

<b>Committee:</b> Strategic Development	<b>Date:</b> 26 <sup>h</sup> October 2017	<b>Classification:</b> Unrestricted
---	--	--

<b>Report of:</b> Director of Place	<b>Title:</b> Applications for Planning Permission
<b>Case Officer:</b> Jennifer Chivers	<b>Ref No:</b> PA/16/03771
	<b>Ward:</b> St Peters

## 1.0 APPLICATION DETAILS

**Location:** 1-3 Corbridge Crescent and 1-4 The Oval, E2 9DS

**Proposal:** Demolition of existing single storey commercial buildings, with the retention, restoration, external alteration and residential conversion of the existing Regency and Victorian Cottages, together with the erection of three linked blocks of 4, 5 and 10 storeys to provide 57 residential dwellings (Use Class C3), with associated private and communal amenity space, cycle parking and refuse storage, and 461sqm of dual use office/community floorspace (Use Class B1/D1).

## 2.0 BACKGROUND

2.1 The application for planning permission for the proposed development was considered by the Strategic Development Committee on 4 October 2017. The original report and the update report are appended.

2.2 The Committee voted against the officer's recommendation for approval and were minded to refuse the application on the following basis:

- The bulk scale and mass of the tallest building (Block A).
- Land use did not satisfactorily provide sufficient quantum of employment floor space and resulted in the loss of an existing business;
- Level of affordable housing;
- Impact of the development on the conservation area;
- Environmental concerns relating to the contamination from previous historic use.

2.3 The application was deferred to enable officers to prepare a supplementary report to a future meeting of the Committee setting out proposed detailed reasons for refusal and the implications of the decision.

## 3.0 COMMITTEE REASONS FOR REFUSAL

### **Bulk, scale and mass of block A**

3.1 Members expressed concerns with regard to the height of block A at 10 storeys was still taller than the prevailing height in the area. Member's acknowledged that the height while at a marked reduction of 8 storeys from the previous appeal schemes, however did not consider the reduction to be sufficient.

- 3.2 At 10 storeys it is considered that the proposal involves a tall building. The Tall Buildings – Historic England Advice Note 4 (2015) states that “*What might be considered a tall building will vary according to the nature of the local area*”. A Planning Policy Explanatory Note was agreed by the Mayor in Cabinet on 19<sup>th</sup> September 2017 which seeks to reiterate the borough’s approach to tall buildings through its existing Local Plan. The Note also seeks to define a tall building in Tower Hamlets, and confirms that “*The definition of a “Tall Building” in the Borough will therefore depend on its location and the predominant height of buildings in the local context*”. This definition allows for the fact that areas of different character within the borough have different sensitivities and that a five storey building in a two-storey context is equally as prominent as a much taller building in a more built up context. Mid-Rise buildings are those that are considered to be tall in the context of relatively low-rise development but that in absolute terms are in the region of 6-9 storeys.
- 3.3 The proposal at 10 storeys is taller than the predominant height of buildings within the local context and therefore is defined as a tall building. The prevailing height, scale and mass within buildings fronting the canal within the Regents Canal Conservation area range from 4-6 storeys and as such at 10 storeys the building presents a marked contrast in scale, bulk and mass.
- 3.4 At a height of ten storeys the building would not be considered appropriate in terms of form, proportions, composition and scale and would therefore be out of character with the surrounding fine urban grain. As such it would be a stark transition in character particularly within local views.
- 3.5 It is therefore reasonable for members to conclude that the proposed development at 10 storeys does not respond positively to the existing character, scale, height, massing and fine urban grain of the surrounding built environment, and fails to integrate with heritage assets in the surrounding area. Block A at 10 storeys would still be significantly higher than the prevailing height of development within its local context, the Regents Canal and the Regents Canal Conservation area. Officers therefore consider that this reason could be defended at appeal.

### **Land Use**

- 3.6 Member’s discussed the proposed mix of land uses on site and considered that the residential led scheme did not provide sufficient quantum of replacement employment floor space to justify the loss of an existing employment site and business.
- 3.7 Managing Development Document Policy (DM15) (Local job creation and investment) paragraph 1 states ‘the upgrading and redevelopment of employment sites outside of spatial policy areas will be supported. Development should not result in the loss of active and viable employment uses, unless it can be shown, through a marketing exercise, that the site has been actively marketed (for approximately 12 months) or that the site is unsuitable for continued employment use due to its location, viability, accessibility, size and condition’. In the explanation to the text 15.4 states that DM 15 (1) does not apply to site allocations, which applies in this instance, and as such this would not be a reason for refusal.
- 3.8 However 15(2) states that ‘development which is likely to adversely impact on or displace an existing business must find a suitable replacement accommodation within the borough unless it can be shown that the needs of the business are better met elsewhere’. The applicant has stated that this coach yard is ancillary to the main

coach yard Empress have outside London. However no information has been provided on where the other sites are located. Additionally, as the site is currently active, there is no information on whether this business could be relocated within the borough or that the needs of the business are better met elsewhere. As such, this could be a reason for refusal.

- 3.9 The site is also located within the outer core area of the City Fringe/Tech city Opportunity Area. The Tech City OAPF states that mixed use schemes should still seek to provide significant employment floorspace where proposals include the demolition of existing employment floorspace. The OAPF seeks to ensure there is the space for continued business growth in the city fringe. In addition, one of the key aspirations of the document is to strike the appropriate balance between residential and commercial development.
- 3.12 This scheme provides 461sqm of either B1 (office) or D1 (non – residential institutions) floorspace with unit sizes ranging between 95 – 132 sqm. While the OAPF strives to achieve flexible work spaces, the four units are provided individually with no ability to be flexible on floor plates, layouts or combining units (with the exception of unit 2 and 3). Given the small sizes of the units and the quantum it is considered that there would be little space for continued business growth on this site and therefore the scheme presents an inappropriate balance between residential and commercial development.
- 3.13 As the scheme is largely residential led it provides 6530sqm (GIA) of residential floorspace and only 451sqm of commercial floor space. The commercial floorspace represents a low 7% of the total development floor space which would not be seen as an adequate mix of in terms of use allocation.
- 3.14 Therefore, the low quantum of floor space would not justify the loss of an existing business and would not provide a significant level of employment floor space that provides for specific needs. Officers consider this could be defended at appeal.

### **LEVEL OF AFFORDABLE HOUSING**

- 3.15 Members discussed the level of affordable housing provided in a strategic housing allocation, which would fall significantly below the Council's target of 35-50% and would be contrary to Policy SP02.
- 3.16 Policy SP02 paragraph 4.4 states that given the extent of housing need, Tower Hamlets has set an affordable housing target of up to 50%. This will be delivered through negotiations as part of private residential schemes, as well as through a range of public initiatives and effective use of grant funding. In some instances exceptional circumstances may arise where the affordable housing requirements need to varied. In these circumstances detailed and robust financial statements must be provided which demonstrate conclusively why planning policies cannot be met. Even then, there should be no presumption that such circumstances will be accepted, if other benefits do not outweigh the failure of a site to contribute towards affordable housing provision.
- 3.17 In this case, it would be reasonable for members to conclude that while the application provided detailed and robust financial statements which were independently reviewed, there were insufficient benefits of the scheme to outweigh the failure to contribute to affordable housing.
- 3.18 In addition, members have identified harm that would be caused as a result of the scheme being the bulk, scale, height and mass of Block A, harm to the conservation area of the scheme and the proposed land use. Therefore, it is considered that there

are insufficient benefits of the scheme in order to justify the low levels of affordable housing.

**Impact of the development on the conservation area;**

- 3.19 Members felt that the proposed development would cause less than substantial harm to the Regents Canal Conservation Area and would fail to preserve or enhance the character of this heritage asset. Block A at 10 storeys would be significantly higher than the prevailing height of development, within the Regents Canal Conservation area. Members states that the harm identified to the designated heritage asset is not outweighed by the public benefits of the scheme.
- 3.20 Section 72 (1) of the Planning (Listed Building and Conservation Areas) 1990 Act requires the Council in reaching a decision on a planning application to pay special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 3.21 Any harm to such designated assets should be weighed against the public benefits of the proposal, in accordance with paragraph 134 of the NPPF. Members have concluded the scheme would result in harm to the conservation area. In the absence of Members identifying public benefits that outweigh the identified harm to heritage this reason could be defended at appeal.

**Environmental concerns relating to the contamination from previous historic use.**

- 3.22 Members expressed concerns with the historic landuse of the site with the impact of contamination and the storage of petrol and chemicals on site and the future redevelopment for residential uses.
- 3.23 DM30 (Contaminated land and development and storage of hazardous substances) states that where development is proposed on contaminated land or potentially contaminated land, a site investigation will be required and remediation proposals agreed to deal with the contamination before planning permission is granted.
- 3.24 In additional Policy 5.21 of the London Plan (2016) states that appropriate measures should be taken to ensure that development on previously contaminated land does not activate or spread contamination and that wherever practicable, brownfield sites should be recycled into new uses. This also provides an opportunity to deal with any threats to health and the environment posed by contamination.
- 3.25 The applicant provided a site investigation geo-environmental desk study preliminary risk assessment report prepared by Jomas associates. The environmental health contaminated land officer has reviewed the submitted information and considers there is a possibility for contaminated land to exist however that the risk has been assessed and can be mitigated by condition.
- 3.26 The EH officer has recommended a two part condition which requires a report which identify the extent of the contamination and measures to be undertaken to avoid risk to public and environment, this will include intrusive investigation of the site, including testing, risk assessment and proposal for the remediation on how to treat and or remove the contaminated land.
- 3.27 The redevelopment will not be occupied until this remediation has been carried out in full, and further reports have been submitted to the council demonstrating the

remediation works have been effective. These reports will be assessed by the Councils specialist officers.

- 3.28 As such, officers consider that this reason for refusal would be difficult to defend at appeal. However, if members are minded to proceed with this reason, officers have prepared the potential reason for refusal.

#### **4.0 IMPLICATIONS OF REFUSING PLANNING PERMISSION**

4.1 The officer recommendation has been to grant planning permission but it is the Committee's prerogative to disagree with that recommendation if there are clear planning reasons for doing so. In coming to an alternative view the Committee has to take into account the provisions of the development plan, any other relevant policies and relevant material considerations including the previous appeal decisions.

4.2 If planning permission is refused, there are a number of routes that the applicant could pursue: Appeal to the Secretary of State. An appeal would be determined by an independent Inspector appointed by the Secretary of State. Whilst officers have recommended approval, any appeal would be vigorously defended on behalf of the Council.

4.3 The applicant has not made any changes to the scheme and as such officers have drafted the following reasons for refusal for members to consider:

##### **Financial implications - award of costs**

4.4 In dealing with appeals, all parties, including the Local Planning Authority, are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

4.5 Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

4.6 An example of the former might be failing to keep to the requirements of an appeal timetable to submit statements of case or other evidence. An example of the latter might be taking a decision which could be described as unreasonable in the context of all of the evidence available to the decision maker. It is this latter aspect that the Committee members in their role as decision makers need to be mindful of.

#### **5.0 RECOMMENDATION**

5.1 Officer recommendation to **GRANT** planning permission remains unchanged.

5.2 However if members are minded to **REFUSE** planning permission the following **four Reasons of Refusal** are recommended:

Reason 1 - Scale of development

1. *The proposed development does not respond positively to the existing character, scale, height, massing and fine urban grain of the surrounding built environment, and fails to integrate with heritage assets in the surrounding areas; Block A at 8 storeys would be significantly higher than the prevailing height of development, within its local context, the Regents Canal and within the Regents Canal Conservation area. It would therefore be contrary to policy SP10(4) of the Core Strategy (2010), Policy DM24 of the Councils adopted Managing Development Document (2010) and Policy 7.3 and 7.6 of the London Plan (2016).*

#### Reason 2 - Land Use

2. *The proposal results in the loss of an existing business which has not been adequately justified, loss of an existing employment site and low quantum of replacement employment floorspace is contrary to the objectives of the City Fringe / Tech City Opportunity Area Framework and meeting the needs of small-medium enterprises, start-ups and creative and tech industries. As such the proposal is contrary to Core Strategy Policy SP06, Policy DM15 of the Councils Managing Development Document (2010), policies 4.3 and 4.4 of the London Plan (2016).*

#### Reason 3 – Housing

3. *By virtue of its excessive density, and level of affordable housing in a strategic housing allocation which falls significantly below the Council's target of 35 – 50%, the proposed new housing would not assist in the creation of a sustainable place and contribute to the creation of socially balanced and inclusive communities and would fail to meet identified housing needs contrary to Policy SP02 of the Council's adopted Core Strategy (2010), Policy DM3 of the Council's adopted Managing Development Document (2013) and Policies 3.3, 3.4, 3.9, 3.11, 3.12 and 3.13 of the London Plan (2016).*

#### Reason 4 - Impact on the Conservation Area

4. *The proposed development would cause less than substantial harm to the Regents Canal Conservation Area and would fail to preserve or enhance the character of this heritage asset. Block A at 8 storeys would be significantly higher than the prevailing height of development, within the Regents Canal Conservation area. The harm identified to the designated heritage asset is not outweighed by the public benefits of the scheme. The scheme would therefore be contrary to paragraph 134 of the National Planning Policy Framework, and policies SP10 of the Core Strategy (2010) and policies DM24 and DM27 in the Managing Development Document.*

#### Reason 5 – Land contamination

5. *The proposed development has the potential for contamination which has not undertaken appropriate measures to ensure the activation or spread of contamination as such the development poses risk to health and the environment and is contrary to policies 5.21 and 5.22 of the London Plan (2016) and policies DM30 of the Managing Development Document (2013).*

#### Reason 6 – necessary mitigation not secured

6. *In the absence of a legal agreement to secure agreed and policy compliant financial and non-financial contributions including for employment, skills, training and enterprise and transport matters the development fails to mitigate its impact on local services, amenities and infrastructure. The above would be contrary to the*

*requirements of Policies SP02 and SP13 of the LBTH Core Strategy, Policies 8.2 of the London Plan (2016) and LBTH's Planning Obligations SPD (2016).*

- 5.7 It is the professional view of officers that the above reasons for refusal could be defended at appeal