

Town and Country Planning Act 1990

Written Statement of the Local Planning Authority for the Appeal by Spenhill Development Ltd against the decision of the Royal Borough of Kensington and Chelsea to refuse planning permission for:

Variation of condition 2 (compliance with approved drawings) of planning permission PP/11/00107 (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 sqm (NIA), community and leisure facilities (comprising 3880 sqm gross external area), creche facility and cafe, 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) to reduce the size of the East Terrace and other alterations to the scheme

**At: 100 and 100A West Cromwell Road and Shaftesbury Place, 135
Warwick Road, London, W14**

**Council Reference: PP/15/03067
Appeal Reference: APP/K5600/W/16/3146132**

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1.0 SITE DESCRIPTION

- 1.1 The application site is located at the western side of Warwick Road, at the junction with West Cromwell Road. The site is 1.16 hectares and is bounded by Fenelon Place to the north, Warwick Road to the east, West Cromwell Road to the south and the West London rail line to the west.
- 1.2 The site comprises a large retail store at ground floor level with associated car parking at basement Levels 1 & 2 and at first floor level (which is to the rear of the retail store). The car parking is accessed via a vehicular ramp off Fenelon Place. Above the retail store fronting Warwick Road is Shaftesbury Place. This provides 75 affordable housing units over three floors together with associated residential car parking (57 spaces). To the South West corner of the site, there is a podium deck of 50m in length and 50m in width which is raised 10 metres above street level
- 1.3 The existing buildings are not listed and the site is not within the setting of any listed buildings. The site is also not in a conservation area. However, part of the boundary of the Edwardes Square, Scarsdale and Abingdon Conservation Area lies to the north of the site, while the Nevern Square and Philbeach Conservation Areas lie to the south. It should also be noted that the Olympia and Avonmore Conservation Area is on the opposite side of the railway line within the London Borough of Hammersmith and Fulham.

2.0 RELEVANT PLANNING HISTORY

- 2.1 Planning permission was granted under reference PP/11/00107 in July 2012 for the redevelopment of the site, comprising:
- Provision of 278 Class C3 residential units (33,839 sqm GEA)
 - Extension to the retail store by 2,333 sqm (GEA) to provide a total floorspace of 8,818 sqm (GEA)
 - Provision of a 2,890 sqm community sports hall and swimming pool (GEA) and a 990 sqm private leisure facility (GEA)
 - Provision of a 480 sqm crèche (GEA)
- 2.2 The approved overall residential provision included:

Unit size	No of units (%)	Habitable rooms (%)
1 bed	82 (29%)	164 (20%)
2 bed	153 (55%)	465 (58%)
3 bed	32 (12%)	120 (15%)
4 bed	11 (4%)	55 (7%)
Total	278	804

- 2.3 The approved affordable provision included:

Overall		Social Rented	Shared Ownership
Unit size	No of units (%)	No of units	No of units
1 bed	10 (21%)	7 (25%)	3 (15%)

2 bed	20 (42%)	3 (11%)	17 (85%)
3 bed	14 (29%)	14 (50%)	
4 bed	4 (8%)	4 (14%)	
Total	48	28	20

- 2.4 The approved level of affordable housing as a percentage of the total residential provision was 17% measured by units, 19% measured by habitable rooms and 25% measured by floorspace (GEA). The approved tenure split between social rented/shared ownership was 58%/42% measured by units.

3.0 APPEAL PROPOSALS AND THE REASONS FOR REFUSAL

- 3.1 Planning permission was sought under Section 73 of the Town and Country Planning Act 1990 to vary condition 2 (compliance with approved drawings) of planning permission PP/11/00107.
- 3.2 The key change was to the East Terrace area of the proposal. The variation sought to reduce the length of this by 65m which resulted in an overall reduction in scale of this element from 6,642 sqm to 2,950 sqm (GEA). This also resulted in a reduction of C3 residential units from 278 to 254 across the whole scheme. In addition, the proposal also resulted in a reduction in the area of the linear public open space in Court 3
- 3.3 The appellant states that the alterations have arisen as a result of ownership issues which have meant that part of the site can no longer come forward for development. No further explanation has been provided.
- 3.4 The planning application was refused on the 9th September 2015 for 6 reasons as set out in the Decision notice.
- 3.5 Copies of the officer's report prepared under delegated powers and the resultant decision notice are attached (Appendices 1 and 2).

4.0 LEGISLATION, POLICY AND GUIDANCE

4.1 Statutory Duties

The Local Planning Authority (LPA) has a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area. Whilst the proposal site is not within a Conservation Area, part of the boundary of the Edwardes Square, Scarsdale and Abingdon Conservation Area lies to the north of the site, while the Nevern Square and Philbeach Conservation Areas lie to the south.

4.2 Development Plan

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

For the purposes of Section 38(6) the development plan comprises:

- The London Plan (LP)
- The Royal Borough of Kensington and Chelsea Consolidated Local Plan (CLP)
- The saved policies from the Unitary Development Plan (UDP)

The relevant LP policies are listed below, those noted in the reasons for refusal are highlighted in bold:

- 3.4 – Optimising Housing Potential
- **3.5 – Quality of Design of Housing Developments**
- 3.6 – Children and Young People’s Facilities
- 3.8 – Housing Choice
- 3.9 – Mixed and Balanced Communities
- **3.12 – Negotiating Affordable Housing on Individual Schemes**
- 3.16 – Protection and Enhancement of Social Infrastructure
- 6.1 – Walking
- 6.8 – Coaches
- 6.9 – Cycling
- **6.13 – Parking**
- **7.1 – Lifetime Neighbourhoods**
- **7.3 – Designing Out Crime**
- **7.4 – Local Character**
- **7.5 – Public Realm**
- 7.6 – Architecture
- 7.7 – Location and Design of Tall Buildings
- **8.2 – Planning Obligations**

The relevant CLP policies are listed below, those noted in the reasons for refusal are highlighted in bold:

- **C1 – Infrastructure Delivery and Planning Obligations**
- **CA6 – Warwick Road**
- CK1 – Social and Community Uses
- CF1 – Local of New Shop Uses
- CH1 – Housing Targets
- **CH2 – Housing Diversity**
- **CT1 – Improving Alternatives to Car Use**
- **CR1 – Street Network**
- **CR2 – Three-dimensional Street Form**
- CR4 – Streetscape
- CR5 – Parks, Gardens, Open Spaces and Waterways
- CP1 – Quanta of Development
- **CL1 – Context and Character**
- **CL2 – Design Quality**
- CL3 – Heritage Assets – conservation areas
- CL4 – Heritage Assets – Listed buildings
- CL5 – Living Conditions
- CL11 – Views
- CL12 – Building Heights

The relevant local supplementary planning documents are:

- Planning Obligations
- Transport 2012 – *since the determination of the application this document has been superseded by the Transport and Streets Supplementary Planning Document 2016.*
- Noise
- Air Quality

4.4 National Guidance

Attention is drawn to the National Planning Policy Framework (NPPF). Paragraph 132 of the NPPF states 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. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm should clear and convincing justification.* Paragraph 134 continues: *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.*

5.0 **GROUNDS OF APPEAL AND AMPLIFICATION OF THE COUNCIL'S CASE**

- 5.1 This section will comment on the Grounds of Appeal put forward by the Appellant and where appropriate will expand on the Council's case. This statement, along with the Officer's delegated report (Appendix 1), forms the Council's statement of case.
- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that proposals must be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is therefore the Local Planning Authority's opinion that to refuse planning permission was fully justified having regard to Development Plan policies, National Guidance, all other material considerations, and the particular circumstances of the site.
- 5.3 The appellant's statement addresses each of the six reasons for refusal. The remainder of this statement will follow the same structure, providing reasoned justification for each of the Council's reasons for refusal and addressing the appellant's comments in relation to these.

Reason 1:

'The development is unacceptable in that the applicant has failed to demonstrate that it would provide the maximum reasonable amount of affordable housing contrary to Policies CA6 and CH2 of the Consolidated Local Plan (2015) and Policy 3.12 of the London Plan 2015.'

- 5.4 As detailed in the officer's delegated report (paras 5.4 to 5.13), the applicant and the LPA failed to agree a position on the maximum amount of affordable housing that could have been provided through the appeal scheme.
- 5.5 In the absence of an agreed position and demonstrable evidence that this agreement corresponds to the maximum reasonable amount of affordable housing that could be

provided on the site, the proposal is contrary to Policies CH2 and CA6 of the Council's Consolidated Local Plan.

- 5.6 If further viability negotiations are to occur, regard should be paid to Consolidated Local Plan policy CA6. This policy identifies 100 West Cromwell Road as a part of the Warwick Road Strategic Site Allocation. Part g of this policy states that affordable housing should be provided as part of any residential development on the site in order to ensure a mixed and balanced community.

Reason 2:

'The application is unacceptable in the absence of a completed satisfactory Section 106 Agreement to secure the necessary planning obligations to mitigate the impact of the development on Borough services and infrastructure as required by Policies CA6 and C1 of the Consolidated Local Plan (2015), the Council's Planning Obligations SPD and Policy 8.2 of the London Plan.'

- 5.7 Owing to its size and attendant increase in population , the development would place additional pressure on local services and infrastructure. The Council requires local services and infrastructure to be improved alongside development and to be funded by the developer in accordance with its Supplementary Planning Document together with any site specific requirements identified in the CLP
- 5.8 Whilst the approved application secured a number of obligations in a Section 106 agreement which would have helped to mitigate the impacts of the development, no new agreement was completed as part of the appeal scheme. Consequently, the proposal is contrary to Policies CA6 and C1 of the Consolidated Local Plan, the Council's Planning Obligations Supplementary Planning Document and Policy 8.2 of the London Plan.
- 5.9 Section 6.2 of the officer's delegated report sets out the Heads of Terms that would need to be secured should planning permission be granted at the site.

Reason 3:

'The application is unacceptable in that the proposed layout, form and scale of the development would not represent a coherent scheme that responds to the character of the area and creates a sense of place. Contrary to Policies CL1, CL2, CR1 and CR2 of the Consolidated Local Plan (2015) and 3.5, 7.4 and 7.5 of the London Plan.'

- 5.10 It is relevant in assessing the appeal scheme to consider the architectural and urban design qualities of the approved scheme. This scheme represented a coherent response to a challenging site. The redundant podium and existing multi-storey car park have a negative and overbearing impact on the townscape and present a significant visual and physical challenge to creating an attractive, seamless urban form that integrates into its surroundings.
- 5.11 The approved scheme successfully addressed this challenge. Its layout, form and scale are well reasoned and contextual. It provided a sequence of high quality urban spaces and routes that extended the public realm into the site, overcoming the varied levels and connecting through to the adjoining streets. The buildings at podium level would be of an acceptable scale and create a coherent built form that comfortably enclose the

new public spaces and address the neighbouring built context. The proposed tower would respond especially well to the axial view along West Cromwell Road, providing a highly distinctive urban marker. The modern, contextual architectural language used throughout the scheme would result in a rich contemporary finish that adds distinction and sense of unity to this urban block.

- 5.12 Within their statement the appellant asserts that the modifications arising as part of the appeal scheme are to elements that would not be visible to surrounding areas. Whilst the LPA accepts that alterations would not be immediately visible to long views such as those along Cromwell Road, or from within the nearby conservation areas, the alterations would dramatically affect the way the scheme is viewed and experienced from within the site and from the adjacent Shaftesbury Estate.
- 5.13 Expanding on this, within the appeal scheme the truncation of the eastern terrace by approximately 65 metres would see its termination at the boundary of the retained open car deck. The scheme would no longer directly address the Shaftesbury Estate, as under the approved scheme, but would instead loom to one side, disengaged from the context. The estate and proposed new build would sit unrelated around the retained car deck, which would retain its open, inhospitable environment. Without the full eastern block, the urban quality would be lost as the space would leak away to the neighbouring buildings beyond in Fenelon Place. The housing estate with its central garden space would no longer be contained as previously planned, but would look out across the car deck to the western terrace block. Here the long, part 10/11-storey block would sit behind the car deck and a tree-lined walkway, appearing dislocated and disproportionately scaled compared to the housing estate, resulting in a fragmented townscape and unsatisfactory sense of place.
- 5.14 In addition, alterations to the layout of streets, squares and buildings of the consented scheme which drew upon the traditional qualities and built form of the Borough have been lost. The design concept of terraced houses opening onto a traditional garden square has gone and has been replaced by the fragmented urban form of a raised courtyard that is poorly enclosed and blocks that would be accessed by walkways.
- 5.15 The appellant asserts that the modifications arising as part of the appeal scheme are expressed in the same architectural language as the approved scheme, sitting within the consented envelope. In contrast, the LPA would assert that these revisions have compromised the form and scale of the proposal.
- 5.16 The proposed reduction in size of the eastern terrace by approximately 65 metres would result in an irregularly shaped block. The resulting development would lack symmetry or any compelling design rationale, making the building hard to read and its architecture unsatisfactory. The design flourishes of the two triangular roof lights of the approved eastern terrace that repeated the sculptural form of those on the western terrace have been eliminated owing to the block's truncation, reducing the overall sense of cohesiveness.
- 5.17 Additionally, the high-level walkway between the eastern block and iconic tower which was present in the approved scheme has been removed. This bridge link successfully framed the public view from court 3. This has also meant the removal of the external spiral stair that previously wrapped around the tower and added visual interest and solidity to the structure. The cantilevered stair is replaced by window openings and parapet, which result in a plain and more domestic appearance. This weakens and obscures the tower's sculptural architecture and detracts from its visual quality. Resultantly, the tower would no longer possess the suitably high quality appearance expected of a landmark tall building in the Borough.

- 5.18 Similarly, the infilling at the southern end of the western block for additional residential units has resulted in additional glazed openings and balconies. This has likewise impacted upon the block's visual solidity and sculptural form.
- 5.19 To conclude, the alterations have negatively impacted on the scale, form and layout of the approved scheme. The proposed three-dimensional built form with its arrangements of buildings and public spaces would no-longer hold together well as a result of the reduction in the size of the East Terrace. Consequently, the development would no longer address or integrate well with the character of the area and is unsuccessful at creating its own sense of place.

Reason 4:

'The application is unacceptable in that the layout results in an unengaging, poorly defined and inactive public realm and illegible street network, which would not be well connected to the surrounding context. Contrary to Policy CR1 and CL1 of the Consolidated Local Plan (2015) and 7.1, 7.3 and 7.5 of the London Plan.'

- 5.20 As noted above, the approved scheme was a successful response to a challenging site context. In addition to the effective design approach, the incorporation of a number of high quality urban spaces along with a series of routes that both extended the public realm into the site and overcome the varied levels across the site, were a significant part of the scheme's success.
- 5.21 Owing to the decrease in size of the eastern terrace in the appeal scheme, the associated landscaping at level three has been reduced in length. In order to compensate for this, the scheme seeks to provide an additional area of landscaped forecourt on the west terrace at level 3. These changes have also resulted in a revised public route through the site.
- 5.22 However, as already noted, the reduction of the footprint of the eastern terrace block and its contribution to the scheme is significant. In the approved scheme the part 5/7-storey block plays a pivotal townscape role in integrating the development within context of the Shaftesbury Estate and Fenelon Place beyond, and mediating the step up in scale to the western terrace block. At level 2 it defines a new and activated public route running north-south across the site and effectively becomes the end terrace to the Shaftesbury Estate, successfully enclosing the garden square (court 2). At level 3 it encloses the new garden square (court 3) and a further public north-south route through the site.
- 5.23 In the appeal scheme, without the full eastern block, the housing estate with its central garden space would no-longer be contained as previously planned, but would look out across the car deck to the western terrace block. Any sense of an engaging and attractive public realm would be lost as visitors would be ushered to one-side of a gated fence and expected to pass along arcaded perimeter walkways around the car deck to access the northern blocks beyond.
- 5.24 Those accessing the proposed accommodation inserted within the south end of the western terrace would be expected to pass through the car deck to reach their front doors. There would be little awareness of a quality public realm, despite the margin planting. Having to cross the vehicle ramp where cars, vans and occasional refuse

truck would be accelerating up the ramp to reach the retained car deck and 16 new parking places within the new undercroft would make for an unsatisfactory pedestrian environment. In the revised scheme the only alternative route would be the circuitous route up to level 3 and then back down again, reflective of the poor connectivity and illegibility that characterise the public realm changes. While the link as now proposed would still be of satisfactory width, its character would change and it is likely to be perceived as a means of accessing the development blocks rather than as a through route. Additionally, the only alternative route through the site would be the circuitous route up to level 3 and then back down again, reflective of the poor connectivity. Consequently, the amended route would be less likely to successfully integrate the development into the wider area.

- 5.25 In terms of the urban experience at level 3, the large western terrace block would be experienced against a substantially reduced central space. Though efforts have been made to increase the amount of planting by infilling the earlier rooflights to the leisure facility below, the public space reads more as a large courtyard compared to the previous large garden square. Whereas the central gardens were comfortably contained between the eastern and western terraces with the view terminated by the north block, the 3-dimensional space would be curtailed, as the eastern terrace would end abruptly with the space leaking beyond. The generous boulevard, grand staircase and alternative spiral stair would be replaced by a raised walkway and perfunctory staircase. The public activation previously provided by the cafe/community facilities at level 3 would be lost, infilled instead by several additional apartments and thereby reducing the courtyard's wider appeal.
- 5.26 As outlined above, the alterations to the appeal scheme would result in an unengaging, poorly defined and inactive public realm. These changes would also fail to successfully integrate the development into the surrounding context as was achieved with the approved scheme.

Reason 5:

'The application is unacceptable in that it would not provide any disabled car parking spaces and motorcycle parking spaces contrary to Policy CT1 of the Consolidated Local Plan (2015) and the Council's Transport SPD and Policy 6.13 of the London Plan.'

- 5.27 Whilst the appellant states that the appeal scheme would provide for 83 car parking spaces for the residential units, the submitted drawings clearly indicate that a total of 99 spaces would be provided. This figure of 99 spaces corresponds to 0.39 spaces per unit and would satisfy the requirements of policy CT1 (d) of the Consolidated Local Plan and the new Transport and Streets Supplementary Planning Document (see section 4).
- 5.28 Whilst the number of parking spaces is acceptable, the revised layout in the scheme does not provide for any disabled parking. This is contrary to Council policy. Nevertheless, and as detailed in the officer's report, this reason for refusal could be overcome by the imposition of a suitably worded planning condition (please refer to appendix 3). Whilst this change could result in a reduction in the overall number of parking spaces provided, this would be supported by the Council.

- 5.29 As per the Transport and Streets Supplementary Planning Document, one motorcycle bay should be provided for every ten car parking spaces. No residential motorcycle spaces are apparent with the submitted plans for the appeal scheme. As above, this reason for refusal could be overcome by the imposition of a suitably worded planning condition (please refer to appendix 3). Whilst this change could result in a reduction in the overall number of parking spaces provided, this would be supported by the Council.

Reason 6:

'The Transport Assessment which accompanies the application fails to demonstrate that the Earls Court development and changes in the availability in coach parking since 2012 would have acceptable transport impacts contrary to Policy CT1 of the Consolidated Local Plan (2015) and the Council's Transport SPD.'

- 5.30 A document entitled "Addendum Transport Assessment May 2015" was submitted in support of the Section 73 application as per the requirement to provide a Transport Assessment. This document acts as a cover note which serves to re-present the Transport Assessment prepared in respect of the 2012 scheme.
- 5.31 The Addendum Transport Assessment along with the appellant's statement argue that the reduced number of residential units coming forward from the appeal scheme would result in a smaller number of vehicular trips. However, the LPA would assert that the difference between the approved scheme and the appeal scheme would not be significant given that most traffic to the site is generated by the supermarket whose proposed floor area would not change.
- 5.32 Crucially, the Addendum Transport Assessment does not address the fact that the Earl's Court development has been granted planning permission since the original permission was granted at the subject site. Given the scale of both developments and their proximity to one another, it is essential that the applicant assess the interaction of the two sites and the resultant impact on the transport network. The failure on the appellant's part to undertake any assessment is consequently contrary to Consolidated Local Plan policy CT1(i).
- 5.33 In relation to coach parking, the appeal scheme would not alter the proposal in the approved scheme to replace the coach parking with car parking. Whilst the scheme was granted permission, the Director of Transport and Highways objected to the loss of the coach parking. However, since the time of the original permission, opportunities for coach parking in Central London have diminished.
- 5.34 The appellant relies on reports published in 2010 and 2011 to demonstrate that the impacts of the loss of coach parking could be accommodated across other sites in London. As explained in the officer's delegated report, the existing coach parking facility on site operates in much the same way as a public car park. It is available for all coach operators to use and provides a convenient holding/ waiting area for coaches visiting nearby hotels museums etc. The facility on the site is ideally suited for its purpose. It is situated directly off the red route strategic road network just at the point where the A4 enters Central London. Other alternative locations would have unwelcome implications for the routing of coach traffic through the Borough potentially taking coach traffic off the Strategic Road Network and on to the Borough's local roads. Consolidated Local Plan Policy CT1 (l), as adopted in December 2014, resists the loss of off street coach parking. The issue of Coach Parking is also covered by the Mayor of London's Land for Transport and Industry Supplementary Planning Guidance,

September 2012 (SPG16 (ix)) states that the Mayor will resist “the loss of any existing facility used to support the operation of coaches”.

- 5.35 The appeal scheme does not review the latest policies or assess the proposal to redevelop the coach park against the current supply and demand for coach parking. The supply of coach parking opportunities in central London has contracted since the original application was determined. Seagrave Road is no longer available for coach parking. The availability of coach parking spaces at New Covent Garden Market and the Embankment has reduced since the original application was determined. There is a greater likelihood that coach parking demand will be displaced on street and coach parking will occur at inappropriate locations necessitating enforcement activity that could be avoided if this facility is retained in its current lawful use.

6.0 CONCLUSION

- 6.1 The NPPF clearly states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (paragraph 197), and that proposals should also be determined in accordance with the development plan unless material considerations indicate otherwise (paragraph 11).
- 6.2 The determination of the appeal rests in balancing the harm that would be caused by the proposals against the benefits that might arise. The reasoning for the reduced East Terrace has not been substantiated by the appellant. This change would dramatically alter the layout, form and scale of the development as it would no-longer read as a comprehensive scheme, but as a fragmented piece of townscape due to the disconnected blocks which fail to create a sense of place. Whilst, a public route would be provided through the site, it would be illegible and poorly connected to the surrounding context and public spaces within the scheme. It would also fail to provide an engaging and attractive public realm. Although the application would provide 254 residential units which would go some way to meeting the Council’s housing targets, the scheme would fail to create a mixed and balanced community by failing to demonstrate that the maximum reasonable amount of affordable housing would be provided on site. Finally, there is no satisfactorily completed Section 106 Agreement in place to secure the site specific infrastructure requirements identified in the local plan together with the relevant mitigation measures required which would address the harm arising. There are no further material considerations that would outweigh this harm and the lack of compliance with the development plan. For these reasons the LPA respectfully submit that the appeal should be dismissed.
- 6.3 If, however, the decision is to allow the appeal and grant planning permission the Council would respectfully ask the Inspector to consider the recommended conditions (set out in Appendix 3).