



## Appeal Decision

Inquiry Held on 9 to 11, 16 to 18 & 30 November, 7 & 13 December 2021 and 7 January 2022

Site visit made on 11 January 2022

**by Beverley Wilders BA (Hons) PgDurp MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 April 2022**

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**Appeal Ref: APP/A5270/W/21/3275781**

**54-58 Stanley Gardens, Acton W3 7SZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr I Hutchinson (Dylon 2 Limited) against the Council of the London Borough of Ealing.
  - The application Ref 203193FUL, is dated 12 August 2020.
  - The development proposed is demolition of the existing building and redevelopment by erection of a ground and part four, part 5, part 6, part 7 upper floors for a mixed residential (Class C3) comprising 76 units (44 x 1bed; 26 x 2bed and 6 x 3bed) and commercial (Class B1(a)) uses comprising 696m<sup>2</sup>, together with ancillary parking space for 10 cars, cycle and bin stores and landscaped communal court at first floor level and landscaped communal roof terraces.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr I Hutchinson (Dylon 2 Limited) against the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

### Procedural Matters and Main Issues

3. The address used in the heading above has been taken from the application form. However, the appeal form, the Council's questionnaire and much of the appeal documentation refers to the site address as 56-58 Stanley Gardens. Notwithstanding this discrepancy, I have seen nothing to suggest that the address stated on the application form is incorrect and the location of the appeal site is clearly identified on the submitted plans. Consequently, in determining the appeal I have used the address stated on the application form.
4. Amended plans were submitted following the submission of the appeal. The plans include a number of revisions to the proposal including an increase in the amount of commercial floorspace; a reduction in the number of residential units from 76 to 72, an amendment to the mix of residential units proposed and a number of alterations to the layout and design of the building, including the retention of the existing northern boundary wall. As advised in my case

- management conference summary note, I consider that the number and nature of revisions proposed materially affect the proposal. However, prior to the Inquiry opening, the appellant carried out a consultation exercise in relation to the amended plans including direct notification to all local residents originally notified of the application by the Council and to all respondees. Consequently, I am satisfied that no party would be prejudiced by my acceptance of the amended plans and I have determined the appeal having regard to them.
5. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
  6. The Council issued a decision notice dated 3 August 2021, after the appeal had been lodged, setting out its four putative reasons for refusal. These relate to the effect of the proposal on the Locally Significant Industrial Site (LSIS); the effect on the character and appearance of the area and affordable housing. However, during the course of the Inquiry the Council advised that it no longer wished to defend putative reason for refusal 3 relating to affordable housing. Whilst I have not identified affordable housing as a main issue to be considered in determining the appeal, it is a material consideration that remains to be considered in the planning balance.
  7. The Council's first putative reason for refusal refers to Policy 3.3 of the Ealing Development Strategy (EDS)<sup>1</sup>. However, this policy relates specifically to the Park Royal Industrial Estate and is not therefore relevant to the appeal proposal which is not located in Park Royal.
  8. Both main parties submitted evidence in relation to viability and highways matters. However, the Inquiry did not hear from any viability or highways witnesses following the Council's decision during the Inquiry to not defend its putative reason for refusal relating to affordable housing or to require financial contributions relating to highways matters. Notwithstanding this, the written evidence relating to these matters is still before me and in reaching my decision I have had regard to it where relevant.
  9. A revised National Planning Policy Framework (the Framework) was published on 20 July 2021, after the appeal had been submitted. However, the main parties have had the opportunity to comment on the revised Framework in their evidence and in reaching my decision I have had regard to it, where relevant.
  10. Having regard to the evidence submitted by all parties, including local residents, I consider that the main issues are:
    - the effect of the proposal on the long-term protection and sustainable economic development of industrial employment land and its associated Uses Classes within the designated Locally Significant Industrial Site (LSIS);
    - the effect of the proposal on the character and appearance of the area having regard to scale, bulk and height;

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<sup>1</sup> Ealing Development Strategy 2026 Development Plan Document adopted 3<sup>rd</sup> April 2012

- the effect of the proposal on the future development and operation of the LSIS, having regard to the agent of change principle and to the design of the proposed building;
- whether the Council can demonstrate a five year housing land supply and consequently whether the presumption in favour of sustainable development applies.

## **Reasons**

### *Effect on industrial employment land and the LSIS*

11. The appeal site is located within a designated Locally Significant Industrial Site (LSIS) as identified in the EDS and as shown on the policies map.
12. Policy E4 of the London Plan (LP), amongst other things, refers to the need for a sufficient supply of land and premises to meet current and future demand for industrial and related functions to be provided and maintained, taking into account employment land reviews and audits and the potential for intensification, co-location and substitution (see Policy E7). Various types of industrial and related functions are listed within the policy but it does not include office use as is proposed in this scheme. Part C of the policy states that any release of industrial land in order to manage issues of long-term vacancy and to achieve wider planning objectives should be facilitated through the process of industrial intensification, co-location and substitution set out in Policy E7.
13. Policy E6 of the LP relates to LSIS and states that these should be dealt with by boroughs in their Development Plans and justified by evidence in local employment land reviews.
14. Policy E7 of the LP relates to industrial intensification, co-location and substitution and states, amongst other things, that Plans and proposals should encourage the intensification of business uses and that in LSIS the scope for co-locating industrial uses with residential and other uses may be considered but that this should be part of a plan-led or masterplanning process.
15. Policy 1.2(b) of the EDS relates to office use and sets out a sequential approach to the location of new office development with the primary focus being at Ealing Town Centre.
16. The appeal site contains a three storey building, with mezzanine, covering the entire plot. The gross internal area (GIA) of the existing building is 5225 square metres. It is currently vacant and has been since the end of 2020, prior to which it had been in use for self-storage (Use Class B8). I note that in 2019 prior approval was approved for the change of use of part of the building to 9 residential flats (Ref 190945PRDIS) and that planning permission was granted for a flexible office/storage use (B1a/B8) together with a café (Ref 193812FUL). The planning permission remains extant.
17. The revised proposal is for the substantial demolition of the existing building and the re-development of the site for a larger mixed use building for residential use comprising 72 units and commercial uses comprising 1116 square metres. The original description of development referred to the commercial uses falling within use class B1(a), that is office use. However, this

- use class was revoked from 1 September 2020 with such uses now falling within Class E of the Use Classes Order<sup>2</sup>.
18. Consequently, the proposal would result in the loss of the existing industrial premises from the appeal site, to be replaced by a mixed residential and office building. Neither of the proposed uses are industrial uses and LP Policy E4 states that any release of industrial land should be facilitated through the process set out in LP Policy E7. However, E7 refers to either the intensification, co-location or substitution of industrial uses and the need for this to be done as part of a plan-led or masterplanning process and not to the complete loss of an existing industrial use via an individual planning application as is proposed. The proposed total loss of industrial floorspace within the LSIS would therefore be contrary to policies E4 and E7 of the LP.
  19. The appellant has drawn my attention to the fact that a previous “no net loss” reference within LP Policy E7 was removed by Inspectors examining the LP and that LP Policy E6 requires LSIS designations to be justified by evidence and regularly reviewed. However, from what I have seen and heard in evidence, I do not consider that the Council’s approach to the proposal amounts to a “no net loss” approach but rather it seeks the retention of as much industrial use where possible under the circumstances. Moreover, whilst I note that the word “review” does not appear in the wording of LP Policy E6, evidence justifying such designations would clearly need to be reviewed and kept up to date. Though it appears that the Council has not reviewed its LSIS boundaries and policies since 2012/13, The West London Employment Land Evidence 2019 (ELE) considered industrial land provision in Ealing in May 2019. The ELE found that there has been a net loss of industrial stock in Ealing since 2004<sup>3</sup> due to the loss of stock at non-designated sites. Though the ELE is a few years old, I have seen nothing to persuade me that the Council’s current LSIS designations are not justified by evidence or that I should not have regard to them when considering the proposal. This is notwithstanding that there are some existing residential uses within this part of the LSIS.
  20. The evidence shows that in the past, Ealing had a small net surplus of industrial land meaning that the borough was placed in the ‘limited transfer’ category for industrial land in the 2011 London Plan. However, the London Industrial Land Demand Study 2017 showed that Ealing had one of the largest losses of industrial land in London and recommended that it be moved to the ‘provide capacity’ category. The ELE found a net deficit of industrial land provision of 1 hectare. Consequently, the Council states that its new Local Plan will include policies designed to increase the supply of industrial land and that the Borough has no capacity for the release of industrial sites. Whilst acknowledging the 1 hectare deficit, the appellant considers that it is not significant when compared to the total amount of industrial land in Ealing (202.7 hectares<sup>4</sup>) or when compared to the demand for housing in the Borough and the land uptake that would require.
  21. Be that as it may, I heard evidence from the Council that unlike housing sites which in theory could be provided anywhere, industrial sites are confined by commercial considerations and the built environment meaning that additional industrial capacity can only be sought on existing industrial sites. Moreover, as

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<sup>2</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>3</sup> Para 6.45 of ELE

<sup>4</sup> Table 1 of ELE

- outlined above, industrial intensification and co-location policies do allow for residential development within industrial areas in combination with industrial uses meaning that it is not necessarily a choice of one use or the other. The evidence demonstrates that there is an industrial deficit and whilst this may be lower than the housing deficit in land use terms, I do not consider that this diminishes the weight to be given to the proposed loss of industrial land proposed.
22. The appellant refers to the fact that, despite being actively marketed, the existing building is currently vacant and has been so since the previous occupier Magenta vacated at the end of 2020 resulting in it not making any meaningful contribution to the LSIS at present. The appellant's evidence also points to the failings of the existing building and to the limitations of the site and location and in particular to the lack of a service yard and constrained access roads meaning that any future use of the existing building for industrial use would be unlikely. In addition, the appellant argues that given the site circumstances including the current level of development on site, any future re-development of the site for intensified industrial use would be so unviable that it would not be possible for a viable mixed use industrial/residential scheme to be developed. However, whilst appraisals of such schemes were referred to by the appellant's employment witness Mr Stephenson during cross examination, no such appraisals have been submitted in evidence.
23. Though I accept that the site circumstances mean that the appeal site would most likely not be suitable for a logistics use, there are many other industrial uses permissible within the LSIS that should be considered before office use, which, in any case, in accordance with Policy 1.2(b) of the EDS ought to be directed towards town centres. Whilst I have had regard to the evidence of Mr Stephenson, I am not convinced that the appellant's evidence adequately demonstrates that the appeal site could not meaningfully and viably fulfil an industrial need, with or without re-development including a residential element. Though LP Policy E7 part C refers to "no reasonable prospect of a site being used for industrial or related purposes", this part of the policy refers to non-designated sites and does not therefore apply to LSIS. In any event, though I see no reason to question the marketing exercise relating to the building, I am not convinced that it or any other evidence submitted demonstrates that there is no reasonable prospect of the building being used for industrial purposes. Allowing the loss of industrial use from the site under these circumstances would be premature.
24. The appellant argues that changes to the use classes order means that even if permission were granted for an industrial use, that use could subsequently be changed to office use without the need for planning permission. However, I note that the Council has stated that if it were to grant permission for the re-development of the site, that it would condition the consent to prevent movement within the E use class without approval from the Council. I have no reason to believe that the Council wouldn't take this approach given the location of the site within an LSIS.
25. Taking the above matters into consideration, I conclude that the proposal would have a significant adverse effect on the long-term protection and sustainable economic development of industrial employment land and its associated Uses Classes within the designated LSIS. The proposal is therefore contrary to Policy 1.2(b) of the EDS and policies E4, E6 and E7 of the LP.

These policies seek, amongst other things, a sequential approach to the location of office development and the protection, retention and where possible intensification of industrial and related uses. I attach significant weight to the conflict with these policies. In addition, the proposal is contrary to paragraphs 81 to 83 of the Framework which seek to create a strong and competitive economy including recognising the specific locational requirements of different sectors.

### *Character and Appearance*

26. As stated, the appeal site comprises a three-storey building. It spans the entire plot, positioned between Stanley Gardens and Warple Way and adjoining Bradford Road. The existing building is predominantly flat roofed, is utilitarian in appearance and was constructed in the mid-20<sup>th</sup> century of cast concrete beams and columns with infill brick elevations. The main parties agree that the existing building has little architectural significance and the Council does not object to the principle of its re-development. I see no reason to disagree with the conclusions of the main parties on this matter.
27. The appeal site and surrounding area form part of a designated industrial area comprising Acton Park Industrial Estate to the west and Allied Industrial Estate to the east. Evidence shows that the area has developed in an ad hoc way over the years, resulting in the area and streets surrounding the appeal site having a mixed character and appearance. There is variation in architectural styles and detailing, building heights and in the use of materials.
28. The character and appearance of the eastern side of Stanley Gardens and of Warple Way differs markedly from that of the industrial estates to the east and west with the former roads being reasonably narrow. Warple Way in particular has a strong sense of enclosure and thus demonstrates more traditional streetscene qualities. By contrast, Acton Park Industrial Estate to the west of the appeal site comprises modern, low-rise utilitarian buildings, set back from the road in a low-density layout.
29. A number of buildings along the eastern side of Stanley Gardens and on Warple Way are now in residential use with other buildings on these roads having consent for residential use, though as yet unimplemented. However, in the main, converted and extended buildings have retained their industrial/commercial character and this positively contributes to the areas mixed character and appearance.
30. Dr Miele, the appellant's townscape and urban design witness, considers the appeal site to form part of a character area comprising the wider LSIS designation. However, he acknowledges that the area immediately surrounding the site along Warple Way and Stanley Gardens has a markedly different quality to the wider character area and has some attractive buildings. Consequently, though I note that Dr Miele identifies the quality of the townscape of the wider character area as low to very low value, and that this is not disputed by the Council, I consider the quality of the townscape within the Warple Way sub area to be higher due to the particular quality, form and layout of buildings. The medium value of the townscape immediately surrounding the site means that it has a greater sensitivity than the wider character area.

31. As with the existing building, the proposed mixed use building would span the entire plot between Stanley Gardens and Warple Way, with a frontage onto Bradford Road to the south. However, unlike the existing building, the proposed building would have a varied height and form rising from 5 storeys in height on Warple Way, to 10 storeys in height on Stanley Gardens, with the height of the eastern elevation on Warple Way reflecting that of nearby buildings along the road. By contrast, the 10 storey height of the proposal on Stanley Gardens would be significantly at odds with the height of adjacent and surrounding buildings which are, in the main, much lower in height.
32. The necessary transition in height across the site from Warple Way to Stanley Gardens results in a building of varied form incorporating flat roofs, pitched roofs and gables, with a number of projecting and recessed elements.
33. I note that permission exists for the upward extension of the building on the opposite side of Bradford Road (60 & 64 – 68 Stanley Gardens Ref 19/1686FUL) and the existence of a taller building further south along Stanley Gardens at Stanley House Studios. Nevertheless, at 10 storeys, the Stanley Road elevation of the proposed building would be materially taller than either of these buildings.
34. Chapter 12 of the Framework relates to well-designed places and states, amongst other things, that the creation of high quality, beautiful and sustainable places is fundamental to what the planning and development process should achieve (para 126). Moreover, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities) (para 130c).
35. Though not referred to in the Council's statement of case, the putative reason for refusal relating to character and appearance and the evidence of Mr Banks refers to Policy D9 of the LP. The policy relates to tall buildings and states, amongst other things, that development proposals should address visual impacts and the views of buildings from different distances, that is long-range views, mid-range views and immediate views from surrounding streets. The policy states that tall buildings should make a positive contribution to the local townscape in terms of legibility, proportions and materiality with the base of the building needing to have a direct relationship with the street, maintaining the pedestrian scale, character and vitality of the street. Though appropriate transitions in scale are referred to in the policy, this is in relation to amenity and privacy, rather than character and appearance.
36. The reason for refusal also refers to Policy 1.2(h) of the EDS which supports higher densities in areas of good public transport accessibility. In relation to tall buildings it states, amongst other things that, tall buildings are acceptable where they contribute positively to the urban environment and do not cause harm to existing heritage assets. In addition, the quality of the design solution proposed, especially in relation to its context, and the accessibility of the location are the overriding considerations in the assessment of any proposed development. Policies 7.4 and 7B of Ealing's Development Management DPD (DMDPD)<sup>5</sup> relate to local character and design amenity and require, amongst other things, that development should complement scale and detailing, include

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<sup>5</sup> Development Management Development Plan Document Adopted 10<sup>th</sup> December 2013

- high quality architecture, make a positive visual impact, that external treatment and materials complement the building and context and must not impair the visual amenity of surrounding uses.
37. LP policies D3, D4 and D8 are also cited by the Council. These policies relate to optimising site capacity through the design-led approach, delivering good design and public realm.
  38. It is clear from the evidence of the scheme architect Mr Filskow that the design process has been an iterative one and from his evidence and that of Dr Miele it is also clear that some regard has been had to the site context in terms of the layout, scale, character and design of surrounding buildings and to the opportunities presented by the re-development of the site. I note that the Council acknowledges that the proposed building is not without merit but that it is concerned about the sheer scale of the building within its immediate context.
  39. Having regard to LP Policy D9 and to the appeal site context, I consider the proposal, at up to 10 storeys in height, to be a tall building. Although the height of the eastern elevation of the building would reflect the height of nearby buildings on Warple Way, the western elevation would be significantly taller than any other building nearby, including that consented on the opposite side of Bradford Road at 60 Stanley Gardens. Whilst there are taller buildings elsewhere in the wider area, none of them form part of the immediate context of the proposed building.
  40. I have considered the evidence of Dr Miele and Mr Filskow and have had regard to the VuCity model shots and the photographs contained within Dr Miele's proof of evidence as well as the additional views provided during the Inquiry (ID6). In his evidence, Dr Miele acknowledges that the scale of the proposed building on Stanley Gardens together with the unusual and distinctive form of the building means that the proposal has a high magnitude of effect on View 6. However, unlike Dr Miele who considers the effect to be beneficial, I consider that the height and scale of the proposed building along and close to the Stanley Gardens frontage means that it does not make a positive contribution to and would in fact be harmful to the local townscape in terms of proportions. This is notwithstanding that I acknowledge that the particular wording of LP Policy D9 does allow for the possibility of stand-alone tall buildings.
  41. The overall height of the building would be at odds with surrounding development and whilst its impact would likely be over a limited area and would not materially affect long range views, it would nevertheless have a harmful effect on the character and appearance of the surrounding area, some components of which have merit in townscape terms.
  42. As previously stated, I consider the built area surrounding the appeal site to exhibit a medium value and as such, I do not consider that the last sentence of paragraph E7.4.1 of the DMDPD requiring positive intervention and change necessarily applies in this case. In any event, I do not consider that the proposal would be a positive intervention to the built area for the reasons given.
  43. Whilst I acknowledge the position of the appeal site at the end of a block of development, the fact that the much lower adjacent building at 10 Stanley Gardens is a historic relic and the set-back position of industrial buildings to the west, I do not consider that these factors justify the height

proposed. Moreover, the particular design and appearance of the proposed building incorporating a gabled roof, set-backs, recesses and variation in form and materials does not adequately mitigate the significant scale change proposed nor does the attention paid to the design of the base of the building. Although the 5 storey height of the building on the Warple Way frontage is not out of keeping with other nearby buildings on that road, the particular position and design of the proposed building together with surrounding buildings means that the increasing height of the building towards Stanley Gardens would be visible from certain vantage points along Warple Way.

44. I note that paragraph 130(c) of the NPPF states that appropriate innovation or change, such as increased densities, should not be prevented or discouraged, and that the proposal would increase density and optimise the development on the site as encouraged by LP Policy D3. However, for the reasons stated above, I consider that in this case, the optimisation proposed would not be appropriate and would be harmful to the character and appearance of the area.
45. I acknowledge that in its consultation response the GLA<sup>6</sup> raised no strategic concerns in respect of the height and massing of the proposed building and noted that in general, the architectural aesthetic appeared a good quality, contemporary design. However, though I understand that the GLA does have some design competency, its conclusion on the height and massing of the proposal does not alter my findings on this issue.
46. Nor do the conclusions reached by the Inspector dealing with the Manor Road appeal (Ref APP/A5270/W/21/3268157) alter my view. I have been provided with a copy of the Manor Road appeal decision and note that whilst the proposal was for a tall, part 19 storeys building, the site context differed in that case with the Inspector concluding that the site location was a town centre, nodal point located along a spine of taller development. That is not the case with this proposal.
47. Taking the above matters into consideration, I conclude that the proposal would have a significant harmful effect on the character and appearance of the area having regard to scale and height. The proposal is therefore contrary to Policy 1.2(h) of the EDS, Policy 7.4 and 7B of the DMDPD and policies D3, D4, D8 and D9 of the LP. Although not cited in the putative reason for refusal relating to character and appearance, the proposal is also contrary to paragraph 130 of the Framework. As stated above, these policies seek, amongst other things, to ensure that development is well designed, is sympathetic to local character and contributes positively to the urban environment. I attach significant weight to the conflict with these design policies.

#### *Effect on LSIS - Agent of Change/Design of Building*

48. As previously noted, the appeal site is located in a designated industrial area comprising existing commercial and residential uses.
49. Policy D13 of the LP amongst other things, states that planning decisions should reflect the Agent of Change principle and take account of existing noise and other nuisance-generating uses in a sensitive manner when new development is proposed nearby. Further, it states that development should

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<sup>6</sup> Greater London Authority

- be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue to grow without unreasonable restrictions being placed on them.
50. The Council's putative reason for refusal relating to the agent of change principle also refers to LP Policy E7, though this policy is not referred to in any of the Council's evidence relating to agent of change. Instead the Council refer to Policy D6, though this relates to housing standards and does not appear to be relevant to this issue. Nevertheless, part D of Policy E7 states, amongst other things, that the industrial intensification and co-location process set out in part B of the policy must ensure that industrial and related activities in surrounding parts of the LSIS are not compromised in their continued efficient function.
51. As stated, the proposed building is a larger and taller building than the one that it would replace, located in a designated industrial area comprising a mixture of commercial and residential uses. There are existing residential uses near to the site at Tech West House to the north, 21 Warple Way to the east, Sun Studios at 30 Warple Way to the south and permitted residential uses at 60-68 Stanley Gardens and on the site itself. Moreover, there are numerous other existing and permitted residential uses along both Stanley Gardens and Warple Way.
52. Consequently, existing industrial and related activities in surrounding parts of the LSIS including noise and other nuisance-generating uses are already affected by these residential uses and must have regard to them both in terms of their day to day operations and when considering any future expansion plans. Though the proposal would result in an additional 72 residential units in the area, having regard to the number and position of existing residential uses nearby, I do not consider that approval of the proposal would be likely to place unreasonable restrictions on any nearby established noise and other nuisance-generating uses over and above those which already exist. I note that the submitted noise and air quality reports conclude that residential occupiers of the site would not be unduly affected by either the noise or air quality of the surrounding area. The conclusions of these reports were not challenged by the Council and no objections were raised to the proposal on air quality or noise grounds subject to the imposition of appropriate conditions.
53. With regard to the effect of the design of the building on the future operation and expansion of the LSIS, much discussion took place at the Inquiry regarding the relationship between the appeal site and the adjoining vacant site 10 Stanley Gardens. No 10 is a narrow site positioned between Stanley Gardens and Warple Way. It comprises two storey frontages to both roads and adjoins the 3 storey north wall of the existing building, which is to be retained as part of the proposal. A residential development at Tech West House is positioned to the north of No 10 and contains a central courtyard and walkway overlooked by windows and including outdoor amenity areas. The size, shape and position of the plot at No 10 is such that it is already compromised and any future re-development of that site would need to have due regard to the form and layout of the existing residential development at Tech West House and that consented at 5 Warple Way and at the appeal site.
54. The proposed building retains the existing 3 storey north wall as existing and includes a 10 storey element fronting Stanley Gardens, a 5 storey element

fronting Warple Way and a central, set-back 6 storey element between the two. Having regard to the existing constraints affecting No 10 and the lack of any information regarding the possibility of that site being re-developed, I consider it unlikely that any future re-development of the site would exceed the height of the retained north wall at the appeal site. Consequently, although the 6 storey set-back section adjacent to No 10 contains habitable room windows and balconies, this would not be likely to result in any undue constraint on the possible future re-development of the adjacent site.

55. Reference has also been made by the Council to the existence of external amenity spaces facing outwards onto surrounding roads and the possibility of these being affected by neighbouring sites and uses in the LSIS, thereby placing undue constraint on their operation. However, the Council has not provided any explanation as to why this would be the case. In the absence of this and noting the position of the proposed building relative to surrounding commercial and residential uses and the conclusions of the submitted noise and air quality reports, I find no harm in this regard.
56. Taking the above matters into consideration, I conclude that the proposal would not have an adverse effect on the future development and operation of the LSIS, having regard to the agent of change principle and to the design of the proposed building. The proposal therefore accords with Policy D13 of the LP and Policy E7 of the LP insofar as it relates to industrial and related activities in LSIS not being compromised in terms of their continued efficient function (part D). As stated above, these policies seek, amongst other things, to ensure that development, does not place unreasonable restrictions on existing noise and other nuisance-generating uses and that industrial and related activities in surrounding parts of the LSIS are not compromised in their continued efficient function.

#### *Housing Land Supply & Tilted Balance*

57. At the Inquiry the Council conceded that it cannot demonstrate a five year housing land supply (5yrHLS). Whilst I heard and acknowledge the difficulties that the Council has faced in calculating its 5yrHLS since 2019, this does not alter the fact that no annual housing supply document has been produced by the Council since 2015 as is required by paragraph 74 of the Framework. In the absence of this or of any other substantive evidence from the Council in this regard, I attach very little weight to the assertion made by Mr Banks that there is a low probability of a housing supply shortfall in Ealing and therefore I much more significantly rely on the substantive housing evidence produced by Mr Butterworth on behalf of the appellant.
58. The main parties agree that the London Plan ten year target for the delivery of additional new homes in Ealing is 21,570 and that half of this target should be used to calculate the 5yrHLS requirement<sup>7</sup>. Mr Butterworth's rebuttal proof of evidence updates his original supply figures and concludes that the Council has a shortfall of 3310 units for the period 1 April 2019 – 31 March 2024 and that this equates to a supply of less than 3.5 years. Although the Council challenged some of Mr Butterworth's assumptions and analysis, as stated, it provided no evidence of its own. I found Mr Butterworth's evidence to be pragmatic, credible and robust, noting that housing land supply is not an exact science and by necessity can only ever be a snapshot in time. Therefore for

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<sup>7</sup> Paras 8.2 & 8.3 Signed Statement of Common Ground dated September 2021

the purposes of this appeal and based on the evidence before me, I consider there to be a shortfall of 3310 dwellings equating to a 5yrHLS of no more than 3.5 years. At the Inquiry, the Council accepted that a 3.5 year supply amounts to a significant shortfall.

59. In such circumstances and as acknowledged by the Council at the Inquiry, paragraph 11(d) of the Framework indicates that the policies which are most important for determining the application are out of date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In arriving at this view, I acknowledge that the Council has met the most recent Housing Delivery Test. However, this consideration would not disengage the tilted balance, where a five year supply of deliverable housing sites cannot be demonstrated.

### **Other Matters**

60. The proposal would provide a total of 72 dwellings, 15 of which would be affordable discounted market sales housing (DMSH) in the form of First Homes. DMSH falls within the definition of affordable housing in the glossary to the Framework, being housing sold at a discount of at least 20% below local market value. First Homes must be discounted by a minimum of 30% against market value and must be at a price no higher than £420,000 in London. The average value of a First Home within the proposed scheme is £315,613. This is below the average lower quartile house price in Ealing, the Southfield ward where the appeal site is located and in the area more immediately surrounding the site<sup>8</sup>.
61. At the Inquiry the Council accepted that vacant building credit (VBC) applies to the proposal. Consequently, and noting the requirements of LP policies H4 and H5 for a threshold level of 50% affordable housing within LSIS, after applying VBC then the proposed 15 affordable dwellings is significantly more in number than is required to comply with policy, irrespective of the viability of the proposal. However, I note that by proposing all First Homes the proposal is not compliant with the tenure split set out within LP Policy H6. Notwithstanding this, given the relatively low numbers of affordable units that would be required to be provided following the application of VBC (5 dwellings), the number of units affected would not be significant nor would splitting them to be tenure compliant seem to be wholly practical. The majority of affordable units being provided are an additional benefit over and above what is required by policy
62. Whilst I acknowledge the Council's position that other types of affordable housing would be preferable and would be more affordable to more people, the evidence of Mr Stacey shows that there is an existing need for affordable homes in Ealing. Though it appears that the provision of affordable homes in Ealing has outperformed the London average of 16%, even having regard to the Council's own figures, affordable housing supply in the borough has consistently failed to meet targets. Under these circumstances and notwithstanding the failure to comply with the tenure mix specified in LP H6, the provision of 72 dwellings, 15 of which would be affordable in perpetuity would be a significant benefit of the proposal to which I attach significant weight. The provision of housing, including affordable housing, also accords with paragraphs 60 and 62 of the Framework which seek to boost the supply of

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<sup>8</sup> Middle Layer Super Output Area for the site – see Mr Stacey's POE

- homes and to cater for the housing needs of different groups in the community including those who require affordable housing.
63. The proposal would result in a number of economic benefits both during construction and afterwards once operational and occupied. It is anticipated that the proposal would provide 211 direct FTE jobs and 209 indirect FTE jobs during the construction phase, 69 direct FTE jobs and 31 indirect and induced FTE jobs during the operational phase and 9 FTE jobs resulting from resident expenditure. In addition the proposal would result in a number of fiscal impacts. I attach significant weight to the economic and employment benefits of the proposal, noting the requirement of paragraph 81 of the Framework to place significant weight on the need to support economic growth and productivity.
64. The appeal site is located in an accessible location with good access to a range of services and facilities. I attach moderate weight to this benefit.
65. A completed unilateral undertaking has been submitted by the appellant making financial contributions towards education, allotments, health, transport, air quality and climate change. Whilst these contributions are required in order to comply with policy and to mitigate against the impact of the proposal, they are nevertheless benefits associated with it. I attach moderate weight to the financial contributions.
66. For the reasons stated earlier in my decision, I do not consider the design of the building and its impact on the area to be a benefit as I consider it to be harmful. Nevertheless, the proposal does incorporate a number of sustainable strategies to ensure that it operates efficiently, reduces energy consumption and promotes carbon reduction. Though a number of these measures are required to meet policy, they are benefits associated with the proposal to which I attach moderate weight.
67. Finally, the appellant argues that should planning permission be refused for the proposal, then the site will likely remain vacant<sup>9</sup> and would make no meaningful contribution to the LSIS. However, Mr Stephenson acknowledges that an occupier might be found on competitive rental and limited repairing liability terms and that there is some limited demand for secure deep storage space, though these uses would only support a limited number of jobs. Another possibility would be for the building to be occupied by a meanwhile user at a highly discounted rent whilst other development options are being considered and evaluated.
68. I note that the site has been actively marketed since it was vacated by Magenta and that the marketing process has not been questioned by the Council. However, as can be seen from my findings in relation to employment matters, on the basis of the evidence before me I am not convinced that the existing building could not be put to a meaningful industrial use at some point in the near future or that the re-development of the site for some kind of industrial use, albeit in combination with a residential use, would be unviable. Consequently, I do not attach any weight to this purported benefit of the proposal.

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<sup>9</sup> Mr Stephenson's POE paras 7.8.1 to 7.8.2

69. Weighed against the scheme's benefits is the significant harmful effect that the proposal would have on the character and appearance of the area and the significant adverse effect on the long-term protection and sustainable economic development of industrial employment land. This is against a backdrop of a deficit in industrial land within the Borough.
70. Though the application of the tilted balance means that the policies which are most important for determining the application are out of date, taking the above matters into consideration, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including policies to help to create a strong and competitive economy (paras 81 to 83) and to achieve well-designed places (chapter 12 including paras 126 and 130).
71. A completed Planning Obligation has been submitted during the course of the appeal addressing various matters. However, there is no need for me to consider the form or content of the obligation as it would not alter the outcome of the appeal.

### **Planning Balance and Conclusion**

72. As stated, the proposal is contrary to a number of development plan policies and although the Council's five year housing land supply position means that the most important policies for determining this appeal are considered to be out of date, the proposal is nevertheless contrary to the development plan when taken as a whole. There are no material considerations that indicate that the proposal should be determined otherwise in accordance with the development plan.
73. Therefore, for the above reasons, I conclude that the appeal should be dismissed and planning permission refused.

*Beverley Wilders*

INSPECTOR

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