are not amongst them. To some extent, this undermines the confidence I have that the reason for condition 36 being imposed was largely derived from an intention to manage heat risk.
27. Given the aforementioned Policy Q2's content, since Policy SI4 of the LP specifically relates to managing heat risk, I find Policy SI4 to be the Policy of the greatest relevance to this main issue. Policy SI4 sets out that developments should minimise urban heat island effects through the likes of design, layout and orientation. It also sets out that major developments should demonstrate through an energy strategy how the potential for internal overheating shall be reduced in accordance with a hierarchy.
28. No dedicated energy strategy document is before me. Nevertheless, I note that a significant proportion of the development's windows and doors have been designed to face in a predominantly easterly direction. As such, they would be protected from the effects of afternoon sun. Of these windows and doors, some have been designed to be set at lower ground floor level and, consequently, I expect that they would benefit from much shade. I expect some further shade

³ Dynamic Summertime Overheating Analysis by Irvineering Ltd

would arise from the proximity of buildings within the development to one another, of some of those beyond the site too, and from landscaping. When coupled with the trickle ventilation requirements of the noise assessment and condition 41, altogether, the design of the development incorporates mitigation so as to reduce the potential for overheating and manage heat risks.

29. For these reasons, the evidence before me is not demonstrating to me that condition 36 is necessary, nor that the effects of its removal on the living conditions of the occupants of the residential development, with particular regard to the potential for overheating, would be unacceptable. Therefore, since acceptable living conditions would be ensured with condition 36 removed, the proposal complies with LLP Policy Q2, cited within the Council's reason for refusal, but also LP Policy SI4 which is specifically concerned with managing heat risks.

Affordable housing

30. Policy H5 of the LP establishes a threshold approach to affordable housing. It would not be appropriate to apply Policy H5's Fast Track Route in this case, consequently, the Policy's Viability Test Route applies. This requires the submission of viability evidence for subsequent scrutiny to determine the level of affordable housing which the development is required to deliver. Policy H5 further requires that a development subject to the Viability Test Route will be subject to early-stage and late-stage viability reviews.
31. Policy H5 includes criteria concerned with scheme amendments under Section 73 of the Town and Country Planning Act 1990, and it emphasises that any amendments which would result in a reduction in affordable housing in comparison to the original scheme should be rigorously assessed via the Viability Test Route.
32. Policy H4 of the LP sets out that all major developments of 10 or more units, as is the case here, trigger an affordable housing requirement. It outlines a strategic target that 50% of all new homes delivered across London should be genuinely affordable. Specific measures to achieve this aim include that those developments which trigger affordable housing provision deliver it through the threshold approach outlined within the aforementioned Policy H5. Reflective of the content of Policy H5, the supporting text of Policy H4, which assists with its interpretation, stresses the importance of comprehensive review mechanisms.
33. Amongst other matters, LLP Policy H2 seeks to maximise the delivery of affordable housing in accordance with LP policy, including adhering to its threshold approach to affordable housing, and its requirement for affordable housing review mechanisms.
34. The submitted viability appraisal asserts that the residential development can no longer viably provide its affordable housing provision requirements. Although the Council make clear its view that the development the subject of the appeal should not be relieved of its affordable housing obligations, it has not provided me with any detailed analysis of the viability appraisal. I have no substantive evidence regarding the Council's views on the validity or accuracy of the viability appraisal's content.
35. That said, I am required to assess the development against the aforementioned Policies concerning affordable housing, and they require the viability of the

development to be scrutinised. The Planning Practice Guidance (the PPG) provides a key source of guidance in respect of viability appraisals.

36. Set against the content of the PPG, I note that the viability appraisal appropriately refers to the viability study which informed the compiling of the development plan. As a part of this, the appellant asserts that the targeted developer return of 18% for the development matches that of the relevant development plan viability study, and I have no reason to disagree. Such a return falls within the 15% - 20% target return bracket cited within the PPG as being a suitable return for plan making purposes.
37. Reflective of the PPG's guidance, the benchmark land value is based upon existing land value plus a premium for the landowner. Evidence also indicates to me that the Council has previously agreed the appellant's existing use value and the landowner premium. In turn, I find that the benchmark land value produced and adopted by the appraisal is reasonable.
38. Appropriately for a site-specific viability assessment, to inform on gross development value, market evidence and transactional data, rather than just average figures, is utilised within the viability appraisal. Some of the market evidence includes sold and for sale transactions relating to properties with values at multi-million-pound levels which I find to be quite incomparable to the development the subject of the appeal. However, it seems to me that all the inclusion of such outliers will have done is inflate projected average sale values for the development which ultimately would make the development's value greater and the development thus more viable.
39. Detailed breakdowns of construction costs are not before me, but I have no good reason to conclude that they have been erroneously presented. Other costs such as professional fees are presented to me as matching the relevant development plan viability study which is a reasonable approach.
40. The viability appraisal is predicated upon a 100% open market housing basis, and yet the results of it show that a return considerably below that targeted would be achieved. Given my assessment, and since the Council has not provided me with evidence to the contrary, I conclude that the viability appraisal adequately demonstrates that the development cannot deliver on-site affordable units, nor an in-lieu affordable housing contribution.
41. However, despite these findings, Policies H4 and H5 of the LP, and Policy H2 of the LLP, nevertheless require developments to adhere to the threshold approach to affordable housing and its Viability Test Route. Adherence requires a commitment to, and securing of, viability review mechanisms. Such reviews enable affordable housing contributions to be changed and increased should viability improve over time. They are an important facet in ensuring that schemes deliver the maximum affordable housing contribution that they can in the context of the gravity of London's affordable housing need. Given the stage at which the development is at, it is not clear to me how an early-stage review mechanism could now apply to the development, however, a late-stage review mechanism would remain feasible.
42. The first of the UUs submitted to me, although executed and dated 21 May 2025, does not secure any affordable housing obligations, including one related to a late-stage review mechanism. The second of the UU's submitted to me does propose a

late-stage review mechanism. However, since it is undated and unexecuted, this UU cannot be attributed any weight.

43. Therefore, Policies H4 and H5 of the LP, and Policy H2 of the LLP require that the development secures appropriate viability reviews so that the threshold approach to affordable housing and its Viability Test Route are met. An appropriately drafted legal agreement securing this would adhere to these Policies, and it would satisfy the tests for planning obligations set out at paragraph 58 of the National Planning Policy Framework (the Framework) and at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations). However, there is no such Section 106 legal agreement before me which I can attribute any weight to.
44. Furthermore, I am mindful of the advice within the PPG which sets out that ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. The PPG further sets out that a positively worded condition which requires a Section 106 agreement to be entered into would unlikely pass the tests for condition imposition and, whilst a negatively worded condition may be acceptable, this would only be in exceptional circumstances and the heads of terms or principal terms of the agreement should, first, have been agreed. No such exceptional circumstances are before me, nor are any agreed heads of terms or principal terms in respect of affordable housing obligations. Therefore, the imposition of a condition permitting a Section 106 agreement to be entered into after the grant of planning permission would be inappropriate in this case.
45. In conclusion on this main issue, I find that an affordable housing obligation is required in the form of an appropriate late-stage affordable housing review mechanism within a Section 106 legal agreement. No Section 106 legal agreement is before me which would secure this for the amended and freestanding planning permission which would result had I allowed the appeal. For this reason, the proposal conflicts with Policies H4 and H5 of the LP, and Policy H2 of the LLP. These affordable housing development plan policies, and indeed the Framework, make clear the pressing requirement to maximise affordable housing delivery. In this context, this development plan policy conflict I have identified is a matter of significant weight in my determination.

Other Matters

46. In my preliminary matters, I set out the principal purposes of the UU dated 21 May 2025. I have considered the obligations within this UU against the tests for planning obligations set out at paragraph 58 of the Framework and at Regulation 122 of the CIL Regulations.
47. The UU would secure the development as a car-free development whilst the contribution toward disabled parking provision would provide necessary parking for Blue Badge holders. These obligations comply with the requirements of Policy T6 of the LP. Annex 9 of the LLP is before me, and it sets out a formula for contributions towards play space provision. The Council has provided me with its commentary and assessment of the play space contribution proposed, and it considers it to be compliant with the LLP annex. I have no reason to disagree. In addition, the UU dated 21 May 2025, includes a contribution to cover the cost of the Council's monitoring and reporting on the implementation of the UU. This would help to ensure that the UU is complied with which would, in turn, help to

ensure the delivery of the mitigation. Therefore, I find that these particular obligations meet the aforementioned tests within the Framework and at Regulation 122 of the CIL Regulations.

48. The evidence before me indicates to me that a contribution towards the implementation of employment and training initiatives has already been made, discharging the obligation within the Section 106 agreement, dated 12 November 2021, which relates to the existing planning permission. The additional contribution proposed within the UU would constitute an unnecessary replication. None of the evidence before me, including the development plan policies, nor LLP Annex 9, provide me with any compelling evidence that the obligation to secure each occupier of the development with a free car club membership would be necessary to make the development acceptable in planning terms, would be directly related to the development or would be fairly and reasonably related to it in scale and in kind. Therefore, I conclude that the car club and employment and training related obligations fail the tests of the Framework and the CIL Regulations, and I am unable to attribute any weight to them.
49. Some benefit would be derived from the play space and disabled parking planning obligations I have attributed weight to because they would contribute towards improved facilities in the area. In addition, the sprinkler system amendments proposed would bring with them fire safety benefits. The appellant asserts that the introduction of the air source heat pumps would make the development more energy efficient, and I have no reason to disagree. However, altogether, these benefits are not sufficient to outweigh the harm and development plan conflict I have identified through my third main issue.

Conclusion

50. Given my findings in my first and second main issues, I have identified that the effects of the variation of condition 2 and removal of condition 36 would be acceptable. In these regards, the proposal to develop the appeal site without complying with these conditions subject to which a previous planning permission was granted complies with certain development plan policies.
51. However, in my remaining third main issue, I set out that an affordable housing obligation is required in the form of an appropriate late-stage affordable housing review mechanism, secured via a Section 106 legal agreement, and no agreement to this effect, and to which I can attribute weight, is before me. Therefore, the proposal conflicts with development plan policies as a result and, overall, I find that the proposal conflicts with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate a decision other than one in accordance with the development plan should be made. Therefore, I find that the proposal as a whole is unacceptable, and I conclude that the appeal should be dismissed.

H Jones

INSPECTOR