



7th September 2021

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Sent by Email

Dear Carl

**FURTHER OBJECTION TO PLANNING APPLICATION REFERENCE 20/3564/OUT
REDEVELOPMENT OF B&Q, CRICKLEWOOD LANE, LONDON, NW2 1ES**

As you are aware, Williams Gallagher act for Tepbrook Properties Ltd. We have previously submitted objections to the above planning application in October 2020, May 2021 and July 2021. These objections have consistently raised the issue of the access being undeliverable and the daylight and sunlight assessment prepared by the applicant being deficient. For ease of reference I attach the two most recent submissions on these matters.

The applicant has not provided any response or scheme amendments in light of these objections and has failed to positively engage with my client.

In addition, the report to committee for determination of the application on 9th September does not address either of these matters adequately. The officer's assessment and conclusions ignore the deficiency in the daylight and sunlight assessment work and do not provide any legal analysis to counter the very clear and correct points made by Pinsent Masons in the attached letter of 20th July 2021.

We have reviewed the conditions which were missing from the previous committee report and note that proposed condition 5 is plainly, on its terms, inadequate to deal with the issue and is contrary to the NPPG as previously stated. We therefore conclude that the advice of Pinsent Masons remains wholly correct and a positive determination of the application will be open to legal challenge.

Yours sincerely

Matthew Williams
WILLIAMS GALLAGHER

Cc: Fabien Gaudin
Cllr Peter Zinkin
Cllr Anne Clarke
Cllr Shimon Ryde
Enc: Letter of Pinsent Mason dated 20th July 2021 and letter of JMR dated 27th July 2021

BY E-MAIL

Tepbrook Properties Limited
124 Finchley Road
London
NW3 5JS

Our Ref 118086548.2\JO09\PRP001.000100

20 July 2021

Dear Sirs

**B&Q, BROADWAY RETAIL PARK, CRICKLEWOOD LANE, LONDON, NW2 1ES (THE "PROPERTY")
PLANNING APPLICATION REF: 20/3564/OUT (THE "APPLICATION")**

We are instructed by Tepbrook Properties Limited ("**Tepbrook**") to provide advice in relation to the Application, which has been submitted by Montreaux Cricklewood Developments Limited (the "**Applicant**").

This letter highlights two fundamental legal flaws with the Report to Committee for the Application scheme ("**the Report**") which is scheduled to go to Planning Committee on Monday 26th July 2021. This is without prejudice to the identification of other legal and other flaws in relation the Report.

1. FAILURE TO DEAL PROPERLY WITH UNDELIVERABLE NEW ROAD ACCESS TO THE SCHEME AND UNDELIVERABLE NEW FOOTPATH ARRANGEMENTS TO THE SCHEME

1.1 We note at paragraphs 12.16 and 12.17 of the Report in relation to access arrangements to the scheme that the Report states as follows:

Access

12.16 It is proposed that vehicular access would be from Depot Approach, a private access road, with the closure of the existing vehicle access onto Cricklewood Lane. The closure of the existing vehicle access onto Cricklewood Lane will require a s278 Agreement and would include improvements to the pedestrian environment and this is included within the agreed heads of terms.

12.17 In terms of the access from Depot Approach, it is noted that this is a private road under the ownership of an adjoining landowner. It is also noted that the adjoining landowner has objected to the application on the basis that the applicant has no legal right to install a new access from the private road. The LPA have taken legal advice on the matter from HBPL and it is advised that there is no legal basis for resisting the application on this basis and that an appropriately worded condition would serve to secure the relevant access in so far as the LPA granting consent is concerned."

Pinsent Masons LLP

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- 1.2 We enclose our letter dated 6 November 2020 which concluded two key points:
- 1.2.1 There are no rights for the applicant to create the New Access for the Application scheme which is therefore not deliverable.
 - 1.2.2 There are no rights for the applicant to create the New Footpaths for the Application scheme which are therefore not deliverable.
- 1.3 As set out in our letter dated 6 November 2020:
- 1.3.1 Pursuant to section 70(2) of the Town and Country Planning Act 1990, the local planning authority must have regard to all material considerations when determining a planning application. The inability of the applicant to deliver its proposals, including the New Access and the New Footpaths which are fundamental to the delivery of the Application is a highly material planning consideration given the nature of the application and the reliance placed on the New Access and the New Footpaths to enable and serve the development. This was reflected in the case of *British Railways Board v SoSE* [1993] 3 P.L.R. 125.
 - 1.3.2 **In this case, there is no prospect at all of the New Access or New Footpaths being provided and these fundamental issues cannot be avoided by imposition of a planning condition, given there is no prospect of such condition being satisfied either, see NPPG Paragraph: 009 Reference ID: 21a-009-20140306:**

"Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – ie prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission."
 - 1.3.3 The Report refers to the LPA having taken legal advice on the matter and "*it is advised that there is no legal basis for resisting the application on this basis and that an appropriately worded condition would serve to secure the relevant access in so far as the LPA granting consent is concerned*". However, no explanation is provided to support this position in light of the legal position as we set it out above. There is no explanation at all dealing with the clear contravention of the NPPG planning guidance. The Report is flawed and any decision made on the basis of it in this respect is liable to judicial review. In addition, there is no published Appendix 2 set of conditions which means it is not possible to examine the proposed condition purportedly imposed to address the issue. Give the proposed planning conditions, including this one, would need to be provided alongside the report 5 clear days before the Committee meeting on 26 July 2021,
2. **FAILURE TO COMPLY WITH SS100B AND 110D LOCAL GOVERNMENT ACT 1972 IN TERMS OF PUBLISHING REPORTS AND BACKGROUND PAPERS 5 CLEAR DAYS BEFORE THE COMMITTEE MEETING**
- 2.1 The failure to publish Appendix 2 (draft conditions) within 5 clear days of the Committee meeting on Monday 26 July 2021 is a clear breach of sections 100B and D of the Local Government Act 1972 (as amended). Section 100B deals with access to agendas and



reports and section 100D with access to background papers. In both cases these must be “open to inspection by members of the public at the offices of the council” at least five clear days before the meeting (“clear days” refers to weekday working days and does not include the day of publication or the day of the meeting (*R v Swansea City Council, ex p Elitestone Ltd (1993) 66 P. & C.R. 422*)). As per case law, e.g. *Joicey, R (on the Application of) v Northumberland County Council [2014] EWHC 3657*, this must be strictly adhered to and the report cannot be properly interpreted without sight of the draft conditions. The Committee will therefore have to be deferred to allow for the proper time for the conditions in Appendix 2 to be published and 5 clear days to elapse before the meeting can be held.

For the reasons set out in this letter, the Report is legally defective, the Committee meeting has to be deferred and the LPA must deal properly with the material consideration in relation to non-deliverability of the New Access and New Footpaths as referred to above. As referred to above, a condition will not satisfy these fundamental issues and the Application will need to be recommended for refusal. If there is cogent legal advice to the contrary, the key points of this advice needs to be reported to the Committee in the Report.

Yours faithfully

Pinsent Masons LLP

Enc Letter dated 6 November 2020

Our ref: DR/B&QCricklewood

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By Email Only

Date 27th July 2021

Re: Proposed Development at B&Q site, Depot Approach, Cricklewood

We have been further instructed to comment upon the B&Q development proposals at Depot Approach in relation to the consented development at 194-196 Cricklewood Broadway (“Asda site”) planning reference 17/0233/FUL.

We have reviewed the B&Q Broadway Retail Park Cricklewood Lane London NW2 1ES response by Childs Hill reference 203564 (total 86 pages).

We set out below our comments in relation to daylight, sunlight:-

1. The latest responses confirm, acknowledges we are on site building out the consented scheme. We are therefore an existing building eligible for consideration as per the BRE Guidance. Therefore the Daylight, Sunlight consultant is obliged to undertake a VSC and NSL assessment of our clients consented scheme.
2. We are firmly of the view that the developers consultant is refusing to undertake this method of assessment as the results will clearly demonstrate our concerns raised over 8 months ago.
3. Whether the scheme is 25 or 19 storeys high our concerns are and remain the same.
4. Unless the developers consultant undertakes a VSC and NSL assessment of our clients development how can the local authority carefully consider the impacts to adjacent existing residential properly, in a considered manner, to in turn make an informed decision.
5. The local authority has accepted VSC and NSL method of assessment for existing properties elsewhere around the site including properties further distanced away from the site than our clients development.

Continued...



Summary

Given the orientation of the Asda site relative to the B&Q site, the majority of the windows serving our clients property will be significantly impacted and rooms facing the site will have to heavily rely upon electric lighting throughout the day due to the significant reduced daylight levels with the proposed outline development in place.

Our comments made on 30th Oct 2020 still stand – no changes nor further assessments have been undertaken. We have previously requested and still do expect to see VSC and NSL assessments to be undertaken.

We enclose a further copy of our response dated 30th October 2020.

It would appear for a number of reasons set out above that the proposed massing on the B&Q site is likely to cause harm through impacts to the Asda site residential and its surrounding residential neighbours.

Yours sincerely

David Reynolds MRICS
Director

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Mobile: 07813 782879

Enc Letter dated 30/10/2021