

RICHARD BUXTON SOLICITORS

ENVIRONMENTAL PLANNING & PUBLIC LAW

19B Victoria Street
Cambridge CB1 1JP

Tel: (01223) 328933

www.richardbuxton.co.uk
law@richardbuxton.co.uk

Newcastle City Council
Development Management
Civic Centre
Newcastle upon Tyne
NE1 8QH

Attn: Jill Young, Planning Officer

Our ref: NUS1-001/MM/AP

Email: mmcfeeley@richardbuxton.co.uk

4 October 2019

Dear Sirs,

Application for a mixed use redevelopment at Strawberry Place; Ref. 2019/0879/01/DET

1. We are instructed by the Newcastle United Supporters Trust ("**the Trust**"), a not-for-profit organisation which represents 10,000 Newcastle United supporters and is committed to strengthening the voice for supporters in the decision making process at Newcastle United, and strengthening the links between Newcastle United and the local community it serves.
2. This letter is not intended to contain an exhaustive list of concerns with the proposed development. However, after reviewing materials in relation to this application, there appear to us to be a number of critical issues with the application which must be properly considered.

Views of St. James' Park

3. Policy UC13 of the Council's Core Strategy and Urban Core Plan ("**CSUCP**") sets out a presumption against development which causes significant harm to important public views. Such views are specifically defined to include views of St. James' Park, which is designated a "distinctive landmark building." (See CSUCP Figure 14.10). Such views "form a major part of the positive visual experience" within the Urban Core and "must be carefully managed to protect the visual experience." (See also CS15(iv)).
4. Views of the upper portions of St. James' Park, and in particular the distinctive steel truss cantilever roof,¹ are a defining feature of the Newcastle skyline (as recognised and protected by the CSUCP).
5. It is notable that no visual impact assessment has been submitted for this proposal, unlike the proposal for development of the site for which planning permission was granted in 2017 (Application ref. 2015/1778/01/DET) (hereinafter, "**the 2017 permission**"). The 2017 permission was supported by

¹ The largest cantilever structure in Europe.

a document analysing “long views” and demonstrating what the impact would be on such views by that application. No comparable analysis has been provided to accompany this application.

6. The modelling that has been provided in the Design and Access statement is simply insufficient in this regard. Rather than superimposing the buildings into photographs, as was done previously, images have been taken from a 3-D modelling software package which make it difficult to understand the impact the proposal would have – first, these are so small as to be virtually useless. Even at a high level of zoom, very little can be gleaned from them. Further, no ‘before’ images are provided as comparison, so it is not clear what the buildings are obscuring.
7. It is perhaps notable, however, that rather than arguing that the proposal is policy compliant because it maintains views of St. James’ Park, the authors of the Design and Access statement (page 22) actually state that the new buildings would “**interrupt the currently over dominant line on the horizon formed by the football ground.**” (emphasis added).²
8. Whatever the opinion of the designers of the current scheme, Local Plan Policy does not consider that there is a benefit to obscuring views of St. James’ Park – precisely the opposite is the case.
9. In contrast, the Officer’s Report in relation to the 2017 permission indicated that “views of the roof trusses, arguably the main distinguishing design feature, would remain uninterrupted.” (para 103)
10. Views of St. James’ Park should be preserved in accordance with local policy and the proposal clearly fails to do this, as the Design and Access statement implicitly admits. This application is therefore non-compliant with (at least) Policy UC13 and CS15(iv) and should be refused.
11. Furthermore, and in any event, if Council officers are minded to recommend approval of the application, they must require the developer to submit a proper analysis of the visual impact of the proposed development and how it will impact views into, out of and within the urban core, in order to adequately consider the impacts the proposed development will have.

Heritage and related matters

12. The Heritage Impact Assessment submitted with the application proceeds from a false premise; namely, that the ‘fallback position’ if the application is not granted is that the site remains as it is currently. However, in light of the extant 2017 permission, this is clearly not a realistic baseline assumption.

² It is also clear from this excerpt that the building ‘breaks the skyline’ and is therefore subject to the Council’s Supplementary Planning Guidance on tall buildings (“Tall Buildings SPD”). The application documents fail to satisfy many of the requirements set out in the Tall Buildings SPD. In relation to views, specifically, the Tall Buildings SPD states that “new tall buildings should not be sited within conservation areas, nor should they visually impinge on the setting of/or important views of listed buildings or conservation areas. This particularly applies to the backdrops of groups of historic buildings or the visual envelope surrounding single buildings such as churches.” (page 8) It is notable in this context that the Heritage Impact Assessment clearly notes that the proposed buildings would form the backdrop to the Grade I listed Cathedral of St Nicholas when viewed from the South. The proposal therefore is not compliant with the guidance in the Tall Buildings SPD in this respect either.

13. The Heritage Impact Assessment repeatedly claims that granting permission will lead to a positive impact on heritage assets, arguing that the proposed development will “revitalise” the site and lead to public realm and pedestrian access improvements, and that the introduction of a variety of uses will lead to natural surveillance and reduce crime. (see, e.g., Heritage Impact Assessment at paras. 5.47, 5.53 – 5.56, 5.74-5.75, 5.87, 5.90, 6.3)
14. However, the existence of the 2017 permission has been entirely ignored. In fact, Council officers must recognise that the most likely outcome if permission is refused for this proposal is that the site will be developed in accordance with the 2017 permission.
15. An alternative development is a material consideration where there is a “real prospect” that it will be implemented. See *Mansell v Tonbridge and Malling BC*, [2019] P.T.S.R. 1452, [2017] EWCA Civ 1314. Here, it is probable that the 2017 permission would be implemented if permission is refused. In such circumstances it would be an error of law to fail to take that fallback position into account. *Id.* at para 28 per Lindblom LJ.
16. It is simply incorrect, therefore, to claim that all of the purported benefits listed in paragraph 11 will only occur as a result of this permission. In fact, the most likely scenario is that essentially these same benefits will occur if permission is refused because the major changes to the public realm, pedestrian access and introduction of mixed uses will occur in any event.
17. The proper analysis therefore must be a balancing of (a) the marginal benefits that this proposal might bring, over and above the benefits that will be delivered by implementation of the 2017 permission, against (b) the additional harms that it causes due to increased height and massing, blocking of key views, etc.
18. When assessed properly, it is clear that the net impacts of this proposal, as compared with the 2017 permission are negative. The development would have the effect of obscuring significant views to and from the locally-listed St. James’ Park, the tallest proposed building being only 5 metres lower than the highest point of the stadium structure (112 versus 117 metres AOD), and approximately 3.3 metres taller than The View nearby.
19. The proposed buildings would also form a new and incongruent backdrop to the iconic views of the Grade I listed Cathedral of St Nicholas when viewed from the South, being situated directly behind the spire of the Cathedral from certain parts of the Tyne Bridge (Design and Access Statement p 23 – compare with views of the Spire against open sky from the Tyne Bridge in the 2015 views analysis).
20. All of the above is a result of the new proposal seeking to extend the heights of the buildings on the site to a level that is beyond those of its surroundings and out of keeping with what the site can accommodate.
21. Furthermore, it is noteworthy that the 2017 Officer Report acknowledged that even the 2017 permission would cause harm to listed heritage assets including the Leazes Conservation Area and proceeded to weigh this harm against the benefits of the proposal. In this case, it is abundantly clear that the harms to heritage assets from this proposal are greater than those caused

by the 2017 permission. The Council must therefore weigh these harms against any benefits of the proposal, and must accord great weight to the conservation of these assets and their settings in accordance with paragraph 193 of the NPPF.

22. Here, properly considered, there is additional harm to listed assets with essentially no benefits identified beyond those which will be delivered under the 2017 permission.

Gallowgate Masterplan

23. It should be noted as background to the points raised above that the Gallowgate Master Plan indicated that development on the site should not exceed 6-storeys with 'a gateway landmark building of up to 17 storeys' on this site.³
24. This higher limit is precisely the height permitted in the 2017 permission.
25. No argument has been advanced why this considered view of the Council that the site should not host a building any higher than 17 storeys should now be discarded.⁴ Moreover, the November 1999 masterplan post-dated the 1998 permission for expansion of the stadium so it may well have been animated by the same concerns which led the Council to adopt local policies such as UC13 and CS15, namely, preservation of views of the Stadium from within and without the urban core.

Consultation process

26. The Council appears to have recently been uploading documents, including revised plans, which imply that the application has been amended. Amended plans for individual buildings and other details including landscaping have been uploaded to the Council's planning webpage over time, including as recently as 24 September. It is not clear from the available materials exactly what amendments have been made and whether the documents available on the Council's webpage capture all the changes that are being made by the developer after what appears to have been one or more meetings in which the Council identified certain concerns with the proposal.
27. In the circumstances, it is incumbent upon the Council to provide a revised description of the proposed development and re-open the consultation to allow the public the statutorily-mandated 21 day period to consider the revised proposal and provide comments. We draw the Council's attention to the judgment in R(Holborn Studios Ltd) v. Hackney LBC, [2017] EWHC 2823 (Admin). It is clear that the Council's duty of procedural fairness requires it to

³ See Officers Report for 2017 permission ("2017 OR") at para. 60.

⁴ The Council has indicated that it considers that the Gallowgate Master Plan is 'no longer relevant' because it has 'not been saved as supplementary planning guidance.' (Email from Jillian Young to Matthew McFeeley of 1.10.19). However, it is not clear why the Council believes that the position has changed since the 2017 permission and we cannot immediately see any reason or intervening policy change which would indicate that the masterplan no longer has relevance. Certainly, as noted in the 2017 OR, it may be that limited weight should be afforded to the masterplan given its age, but the Council surely must *at minimum* explain any decision to depart from its previous considered opinion, set out in the masterplan, that 17 storeys is the most the site can reasonably accommodate.

provide our clients and other interested residents with the opportunity to consider the amended proposal in full and to provide comments.

Conclusion

28. On the basis of the above, the application should be refused. If Council officers are considering recommending to the Planning Committee that permission be granted, the Council must at minimum:

- a. Require the submission of an adequate visual impact assessment and ensure that Committee members are made aware of these impacts and the policies protecting important public views; and
- b. Consult on the amended proposal after providing a clear description of the amended development so that the public is aware of the amendments that have been made; and
- c. Properly advise the Committee as to the heritage impacts (and other impacts) of the proposed development on the basis that the 2017 permission represents the most realistic fallback position.

Yours faithfully,

A handwritten signature in black ink that reads "Richard Buxton Solicitors". The signature is written in a cursive, flowing style.

Richard Buxton Solicitors
Environmental, Planning & Public Law