



Planning Committee

Wednesday 7 February 2024 at 6.00 pm

Conference Hall - Brent Civic Centre, Engineers Way,
Wembley, HA9 0FJ

Please note this will be held as a physical meeting which all Committee members will be required to attend in person.

The meeting will be open for the press and public to attend or alternatively can be followed via the live webcast. The link to follow proceedings via the live webcast is available [HERE](#)

Membership:

Members

Councillors:

Kelcher (Chair)
S Butt (Vice-Chair)
Akram
Begum
Dixon
Mahmood
Maurice
Rajan-Seelan

Substitute Members

Councillors:

Ahmed, Chappell, Chohan, Collymore, Dar,
Ethapemi and Kabir

Councillors
Kansagra and J.Patel

For further information contact: Hannah O'Brien, Senior Governance Officer
hannah.O'brien@brent.gov.uk; 020 8937 1339

For electronic copies of minutes and agendas please visit:
[Council meetings and decision making | Brent Council](#)

Members' virtual briefing will take place at 12.00 noon.

Notes for Members - Declarations of Interest:

If a Member is aware they have a Disclosable Pecuniary Interest* in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent and must leave the room without participating in discussion of the item.

If a Member is aware they have a Personal Interest** in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent.

If the Personal Interest is also significant enough to affect your judgement of a public interest and either it affects a financial position or relates to a regulatory matter then after disclosing the interest to the meeting the Member must leave the room without participating in discussion of the item, except that they may first make representations, answer questions or give evidence relating to the matter, provided that the public are allowed to attend the meeting for those purposes.

***Disclosable Pecuniary Interests:**

- (a) **Employment, etc.** - Any employment, office, trade, profession or vocation carried on for profit gain.
- (b) **Sponsorship** - Any payment or other financial benefit in respect of expenses in carrying out duties as a member, or of election; including from a trade union.
- (c) **Contracts** - Any current contract for goods, services or works, between the Councillors or their partner (or a body in which one has a beneficial interest) and the council.
- (d) **Land** - Any beneficial interest in land which is within the council's area.
- (e) **Licences**- Any licence to occupy land in the council's area for a month or longer.
- (f) **Corporate tenancies** - Any tenancy between the council and a body in which the Councillor or their partner have a beneficial interest.
- (g) **Securities** - Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

****Personal Interests:**

The business relates to or affects:

(a) Anybody of which you are a member or in a position of general control or management, and:

- To which you are appointed by the council;
- which exercises functions of a public nature;
- which is directed is to charitable purposes;
- whose principal purposes include the influence of public opinion or policy (including a political party or trade union).

(b) The interests a of a person from whom you have received gifts or hospitality of at least £50 as a member in the municipal year;

or

A decision in relation to that business might reasonably be regarded as affecting the well-being or financial position of:

- You yourself;
- a member of your family or your friend or any person with whom you have a close association or any person or body who is the subject of a registrable personal interest.

Agenda

Introductions, if appropriate.

ITEM	WARD	PAGE
1. Apologies for Absence and Clarification of Alternate Members		
2. Declarations of interests Members are invited to declare at this stage of the meeting, the nature and existence of any relevant disclosable pecuniary or personal interests in the items on this agenda and to specify the item(s) to which they relate.		
3. Minutes of the previous meeting To approve the minutes of the previous meeting held on Wednesday 17 January 2024 as a correct record of the meeting.		1 - 8
APPLICATIONS FOR DECISION		
4. Deed of Variation - Fairgate House, 390-400 & 402-408, High Road, Wembley, HA9	Wembley Hill	13 - 20
5. Any Other Urgent Business Notice of items to be raised under this heading must be given in writing to the Head of the Chief Executive and Member Services or her representative before the meeting in accordance with Standing Order 60.		

Date of the next meeting: Wednesday 13 March 2024



- Please remember to **SWITCH OFF** your mobile phone during the meeting.
- The meeting room is accessible by lift and seats will be provided for members of the public. Alternatively, it will be possible to follow proceedings via the live webcast [HERE](#)

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LONDON BOROUGH OF BRENT

MINUTES OF THE PLANNING COMMITTEE

Held in the Conference Hall, Brent Civic Centre on Wednesday 17 January
2024 at 6.00 pm

PRESENT: Councillor Kelcher (Chair), Councillor S Butt (Vice-Chair) and Councillors Akram, Begum, Dixon, Mahmood, Maurice and Rajan-Seelan.

1. Apologies for Absence and Clarification of Alternate Members

None.

2. Declarations of interests

Councillor Rajan-Seelan declared a declared a personal interest in relation to Agenda Item 5 (23/3021 - 291 Kenton Road, Harrow, HA3 0HQ) as he lived in an adjacent road to the application site address.

3. Minutes of the previous meeting

RESOLVED that the minutes of the previous meeting held on Wednesday 13 December 2023 be approved as a correct record of the meeting.

4. 22/0541 - 24 High Street, London, NW10 4LX

PROPOSAL

Change of use of part of ground floor, 1st, 2nd and 3rd floors from student accommodation, change of use of 1st floor retail storage, erection of extension at 2nd floor level and erection of 2 storey extension to create a co-living scheme (45 units - Use Class Sui Generis) including communal kitchen/lounges on 1st, 2nd and 3rd floor levels, creation of communal courtyard on 1st floor level and common area on ground and 1st floor levels with minor alterations to the ground floor to accommodate cycle parking and refuse facilities and replacement double glazed timber sash windows.

RECOMMENDATION:

That the Committee resolve to GRANT planning permission subject to:

- (1) The prior completion of a legal agreement to secure the planning obligations detailed in the Committee report.
- (2) The Head of Planning being delegated authority to negotiate the legal agreement detailed in the Committee report.

PLANNING COMMITTEE

17 January 2024

- (3) The Head of Planning being delegated authority to issue the planning permission and impose the conditions and informatives as detailed in the report.
- (4) The Head of Planning being delegated authority to make changes to the wording of the committee's decision (such as to delete, vary or add conditions, informatives, planning obligations or reasons for the decision) prior to the decision being actioned, provided that the Head of Planning is satisfied that any such changes could not reasonably be regarded as deviating from the overall principle of the decision reached by the committee nor that such change(s) could reasonably have led to a different decision having been reached by the committee.

Neil Quinn, Principal Planning Officer, South Team, introduced the report and set out the key issues. In introducing the report, members were advised that the application sought a change of use from the existing student accommodation to provide 45 co-living units, including the creation of communal kitchens and lounges, internal amenity space including a cinema, gym, and workspace at ground floor level. The site did not contain any listed buildings; however, it was located within the Harlesden Conservation Area and the Harlesden Neighbourhood Area.

The Committee's attention was drawn to the supplementary report that detailed some minor amendments to the main report, with members having noted that no further comments or objections had been received.

The Chair thanked Neil Quinn for introducing the report. As there were no Committee questions raised at this point, the Chair invited the first speaker Colin George, Trustee of the Harlesden Neighbourhood Forum, to address the Committee (online) in relation to the application.

The following key points were highlighted:

- The Forum was broadly supportive of the application, however had concerns in relation to the operational impact of the development and the lack of engagement between the developers and the Neighbourhood Forum.
- The Forum was concerned that the size of the development could have an operational impact in terms of waste disposal and fly tipping. The Forum sought assurances that all tenancy agreements would include instructions not to place waste outside on the pavement and to use all communal services provided in order to mitigate the risks of fly tipping.
- There had been limited engagement from the developers with the Harlesden Neighbourhood Forum, it was felt that better engagement may have alleviated the Forum's concerns ahead of the issues being brought to the Planning Committee. The lack of engagement had also led the Forum to question the authenticity of the developer's claims that they were happy to engage with the Forum.
- In closing his comments, Mr George urged the Committee, in their consideration of the application, to be explicit on the measures to be taken to prevent residential fly tipping and to support liaison between the developers and the Forum.

PLANNING COMMITTEE

17 January 2024

The Chair thanked Colin George for addressing the Committee and invited the Committee to ask any questions they had in relation to the information heard. In response, the Committee queried if there was anything else in addition to waste management that the Harlesden Neighbourhood Forum would like to see conditioned. As Mr George did not highlight any further issues, the Committee agreed they were happy to take the issue of waste management forward with officers, however, regrettably were unable to condition any expectations on the developer's engagement with the Forum.

The Chair then invited the next speaker, Mark Pender (agent) to address the Committee (online) in relation to the application.

The following key points were highlighted:

- The applicant was experienced in the delivery of other co-living schemes in London.
- In addition to 45 co-living units, the proposal also included a laundry room (5 dryers and 5 washers) and a gym on the ground floor. On the first floor there would be access to a communal courtyard garden (circa 130m²), 2 communal kitchens/lounges (65m² and 35m²), a separate lounge (47m²) & workspace (39m²). The second floor included further access to a communal kitchen/lounge of 53m² and on the third floor a communal kitchen of 55m².
- The student market had been significantly impacted due to covid and had not fully recovered. It had therefore been decided to re-develop the site as a co-living development, as it was felt that co-living opportunities offered more flexibility in terms of who could occupy.
- In addition, co-living offered longer rental terms compared to student accommodation, therefore creating less turnover which meant a more cohesive and integrated community and from the applicant's perspective, more certainty.
- In closing his comments, Mr Pender advised that the developers were happy to respond to the suggestions from the Harlesden Neighbourhood Forum to allay concerns going forward and on the basis of the benefits the scheme would provide, urged the Committee to approve the application.

Following Mr Pender's comments, the Committee raised queries in relation to waste management measures, security of tenure, affordability for tenants, potential other uses of the site and if an updated report was available to demonstrate the demand for co living accommodation in Brent.

The following responses were provided:

- Mr Pender confirmed that the developers were keen to respond to the suggestions from the Harlesden Neighbourhood Forum in relation to waste management. This included taking steps to include details in tenancy agreements as well as using enforcement signs to remind tenants of the waste management procedures and not to dispose of domestic waste on the streets as the timed on street collections were exclusively for business refuse

PLANNING COMMITTEE

17 January 2024

collections. All terms could be agreed via a detailed conditioned Waste Management Plan.

- Following a Committee query in relation to the security of the tenure provided by the proposed development, it was confirmed that all tenancies would be Assured Shorthold Tenancies (AST's) enabling tenants to benefit from the regulated security these type of tenancies provided.
- Tenancies would be provided with a minimum 3-month term to allow greater flexibility for tenants.
- In response to a Committee query in relation to the affordability of the units for tenants, Mr Pender advised that although marginally more expensive than an HMO, the benefits of co-living developments included significant add on facilities such as the gym, cinema and laundry facilities, additionally all bills were inclusive of the rent.
- Following a Committee query in relation to whether the applicant had explored other uses for the building as opposed to a co-living scheme, the Committee was advised that the current use as student accommodation was not working well for this particular site, following the long lasting impacts from the Covid pandemic. Therefore, it was felt the best way to utilise the site was to remain as close as possible to the existing setup and provide a community based co - living facility. It would not have been viable to develop the site into self-contained flats, as due to the size and layout of the building it would not have been possible to meet the required space and light standards.
- The Committee queried if the Savills Report from 2021 provided accurate figures of the housing needs in Brent and queried if an up to date version was available to allow the Committee to consider the figures inclusive of any co-living developments that had been developed since the original report. Mr Pender advised that the report had been up to date at the time the application was made but did not reflect more recent developments since the report had been produced. Despite this it was, however, felt that the identified London wide and Brent need for co-living accommodation remained an issue.

The Chair thanked Mr Pender for responding to the Committee's queries and proceeded to offer the Committee the opportunity to ask the officers any remaining questions or points of clarity they had in relation to the application. The Committee had questions in relation to viability, a waste management plan, the demand for co-living accommodation, affordability, quality of accommodation, cycle and blue badge parking and Building Control requirements.

The following responses were provided:

- Following a Committee query in relation to the viability of the scheme that resulted in no Payment in Lieu (PiL) of affordable housing, the Committee was advised that an independent viability assessment had concluded that a PiL could not viably be provided by the applicant, however the application would be subject to a section 106 agreement securing both early and late stage review mechanisms to capture any possible changes in this. The Committee acknowledged the application had been viability tested, however felt that the absence of the schemes affordable housing or a PiL to support offsite

PLANNING COMMITTEE

17 January 2024

affordable housing meant that the scheme offered little benefit to Brent residents in need of housing.

- In response to the queries raised in relation to waste collection, officers advised that the communal bin storage was provided in an enclosed area as seen on the site plan in the report. Officers were satisfied that the additional conditions agreed by the applicant to support an effective waste management plan would be sufficient to mitigate any risk of fly tipping.
- Following concerns raised from the Committee that the report did not adequately demonstrate the current need for co-living accommodation in Brent, the Committee was advised that it was unfortunate that there was not a more up to date report to support the position regarding the level of demand for co-living accommodation in the borough, however it was highlighted that the original report had concluded that there was a particular shortage of accommodation within the Harlesden local area (NW10 postcode) catering for younger, single people, and that the more flexible co-living model would represent a better alternative for this part of the population than other forms of shared housing, particularly poor quality HMOs. Officers felt that the report was robust and sufficiently demonstrated the genuine need and demand for this type of shared living accommodation in the area, therefore felt the application was compliant with the criteria set out in Policy BH7.
- The Committee noted that there were two approved co-living schemes in Brent, however they remained in the construction phase.
- Officers highlighted that the scheme also contributed towards meeting overall housing needs targets, the Committee acknowledged this, however felt that the scheme fell short of meeting Brent's specific housing needs.
- The Committee felt that the difference between standard HMO rents in the borough and the rent levels for the proposed scheme were not as closely aligned as the agent had stated and therefore queried why the report had placed a high weight on the scheme being an affordable option. In response officers advised that they acknowledged the scheme was not an affordable housing product and it was not their intention to highlight this as a benefit of the scheme in the Committee report. It was clarified that Brent had no control over the rents set for the scheme, however it was recognised that the scheme would offer an alternative cheaper option than traditional accommodation.
- Concerns were raised in relation to the quality of the accommodation proposed, as there were no dual aspect units, restrained living spaces and shortfall in external amenity space.
- It was clarified that a total of 55 semi-vertical bicycle spaces were proposed in four locations on the ground floor, which accorded with requirements in a secure and sheltered manner, however one space was stated as being for a non-standard bike. As there was a surplus of bike parking, it was therefore suggested that the smallest store for 6 bikes instead provided a reduced number of spaces with 'Sheffield' stands to accommodate any non-standard bikes.
- Given the proposed development's car free status, the Committee queried how disabled residents would access parking if needed. In response officers advised that residents with a Blue Badge would be able to access disabled bay on street parking next to the development.

PLANNING COMMITTEE

17 January 2024

- Following Committee concerns as to why only the proposed extended part of the scheme would be subject to Building Regulation requirements, officers advised that it was felt that as the existing building had been recently refurbished, it was not necessary to apply the revised Building Regulation requirements to the existing refurbished areas. It was highlighted that if the Building Inspector deemed that there had been significant changes to the existing building, they could insist that the whole scheme was subject to Building Regulation requirements.
- The Committee felt strongly that due to the proposed level of change to the existing site as well as the proposed extension, that the whole scheme should be subject to Building Regulations, particularly as by the time the scheme was completed, the refurbishments on the existing building would no longer be recent.

As there were no further questions from members and having established that all members had followed the discussions, the Chair asked members to vote on the recommendations.

DECISION

To refuse planning permission on the basis that the Committee felt the application did not meet a Brent housing need, and the proposal resulted in a poor quality of accommodation due to lack of dual aspect units; and the scheme's limited benefits did not adequately outweigh the harm caused by the scheme.

(Voting on the above decision was For 6 and Abstentions 2).

5. **23/3021 - 291 Kenton Road, Harrow, HA3 0HQ**

PROPOSAL

Proposed two storey side extension, first floor rear extension, hip to gable roof extension and rear dormer window with 4x front rooflights, front porch and replacement of rear extension door and window with new door for proposed conversion of dwellinghouse into 4x self-contained flats with associated refuse and cycle storage and subdivision of rear garden.

RECOMMENDATION:

That the Committee resolve to GRANT planning permission subject to:

- (1) The Head of Planning being delegated authority to issue the planning permission and impose conditions and informatives as detailed in the report.

Jeanne Gleize, Senior Planning Officer, North Area Planning Team, introduced the report and set out the key issues. In introducing the report members were advised that the proposal sought the conversion of a dwellinghouse into 4x self-contained flats with a proposed two storey side extension, first floor rear extension, hip to gable roof extension and rear dormer window with 4x front rooflights, front porch and replacement of rear extension door and window with new door, associated refuse

PLANNING COMMITTEE

17 January 2024

and cycle storage and subdivision of rear garden. The site was not located within a conservation area, nor did it contain any listed buildings.

The Committee noted the existing dwellinghouse was currently undergoing building works that included a ground floor rear extension.

The Chair thanked Jeanne Gleize for introducing the report, as there were no speakers registered to address the Committee on the application, the Chair invited the Committee to ask officers any questions or points of clarification they had in relation to the application. The Committee raised queries in relation to car parking, the separation boundary distance and the proposed development's footprint.

The following responses were provided:

- Following a Committee query in relation to the increased demand the development could have on parking spaces, the Committee was assured that the small size of the scheme was unlikely to cause any significant issues, with predicted overspill from the scheme equating to one parking space.
- A further discussion took place, with the suggestion that if a Controlled Parking Zone (CPZ) was introduced in the area in the future, that a condition was added to remove the right for residents of the new development to obtain a parking permit. Having sought members views, on balance the Committee felt that this would not be necessary, given the limited predicated impact from the proposed development.
- It was clarified that the proposed 2-storey side extension would still leave a 1 metre distance to the neighbouring boundary line.
- Following a query in relation to the footprint of the proposed development, officers confirmed that the proposed development would be mainly within the existing footprint, with the additional wraparound extension.

As there were no further questions from members and having established that all members had followed the discussions, the Chair asked members to vote on the recommendations.

DECISION:

Granted planning permission subject to the conditions and informatives as set out in the Committee report.

(Voting on the above decision was unanimous)

6. Any Other Urgent Business

None.

The meeting closed at 7.44 pm
COUNCILLOR KELCHER
Chair

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APPLICATIONS FOR DECISION

Introduction

1. In this part of the agenda are reports on planning applications for determination by the committee.
2. Although the reports are set out in a particular order on the agenda, the Chair may reorder the agenda on the night. Therefore, if you wish to be present for a particular application, you need to be at the meeting from the beginning.
3. The following information and advice only applies to reports in this part of the agenda.

Material planning considerations

4. The Committee is required to consider planning applications against the development plan and other material planning considerations. The development plan policies and material planning considerations that are relevant to the application are discussed within the report for the specific application
5. Decisions must be taken in accordance with section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. Section 70(2) of the Town and Country Planning Act 1990 requires the Committee to have regard to the provisions of the Development Plan, so far as material to the application; any local finance considerations, so far as material to the application; and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Committee to make its determination in accordance with the Development Plan unless material planning considerations support a different decision being taken.
6. Under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects listed buildings or their settings, the local planning authority must have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest it possesses.
7. Under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects a conservation area, the local planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
8. Under Section 197 of the Town and Country Planning Act 1990, in considering whether to grant planning permission for any development, the local planning authority must ensure, whenever it is appropriate, that adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.
9. In accordance with Article 35 of the Development Management Procedure Order 2015, Members are invited to agree the recommendations set out in the reports, which have been made on the basis of the analysis of the scheme set out in each report. This analysis has been undertaken on the balance of the policies and any other material considerations set out in the individual reports.

10. Members are reminded that other areas of legislation cover many aspects of the development process and therefore do not need to be considered as part of determining a planning application. The most common examples are:
- **Building Regulations** deal with structural integrity of buildings, the physical performance of buildings in terms of their consumption of energy, means of escape in case of fire, access to buildings by the Fire Brigade to fight fires etc.
 - Works within the highway are controlled by **Highways Legislation**.
 - **Environmental Health** covers a range of issues including public nuisance, food safety, licensing, pollution control etc.
 - Works on or close to the boundary are covered by the **Party Wall Act**.
 - **Covenants and private rights** over land are enforced separately from planning and should not be taken into account.

Provision of infrastructure

11. The Community Infrastructure Levy (CIL) is a charge levied on floor space arising from development in order to fund infrastructure that is needed to support development in an area. Brent CIL was formally introduced from 1 July 2013.
12. The Council has an ambitious programme of capital expenditure, and CIL will be used to fund, in part or full, some of these items, which are linked to the Infrastructure Delivery Plan (IDP).
13. Currently the types of infrastructure/specific infrastructure projects which CIL funds can be found in the Regulation 123 List.
14. The Regulation 123 list sets out that the London Borough of Brent intends to fund either in whole or in part the provision, improvement, replacement, operation or maintenance of new and existing:
- public realm infrastructure, including town centre improvement projects and street trees;
 - roads and other transport facilities;
 - schools and other educational facilities;
 - parks, open space, and sporting and recreational facilities;
 - community & cultural infrastructure;
 - medical facilities;
 - renewable energy and sustainability infrastructure; and
 - flood defences,
- except unless the need for specific infrastructure contributions is identified in the S106 Planning Obligations Supplementary Planning Document or where section 106 arrangements will continue to apply if the infrastructure is required to make the development acceptable in planning terms.
15. We are also a collecting authority for the Mayor of London's CIL 'Mayoral CIL' which was introduced from 1 April 2012 to help finance Crossrail, the major

new rail link that will connect central London to Reading and Heathrow in the West and Shenfield and Abbey Wood in the East.

16. In February 2019 the Mayor adopted a new charging schedule (MCIL2). MCIL2 came into effect on 1 April 2019 and superseded MCIL1. MCIL2 will be used to fund Crossrail 1 (the Elizabeth Line) and Crossrail 2.
17. For more information:
Brent CIL: <https://www.brent.gov.uk/services-for-residents/planning-and-building-control/planning-policy/community-infrastructure-levy-cil/>
Mayoral CIL: <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy>
18. Other forms of necessary infrastructure (as defined in the CIL Regulations) and any mitigation of the development that is necessary will be secured through a section 106 agreement. Where these are necessary, it will be explained and specified in the agenda reports

Further information

19. Members are informed that any relevant material received since the publication of this part of the agenda, concerning items on it, will be reported to the Committee in the Supplementary Report.

Public speaking

20. The Council's Constitution allows for public speaking on these items in accordance with the Constitution and the Chair's discretion.

Recommendation

21. The Committee to take any decisions recommended in the attached report(s).

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COMMITTEE REPORT

Planning Committee on
Item No
Case Number

7 February 2024
04
N/A

SITE INFORMATION

RECEIVED	N/A
WARD	Wembley Hill
PLANNING AREA	Brent Connects Wembley
LOCATION	Fairgate House, 390-400 and 402-408, High Road, Wembley, HA9
PROPOSAL	<p>Deed of Variation to the Deed of Agreement dated 3rd May 2023 under Section 106 under the Town and Country Planning Act 1990, as amended in relation to planning application reference: 22/2225 for the following development:</p> <p><i>Demolition of existing buildings and construction of an up to part 13 and part 17 storeys (including ground level) building comprising purpose built student bed spaces (Use Class Sui Generis) together with ancillary communal facilities, flexible non-residential floor space (Use Class E), cycle parking, mechanical plant, landscaping together with other associated works</i></p> <p>The Deed of Variation would secure the following changes:</p> <ul style="list-style-type: none"> • The removal of the requirement to provide student bedspaces at affordable rent levels within the development (the extant scheme secured 122 affordable student bed spaces on site) • To secure the provision of a financial contribution towards affordable housing (a payment in lieu) of £2.224 m to be utilised to fund the provision of additional permanent low-cost rent affordable housing, being affordable housing that is provided that goes beyond the minimum secured through the relevant planning consents for the site(s). • Changes to the early stage review and the incorporation of a late stage viability review mechanism, in connection with the new off-site affordable housing payment.
PLAN NO'S	N/A
LINK TO DOCUMENTS ASSOCIATED WITH THIS PLANNING APPLICATION	N/A

RECOMMENDATIONS

That the Planning Committee resolves to enter into a Deed of Variation under Section 106A of the Planning Act to vary the Section 106 agreement associated with planning application reference 22/2225 and delegates authority to the Head of Planning and Development to agree the wording of the Deed of Variation.

The Deed of Variation would secure changes to the obligations secured through the legal agreement to require the payment of a financial contribution of £2.224 million (indexed from date of decision) towards the provision of additional low-cost rented Affordable Housing (within Use Class C3) and would remove the requirement to provide on-site Affordable Student Accommodation.

SITE MAP



Planning Committee Map

Site address: Fairgate House, 390-400 and 402-408, High Road, Wembley, HA9

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This map is indicative only.

PROPOSAL IN DETAIL

Background – planning history

Planning permission was granted in May 2022 for the demolition of the existing buildings on site and the construction of a part 13 and part 17 storey building comprising purpose built student accommodation. This also included ancillary communal facilities, flexible non-residential floor space (Use Class E), cycle parking, mechanical plant, landscaping together with other associated works.

A subsequent application under Section 73 was submitted for amendments to the approved scheme to amend planning conditions 2 (development built in accordance with approved plans and/or documents), 4 (commercial floor space - Use Class E) and 31 (storey heights of building) which would result in changes to the form and layout of the permission. 10 additional student bedspaces were also proposed from the original permission and the proposal would result in a slight reduction in student accommodation floorspace from 11,257.2 sq.m. to 10,958.78 sq.m. The scheme would also secure the widening of the underpass at the eastern end of the building to allow managed vehicle access to Network Rail land to the rear of the Site, together with other associated minor changes to the scheme. The S73 application also sought to change the requirement to enter into a nominations agreement with a higher education provider so that the developer was required to demonstrate that reasonable endeavours had been taken to enter into such an agreement. The Section 73 application has a resolution to grant consent under delegated authority subject to the completion of a deed of variation to the Section 106 Agreement and stage 2 referral to the GLA.

The removal of the on-site affordable student accommodation and its replacement with an off site payment in lieu contribution towards conventional affordable housing within the Borough was initially also proposed within the Section 73 application. However, this was not the appropriate route to propose such a change and it was removed from that application. Subsequently the request was made to amend the affordable provision under Section 106A of the planning act, which is considered to be the appropriate route for such a change.

The phase 2 scheme at the rear of the site (application reference: 23/2811) also included a payment in lieu towards off site additional permanent affordable housing rather than the delivery of affordable student accommodation on site. The Planning Committee resolved to grant permission for the Phase 2 scheme in December 2023.

Deed of Variation through Section 106A of Town and Country Planning Act

Section 106A of the Town and Country Planning Act 1990 makes provision for existing planning obligations to be modified or discharged by agreement between the authority and the person or persons by whom the obligation is enforceable. Section 106A enables modification or discharge to be achieved either by an agreement with the local planning authority (which must be executed as a deed), or by an application to the local planning authority.

For obligations entered into after 6 April 2010, an application can only be made after 5 years beginning with the date the obligation has been entered into to. However, the Council may (at it's own discretion), agree to vary obligations to a legal agreement within this period. In this case, as the original obligation was made within the last 5 years, an obligation can only be modified or discharged through an agreement with the local planning authority (which must be executed as a deed). In such cases, there is no right of appeal under section 106B if any application is refused.

The applicant has requested that the Council enters into a Deed of Variation to make changes to the obligations associated with the s106 Legal Agreement to secure the following:

- Removal of the requirement to provide the student bedspaces on site at affordable rent levels (the extant scheme secured 122 affordable student bed spaces on site)

- Secure the provision of an off site affordable housing payment in lieu of £2.224m to be utilised towards the provision of additional permanent low-cost rented affordable housing, being affordable housing that is provided that goes beyond the minimum secured through the relevant planning consents for the site(s).
- Changes to the Early stage review and introduction of a late stage viability review to reflect the change to the provision of a payment in lieu.

EXISTING

The existing site consists of Fairgate House, a vacant seven-storey office building at 390-400 High Road, and Pitsman House, a vacant three-storey office building at 402-406 High Road, both with some retail floorspace at ground floor level. The site is on the north side of the High Road in Wembley Town Centre and is part of a secondary shopping frontage. The site adjoins an area of hardstanding and mixed scrub to the north, and further to the north are railway embankment land and the Chiltern Line railway tracks.

The site is not in a conservation area and does not contain any listed buildings.

RELEVANT SITE HISTORY

Fairgate House (phase 1)

23/3188 Under consideration

Variation of Conditions 2 (development built in accordance with approved plans and/or documents), 4 (commercial floor space - Use Class E) and 31 (storey heights of building) of Full Planning Permission (ref. 22/2225 dated 3 May 2023), as amended by Non-Material Amendment (ref. 23/2537).

23/2437 Granted 18/09/2023

Non-material amendment (remove number of storeys from development description) of Full Planning Permission reference 22/2225 dated 3 May, 2023, for Demolition of existing buildings and construction of an up to part 13 and part 17 storeys (including ground level) building comprising purpose built student bed spaces (Use Class Sui Generis) together with ancillary communal facilities, flexible non-residential floor space (Use Class E), cycle parking, mechanical plant, landscaping together with other associated works, subject to Deed of Agreement dated 3rd May 2023 under Section 106 of Town and Country Planning Act, 1990, as amended.

22/2225 Granted 03/05/2022

Demolition of existing buildings and construction of an up to part 13 and part 17 storeys (including ground level) building comprising purpose built student bed spaces (Use Class Sui Generis) together with ancillary communal facilities, flexible non-residential floor space (Use Class E), cycle parking, mechanical plant, landscaping together with other associated works, subject to Deed of Agreement dated 3rd May 2023 under Section 106 of Town and Country Planning Act, 1990, as amended.

Adjoining site: Land to the rear of Fairgate House (phase 2)

23/2811 Planning Committee resolved on 13/12/2023 to grant consent subject to completion of section 106 agreement, stage 2 referral to the GLA and planning conditions

Erection of 2 purpose-built student accommodation buildings up to 20 and 22 storeys with basement level (Sui Generis) connected at ground floor level by a podium together with ancillary communal facilities, internal and external communal amenity space, cycle parking, mechanical plant, hard and soft landscaping, new public realm, play space and other associated works. This application is accompanied by an Environmental Statement.

CONSULTATIONS

It should be noted that there is no statutory requirement to carry out public consultation on an application under Section 106A to modify or discharge existing planning obligations.

DETAILED CONSIDERATIONS

Proposed Amendments

Acceptability of proposed off-site cash in lieu approach

1. London Plan policy H15 requires the provision of the maximum level of affordable student accommodation within proposals for purpose-built student accommodation.
2. The consented scheme secured the provision of 122 of the student bedspaces at affordable rent levels. This equated to 35% of the student bed spaces within the consented scheme and therefore qualified for fast track under policy H15 of London Plan. This meant that no financial viability assessment (FVA) was required to be submitted, and only an early stage review was secured within the Section 106 Agreement as set out by policy.
3. The S106A application seeks to remove the requirement to provide the need for any affordable accommodation onsite. Instead a £2.24m Payment in Lieu (PiL) is proposed, which would be utilised for the delivery of additional permanent low-cost rented Use Class C3 affordable housing in the Borough.
4. The proposed contribution towards traditional affordable housing (as opposed to the provision of affordable student accommodation) recognises the very significant need for low-cost rent affordable housing (Social Rent and London Affordable Rent) within the borough. Whilst it would not accord with policy H15 (as it would not secure the provision of affordable student accommodation), it is considered to result in significant benefits given the current levels of need together with the ability to deliver additional affordable homes in the homes within extant consents already held by the Council.
5. Nevertheless, with regard to affordable housing delivery, the starting point as set out in London Plan Policy H4 (Delivering affordable housing) is that it should be provided on site and that it must only be provided off-site or as a cash in lieu in exceptional circumstances. Supporting text (Paragraph 4.4.10) states that cash in lieu contributions should be used in even more limited circumstances, and only where there is detailed evidence to demonstrate that on-site affordable housing delivery is not practical, off-site options have been explored but are not acceptable and that accepting a cash in lieu contribution will not be detrimental to the delivery of mixed and balanced communities.
6. The following policy criteria must also be met in each case:

Additionality: Any cash in lieu payment must result in additional affordable homes over and above any affordable homes that would otherwise be expected to be provided.

No financial benefit: To avoid incentivising off-site provision, there must be no financial benefit to the applicant relative to on-site provision.

Monitoring: Robust monitoring and reporting mechanisms should be put in place to ensure the additional affordable homes are delivered.

Viability and reviews: Where a cash in lieu contribution is proposed then the viability tested route must be followed and schemes will need to be subject to early and late stage review mechanisms.

7. In the context of policy H4, firstly consideration has been given to whether affordable accommodation could be delivered on site. While the provision of affordable student

accommodation would be practical on-site, taking into account the design challenges of the site, its constraints, limited footprint available and proximity to the other developments, it would not be practical to deliver high quality Use Class C3 housing in addition to the student accommodation, including the necessary proportion of family housing that would be required.

8. Secondly, off-site delivery of affordable housing has been considered. The applicant has advised that they do not have any undeveloped land interests in the borough that could deliver the additional affordable housing. It is noted that the applicant is currently on-site with the Euro House development in Wembley, but that construction is well underway, and it is acknowledged that it would be difficult, or operationally impossible to change the tenure of homes at this point in construction. As such, it is acknowledged that the provision of additional affordable housing on this site would be unrealistic, and it is accepted that it would not be practical to require off-site provision.
9. In these circumstances, the alternative is a financial contribution which in this instance would be secured as a PiL towards delivery of conventional C3 affordable housing in the local area. As referred to above, the applicant proposes a PiL of £2.224m, which would be utilised specifically for this purpose, and would enable the provision of additional low-cost rent affordable housing within existing consented schemes, which is considered to be significant planning benefit when considered against the viability assessment. The proposed PiL would equate to the equivalent of approximately 5% affordable student accommodation on-site whereas the extant consent was subject to the fast-track route, securing 35% affordable student bedspaces on site.
10. Delivery of conventional affordable housing is a strategic priority in Brent, with a particular emphasis on Social Rent and London Affordable Rent properties, as stated in the Local Plan. The proposed PiL approach provides the opportunity to help meet these priorities and is welcomed as this would help to address local housing need for low cost rented accommodation. The PiL secured would help contribute towards the delivery of additional traditional C3 affordable homes, which would help to provide additionally of affordable homes for already consented schemes, for which there is the greatest need at local and strategic level. This is considered to carry significant material weight which on balance is considered to be acceptable.
11. There would be a requirement through the s106 agreement that the PiL secured is specifically used to fund additional traditional low cost rent affordable housing, being affordable housing that is provided which goes beyond the minimum secured through relevant planning consents for other site(s) in the Borough. At this stage it is envisaged this could benefit either the Brent Council Homes programme, Wembley Housing Zone programme or the Estate Regeneration programme, where there are a number of potential site(s) across the programmes. The proposed approach is therefore supported by the Council, subject to agreement on the PiL figure.

Assessment of Scheme Viability

12. As stated in London Plan policy H4, applications proposing off-site or a cash in lieu contribution must follow the viability tested route, and the applicant has submitted a Financial Viability Assessment (FVA) to support the application. The FVA, prepared by Gerald Eve (on the applicant's behalf) has been independently assessed on behalf of the Council by BNP Paribas. Paragraph 4.4.13 of the London Plan states that cash in lieu contributions should provide no financial benefit to the applicant relative to on-site provision and should include review mechanisms.
13. The submitted FVA includes appraisals on different counterfactual scenarios that compare various on-site and off-site affordable student / housing options. These scenarios can be summarised as follows:

The proposed application – a student accommodation scheme (100% market rent) with no on-site affordable accommodation.

Counterfactual 1 – a policy compliant / Fast Track Route compliant student accommodation scheme with 35% on-site affordable student accommodation

Counterfactual 2 – a market student accommodation scheme alongside Class C3 affordable housing (35% floorspace)

Counterfactual 3 – wholly residential (Class C3) scenario incorporating 35% on-site affordable housing at a policy compliant tenure mix (70:30)

Counterfactual 4 – 100% market Class C3 residential scheme with a financial contribution towards off-site affordable housing

14. The applicant's FVA concludes the proposed scheme (with the PiL of £2.24m) would generate the highest gross development value of each of the scenarios and is more viable than the counterfactual examples. None of the other scenarios are considered viable or deliverable, as set out in the submitted FVA. The FVA finds that whilst each scenario generates a deficit, the level of deficit would be lowest in the proposed scheme, meaning the PiL received from the proposed scheme would provide the greatest quantum of affordable housing.
15. The Council commissioned BNP Paribas to provide an independent assessment of Gerald Eve's viability assessment to determine whether the affordable housing offer (i.e. the PiL) and Section 106 contributions as proposed have been optimised. Evidence from both reviews has informed what the appropriate (i.e. maximum viable) PiL should be. The following paragraphs summarise how the viability position has evolved following further discussion between the parties.
16. Initial FVA prepared by Gerald Eve found the proposed scheme (with a PiL of £2.24m) to be unviable, resulting in a viability deficit of -£11.9m.
17. BNP Paribas review raised several areas of difference, these include (but are not limited to), the adopted yield for the student accommodation, finance rates, operating expense costs, build costs and the benchmark land value (BLV). On this basis it was initially concluded the proposed development would generate a deficit of -£240,115 against the BLV.
18. A rebuttal was subsequently provided by Gerald Eve, this disagreed with BNP Paribas adjustments to inputs and assumptions and initial conclusions overall providing additional evidence to support this. The FVA's originally adopted yield of 4.75% has been maintained, and justification provided for this; the operating expense cost assumptions have been maintained as originally stated; the build costs retained; a finance rate (7%) suggested and the BLV applied by BNP Paribas (£3,443,768) has been accepted. It was concluded the proposed scheme (with a PiL of £2.24m) to be unviable, with a 9.12% return on GDV, which is some way below the developers target return on GDV, of 15%, resulting in a viability deficit of £4,967,610.
19. In conclusion, and on the basis of the degree to which the proposed scheme is agreed to be in deficit (£4.967m), and agreement that each of the counterfactual scenarios are even less unviable and deliverable than the proposed scheme, including where 35% affordable student accommodation is provided on site, the proposed PiL of £2.224m is considered the maximum viable.
20. The proposed PiL of £2.224m equates to 5% provision, which although is somewhat short of 35% on an equivalency basis, this is backed up by the agreed viability position, and therefore represents the maximum viable. Securing this payment would, it is considered result in the greater public benefit than affordable student accommodation being delivered on-site, and meeting an identified local need within the Borough.
21. In accordance with London Plan policy, it is recommended that s106 obligations secure early and late stage review mechanisms to capture any uplift.

Balance of benefit and harm

22. As discussed above, the proposed financial contribution would equate to the provision of approximately 5 % on-site affordable student accommodation. While it has been demonstrated that this represents the maximum viable contribution, the Council must consider whether the reduced provision would result in a different outcome when weighing the planning balance (of benefit and harm) associated with the development as a whole. The scheme (LPA 22/2225) was noted to result in some impacts, including some daylight and sunlight impacts beyond BRE guidelines and an Urban Greening Factor which was marginally below policy targets. However, the daylight and sunlight impacts were considered to be reflective of the emerging context (within a designated tall building zone) while the opportunities for greening had been optimised and the proposal resulted in a significant gain in biodiversity. The full assessment of the original scheme was set out within the committee report for that application
<https://democracy.brent.gov.uk/ieListDocuments.aspx?CId=115&MId=7129&Ver=4> .
23. The proposal would continue to result in significant benefits, including the regeneration of the site within a Growth Area, the provision of student accommodation (which meets a London wide need) and the provision of the contribution towards affordable housing, enabling the provision of low-cost rent affordable homes. It is considered that the benefits associated with the development as a whole will continue to outweigh the harm.

Conclusion

24. It is recognised that there is a London wide need for affordable student accommodation and the proposed change in the provision (to a Payment in Lieu towards traditional affordable housing) would result in the affordable provision diverging from the requirements set out in London Plan Policy H15. However, given the very significant need for low-cost rent affordable homes (Social and London Affordable Rent) and the presence of extant consents held by the Council within which additional affordable housing could be provided, it is considered that a change to a payment in lieu would result in significant planning benefits.
25. It is considered that there are exceptional circumstances for the PiL approach to be supported in this particular instance, as set out above. This offers greater public benefit to Brent by contributing towards addressing local and strategic housing needs for conventional Use Class C3 affordable accommodation. It is recognised that the proposed payment in lieu would represent a significant reduction when compared to the extant consent which was subject to the fast-track approach. However, the contribution would represent the maximum viable affordable contribution. The benefits of the development are considered to outweigh the harm associated with the scheme. It is recommended that members delegate authority to the Head of Planning and Development Services to enter into a Deed of Variation to secure the legal obligations set out above.