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## Appeal Decision

Inquiry held on 27, 28, 29, 30 January 2015 and 3 February 2015

Site visit made on 3 February 2015

**by Brendan Lyons BArch MA MRTPI IHBC**

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

**Decision date: 23 March 2015**

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**Appeal Ref: APP/T5150/A/14/2219081**

**110 Walm Lane, Willesden Green, London NW2 4RS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Fairview New Homes against the decision of the Council of the London Borough of Brent.
  - The application Ref 13/3503, dated 14 November 2013, was refused by notice dated 19 March 2014.
  - The development proposed is described as: Demolition of existing buildings and redevelopment to provide 53 residential dwellings, comprising a mix of one, two and three bedroom apartments, provision of a new A3/A4/D1 mixed use unit on the ground floor; formation of a new access and associated highway works, basement car parking, amenity space and landscaping.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The Inquiry opened on 27 January 2015 at Brent Civic Centre, and continued for four further days. At the Inquiry, 'Rule 6 status' was granted to 'Save the Queensbury' ('STQ'), an informally constituted group of local residents and organisations opposed to the loss of the public house that occupies part of the existing building on the site. Other local residents and elected representatives also spoke at the Inquiry. Some of these accompanied representatives of the Council and the appellants at my formal inspection of the site and surrounding area on 3 February 2015. I also carried out unaccompanied visits to the area on 26 January and 3 February.
3. The description of development set out in the heading above is taken from the planning application form. During the consideration of the application, the Council and the appellants agreed that the proposed mixed-use unit should be for uses within classes A4 and D1 only, omitting the option of use within class A3<sup>1</sup>. This change of description is reflected in the Council's decision on the application and in the submitted appeal. STQ had made representations in support of the change. I have considered the appeal on the basis of the amended description. At the Inquiry the appellants provided a substitute

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987, as amended

ground floor plan<sup>2</sup>, from which the reference to A3 use has been deleted. As this amendment merely reflects the change already agreed, I consider that no party's interest would be prejudiced by acceptance of the substitute plan.

4. It came to light following the refusal of planning permission that the Council had not formally notified English Heritage ('EH') of the application, as directed by Circular 01/01, other than in respect of archaeology. The Council subsequently notified EH of the appeal and invited comments to be made. During the Inquiry, confirmation was received from EH that it had decided not to offer a response to this notification. Whilst the original failure to notify was regrettable, I am satisfied that EH has since had sufficient opportunity to make representations, whose absence does not prejudice determination of the appeal.
5. At the time of the Inquiry, the development plan comprised the London Plan ('LP'), as altered by its Revised Early Minor Alterations published in 2013, the London Borough of Brent Core Strategy ('CS'), adopted in 2010, and the saved policies of the London Borough of Brent Unitary Development Plan ('UDP') adopted in 2004.
6. All parties to the Inquiry were aware of the imminent publication of the Further Alterations to the London Plan ('FALP'), following receipt of the Inspector's recommendations on their examination. Since the close of the Inquiry the Mayor of London has published the FALP on 10 March 2015, so that the LP now formally incorporates the FALP changes. As the 'Intend to Publish' version of the FALP was referred to in evidence at the Inquiry and the proposed altered policies were discussed, I have not considered it necessary to go back to the parties for further submissions on the implications of the formal publication, but have assessed the appeal in the light of the now up-to-date development plan.
7. New and revised plans are also emerging at borough level. In accordance with the guidance of the National Planning Policy Framework ('NPPF'), only limited weight can be given to emerging alterations to the CS and to the Borough's Draft Development Management Policies ('DDMP'), which have not yet been subject to examination.
8. The Council refused the planning application for three reasons, the second of which related to inadequate provision of on-site affordable housing and the third to the absence of a legal agreement to secure certain community and environmental benefits. A Statement of Common Ground ('SoCG') agreed between the Council and the appellants anticipated that a suitable legal agreement could be concluded. Before the Inquiry, the appellants submitted a draft unilateral undertaking ('UU') under Section 106 of the Act<sup>3</sup>, which set out commitments to the provision of affordable housing, the provision of temporary community accommodation and of flexible use space in the proposed building, the implementation of a travel plan, the achievement of targets for sustainability, renewable energy, car parking and considerate construction and the encouragement of local employment. Amended drafts of the UU were presented and discussed during the Inquiry, and a final version, executed as a deed dated 3 February 2015, was provided by the close of the event. The Council has accepted that the final UU would largely address the concerns that

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<sup>2</sup> Plan Ref 1201-2001 Rev P3

<sup>3</sup> Section 106 of the Town and Country Planning Act 1990 (as amended)

underpinned the second and third reasons for refusal. The weight to be attached to the obligations set out in the completed UU is considered later in this decision.

### **Appeal proposal**

9. Walm Lane is a main local route that runs north from the busy commercial centre of Willesden Green. The appeal site lies immediately to the north of where Walm Lane crosses the railway, diagonally opposite Willesden Green Underground Station. The site is outside the defined town centre, but the parade of shops on the opposite side of Walm Lane is designated as a secondary town centre shopping frontage.
10. The appeal site is occupied by No.110 Walm Lane, which is a wide-fronted mainly three-storey building that dates from 1893, when it was built as a doctor's surgery and private house. The building was subsequently converted to use as a Constitutional Club, and continued in use as a members' club, with several extensions added over time to the side and rear. The building is currently vacant, other than a caretaker's flat and a large part of the ground floor that in 2001 was made over to form the Queensbury public house. The front forecourt, which is raised above street level, provides outdoor seating for the public house. The car park to the side and rear of the building, bounded by the railway embankment and the back gardens of adjoining houses and flats, is currently used for contract parking. The appeal site also includes a triangle of pavement to the front of a row of three small shops built next to the railway bridge.
11. The site is adjoined to the north by two apartment buildings. No.112 Walm Lane is a recently erected narrow-fronted five-storey building, while Westly Court is a larger post-war four-storey block that turns the corner onto Dartmouth Road. This road and those to the north of it, predominantly lined by substantial houses of the late nineteenth and early twentieth centuries, make up the Mapesbury Conservation Area. The southern boundary of the conservation area is defined by the railway, and includes the appeal site. On the opposite side of the railway, the Willesden Green Conservation Area is centred on the shopping area along Walm Lane and the High Road, but extends to include the Underground station and its platforms.
12. The Queensbury public house has been registered by the Council as an Asset of Community Value ('ACV') under the Localism Act 2011.
13. Planning permission is sought to demolish No.110 Walm Lane and to replace it with a new building containing 53 apartments on the ground and upper floors, a ground floor unit with a mixed use intended now to consist of a public house and community uses within class D1, and a basement with parking for 23 cars, storage and servicing, to be accessed by a ramp adjoining No.112. The main mass of the building facing Walm Lane and the railway would be six storeys in height, but a central tower element, marked by angled front balconies, would rise to ten storeys. Towards the rear of the site the building would step down to four and then three storeys, with this rear wing having its own entrance and stair. The front forecourt, access way to the side and communal garden to the rear would be comprehensively paved and planted.
14. A previous version of the proposal, comprising 56 apartments and without the ground floor mixed use unit, had been submitted for planning permission in

2012<sup>4</sup>, but was withdrawn before the Council reached a decision. The appeal application was subject to discussion with the Council and consultation with the local community as it evolved, and was ultimately recommended for approval by Council officers.

## **Main Issues**

15. Based on the original reasons for refusal and the evidence presented by all parties to the Inquiry, I consider the main issues in this appeal to be:
- the effect of the loss of the existing building and its replacement by the proposed development on the character and appearance of the Mapesbury Conservation Area and on the setting of the Willesden Green Conservation Area and of nearby listed buildings;
  - the adequacy of proposed provision for affordable housing;
  - the adequacy of mitigation for the effects on local infrastructure and environment, including for the loss of the Queensbury public house.

## **Reasons**

### ***Conservation areas and listed buildings***

16. In considering proposed development affecting a conservation area, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to pay special attention to the desirability of preserving or enhancing the area's character or appearance.
17. The judgment of the Court of Appeal in the case of *Barnwell Manor*<sup>5</sup> and other recent High Court judgments<sup>6</sup> have re-affirmed the importance of this duty and of the similarly worded duty under Section 66 of the Act to have special regard to the desirability of preserving a listed building or its setting. Application of these judgments to the circumstances of an individual conservation area means that 'considerable and importance and weight' must be given to the desirability of preservation or enhancement in any balancing of the merits of a particular proposal.
18. National policy guidance set out in the NPPF confirms the great weight in favour of the conservation of 'designated heritage assets', such as conservation areas. The particular significance of any heritage assets likely to be affected by a development proposal should be identified and assessed, including any contribution made by their setting. Any harm should require clear and convincing justification.
19. The concept of the setting of a conservation area is not enshrined in the legislation and does not attract the weight of statutory protection. The NPPF advises that the setting of a heritage asset can contribute to its significance. Opportunities should be sought for new development within conservation areas and within the setting of heritage assets that would enhance or better reveal the significance of the heritage asset. Proposals that preserve those elements

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<sup>4</sup> Application ref 12/2373

<sup>5</sup> *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, The Secretary of State for Communities and Local Government* [2014] EWCA Civ 137

<sup>6</sup> *The Forge Field Society v Sevenoaks District Council* [2014] EWHC 1895 (Admin); *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin)

of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

### *Significance of heritage assets*

#### Mapesbury Conservation Area

20. The character and appearance of the Mapesbury Conservation Area are well set out in the Council's Character Appraisal published in 2006, since when there has been very limited change. The area's distinctive character derives from its rapid development as middle-class housing at the end of the nineteenth and beginning of the twentieth centuries. The relatively short period of development has led to a consistency of layout, scale and built form. The wide east-west roads are lined by rows of closely spaced generously scaled detached and semi-detached houses, generally of two storeys but with some upper gable and attic-level windows. Materials reflect a consistent palette of brick, terracotta, tile and timber, with much surviving original detail adding richness to the street scene. The north-south roads cut across the grain, revealing the spaciousness of the layout of rear gardens and their mature planting.
21. The historical evidence reveals that the existing building, now No.110, was one of the earliest to be built to the north-east of the newly arrived Metropolitan Railway. The building's survival in its original form, clearly recognisable from the public realm as the later extensions are mainly confined to the rear, thus makes a positive contribution to the historic interest of the area.
22. Because of its location at the south-western corner of the conservation area and immediately to the north of the railway bridge, the building has a gateway role. It marks the entrance to the area along the main spine route through Willesden Green and past the Underground station. The building's scale and use of materials therefore provide an important highly prominent announcement of the character of the Mapesbury area.
23. The Character Appraisal acknowledges that Walm Lane has a slightly more varied character than roads at the core of the conservation area. This is in part due to the need for post-war redevelopment, including that just to the north of the appeal site. But No.110's slight isolation from the houses at the core of the area does not in my view support the case for replacement of the building, as the appellants would have it. Rather it reinforces the merit of the building's retention as a cornerstone that provides a marker of the area's history and character.
24. It is common ground that the site's prominent position at the junction next to the railway and at the crest of rising ground from each direction requires the building to provide something of a local landmark. Evidence for the appellants is very critical of the building's architectural quality. I agree that it is not of outstanding design merit, even in terms of its own style<sup>7</sup>, and its original designer cannot be identified. Whether it is of sufficient interest to be classed as a 'non-designated heritage asset' in its own right is not a decision to be made in the context of a section 78 appeal, but should ideally, as argued by the appellants, form part of a consistently judged local listing exercise.
25. The building is still sufficiently distinctive and pleasing in its design to carry off its local landmark function. It has an enhanced domestic scale, set by its width

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<sup>7</sup> The style has been variously described as 'Arts and Crafts' and 'Queen Anne Revival'

and dual entrance, reflecting its original mix of domestic and medical uses. But I would not agree that the building is 'over-scaled', as assessed by the appellants. Its full height is emphasised by the prominent gable feature marked by its very large central window set within tile-hanging. This feature also has the important benefit of giving a strong focus to the otherwise quite informal arrangement of windows below. Render is sparingly used on the front elevation, to add emphasis to the tile-hung gable, but the appellants' photographs show that until No.112 was rebuilt render was also quite visible on the north elevation, interrupted by two well proportioned chimney stacks. Seen from the other side, the building's most notable attribute is its sweeping expanse of roof, broken only by a wide dormer. This side of the building does not present a formal frontage, but historic maps show that the building was at the time flanked by a track leading to a nursery beside the railway. The low roof provides an appropriate response.

26. The front of the building squarely addresses the road, in an entirely natural way. To the rear, the building has been adversely affected by the poor design of extensions and by the utilitarian treatment and usage of the car park. The site is flanked by trees along the railway boundary, but cannot be described as verdant, as the Council's evidence seeks to. However, there are only very limited views along the side of the building from the public realm, and none of the rear.
27. Taken overall, I support the assessment on behalf of the Council, endorsed by STQ, the Victorian Society and others, that the building makes a positive contribution to the character and appearance of the conservation area. The preservation of this contribution would be desirable.

#### Willesden Green Conservation Area

28. The character of the Willesden Green Conservation Area is essentially commercial. South of the railway Walm Lane becomes an urban high street, lined by shops and mansion blocks, unlike the parade of shops opposite the appeal site, which has a more suburban feeling because of the spacious layout of the surrounding residential development. There is a marked transition crossing the railway from the commercial zone to the residential area.
29. The appeal building helps to flag up this transition. In views north along Walm Lane the commercial frontages are terminated by the dominant form of the recently added Erin Court development. But nearer to the station, as the road bends, the sweeping roof of No.110 comes into view between taller blocks on each side, and then its front. The building's smaller scale, with clear sky above, and more domestic treatment, offers an indication of the more residential environment ahead.
30. By emphasising this contrast, the appeal building makes a positive contribution to the setting of the Willesden Green Conservation Area.

#### Underground station

31. The Underground station dates from 1924 and is listed Grade II. Its finely proportioned symmetrical front, clad in cream-coloured faience, shows that bulk and height are not necessary to achieve presence in the street scene. The full width of the façade can be well appreciated in views from the Lydford Road

bridge, where the railway is flanked by Erin Court to the south and the appeal site to the north.

32. The space on the Walm Lane bridge provides a clear zone in front of the station, whose angled façade responds to the building's pivotal location. The clear space is greater outside the northern entrance, and the front of No.110 helps to enclose it. The building's three storeys and prominent gable respond to those of the shops opposite to give a consistency to the visual enclosure, with a height appropriate to the overall width of the space and the scale of the station building. Contrary to the appellants' criticism, the fact that No.110 does not turn to face the station does not undermine their relationship.
33. On arrival at the station by train, the upper parts of No.110 can be seen from the platforms, in combination with the gables of the Station Parade terrace. But on leaving the station at street level, the distinctive form and materials of No.110 become obvious. There is an immediate reminder of the origins of suburban development of Outer London facilitated by the Metropolitan Railway. This is emphasised by the marked contrast with the height and treatment of Erin Court to the south.
34. For these reasons, I consider that the existing building on the appeal site makes a positive contribution to the setting of the listed station, which it would be desirable to preserve.

#### St Gabriel's Church

35. St Gabriel's Church stands within the Mapesbury Conservation Area and is listed Grade II. It is contemporary with the surrounding housing but differs in scale, style and materials. Its slender tower is a prominent feature in some views along Walm Lane, where not obscured by trees in leaf.
36. Adverse effect on the setting of the church did not form part of the Council's first reason for refusal of the application, but has been raised in evidence. The appeal site is at some distance from the church, but being jointly visible in views such as that from the Walm Lane bridge illustrated in the appellants' evidence, the existing No.110 forms part of the setting of the listed building. However, its contribution to the significance of the church as a designated heritage asset is very modest, as one relatively remote part of the surrounding housing area.

#### *Effect of proposed development*

37. The six-storey base block of the proposed building would fill much of the width of the site frontage and would return at slightly greater length along the railway frontage. The front of the building would be stepped in plan, with the central portion stepping forward of a set-back adjoining No.112, and a slightly lesser set-back to the railway corner. The ten-storey element would rise across half the width of the central block, with the open framework of the angled balconies forming a prominent frontispiece from ground to roof level. The evolution and philosophy of the proposed design are set out in evidence.

#### Mapesbury Conservation Area

38. The replacement of the existing building would lose the historical presence of original built form at the gateway to the conservation area. Further new development would continue the pattern of erosion of historic character at the

south-west corner of the area. As a result, evidence of the original development and subsequent evolution of area, in particular of its buildings used by the community, would be lost. There would be harm to the conservation area's historic interest.

39. The proposed building would represent a significantly more intensive form of development of the site than the existing and than is typical of the conservation area. It is common ground that the proposed density would significantly exceed the target range set out in Table 3.2 of the LP. In stating that development proposals that would compromise these targets should be resisted, LP Policy 3.4 already takes into account factors such as local context and character, design principles and public transport accessibility, which are the issues that the appellants seek to use in support of their case for a breach of the policy. The policy's supporting text states that the targets should not be applied inflexibly. But I find nothing in the policy or the other policies or GLA report quoted that suggest that the targets should be readily set aside for reasons of location, accessibility or good design.
40. The appellants seek to treat the site as a town centre location. But, as outlined above, it is too early to give significant weight to an allocation in the emerging DDMP. Even if the allocation were to come into effect, it proposes the site as a secondary retail frontage, effectively similar to its current mix of public uses. Such secondary use, at the very edge of the designated centre, would be consistent with the existing scale of development at the appeal site or at the shops opposite, and does not provide a powerful argument for intensive high-density development.
41. I acknowledge that the measurement of residential density should not be an end in itself, but the amount of accommodation sought clearly has a critical influence on the form of the proposed development and hence on its effect on the character and setting of heritage assets. In this case, the proposal would bring the urban scale and character of the town centre across the railway for the first time. The transition from the urban character of Willesden Green centre to the more residential scale and character of the Mapesbury Conservation Area would be compromised.
42. The appellants' justification for a tall building on the site reflects that on density, being based on town centre location, closeness to public transport and quality of design. The appeal site is not in one of the 'preferred locations' for tall buildings identified by CS Policy CP6, which does not offer support in principle for any other locations. UDP Policy BE10 also favours the preferred locations, but does not prevent tall buildings in other locations, for which it sets exacting criteria. This is similar to the approach of LP Policy 7.7, which advocates a plan-led approach to location, but does envisage the possibility of other locations subject to criteria. Town centres close to public transport are seen as potential locations, but only where character would not be adversely affected by the scale, mass or bulk of the proposed building, and where the building would relate well to the scale and character of surrounding buildings. The impact of tall buildings on sensitive areas such as conservation areas and on listed buildings should be given particular consideration.
43. As already outlined, the appeal site lies outside the town centre, and the intensification of development of the site to give it a more urban scale would be intrinsically harmful to the character of the conservation area. The character of



the area would be adversely affected by the scale of the proposal, particularly of the tower element. The building would not relate well to the scale and character of the immediately surrounding buildings.

44. The base block would be some 1.5 storeys taller than the adjoining No.112 and would appear quite bulky by comparison. Rather than align with the front of No.112 to maintain the character of a group fronting the street, the new block would be set back, so that the blank side wall of No.112 would be exposed and would have to be covered by a rather contrived green wall. It appears that the set-back would be generated by the need to accommodate the basement ramp rather than for any strong urban design reason.
45. This articulation of the plan form would help to emphasise the prominence of the tower element, which would become a dominant feature in local views. It appears that the design has over-estimated the site's capacity for a landmark building. I endorse the analysis on behalf of the Council of the tower's likely adverse impact on the character and appearance of the Mapesbury Conservation Area in views from the north along Walm Lane. These show that because of the tower's height and plan area, it would have a much greater presence than the more distant Erin Court, and would introduce an intrusive accent where none is needed. Similar effects would be found in the reverse views back to the north from the railway bridge. They show that the tower would have an intrusive impact, much greater than that of the slender tower of St Gabriel's Church, with which the appellants draw a comparison.
46. Views from within the heart of the conservation area would be generally screened by intervening buildings. However, the view west from Lydford Road would show the dominance of the tower and the mass of the base block relative to the low lines of the station façade. The potential to create 'bookends' with Erin Court would not justify the impact, as Erin Court performs a different function marking the edge of the urban shopping area, whereas the suburban housing area would not support a termination of the scale proposed.

#### Willesden Green Conservation Area

47. Seen from further south on Walm Lane, the building would rise next to Erin Court, competing with it visually. The sense of definition of the edge of the Willesden Green Conservation Area provided by Erin Court and the buildings opposite it would be eroded. The proposal would have an adverse effect on the setting of the conservation area.

#### Underground station

48. In closer views, such as those from the Walm Lane railway bridge or from the front of the station itself, the building's assertive impact on the setting of the station would be clear. The tower would rise above the space to the front of the station, changing its character from a relatively consistent low-rise area into one strongly focused on the vertical element of the new tower. The angling of the grid of balconies to face towards the station would increase attention on the new building. The effect of the station's primacy would be challenged, and the space's positive contribution to the setting of the station would be diminished.
49. From the rear of the station, along Station Parade, the tower would be seen to best advantage at its most slender. But it would still appear out of keeping with

the large domestic scale of the Station Parade shops and with the low mass of the station itself.

#### St Gabriel's Church

50. The appeal building would intervene in views from near the station towards St Gabriel's Church. As a second tower, it would dilute the church tower's current prominence as the only tall structure rising above the surrounding housing. But because of the distance between them and the appeal building's location at the edge of the housing area, the effect on the church's special interest would be modest.

#### *Conclusions on heritage impacts*

51. The adverse effects outlined above stem from the basic form and massing of the proposed building, and the degree of intensification of development of the appeal site. These may arise from an over-ambitious brief but, in my view, they are inherent defects in the design. Therefore, I do not agree with the high value placed by the appellants on the quality of the proposed design as justification for departure from policy. The inherent defects would not be adequately mitigated by the proposal's positive attributes in terms of the assurance of its execution, the elegance of some façade treatments, the proportions of openings, the crispness of detailing and the careful selection of materials.
52. In weighing the impact of loss of the existing building on the significance of the conservation area as a designated heritage asset, the Council's evidence has assessed the degree of harm as 'less than substantial' in the terms of paragraphs 132-134 of the NPPF. Notwithstanding the positive contribution made by the building, I agree that its importance is not absolutely integral to the quality of the area as a whole, and that the Council's assessment is correct.
53. I recognise that the Council's stated position remains that a replacement building of sufficient quality could be supported. However, that judgment cannot be made with certainty in the abstract, and would rely on first weighing benefits of a particular proposal against harm, in accordance with the statutory duty and NPPF guidance.
54. An alternative scheme that would retain the original parts of the existing building and provide new low-rise housing in separate blocks to the rear of the site was put forward by STQ, supported by an outline viability appraisal. While noting the attractions of the proposed layout, I have no reason to doubt the adverse practical and viability issues identified by the appellants.
55. I conclude that the loss of the existing building and its replacement by the appeal proposal would not preserve or enhance the character or appearance of the Mapesbury Conservation Area and would adversely affect the setting of the Willesden Green Conservation Area. The harm in each case must be assessed as less than substantial in NPPF terms.
56. The proposal would also fail to preserve the setting of the listed Underground station. While the impact on setting would be severe, the overall effect on the significance of the designated heritage asset must be regarded as less than substantial. The proposal would fail to preserve the setting of St Gabriel's Church, but the impact on setting would not be severe and the effect on significance very modest.

### ***Affordable housing***

57. The Council has clarified that its refusal of the planning application was based on concern that the proposed 10 units of shared ownership affordable housing with a surplus cash payment was not an adequate level of on-site provision. Maximising on-site provision, in order to address targets set by LP Policies 3.11 and 3.12, was the key issue for the Council. The appellants' subsequent offer of 12 intermediate shared ownership units on-site, with potential further financial contribution from a later viability review, was still considered inadequate.
58. This remained the Council's position at the opening of the Inquiry. Particular concern was raised about the absence of social rented units, when the CS endorsed a provision of 70% social rent and 30% shared ownership to respond to Brent's needs, in comparison with LP (including FALP) target levels of 60%/40%. Its own independent viability appraisal of the appeal proposal suggested that 32% of the units could be made affordable, with the desired 70/30 tenure split. This would still be some way short of the policy aspiration of 50% overall affordable provision, which remains a matter of concern to some local representatives and to STQ.
59. At the Inquiry the Council did not refute the appellants' evidence in rebuttal of its appraisal, with regard to the implications of omission of the proposed basement, commercial lease revenue, build costs and land value. I have found no reason to reach a different conclusion on any of these matters.
60. By the close of the Inquiry, the Council had accepted that the revised alternative proposal set out in the UU of 8 units for social rent and 2 units for shared ownership represented the maximum reasonable provision of affordable housing, and would comply with LP and CS policy.
61. This option was based on the Council appraisal's costs and values. The appellants maintained that higher costs and lower values would in fact be likely. The UU also included an option of 12 units for shared ownership, which could be delivered at the more likely rates, and would also respond to an identified need for this tenure in the borough.
62. It is acknowledged by both main parties that viability appraisals rely on identified assumptions. Common assumptions have the benefit of allowing comparison, even if they are qualified by reservations. The appellants' revised alternative provides a useful means of assessing optimum levels of provision of affordable housing. I also accept that the level of provision must have some regard to the form of development and the practicality of future occupation and management of the accommodation. There would be good reason to group social rent units around a shared access and stair.
63. The appellants' analysis is that based on common assumptions the option of 12 shared ownership units would result in a notional surplus of £200,000 over the mixed tenure option. For that reason, and notwithstanding the reservations expressed by interested parties, I consider that the mixed tenure option, comprising 8 social rent units and 2 shared ownership units, would comprise the maximum reasonable amount of affordable housing for this scheme, and that the range of unit size would provide an acceptable mix. The smaller number of units would reflect the lower return for rented units, but the overall tenure split would be closer to the CS and LP policy target than the all shared ownership option.

64. I conclude that Option B as set out in the UU, combined with the review mechanisms to ensure any later changes in costs and values would be captured, would enable the proposal's compliance with CS Policy CP2 and LP Policy 3.12. The obligation would comply with the tests set out in the NPPF and the CIL Regulations, and should attract weight in the balance of decision making. It follows that Option A must not represent the maximum reasonable amount of affordable housing and so would not make the development acceptable in planning terms, which is the first test for planning obligations. Weight could not be given to this option in any approval of planning permission.

### **Local infrastructure and environment**

#### *Queensbury public house*

65. In accordance with the statutory definition<sup>8</sup>, the registration of the Queensbury public house as an ACV provides formal recognition that the current use of the building furthers the social wellbeing or social interests of the local community. The evidence given by STQ and local representatives, together with many submissions by local residents, attest to the high esteem in which the venue is held as a well managed, safe and congenial social facility in an area where these are felt to be lacking.

66. The NPPF seeks positive planning for the provision and use of community facilities, including public houses, to enhance the sustainability of communities and residential environments, and advises that the unnecessary loss of valued facilities should be guarded against<sup>9</sup>. LP Policy 4.8 has been altered by the FALP to require local development plans to provide a policy framework for maintaining, managing and enhancing local facilities and to develop policies to prevent the loss of valued local community assets, including public houses. The supporting text to the policy explains the Mayor's recognition of the important role that London's public houses can play in the social fabric of communities. LP Policy 3.1 requires development proposals to protect and enhance facilities that meet the needs of particular groups and communities, while LP Policy 3.16 seeks the protection and enhancement of social infrastructure. Consistent with the NPPF guidance, CS Policy CP23 seeks to protect existing community and cultural facilities that support community participation and development, and this is reflected in the emerging DDMP, which identifies public houses among the elements of social infrastructure.

67. The community value of the Queensbury is raised above the ordinary for public houses by its regular weekday use for parent and child activities under the auspices of the 'Busy Rascals' group and the National Childbirth Trust. The strong concerns raised by STQ about any potential threat to the future continuation of these well supported activities are quite understandable, as is their appreciation of the particular suitability of the current layout of the public house.

68. However, it must be recognised that the current arrangements for the use of the premises are informal, entirely reliant on the management priorities of the business's operators, and the will of the activities' organiser. Existing arrangements could completely change without any recourse to the planning

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<sup>8</sup> Localism Act 2011, s.88(1)

<sup>9</sup> NPPF para 70

system. There is also some question, which it is not the role of this appeal decision to resolve, over whether the community use of the premises in this way is entirely legitimate in planning terms, and should have some specific planning approval.

69. The appeal proposal would provide a new public house of almost exactly the same floor area as the existing. The appellants would be willing to accept a planning condition to prevent normally permitted change to other uses. The plans show a well landscaped forecourt slightly smaller than the existing, but with good provision of outdoor seating. Evidence has been provided to show that the existing operators would lease the premises. Therefore, there seems little reason to doubt that the appeal proposal would provide a new social facility of very similar size and standard to the existing, even if of a different style and ambience.
70. The mixed use sought for the proposed ground floor unit, would resolve any doubt about the legality of community uses. Through the UU, the proposal would guarantee future community use of the designated 'flexible space' for a minimum of 18 hours per week, to be regulated by a Community Access Plan approved by the Council. Busy Rascals is specifically named in the UU as a favoured Community Group. Whilst STQ maintain reservations about the proposed internal layout of the space, it appears that any disadvantage in terms of immediate access to the bar service area would be well mitigated by the availability of a private kitchen area and that the almost self-contained nature of the space could in time prove to be advantageous. In any event, these concerns would be significantly outweighed by the security of usage offered by the UU.
71. The UU also commits that development could not commence until suitable alternative temporary accommodation for Busy Rascals had been secured, at no expense to the group. I recognise the concern expressed by STQ about the potential disruptive effect on a small voluntary operation of having to relocate, and about the perceived lack of suitable alternative premises. But I consider that the obligation offered goes as far as could reasonably be expected, and that with flexibility any adverse effects, which would be for a relatively limited period, should not be insurmountable.
72. I find that the proposal as currently framed would not result in the net loss of a valued community facility and that the proposed replacement would be capable of providing for the social wellbeing of the community to the same extent as the existing public house. The proposal would therefore comply with CS Policy CP23 and LP Policies 3.1 and 3.16 and the objectives of Policy 4.8, as well as with the guidance of the NPPF.

#### *Parking and servicing*

73. The plans allow for basement level servicing of the public house, to be controlled by a management plan secured by a planning condition. Bin collections and other deliveries would take place from the kerbside. I acknowledge the concern raised by a local councillor about the potential effect on safe traffic flow on Walm Lane due to unscheduled deliveries, collections and drop-offs. However, I note that loading is restricted during peak hours. In the absence of objection by the Council as highway authority, there is insufficient reason to oppose the proposal on this ground.

74. Parking provision would be below the Council's maximum standard, at a level appropriate to the site's very good public transport accessibility. Spaces would be identified for electric vehicles, and adequate cycle parking would be available. The UU would provide for the approval and implementation of a travel plan, and measures to prevent increased demand for on-street parking, which should be effective if properly enforced.
75. The evidence suggests that the proposed parking and servicing arrangements would be satisfactory and that the proposal would comply in this respect with UDP Policies TRN2, TRN3, TRN4, TRN23 and TRN34.

#### *Effect on residents*

76. The proposal would meet required separation distances from surrounding properties and any potential overlooking of adjoining gardens from balconies could be screened. Daylight and sunlight studies show that neighbouring properties would not be unacceptably affected. Hours of use of the public house would be as existing, and could be controlled by a condition, as could noise from plant. The proposal would comply in this respect with the guidance of the NPPF and of the Council's SPG 17: Design Guide for New Development.
77. Adverse effects on residents during the construction period would be mitigated by the UU commitment to participation in the Considerate Constructors programme. The commitment to local notification of construction jobs should also be beneficial to the local community.

#### *Sustainability*

78. The UU commits to the approval by the Council of strategies for sustainability and renewable energy, with the aim of achieving a Code for Sustainable Homes Level 3 rating and a 40% reduction in CO2 emissions above the Building Regulations requirement. Despite a marginal shortfall below the sustainability checklist target of UDP Policy BE12, the proposal as a whole would satisfactorily address national and local objectives for sustainable forms of development.

#### *Conclusion on infrastructure*

79. I conclude that adverse effects on existing social infrastructure and on the environment would be satisfactorily mitigated by the imposition of conditions and by the above obligations of the UU, all of which would meet the tests set by the NPPF and the CIL Regulations.

#### **Balance of considerations**

80. With the publication of the FALP, the borough's housing requirement has increased significantly to more than 15,000 over the next 10 years. The Council's submissions on the FALP had not objected to the increase but pointed out that potential sites would be difficult to find. It was acknowledged at the Inquiry that, following publication, the Council would no longer be able to demonstrate a 5-year supply of deliverable sites. In these circumstances, in accordance with the guidance of paragraph 49 of the NPPF, the borough's housing supply policies cannot now be regarded as up-to-date. In applying the presumption in favour of sustainable development set by paragraph 14 of the NPPF, planning permission should be granted unless any adverse impacts

would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

81. NPPF policies are also relevant to weighing the harm to designated heritage assets. Where, as here, the overall level of harm has been rated as 'less than substantial', the guidance of paragraph 134 of the NPPF is that the harm should be weighed against the proposal's public benefits. In this instance, the public benefits would primarily comprise the provision of good quality new housing, including 10 affordable units. The replacement of the existing public house cannot be seen as a net benefit, as the new unit would be of equivalent size and quality to the existing. But there would be a public benefit in the formalising of community use of the proposed new unit and in the temporary relocation of the Busy Rascals activities during construction. It is not clear that the proposed treatment of the front forecourt would provide a sufficient enhancement over the existing to be classed as a public benefit. The other UU commitments would amount to mitigation rather than benefits. However, there would be some public benefit through the investment in new construction and the employment it would provide.
82. While the proposed housing would make a welcome contribution to meeting outstanding need, the numbers involved would not be great. None of the benefits would be of very great significance. On the other hand, the proposal's adverse lasting impacts on the character and appearance of the Mapesbury Conservation Area and on the setting of the Underground station would be considerable, even if within the 'less than substantial' category.
83. The *Barnwell Manor* judgment has re-affirmed that less than substantial harm does not equate to a less than substantial objection. The judgment is clear that in the case of harm to the setting of a listed building or to the character or appearance of a conservation area, the 'strong presumption' against the grant of planning permission, identified by previous judgments as the correct application of Sections 66 and 72 of the Act, continues to apply.
84. In the light of the considerable importance and weight to be given to the desirability of preserving listed buildings and their settings, and the character and appearance of conservation areas, I find that the adverse impacts in this instance would significantly and demonstrably outweigh the benefits of the proposal. Therefore, planning permission should not be granted.

### **Conclusion**

85. For the reasons set out above, and having taken account of all submissions made both in writing and at the Inquiry, I conclude that the appeal should be dismissed.

*Brendan Lyons*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

David Smith of Counsel	Instructed by the Borough Solicitor, London Borough of Brent
He called:	
Stephen Levrant RIBA AADip FRSA DipCons(AA) IHBC ACArch	Principal, Heritage Architecture Ltd
Ben Martin BEng (Hons) MSc MRTPI	Deputy Team Manager, London Borough of Brent
For debate on conditions and/or obligation: Horatio Chance	Planning Solicitor, London Borough of Brent

### FOR THE APPELLANTS:

Timothy Corner QC	Instructed by Simon Slatford, Nathaniel Lichfield & Partners
He called:	
John Pardey DipArch(Dist) RIBA	Principal, John Pardey Architects
Chris Miele IHBC MRTPI FRHS FSA	Senior Partner, Montagu Evans
Ian Dix BSc(Hons) MSc MCIT MCIHT	Director, Vectos
Claire Dickinson BSc(Hons) DipTP	Director, Quod
Simon Slatford BA(Hons) BPL MRTPI	Senior Director, Nathaniel Lichfield & Partners
For debate on conditions and/or obligation: Victoria Du Croz Mark Jackson	Senior Associate, Hogan Lovells Fairview New Homes, Appellants

### FOR SAVE THE QUEENSBURY (RULE 6 PARTY):

Ian Elliott, who gave evidence; Sujata Aurora	Local residents and members of Save the Queensbury group
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### INTERESTED PERSONS:

Navin Shah	London Assembly Member for Brent
Helen Carr	Councillor, Mapesbury Ward
Tom Miller	Councillor, Willesden Green Ward
Lia Colacicco	Councillor, Mapesbury Ward
Joanna Hanley	Local resident
Peter Chambers	Local resident
Rochelle Berger	Local resident
Maggie Chambers	Local resident



## **DOCUMENTS**

- 1 Draft Unilateral Undertaking
- 2 Opening submissions on behalf of the appellants
- 3 Copies of planning permissions granted for London public houses
- 4 Copies of letters of notification sent to English Heritage
- 5 High Court Judgment: The Queen on the application of University College London v First Secretary of State and London Borough of Camden
- 6 London Borough of Brent Core Strategy: Tall Buildings
- 7 GLA Intelligence Borough Profiles
- 8 Exchange of e-mails on alteration of description of development
- 9 Development Appraisal: 2 Shared Ownership and 8 Affordable Rent units
- 10 Draft Schedule of Conditions
- 11 Extracts from FALP
- 12 English Heritage response to notification of the appeal
- 13 Revised Draft Unilateral Undertaking
- 14 Appeal Ref APP/G2815/V/12/2190175: Secretary of State's decision letter, extracts from Inspector's report and copy of Unilateral Undertaking
- 15 Revised Draft Unilateral Undertaking and Schedule of changes
- 16 Copy of executed Unilateral Undertaking
- 17 Closing Submissions on behalf of Save the Queensbury
- 18 Closing Submissions on behalf of the Council
- 19 Closing Submissions on behalf of the appellants

## **PLANS**

- 1 Substitute Ground Floor Plan, Ref 1201-2001 Rev P2
- 2 Swept Path Analysis Loading Bay Transit Van, Ref 120428/AT/B01

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