

Committee: Strategic Development	Date: 24 th July 2018	Classification: Unrestricted	Agenda Item Number:
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Report of: Director of Place	Title: 21 Buckle Street Public Inquiry - reasons for refusal
Case Officer: Elizabeth Donnelly	Ref No: PA/16/01612
	Ward: Whitchapel

1.0 BACKGROUND

- 1.1 On 2nd December 2016, the London Borough of Tower Hamlets, in its role as the local planning authority (LPA), received an application for planning permission for:

Demolition of existing office building and erection of a 13 storey building (plus enclosed roof top level plant storey) rising to 56.32m (AOD) containing 103 unit aparthotel (C1 Use) with B1 Use Class office workspace at ground and mezzanine level with an ancillary café (A3 Use Class) and hotel reception space at ground floor, together with ancillary facilities, waste storage and associated cycle parking store.

- 1.2 The application was reported to the Strategic Development Committee on 17 August 2017 with an officer recommendation to grant permission. The Committee resolved to refuse the application, against the officer recommendation. The committee indicated four reasons relating to:

- Residential amenity;
- Over-development, including townscape and heritage impacts;
- The need for short-stay accommodation has not been demonstrated.
- Failure to mitigate impact on local services, amenities, infrastructure

- 1.3 The application was deferred to enable officers to prepare a supplementary report, setting out proposed reasons for refusal. This was presented to the Strategic Development Committee on 4^h October 2017 and the application was refused on the following four reasons:

Reason 1:

The proposed development would cause significant harm to the amenities and living conditions of occupiers of neighbouring residential properties through both major and moderate losses of daylight and sunlight, excessive loss of outlook resulting from the overbearing nature of the development including an undue sense of enclosure. As such the development would be contrary to the NPPF, as set out in paragraphs 14, 17 and 56 of the NPPF and the Local Plan including Policy SP10 of the Core Strategy (2010) and DM25 of the Managing Development Document (2013) which seek to protect the amenity of residents including ensuring that development does not result in unacceptable material deterioration of daylight and sunlight conditions for future and existing residents.

Reason 2:

The proposed development exhibits clear and demonstrable signs of overdevelopment by virtue of:

- a) its adverse amenity impacts to residential neighbours;
- b) from its detrimental townscape impacts resulting from the proposed height, scale and mass of the development set on a small, tightly confined site edged by two narrow streets and set within an established lower scale urban street block;
- c) resultant harm to the significance of the setting of the Grade II* listed St George's German Church and to the Grade II listed Dispensary Building, the former St George's German and English Schools, the former St George's German and English Infants' School, that are not outweighed by the public benefits of the scheme, by reason of the height, scale, mass of the development set in immediate proximity to these designated heritage assets and the proposed schemes impacts upon local townscape views of this cluster of listed buildings
- d) unacceptable relationships to other developments that limits the opportunity to achieve a tall building on site or increase significantly the height of the existing building envelope on site such that it is compatible with the objectives of sustainable development and delivering high quality place-making within Aldgate.

As such the scheme would fail to provide a sustainable form of development in accordance with NPPF including paragraphs 17, 56, 61, 128-134 and would be contrary to the development plan in particular policies 7.4, 7.5, 7.6 and 7.7 and 7.8 of the London Plan (2016), policies DM0, DM23, DM24, DM25, DM26, DM27 of the Tower Hamlets' Managing Development Document and the Borough's vision for Aldgate, that taken as a whole, have an overarching objective of achieving place-making of the highest quality.

Reason 3:

The need for additional short stay accommodation to serve visitors and the borough's economy has not been adequately demonstrated given the strong pipeline supply of short stay accommodation, the limited contribution to the local economy arising from the proposed development, and the discernible dis-benefits to the local economy arising from a net loss of office floorspace and associated net loss of local jobs. In addition any need for additional short stay visitor accommodation in the Borough would not outweigh the harm to residential amenity, local townscape and heritage assets.

As a result the proposed is not considered to be in accordance with the development plan including Policies DM0, DM7, DM24, DM25, DM26, DM27 of the Managing Development Document, Core Strategy Policies SP06, SP10, London Plan Policies 2.13, 4.1, 4.2, 7.4 and the objectives of the City Fringe OAPF including objectives of Paragraph 3.9 in respect of avoiding a net loss of employment floorspace within the OAPF Inner Core.

Reason 4:

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).

Reason 4 was included to protect the Council's position in the event of an appeal.

- 1.4 On 18 December 2018, the Council received a Planning Appeal against the refusal of the application. The appeal is following the Public Inquiry appeals procedure. The Public Inquiry is due to take place from the 6 November 2018 for a period of 6 days. At the public inquiry, officers, with the support of Counsel and expert witnesses will be defending the Council's decision to refuse planning permission. The Council will need to provide evidence that can withstand examination and cross-examination to support each of the four reasons for refusal.

2.0 PURPOSE OF THIS REPORT

- 2.1 Since the appeal was received, officers have undertaken an extensive amount of work to build a case to defend the reasons for refusal set out above. This has included seeking legal advice and procuring expert witnesses in respect of heritage, townscape, daylight and sunlight issues.
- 2.2 Officers have however faced considerable difficulty in building a case surrounding reason for refusal 3; concerning need for short stay accommodation.
- 2.3 This report will set out these difficulties and seeks authority from the Committee to advise the Planning Inspectorate and the appellant at the earliest possible stage that the Council will not be defending reason 3 and for this to be agreed in an updated Statement of Common Ground.

3.0 DISCUSSION OF ISSUES

- 3.1 The third reason for refusal can be logically broken down into three planning issues.
- The need for short stay accommodation;
 - Loss of office floor-space and jobs;
 - Public benefits balanced against harm.

Need for short-stay visitor accommodation

- 3.2 With regards to **issue 1**, the 'need' argument, the reason for refusal and the supporting Committee report (dated 4th October 2017) argues that there is a strong pipeline supply of short stay accommodation in the borough. This is evidenced by the London Plan evidence base for the draft new London Plan.

- 3.3 The figures show that the borough is well exceeding the required supply of visitor accommodation.
- 3.4 On this basis, it could be argued that the applicant has failed to demonstrate that there is a need for short stay accommodation to serve visitors and the boroughs economy and thus, fails criteria (b) of Policy DM7.
- 3.5 After much consideration, it is however felt that this argument is problematic when considered in the context of the Council's general approach towards the interpretation and application of Policy DM7.
- 3.6 Whilst a qualitative argument could be applied, the intention of the 'need' criteria within Policy DM7 is not to pull into question the principle of a hotel as a land use.
- 3.7 Being in the Central Activities Zone (CAZ), the Council's policy indicates that the proposed location is an appropriate location for a hotel. The principle of hotel development from a land use perspective is therefore acceptable.
- 3.8 Making a 'need' argument based on supply and demand figures however essentially pulls into question the acceptability of visitor accommodation across the whole of Tower Hamlets i.e. – *'at this point in time, the borough does not 'need' anymore visitor accommodation'*. If this was the intention of the policy, this would warrant the refusal of all applications for hotels or other visitor accommodation.
- 3.9 To take this approach towards Policy DM7, especially in the context of a refusal, would be inconsistent with our assessment and decision-making of other hotel proposals within the borough.
- 3.10 This reason for refusal could also be used to argue to that the proposed development fails Policy DM7 on amenity grounds - through balancing the opportunities presented by hotel development with the identified negative impact on residential amenity. However, the amenity impact of the proposal is already covered by reasons for refusal 1 and 2.
- 3.11 Taking the above into account, officers do not consider that this element of reason for refusal 3 can be defended without being inconsistent with the policy approach and nature of assessment and decisions relating to hotel development in the borough.

Loss of employment floor-space

- 3.12 The reason for refusal infers that the proposed scheme would result in discernible dis-benefits to the local economy arising from the loss of the existing office floorspace and associated net loss of local jobs.
- 3.13 Whilst officers accept that the loss of an office development has the potential result in a loss of employment generating floorspace and employment itself, the existing office development at the application site is not active, or considered to meet modern day standards.
- 3.14 In their Committee report (dated 17th August 2017), officers accepted that the applicant had provided the necessary marketing evidence, as required by

Policy DM15 'Local job creation and investment', to demonstrate that the proposed development would not give rise to the loss of an active and viable office use. Officers were therefore satisfied that at the time of submission, there was no existing employment at the site, nor the potential for the site to support a viable office use, particularly in the context of the substantial growth in office floor space elsewhere in Aldgate. This was not challenged by the Committee members.

- 3.15 The argument, set out in the reason for refusal, that the proposed development would result in a net loss of employment associated with the existing office is therefore not considered to be a true reflection of the situation.
- 3.16 On this basis, officers would not be able to lead an argument that the proposed scheme - that generates some employment - would result in a net loss of employment generating floorspace/ jobs/ discernible benefit to the local economy.
- 3.17 For this reason, officers were unable to defend this point even in the Council's Statement of Case that has already been submitted to the Planning Inspectorate.

Public benefits balanced with harm

- 3.18 Lastly, **issue 3**, essentially sets out a 'planning balance' argument and weighs the economic benefits of the scheme with the identified amenity and heritage harm.
- 3.19 In terms of taking this argument forward to the Public Inquiry, it is considered that issue 3 presents a sound planning argument. However the reason for refusal is not required for officers to carry this argument forward as the other two reasons for refusal adequately deal with this issue. And, in any event the NPPF requires decision makers to take into account any potential public benefits when considering harm to heritage assets
- 3.20 The omission of reason for refusal 3 from the planning appeal would therefore not fetter the Council's ability to argue that the heritage harm is not outweighed by the benefits of the scheme.

4.0 IMPLICATIONS OF DEFENDING REASON 3

- 4.1 Separate to the consideration of the planning merits of a proposed development or the final decision/outcome of the appeal, the Planning Inspectorate dealing with an appeal can require either party to pay costs. The Appellant can also make a claim to the Planning Inspectorate, against the Council (and vice versa), for the award of costs. Costs can only be awarded in certain circumstances, including for unreasonable behaviour.
- 4.2 The inability of the Council to properly defend a reason for refusal could be deemed unreasonable behaviour and generate a risk of costs.
- 4.3 It is also important that the Appellant does not carry out abortive work in preparing for the Inquiry, which could also lead to an adverse costs decision against the Council.

- 4.4 Agreeing that reason 3 would not be defended, during this early stage of preparation for the Inquiry would limit the Council's potential risk of exposure to an award of costs. It would also not diminish the Council's overall position on the planning merits of the development as reasons 1, 2 and 4 can be robustly defended.

5.0 RECOMMENDATION

- 5.1 For the Committee to delegate authority to officers to advise the Planning Inspectorate and the appellant that refusal reason 3 will not be defended by the Council at the Appeal Inquiry and that this can be agreed as part of an updated Statement of Common Ground.