



## Appeal Decision

Inquiry Held on 18-20 June 2019

Site visit made on 20 June 2019

**by Helen B Hockenhull BA (Hons) B. PI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23 July 2019**

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### **Appeal Ref: APP/A5270/W/18/3212646**

### **64-66 and 70-88 Uxbridge Road, Hanwell, London W7 3SU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Lou Hanwell Ltd against the decision of the London Borough of Ealing.
  - The application Ref 172913FUL, dated 31 May 2017, was refused by notice dated 28 March 2018.
  - The development proposed is the redevelopment to provide two buildings (demolition of the existing buildings) as a part 4 and 9 storey building and a four storey building comprising a mixed use development of 679 sq. m of flexible uses/retail (class A1) and /or financial/professional services (Class A2), and /or restaurant/café (Class A3) and /or assembly and leisure (Class D2) and 57 residential units (including affordable housing) and associated cycle storage, public and private amenity spaces, refuse and recycling storage and hard and soft landscaping.
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### **Decision**

1. The appeal is allowed and planning permission is granted for redevelopment to provide two buildings (demolition of the existing buildings) as a part 4 and 9 storey building and a four storey building comprising a mixed use development of 679 sq. m of flexible uses/retail (class A1) and /or financial/professional services (Class A2), and /or restaurant/café (Class A3) and /or assembly and leisure (Class D2) and 57 residential units (including affordable housing) and associated cycle storage, public and private amenity spaces, refuse and recycling storage and hard and soft landscaping at 64-66 and 70-88 Uxbridge Road, Hanwell, London W7 3SU in accordance with the terms of the application, Ref 172913FUL, dated 31 May 2017, subject to the conditions in the attached schedule.

### **Procedural matters**

2. The original planning application proposed redevelopment to provide two buildings, a part 4 and part 9 storey building and a 5-storey building for a mix of uses including 59 residential units. During the application process the scheme was amended, the five-storey building being reduced to four storeys and the number of residential units being decreased to 57. I have determined the appeal on this basis.
3. The Council and the appellant submitted an agreed Statement of Common Ground (SoCG) dated 17 April 2019 indicating the areas of agreement and disagreement between them.

4. A draft planning obligation by way of a unilateral undertaking made under section 106 of the Town and Country Planning Act 1990 (s106) was submitted by the appellant. The obligation relates to the provision of affordable housing and financial contributions towards primary education, healthcare provision, parks and recreation provision, air quality, energy and travel plan monitoring, pedestrian and cycling facilities, the provision of car club membership and restrictions on car parking should a controlled parking zone be implemented. A signed and dated document was submitted after the Inquiry.

### **Main Issues**

5. The main issues in this case are:
  - the effect of the development on the character and appearance of the area, with particular regard to massing, scale and design;
  - whether the proposed development would preserve or enhance the character or appearance of the Hanwell Clock Tower Conservation Area and the setting of the Grade II Listed Church of St Mellitus.

### **Reasons**

#### *Policy context*

6. The appeal site is located to the south of Uxbridge Road within Hanwell town centre. Policy 2.1 of the Ealing Development (Core) Strategy adopted in 2012 aims to realise the potential of the Uxbridge Road/Crossrail corridor through the provision of more than 9000 extra homes. This amounts to 74% of the borough's total net increase in housing development.
7. Policy 2.7 of the Core Strategy seeks to enhance and consolidate Hanwell town centre with a focus on ensuring new development supports an improved retail offer, with design that responds to the distinct character of the centre. The profile of Hanwell establishes that the town will not be a major focus for growth but nonetheless there are opportunities for some development. The Ealing Development Management Development Plan Document (DPD) identifies 3 sites which offer real opportunities to support the vitality and viability of the town centre through intensification coupled with public realm improvements. Policy HAN1 relates to the appeal site and allocates it for a mixed-use development appropriate to the town centre, including provision for community uses.
8. There is no dispute between the parties that the principle of development on the site accords with the development plan.

#### *Character and appearance*

9. The appeal site comprises Nos 64-66 and 70-88 Uxbridge Road, Hanwell. The existing building forms a two-storey terrace with ground floor shop fronts providing retail and commercial uses, except for No. 66 which is in residential use. No.68 Uxbridge Road, a Dental Surgery, does not form part of the scheme. Adjoining the terrace to the west is a single storey garage building.
10. The site lies west of an area of public realm which lies north of the car park to two modern retail units. This area is referred to by the main parties as 'Lidl square'. Running along the western boundary of the appeal site adjacent to the square is a wall around 2 metres in height. This is outside the ownership of

the appellant. Beyond the square to the west is a 19<sup>th</sup> century terrace of three storeys in height, providing further retail and commercial uses. On the eastern boundary of the site is a modern flat roof three storey building set back from the street frontage in use as a gym. Opposite on the northern side of Uxbridge Road, is a three-storey terrace with gable features and roof dormers.

11. Heading west to the centre of Hanwell, lies a public square which contains the Clock Tower, a 1930's art deco listed structure celebrating the coronation of King George VI and Queen Elizabeth. Designated as a Conservation Area, the square is surrounded by three and four storey Victorian and Edwardian buildings built in traditional materials. Key buildings at junctions are designed to turn the corner and have distinctive turret and cupola features.
12. The Council submits that the conceptual design of the appeal proposal is not at issue. However, the siting, scale, massing and bulk of the proposal is of concern in the context of Hanwell.
13. The proposed buildings are sited to the back of the footway on the same building line as the existing building on the site. This is in keeping with the siting of the terraces to the west and other buildings in the locality. Gold's Gym, to the east of the appeal site, is set back from the road frontage, which to a degree gives the building some subservience in the street scene. However, this is not reflective of the surrounding townscape.
14. The proposed main block provides ground floor retail units with residential uses at first, second and third floors. The third floor is set back on the roof responding to the roofscape and roof dormers in the locality and respecting the eaves line of the adjacent terraces. The elevation to Uxbridge Road exhibits a strong vertical emphasis and is subdivided into bays giving the appearance of individual units within a larger terrace. This reflects the character and rhythm of the Victorian buildings opposite the site. Window size and proportion also respects that of the older traditional terrace on the other side of the road. The curved north west corner of the main building reflects the design of other key Victorian buildings surrounding the Clock Tower. Overall, I consider that the four-storey base is appropriate in scale and mass and is consistent with its context.
15. In terms of materials the four-storey base is proposed to be constructed in a dark burnt red brick. There is variety in the colour of brickwork in Hanwell town centre. The predominant colour is a traditional red brick however there are accents of other colours including darker brick, for example on the Catholic Church to the east of the site. There are however no dark brick buildings of the scale proposed in this scheme. Whilst some representors expressed concern that the dark red brick would be out of keeping with the area, it is not necessary for me to come to a view on this matter. Should the appeal be allowed, a condition requiring the submission of brick samples for the approval of the Council could be imposed.
16. The facade of the northern elevation has been designed to include subtle references to Marshalls, the music business which originally occupied No. 76 Uxbridge Road. This heritage is reflected in the dark colour of the brickwork and also in the use of different brick bonds to reflect the paper grill cloth of the amplifiers that the company produced. This provides articulation and interest particularly at street level and leads to high quality design.

17. The smaller 4 storey building has been designed to complement the main block. It integrates well in the street scene similarly responding to the terrace building opposite. It would be built in a lighter brick to the main block and the proposed articulation to the front façade adds visual interest.
18. The 9-storey tower of the main building is set to the south west corner of the site. A number of development plan policies address the issue of tall buildings. Policy 7.7 of the London Plan directs tall buildings to the Central Activity Zone, opportunity areas or intensification areas. Policy 1.2 (h) of the Core Strategy specifies sites in Action, Ealing and Southall town centres, gateways to Park Royal and specified sites. Whilst not referred to in the reason for refusal or in the Council's Statement of Case, Policy 7.7 of the Ealing Development Management Development Management Plan (DPD) restates these specified locations.
19. The above policies define tall buildings as those that are substantially taller than their neighbours and /or significantly change the skyline. The proposed 9 storey tower would meet this definition, and as Hanwell town centre is not referred to as being an appropriate location for tall buildings, the appeal proposal would not comply with the policies referred to above. However, Policy 7.7 of the London Plan in Part B recognises that planning applications on unidentified sites may come forward and sets down criteria against which they should be assessed. Such buildings should relate well to the form, proportion, scale and character of surrounding buildings, urban grain and public realm.
20. In the local context, Policy HAN 1 of the Ealing Development Management DPD provides design principles for the redevelopment of the appeal site. This policy does not restrict the height of a new building. Rather it seeks additional floorspace and an increase in building height to better relate to the high street location and the prevailing three to four storey building heights.
21. The 9-storey tower element is set back approximately 11 metres from the site frontage. This results in the 4-storey element of the building being the visual focus in the street scene, particularly when viewed looking west towards Hanwell centre. The tower is broken up into three sections. The lower brick base, a middle section proposed to be constructed in vertical aluminium cladding, and an upper section of the same cladding but of a narrower width. The cladding gives the tower a lighter appearance on top of the heavier brick base. The tower is articulated with balconies, recesses and projections which assist to break up its bulk and mass.
22. Heading east away from the town centre, views of the building would be partially screened by existing development. Whilst the tower would be visible, its siting, set back from the street frontage, together with the proposed lighter material palette and articulation, result in a proposal which would not be of such prominence to cause harm to the character and appearance of the area.
23. From a closer position, near to 'Lidl square', the western elevation of the building would dominate the street scene. The 9-storey element of the building would contrast with the predominantly three storey traditional terrace buildings in the locality. However, it would also be seen alongside the more modern buildings of Gold's Gym and the retail units to the west of the appeal site. Whilst the tower element would be taller than any other building in the vicinity, I consider that in this context and having regard to its siting, overall design and articulation, it would be acceptable in terms of its form, mass and scale. The

- proposed building would therefore not impact adversely on the visual amenity of the area.
24. The tower provides enclosure to the square and creates a focal point meeting the requirement of Policy HAN1. The appellant argues that the tower would provide a 'waymarker', denoting the location of the square and marking the entrance into the town centre. I am not persuaded that the place making of 'Lidl square', which is a relatively small area, is necessary or that the square would be seen as having such importance to the town centre particularly when compared to the public space around the Clock Tower.
  25. The side elevation of the existing garage building, as well as the existing wall on this elevation, provides a dead frontage to the public space. Whilst I acknowledge that negotiations with Lidl are ongoing to remove the wall, they have not been completed. For the purposes of this appeal, I must therefore consider the proposed scheme with the wall in place. The upper balconies on the western elevation of the building would provide only limited activation to the public square. Whilst this would not achieve the full potential of the site, with ground floor uses facing and animating the square as envisaged in HAN 1, it would represent an improvement on the existing situation.
  26. A further consideration is the effect of the 9-storey part of the proposed building on the skyline. There are 2 key existing features which form landmarks in the area. Firstly, the spire to St Mellitus Church, which at 30 metres would be approximately the same height as the proposed 9 storey tower and secondly the taller element of the Catholic Church at around 14 metres. Viewed from Uxbridge Road, the development would block the view of these features. However, this could reasonably be expected with any redevelopment and intensified use of the site.
  27. I have been made aware of the Peugeot site located on Uxbridge Road to the west of the Clock Tower, one of the three sites identified for development in the local plan along with the appeal site. It has an extant planning permission for a development which includes a six-storey building on the street frontage. Whilst I have had regard to the development of this taller building in the town centre, each proposal must be considered in context and on its individual merits.
  28. I viewed the site from Deans Road to the south and several other viewpoints in the surrounding area. Looking north from Deans Road the current view is of the upper floors and roofscape of the relatively low scale Victorian town centre buildings. As a result of the relatively open and unrestricted view from this position any new development would be visible, including a building of 3 or 4 storey height. The lighter materials of the 9-storey tower assist to blend the structure into the skyline. The building would visually denote the relationship of the town centre to the surrounding residential area. Whilst it would create a very different view, I consider it would not cause significant harm to the skyline or the character and appearance of the locality.
  29. There are a number of other viewpoints in the Hanwell area where the proposed tower would be visible in the skyline. However, as a result of distance, intervening buildings and the presence of trees and other landscape features, this visibility does not in my view equate to harm.

30. The appeal scheme does not include No. 68 Uxbridge Road. The two proposed buildings lying either side, would dominate this smaller two storey building in visual terms resulting in a poor relationship. It is clearly unfortunate that No.68 does not form part of the scheme as it does not allow the comprehensive redevelopment of this allocated site. However, I acknowledge that there is nothing in Policy HAN1 that prevents a phased approach to redevelopment. On this basis, I consider that the appeal proposal would not result in an unacceptable visual impact.
31. In summary, I have found that whilst the scheme proposes a tall building in the context of Hanwell, it would be acceptable in the street scene in terms of siting, design, massing and scale. Furthermore, whilst the proposal would be visible, it would cause no significant adverse impact to the skyline. The appeal proposal would provide a sense of enclosure to the 'Lidl square' and whilst providing only limited activation, this would be an improvement to the currently dead frontage.
32. The proposal would comply with Policies 3.5, 7.4 and 7.6 of the London Plan 2016 and Policies 3.5 and 7.4 of the Ealing Development Management DPD 2013. These policies aim to achieve a high quality of design, complementing and making a positive contribution to the character of existing built areas.

#### *Heritage assets*

##### Clock Tower Conservation Area

33. The appeal site lies approximately 75 metres to the west of the Clock Tower Conservation Area. The Conservation Area is centred on the listed art deco Clock Tower monument. Its significance derives from the mainly Victorian 2 and 4 storey buildings set around an older street pattern with narrow often irregular shaped plots. It is urban in character and provides a historic commercial centre to Hanwell.
34. The Conservation Area Appraisal notes that views into and out of the Conservation Area are along the principal and secondary roads. Views are severely affected by heavy traffic at most times of the day.
35. I am statutorily required to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Whilst the appeal site lies outside the boundary of this heritage asset, it forms part of its setting. The Council identified 3 viewpoints where the appeal scheme would have a visual relationship with the Conservation Area, impacting on its character and appearance.
36. Firstly, looking west from the corner of Church Road, the view is of a range of both modern and traditional buildings. The Conservation Area, whilst visible is not prominent in the view. Secondly viewed east from the corner of Broadway and thirdly from Station Road, the upper three storeys of the proposed tower element would be seen above the roofline of the existing Victorian buildings.
37. The Conservation Area Appraisal recognises that the key focus of the Conservation Area is the Clock Tower and the immediately surrounding buildings. Having regard to the separation distances and the presence of intervening buildings, I consider that the appeal proposal would not be dominant in views towards or from the Conservation Area. It would cause no

harm to the significance of the heritage asset and would preserve its character and appearance.

38. The proposal would therefore comply with section 16 of the Framework, Policy 7.8 of the London Plan and Policy 7C of the Ealing Development Management DPD. These policies seek to ensure that development does not undermine or detract from the significance of a heritage asset.

#### Church of St Mellitus

39. The Grade II listed Church of St Mellitus is located approximately 60 metres to the north east of the appeal site. It is set back from Uxbridge Road with a relatively narrow frontage and tree planting providing an element of screening to its southern elevation. The church spire rises to around 30 metres in height and forms a local landmark visible in the skyline from a number of points in the area. The setting of the building is compromised to a degree by a petrol station on the other side of Church Road.
40. The significance of the heritage asset lies in its architecture and historic interest. It forms an imposing brick Gothic design from the prominent Victorian architect Sir Arthur Blomfeld.
41. The parties agree that the principal setting of the Church is to the side along Church Road. From a position just north of the Church, it would be unlikely that the appeal proposal would be visible and therefore it would not impact on the setting of the heritage asset.
42. Looking towards the appeal site from the junction of Uxbridge Road and St George's Road, the appeal site and the Church can be seen. However, this view does not directly focus on the setting of the heritage asset. The Church appears in the periphery of the view. Looking towards the Church, to view it directly in its setting, the proposed development would not be appreciated. I therefore consider that the appeal proposal would not cause harm to the significance of this heritage asset and its setting would be preserved.
43. Accordingly, the appeal scheme would comply with section 16 of the Framework, Policy 7.8 of the London Plan 2016 and Policy 7C of the Ealing Development Management DPD 2013. These policies seek to conserve the significance of heritage assets.

#### **Other Matters**

##### Housing need

44. The London Plan Annual Monitoring Report September 2018 confirms that Ealing has failed to meet its London Plan housing targets for the 3-year period 2014/15 – 2016/17. Furthermore, the draft London Plan minimum ten-year housing target proposes a significant increase in the number of dwellings to be provided in Ealing over the period 2015-2025. Whilst this draft plan is under Examination and is the subject of objection, it indicates the severe housing need in London.
45. The provision of 57 residential units with 20 to be affordable, would make a significant contribution to the supply of housing in the borough.

### Impact on No.68 Uxbridge Road

46. The implementation of the proposed development would need to have regard to the structural integrity of No. 68. I am satisfied that Building Regulations and Party Wall legislation would provide the necessary safeguards.
47. The plant room to the smaller proposed building would be located immediately next to the eastern side elevation of No. 68. Concern has been raised about the impact of this in terms of noise and vibration on the amenity of the occupant and users of the adjoining premises. Should the appeal be allowed appropriate conditions could be imposed to ensure that mitigation measures are in place to address this matter. I am satisfied that this would overcome any potential issues.
48. The proposed refuse storage area for the smaller building would also be located on the side elevation of No.68. Again, should the appeal be allowed, conditions could be imposed to require a delivery and servicing management plan. I am satisfied that this would ensure that appropriate waste management measures were in place to prevent any adverse impacts on neighbouring occupiers and users.
49. Windows in the western side elevation of the proposed building would overlook the rear of the adjacent premises. I am advised that the first floor of No 68 is not in residential use forming part of the Dental Surgery. The submitted plans show that the oblique windows at first, second and third floor which look onto windows in the rear of No 68 would be obscure glazed. This would prevent any loss of privacy to users of the adjoining building. There are also other windows in the side elevation of the proposed building which would overlook the rear yard. However, as No.68 is not in residential use, there would be no adverse impact on the living conditions of occupiers of the property. The relationship would therefore be acceptable.
50. The appeal proposal has been designed to make provision for the future redevelopment of the Dental Surgery either in isolation or as part of the wider scheme. I accept that the design of the appeal scheme with windows overlooking No.68 would impact on any redevelopment proposals. However, the appellant has provided evidence that in isolation, a scheme for the adjoining property would remain financially viable. I am therefore satisfied that the appeal scheme would not negatively impact on the potential redevelopment of the neighbouring building.

### Other issues

51. Several other matters were raised by local residents. Turning first to parking and highway matters, the scheme proposes a car free development. Policy HAN 1 of the Ealing Development Management DPD states that the Council would consider such a scheme. The appeal site has a PTAL rating of 4, which, means it has a good level of accessibility to public transport. On the arrival of Crossrail in 2021 the rating is set to increase to 5, very good. Two disabled parking spaces would be provided in front of the building and all residential units would benefit from a 3-year Car Club membership. The latter benefit being secured through a unilateral undertaking. The Highways Authority have raised no objection to the proposals. I am therefore satisfied that in highway terms the development would be acceptable.

52. Whilst the proposal exceeds the average density range for a site in an accessible location, all the proposed residential units meet or exceed the London Plan Housing Standards guidelines for internal floorspace. The design of the development seeks to maximise the number of dual aspect apartments with 76% achieving this objective. Of those that do not, only 3 would be north facing and these have been provided with large windows facing Uxbridge Road and additional floorspace. The scheme provides a mix of apartments including studios, 1, 2 and 3 bed units providing for both single persons and families. Overall, I consider the development acceptable in terms of the quality and mix of housing.
53. With regard to external amenity space, 49 of the proposed units, 86%, would have private balconies. Those that do not, would have access to the communal amenity space in the main building. This includes a courtyard with children's play space at first floor and a roof terrace on the fourth floor. Future residents in the smaller building would be required to walk through to the main block to access the communal recreation space. This is not ideal. However, there are also other public open space areas with a reasonable walking distance of the site that could be used by residents. The proposed communal amenity space falls short of that required by Policy 7D of the Ealing Development Management DPD. A financial contribution towards other public open space in the vicinity of the site is sought and could be secured through the unilateral undertaking. On balance I am satisfied that adequate external amenity space is provided in the scheme.

### **Planning Obligation**

54. The appellant has submitted a signed and dated unilateral undertaking relating to: affordable housing; car club membership; a Travel Plan; restrictions on car parking in the event of a Controlled Parking Zone; a section 278 Highway Agreement for the construction of a loading bay; and financial contributions for education, health, parks and recreation, pedestrian and cycle improvements, air quality monitoring and energy monitoring.
55. Based on the contents of the CIL Compliance Schedule, the provisions of the unilateral undertaking, meet the tests set out in paragraph 56 of the Framework and CIL Regulations 122/123. I attach significant weight to this document.

### **Planning Balance**

56. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise.
57. The principle of the development accords with the development plan which seeks to achieve a mixed-use scheme optimising the potential of the site, with the introduction of additional floorspace resulting in the intensification and regeneration of the site. I have also found that the scheme would accord with Policies 3.5, 7.4 and 7.6 of the London Plan 2016 and Policies 3.5 and 7.4 of the Ealing Development Management DPD 2013 in that the scheme would not cause harm to the character and appearance of the area. Furthermore, I have concluded that the proposal would preserve the character and appearance of the Clock Tower Conservation Area and the setting of the listed St Mellitus Church.

58. There are a number of material considerations in this case. These include the contribution to the supply of market and affordable housing in the borough, addressing the significant housing need. I afford significant weight to this benefit. The proposal would also provide employment during construction and once completed, through the commercial uses and the ongoing management and maintenance of the buildings.
59. The financial contributions that the development would make to local infrastructure are required to mitigate various aspects of the scheme. Whilst contributions to local parks and pedestrian and cycle improvements would to an extent benefit the wider public, this would be limited. The payment of Community Infrastructure Levy is required of all new development and is therefore not a specific benefit of this scheme.
60. In terms of environmental enhancement, the building is proposed to be energy efficient, includes a communal boiler system and incorporates photovoltaic panels. The Appellant expects the achievement of at least 35% onsite carbon emission reduction.
61. In summary, I find that the proposal would provide significant social benefits through the provision of much needed housing as well as economic and environmental benefits. I therefore conclude that the material considerations in this case do not indicate that the appeal should be determined other than in accordance with the development plan. Accordingly, the appeal should be allowed.

### **Conditions**

62. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of precision and enforceability. I attach a condition limiting the life of the permission in accordance with the Act (1). For the avoidance of doubt and in the interests of proper planning, a condition specifying the plans is imposed (2).
63. In the interest of protecting the living conditions of future residents and the amenity of the occupier and users of No.68, conditions relating to the submission of details and the implementation of approved schemes for construction management (3), contamination (9), refuse (12), insulation (13 and 14), plant and machinery (15), vibration and noise mitigation (16, 17 and 18), odours (19), light pollution (21), air quality (22) and the hours of use of the commercial premises (28) are reasonable and necessary.
64. Material samples are required to be submitted in order to maintain the character and appearance of the area (4). For the same reason conditions are required to ensure the implementation and maintenance of a landscaping scheme (5) and to prevent the installation of microwave masts, antennae or satellite dishes (23).
65. In order to ensure the provision of adequate play space, condition 24 is necessary. Conditions 10 and 11 are required to ensure that appropriate foul and surface water drainage is provided and that any piling operations do not cause damage to subservice water or sewage infrastructure. I impose a condition removing permitted development rights for a change of use of the commercial uses to safeguard the vitality and viability of the town centre (29).

66. In the interests of highway safety, conditions 6, 7 and 8 are necessary to ensure the preparation and implementation of a travel plan, the provision of cycle parking and the submission of a servicing and delivery plan.
67. To ensure that the development is inclusive in its design, conditions 25, 26 and 27 are necessary to require the installation of passenger lifts, a percentage of units to meet accessible and adaptable dwellings standards as well as dwellings designed for wheelchair users.
68. In order to address climate change and provide a sustainable development, conditions requiring the submission of details and schemes for sustainable design and construction (30), water efficiency (31), low nitrous oxide boilers (22), site waste management and procurement (32), energy strategies for residential and non-residential uses (33 and 34) and overheating and cooling for both dwellings and commercial units (35 and 36) are necessary.
69. The Council suggested a condition requiring details of any future connection to the district heating network to be submitted for approval. However, as it is unclear whether such a connection would be made, I consider that such a condition is unnecessary.
70. Conditions 3, 9, 10, 11, 21 and 32 are pre commencement conditions and were agreed by the appellant in writing in the SoCG. I am satisfied that they are fundamental to the development to ensure that it does not occur until such matters are resolved, in the interest of safeguarding the living conditions of future occupiers and achieving a sustainable energy efficient development.

### **Conclusion**

71. For the reasons given above and having had regard to all other matters raised, I allow this appeal.

*Helen Hockenhull*

**INSPECTOR**



#### DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Revised draft Unilateral Undertaking.
2. Appellant's Opening Submission.
3. Council's Opening Submission.
4. Extract from the London Plan 2016 - Policy 3.3 Housing Supply and Policy 3.12 Negotiating Affordable Housing on Individual Residential and Mixed Schemes.
5. CIL Compliance Schedule.
6. Local Plan Adopted Policies Map marked up with locations for Inspector's site visit to view the impact proposal on the skyline.
7. Council's list of witnesses and qualifications.
8. Council's Closing Statement.
9. Appellant's Closing Statement.

#### DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Appellant's list of witnesses and qualifications.
2. Signed and dated unilateral undertaking.
3. CIL Compliance Schedule amended to address Reg 123 compliance.
4. Revised list of agreed conditions

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no. A1.200 P4 Ground Floor Plan, Drawing no. A1.201 P2 First Floor Plan, Drawing no. A1.202 P1 Second Floor Plan, Drawing no. A1.203 P2 Third Floor Plan, Drawing no. A1.204 P2 Fourth Floor Plan, Drawing no. A1.205 P2 Fifth Floor Plan, Drawing no. A1.206 P2 Sixth Floor Plan, Drawing no. A1.207 P2 Seventh Floor Plan, Drawing no. A1.208 P2 Eighth Floor Plan, Drawing no. A1.209 RF P2 Roof Plan, Drawing no. A1.300 P2 North Elevation, Drawing no. A1.301 P3 South Elevation, Drawing no. A1.302 P2 West Elevation, Drawing no. A1.303 P2 East Elevation, Drawing no. A1.400 P2 Section AA, Drawing no. A1.401 P2 Section BB, Drawing no. A1.402 P2 Section CC, Drawing no. LL.610 P1 Landscape Ground Floor, Drawing no. L1.611 P1 Landscape Plan First Floor, Drawing no. L1.614 P1 Landscape Plan Fourth Floor, Drawing no. L2.300 P1 Public Realm Landscape Sections, Drawing no. L2.310 P1 First Floor Landscape Sections, Drawing no. L2.311 P1 First Floor Landscape Sections, Drawing no. L2.320 P1 Fourth Floor Landscape Sections.
- 3) Development shall not commence (including demolition and site clearance) until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The submission shall include the following information:
  - a) anticipated number, frequency and size of construction vehicles entering/exiting the site;
  - b) delivery times and booking system (staggered to avoid morning and afternoon school run peak periods);
  - c) site access for construction traffic and contractor staff parking and associated signage;
  - d) consolidated or re-timed trips;
  - e) site security;
  - f) secure, off-street loading and drop-off facilities;
  - g) vehicle manoeuvring and turning, including swept path diagrams to demonstrate how vehicles will access the site and be able to turn into and emerge from the site in forward gear;
  - h) details as to the locations for the storage of building materials and construction debris and contractors' offices;
  - i) procedures for on-site contractors to deal with complaints from local residents including the name, telephone number and address of a responsible person to whom enquiries / complaints should be directed. These contact details shall also be displayed at regular intervals around the site compound;
  - j) using TfL's Freight Operator Recognition Scheme (FORS) or similar;
  - k) details of an Air Quality and Dust Management Plan (AQDMP) that includes an Air Quality (Dust) Risk Assessment shall be produced in

accordance with current guidance The Control of Dust and Emissions during Construction and Demolition, SPG, GLA, July 2014, for the existing site and the proposed development.

The development shall be carried out strictly in accordance with the approved Construction Management Plan for the duration of the works.

- 4) Prior to construction above the slab level, details of the materials to be used for the external surfaces of the development shall be submitted to and approved in writing by the local planning authority. The samples shall include:
- a) brickwork (including brick panels and mortar courses);
  - b) cladding and colours;
  - c) all window treatments (including sections and reveals);
  - d) balcony structures and balustrading treatment (including sections);
  - e) privacy screens;
  - f) metal, cement and render facing and banding detail;
  - g) ventilation and extraction louvres;
  - h) shop fronts; and
  - i) all other external materials to be used.

Development shall be carried out only in accordance with the approved details and permanently retained thereafter.

- 5) Notwithstanding any information submitted, prior to the occupation of the development, a 10-year landscape management and maintenance plan with full details of hard and soft landscaping works (including green roofs) and boundary treatments shall be submitted to and approved in writing by the local planning authority.

The approved planting (green infrastructure) shall be implemented prior to the occupation of any part of the development and in accordance with the programme agreed by the local planning authority and maintained thereafter.

Any planting that is part of the approved scheme that within a period of five years after planting, is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced with others of a similar size and species and in the same position, unless the local planning authority first gives written consent to any variation.

- 6) Notwithstanding the submitted Framework Travel Plan (Prepared by Canepro Associates), a revised and detailed Travel Plan designed to manage the transport needs of the occupiers of the development, including measures to minimise car usage and promote alternative modes of transport shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any part of the development hereby approved. The revised and detailed Travel Plan shall be prepared in accordance with the Transport for London Travel Plan Guidance and Ealing's Sustainable Transport for New Development SPD in use at the time of its preparation. The development shall be carried out strictly in accordance with the approved Travel Plan.

- 7) Notwithstanding the submitted documents, written details shall be submitted to the local planning authority prior to the first occupation of any part of the development to demonstrate the provision of at least 78 residential cycle parking spaces carried out to the specifications and adopted standards of the London Plan and the local planning authority. The approved details shall be brought into use prior to first occupation and retained permanently.
- 8) Notwithstanding the submitted Delivery and Servicing Management Plan (Prepared by Caneparo Associates), a delivery and servicing plan shall be submitted to and approved in writing by the local planning authority, prior to first occupation of any part of the development hereby approved. The plan shall cover the following:
- a) deliveries and collections (both commercial and residential); including how deliveries will be scheduled to avoid several lorries arriving at the site simultaneously;
  - b) servicing trips (including maintenance); and measures to reduce the number of freight trips to the site (freight consolidation);
  - c) details of the location and management of the receipt and collection of deliveries for the residential properties;
  - d) cleaning and waste removal; including arrangements for refuse collection;
  - e) monitoring and review of operations;
  - f) times and frequency of deliveries and collections, vehicle movements, silent reversing methods, location of loading bays, quiet loading/unloading measures.

The delivery and servicing plan shall be implemented on first occupation of any part of the development hereby approved and the site shall be managed in accordance with the approved plan for the life of the development.

- 9) Prior to commencement of the development (excluding demolition and site clearance) the following shall be submitted to and subject to the approval in writing of the local planning authority:
- a) Prior to the commencement of the development (not including demolition works) a phased risk assessment shall be carried out by a competent person in accordance with current government and Environment Agency Guidance and Approved Codes of Practice. Each phase shall be submitted in writing and approved in writing by the local planning authority.
  - b) If the report recommends remedial work is required at the site before it will be suitable for the proposed end use, a remedial strategy / method statement including; remediation methodology; site specific assessment criteria; on-going monitoring plan; and a verification plan shall be submitted for approval in writing by the local planning authority.
  - c) The development shall not be occupied until any approved remedial works, have been carried out and a full validation report has been submitted for approval in writing by the local planning authority.

- 10) Development shall not commence (excluding demolition and site clearance) until a drainage strategy detailing any on and/or off-site drainage works, has been submitted to and approved in writing by the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 11) Should piled foundations be required, the development shall not commence (excluding demolition and site clearance) until a piling method statement (detailing the type of piling to be undertaken and the methodology by which such piling shall be carried out, including measures to minimise the potential for damage to subsurface water or sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 12) The refuse and recycling facilities shown on the approved drawings shall be provided prior to the first occupation of any dwelling or commercial unit and retained thereafter.
- 13) Noise mitigation measures, with windows closed and other means of ventilation provided, shall insulate the new dwellings against the transmission of externally generated noise, to meet the minimum internal ambient noise criteria as specified in Table 4 of BS 8233:2014; Living Rooms, Bedrooms = 35 dB LAeq,16 hours ; Kitchens, Dining Rooms, Bathrooms = 40 dB LAeq,16 hours during day-time hours (07:00 – 23:00); and Bedrooms = 30 dB LAeq,8 hours during night-time hours (23:00 - 07:00). The mitigation measures shall be implemented prior to the first occupation of the residential units and thereafter be permanently retained.
- 14) Details shall be submitted for approval of the local planning authority prior to the commencement of superstructure works, for the insulation of the floor/walls/ceiling between the commercial premises, plant room, communal facilities from dwellings/ noise sensitive premises. Details shall demonstrate that the sound insulation value  $D_{nT,w}$  [and  $L'_{nT,w}$  ] is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures shall be provided. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 15) Details of any plant or machinery shall be submitted and approved in writing by the local planning authority prior to installation, to demonstrate that the rating sound level as assessed under BS4142: 2014, will not exceed the existing background sound level, as measured at the nearest noise sensitive facades, during the relevant periods of operation.
- 16) Prior to occupation of any commercial units, details shall be submitted for the written approval of the local planning authority for a Quiet Delivery Scheme (QDS). The Scheme shall be compiled in accordance with the Quiet Deliveries Good Practice Guidance, - Key Principles and Processes for Retailers, Department Of Transport, April 2014. The noise mitigation measures emanating from the site assessment report shall be

- implemented prior to the commencement of the QDS and shall be retained permanently thereafter.
- 17) Prior to use, any machinery, plant or equipment that requires extract/ventilation system at the development shall be mounted with proprietary anti-vibration isolators and fan motors in accordance with details first submitted for approval in writing by the local planning authority.
  - 18) Occupation of the commercial premises shall not commence until all external doors have been fitted with self-closing devices, which shall be maintained in an operational condition and at no time shall any external door or windows be fixed in an open position.
  - 19) Prior to the occupation of any commercial units for A3 use, details shall be submitted to and approved in writing by the local planning authority, of the installation, operation, and maintenance of the odour abatement equipment and extraction system, including the height of the extract duct and vertical discharge outlet at least 1m above the eaves of the main building, in accordance with the 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems' January 2005 by DEFRA. Approved details shall be implemented prior to the commencement of the use and thereafter be permanently retained.
  - 20) External artificial lighting at the development shall not exceed lux levels of vertical illumination at neighbouring premises that are recommended by the Institution of Lighting Professionals in the latest 'Guidance Notes For The Reduction Of Light Pollution'. Lighting should be minimized, and glare and sky glow should be prevented by correctly using, locating, aiming and shielding luminaires, in accordance with the Guidance Notes.
  - 21) No development shall commence, (except site clearance and demolition), until details of a scheme for the provision of fresh air ventilation to all habitable rooms including air supply location, have been submitted to the local planning authority for approval in writing. The ventilation system as approved shall be completed prior to occupation and shall be retained permanently thereafter.
  - 22) Ultra-Low NO<sub>x</sub> boilers (<40mg NO<sub>x</sub>/KWh) shall be installed, and abatement of NO<sub>x</sub> emissions shall be applied to the rest of the development, including apartments and non-residential unit, to achieve emission rates in g NO<sub>x</sub>/m<sup>2</sup> as set out at Appendix 5 of Mayor's Sustainable Design and Construction SPG, April 2014 and the approved Sustainability Statement.
  - 23) No microwave masts, antennae or satellite dishes or any other plant or equipment shall be installed on any of the buildings within the development unless otherwise approved in writing by the local planning authority under this condition prior to installation.
  - 24) Prior to first occupation of the development, details of the children's play areas (including play equipment, landscaping, boundary treatment, disabled access and security measures) shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented and completed as approved prior to first occupation of the relevant part of the residential development that the facilities serve and retained for the life of the development.

- 25) The passenger lifts located within the communal cores serving the approved apartment blocks shall be installed and operational prior to the first occupation of the relevant part of the apartment block to which the lift serves.
- 26) Ninety percent of the approved residential dwellings shall be designed and constructed to meet Approved Document M (Volume 1: Dwellings), Part M4(2) (Accessible and adaptable dwellings) of Building Regulations 2015, or other such relevant technical requirements in use at the time of the construction of the development.
- 27) Ten percent of the approved residential dwellings shall be designed and constructed to meet Approved Document M (Volume 1: Dwellings), Part M4(3) (Wheelchair user dwellings) of Building Regulations 2015, or other such relevant technical standards in use at the time of the construction of the development.
- 28) The hours of business use for the ground floor commercial units (A1/A2/A3/D2 Use Class) fronting Uxbridge Road hereby approved shall be restricted to the period [0700 - 2300hrs] Monday to Sunday.
- 29) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any subsequent order revoking and re-enacting that Order with or without modifications), the ground floor commercial units shall not be subdivided and shall only be used for an A1/A2/A3/D2 Use Class activity, and not for any other use.
- 30) Upon the first occupation of the approved development, including residential and non-residential units, the approved dwellings and non-residential spaces shall incorporate sustainability measures as detailed in the approved Sustainability Statement Issue 2 prepared by Eight Associates in 24 May 2017.
- 31) A. Prior to occupation of each residential unit within the development, the approved dwellings shall incorporate and maintain water saving measures that will meet water efficiency standards with a maximum water use target of 105 litres of water per person per day as detailed in the approved Sustainability Statement Issue 2 prepared by Eight Associates in 24 May 2017.  
B. Prior to occupation of the non-residential unit within the development, the approved non-residential unit shall incorporate and maintain water saving measures that will reduce the water consumption by at least 40% as detailed in the approved Sustainability Statement Issue 2 prepared by Eight Associates in 24 May 2017.
- 32) Prior to the commencement of the development, a Site Waste Management Plan including a Green Procurement Plan, shall be submitted to and approved in writing by the local planning authority. The Site Waste Management Plan and Green Procurement Plan shall demonstrate how the procurement of materials for the development will promote sustainability, including by use of low impact, sustainably sourced, reused and recycled materials, including reuse of demolition waste (where available), use of local suppliers and by reference to the BRE's Green Guide Specification. The development shall be carried out in accordance with the approved plan.

- 33) A) Prior to commencement of the residential units, other than site preparation, remediation and /or the formation of accesses, a revised report, which includes full details and drawings of the energy saving measures, including passive measures and/or LZC technologies, that are to be incorporated into the development, shall be submitted to, and approved in writing by the local planning authority.

The measures should be in line with or better than the ones proposed under the approved Overheating Risk Assessment Addendum (27 October 2017, prepared by Thornton Reynolds) and the submitted details shall demonstrate whether the residential component of the development hereby approved will achieve zero carbon in regulated CO2 emissions over and beyond Building Regulations Part L 2013. In demonstrating compliance with this percentage reduction, the applicant should consider the use of measures in line with the Energy Hierarchy including the incorporation of on-site renewables. This reduction should be calculated based on carbon dioxide emissions covered by the Building Regulations whilst carbon dioxide emissions associated with other energy uses not covered by Building Regulations (un-regulated) should be also included and measures to reduce them should be demonstrated.

B) Within three-months of the first occupation of each dwelling in the approved development, Energy Performance Certificates [EPC's], detailed modelling output reports showing clearly the DER and TER from the "as built stage" to confirm compliance in terms of savings achieved through energy efficiency measures should be also submitted for written approval by the local planning authority.

C) Within three-months of the practical completion of the dwellings, technical information and evidence that the renewable/low carbon technologies are certified under the Microgeneration Certification Scheme (MSC) and, if appropriate, complies with the Enhanced Capital Allowances (ECA) product criteria should be submitted to and approved in writing by the local planning authority. The development shall be carried out strictly in accordance with the details so approved.

- 34) A) Prior to commencement of the non-residential units, other than site preparation, remediation and / or the formation of accesses, a revised report, which includes full details and drawings of the energy saving measures, including passive measures and/or LZC technologies, that are to be incorporated into the non-residential component of the development, shall be submitted to, and approved in writing by the local planning authority. The submitted details shall demonstrate whether the non-residential component of the development hereby approved will achieve a minimum 35% CO2 emissions reduction (regulated CO2 emissions) over and beyond Building Regulations Part L 2013. In demonstrating compliance with this percentage reduction, the applicant should consider the use of measures in line with the Energy Hierarchy including the incorporation of on-site renewables. This reduction should be calculated based on carbon dioxide emissions covered by the Building Regulations whilst carbon dioxide emissions associated with other energy uses not covered by Building Regulations (un-regulated) should be also included and measures to reduce them should be demonstrated.

B) Within three-months of the first occupation of the non-residential unit in the approved development, Energy Performance Certificates [EPC's], detailed modelling output reports showing clearly the BER and TER from the "as built stage" to confirm compliance in terms of savings achieved through energy efficiency measures should be also submitted for written approval by the local planning authority.

C) Within three-months of the practical completion of the non-residential unit, technical information and evidence that the renewable/low carbon technologies, if incorporated, are certified under the Microgeneration Certification Scheme (MSC) and, if appropriate, complies with the Enhanced Capital Allowances (ECS) product criteria should be submitted to the local planning authority.

The development shall be carried out strictly in accordance with the details so approved.

- 35) Prior to the first occupation of each dwelling within the development, the approved residential units shall incorporate and maintain mitigation measures that will assist with reducing the risk of overheating, follow the Cooling Hierarchy and comply with CIBSE TM49 & TM59 criteria as stated in the approved Overheating Risk Assessment Addendum (27 October 2017) prepared by Thornton Reynolds.
- 36) Prior to occupation of the non-residential unit within the approved development, the details of the dynamic thermal modelling, being applied to each non-residential unit proposed using the guidance and criteria provided in CIBSE TM49 & TM52 and demonstrating how these units perform against and even exceed the overheating criteria, shall be submitted to the local planning authority for written approval. The details of any additional measures to be incorporated into each non-residential unit to minimise the risk of overheating (without active cooling first) shall also be submitted and evidence that these measures can be incorporated into the development if the dynamic thermal modelling demonstrates that overheating would occur. Compliance with Criterion 3 of the Building Regulations should also be demonstrated. Each non-residential unit shall thereafter be provided in accordance with the approved details.