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## Appeal Decision

Inquiry opened on 2 July 2019

Accompanied site visits carried out on 4 and 9 July 2019

**by Mrs J A Vyse DipTP Dip PBM MRTPI**

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

**Decision date: 21 August 2019**

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**Appeal Ref: APP/V5570/W/19/3224373**

**22-23 Tileyard Road and 196-228 York Way, London N7 9AX**

- 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 David Potter (Big Yellow Self Storage Company Limited and City and Provincial Investments Limited) against the Council of the London Borough of Islington.
  - The application No P2018/2355/FUL, is dated 10 July 2018.
  - The development proposed comprises demolition of the existing buildings and the construction of a new part 6, part 7, part 8 storey building plus double basement (overall height of 29 metres) to provide for 1,628 square metres (GIA) of light industry floor space (Use Class B1(c) at basement and ground floor level along with ancillary café at ground floor level, and 9,111 square metres (GIA) of business use floorspace (Use Class B1(a)/(b)/(c)) and the construction of a part 6, part 9 storey building plus double basement (overall height of 27.3 metres) consisting of 7,400 square metres (GIA) of self-storage floorspace (Use Class B8) and 870 square metres (GIA) of office floorspace (Use Class B1(a) along with associated access arrangements, plant area, car and cycle parking, refuse storage and ancillary works.
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### Decision

1. For the following reasons the appeal is dismissed and planning permission is refused.

### Procedural Matters

2. During the Council's consideration of the proposal, the scheme was amended. Revised plans were submitted and a revised description of development was agreed with the Council. The Council re-consulted on the amendments. It is that revised description which is set out in the header above and which formed the basis of the Council's position at the Inquiry.
3. Following the lodging of the appeal, the Council resolved that had it been in a position to determine the application, permission would have been refused. Five putative reasons for refusal were set out in the officer's report:
  - 1) *The significant increase in floorspace of open B1 use, designed and suitable for B1a offices, is inconsistent with the primary economic function of the LSIS, as identified in Policy DM5.3, and compromises the scope for future intensification of industrial uses (B1c, B2, B8). The proposed open B1 floorspace does not complement or support the economic and employment role of the LSIS. The application is therefore contrary to the objectives of Policy DM 5.3, and para 5.22 of the Council's Development Management Policies and Policy 4.4 of the London Plan. Further, implementation guidance point of SPG3 of the Mayor of London's Supplementary Planning Guidance "Land for Industry and Transport"*

*emphasises the importance of timely reviews to inform the retention of industrial land. Islington's Employment Land Study (ELS) (2016) highlights the large losses of industrial land in recent years. Similarly, the recent GLA Industrial Land baseline data demonstrates that the borough's stock of industrial land fell from 60ha in 2010 to just 35ha in 2015. The need to ensure that the land within the LSIS remains predominantly in industrial use is therefore an important material consideration. This position is reflected in a) the draft new London Plan, Policy E6 of which requires the LSIS to be focused on "industrial and related uses" and b) Policies SP3, B1 (including para 4.13 of the supporting text), and B2 of the Council's emerging Local Plan which permit the development of office use as part of a hybrid workspace but only where this constitutes a small proportion of the overall gross space proposed. The application is contrary to the Mayor's SPG, London Plan Policy E6, and policies SP3, B1 and B2 in Islington's draft Local Plan.*

- 2) The proposed development, by reason of its height, scale and design, would be overbearing and fail to respect and respond positively to existing buildings, the streetscape and the wider context. The proposal is therefore contrary to the National Planning Policy Framework Chapter 12 (Achieving well-designed places), London Plan 2016 policies 7.4 (Local character) and 7.6 (Architecture), Islington Core Strategy 2011 policy CS8 (Enhancing Islington's character) and policy CS9 (Protecting and enhancing Islington's built and historic environment) and Islington Development Management Policies 2013 DM2.1 (Design).*
  - 3) The proposed development would have a significant, major adverse impact on daylight to the neighbouring residential properties on Maiden Lane Estate contrary to London Plan 2016 policy 7.6 (Architecture), Islington Core Strategy 2011 policy CS8 (Enhancing Islington's character) and policy CS9 (Protecting and enhancing Islington's built and historic environment) and Islington Development Management Policies 2013 DM2.1 (Design).*
  - 4) The proposed development would fail to meet the target carbon emissions reductions in regulated and unregulated emissions and has failed to provide thermal modelling to demonstrate that areas are at risk of overheating without active cooling, contrary to policies 5.2 (Minimising Carbon Dioxide Emissions) set targets for CO2 reductions and 5.3 (Sustainable Design and Construction) of the London Plan 2016, CS10 (Sustainable design) of the Islington Core Strategy (2011), policy DM7.5 (Heating and cooling) of the Islington Development Management Policies (2013), and the Islington Environmental Design SPD (2012).*
  - 5) In the absence of an appropriate Section 106 legal agreement, the application fails to provide measures to mitigate the impacts of the development through enhancements to services and the environment necessary as a consequence of demands created by the proposed development (highway and footway works, parking bay relocation, employment and training, carbon offsetting, and Travel Plan), and as such the proposal fails to accord with policies CS10, CS13, CS18 and CS19 of Islington's Core Strategy 2011, policies DM7.1, DM7.2, DM7.4, DM8.2, and DM9.2 of Islington's Development Management Policies (2013), and Islington's Planning Obligations SPD (2014) and the Environmental Design SPD (2012).*
4. As set out in the Statement of Common Ground,<sup>1</sup> the subsequent provision of additional material confirmed to the Council's satisfaction that the scheme had achieved the maximum reduction in possible carbon dioxide emissions on the appeal site in accordance with Core Strategy policy CS10(A), and that all

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<sup>1</sup> Inquiry Document (ID) 4

remaining carbon dioxide emissions could be offset through a financial contribution. On that basis, the fourth putative reason for refusal was not pursued.

5. The submission of a planning obligation addressed the fifth of the putative reasons for refusal. The completed document comprises a planning obligation by Deed under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended).<sup>2</sup> The obligation is a material consideration.
6. Following the close of the Inquiry, the Government revised its Planning Practice Guidance. The revised version introduced a section on 'Supporting more effective use of land', which includes paragraphs relating to sunlight and daylight. Since effect on daylight is one of the determinative issues in this case, the parties were given the opportunity to submit further comments. I have taken those comments<sup>3</sup> into account in coming to my decision.

### **Main Issues**

7. The main issues in this case relate to:
  - the effect of the development proposed on the character, appearance and townscape of the surrounding area;
  - the effect in terms of daylight and overlooking/privacy on the living conditions of nearby residents on the Maiden Lane Estate and on the use of an adjacent property as an artist's studio; and,
  - the effect on the economic and employment role of the Vale Royal/Brewery Road Locally Significant Industrial Site.

### **Reasons for the Decision**

8. The development plan for the area includes the London Plan (March 2016), and the Council's Core Strategy (February 2011) and Development Management Policies (June 2013).
9. The draft London Plan is currently at Examination.
10. Islington's Local Plan Review: Strategic and Development Management Policies Document and its Site Allocations Document are at an early stage.

### ***Character/Appearance and Townscape***

11. The appeal site, which extends to some 0.45 hectares, forms the western third of a rectangular urban block fronting onto York Way (A5200), bounded by Tileyard Road to the north, which loops round at the western end of the block to become Vale Royal which adjoins the southern boundary of the appeal site.
12. The site, which lies within the southwestern corner of the Vale Royal/Brewery Road Locally Significant Industrial Site (LSIS) as defined in the Core Strategy, currently contains two to three storey, largely vacant commercial/industrial buildings of poor quality with no architectural merit set behind associated parking/servicing areas and storage yards along the York Way frontage. It presents a piecemeal and cluttered townscape, offering no animation or activity along the frontage, with a negative impact on the public realm.

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<sup>2</sup> ID16

<sup>3</sup> ID 17 and 18

13. The surrounding part of the LSIS to the north and east of the appeal site, is characterised by generally low-rise industrial and commercial buildings of two to four storeys. Although there is an extant permission for alterations to one of the buildings on the site on the Tileyard Road frontage, to create a five storey building, it was confirmed at the Inquiry that there was no intention to carry that through to completion. Other than the adjacent Gormley Studio dating from 2001 (the studio, which lies immediately to the east of the appeal site on the Vale Royal frontage, comprises a three storey high building designed by Sir David Chipperfield and is set back from the Vale Royal frontage behind a high wall) the existing buildings are generally simple and modest rather than architecturally distinguished. A further notable exception, particularly in terms of the prevailing building height within this part of the LSIS, is the 7-9 storey 30 metres high Fitzpatrick building, located opposite the appeal site on the southern corner of the Vale Royal/York Way junction. The building is currently under construction.<sup>4</sup> Although my attention was also drawn to a 7-9 storey residential development on Caledonia Road, that is in a different part of the LSIS and is not seen as part of the immediate context of the appeal site.
14. York Way descends from north to south towards Kings Cross, with levels dropping some 2-3 metres across the appeal site. On the higher ground to the north are a variety of low-rise, generally brick buildings, including Victorian terraced buildings and former public houses or commercial buildings. To the south are the raised embankments of the railway lines and other railway infrastructure, with York Way descending to pass beneath the railway.
15. York Way forms the boundary here between the London Boroughs of Islington and Camden. Opposite the appeal site on York Way, within Camden, is the Maiden Lane residential estate. The eastern part of that development, facing the appeal site, comprises three flatted blocks with some retail/commercial uses at ground floor: blocks D and E are of seven storeys (24.5 and 24 metres high respectively) whilst block H has six storeys (21.3 metres). Block A, which is offset to the south of the appeal site, has 20 storeys.
16. There is no dispute that the appeal site is in need of redevelopment. Moreover the LSIS, including the appeal site, is located within the Kings Cross key area as shown on Map 2.7 in the Core Strategy. Policy CS6 of the Core Strategy sets out that the area is expected to accommodate an estimated growth in jobs of some 3,200 from B-use floorspace, with Development Management policy DM5.3 supporting the intensification of uses within the LSIS. However, development of this corner site also brings with it design challenges that need to be overcome, including dealing with the transition from the main York Way frontage to the smaller scale development behind within the LSIS, and the treatment of the three road frontages.
17. The Government attaches great importance to the design of the built environment, with national policy placing great emphasis on the importance of good design as a key aspect of sustainable development. The requirements outlined in paragraph 127 of the National Planning Policy Framework (the Framework) include the need to add to the overall quality of the area and establish or maintain a strong sense of place. While appropriate innovation and change, such as increased density, is not to be prevented, developments

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<sup>4</sup> The building has planning permission for B1a and flexible B1 uses (Application No P2016/1999/FUL)

must be sympathetic to local character, including the surrounding built environment.

18. It is proposed to clear the site and erect two separate buildings with a shared foundation along the mutual boundary. The two components, which have been designed by separate architects, would read as separate but complementary buildings.
19. No issue is taken with the relationship of the proposed buildings to each other although, if the appeal was to succeed and one came forward before the other, there is the potential for a large blank wall along the contiguous boundary within the site to be exposed. That said, there would be scope to deal with the phasing of development and materials etc by condition, which could minimise any adverse visual impact in this regard.
20. On the smaller northern part of the site, on the corner of Tileyard Road and York Way, the 'Tileyard building' would be of seven storeys above two storeys of basement, comprising some 9,111sqm flexible Use Class B1<sup>5</sup> workspace on the upper floors, with independent light industrial (Use Class B1c) units at ground and lower ground floors (extending to some 1,628sqm) plus ancillary café and event space at ground floor level.
21. The building would have an overall height of 29 metres above ground level at its core (to the top of the plant room).<sup>6</sup> The profile of the shorter frontage to York Way is stepped, rising from five storeys – the five storey element along the back of the footway would have a parapet height of 18.9 metres<sup>7</sup> - with a roof terrace above in front of the sixth storey, which is set back, rising to 22.8 metres. The seventh storey, rising to 26.4 metres, has a deeper set back behind another roof terrace. The sixth storey parapet line continues along the much longer Tileyard Road frontage, with the seventh storey on this elevation set back slightly (much less than the set back on the York Way frontage). At the eastern end, adjacent to the existing buildings within the LSIS on Tileyard Road, the building steps down from seven to five storeys similar to the York Way frontage, although the set back of the seventh storey is not as generous, whilst the five storey element comprises just the upper three floors which are cantilevered above the service entrance.
22. On the southern, larger part of the appeal site (on the corner of Vale Royal with York Way) it is proposed to construct a part six, part seven and part nine storey building above a two storey basement, providing a total of 7,400sqm of self-storage floor space (Use Class B8)<sup>8</sup> and 870sqm of B1a office floorspace (the Big Yellow Building). Including lift over-runs etc, it would be some 27.3 metres high at its highest,<sup>9</sup> some 25.7 metres excluding the over-runs.<sup>10</sup> Two pedestrian entrances to the building are shown, to the self-storage use and the

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<sup>5</sup> As defined by the Town and Country Planning (Use Classes) Order 1987 (as amended), Use Class B1 comprises use for all or any of the following purposes (a) as an office other than a use within class A2 (financial and professional services), (b) for research and development of products or processes, or (c) for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area.

<sup>6</sup> Unless otherwise stated, all the measurements relating to building heights given here and in subsequent paragraphs are taken from Figure 4.22 within the proof of Mr Pilbrow.

<sup>7</sup> As annotated on Figure 4.22 of Mr Pilbrow's proof, although the corresponding text refers to a front parapet height of 19.2 metres. Whichever is correct, the difference of 0.3 metres can, for the purposes of this appeal, be considered as de minimis.

<sup>8</sup> Use Class B8 comprises use for storage or as a distribution centre.

<sup>9</sup> Proof of Ms Godden paragraph 6.9

<sup>10</sup> Fig 4.22 Proof of Mr Pilbrow

- offices, with a service entrance off Vale Royal. The internal service yard is open to the east elevation, adjacent to the boundary with the Gormley Studio, below the overhanging upper levels.
23. The vast majority of the Big Yellow building comprises its nine storey core. On the York Way frontage, and wrapping round onto Vale Royal, the building is articulated as three separate elements of varying depths, sitting in front of that core. They range from six storeys in height at the northern end adjacent to the Tileyard building, a central seven storey element (19.9 metres) and a five storey component (15.1 metres) on the corner with Vale Royal with a sixth storey set back above rising to 18.3 metres. It is this end element that houses the proposed offices and is canted slightly in relation to the rest of the York Way facade, reflecting a change in the alignment of the highway at this point.
24. The appeal site occupies a relatively prominent position on one of the main arterial routes leading into the centre of London, a location where high quality design is required and where the scale of development proposed should be appropriate in its context. As set out above, whilst there are a couple of buildings of height in the locality, the majority of buildings within this part of the LSIS are much lower. Whilst one would expect an intensification of activity along York Way, a major route in the central London - indeed as much is recognised by policy CS6, although as shown on Map 2.7, the commercial led corridor for office led mixed use development and general mixed use intensification lies to the south of the appeal site, beyond the railway - the scale of development would, in my view be expected to decrease along the minor road frontages behind. That is recognised in paragraph 6.14 of Mr Scanlon's proof.
25. I recognise that the rear (eastern) elevation of the Tileyard building steps down, but not until almost at the boundary of the site with the adjacent, very modest two storey buildings, but it would be no lower than the York Way frontage. At its lowest, it would be almost 19 metres above ground level. In fact the whole bulk of the seven storeys would be clearly seen on the approach along Tileyard Road. As a consequence of its height, scale and massing the building would, as graphically demonstrated on photo views 5 and 6 in the appellant's Townscape Visual Impact Assessment (TVIA), as updated on pages 33 and 32 respectively of the DAS<sup>11</sup> Addendum Townscape, appear excessively large compared to the surrounding properties, looming up from the street, overwhelming the existing established buildings within this part of the LSIS, with no sense of any coherent architectural dialogue between the appeal building and its Tileyard Road neighbours, either to the rear or to the north on the opposite side of the road. In my view, the new development would be over-dominant, overwhelming the local built environment here and would not provide a successful transition in terms of scale between the York Way frontage and the adjacent LSIS buildings.
26. In terms of detailing, the steel frame of the Tileyard building is expressed externally, within which infill brickwork spandrels and steel framed windows are set, although on the York Way frontage, the recessed southern bay, adjacent to the proposed Big Yellow building, is predominantly brick clad from ground to top. Its appearance is intended as a contemporary reinterpretation of the warehouse/trading estate buildings found within the LSIS on Brewery Road,

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<sup>11</sup> Design and Access Statement

although it is notable that those buildings are only three to four storeys in height, with a greater proportion of solid to glazing than is currently proposed. In fact the vast majority of buildings within the LSIS, especially those in this 'Tileyard Quarter' generally have a much more solid appearance. Whilst some 70% of the north and west facades of the Fitzpatrick office building would be glazed, the design incorporates various devices including a perforated metal brise soleil and vertical 'sleepers' giving it a much more solid, robust appearance than might be expected given the extent of glazing, as demonstrated for example by the photo view on page 14 of the DAS Addendum.

27. Not only would the largely glazed elevations of the Tileyard building be seen in stark contrast to the solidity of the surrounding buildings, but I agree with the Council that the combination of materials, scale and design give the overall impression of an office building, which would materially undermine the industrial 'language' and character of the LSIS. In relation to views when approaching along York Way from the higher land to the north, the incongruity of its scale and massing, extending back into the LSIS in the same form as that presented to the main York Way frontage is very apparent, as illustrated on the photo view on page 30 of the DAS Addendum. When seen behind the solid 'grounded' brick buildings in the foreground, the uncharacteristic nature of the glazing is also highlighted.
28. With regard to the Big Yellow building and its relationship with Vale Royal, the brooding boxy mass of the rear of the nine storey core would loom more than six storeys above the adjacent Gormley Studio and the two storey brick pitched roof building at the back of the footway on this frontage, as well the approved but not yet constructed Egg nightclub building. The effect is well illustrated in View 3 of the TVIA (as amended on page 24 of the DAS Addendum) and on the '*south elevation context as proposed*' plan in the proof of Mr Scanlon. I recognise that efforts have been made to enliven the rear of the building to some degree with blind windows, but that does not assist in reducing its overall scale and mass. Again, notwithstanding its more industrial genre, I consider that the core in particular would be bulky and overbearing, with a confrontational rather than respectful relationship with the generally modest adjacent buildings within this part of the LSIS.
29. I recognise that the Fitzpatrick building, which is nearing completion on the opposite side of Vale Royal to the appeal site, rises in part to some 30 metres. The use of lower five/six storey element on the corner of the Big Yellow building, including setting back the upper floor is appropriate, assists in terms of legibility, in that it distinguishes between the linked but separate uses within the building as a whole and, at up to 18.3 metres in height, is materially lower than the Fitzpatrick building, reflecting an appropriate step down in scale. However, that effect is materially undermined by the presence of the larger nine storey core rising up behind.
30. Whilst views of the building on the rising approach along York Way from the south are largely screened by the Fitzpatrick building, the Council takes issue with the way that the architect has attempted to break up the massing of the proposed building, suggesting that it has resulted in an 'insufficiently coherent organisation of the volume,' with particular concern expressed about the relationship of the offices component on the Vale Royal corner of the site with the main part of the building, which comes into view the closer one gets.

31. In my view, the principle of angling this element of the building, so that it is set parallel to both road frontages and the Fitzpatrick building, is appropriate. Although the recess at the junction of the two elements on York Way looks uncomfortable on plan, it is sufficiently wide in my view that it would not appear awkward when viewed in the street scene and would properly articulate the junction. I do agree with the Council however, that its junction with the main part of the building at the upper levels, which is very apparent on this approach, is not well considered, resulting in an unsettled and disjointed relationship between the two elements.
32. In terms of York Way itself, whilst the shallow frontage elements to both buildings would be lower than the Maiden Lane estate blocks opposite, the elements behind step up to overall heights of between 25.7-26.4 metres, materially higher than the opposite blocks. Moreover, the three blocks opposite do not present a continuous building frontage to the main road, blocks E and H having a significant gap between them which helps break up the massing. In addition, the floorplate of the Maiden Lane blocks is nowhere near as deep as the buildings proposed. In essence, whilst I recognise that part A of policy CS9 promotes a perimeter block approach, the development proposed would be of a significantly greater scale and massing than the opposite blocks, which themselves are not characteristic of the area generally, particularly the character of the LSIS.
33. At street level, two pedestrian entrances are shown to the Tileyard building: a secondary entrance is shown off Tileyard Road, which would help maintain connectivity with the wider Tileyard estate. The service entrance would also be off Tileyard Road. The main entrance would be off York Way, through the proposed event space. The ground floor on the York Way frontage would be set well behind the back of the existing footway, allowing for welcome improvements to the public realm here. Two pedestrian entrances to the Big Yellow building are also shown, to accommodate the self-storage use and the offices. At street level, along York Way, the ground floor of the central element, including the pedestrian entrance to the Big Yellow part of the building, is recessed beneath the overhanging upper floors, as is the pedestrian office entrance on the Vale Royal corner. Not only does that protect the entrances from the elements but, as with the Tileyard building, the arrangement also allows for a considerably wider footway area than at present, again allowing for welcome improvements to the public realm here.
34. The existing street trees in front of the Big Yellow building would be retained, with additional planting in front of the boundary between the two buildings, as well as street planters and seating. Again, those public realm improvements are welcome. Whilst the Council takes issue with some of the 'dead' elements that would occur on the York Way frontage, including fire fighting stairwells and an electricity substation, the scheme would create a much more animated street frontage than is currently the case, or indeed is the case with the Maiden Lane development opposite, with the added benefit of a material widening of the currently narrow footway. Whilst not ideal, I am content that the development would, on balance, be acceptable in this regard.
35. The Council's LSIS Height Study (December 2016) suggests a need for a lower building frontage in the majority of streets, with the indicative height plan in

the Study<sup>12</sup> indicating a preference for development of just 10-13 metres in height along the York Way frontage of the appeal site (3 commercial storeys) with up to 22 metres<sup>13</sup> (five commercial storeys) behind, reflecting the height principles and sections set out at Fig 3.2 of the Study. The development proposed would clearly conflict with the principles of the Study in these regards. That said, it is not adopted policy, with the Council seeking to distance itself from it at one stage. In any event, I have considered the proposal on its own particular merits in the light of its current surroundings.

36. I appreciate that, in longer views perhaps, the proposal may be seen against the backdrop of taller buildings to the south of the railway and those under construction in the vicinity but, at closer quarters, the contrast would be stark and, in my judgement, unacceptable within the context of the much smaller adjacent buildings, particularly within the LSIS.
37. I consider that the appeal scheme fails to take the opportunities available for improving the character of the area, including its function as the only LSIS in the Borough, located on one of the main routes into the city centre. In my view, the combined height, mass and scale of the proposed buildings relative to their context, together with aspects of their design and appearance would cause material harm to the character and appearance of the area. There would be conflict in this regard with Core Strategy policies CS8 and CS9 and Development Management policy DM2.1, which together and among other things require development to be of a high quality, reflecting the character of the surrounding area, with high quality architecture and urban design being key to enhancing and protecting the Borough's built environment in order to improve the quality, clarity and sense of space around or between buildings, to reinforce and complement local distinctiveness and to create a positive sense of place. It would also be contrary to section 12 of the Framework, which requires good design.

### **Daylight/Privacy**

38. It was accepted by the appellant that all the Maiden Lane estate flats facing the appeal site are essentially single aspect. Ensuring a high standard of amenity for existing users is an integral part of achieving well-designed places, as set out in paragraph 127 of the Framework. The *Effective Use of Land* section in the Government's Planning Practice Guidance, confirms that consideration is to be given as to whether a proposed development would have an unreasonable impact on the daylight and sunlight levels enjoyed by neighbouring occupiers, setting out that all development should maintain acceptable living standards, although what will be appropriate will depend to some extent on the context. The Guidance cites city centre locations where tall modern buildings predominate as an area where lower daylight levels at some windows may be appropriate if new development is to be in keeping with the general form of its surroundings.<sup>14</sup>
39. Together and among other things Islington's Development Management policy DM2.1Axi) and policy 7.6Bd) of the London Plan seek to ensure that new development does not cause unacceptable harm to, or unduly prejudice the operation of adjoining land or buildings, including consideration of impacts such as direct sunlight or daylight. There was some discussion at the Inquiry as to

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<sup>12</sup> Figure 3.3 on the Study

<sup>13</sup> Not 20 metres.

<sup>14</sup> Paragraph: 007 Reference ID: 66-007-20190722

- whether part x) of policy DM2.1A also applies to effects on adjoining development, as opposed to effects on buildings within a proposed development. Either way, in requiring provision of a good level of amenity, I am not persuaded that this element of the policy adds anything over and above the high standard of amenity required by the Framework in relation to my consideration of this appeal. Policy D4(F) of the emerging draft London Plan also requires that development should provide sufficient sunlight and daylight to new and surrounding housing appropriate for its context.
40. In essence, the issue to be addressed in this case is whether the development proposed would cause harm or prejudice in terms of daylight for adjoining occupiers and, if it would, whether that harm or prejudice is undue or unacceptable in its local context.
41. Whilst the policies referred to do not require compliance with the BRE Guide *Site Layout Planning for Daylight and Sunlight: a guide to good practice*,<sup>15</sup> it is referenced in the supporting text to policy DM2.1 and the Mayor of London's Housing SPG (2016) as providing relevant guidance. It provides a useful starting point for assessing the effect of a proposed development on residents' living conditions. As confirmed in the Rainbird judgement,<sup>16</sup> the guidelines are intended to identify when there will be a material deterioration in the relevant conditions in relevant rooms: if the change is adverse, it involves a deterioration; if it is significant, it is material. Rainbird also makes clear that, in order to decide whether a material adverse impact is acceptable, it is necessary to understand the number and nature of the rooms affected and the extent of the likely deterioration.
42. The BRE quantifies the amount of skylight falling on a vertical window as the vertical sky component (VSC). It sets out that if the VSC is greater than 27% with a proposed development in place, then enough skylight should still be reaching the window of the existing building. If the VSC is less than 27% and the decrease as a consequence of a proposed development is more than 20% of the former value, occupants will notice the reduction in skylight - the area lit by the window is likely to be more gloomy and electric lighting will be needed for more of the time.
43. Daylight provision can also be checked using the average daylight factor (ADF) which is a measure of the overall amount of daylight in a space. British Standard 8206-2:2008 *Code of practice for daylighting*<sup>17</sup> recommends an ADF of 5% for well-lit space, 2% for a partly daylit space. Below 2% the room will look dull and electric lighting is likely to be turned on. In relation to housing, it recommends minimum ADF levels of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms.
44. The target values in the BRE Guide are advisory and may be varied to meet the needs of development and its location. As noted by two Inspector colleagues,<sup>18</sup> the Mayor's Housing SPG also expects flexibility, with the guidelines to be applied sensitively to higher density developments, especially in opportunity areas, taking into account local circumstances and the scope for the character and form of an area to change over time, as long as the resulting scheme would provide acceptable living standards. **There appears to be a growing**

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<sup>15</sup> Published by the Building Research Establishment (2011)

<sup>16</sup> R (oao Melanie Rainbird) v The Council of the London Borough of Tower Hamlets [2018] EWHC 657 (Admin)

<sup>17</sup> Although this has recently been withdrawn following publication of British Standard EN 17037:2018 *Daylight in buildings*, the ADF is still a useful guide.

<sup>18</sup> APP/E5900/W/17/3171437 The Whitechapel Estate and APP/E5900/W/17/3190685 Sainsbury's

recognition in heavily built up areas of London that a VSC of 20% is now regarded as reasonably good, with a VSC of 15% being considered acceptable in most instances.

45. That flexible approach is clearly relevant here, with the appeal site located within the Kings Cross key area as shown on Map 2.7 in the Core Strategy. As noted earlier, policy CS6 of the Core Strategy sets out that the area is expected to accommodate an estimated growth in jobs of some 3,200 from B-use floorspace, indicating high scope for its form and character to change over the short and longer term.
46. Within the Maiden Lane development, the flats facing the appeal site in the 20-storey block A would be the least affected by the development proposed, since the block is not directly opposite the site - six windows would have a loss of daylight marginally outside the BRE guidelines, which impact would at worst be minor adverse.
47. In relation to the other affected blocks, Dr Littlefair's rebuttal evidence for the Council was as follows, based on the appellant's daylight and sunlight assessment:

**Block D<sup>19</sup>** - the effect on VSC<sup>20</sup> to 14 flats out of 18 (44 windows out of 66) as a consequence of the development proposed would be outside the BRE guidelines, with the nine flats on the lower three floors worst affected. The impact to five of the flats is assessed as major adverse: every single window bar one to those flats would have a residual VSC of less than 15%, with six windows to four of those flats (bedrooms and LKDs)<sup>21</sup> being left with VSCs of less than 5% - effectively non-daylit; the one window would have a VSC of 15-20%. In another five flats, the effect would be moderate adverse, with 15 out of a total of 19 windows being left with a residual VSC of 5-15% and one window with 15-20%. In a further four flats the effects are categorised as minor adverse. Of the 24 rooms to the nine flats on levels 1-3 facing the appeal site, 18 would be left with ADF levels below the relevant standards.

**Block E<sup>22</sup>** - the VSC to 15 flats out of 18 would be affected, with the loss of VSC to every single one of their windows (55 out of a total of 66 on this elevation) being outside the BRE guidelines. In terms of residual VSC, the impact to ten flats (all those on the flower three floors plus one on the fourth floor) is assessed as major adverse: on floor one, all of the nine windows beneath the balcony would have a VSC of less than 5%; on floor two, the VSC to eight of the corresponding windows would also be less than 5%, with one window less than 10%; and on floor 3, two would be less than 5% with the rest less than 10%. In all instances the affected rooms to each flat include LKDs and bedrooms. The impact to a further three flats would be moderate adverse, with the impact to another two being minor adverse. All 24 rooms to the flats on levels 1-3 would have ADFs below the relevant standards, compared to two at present. Block E is the worst affected of the three blocks, being directly opposite the centre of the development proposed.

**Block H<sup>23</sup>** - the VSC to 11 out of the 15 flats would be affected (37 windows out of a total of 65). The impact to one first floor flat is assessed as major

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<sup>19</sup> Figure 7 in Dr Littlefair's Rebuttal proof

<sup>20</sup> The reference to the VSC to windows throughout this paragraph are all instances where the loss of VSC compared to the existing situation is also more than 20%.

<sup>21</sup> Combined Living/Kitchen/Dining space

<sup>22</sup> Figure 10 in Dr Littlefair's Rebuttal proof

<sup>23</sup> Figure 13 in Dr Littlefair's rebuttal proof

- adverse, with VSCs of 5-15% (bedrooms and LKD). The impact to five flats on the lower three floors is classed as moderate adverse, with the impact to five other flats being minor adverse. Only part of this block is directly opposite the proposed development.
48. In light of the forgoing, I am in no doubt that there would be material harm or prejudice for the occupiers of the Maiden Lane flats in terms of their daylight. In answering the next part of the question as to whether that deterioration is acceptable in the local context, wider considerations are engaged.
49. Other than the top floor in each block and the window at each end of each floor, the windows to the flats have deep balconies above them which can affect the light from the upper parts of the sky, which can in turn make the affected rooms more dependent on light from directly opposite. The BRE guidelines recognise that and allow for a theoretical calculation removing the effect of the balconies in order to compare whether it is the balcony or the development proposed that is the main cause of the problem.
50. Even on that basis, the relative loss of VSC to some 63 windows across the lower three floors of the three blocks would be between 20-60%, in excess of the BRE guidelines. Again, block E would be the worst affected, with a relative loss to every single window to five of the flats, and all but one window of a sixth flat, of between 40-60%. That suggests to me that the development proposed is a significant contributory factor in the loss of daylight. Whilst Mr Ingram suggested that without the balconies, residents would have VSCs in the mid-teens with the new development in place, the balconies clearly cannot be removed, with residents being forced to accept much lower VSCs than is currently the case, down to as low as 1-2% in some cases.
51. In support of its case, the appellant drew attention to a number of other factors. The Mayor's SPG confirms that quantitative standards should not be applied rigidly without considering carefully the location and context and standards experienced, with the degree of harm to be assessed drawing on broadly comparable residential 'typologies' within the area and of a similar nature across London.
52. The appellant provided examples of three recently constructed schemes within the LSIS, all with balconies/external walkways,<sup>24</sup> and a fourth in Camden (the Maiden Lane estate) assessing the ADF values to rooms within those developments. All these schemes relate to new-build development, with assessment made of the daylight for rooms within that new development, whereas the situation in relation to this appeal is that a new scheme would impose itself on existing accommodation. Future occupiers of a new development would have the choice whether or not to accept the offered living conditions in terms of daylight before moving in, whereas existing occupiers would not have a choice, with the new development and its effects imposed upon them. Nonetheless, in principle, the 'typologies' referred to may provide a relatively broad brush view of what Islington and Camden Councils appear to have considered to be acceptable residual daylight levels on completion of new development in the area.
53. However, the evidence of Mr Ingram, based on his own calculations of light in those other properties is that in some cases, the situation is worse than was predicted by other consultants in the reports presented to the local authorities

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<sup>24</sup> 423-425 and 429-435 Caledonian Road, 130-154 Pentonville Road and Tremanton Building in the Regents Quarter.

when deciding whether to grant permission. For instance, in relation to the flats at Maiden Lane, Camden was provided with a report stating that all rooms would meet the BS minimum guidelines. Following amendments, the report was revised to confirm that whilst five rooms, all kitchens, would fail the guidelines, all living rooms and bedrooms would pass. Mr Ingram's evidence though, shows a large number of rooms with very low levels of light. Similar concerns arise with the Caledonian Road development, which was determined by Islington. I am not persuaded, therefore, that the examples necessarily support the appellant's case in this regard, given that in at least two, the relevant authority clearly thought it was approving development with better levels of daylighting than was actually the case. In any event, there is a danger that such an approach has the potential to create a dangerous 'race to the bottom' if subsequent decisions were to whittle away at desirable standards.

54. The Maiden Lane flats, being located virtually on the back of the footway, could be interpreted as being bad neighbours, taking more than their fair share of light. Indeed, the BRE Guide recognises that different target values may be appropriate in special circumstances, confirming that *'in an area with modern high-rise buildings, a higher degree of obstruction may be unavoidable...'* and that *'...to ensure that new developments match the height and proportions of existing buildings, the VSC...targets for these windows could be set to those for a 'mirror-image' building of the same height and size and equal distance on the other side of the boundary.'*<sup>25</sup>
55. However, the approach in the guidelines shows two developments, one existing one proposed, equidistant from a shared contiguous site boundary. That is not the case here, the site boundaries being separated by York Way. **As such, they are not directly applicable in this situation.** That said, the evidence of the appellant is that, where the boundary is taken as that centre line, a mirror scheme would have a similar impact on the daylight values of the flats in question when compared with the appeal scheme.
56. My attention is drawn in this regard, to an appeal decision for a site in Tower Hamlets<sup>26</sup> where a similar exercise was employed. My colleague noted that *'starting from an existing low level, many.. [flats in the existing development].. would experience no more than a 3% absolute loss of daylight, a virtually imperceptible change. The worst affected living rooms would experience less than a 5% absolute loss, a barely noticeable change.'* He went on to conclude that although not to the letter of the guidelines, the mirror-image exercise gave a clear indication that overall, in that more 'equitable' arrangement, many more of the existing flats would be adversely affected than would be the case with the scheme then proposed, which arrangement would be considered acceptable in terms of a fair share of light. On that basis, and recognising that by strictly applying the BRE guidelines development of the appeal site would be unfairly prejudiced, my colleague went on to conclude that that provided reasonable justification for the reduction of daylight and sunlight levels in the appeal scheme.
57. In the scheme before me, the impact of a mirror image scheme would be similar, not materially greater and so is less persuasive as an argument in favour of the appeal scheme, although I recognise that, for the worst affected

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<sup>25</sup> Paragraphs 1.6 and F5 respectively in the BRE Guide

<sup>26</sup> APP/E5900/W/17/3191757 (17 December 2018)

flat (the central first floor flat in block E) there would be no more than a 3% absolute change.

58. In coming to a view on this matter, I am mindful that Government policy, as set out at paragraph 127f) of the Framework, which post-dates the Tower Hamlets Decision, places greater emphasis on the amenity of existing users than was the case in the earlier iteration of the Framework. It requires that planning decisions should ensure that developments create places with a *high* standard of amenity for existing and future users – the previous version sought a *good* standard of amenity (paragraph 17 fourth bullet). I am also mindful of the importance placed by the Secretary of State on the amenity of existing residents in dismissing a recent appeal,<sup>27</sup> where he found that harm in terms of the reductions in VSC to a large number of windows, many of which would be affected quite significantly, carried substantial weight against the proposal. In that scheme, 243 affected windows (19%) would have been left with a VSC of less than 15%, with 175 of those (14%) would have been left with less than 10%.
59. The situation in relation to the Maiden Lane flats would be worse, where in block D, 60% of the windows facing the appeal site (39 windows out of 66) would be left with a residual VSC of less than 15%, with some 40% (27 windows) left with less than 10%, whilst 12% (8 windows) would have less than 5%. In Block E, 75% of all the windows in the facing elevation (50 out of 66) would have a residual VSC of less than 15%, some 56% (37 windows) would have less than 10%, and 28% (19 windows) would have less than 5%.
60. Moreover, as accepted by Mrs Price for the appellant, in assessing the existing building, it is relevant to have regard to the policy framework which sets expectations in relation to the scale, form and type of development which might reasonably be expected on the adjoining site - the appeal site in this instance.
61. The appeal site lies within the Vale Royal/Brewery Road Locally Significant Industrial Site (LSIS) an area for which there are long-standing policy objectives and related guidance. As pointed out by the Council, unlike residential developments, industrial uses are not particularly light sensitive and there would have been no reason therefore, to be concerned that the Maiden Lane development would unduly overshadow any development within the LSIS.
62. The corollary to that, is that whilst current planning policies encourage intensification of industrial uses within the LSIS, there would have been no reason to suppose, at the time that the Maiden Lane application was being considered by Camden Council, that development of the height now proposed was envisaged for the appeal site. Indeed, whilst it post-dates the Maiden Lane development, Islington's Height Study for the LSIS (December 2016) suggests, in Section 3.2, a maximum of height of five commercial storeys in the LSIS, with a lower height on the building front on the majority of streets. In addition, as noted earlier, whilst there is reference in part A of Core Strategy policy CS6 to York Way being one of the principal locations for office-led development mixed use development which intensifies the use of land, Map 2.7 shows that area to be located to the south of the Maiden Lane flats and the appeal site, to the south of the railway line.

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<sup>27</sup> APP/E5900/W/17/3190685 (10 June 2019)

63. All in all, I am not persuaded that the mirror imaging exercise necessarily provides a reasonable justification for a similar reduction in daylight levels in the surrounding buildings as a result of this proposal, not least because the assessment of impact undertaken is already weighted with the 15% VSC figure being taken as acceptable.
64. Mr Ingram also assessed a hypothetical scheme of uniform 20 metres height along the York Way frontage of the appeal site, on the same footprint as the appeal scheme. The reference to 20 metres (development of up to five storeys in height) is found in section 3.11) of the Study, under the heading *To Encourage the Development of Hybrid Space*. The appellant's assessment suggests that such a scheme would have a substantial impact on the light received by the Maiden Lane flats, although not quite as bad as that of the appeal scheme.
65. However, as already noted, the Study suggests a lower building frontage in the majority of streets, with the indicative height plan in the Study<sup>28</sup> indicating a preference for a development height of just 10-13 metres along the York Way frontage of the appeal site (3 commercial storeys) with up to 22 metres<sup>29</sup> (five commercial storeys) behind. I am mindful, in this regard, that Mr Ingram's evidence confirms that block massing at lower heights (heights of 8, 12 and 16 metres were assessed) presents improved daylight values for the flats. Whilst he goes on to comment that a lower scheme would not deliver the aspirations of the LSIS and the wider Kings Cross key area to accommodate expected growth and jobs, I do not agree, not least because the LSIS is only one part of the wider Kings Cross key area. I am not persuaded therefore that the comparison is a helpful one or adds support to the appellant's case. In any event, as set out earlier, the Study is not adopted policy. I confirm in this regard that I have considered the proposal on its own particular merits in the light of its current surroundings.
66. It was also suggested that since any room with an existing ADF of less than 2% would already look dull, such that electric lighting is already used for most of the time, then any further reduction in daylight would make no material difference. However, that 2% is a minimum and I agree with the Council that just because a flat may have very little daylight currently, that is not a good reason to reduce it further or take that little away.
67. Other methods for assessing the daylight received by the existing flats were investigated by the appellant, including Radiance based studies, ADF studies and Human Visual Response Studies. To that end, Mr Ingram produced 'false colour' images showing daylight factors on surfaces within the spaces. There is no set criteria against which to assess those but, as pointed out by the Council, daylight factors drop substantially with the development in place.
68. Whilst Mr Ingram also produced a series of Human Visual Response images, he accepted in cross-examination that they illustrated the perception of contrast, as opposed to providing a comparison in terms of the appearance of brightness before and after development. Again, I am not convinced that the evidence in this regard demonstrates that the effect of the development proposed would necessarily be acceptable in terms of daylighting for existing occupiers.

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<sup>28</sup> Figure 3.3 on the Study

<sup>29</sup> Not 20 metres as referred to in section 3.1 of the Study.

69. With regard to light to spaces within the adjacent Studio, which lies to the east of the proposed Big Yellow Building, I note that whilst the BRE guidelines are intended for use in adjoining dwellings, paragraph 2.2.2 confirms that they may also be applied to existing non-domestic buildings where occupants have a reasonable expectation of daylight. Clearly, the adjacent Studio would have such an expectation.
70. The main area of the adjacent Studio is equivalent to a three storey building, the whole volume of which is used as a studio space relying on light from high level rooflights that are in the saw-tooth roof pitches. The western end of the building, adjacent to the appeal site, contains a painting studio (Drawing Room) at mezzanine level which was also designed to take advantage of direct natural light through windows along the ridge of the roof, and a Plaster Room. Although there is a side facing window to the Drawing Room, that faces directly onto a high brick boundary wall and is for ventilation purposes, playing little if any part in providing daylight to the space.
71. The evidence of the appellant looked at the ADF and daylight distribution. It concludes that with a retained Daylight Factor of 13.5% (well in excess of the 5% that is considered to represent well daylight space) the main studio space would continue to be well daylight, with any changes in light conditions unlikely to be perceptible. Whilst the mezzanine Drawing Room and Plaster Room would experience a higher reduction in ADF, outside the BRE guidelines (1.2-2.5%) due to their proximity to the appeal site, given the exceptionally high existing daylight values to those spaces, the retained value of 14.2-15.1% indicates that both would remain very well daylight, with no noticeable change in daylight. Three other rooms at the eastern end of the Studio at first floor level would experience a minimal change in ADF (0.1%), with no noticeable change in daylight condition given the predicted retained values of between 7.5-8.7%. None of the appellant's findings in these regards was challenged by any other technical evidence and I am satisfied that there would be no harm in relation to any material loss of daylight for the adjacent Studio.
72. So, to conclude on this issue, whilst there would be no material harm in terms of daylight to the adjacent Studio, I have found that that there would be material harm to the living conditions of occupiers of a substantial number of the flats in blocks D, E and H of the Maiden Lane estate. I recognise that the location of those blocks means that they take substantially more than their fair share of light and, as such, the strict application of the BRE guidelines unfairly prejudices development of the appeal site. However, even when allowances are made for its urban context, including a lower 'London VSC' of 15%, plus allowances for the deep balconies, there would still be a significant material impact for existing occupiers of the single aspect flats on the Maiden Lane estate facing the appeal site. In my view, that impact would be unacceptable even taking account of the local context.
73. Taken in the round therefore, the development would conflict with London Plan Policy 7.6B.d and Development Management policy DM2.1Axi) which seek to ensure that new development does not cause unacceptable harm to, or unduly prejudice the operation of adjoining land or buildings. There would be conflict too with paragraph 127 of the Framework.

**Vale Royal/Brewery Road Locally Significant Industrial Site (LSIS)**

74. The appeal site lies wholly within and forms part of the western boundary of the designated LSIS. Among other things, policy 4.4 of the London Plan (March 2016) requires that Local Plans should demonstrate how industrial land and premises in LSIS will be planned and managed. The justificatory text says that DPDs should make explicit the types of uses considered appropriate in LSIS, with regard to be had to the Mayor's Land for Industry and Transport SPG (September 2012) which confirms that the protection of LSISs needs to be reviewed regularly and justified in the Borough's Employment Land Reviews.
75. Policy CS13B of the Core Strategy deals with employment spaces and sets out that the LSIS will be retained for industrial/warehousing/employment land. The site is also within the Kings Cross key area, wherein Core Strategy policy CS6D also seeks to retain the LSIS, which is recognised as the only locally significant concentration of industrial/warehousing/employment land in the Borough. The Glossary to the Core Strategy defines employment floorspace/buildings/development/uses as activities or uses that generate employment including offices, industry, warehousing.
76. Development Management policy DM5.3 deals specifically with the LSIS. Part A) of the policy supports the retention and intensification of uses within the LSIS appropriate to its role, ie within the B1c, B2 and B8 Use Classes; part B) sets out that proposals that would result in loss or reduction of floorspace in those Use Classes will be resisted unless exceptional circumstances can be demonstrated; part C) confirms that notwithstanding part B) the loss or reduction of business floorspace will be resisted where it would have a detrimental individual or cumulative effect on the area's primary economic function; and part D) resists the introduction of non-business uses (defined as uses outside the B Use Class) except for services and facilities ancillary to and which support the economic and employment function of the LSIS. The Glossary to the Development Management Policies Document confirms that business floorspace/buildings/development/uses comprise activities or uses that fall within the B-Use Class (ie offices, industry or warehousing). The definition of employment floorspace/buildings/development/uses is the same as the Core Strategy.
77. The Council accepts that the appeal scheme would not conflict with policy DM5.3. I have no reason to disagree since the scheme does not offend any of its constituent parts: there is no loss or reduction of B1c, B2 or B8 floorspace; the scheme includes a material uplift of B1c and B8 floorspace; there is no policy presumption against any form of B1 office use; and the scheme does not introduce any non-business uses as defined by the development plan. There would be no conflict either with Core Strategy policies CS6 and CS13 which are supportive of employment uses in the LSIS, including offices.
78. However, whilst the Council acknowledged in closing that, in land use terms, the application is not contrary to the development plan, it argued that the flexible B1 floorspace proposed as part of the Tileyard element of the scheme would largely be attractive to B1a office users. Were that to be the case, the Council maintained that that would cause material harm to the objectives of the policies and the primacy of industrial uses in the LSIS which, together with the prominence and design of the building would, in its view, mark a significant change in the character of the LSIS, away from the industrial uses which are its primary economic function and towards the sort of office development that

more properly belongs in the CAZ<sup>30</sup> or other locations in the Borough. Its case was that there would, in this regard, be harm to an interest that the Local Plan seeks to protect, with the draft London Plan and the emerging Local Plan recognising the need to strengthen the existing LSIS policies, and that this amounted to a material consideration justifying a decision otherwise than in accordance with the development plan.

79. Policy E4 of the draft London Plan (August 2018) seeks to maintain a sufficient supply of land and premises for industrial and related functions, with the explanatory text confirming, among other things, that the policy is intended to ensure that there is no overall net loss of industrial floorspace capacity within any designated LSIS. In addition, Boroughs such as Islington which are in the 'retain' category should seek to intensify industrial floorspace capacity in LSIS. Policy E6 sets out that Boroughs should define detailed boundaries and policies for LSIS and make clear the range of industrial and related uses that are acceptable in LSIS. Among other things, policy E7 encourages intensification of business uses in the LSIS in Use Classes B1c, B2 and B8 to deliver an increase in capacity (or at least no overall net loss) in terms of industrial, storage and warehousing floorspace, with appropriate provision of yard space for servicing. The policies do not of themselves resist office uses and, for the reasons set out in paragraph 73 above, I find no conflict with the relevant policies of the draft London Plan.
80. Policy SP3 of the Council's emerging Strategic and Development Management Policies (Regulation 18 draft November 2018) seeks to retain and intensify B1c, B2 and B8 uses in the LSIS, resisting encroachment of non-industrial uses, especially residential, which would jeopardise long term sustainability, economic function and future economic growth of the LSIS as an industrial area. Proposals for additional offices, where the predominant use of the building would not be industrial, will be resisted as encroachment of offices is considered to be a principal threat to the continued industrial function and balance of uses in the LSIS.
81. Whilst the policy goes on to recognise the contribution of businesses in the LSIS related to the music and entertainment industry, including Tileyard Studios, and seeks to support the successful economic cluster, that is only through protection of existing uses, with any new related floorspace being required to align with B1c, B2 or B8 uses. Where additional offices are included, they should not be the predominant use.
82. Policy B2 of the emerging Plan reiterates that the priority land uses in the LSIS are B1c, B2 and B8a and that retention and intensification of those uses, and existing clusters of activity, is a priority. Whilst development of office use may be permissible where there is existing office floorspace on the site, or as part of a hybrid workspace scheme, it must only constitute a small proportion of the overall gross floorspace proposed. The introduction of uses that could undermine the primary economic function of LSIS is resisted.
83. The appeal site is identified in the emerging Site Allocations Plan (Regulation 18 draft November 2018) as site VR1, allocated for retention and intensification of industrial uses B1c, B2 and B8, with office floorspace only acceptable as part of a hybrid workspace scheme. The Regulation 19 version adds to the

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<sup>30</sup> Central Activities Zone as defined in the London Plan

justification, stating that the allocation is to contribute toward the delivery of the strategic priorities for the Spatial Strategy area.

84. Inasmuch as the open B1 floorspace in the Tileyard building could, in theory, all be used as B1a offices, there would be conflict with all these emerging policies. I also recognise that the wording of policies SP3 and B2 (revised in the Regulation 19 version to further reinforce resistance to office uses) reflects the increasing pressure for non-industrial development in the LSIS. However, the emerging plan has not yet been examined, with the regulation 19 revisions not even having been the subject of formal public consultation as yet. I am also advised that there are multiple objections, particularly to policy SP3. As such, I afford the emerging policies only limited weight in this appeal.
85. Notwithstanding the forgoing, I understand the Council's concerns in relation to increasing pressure on the LSIS from general office use, a use that had apparently not been perceived as a threat when policy DM5.3 was drafted. However, case law has made it very clear that it is the policies themselves that are determinative, not any supporting text or objectives. Whilst the supporting text is plainly relevant to the interpretation of policy, it is not of itself a policy or part of the policy, and it cannot trump the policy. In particular, the supporting text is not to be given the force of policy where, to apply it, it would conflict with the policy itself. In seeking to resist B1 use on part of the site, a use that not only is not precluded by the policy but is allowed for (part D resists the introduction of non-business uses, which are defined as uses outside the B Use Class) the Council's approach seems to me to introduce an additional test for development proposals. I am mindful though, that it was agreed by Mrs Price for the appellant, that conflict with the objectives of a policy could be a material consideration. That being so I look now at whether the development proposed would conflict with the objectives of the policies - in essence, whether the development proposed would have an adverse impact on the primary economic function and future economic growth of the LSIS.
86. There is no definition in either the current or emerging development plan as to what the primary economic function of the LSIS is. As a starting point, it is pertinent to note, in my view, the extent of the proposed increase in B1c and B8 floorspace. At present, the buildings on the site are largely vacant, are in a very poor structural state beyond economic repair and are physically obsolete. The existing offer on the site comprises some 1,404.3sqm of B1a floorspace, 4,644.3sqm B8 space and 457.7sqm B1a/sui generis use - some 6,506sqm in total. Overall, the appeal scheme would provide 8,270sqm B8 floor space (excluding mezzanines but including 870sqm ancillary B1a offices) 1,628sqm B1c space, plus 9,111sqm of open B1 space - a total gross floorspace of some 19,009sqm.<sup>31</sup> Even without the open B1 space, the development proposed would result in a significant enhancement in B1c and B8 space on the site - an uplift of some 4,384sqm - compared with the existing situation. I also note that the extent of B1c floorspace proposed as part of the Tileyard building over the ground and lower ground floors, would greatly exceed the floorspace provided by the building that currently occupies that part of the site, which is in B1a use. Far from harming the primary economic function of the LSIS, I consider that the provision of that additional B1c and B8 floorspace would materially enhance it.

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<sup>31</sup> Ibid

87. A footnote to policy E4 of the draft London Plan defines floorspace capacity as either the existing industrial and warehousing floorspace on site, or the potential industrial and warehousing floorspace that could be accommodated on site at 65% plot ratio, whichever is the greater. Mr Stephenson did an exercise based on the industry norm of 50% site coverage, confirming for the appellant that on the Tileyard part of the appeal site, a replacement single storey B1c building would achieve some 768sqm of floorspace. At two storeys (recognising the two storeys of B1c space proposed albeit that some of that would be at lower ground level) it would be possible, in theory, to achieve some 1,535 square metres of industrial floorspace. At 65% coverage the floorspace would be slightly greater (confirmed in re-examination as 975sqm for a single storey building). He confirmed, though, that a single B1c user for the site is very unlikely.
88. Where does that take the discussion? At worst, the B1c floorspace proposed would be comparable with a hypothetical new two storey building on the site for which there is no apparent appetite. At best the development proposed would more than double the B1c floorspace of a hypothetical single storey B1c building on the site. Either way, I consider that the appeal scheme maximises the provision of industrial use on the site and thus there would be no harm to the economic function of the LSIS in this regard. At best, there would be a material enhancement.
89. The Mayor's SPG refers to the need to have regard to the Borough's Employment Land Reviews. The Council's latest Employment Land Study (January 2016) confirms the LSIS as the Borough's largest concentration of employment land which, although unprepossessing in appearance, provides space that is crucial to accommodate businesses servicing both the wider Borough and central London. That is particularly evidenced, it notes, by the cluster of live event and music oriented businesses and the number of catering operations. It sets out that, at the very least, there should be no net loss of employment space and that ideally, efforts should be made to intensify uses and be flexible about what user classes are permitted in what space. It also confirms that the LSIS has a role to play in providing for the emerging market of hybrid/flexible space and in providing some of the lower threshold enterprise space which is needed for start-up companies. It recognises a strong growth in firms seeking hybrid space – not Grade A office stock but for use as studio/light production space or low specification flexible and collaborative office space. The Study notes that such space has been particularly attractive to the creative and digital sectors, going on to recommend that opportunities should be sought to encourage this type of space.
90. In relation to the Tileyard/Vale Royal part of the LSIS, the Study notes that the most significant activity is the Tileyard Studios complex which comprises some 10,000 square metres of studio, writing room and office space dedicated to the music industry, with 70 modern studios and 100 offices as well as event space and co-working space located close to other music and event oriented businesses on Brewery Road and Vale Royal (both within the LSIS). The Study confirms that such conglomerations develop for sound economic reasons and care should be taken not to disrupt this.
91. In addition, the Council's own LSIS Height Study (December 2016) the purpose of which was to inform an SPD on the LSIS, confirms that there are a number of opportunities to strengthen the character and function of the LSIS, including

- intensifying the creative quarter that is already establishing at Vale Royal (the Tileyard studios area).
92. The Tileyard businesses clearly benefit from being located in close proximity to one another. As recognised in paragraph 2.28 of the emerging Strategic and Development Management policies document, these 'agglomeration benefits' can include increased productivity levels, having access to a pool of labour and experience, enabling business to attract and retain skilled labour. Other benefits include fostering collaboration and the transfer of knowledge, innovation and technology between businesses and sectors. It goes on to note that in addition, there may be potential synergies between the music and entertainment businesses and catering businesses within the LSIS. The paragraph concludes that these important functions and industrial uses will be safeguarded and promoted.
93. The flexible B1 space proposed, which is estimated to generate some 805 jobs, is intended to assist in accommodating future growth of the successful Tileyard Studios cluster. It has been designed to bridge the gap between businesses and start-up space and larger floorplates to meet the needs of the range of users who are seeking to locate in or expand from the existing Tileyard Studios cluster. As such, there are material differences in the physical characteristics of the space compared with conventional office buildings: it is not designed to comply with British Council for Offices standards for conventional office buildings; the service core is situated at the rear of the building creating flexible floorplates to allow for different sized occupiers, making each floor configurable to allow for multiple occupation to accommodate the range of anticipated Tileyard tenant needs, allowing for smaller, discrete tenancies around the perimeter as opposed to full open floors, aligning with the type of hybrid spaces outlined in the Employment Land Study and the LSIS Height Study; a range of shared spaces and facilities, including communal breakout spaces, kitchen areas etc; those visiting the office space would have to walk through the ground floor café and event space to reach the lifts; the ground and lower ground floors are designed specifically for B1(c) use which would generally not be considered appropriate for a conventional office building; and the generous structural spans (typically 9 metres x 9 metres and clear ceiling heights of 3.25 metres floor to soffit allow for large recording studios to be created with 'box in box' acoustic isolation. As such, the nature of the open/flexible B1 space proposed would not, for the most part, be well suited for general B1a office space and would not be similar for instance, to the B1a office buildings in the nearby Kings Cross area.
94. The development proposed also draws some support from the Framework. Under the heading *Building a strong, competitive economy*, paragraphs 80 and 82 set out that policies and decisions should help create conditions in which businesses can invest, expand and adapt, where each area can build on its strengths, counter any weaknesses and address the challenges of the future. The specific locational requirements of different sectors are to be recognised, including making provision for clusters or networks of knowledge and data-driven, creative or high technology industries.
95. To conclude on this matter, whilst I recognise that the flexible B1 space proposed within the Tileyard building could, in theory, all be occupied by Class B1a office users, it seems to me that in providing flexible design features and future adaptability for a range of Class B1 uses, in close proximity to the

existing Tileyard cluster (the intended occupiers) the specific nature of the space proposed responds appropriately to changing economic conditions as reflected in the various policies and guidance. In my view, when the development proposed is considered in its entirety - development which would, among other things, result in an uplift of some 4,384 square metres in B1c and B8 space on the site - and having regard to the intended users for the Tileyard building combined with its close physical relationship with the existing Tileyard cluster, within the LSIS, it would not jeopardise the long term sustainability, employment role, economic function or future economic growth of the LSIS as an industrial area and it would not be at fundamental odds with the objectives of the relevant policies.

### ***Benefits of the scheme***

96. The scheme would allow for comprehensive redevelopment of the site, removing the existing buildings which are out of date, defunct and without architectural merit, replacing them with modern flexible space. Intensification of development on this brownfield site would maximise its utilisation and efficiency, with the scheme resulting in a significant 12,960.4m<sup>2</sup> net increase of employment/business floorspace, including intensification of light industrial (Class B1c) and self-storage (Class B8) uses.
97. The appellant's Economic Regeneration Statement sets out that over a 20 month construction period, construction employment is estimated as being equivalent to around 265 FTE construction jobs, with the development itself, once completed, having the potential to generate some 1,240-1,525 jobs (gross) compared to the eight jobs generated by the site at present. The increased employment on the site is expected to provide in-work training and development opportunities accessible to local people. I am mindful, in this regard, that the existing Tileyard operation has strong links with local schools and organises apprenticeships for young people.
98. The Big Yellow building, including the flexible office space, is expected to support approximately 695-720 jobs. Many businesses supported by Big Yellow operate from the storage units where people work regularly packaging stock for distribution. In addition, many jobs outside Big Yellow are also dependent on the space rented there to provide storage of stock, materials and equipment (akin to a modern day lock-up) or, for example, the storage of stock so that premises can maximise sales floorspace.
99. The Tileyard building is expected to generate 30 jobs in association with the dedicated B1c floorspace and some 515-775 jobs in connection with the flexible B use floorspace etc. In addition, the Tileyard building is intended to assist in accommodating future growth of the successful Tileyard Studios cluster, having been designed to bridge the gap between businesses and start-up space and larger floorplates. I am mindful, in this regard, that both versions of emerging policy SP3 recognise the contribution of businesses related to the music and entertainment industry in the area, including Tileyard Studios and seek to support the successful economic cluster.
100. Once completed, annual spending by the net additional employees on the site would generate spending of approximately £2.9-£3.6 million per annum. In addition, the development would allow businesses to invest and expand, contributing to economic growth estimated by the appellant as being in the region of some £84 million in GVA per annum. The appellant also refers to

business rates revenue for the Council in the region of approximately £2 million (gross).

101. As mentioned earlier, there would be welcome benefits to the public realm. The footway along the site frontage is narrow, congested and completely without animation. As also mentioned earlier, the development proposed would bring with it benefits to the public realm on the York Way frontage, including removal of vehicular crossovers, with all servicing to be taken off either Tileyard Road or Vale Royal, a much wider, animated footway, plus additional planting and seating etc.

### **Overall Planning Balance and Conclusions**

102. Whilst I have concluded that there would be no harm to the economic and employment role of the LSIS or its primary function, I have found that the development proposed would result in material harm in terms of the character/appearance of the area and the townscape. The development would also result in harm to the interests of residents of the Maiden Lane flats that face the appeal site, with particular regard to its effect on daylight. I consider that impact to be unacceptable even in the local context. To be weighed against those harms are the benefits set out above. In the overall balance, I consider that those benefits do not outweigh the harm that I have identified would be a consequence of the development proposed. I therefore conclude that the appeal should not succeed. I confirm that my concerns in relation to the character and appearance of the area are such that the outcome of that balance would have been the same even had I found the harm in terms of daylight not to be unacceptable in this urban context, or that the overall amenity for local residents, taking into account the public realm improvements, would be good.
103. I recognise that this will come as a disappointment to the Tileyard enterprise and I do not underestimate the importance of the Studios to the music industry. However, the needs of Tileyard, important though they are, must be balanced against other considerations. In coming to my conclusions on the various issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan, emerging policies, the National Planning Policy Framework and other material considerations. On balance though, the evidence in this case leads me to the view that the appeal should be dismissed and that planning permission should be refused.

*Jennifer A Vyse*  
INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Paul Brown, of Queen's Counsel	Instructed by Islington Borough Council
He called	
Rachel Godden MA(Oxon), MA, MSc, IHBC	Senior Design and Conservation Officer with the Council
Dr Paul Littlefair MA, PhD, CEng, MCIBSE, FSLL, MILP	Principal Lighting Consultant with the Building Research Establishment
Sakibu Gurda BSc(Hons), DipTP, MA	Head of Planning and Policy Development with the Council
Robin Tulloch MA	Principal Planning Officer (Major Applications team) with the Council
Richard Gill* IEMA	Energy Projects and Programmes officer with the Council

\*Having produced a proof of evidence to deal with one of the putative reasons for refusal, the Council's concerns were addressed in this regard prior to the Inquiry. In the event, therefore, Mr Gill did not appear to present his evidence.

### **FOR THE APPELLANT:**

Neil Cameron, of Queen's Counsel	Instructed by DWD Property + Planning
He called	
Fred Pilbrow MA(Cantab) AA Dipl, RIBA, NCARB	Founder Partner, Pilbrow and Partners
David Scanlon Dip Arch Tech	Senior Partner, Mountford Pigott LLP
Peter Stewart MA(Cantab), Dip Arch, RIBA	Principal, Peter Stewart Consultancy
Gordon Ingram MRICS	Partner, Gordon Ingram Associates
Nicholas Keynes	Tileyard Studios
John Stephenson FRICS, MCIARB	Senior Director, Grant Mills Wood
Sarah Price BA(Hons), DipTP, MRTPI	Partner, DWD Property + Planning

### **INTERESTED PARTIES**

Sir Anthony Gormley	The Gormley Studio
Cliff Fulet	Solicitor and Tileyard business resident
Christian Henson	Tileyard business resident
Sammy Andrews	Tileyard business resident
Ray Jones	Tileyard business resident

## **DOCUMENTS HANDED UP DURING THE INQUIRY**

- ID1 List of appearances for the appellant
- ID2 Opening submissions on behalf of the appellant (including legal submissions on policies relating to employment land)
- ID3 Opening statement on behalf of the local planning authority
- ID4 Statement of Common Ground
- ID5 Sir Anthony Gormley's statement to the Inquiry
- ID6 Presentation on behalf of the appellant in relation to the round table discussion session on the first main issue
- ID7 Dr Littlefair's presentation (as part of his evidence in chief)
- ID8 Plans for new Egg Nightclub
- ID9 Gordon Ingram's presentation (as part of his evidence in chief)
- ID10 Letter from Mr Henson (Spitfire Audio)
- ID11 Draft planning obligation (final agreed but not completed version)
- ID12 Draft wording for future proofing for connection to District Heating Network
- ID13 CIL Compliance Statement
- ID14 Closing submissions on behalf of the local planning authority
- ID15 Closing submissions on behalf of the appellant

## **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

- ID 16 Completed planning obligation
- ID 17 Appellant's comments in relation to the revised Planning Practice Guidance
- ID 18 Council's comments in relation to the revised Planning Practice Guidance