

Newcombe House, Notting Hill Gate and Kensington Church Street

in the Royal Borough of Kensington & Chelsea

planning application no. PP/15/07602

Strategic planning application stage II referral

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008.

The proposal

Demolition of existing buildings and redevelopment to provide office, residential, and retail uses, and a flexible surgery/office use, across six buildings (ranging from ground plus two storeys to ground plus 17 storeys), with two storey basement together with landscaping to provide a new public square, ancillary parking and associated works.

The applicant

The applicant is **Notting Hill Gate KCS Ltd** and the architect is **Urban Sense**.

Strategic issues

Kensington & Chelsea Council has resolved to refuse permission for this application. The Mayor must consider whether the application warrants a direction to take over determination of the application under Article 7 of the Mayor of London Order 2008.

Having regard to the details of the application, the matters set out in the committee report and the Council's draft decision notice there are **no sound planning reasons for the Mayor to intervene** in this particular case and therefore no basis to issue a direction under Article 7 of the Order 2008.

Should the scheme be considered at appeal or a revised application submitted the applicant should have regard to the matters relating to housing, affordable housing and transport that have been raised to date by the Mayor.

The Council's decision

In this instance, Kensington & Chelsea Council has resolved to refuse permission.

Recommendation

That Kensington & Chelsea Council be advised that the Mayor is content for it to determine the case itself, subject to any action that the Secretary of State may take, and does not therefore wish to direct that he is to be the local planning authority.

Context

1 On 11 January 2016 the Mayor of London received documents from Kensington & Chelsea Council notifying him of a planning application of potential strategic importance to develop the above site for the above uses. This was referred to the Mayor under Category 1C of the Schedule to the Order 2008:

1C - Development which comprises the erection of a building that is more than 30 metres high and is outside the City of London”.

2 On 28 January 2016 the Mayor considered planning report D&P/3109/01, and subsequently advised Kensington & Chelsea Council that while the application was generally acceptable in strategic planning terms, further information was required in relation to the points raised in paragraph 68 the above-mentioned report before it could be confirmed that the application complied with the London Plan.

3 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report.

4 On 17 March 2016, against officer recommendation, Kensington & Chelsea Council Planning Committee decided that it was minded to refuse planning permission and on 15 April 2016 it advised the Mayor of this decision. Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008 the Mayor may allow the draft decision to proceed unchanged, or issue a direction to Kensington & Chelsea Council under Article 7 that he is to act as the local planning authority for the purposes of determining the application and any connected application. The Mayor has until 28 April 2016 to notify the Council of his decision and to issue any direction.

5 The minutes from the Council’s Planning Committee and draft decision notice cites the following reasons for refusal:

- 1) *The height of the tall building would be significantly taller than the existing building and the surrounding townscape. The architecture of the proposed tall building would be of insufficient high design quality and would not have a wholly positive impact on the townscape. It would result in harm to the setting of nearby listed buildings and conservation areas, including important local views and would result in substantial harm to those heritage assets. The proposals are contrary to policies of the London Plan, in particular policies 7.4, 7.6 and 7.7, and Local Plan policies CL1, CL2, CL3, CL4, CL11 and CL12. The public benefits would be insufficient to outweigh those harms.*
- 2) *The proposals result in the loss of social rented floorspace within the Royal Borough, contrary to policies of the London Plan, in particular policy 3.14, and the Local Plan, in particular policy CH3.*
- 3) *In the absence of agreed Section 106 obligations, and provisions under Section 16 of the General Powers Act, which would secure the necessary mitigation measures and infrastructure which are necessary to make the development acceptable, the proposal would be contrary to policies of the London Plan, in particular policies 3.12 and 3.16, the Local Plan, in particular policy C1, CT1 and CH2.*

6 The decision on this case, and the reasons, will be made available on the GLA’s website www.london.gov.uk.

Article 7: Direction that the Mayor is to be the local planning authority

7 The initial policy test regarding the Mayor's power to take over and determine applications referred under categories 1 and 2 of the schedule to the Order is a decision about who should have jurisdiction over the application rather than whether planning permission should ultimately be granted or refused.

8 The policy test consists of the following three parts, all of which must be met in order for the Mayor to take over the application:

- a) significant impact on the implementation of the London Plan;
- b) significant effects on more than one borough; and
- c) sound planning reasons for his intervention.

9 Parts (a) and (b) of the test identify the impact an application would have on the Mayor's policies and the geographical extent of the impact, whilst part (c) deals with the reasons for the Mayor's intervention, having regard to the Council's draft decision on the application. These tests are intended to ensure that the Mayor can only intervene in the most important cases.

10 This report considers the extent to which the policy tests under Article 7(1) apply in this case and whether, therefore, the Mayor should direct that he is to be the local planning authority and apply the tests set out under Article 7(3) of the Order 2008.

Policy test 7(1)(a): Significant impact on the implementation of the London Plan

Housing delivery

11 In considering this test, it is appropriate to consider how this scheme contributes towards the housing targets set out in the London Plan. Table 3.1 of the London Plan seeks to deliver at least 42,000 net additional homes across London. London Plan Policy 3.3 states that boroughs should seek to achieve and exceed the relevant minimum borough annual average housing target in Table 3.1, which sets a target for Kensington & Chelsea of 733 homes per year over a 10 year period.

12 In this instance, the application proposes 46 residential units. The number of units that would come forward represents approximately 6% of the Council's annual housing target. As such, it is concluded that whilst the resultant development would contribute to successful housing delivery in the Royal Borough of Kensington & Chelsea, this particular application would make a relatively modest contribution to the Council meeting the strategic minimum targets. On this basis the scheme would not have a significant impact upon the implementation of London Plan housing policies.

Transport

13 The proposal would deliver step free access to one side of the District and Circle Line platforms at Notting Hill Gate Underground Station and, were the application approved, this would have been secured through the S106 agreement. It is regrettable that there has not been an opportunity to deliver this benefit, but it is considered that this in itself would not be sufficient for the Mayor to intervene. On this basis therefore the scheme would not have a significant impact upon the implementation of London Plan transport policies.

Policy test 7(1)(b): Significant effects on more than one Borough

14 As discussed above, the proposed step free access would be of benefit to disabled users of the London Underground, some of whom would reside outside of the Royal Borough of Kensington & Chelsea. However, the absence of these improvements would not in itself result in significant effects on more than one Borough. Furthermore, whilst officers recognise the benefits of the delivery of a new health centre on the site, which could benefit residents outside of the Royal Borough of Kensington and Chelsea, it is considered that this would not in itself, or considered cumulatively with the step free access, result in significant effects on more than one borough.

Policy test 7(1)(c): Sound planning reasons for intervening

15 In addition to Article 7(1) (a) above, paragraph (c) requires the Mayor to consider whether there are sound planning reasons for issuing a direction that he become the planning authority for the purpose of determining the application.

16 As observed above, the units generated by this scheme would not significantly impact upon housing delivery and the absence of step free access would not significantly impact upon the implementation of London Plan transport objectives.

17 Also for consideration are the reasons for refusal given by Kensington & Chelsea Council. The first reason relates to the visual impact of the scheme on nearby listed buildings, conservation areas and local views. Although the site is not designated as such, there are a number of listed buildings and conservation areas in the vicinity of site. As set out in the Stage I report to this application, GLA officers consider that there would not be substantial harm to the settings of any of these heritage assets and indeed in most cases the settings would be enhanced by the higher quality of architecture proposed. The report concluded that the harm identified would be outweighed by the public benefits of the scheme, namely improved public realm, delivery of an appropriate mix of uses and step free access to the London Underground station. The Council, for the most part, reached a similar conclusion, although they do conclude that the harm to the Grade II listed terraces in the Pembridge Conservation Area would be substantial in some views, albeit outweighed by the public benefits.

18 Whilst this is a sensitive location, the previous conclusions stand and it is not considered that the proposal would result in substantial harm to heritage assets. However, given the specific and local nature of the view to which the reason for refusal relates, officers are of the view that the scheme as proposed is not of such significance to warrant the Mayor's intervention.

19 The second reason for refusal relates to the loss of social rented floorspace. As set out in the Stage I report, there is some existing housing on the site, comprising 20 studio units, which are owned and managed by the Notting Hill Housing Trust (NHHT). The applicant was asked to explain how the tenants from these studios will be re-housed and how this would impact on NHHT's estate. NHHT provided a written response stating that they would decant residents into existing housing stock, of which they have a preponderance of studio and 1 bed dwellings locally. NHHT would also compensate further through the provision of ten 2 bedroom homes outside the borough and the land receipt will help NHHT to provide family affordable housing elsewhere, which would better meet the strategic affordable housing needs of London. There are also management reasons for dispersing the occupants of the units. The Council officers concluded, on balance, that the loss of these units within the borough would be acceptable, given the public benefits of the scheme.

20 Given the above explanation, the proposal would not result in the loss of social rented floorspace across London, as ten 2 bedroom units would be provided to compensate for the loss of

the studios. However, officers are of the view that this aspect is not of such significance to warrant the Mayor's intervention.

21 The third reason for refusal relates to the absence of a legal agreement to secure planning obligations as part of the scheme. Were the application to be granted, it is very likely that a S106 agreement between the Council and the applicant would be completed and this would overcome this reason.

22 In order for the Mayor to issue a direction that he is to be the local planning authority, all relevant policy tests must be met. Having regard to the details of the proposal and the Council's draft reasons for refusal, together with the outstanding issues from stage one described in the paragraphs below, on balance there are no sound planning reasons to intervene in this case. Given none of the policy tests have been met, GLA officers are of the view that there is no basis to issue a direction under Article 7.

Issues outstanding

23 At the consultation stage, Kensington & Chelsea Council was advised that the application was broadly acceptable in strategic planning terms, but further information as detailed below was required to ensure that the application complied with the London Plan:

- **Affordable housing:** the Council should confirm that the proposal provides the maximum reasonable contribution towards affordable housing that best addresses local need.
- **Housing:** the Council should confirm that the housing mix is in line with local needs; the applicant should clarify that London Plan standards are met; the applicant should provide further explanation for the loss of existing housing.
- **Urban design:** the applicant should demonstrate that servicing will not be detrimental to the public realm.
- **Climate change:** the applicant should provide further information regarding sustainable drainage and overheating, as well as paying a financial contribution towards off-setting carbon dioxide emissions.
- **Transport:** cycle parking should be increased and shower and changing facilities provided; additional information on trip generation should be provided; a contribution should be made towards Legible London signage; further detail to be agreed with regard to servicing and construction impact on buses; step free access and the travel plan should be secured as part of the section 106 agreement; infrastructure protection, the construction logistics plan and delivery and servicing plan should be secured by condition.

24 Since the Stage 1, the applicant has provided further information on the matters raised above.

Affordable housing

25 The Council has confirmed, in their committee report, that the off-site contribution of £7,060,549 (or £9,601,685 should the health centre revert to office use) is the maximum reasonable contribution the scheme can make. The applicant's viability assessment was presented with a two options, including four on-site units together with an off-site contribution

of £1,513,069. Given that four units is unlikely to be attractive to a Registered Provider due to management constraints, the off-site contribution was accepted and would be expected to provide a greater quantum of units in a lower value area of the borough, that would better address local need. A S106 obligation was agreed and included in the recommendation to secure this figure, as well as a potential further uplift if the step free access works cost less than the figure secured. This would have been entered into were the application approved. The affordable provision is therefore considered to meet London Plan policy requirements.

Housing

26 The applicant has provided a floor space schedule which has demonstrated that all the units meet and/or exceed the targets set in Table 3.2 of the London Plan, as well as the more detailed requirements of the Mayor's Housing SPG. The Council has confirmed that the proposed housing mix responds appropriately to local need.

27 As mentioned above, there is some existing housing on the site, comprising 20 studio units, which are owned and managed by the Notting Hill Housing Trust (NHHT). NHHT provided a written explanation for the loss of this accommodation, stating that they would decant residents into existing housing stock, of which they have a preponderance of studio and 1 bed dwellings locally. NHHT would also compensate further through the provision of ten 2 bedroom homes outside the borough (ensuring no net loss of floorspace) and the land receipt will help NHHT to provide family affordable housing elsewhere, which would better meet the strategic affordable housing needs of London. There are also management reasons for dispersing the occupants of the units. GLA officers therefore conclude, as did the Council, that the loss of these units within the borough would be acceptable, given the public benefits of the scheme.

Urban design

28 The applicant has submitted further details including a Servicing Management Plan, which demonstrates that there is sufficient capacity within the existing on-street bays around the site to accommodate the required servicing trips. Furthermore, the refuse bins would be transported to the collection area from the basement by a management company. These strategies would be secured by condition and on this basis GLA officers are satisfied that the servicing of the development would not be detrimental to the quality and usability of the proposed public realm. The scheme is of a high design quality as confirmed at Stage I. The tall building, public realm and urban setting has been carefully considered and well resolved and the scheme would be a considerable improving on the existing site circumstances. Accordingly, the proposal meets the requirements of London Plan Policies 7.4, 7.5, 7.6 and 7.7.

Flooding and drainage

29 The applicant has responded to Stage 1 comments stating that the application has a drainage strategy that uses a green roof and basement level attenuation tank of 90 cubic metres. These measures are designed to reduce the peak discharge of the 1 in 2 year storm by 70% and the 1 in 100 year storm by 45%. These details have been agreed with the Council and are considered to be compliant with London Plan Policy 5.13. Although the Drainage Strategy has not been seen by the GLA, this approach is considered to be acceptable and GLA drainage officers consider this issue to be resolved.

Climate change

30 The applicant has responded to comments made at initial consultation stage and undertaken a dynamic overheating assessment. The applicant has confirmed the strategy for

reducing cooling demand, including energy efficient fittings, shading through balconies, internal blinds and mechanical ventilation with heat recovery. Higher level solar protection through glazing is proposed for the residential element of the scheme, with g-value specification of 0.55. The applicant has confirmed that they are willing to pay the carbon dioxide off-set fund amount. Unfortunately, the Council do not have the procedures in place to collect the money, which is regrettable.

Transport

31 At Stage 1 TfL requested some amendments to the proposals and the imposition of a number of conditions and S106 obligations. Together these would have enabled the application to be compliant with London Plan policy. As a result of negotiations prior to consideration of the application at the Council's Planning Committee most of these were secured.

32 The most important strategic transport element of the proposals was that full funding and the necessary land within the application site for step free access to the inner Circle and District line platform at Notting Hill Gate Station (NHG) would have been secured in the Section 106 agreement. Although the feasibility of step free access to the outer rail of the Circle and District line at NHG has yet to be understood, the provision of such access to the inner rail through this application would have contributed towards realisation of the Mayor's aspirations of step free access across the London Underground Network. However, as the application has been refused, this cannot currently be secured.

33 At Stage 1 TfL requested an increase in the cycle parking provision and also requested a cycle hire docking station for a minimum of 25 cycles. Given the lack of available space in the public realm a reduced number of short stay cycle spaces was accepted to allow for the cycle hire docking station. Both the cycle parking and the site for the docking station would have been secured by planning condition and the cost of installing the docking station would have been secured through the Section 106 agreement.

34 Although the car parking was not reduced in response to Stage 1 comments, the six blue badge spaces, electric vehicle charging points and a car parking management plan would have been secured by condition. A contribution of £3,017 to enable Legible London wayfinding signage to be updated would have been secured in the Section 106 agreement. A construction traffic management plan (CTMP) would have also been conditioned and an assessment fee of £2,800 for each phase of development (demolition, excavation and construction) would have been secured in the Section 106 agreement. A servicing and waste management plan would have been secured by planning condition and an office travel plan would have been secured by condition and a monitoring fee of £1,000 would have been secured by the Section 106 agreement.

35 Subject to the imposition of the above mentioned conditions and Section 106 obligations, should the application be considered at appeal or be the subject of any resubmission, TfL would consider the proposals compliant with the transport policies of the London Plan

36 In summary, should the development proposal be considered at appeal or a revised application be submitted, it is concluded that any strategic issues could be addressed through condition or legal agreement.

Response to consultation

37 The application was advertised by site notices and a press advert. A total of 1,816 letters of notification were sent out to neighbouring properties and amenity groups. 266 responses were received, 225 objecting to the scheme (including an online petition), 33 in support and 9 general comments.

38 Planning related concerns can be summarised as follows:

- The existing building should not set a precedent for a new towers, the proposal is overbearing and inappropriate.
- The tall building causes harm to conservation areas, listed buildings and parks, whilst the architecture and materials are unattractive.
- The access to the new public square should be larger, more visible and contain public art; the scheme should contribute towards surrounding public realm including wider footways.
- The proposals should replace the 20 bedsit units on site and provide more affordable housing.
- There is no guarantee that the community benefits will be secured and the step free access would only be to one platform.
- The level of parking is excessive for this location.
- There may not be enough tenants for the new shops and temporary loss of the farmers market during construction is unwelcome.
- Loss of privacy, solar glare, loss of light and wind impact.
- Servicing should be clarified and refuse collection should not be from Uxbridge Street.
- Noise and disturbance during construction.
- Potential structural harm to nearby properties.

39 Support comments can be summarised as follows:

- Welcome the regeneration of the site and removal of eyesore building, with less bulky replacement and improved architecture/materials.
- Site is suitable for a landmark tall building.
- The square and shops are of a good design and the scheme has benefits as a meeting destination.
- The retention of the farmers market is welcome, as are the other public benefits proposed.

40 The matters set out in the objections raised have been assessed by Council officers in the committee report and appropriately worded conditions and planning obligations had been drafted by officers accordingly. GLA officers consider that these would have addressed these issues. Matters relating to impact upon local amenities and residential amenity of surrounding residents are not in this instance strategic planning matters and have been assessed by the Council. Strategic issues relating to housing, the design of the proposals, heritage impact and car parking have all been addressed in the Council's committee report, the Stage 1 report and this report, and have been found to be acceptable.

41 Other statutory consultees responded as follows:

- **Historic England:** There is some harm caused to the setting of heritage assets, but that harm is less than substantial. The public benefits of the proposal should be balanced against this harm and secured and delivered.

- **Historic England (Archaeology):** The proposal is unlikely to have a significant effect on heritage assets of archaeological significance.
- **Thames Water:** No objection, subject to the imposition of conditions.

Representations directly to the Mayor

42 The **West London Clinical Commissioning Group (CCG)** has written directly to the Mayor expressing disappointment at the Council's decision to refuse planning permission for the development. The proposed health centre had been designed to accommodate the needs of the CCG to establish a much needed primary care facility to serve around 20,000 patients, across the Royal Borough of Kensington and Chelsea and the City of Westminster.

43 Whilst officers recognise the benefits of the delivery of a new health centre on the site, which could benefit residents outside of the Royal Borough of Kensington and Chelsea, it is considered that this would not represent a sound reason for the Mayor to intervene, nor would it result in *significant* effects on more than one borough.

Legal considerations

44 Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor has the power to issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application and any connected application. The Mayor may also leave the decision to the local authority. If the Mayor decides to direct that he is to be the local planning authority, he must have regard to the matters set out in Article 7(3) and set out his reasons in the direction.

Financial considerations

45 Should the Mayor take over the application he would be responsible for holding a representation hearing and negotiating any planning obligation. He would also be responsible for determining any reserved matters applications (unless he directs the council to do so) and determining any approval of details (unless the council agrees to do so).

Conclusion

46 Having regard to the details of the application, the matters set out in the committee report and the Council's draft decision notice there are no sound planning reasons for the Mayor to intervene in this particular case and therefore no basis to issue a direction under Article 7 of the Order 2008.

47 The scheme is however considered to accord London Plan policies in respect of tall buildings, design, housing, affordable housing and transport. It is a high quality scheme that would deliver a number of public benefits.

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