

RE : FORMER DEBENHAMS, 37-45 HIGH STREET, STAINES UPON THAMES

APP REF : APP/Z3635/W/22/3312440

SPELTHORNE BOROUGH COUNCIL OPENING STATEMENT

1. The development proposed seeks to demolish the locally listed Debenhams Building on a prominent corner within the town centre of the historic market town of Staines-upon-Thames, on the junction of Thames Street and High Street (as High Street becomes Clarence Street at the Market Square. The site lies at the heart of the civic and historic core of the town.
2. The proposal seeks to replace the existing 4 storey retail building with two towers rising to 66.07m in height, comprising 16 storeys in each tower, the towers connected by a low-level podium. The 14 storeys above ground and mezzanine levels would provide 226 ('build to rent') residential dwellings.
3. The Council, through its planning committee who agreed with the recommendation of officers, refused the scheme for three reasons which can be summarised as follows :
 - i. Impact on heritage assets (designated and non-designated)
 - ii. Impact on the character and appearance of the area
 - iii. Inadequate provision of affordable housing.
4. In respect of the affordable housing objection, against a strategic target of 40% and a policy requirement for up to 50% from all sites of 15 more or more dwellings (subject

to viability), the quantum proposed at the time of determination had risen from 10% to 12%. No review mechanism had been proposed. During the appeal process, following discussions between the viability advisers acting for each of the appellant and SBC, the appellant increased its offer to 22% (ie 50 units), and to now offer a late-stage review mechanism (secured through the s106 agreement). The Council have agreed this to be the maximum viable amount, and in these circumstances and subject to the review mechanism being secured, the third objection is overcome. This leaves two objections which remain in issue :

- i. Heritage
- ii. Townscape.

5. The appeal is to be determined in accordance with the statutory test, namely in accordance with the development plan unless material considerations indicate otherwise¹.

6. The development plan consists of :

- i. Saved policies of the Local Plan (2001)
- ii. Core Strategy and Policies DPD (2009)
- iii. Allocations DPD (2009)
- iv. Proposals Map (2009)

7. When considering a proposal's consistency with the development plan, it is the development plan overall which must be considered, but it is the following development plan policies (identified in the Decision Notice) which SBC say are breached :

- i. EN5 (RfR1)
- ii. EN6 (RfR1)

¹ s 70(2) TCPA 1990 and s 38(6) PCPA 2004

- iii. EN1 (RfR2)
 - iv. EN9 (RfR2)
8. Staines-upon-Thames and in particular the town centre, is rich in history and to which the junction where the appeal site is important.
9. The appeal site is within the setting² of a wealth of heritage assets.
10. The following buildings are statutorily listed, recognising their special architectural and historic interest, within a stone's throw of the appeal site and the site falling within each of their respective settings:
- i. 2 Clarence Street
 - ii. 15-17 Clarence Street
 - iii. 25-27 Clarence Street
 - iv. 29 Clarence Street
 - v. 31 Clarence Street
 - vi. 33 Clarence Street
 - vii. 35 Clarence Street
 - viii. 41 Clarence Street
 - ix. 21 – 27 Church Street
 - x. 44 – 48 High Street
 - xi. 13 – 15 Market Square ('Blue Anchor')
 - xii. Staines Town Hall, Market Square
 - xiii. War Memorial Market Square
11. Of this area containing a considerable array of buildings appearing on the statutory list, the following should be noted :

² 'Setting' as defined in the NPPF (2021) : The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

- i. 13-15 Market Square ('Blue Anchor'), which is a very close neighbour of the appeal site, is one of only two Grade II* listed buildings in Staines (the other being the Church of St Mary), there are no Grade I listed buildings and the Blue Anchor can therefore properly be regarded as one of the two most important buildings in Staines (in heritage terms) ;
 - ii. All those others listed above are listed at Grade II ;
 - iii. Almost all of these buildings (44-48 High St being the exception) lie within the Staines Conservation Area ;
 - iv. It is SBC's position that the significance and/or the ability to appreciate significance) of each and every one of these designated heritage assets would be harmed by the proposed development, calibrated at the middle of the less than substantial bracket (except 2 Clarence Street, 21-27 Church St, and 44-48 High St, at the lower end).
12. Although the appeal site is currently outside Staines Conservation Area³, the boundary of the CA lies only 60m away, the site is clearly within the setting of the CA, and it is the Council's case that the CA is a further asset whose significance, or the ability to appreciate that significance, will be harmed (in the middle of the less than substantial bracket).
13. In addition to designated heritage assets, the Debenhams building is a non-designated heritage asset which would be lost completely. Furthermore, the appeal site is within the setting of a significant number of non-designated heritage assets (26 High St, 28-30 High St, 56-62 High St, 65-67 High St, 91-93 High St, 5-7 Market Square, 1-9 Clarence St, 2-8 Church St, 14 Church St, 29-31 Church St) and the ability to appreciate their significance will be harmed, a number of these lie within the boundaries of the Conservation Area. Other than to the Debenhams building itself, the greatest harm to

³ It had been added in 2022, as the first of 8 conservation areas within the borough of Spelthorne who's boundaries are to be reviewed, but the court recently (28th March 2023) found the process to have been unlawful, although that does not impede the ability of SBC to go on to extend the boundaries

non-designated assets would be caused to those in Market Square, Clarence Street, and the (former) Angel Hotel (26 High St).

14. It is notable that the appellant accepts that harm would be caused by the development to the significance of a number of these designated⁴ and non-designated⁵ heritage assets, however the appellant under-states both the number of assets which will be harmed, and the extent of harm where harm is accepted to arise.

15. SBC's heritage evidence will be given by Nigel Barker-Mills, he is a noted heritage expert with nearly 40 years' experience including a lengthy period in a prominent role at Historic England, and was a founding member of IHBC⁶.

16. The NPPF separates harm to the significance of designated heritage assets into substantial and less than substantial harm. SBC allege less than substantial harm to arise in each case. However, substantial harm is a high bar (rarely found) for which the courts have said⁷ the development proposed "would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced". However, it is expected that the following propositions will be common ground between the parties :

- i. An allegation of less than substantial harm does not amount to a less than substantial objection⁸ ;
- ii. Great weight should be given to the conservation of a designated heritage asset, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance⁹.

⁴ 2 Clarence Street, 44-48 High St, 13-15 Market Square, Staines Town Hall, Staines CA

⁵ 26 High St, 28-30 High St, 1-3 Market Sq, 1-9 Clarence St

⁶ Institute of Historic Building Conservation

⁷ Bedford [2013] EWHC 2857 (Admin)

⁸ Barnwell Manor [2014] EWCA Civ 137

⁹ NPPF (2021) at para 199

17. It is in addition expected to be uncontroversial between the parties that the s66 statutory duty¹⁰ arises in this case, but that generally a decision-maker who works their way through the relevant paragraphs of the NPPF will have complied with the this duty¹¹.

18. If the Inspector is satisfied that harm would result to the significance of a designated heritage asset, then this should be weighed against the public benefits of the proposal¹² ; whilst the effect on the significance of non-designated heritage assets should also be taken into account¹³.

19. It is SBC's case that the harm to the significance of designated heritage assets is not outweighed by public benefits. It is recognised that these public benefits include :

- The provision of housing in circumstances where SBC do not currently have a 5YHLS and the shortfall is significant¹⁴ ;
- The provision of affordable housing ;
- The economic benefits of the scheme.

20. Although the impact on the character and appearance of the area (the townscape objection) should not be treated as if it is interchangeable with the heritage objection, a degree of overlap in assessing impacts is inevitable. SBC's evidence as to the impact on the character and appearance of the area will be given by Phillip Hughes, an extremely experienced and measured independent chartered town planner.

¹⁰ The 'special regard' duty in respect of development affecting a listed building or its setting : s66 Planning (Listed Buildings and Conservation Areas) Act 1990

¹¹ Mordue [2015] EWCA Civ 1243

¹² NPPF (2021) at para 202

¹³ NPPF (2021) at para 203

¹⁴ The parties have agreed in the HLS SOCG that SBC for the purposes of this Inquiry can demonstrate between 2.78 years (the appellant's figure) and 3.52 years (SBC's figure) but that (in the context of the current NPPF) it is not necessary for the Inspector to make a finding as to where within that bracket the figure falls

21. The impacts are evident from the CGIs and AVRs prepared by the appellant, although as always these are not a substitute for the kinetic experience of walking the area. It is SBC's case that the harmful impacts to the character and appearance of the area, arising principally from the height of the proposed towers (in association with scale and bulk) can be appreciated in views that can be grouped as follows :

- i. From the River Thames (including towpath and residents) ;
- ii. From the north-west (Clarence Street, Market Square, Church Street) ;
- iii. From the south (Thames Street) ;
- iv. From the east (High Street).

22. The harmful impacts are multi-faceted, and the appellant places a misguided reliance on a number of misconceived 'inputs' into their analysis, including :

- i. Under-stating (in fact, denying) the positive relationship that the existing building has with its surroundings ;
- ii. Over-stating the influence of the emerging scheme at Masonic Hall (particularly on the historic core of the town centre) ;
- iii. Treating suitability for a 'landmark' building as providing carte blanche on height.

23. SBC accept the principle of a building on this site which is taller than the building currently on site, and accept the principle of mixed use including residential use. Indeed these principles are recognised in the draft allocation¹⁵ as part of the emerging (yet to be examined) local plan. However, acceptance of these principles does not mean anything goes, and does not give developers carte blanche.

24. It is SBC's case that the proposal is clearly in conflict with the development plan overall, in the light of its impact on heritage assets and the character and appearance

¹⁵ ST4/019, for approximately 150 residential dwellings and 500 sq m commercial floorspace

of the area. That conflict is not outweighed by other material considerations, giving due weight to the benefits of the scheme.

25. The parties disagree as to whether or not the so-called tilted balance¹⁶ applies in the determination of this appeal. SBC's case is that it is disengaged¹⁷ because the heritage objection provides a clear reason for refusal. Even if the tilted balance was not disengaged, SBC nonetheless will submit that the adverse impacts of granting planning permission would significantly outweigh the benefits when assessed against the policies of the Framework as a whole.

26. SBC will respectfully invite the Inspector to refuse the application for planning permission.

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¹⁶ NPPF (2021) at para 11d)

¹⁷ 11d)i and Footnote 7