



## Appeal Decision

Inquiry held 2-5 and 9-11 November 2021

Site visit made on 5 November 2021

**by Siobhan Watson BA (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7<sup>th</sup> December 2021**

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**Appeal Ref: APP/M5450/W/21/3278646**

**Canons Park Station Car Park, 229 Donnefield Avenue, Harrow, HA8 6RL**

- 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 Catalyst Housing Limited and Transport for London against the decision of the London Borough of Harrow.
  - The application Ref P/0858/20, dated 4 March 2020, was refused by notice dated 25 January 2021.
  - The development proposed is the redevelopment of existing public car park to provide new residential accommodation (Use Class C3) and flexible ground floor space and a public car park along with associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The London Plan 2021 was adopted after the planning application was refused. I will therefore refer to the London Plan adopted policies set out in the Statement of Common Ground which I consider to be most relevant to my consideration of the appeal proposal, taking into account the matters of dispute between the parties.

### Main Issues

3. The main issues are the effect of the proposed development upon (i) the character and appearance of the area with particular regard to designated heritage assets; and (ii) the living conditions of the occupiers of neighbouring dwellings.

### Reasons

#### *Character and Appearance*

#### Prevailing Character of the Area

4. The appeal site is currently a surface car park alongside the railway embankment of the Jubilee line. There is an ambulance station and car repair garage to one side and Canons Park which is a Grade II Registered Park and Garden (RPG) to the other side. The park is also designated as Metropolitan Open Land (MOL) and is within the Canons Park Estate Conservation Area (CA). A very small part of the site, adjacent to the park is within the CA. There is low rise residential development directly opposite the site which includes two storey

dwelling and two and three storey flats. Overall, Donnefield Avenue has a low rise, mature landscaped character.

5. At end of Donnefield Avenue, at the junction with Whitchurch Lane, is Canons Park Station and beyond this is a three-storey parade of shops behind which is the Howberry Road estate, an area of traditional two-storey, semi-detached housing. On the opposite side of Whitchurch Lane, behind the main road frontage, lies the Stanmore Park Development which is a recent predominantly residential development containing buildings of varying heights. Whitchurch Lane itself is mainly characterised by two storey development in the vicinity of the site. Whilst there are non-residential elements in the area, such as an ambulance station and MOT testing centre, these are common suburban uses which provide day to day services for residents. The wider area is predominantly residential and therefore the area has a typical suburban character.

### Tall Buildings Policy

6. Policy D9 of the London Plan 2021 says that tall buildings should only be developed in locations that are identified as suitable in Development Plans. It says that development plans should define what is considered a tall building for specific localities, based on local context. It says that the height will vary between and within different parts of London but should not be less than 6 storeys or 18 metres measured from the ground to the floor level of the uppermost storey. The explanatory text says that where there is no local definition, the policy applies to buildings over that height.
7. The explanatory text to Policy CS1 "Overarching Policy" of the Harrow Core Strategy 2012 (CS) sets out the borough wide objectives. It says that windfall proposals for tall, landmark buildings will be assessed in relation to the planning decisions criteria set out in London Plan Policy 7.7. This Policy has been replaced by the current London Plan Policy D9. Harrow does not provide its own definition of tall buildings under CS1 or in the Glossary to the CS.
8. The buildings would be 7 storeys and 21 metres high so that would be higher than the minimum height expressed in the London Plan but the appellant is of the view that it would not be a tall building because, they say, tall buildings are defined in the explanatory text to CS Policy 2 "Harrow and Wealdstone Policy Sub Area" as at or above 30m high. However, this figure is mentioned within the context of the production of a Joint Area Action Plan for the Intensification Area within the Harrow and Wealdstone Sub Area, which is a specific locality, rather than within the context of the borough as a whole. There is no borough wide definition of a tall building.
9. The appeal site is not within the Harrow and Wealdstone Sub Area let alone the intensification area so the 30m high figure does not apply. The appeal site is not in an area identified for tall buildings in the development plan. In my mind, the proposed buildings can be defined as tall buildings. Therefore, the proposal would conflict with Policy D9.
10. I note the appellant's evidence that the Council has previously interpreted the explanatory text to Policy CS2 as a borough wide policy, however, whilst I note

their argument in respect of consistency<sup>1</sup>, it is not for me to repeat mistakes made local planning authorities.

#### Effect of the proposal upon the street-scene

11. The proposed buildings would extend for over half the length of Donnefield Avenue and would be 7 storeys high. The top floor would incorporate set backs, which to some extent, would mitigate the visual impact of its total height when standing close to it. However, the full height of the building, along with the service structure on top, would be obvious from medium and longer-range views, including from the streets of residential development around Howberry Road and Cheyneys Avenue. Viewpoint 7 of the appellant's Townscape Visual Impact Assessment (TVIA) very clearly demonstrates how the skyline would change behind Cheyneys Avenue from treetops to huge masses of uncharacteristically high buildings, significantly taller than the trees, towering over and bearing down upon the existing dwellings. This would be particularly apparent when viewed from Watersfield Way towards Cheyneys Avenue. The railway embankment would not create any discernible visual break between this area of housing and the proposed flats as it is lower than the proposed buildings.
12. Furthermore, surrounding housing, including that on Donnefield Avenue, is characterised by deep front gardens, whereas the proposed flats would be built against the back of the footway. I accept that many of the front gardens on the Howberry Road estate have been hard surfaced but their set back from the pavement remains. In any event, in terms of the proposed frontage treatment, the more relevant street is Donnefield Avenue and the housing here includes plenty of greenery to the frontages. The height, together with the extensive mass of the buildings, would be dramatically at odds with the prevailing grain of the surroundings and the development would appear wholly overbearing and intrusive within the street-scene of Donnefield Avenue. It would also create a sense of enclosure of Donnefield Avenue itself. Viewpoint 6 of the TVIA demonstrates the overbearing and enclosing nature of the appeal proposal and the sharp and incongruous character contrast that would result between the two sides of Donnefield Avenue.
13. The appellant drew my attention to the development at Stanmore Park<sup>2</sup> as an example of existing character in the surrounding area. I walked around this at my visit and found that it was not comparable to the appeal proposal. This is because whilst there are 6 storey flats at Stanmore Park, they are situated within a large comprehensive scheme. Stanmore Park contains low rise development where it is closest to the two-storey dwellings on Whitchurch Lane. The 6 storey flats are far away from those dwellings. There is a gradual increase in size and scale as the development gets further from the older, lower buildings, thereby responding to the existing context. The 6 storey flats at Stanmore Park have a completely different context to that of the appeal scheme. In any event, Stanmore Park is on the other side of Whitchurch Lane and does not form part of the street scene of the appeal site. The axonometric drawing contained within the appellant's Design and Access Statement very clearly shows how the proposal would be out of keeping with the scale of buildings on Donnefield Avenue, Whitchurch Avenue and the Howberry Road

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<sup>1</sup> Suffolk Coastal DC [2017] UKSC 37 and R(Adriano) v Surrey County Council [2002] EWHC 2471

<sup>2</sup>Planning Inspectorate Reference APP/M5450/A/06/2032152

- Estate. The contrast between the proposed buildings and the scale and height of their surroundings is shown on this drawing and it is a very stark contrast.
14. The appellant explained that the detailed design would be high quality and would include details such as full brick length window reveals, paired semi projecting balconies, setback upper terraces, highly articulated facades, projecting double height entrances and an active frontage to the ground floor which would increase passive surveillance over the street. Nevertheless, the high-quality design details would not overcome the impacts of the height and mass of the proposal.
  15. In terms of the proposal increasing surveillance, the existing dwellings on Donnefield Avenue are not completely hidden by trees and there is some activity in connection with the use of the site as a car park. Whilst I have no doubt that passive surveillance over the street would be increased by the proposal, I am unconvinced that the existing amount of passive surveillance is particularly lacking or problematic.
  16. I acknowledge that Paragraph 59 of the National Design Guide says that where the scale or density of new development is very different to the existing place, it may be more appropriate to create a new identity rather than to scale up the character. However, this does not mean that the character of an existing place should be harmed. In fact, Paragraph 20 of the Guide indicates that good design involves careful attention to context. In addition, Paragraph 40 indicates that well-designed places are based on a sound understanding of the features of the site and the surrounding context; that they are influenced by and influence their context positively; and are responsive to local history, culture and heritage. Notably, Paragraph 43 advocates that designs are based on an understanding of existing patterns of built form to inform scale. Whilst this does not mean that contrast or change is necessarily harmful, it does demonstrate that scale and context is important in formulating a design.
  17. Policy H17 of the Harrow Site Allocations 2013 gives an indicative capacity for the site as 17 dwellings. The Council expressed the view at the Inquiry that this figure is out of date due to the adoption of the London Plan. In this respect, the appellants placed great reliance on Policy D3 of the London Plan which refers to optimising site capacity. However, although Policy D3 says that incremental densification should be actively encouraged, it indicates that a change in densities should be done in the most appropriate way. It also conveys that optimising site capacity means ensuring that development is of the most appropriate form for the site and responds to a site's context. It requires development to positively respond to local distinctiveness including through its scale and shape with due regard to existing and emerging street hierarchy, building types, forms and proportions. It also requires development to respond to the existing character of a place and to enhance heritage assets.
  18. In respect of optimisation, I have also had regard to Paragraph 125 of the Framework which advises that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning decisions avoid homes being built at low densities, and that developments make optimal use of the potential of each site. Paragraph 120(d) advises that planning policies and decisions should also promote and support the development of under-utilised land and buildings and cites car parks as such land. Nevertheless, in respect of achieving appropriate densities,

Paragraph 124 advises that planning policies and decisions should support development that makes efficient use of land whilst taking into account the desirability of maintaining an area's prevailing character and setting. Therefore, the Framework does not advocate optimisation regardless of the effect upon an area's character and appearance.

19. I note the appellant's argument, in respect of a changing context, that part of Canons Park Close has planning permission to construct another storey and there are permitted development rights in respect of adding up to two storeys. However, even if these permissions were implemented, the result would not be comparable to three seven-storey buildings at the back of the footway. Furthermore, their implementation would not dramatically change the character of the street scene in the way that the appeal scheme would. The existence of the permitted development rights and planning permission does not justify the proposal.
20. The scheme would widen the footway and I note the appellant's evidence that people walk single file along the street. However, my own observations at my visit were that at least two people can walk side by side on the pavement. The appellant says the useable width of the pavement is 1.9m but this is not particularly narrow. There is currently a grass verge alongside the pavement which provides a further buffer between pedestrians and cars. The widening of the pavement would be a very minor benefit. The proposed street trees and planters would be attractive but the pavement works would not overcome the proposed height and mass.
21. I acknowledge that the existing car park, which is surrounded by a palisade fence and conifers, is not especially attractive. However, this existing form of development it is at a low physical level, it is of an open nature and therefore imposes less upon the street than the proposal. Furthermore, unlike the proposed appeal buildings, it is not readily seen in wider views beyond Donnefield Avenue.
22. In line with Policy D4 of the London Plan which requires design scrutiny, the scheme was subject of advice from the combined Harrow/Mayor TfL Design Review Panel (DRP) which provided comments at different stages of the scheme being drawn up. The final review resulted in the DRP confirming that it was comfortable with the height and massing distribution of the proposed buildings and it expressed support for the proposed scheme. Nonetheless, there is scant reference to the prevailing character and appearance of Donnefield Avenue in the three DRP responses before me and therefore, it is unclear whether the panel fully took the townscape characteristics of Donnefield Avenue into account.
23. The Council's Design Officer was of the view that the proposed buildings would have a complimentary relationship with the neighbouring low-rise mansion buildings to the east of Donnefield Avenue. However, for the reasons given above, I disagree with that opinion and consider that the proposed development would be severely harmful to the character and appearance of the street-scene.

#### Effect upon Heritage Assets

24. Framework paragraph 199 says that when considering the impact of a proposed development on the significance of a designated heritage asset, great

weight should be given to the asset's conservation. Framework paragraph 200 says that any harm to the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. The Framework defines setting as the surroundings in which the asset is experienced, recognising that elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.

25. The Canons Park Estate Conservation Area (CA) is comprised of the Canons Park Registered Park and Garden (RPG) and an attractive, verdant interwar Metroland estate comprising of reproductions of old Kentish black and white c16 farmhouses. The CA includes the RPG's main carriage drive from Edgware Road. The residential estate is generous and regular in its plot sizes and set within streets lined with trees and green verges. The low density and residential scale and massing of the 2-3 storey buildings within it emphasises its generous Metroland qualities. However, this housing area of the CA is on the other side of the park to that of the appeal site and the setting of this part of the CA would remain unaffected.
26. The RPG is an early 18<sup>th</sup> Century landscaped park laid out for James Brydges, first Duke of Chandos by Alexander Blackwell. Land belonging to the estate was sold off for housing in the early 20<sup>th</sup> century and the park that remains forms the RPG. Notable garden designers included Blackwell, Kent, Repton and Mallows. Some of the landscape features associated with the historic parkland survive. The most notable structure in the RPG is Canons House, a Grade II Listed Building, at the opposite end of the park to the appeal site. This is a villa which was built on the site of the former Canons Palace in 1754, using some of the materials of that building, and is now the North London Collegiate School. Its formal gardens, which include structures such as balustrades, walls and a temple were designed by Mallows. There is an irregular shaped pond situated on the north west side of the main school building which dates from the early 18<sup>th</sup> century layout. On the west side of the pond is a small summerhouse of the late twentieth century.
27. A garden temple which is Grade II Listed, and the George V Memorial Garden (a former kitchen garden) are to the south of the school and in the public park area. The memorial garden has a formal layout of 1938 featuring a central square pond surrounded by a raised terrace with steps, formal flower beds and a pavilion. The more southern part of the RPG, which is the area closest to the appeal site includes playing fields, an equipped play area and the spinney. It has a mid to late 20<sup>th</sup> century functional path layout and an extensive grassed area. The Grade I Listed Church of Saint Lawrence is at the outer south east corner of the park.
28. What remains of the RPG is now largely owned and enjoyed by the public as Canons Park and I could see at my visit that it is well used for walking, exercise, sport, play and as a pedestrian route between surrounding roads. The whole of the CA, including the RPG has a green and sylvan feel due to the richness of trees and other soft landscaping features. The RPG itself is of an open nature with only a limited amount of built development and is free from vehicular traffic. This makes it a spacious, natural and tranquil area in comparison to the surrounding built up suburban area with its consequential activity.



29. It is the planned landscape, historic buildings, the long history of the development of the land, its spacious and verdant character and its connections with prominent people that give the RPG and CA their significance both as individual heritage assets and in combination with each other.
30. The appellant is of the opinion that the proposed development would not be within the setting of the Listed Buildings within the RPG and at the Inquiry the Council was unable to confirm with any reasonable explanation that it would. As the Listed Buildings are some distance from the appeal site and have physical development between them and the appeal site, I consider that their settings are not materially affected by the proposal.
31. The setting of the CA is mainly suburban housing development and the railway. The setting of the RPG is similar but it includes the part of the CA away from the appeal site which has housing development that is more spacious and more richly landscaped than the housing outside of the CA. However, an important component of the setting of the RPG and CA are the views out of the RPG which predominantly comprise of a skyline of trees and low-rise development beyond them. The long-range sky views are an important part of the experience of being within Canons Park as they contribute to the park's spacious appearance and atmosphere of relative tranquillity. I acknowledge that the 6 storey Stanmore Place flats are partially visible from the RPG but they are seen in the distance.
32. I also appreciate that the northern part of the RPG and the CA has more historic and architectural significance than the southern part due to the more formal garden layout, the presence of several Listed Buildings and the spacious Tudor revival housing area but the statutory designations cover the whole of the RPG.
33. The proposed seven storey blocks would be immediately adjacent to the RPG and CA and there would be clear and near views of the mid and upper stories from much of the RPG. Whilst the proposed development would not obstruct the long-distance key view<sup>3</sup> from Whitchurch Avenue towards the formal garden layout, it would be seen to the side when walking along the route of this view.
34. On the western boundary of the RPG and CA, the appearance of the proposed three blocks of flats above and beyond the sports pavilion and Canons Park Close flats would be dramatic as they would rise significantly above these existing buildings and provide a long and tall backdrop of built development. This is demonstrated in TVIA viewpoint 3.
35. The flats would similarly dominate and intrude upon the southern boundary, adjacent to the Donnefield Avenue access to the RPG. They would rise above the treeline and above the two houses at the end of Donnefield Avenue. They would be seen from the playground and the open spaces closest to the gate to Donnefield Avenue, especially when walking along the path towards it. This is demonstrated in TVIA viewpoints 5 and 6.
36. Furthermore, as the suburban housing forms the setting to the heritage assets, the approach along Donnefield Avenue would also be affected. Currently, the low-rise development and the spaciousness of the layout of the street,

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<sup>3</sup> As denoted in Picture 6.31 Canons park Estate Conservation Area Appraisal and Management Strategy

including its mature landscaping, enable the pedestrian to approach the park within an atmosphere of sylvan spaciousness. The proposed blocks of flats, due to their height, massing and position at the back of the pavement, would urbanise and enclose the street and degrade this pleasant and spacious ambiance.

37. Historic England advised in the pre application consultation that the seven-storey height of the proposed buildings would be overbearing; that the proposed development would be much greater than the established domestic scale, height and massing of existing buildings both in the conservation area and in the wider local environment and they would result in harm to the setting of this part of the RPG and the CA. Historic England declined to comment on the planning application consultation.
38. In conclusion, the proposed flats would starkly and uncharacteristically intrude into the skyline and would harm views out of the CA and RPG spoiling the open outlook from the southerly end of the RPG and CA. The approach along Donnefield Avenue would also be adversely affected. The setting would change to that of a more urban and built-up nature and would diminish the open and tranquil ambience within the RPG and of its approach along Donnefield Avenue. This would harm the setting and significance of the heritage assets.
39. Since the development would affect only the more southerly part of the CA and the RPG, I consider the impact in this regard to be less than substantial but within the middle of the less than substantial range. Nevertheless the harm to their significance is of considerable importance and weight. The Framework advises that less than substantial harm must be weighed against the public benefits of the scheme.
40. A tiny part of the site, adjacent to the park, is within the CA. A small picnic set and bike stands are proposed. The front of this part of the site facing Donnefield Avenue would be lawned and contain some herbaceous planting and the ground would be surfaced with coloured asphalt to the rear. There are currently conifers and car parking covering this part of the site. As this part of the site would be largely free of structures and would incorporate a small amount of soft landscaping, I consider that the development would preserve the character and appearance of the CA itself, however, this does not overcome the harm to its setting.
41. I therefore conclude that the proposed development would cause very substantial harm to the character and appearance of the area. The proposal would be contrary to CS Policies CS1 and CS8; DM1 of the Harrow Development Management Policies Local Plan 2013 (HDMPLP); D1, D3, D9 and HC1 of the London Plan 2021. In combination, these policies seek to protect the character of Harrow's suburbs; protect the setting of Canons Park; preserve heritage assets; and ensure that development has regard to local context including having regard to its massing, bulk, scale and height. Even if I had not considered the proposal against London Plan Policy D9 I would have reached the same conclusion as the proposal is contrary to the other above policies.
42. The proposed development would also conflict with the Canons Park Estate Conservation Area Appraisal and Management Strategy Supplementary Planning Document which seeks to protect the significance of the CA and RPG.



43. It would also conflict with Paragraph 134 of the Framework which indicates that development that is not well designed should be refused and sub paragraph (b) of that paragraph which indicates that designs should fit in with the overall form and layout of their surroundings.

#### *Living conditions*

44. The appeal buildings would be some 20-32m from principal windows to habitable rooms of the residential properties opposite. Policy D3 of the London Plan indicates that development should deliver appropriate outlook, privacy and amenity. Part C of HDMPLP Policy DM1 requires that all development proposals must achieve a high standard of privacy and amenity but no spacing distances are contained within either of these policies.
45. The Mayor's Supplementary Planning Guidance (SPG) Standard 28 indicates that proposals should demonstrate how habitable rooms within each dwelling are provided with an adequate level of privacy in relation to neighbouring property, the street and other public spaces. There is no specific distance contained within this policy but the explanation mentions 18 – 21m between facing homes as a useful yardstick. The proposal would conform to this. Given that the facing windows would be in excess of this figure, I find no harm to the privacy of existing occupiers.
46. The Mayor's SPG does not contain specific guidance in respect of outlook. Nevertheless, the development plan policies confirm that it is a consideration. The buildings would be located in a suburban context, where the expectation and enjoyment of space and outlook is somewhat different to that of a more high-density urban setting. I have already found that the proposed buildings would have an enclosing effect upon the street. Similarly, I find that the outlook from the Canons Close flats would unacceptably be enclosed due to the excessive height and massing of the proposal. They would have an overbearing effect upon the outlook from habitable rooms and front garden spaces of the flats. Although the front gardens are not completely private, I noted children playing within them at my visit and therefore, they appear to be valuable as amenity space.
47. For this reason, I conclude that the proposal would harm the living conditions of existing neighbouring residents and would be contrary to Policy D3 of the London Plan and Policy DM1 of the HDMPLP.

### **Benefits of the Scheme**

#### Affordable Housing

48. The proposal would deliver 118 units all of which would be affordable homes. There would be 22 two- and three-bedroom family sized London Affordable Rent units and 96 Shared Ownership units as a mixture of one, two and three bedroom units. The appellant is a registered social housing provider.
49. Policies H4 and H5 of the London Plan requires at least a 50% level of affordable housing on the site due to it being public sector land. The level is calculated on the basis of the number of habitable rooms. This is greater than the 40% affordable housing requirement of CS Policy CS1. Policy CS1 does not set a tenure mix, however, Policy H6 of the more recent London Plan sets a tenure mix as a minimum of 30% low cost rented homes, as either London Affordable Rent or Social Rent; 30% intermediate products, including London

Shared ownership; and 40% is to be determined by the borough as low-cost rented homes or intermediate products based on identified need. The explanatory text indicates that the presumption is that the 40% to be decided by the borough will focus on Social Rent and London Affordable Rent. There is no policy in the Harrow development plan which sets what tenure the remaining 40% should be.

50. The proposed level of provision of London Affordable Rent would be 29% of the total accommodation provided but the provision of affordable housing overall would be twice that required by Policies H4 and H5 of the London Plan. The excess provided would be Shared Ownership which is an important tenure for those who otherwise would not be able to buy. This tenure is referred to in the Living with Beauty report 2020<sup>4</sup> which says that more affordable homes are needed not just for those on the lowest incomes, but for many working families who are squeezed from both ends of the housing market.
51. The appellant's evidence is that there are around 2000 households on the Council's Waiting List. The most recent Strategic Housing Market Assessment of 2018 concludes that there is a net need for an additional 384 affordable dwellings each year between 2016-2040. The Core Strategy has had a 40% affordable housing target for the 2009-2026 period but the recently adopted London Plan records that in the last 3 years only 6% of new dwellings developed in Harrow have been secured as affordable housing. This is the lowest level of provision of any London borough apart from the City of London. I heard at the inquiry that on average only 41 affordable homes per year were provided in Harrow over a nine-year period between 2011 and 2020. The draft Harrow Borough Plan evidence base comments that in the last 7 years just 12% of net completions from all sources were affordable housing. This rate of provision is dire in comparison with the target rate of 40%.
52. The Council argued that they will make good progress in catching up on provision given their CS target of a 40% provision and that they will achieve this through existing approvals and large strategic sites coming forward, including on public land which requires 50% provision. However, notwithstanding this encouraging pipeline, affordable housing from previous trajectories has not all materialised.
53. It has often been the case that financial viability means that the policy required amount of affordable housing is not provided. I appreciate that the 2018 Framework somewhat changed how viability calculations are to be done and this should result in more schemes becoming viable. I also note the "fast track" concept for viability in the 2021 London Plan which allows developers to propose 35% affordable housing without having to test viability. However, even if all consented sites deliver the affordable housing agreed, and all future sites were to deliver 40%, the Council would not be able to make up the shortfall that has already accrued.
54. Given what I heard from both main parties, I conclude that there is likely to remain a severe shortage in the delivery and provision of affordable homes as there would still be a shortfall even if larger schemes predominantly offer 35% as the Council's predictions were based on the 40% figure. It is notable that Harrow has the second lowest proportion of social housing in London and is

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<sup>4</sup> 'Living With Beauty: Promoting health, well-being and sustainable growth' report by the Building Better, Building Beautiful Commission January 2020

287<sup>th</sup> out of 326 local authorities in the country in terms of its percentage of social housing.

55. Furthermore, the 2018 SHMA figure of 384 dwellings per year does not address the affordable needs that the Framework has required since 2018 as it specifically excludes any calculation of those who are in private rented accommodation and not in receipt of housing benefit. This squeezed middle is now acknowledged by the Framework and the PPG to be in need of affordable housing and this need must be met. The appellant has estimated the additional need to be between 166 and 373 dwellings per annum beyond the 384 figure in the SHMA. The Council has not provided a figure to dispute this. For this reason, even though I accept that the additional provision would not be for people in the most housing need as it would be for people who can afford market rent, the 100% provision of genuinely affordable housing on the site, of the mix of tenure proposed, would be a very substantial benefit of the scheme.
56. The appellant has provided viability evidence that if this scheme does not go ahead, it would be unviable to achieve a reduced scheme which provides affordable housing on the site. The viability evidence in respect of construction costs between the parties is widely divergent. I have some concerns about the appellant's viability evidence particularly as their build costs are high when compared to those of the Royal Institute of Chartered Surveyors Building Cost Information Service (BCIS) database. Furthermore, the Council, in addition to using BCIS data, did an analysis of other recent schemes that had submitted viability reports and found that the build costs in them were also significantly below those of the appellant. Nevertheless, for the purposes of the balancing exercise I will assume the appellant to be correct that a reduced scheme would not be viable.

#### Repair of Listed Wall

57. The submitted S.106 agreement provides for a historic environment contribution of £10,000 towards repair works to the Grade II Listed memorial garden walls within the RPG. This would enhance the significance of the RPG/CA and the wall and therefore constitutes a public benefit of the scheme to which I give some weight. I am mindful, however, that the Council said at the Inquiry that the repairs could be undertaken by using other funds. Therefore, I have no reason to believe that the wall would be at risk if the proposed development did not go ahead.

#### Other Benefits

58. The S.106 agreement contains several undertakings. Some are to make the development acceptable and others can be considered benefits of the scheme. In this respect, in addition to the affordable housing and repairs to the listed wall, I consider benefits of the scheme to be the contributions and actions to support employment and training within the Council's administrative area; and the Off-Site Biodiversity Enhancement and Management Plan/financial contribution. I give these moderate weight. The remainder of the provisions in the S.106 make the development acceptable. However, it is not necessary for me to look at them in detail, given that I have found the proposal is unacceptable for other reasons.
59. The proposal would provide homes on a brownfield site in a sustainable location adjacent to public transport and, as they would be car free, it would promote

travel by sustainable transport modes. The development of the car park would result in a reduction in commuter parking. This could encourage people to either walk, cycle or take the bus to the station or to use stations closer to their home. This would be helped by the provision of 71 spaces in a new station cycle hub for use by the general public. I give these benefits moderate weight.

60. The appellant argues that the design of the scheme would be highly sustainable in accordance with London Plan policy. However, this is an expectation of all such development rather than a benefit and this is a neutral factor. There would be economic benefits from the construction of the development and from the presence of additional residents in the local area to which I give some weight.

### **Other Matters**

#### Metropolitan Open Land (MOL)

61. The site is not within MOL and therefore, whilst I recognise that Policy G3 of the London Plan refers to enhancing the quality and range of uses of MOL, it does not mention its setting and there is no policy within the Framework that seeks to protect the setting of the Green Belt. I therefore find no direct conflict with Policy G3 of the London Plan which seeks to ensure that MOL is protected from inappropriate development in accordance with the Framework tests that apply to the Green Belt. In this respect, neither do I find conflict with CS Policy 1 which seeks to safeguard and enhance MOL. In any event, I have considered the setting of the MOL under other policies.

#### Previous Appeal decisions

62. The appellant has provided a number of appeal decisions to support its case. These are mostly to demonstrate the weight they say that should be attached to the provision of affordable housing in the planning and heritage balances. All of those appeals were for schemes very different to the appeal proposal and on different sites within different contexts. I have considered this appeal on its own particular merits.

### **Overall Conclusions**

63. I have found less than substantial harm to the significance of the CA and the RPG. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. I have found the harm to the setting and significance of the RPG/CA to be within the middle of the less than substantial range. I am mindful, in this regard, that less than substantial harm does not equate to a less than substantial planning objection. Having regard to the advice in the Framework, this is a consideration to which I attach great weight.
64. I have considered carefully the weight to the public benefits. On balance, however, that weight does not outweigh the harm to the heritage significance of the RPG and the CA.
65. I have found very substantial harm in terms of the effect on the character and appearance of the area generally and harm to living conditions and therefore

conflict with the relevant development plan policies. To be added to that is the heritage harm and the corresponding conflict with relevant policies.

66. Having weighed carefully all the above benefits they do not, in my view, outweigh the harm that I have identified. I conclude that the proposal would conflict with the development plan taken as a whole and that the appeal should not succeed.
67. Even if I had found that the public benefits did outweigh the heritage harm, the harm to living conditions and the character and appearance of the area as a whole is such that it would significantly and demonstrably outweigh the identified benefits and the outcome of the appeal would be the same in any event.
68. For the above reasons, I dismiss the appeal.

*Siobhan Watson*

INSPECTOR

## DOCUMENTS SUBMITTED AT THE INQUIRY

Updated Statement of Common Ground in respect of viability

### **Appellant**

Cannon's Park Viability Note

Update to Table 2, p26 of Viability Proof of Evidence

Amendments to Appendix 7 of Viability Proof of Evidence

Appeal Decisions APP/M5450/A/06/2032152 and APP/M5450/A/06/2032153

A Miele corrections and clarifications to proof of evidence

Shared Ownership initial eligibility and sustainability assessment calculation

Gloucestershire Local Housing Needs Assessment 2019

Highways technical note in response to 3<sup>rd</sup> party comments from WSP dated 5 November 2021

Note on building foundations from DS2

### **Interested Parties**

Email from M Joshi dated 2 November 2021 in respect of car parking with a plan of local roads to look at for Inspector's site visit.

Email from S Sackwild dated 3 November 2021 suggesting local roads to look at for Inspector's site visit.

### **Council**

Supplementary Viability Evidence

Community Infrastructure Levy Compliance Statement



## **APPEARANCES**

### FOR THE APPELLANT:

James Strachan QC called:

Edward Blackett BArch, Dip Arch, ARB, RIAS, RIBA - Design  
Chris Miele IHBC, MRTPI - Heritage  
David Parker MSc, BA(Hons), DMS, FCIH – Affordable Housing  
Pascal Levine MRICS – Viability  
Allan Trulock – Transport  
Liz Mason BSc, MRTPI - Planning

### FOR THE LOCAL PLANNING AUTHORITY:

David Forsdick QC called:

Funda Kemal BSc(Hons), DipArch, PgCert, ARB, RIBA- Design  
Lucy Haile BA(Hons), MSc, IHBC, MRTPI– Heritage  
Anthony Lee PhD, MRTPI, MRICS– Affordable Housing  
Thomas Blackman BA(Hons) MPLAN MRTPI – Planning

### INTERESTED PARTIES:

Minesh Joshi – local resident  
Abe Hayeem, RIBA – local resident  
Jane Price – local resident  
Shirley Sackwild - Cannon's Park Residents' Association  
Mike Turner – Friends of Cannon's Park  
Councillor Marilyn Ashton, Stanmore Park Ward and Planning Committee  
Spokesperson  
Sharon Graham, Steering Committee, Friends of Canons Park