

<b>Committee:</b> Strategic Development	<b>Date:</b> 30 <sup>th</sup> November 2017	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Director of Place	<b>Title:</b> Application for Planning Permission
<b>Case Officer:</b> Chris Stacey	<b>Ref No:</b> PA/16/03518
	<b>Ward:</b> Canary Wharf

## 1. APPLICATION DETAILS

- Location:** 49-59 Millharbour, 2-4 Muirfield Crescent and 23-39 Pepper Street, London, E14
- Existing Uses:** Retail (Class A1) at ground floor level with commercial office space (Class B1) above and ancillary car parking at basement level.
- Proposal:** Demolition of existing buildings at 49-59 Millharbour, 2-4 Muirfield Crescent and 23-39 Pepper Street and the comprehensive mixed use redevelopment including two buildings ranging from 26 storeys (90.05m AOD) to 30 storeys (102.3m AOD) in height, comprising 319 residential units (Class C3), 2,034sqm (GIA) of flexible non-residential floor space (Classes A1, A3, A4 and D1), private and communal open spaces, car and cycle parking and associated landscaping and public realm works. The application is accompanied by an Environmental Statement.

## 2. BACKGROUND

- 2.1 This application for planning permission was considered by the Strategic Development Committee on 26<sup>th</sup> October 2017. A copy of the original report is appended.
- 2.2 The application was recommended for approval, however members voted to REFUSE planning permission due to concerns over:
- The height of the proposal and its failure to step down;
  - The overdevelopment of the site;
  - The bulk and massing of the proposal.
- 2.3 In accordance with Development Procedural Rules, the application was **DEFERRED** to a later committee to enable officers to prepare a deferral report to provide wording for the reasons for refusal and provide commentary on the detailed reasons for refusal of the application.

## 3. REVISED OFFER / AMENDMENTS TO SCHEME

- 3.1 Following negotiations with Council officers, the applicant has made a number of amendments to the scheme and provided further information in an attempt to address the concerns raised by members.

3.2 The following is a summary of the amendments to the proposal:

- Converting 18 private units to 18 affordable units within Block B, in the form of 11 affordable rented units and 7 intermediate units, taking the overall affordable housing offer within the scheme up to 40% (from 35%).
- The removal of 127sqm of A1 floor space and the provision of 453sqm of D1 floor space to be used as a doctor's surgery (subject to the health trust agreeing to take on the facility) or another community facility.

3.3 These are explained further below.

### ***Increased Affordable Housing Provision***

3.4 The applicant has increased the proposed affordable housing offer to provide 40% affordable housing by habitable rooms, providing 69 social/affordable rented units (257 habitable rooms) and 44 intermediate units (114 habitable rooms). This represents a 70%/30% split in favour of social/affordable rented accommodation which meets the Council's preferred 70%/30% split in favour of social/affordable rented accommodation.

3.5 It should be noted that the proposed amended affordable housing offer is being made despite the viability report claiming that the previous lower affordable housing, as presented to committee on 26<sup>th</sup> October 2017, was substantially over and above the maximum reasonable amount that could be viably be supported by the development.

3.6 The table below outlines both the previous affordable housing offer, as presented to committee on 26<sup>th</sup> October 2017 and the amended affordable housing offer now being proposed by the applicant.

Tenure	Units		As a %		Habitable Rooms		As a %	
	Previous	Revised	Previous	Revised	Previous	Revised	Previous	Revised
Market Sector	224	206	70%	64%	597	549	65%	60%
Intermediate	37	44	12%	14%	95	114	10%	12%
Social/ Affordable Rented	58	69	18%	22%	228	257	25%	28%

***Fig.1 – Number and Percentage of Units and Habitable Rooms by Tenure (Previous and Revised Offer)***

3.7 With respect to the breakdown of units and habitable rooms between social rent and affordable rent, the table below outlines both the previous affordable housing offer, as presented to committee on 26<sup>th</sup> October 2017 and the revised affordable housing offer now being proposed by the applicant. The percentage split is largely unaffected by the revised affordable housing offer.

Product	Units		As a %		Habitable Rooms		As a %	
	Previous	Revised	Previous	Revised	Previous	Revised	Previous	Revised
London Affordable Rent	20	23	34%	33%	100	113	44%	44%
Tower Hamlets Living Rent	38	46	66%	67%	128	144	56%	56%

***Fig.2 – Breakdown of Social/Affordable Rented Products (Previous and Revised Offer)***

- 3.8 The revised affordable housing offer also alters the proposed mix of units by size and tenure proposed within the scheme, and the below table outlines both the previous affordable housing offer, as presented to committee on 26<sup>th</sup> October 2017, and the amended affordable housing offer now being proposed by the applicant.

	Affordable Housing				Market Housing	
	Social/Affordable Rented		Intermediate			
Unit Size	Units		Units		Units	
	Previous	Revised	Previous	Revised	Previous	Revised
1 Bed	14	18	16	18	89	83
2 Bed	14	21	21	26	121	109
3 Bed	22	22	0	0	14	14
4 Bed	8	8	0	0	0	0
Total	58	69	37	44	224	206

*Fig.3 – Mix of Units by Size and Tenure (Previous and Revised Offer)*

- 3.9 The changes proposed to the affordable housing provision within the scheme will alter the child yield and minimum child play space requirements. The below table outlines both the previous child play space requirements and proposed play space, as presented to committee on 26<sup>th</sup> October 2017, and the updated child play space requirements and proposed child play space. As noted within the below table the proposed play space will continue to exceed the minimum requirements.

Age Group	Child Yield		Minimum Requirement (sqm)		Proposed Play Space (sqm)	
	<i>Previous</i>	<i>Revised</i>	<i>Previous</i>	<i>Revised</i>	<i>Previous</i>	<i>Revised (no change)</i>
Under 5 Years	41	46	410	460	489	489
5-11 Years	38	40	380	400	488	488
Over 12 Years	28	29	280	290	373	373
Total	107	114	1,070	1,140	1,350	1,350

*Fig.4 – Child Play Space Requirements and Proposed Provision (Previous and Revised Offer)*

#### **Additional Community Facility (Class D1)**

- 3.10 The previous proposal sought to provide a 558sqm nursery (D1) and 1,150sqm of A class floor space (A1, A3 and A4). The amended proposal still seeks to provide a 558sqm nursery (D1) as well as 375sqm of A3 floor space and 203sqm of A4 floor space, however it is now proposed to replace 1 x A1 (retail) unit at ground floor level

within Building A (measuring 127sqm) and convert 326sqm of mezzanine void space above this into a doctor's surgery (D1) measuring 453sqm.

- 3.11 Such a facility would be secured as part of the proposed S.106 agreement, and in the event that the health trust were not able/willing to take this space on as a doctor's surgery, an alternative community facility could occupy this space. The below two tables outline both the previous non-residential floor space offer, as presented to committee on 26<sup>th</sup> October 2017, and the amended non-residential floor space offer now being proposed by the applicant.

Use Class	A1 (Retail)		A3 (Café/Restaurant)		A4 (Drinking Establishment)		D1 (Non-Residential Institution)	
	Previous	Revised	Previous	Revised	Previous	Revised	Previous	Revised
Floor Space Area	572sqm	445sqm	375sqm	375sqm	203sqm	203sqm	558sqm	1,011sqm

*Fig.5 – Proposed Non-Residential Floor Space (Previous and Revised Offer)*

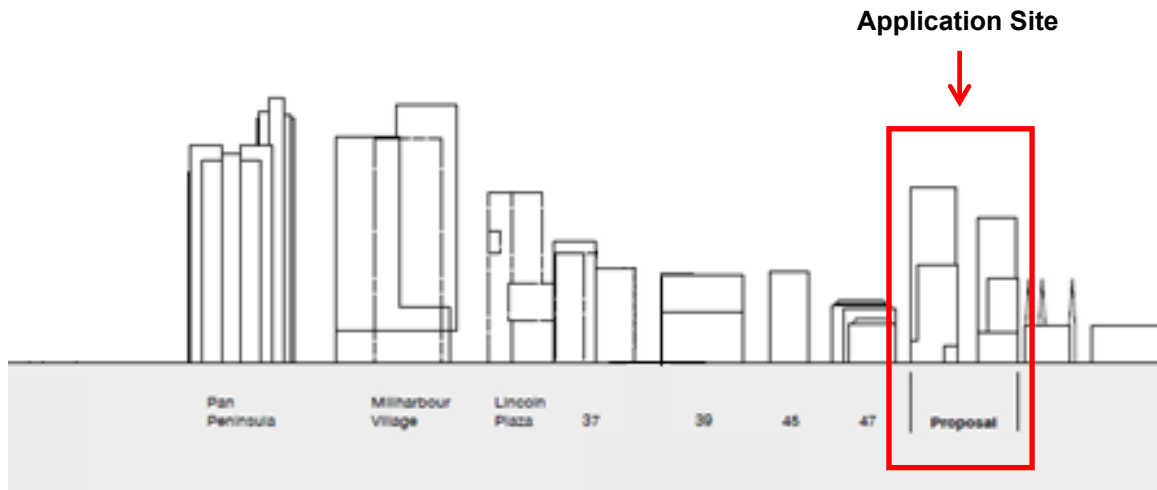
#### 4. SUMMARY OF ISSUES RAISED BY MEMBERS AND OFFICER'S RESPONSE

##### ***Height and Failure to Step Down***

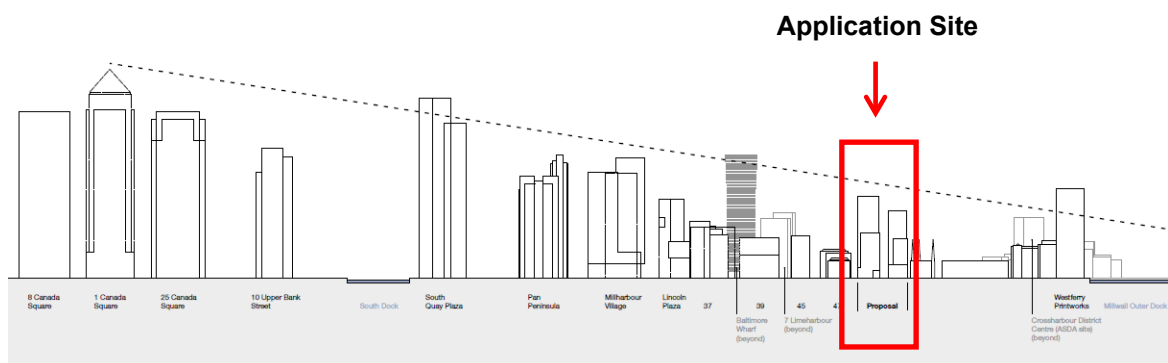
- 4.1 Members objected to the proposal's height and its failure to step down from the buildings immediately to the north of it, as it was considered that this was not in conformity with the Council's building height policies on the Isle of Dogs.
- 4.2 As noted both within paragraph 8.84 of the original committee report and at the meeting of Strategic Development Committee on 26<sup>th</sup> October 2017, officers appreciate that the proposal, when viewed within the isolated context of the existing buildings along Millharbour (running from north to south), does not systematically step down and is instead taller than buildings directly to the north of it.
- 4.3 The Council's planning policies do not explicitly require proposals to step down in a systematic manner, and instead seeks for this locality to act as a transitional area (in terms of building heights) between the higher-rise commercial area of Canary Wharf to the north and the low-rise predominantly residential areas to the south. This position is outlined as follows within the Council's Development Plan:
- **MDD DM26(a) Building Heights** – *“Within the Tower Hamlets Activity Area, development will be required to demonstrate how it responds to the difference in scale of buildings between the CAZ/Canary Wharf Major Centre and the surrounding residential areas”*
  - **CS Chapter 9 Delivering Placemaking (Millwall)** – *“Taller buildings in the north should step down to the south and west to create an area of transition from the higher-rise commercial area of Canary Wharf and the low-rise predominantly residential area in the south”*
  - **CS Chapter 9 Delivering Placemaking (Cubitt Town)** – *“Development should provide a transition between the higher rise commercial area to the north and the nearby low-rise residential areas to the south and east”*
- 4.4 The assessment as to whether the proposal conforms with the above policies is thus concerned with whether the proposed height is appropriate within the wider context of the surrounding area. Therefore, when applying the policies strategically across the island, appropriate weight should also be given to nearby developments, such as Baltimore Wharf, Westferry Printworks and the consented development at Crossharbour ASDA which are material considerations when assessing the suitability of the height of

this proposal, especially as these schemes will deliver notable buildings within a future cumulative scenario.

- 4.5 The diagram below illustrates the proposal within its localised context, i.e. existing buildings along Millharbour. Whilst this illustrates that the proposal when viewed within this isolated context fails to systematically step down from the buildings directly to the north, it does illustrate that the scale of the proposed development notably differs from a number of the larger buildings to the north, such as the Pan Peninsula development.



- 4.6 The diagram below illustrates the proposal within its wider context, i.e. taking into account the significantly taller buildings in the Canary Wharf and South Quay area, as well as other notably taller buildings at Baltimore Wharf and Westferry Printworks. This clearly illustrates that the proposal when viewed within its wider context is adhering to the Council's policy position that buildings within this area should provide a transition (in terms of their height) between the higher-rise commercial area of Canary Wharf to the north and the low-rise predominantly residential areas to the south. Furthermore this diagram also illustrates that the proposed height of the scheme is appropriate for its location within the Isle of Dogs Activity Area when taking into account the existing building heights within this area.



- 4.7 Given the above, officers remain of the view that the proposed heights of the two buildings are acceptable as they are not considered to be contrary to policies 7.4, 7.6 and 7.7 of the London Plan (2016), policies SP10 and SP12 of the Tower Hamlets Core Strategy (2010) and policies DM24 and DM26 of the Tower Hamlets Managing Development Document (2013).

## **Overdevelopment**

- 4.8 Members objected to the density of the proposed development which exceeded the London Plan density matrix without special circumstances being demonstrated to justify such non-compliance.
- 4.9 Both London Plan policy 3.4 and the London Plan Housing SPG explicitly state that it is not appropriate to apply the density matrix mechanistically due to its inherent flexibility, and that the matrix should be used as a starting point and guide rather than an absolute rule, in order that other key policy objectives can also be taken account. Furthermore the London Plan Housing SPG also states that meeting London's housing requirements will necessitate residential densities to be optimised in appropriate locations with good public transport access, such as town centres and opportunity areas.
- 4.10 When assessing the acceptability of proposals which exceed the London Plan density matrix, it should be noted that the guidance contained within the London Plan Housing SPG (2012) relating to schemes which exceed the density matrix (which states that *"exceptions to the (density) ranges should be just that, whether above or below the appropriate range, and must be justified robustly"*) is no longer a material consideration as it has been superseded by the London Plan Housing SPG (2016). The guidance contained within the latter relating to schemes which exceed the density matrix states that schemes which exceed the density matrix should be supported where they are in accordance with the following considerations:
- *the factors outlined in Policy 3.4, including local context and character, public transport capacity and the design principles set out in Chapter 7 of the London Plan;*
  - *the location of a site in relation to existing and planned public transport connectivity (PTAL), social infrastructure provision and other local amenities and services;*
  - *the need for development to achieve high quality design in terms of liveability, public realm, residential and environmental quality, and, in particular, accord with the housing quality standards set out in Part 2 of this SPG;*
  - *a scheme's overall contribution to local 'place making', including where appropriate the need for 'place shielding';*
  - *depending on their particular characteristics, the potential for large sites to define their own setting and accommodate higher densities;*
  - *the residential mix and dwelling types proposed in a scheme, taking into account factors such as children's play space provision, school capacity and location;*
  - *the need for the appropriate management and design of refuse/food waste/ recycling and cycle parking facilities; and*
  - *whether proposals are in the types of accessible locations the London Plan considers appropriate for higher density development (eg. town centres, opportunity areas, intensification areas, surplus industrial land, and other large sites).*
- 4.11 In this instance officers are content that the proposal is in accordance with all of the above as: the scheme is of a high quality design appropriate to the local context and character of the area; would not have an adverse impact upon public transport capacity or other amenities or services; would afford future occupiers a high standard of residential quality and fully accords with the housing quality standards; would positively

contribute to local 'place making'; provides an acceptable residential mix and quantum of child play space and communal amenity space; exceeds requirements for refuse storage and cycle parking, and; sits within both a town centre and opportunity area location where higher density development is targeted, both by the Council's Local Plan and the London Plan.

- 4.12 As such the proposal is considered acceptable as it is not considered to be contrary to the NPPF, policy 3.4 of the London Plan (2016), policy SP10 of the Tower Hamlets Core Strategy (2010) and policy DM25 of the Tower Hamlets Managing Development Document (2013).

### ***Bulk and Massing***

- 4.13 Members objected to the proposal's bulk and massing and its resulting impact and the local character and setting of the development.
- 4.14 Within the surrounding context of the application site, a number of existing buildings (including 39, 41, 45 and 47 Millharbour) can be considered to be of notable bulk and massing. Officers are of the view that the bulk and massing of the two buildings proposed as part of this development are not significantly greater than the aforementioned buildings, and as such, it is not considered as though the scheme's bulk and massing would adversely impact the local character or setting of the development.
- 4.15 Furthermore the design of the two proposed buildings incorporates podium and tower elements, an approach employed to help break up the overall bulk and massing of the proposed buildings, which is considered to be effective in this instance.
- 4.16 In light of the above, officers remain of the view that the proposal is acceptable as it is not considered to be contrary to policies 7.4, 7.6 and 7.7 of the London Plan (2016), policies SP10 and SP12 of the Tower Hamlets Core Strategy (2010) and policies DM24 and DM26 of the Tower Hamlets Managing Development Document (2013).

## **5. IMPLICATIONS ARISING FROM A DECISION TO REFUSE THE APPLICATION**

- 5.1 In the event that the Committee resolves to refuse the application, the following options could be exercised by the applicant.
- 5.2 The applicant could withdraw the application and later approach the Council for further pre-application advice on an amended proposal and thereafter submit new applications.
- 5.3 The application is of a strategic nature and referable to the Mayor of London. Prior to issuing a decision the application will be required to be referred to the Mayor of London who could exercise their powers to take over the application, become the local planning authority and determine the application. Should this happen officers would seek to defend the Council's reasons for refusal at any hearing.
- 5.4 The applicant could exercise their right to appeal to the Secretary of State against the Council's decision and lodge an appeal for costs. The appeal would be determined by an independent inspector appointed by the Secretary of State. At any appeal, the viability of the scheme could be reviewed, and the affordable housing could be amended. This is significant in this context as the viability assessment concluded that the affordable housing offer was in excess of what the scheme could viably deliver.

### ***Implications on the Tower Hamlets Local Plan 2031: Managing Growth and Sharing the Benefits***

- 5.5 Statutory public consultation on the 'Regulation 19' version closed on Monday 13th November 2017. Weighting of draft policies is guided by paragraph 216 of the National Planning Policy Framework and paragraph 19 of the Planning Practice Guidance (Local Plans). These provide that from the day of publication a new Local Plan may be given weight (unless material considerations indicate otherwise) according to the stage of preparation of the emerging local plan, the extent to which there are unresolved objections to the relevant policies, and the degree of consistency of the relevant policies in the draft plan to the policies in the NPPF. Accordingly as Local Plans pass progress through formal stages before adoption they accrue weight for the purposes of determining planning applications. As the Regulation 19 version has not been considered by an Inspector, its weight remains limited. However, at the point of any appeal the weight of the document could be materially different. This is pertinent to the tall building's policy which identifies the site in the Millwall tall building zone, providing further support for the scale of development as proposed.
- 5.6 Section 4 of this report set out the officer's assessment of how unlikely the Council would be in defending the reasons for refusal at appeal. However if the Committee do resolve that the application should be refused on grounds relating to: the height of the proposal and its failure to step down; the overdevelopment of the site, and; the bulk and massing of the proposal, officers will seek to defend the Council's position.

## 6. RECOMMENDATION

- 6.1 Officer's original recommendation as set out in the officer's report for Strategic Development Committee on 26<sup>th</sup> October 2017 to **GRANT** planning permission for the proposal remains unchanged, however additional planning obligations requiring the provision of a further community facility and the provision of 40% affordable housing would also be required.
- 6.2 However, if Members are minded to refuse planning permission for this scheme, then the proposed three reasons for refusal are recommended to be amalgamated into a single reason relating to design and density. The suggested reason is as follows:

### Reason for Refusal:

1. *The excessive scale and height of the proposed development within its local context would not be proportionate to the site's position outside of the Canary Wharf major centre and would not maintain the transition in height between Canary Wharf and the lower rise buildings to the south. The proposed scale, height and massing would result in a development that is overbearing, is unduly prominent in local views and detracts from the low-rise character of the area to the south. The proposed development therefore fails to respect the features that contribute to the area's character and local distinctiveness and demonstrates clear symptoms of over development and excessive density. This is contrary to Strategic Objectives SO22 & SO23 and Strategic Policies SP10 and SP12 of the Core Strategy (2010), Policies DM24 and DM26 of the Managing Development Document (2013) and Policies 3.4, 7.4, 7.6 and 7.7 of the London Plan (2016).*