



Appeal Decision

Inquiry held on 8 and 9 October 2008

Site visit made on 13 October 2008

by **M T O'Rourke** BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
28 October 2008

Appeal Ref: APP/L5810/A/07/2061855

Former Seeboard Site, Sandy Lane, Teddington TW11 ODS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Linden Homes South East Ltd against the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 07/2141/FUL, is dated 15 June 2007.
- The development proposed is revised proposal involving erection of 127 flats, including 18 affordable units, and 235sqm of business space in three blocks (B/B1, C/C1 and D) together with basement car parking and landscaping and plant.

Decision

1. I dismiss the appeal.

Preliminary Matters

2. An inquiry into this appeal was held in April 2008. Due to the Inspector's subsequent illness, the inquiry was re-run with a new Inspector. I have listed as documents and plans those submitted at the inquiry in April, which were retained on the file, as well as those handed to me at the inquiry in October.
3. The planning history of the area is set out in the agreed Statement of Common Ground (SoCG). Application was first made for the residential redevelopment of the former Seeboard land in 2004. There is an extant permission for development on the site as part of a larger scheme allowed on appeal in 2006. The buildings then on the site have been demolished and remediation works carried out and the land is now clear. Two new accesses have been formed and construction work is proceeding on the southerly buildings. Blocks E and F fronting Sandy Lane are completed and Blocks G, H and I are either nearly completed or in the course of construction. Work has not yet started on Block A, a 3 storey nursing home fronting Bushy Park Road, and that land is now in separate ownership. Minor non-material alterations to its approved design have been agreed.
4. The application as originally proposed was for revisions to the approved scheme to provide 235sqm of office space and 131 units of which 16 would be affordable. The 40 additional units were to be achieved by infilling the gaps between Blocks B/B1 and C/C1 and increasing their height, and that of Block D. A semi-basement under Blocks B/B1 and C/C1 would provide for car and cycle parking and for the heating/power plant. Apart from the infilling between Blocks B/B1 and C/C1, the layout and footprint of the buildings and the access

- arrangements would remain unchanged but there would be an increase in the informal landscaped area around Block D.
5. Further amendments were made during the course of the Council's consideration of the application with revised drawings submitted in relation to highway issues and in November 2007 the scheme's design and housing mix was amended. The amendments include reducing the height of Block D by one storey, fewer units and changes to the external materials. The description of development set out in the bullet points above is taken from the SoCG and was agreed at the inquiry to be correct.
 6. At the inquiry, as a response to issues raised by residents at the April inquiry regarding the effect of the top floor setbacks, the applicants asked for revised proposals to be considered for the northern elevations of Blocks B1 and C1. Option A is an alternative design solution, omitting the communal terraces at the upper floor level and setting back the screens further to the south towards the lift shaft.
 7. The question as to whether Option A should be considered was raised at the inquiry. I was told that whilst emails had been sent, they had been returned and the only consultation with local residents before the inquiry was a letter of 22 September 2008 sent to Mr Harnden as Chairman of the Sandy Lane Site Action Group. However the inquiry gave an opportunity to hear the views of local residents on Option A and also that of the Council which indicated that if permission were to be granted for the appeal scheme, Option A would be considered by it as a minor amendment. Having also in mind the decision of the Court in the case of *Bernard Wheatcroft Ltd v Secretary of State and Harborough DC* [1982] JPL 37, I find that the development would not be so changed by Option A that to consider it would deprive those who should have been consulted on the changed development of the opportunity of making their views known. I have taken it into account in my determination of the appeal as an alternative to that part of the appeal proposals.
 8. The application was accompanied by an Environmental Statement (and its non-technical summary), Addendum to Technical Reports, a Planning Statement, a Design and Access Statement (DAS), a Sustainability Appraisal and Checklist, a Transport Assessment, an Outline Travel Management Strategy and a Statement of Community Involvement. A Unilateral Undertaking (UU), made under Section 106 of the Act and replacing that signed in April 2008, was presented by the applicants at the inquiry covering various infrastructure contributions as required by the Council's Planning Obligations Strategy and affordable housing.

Main issues

9. If the appeal had not been lodged, the Council would have refused the application for six reasons. These are set out in the SoCG and cover the lack of appropriate contributions towards various infrastructure facilities; the adequacy of wastewater and water supply infrastructure; overdevelopment and detriment to the streetscene, adjacent conservation area, Metropolitan Open Land (MOL), and historic Bushy Park; overdevelopment and detriment to the outlook and amenities of those living in School House Lane and using The Orchard; insufficient evidence on the achievement of an 'excellent' EcoHomes rating and

the reduction of carbon dioxide (CO²) emissions; and the reduction in the scheme's permeability. Prior to the inquiry, agreement was reached between the main parties in relation to Reason 1 (infrastructure contributions), Reason 2 (water supply and waste water infrastructure), and Reason 5 (sustainability), and the Council made no case in relation to Reason 6 in so far as it deals with the physical permeability of the appeal proposals.

10. I consider that there are 3 main issues in this case:

- The impact of the proposed development, in terms of its height, bulk and mass, on the streetscene, the adjacent Conservation Area, the openness of the Metropolitan Open Land and the historic Grade 1 listed Royal Bushy Park and the setting of the listed park wall;
- The effect of the proposed infilling of Blocks B/B1 and C/C1 on visual permeability within the site; and
- The effect of the proposed development on the outlook and amenities of those living in School House Lane and users of The Orchard and on the future occupants of the development.

11. Further matters of concern to local residents and their representative include the quantum and mix of affordable housing, the number of small housing units, water infrastructure, the impact on the ecology and biodiversity of Bushy Park and on the achievement of Code for Sustainable Homes level 3 and the London Plan requirements for reductions in carbon dioxide emissions and the use of renewable energy.

Reasons

12. The appeal site is contained between the railway line and Sandy Lane, a busy local road linking Teddington and Hampton Wick/Kingston upon Thames. Sandy Lane skirts the north eastern side of Bushy Park, a Grade 1 listed Royal Park, which is designated as MOL and is a Conservation Area and a major area of public open space. It is bounded along Sandy Lane by a tall brick wall which is also listed (Grade II).
13. The appeal site forms the central part of a larger development site which has a long frontage to Sandy Lane but is relatively shallow. To the north west and south east there is predominantly 2 and 3 storey housing whilst School House Lane, primarily small scale Victorian terraced cottages, is on the opposite side of the railway. At the end of School House Lane, The Orchard is a small landscaped area of public open space with a path leading through to Wick Road and the footbridge over the railway.
14. The appeal scheme would result in an additional 36 units over that previously permitted. This would be achieved by infilling the gaps between Block B/B1 and C/C1 and increasing the heights of Blocks B/B1, C/C1 and D. Blocks B/B1 and C/C1 would be 4 storeys plus a set back top floor above semi-basement car parking and with a set back in height from the railway line. Drawing LH.SLT1 13E (Plan K) shows Block D as 5 storeys of residential with the top floor set back on its Sandy Lane frontage. There would be a slight reduction in the amount of B1 office space on the ground floor of Block C. In addition to

the increase in the height of the Blocks, changes are proposed to the render colour and the elevations and roofs.

15. It was confirmed at the inquiry that the client's brief to the architect had been to accommodate more units within this part of the larger site. In support of the appeal application Mr Adams' evidence was that in order to secure the 2006 permission, the total quantum of accommodation and overall massing of the scheme had been less than initially envisaged. Planning Policy Statement 3 on Housing (PPS3) promotes the efficient and effective use of land and policy 4B.1 of the London Plan 2008 (LP) seeks to ensure that development maximise the potential of sites. The Council, however, contended that the permitted scheme had only been found acceptable '*on balance*' and it was the maximum that could be developed on the site.
16. Whether it can be said that there is a finite amount of development that any one site can accommodate seems to me to be an overly prescriptive approach. Much will depend on the design approach and the scale, form and massing of the proposed development and its relationship to and impact on the surrounding area. In this case, a benefit of the grant of permission for the extant scheme was the removal of the large and unsightly buildings then on the site. As the land has now been cleared, they are no longer of relevance and it was accepted at the inquiry that the appeal proposals should be considered having regard to the development that has been permitted and which could be built on the site.
17. The applicants made much of CABE declining to comment on the revised proposals, the reason given being that permission had already been granted and the amendments would not have '*an overly significant effect on the scheme and are too minor to warrant CABE's involvement*'. Nonetheless, it was also agreed at the inquiry that it was a matter of judgment for me from what I had read, heard and seen to determine whether or not the proposals would be acceptable.
18. I agree with the Greater London Authority's assessment (GLA) that the site is relatively self contained and '*capable of adopting its own character without harming surrounding lower densities*'. I find no objection in principle to the increase in the density of development, subject to achieving a high quality urban design that respects its context and encourages permeability. The context includes the key constraints of the site's relationship to Bushy Park, to the streetscene in Sandy Lane and to its immediate neighbours, particularly those in School House Lane.

First issue - the impact on Bushy Park and on the streetscene

19. The SoCG lists policies agreed to be relevant in the LP and relevant saved policies in the Richmond upon Thames Unitary Development Plan 2005 (UDP). The following are of particular interest in terms of the first issue. LP policy 3D.10 and UDP policy ENV1 deal with MOL. Where development is on sites adjoining MOL, account will be taken of any possible visual impact on the character of the open land. Historic parks and gardens are protected by UDP policy ENV10 and proposals which would have an adverse effect on their setting, views and vistas to and from will not be permitted. UDP policy BLT2 sets out the statutory duty to pay special attention to the desirability of

preserving or enhancing the character or appearance of Conservation Areas, which is extended by Planning Policy Guidance note 15 (PPG15) to include development that would affect the setting of a Conservation Area. Policy 4B.1 of the LP seeks to promote high quality inclusive design that amongst other things is attractive to look at and, where appropriate, inspires, excites and delights. There is an overarching policy BLT11 in the UDP which requires a high standard of design in new buildings whilst recognising that in some circumstances this may result in new building forms which will need sensitive integration into existing settlements or landscape. In 2006 in response to the Government's objective set out in PPS1 that planning should advance high quality inclusive design, the Council adopted Supplementary Planning Guidance (SPG) on Design Quality.

20. The Conservation Area of Bushy Park covers some 44 ha of historic parkland north of Hampton Court Palace. The boundary wall and perimeter belt of trees are important features that contain the Park and views are noted as being an integral part of the landscape. Whilst there are views from within the Park of some tall buildings beyond the boundary of the Park, they are mainly in the direction of Kingston and are limited. Elsewhere outside the Park and moving northwards, the surrounding development is lower and less obvious when looking out from the Park. The Conservation Area statement refers to the existence of trees beyond the boundary of the Park being important in contributing to a sense of landscape continuing beyond its well-defined and historic boundaries. The statement identifies development pressure as a concern that may harm the balance of the landscape-dominated setting and the obstruction or spoiling of views, skylines and landmarks. However no case was made at the inquiry that the appeal scheme would impinge on any recognised or protected views or vistas rather than the increased height and infilling of the blocks would adversely affect the landscape setting of Bushy Park through their increased prominence. Mr Morpurgo for the Friends of Bushy and Home Parks was fearful that if this scheme was allowed then within a few years the Park would be surrounded by 5 or more storey buildings. But no particular site or sites were suggested where it was thought the appeal scheme would act as a precedent and so this is something to which I can give very little weight.
21. The Visually Verified Montages (VVMs) produced by the applicants are agreed to be an appropriate basis on which to assess the visual impact of the proposals compared to that already approved and on my site inspection I was able to view the site from each of the viewpoints. In the characteristic long views from within the Park, VVMs1, 2 and 3 illustrate the open aspect of the site and I saw that gaps in the boundary trees allow views to be obtained of the builders' site huts above the boundary wall. The approved scheme would be visible but whilst the proposed buildings would be taller they would still be below the tops of the Park's boundary trees. The appeal proposals conform to the footprint of the approved scheme and there would be a clear perception of the space around Block D and gaps between the buildings. The prominence of the buildings would be reduced by the change in the render colour from white to stone but I give this limited weight as the use of a stone colour for the render could be secured through the discharge of the materials condition for Blocks B/B1, C/C1 and D. Despite the set back of the top floors, even in these long views it seems to me that the increased height, elevational changes and

- consistent roof line would give the appeal buildings a more solid and heavier appearance than those approved. In particular, from Cobblers Walk and view 3, Block D at 5 storeys in height would have a greater and more dominating presence in views out from the Park, detracting from the existing landscape-dominated setting.
22. In closer views (VVMs 4, 5 and 6), development outside the Park is seen in the context of the perimeter trees and the boundary wall. VVM4 illustrates the open aspect of the site and the extent of recent tree planting. I did see a diseased Horse Chestnut on my site visit but trees of all species can succumb to viruses at any time and it is not something that I consider should influence the assessment that I have to make now of the visibility of the appeal scheme. Again the 3 storey Block A would only be partially visible through the trees with Block E barely visible. Blocks B, C and D would be visible. Whilst the architect's view was that the appeal proposals would be more controlled and consistent in its roof and parapet lines thus reducing the impact of the view from within the Park, to my mind the redesign displays an unfortunate hardness of line when seen from these viewpoints which combined with the increase in height would give the buildings a greater impact. Contrary to his evidence I find the approved scheme to be the calmer with the roof modelling exhibiting a lightness of touch more compatible with the site's setting opposite the landscaped boundary of the Park and which continues the treatment of Blocks E and F. Much was made of the changes to the glazed element on the façade of Block B as shown on VVM6 in improving its overall integration but I find them to be of less significance when considering the overall impact of the redesigned scheme and its appearance in views from the Park.
23. Block D is described in the Design and Access Statement (DAS) as a '*landmark building*'. It would continue to sit within its own space, which would be marginally more extensive in the appeal scheme. The DAS contends that the increase in height and form justifies its position and location within the development, but Blocks B/B1 and C/C1 would also be taller whereas Blocks E and F to the south are at the height originally approved. It is suggested that a strength of the redesign is that Block D would be '*less squat and better proportioned*'. I am not convinced of this but if there were any advantage to my mind it would be offset by the building's greater prominence and dominance in views from Bushy Park (as in VVM5) and when seen from Sandy Lane (View 8 CGI).
24. In terms of the impact on the streetscene, the site is relatively self contained and because of its size capable of accommodating the scale and height of development that has been approved. The question is whether the additional height of the buildings that is now proposed would tip the balance and make what was acceptable now unacceptable. There is already an uncomfortable relationship between the parapet height of Block F and the lower eaves height of the neighbouring house that was not adequately explained by the change in ground floor slab levels. The Blocks have their end elevations to Sandy Lane which creates a strong built frontage but allows views through and would not be a continuous wall of building. The proposed increase in the height of Blocks B/B1, C/C1 and D is only around 3m but having in mind the relative height of Block A to the north and the heights of the blocks to the south that are built or being built, the changes now sought would to my mind disturb the rhythm of

the overall scheme and upset the balance of the composition and in turn its relationship to the surrounding domestic scale buildings.

25. It is suggested that the appeal scheme would bring an improved sense of enclosure. However that assumes that the gaps between the buildings somehow undermine any sense of enclosure on the site and that, as a matter of principle, increased mass would bring an improved sense of enclosure and that is more important than the pavilion concept promoted in the original DAS. I consider that an acceptable sense of enclosure is already provided by the way that the separate blocks are arranged around and face on to the internal spaces and Sandy Lane and the effect of the increased mass would be to make the buildings enclosing the space somewhat overbearing. There would be benefits in the change in render colour and the redesign of the ground floor of Block C but they are insufficient in my view to outweigh the detrimental impact of the proposed redesign on the streetscene.
26. The northern elevations of the Blocks face the railway and the backs of the houses in School House Lane and I consider whether the buildings as proposed would have any overbearing effect in terms of my third issue. As to views from the street of the interior of the site and the implications of the infilling of the gaps between Blocks B and B1 and C and C1 I address this in terms of the permeability of the scheme in my reasoning below.
27. Concluding on my first issue, I find no real design benefits as compared to the approved scheme that would arise from the implementation of the appeal scheme that would justify the adverse impact that I have identified on the landscape setting of the Bushy Park Conservation Area, on the character of the MOL and the setting of the listed park, and on the streetscene. Accordingly the appeal proposals would not preserve the character or appearance of the Conservation Area contrary to national policy and would conflict with the Government's objectives for design and for the historic environment in PPS1 and PPG15 and with the objectives of LP policies 3D.10 and 4B.1 and saved policies ENV1, ENV10, BLT2 and BLT11 of the UDP and the Council's SPG on Design Quality to secure a high quality of urban design.

Second issue - the effect on visual permeability within the site

28. All parties accepted that permeability is a feature of good design. It was identified as one of the key objectives in the 2005 DAS and the design response, in terms of the development's form and massing, was *'to provide a series of 'pavilions' along Sandy Lane that allows views through into and out of the site'*. In particular page 30 of that DAS refers to buildings being located to define views through the scheme and the view between Blocks A and D along the gaps between Blocks B and B1 and C and C1 is shown as one of the key views around the site.
29. The DAS revised in 2008 also refers to permeability as being a key driver but not in terms of any views within the site as these would be blocked by the infilling of Blocks B/B1 and C/C1. The massing of the development is described as following the established design guidelines of the approved scheme. However there is no reference to the concept of pavilion blocks and the views and vistas identified are through to/from Bushy Park and across the railway with the only internal view being in front of Block D between Blocks C and E.

- There was no adequate explanation at the inquiry as to why a matter that was considered important to the design in 2005 is no longer important.
30. The Council's SPD on Design Quality does not specifically refer to permeability as a principle guiding quality other than in terms of promoting ease of movement and it was accepted by the Council, prior to the inquiry, that the approved scheme would not provide a pedestrian connection between Blocks A and D or between B and D. Nevertheless, the Council pointed to what it saw as the merit of retaining the gap in Block B/B1 in providing some interest and variety in views from the windows of bedrooms in nursing home. With decking now proposed to be provided along the rear elevation of Block A, the Council was concerned that more people would be using the outside space and looking towards Blocks B/B1 with less interest in the view without the gap.
 31. Drawing LH.SLT1 32 prepared for the inquiry indicates that the maximum width between B and B1 in the approved scheme would have been around 8.3m and at its narrowest some 5.8m and the architect expressed his view in cross examination that the relatively restricted width compared to the height and depth of the blocks would make the gaps rather dark, damp and miserable, devoid of sunlight. This may be rather overstated, however, I accept that the concept of pavilion blocks is not without its shortcomings and what views there would be from windows in Block A would be rather limited and some would be oblique. Nonetheless in urban design terms I consider that the individual blocks in the approved scheme are useful in providing a sense of separateness within the development. Although perhaps imperfect, the pavilion concept is a positive feature that provides a valuable sense of visual permeability by allowing space to flow around the blocks and this helps to present a more manageable visual package that is easy to understand.
 32. I accept that from the VVMs the gaps in the approved scheme might not be fully appreciated from all external viewpoints. But from what I saw on my site inspection, in particular from the Park's perimeter path, I think those looking at or passing the site would still gain a clear perception of there being a break in the buildings. Depending on where they were or as they moved around, they would get a clear sense of separate blocks from the varying quality of light on wall surfaces facing in different directions and the changes in roof planes would also be seen. Whether the view is of a blank wall or a more detailed elevational treatment, these gaps would help in preserving a sense of separation within the development and would create a degree of linkage with the more open surroundings.
 33. The proposed infilling of Blocks B/B1 and C/C1 in the appeal scheme would create substantial buildings some 56m deep. Although they would be similar in depth to Block A, the development would no longer appear as a series of pavilions, representing a significant change from the original scheme as manifest in Blocks E, F, G, H and I. Combined with the increase in height their presence would become emphasised and magnified. The loss of the sense of separateness would create a building mass that would appear more bulky and be far more difficult to accept as a visual entity within its landscape setting and which would not be overcome by the introduction of an additional bay feature as shown on Block C/C1. The increase in height would further emphasise both the presence of the buildings and the bulk they would attain. I find that this represents a significant shortcoming of the redesign which fails the applicants'

own test of high quality urban design, contrary to the objectives of PPS1, policy 4B.1 of the LP and UDP policy BLT11.

Third issue - the effect on those living in School House Lane

34. In addition to UDP policy BLT11 that requires buildings to be compatible with the scale and character of existing development, the Council through UDP policy BLT16 seeks to protect adjoining properties from unreasonable loss of privacy, pollution, visual intrusion, noise and disturbance. No change is proposed in the relationship of the development to the railway and to the properties beyond. The buildings would occupy a similar footprint and being end on to School House Lane, the substantial gaps between the buildings allowing long views through to Bushy Park from the rear windows and gardens of some of the houses would remain unaltered from the approved scheme. The significant change is the increased height of Blocks B/B1, C/C1 and D, however no case was made by the Council that there would be any unacceptable loss of sunlight or daylight to any residential properties.
35. Prior to the inquiry in October, further survey work was undertaken to confirm levels and the height of properties in School House Lane. Comparing the approved and appeal sections, whilst Block D would be 3m higher it would still be set back more than 40m from the properties in School House Lane. There would be an increase in the number of windows in the northern elevation serving habitable rooms, with roof terraces at fourth floor level (the top storey). Whilst no adequate explanation was given at the inquiry as to why there had been these changes, I am satisfied that any potential for adverse overlooking is likely to be mitigated by the distance.
36. However even given the separation distance I remain concerned at the potential visual intrusion through the increased height of Block D and, as shown on VVM14, I believe from the other side of the railway there would be a clear perception of the increased height and massing of the building. Whilst this is an urban situation where in certain locations the Council's SPD on Design Quality recognises that intensification may be acceptable, *'this will require a creative response which balances the scale of development with the massing of neighbouring buildings.'* Having looked at the site from the rear garden and 1st floor window of 41 School House Lane which would lie directly behind Block D, I consider that its increased height would have an unacceptable overbearing impact and be visually intrusive in the outlook from the smaller 2 storey residential properties in School House Lane, contrary to the objective of UDP policy BLT16.
37. Block C/C1 would be the closest to the properties in School House Lane with a distance of only 27m, just over the width of the railway, between its ground floor rear wall and that of the Old School House whilst Block B/B1 would be slightly further away from The Orchard. The rise in height on the northern elevation would be stepped with set backs at 2nd, 3rd and 4th floor levels so that the top floor of Block C/C1 would be some 40m away from the southern building line of School House Lane. Revised timber screen detailing is proposed to the 2nd, 3rd and 4th roof terraces. The impact of the changes to the height of the buildings on views from The Orchard is shown in VVM12 and VVM13. Comparing the approved and appeal VVMs and from what I saw on my visit, despite the top floor setbacks I consider that the visual intrusion of the

buildings would be increased to an unacceptable extent. In seeking to address the objections of residents, the alternative design solution (Option A) omits the communal terraces at the upper floor level of Blocks B1 and C1 and sets back the screens further to the south towards the lift shaft. However this gives the lift shafts a greater and adverse prominence in views from the north that I find undesirable.

38. I have already commented above in terms of my second issue on the impact of the loss of the gaps between Blocks B/B1 and C/C1 on the views that would have been enjoyed by the future residents of Block A. Whilst accepting that the views would be rather limited and some oblique, those using the proposed decked area on the ground floor would have a less varied outlook and the overall impact of the proposed changes would not be positive. This adds a little extra weight to my conclusions on this issue that the increased height and mass of Blocks B/B1, C/C1 and D, and the infilling of the gaps, would have an overbearing and visually intrusive impact on the outlook of those living in School House Lane and users of The Orchard, and on the outlook of future occupants of Block A, contrary to the objectives of UDP policy BLT16.

Other matters

39. The applicants put forward various benefits that would arise from the appeal application and a number of other matters were raised by third parties that were not pursued by the Council as putative reasons for refusal but nonetheless are material considerations that need to be considered and which were addressed in the applicants' evidence.

Affordable housing

40. UDP policy HSG6 seeks opportunities to maximise the provision of permanent affordable housing and has an expectation of 40% of all new units to be affordable. The more recent LP also has policies for affordable housing and policy 3A.9 sets out the Mayor's strategic target of 50% additional housing to be affordable. Through the UU, half of the additional units to be provided through the appeal scheme would be affordable. The lack of affordable housing is recognised in the Council's most recent Annual Monitoring Report 2006/7 as the '*biggest single problem in the Borough*'. The Council is underperforming against its own targets and the additional 18 units of affordable housing would be equivalent to nearly half the total supply of affordable housing achieved in the Borough in the last recorded year.
41. These would be provided as a mix of one and 2 bedroom units with a tenure split acceptable to the GLA. The 2006 Local Housing Assessment identified the shortage relative to supply as being greatest for 4 bedroom properties. However it also showed shortfalls for all sizes of accommodation and the Council's earlier Housing Strategy 2004-2007, which has not yet been updated, indicated a need for 2 bed as well as 3 bed units in social rented housing. Three bedroom affordable housing units are being provided as part of the scheme as a whole and thus that benefit has already been captured. Nonetheless, the provision of half the additional units proposed as affordable would mean that the whole development would provide 40% of units as affordable, complying with UDP policy, and 38% as to floorspace, close to the 40% expected in the Council's 2003 SPG on Affordable Housing. The additional

provision of affordable housing units is a benefit of the scheme that I find should be given some weight.

Small units

42. UDP policy HSG11 expects developments to provide a reasonable number of small units with the Council seeking to negotiate at least 25% small units on appropriate sites. As 32 of the 127 units to be provided would have one bedroom, representing 25% of the appeal scheme, the applicants argued that the policy would be met for the appeal scheme and also across the whole site with 58 small units being provided overall. These small units would be provided mainly as affordable housing, whereas the local ward member contended that the policy requires 25% of the private units to be small.
43. Whilst there is a logic to the argument that the two elements – affordable housing and small units – should be assessed separately, part (B) of policy HSG11 only requires affordable housing to be provided and small units to be provided and does not explicitly state that the two elements are mutually exclusive, even if that is the way that the policy may have been applied in the past. Moreover the applicants pointed to the indicators in the Council's Annual Monitoring Report which make no distinction between market and affordable housing in measuring achievement of the 25% small unit target. Given that conflict with policy HSG11(B) was not a point taken by the Council at the inquiry, nor was it identified in the putative reasons for refusal, it is not something which I find should weigh heavily against the proposal.

Sustainability

44. The applicants also put forward the sustainability of the scheme, in accord with LP policies and the Council's sustainability checklist, as a benefit of the development. There have been a number of iterations of Price & Myers' sustainability appraisal with further evidence submitted to the inquiry by the applicants' consultant in her letter responding to Mr Harnden's detailed critique of Revision 07. The Sustainability Appraisal indicates a three stage approach with energy efficiency measures resulting in a predicted 11% savings in CO²; the supply of energy efficiently through the installation of a Combined Heat and Power plant running for 14 hours a day to achieve further savings; and increased use of renewables with a photovoltaic array on the top roofs to secure a further 20% reduction in carbon emissions. The Code for Sustainable Homes pre-assessment report indicates a predicted rating of Code Level 3.
45. The GLA has confirmed that the proposed approach to energy complies with the energy hierarchy set out in the LP and is supported subject to the imposition of agreed conditions on any permission to secure the revised CO² savings. Whilst there were some outstanding concerns at the inquiry about the size of the CHP plant and energy/power storage, I am satisfied that if permission were to be granted these are matters of detail that could be resolved by the subsequent submission of a scheme in accord with the suggested conditions. The sustainability credentials of the scheme are put forward as a positive factor in favour of the appeal development. I consider them to be a benefit but as it is one that policy is now seeking to achieve for all new development, the weight it should be given must necessarily be limited.

Water infrastructure

46. The SoCG confirms that agreement had been reached in relation to the Council's second putative reason for refusal in so far as it related to waste water infrastructure. Through the proposed imposition of an agreed condition on any permission granted, development would not begin until there was an agreed strategy for foul sewerage and drainage works and no occupation until those works were completed. Subsequently, via an exchange of emails between the Council and Thames Water, suitable wording for a condition requiring there to be a connection to the potable water supply prior to any occupation of the dwellings was also agreed. I am satisfied that with the imposition of these conditions on any permission granted, appropriate measures could be put in place to address the concerns of local residents about the adequacy of the infrastructure in the area and problems of flooding.

Impact on the ecology and biodiversity of Bushy Park

47. There is an extant permission for development on the appeal site therefore any impact on the ecology and biodiversity of the Park must be limited to that arising because of the additional height of the blocks. Survey work in 2005 had identified the need to preserve linear flight paths for bats, which are a European protected species, across the development. This was reviewed against the revised proposal and recommendations made that whilst there would be no increased impedance of bat movements that external lighting should be controlled on the site to create two '*dark corridors*' to link Bushy Park with the railway line. Further survey work on trees in Bushy Park identified trees on the perimeter that could be used for bat roosting and the applicants have accepted the need to control external lighting which can have a negative impact on roosting and foraging bats.

48. In that the buildings would be taller with more balconies and windows looking out over Bushy Park, there would be the potential for additional light spillage at high level. A condition is proposed to limit external lighting on the site and it would be possible to devise a suitable lighting scheme for the external areas at ground level, however I have some concerns as to whether such a condition is capable of being enforced against individual occupants who might bring lights out onto their balconies at night. Key principles in PPS9 on Biodiversity and Geological Conservation include there being adequate mitigation measures in place to prevent harm to biodiversity interests or, if that is not possible, appropriate compensation measures should be sought. As I am not satisfied on the evidence that proposed mitigation measures would be adequate and no compensation measures have been proposed, this is a further consideration that must weigh against the scheme.

Overall balance

49. In coming to an overall conclusion on the appeal proposal, there would be some benefits, particularly in terms of the additional units of affordable housing and the meeting of sustainability objectives. However those benefits have to be weighed against the considerable harm that would arise as a result of the proposed changes to the development, in terms of its increased height and massing, on the character and appearance of the Conservation Area, on the character of the MOL, the setting of the listed park and on the streetscene. In

addition, I have identified significant shortcomings in the redesign in its impact on the scheme's visual permeability and on the outlook of those living in School House Lane and users of The Orchard, and on the outlook of future occupants of Block A. I also have concerns about the adequacy of the mitigation measures proposed to prevent harm to bats.

50. I have concluded that the balance weighs against granting permission for the appeal development which I find would conflict with the objectives of national guidance in PPS1, PPS3, PPS9 and PPG15 and with the LP, particularly policies 3D.10 and 4B.1, and the UDP, including policies BLT11 and BLT16, to secure a high quality of urban design and neighbourly development.
51. I have taken into account all other matters raised but for the reasons given above I have concluded that the appeal should be dismissed.

Mary O'Rourke

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Litton	Of Counsel, instructed by the Borough Solicitor, London Borough of Richmond upon Thames
He called	
Mr M Wolfe-Cowen BSc MA DipLA MRTPI MLI FRSA	Principal Planning Officer (Urban Design and Street Scene), London Borough of Richmond upon Thames
Mrs S Tamplin DipTP DipPg Arch Cons MRTPI IHBC	Team Leader, Appeals and Enforcement, London Borough of Richmond upon Thames

FOR THE APPLICANTS:

Mr M Lowe QC	Instructed by Lennon Planning Ltd, UK House, 82 Heath Road, Twickenham TW1 4BW
He called	
Mr M Adams BA(Hons) DipArch MA RIBA	Managing Partner, John Thompson & Partners LLP, Wren House, 43 Hatton Garden, London EC1N 8EL
Mr A Williams BA(Hons) BPI MRTPI	Director of Lennon Planning Ltd
Ms M Borchers DipEng ING	Sustainability Consultant, Price & Myers LLP, Consulting Engineers, 30 Newman Street, London W1T 1LT

INTERESTED PERSONS:

Mr I Jones-Healey	59 School House Lane, Teddington TW11 9DP
Mr S Gillespie	41 School House Lane, Teddington TW11 9DP
Mr P Morpurgo	Chairman of Friends of Bushy & Home Parks, 81 Park Road, Teddington TW11 0AW
Councillor J Mumford	Local Ward Councillor, 3 Faircroft Court, Udney Park Road, Teddington TW11 9AZ
Mr D Harnden	49 School House Lane, Teddington TW11 9DP
Mrs J Harnden	49 School House Lane, Teddington TW11 9DP

DOCUMENTS

[1-37 were handed in at the April Inquiry, 38-65 at the October Inquiry]

- 1 Secretary of State's decision letter relating to appeal Ref:
APP/L5810/A/05/1193656
- 2 Design Statement July 2005 (relating to previously approved
scheme)
- 3 Deed of unilateral undertaking under Section 106 of the Town and
Country Planning Act 1990, as amended – Linden Homes South-
East Limited to the Mayor and Burgesses of the London Borough
of Richmond upon Thames, dated 22 April 2008
- 4 E-mail message of 21 April 2008 from Justin Carr of the Greater
London Authority with attached note relating to compliance of

- scheme with London Plan policy relating to energy efficiency, supplying energy efficiently, and using renewable energy
- 5 Revised Sustainability Checklist June 2007
- 6 Revised Views – Appendix 3 to Mr Adams’ April proof of evidence
- 7 Minutes of meeting between Linden Homes, its professional advisers and Royal Parks, 29 February 2008, and related e-mail correspondence
- 8 Extracts from The London Plan, February 2008
- 9 Extracts from London Borough of Richmond upon Thames Unitary Development Plan: First Review
- 10 London Borough of Richmond upon Thames Supplementary Planning Document: Sustainable Construction Checklist
- 11 London Borough of Richmond upon Thames Supplementary Planning Document: Design Quality
- 12 Conservation Statement for Bushy Park Conservation Area 61
- 13 London Borough of Richmond upon Thames Annual Monitoring Report 2006/7
- 14 Applicants’ table of comparison of 2004 (refused) scheme and scheme approved under appeal Ref: APP/L5810/A/05/1193656 (whole of Sandy Lane site)
- 15 Applicants’ table of comparison of scheme approved under appeal Ref: APP/L5810/A/05/1193656 and the appeal scheme (Blocks B/B1/C/C1/D only)
- 16 Opening submissions for the applicants 23 April 2008
- 17 Statement of Common Ground dated 23 April 2008
- 18 Masterplan extracted from Design Statement for the 2004 (refused) scheme for the Sandy Lane site
- 19 Secretary of State’s Direction relating to the saving of policies of the London Borough of Richmond upon Thames Unitary Development Plan and Schedule of saved policies
- 20 English Heritage and CABI Guidance on tall buildings, July 2007
- 21 E-mail correspondence between Premier Energy (for the appellant) and Thames Water April 2008
- 22 Statement of Mr Jones-Healey on water issues given at the April Inquiry
- 23 Statement of Mr Gillespie on design given at the April Inquiry
- 24 Statement of Mr Morpurgo on behalf of the Friends of Bushy and Home Parks given at the April Inquiry
- 25 Statement relating to biodiversity impact (from Mr Morpurgo) given at the April Inquiry
- 26 Statement of Councillor Mumford on housing matters given at the April Inquiry
- 27 Statement of Mr Harnden relating to sustainability and renewable energy matters given at the April Inquiry
- 28 Surface Water Drainage Strategy which accompanied the 2007 application
- 29 Letter from Ms Borchers (Price & Myers) to Lennon Planning, 23 April 2008
- 30 Exchange of correspondence in October/November 2006 between Lennon Planning and London Borough of Richmond upon Thames relating to slab levels of Blocks B1 and C1 in the scheme approved

- under appeal Ref: APP/L5810/A/05/1193656
- 31 Letter from RSK Group PLC to Linden Homes, 27 March 2008, relating to potential impact on moths and other invertebrates
- 32 Letter from Ms Borchers to Lennon Planning, 16 April 2008
- 33 EcoHomes Pre-Assessment, 16 April 2008
- 34 Agreed revision of Plan 3 of Document 3
- 35 Mr Burgess' business card and list of committee memberships handed in at the April Inquiry
- 36 List of suggested conditions handed in at the April Inquiry
- 37 Closing submissions for the applicants at the April Inquiry
- 38 Lists of those attending the Inquiry in October 2008
- 39 Opening submissions for the applicants
- 40 Revised Views – Appendix 4 to Marcus Adams' October proof which supersedes Appendix 3 (Document 6 above)
- 41 Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, as amended – Linden Homes South-East Limited to the Mayor and Burgesses of the London Borough of Richmond upon Thames, dated 3 October 2008 (replacing Documents 3 and 34 above)
- 42 Exchange of emails in September/October 2008 between Lennon Planning and GLA confirming the acceptability of the revised sustainability statement
- 43 Exchange of emails between London Borough of Richmond upon Thames and Thames Water agreeing the wording of the condition on water infrastructure
- 44 List of suggested conditions with highlighted changes
- 45 Statement of Common Ground September 2008 (replacing Document 17) with errata on number of parking spaces
- 46 Mr Adams' Revised and New VVMs 7 October 2008 and replacement pages 38 and 39 of his Appendix 4 (Document 40)
- 47 The Mayor of London's response dated 5 September 2007 to the appeal application and attached report
- 48 Letter of 19 November 2004 from CABE supporting application 04/2579/FUL
- 49 Letter from RSK Group PLC to Linden Homes, 19 September 2007, commenting on the CIP Group's Bat Survey and Ecological Impact Assessment.
- 50 Letter from Ms Borchers to Lennon Planning, 28 March 2008
- 51 Letter from London Borough of Richmond upon Thames to Lennon Planning, 24 July 2008, confirming proposed amendments to the approved scheme in relation to Block A were non-material.
- 52 CIP Group Bat Survey and Evaluation November 2005
- 53 Statement of Mr Jones-Healey on architecture, overlooking, construction dust and noise, outlook and water issues to the October Inquiry
- 54 Statement of Mr Morpurgo on behalf of The Friends of Bushy and Home Parks on overdominance, ecological effects and light pollution to the October Inquiry
- 55 Statement of Mr Gillespie on design and the veracity of the photomontages to the October Inquiry with attached photographs
- 56 Extract from the London Borough of Richmond upon Thames

- 57 Housing Strategy 2004-2007 submitted by Councillor Mumford
Extract from the London Borough of Richmond upon Thames 2006
Local Housing Assessment by Fordham Research Ltd submitted by
the applicants
- 58 Wording of draft condition on treatment of the windows to the
ground floor commercial unit in Block C.
- 59 Letter from John Thompson and Partners LLP to David Harnden
dated 22 September 2008 setting out proposed amendment
Option A
- 60 Note from John Thompson and Partners on cycle storage and plan
dimensions
- 61 Letter from Linden Homes to the Inquiry dated 9 October 2008
responding to comments made about noise and disturbance
during the early construction phases
- 62 Statement of David Harnden relating to sustainability renewable
energy matters with attached appendices
- 63 Ms Borchers' response dated 8 October 2008 to Mr Harnden's
statement
- 64 Closing statement for the Council to the October Inquiry
- 65 Closing statement of the applicants to the October Inquiry

PLANS

[A to H were handed in at the April Inquiry]

- A (1-12 The appeal drawings:
 - 01 Rev G Site Layout
 - 02 Rev F Block B/B1/C/C1 Car Park
 - 03 Rev E Block B/B1 Plans
 - 04 Rev C Block B/B1 Plans
 - 05 Rev F Block C/C1 Plans
 - 06 Rev A Block C/C1 Plans
 - 07 Rev D Block D Plans
 - 09 Rev A Site boundary
 - 010 Rev D Block B/B1 Elevations
 - 011 Rev D Block C/C1 Elevations (further revised – see Plan G)
 - 012 Rev E Block D Elevations
 - 13 Rev B Site Sections Appeal (further revised – see Plan F)
- B Volume of A3 reductions of the appeal drawings
- C Bundle of 30 drawings being the approved plans for appeal
Ref: APP/L5810/A/05/1193656
- D Volume of A3 reductions of the approved drawings for appeal
Ref: APP/L5810/A/05/1193656
- E Site Sections – Approved: Drawing No. 15 Rev A
- F Site Sections – Appeal: Drawing No. 13 Rev D (with A3
reduction of same drawing)
- G Drawing No. 011 Rev E – Block C/C1 Elevations
- H Extract from site plan of approved under appeal Ref:
APP/L5810/A/05/1193656
- I Drawings included in Mr Adams' appendices 5 to 8
All prefixed LH.SLT1

- Appendix 5 -15 rev B site section (approved scheme)
- Appendix 6 - 32 site section ZZ (approved scheme)
- Appendix 7 - 14 roof plans
- Appendix 8 – 16 to 20 Option A
- J Volume of A3 reductions of Mr Adams' appendices 4 to 8
- K Drawing LH.SLT1 13 rev E site sections XX and YY
- L Drawing LH.SLT1 32 site section ZZ

PHOTOGRAPHS HANDED IN AT THE INQUIRY

- 1 (a & b) 2 photographs of the buildings under construction from Bushey Park (from Mr Morpurgo)
- 2 Night-time photograph from Bushey Park (from Mr Morpurgo)