



Ministry of Housing,
Communities &
Local Government

Ms Jacqueline Backhaus
Partner
Trowers & Hamlins LLP
3 Bunhill Row
LONDON
EC1Y 8YZ

Our ref: APP/K5600/W/17/3177810
Your ref: TH-THL.FID100128239

18 December 2018

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY CLARION HOUSING GROUP
LAND AT WILLIAM SUTTON ESTATE, CALE STREET, LONDON, SW3 3QY
APPLICATION REF: PP/15/04878**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Philip JG Ware BSc(Hons) DipTP MRTPI, who held a public inquiry from 9 to 18 May 2018 into your client's appeal against the decision of The Royal Borough of Kensington and Chelsea Council to refuse your client's application for planning permission for the demolition of the existing estate (Blocks A-K, N and O) and ancillary office; delivery of 343 new residential homes comprising of 334 apartments and 9 mews within buildings of 4-6 storeys; provision of Class D1 community floorspace with associated café; new Class A1-A5 and B1 floorspace; creation of new adopted public highway between Cale Street and Marlborough Street; new vehicular access from Ixworth Place; creation of new basement for car parking, cycle parking and storage; new energy centre fuelled by CHP, and works to adjacent pavement, in accordance with application ref: PP/15/04878, dated 13 July 2015.
2. On 1 May 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. The Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. On the 24 July and subsequent to the Inquiry, the new National Planning Policy Framework was published. The Inspector invited the main parties to make representations on the changes.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the London Plan, including alterations (2016), the Consolidated Local Plan Royal Borough Kensington and Chelsea (CLP) (2015), the Core Strategy proposals map (2010) and the extant policies of the Unitary Development Plan (2007). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR23-24.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
11. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

12. The emerging plan comprises the draft London Plan (December 2017). The Secretary of State considers that the emerging policy of most relevance to this case is policy H10 that addresses redevelopment of existing housing and estate regeneration.
13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan;

(2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the Inspector's conclusions at IR26, the Secretary of State concludes that the London Plan has some way to go before it can be considered close to adoption, and as such agrees with the Inspector and the parties that it can be afforded only very limited weight. He further agrees with the Inspector and parties that the review of the CLP can only be afforded limited weight (IR27).

Main issues

Appeal Scheme 'vs' the Revised Scheme

14. The Secretary of State has had regard to the Inspector's analysis at IR173-182, and notes that, although the Revised Scheme (RS) put forward by the Appellant seeks to address the Council's concerns, in particular with respect to the quantum of affordable housing proposed overall, and scheme viability, the RS was submitted some time after the planning application was refused and whilst the appeals process for the Appeal Scheme (AS) was underway. For the reasons given at IR180 the Secretary of State agrees that there are issues of concern relating to the consultation scheme which impact on accepting the RS. He further agrees, for the reasons set out by the Inspector at IR181 that the Council and other statutory and non-statutory parties have not fully addressed the RS, if at all. As such, and taking into account the 'Wheatcroft' principles, he concludes that it would be inappropriate to make a decision based on the RS.

Visual quality of the existing buildings

15. For the reasons set out at IR183-193, the Secretary of State agrees with the Inspector at IR194 that whilst the demolition would cause considerable harm to the estate, there would be low impact in significance terms due to the limited contribution made by the buildings to the streetscape, and the fact that the historic significance would partially remain in the form of those retained buildings outside of the appeal site. As such he agrees that overall the loss of the existing estate buildings is not a matter which weighs heavily against the AS.

The quality of existing accommodation on the estate

16. The Secretary of State agrees, for the reasons set out by the Inspector at IR195-199, that the estate cannot remain as it is and needs to be brought up to modern standards. He further notes that the Council, appellant and Mayor of London agree that demolition and redevelopment is the only feasible option.

The refurbishment/infill option

17. The Secretary of State has gone on to consider the refurbishment/infill option put forward by Save the Sutton Estate (SSE). For the reasons given at IR201-206 he agrees that the significance of the estate would be substantially harmed by the insertion of infill blocks. He further agrees (IR205) that there is no evidence that such an approach would be viable. As such he agrees that only very limited weight can be accorded to the SSE scheme and it does not represent a reason for objecting to the AS.

Provision of social rented housing

18. The Secretary of State has given careful consideration to the Inspector's analysis at IR206-228. For the reasons given he agrees (IR216) that the vacation of a property by a Registered Provider as a preliminary step towards estate renewal cannot reasonably be a basis for disregarding that floorspace for the purposes of affordable housing policy. He further agrees, for the reasons given at IR206-218, that the AS fails to comply with the 'no net loss' element of development plan policy.
19. The Secretary of State has gone on to consider the 'maximum reasonable affordable housing' element of policy. For the reasons given at IR219-222 the Secretary of State agrees that with regards to Benchmark Land Value the appropriate position is a decision based on the current situation, that is based on social housing development, as the Council contends.
20. He further agrees, for the reasons given at IR223, that it is not necessary to reach a conclusion on build costs related to risk allowance and finishes given the much greater impact of other matters. The Secretary of State also agrees, for the reasons given by the Inspector at IR224, that the appellant's estimates of sales values were appropriate. For the reasons given at IR225 he agrees that a figure of 12% for professional fees is appropriate. He also agrees that a developers' return of 18.76% is appropriate, for the reasons set out at IR226, and having regard to the Planning Practice Guidance and Mayor's guidance. He also concludes, in agreement with the Inspector at IR227, that the unusual nature of a development justifies a development management fee.
21. For the reasons above, and in agreement with the Inspector at IR228, the Secretary of State concludes that the AS fails to satisfy the policy aims of no net loss of social housing and maximum reasonable provision, largely for reasons related to the way in which the exiting vacant units of social housing are treated. As such he finds the proposal conflicts with Policies CH4 and LP3.14 of the development plan, and emerging policy H10 of the London Plan. He agrees that this is a very important consideration weighing against the AS.

Effect on the character and appearance of the area

22. For the reasons given at IR229-236, the Secretary of State agrees with the Inspector's conclusion that overall the AS is well designed and would sit comfortably within its context. He further agrees that any minor criticisms of the design, were they considered of significance, could be addressed by the agreed conditions requiring further details to be submitted for approval. As such he concludes that there would be no harm to the character and appearance of the area. He thus concludes that the proposal is in line with the development plan and Framework policy.

Effect on the setting of the heritage assets

23. For the reasons given at IR240-245 the Secretary of State agrees with the Inspector (IR246) that the only heritage asset which would be adversely affected by the scheme is the non-designated asset of the estate buildings themselves. He agrees that although the scheme would result in the loss of some buildings through demolition they are of limited significance. He has gone on to have regard to the provisions of paragraph 197 of the Framework, and has weighed the total loss of a heritage asset of limited significance, against the benefits of the provision of new market and affordable housing, as well as the

other benefits of the proposal. He considers that the balancing exercise under paragraph 197 is therefore favourable to the proposal.

Housing requirement supply

24. The Secretary of State agrees that there is a pressing need for housing, and especially affordable housing, in both policy and site specific terms (IR247) and that this weighs in favour of the proposal. He has gone on to consider whether the Council can deliver a 5 year housing land supply. For the reasons given at IR248-260, the Secretary of State agrees with the Inspector that the Council cannot currently demonstrate a 5 year supply of housing. As such he agrees (IR261) that paragraph 11 of the Framework is therefore engaged.

Other matters

25. The Secretary of State has given careful consideration to the other matters raised at IR262-267. He concludes that none is a material consideration which weighs against this proposal.

Planning conditions

26. The Secretary of State has given consideration to the Inspector's analysis at IR268-275, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

27. Having had regard to the Inspector's analysis at IR276-279, the planning obligation dated 29 May 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR280 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

28. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CH4 and LP3.14 of the development plan and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

29. As the council cannot currently demonstrate a 5 year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

30. The Secretary of State gives significant weight to the provision of new market and affordable housing, in an area with a pressing housing need. He also gives moderate weight to the other benefits of the scheme including the provision of some retail and employment floor space, community facilities and café and the sustainability improvements brought about by the redevelopment and regeneration of the existing estate buildings with low energy efficiency measures.
31. Against this he gives limited weight to the harm by way of loss of the non-designated estate buildings, but concludes that this harm is outweighed by the public benefits of the proposal, and that therefore the balancing exercise under paragraph 197 of the Framework is favourable to the proposal. However, he also finds that the proposed scheme does not comply with the policy aims of no net loss of social housing and maximum reasonable provision, contrary to the development plan and national policy. He gives substantial weight to this failure.
32. As such the Secretary of State considers that while there are no protective policies which provide a clear reason for refusing the development proposed, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. He thus concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
33. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the demolition of the existing estate (Blocks A-K, N and O) and ancillary office; delivery of 343 new residential homes comprising of 334 apartments and 9 mews within buildings of 4-6 storeys; provision of Class D1 community floor space with associated café; new Class A1-A5 and B1 floor space; creation of new adopted public highway between Cale Street and Marlborough Street; new vehicular access from Ixworth Place; creation of new basement for car parking, cycle parking and storage; new energy centre fuelled by CHP, and works to adjacent pavement, in accordance with application ref: PP/15/04878, dated 13 July 2015.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
36. A copy of this letter has been sent to the Royal Borough of Kensington and Chelsea Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Philip Barber

Authorised by the Secretary of State to sign in that behalf