



Appeal Decision

Hearing held on 2 November 2016 and 24 January 2017

Site visit made on 25 January 2017

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 April 2017

Appeal Ref: APP/K5600/W/16/3146132

100A West Cromwell Road, London W14

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Spen Hill Developments Limited against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/15/03067, dated 13 May 2015, was refused by notice dated 9 September 2015.
 - The application sought planning permission for the erection of five buildings (up to a maximum of 13 storeys in height including basement level) to provide a maximum of 278 residential units, provision of an extension at ground floor level to existing retail store of 1722 sq.m. (NIA), community and leisure facilities (comprising 3,880 sq.m. gross external area), crèche facility and café, hard and soft landscaping, provision of parking and cycle spaces, provision of vehicular and pedestrian access, improvements to the existing public realm and all ancillary and associated works, servicing, storage, plant and equipment without complying with condition 2 attached to planning permission Ref DPS/DCPP/11/00107/Q06/STR2, dated 19 July 2012.
 - The condition in dispute is No 2 which states that the development should not be carried out except in complete accordance with the details shown on the submitted plans (plans listed).
 - The reason given for the condition is: The details are considered to be material to the acceptability of the proposals, and for safeguarding the amenity of the area.
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Procedural matters

1. The Hearing also considered a separate appeal under s78 of the Town and Country Planning Act 1990 related to the Council's refusal of consent related to the original 2012 planning permission. That appeal relates to significantly different matters to those in this appeal and is the subject of a separate Decision.
 2. However, the consequence of my decision to allow the s78 appeal is to confirm the implementation of the original permission. There is therefore no time limit as to when a s73A application can be made to the Council to vary the condition. The current appeal relates to an application to vary a condition attached to the 2012 planning permission, specifically a condition on the original permission which lists the approved plans.
 3. Shortly after the close of the Hearing, a Planning Obligation (26 January 2017), signed by the landowners, the sub-lessee and the Council was submitted. This had been discussed at the Hearing. It dealt with, amongst other matters, affordable housing; parking permits; financial contributions related to air
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quality, construction training and a monitoring fee; a Construction Transport Management Plan; the community leisure facility; the north-south pedestrian route; Travel Plans, land transfer and highway works. I have taken the contents of this obligation into account in reaching my decision.

Decision

4. The appeal is allowed and planning permission is granted for the erection of five buildings (up to a maximum of 13 storeys in height including basement level) to provide a maximum of 278 residential units, provision of an extension at ground floor level to existing retail store of 1722 sq.m. (NIA), community and leisure facilities (comprising 3,880 sq.m. gross external area), crèche facility and café, hard and soft landscaping, provision of parking and cycle spaces, provision of vehicular and pedestrian access, improvements to the existing public realm and all ancillary and associated works, servicing, servicing, storage, plant and equipment at 100A West Cromwell Road, London W14 in accordance with the application Ref PP/15/03067, dated 13 May 2015 subject to the conditions set out in the Schedule to this decision.

Application for costs

5. At the Hearing an application for partial costs (related to two separate matters) was made by Spen Hill Developments Limited against The Council of The Royal Borough of Kensington & Chelsea. This application will be the subject of a separate Decision.

Main issues

6. Planning permission for the development described in the banner heading above was granted by the Council in July 2012. Since that time a number of pre-commencement conditions have been discharged, including those which are the subject of the separate appeal decision referenced above. Some work has been undertaken on the site prior to the expiry of the permission and the Council accepts that the permission has been lawfully implemented.
7. The current proposal is to vary condition 2 of the original planning permission (compliance with approved drawings). Amongst other matters, the revised proposal reduces the number of residential units by 24 and reduces the scale and massing of the east terrace. There is agreement that the scheme satisfies development plan requirements in terms of land use and the provision of community facilities. The application was refused on grounds related to affordable housing, the absence of a s106 Obligation, character and sense of place, public realm, disabled and motorcycle spaces, and transport impact.
8. Since the Council's decision a number of matters have been agreed between the parties. The quantum of affordable housing in the scheme has been agreed as the maximum reasonable amount that can be achieved. It is agreed that disabled and motorcycle parking could be the subject of a condition. Finally the parties agree that the terms of the Planning Obligation which accompanied the original planning permission could be replicated in a deed entered into in relation to this appeal – as has been done.
9. With that background there are three main issues in this appeal:
 - The effect on the character and appearance of the area in relation to layout, form and scale

- Whether the proposal would produce an engaging, well defined and active public realm and a legible street network
- Whether the proposal demonstrates that the traffic impact would be acceptable in the light of the Earls Court development and takes account of the loss of coach parking since 2012

Reasons - layout, form and scale

10. The site is at the junction of Warwick Road and West Cromwell Road, with the rear of the site being bounded by a railway. The site contains a retail store, the 'Tesco plaza' area with social housing above. There is a coach/lorry park at basement level, and the part of the site adjacent to the railway is open land. The main frontage is onto West Cromwell Road to the south, where the existing development is dominated by a podium structure.
11. The area around the appeal site is mixed in character, ranging from terraced houses to buildings up to 11 storeys in height to the north. The evidence is also that developments further to the north are proposed or approved up to 17 storeys in height. To the south is West Cromwell Road, a main arterial route, whilst the West London Railway lies to the west.
12. The appellant has explained that ownership issues have prevented the development being implemented as approved. I will return to this matter below. In any event, the current proposal is intended by the appellant to address allegedly intractable ownership issues. The changes largely affect the east terrace and infilling beneath the west terrace. The ramp and retail area has been modified.
13. The alterations would not be readily visible in long views although they would have an effect from within the development itself and from the Shaftesbury Estate. The extent of the visibility of the changes from the approved scheme is agreed between the parties.
14. The main concern of the authority relates to the manner in which the townscape created by the revised proposal would be fragmented and disengaged from its context. However the proposal is essentially a reinterpretation of the previously approved scheme, with open spaces arranged around a new public route through the development. It is hard to comprehend how the current proposal can be regarded as unacceptable in principle in townscape terms.
15. Given the very varied nature of the surrounding townscape, the balance of the evidence is that the proposal would not be at odds with the surrounding area. The massing of the proposed scheme is appropriate (and does not extend the approved building envelope) and displays a coherent and appropriate architectural language (again, the same approach as the approved scheme). The development would relate well to the surrounding area and would appropriately increase in height from north to south in response to the scale and significance of West Cromwell Road.
16. A particular concern of the Council is the truncation of the eastern terrace when compared with the approved development. Whilst different to that approved, I do not agree that it would be divorced from its context, particularly given the very varied setting of the site.

17. The development plan includes the Consolidated Local Plan (CLP) (2015) and the London Plan (LP) (2015). Policies in the CLP¹ and the LP² address context, local character and design quality. This concern with a high standard of design which respects the local area is reflected in the National Planning Policy Framework (the Framework) which seeks high quality design. In the light of the considerations above the proposal would not harm the character and appearance of the area in relation to layout, form and scale.

Reasons - public realm and street network

18. Due to the ownership issues the level 3 deck has been reduced in length by around 65 metres to correspond with the reduction in length of the east terrace. The public realm would not be affected at ground level, and a pedestrian route would remain through the development. However it would be amended at level 3, with a landscaped forecourt being provided.
19. The Council's position is that, without the full eastern block, the public realm would be diminished as pedestrians would have to move to one side and along arcaded walkways around a car park. I can understand this concern and agree that the pedestrian route, in part, appears to be somewhat relegated to one side of a car parking area. This feature was explored in the Council's evidence and discussed at the Hearing. However this falls far short of being a reason why the appeal should be dismissed, either on its own or in conjunction with other consequences for the public realm.
20. Policies CL1 and CR1 of the CLP and policies 7.1, 7.3 and 7.5 of the LP address context and character, the street network and the public realm. In this case, the development provides a logical, well defined and active public realm, and would not conflict with any of the relevant development plan policies and the Framework.

Reasons - the Earls Court development and the loss of coach parking

21. The Council's concern is that the Transport Assessment which accompanied the application failed to demonstrate that the Earls Court development had been properly assessed and that changes in the availability of coach parking since 2012 were not considered.
22. Dealing first with the Earls Court development, the original 2012 planning application was submitted before the application for the Earls Court scheme. For that reason the original Transport Assessment could not possibly have taken account of the Earls Court scheme, as the projected traffic flows were not known. However the assessment of the Earls Court scheme itself would have taken account of the 2012 permission at the appeal site, as by then it was a committed development.
23. An Addendum Transport Assessment was submitted in relation to the appeal scheme which specifically noted the reduction in traffic flows related to current scheme in comparison with the 2012 approved scheme, and the consequently reduced effect on the highway network. It was stated that the mitigation measures associated with the 2012 scheme would nevertheless be maintained.

¹ CL1, CL2, CR1 and CR2

² 3.5, 7.4 and 7.5

24. In any event the Council's highways representative specifically stated at the Hearing that "the proposal would not generate sufficient traffic such that planning permission should be refused". This effectively deals with that concern.
25. The site includes a coach and lorry park, although the extent to which this has been or is functioning is unclear. It is not on the TfL website as an available coach park. In any event, even if the facility were still fully operational, the valid 2012 permission allows for its removal and an element of mitigation was included in the original obligation. Furthermore the appellant explained that the lease/licence to the coach/lorry park would expire within a few days of the hearing.
26. There was discussion at the Hearing related to the consequences of the loss of the coach parking element, if it still exists. The situation regarding coach parking in central London has undoubtedly changed since the 2012 permission. However there is no evidence of specific harm which would be caused by the closure of any existing facility. In addition the evidence is that developments have been approved on The Embankment and at Earls Court/Seagrove Road which resulted in a loss of coach parking without concern being expressed.
27. Overall, the evidence is that the proposal would not harm traffic issues in relation to the Earls Court development or the loss of coach parking. It would not conflict with Policy CT1 of the CLP.

Planning Obligation and Conditions

28. The Planning Obligation effectively replicates the matters, set out above, included in the obligation which related to the 2012 permission. No objections were raised to the provisions of the new obligation and, based on the evidence before me, I conclude that it meets the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore taken it into account and given weight to those matters which go beyond mitigation related to the impact of the development.
29. In a similar vein the conditions agreed by the parties in this case largely reflect those imposed in 2012. The main difference obviously relates to the approved plan numbers. The full details of the proposal need to be submitted for approval.
30. A range of conditions which control the development are necessary in the interests of the amenity of the adjoining residents and highway safety. These include a Demolition and Construction Traffic Management Plan, the Considerate Constructors Scheme, and a Construction Environmental Management Scheme.
31. A range of conditions are necessary to address sustainable modes of transport and the needs of the disabled. These include disabled car parking, electric vehicle charging, bicycle and car parking.
32. A number of conditions are necessary in order to protect residential amenity. These include controls over noise from building services, plant and vents, the hours of opening of the community facility, cafe and crèche, noise and construction details, and control over odours from extraction equipment.

33. In order to ensure the provision of community facilities, conditions are necessary to address the leisure facility and the crèche.
34. Conditions are necessary to control the external appearance of the development. These address façade details, planting, and development on roofs.
35. In order to avoid pollution and provide adequate drainage, conditions need to address waste and water infrastructure. A condition needs to promote sustainable construction by way of an Energy Performance condition.
36. To accord with the Council's retail policy, a condition needs to limit the percentage of comparison goods sales.

Planning balance and conclusion

37. A significant part of the Council's position is that the authority considers that the appeal scheme responds poorly to the design challenges of the site in comparison with the approved 2012 development. This raises the question of the likelihood of that development going ahead.
38. The appellant's submitted evidence, which was discussed at the Hearing, deals with the ownership situation which has arisen in relation to the existing residential car parking. In short, for reasons which have been clearly explained, the rights over the car parking spaces are now split between a range of known and unknown parties, and there is no way of ascertaining what rights may have been granted by the various leaseholders. In the absence of a Compulsory Purchase Order, which the Council confirmed they would not promote, there is no way in which the approved development can go ahead. The current appeal scheme does not encroach onto the car park and thereby avoids these problems.
39. I was told that some discussions have more recently taken place regarding the redevelopment of the entire site, however the clear evidence from the appellant leads to the conclusion that there is no reasonable possibility of the scheme approved in 2012 progressing. On that basis the 2012 scheme is not a realistic fallback position. The only current alternative to the appeal scheme is the site in its existing condition.
40. In relation to each of the issues above I have concluded that the proposed development would be acceptable and would not conflict with policy. This is on the basis of a comparison with the existing situation on the site in the light of development plan policy and other material considerations. Even if the development currently proposed were to be considered against the approved scheme, which I do not consider would be a reasonable approach, I would have reached the same conclusion.
41. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting another and restating those undisputed conditions that are still subsisting and capable of taking effect.

P. J. G. Ware

Inspector

100A West Cromwell Road, London W14

Schedule of conditions

Time Limit

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Compliance with approved drawings

2. Except as required by condition 5 below, the development shall not be carried out except in complete accordance with the details shown on submitted plans 084 M0A DR 101 PL0, A620 0035 A1, A620 0301 A3, A620 0302 A4, A620 0303 A7, A620 0304 A4, A620 0305 I, A620 0306 I, A620 0307 I, A620 0308 I, A620 0309 H, A620 0310 H, A620 0311 I, A620 0312 E, A620 0313 A, A620 0314 A, A620 0315 A, A620 0316 D, A620 0318 A1, A620 0320 F, A620 0321 E, A620 0322 E, A620 0323 G, A620 0330 G, A620 0331 D, A620 0332 F, A620 0333 F, A620 0334 F, A620 425 A, A620 427 A, A620 418 A

Construction Traffic Management Plan (DCTMP)

3. A Construction Traffic Management Plan shall be submitted to and approved in writing by the local planning authority prior to each demolition, excavation or construction phase of the development, or any other construction related activity likely to result in additional traffic or disruption on the highway related to the development. The statement should include:

- a) routing of demolition, excavation and construction vehicles;
- b) access arrangements to the site;
- c) the estimated number and type of vehicles per day/week;
- d) details of any vehicle holding area;
- e) details of the vehicle call up procedure;
- f) estimates for the number and type of parking suspensions that will be required;
- g) details of any diversion or other disruption to the public highway during preparation, demolition, excavation and construction work associated with the development;
- h) work programme and/or timescale for each phase of demolition, excavation and construction work associated with each phase of the development;
- i) details of measures to protect pedestrians and other highway users from construction activities on the highway;

and

- j) where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

Each of the phases of the development shall be carried out in accordance with the approved Demolition and Construction Traffic Management Plan.

Submission of details

4. Prior to the commencement of each relevant part of the development, save for demolition, full particulars of the following shall be submitted to and approved in writing by the Local Planning Authority and the development shall not be carried out otherwise than in accordance with the details so approved:

- (a) samples of materials to be used on the external faces of each relevant block;
- (b) samples of materials and detailed drawings of the fenestration, balustrades, panelling and framing to each relevant block (including any at roof level);
- (c) details of all open land within the site, including hard or soft landscaping, details of the type and size of trees within the site showing the associated tree pits and any proposed exterior lighting;
- (d) details of the pinnacle to the cylinder building.
- (e) details of the means of any external ventilation to basement car park or relevant block;
- (f) details of the elevational treatment to the West Terrace;
- (g) details of photovoltaic panels to the relevant block;
- (h) details of green/brown roofs to the relevant block;
- (i) detailed drawings (at scale 1:20) of the wheelchair units to the relevant block;
- (j) details of the main entrance to the cylinder building;
- (k) details of the main entrance to the community/leisure facility;
- (l) details of the public entrance, internal layout, fenestration, doors and walkway to the Tail Building;
- (m) residential servicing management plan;
- (n) details of layout and detailed design of travelators;
- (o) details of the glazed screen to West Cromwell Road;
- (p) retail servicing management plan.

Disabled car parking

5 Notwithstanding condition 2 above, revised car parking plans showing a minimum of eight disabled parking bays and a minimum of nine motorcycle parking bays for use of the residential units shall be submitted to and approved in writing by the local planning authority prior to the first residential occupation of the development. The development shall not be carried out otherwise than in accordance with the details so approved and shall be made available for use prior to the first residential occupation of the development.

Electric vehicle charging

6. Prior to occupation of the relevant part of the development, the electric vehicle charging points shall be provided in accordance with the approved details and maintained thereafter.

Bicycle Parking

7. Details of cycle parking for both the residential and non-residential uses together with associated shower and locker facilities shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the relevant part of the development. The cycle parking and facilities shall be installed

prior to the occupation of the relevant part of the development and maintained thereafter.

Car park

8. The whole of the car parking accommodation shown on the drawings hereby approved shall be provided before the occupation of the relevant part of the development.

Hours of opening

9. The community facility, cafe and crèche uses hereby permitted (within Class D1) shall not be carried out between 23:00 hours and 07:00 hours the following day.

Considerate Constructors Scheme

10. No development shall commence within any phase until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that these can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission.

Energy Performance

11. The residential dwellings shall achieve at least Level 4 of the Code for Sustainable Homes equivalent in relation to energy performance and no dwelling shall be occupied (unless the Local Planning Authority otherwise agrees) until a final Code Certificate has been issued for it certifying that at least Code Level 4 equivalent for this criterion has been achieved.

Energy efficiency

12. The non-residential floorspace hereby approved shall achieve a BREEAM rating of at least Very Good. None of the non-residential floorspace hereby approved shall be occupied until a post construction review certificate has been issued for it certifying that a BREEAM rating of at least Very Good has been achieved.

(13. *Omitted by the parties*)

Noise from building services plant and vents

14. Noise emitted by all external building services plant, and from any ventilation louvre or grill, when operating individually or in combination, shall not increase the lowest existing measured background LA90(15min) level measured or predicted at 1.0m from the nearest residential window and/or at a height of 1.2m above any adjacent residential garden, terrace, balcony or patio at any time when the plant is operating. The plant shall be serviced regularly in accordance with manufacturer's instructions and as necessary to ensure that the requirements of the condition are

maintained. If at any time the plant is unable to comply with this Condition, it shall be switched off and not used again until it is able to comply

Anti-vibration mounts for plant and lift equipment

15. The plant and lifts shall not operate unless they are supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.

Submission of noise report

16. The buildings shall not be occupied until a noise report has been submitted to and approved in writing by the Local Planning Authority. The report shall show how the noise emitted by the plant as finally installed will comply with condition [14].

Noise in habitable rooms

17. Prior to the construction of any floor to be occupied by residential dwellings a scheme of sound insulation designed to prevent the transmission of excessive airborne and impact noise between the commercial uses and the residential dwellings to the upper floors of the relevant part of the development shall be submitted to and agreed in writing by the Local Planning Authority. The sound insulation shall be installed and maintained in accordance with the details so agreed. The residential dwellings of the relevant blocks shall not be occupied until the agreed scheme has been fully implemented for the relevant block. The development shall be carried out in accordance with the approved details and maintained thereafter.

Combustion plant

18. Prior to installation of any combustion plant, details of the chimney stack/flue shall be submitted to and approved in writing by the Local Planning Authority to show that any chimney stack/flue will be located so that it is away from ventilation intakes or accessible areas and at a sufficient height and discharge velocity to disperse the exhaust emissions. Details of the selected combustion plant (including abatement equipment), their emissions (and maintenance schedule) shall be provided. This should demonstrate that boilers shall have NO_x emissions not exceeding 40mg/kWh of dry NO_x (at 0% O₂) and CHP plant not exceeding Band B emissions standard of the Sustainable Design and Construction SPG. The development shall be carried out in accordance with the approved details and maintained thereafter.

Odours from extraction equipment

19. Fumes or odours expelled from any flue serving a stove, oven or other cooking device shall not cause offence at relevant locations sensitive to odour (eg residential properties). If at any time the extraction plant is determined by the local planning authority to be failing to comply with this condition, it (or the source device) shall be switched off and not used again until it is able to comply.

Facade construction details

20. Prior to commencement of the relevant part of the development, save for demolition and excavation of the basement, full facade construction details of the external facades, including facade performance and glazing, with commensurate composite sound insulation performance predictions, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall show that noise levels within habitable rooms shall comply with the recommendations of BS8233: 2014 'Sound insulation and noise reduction for buildings.' The development shall be constructed in accordance with the approved details.

Contamination – preliminary risk assessment report

21. No development (save for demolition) shall commence until a Preliminary Risk Assessment Report comprising:

- (i) a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses;
- (ii) information from site inspection;
- (iii) a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and
- (iv) a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials has been prepared in accordance with CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing, and submitted to, and approved in writing by, the local planning authority.

Contamination – site investigation and quantitative risk assessment

22. No development shall commence (save for demolition) until a Site Investigation Scheme has been undertaken and prepared in accordance with CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing, and a Quantitative Risk Assessment Report has been submitted to, and approved in writing by, the local planning authority.

Contamination – remediation method statement

23. No development shall commence (save for demolition) until a Remediation Method Statement if required, to address the results of the Site Investigation Scheme has been submitted to, and approved in writing by, the local planning authority.

Unexpected contamination

24. If during development, contamination not previously identified is found to be present at the site, development work in the relevant area shall cease and not be recommenced until a report indicating the nature of the contamination and how it

is to be dealt with has been submitted to, and approved in writing by, the local planning authority.

Planting and replanting

25. All tree and shrub planting forming part of the plans and details approved through this planning permission shall be carried out in the first planting and seeding season following the first occupation of the development or the completion of the development whichever is the sooner. Any trees or shrubs which, within a period of five years from the first planting and seeding season referred to above, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Construction Environmental Management Plan

26. Prior to commencement of any phase of the development, a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing by the Local Planning Authority. The CEMP shall detail construction and demolition methodology and plant utilising the Best Practicable Means, to mitigate construction noise, vibration and dust affecting adjacent and adjoining occupied residential premises. The development shall only be carried out in accordance with the agreed document.

Demolition and construction

27. Prior to commencement of any phase of the development, a risk assessment shall be undertaken and the appropriate mitigation measures to minimise dust and emissions incorporated into a site specific Demolition and Construction Management Plan based on the Mayor's SPG 'The Control of Dust and Emissions during Construction and Demolition' which shall be submitted to and approved in writing by the Local Planning Authority. This should include a list of anticipated dust generating activities and indicative Timetable or expected durations of these activities (including Non-Road Mobile Machinery), emission control methods and air quality monitoring. The development shall be carried out in accordance with the approved details.

Low emission strategy

28. Prior to commencement of the development, save for demolition, a low emission strategy shall be submitted to and approved in writing by the Local Planning Authority. This should include a comparison of emissions against London Plan emission benchmarks for buildings and transport and Band B emission standards for combustion plant and where practical and required include measures to reduce emissions from the operational development. The strategy shall detail the emission reduction strategies to be incorporated including proposals for boiler /plant abatement equipment, including the calculation of the appropriate chimney height. The development shall be carried out in accordance with the approved details.

Ventilation

29. Prior to the commencement of any phase of the development, save for demolition, details of a system of mechanical ventilation, with filtration to remove

airborne pollutants for residential properties shall be submitted to and agreed in writing by the Local Planning Authority. Filtration should only be required in locations predicted to be above the relevant national Air Quality Objectives for Nitrogen Dioxide (NO₂) and Particulate Matter (PM₁₀). The system shall be checked and maintained annually, filtration media replaced as necessary.

Restricting permitted development rights

30. Notwithstanding any rights under Schedule 2 Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015, except that which is shown on the approved plans, no further communications equipment shall be located at roof level without the express grant of planning permission.

Water supply infrastructure

31. Prior to commencement of any phase of the development (save for demolition) impact studies of the existing water supply infrastructure shall be submitted to and approved in writing by the Local Planning Authority. These studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point.

Surface water drainage scheme

32. Prior to commencement of any phase of the development a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be prepared in accordance with the approved Flood Risk Assessment prepared by URS (Ref: 49316147/MARP001 issue 3 dated 5 January 2011) as amended by URS submission 49316147/EAY MALT0002 dated 6th February 2012). The scheme shall:

- (a) Fully demonstrate the aim to utilise sustainable urban drainage systems (SUDS) including maximisation of gravity drainage and management of surface water run off as close to source as possible;
- (b) Fully demonstrate the aim to achieve Greenfield run off rates;
- (c) Fully demonstrate the effectiveness of the site drainage for rainfall events up to the 1 in 100 year critical storm.

The scheme shall be implemented in full and maintained in accordance with the phasing arrangements in the scheme hereby approved, or within any other period as may be agreed by the Local Planning Authority.

Waste strategy

33. Prior to the commencement of any phase of the development (save for demolition) a detailed Waste Strategy shall be submitted to and approved in writing by the Local Planning Authority and shall include the following:

- locations of bin storage areas and collection points;
- routes through development for collection vehicles;
- measures undertaken for on site management of waste.

The development shall be carried out in accordance with the details as agreed implemented in full.

Archaeology - watching brief

34. No development shall take place until arrangements have been made for an archaeological "watching brief" to monitor development groundworks and to record any archaeological evidence revealed. These arrangements shall be submitted to, and approved in writing by, the local planning authority, and the development shall take place only in accordance with the detailed scheme so approved.

Development on roofs

35. No water tank, lift motor room, or other roof structure, shall be erected on top of the roofs of the buildings hereby approved unless agreed in writing by the Local Planning Authority.

Vibration

36. Vibration Dose Values (VDV's) as defined in BS 6472-1:2008 shall not exceed those of Table 1 in that code for 'low probability of adverse comment'.

Elastometric bearings

37. Details of the elastomeric bearings shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of any phase of the development (save for demolition). The bearings shall be installed as so agreed prior to the occupation of the relevant part of the development.

Comparison goods

38. No more than 35% of the net sales area of the retail store that will be formed as a result of the proposal shall be used for the sale of comparison goods.

Private leisure facilities

39. The private leisure facilities shall not be available to the general public.

Community leisure facility

40. The community leisure facility shall be retained for this use and for no other purpose including any other purpose within Class D1 of the Town and Country Planning (Use Classes) Order 1987, as amended.

Creche

41. The creche facility shall be retained for this use, and for no other purpose including any other purpose within Class D1 of the Town and Country Planning (Use Classes) Order 1987, as amended.

APPEARANCES

FOR THE APPELLANTS:	
Mr R Taylor QC	Instructed by Berwin Leighton Paisner LLP
Mr M Dodds BA(Hons) BTP MRTPI	National Head of Planning and Development , Lambert Smith Hampton
Ms J Muirhead PhD MIAQM MIEEnvSc	Senior Air Quality Consultant, Environment and Ground Engineering, AECOM
Mr G Goodwin	Project Director Stace LLP
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Mr N Reynolds	Partner, B3R Architects
Mr R Lyons	Director, Transport Planning Associates
Mr T Faber	Associate, Savilles

FOR THE COUNCIL:	
Mr S Westmorland	Senior Planning Officer
Ms Lisa Cheung	Assistant Head of Development Management
Mr G McIntosh	Bi-Borough Environmental Quality Officer (Air Quality)
Mr R Craig	Senior Urban Designer
Mr J McCool	Transport Planning Manager

INTERESTED :	
Mr A Warrender	Coaching Manager, Confederation of Passenger Transport

DOCUMENTS (Combined list for two appeals and costs claims)

1	List of persons present at the Hearing
2	Council's letters of notification and lists of persons notified
3	Bundle of documents related to delivery of appellant's documents
4	Council's response to appellant's legal submissions (which were submitted before the Hearing)
5	Statement of Common Ground
6	Earls Court redevelopment planning permission (November 2013)
7	Unilateral Planning Obligation (1 November 2016)
8	Extract from officer's report on appeal site (14 February 2012)
9	Bilateral Planning Obligation (26 January 2017) submitted after the Hearing