

Agenda Item 04

Supplementary Information Planning Committee on 15 November, 2023

Case No. 22/3669

Location	Kilburn Square Estate, Kilburn Square, London
Description	Demolition of Former Kilburn Square Clinic, 13-15 Brondesbury Road, substation, footbridge and garages and redevelopment of site to provide extra care flats (Use Class C3b) and general needs flats (Use Class C3)) in 4 buildings alongside access routes, car parking, motorcycle parking, cycle parking, refuse and recycling storage, amenity space, landscaping, playspace, boundary treatments, alterations to the entrance to Varley House, refurbishment of the existing podium parking area and other associated works.

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A further objection has been received from a person who previously commented on the application. Within this objection, concern is raised regarding recommended conditions 3 and 4 which relate to the provision of the Affordable Housing within the scheme and the mortgagee provisions respectively.

In relation to condition 3, it is contended that:

- the scheme would not require a level of public benefit required to justify the harm associated with the breaches of policy if all of the general needs affordable are not provided at London Affordable Rent (LAR) levels; and
- that the application must be considered as submitted, and it must therefore reflect the fact that all of the general needs housing is let at LAR levels;
- That two other applications which were determined in 2022 (Watling Gardens and Windmill Court) were required to provide all of the housing as Affordable;
- That if the homes are not secured as LAR, they may be converted to “shared ownership”;
- That it would undermine the integrity of Brent’s planning system if “such a blatant abuse of that system were allowed to occur”.

With regard to condition 4, it is contended that if it is intended that the homes are let by the council, that the only mortgagor would be Brent Council and it is questioned whether Brent expects to default on any loans that are taken out to build the homes and why this condition is needed. It is also questioned whether this relates to an intention to dispose of the homes as shared ownership.

The discussion of benefit and harm is set out in the committee report, and the benefits of the scheme with threshold approach compliant level of 50 % Affordable Housing is sufficient to outweigh the harm discussed in the report.

It is also discussed in the report that conditions and obligations can only secure matters that are necessary in order to ensure that a proposal accords with relevant planning policies. This is a core principle of the planning system rather than undermining it.

Each proposal must be considered on its merits and the site specific circumstances. In relation to both Watling Gardens and Windmill Court, the proposals resulted in the demolition of some existing affordable homes. In such instances, London Plan policy disapplies the 50 % threshold approach and requires a viability assessment to be undertaken (even where a significant net increase in Affordable Housing is proposed). Rather than commissioning a viability assessment, it was proposed that all of the homes would be Affordable (therefore negating the need for an assessment). The provision of 100 % Affordable Housing was therefore required (in the absence of a Financial Viability Assessment) to accord with London Plan affordable housing policy.

While some buildings are to be demolished as a part of the current application, no Affordable Homes are to be lost. As such, the 50 % threshold approach as set out in adopted planning policy is applicable.

With regard to condition 4 (mortgagee clauses), these are standard clauses that are applied to all housing consents which include provisions to ensure suitable safeguards are in place for lenders to enable them to lend in relation to the schemes. The Council when acting as Local Planning Authority must deal with all applications in the same way irrespective of who the applicant is. Planning permissions runs with a land and therefore technically could be delivered by any party, and the Council in its role as local planning authority cannot take into account the fact that this scheme is intended to be delivered by the Council (as the developer). As such, all conditions and obligations that would be applied to a private scheme are applied to a council scheme.

Clarifications

Within the main report, the following is noted within one of the responses to an objection: "The proposal is not considered likely to result in a significant impact on infrastructure in terms of the services to the building. This development would be subject to the Community Infrastructure Levy which may be used to fund infrastructure required to support new development."

However, the payment of CIL would not be applicable for if all of the homes are delivered as affordable housing as intended (whilst noting that planning conditions and obligations can only require the delivery of the 50 % required for the threshold approach to affordable housing as set out in the main report). While there is unlikely to be a CIL payment associated with this scheme, when looking at development proposals within the borough as a whole, many schemes fall below the threshold levels for affordable housing (35 % or 50 %) and therefore deliver higher levels of CIL. The infrastructure requirements associated with new development are evaluated through the Council's Infrastructure Delivery Plan and local plan which examines not only site allocations (with buildings A and B being within the site allocation) but also takes into account the fact that a proportion of the new homes will need to be delivered through "windfall sites". The potential impact on local services within the borough has been considered through this process and it is considered that proposal would not have an adverse impact on the capacity of infrastructure within the locality. The delivery of affordable housing is a significant benefit within the scheme and the benefits of the development would outweigh any harm identified.

Recommendation: Remains approval subject to the conditions set out in the main report.