

<u>Committee:</u> Development	<u>Date:</u> 17 th July 2013	<u>Classification:</u> Unrestricted	<u>Agenda Item No:</u>
Report of: Corporate Director Development & Renewal		Title: Town Planning Application and Conservation Area Consent	
Case Officer: Mary O'Shaughnessy		Ref No: PA/11/03371 – 3372	
		Ward: Bow West	

1.0 APPLICATION DETAILS

Location: Site At Bow Wharf Adjoining Regents Canal And Old Ford Road, Old Ford Road, London

Existing Use: Vacant warehouse buildings and commercial units.

Proposal: Demolition of existing buildings to facilitate the redevelopment of the site to provide three buildings ranging in height from 3 - 6 storeys including Block A (part 3 part 4 storeys to the north of the Hertford Union Canal), Block B (6 Storeys to the south of the Hertford Union Canal) and Block C (4 storeys to the south of the Hertford Union Canal) to provide 34 residential units comprising 10 x 1 bedroom, 15 x 2 bedroom, 4 x 3 bedroom and 5 x 4 bedroom houses, 74.8 square metres of commercial floor space to be used as either Use Class A1, A2, A3, B1 or D1, including provision of one accessible parking space, cycle parking, public and private amenity space and associated works.

Drawing Nos:

- A1-01 REV01 (Site context plan)
- A1-10 REV01 (Ground floor plan)
- A1-11 REV01 (First floor plan)
- A1-12 REV01 (Second floor plan)
- A1-13 REV01 (Third floor plan)
- A1-14 REV01 (Fourth floor plan)
- A1-15 REV01 (Fifth floor plan)
- A1-20 REV01 (Building 'A' typical floor plans)
- A1-21 REV01 (Building 'B' typical floor plans)
- A1-22 REV01 (Building 'C' typical floor plans)
- A1-81 REV01 (Proposed site sections)
- A1-82 REV01 (Proposed site elevations)
- A1-91 REV01 (Proposed Building 'A' external elevations)
- A1-92 REV01 (Proposed Building 'B' external elevations)
- A1-93 REV01 (Proposed Building 'C' external elevations)
- A2-05 REV01 (Existing site plan)
- A2-10 REV01 (Demolition site plan)
- A2-81 REV01 (Existing site conditions)
- A2-82 REV01 (Existing site elevations)
- A4-01 REV01 (Proposed external envelope details)
- A4-02 REV01 (Proposed external envelope details)
- 2011-1129-AT-007 (Entry & Exit Manoeuvre using a 7.9m Pumping Appliance)

Documents:

- Design and Access Statement, Reference: L2853/DS1004, dated October 2011, prepared by Lewis and Hickey.
- Planning and Impact Statement, dated October 2011, prepared by Dalton Warner Davis.
- Bow Wharf Heritage Assessment, prepared by Dalton Warner

Davis.

- Air Quality Assessment, dated 14 September 2011, prepared by SKM Enviros.
- Extended Phase 1 Habitat Survey – Bat Habitat Suitability Assessment, Reference: H2OURB-BOWWHA-3385, dated July 2011, prepared by Ecosulis.
- The Code for Sustainable Homes – Strategic Report, Version 4, dated 3 October 2011, prepared by EcoConsulting (UK) Ltd.
- Energy Report – Bow Wharf – Version 8, dated 4 October 2011, prepared by EcoConsulting.
- Asbestos Survey Report, Reference: TM0088/1, prepared by Chemtest onsite.
- Transport Statement, October 2011, prepared by TTP Consulting.
- Statement of Community Involvement, October 2011, prepared by Quatro.
- Daylight/Sunlight Report, dated 12 October 2011, prepared by GVA Schatunowski Brooks.
- Geotechnical and Geoenvironmental Report, Report No. 36398-01, prepared by STATS Limited.
- Bow Wharf Proposed fire-fighting access to new residential accommodation, Issue 4, Document Reference: MT13753R, dated 10 October 2012, prepared by ExovaWarringtonfire.
- Introduction to the Landscape Proposals, prepared by Outerspace.
- External Finishes Schedule Ref: L2853/B7/MA/GM, Issue 01, dated February 2012, prepared by Lewis & Hickey.

Applicant: H2O Urban (NO.2 LPP)

Owner: Canal and River Trust (formerly British Waterways)

Historic Building: Stop Lock Bridge – Grade II Listed
2 Warehouses within the Bow Wharf Complex are locally listed -
Former British Waterways Warehouse (3 storeys)
Former Glue Factory (2 storeys)

Conservation Area: Regents Canal Conservation Area (formerly within Victoria Park Conservation Area)

2.0 RECOMMENDATION

2.1 Whilst officers' views on the planning merits of the scheme remain unchanged, if Members are minded to refuse planning permission and conservation area consent for this development, it is recommended that Members adopt reasons for refusal No.s 1 and 4 outlined in this report.

3.0 BACKGROUND

3.1 This application for planning permission was reported to Development Committee on 11th April 2013 with an officers' recommendation for approval. Members did not accept this officer's recommendation. It was then reported back to committee on 15th May 2013 with a reason for refusal based on Members concerns, relating to the impact on the character and appearance of the conservation area.

3.2 At the 15th of May 2013 Committee, Members were minded to support the

officer's recommendation to approve planning permission however resolved to defer the application for officers to consider and investigate the possibility of ensuring the s106 contributions are spent in the Bow West ward only.

- 3.3 Rather than being reported as a deferred item, the application was subsequently re-presented afresh on part 7 of the agenda at the Development Committee of the 19th of June 2013. The item was freshly presented, because it was a new municipal year, and thus a new Membership of the committee.
- 3.4 After consideration of this previous report and the update report, Members resolved not to accept the officers' recommendation and were reminded to refuse planning permission due to concerns over:
- Impacts on the heritage aspects of the site, with emphasis on the height of the proposal;
 - Over development of the site, due to the proposed density;
 - Lack of s106 contributions, with particular regard given to the health contribution; and
 - Lack of affordable housing, in that the scheme failed to achieve 35% affordable housing.
- 3.5 In accordance with Rule 10.2 of the constitution and Rule 4.8 of the Development Procedure Rules, the application was once again deferred to a future meeting of the Committee to enable officers to present a supplemental report setting out reasons for refusal and the implications of the decision. The proposed reasons for refusal and implications are set out at Sections 5.0 and 6.0 of this report.

4.0 OTHER ISSUES

- 4.1 If members are minded to refuse planning permission officers are suggesting that a reason for refusal around s106 be included. This would ensure that if the applicant appeals against the council's decision and did not enter into a legal agreement that the Inspector would also need to consider the implications of the lack of any financial contributions or affordable housing being provided.
- 4.2 This has been drafted as Reason for Refusal No. 4

5.0 CONSIDERATION OF REASONS

- 5.1 Members raised four areas of concern, upon which they resolved that they were minded to refuse this application. Outlined below are suggested reasons for refusal based on these concerns, followed by officer's comments and advice pertaining to the proposed reason.
- 5.2 Officers have also prepared a reason for refusal for the conservation area consent.

Suggested Reasons for Refusal

Full Planning Permission

Reason for Refusal No. 1

- 5.3 The following reason relates to Members concern regarding the impacts on the heritage aspects of the site, with emphasis on the height of the proposal:
- 5.4 *The proposal would represent an unacceptable form of development with regard to design, appearance, height, bulk, scale and massing which would fail to preserve or enhance the open character and appearance of this part of the Regents Canal Conservation Area. As such, the proposal would be contrary to strategic policy SP10 of the adopted Core Strategy (2010), policies DM25 and DM27 of the adopted Managing Development Document (2013), the National Planning Policy Framework and the guidance contained within the Regents Canal Conservation Area Appraisal. These policies seek to ensure development preserves*

or enhances the character and appearance of the Regents Canal Conservation Area and that development takes account of local context.

- 5.5 **Officer Comment:** The issue of design is a planning issue, and accordingly it is considered by officers that such a reason for refusal is based on planning merits, and could be reasonably defended at appeal by officers.

Reason for Refusal No. 2

- 5.6 Officers have grouped the two concerns raised by members regarding the overdevelopment of the site due to density, and lack of s106 contribution into one reason.

- 5.7 *The proposal would fail to accord with table 3.2 of policy 3.4 of the London Plan (2011), and would therefore result in the overdevelopment of the subject site, without securing appropriate levels of financial contributions, including health contribution, to mitigate against the impacts of such density. The proposal is therefore contrary to the adopted Planning Obligations SPD (2012), policy SP13 of the Core Strategy (2010) and the National Planning Policy Framework, which seek to ensure that the impacts of development are mitigated through planning obligations.*

- 5.8 **Officer Comment:** It is the view of officers that a reason for refusal regarding density and lack of s106 contribution is weak in planning terms.

- 5.9 The proposal exceeds the density matrix within the London Plan marginally, by 6 habitable rooms per hectare (density range of 200 – 450 habitable rooms per hectare; proposal seeks 456 habitable rooms per hectare). Whilst in the simplest of numerical terms the density exceeds the matrix, the intent of the London Plan is to maximise the highest possible intensity of use compatible with local context. The proposal itself is not considered to demonstrate any symptoms of overdevelopment, and no particular concerns with relation to the impacts of the additional 6 habitable rooms per hectare have been raised.

- 5.10 Paragraph 173 of the National Planning Policy Framework (2012) set out that:

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable”

- 5.11 Additionally, the Council's Planning Obligations SPD acknowledges that in certain circumstances the viability of a scheme is jeopardised due to site constraints or other factors, and that in these circumstances viability appraisals are required for officers to assess.

- 5.12 The s106 contributions secured have been subject to a viability assessment, which has been independently assessed by consultants on behalf of the Council, and found that the financial contributions secured represent the maximum amount which the scheme can reasonably afford.

- 5.13 Accordingly, it is the view of officers that reason for refusal number 2 carries limited weight in planning terms, given that the proposal does not exhibit the typical symptoms of overdevelopment, and proposes a financial obligations package which is reasonable when considered in the context of the scheme viability.

Reason for Refusal No. 3

- 5.14 Officers have drafted the following reason, with regard to the failure to secure min 35% affordable housing:
- 5.15 *The proposal fails to secure a minimum of 35% affordable housing, and is therefore contrary to policies SP02(3a) of the Core Strategy 2010 and DM3 of the Managing Development Document (2013), which seek the delivery of 35% - 50% affordable housing in major developments.*
- 5.16 **Officer Comment:** It is the view of officers that a reason for refusal regarding the amount of affordable housing is not appropriate in this instance.
- 5.17 Policy 3.12 of the London Plan (2011) – ‘Negotiating affordable housing on individual private residential and mixed use schemes’ notes:
*‘A) The **maximum reasonable amount** of affordable housing should be sought when negotiating on individual private residential and mixed use schemes, having regard to...
 B) Negotiations on sites should take account of their individual circumstances including **development viability**, the availability of public subsidy, the implications of phased development including provisions for reappraising the viability of schemes prior to implementation and other scheme requirements’*
- 5.18 Policy SP02(3a) of the Core Strategy (2010) notes:
*“Set an overall strategic target for affordable homes of 50% until 2025. This will be achieved by:
 a) Requiring 35% - 50% affordable homes on sites providing 10 new residential units or more **(subject to viability)**”*
- 5.19 Accordingly, together with the NPPF position as outlined in paragraph 5.10 of this report, it is enshrined in policy that financial viability is a material consideration in the delivery of affordable housing.
- 5.20 The application being considered has been subject to detailed financial viability review, officers have taken the view on advice of a financial viability consultant appointed by the Council, that the proposed level of affordable housing is the maximum reasonable amount of affordable housing which the scheme can deliver.
- 5.21 Accordingly, officers are of the view that reason for refusal No. 3 is weak in planning terms, given that the scheme is delivering the maximum reasonable amount of affordable housing, subject to viability.
- Additional Reason for Refusal (No. 4)
- 5.22 In the event that planning permission is refused, it is important to add a reason for refusal setting out that no legal agreement securing financial contributions has been entered into.
- 5.23 *No planning obligations in the form of financial contributions have been secured to mitigate the impacts of the development. As a result, the proposal fails to meet the requirements of policy SP13 of the adopted Core Strategy (2010) and the Planning Obligations Supplementary Planning Document (2012), which seek to agree planning obligations between the Local Planning Authority and developers to mitigate, compensate and prescribe matters relating to the development.*
- 5.24 **Officer Comment:** Officers suggest that if members are minded to refuse planning permission, they also include this as a reason for refusal. This would ensure that if the applicant appeals and were not to enter into a legal agreement that the Inspector would also consider the implications of the lack of any financial contributions or affordable housing being provided, allowing for the negotiation and provision of appropriate financial mitigation.

Conservation Area Consent– reason for refusal

- 5.25 *In the absence of an approved planning permission for the re-development of the site, the demolition of the existing buildings would leave an undeveloped site which would represent a blight on the character and appearance of the Regents Canal Conservation Area, contrary to strategic policy SP10 of the adopted Core Strategy (2012), policy DM27 of the adopted Managing Development Document (2013), the National Planning Policy Framework and the guidance within the Regents Canal Conservation Area Appraisal. These policies seek to ensure development preserves or enhances the character and appearance of the Regents Canal Conservation Area.*

6.0 IMPLICATIONS OF THE DECISION

- 6.1 Following the refusal of the application the following options are open to the Applicant. These would include (though not be limited to):

1. The applicant could appeal the decisions and apply for an award of costs against the Council. Planning Inspectorate guidance on appeals sets out in paragraph B20 that:

“Planning authorities are not bound to accept the recommendations of their officers. However, if officers’ professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the Council”.

2. There are two financial implications arising from appeals against the Council’s decisions. Firstly, whilst parties to a planning appeal are normally expected to bear their own costs, the Planning Inspectorate may award costs against either party on grounds of “unreasonable behaviour”. Secondly, the Inspector will be entitled to consider whether proposed planning obligations meet the tests of CIL Regulations 2010 (Regulation 122).
3. The Inspector will be entitled to consider the type and amount of affordable housing. This could result in the developers being able to provide affordable rented housing at up to 80% of market rents across this site, as opposed to the current proposed offer which secures the affordable rent at POD levels (especially in view of the Planning Inspector’s Report which dealt with the Examination In Public into the Managing Development Document). Similarly, the developer may elect to either renegotiate planning obligations previously agreed or prepare a unilateral undertaking for a subsequent appeal which might well result in a lesser S.106 planning obligations package (both in terms of financial and non-financial obligations negotiated by your officers).

- 6.2 Should Members resolve to refuse planning permission, officers would seek to defend any appeal made by the applicant.

7.0 CONCLUSION

- 7.1 All relevant policies and considerations have been taken into account. Whilst officers remain satisfied that planning permission and conservation area consent for this proposed development should be **GRANTED**, subject to suitable conditions and the signing of a S.106 Agreement, Members are directed to the draft reasons for refusal and officers comments, viewed alongside the previous reports and update reports presented to the Development Committee and determine the planning application as appropriate.

- 7.2 If Members are minded to refuse planning permission, officers recommend that this be on the basis of drafted reasons for refusal No.s 1 and 4.

8.0 APPENDICES

- 8.1 Appendix One - Committee Report to Members on 11th April 2013
- Appendix Two – Update Report to Members on 11th April 2013
- Appendix Three – Materials Schedule
- Appendix Four – Committee Report to Members on 15th May 2013
- Appendix Five – Update Report to Members on 15th May 2013
- Appendix Six – Committee Report to Members on 19th June 2013
- Appendix Seven – Update Report to Members on the 19th June 2013