



Appeal Decision

Site visit made on 30 September 2025

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2025

Appeal Ref: APP/K5600/W/25/3367853

Unit 9 Latimer Industrial Estate, 343-453 Latimer Road, Kensington and Chelsea, London W10 6RQ

- 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 7LR Limited against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/24/05920.
 - The development proposed is the demolition of the existing building and redevelopment for a five-storey building comprising flexible Class E floorspace and seven residential units with associated landscaping, cycle parking and other works incidental to the application proposal.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The application was refused for a single reason relating to the effect of the proposed development on the living conditions of neighbouring occupiers. However, the Council have advised that a legal agreement to secure a range of planning obligations and financial contributions would have been required. A draft Unilateral Undertaking (UU) was submitted as part of the appeal. I consider this matter further in my reasoning below.
3. Therefore, the main issues are:
 - The effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to privacy, noise and disturbance; and
 - Whether the proposed development makes an appropriate contribution towards highway improvements, car-free housing, public realm measures, carbon off-setting, air quality, tree planting, employment, training and local supply chain, and monitoring.

Reasons

4. The appeal site comprises an existing commercial warehouse building located on the western side of Latimer Road. It is part of an existing industrial estate comprising a relatively short row of low-rise buildings. The surrounding area is mixed use with commercial premises primarily located on the same side of the road as the appeal site, and a number of traditional terraced houses on the opposite side of Latimer Road. It is located within the Freston Road/Latimer Road Employment Zone.

5. The proposed development would involve the erection of a five-storey building, measuring approximately 17.7 metres in height. It would provide seven residential flats on the upper floors of the building, with flexible Class E floorspace on the ground and first floors.

Living Conditions – Neighbouring Occupiers

6. Policy CD9 of the Royal Borough of Kensington and Chelsea New Local Plan Review, adopted 2024 (the LP) requires development to ensure good living conditions for occupiers of existing and neighbouring buildings. The policy requires reasonable visual privacy for occupants of the new development and for occupants of existing properties affected by the development.
7. The Latimer Road Design Code Supplementary Planning Document adopted 2021 (the Design Code SPD) establishes a set of design guidelines to provide practical, robust and informed guidance to shape the future development of Units 1-14 Latimer Road Industrial Estate. It is a material consideration.
8. The Design Code SPD states that balconies should be provided for each residential unit and should ideally face the rear (west facing) elevation. It further states that where it is not possible to accommodate external amenity space for units facing Latimer Road, balconies will be acceptable on the secondary elevations and where the distance between the buildings on the opposite side of Latimer Road is increased.
9. Policy CD9(c) of the LP relates to privacy, the supporting text to this policy sets out that a distance of 18 metres between opposite habitable rooms reduced inter-visibility to a degree acceptable to most people but recognises that there are instances in the historic fabric of the borough of distances much less than this.
10. The proposed building would incorporate a large number of windows within the front elevation. There would also be a number of balconies and terraces. However, these would be located within the secondary frontage and would not project beyond the building line. The submitted plans show that the separation distances between the properties on the opposite side of Latimer Road and the proposed development would be approximately 23 metres at its closest point. This would exceed the minimum expected standards and accord with the principles of the Design Code SPD.
11. Furthermore, unlike other buildings on this side of Latimer Road, the appeal site has a direct relationship to a side street (Latimer Place) rather than facing directly towards a number of residential properties. This would further reduce the likelihood of harmful impacts arising through loss of privacy. Nonetheless, even if the proposed development faced directly towards residential properties, the above separation distances and set back design would be sufficient to ensure there is no adverse impact on the living conditions of nearby occupiers in respect of privacy.
12. In respect of the privacy of the occupiers of the neighbouring properties on Eynham Road, these are located on the opposite side of the railway embankment and therefore a considerable distance from the proposed building. The submitted plans indicate that the separation distances would be in the region of 50 metres, which is considerably greater than the minimum distance recommended in the guidance. Moreover, the Design Code SPD sets out that this elevation is the preferred location for the provision of external amenity space. On this basis, I

therefore find that the proposed development would not cause unacceptable harm to the occupiers of the properties on Eynham Road, with particular regard to privacy.

13. Whilst there are a number of existing residential properties in close proximity, the area is nevertheless a mixed-use area where background is likely to be higher. In respect of noise and disturbance, the Council has raised concerns relating to the use of the proposed balconies, rather than noise generated by the proposed commercial premises on the ground and first floors.
14. The proposed balconies would be modest in size and likely to be used intermittently. Therefore, they would be unlikely to result in the congregation of groups of people. Furthermore, I understand that the existing public house on the corner of Latimer Road and Latimer Place has outdoor seating areas. On this basis, I find that the proposed development would not cause unacceptable harm to the living conditions of neighbouring occupiers with particular regard to noise and disturbance.
15. I have had regard to third party concerns in relation to the overall height, scale and massing of the proposed development, in particular whether it would be overbearing and create a harmful sense of enclosure. I have also had regard to concerns regarding the potential for loss of daylight and sunlight.
16. Policy LR5 of the St Quintin and Woodlands Neighbourhood Plan (the NP) adopted July 2018 states that increased building heights on the western side of Latimer Road will be allowed subject to (i) consideration of the heights of nearby buildings which range from four storeys at the southern end, and two storeys at the northern end, (ii) meeting the Council's and national standards of daylight, sunlight, and visual privacy for occupants of new development and for occupants of existing properties affected by development, and (iii) no harmful increase in the sense of enclosure to existing buildings, spaces and neighbouring gardens.
17. The Design Code SPD states that all proposals should be no taller than either 4 or 5 storeys and where are proposed building would be 5 storeys, it will need to provide a detailed sunlight/daylight study evidencing that adverse impacts to sunlight and daylight of neighbouring properties have been mitigated.
18. I accept that the proposed building would be much taller than the existing building. However, it would be situated no further forward than the existing building, and the second third and fourth floors would be set back. The appeal is accompanied by a Daylight and Sunlight Assessment, which confirms that the proposed development complies with the relevant BRE Guidelines. Whilst it is recognised that there would be a degree of daylight and sunlight reduction to certain windows of neighbouring properties, the assessment concludes that any loss would be limited and not significant. Accordingly, the proposals are considered to have an acceptable impact in terms of daylight and sunlight.
19. Furthermore, any increased sense of enclosure would be mitigated by the setting back of the massing at the upper floor levels and the separation distances from neighbouring properties on Latimer Road and Eynham Road. On this basis, the proposed development would not lead to a harmful increase in the sense of enclosure for neighbouring properties and would therefore accord with the principles set out in the Design Code SPD and Policy LR5 of the NP.

20. Whilst Policy LR5 of the NP requires consideration of the heights of neighbouring buildings, which I accept are lower at the northern end of the street, this does not preclude a building of five storeys where all relevant criteria have been met. The Council in determining the application did not raise any specific concerns in relation to the overall height of the proposed development. Based on the evidence before me and my own observations, I see no reason to disagree.
21. For the reasons set out above, I find that the proposed development would not cause unacceptable harm to the living conditions of neighbouring occupiers with particular regard to privacy, noise and disturbance. Thus, it would comply with Policy CD9 of the LP and Policy LR5 of the NP, which seek to ensure that the development ensures good living conditions, in particular providing reasonable visual privacy for occupants of existing properties affected by the development.

Planning Obligation

22. Policy IP1 of the LP states that where development generates a need either because of its individual or cumulative impact, planning obligations and contributions will be sought to secure the necessary infrastructure required to make the development acceptable. The supporting text to the policy provides a list of examples of the contributions which may be sought. Additionally, the Planning Contributions Supplementary Planning Document adopted September 2019 (the Planning Contributions SPD) details the type of planning contributions that may be required, the qualifying development thresholds and the level of financial contribution where appropriate.
23. Although not a reason for refusal, the Council has set out in its appeal statement that planning contributions towards highway improvements, car-free housing, public realm measures, carbon off-setting, air quality, tree planting, employment, training and local supply chain, and monitoring would be required to mitigate the effects of the proposed development.
24. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 58 of the National Planning Policy Framework (the Framework) set out three tests that planning obligations must meet.
25. The appellant states that they were agreeable to these contributions on the basis that the application was recommended for approval. However, in their appeal statement they query whether the contributions towards tree planting, public art and highways improvements are necessary and would meet the relevant tests.
26. In respect of highway improvements, Policy TR4 of the LP requires improvement to the visual, functional and inclusive quality of streets. Policy TR6 of the LP requires all development to improve road safety and in particular the safety of walking and cycling.
27. The proposed development would necessitate removal of the section of dropped kerb currently servicing the units and the reinstatement of a level footway and full height kerb line. The Council state that this requirement would be secured by imposing a suitably worded planning condition. However, the required works to improve the walking routes (within the street) would need to be carried out by the Council at the applicant's expense and the financial contribution to these works would need to be secured by a legal agreement.

28. The Appellant does not dispute the need to undertake highway improvement works. However, they do dispute the financial contribution of £20,000 which is being sought by the Council. Whilst I have not been provided with a detailed breakdown of these costs to reach a view as to whether the level of contribution is reasonable. I have also not been presented with an alternative mechanism to ensure these works are carried out and that an appropriate financial contribution would be made. Without the required contribution to ensure these works would be undertaken, I find that the proposed development would be in conflict with Policies TR6 and TR4 of the LP.
29. In respect of the requirement for public art provision, Policy TR4 of the LP states that all major development must contribute to delivering new arts and culture. This may be on-site, or where on-site provision is not appropriate through a financial contribution. Where no on-site provision is proposed, the calculation for a financial contribution is set out in the Planning Contributions SPD and is 1% of Gross Development Value (GDV).
30. Whilst the appellant disputes the level of contribution required, it is clearly set out in Policy TR4 and supported by guidance contained within the Planning Contributions SPD. The appellant has not provided any viability evidence to demonstrate that such a contribution would be unviable, nor have any proposals for on-site provision been put forward. Accordingly, I find that the requested contribution to public art is justified and would meet the relevant tests.
31. In respect of the requirement for tree planting, the proposed development would include the provision of on-site landscaping proposals which would be secured by condition. However, the Council is also seeking a financial contribution towards the provision of street trees, this contribution would be £1,000 per tree to be planted, with the exact number and location to be agreed.
32. Although I have limited information with regards to the number and location of the proposed street trees, the provision would contribute to the improvement of the streetscape and would assist in meeting the carbon reduction targets for the development. Therefore, I find that the requested contribution to street tree planting is justified and would meet the relevant tests.
33. Notwithstanding the above, the appeal is supported by a draft UU, which is neither dated nor signed and is therefore incomplete. The Procedural Guide: Planning Appeals – England requires the appellant, to submit an executed and certified copy of any planning obligation at the time of making their appeal. It explains that the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances. I am not aware of any such circumstances in this case. Accordingly, I afford it no weight.
34. In the absence of a planning obligation or other legal mechanism, I have given consideration as to whether the necessary obligations could instead be secured by way of a planning condition. But in that regard, the Planning Practice Guidance states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. No evidence has been provided to demonstrate that the delivery of the development would be at serious risk if a planning condition were not to be used. It is also not

suggested by either of the main parties that a planning condition could or should be used. Therefore, there are no exceptional circumstances and the use of a planning condition to secure the obligations would not be appropriate in this instance.

35. For the reasons set out above, the proposed development fails to make appropriate contributions towards highway improvements, car-free housing, public realm measures, carbon off-setting, air quality, tree planting, employment, training and supporting the local supply chain. Consequently, in the absence of a legal agreement or other suitable mechanism, I conclude that the effects of the proposed development cannot be appropriately mitigated. Therefore, the proposed development would conflict with Policies IP1, GB4, TR4 TR6 and TR8 of the LP. Furthermore, there would be conflict with the guidance set out in the Planning Contributions SPD.

Other Matters

36. The appeal site is located in close proximity to the Oxford Gardens and St Quintin's Conservation Area (the CA). The Council concluded that the proposed development would not cause harm to the character and appearance of the area. On this basis, I am satisfied that it would preserve the setting of the CA.
37. My attention has been drawn to a planning application¹ for the adjacent site, Unit 10 Latimer Road (Unit 10), which was granted planning approval for a part three, part five storey building comprising flexible Class E floorspace and eight residential units. Nonetheless, there are some differences between the appeal scheme and the approved scheme for Unit 10, notably the number of balconies to be provided and their size, but also the relationship to neighbouring properties. Whilst I have had regard to this scheme as a material consideration, each proposal must be considered on its own site-specific circumstances.
38. I have had regard to third party concerns over the effect of the proposed development on the character and appearance of the area, highway safety, affordable housing provision, land use, contamination, pollution, construction disruption, climate change and a lack of community benefits and consultation. These matters were before the Council when it determined the planning application and did not feature in the reasons for refusal. Based on the evidence before me, and from my own observations, I have no reason to disagree with the Council's assessment of these matters. Consequently, the other matters raised do not lead me to a different conclusion.

Planning Balance

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making.
40. However, Paragraph 11d of the Framework states that where development plan policies which are most important for determining an application are out-of-date, planning permission should be granted unless any adverse impacts of doing so

¹ Planning Application Ref: PP/23/00778

would significantly and demonstrably outweigh the benefits. In accordance with Footnote 8 of the Framework, policies are considered to be out of date where the Housing Delivery Test (HDT) indicates that the delivery of housing in a local planning authority's area was substantially below (less than 75% of) the housing requirement over the previous three years. The most recent published figure was 63%, as such Paragraph 11d is engaged.

41. The proposal would provide increased commercial floorspace plus the addition of seven homes to the benefit of the Borough's housing stock, and the designated Employment Zone. These are benefits which align with the Framework's objective to boost the supply of housing and support economic growth. On that basis, I afford these benefits moderate weight in the determination of the appeal.
42. Whilst I have concluded that the proposed development would not cause harm to the living conditions of neighbouring properties with particular regard to privacy, noise and disturbance, the absence of harm would be a neutral consideration.
43. Nonetheless, the appeal is not supported by a executed legal agreement to secure provision of appropriate contributions and financial obligations towards mitigating the effects of the proposed development. This leads to conflict with the development plan as a whole. I afford this conflict with the development plan significant weight.
44. Accordingly, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

Conclusion

45. For the reasons set out above, the proposal conflicts with the development plan as a whole, and the material considerations, including the Framework do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

K Lancaster

INSPECTOR