



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

NEWCOMBE HOUSE

Summary of Proof of Evidence for Call-In Inquiry by Direction of The Secretary of State

Mike Kiely 8 October 2019

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Site Address

Newcombe House, 45 Notting Hill Gate, 39-41 Notting Hill Gate and 161-237 (odd) Kensington Church Street, London W8.

Description of the development

Demolition of existing buildings and redevelopment to provide office, 55 residential units, 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.

References

Royal Borough of Kensington and Chelsea (RBKC): PP/17/05782

Greater London Authority (GLA): 3109a

Planning Inspectorate (PINS): APP/G6100/V/19/3225884



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1 INTRODUCTION

1.1 This Inquiry relates to the call-in of application reference PP/17/05782 for the demolition of existing buildings and redevelopment to provide office, 55 residential units, 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 at Newcombe House, 45 Notting Hill Gate, 39-41 Notting Hill Gate and 161-237 (odd) Kensington Church Street, London W8.

1.2 RBKC object to the planning application for the following reason:

The height of the tall building would be significantly taller than the existing building and the surrounding townscape at a very high land point in the borough. 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. The tall building and increased massing to KCS1 and WPB3 buildings would result in harm to the setting of nearby listed buildings and conservation areas, including important local views and when moving around the conservation areas experiencing them as a whole. This would result in less than substantial harm to those heritage assets, to which the Council attaches considerable importance and weight. The proposals are contrary to policies of the London Plan, in particular policies 7.4, 7.6, 7.7 and 7.8, and the Consolidated Local Plan, in particular policies CL1, CL2, CL3, CL4, CL11 and CL12, and the Notting Hill Gate SPD and Building Height in the Royal Borough SPD. The public benefits would be insufficient to outweigh those harms.

2 BACKGROUND

2.1 The Statement of Common Ground between the applicant, the GLA and RBKC contains details of the relevant parties, a description of the site and the surrounding area, details of the planning application and its relevant planning history, the associated listed building consent application and a full description of the proposed development (as amended).

2.2 The significant elements in the planning history of this proposed development have been analysed and it has been discovered that the Inspector in his decision on the previously appealed application (PP/15/07602) did not apply the right test with respect to weighing the harm to heritage assets.

- 2.3 In paragraph 41 he states, following the acknowledgement of some harm to heritage assets in some views, that “in none of the cases where there would be any harm to a heritage asset would this amount to substantial harm under paragraphs 132-134 of the NPPF”. He concludes his assessment of impact on settings in paragraph 42 with, “I find that the impact would be well below the hurdle for substantial harm”.
- 2.4 But substantial harm is not the hurdle. Furthermore, the Inspector may have been misled by the 2012 NPPF paragraph 134 which appears to advocate a straightforward balancing exercise where the harm to a designated heritage asset is less than substantial. This has been corrected in the latest NPPF following Barnwell.¹
- 2.5 The 2012 NPPF did not clearly reflect the correct application of the law² and does not contain the clear advice now in paragraph 193 of the latest NPPF that, “great weight should be given to the asset’s conservation” and that “this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”.

3 PLANNING APPRAISAL

- 3.1 Conditions and necessary planning obligations are being negotiated with the applicant and the GLA. Agreement is hoped to be reached in advance of the Inquiry.

NPPF Paragraph 11

- 3.2 RBKC have an up-to-date Local Plan (September 2019) which confirms both their five-year housing land supply and their 137% performance (2015-18) against the Housing Delivery Test. The “tilted balance” that flows from paragraph 11 is therefore not engaged in the determination of this application. Even if it was, the reliance on NPPF policies that protect heritage assets in the reason for objecting mean that those national policies will prevail in the determination and are not set aside.

Material Changes to National Planning Policy

- 3.3 Since the previous appeals decision the NPPF has been amended and two changes are of relevance:

¹ The judgment of the Court of Appeal (Maurice Kay LJ, Sullivan LJ and Rafferty LJ) in *Barnwell Manor Wind Energy Ltd v East Northants District Council, English Heritage, National Trust & SSCLG* [2014]

² Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

1. The updating of the Conserving and Enhancing the Historic Environment section with the up-to-date case law following Barnwell.
2. A greater emphasis on delivering design quality in the Achieving Well-Designed Places section alongside a series of initiatives (such as the Building Better, Building Beautiful Commission) to deliver this.

Compliance with the Development Plan

- 3.4 The Statement of Common Ground between the applicant, GLA and RBKC contains an overview of relevant planning policy (including emerging policy) and associated guidance, other policy documents (including the NPPF and PPG) are identified and the relevant site designations are set out. The issues that are agreed between the parties are set out in section 7.
- 3.5 The proposal conflicts with the following policies in the current London Plan ³:
- 7.4 Local Character
 - 7.6 Architecture
 - 7.7 Location and design of tall and large buildings
 - 7.8 Heritage assets and archaeology
- 3.6 The proposal conflicts with the corresponding policies in the draft London Plan 2019 ⁴:
- D2 Delivering Good Design
 - D8 Tall buildings
 - HC1 Heritage Conservation and Growth
- 3.7 The proposal conflicts with the following policies in the RBKC Consolidated Local Plan 2015:
- CL1 Context and Character
 - CL 2 Design Quality
 - CL3 Heritage Assets – Conservation Areas and Historic Spaces
 - CL4 Heritage Assets – Listed Buildings, SAMs and Archaeology
 - CL11 Views
 - CL12 Building Heights

³ London Plan March 2016: The Spatial Development Strategy for London Consolidated with Alterations Since 2011

⁴ Draft London Plan – consolidated changes version – July 2019

3.8 The proposal conflicts with the following additional policy in the RBKC Local Plan Partial Review 2019:

- CR5 Parks, Gardens, Open Spaces and Waterways

Harm to Historic Assets

- 3.9 Sarah Buckingham's ⁵ proof of evidence identifies the relevant heritage assets and assesses and describes their significance. The development directly impacts on several listed buildings (one is grade I and one is grade II*), a grade 1 Registered Park and Gardens and four conservation areas. These conservation areas encircle the application site, which sits in a small gap between them.
- 3.10 Newcombe House (12 storey and 46.3m high) is proposed to be replaced by an 18 storey and 71.8m high building which is some 55% higher. Whilst narrower than Newcombe House in N/S views, the proposed tower is in fact wider on the other W/E elevations by 10.6m and 6.7m (above level thirteen) compared to the existing.
- 3.11 The existing heritage assets hereabouts are harmed by Newcombe house because it appears as an alien feature. Whilst the new building has an improved aesthetic, the harm to heritage assets is as a result of an alien tall building. Improving the quality of the building might make the alien prettier, but it is still alien. The result of the increase in height and greater width (W/E elevations) is that the proposed building would be visible from a greater extent of the surrounding area than the existing building.
- 3.12 The proposed tower does not contribute positively to the settings of several listed buildings, four conservation areas and a historic park and gardens of exceptional importance. This represents harm to heritage assets that must be given the appropriate weight, as required by law ⁶, in deciding this application.

Public Benefits

- 3.13 The main public benefits have been cited in the Statement of Common Ground as:
- Removal of Newcombe House
 - Provision of housing units, office and retail floorspace
 - Provision of affordable housing
 - Provision of a health centre
 - Provision of a public square

⁵ RBKC's Conservation and Design Team Leader

⁶ Sections 66 and 72 of the 1990 Act



- Provision of step-free access to Notting Hill Gate
- 3.14 Their level of public benefit has been analysed and it has been concluded that they are not sufficient to outweigh the harm to heritage assets identified, when this harm is given the correct level of weight.

Planning Balance

- 3.15 The development causes harm to a significant range of heritage assets (some of which are grade I and II*) over a wide area. In this case the harm is less than substantial but as clearly established in Barnwell and now set out in the NPPF, "great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."
- 3.16 The public benefits have been evaluated and are not considered sufficient cumulatively to outweigh the harm to heritage assets that has been identified in Sarah Buckingham's proof of evidence when that harm has been given the necessary importance and weight in that planning balance. There are no other material planning considerations (such as paragraph 11 of the 2019 NPPF) that disturb this conclusion and therefore planning permission should be refused.

4 CONCLUSIONS

- 4.1 The application is contrary to policies in the NPPF and the development plan (London Plan and RBKC Local Plan) designed to protect heritage assets and considerable weight and importance must be given to that harm. The public benefits are not so great that they outweigh this harm and therefore planning permission should be refused. There are no other material planning considerations that would override this planning judgement.

