

Mill Hill Preservation Society founded 1949



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The Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government

2 Marsham Street
London
SW1P 4DF
United Kingdom

5th August 2019

Our reference: JL / jl.05082019 / MHPS / Pentavia

Dear Sir,

RE: Mayor of London's use of call-in powers, request for statutory intervention; Pentavia Retail Park, Mill Hill. Local planning authority reference: 17/8102/FUL

1. Overview

1. We write on behalf of the Mill Hill Preservation Society (“**the Society**”), founded in 1949 to protect the natural, historic and architectural features of beauty in Mill Hill, Barnet, London. The Society objected to the above planning application submitted to the London Borough of Barnet (“**LBB**”), which proposed to build a large number of residential tower blocks between the M1 motorway and the A1/A41. This proposal was contrary to the development plan, which LBB and the Mayor’s planning officers acknowledged. It was also opposed by a number of local residents, including the local Conservative Member of Parliament Matthew Offord MP. Nevertheless, the Mayor of London used his planning powers to ‘call-in’ the application and granted planning permission on 25 July 2019.
2. We are certain that your department is aware of how the Mayor of London is using his call-in powers to undermine local decision-making. This time we believe he has gone too far, in a manner that warrants your intervention. We have sought Planning Counsel’s advice and note that as Secretary of State you have a legal power to intervene in this matter, under s.100 of the Town and Country Planning Act 1990 (“**TCPA 1990**”).
3. In this letter we set out the legal basis for your intervention and why, in our opinion, this matter represents a key opportunity for this government to rein in the Mayor’s inappropriate use of his call-in powers.

2. The application

4. The development concerns Pentavia Retail Park, Watford Way, London, NW7 2ET (“**the Site**”), which falls within the jurisdiction of LBB. The amended proposal was for

“Redevelopment of site including the demolition of all existing buildings and construction of 724 new Build to Rent residential units (Use Class C3) along with 949 sqm of ancillary residential facilities, 987 sqm of non-residential floorspace (Use Class A1, A3 and D1) within buildings ranging from 5 to 15 storeys, a new pedestrian access off Bunns Lane, open space, landscaping, car parking, acoustic mitigation and highway / pedestrian improvements (Environmental Statement Received) (AMENDED DESCRIPTION). APPLICATION AMENDED AS FOLLOWS Internal reconfiguration of the

development to provide 7 additional residential units, reduction of 708 sqm in the amount of non-residential floorspace (Use Class A1, A3 and D1), increase of 168 sqm in the amount of ancillary residential floorspace along with amendments to the site access, landscaping and external layout.”

5. In a report for LBB’s Planning Committee on 25 July 2018, LBB officers recommended that the Application be **refused**. The key reason was that the development “*by virtue of its excessive height and scale would represent an over development of the site resulting in a discordant and visually obtrusive form of development that would fail to respect its local context and the pattern of development within the surrounding area*”. The development would therefore be contrary to Policies CS5, DM01 and DM05 of the Barnet Local Plan Core Strategy and Development Management Policies (September 2012), policies 3.4, 7.4, 7.6 and 7.7 of the London Plan (July 2011, October 2013 and January 2014), and the adopted Pentavia Retail Park Planning Brief.
6. In accordance with their officers’ recommendations, the Planning Committee resolved to refuse the Application on 25 July 2018. Having been notified of LBB’s resolution to refuse permission, the Mayor decided to call-in the development pursuant to art. 7 of the Mayor of London Order 2008 and s.2A of the TCPA 1990. LBB was notified of this decision by letter dated 5 November 2018.
7. On 25 July 2019 the Mayor **granted** planning permission in the face of significant local opposition.
8. The proposed 16-storey development is visually obtrusive, poorly located and contrary to both the Barnet Local Plan and the London Plan. We also note that due to NO₂ pollution from the major roads adjacent to the development, the proposal includes a large number of permanently sealed windows, which serves to illustrate the fact that large-scale residential development is clearly inappropriate for this site.

3. Your legal power to intervene in this matter

9. In summary, our Planning Counsel’s advice is that while the exercise of your powers in this case would be a bold move against the Mayor, it is perfectly within your gift and legally defensible.
10. Your power to intervene is set out in s.97 and s.100 of the TCPA 1990. Section 97 provides (emphasis added):

“97.— Power to revoke or modify planning permission or permission in principle.

(1) If it appears to the local planning authority that it is expedient to revoke or modify—

(a) any permission (including permission in principle) to develop land granted on an application made under this Part, or

(b) any permission in principle granted by a development order,

the authority may by order revoke or modify the permission to such extent as they consider expedient.”

11. Section 100 provides (emphasis added):

“100.— Revocation and modification of planning permission or permission in principle by the Secretary of State.

(1) If it appears to the Secretary of State that it is expedient that an order should be made under section 97, he may himself make such an order.

(2) Such an order which is made by the Secretary of State shall have the same effect as if it had been made by the local planning authority and confirmed by the Secretary of State.”

12. Under s.100(3) The Secretary of State shall not make such an order without consulting the local planning authority. Under s.100(5) the local authority may make representations to the Secretary of State. Section 100(7) provides a right of compensation to the developer against the local council for works carried out

pursuant to the permission. However, in the present matter it would be surprising if any work is carried out until 6 weeks from the Mayor's grant of permission, given the possibility of a judicial review challenge within that period.

13. The government's current policy is to use the s.100 power only "*in exceptional circumstances*" where "*the original decision is judged to be grossly wrong, so that damage is likely to be done to the wider public interest*": see, e.g., the 4.7.16 House of Commons Library Briefing Paper 00905 on "*Revocation of planning permission*"; see also *Hansard, H.C. Deb., Vol. 164, Cols. 329–330, 20 December 1989*.
14. In our Planning Counsel's view, a decision to exercise your s.100 power in this matter is legally defensible on the basis that exceptional circumstances exist and that damage is likely to be done to the wider public interest if this development goes ahead. In particular:
 - (i) There is a strong public interest in encouraging plan-led development. The Mayor's planning officers acknowledged in their recommendation to the Mayor that this development was contrary to the development plan. The starting point for development that is contrary to the development plan is *refusal*: see s.38(6) of the Planning and Compulsory Purchase Act 2004. The Mayor should not be allowed to ignore the correct legal test and the policies in the development plan on the basis of his electoral priorities.
 - (ii) There is a strong public interest in preventing development in the most polluted areas of the UK. The government should discourage developers from locating large residential developments next to polluted motorways and offering only sealed windows as mitigation.
 - (iii) The government's policy test is "*judged to be grossly wrong*", which should be interpreted as allowing for the reasonable subjective judgment of the Secretary of State. It is clearly reasonable to judge this decision to be grossly wrong for the reasons outlined above.

4. Conclusion

15. We hope that you will consider making a firm stand against the Mayor on this matter. We believe that a Secretary of State who pushed back against the inappropriate use of call-in powers would win deserved acclaim, both in London and nationally. There are many people across the UK who are unhappy with centralised decision-making in planning matters and would welcome a return to local decisions being made locally.
16. If you would like to discuss this matter further, we are at your service.

Yours faithfully,

John Living AAdip CM dip RIBA
Honorary Architect to the Society
On behalf of the Planning Group and General Committee of Mill Hill Preservation Society

CC: Robert Jenrick MP Constituency Office, Newark