



PLANNING STATEMENT

IN RESPECT OF

**LOCKCORP HOUSE
75 NORCUTT ROAD
TWICKENHAM
TW2 6SR**

**ON BEHALF OF
LEEK REAL ESTATE
(NO.1) LIMITED and
PARAGON ASRA
HOUSING**

SEPTEMBER 2019

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Appendix A – Legal Opinion

1 INTRODUCTION

1.1 Leek Real Estate (No.1) Ltd and Paragon Asra Housing (the Applicant's) are proposing the redevelopment of this former commercial building for a development of 15 affordable residential units, together with car parking and amenity space.

1.2 Full Planning Permission is sought for the following (the Development):

"The demolition of the existing commercial building and the erection of a building to provide 15 affordable residential units together with 12 parking spaces and amenity space"

1.3 The application is accompanied by various technical reports that include the following supporting documents:

- Air quality and Air Quality Neutral Reports (RPS)
- Design and Access Statement (Brookes Architects)
- Daylight and Sunlight Study (Lumina)
- Energy and Sustainability Statements (RPS)
- Ground Investigation Report (RPS)
- Health Impact Assessment (KG Creative)
- Marketing Report (Sneller Commercial)
- Noise Report (RPS)
- Planning Statement (this document)
- Transport Statement (YES Engineering)
- Statement of Community Involvement (SCI)
- SUDS/Drainage Report (RPS)
- Viability Appraisal (Knight Frank)

1.4 In addition to the above free standing technical reports referred to above there is attached as an Appendix to this Statement a legal opinion from Russell Cooke LLP on the 'backstop' position.

- 1.5 This Statement analyses the planning history of the site, the physical context of the development and demonstrates that the proposal would comply with the relevant planning policies of the local development framework.

2 SITE AND SURROUNDING AREA

- 2.1 The following section provides an overview of the site together with its immediate and wider context. A more detailed description is provided within the Design and Access Statement which is submitted as part of the planning application.

The site

- 2.2 The 0.072ha application site is located at the northern end of Norcutt Road, an existing cul de sac that extends broadly north off Edwin Road. It is the last plot of land within this road and is secured from the rest of the road by gates.
- 2.3 It currently comprises a building of effectively two storeys in height, with internally a ground floor space and part first floor area. It forms the residual structure of what originally was a terrace of three commercial properties; the adjoining two units having been demolished to accommodate the adjacent residential building.
- 2.4 To the east is an electricity substation. To the south is Alcot House a residential building containing 11 flats. To the west is the former Greggs factory that is currently the subject of a planning application for "Demolition of existing buildings (with retention of single dwelling) and redevelopment of the site to provide up to 116 residential units and 175sq.m commercial floorspace; landscaped areas; with associated parking and highways works and other works associated with the development". To the north beyond vegetation is the slightly elevated railway line.

Surrounding Area

- 2.5 The site is located within a primarily residential area. In this respect the former attached buildings to the south were permitted for redevelopment for residential. The current application on the former Greggs site is for a mixed use development. The character of the area is changing away from this historic commercial uses adjoining the railway.
- 2.6 Further details of the site context are set out in the Design and Access Statement.

3 PLANNING HISTORY

3.1 There is an extensive planning history associated with the application site, that we set out below:

3.2 On 30th January 2009 planning permission was granted for:

Demolition Of All Existing Buildings And Redevelopment To Provide A Terrace Of 7 Houses, 2 No.1 Bed Flats And 2 No. Studio Flats (Open Market). A Single Block Of 1 No.3 Bed, 5 No.2 Bed And 5 No.1 Bed Flats (Affordable) And A Single Office Block Comprising Of 900m2 Gross Internal Floor Area Together With Associated Off Street Car Parking And Landscaping (06/2018)

3.3 On 23rd June 2015 planning permission was granted for:

Demolition of the existing light industrial building and replacement with a detached three-storey building (with accommodation in roof) to provide 9 No.flats (all affordable housing) together with 6 off-street car parking spaces and associated amenity and landscaping areas (14/0157/FUL)

3.4 In September 2017 planning permission was refused for:

Demolition of Lockcorp House; erection of a part four, part five-storey building comprising 9 no. student cluster flats (49 study/bedrooms in total); three car parking spaces including one disabled space, ancillary cycle and refuse storage and landscaping (17/1033/FUL).

3.5 This decision was appealed and allowed on appeal on 23rd May 2018. This appeal decision is of relevance in a number of respects to this application proposal.

3.6 In connection with the current application proposals a pre-application submission was made on 25th January 2019. A meeting was held on 14th March 2019 and a written response was received dated 8th April 2019. In addition to this the case officer provided additional policy commentary in email correspondence.

3.7 Given the nature of the proposals community engagement was undertaken as set out in the Statement of Community Involvement (SCI) through letters to every household in Norcutt Road and local councillors.

4 PROPOSED DEVELOPMENT

- 4.1 As noted in Section 1 of this Statement, the proposal is for the following development:

"The demolition of the existing commercial building and the erection of a building to provide 15 affordable residential units together with 12 parking spaces and amenity space"

Proposed use

- 4.2 The proposal comprises the erection of a single building to provide 15 flats, all affordable. Overall the accommodation would provide:

6 x 1bed

7 x 2bed

2 x 3bed

- 4.3 The proposed accommodation would be within a part four/part five storey building. The ground floor of the building will accommodate a single unit with four flats on the first, second and third floors and two larger units on the top floor.

- 4.4 The site has an area of 0.072 hectares, such that the proposed density equates to 569hrh or 208dph.

Orientation, Massing and Height

- 4.5 The proposed scheme provides for a single building located towards the rear (north) of the application site, away from Allcot House. It is located in a similar position to that already approved for the student building on the site, but with a reduced footprint so at a greater distance to Allcot House.

- 4.6 It therefore primarily has a north-south orientation, such that the proposed flats are dual aspect.

- 4.7 The proposed massing is lower than that approved by the inspector for the previous student scheme and further from Alcott House.

Pedestrian entrance

- 4.8 The core of the building is located on the south side of the building, facing towards Norcutt Road, so that the entrance is easily legible for residents and visitors. There is also direct access from the parking court for wheelchair access.

Design

- 4.9 The proposed design of the overall development is contemporary but would fit in seamlessly in the surrounding context. The building would be finished in brick with the top floor being clad.
- 4.10 The design merits of the proposal are described further in the accompanying Design and Access Statement.

External and private amenity spaces

- 4.11 Private amenity space is provided for the flats with additionally an area of communal amenity space at ground floor level.

Car and Cycle Parking

- 4.12 The site has reasonable transport links. A total of 12 parking spaces are provided in a parking courtyard on the east side of the site. These are accessed by means of the right of way that the applicant has over the adjoining land from the northern end of Norcutt Road.
- 4.13 Residents cycle parking spaces are provided at ground floor level within a covered and secured store designed as part of the building.

5 PLANNING POLICY CONSIDERATIONS

- 5.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 5.2 The statutory development plan for the London Borough of Richmond comprises:
- London Plan (2016)
 - Local Plan (2018)
- 5.3 It should however be noted that there are two outstanding legal challenges against the adoption of the local plan. An Inspector has been appointed to consider the issues arising from these challenges.
- 5.4 In addition to the policies of the development plan the Council has adopted a number of Supplementary Planning Documents (**SPDs**) including of relevance:
- *Design Quality (2006)*
 - *Small and Medium Housing Sites (2006)*
 - *Front Garden and Other Off-Street Parking Standards (2010)*
 - *Refuse and Recycling Storage Requirements (2015)*
 - *Sustainable Construction Checklist (2016)*
 - *Character Area Village Planning – Twickenham (2018)*
 - *Affordable Housing (2014)*
 - *Residential Development Standards (2010)*
 - *Development Control for Noise Generating and Noise Sensitive Development (2018)*

The Principle of Housing Development and Loss of Employment Use

- 5.5 Policy LP40 states that the Council will support a diverse and strong local economy by requiring land in employment use to be retained in employment use for business, industrial or storage purposes.

5.6 Policy LP42 (B) covers Locally Important Industrial Land and Business Parks and mentions that the Council has identified locally important industrial land and business parks and that these are now identified within Appendix 6 of the Plan.

5.7 In these areas the policy states:

B. The Council has identified locally important industrial land and business parks (as set out in the supporting text and Appendix 6). In these areas:

a. loss of industrial floorspace will be resisted unless appropriate replacement floorspace is provided;

b. development of new industrial floorspace and improvement and expansion of existing premises is encouraged; and

c. proposals for non-industrial uses will be resisted where the introduction of such uses would impact unacceptably on industrial activities (which may include waste sites).

5.8 At para.10.3.1 the policy defines 'industrial land' as that being used for general industry, light industry, open storage, self-storage, distribution and logistics and other similar types of development as well as any other uses which fall within B1c, B2 or B8 Use Classes or are considered to be Sui Generis. Further at paragraph 10.3.18 it states:

In the locally important industrial land and business parks loss of industrial space will be strongly resisted unless appropriate replacement provision is provided. Appropriateness will be determined with particular regard to site circumstances and the industrial/employment needs of the Borough; it should not be interpreted as a like for like replacement in the nature of the use or its scale. New appropriate industrial, storage and distribution development, as well as improvement and expansion of such premises, is encouraged in these areas, particularly new B2, B8 and B1(c) floorspace. Proposals for non-industrial uses will be resisted unless the proposed uses are ancillary to the principal industrial use on the site.

5.9 Policy LP 41 deals with offices and section C of the policy with 'Key Office Areas'. However as the plan is subject to challenge the Council has not published an updated

Policies Map. The Council has advised that the site is within a Key Office Area, but again from the list of areas that are designated as such in paragraph 10.2.9 none of these specifically mention Norcutt Road. We however assume that it is the area listed as 'West Twickenham, south of River Crane'.

5.10 Part C of the policy states:

Key Office Areas

C. In the designated Key Office Areas, as shown on the Policies Map, net loss of office floorspace will not be permitted. Any development proposals for new employment or mixed use floorspace should contribute to a net increase in office floorspace where feasible. Criteria 1 and 2 in A (above) do not apply to the Key Office Areas.

5.11 For clarity the existing building is not an office building.

5.12 We consider the application of affordable housing to employment sites below under the heading of Affordable Housing.

Assessment

5.13 Notwithstanding the content of the adopted policy there are a number of material considerations that are relevant to land use here.

5.14 Firstly the existing commercial building is vacant, with the previous business having gone into liquidation over a year ago. Therefore as a matter of fact there is no employment use of the site. In this respect the site does not meet the definition of 'industrial land' as set out above in that it is not being used for any of the stated uses and has not been for a period of time now.

5.15 Secondly the site was offered to the market in 2018 when the applicants purchased the site. There was no interest through any enquires in taking the site for continued employment purposes. It has continued to remain on the market and been offered for alternative employment generating uses through redevelopment.

5.16 The submitted marketing report considers the demand position for employment uses, including office use, in this part of the borough of Richmond. It concludes that there is no demand as the character of the area has changed. There is no demand and it

is unviable to provide any offices here. Despite the site being within a 'Key Office Area' we assert that this a misapplication of the designation and a response to the designation of anything vaguely commercial, given the loss of office floorspace under permitted development rights.

5.17 Whilst some employment use is proposed as part of the larger mixed use development of the former Greggs site to the west, that is in itself a significant reduction over that previously on the site. But that is a significantly larger site, whereas mixed use development here would be physically difficult to provide, as well as unviable as indicated in the viability report.

5.18 In the Planning Statement for that application it refers to the planning history of this application site and reinforces the position that we have set out and states:

This application successfully demonstrated that there was no demand for office accommodation in this location and instead sought a fully residential scheme for the site. The officer's report in relation to this application concludes that "due to the restricted access; ... it is considered that the cessation of the employment use would be beneficial due to its poor access and relationship with surrounding residential properties." It is evident that officers do not consider this adjacent site to be appropriate for commercial uses given the residential location. The site was however included within the 'West Twickenham Cluster' locally important employment area and 'West Twickenham Cluster' key office area despite acknowledging the unsuitable use of the site for employment uses.

Most recently, planning permission (ref.17/1033/FUL) was granted on appeal on 23rd May 2018 for the redevelopment of Lockcorp House, 75 Norcutt Road to provide student housing. This Inspector concluded that the need for student housing outweighed the need for employment floorspace in the Borough.

5.19 Therefore our view as to the continued unsuitability of this application site for any commercial use is mirrored by the planning consultant for the adjoining site in their application.

5.20 As described in the preceding section in this Statement the most recent decision taken by the Council in respect of this site was a refusal of an application for student housing scheme. The Council refused the application for two reasons that we state below, without the specific policy references:

1. In the absence of a wider growth strategy for an existing local institution and in the absence of a legal agreement to secure the application site to that institution, the scheme fails to demonstrate that there is a local need for student housing.
2. In the absence of an agreement linking the site to a local institution and due to the site's restricted access and local parking conditions, the development would fail to provide sufficient off street parking and would result in an unacceptable impact on on-street parking conditions and local traffic conditions.

5.21 There was no refusal reason in relation to the loss of employment land. In discussing land use and the principle of development the officers report on that application states:

The existing site consists of a light industrial building which was formerly part of a phased redevelopment of a larger site. The Borough has a recognised shortage of employment land and premises and is designated as 'Restrictive Transfer' for light industrial premises in the London Plan. The use of employment land for other purposes will only be permitted in exceptional circumstances when the steps set out in DM EM2 have been follows. The sequential approach has been properly conducted and consent for 100% affordable housing was previously granted permission.

The implementation of 14/0157/FUL would deliver 100% affordable housing in the form of 9 affordable rented flats to address priority local needs. The scheme is supported by a local Registered Provider and the Councils Housing Development Manager and funding is currently available to assist with implementation.

5.22 Notwithstanding that the application was for student housing, no policy issue was taken with land use in respect of any loss of employment land. This decision was taken in September 2017. Whilst the current local plan hadn't yet been adopted at that time, the plan had been submitted to the Secretary of State and Examination had just started, so the emerging policies were a material consideration to be given some weight. Although neither draft Policy LP40 or LP 42 are referred to in the officers report.

- 5.23 This refusal of permission resulted in an appeal. The appeal inspector considered the main issues in her decision letter at paragraph 5 stating:

The main issues raised in respect of the appeal are: -

(a) Loss of employment land in the absence of a legal agreement linking the proposed student accommodation to a particular local education institution with a demonstrated existing or/and future need;

- 5.24 The Inspector then went on to discuss this issue in paragraphs 6-12 of her decision letter. At paragraph 14 she states:

Whilst the loss of this existing employment site would conflict with Policies DM EM 2 and LP 40 the proposed student accommodation would meet an identified housing need which Policies DM HO 5 and LP 37 support. On the evidence before me, including what I heard at the hearing, I consider the need for the development outweighs that of retaining the employment use of the site. The UU would secure the development for student accommodation.

- 5.25 And in her Conclusions at paragraph 34:

I have found that the loss of employment land would be acceptable as the UU would secure the development for student accommodation linked with local education institutions within the Borough or within five miles of its boundary and within Greater London.

- 5.26 By the time of the appeal hearing on 24th April 2018, Main Modifications had been published to the draft plan (December 2017). The Local Plan Inspector reported on 26th April 2018, so before the appeal decision on 23rd May 2018.

- 5.27 Therefore the appeal inspector would have been aware of the sites inclusion in a proposed Locally Important Industrial Land and Business Park. She certainly makes reference to Policy LP40 that is the overarching policy on employment land and states:

With regard to emerging London Borough of Richmond upon Thames Local Plan (the LP) Policies LP 37 and LP 40 the Council is awaiting the Inspector's report following the plan's Examination in Public and main modifications. There are no proposed changes to the wording of Policy LP 37 but there are changes in

respect of criterion 4 of Policy LP 40. It is clear to me that the LP is at an advanced stage and the policies it contains can be given significant weight.

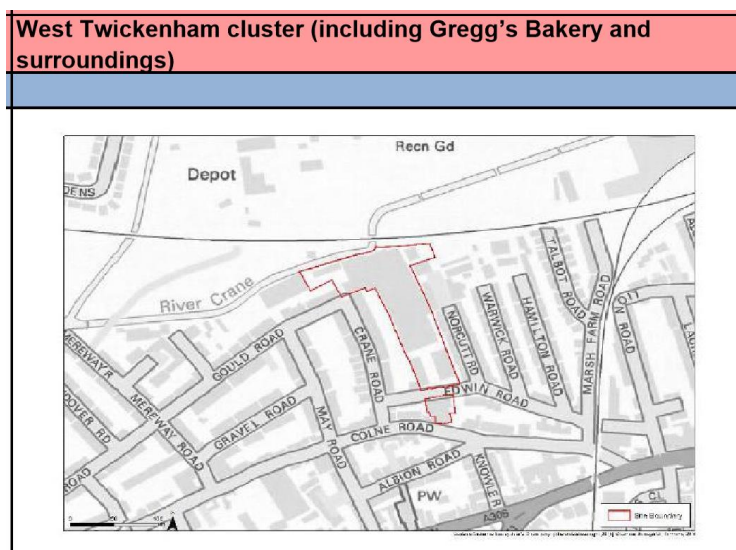
- 5.28 She gave that policy significant weight but considered that notwithstanding the conflict with policy “On the evidence before me, including what I heard at the hearing, I consider the need for the development outweighs that of retaining the employment use of the site”.
- 5.29 The adoption of the Local Plan, subject to the legal challenge, cannot simply ‘wipe the slate clean’. In fact it would be unlawful to adopt such an approach.
- 5.30 As advised in the legal opinion attached to this statement, that appeal decision, notwithstanding it was issued before the actual adoption of the local plan, is still a material consideration of some weight. It forms a ‘backstop’ permission that the applicant can rely upon and is capable of implementation. Therefore the position reached on that application in terms of meeting a local need remain relevant here.
- 5.31 It should also be noted that the Council in its officer’s report on the previous student scheme commented that “Norcutt Road is a narrow residential street”. The committee report on the 2007 application for the mixed use of the site states in the Summary that “The proposed mixed development would reduce the problematic business presence on site and bring in housing, which would be in character with the rest of the street and less likely to generate large vehicular movements”. Further in the Conclusion it states, “The site is a difficult one in that its commercial nature is recognised as contributing to local environmental problems...Ideally the development would have provided 100% affordable housing”.
- 5.32 This application not only addressed the long recognised issues with commercial development at the end of this road but also provides 100% affordable housing.
- 5.33 It is also relevant to consider the Councils evidence base to its adopted local plan. This included its Employment Sites & Premises Study 2017 Update – May 2017. We reproduce Table 3.2 from that report below:

Table 3.2 Designated sites – less attractive to occupiers

Site	Employment type	Site area (ha)	Vacancy rate	Constraint(s)
St Clare Business Park, Holly Road, Hampton	Mixed B uses	0.78	20%	Poor access and lack of prominence, surrounded by residential areas, constrained access.
West Twickenham cluster (including Gregg’s Bakery and surroundings)	Mixed B uses	1.29	0%	Access is constrained especially for HGVs, & surrounded by residential areas

Source: PBA

- 5.34 The accompanying text states “Both the sites in the table above are located within residential areas like many of Richmond’s industrial sites, but they also have particularly poor access arrangements that significantly constrains their potential for redevelopment for alternative forms of industrial use”.
- 5.35 This demonstrates that not only does the adjoining Greggs site suffer from poor and constrained access for industrial use, but the same considerations apply to this application site. Further that the site is effectively surrounded by residential properties at least for access purposes.
- 5.36 These proposed Locally Important Land and Business Parks are considered in more detail in Appendix A of the report. Pages 7 and 8 of that Appendix specifically relate to the ‘West Twickenham Cluster’ where the application site is clustered in with the land to the west, although it has no direct relationship to that land and doesn’t share any access with that land to the west – see extract below.



- 5.37 Further in the site address row in this schedule in the Appendix Norcutt Road is not listed, only properties in Gould and Edwin Roads. Also in the planning history row its states ‘No relevant panning history’ but by May 2017, the date of the report, there had been two permissions on the site, one of which included commercial space.
- 5.38 In terms of ‘Bad Neighbour Effect’ this was classified as ‘Major’ and in respect of ‘Prominence’ this states “Site is obscured by surrounding residential uses”.
- 5.39 Further the supporting text to Policy LP 40 states “It is imperative that sufficient **well-located employment land** is retained or redeveloped to meet modern

business needs and support a strong sustainable economy” (our emphasis). As evidenced, the application site does not comprise *well located employment* and as such there should not be any reason, even notwithstanding the previous decisions, to retain or redevelop the site for employment purposes.

5.40 That application is also accompanied by a Market Demand report and in this respect the Planning Statement states “A local demand report has been prepared by Milestone Commercial and submitted in support of and with this application which confirms that there is no demand for a significant level of office floorspace in this residential location outside of a centre and as such development of a significant level of offices in this location would be high risk. It is identified that there are high vacancy rates of offices and falling rents within the surrounding area, and Milestone’s opinion is that a fully commercial scheme would not be viable or sustainable due to the lack of demand”.

5.41 As we discuss below under ‘Affordable Housing’ the proposal within this application will meet a very local need housing and given the previous inspectors conclusions and the absence of interest for employment use here, that the proposal is acceptable.

5.42 We have considered alternative employment uses here but none of these are viable, in addition to the lack of interest.

Density

5.43 Paragraph 49 of the NPPF notes that housing applications should be considered in the context of the presumption in favour of sustainable development.

5.44 Policy LP1 deals with Local Character and Design Quality and states:

To ensure development respects, contributes to and enhances the local environment and character, the following will be considered when assessing proposals:

1. compatibility with local character including the relationship to existing townscape, development patterns, views, local grain and frontages as well as scale, height, massing, **density**, landscaping, proportions, form, materials and detailing (our emphasis).

5.45 The supporting text states “There is an expectation that higher residential densities will be delivered without recourse to tall buildings”.

5.46 London Plan Table 3.2 provides guidance on density in urban areas and states:

Table 3.2 Sustainable residential quality (SRQ) density matrix (habitable rooms and dwellings per hectare)

Setting	Public Transport Accessibility Level (PTAL)		
	0 to 1	2 to 3	4 to 6
Suburban	150–200 hr/ha	150–250 hr/ha	200–350 hr/ha
3.8–4.6 hr/unit	35–55 u/ha	35–65 u/ha	45–90 u/ha
3.1–3.7 hr/unit	40–65 u/ha	40–80 u/ha	55–115 u/ha
2.7–3.0 hr/unit	50–75 u/ha	50–95 u/ha	70–130 u/ha
Urban	150–250 hr/ha	200–450 hr/ha	200–700 hr/ha
3.8–4.6 hr/unit	35–65 u/ha	45–120 u/ha	45–185 u/ha
3.1–3.7 hr/unit	40–80 u/ha	55–145 u/ha	55–225 u/ha
2.7–3.0 hr/unit	50–95 u/ha	70–170 u/ha	70–260 u/ha

5.47 Emerging London Plan D6 states:

Policy D6 Optimising housing density

A Development ~~proposals~~ must make the most efficient use of land and be ~~developed~~ **designed** at the optimum density. The ~~optimum density processes required by parts A and B of a development should result from Policy D2 Delivering good design set out how~~ a design-led approach ~~to determine will inform the evaluation of a site’s context and help to identify its capacity of the site for growth.~~ Particular consideration should be given ~~to the following evaluation criteria to determine optimal development density:~~

- 1) the site context, **including surrounding built form, uses and character;**
- 2) ~~its the site’s~~ connectivity and accessibility by walking, ~~and~~ cycling, and existing and planned public transport **to jobs and services** (including **both** PTAL **and access to local services**^{28A});
- 3) the capacity of surrounding infrastructure **(see Part B)**

~~Proposed residential development that does not demonstrably optimise the housing density of the site in accordance with this policy should be refused.~~

5.48 And proposed section EA states:

Proposed development that does not demonstrably optimise the density of the site in accordance with this policy should be refused.

5.49 With the proposed revised supporting text stating:

3.6.1 For London to accommodate the growth identified in this Plan in an inclusive and responsible way every new development needs to make the most efficient use of land. This will mean developing at densities above those of the

surrounding area on most sites. The design of the development must optimise density.

3.6.1A A design-led approach to optimising density should be based on an evaluation of the site's attributes, its surrounding context and its capacity for growth.

Assessment

- 5.50 The proposal will deliver 15 additional affordable dwellings and therefore contribute to the existing and future housing targets for Richmond.
- 5.51 The application site is previously developed land and therefore in this respect redevelopment of the site for residential purposes is supported by policy.
- 5.52 The proposal is for a development of 15 dwellings and that on a site area of 0.072ha equates to 208dph. It is considered that this density is appropriate for this location.

Affordable Housing

- 5.53 Policy LP36 expects at least 50% on-site affordable housing provision on all former employment sites. Any residential use replacing employment floorspace/land should be in the form of affordable housing and comply with the tenure split (of 40% of the affordable housing for rent and 10% of the affordable intermediate housing) required by Policy LP36 and relevant housing strategies. The provision of affordable housing should normally be discussed with the Council's Housing Development Manager and Registered Providers who are interested in exploring opportunities and maximising funding opportunities.
- 5.54 The Council seeks evidence of discussions and that comments raised by a Registered Provider (RP) have been addressed including an opportunity to influence the proposed tenure and design to address local priorities. The applicant has agreed to develop the site in conjunction with PA Housing a local registered provider.
- 5.55 Therefore they have engaged with this local housing associations and has agreed to develop this scheme in conjunction with them as joint applicants. PA housing are satisfied with the application scheme, both in terms of dwelling and tenure mix and the levels of car parking.

Assessment

- 5.56 As the proposal is for 15 residential units this would trigger the provision of affordable housing and as with the previous scheme with affordable provision this can outweigh any need to retain employment land.
- 5.57 The proposal that is supported by the RP here is for 100% shared ownership housing. It is not viable to provide that proportion of affordable housing with a social/affordable rented housing element.
- 5.58 This approach is also supported by a viability assessment.

Dwelling Mix

- 5.59 Policy LP35 (A) deals with Housing Mix and Standards and states:

A. Development should generally provide family sized accommodation, except within the five main centres and Areas of Mixed Use where a higher proportion of small units would be appropriate. The housing mix should be appropriate to the site-specifics of the location.

Assessment

- 5.60 The proposal is for a mix of accommodation with the following dwelling mix:

6 x 1bed
7 x 2bed
2 x 3bed

- 5.61 In this respect the proposed mix provides for a mix of accommodation with both non-family and family accommodation.

Internal Space Standards

- 5.62 The Nationally Described Space Standards provides the standards for internal space. These are specified in the table below.

Table 1 - Minimum gross internal floor areas and storage (m²)

Number of bedrooms(b)	Number of bed spaces (persons)	1 storey dwellings	2 storey dwellings	3 storey dwellings	Built-in storage
1b	1p	39 (37) ²			1.0
	2p	50	58		1.5
2b	3p	61	70		2.0
	4p	70	79		
3b	4p	74	84	90	2.5
	5p	86	93	99	
	6p	95	102	108	

5.63 Policy LP35 and the Residential Development Standards SPD set the requirement for internal living standards. In addition to the requirements of this policy and guidance the Council is now applying the above nationally described space standards which are to be applied alongside relevant Council policy.

5.64 The minimum standards are outlined below:

- A single bedroom should be at least 7.5sqm and 2.15m wide
- A double should be 11.5sqm and 2.75m wide
- Head height should be at least 2.3m for a minimum of 75% of the gross internal floor area
- Suitable storage space to be incorporated into units
- Communal gardens to be sheltered from roads and not overlooked from habitable rooms.

5.65 Furthermore, the Council’s Residential Development Standards SPD requires the following minimum floorspace for kitchen / dining / living areas:

- 1 bed dwelling - 22sqm
- 2 bed dwelling - 24sqm
- 3 bed dwelling - 27sqm

Assessment

5.66 The proposed flats would have the following internal sizes:

- 6 x 1b units – 52/53m²
- 6 x 2b units – 62/64m²
- 1 x 3b unit – 86-102m²

5.67 Accordingly with these space standards and the internal layouts all the proposed units meet and exceed the above standards.

Design

5.68 The NPPF stresses the importance of achieving high quality design in all developments.

5.69 As indicated above Policy LP1 states new development must be of a high architectural quality based on sustainable design principles. Development must respect local character and contribute positively to its surrounding based on a thorough understanding of the site and its context.

5.70 The policy states:

To ensure development respects, contributes to and enhances the local environment and character, the following will be considered when assessing proposals:

1. compatibility with local character including the relationship to existing townscape, development patterns, views, local grain and frontages as well as scale, height, massing, density, landscaping, proportions, form, materials and detailing;
2. sustainable design and construction, including adaptability, subject to aesthetic considerations;
3. layout, siting and access, including making best use of land;
4. space between buildings, relationship of heights to widths and relationship to the public realm, heritage assets and natural features;
5. inclusive design, connectivity, permeability (as such gated developments will not be permitted), natural surveillance and orientation; and
6. suitability and compatibility of uses, taking account of any potential adverse impacts of the co-location of uses through the layout, design and management of the site.

5.71 At paragraph 4.1.3, the supporting text states:

This policy requires developers and applicants to take a sensitive approach to the architectural design of new buildings, extensions and modifications to existing buildings, as well as landscape proposals. The Council does not wish to encourage a particular architectural style or approach but expects each scheme to be to a high quality, with very high quality expected within Conservation Areas. Schemes should be based on a sound understanding of the site and its context, following the locally specific guidance set out in the Village Planning Guidance SPDs.

- 5.72 Policies LP3 (Conservation Areas) and LP4 (Buildings of Townscape Merit) cover heritage assets in the borough and state that any development which could potentially affect these heritage assets by being of proximity to them would need to be sensitive to their setting, character and appearance.
- 5.73 Policy LP13 states that views and vistas from and towards Metropolitan Open Land (MOL) are important to the open character of land designated as such.
- 5.74 Policy LP39 states that all infill and backland development must reflect the character of the surrounding area and protect the amenity and living conditions of neighbours.
- 5.75 Guidelines from the 'Small and Medium Housing Sites' SPD state that new residential development must have regards to potential impacts on local character, plot layout and grouping, amenity and parking amongst others. Re-development of previously developed sites should only take place where the proposal does not have an adverse impact on the local character.
- 5.76 The area is part of the Twickenham Village which has a relevant Village Planning Guidance. Within this document the site is located within Character Area 11 – North of the Green. Although there is no specific reference to Norcutt Road.
- 5.77 In relation to development opportunities in the area the document refers to the Greggs Bakery site. This sets out guidance for future development of the site, but this does not include this application site.
- 5.78 The Hamilton Road Conservation Area adjoins the site to its immediate east and includes the substation. The land to the north beyond the railway is designated Metropolitan Open Land (MOL) and any impact from here has been assessed.

Assessment

5.79 The proposed building, as previously stated, in terms of built form is a variation on the one allowed on appeal under application ref: 17/1033/FUL. In her report, the inspector states 'although it would have five storeys, the fifth storey would have a set back where it would front onto Norcutt Road. Given the stepped height of existing development along this street, the height of the building would not appear out of keeping in the context of existing developments and their differing heights'.

5.80 The officer in his pre-app response on design states:

Whilst there are changes to the design, officers agree with the inspector's conclusion that the proposed architectural style is still innocuous, and the proposed building would be fairly inconspicuous from views within the Conservation Area. In fact, the proposed architectural style is considered an improvement from the previous which included a sawtooth front elevation with strips of solid brick walls and most windows set diagonally to face away from the principal elevation. This would create a stark, unrevealing and strong finish, whereas the proposed would include more openings to give a softer finish to the principal elevation.

5.81 Whilst of modern design compared to that of the traditionally designed development along Norcutt Road, the NPPF says that decisions should not attempt to impose architectural styles or particular tastes. An appropriately worded planning condition can ensure an acceptable external appearance would be achieved.

5.82 Further details with regard to the design, scale and massing of the building are included in the accompanying Design and Access Statement.

Private amenity space

5.83 Policy LP35(D) states that external amenity space for all new dwellings, including conversions, should be:

- a. private, usable, functional and safe;
- b. easily accessible from living areas;
- c. orientated to take account of need for sunlight and shading;
- d. of a sufficient size to meet the needs of the likely number of occupiers; and
- e. accommodation likely to be occupied by families with young children should have direct and easy access to adequate private amenity space.

- 5.84 The requirements of Policy LP35 (C and D) and the Residential Development Standards SPD apply to external amenity space. A minimum of 5sqm of private outdoor space for 1-2 person dwellings should be provided and an extra 1 sqm should be provided for each additional occupant.

Assessment

- 5.85 There is dedicated amenity space for each unit shown on the proposed plans. This is in the form of terraces or balconies. These all meet the SPD space standards.
- 5.86 In addition at ground floor level there is an area of communal amenity space to the south of the proposed building. Defensible planting will be provided close to the ground floor windows both of the existing building to the south and the proposed windows to the building.
- 5.87 Appropriate planting can be controlled by condition.

Residential amenity of neighbouring properties

- 5.88 Policy LP8 states in considering proposals for development, the Council will seek to protect adjoining properties from unreasonable loss of privacy, pollution, visual intrusion, noise and disturbance.
- 5.89 The 'Residential Development Standards' SPD states that alterations to residential buildings can make more effective use of urban land for modern living needs and well-considered alterations to dwellings which complement the appearance of a property can often increase their value. However, changes can harm the amenity of neighbouring occupiers through increased noise, disturbance and activity due to an intensification of use.
- 5.90 The 'Small and Medium Housing Sites' SPD mentions that in defining a layout, it is important that new developments do not infringe on the privacy, daylight and sunlight of adjacent properties nor that of the intended occupiers. Privacy, daylight and sunlight standards should be used as a check to ensure that a layout is acceptable but should not necessarily dictate the layout. To ensure that the privacy of occupiers is respected, the windows of main facing habitable rooms should preferably be no less than 20m apart. Where principal windows face a wall that contains no windows or those that are occluded separation distances can be reduced to 13.5m.

Assessment

- 5.91 The proposed development is located in an area where on three sides there are no residential properties. These comprise the former Greggs property to the west, the railway line to the north and an electricity substation to the east.
- 5.92 There is a residential building located to the south, Alcott House. This has some windows on its north elevation facing the application site.
- 5.93 The proposed building is located further away from Alcott House than the building in the extant student permission. It is proposed to obscure some of the windows in the proposal and to provide screening so as to mitigate any perception of overlooking between the two developments.
- 5.94 In addition any potential impact on daylight to the existing windows has been considered. In this respect the application is accompanied by a Daylight and Sunlight Assessment that concludes that the proposal will not result in any adverse impact on light to the existing windows.
- 5.95 There are proposals for the redevelopment of the former Greggs site, but these proposals will not impact upon those in terms of residential amenity.

Sustainability

- 5.96 Policy LP20 states that new development, in their layout, design, construction, materials, landscaping and operation, should minimise the effects of overheating as well as minimise energy consumption in accordance with the following cooling hierarchy; the proposed scheme shows strong elements which complies with this overall.
- 5.97 All new developments should include measures capable of mitigating and adapting to climate change to meet future needs and reduce carbon dioxide emission.
- 5.98 Policy LP22 requires development of 1 dwelling unit or more, or 100sqm or more of non-residential floor space (including extensions) to comply with the Sustainable Construction Checklist SPD. Development that results in a new residential dwelling,

including conversions, change of use, and extensions that result in a new dwelling unit, will be required to incorporate water conservation measures to achieve maximum water consumption of 110 litres per person per day for homes (including an allowance of 5 litres or less per person per day for external water consumption).

- 5.99 It also requires developments to achieve the highest standards of sustainable design and construction in order to mitigate against climate change. Further, all new major residential development (10 units or more) should achieve zero carbon standards in line with London Plan policy. A zero carbon home is one where at least 35% of regulated CO₂ emissions reductions are achieved on-site, with the remaining emissions (up to 100%) to be offset through a contribution into the Council's Carbon Offset Fund. Where development viability is a concern, affordable housing will be prioritised over zero carbon contributions.
- 5.100 Policy LP17 mentions that green roofs and/or brown roofs should be incorporated into new major developments with roof plate areas of 100sqm or more where technically feasible and subject to considerations of visual impact. The aim should be to use at least 70% of any potential roof plate area as a green/brown roof. The onus is on an applicant to provide evidence and justification as to why a green roof cannot be incorporated. The Council will expect a green wall to be incorporated, where appropriate, if it has been demonstrated that a green/brown roof is not feasible.
- 5.101 Additionally, all new developments should include measures capable of mitigating and adapting to climate change to meet future needs.

Assessment

- 5.102 The proposal will incorporate a brown roof under and around the PV's that will provide for energy savings that are mounted at roof level.
- 5.103 The application is accompanied by an Energy Statement and a Sustainability Statement with Overheating Report. The Energy Statement states:

In conclusion, based on the measures outlined in the report, the development achieves both its sustainability and energy targets. The proposed strategy includes high insulation standards, very efficient building services, individual combi gas boilers and 17.3 kWp of photovoltaics on the flat roof of the building. It has been confirmed that a 39.8% improvement on 2013 Building Regulations will be achieved and 20% of the total CO₂ emissions reduction of this

development will be achieved by the incorporation of a low or zero carbon technology onsite.

.....

The modelling undertaken shows that Building Regulations Part L1A 2013, London Plan 2018 and local authority planning requirements have been met with respect to energy and CO2 reduction.

5.104 The Sustainability Statement report states:

.....the proposed development has been designed to take account of a number of fundamental design concepts to create a sustainable development. As a result, the following key sustainability aspects have been incorporated into the design:

- A commitment that the main contractor on site will sign up to the Considerate Constructor's scheme (or equivalent) and that the score achieved will be recognised as being above best practice;*
- The maximisation of daylight to reduce the demand on artificial lighting and create a healthy internal environment for the occupants;*
- Provision of adequate cycle storage facilities and car parking spaces on site to promote the use of sustainable transport modes;*
- The sourcing of the major building elements and materials from responsible local sources where practical;*
- Specification of materials rated as A or above under the Green Guide and use of responsibly sourced timber;*
- Minimisation of construction waste stream quantities and targets for diversion of non-hazardous construction waste from landfill;*
- Implementation of a Site Waste Management Plan on site;*
- Minimisation of the generation of construction waste and of the waste that is generated, ensuring a high percentage is diverted from landfill;*
- Reduction of water use on site through the specification of water saving sanitary items;*
- Effective surface water management;*
- Reduction of CO2 emissions, through the incorporation of high insulation standards, very efficient building services and photovoltaic panels.*
- Incorporation of energy efficient internal and external lighting.*

Overall, the principles of good sustainable design have been incorporated in the development and good sustainable practices would be followed during the construction phase.

Traffic, Car parking and Cycle parking

- 5.105 Policy LP45 states that the Council will require new development to make provision for the accommodation of vehicles in order to provide for the needs of the development while minimising the impact of car-based travel including on the operation of the road network and local environment and ensuring making the best use of land.
- 5.106 The Council have indicated that they expect that in PTAL areas (1-4) the relevant parking standards should be met, car-free housing developments may be appropriate in locations with high public transport accessibility, such as areas with a PTAL of 5 or 6, subject to:
- a. the provision of disabled parking;
 - b. appropriate servicing arrangements; and
 - c. demonstrating that proper controls can be put in place to ensure that the proposal will not contribute to on-street parking stress in the locality.
- 5.107 All proposals for car free housing will need to be supported by the submission of a Travel Plan.
- 5.108 The site has a low PTAL rating of 2 and it is also within Controlled Parking Zone (CPZ): Zone WT - West Twickenham, operational Monday to Saturday 8:30am to 6:30pm (Bank and Public holidays free).

Assessment

- 5.109 The application site proposal is for residential development with 15 affordable residential units. It is proposed to provide for 12 car parking spaces including one wheelchair space. The parking provision is in line with the London Plan standards and local census data as discussed in the Transport Assessment.
- 5.110 In respect of cycle provision a cycle store is provided for the flats that provides for 30 cycle spaces.

- 5.111 The application proposal is accompanied by a Transport Assessment, Travel Plan and a Construction Logistics Plan. The Transport Assessment concludes:

NPPF paragraph 109 states that 'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'. As demonstrated within this report the impacts are not severe.

The residents associated with the development will be excluded from obtaining parking permits, and the S106 Agreement will include car club membership for residents for a 5-year period.

6 CONCLUSION

- 6.1 The proposal is for the redevelopment of a vacant commercial building by its redevelopment for 15 affordable dwellings. In addition there will be 12 car parking spaces, 30 cycle parking spaces and landscaped areas.
- 6.2 The development has been the subject of a pre-application consultation with the Council and also community engagement with residents and local councillors. During this process the scheme has been amended to revise the tenure of the proposal with some changes to the building layout and external treatment and also an increase in car parking numbers.
- 6.3 The proposal will make a valuable contribution to existing and proposed housing targets within Richmond. It provides for a mix of housing sizes with both non-family and family accommodation.
- 6.4 The development has been considered against adopted development plan policies and is supported by a number of technical reports that demonstrate compliance.
- 6.5 It is considered that this proposal complies with the policies of the development plan and therefore planning permission should be granted with appropriate planning conditions. The grant of planning permission here would not set a precedent for proposals by others elsewhere given the planning history of the site and the fallback position as advised in the legal opinion.

Appendix A -Legal Opinion

RUSSELL-COOKE | SOLICITORS**RE: LOCKCORP HOUSE****75 NORCUTT ROAD, TWICKENHAM TW2 6SR**

OPINION

1. Introduction

- 1.1 We are instructed to advise Leek Real Estate Limited (the “**Company**”) in respect of its proposed demolition of the existing building at Lockcorp House (the “**Site**”) and erection of a new part four-storey part five-storey building to provide 16 residential units (at least 50% affordable), car parking and amenity space (the “**Proposed Development**”).

2. Background

- 2.1 The Site currently consists of a light industrial building, which was formerly part of a phased redevelopment of a larger site. The Site has had the benefit of various planning consents, only one of which was implemented. Of note is permission ref. no. 06/2018/FUL (for 7 open market houses, 4 open market flats, 11 affordable housing flats and 900 sq.m. office block (the office block proposed to be constructed on the Site) (“**Mixed Permission**”)) which has had the residential element built out but the office block has not been completed. Accompanying that Mixed Permission was a s106 agreement requiring £100k contribution to affordable housing if the office block was not implemented by 31 December 2014 (the “**Affordable Housing Contribution**”). A later permission ref. no. 14/0157/FUL (the “**Affordable Housing Permission**”) for 9 affordable housing units was not implemented within the required time frame however of note is that it varied the original s106 agreement such that the £100k contribution was only payable if the affordable housing units or office block were not implemented by 1 March 2017.
- 2.2 In addition to the Mixed Permission there is also a more recent planning permission ref. no. 17/1033/FUL for demolition of the building and construction of student accommodation (49 study/bedrooms) (the “**Student Permission**”) which was approved in May 2018.
- 2.3 London Borough of Richmond-Upon-Thames (the “**Council**”) has provided a pre-application advice letter dated 8 April 2019 (the “**Advice Letter**”). It is clear from the Advice Letter that the Council considers that the main planning issue is that “*land in employment use should be retained in employment use for business, industrial or storage purposes*”, and that the Council “*will resist the loss of industrial floorspace/land unless appropriate replacement floorspace is provided*”.
- 2.4 There are other issues raised in the Advice Letter, but we have been asked to advise solely on the main planning issue in this Opinion.

3. Discussion – what are the fall-back permissions to be taken into account?

- 3.1 It has been held that the planning history, including previous grants of permission, is a material consideration to be taken into account in the determination of a planning application¹. In this instance, there are therefore three potential fall-back positions:
- 3.1.1 the Mixed Permission with the Affordable Housing Contribution – extant permission already implemented that authorises an office block on the site;
 - 3.1.2 the Affordable Permission – no longer capable of implementation but as set out below still capable of being considered as a fall-back position; and
 - 3.1.3 the Student Permission – not implemented but capable of being implemented until 23 May 2021.

4. Discussion – what weight to give each of the fall-back positions

- 4.1 In terms of the weight to be given to the fall-back positions, caselaw has held that there are three tests².
- 4.1.1 Firstly, the Council must consider whether there is a fall-back use i.e. whether there is a lawful ability to undertake such a use. The Mixed Use Permission is still extant. The Student Permission is also still extant. As per *Samuel Smith Old Brewery v Secretary of State [2009] EWHC Civ 333, 1326*, the Affordable Housing Permission may lawfully also satisfy this first limb of the test (see below at 4.1.2 that absence of a planning permission does not necessarily dictate that there cannot be a possibility of it coming forward);
 - 4.1.2 Secondly, the Council must consider whether there is a real prospect of the fall-back use occurring if the planning permission is not granted. As above, *Samuel Smith Old Brewery* held that a ‘real prospect’ does not necessarily mean the use is probable or likely, just that it is possible³, as opposed to one that is merely theoretical, or no possibility at all. *“there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand”*. It is therefore entirely reasonable that the Company would seek to rely on one of the fall-back positions if planning permission for the Proposed Development is not forthcoming and it is a simple and obvious reality that the Company will do

¹ *North Wiltshire District Council v Secretary of State for the Environment* [1993] 65 P&CR 137 and *R (on the application of Harvard v South Kesteven District Council* [2006] JPL 1734

² *R v Secretary of State for the Environment Ex p Ahern* [1998] Env.L.R.189

³ Affirmed by *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314; *New Forest DC v Secretary of State for the Environment* (1996) 71 P. & C.R. 189

so. The Affordable Housing Scheme whilst not having an extant permission is a valid fall-back (following *Samuel Smith Old Brewery*) because in the absence of the Proposed Development being granted permission, the Company may well pursue the same and it is likely that planning permission for the same would be granted. The need for affordable housing has not decreased since the Affordable Housing Permission was granted and evidence from the draft London Plan concludes the need has only increased. The development pursuant to the Student Permission is certainly a real prospect as it is “possible”, in the absence of the Proposed Development; we are instructed that there has been some interest from third parties in delivering the same and that it is viable.

- 4.1.3 Thirdly, if there is a likelihood or real prospect of such a use occurring, a comparison must be made between the proposed development and the fall-back use. In the context of fall-back cases this reduces to a need to ask and answer the question: is the proposed development in its implications for impact on the environment, or other relevant planning factors, likely to have implications worse than, or broadly similar to, any use to which the site would or might be put if the proposed development were refused permission. Compared to all of the fall-back positions, the Proposed Development is likely to have similar impacts (in terms of highways impacts car parking is proposed on site) or have impacts less worse (see para 4.4 below and officer’s report for Affordable Housing Permission in which he states that cessation of employment would be beneficial for highways and amenity reasons). As mentioned above, the main planning factor referred to in the Advice Letter is the loss of employment land. The Proposed Development and the fall-back uses would both result in the loss of employment land (in the context of the Mixed Permission the clear inference is that if the affordable housing contribution was paid, then the policy requirement to retain an employment use on the site would fall away as it would have been mitigated), and thus they both have the same implications. It is also necessary to consider if any of the fall-back positions would be less desirable than that for the Proposed Development⁴. Given the pressing housing need (for both market and affordable units), the Affordable Housing Permission scheme may be less desirable given the quantum of units proposed (9 units opposed to the 16 units now proposed). Also the s106 agreement (dated 8th May 2018) allows occupation of the 49 bedrooms for any C3 or short term residential use (see paragraph 3 Schedule of s106 agreement) for up to 90 days over the summer recess. Such short term stay accommodation can have adverse amenity impacts; therefore in that respect the Student Permission would be worse than the Proposed Development. In addition, local residents objected to the Student Permission on the grounds of potential noise from students; the same perceived harm would not arise from the Proposed Development. The Council therefore must take the fall-back options into account and give them appropriate weight given that the impacts from the Proposed Development will be broadly similar to, or more positive than, the fall-back options.

⁴ *Coln Park LLP v Secretary of State for Communities and Local Government* [2011] EWHC 2282 (Admin) para 31

4.2 In order for a previous decision to be taken into account, it is necessary that not just the fact of determination should be taken into account but also that regard should be had to the basis for that decision⁵.

4.3 Applied to the Proposed Development, firstly therefore, the Mixed Permission should be considered as far as the reasoning to allow the Affordable Housing Contribution is concerned i.e. it was accepted that if the office block was not constructed it was acceptable for a contribution to be paid. It is noted that in the officer's report for the Mixed Permission it is stated:

"39....The further contribution towards affordable housing is considered to reasonably reflect the shortfall of the benefits that would have otherwise have stemmed from the delivery of the office building."

It is accepted therefore by the Council that in the absence of delivery of the office block the Affordable Housing Contribution adequately mitigates delivery of the same i.e. if the Affordable Housing Contribution was paid it was accepted that the employment use could be lost.

4.4 Secondly, as regards the Affordable Housing Permission, the provision of 9 affordable flats was considered as meeting an identified need that outweighed the loss of an employment site. We understand the Company, subject to further viability testing, may propose 50% (or more) affordable housing as part of the Proposed Development; clearly, given the Affordable Housing Permission was granted then if it were viable to propose some affordable housing as part of the Proposed Development, in addition to market units, that should be taken into account. It should also be noted that the officer's report for the Affordable Housing Permission concluded that:

"due to the restricted access; the proposal complies with part (c) of DM EM 2 and it is considered that the cessation of the employment use would be beneficial due to its poor access and relationship with surrounding residential properties."

There have been no improvements in access arrangements and more intense commercial development, which would be the only other alternative on the site, would worsen access arrangements.

4.5 Thirdly, in the appeal decision for the Student Permission, the Inspector determines that whilst the loss of an employment site would conflict with policy, the proposed student accommodation would meet an identified housing need which policy LP 37 supports and the need for the student development outweighs that of retaining the employment use of the site (whilst when the Inspector was determining the Student Permission appeal, the previous local plan was in force, as the current local plan was nearing adoption he also considered the current policies which as regards the main issues were broadly similar regardless to those of the previous local plan and accordingly was given significant material weight at the time of that appeal decision⁶). The relevant part of LP 37 reads:

"Planning permission will be granted for new accommodation where housing is providing for an identified local need, across a range of tenures, providing

⁵ R (on the application of Harvard v South Kesteven District Council [2006] JPL 1734 para 14

⁶ See paragraph 3 of appeal decision for Student Permission

they are on a site and in a location for that particular use, and in accordance with environmental, transport and parking and other relevant policies.”

Importantly, the Inspector also took into account the London Plan (as part of the development plan) and the evidence base that underpins it as regards the need for the student accommodation⁷. The Inspector noted that Policy 3.3 seeks to increase housing supply across London.

- 4.6 Accordingly, firstly, the Council should have regard to their own decision as part of the Mixed Permission that a contribution for affordable housing was acceptable in lieu of provision of office floorspace. Secondly, the Council should have regard to their own decision as part of the Affordable Housing Permission that a need for 9 affordable flats outweighed retention of employment floorspace because poor access arrangements for employment purposes meant that cessation of the employment use was beneficial.
- 4.7 Thirdly, whilst the Proposed Development would meet a different housing need to that of the Student Permission, it nevertheless is proposed to meet a housing need (of both market and affordable residential units) (again policy LP 37 is relevant as it states that planning permission will be granted for new accommodation where housing is providing for an identified local need and across a range of tenures) and accordingly the Council should also have regard to the identified housing need in considering the Proposed Development (even if the Council is meeting its own 5 year housing land supply that is a minimum⁸ and not a ceiling and pan wide London need should be taken into account in particular that for affordable housing and all in light of the draft London Plan revised targets which revise the housing need up from 315 dwellings per annum to 811 dwellings per annum). Para 3.15 London Plan should also be noted which states that the “housing market area” is Greater London; this is important to note as regards meeting identified needs pan London wide. The draft London Plan also contains much greater policy support for housing delivery via small sites and includes annual targets for each borough; there is therefore a clear need for delivery of housing on smaller sites such as this.
- 4.8 Since the Student Permission was granted, the Council’s Local Plan has been adopted. This designates certain areas as “locally important industrial land and business parks” and “Key office areas”. The Local Plan resists a net loss of industrial and office floorspace respectively within each of them (policies LP 42 and LP41). The Site is located within the “West Twickenham cluster, Twickenham” designation as a locally important industrial land and business park. Whilst therefore there may be a conflict with these policies, given that an urgent need for housing can be demonstrated (as per draft London Plan evidence base which would be a material consideration of increasing weight) (and as above at 4.7, pan wide London need should be considered as per London Plan), as in the determination of the Student Permission, the need for the same can lawfully outweigh that conflict when combined with the material consideration of the fall-back positions which are unique to this Site and therefore do not create a policy precedent on other sites in the borough.
- 4.9 There are a number of related points raised in the Advice Letter which are also worth commenting on.

⁷ See para 7 of Student Permission appeal decision

⁸ Para 3.14A London Plan “ ..this Plan sets out the average annual minimum housing supply targets...”

- 4.9.1 The Advice Letter notes that during the decision-making process for the 17/1033/FUL consent “*the loss of employment was linked with the assessment of housing need (rather than a separate reason for refusal) and so at the hearing the Council’s up to date evidence on employment land was not discussed*”. The Advice Letter states that the Student Permission is therefore not considered to set a precedent for any residential use. When applying the fall-back test as set out above, what is important is that the Student Permission exists and there is a real possibility that the Company will develop the Site in accordance with that consent if the Proposed Development is not approved. It would therefore be lawful to give substantial weight to the Student Permission as a fall-back position in the determination of the Proposed Development.
- 4.9.2 The Advice letter notes that “*the submitted supporting statement sets out that the site is no longer coming forward for student housing*”. This is taken out of context as it actually states that “*on the basis that the site is no longer coming forward for student housing, then its use for housing must be a priority.*” i.e. that if it were not to come forward for student housing then residential use should be the priority use. We are instructed that there has been interest in the Site by third parties to develop the Student Permission and that it is viable to do so. This does not have an impact on the fall-back test. In the case of *Coln Park LLP v Secretary of State for Communities and Local Government* [2011] EWHC 2282 (Admin), the fact that the applicant had not raised the fall-back use in its statements of case did not mean that there was not a real possibility of it occurring if the planning permission was not granted. The court found that the council in that case should have taken the fall-back use into account in making its decision.
- 4.9.3 The Advice Letter notes that “*previous permissions were given for residential use on the basis that they were for identified local needs and a fully residential scheme is not considered to fall within that category unless on site affordable housing provision can be maximised to mitigate the loss of employment land*”. It also notes that “*on all former employment sites changing to residential use, at least 50% of the proposed residential units should be through on-site affordable housing provision*”. Given that the Company is proposing to provide at least 50% on-site affordable housing, subject to further viability testing, this requirement is satisfied. Indeed, this makes the Proposed Development more attractive than the Affordable Housing Permission fall-back use, as it would result in maximising market and affordable housing on the site in accordance with the Council’s policies.

5. Conclusions

- 5.1 On a proper application of the fall-back test, it is a possibility that any of the fall-back uses could come forward if the Proposed Development were refused, and they all have impacts similar to, or worse than, the Proposed Development. In particular, the Student Permission may be developed. The Proposed Development has greater benefits to the Council and residential neighbours than the Student Permission. In light of the above factors, significant weight can be given to the fall-back positions and accordingly, such a material consideration can lawfully outweigh any conflict with policies resisting the loss of employment land resulting in granting of permission for the Proposed Development. This is particularly so, given the other material consideration of pressing pan wide London housing need (for both market

and affordable units as evidenced in the draft London Plan) and support for small sites (in draft London Plan).

- 5.2 The existence of the fall-back positions on this Site are a unique site circumstance. In the absence of the material consideration of the fall-back position, conflict with Local Plan policies would indicate that loss of employment land would be lawfully resisted. Therefore if permission were granted on this Site, it would not be a precedent for other sites within the borough that did not have such a fall-back to grant permission on the same.

RUSSELL-COOKE LLP

Ref: 14/AEG/171267/1

Date: 31st May 2019