



Representation Statement B & Q Appeal Decision

On behalf of:

Derwent Development Management Ltd

In respect of:

Trafford Civic Quarter:

Area Action Plan

Examination in Public

Date:

May 2022

Reference:

MA/DDML/029-3/R005m

1.0 Introduction

1.1 This Statement is submitted pursuant to an invitation to make representations in regard to the recent Appeal decision pertaining to the B & Q site, and to:

"comment on any implications you consider relevant for the Area Action Plan."

1.2 These representations are submitted on behalf of DDML which has been active in the Examination of the AAP and is a key landowner within that area.

1.3 In the context of this Appeal decision, we set out for completeness that DDML has no interests in the Appeal site and has not submitted any formal representations to that application or the Appeal which has recently been determined.

1.4 It is evident that the Appeal decision reaches a conclusion based upon the evidence before the Inquiry, and that this comprises consideration of a number of matters including:

- a) Design;
- b) Acoustic matters (pertaining to the agent of change principle);
- c) Viability considerations; and
- d) Relative benefits of the delivery of market housing and affordable housing.

2.0 Responses to Thematic Issues

Design

- 2.1 DDML makes no detailed comments in terms of the implications of the Appeal decision to the progress of the AAP in respect of matters relating to design.
- 2.2 We would anticipate that a scheme can be prepared that would be capable of overcoming the detailed matters that have been raised by the Inspector. That process could have a consequence of reducing the housing yield for that site from what was sought by the Appellant, but there would appear to be great flexibility to still achieve the yields identified for that site by the AAP, in accord with the evidence presented by the Council through the course of the Examination.

Acoustic Matters (re agent of change principle)

- 2.3 DDML notes that the Council's original assessment of the application subject of Appeal did not raise noise as a putative reason for refusal. Notwithstanding that, upon receipt of third party evidence the Council reconsidered that view.
- 2.4 During the Course of the Inquiry, evidence was presented by LCCC and the Appellant and the Inspector decided to prefer the LCCC evidence- as such concluding that there was potential that the noise associated with occasional music events could cause a level of amenity harm to ingoing residents. The Inspector was not convinced that the acoustic mitigation measures provided by the Appeal scheme would overcome that harm.
- 2.5 Given that it would be the introduction of the proposed residential use which would create this potential for harm, the "agent of change" principle dictates that this new development should ensure that the development would not result in any unacceptable harm and that the scheme can be managed accordingly by appropriately worded conditions.
- 2.6 DDML submitted evidence during the Examination in connection with proposed residential uses in the vicinity of White City Retail Park, seeking clarification that the AAP would ensure that the same "agent of change" principles would be applied so that there was no potential for adverse impact or constraint upon the servicing movements which are fundamental to the ongoing operation of White City Retail Park.
- 2.7 In the context of those sites close to White City Retail Park or indeed any other AAP land that has an existing commercial noise climate, we would welcome clarification that the "agent of

change” principle would be applied.

- 2.8 We would anticipate that there would be technical and perhaps design-led solutions to minimise any such conflicts and these can be arrived at through design development. It would be for any future applicant to seek to argue whether taking such approaches would have material implications on viability that would justify the submission of a bespoke viability appraisal to accompany their DM application.

Viability Considerations

- 2.9 DDML notes that there was considerable discussion throughout the Inquiry and within the decision letter in regard to viability matters.
- 2.10 As a starting position, the Council applied its adopted Development Management framework (CS Policy L2.12) and set out that the viability implications of the scheme were “atypical” and should be tested against its stated ambition for the delivery of up to 40% affordable housing alongside other site-specific infrastructure.
- 2.11 The Appellant essentially disagreed that Policy L2.12 should be engaged but nevertheless provided evidence through the application and into the Inquiry which concluded that the imposition of 40% affordable housing would render the development unviable. Underpinned by its own analysis, it argued that the appropriate provision of affordable housing should not exceed 6.3% having regard to other site-specific requirements.
- 2.12 Through review of the Appeal decision, it is evident that the Inspector gives greater weight to the evidence of the Council in respect of a number of matters including:
- Build costs (and incremental changes to those over time);
 - The implications of the procurement approach upon viability;
 - Benchmark allowances for preliminaries and external costs; and
 - Land value expectations.
- 2.13 In very basic terms, the Inspector was presented with two competing sets of evidence in terms of what would be an appropriate level of planning obligations in the context of a specific scheme set in the prism of the viability evidence available at that point in time.
- 2.14 One of the key issues which arose through the Inquiry was the extent of change in the Appellant’s case (over time) in regard to construction costs and then reference to the procurement approach.

- 2.15 The Inspector decided that the evidence provided by the Council was more reliable than that provided by the Appellant. By consequence he did not agree with the assertions of the Appellant that anything beyond 6.3% affordable housing would render the scheme unviable and undeliverable. In the absence of any "compromise" viability analysis, the Inspector chose to refer to the Council's evidence seeking 39% affordable housing.
- 2.16 That should not necessarily be concluded to mean that the Inspector had endorsed all elements of the Council's case and agreed that the requirement for 39% of the housing to be of affordable tenure would remain viable and deliverable. It could have been the case that the Inspector felt able to reach an alternative view as to an appropriate provision, whether that had been volunteered by a Rule 6 party or instead a bespoke analysis of his own. None of these approaches were adopted by the Inspector.
- 2.17 It should also be noted that the viability analysis (by both parties) related to the scheme submitted by the Appellant and standards sought by the adopted Development Plan rather than those sought by the AAP. The DDML team presented evidence to the Examination that many aspects of the AAP policy requirements have not been subject to robust viability testing (including podium parking, environmental performance, blanket requirements for balconies).
- 2.18 DDML has a key concern insofar that the Council viewpoint is that (with the exception of White City Retail Park) it would not anticipate any subsequent DM applications to refer to site-specific viability analysis, instead relying upon the application of the generic AAP-wide analysis that informed the submission of the AAP itself. This new approach would be fundamentally inconsistent with the premise of Core Strategy policy L2.12 which instead provides a framework to reconsider viability, should the specifics of any given DM proposal (or changes in market conditions over time) warrant a bespoke appraisal.
- 2.19 DDML's strong view is that the apartment-driven community that is envisaged by the AAP will represent a new housing market and that the costs/returns that will be achieved are very likely to be of a considerably different magnitude to those which were set out in the Council's viability evidence to the Examination. This is partly by consequence of the very significant fluctuations in construction costs and potentially the change in sales values resultant from demand conditions and shortage of supply.
- 2.20 We think it particularly relevant to refer to paragraph 137 of the Appeal decision which is set out below.

"Notwithstanding these schemes, the fundamental premise of an FVA is that it is an objective exercise, and in this case, based on the proposed development. The outcome of the FVA should determine the affordable

housing contribution and not be based on what may have been the norm or accepted elsewhere.”

- 2.21 This is entirely consistent with the argument that the AAP should not seek to prevent the opportunity for an applicant to provide a Viability Assessment, especially in the prism of the overriding flux in terms of the costs/ returns figures and some degree of uncertainty of the implications of more onerous obligations in terms of design standards.
- 2.22 It is also the case that (notwithstanding the above) that the premise for treating White City Retail Park as an exception is to realise that it is entirely different to what might be a “typical” site in terms of its existing land value. This is a product of the considerable investment, and the value and longevity of the rental income which is secured from its multiple tenants.
- 2.23 Whilst we welcomed the clarification through the Examination that the benchmark figure within the AAP to inform existing land values was essentially a blended average (from several sites across the AAP area, some of which have no current income), the White City principle could be applied to other sites across the AAP area which have gainful ongoing commercial uses (such as the Audi garage and the Bingo site).
- 2.24 Whilst we note that the Appeal decision does not appear to support the Appellant’s argument for 6.3% affordable housing for that scheme, that does not necessarily assist the Council’s position for the AAP which argues that it has provided robust evidence to justify the requirement for 25% affordable housing in a community designed to achieve much higher environmental performance and the delivery of a roof tax to fund AAP-wide infrastructure.
- 2.25 This is fundamentally a lacuna that is deepened by the assumption that no viability analysis would be accepted for the vast majority of sites within the AAP area. The only logical and appropriate solution available to the Council and the AAP Inspector should be to amend the reference in the AAP as it pertains to the expectation of viability evidence being necessary and anticipated by the Council.

[Weight afforded to delivery of market and affordable homes](#)

- 2.26 We note that there is a brief mention in the Appeal decision that weight was afforded to the delivery of new homes, including affordable homes. Notwithstanding this, it does appear to the reader that the extent of weight actually afforded to those objectives was quite limited.
- 2.27 Given the extent of the housing crisis at a national and more local level, we conclude that the AAP objective to deliver 4000 homes and to seek to optimise the opportunity for early delivery was and remains entirely robust.