



Planning Department
LB Ealing
Ealing Town Hall
New Broadway, Ealing W5 2BY
By email
2022

November 12th 2022

Dear Sir/Madam

Land Between Park View And Cloister Road Western Avenue Acton London W3 6XZ PP-11535764

We wish to object to this application, on the grounds set out below. The Old Oak Neighbourhood Forum is a body designated by the OPDC in 2018, with 150 members in the area of East Acton, North Acton and North Hammersmith.

We took part in pre-application sessions with Barratts London, and fed back our views on the planning context for the site. These earlier responses have been ignored by the applicants.

We support many of the views submitted in the 23 objections from neighbouring residents as published on the LBE planning register (at time of writing).

Our ground for objection is that these proposals fail to meet the policy requirements of 2021 London Plan Policy D9 on Tall Buildings, when read in conjunction with Ealing's 2013 Core Strategy 2014 Development Sites DPD.

The application is *for the erection of 6 residential buildings ranging in height from ground +1 to ground + 16 floors to provide a total of 300 new homes (use class C3) (affordable and private) and associated works.*

We have read the Planning Statement from Newsteer submitted by with the application. This addresses the issues of London plan D9 as follows:

7.26 Policy D9 of the London Plan (2021) and Ealing's new tall buildings guidance requires tall buildings to only be developed in locations that are identified as suitable in Development Plans. Ealing defines tall buildings as being anything over 6 storeys or 18m measured from ground to floor level of the uppermost storey.

7.27 Whilst the Site has been allocated for development, the Site has not been allocated for a tall building and is not located within a tall building location. As previously set out, the 'Level 1 – In Principle' meeting was primarily to discuss this matter and the application of Policy D9. The GLA were very clear in setting out that this policy should not be treated as a gateway policy and tall buildings may still be considered acceptable where it can be demonstrated that the development has no adverse visual, functional, environmental, or cumulative impacts.

We are aware the GLA Planning Decisions Unit (PDU) has applied its own interpretation of London Plan Policy D9 since the 2021 London Plan came into force in March 2021. We are not alone in taking the view that this present GLA interpretation will not in future be upheld in all cases that are brought before the courts.

The GLA argument that Part B of London Plan D9 should not be applied as a 'gateway' policy relies on the Hillingdon judgment by Mrs Justice Lang. We do not believe that this legal case will prove to be the last word on this subject.

We ask the Ealing Council Planning Committee to take the following into account in determining this application.

Ground 1 the contention by the applicants that the GLA and LBE have found the building of a 16 storeys at this location to be acceptable.

1. The applicants, GLA and LBE officers all agree that a 17 floor residential building is a 'tall building', as defined in the Ealing Core Strategy. Hence this application is subject to 2021 London Plan Policy D9 on Tall Buildings.
2. Part B of London Plan Policy D9 reads as below:
 - 1) *Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, subject to meeting the other requirements of the Plan. This process should include engagement with neighbouring boroughs that may be affected by tall building developments in identified locations.*
 - 2) *Any such locations and appropriate tall building heights should be identified on maps in Development Plans.*
 - 3) *Tall buildings should **only** be developed in locations that are identified as suitable in Development Plans (our emphasis).*
3. The wording of London Plan Policy part B (3) is very clear. It does not say that tall buildings should 'generally' or 'usually' be developed in locations identified as suitable in Development Plans. It says 'only'.
4. In her judgment in the Hillingdon case, Mrs Justice Lang at her paragraph 79 stated *All parties contended that the meaning of Policy D9 was clear and unambiguous, despite the differences in their interpretation of it. In those circumstances, applying the principles set out above, I consider that I ought not to have regard to the letter from the Secretary of State to the Defendant dated 10 December 2020 (paragraph 46 above) as it is not a public document which members of the public could reasonably be expected to access when reading Policy D9.*
5. We consider that Mrs Justice Lang was wrong in deciding not to have regard to the letter from the Secretary of State of 10th December 2020. The widespread construction of tall buildings in London has been a major public concern the second phase of use of this building typology emerged in the 1990s. Many Londoners concerned with this issue will have read the Secretary of State's letter to the Mayor, issuing a rare 'Direction' to strengthen the wording of Policy D9 in the precise terms as then adopted and in force since March 2021. Our own members are well aware of these events.

6. The Secretary of State's letter makes clear his intentions in issuing a Direction to the Mayor on London Plan D9. The relevant paragraph reads *Second, I am issuing a new Direction regarding Policy D9 (Tall Buildings). There is clearly a place for tall buildings in London, especially where there are existing clusters. However, there are some areas where tall buildings don't reflect the local character. I believe boroughs should be empowered to choose where tall buildings are built within their communities. Your draft policy goes some way to dealing with this concern. In my view we should go further and I am issuing a further Direction to strengthen the policy to ensure such developments are only brought forward in appropriate and clearly defined areas, as determined by the boroughs whilst still enabling gentle density across London. I am sure that you share my concern about such proposals and will make the required change which will ensure tall buildings do not come forward in inappropriate areas of the capital.* (our emphasis).
7. This seems to us to be a clear Government view, and one that corresponds with the objectors to this application

LBE Development plan policies for the land at Park View And Cloister Road Western Avenue

8. In pre-application consultations undertaken by Barratts London as the developers, much was made of the fact that tall buildings have emerged in recent years at the North Acton Cluster, North of the A40. Local residents were told that the spread of this cluster was an inevitability and that this scheme would provide a 'transition'.
9. As we and others have pointed out, this site does not lie within the North Acton 'Place' as defined in the 2022 OPDC Local Plan. There is nothing in either the OPDC Local Plan nor the Ealing Development Plan that suggests that tall building should be allowed on the southern side of the A40 to act as a 'transition' or 'buffer' to the extreme building heights at North Acton (as is suggested in paragraph 7 of the Newsteer planning statement).
10. The fact that a scheme with buildings of 3-9 storeys was granted consent on the site back in 2018 we consider to be immaterial to the present application. This decision predates the 2021 London Plan. Consents for tall buildings at North Acton (as listed at 7.29 of the Planning Statement) are similarly of limited relevance, as this is different location (OISI Park Royal Southern Gateway) is identified in the LBE Development Sites DPD as being *in principle an appropriate location for tall buildings*,
11. The site that is the subject of this application PP-11535764 lies at a location designated in the LBE 2013 Development Sites DPD as *OIS3 Western Avenue Sites South of Park View to North of Railway*. The Design Principles for this location read as below: *Design Principles: New development must include a significant landscaped zone to Western Avenue that makes a clear contribution to achieving the objectives of the Green Corridor. The scale, massing and height of buildings must respect the amenity of adjoining properties). An element of residential to the western boundary of the northernmost site may be acceptable, subject to a satisfactory level of amenity being achieved, successful integration with the surrounding suburban area and avoidance of on-site conflicts between uses (our emphasis).*
12. We have been told by the applicants that LBE and GLA planning officers are 'comfortable' with the proposed heights and massing of these proposals from Barratts. We struggle to

see how this can be so, if officers are applying London Plan and LB Ealing Policies with due care and objectivity. **This is not a case (such as covered by the Hillingdon judgment) where the local plans was largely silent in the 'suitability' of the location. In this case the wording in Site Designation OIS3 says that *The scale, massing and height of buildings must respect the amenity of adjoining properties.* These are suburban low rise houses, as multiple objectors have made clear.**

13. In the Hillingdon case, the Local Plan and related Character Studies had identified Hayes and Uxbridge town centres as "appropriate for tall buildings". The Borough Council had not identified any other such area (see paragraph 17 of the judgment). So this planning context is not comparable.
14. Reliance on the Hillingdon judgment, which related to a scheme with buildings up to 11 storeys at a location without site-specific policies on heights, seems a high risk policy to for the Council's Planning Committee to follow. The parallels with the Hillingdon case are limited. In the case of application PP-11535764, we question on what basis GLA and LBE officers have advised that they are 'comfortable' on the issue of building height?
15. We are not finding copies of a GLA Stage 1 report, or of any pre-application advice, on the LBE online planning register.

LBE January 2022 Guidance on Tall Buildings

16. This document features prominently on the LBE website under the banner headline *New guidance was issued today by the London Borough of Ealing to help stop the spread of speculative developments featuring tall buildings.* Supporting text states: *Ealing adopted a formal position statement on tall buildings as an Independent Cabinet Member Decision (ICMD) on 11 January 2022, this is implemented as planning guidance by the LPPG. It is considered important to adopt this guidance in order to ensure clarity now that the 2021 London Plan has been adopted with the Secretary of State's directed changes, and in the interim before the development of the new Local Plan.*
17. The material weight that can be applied to this guidance is arguable. It is less than that for a Supplementary Planning Document which would have been consulted on. Nevertheless this January 2022 public statement demonstrates a political commitment which recognises the Secretary of State's intervention on London Plan policy towards Tall Buildings, as covered above.
18. The LBE website gives further detail of the implications of this guidance, as below:
 - *Tall buildings in Ealing should be plan-led and speculative schemes will generally be resisted.*
 - *Ealing's adopted Core Strategy directs tall buildings to specified sites within Acton, Ealing and Southall town centres, gateways to Park Royal and identified development sites only.*
 - *The locations of tall buildings need to be tested against the sensitivity indicators identified in the council's evidence base as set out below.*
19. This application clearly fails to meet the criterion of being 'plan-led' in respect of the LBE 2012/3 Development Plan. It is a speculative scheme. It is not on a site deemed as appropriate for tall buildings – quite the reverse. It appears that the only one of the three criteria published by the Council which will be applied by planning officers is the 'testing of

sensitivity indicators'. These indicators will no doubt relate to the criteria set out in Part C of London Plan Policy D9. These can be interpreted subjectively.

Conclusions

This application is one of a number in West London on which the wording of London Plan D9 is under scrutiny, including the interpretation by Mrs Justice Lang that this is 'not a gateway clause'. There have been one or two relevant decisions by Planning Inspectors, and the public inquiry held on an application on the site of the former Edith Summerskill House is one of these.

For the time being the Hillingdon judgment is being much relied on by developers. To the surprise of many Londoners, the Mayor of London and the GLA Planning Decisions Unit are taking a similar line. GLA advice seems to be that assessment under D9 Part C criteria can be used, along with 'planning balance', as a basis for granting consent to tall building proposals on sites which have *not* been identified as suitable in local plans. In part, this is a pragmatic approach to the reality that not all currently adopted London local plans have carried out a thorough review of sites and their 'suitability'.

But the situation on application PP-11535764 is different. The 2013 LBE Development Sites DPD is a key development plan document. It identifies and maps 40 sites across the Borough and sets out 'site context' and 'design principles' for each on any future development, including where relevant some comments on heights, massing, and relationship to surrounding buildings.

Were planning officers to argue that, directly contrary to the content of page 104 of the Development Sites DPD, that a 17 storey building is acceptable at this location, this would in our view expose the Council to the risk of legal challenge.

Such predictions are often made by community groups opposing specific applications. In this case, we believe that the risk is heightened by the fact that London Plan Policy D9 has as yet been tested only once in the Courts. And by a judge who chose to set aside the content of the letter of December 10th 2020 from the Secretary of State to the Mayor of London, setting out his reasoning for the Direction.

We think that his wording should be taken into account. It reads: *In my view we should go further and I am issuing a further Direction to strengthen the policy to ensure such developments are only brought forward in appropriate and clearly defined areas, as determined by the boroughs whilst still enabling gentle density across London.* 'Only' is a word included in Part B of the modified Policy D9. It is not a word that Secretaries of State and civil servants use lightly when issuing planning rules.

If Ealing Council had by now updated its Local Plan and adopted a new version, with different site allocations and related policies, matters might be different. But this has not happened. The first stage of Regulation 18 consultation on a new local plan has yet to get underway. Meanwhile the legal interpretation of London plan D9 is of interest to many Londoners and a case with good potential would attract crowd-funding contributions.

In a period of very unusual political turmoil, Secretaries of State and Ministers for Planning and Housing at DLUHC have come and gone. The one constant has been that Section 38(6) of the Planning and Compulsory Purchase Act ("PCPA 2004") provides:
"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

We await with interest sight of a committee report on this application, and will comment further prior to a committee decision if the need arises.

Henry Peterson
Adviser to the Old Oak Neighbourhood Forum