

FORMER B&Q SITE, GREAT STONE ROAD, STRETFORD

OPENING ON BEHALF OF TRAFFORD MBC

Putative reasons for refusal

1. In the light of further verified views, RFR2 (impact on EOT Stadium) and RFR 7 (heritage) are not pursued. The agreed position on heritage will be explained in the roundtable session. As to RFR5 and 6, a refusal based on adverse daylight and sunlight impacts alone is not sought although the breaches of standard in this regard are relied on as part of the overall assessment.

RFR3: Design; Massing – Height and Scale – character and appearance of the area

2. It will be shown that the development is of far too great a scale, mass and height in this location. No amount of detailed design can overcome this basic and fundamental point. The history shows that the proposals here are quantum, not design and context, led and the latest iteration is just the least bad of a number of seriously excessively large proposals. There is no reason why a suitably sized development cannot and should not be delivered here consistent with the context, with optimizing use of the Land and with ensuring a significant contribution to housing land supply.
3. Under the NPPF (2021) and National Design Guide [G2] the importance of context and design led development has come centre stage. These proposals fundamentally fail to follow that context and design led approach.
4. The site is currently occupied by a low-rise development of about one storey [A44/45]. It is obvious that it can and should be developed for a significantly greater scale of development consistent with the NPPF/NPPG/Local Plan and emerging AAP. What that scale should be must be design and context led and sympathetic to local character whilst ensuring optimum and efficient use of the land. The Council considers that here that means well designed buildings fit for their context up to a maximum of 6 storeys at the rear. The proposed development is out of context, far too big in all dimensions for its setting, domineering and more suited to a highly urban environment rather than the suburban fringe here.
5. The massing of a development is a function of its height, width, depth and design. From GSR (the SE elevation) the development will be perceived as a single, courtyarded, block fronting GSR stretching 110m and of 4/5 – 7 stories. The SE elevation is 7 – 9 stories and a continuous unbroken wall of development 68 long. The NW is 5 – 7 stories and a continuous wall of development 65m long. The NE elevation is predominantly 7 – 9 stories and in total 103m long (with just one small gap with built form behind). This is a very large development which is seriously out of keeping with its location.

6. It will fill its plot with limited setback from its boundaries (esp SE/NE and NW) with insufficient room for appropriate and effective landscaping and coming very close to the existing trees to the SE elevation (near the trams).
7. As a result of the above features, the development presents as a significantly urban, very high density, excessively large form of development and is out of character with its low rise, suburban and spacious surroundings.
8. There is no design or contextual cue in the area for a building of this height, massing or site coverage. The context is of ubiquitous 2 storey development to the south and west, a single 1 storey training facility to the NE with a permanent stand some distance to the NE of about 5 stories (compare the 9 stories of the development), a car park to the NW and the 3 separate six storey blocks 130m away and along the more urban Talbot Road beyond. Even on the Talbot Road much closer into the City the Kellogg's development shows a level of intensity of development which is acceptable there in its context. This goes far beyond even that in terms of the scale of elevations and of the blocks and lack of visual permeability.
9. The wireframes, viewpoints and photomontages (CAM) speak for themselves.
10. The AAP has undertaken a careful analysis of scale and height including on this site. It envisages high density yet spacious development consistent with the zone of transition.

RFR5 and 6

11. The sheer scale also gives rise to the significant adverse impacts under these reasons for refusal.

RFR1 - Turf

12. The Fine Turf Practice Facility ("FTPF") is a recent and necessary addition to the EOT facilities. It is and needs to be world class. That depends on its turf being maintained to a very high standard – optimizing growing seasons and protected during the winter.

Grass Growth Periods

13. Worn grass is primarily replaced in October (as soon as the season ends) and needs to get established before the winter (dormant) period begins. It then starts to regrow in February (as sunlight and temperature starts to rise) to the point that it is ready for use from March. Both the October initial growth and the February period are critical to ensuring an adequate surface for the season. For grass growth periods (February to October) at least 8 mol/m²/day ("DLI") is required; the facility currently enjoys this and it is inconceivable that anyone would design such a facility at less than 8 DLI in February across its area. The development will reduce the amount of sunlight and increase the shading of the world class facility particularly in its southern area in both months. In February the amount of sunlight will reduce from 9 DLI in that part of the facility to 7 (a

reduction of around 20%) In October whilst the DLI will remain above 7 but will still be reduced from existing.

Dormant Period

14. In the dormant period (November to January) the issue is not (contrary to Mr Collier's understanding) to do with grass growth or reaching 8DLI but with the impact of reduction of sunlight on frost. Grass in shade becomes frost free much slower than grass in sunlight – for obvious reasons relating to photonic radiation. More shade reduces thawing and thus increases the risk of damage to the grass and of disease. The development will very significantly shade the facility in mid-winter – even on 1st February the shading is very significant. There is currently no such shading.

Impacts

15. It is because of these potentially significant impacts on a world class facility which needs to remain world class that the ECB and SE have objected and have provided evidence here. Their advice is to be given great weight and only departed from with good reason. There is no such good reason here – Mr Collier has misunderstood the issues.

RFR7 - Noise

16. The issue here concerns concert noise. They are an accepted part of the EOT offer and the agent of change principle applies. In short the development of the site should not place obstacles in the way of existing activities or future potential at the EOT.
17. The Vanguardia surveys and consequent modelling are clearly to be preferred to those of Holtz and there is, in reality, no critique of them. Vanguardia's conclusions are based on actual measurements in the stadium and very close to the façade of the development at 11m height. The modelling flows from that base (undoubtedly correct and fundamental) information and shows external façade level noise of up to a totally unacceptable LAeq 90dB which would translate to an equally unacceptable internal noise environment. By contrast, the Holtz modelling is not fit for purpose. It is based on a single (survey point 2) ground level measurement position near the front of the development on GSR and then relies on modelling back from that on the supposedly worst case assumption that the noise source is a point source thus delivering an LAeq80dB level at the façade. The assumption that 80db external is acceptable is wrong – it was only judged acceptable for *existing* housing as a compromise to allow the events to operate. There is no justification for compromising here. More importantly, the approach is wholly dependent on modelling backwards using unsafe assumptions from an inappropriate survey location *towards* the source. It replaces Vanguardia's actual measurements at the façade with wholly modelled assumptions there.
18. Whilst there may be the ability to mitigate 80db at the façade there is no possible way of mitigating the higher volumes consistent with the current design.

19. Even though current concerts do not exceed 80 at existing facades there are numerous complaints. The Appellant sought information on complaints and this has demonstrated the opposite to that for which the Appellant contends.
20. The consequent noise environment will give rise to complaints and may constitute an environmental nuisance. That alone is sufficient to require refusal here. Indeed the Appellant's have implicitly accepted the risk of significant noise nuisance by offering a "deed of easement" to LCC to authorise the noise. That is an implicit admission of a significant problem and yet legally misconceived. One cannot authorise a nuisance or remove public law rights of tenants under private law agreements.

RFR4: Section 106 Contributions

Affordable Housing

L2.12

21. The question of policy interpretation has been considered in the documents. In short, the development obviously performs differently from generic development and the 10% policy does not apply (just as in Kellogs).

Viability

22. The main outstanding matters are: (1) gross development value where there is now, in the light of Mr Miles' acceptance of significantly increased values, a relatively limited difference; and (2) base build costs which is the key driver of the difference between the parties. In addition, the gross to net ratio remains an area of contention – the building is inefficiently designed. A more efficient building would have a greater proportion of value generating elements to off-set against costs.
23. All other matters are now agreed.
24. The Appellant has abandoned its previous approach to benchmark land value ("BLV"). Whilst the Appellant's new methodology is not agreed it results in an outcome on which the parties can agree.
25. On GDV, there is a dispute as to what are the most appropriate comparables and what they show. The Council (Mr Lloyd) maintain their view that the correct value in Q3 2020 (date of initial viability review) was £360 psf. That analysis was built up from a combination of asking prices for new build apartments in particular at No1 Old Trafford; PDR schemes, other viability submissions in the immediate area and the work on the emerging Area Action Plan for the Civic Quarter. With the HPI applied for the intervening period (Q3 2020 to Q4 2021) values in the region of £400 psf would now be achievable. Mr Lloyd has however used £385 in his sensitivity test assessments. Mr Miles adopts £380 based heavily on permitted development right schemes (plus HPI uplift). The difference between £380 and £385/£400 would have relatively limited impact on the viability appraisal outcome compared to costs.

26. On costs, the difference in costs is very large indeed and by itself would easily account for the difference between 40% and 10%/5% Affordable Housing. Mr Latham has partially used BCIS Elemental *median* figures (reflecting the quality of the build/product) but for some elements has used his own figures – what he calls “cost target” or “element unit rate – estimate”. There is no evidence to support those estimates which have fluctuated widely between Rev D (the basis of the application and appeal) and Rev G (now pursued in evidence). In the absence of evidence to support his asserted (and wildly fluctuating) figures, reliance on the BCIS is both appropriate and necessary.
27. In any event on a correct analysis the two approaches yield similar answers. Mr Latham relies heavily on the assertion that his estimate (£1787psm Q4 2021) sits between the BCIS median and mean and is thus reliable. It will be shown that reliance on the mean as opposed to the median is flawed. More importantly on a correct analysis, the comfort he draws is simply mathematically wrong because he has included in the GIFA the basement carpark, cycle stores and similar. Those areas are much cheaper to build than the flats – including them thus seriously distorts the average £psm. Just properly accounting for those elements (Mr Lloyd Rebuttal Appx 1 p2) the correct blended cost is just £1609^[1] (11% or £178psm lower than Mr Latham’s figure¹). Even applying his methodology, but correcting just this single error, the build costs would be £5.25m lower.
28. There are multiple other assumptions and mistakes in Mr Latham’s assessment which will be considered in XX. Their correction all serve to reduce costs further.
29. On Mr Latham’s own evidence, the current BCIS median with 12% preliminaries is between £1452 and £1513 (Latham Rebuttal Appx) – the highest of these is still 17% below his build costs.
30. Applying the correct costs, results in the analysis at Mr Lloyd appx 12 – which shows that the scheme generates a £1.3m higher land value than the BLV *even with* the full education contribution and 40% AH. The Viability case is fatally flawed just on the costs issue.

Education

31. The Council has applied its standard methodology (which is tried and tested) to ascertain the yield (if anything understated) and the capacity of schools within the standard walking distances. Its calculations correctly take into account other approved developments and the need for operational surpluses to be maintained as is standard. This demonstrates a need for the contributions as shown in the latest Education Contribution Assessment. The criticisms of this standard approach from the developer will be shown to be wrong.

Five Year HLS

^[1] Even if the mean was used (£1843), the figure would be £XXX.

¹ And far closer to Mr Lloyd’s figure than Mr Latham’s figure – see proof appx 12) £150psf or £1630psm which when adjusted is £1544psm.

32. The Council accepts that the tilted balance is triggered because it does not currently have a 5 yr HLS. However, the weight to be attached to that will necessarily be impacted by: (1) the scale of the shortfall; (2) the imminence of the shortfall being addressed; and (3) the direction of travel in respect of the historic and current shortfall. At Warburton Lane, the 5 yr HLS was just 2.4 (based on March 2020). Ms Coley gave similar evidence as to the underlying cause of the historic shortfall and indicated how the Council was making strenuous efforts to dramatically improve the position and how, she thought, the position was set to improve in the short term. She was right. Since then, by virtue of the action taken by the Council in response to the causes of the historic shortfall identified by Ms Coley, the position has improved very substantially. Whilst there is today, on a current snapshot, a modest shortfall the Inspector can have complete confidence that that position will imminently reverse without an excessively large scheme here (indeed without any permission here) and that in the short to medium term the Council will have a HLS significantly in excess of 5 years.

Planning Balance

33. Assuming that full weight is attached to the 5 year HLS shortfall and thus the tilted balance, the proposals by reason of: (1) their scale and consequent impacts: (2) the noise issue; and/or (3) the turf issue should be refused. The NPPF test is amply met. The failure to provide policy compliant AH adds very significant further weight to the case for refusal.

34. There is no justification or imperative to accept the significant harms here. They cannot be mitigated with the scheme as it is. A smaller scheme can and will ensure that this site is appropriately developed at an appropriate scale consistent with the context.

35. It will be shown that this is an unusually strong case for a clear refusal on all grounds.

David Forsdick QC

10th January 2022