

PLANNING COMMITTEE B – 22nd NOVEMBER 2023

ADDENDUM TO OFFICERS REPORT

Pages: 11 - 56

Agenda Item: 6

Reference: 22/3958/FUL

Site Address: 84 West Heath Road London NW3 7UJ (Childs Hill)

Notification of potential legal challenge

Following the publication of the agenda, Council received notification of a potential legal challenge by way of judicial review. The letter dated 21st November 2023 has been submitted by Hill Dickenson LLP, on behalf of Mr and Mrs S B Katz, being the owners of the freehold interest at 1 Eden Close, West Heath Road, London NW3 7UL.

Background:

By way of background, the content of this letter follows a previous notification from Hill Dickenson LLP, dated 26th July 2023. The content of the letter (and further late objections received from local residents not previously seen by Officers), resulted in the application being deferred for determination by planning committee B on the same day.

The issues raised focussed on the following alleged failings of the report.

- Failure to discharge the public sector equality duty and obligations under The Equality Act 2010 and The Human Rights Act 1998, in relation to meeting timing, causing potential significant prejudice to objectors
- Total inadequacy of the Planning Condition 25 and Operator Statement and consequential failure to provide proper controls for proposed permitted use as a care home
- Failure to properly disclose s106 Agreement
- Failure to provide proper written analysis of objections
- Failure to apply Policy G5 of the London Plan
- Failure to have regard to Art 30 of the Vienna Convention and The Consular Relations Act 1968
- Vision of misleading and irrelevant material.
- Failure to identify current Circular Economy Statement as being materially deficient.
- Failure to deal with principle of development at the correct stage.
- Reliance on one sub-optimally timed bat survey
- Arboricultural mitigation measures.

Current notification of potential legal challenge:

The current letter of intent to judicially review follows the publication of the 22nd November Committee B agenda. The content of the letter continues to repeat the issues raised in the original letter (bar the first point about committee timing) with continued objections raised in relation to the imposition of Planning Condition 25 (Operator Statement) and disclosure of the S106 agreement. All other suggested failings are continued with the author setting out their initial and current position.

Officer response:

Following receipt of the original letter of intent received July 2023, the report was subsequently reviewed against National Government Planning guidance for 'Use of planning conditions' and 'Use of planning obligations' through the planning application process. Re-consultation with both internal and external consultees was also carried out with the Police Liaison Officer and Arboricultural, Ecological and Sustainability Officers providing further input.

Following advice from Counsel, the report was amended to make minor corrections relating to consultation, the principle of development, character and appearance and noise & disturbance issues. A more detailed analysis of the security concerns from the Republic of Kazakhstan was also included. A Senior Lawyer confirmed that the amended report can be published.

In respect of the issues raised, a draft S106 has not been prepared. The Heads of terms for the agreement are set out in the recommendation. It is usual to instruct HB law to draft an agreement after a committee resolution has been made.

The other issues raised about the inadequacy of the report to address particular matters have been updated and addressed in the relevant sections of the report. Matters relating to the operator statement are dealt with at paragraph 8.7 and planning condition no.25. A comprehensive written analysis of objections is dealt with at section 4. The aims and objectives of London Plan policy G5 (Urban Greening Factor) are dealt with at paragraphs 7.1.9 - 7.1.10 and planning condition 5. Matters relating to designing out crime are dealt with at paragraphs 7.86 - 7.91 with condition 23 seeking secured by design accreditation. The comments made by the Designing Out Crime Officer (DOCO) dated 27th July 2023, have been made publicly available to view. The principle of development is dealt with in paragraphs 7.1 - 7.12. Matter relating to the bat survey are dealt with at paragraphs 7.94 - 7.97, with ecological mitigation and enhancement measures controlled by conditions 10 and 11.

On this basis, Members are respectfully asked to determine this application.

Late Objections from neighbouring residents:

A total of 12no.objections have been submitted following the publication of the agenda. The objections seek to reinforce the original comments made, in addition to raising further issues relating to Whole Carbon Lifecycle Assessment and Archaeology.

Whole Carbon Lifecycle Assessment:

Objection:

Barnet has pledged to be a net zero carbon Council by 2030. Knocking down the last remaining Victorian villa in Childs Hill means losing a valuable historical house and contributing unnecessarily to the climate crisis. Retrofit first. The current plan contradicts the UK governments climate emergency pledge, as well as Labour and Barnet's - the construction of this basement will be the main contributor of the release approximately 4,356 tons of carbon emissions (which this development is estimated to release). It's crucial to bear in mind that below-ground works cause around 70% more carbon emissions than above-ground construction. This poses a grave threat to our area and the planet as a whole to put it into perspective, offsetting this basement's carbon footprint would require planting an astonishing 264,463 trees. In light of the Marks and Spencer decision it is clear that the council should be taking a different approach and that the applicant has failed to complete a carbon whole life cycle and explore options to keep the existing villa to comply with legal and policy obligations

Officer Response:

Following the completion of the committee report and in anticipation of late objections being received on this issue, a Whole Carbon Lifecycle Assessment has been submitted by the applicant which includes a comparison between all three schemes currently being determined on this site. For this particular application, it confirms that over a prolonged period of time, the demolition of the building is sustainably preferable albeit, over a 50 year period. The following issues are also raised.

- The building cannot be converted without substantial demolition to meet current national space standards.
- The building cannot be retained without substantial demolition to be upgraded to meet current building regulations.
- Substandard building fabric cannot be retained and would require substantial demolition and replacement.
- In light of the above, it is highly questionable whether an effective refurbishment of the existing building is even possible, let alone viable. The only viable option is to replace the existing substandard property with a new building which meets current standards and will provide a much needed asset for many generations to come.

The Councils Energy & Sustainability Officer has been consulted and accepts the view that the possible refurbishment or retention of the existing building aligns with the conclusions of the Whole Life Cycle Assessment, i.e. that in order to adapt the existing building to a standard that will house residents needing particular care, a significant amount of the existing fabric would be removed and/or replaced. This would include requirements for making the building well insulated and preferably airtight, installing modern energy-efficient utilities, accessibility infrastructure, fenestration changes and upgrades, replacement of internal walls, to list some aspects. All of these actions reduce the benefit of refurbishing the existing structure.

Neighbour objection comment - 'In light of the Marks and Spencer decision it is clear that the council should be taking a different approach':

Sustainability Officer response-

- The proposed redevelopment of M&S's flagship Oxford Street Store is significantly different, in location, use, materials and size, and so is difficult to draw meaningful comparisons between.
- Westminster Council, the GLA and the Planning Inspector approved the application to demolish the existing building and create a new-build development on the site. The Secretary of State overruled this, on the basis of issues around heritage, the effect on the surrounding area and carbon emissions.
- The Secretary of State was not convinced that Marks & Spencer had exhaustively considered the alternatives of repurposing the building – "*The proposal would, in part, fail to support the transition to a low carbon future, and would overall, fail to encourage the reuse of existing resources, including the conversion of existing buildings.*"

Neighbour objection comment - 'the applicant has failed to complete a carbon whole life cycle'

Sustainability Officer response -

This has been completed, along with a Circular Economy Statement and an Energy Strategy Report, BREEAM Assessment.

Neighbour objection comment - 'and explore options to keep the existing villa to comply with legal and policy obligations'.

Sustainability Officer response -

- See above &
- “Barnet has pledged to be a net zero carbon Council by 2030.” – Given that retaining the existing structure has been considered and deemed not feasible, the proposals for the new development are in line with reaching net-zero emissions through energy efficiency measures, all-electric utilities that will benefit from future decarbonisation of the grid, S106 Carbon Offset amount to be used for local decarbonisation projects.

Objection comment – 'It's crucial to bear in mind that below-ground works cause around 70% more carbon emissions than above-ground construction'.

Sustainability Officer response -

- It is anticipated that the Figure is derived from the following report commissioned by [RBKC-commissioned report: Life Cycle Carbon Analysis Extensions and Subterranean Developments in RBKC](#). Reason for report: RBKC has experienced an unprecedented number of planning applications for Subterranean Extensions over the last decade. Since 2001 the council has seen a rise of 85% in subterranean planning applications, from 46 basement applications in 2001 to 307 basement applications in 2012.
- The basement in question is single-storey only. The 70% figure relates to Multi-storey basements only that do require a lot more concrete and therefore more embodied emissions than single-storey.
- Use-type of the basements in the study not considered.
- Recycled concrete not included in calculation.
- It was considered that any demolition waste and spoil removal would go directly to landfill
- It is likely that spoil can be reused as well as the waste from demolition, however, in the absence of evidence this was not considered.
- in the absence of data, assumptions and estimations used.

There are several ways to mitigate the environmental impacts of the embodied carbon of a building. This can be done by defining standards for the choice of more sustainable materials at the design stage of the project. These standards can include, among others, the following aspects:

- reuse of materials;
- recycled content of materials (pre and post consumer);
- the use of rapidly renewable materials;
- the use of local or regionally manufactured materials;

To enable the development to proceed on this basis, such measures can be secured under Planning Condition number (30), which seeks carbon dioxide emissions reduction measures.

Archaeological priority:

Objection:

Whilst this is not a conservation area, it is a site within an area of special archaeological significance.

Officer Response:

The site is located within an Area of Archaeological priority (APA)- Child's Hill (Golders Green, Clitterhouse Farm and West Heath) as designated by Historic England and included within the Barnet Local Plan. An Archaeological Desk Based Assessment commissioned by Stephen Levrant Heritage Architecture Ltd concludes that the potential of discovering below ground archaeological deposits at the subject site is low, and that if discovered, their significance is likely to be low. This conclusion is based on the fact that the proposed development occupies largely the same footprint as the existing building, with the existing footprint being altered by previous construction and earthworks. On this basis, it is recommended that no further archaeological investigation or mitigation measures are considered necessary. Historic England were consulted on the previous application (22/0228/FUL), and raised no issues in relation to archaeological constraints on this site.

Should Members take a different view then a pre commencement condition can be imposed requiring further investigation.

Pages: 137 - 138

Item: 10

Reference: 23/3674/HSE

Address: 1 Evelyn Road, Barnet, EN4 9JT

Amendment to number of objections received

One of the objectors has withdrawn their objections as confirmed in the email received on 21st November 2023 5:04PM provided existing greenery is retained and supplemented.

Therefore, the number of objection comments received is 5 instead of 6.

Pages: 143 and 145

Item: 11

Reference: 23/2853/RCU

Address: 62 Hervey Close, N3 2HJ

One further objection has been received concerning the committee report:

1. Safety considerations appear to be overlooked in the report's main issues of consideration. The obstruction caused by this structure poses a substantial hazard, impeding visibility when manoeuvring vehicles in and out of the driveway from neighbouring property. *Officer response: Highways officers raised no objection about the siting of the storage shed.*
2. Report lacks mention of this consultation with Highways or its outcomes. The structure's height, pitched design, and inappropriate placement significantly obstruct line of sight when using my parking driveway *Officer comment: The report includes highway officer comment: "In the lifetime of this application, the highways team were consulted who said the unit was too small. However, the bikes fit into the shed, and on balance, officers are satisfied with the size of the shed as a larger one would be more imposing."*

3. The report inaccurately states a maximum storage height of 1.5 meters. The height is definitely above 1.5 meters. Officer comment: Dimensions confirmed by the applicant as height (top of pitch): 160cm, height (bottom of pitch): 146cm

4. It's imperative to highlight that this storage is intended for general use and not specifically for bikes. Officer comment: Application relates to bike storage.

Amendment to condition 1, Approved Plans:

The development hereby permitted shall be carried out in accordance with the following approved plans:

106/A Block Plan and Bike Store Elevations

Site Location Plan