

<b>Committee:</b> Development	<b>Date:</b> 28 April 2010	<b>Classification:</b> Unrestricted	<b>Agenda Item No:</b> 7.1
<b>Report of:</b> Corporate Director of Development and Renewal		<b>Title:</b> Planning Application for Decision	
<b>Case Officer:</b> Devon Rollo		<b>Ref No:</b> PA/09/02043	
		<b>Ward(s):</b> Bethnal Green North	

## 1. APPLICATION DETAILS

<b>Location:</b>	Moorings at Belmont Wharf, Land North of Canal Club, Waterloo Gardens, London, E2 9HP
<b>Existing Use:</b>	Canal
<b>Proposal:</b>	Removal of Condition 12 (Car Free Agreement) of planning permission reference PA/04/01841, dated 20/04/2007.
<b>Drawing Nos:</b>	N/A
<b>Supporting Documents:</b>	Written Statement – <i>“Removal of Condition 12 (car-free agreement) of planning permission granted 20/04/07 ref: PA/04/1841”</i>
<b>Applicant:</b>	Ms Sally Hone 4J Peabody Buildings John Fisher Street London E1 8LE
<b>Owner:</b>	London Borough of Tower Hamlets
<b>Historic Building:</b>	No
<b>Conservation Area:</b>	Regents Canal

## 2. SUMMARY OF MATERIAL PLANNING CONSIDERATIONS

### Planning Permission

2.1 The Local Planning Authority has considered the particular circumstances of this application against the Council's approved planning policies contained in the London Borough of Tower Hamlets Unitary Development Plan, the Council's Interim Planning Guidance (2007), Council's Core Strategy 2025 Development Plan Document (Submission Version December 2009), associated supplementary planning guidance, the London Plan and Government Planning Policy Guidance and has found that:

- The Condition requiring a S106 legal agreement to be entered into to prevent owners and occupiers from obtaining highway parking permits is unreasonable and is not in accordance with the government guidance provided by Circular 11/95.
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- Consideration has been given to the objections made to the scheme, but none of these are considered sufficient to outweigh the reasons for granting planning permission.

### **3. RECOMMENDATION**

- 3.1 That the Committee resolve to **GRANT** planning permission for the removal of condition 12 on planning permission reference PA/04/01541 dated 20 April 2007.

### **4. BACKGROUND, PROPOSAL AND LOCATION DETAILS**

#### **Background**

- 4.1 On 7 December 2004 the Council received an application for planning permission for the provision of permanent residential moorings of three boats and one workshop boat (for artwork) on the canal side.
- 4.2 The application was presented to the Development Committee on 18 April 2007. At the meeting the committee decision was to approve the planning permission subject to a condition requiring a S106 agreement to be entered into requiring the development to be car free.
- 4.3 The application was approved on 20 April 2007 with the following condition:

*“No development shall commence until an agreement has been entered into with the Council pursuant to Section 106 of the Town & Country Planning Act 1990, to prohibit the owner/occupiers of the development from applying to the Council for a permit to park a vehicle on public highway within the vicinity of the land.*

*Reason: To reduce the amount of traffic congestion and associated air pollution being generated by new residential developments in accordance with policy T11 of the Tower Hamlets Unitary Development Plan (adopted December 1998) and policy DEV19 of the Local Development Framework Submission Document (November 2006).”*

- 4.4 As owner of the land the Council is not able to enter into a S106 legal agreement with itself. Furthermore, the applicant does not have sufficient interest in the land to enter into a S106 legal agreement. Therefore, this condition cannot be complied with.

#### **Proposal**

- 4.5 The applicant is applying for the removal of Condition 12 (Care free agreement), as detail in paragraph 4.3, as the condition is ultra vires in that it is not possible to comply with the condition.

#### **Site and Surroundings**

- 4.6 The application site falls within the Victoria Park Conservation Area and is situated along the south side of Grand Union Canal immediately to the north of the Canal Club. The Canal Club is a single storey community centre with an outdoor games court area, enclosed by high-rise meshed fencing.

- 4.7 North of the site is Victoria Park (a large green open space). On the north side of the canal is a towpath running along the canal.
- 4.8 Adjacent to the site, on Sewardstone Road to the east, is a row of two storey Victorian terrace houses. The long rear gardens of these terrace properties back onto the canal (south side). The nearest residential property to the site is 176 Sewardstone Road. This property is located adjacent to the outdoor games court area (to the east of the Canal Club).
- 4.9 South of the site is predominantly residential accommodation, with a mixture of medium-rise public and low-rise private housing. The wider area is served by a number of health and community related facilities.
- 4.10 There is no existing physical link for the proposed moorings. However, adjoining the application site is a raised canal bank with a hedge above. The canal bank adjoining the application site is currently in a poor condition with overgrown vegetation and litter all along the hedge above.

### **Relevant Planning History**

- 4.11 PA/04/01841 Provision of permanent residential moorings for three boats and one workshop boat (for artwork) on the canalside.

Granted planning permission 20/04/2007

## **5. POLICY FRAMEWORK**

- 5.1 For details of the status of relevant policies see the front sheet for "Planning Applications for Determination" agenda items. The following policies are relevant to the application:

### **Government Planning Policy Guidance/Statements**

PPS 1	Delivering Sustainable Development
PPG 13	Transport

### **The London Plan Spatial Development Strategy for Greater London Consolidated with Alterations since 2004 (February 2008)**

3C.23	Parking Strategy
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### **Unitary Development Plan 1998 (as saved September 2007)**

Policies:

ST1	Effective and Fair Planning Service
ST28	Restrain Use of Private Cars

### **Interim Planning Guidance for the purpose of Development Control (October 2007)**

Core Policies:

CP 41	Integrating Development with Transport
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Policies:

DEV 19	Parking for Motor Vehicles
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### **Core Strategy 2025 Development Plan Document (Submission Version December 2009)**

Spatial Policies:

SP09                      Creating Attractive and Safe Streets and Spaces

### **Supplementary Planning Guidance/Documents**

There are no relevant Supplementary planning guidance documents

### **Community Plan – One Tower Hamlets**

The following Community Plan objectives relate to the application:

A Great Place To Be  
Healthy Communities  
Prosperous Communities  
Safe and Supportive Communities

## **6. CONSULTATION RESPONSE**

6.1 The views of the Directorate of Development and Renewal are expressed in the MATERIAL PLANNING CONSIDERATIONS section below. The following were consulted regarding the application:

### **LBTH Legal Team**

6.2 The condition regarding the car free agreement that is on the original consent is unlawful.

6.3 The applicant can't enter into a section 106 agreement as they don't have a licence or any other interest in the land and therefore cannot enter into a s106 agreement so this condition will never be able to be complied with.

### **LBTH Parking Team**

6.4 I do not consider changing the TMO to exclude boat dwellers as a class or this particular parcel of land specifically an appropriate use of our highway powers.

### **LBTH Highways**

6.5 Final comments on this matter should be sought from Parking Services and the Council's Legal teams.

## **7. LOCAL REPRESENTATION**

7.1 A total of 77 neighbouring properties within the area shown on the map appended to this report were notified about the application and invited to comment. The application has also been publicised on site. The number of representations received from neighbours and local groups in response to notification and publicity of the application were as follows:

No of individual responses: 23    Objecting: 23    Supporting: 0

7.2 The following issues that are material to planning considerations were raised in

representations:

- There are already issues with lack of parking on Sewardstone Road, Waterloo Gardens and the Wellington Estate.
- Estate tenants are buying cheaper council parking permits rather than estate permits and parking on the highway
- With one of the boats to be moored an artist's studio there will be frequent visitors.
- Consultation process by LBTH is poorly informed [comments related to planning permission for Bestway Discount Warehouse]

#### Officer's Comments

- 7.3 Parking permits issued to the moorings for business or residents would not allow visitors to park within the residents permit bays. Likewise business permits would not be eligible to park in the residents bays. If the boats were able to obtain parking permit, it would result in a maximum of 4 additional addresses being able to obtain parking permits for parking within the highway parking bays.
- 7.4 The price of estate parking permits is not controlled by the council parking team. The removal of this condition would not alter this aspect of the current environment.
- 7.5 Comments related to poorly informed consultation by Council is not related to this application.

### **8. MATERIAL PLANNING CONSIDERATIONS**

- 8.1 The main planning issues raised by the application that the committee must consider are:
1. The validity of the condition in terms of circular 11/95.
  2. The impact of removing the condition

#### **The validity of the condition in terms of circular 11/95**

- 8.2 The power to impose conditions when granting planning permission is very wide. If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when that power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable. Government Circular 11/95, sets out guidance on how this can be achieved.
- 8.3 In particular it stresses that conditions should only be imposed where they are both, necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted.
- 8.4 On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42 of the Circular. In brief, these explain that conditions should be:
- i. necessary;

- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects.

- 8.5 A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. In such cases a condition would not be reasonable.
- 8.6 In relation to Condition 12 (Car-free agreement) of planning permission reference PA/04/01841, dated 20/04/2007, as the applicant has no interest in the land, they are not able to enter into a S106 legal agreement as required by the condition. Furthermore, the owner of the land is the Council. As such, the Council is unable to enter into a legal agreement with itself.
- 8.7 It is therefore not possible for Condition 12 of planning permission reference PA/04/01841, dated 20/04/2007, to be complied with by any party. It would therefore not meet the test of being reasonable and would not comply with the requirements of the government guidance provided by Circular 11/95.
- 8.8 It is therefore considered that the condition 12 should be removed from the planning application in order for compliance with the government guidance of Circular 11/95 to be achieved.

#### **Impact of removing the condition**

- 8.9 By removing the condition it would mean that the owners/occupiers would be able to apply for a parking permit for each of the addresses. This would mean that maximum of 3 additional residential parking permits could be issued, as only 3 of the boats are residential.
- 8.10 It is considered by officers that if condition requiring a car free agreement was not included on the original application that, given the minimal impact that the additional permits would have on the parking supply, the application would still have been recommended for approval.

#### **Conclusions**

- 8.11 All other relevant policies and considerations have been taken into account. Planning permission should be granted for the reasons set out in the SUMMARY OF MATERIAL PLANNING CONSIDERATIONS and the details of the decision are set out in the RECOMMENDATION at the beginning of this report.

# Site Plan and Consultation Zone

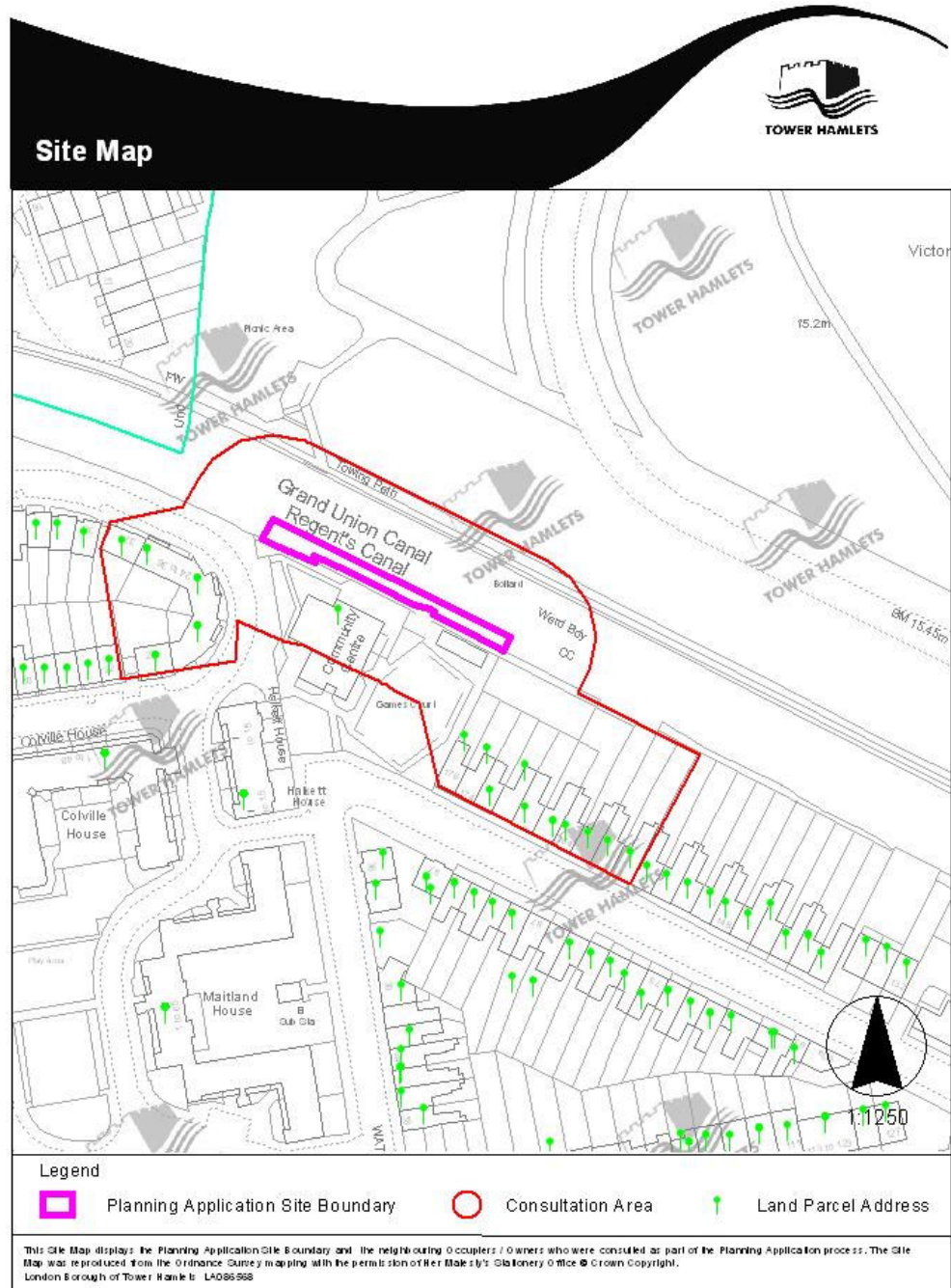


Figure 8.1 – Map showing site consultation zone