



Appeal Decision

Site visit made on 13 November 2007

by **N P Freeman** BA(Hons) Dip TP MRTPI
DMS

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

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Decision date:
6 December 2007

Appeal Ref: APP/A9580/A/07/2053649

Concorde House, Caxton Street North, Canning Town, London, E16 1JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Samsen Ltd against the decision of London Thames Gateway Development Corporation.
- The application Ref. 06/01172/LTGDC, dated 26 June 2006, was refused by notice dated 21 June 2007.
- The development proposed is the demolition of the existing building and construction of a new 5-8 storey residential led mixed use building comprising 68 flats, 585 sq.m. of commercial space (B1 use) at part ground and first floor levels, 18 parking spaces and 67 bicycle parking spaces.

Decision

1. I dismiss the appeal.

Preliminary matter

2. A planning obligation in the form of a unilateral undertaking pursuant to s106 of the 1990 Act has been submitted on behalf of the appellant, signed by the present owner (Quantum Securities Ltd) and the prospective purchaser (Kresmay Ltd). I will consider the matters covered by this undertaking below.

Main issues

3. I consider that the main issues in this case are as follows:
 - 1) Whether the construction of a building to be used predominantly for residential purposes and the net loss of commercial floorspace is acceptable having regard to the prevailing policy context;
 - 2) Whether this location is a suitable and satisfactory environment for residential development having regard to the surrounding land uses;
 - 3) Whether the density, height, massing and design of the development are compatible with the character and appearance of the area and adjoining occupiers;
 - 4) Whether the internal floor space within the proposed flats is of a satisfactory standard;
 - 5) Whether the external amenity space that would be provided within the development is adequate to meet the needs of residents, particularly children;

- 6) Whether the affordable housing content is sufficient, having regard to the prevailing policy context;
- 7) Whether appropriate measures have been put in place, by means of a planning obligation (unilateral undertaking) to meet the cumulative impacts and demands upon infrastructure and community facilities.

Planning policy

4. The development plan comprises the Mayor of London's Spatial Development Strategy for Greater London – The London Plan (February 2004) and those policies from the London Borough of Newham Unitary Development Plan (UDP) (adopted June 2001) which were specifically 'saved' by virtue of a Direction made by the Secretary of State under paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004¹. The policies from the UDP to which I will refer have all been saved bar one (H7). The Corporation has referred to a number of policies from these plans but I consider that those listed below are most pertinent and include those mentioned in the reasons for refusal set out in the decision notice.
5. Reference has also been made by the parties to the emerging Core Strategy for Newham LBC which will form part of the Local Development Framework (LDF)². However, I understand that following consultation on the draft preferred options the Council has decided to go back to the issues and options stage to enable further consultation to take place in order to address matters raised in earlier consultation. Given this position, I consider that only limited weight should be attached to the policies in the current document.
6. My attention has also been drawn to the London Mayor's Lower Lea Valley Opportunity Area Planning Framework (LLV OAPF), adopted January 2007, which is referred to as Strategic Planning Guidance. The appeal site falls within Sub Area: 13 – Canning Town and an area identified as "locally significant industrial sites" in this framework. The Corporation says that I should attach considerable weight to this document but the appellant's agent argues that it is not part of the development plan, or a development control document but simply a document to guide policy formulation. In my view it is a material consideration being a piece of strategic planning guidance adopted by the Mayor but it does not have the status of being part of the development plan.
7. I have also been referred to a number of Supplementary Planning Guidance (SPG) documents produced by Mayor of London and Newham LBC, concerning some of the issues identified above. Again, whilst these documents do not form part of the development plan, they are nevertheless material considerations in deciding this appeal.

The London Plan

8. Policy 3A.1 seeks to increase housing provision in general in London at a rate of 30,000 additional homes per annum and Policy 3A.4 promotes housing choice in terms of sizes and types of accommodation catering for the whole

¹ A letter dated 18 September 2007 from the Government Office for London to Newham LBC provided such a Direction under the said part of the 2004 Act attached to which was a schedule of the 'saved' policies

² The document provided is entitled "Newham 2020 – Planning for the Future – Draft Preferred Options for the Core Strategy"

community. Policy 3A.7 indicates that UDP policies should set down the overall target for affordable housing provision taking account of needs assessments, the Mayor's strategic target that 50% should be affordable and the Londonwide objective of a 70% / 30 % split between social and intermediate housing.

9. Policy 4B.1 sets out general design principles for a compact city, including maximising the potential of sites, creating or enhancing the public realm and providing a mix of uses. Policy 4B.3 picks up on the maximisation point, seeking the highest possible intensity of use compatible with local context, the design principles in Policy 4B.1 and with public transport capacity. Boroughs are charged with developing residential and commercial density policies in their UDPs which accord with the density ranges set out in Table 4B.1 of the Plan.

Newham UDP

10. The Urban Regeneration chapter of the UDP includes a number of policies which seek to achieve this aim. In particular, as regards this appeal proposal, Policy S10 seeks new uses or improvements for neglected, derelict and vacant land and buildings. However, Policy S27 makes it clear that proposals which would lead to changes of use from designated business, industrial and other employment-generating uses will be resisted unless there is an absence of demonstrable demand for such land and premises. Policy S28 adds that development which contributes to creating employment places of quality and character will be encouraged, particularly in existing employment areas.
11. Policy EMP1 sets out measures to achieve the strengthening and diversification of the local economy including (B) the early redevelopment of vacant sites and re-use of premises within Principal Employment Areas (PEA). The appeal site falls within a PEA (Area emp5). Policy EMP4 indicates that within PEAs the Council will sanction the retention and expansion of industrial and warehouse uses. Redevelopment for retail and residential use will be strongly resisted in such areas. Other uses of premises last used for employment purposes will also be resisted except where such uses would be ancillary to, or supportive of, the preferred uses and other criteria are met, including where there is no appreciable demand for the preferred uses.
12. Policy H6 sets out the general framework for promoting the provision of affordable housing in the Borough. Policy H7 which sets out the approach to be adopted in terms of site size and percentage of affordable housing to be incorporated into schemes has not been saved³. Policy H13 promotes quality and innovation in housing development, especially in larger schemes (over 40 units) taking account of context, form, function and materials. Policies H14 and H15 seek to extend the range of housing choice and the mix of dwelling sizes appropriate to a specific site. Policy H17 sets out general criteria to be applied to the assessment of residential proposals. These include design and relationship to surroundings, privacy, outlook, natural light and amenity space. Policy EQ19 sets down criteria to be applied to achieve a high standard of design, layout and detail in all new developments.

³ The reason given by the S of S in the letter of 18/09/07 is that the policy does not comply with paragraph 5.15 of PPS12 and the protocol

Reasons

Site location and surroundings

13. The appeal site is about 1,700 sq.m. in area and is presently occupied by a large building of just over 1,000 sq.m. in floor area which has a history of use as a warehouse. The front part of the building, adjacent to Caxton Street North, is 2 storeys in height with the rest of the building being single storey. It is located within a group of industrial and commercial buildings of similar height and scale between Caxton Street North and the elevated Silvertown Way to the west and Huntingdon Street to the east. It is bounded by a building used as gymnasium to the south and Fen Street to the north.
14. At the time of my visit, I noted that the building was being used by a scrap metal company (London City Metals) who also occupy of a number of units on the opposite side of Caxton Street North, beneath the Silvertown Way flyover. Cutting machinery and piles of scrap metal were evident inside the building, viewed through a loading door from Fen Street. On the opposite side of Fen Street (north) the premises are in use as a roller shutter and door manufacturers and vehicle repair garage. To the east a new housing development is under construction between Huntingdon Street and Tarling Road. I also noted the recent residential development of 11 flats at 118 Victoria Dock Road to the south, the new 8/10 storey predominantly residential development on Silvertown Way (The Sphere), the adjacent Holiday Inn hotel (5 storeys) and what I shall refer to as the "St Luke's Square" site (adjacent to St Luke's Church) where development of a mixed use scheme has commenced.
15. Canning Town bus, tube and Docklands Light Railway (DLR) stations are located about 500m to the north along Silvertown Way close to the junction with the A13 road. Royal Victoria DLR station is about 400m to the east. There is a sizeable public recreation ground a short distance to the north-east within a few minutes walk of the site.

Issue 1) – Principle of residential use and loss of commercial floorspace

16. The proposed building would be used predominantly for residential purposes. The commercial element, which is intended for B1⁴ use, would occupy the south-western end of the building at ground and first floor levels but the substantial majority of the floorspace would be devoted to flat development (24 x 1bed, 34 x 2 bed and 10 x 3 bed). In terms of the commercial floorspace there would be a net reduction of about 475 sq.m. (45%).
17. The starting point is the policies contained within the development plan. There is no dispute that the site falls within a PEA as defined in the UDP and in such areas the principal objective is to strengthen and diversify the local economy (Policy EMP1). There is also acceptance by the appellant's agent that the proposal would represent a departure from Policy EMP4 which states that redevelopment for residential use will be strongly resisted in PEAs. In these circumstances, having regard to the terms of s38(6) of the Planning and Compulsory Purchase Act 2004, it needs to be demonstrated that there are material considerations which indicate that determination should be made other than in accordance with Policy EMP4 if the appeal is to succeed.

⁴ Class B1 of the Town and Country Planning (Use Classes) Order 1987

18. For the appellant it is argued that the building has been vacant for about 2½ years. Whilst this is not disputed by the Corporation, it argues that no evidence of marketing during that period has been provided. The response for the appellant is that no such evidence has been requested and that vacancy can be verified by Newham LBC rating department. Having made this comment there is again no evidence or any information whatsoever about marketing. Without such information, I can only find that it has not been shown that there is no demand to use the building for commercial or industrial purposes which would be wholly in accordance with Policies EMP1 and EMP4 of the UDP. If the appellant is seeking to rely on an argument of lack of demand or interest for re-use for such purposes it is only reasonable to expect that evidence to support such an argument would be forthcoming. None has been adduced.
19. Furthermore, it is apparent that the building is not actually vacant at present. I do not know on what basis London City Metals is in occupation and this may be simply an informal arrangement pending the outcome of this appeal for redevelopment. Nevertheless, the fact that the building is in occupation by an industrial business occupying adjacent premises suggests to me that there is demand for this type of commercial floorspace in this location. I am also mindful of the fact that businesses like scrap metal dealers often have difficulty in finding acceptable premises due to the nature of the use which is likely to be perceived as a bad neighbour. It is therefore important that niches such as these within a PEA are not eroded or lost as this could threaten the survival of such businesses.
20. I have also had regard to the nature of the surrounding area and whether this is showing signs of vacancy, neglect or dereliction. If this were the case then, by virtue of Policy S10 of the UDP, an argument for redevelopment could carry significant weight. However, from my observations it was apparent that most, if not all of the buildings, within this part of the PEA between Caxton Street North and Huntingdon Street were in active use mostly for industrial or warehousing purposes. To the north, as well as the uses mentioned in paragraph 13 above, there is a commercial bakery and a substantial electrical business occupying two buildings. On the opposite side of Caxton Street North, beneath Silvertown Way is a vehicle repair garage. To the south is the gymnasium and beyond that an office furniture suppliers. I therefore do not accept that this is an area showing significant levels of vacancy, neglect or dereliction so Policy S10 does not come into play. Moreover, based on the evidence before me including my own observations, I do not find that there is an absence of demonstrable demand for such land and premises. On this basis the proposal is also in conflict with Policy S27 of the UDP.
21. The appellant's agent has placed great weight on the regenerative benefits of the scheme as did Newham LBC when they considered the application. In the circumstances I have described above I consider that such emphasis is either misplaced or exaggerated and fails to take due account of the fact that employment development is the priority in this location as set out in the UDP. This is reinforced by LLV OAPF designation as locally significant industrial sites. I also consider that the claims that the employment function of the site would be retained and improved and that scheme would contribute positively to the diversification and strengthening of the local economy are, at the very least,

- questionable. It is a fact that there would be almost a 50% reduction in commercial floorspace. Whilst the proposed B1 floorspace may create 8 full-time jobs as suggested there is no guarantee that this would be so and no reason why the re-occupation of the existing building or redevelopment for a greater proportion of non-residential floorspace could not create more.
22. I am mindful of the thrust of certain policies in The London Plan and the UDP to maximise the use of land and, in general, to encourage high density residential developments in locations well-served by public transport. However, this does not mean that specific policies in the development plan aimed at protecting important employment areas and achieving an appropriate balance of land uses should be set aside lightly. To do so could result in a situation where there is plenty of housing available but no local employment opportunities for those living in such areas. In my view, this goes against the principles of good planning and ensuring that jobs are available within reasonable distances of such homes. There is no priority for residential redevelopment on this site. On the contrary the priority as it stands is to retain employment generating uses.
23. I have borne in mind that the emerging LDF Core Strategy did suggest that between 40-59% on the industrial/employment land within PEA emp5 could be released for mixed use development. However, as the Core Strategy has been withdrawn⁵ I consider it would be wrong to place any significant weight on this suggestion at this time. I also consider that, with the designation in the LLV OAPF as part of an area of locally significant industrial sites it would be wrong to attach more weight to emerging policy, which has been withdrawn pending further consultation, than the adopted UDP policies, which form part of the development plan.
24. I have taken account of the arguments that other residential schemes have been permitted in the area. The St Luke's Square site does come within the PEA but it is at the northern edge adjacent to an area which is designated in the UDP for mixed use development. It also falls outside the 'locally significant industrial sites' designation in the LLV OAPF ('other industrial areas' designation instead). I also do not accept that the characteristics of the surrounding land uses are very similar as argued for the appellant. The St Luke's Square site has a more varied land use character with a former church (now used as workspace, meeting rooms and a café) to the east, a hotel to the west and mixed uses to the north. The appeal site faces industrial development to the north and west and is separated from residential uses to the east by Huntingdon Street. It is within the heart of the PEA rather than on its fringe.
25. In terms of the recent development at 118 Victoria Dock Road, I understand that this site is partly within the PEA and partly outside. Whatever the split it is clearly on the periphery of the PEA and immediately adjacent to a 3 storey block of flats (Wimborne House) to the east. Additionally it abuts the gardens of houses in Tarling Road to the north-east. I have also had regard to the fact that this development is of a different quantum being only 11 units compared with the 68 units proposed. I therefore do not see the circumstances as being comparable. I also note that The Sphere development some distance to the north is outside the PEA in a zone designated for mixed use development.

⁵ See para. 5 above

26. Based on these findings, my conclusion on the first issue is that there is no sound justification for permitting a predominantly residential development on this protected industrial site at this time. To do so would be contrary to Policies S27 and EMP4 of the UDP and at odds with the thrust of the LLV OAPF. The other material considerations put forward do not outweigh the harm in this respect. I also consider that, to allow this development, in the present policy context, would create an unfortunate precedent which could further undermine and erode an area which is currently protected for employment generating uses. These conclusions weigh strongly against the grant of planning permission.

Issue (2) – Surrounding environment – suitability for residential use

27. It is apparent that the site is adjacent to a number of uses (scrap metal dealers, vehicle repairers) which do not make good neighbours for residents. Whilst the application was supported by a noise assessment report this was commissioned to examine the implications of traffic noise generated by vehicles using Silvertown Way and not the potential disturbance from surrounding businesses. I accept that noise insulation measures could be introduced such as multiple glazing which would provide some amelioration. However, it is to be expected that residents would wish to be able to open their windows on warmer days to obtain natural ventilation. This would lead to potential disturbance both from neighbouring businesses and the traffic using Silvertown Way. I accept that other residential development has been permitted in the locality, such as at 118 Victoria Dock Road but this does not seem to me to be a location where a large number of flats should be encouraged.

28. In these circumstances, I consider that the Corporation is right to point out the potential conflict between residential and industrial uses and the fact that this may lead to complaints which could create pressure for the removal of the latter uses in what is a recognised employment area. The outlook for a number of the flats towards Silvertown Way would also be poor. I, therefore, conclude on this issue that the surrounding environment is one which weighs against permitting the development and that there would be some conflict with criteria A) and B) of Policy H17 of the UDP.

Issue (3) – Density, height, massing and design

29. As far as density is concerned, I note the site has a Public Transport Accessibility Level (PTAL) rating of 5 or 6⁶, which is a high standard and a situation where higher densities than the norm may be acceptable. The density proposed is calculated at 919 habitable rooms per hectare (hrh). From my reading of the SPG and other emerging guidance on densities (Core Strategy) it seems that this figure is above what would normally be permitted in this location even with the high PTAL. In 'central' areas of Canning Town densities of up to 1,100 hrh are mentioned but the normal range for Area 7 of the Canning Town and Custom House Masterplan SPG, to the north-west, is 450-750 hrh. I am told that a density of 835 hrh was permitted for the St Luke's Square scheme where the PTAL is said to be lower (rating 4) but the density proposed here would be higher still exceeding what would normally be expected on a site in this location.

⁶ The Corporation's figure is 5; the appellant's 6

30. The proposed building would clearly be of a height and massing which is at odds with the surrounding 'low rise' industrial and commercial buildings but this would be likely if a redevelopment scheme was sanctioned, given the thrust of development plan policy to maximise the use of land. I appreciate that there are some other tall buildings in the neighbourhood such as The Sphere but, as has already been pointed out, this is in a mixed use area closer to the Canning Town transport interchange. Whilst some form of multi-storey development might well be permissible, should the principle of redevelopment for predominantly residential use be accepted, I have concerns that the height and scale of the building proposed would still be excessive, having regard to the surrounding buildings and the density guidelines.
31. A related matter is the impact that the building would have on the light received by and outlook from the large number of windows in the north-facing elevation of the adjacent gymnasium. A light assessment report was submitted with the application demonstrating compliance with Building Research Establishment Guide for sunlight and daylight received by surrounding residential buildings. I accept that the impact on a non-residential use is not so critical and the scheme has been designed with a recessed area along part of the boundary which would allow some light to penetrate. Nevertheless, the close juxtaposition of parts of the proposed building to the boundary would be likely to have an oppressive impact on a number of the windows in the gym.
32. In terms of design, it is to be expected that by the nature and function of the building, it would be markedly different from its neighbours. The surrounding buildings are generally nondescript lacking in any particular architectural value and the proposed building would introduce a piece of modern architecture which, subject to careful control of materials, could enhance the appearance of the area and reflect some of the positive attributes found in other new development built or under construction in the area. I, therefore, do not find the design to be unacceptable in principle.
33. Notwithstanding this finding, my conclusion overall on this issue is that the scale, height and density of development exceeds what is appropriate for the site having regard to the density guidelines and this weighs against the granting of permission.

Issue (4) – Internal space standards

34. The Corporation argue that some of the flats and room sizes fall below the standards set out in the Newham LBC's SPG⁷. However it is apparent that this guidance applies to flat conversion schemes and not new build development. The appellant's agent refers to the comment in Committee Report of 24 January 2007 that all the residential units meet Newham's minimum space standards. There is clearly a dichotomy of opinion here and it may be due to not using the same standards. For the appellant it is argued that the Housing Corporation Scheme Development Standards (a national standard accepted by Government) would be met.

⁷ SPG – Flat conversions – June 2001

35. In terms of specifics, the Corporation argues that 7 of the proposed 2 bed (4 person) units fall below the guideline of 70 sq.m. and that 30 of the units have first bedrooms below the guideline minimum of 12 sq.m. However, the degree of shortfall below these guideline figures has not been itemised. From my examination of the plans it appears that the 'deficiencies' are unlikely to be significant and I have borne in mind that the 'standards' applied are only guidelines and in themselves are not strictly applicable to new build developments. In these circumstances I do not find against the scheme on this basis.

Issue (5) – Amenity space

36. The Corporation argue that, based on the adopted standards in relevant Newham LBC SPG "Residential Planning Guidelines", private amenity space of 1,500 sq.m. should be provided. The Council's report suggests a figure of 1,045 sq.m. The actual level of provision (excluding the balconies proposed) is said by the Corporation to be about 224 sq.m. I accept that the balconies serving most of the flats would provide additional external areas and that there is a public park on Tarling Road a short walk to the north-east. I have also borne in mind that this is an urban location where constraints apply. However, whichever of the above figures is preferred, it is clear that there is a substantial shortfall below what would normally be expected. I also note, from the Corporation's calculations that the level of provision is below the recommended guideline of 10 sq.m. of play space per child set out in the Mayor's draft SPG "Providing for Children and Young People's Play and Informal Recreation" (October 2006).

37. These findings lead me to conclude that the proposal would be contrary to criterion B) of Policy H17 of the UDP and the adopted and emerging SPGs. They reinforce my view that the scale of development is excessive for the site and weigh against the granting of planning permission.

Issue (6) – Affordable housing

38. The original scheme proposed 100% social housing to be developed in conjunction with Circle Anglia Housing Association. However following discussions with Newham's Housing and Regeneration Departments the mix was altered to what is now proposed which includes 20 units of affordable housing (29% of the total). This would comprise of 11 units of rented accommodation located at the northern end of the building and 9 units for shared ownership at the southern end. If the split is calculated on the basis of habitable rooms the percentage figure increases to just over 35%, with 21% being rented accommodation and 14% shared ownership.

39. The UDP does not provide guidance on the percentage that should be aimed for but I understand that in recent years Newham LBC has sought a minimum of 35% affordable housing. The Corporation argues that a calculation based on the number of habitable rooms rather than the number of units is only appropriate where a higher percentage of larger units is to be affordable which is not the case here. However, no explanation is provided for the basis of this assumption and the Borough Council considers the level of provision is compliant with what they would expect.

40. The situation at the London-wide level, as indicated in Policy 3A.7 of The London Plan, is a strategic target of 50% affordable housing which is not achieved whether the calculation is based on the number of units or habitable rooms. This policy does however indicate UDP policies should set out overall targets based on regional and local needs assessments. I am not party to such information. I do however note that paragraph 6.21 of the emerging Core Strategy for Newham would seek a minimum of 35% affordable units within new development.
41. In conclusion on this issue it would appear that, despite the stance of the Borough Council, the level of provision does fall below what is being sought in their Core Strategy and as recommended in The London Plan. This weighs against the grant of permission.

Issue (7) – Unilateral undertaking

42. The 'offer' put forward in the submitted undertaking comprises £3,000 per private unit for the planning obligation, education and health contributions and a total of £20,000 for employment skills training. This equates to a total figure of £164,000.
43. The Corporation have responded criticising the form, content and enforceability of the undertaking for various reasons, concluding that it should be given very little weight, if any. In terms of the named parties to the deed it is argued that neither the bank⁸, who hold a mortgage on the property, nor the appellant are so named. I agree that without the bank being party to the undertaking it, or its successors in title, would not be bound to comply with the obligations. The undertaking is also being given to the London Borough of Newham which is not the local planning authority for the purposes of the s106 agreement in this case. Such responsibility has been transferred to the Corporation. For these reasons, I agree that the undertaking is procedurally flawed and is not in the correct form to deliver the 'benefits' that are included.
44. In terms of content, the Corporation has provided a copy of its guidance document "Planning Obligations Community Benefit Strategy". This document was adopted by the Corporation in July 2007 following consultation as a basis for determining planning applications falling within its jurisdiction. It therefore appears to me to be a sound and reasonable basis for identifying what measures should be included in an undertaking.
45. In terms of the contribution for essential infrastructure (health, education, etc) the offer of £3,000 per private unit falls way below what is normally expected. The Corporation says that the standard charge in mixed use developments is £22,000 per unit. However, in this particular location a discounted figure of £10,000 per unit is sought⁹. Moreover, the charge is to be applied to all units, including the affordable units, and not just the private ones as offered. So, the Strategy indicates that £680,000 is required whereas only £144,000 is offered. Consequently there would be a substantial shortfall. The figure of £20,000 for skills training is also well below the figure of £38,000 recommended by the Newham LBC Regeneration Department.

⁸ HSBC Bank plc

⁹ £10,000 per unit is the discounted figure set down for development in the Lower Lea Valley up to April 2009

46. As regards labour, goods and services commitments the appellant's agent says that there is a willingness to enter into an agreement on these matters but they are not incorporated within the undertaking. There is also no contribution for highway improvements related to the development although I note a willingness in principle to enter into an agreement in this respect¹⁰. There is also no mention of the requested green travel plan.
47. Other criticisms raised by the Corporation concern the lack of definition of certain words and the lack of, or inadequacy of, 'triggers' to ensure that the benefits are guaranteed. The use of positively, rather than negatively, worded clauses is identified as a potential problem in the case of default as well as the lack of index-linking.
48. For these reasons, I agree that the unilateral undertaking put forward is fundamentally flawed in terms of its form, content and enforceability. The appellant's agent says that at no time did the Corporation seek to discuss the terms of an undertaking but I consider, in the knowledge of the important matters that needed to be addressed, it was incumbent upon the appellant to enter into discussions with the Corporation at an early stage having lodged an appeal. This did not happen and the undertaking that has emerged was submitted after the date of the appeal site visit and after the standard 9 week deadline for the receipt of appeal representations. The lack of an acceptable undertaking weighs strongly against the granting of planning permission.

Other matters

49. The appellant's agent has laid great stress on the point that Newham LBC found in favour of the development as the plan-making authority. Nevertheless, from the analysis set out above, I do not agree with the Borough Council's conclusions and consider that there is serious conflict with a number of policies in the adopted UDP.

Overall Conclusion

50. For the reasons given above, I have found against the proposal on all the main issues identified above apart from Issue (4) concerning internal floor space standards. I am especially concerned about the conflict with adopted employment policy as explained under Issue (1) and I consider that for these reasons alone the grant of planning permission should be opposed. In carrying out the required balancing exercise, I conclude that any benefits in terms of additional housing or environmental enhancements are outweighed by the demonstrable harm that would be caused if the development proceeded. Accordingly the appeal is dismissed.

N P Freeman

INSPECTOR

¹⁰ s278 of the Highways Act is cited