



## Appeal Decision

Inquiry sitting on 20-23 and 27 April 2021

Site visit made on 10 June 2021

**by Zoë H R Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC**

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

**Decision date: 2 March 2022**

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**Appeal Ref: APP/V5570/W/20/3262199**

**Edward Rudolph House, 69-85 Margery Street, Islington,**

**London WC1X 0JL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (T&CP Act) against a refusal to grant planning permission.
  - The appeal is made by Royal UK Properties III Ltd against the decision of the Council of the London Borough of Islington.
  - The application Ref: P2019/3464/FUL, dated 15 November 2019, was refused by notice dated 3 August 2020.
  - The development proposed is described as 'Demolition of the existing building and erection of a 5-storey office (Use class B1a) building, with a plant enclosure and level access on the roof, and including affordable workspace, cycle parking, waste & recycling storage, a substation, plant, hard & soft landscaping and associated engineering works'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Following the close of the Inquiry and prior to the Decision being issued the National Planning Policy Framework (the Framework) was updated. The main parties were given opportunity to comment upon that change and those comments have been taken into consideration.
3. An Agreement was submitted under section 106 of the T&CP Act (s.106) which provides for affordable housing, affordable workspace, public realm improvements, compliance with the Employment and Training Code and Code for Construction Practice, contributions to mitigate employment, training and accessible transport impacts, Travel Plan and other highway matters, Green Performance Plan and associated measures. It was common ground that this overcame reason for refusal no 4 (measures to mitigate the impact of development).
4. The description above relates to Use Class B1a. The use classes order was changed on 1 September 2020 and the use is now described as Use Class E. As the proposal was submitted to the Council prior to 1 September 2020 it falls to be considered as submitted.
5. As part of the reassessment of documentation during the appeal process a minor error was found in the site area calculations. This reduces the floor area

by 7sqm. This change is not material for the purposes of this decision and therefore it will not be addressed further.

6. Following the close of the Inquiry the appellant drew my attention to appeal APP/A3655/W/21/3276474 in respect of daylight and sunlight. However, it does little other than identify that another Inspector used a two stepped approach.

### **Main Issues**

7. The main issues in this case are:-

(a) Whether or not the proposed development would preserve the settings of nearby listed buildings, with particular regard to Nos. 21-23 Yardley Street and 25-37 and 38-39 Wilmington Square;

(b) Whether or not the proposed development would conserve the setting of the New River Conservation Area;

(c) the effect of the design of the proposed development on the character and appearance of the streetscene;

(d) the effect on the living conditions of the occupiers of neighbouring properties having particular regard to daylight and outlook; and,

(e) whether the benefits of the proposed development, as well as any other relevant matters, would outweigh the harm in determining the planning balance.

### **Reasons**

#### *(a) and (b) Heritage Assets and (c) Streetscene*

8. I shall consider effects upon the streetscene as relevant to the listed buildings, the conservation areas or character and appearance. It is then necessary to also take account of the provisions of the local policies and National Planning Policy Framework (the Framework) in undertaking a balance between any harm and any public benefits.

#### *(a) Listed Buildings*

9. No listed building would be altered. The issue relates their settings, that is the surroundings in which the relevant heritage assets are experienced. There are a number of listed buildings within the vicinity of the site, but it was agreed that those of relevance are as set out in issue (a).
10. Nos 21 and 23 Yardley Street, c.1835-1840, by John Wilson, are a pair of grade II listed buildings which directly adjoin the appeal site. Essentially a mirrored pair, they are each two bays wide and two storeys with a basement, behind railings abutting the pavement. The dwellings are of yellow stock brick with cream painted stucco below the first-floor windows. Ground and first floor windows are of 6 over 6 construction with the first floor having hoodmolds and balconies and the entrance doorways are ornamented. These dwellings, altered during the twentieth century, are of different detail, height and massing to the earlier Wilmington Square properties but nonetheless, are of historic interest and value in their own right as well as forming part of a residential complex. They contribute evidential value for the development of the area and

may be indicative of development now demolished. Their aesthetic value also contributes to the New River Conservation Area within which they are situated and particularly to the area of Wilmington Square.

11. Nos 38 and 39 Wilmington Square, again set behind railings, are also grade II listed buildings and abut 21 and 23 Yardley Street. With the appeal site, these listed buildings form the frontage to the road between Margery Street and Attneave Street. Nos 38 and 39 date from 1819-1841 and were refurbished in 1969. Constructed of yellow stock brick, they also have banded stucco at ground floor and stucco dressings with a parapet obscuring the roof. The first-floor windows also have balconies. They notably differ from the Yardley Street dwellings, being of three floors and a basement, and in that the ground floor windows and entrance take prestige and elegance from a semi-circular arch design.
12. The terrace of Wilmington Square which contains Nos 25-37 (consecutive), is at the north-west side of the square and unlike the other sides immediately adjoins the square's garden. The houses are set behind railings which are listed. By John Wilson for Lord Compton they are also of yellow stock brick with ground floor stucco. Of three storeys with basements (and some attic additions), the articulation and detailing create an elegant block of quality housing intended to be seen as an imposing whole. It includes use of fenestration to establish status and at first floor the metal balconies create a rhythm and harmonising feature.
13. Whilst each has its own architectural and historic interest, taken together they illustrate residential development of the early to mid C19th which is of special interest in terms of the development of London. Further the architectural qualities and detailing of the buildings around Wilmington Square, in both its original arrangement and later reworking, create a pleasing aesthetic with the verdant communal garden, set within railings, at its heart. With its presentation as a well-mannered and elegant square it also demonstrates aspiration, as seen in design detailing, massing and, in part, height. It is these qualities which give the buildings, and the group, their significance or special interest.
14. The setting of these buildings contributes to their special interest in several ways. The immediate inter-relationship of these listed buildings is apparent appearing as designed to reflect each other and giving sense of cohesiveness which reinforces their status as an impressive and architecturally ordered, 'polite' place to reside. The intimate verdant park with its trees at its heart emphasises its attractiveness as a pleasant residential environment within a planned layout; this is not simply aesthetic but also provides a glimpse of the past. Beyond, this the setting extends to adjoining streets and residential areas which reflect the progressive development of a high quality residential environment from the C18th. Where development differs in use it is either of similar date and design quality and contributes to the largely estate led development or is subservient and does not impose upon the setting. As such, setting contributes to the status, cohesiveness and historic character of the buildings wherein vehicles and the background noise of the city are the main modern influences.

*(b) and (c) Character and Appearance including the neighbouring New River Conservation Area and local Streetscene*

15. It was common ground that it is only the New River Conservation Area which includes the Yardley Street and Wilmington Square listed buildings which might be affected. This adjoins, but does not include, the site and encompasses the development on the opposite side of Margery Street to the appeal site. In general terms the effect of the proposed development is, at most, limited to a setting and contextual effect on this heritage asset.
16. The New River Conservation Area is characterised by residential uses, with associated garden and open areas, and facilities such as the shops on Amwell Street and ecclesiastical buildings, developed as relatively well-defined phases of development. However, other uses, or former uses, remain evident such as the New River Head industrial buildings and Sadler's Wells Theatre.
17. The residential development includes estates from the C18th through to the C20th, with the Lloyd Baker, Northampton and Metropolitan Borough of Finsbury estates being prominent; notably the latter is located to the opposite side of Margery Street to the appeal site whilst the Wilmington Square properties are part of the Northampton Fields Spa Estate development. Within each there is a clear palate of materials, an identifiable form and distinct architectural style. The small parks and green spaces contribute to making this an attractive residential environment which has a cohesive character despite the obvious changes between different phases of development, including that between the Northampton Estate to the north-east of the appeal site and the Metropolitan development to the north-west side of Margery Street.
18. More simply within the Conservation Area, Yardley Street takes its character from the residential development of Wilmington Square in terms of its height and palette of pale materials. In contrast Margery Street is of higher density residential development generally in a palette of deeper colours including the red-brick of Bagnigge House. Within this part of the Conservation Area the housing is predominantly in larger blocks, this gives way to residential streets of a lower density. The appeal site is unusual in that it, along with Attneave Street which it adjoins, is excluded from, but almost entirely surrounded by, designated conservation areas. Whilst this area does not share the same characteristics as either conservation area, it is low in height and modest in form and so neither competes with, or intrudes into, their setting. As set out above this is most important in terms of the New River Conservation Area which has boundaries with the two main, public realm facing, elevations of the appeal site.

#### *The Existing Building*

19. Edward Rudolph House (the appeal site), the Attneave Street houses and Charles Simmons House (currently a construction site) form a notable area excluded from the Conservation Area. When seen from Farringdon Road they appear as a disparate group of buildings. Edward Rudolph House itself is, however, fairly innocuous; its low height compared with the majority of the neighbouring development, albeit similar in height to the adjoining 21-23 Yardley Street, along with its simple form reflecting its historic use, and materials, render it rather inconsequential. On the Margery Street frontage, the use of recessed brick and with tile hung 'pilasters' give a vertical emphasis to the otherwise visually squat mass and clearly seek to achieve some sense of verticality as at Charles Rowan House, but without its refinement. Moreover, despite the articulation, there is little to reflect the character and appearance of

the New River Conservation Area, nonetheless it is not dominant. It wraps around the corner onto Yardley Street and it is here, particularly at the junction with the listed building, that some street scene harm is evident. However, with regards to the Conservation Area, taken as a whole, the modest proportions of the building, reflecting its former commercial garage use, and its appearance render it innocuous.

20. The low roof height of the existing building allows views over it from Easton Street and Yardley Street/Wilmington Square, including views of chimneys. Those views contribute to the streetscape and add modest interest to the Conservation Area setting. Similarly, the glimpsed views of trees, when seen from Farringdon Road, indicate the presence of the open space which is important to the residential character of the Conservation Area.
21. The appeal site historically had a motor showroom use which can still be understood by its plan form. That historic evidence contributes to understanding of the development of this area. However, the loss of the building is a matter for historic recording rather than a justification of any positive attribute to be retained on the ground. There is no dispute in this regard, rather it is the effect of the replacement building which is key.

#### *The Proposed Development*

22. Turning to the proposed development, the scheme in its revised form ultimately achieved support through the Design Review process as sought by London Plan 2021 (LP) Policy D4 and officer support.
23. The main outward facing façades consist of three key components: the Yardley Street elevation, the Margery Street elevation and the entrance Cube. The main mass would create 5 levels of office accommodation, one at 'lower ground' and the upper set back from the main façade. The overall height would be below that of Bagnigge House (opposite on Margery Street) which provides 5 levels of accommodation, albeit constructed differently with lower ceiling to floor heights. However, it would exceed the roof height of 21 and 23 Yardley Street and 38-39 Wilmington Square.

#### *Yardley Street*

24. The Yardley Street elevation proposes to maintain the same height and back of pavement positioning as the existing building. The parapet and string course take their cues from the adjacent listed building. Similarly, the rhythm and pattern of fenestration, to include opening lights, is driven by its vertical emphasis which is characteristic of the local area. Whilst the proposed scheme does not reflect the domestic pattern of solid to void in the neighboring listed buildings it reflects the proposed use of the building and, having in mind the existing building form, I am satisfied the main façade on this frontage would represent an improvement for this elevation. This would provide a largely sympathetic relationship to the adjoining listed building without being a pastiche.
25. While this elevation would be generally acceptable in streetscape terms, I have reservations about the materials, the roof top projection, albeit set back from the parapet, and the relationship of this façade as it turns the corner to the entrance Cube feature; it is here that the Cube projection and its intersection with the Yardley Street elevation becomes more awkward. Indeed, at this

point it would make the Yardley Street elevation appear as a façade rather than an integral part of the building; this is a matter to consider in respect of the Cube entrance.

### *Margery Street*

26. The Margery Street elevation would result in significant change to the appearance of the streetscene. The proposed building would be clearly linear with a horizontal emphasis to the mass reinforced by the structural form and with external acknowledgement of the floor levels. The visual heaviness of the rusticated stone base for the lower ground level would change in height to reflect the site topography and a defined parapet with a weighty cornice would terminate the façade with a recessed top floor and, set further back still, an additional roof plant enclosure.
27. Vertical emphasis would be created by the well-defined bay and mullion arrangement, using a pilaster style arrangement. The expression between floor levels when compared with traditional building form would be less satisfactory in terms of the expression of vertical hierarchy. However, I do not consider this to be so significant. Despite the 5-bay sub-division, created in a limited way by modest breaks in the façade treatment, the proposed elevation would have a monotonous appearance. This combined with the bulk and massing would create a dominating building that would have little regard to the other buildings within the streetscene, nor would it reflect the largely residential character and welcoming appearance of the area. Whilst I appreciate the functional choice for the siting of the proposed entrance at the corner of Yardley Street and Margery Street, due to land levels, it is such that even this does not alleviate the relentless repetition.
28. In the context of the corner buildings on Farringdon Road, and the back-drop which will be created by the Mount Pleasant development, the highest point of the proposed building would be reasonably well-absorbed into the cityscape when viewed from the north. Moreover, at this point the existing uncharacteristic road frontage gap would be closed making better use of the site and reinforcing the street definition. Thus, when seen in perspective from the top of Margery Street it would naturally fill the gap. However, when viewed from Farringdon Road it would not be so successfully integrated because, seen from Calthorpe Street it would appear bulky and monotonous. Moreover, it would sit uncomfortably with the rather domestic and visually busy corner property which appears to have been designed to minimize its bulk and presence through its use of materials and massing, including its double stacked dormers. Although this is not a building which is characteristic of the locality, and so not one from which to take cues, the juxtaposition would also be jarring.
29. Turning at this point to materiality, not simply materials, I have no doubt that the proposed brick panel system could be of good quality. I also observed its use on sites remote from the development. The striking point though is the materials and their use, as whilst used in a sympathetic manner on the Yardley Street elevation they would be used to different effect on Margery Street. Moreover, that streetscape itself is significantly different from Yardley Street. Thus, in this location the materiality, which is integral to the building design and so not a matter which could be dealt with by conditions in terms for

instance of the external facing materials, would fail to respect the character of the streetscene.

30. In all, the design of this elevation whilst having some positives, fails to take the opportunities to use this site to create a better and more beautiful building that relates well to its context. Rather, it would replace a small building which is neutral or marginally harmful (on the Yardley Street frontage) with a larger building, in height and massing terms, that is uncharacteristic for this location and so would be a jarring and visually intrusive element within the Margery Street streetscene.

#### *The Cube*

31. The Cube, situated at the corner of the Margery Street and Yardley Street junction, is in essence a key feature of the composition which is situated above the main entrance. It is designed to give focus and in terms of the building alone is successful in doing this. However, the Cube, as set out above, creates a lack of solidity and façade like appearance to the Yardley Street elevation. Moreover, the floor to ceiling glazed element over two stories, whether or not the lighting within can be successfully controlled, appears as a business type use. Whilst form following function is generally desirable (and encouraged by London LP Policy D3), such an obviously commercial appearance would be at odds with the largely domestic character of the area that arises once entering Margery Street. The massing of this element, despite the set-back, combined with the massing of the main block and its fenestration would create a dominating presence in the streetscene which would be a harmful imposition.
32. Furthermore, the detailing of the Cube design, by virtue of its precise design in relation to the entrance, would create a somewhat squashed entrance floor which, being recessed, would fail to be a welcoming feature within the streetscene; rather the two floors above would be the dominant visual focus. In this sense it would fail to enhance the locality and would create an unacceptable and incongruous feature that would fail to respect or enhance the existing streetscene.

#### *Conclusions on the effect of the Proposed Development on Settings and on the Streetscene*

33. Considering the development as a whole and looking at each design feature in detail, as to some extent has happened through the design process, it seems to me that the unity has been lost. Critical to my concerns are the massing and bulk of the building. Undeniably it would be a distinctive building. However, as a whole it would be neither locally characteristic, in a way that might be sympathetic to its surroundings, nor would it reflect the importance of this site at a transitional point and within a sensitive area at the very boundary of the Conservation Area.
34. The proposed development would alter the back-drop to the New River Conservation Area being seen from within it, notably from Margery Street, Yardley Street and to a lesser extent Wilmington Square, though particularly in winter months when the trees are not in leaf. This would cause harm to the setting of the New River Conservation Area by intruding on its significance as an area of predominantly high-quality residential development, as I have described above. Whilst outside the Conservation Area, I conclude that the proposed development would nevertheless fail to conserve its setting and thus

- significance, contrary to the expectations of paragraph 200 of the Framework. However, this would be at the lower end of the spectrum of less than substantial harm as identified in paragraph 202 of the Framework.
35. Whilst having a beneficial impact in respect of the immediate section abutting the listed buildings on Yardley Street, the proposed development would also have an adverse effect on the setting of those listed buildings as well as those on Wilmington Square. This is because of the massing, height and design of the proposed building which, when combined, would detract from the significance I have found in the predominantly residential finely detailed characteristics of the existing buildings and the contribution their setting makes to that significance. This contrasts with the existing situation, where the present commercial building is subsumed within the prevailing domestic character. Such an outcome would conflict with the expectations of section 66 of the Act that the settings of such buildings be preserved. For the same reasons the proposals would fail to meet the expectations of paragraph 200 of the Framework, which anticipates great weight being given to the preservation of designated heritage assets and their settings.
36. The harm identified is such that the proposed development would fail to accord with Islington Local Plan: Development Management Policies 2013 (ILPDM) Policy DM2.3 insofar as it seeks high quality contextual design that conserves or enhances the significance of conservation areas and seeks good quality design within the setting of listed buildings. However, each policy carries the proviso that this requirement exists unless there is clear and convincing justification. Thus, it is necessary to consider whether any clear and convincing justification exists to outweigh the harm identified, a matter I shall leave until the heritage and planning balances.
37. There would also be conflict with Islington's Core Strategy 2011 (ICS) Policy CS9 which seeks to protect and enhance Islington's built and historic environment. Whilst some factors from this policy are addressed, for instance reinforcing street pattern, I find that the aim for new buildings to be sympathetic in scale and appearance and to be complementary to the local identity would be missed.
38. I have clearly identified why there would be harm to the setting of Listed buildings and the Conservation Area. Moreover, for these reasons there would be localised harm to the immediate streetscenes within which the proposed development would be seen from the public realm. In terms of the broader streetscene character I also find conflict with LP and London Plan March 2021 (LP) Policies D3 and D4, ILPDM Policy DM2.1 which, taken together, whilst aiming to avoid pastiche and to maximise site use also seek high quality design that is appropriate to its context, reinforces and complements local distinctiveness and responds positively to the existing streetscape, wider context and historic environment.
39. It is also necessary, given that the harm identified amounts 'to less than substantial harm' as described in the Framework to both the listed buildings and Conservation Areas cited, that it should be weighed against the public benefits of the proposal. This is a matter to which I shall return.

### *Living Conditions*



40. The key ILPDM Policy is DM2.1 which requires that new development provides a good level of amenity including in respect of daylight, and outlook, including protection from over-dominance and undue enclosure, so that the new development does not unduly prejudice the satisfactory operation of adjoining land.
41. The relevant LP Policy is D6 which requires the design of new development to provide sufficient daylight to surrounding housing that is appropriate for its context.
42. Neither is prescriptive in how to measure what is or is not acceptable but there are recognised tools to do so. Both parties agree that the Building Research Establishment (BRE) Guide to Good Practice (BRE Report) is appropriate to test the scheme and creates a starting point.
43. It is not disputed that the appeal proposal would result in loss of daylight which exceeds that which the BRE Report recommends.
44. A total of 109 windows within Charles Simmons House, 160 Farringdon Road, Bagnigge House, St Anns House, 17-23 Attneave Street and Sherston Court would have a loss of vertical sky component (VSC)<sup>1</sup> in excess of 20%, some 54 rooms would have a loss of daylight distribution outside the guidelines. These are not simply statistics but rather they reflect a diminution of living conditions for the occupiers of those properties affected. This is not a matter to be taken lightly – there would be material harm to living conditions in terms of daylight.
45. The BRE Report accepts its values are advisory and a different target may be used. In fact, it sets out the example of maintaining a historic streetscene pattern<sup>2</sup> being justification for a reduced VSC down to 18%. This reduction in VSC to any percentage is just one factor; it does not identify how many rooms it would relate to, their use, size or other rooms in the dwelling and so forth. It seems to me full details of the scheme and its effects have to come into play.
46. I have no doubt either that the target ratio of 27% VSC has been under scrutiny for some time. There are numerous planning appeal decisions particularly those post-dating the case known as Rainbird<sup>3</sup> which dealt with the importance of being specific in acknowledging the impacts of development on daylight and sunlight. In this respect I have considered the key cases and appeals cited by the appellant<sup>4</sup> where lower VSC values were accepted. But in each case the impacts were considered on their own merits.
47. There is no clear guidance or formal alternative targets, including from within Islington's Local Plan Policies; rather the question is having regard to the policy context would sufficient light be maintained for existing occupiers when balanced against the objectives of promoting employment growth in this locality and particularly seeking it on this existing employment site within the CAZ (Central Activities Zone).

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<sup>1</sup> The BRE Report glossary identifies this as 'Ratio of that part of illuminance, at a point on a given vertical plane, that is received directly from a CIE standard overcast sky, to illuminance on a horizontal plane due to an unobstructed hemisphere of this sky. Usually the 'given vertical plane' is outside of a window wall. The VSC does not include reflected light, either from the ground or from other buildings. (A standard CIE sky is an overcast sky)

<sup>2</sup> Appendix F of the BRE Report

<sup>3</sup> Melanie Rainbird and The Council of the London Borough of Tower Hamlets [2018] EWHC 657 (Admin) CD3.12

<sup>4</sup> See Whitechapel (APP/E5900/W/17/3171437), Tileyard Road, Biscuit Factory (Planning application 17/AP/4088), Burgess Business Park (APP/A5840/W/19/3225548).

48. It is therefore necessary to be clear about what the harm entails. Simply put, a reduction of light in a bathroom is not the same in terms of impacts upon living conditions as a reduction in light within a living room would be.
49. Appendix I of the BRE Report, albeit it aimed at Environmental Impact Assessment (EIA), indicates how to quantify whether harmful loss of light should be viewed as a minor, moderate or major adverse impact. Whilst this is not EIA development, I consider that this structure provides a pragmatic starting point even here where this site is clearly in a high-density urban area which might be contrasted with a green field development scheme, and I note that there is nothing in the text which suggests it should be discounted when assessing EIA schemes in such locations.
50. Based on Appendix I, that for 9 dwellings, in the flats in Bagnigge and St Anns House and 17, 18 and 19 Attneave Street there would be a major adverse effect. This is because the affected rooms include the living room which is the principal room in the dwelling; the loss of light exceeds the BRE guideline for VSC and No Sky Line (NSL)<sup>5</sup> to a significant extent; and, in each case these are single aspect rooms so that there is no secondary light. That is not to say the loss of light is not material elsewhere rather, this highlights where it would be most significant. Having visited some properties affected I have no doubt that impacts upon daylight within the living rooms would significantly harm living conditions for the occupiers of the properties most seriously affected and there would be material harm in other properties too.
51. In addition to simply looking at the daylight issue it is necessary to consider the impact upon outlook. In this respect the most directly impacted properties would not be the same as those which would be harmed by the reduction in daylight. In particular 20-23 Attneave Street have small gardens between the dwellings and appeal site building of some 4.8 metres in depth. They are already enclosed by a tall wall of some 3.5 metres beyond which the existing building sits but is no more dominating than the wall itself for users of the gardens.
52. Whilst it is argued that these gardens are already enclosed and the additional development would not materially worsen it but would improve outlook through design and massing I do not share that view. The massing of the proposed building is stepped and whilst this means there is setting back of the existing lower sections of the building, further from the boundary than existing building, the proposed development is significantly greater in height, being five levels rather than three, at the set-back level<sup>6</sup>.
53. As such, those within the small rear gardens at 20-23 Attneave Street would perceive and be affected by a significant impact upon their outlook, because the set-back would not compensate for the additional height. I appreciate that the orientation is such that it would cause negligible change to sunlight here and that materials would represent an improvement on the existing building however this does negate the visual impact that such a tall building would have. Moreover, that additional height would impose itself as a large mass when seen more generally from the windows facing this direction (as before 6.14) and so would appear more dominating than the existing relatively low

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<sup>5</sup> The BRE Report explains

<sup>6</sup> This is illustrated within the Appellants' Proof of Evidence for Architecture at 4.6 'Preserving Residential Amenity' and 6.11 and 6.22-23 'Improvements to Rear Outlook'.

building over which views can be seen out to the chimneys on the Margery Street mansion blocks. Whilst privacy would be maintained by use of obscured glazing, including glazed screens to the terrace this provides a solution to privacy alone.

54. I have no doubt that the proposed development because of its massing and height would harm the living conditions of many neighbours, as identified, in term of daylight and would significantly harm the living conditions of 9 dwellings, in the flats in Bagnigge and St Anns House, and 17,18 and 19 Attneave Street in particular. Moreover, there would be a harmful impact on the outlook for occupiers of neighbouring properties but in particular this would be materially harmful for the occupiers of 20-23 Attneave Street, and for 17-19 Attneave Street where the combination of loss of daylight and impacts on outlook would be particularly poor. As a consequence, I find that the proposed development would fail to accord with ILPDM Policy DM2.1 in so far as the proposed development would not respect the amenities of existing properties for the reasons cited.
55. I accept that the BRE standards are simply guidelines and that the site context in this case is such that departing from those national guidelines, which apply anywhere within the country, is appropriate in order to maximise the use of the land in this location in the interests of national benefits it would accrue in terms of the economy.
56. I agree that some degree of flexibility in interpretation should be applied given need for office space in the CAZ and its accessible is a location. However, this does not mean living conditions of existing occupiers should be disregarded. In this case I conclude that the very real harms identified result in a failure is also a failure to comply with LP Policy D6 because the design of new development would not provide sufficient daylight to surrounding housing that is appropriate even given its context.

#### *Benefits of the Proposed Development*

57. The appeal site is situated within the Central Activities Zone (CAZ) for London. This is a location described as the 'vibrant heart and globally-iconic core of London' and it was not disputed that it accommodates about a third of London's jobs and accounts for some 10% of the entire UK's output.<sup>7</sup> It is located in a highly sustainable location with exceptionally good transport links which provide 'hyper-connectivity'. Indeed, there is no doubt that active regeneration of the site in principle is a significant benefit.
58. The recently adopted LP seeks at Policy SD5 makes it clear that residential development, despite being acutely needed, should not compromise the strategic functions of the CAZ. I am also aware of the Secretary of State's decisions<sup>8</sup> wherein the weight given to housing is significant and therefore it is logical to assume weight to employment uses in the CAZ should be at least as significant.
59. ICS Policy CS 13 'Employment Spaces' seeks to encourage such development in the CAZ and avoid loss of such uses (this site being currently occupied by an office use). It also seeks that new floorspace should be flexible to meet future business needs and require a range of unit types and sizes, including those for

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<sup>7</sup> Para 2.4.1

<sup>8</sup> APP/G6100/V/19/3226914 and APP/F5540/V/19/3226900

- Small and Micro Enterprises (SME). The policy requirements for affordable workspace provision on site would be double the amount sought in policy (10% against a 5% requirement) and would include shared access to facilities used by the proposed 'market' office floorspace lobby. This would undoubtedly also be a significant benefit of the proposal.
60. In terms of the ILPDM policies, Policy DM5.1 identifies that within Employment Growth Areas, as is the case here, the maximum amount of business floorspace reasonably possible should be achieved on the site whilst complying with other relevant planning considerations. Whilst this might justify stepping aside from the BRE standard which is a national standard to apply in all locations, it is the case that this does not mean harmful development should be considered acceptable. Rather it needs to be considered on its merits.
61. The emerging Local Plan is at proposed modifications stage and is of limited weight. However, particularly given the limited opportunities for such development, it is clear that the intention is to make the best use of sites.
62. Any scheme would be expected to be of high quality design, however, I have identified issues with respect of the design which I consider to be harmful to the settings of heritage assets. Although ground floor visual permeability, active frontages, and removal of the existing spaces that are available for loitering and anti-social behaviour are positive they do not outweigh the harm identified. This similarly applies to the benefits of removal of some privacy issues on Attneave street where the visual harms outweigh the marginal privacy benefit.
63. In terms of other benefits which arise from the s.106 Agreement, these are mostly mitigation or could not attract weight. Thus, whilst the proposed development would be car free, with cycle and Motability scooter parking, with a £10,000 sum towards on-street accessible blue-badge spaces would be expected in such an accessible location and would be anticipated in any scheme likely to gain support on the site thus this is neutral in the planning balance.
64. The financial contribution of £85,985 towards enhanced public realm at the junction on Margery Street and Yardley street, including street trees and enhanced surface materials would be a benefit but are matters that might ordinarily be expected and if not necessary would not be matters I should take into account. That similarly applies to the affordable housing contribution of £487,800 proposed.
65. The high BREEAM 'excellent' rating would be positive but the financial contribution of £128,690.52 towards carbon offsetting, would again either be a justified requirement or not a matter to be taken into account. Green roof use would be a benefit but a modest one.
66. The benefits of delivery of two work placements during the construction phase of the development, lasting a minimum of 26 weeks and a financial contribution of £28,617 towards employment and training for local residents would be benefits but again modest in my view.

#### *Heritage Balance*

67. As set out above I have concluded that there would be less than substantial harm to the setting of Nos 21-23 Yardley Street and 38-39 Wilmington Square. There would also be less than substantial harm to the setting of the New River

Conservation Area. Paragraph 202 of the Framework requires that I consider whether there are any public benefits which would outweigh the harm identified. In this case whilst I have significant concerns about the proposed design in terms of the settings of the heritage assets, this alone is not sufficient to outweigh the substantial economic benefits which would accrue from the proposed development even when according those harms considerable weight and importance.

### *Planning Balance*

68. Although I have not found that the heritage harms are sufficient to outweigh the benefits on their own, they still form part of the planning balance. When the harms to the streetscene and to the living conditions of the nearby occupiers are added to the planning balance I find that the cumulative weight of harms does outweigh the benefits which would arise from the scheme.

### *Other Matters*

69. There is no doubt that the pandemic has had a significant impact upon the people and economy. In this context I am particularly mindful of the need to promote economic development. Equally, as others have pointed out, the pandemic has meant people have been in lockdown, where the living conditions they have are significant to well-being. These are difficult to quantify and pull in different directions. However, this decision needs to be made on the basis of the extant policies before me, which is what I have done.

70. The appellants are clear that the proposed scheme is viable but only just such that further changes could not be readily accommodated particularly to floorspace. They also note that this is the only scheme proposed, it is not the case that there is an alternative. That is of course true. Thus, the issue is simply the acceptability or otherwise of the scheme based on the evidence before me with due weight to the fact it offers an active use of the site for development of a type known to be acceptable in principle. It is on that basis which I have assessed the scheme.

### *Conclusions*

71. For the reasons set out above and having had regard to all matters raised, including Officer support at the committee stage, I conclude that the appeal should fail.

*ZHR Hill*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Brown QC	Instructed by Penny Parkinson, Principal Planning Lawyer London Borough of Islington
He called:	
Ms Emma Lawrence	Heritage & Design Witness
Dr Paul Littlefair	Daylight Witness
Mr Stephan Kukula	Planning Witness
Mr Simon Greenwood	Planning Major Developments (Conditions Session only)

### FOR THE APPELLANT:

Mr Russell Harris QC	Instructed by ROK Planning
He called:	
Mr Lukasz Platkowski	Architect
Mr Gordan Ingram	Daylight Witness
Mr Laurie Handcock	Heritage & Design Witness
Mr Will Thompson	Planning Witness

### INTERESTED PERSONS:

Mr P Thornton	Amwell Society
Mr M Allen	Local Resident
Ms G Sulkes	Mount Pleasant Neighbourhood Forum
Ms B Unwin	Local Resident
Mr F Smit	Local Resident

## DOCUMENTS

INQ 1	Schedule of Appearances
INQ 2	Paul Brown QC Opening Speech for the Council
INQ 3	Russell Harris QC Opening Speech for the Appellant
INQ 4	Statement of Gail Sulkes for Mount Pleasant Neighbourhood Forum
INQ 5	GIA rebuttal (reissued - submitted on 13 and 14 April)
INQ 6	Dr P Littlefair Daylight presentation
INQ 7	GIA Daylight Presentation
INQ 8	Appendix 1 – List of Conditions issued to Liz Humphrey by Stefan Kukula
INQ 9	Engrossed version of s.106
INQ 10	CIL Compliance Statement
INQ 11	Paul Brown QC Closing Speech for the Council
INQ 12	Russell Harris QC Closing Speech for the Appellant
Post Inquiry	
INQ 13	Engrossed version of s.106 and summary document
INQ 14	Completed s.106
INQ 15	Itinerary for Site Visit

INQ 16            Post Framework Consultation Documentation  
INQ 17            APP/A3655/W/21/3276474

Prior to the Inquiry (19 April 2021)

The Appellant's Architecture Presentation prepared by Gensler was submitted to the Planning Inspectorate and was used during the Inquiry.

**PLANS**

A     The Application Plans