

PLANNING COMMITTEE

9th September 2021

ADDENDUM TO SERVICE DIRECTOR OF DEVELOPMENT MANAGEMENT AND BUILDING CONTROL'S REPORT

Item No. 7

20/3564/OUT – Broadway Retail Park

Pages 141 - 236

Revisions to Report

The following should be read alongside 9.26 to 9.42 of the report which relate to the impact of the scheme on statutory heritage assets.

The LPA has a duty under Sections 72 and 66 of the Listed Buildings Act (1990) to pay special attention and regard to the desirability of preserving and enhancing the character and appearance of the Conservation Area (S72) and the setting of the listed building (S66).

The Council has given the requisite special attention to the preservation of the CA and LB in line with Sections 66 and 72. It is the view of the LPA's Heritage and Conservaton officer that the development would result in harm to the CA and LB but that this harm would be less than substantial. Therefore, having given the requisite due regard under S66 and S72, it is officers view that the benefits of the scheme would outweigh the harm in line with the assessment undertaken under NPPF Paragraph 196.

Additional Responses

Since the publication of the report, additional representations have been received as set out below.

Representation	Officer Response
<p><u>Tepbrook Properties</u></p> <p>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.</p> <p>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.</p>	<p>On the matter of the daylight and sunlight, as set out in Section 10.1 of the report, The application was accompanied by a Daylight/Sunlight report from AECOM within the ES (ES Volume: Chapter 11: Daylight, Sunlight and Overshadowing). The standardised assessment methodology for daylighting is set out within the BRE document Site Layout Planning for Daylight and Sunlight (BRE, 2011). Within this document it is set out that the primary tools for the assessment of daylight are Vertical Sky Component (VSC)). For VSC the guideline value for windows to retain the</p>

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.

The full text of the legal opinion from Pinsent Masons is included as Appendix 1 to this Addendum.

potential for good daylighting is 27% or more than 0.8 times its former value. The Statement of Conformity submitted in support of the current scheme also confirms that the daylight and sunlight impact of the development would not be materially worsened by the revisions to the massing and in some cases would slightly improve.

The methodology for the assessment of the daylight impact of the development on neighbouring properties is in line with BRE Guidelines and is considered to be appropriate for assessment.

On balance, officers consider that the daylight impact of the development is acceptable. Full discourse on this is set out in Section 10 of the officer report.

On the matter of the access from Depot Approach, drawing ref SK04 sets out how this access would be provided. Condition 5 is a 'Grampian' style condition whereby development could not commence until the access has been delivered. The delivery of the access is therefore a matter for the respective landowners to facilitate in order to adhere to the requirements of the condition.

The LPA has taken full legal advice from HBPL in response to the legal opinion of Pinsent Masons which states that the use of a Grampian condition is entirely appropriate and that there is case law which confirms this. The conclusion is set out below:

"Based on the Court of Appeal ruling in Shaw v Gould it appears that the applicant has a realistic possibility of creating a new access point. There is no physical impediment to this. Therefore, planning permission should not be refused on the basis that it is unlikely that the new access can be provided. The provision of a new access can, if necessary, be secured by a condition preventing commencement of the construction of the units until the new access had been provided, similar to the condition in the British Railway Board v SoSE case."

	<p>The full text of the legal opinion from HBPL, including full references to the case law set out, is included as Appendix 2 to this report.</p>
<p><u>Network Rail</u></p> <p>We have recently been made aware that our previous comments in respect of this application do not appear to have been received by the council and wish to ensure Network Rail's views and requirements are represented when considering this application.</p> <p>Network Rail own, operate and develop Britain's railway infrastructure. Our role is to deliver a safe and reliable railway. All consultations are assessed with the safety of the operational railway in mind and responded to on this basis.</p> <p>Following assessment of the details provided to support the above application, Network Rail has serious concerns about the potential impact of these proposals upon the safe operation of the adjacent Cricklewood Railway Station without suitable mitigation measures being undertaken.</p> <p>We note from the Transport Assessment provided in support of this application that it is anticipated that the proposals will generate a significant increase in usage at the adjacent station and we believe that this will exacerbate existing issues relating to the restricted station access and crowding in the station entrance and platform areas, as well as the continued issues of accessibility at the station for mobility impaired people. Without mitigation measures, we consider that the increase in passenger numbers generated by this scheme would have a considerable adverse impact on passenger safety in these restricted areas of the station.</p> <p>We consider that if this scheme is to be permitted, suitable remodelling of the station entrance, ticket office and ticket gate areas must be undertaken in order to mitigate this risk and initially estimate the cost of this to be at least £500,000 which we consider should be</p>	<p>NR assert that the development will result in a 'significant increase in the usage of the adjacent station' and that this would 'exacerbate existing issues relating to the restricted station access'. The TA assesses the very worst case by assuming that the existing 7990sqm of retail use generates ZERO travel by rail. This is highly unlikely given the site's location but it allowed for a worst-case assessment to be undertaken. The proposed development is predicted to generate an average of some 120 peak hour trips by rail. That equates to 60 passengers arriving and 60 passengers departing across an hour (one in each direction per minute). The station currently accommodates 8 trains per hour so even taking this worst-case net effect, the development would see 15 additional passengers boarding or alighting from each train. NR have provided no supporting evidence to suggest why this modest increase in passenger numbers would have any material effect on the operation of the station access.</p> <p>On this basis, it is not considered reasonable or justified that any contribution be sought for station remodelling, Given the empirical data set out within the TA setting out the modest level of additional hourly passengers (on a worst-case scenario basis), such a contribution would not meet the S106 test of necessity.</p> <p>However, it is important to note that the station has had regard for future station plans and land for a potential future southern entrance would be safeguarded as part of the S106.</p> <p>On the matter of the conditions requested in relation to construction methodology, Condition 4 has been amended to include requirement for the applicant to liaise with Network Rail in respect of the construction methodology.</p>

met by the developer as part of the S106 agreement should the scheme be permitted.

We would welcome discussion with the local authority and developer in respect of this matter, however, without such measures, we have serious concerns about the impact of this scheme upon operational railway safety.

Aside from the above, it is imperative that the actual construction work itself does not impact on railway safety given the proximity of the scheme to the railway which includes high voltage over head line equipment. Should the council be minded to approve this application, the following should be included as conditions in addition to the above S106 requirement;

Works in Proximity to the Operational Railway Environment

Development Construction Phase and Asset Protection

Due to the proximity of the proposed development to the operational railway boundary, it will be imperative that the developer liaise with our Asset Protection Team (contact details below) prior to any work taking place on site to ensure that the development can be undertaken safely and without impact to operational railway safety. Details to be discussed and agreed will include construction methodology, earthworks and excavations, use of crane, plant and machinery, drainage and boundary treatments. It may be necessary for the developer to enter into a Basic Asset Protection Agreement (BAPA) with Network Rail to ensure the safety of the operational railway during these works.

Condition

Development shall not commence until a construction methodology has been submitted to and approved in writing by the Local Authority. The construction methodology shall demonstrate consultation with the Asset Protection Project Manager at Network Rail. The development shall thereafter be carried out in accordance with the approved construction methodology unless otherwise

In respect of the conditions requested in relation to landscaping and boundary fencing, these are matters which are reserved from this outline application and as such it would not be appropriate to condition details of reserved matters.

An additional informative is included in association with Condition 10 (Surface Water Drainage) to refer to the points made by Network Rail.

agreed in writing by the Local Planning Authority.

Contact details for Asset Protection are supplied below and we would draw the developers' attention to the attached guidance on Network Rail requirements.

Drainage

It is imperative that drainage associated with the site does not impact on or cause damage to adjacent railway assets. Surface water must flow away from the railway, there must be no ponding of water adjacent to the boundary and any attenuation scheme within 30m of the railway boundary must be approved by Network Rail in advance. There must be no connection to existing railway drainage assets without prior agreement with Network Rail. Please note, further detail on Network Rail requirements relating to drainage and works in proximity to the railway infrastructure is attached for your reference.

Condition

It is expected that the preparation and implementation of a surface water drainage strategy addressing these above points will be conditioned as part of any approval.

Boundary Treatments, Landscaping and Lighting

Trespass Proof Fencing

Trespass onto the railway is a criminal offence. It can result in costly delays to rail traffic, damage to the railway infrastructure and in the worst instances, injury and loss of life. Due to the nature of the proposed development we consider that there will be an increased risk of trespass onto the railway.

Condition

The developer must provide a suitable trespass proof fence adjacent to Network Rail's boundary (approx. 1.8m high) and make provision for its future renewal and maintenance. Network Rail's existing fencing/wall must not be removed or damaged.

Vehicle Incursion Measures

An Armco or similar barrier should be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing. Network Rail's existing fencing / wall must not be removed or damaged. Given the considerable number of vehicle movements likely provision should be made at each turning area/roadway/car parking area adjacent to the railway. This is in accord with the new guidance for road/rail vehicle incursion NR/LV/CIV/00012 following on from DfT advice issued in 2003, now updated to include risk of incursion from private land/roadways.

Condition

Given the nature of the proposals and location of turning areas/car parking, we would expect that a condition securing the design and installation of suitable vehicle incursion measures by the developer is included in any consent. This is for the safety, operational needs and integrity of the railway.

Landscaping

It is imperative that planting and landscaping schemes near the railway boundary do not impact on operational railway safety. Where trees and shrubs are to be planted adjacent to boundary, they should be positioned at a minimum distance greater than their height at maturity from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Any hedge planted adjacent to the railway boundary fencing for screening purposes should be placed so that when fully grown it does not damage the fencing, provide a means of scaling it, or prevent Network Rail from maintaining its boundary fencing. Below is a list of species that are acceptable and unacceptable for planting in proximity to the railway boundary;

Acceptable:

Birch (Betula), Crab Apple (Malus Sylvestris), Field Maple (Acer Campestre), Bird Cherry (Prunus Padus), Wild Pear (Pyrus Communis), Fir Trees – Pines (Pinus), Hawthorn (Cretaeagus), Mountain Ash – Whitebeams (Sorbus), False Acacia (Robinia), Willow Shrubs (Shrubby Salix), Thuja Plicatata "Zebrina"

Not Acceptable:

Acer (*Acer pseudoplatanus*), Aspen – Poplar (*Populus*), Small-leaved Lime (*Tilia Cordata*), Sycamore – Norway Maple (*Acer*), Horse Chestnut (*Aesculus Hippocastanum*), Sweet Chestnut (*Castanea Sativa*), Ash (*Fraxinus excelsior*), Black poplar (*Populus nigra* var, *betulifolia*), Lombardy Poplar (*Populus nigra* var, *italica*), Large-leaved lime (*Tilia platyphyllos*), Common lime (*Tilia x europea*)

Condition

Landscaping detail should be submitted to the Local Planning Authority and approved in conjunction with Network Rail.

Lighting

Where lighting is to be erected adjacent to the operational railway, the potential for train drivers to be dazzled must be eliminated. In addition, the location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway.

Revised Condition

In response to the representation from Network Rail, Condition 4 is to be amended as follows to include requirement to consult with Network Rail:

4. No site works or works on this development including demolition or construction work shall commence until a Demolition and Construction Management and Logistics Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in full accordance with the details approved under this plan. The Demolition and Construction Management and Logistics Plan submitted shall include, but not be limited to, the following information:
 - i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures;
 - ii. site preparation and construction stages of the development;
 - iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - iv. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;

- v. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;
- vi. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
- vii. noise mitigation measures for all plant and processors;
- viii. details of contractors compound and car parking arrangements;
- ix. Details of interim car parking management arrangements for the duration of construction;
- x. Details of a community liaison contact for the duration of all works associated with the development;
- xi. Construction methodology shall demonstrate consultation with the Asset Protection Project Manager at Network Rail.**

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of adjoining residential properties and in the interests of highway and pedestrian safety in accordance with policies CS9, CS13 , CS14, DM01, DM04 and DM17 of the Barnet Local Plan and the London Plan 2021.

Additional Informative

In response to the representation from Network Rail, the following informative to be added in association with Condition 10:

“It is imperative that drainage associated with the site does not impact on or cause damage to adjacent railway assets. Surface water must flow away from the railway, there must be no ponding of water adjacent to the boundary and any attenuation scheme within 30m of the railway boundary must be approved by Network Rail in advance. There must be no connection to existing railway drainage assets without prior agreement with Network Rail. Please note, further detail on Network Rail requirements relating to drainage and works in proximity to the railway infrastructure is attached for your reference.”

Item No. 8

21/3001/PNV – Blocks 7 -9 Chandos Way and Blocks 1 to 6 Britten Close

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Under the Section A.2, the following assessment text is added:

(i) where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building.

The existing building is less than 18 metres in height and so does not need to be accompanied with a report from a chartered engineer or other competent professional. The proposal is compliant on this criteria.