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## Appeal Decisions

Inquiry opened on 19 November 2013

Site visits made on 19 and 21 November 2013

**by Paul Griffiths BSc(Hons) BArch IHBC**

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

**Decision date: 21 February 2014**

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### **Appeal A: APP/V5570/A/13/2199042**

#### **Land to the South of Chadwell Street, London EC1R 1YE**

- 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 Petchey (Islington) Ltd [formerly Galliard (Islington) Ltd] against the decision of the Council of the London Borough of Islington.
  - The application Ref.P121042, dated 13 April 2012, was refused by notice dated 21 May 2013.
  - The development proposed is redevelopment of land to south of Chadwell Street (vacant car park) to provide seven new houses with associated access, amenity space, and landscaping arrangements.
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### **Appeal B: APP/V5570/E/13/2199043**

#### **Land to the South of Chadwell Street, London EC1R 1YE**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Petchey (Islington) Ltd [formerly Galliard (Islington) Ltd] against the decision of the Council of the London Borough of Islington.
  - The application Ref.P122468, dated 17 October 2012, was refused by notice dated 24 May 2013.
  - The works proposed are the removal of the existing boundary treatment fronting Chadwell Street (wall, hoarding and brick piers).
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### **Preliminary Matters**

1. - The Inquiry opened on 19 November 2013 and also sat on 20 and 21 before closing on 22 November 2013. I carried out an unaccompanied visit to the vicinity of the site on 19 November followed by an accompanied visit on 21 November 2013 that took in the site itself, and several properties bounding it.
2. - At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

### **Decisions**

#### **Appeal A**

3. - The appeal is dismissed.

#### **Appeal B**

4. - The appeal is dismissed.

## **Main Issues**

5. - The Council refused planning permission for five reasons which can be summarised as the unacceptable effects of the proposal on the significance of designated heritage assets; the living conditions of existing residents through visual impact and loss of light; the failure of the proposal to provide an appropriate mix of unit sizes; an adequate level of access and future adaptability in relation to Units 1 and 7; and cycle parking. In the lead up to, and during, the Inquiry, the Council modified its position in response to amended drawings submitted, and matters clarified, by the appellant. This was reflected in the closing statement to the Inquiry made on behalf of the Council.
6. - Based on that revised position, and the points raised by local residents, the main issues to be considered are the effect of the proposal on (1) the significance of designated heritage assets; (2) the living conditions of local residents through visual impact and potential loss of light, in particular, and (3) whether the proposal, and in particular Unit 7, would provide an acceptable living environment for prospective occupiers. There are other matters that require analysis too, notably the potential for structural damage to existing properties, and any benefits associated with the scheme.

## **Reasons**

### *Designated Heritage Assets*

7. - The appeal site lies on the south side of Chadwell Street. It is enclosed to the north by Nos.6-11 Chadwell Street. This terrace dates from 1828-1829 and, along with the attached railings, is a Grade II listed building. To the west, the appeal site is bounded by a terrace of houses that front Myddleton Square. Nos.12A to G, 12 to 30 (consecutive), and the attached railings, date from 1824-1827, and together, make up a Grade II listed building. To the south-east of the appeal site is Arlington House, a relatively modern block of flats that fronts Arlington Way.
8. - All lie within the New River Conservation Area which encompasses a wide area south of Pentonville Road including Myddleton Square, Great Percy Street and Lloyd Baker Street. This conservation area is said by the Council to have outstanding architectural and historic significance by virtue of its high quality late-Georgian and early-Victorian residential development containing one of the few true circuses in London and some of its finest squares and terraces.
9. - Against that contextual background, it is necessary to set out the policy approach to development and works. At the top of the scale are the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>1</sup>.
10. In terms of works, s.16(2) of the Act requires, in considering whether to grant listed building consent, the decision-maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. S.66(1) of the Act takes a similar approach to development which affects a listed building, or its setting. S.72(1) of the Act sets out the general duty as respects conservation areas in exercise of planning functions: special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

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<sup>1</sup> Referred to hereafter as the Act

11. A range of development plan policies have been drawn to my attention. Of primary relevance in terms of the designated heritage assets set out, LP<sup>2</sup> Policy 7.4 looks for high-quality design responses that, amongst other things, have regard to the pattern and grain of existing spaces and streets, and are informed by the surrounding historic environment. LP Policy 7.6 seeks to ensure that buildings and structures are of the highest architectural quality, comprise details and materials that complement, not necessarily replicate, the local architectural character, and optimise the potential of sites. LP Policy 7.8 requires development to identify, value, conserve, restore and incorporate heritage assets, where appropriate, and where development affects heritage assets and their settings, it should conserve their significance by being sympathetic to their form, scale, materials and architectural detail.
12. CS<sup>3</sup> Policy CS 5 deals with Angel and Upper Street and sets out to protect and enhance the historic character of the area, encouraging high-quality design that respects local context. CS Policy CS 9 seeks to enhance and protect the built and historic environments of Islington. The policy looks to achieve that by, amongst other things, securing high-quality architecture and urban design, preserving historic urban fabric with new buildings sympathetic in scale and appearance, and conserving and enhancing heritage assets. Moreover, new buildings should make efficient use of sites and the policy acknowledges that high-quality contemporary design can respond to these challenges as well as traditional approaches, with innovative designs welcomed.
13. DMP<sup>4</sup> Policy DM2.1 takes a broadly similar approach to design. DMP Policy DM2.3 deals with heritage and, as a principle, sets out to conserve and enhance heritage assets in a manner appropriate to their significance. In terms of conservation areas, the policy requires new development within them to be of high-quality contextual design that conserves or enhances significance. Harm to the significance of a conservation area will not be permitted without clear and convincing justification and substantial harm to the significance of a conservation area is strongly resisted. It is also pointed out that the significance of a conservation area can be substantially harmed over time by the cumulative impact arising from the demolition of buildings which may, individually, make a limited contribution to that significance.
14. With regard to listed buildings, the policy seeks to conserve and enhance significance. Proposals to alter listed buildings in a way that harms significance will not be permitted without clear and convincing justification and substantial harm to, or loss of, a listed building is strongly resisted. New development affecting the setting of a listed building is required to be of good quality, contextual design. Where new development harms the setting, and thereby the significance, of a listed building, clear and convincing justification is required, and substantial harm, again, strongly resisted.
15. The DMP policies in particular, mirror in many ways, the approach of the Framework<sup>5</sup> two of the core principles of which are first, to always seek to secure high-quality design and second, conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

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<sup>2</sup> The London Plan 2011

<sup>3</sup> Islington's Core Strategy of February 2011

<sup>4</sup> Islington's Local Plan: Development Management Policies of June 2013

<sup>5</sup> The National Planning Policy Framework

16. This latter approach is expanded upon in paragraphs 126 to 141 but at this juncture, the most important principles are enshrined in paragraph 132. This sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to, of relevance here, a Grade II listed building, should be exceptional.
17. The appeal site originally formed the rear gardens of terraced houses to the west, fronting Myddleton Square and to the north, fronting Chadwell Street and there was a single-storey gate or carriage house adjacent to No.11 Chadwell Street. Sometime between 1966 and 1981, this building was removed, the rear gardens shortened, and new boundary walls erected, in order to allow the appeal site to be used as a car park.
18. Part of the wall connected to No.30 Myddleton Square, fronting Chadwell Street, is proposed to be removed. This wall has been altered and added to over time but despite its current appearance, contains historic fabric, and provides an indication of how the original boundary to Chadwell Street would have worked. It makes a positive contribution to the significance of the listed building it forms part of<sup>6</sup>, and the wider conservation area, therefore. Viewed in isolation, the removal of part of the wall would harm the special architectural and historic interest of the listed building, and fail to preserve or enhance the character or appearance of the conservation area.
19. However, the removal of part of the wall is not proposed in isolation, but as part of the redevelopment of the appeal site for housing. There was some discussion at the Inquiry about the contribution the appeal site, in its open state, makes to the conservation area and the setting of the listed buildings that bound it. As the appeal site stands, it is relatively easy to appreciate that it must once have been subdivided to form part of the rear gardens of the surrounding terraces and in that sense, it has some resonance as a vestige of the historical layout.
20. Against that, the appeal site has been divorced from the terraces it once served and there seems to be no realistic prospect of reunion. That divorce involved some rather unfortunate boundary treatments. Public views into the site may be limited but nonetheless, it has the air of a derelict, leftover space, bereft of discernible function. In that sense, it does have a harmful impact on the character and appearance of the conservation area and the setting of the adjacent listed buildings.
21. In that overall context, like the main parties, I see no reason, in principle, why redevelopment of the appeal site would necessarily cause harm to the designated heritage assets affected and there does appear to be the potential for redevelopment to bring a degree of enhancement. The presence of schemes on similar sites bounding listed buildings in the conservation area, approved by the Council, and in some cases built out, amply demonstrates that.

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<sup>6</sup> Nos.12A to G, 12 to 30 (consecutive) Myddleton Square and the attached railings

22. Central to consideration of this issue then is the nature and quality of the scheme for redevelopment. There are certainly positive aspects to it. Unit 1 would address the Chadwell Street frontage in a manner reminiscent of the gate or carriage house that once stood in a similar position, mirroring the garage, traditional in appearance, which has been inserted on the opposite side of the street. While clearly contemporary in derivation, Unit 1 would reflect the width of the terraced houses alongside and form a respectful relationship with them. Considering the quality of the frontage the existing site presents to Chadwell Street, this element of the proposal would enhance the street-scene.
23. Given that the terraces bounding the site have basements, I see nothing in the inclusion of basements in the scheme proposed that creates difficulty in design terms. I am also conscious of the potential for boundary treatments to be improved as part of the proposals. However, the treatment of the dwellings proposed in the body of the site is an area of concern. Where similar sites have been developed in the conservation area<sup>7</sup>, notwithstanding the contemporary approach to design, the layout of the dwellings, in plan, and elevation, has a distinct discipline that reflects strongly, and therefore relates well, to the form of adjoining terraces.
24. I accept that the shape of the appeal site makes such an approach more of a challenge and appreciate the policy requirement to make best use of the facility the site offers. Moreover, there is policy support for innovative and contemporary designs. However, all that must be balanced against the need to pay proper respect to context.
25. It appears to me that in seeking to maximise site coverage the block housing Units 2-6 has too closely followed the profile of the site. This has led to a relatively complex plan-form, lacking the discipline evident in the adjoining terraces. The translation of that plan form into three dimensions has resulted in a building that would lack discipline in its form, with various angles and shapes that would appear highly incongruous against the much more rigid architectural treatment of the adjoining terraces.
26. The alien presence of the block housing Units 2-6 means that the proposal, viewed in its entirety, would cause a degree of harm not only to the special architectural and historic interest of the listed building affected, but also to both the character and the appearance of the conservation area, and the setting of adjacent listed buildings.
27. There was much debate at the Inquiry about whether the harm caused to the significance of the designated heritage assets affected should be defined as substantial or less than substantial.
28. Paragraph 133 of the Framework sets out that where a proposed development will lead to substantial harm to or loss of a designated heritage asset, consent<sup>8</sup> should be refused unless, of relevance here, it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss. Paragraph 134 says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against, of relevance in this case, the public benefits of the proposal.

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<sup>7</sup> The developments at Ingle Mews and River Street in particular

<sup>8</sup> And I take that term to include permission

29. The Framework does not explain the difference between substantial and less than substantial harm but as outlined at the Inquiry, the decision of the High Court in the case of *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin) is useful in this regard. Paragraph 25 sets out that in terms of substantial harm, one is looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced. On top of and consistent with that, according to the recently published (in Beta mode) National Planning Practice Guidance, substantial (or serious) harm is defined as a degree of harm that goes to the heart of the reason for designation.
30. Applying that to the proposals, the element of the boundary wall proposed for removal is but one small part of the listed building<sup>9</sup> it must be considered part of<sup>10</sup>. The listed building, and its overall significance as a designated heritage asset, would remain predominantly intact. Similarly, the proposal would harmfully affect a small part of what is a relatively large conservation area. Much of the significance of the conservation area would be unaffected. While there would be some harm caused to the settings of the adjoining terraces and other listed buildings in the vicinity, these derive only part of their significance from their settings. The fabric and format of these listed buildings, where their significance largely lies, would remain completely, or largely, untouched.
31. In that overall context, the harm that would be caused by the proposals to the significance of the designated heritage assets affected would, in all cases, be less than substantial. In such a situation, the Framework requires that less than substantial harm to be weighed against public benefits. However, as set out above, the Act requires special regard to be had to the desirability of preserving (that is not harming) listed buildings and their settings, and special attention to be paid to the desirability of preserving or enhancing (again, not harming) the character or appearance of conservation areas. Moreover, that there would be some harm caused to the listed buildings and their settings, and the character and appearance of the conservation area, brings the proposals into conflict with LP Policies 7.4, 7.6 and 7.8, CS Policies CS 5 and CS 9, and DMP Policies DM2.1 and DM2.3.

#### *Living Conditions of Existing Occupiers*

32. In this regard, LP Policy 7.6 requires buildings and structures not to cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing, in particular. DMP Policy 2.1 requires development to provide a good level of amenity including consideration of overshadowing, overlooking, privacy, sunlight and daylight, over-dominance, sense of enclosure and outlook. One of the core principles of the Framework is to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
33. There are two strands to the concerns that have been expressed on this issue. Given the difference between the basement levels of the adjoining terraces and the appeal site, and the constrained nature of their gardens, I can understand why neighbouring residents are concerned by the potential for loss of light, and any increase in the sense of enclosure, that might result from the proposals.

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<sup>9</sup> Nos.12A to G, 12 to 30 (consecutive) Myddleton Square and the attached railings

<sup>10</sup> By dint of Section 1(5) of the Act

34. However, the largely uncontested, technical evidence provided by the appellant in the lead-up to, and at, the Inquiry demonstrates that there would be no easily discernible loss of light to any adjoining property. Moreover, while the development would be visible from adjoining properties, and their gardens, from what I saw at my site visits, it would not sit so close, or loom over the boundaries, to the extent that it would appear dominant or oppressive.
35. On that basis, I conclude that the proposal would have no detrimental impact of any significance on the living conditions of existing occupiers. As such, there is compliance with LP Policy 7.6, DMP Policy 2.1, and the Framework.

*Living Conditions of Prospective Occupiers*

36. In relation to this particular issue, LP Policy 3.5 requires the design of new dwellings to have adequately sized rooms and convenient and efficient room layouts, and meet the needs of Londoners over their lifetimes. LP Policy 7.6 requires buildings and structures to provide high-quality indoor and outdoor spaces and meet the principles of inclusive design. LP Policy 7.2 requires development to follow those principles, and to show how the specific needs of older and disabled people have been integrated into proposals.
37. CS Policy CS 12 requires all new housing to comply with 'flexible homes' standards. DMP Policy DM2.1 requires development to be sustainable, durable, adaptable, safe and inclusive and DMP Policy DM2.2 requires all development to demonstrate that it provides for ease and versatility in use; deliver safe, legible and logical environments; and produce places and spaces that are convenient and enjoyable for everyone. DMP Policy DM3.4 requires new housing to provide accommodation of adequate size with acceptable shapes and layouts of rooms, with consideration to aspect and outlook in particular.
38. As set out, the original, more wide-ranging, objections of the Council, on this count, have been distilled into two particular and distinct aspects relating to the design of Unit 7. This provides accommodation at basement level set around a courtyard located against the wall that forms the western boundary of the site. This has led to criticism of the outlook provided for future occupiers. However, basement level accommodation is not unusual in the area or London generally. Being set so low down, the courtyard would receive little in the way of direct sunlight but it would be of a size that would allow daylight to penetrate and, with careful design and finishes, it could provide a reasonable facility for the occupiers, and an acceptable outlook from the rooms opening out into it.
39. The Council has also raised issues about the lack of level access to Unit 7. The scheme proposes a staircase from ground floor level down to the accommodation in the basement. The standards set out in the Council SPD: *Accessible Housing in Islington* build upon those that define Lifetime Homes and set out the 'flexible homes standards' referred to in policy. Criterion 3 of the Lifetime Home Revised Criteria provides that 'the approach to all entrances should preferably be level or gently sloping' to 'enable as far as practicable, convenient movement along other approach routes to dwellings'.
40. To achieve that laudable aim, Unit 7 would need to be provided with a lift. There is no dispute between the parties that such a lift could be accommodated within Unit 7; the dispute is whether it needs to be provided at the outset, or whether it is sufficient to show that one could easily be accommodated in the future, if required.

41. Looking at the development plan, it appears to me that what is required for the provision of housing, in general terms, is a demonstration that the design of any new dwelling is flexible, and able to adapt to the changing needs of those who live in it. In that context, it seems to me sufficient for the appellant to show that level access, through the vehicle of a lift, could be provided in the future, if required. It would be disproportionate to require one at the outset when those who choose to live in Unit 7 might not need it, at that stage.
42. On that overall basis, I am content that the proposal would provide an acceptable living environment for prospective occupiers and it accords, therefore, with LP Policies 3.5, 7.2 and 7.6, CS Policy CS 12 and DMP Policies DM2.1, DM2.2 and DM3.4.

#### *Other Matters*

43. Local residents raised understandable concerns about the potential impact that the excavation involved in the proposal, in particular, might have on the structural stability of adjoining properties. The technical evidence of the appellant on this matter is that the development, if carefully controlled, need cause no great difficulty in this regard. Those controls could be applied by condition in the event that planning permission was granted. Moreover, the appellant helpfully volunteered a report on the structural condition of any adjoining property, prior to any work commencing, in order to assess the baseline position. In that overall context, I am content that these concerns expressed by local residents do not weigh against the scheme.
44. The appellant drew attention to the benefits of the proposal. The Framework talks of the importance of boosting significantly the supply of housing. CS Policy CS 12 sets out the aim of the Council to provide more high quality, inclusive, and affordable homes. In line with the general approach of CS Policy CS 12, the proposal would provide 7 open-market houses of a size, demonstrated by the appellant's evidence to be in short supply<sup>11</sup>. Moreover, through the vehicle of a Planning Obligation, a financial contribution of £420,000 would be made towards the provision of affordable housing off-site, in line with criterion G of CS Policy CS 12. Taken together, those represent considerable, public benefits.

#### **Final Conclusion**

45. As set out above, the proposal would provide considerable benefits in terms of the provision of market housing and a financial contribution towards the off-site provision of affordable housing. This would be achieved without any significant detrimental impact on the living conditions of adjoining residents and residents of the proposal would be provided with an acceptable living environment.
46. Against that, the proposal would cause harm to the special architectural and historic interest of a listed building, the character and appearance of the conservation area, and the setting of listed buildings. While, in the parlance of the Framework, that harm would be less than substantial, the desirability of avoiding any harm requires special regard, or special attention, by dint of the statutory provisions of the Act. Moreover, that there would be some harm caused to a listed building, the conservation area, and the settings of listed buildings, renders the proposal contrary to the development plan.

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<sup>11</sup> With reference to the North London Strategic Housing Market Assessment of March 2011



47. On my analysis, the public benefits outlined, while considerable, are not sufficient to outweigh the less than substantial harm that would be caused to the significance of the designated heritage assets affected. I reach that conclusion largely because it seems to me entirely possible for a scheme to be brought forward that secured much the same benefits, without causing the same degree of harm.
48. For the reasons given above I conclude that the appeals should be dismissed.

*Paul Griffiths*

**INSPECTOR**

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|                          |  |
|--------------------------|--|
| Katie Helmore of Counsel | Instructed by the Council of the London Borough of Islington     |
| She called               |  |
| Kristian Kamiński        | Deputy Manager of the Design and Conservation Team, LB Islington |
| MA                       |  |
| Sally Fraser             | Principal Planning Officer, LB Islington                         |
| BSc (Hons) MA            |  |

### FOR THE APPELLANT:

|                        |                                    |
|------------------------|------------------------------------|
| Thomas Hill QC         | Instructed by Asserson Law Offices |
| He called              |                                    |
| Michael Taylor         |                                    |
| RIBA                   |                                    |
| Lance Harris           | Anstey Horne                       |
| MRICS                  |                                    |
| Ronald Packman         | Packman Lucas                      |
| BSc (Eng) CEng ACGI    |                                    |
| FIStructE FRSA         |                                    |
| Dr Chris Miele         | Montagu Evans                      |
| IHBC MRTPI FRHS FSA    |                                    |
| Phillipa Dalton        |                                    |
| BSc (Hons) DipTP MRTPI |                                    |

### INTERESTED PERSONS:

|                           |  |
|---------------------------|--|
| Martin Edwards of Counsel | Representing Dr & Mrs Lyons, Local Residents |
| Rob Hull                  | Local Resident                               |
| Paul Keene                | Local Resident                               |
| David Plume               | Local Resident                               |
| Dr Timothy Lyons          | Local Resident                               |

## DOCUMENTS

- 1 - Council's Letters of Notification
- 2 - Adjustment to the evidence of Mr Harris
- 3 - Statement of Common Ground (SoCG)
- 4 - Copy of Distant Neighbours: Poverty and Inequality in Islington published by The Cripplegate Foundation and nef
- 5 - Lifetime Homes (July 2010)
- 6 - Copy of *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin)
- 7 - Draft s.106 Agreement
- 8 - Council's Draft Conditions with suggested amendments from the Appellant
- 9 - SoCG: Timeline of Correspondence
- 10 - Completed s.106 Agreement
- 11 - Closing Statement on behalf of the Council
- 12 - Closing Statement on behalf of the Appellant

## **PLANS**

- A 617-P-01: Existing Site Plan
- B 617-P-102: Southern Site – Proposed Site Plan
- C 617-P-103 Revision B: Southern Site – Proposed Ground Floor Plan
- D 617-P-104: Southern Site – Proposed Basement Floor Plan
- E 617-P-105: Southern Site – Proposed Upper Floor Plan
- F 617-P-106 Revision A: Southern Site – Proposed Roof Plan
- G 617-P-107 Revision A: Southern Site – Proposed Sections A and B
- H 617-P-108: Southern Site – Proposed Sections C and D
- I 617-P-09 Revision B: Southern Site – Proposed Elevations
- J 617-P-110: Southern Site – Proposed Elevation
- K 617-P-111 Revision A: Southern Site – Proposed House 1 Plans
- L 617-P-112 Southern Site – Proposed Houses 2+3 Plans
- M 617-P-113: Southern Site – Proposed Houses 4+5 Plans
- N 617-P-14: Southern Site – Proposed House 6 Plans
- O 617-P-115: Southern Site – Proposed House 7 Plans
- P 617-P-116: Southern Site – Proposed Elevation Comparison
- Q 617-P-117 Revision A: Southern Site – Proposed Elevations East and West
- R 617-P-118: Southern Site – Proposed Demolition Plan
- S 617-P-119: Southern Site – Proposed Demolition Elevations
- T 617-P-119 Revision A: Southern Site – Proposed Cycle Storage

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