

<b>Committee:</b> Strategic Development	<b>Date:</b> 27th September 2012	<b>Classification:</b> Unrestricted	<b>Agenda Item No:</b>
<b>Report of:</b> Corporate Director Development & Renewal		<b>Title:</b> Planning Application for Decision	
<b>Case Officer:</b> Mandip Dhillon		<b>Ref No:</b> PA/11/03824	
		<b>Ward(s):</b> Blackwall and CubittTown	

## 1. APPLICATION DETAILS

**Location:** OrchardWharf, Orchard Place, London

**Existing Use:** Vacant/Brownfield Site

**Proposal:** Cross-boundary hybrid planning application for erection of a concrete batching plant, cement storage terminal and aggregate storage facilities, together with associated structures and facilities, walkway and landscaping, jetty and ship to shore conveyor.

### 1) Outline Application: All matters reserved

Jetty; and Ship to shore conveyor.

### 2) Full details

Demolition of all existing buildings; Concrete batching plant; Cement storage terminal; Aggregate storage facilities; Associated structures and facilities; Associated highway works; Walkway; and Landscaping.

**Drawing Nos:** Drawings:  
Figure 2.1 rev C  
Figure 2.2 rev D  
Figure 2.3 rev D  
Figure 2.4 rev D  
Figure 2.5 rev D  
Figure 2.6 rev C  
Figure 2.7 rev B  
Drawing 2565/20 rev B  
Figure 3

Documents:  
Design and Access Statement dated December 2011  
Energy Report (Planning Stage) dated December 2011  
Sustainable Design and construction Statement dated December 2011  
Non-Technical Summary (Environmental Statement) dated December 2011  
Lighting Assessment dated December 2011  
Statement of Community Involvement dated December 2011  
Planning Statement dated December 2011  
Environmental Statement dated December 2011

**Applicant:** Aggregate Industries UK Ltd & London Concrete Ltd

**Owner:** Port of London Authority and Grafton Group.

**Historic Building:** None

**Conservation Area:** None

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## **2.0 RECOMMENDATION**

- 2.1 That the Committee notes the details of this report and officers' advice regarding the appropriate form of the suggested reasons for refusal when resolving to refuse this planning application.

## **3.0 BACKGROUND**

- 3.1 This application for planning permission was first reported to Strategic Development Committee on 31<sup>st</sup> May 2012 with an officer recommendation for approval. A copy of the case officers' report and update report containing the summary of material planning considerations, site and surroundings, policy framework, planning history and material planning considerations is attached at Appendices 1 & 2 to this item.
- 3.2 After consideration of the report and the update report, the committee resolved not to accept the officers' recommendation and was minded to refuse planning permission because of concerns over:
- The safeguarded status of OrchardWharf.
  - The impact of the development on the FAT walk.
  - Impact from noise and general use on the biodiversity of the site and the EastIndiaDockBasin.
  - Impact of Noise on Neighbours.
  - Transportation impacts.
  - Design and Impact on Views.
- 3.3 In accordance with Rule 10.2 of the Constitution, and Rule 4.8 of the Development Procedure Rules, the application was 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.
- 3.4 An Information Report was issued to the Strategic Development Committee on 5<sup>th</sup> July 2012 (Appendix 3) to advise Members that a formal letter of objection had been submitted on behalf of the Council to the GLA Safeguarded Wharves Review 2011/2012 Consultation Draft document. The letter of objection raised formal objections to the safeguarding status of OrchardWharf due to the changing nature of the area around the application site. A copy of the Comments submitted is provided at Appendix 4.
- 3.5 On the 16<sup>th</sup> July 2012, the GLA released a further consultation draft of the Safeguarded Wharves Review 2011/2012 and provided a formal response to the objections lodged with regard to the safeguarded status of OrchardWharf. A copy (extracts only) of the formal response received from the GLA to the LBTH comments/representations is provided at Appendix 5. As a result of the release of this document alongside the formal response from the GLA, it was considered that these were fresh material considerations in the determination of the proposed development which warranted consideration of the application by the Strategic Development Committee. As such, the application was presented afresh on August 16<sup>th</sup> 2012 in light of the additional information and clarification, with an Officer recommendation for Approval (Appendix 6). The committee resolved not to accept the officers' recommendation and were minded to refuse planning permission for the same reasons given previously with the exception of the first reason relating to the safeguarded wharf status.

- 3.6 In accordance with Rule 10.2 of the Constitution, and Rule 4.8 of the Development Procedure Rules, the application was 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 Section 5.0 of this report.

#### **4.0 INFORMATION UPDATE**

##### London Thames Gateway Development Corporation (LTGDC)

- 4.1 As a cross boundary planning application, an identical application was submitted to the LTGDC for determination. On the 23<sup>rd</sup> August 2012, the LTGDC resolved to accept the officers' recommendation and grant planning permission for the proposed works within the LTGDC boundary area.
- 4.2 During the committee discussions, LTGDC Members resolved to add further conditions and Heads of Terms to the S106 agreement. The details agreed included a strengthened condition restricting the hours of operation to specific noise levels which should not be exceeded at the site. A further condition included an overall limit to the level of aggregate and cement imported into the site, this condition limits the production at the application site to prevent further intensification and impact on local residents. A condition requiring details of the ongoing maintenance of the buildings and structures at the site has also been imposed to ensure that the external appearance of the site is acceptable at all times and maintained by the Applicant. An additional provision has also been secured within the S106 to ensure that the Orchard Place (from Orchard Wharf to the eastern boundary of the site up to A1020) is to be cleaned on a daily basis at or around 12 noon.
- 4.3 Officers at LTGDC will be issuing the decision notice and S106 prior to the 26<sup>th</sup> September 2012, when the Corporation are dissolved at the functions return to LB Tower Hamlets. The planning decision notice of the LTGDC includes a Grampian condition preventing implementation of all works within the LTGDC area until approval is given for the works within the LBTH. This Grampian condition is imposed in order to deliver the key London Plan objective of providing a sustainable development and ensuring the delivery of the Jetty and Ship to Shore Conveyor.

##### GLA – Stage II Report

- 4.4 On the 11<sup>th</sup> September 2012, the GLA issued their Stage II report to the LTGDC, advising that they were content to allow the Corporation to determine the case, subject to any action the Secretary of State may take, and do not therefore wish to direct refusal. The GLA comments further identified how the revision made to the scheme and the financial and non-financial contributions secured had overcome all of the concerns raised within the Stage I report, issued on 29<sup>th</sup> February 2012.

#### **5 CONSIDERATION OF REASONS**

- 5.1 Members have raised 5 matters of concern on which they resolved that they were minded to refuse this application. The following are suggested reasons for refusal based on these concerns, followed by officer's comments and advice pertaining to each of the proposed reasons.
- 5.2 Officers are recommending that only Reason 1 and 5 should be carried forward by Members when refusing the application, and do not consider that Reasons 2, 3 or 4 are appropriate or able to be defended at appeal. Reasons 1 and 5 have been consolidated at paragraph 6.1 of this Report, which sets out the reason for refusal which officers recommend in respect of this application.

## Suggested reasons for refusal & officer comments

### Reason 1

- 5.3 By reason of the introduction of a use which would fail to complement the setting of East India Dock Basin, the proposal would fail to enhance the quality and usability of the FAT Walk as it terminates at the East India Dock Basin. As such the scheme is contrary to policies SP04 and SP10 of the Core Strategy Development Plan Document 2010 and policy DM10 of the Managing Development DPD Proposed Submission Version 2012, which seek to protect and improve access to publicly accessible open spaces which include the FAT Walk.

### Officer's Comments

- 5.4 Members indicated that as the FAT Walk terminates at the East India Dock Basin, it is not considered that the proposed concrete batching plant and aggregate storage depot, which would be located at the end of the walkway, would enhance the quality and usability of the FAT Walk. A further condition was imposed by Members of the LTGDC Board, which is proposed to be issued by the LTGDC which requests a strategy for the ongoing maintenance of the buildings and structures within the site.

Whilst LTGDC have imposed a further condition with regard to the future appearance of the structures and buildings on site, Officers consider on balance that this is an acceptable reason for refusal.

### Reason 2

- 5.5 The proposal fails to protect biodiversity in terms of both enjoyment of Biodiversity assets by visitors, and impacts on habitat and birds. It causes significant harm to habitat within the application site, which is used by breeding birds including shelduck and the protected Black Redstart. It could also cause significant disturbance to birds, particularly Teal, at East India Dock Basin as well as resulting in significant impacts relating to the enjoyment of biodiversity of visitors to this Site of Nature Conservation Importance, by reason of the noise disturbance associated with the proposed use. The proposal therefore fails to accord with policies 7.14, 7.15 and 7.19 of the London Plan 2011, policies DEV2 and DEV50 of the Unitary Development Plan 1998, policies DM11 and DM25 of the Managing Development DPD (Submission Version May 2012) and Policies SP03 and SP04 of the Core Strategy 2010 and the National Planning Policy Framework 2012.

### Officer's Comments

- 5.6 The applicants included a full Biodiversity Survey within their Environmental Statement which considered the impacts of the development on both the application site and the East India Dock Basin. In addition to the findings of the survey work, the Local Planning authority in consultation with the Lea Valley Regional Park Authority sought off-site mitigation to provide enhancements and de-silting works for the East India Dock Basin to encourage an environment at the East India Dock Basin which was more favourable to less noise sensitive birds.
- 5.7 The LTGDC have assessed the Biodiversity matters within this planning application and have resolved to grant planning permission as it is considered that the measures proposed coupled with the obligations secured mitigate against the impact of the proposed development.
- 5.8 Considering this, Officers do not consider that impacts on biodiversity constitute a defensible reason for refusal on this planning application.

### Reason 3

- 5.9 The proposed industrial development is situated in an emerging residential led mixed use area and its proposed use would detrimentally affect the amenity enjoyed by existing and future occupants and visitors by virtue of noise generation from the use and its associated vehicular movements. As such the scheme is contrary to 7.15 of the London Plan 2011, saved policies DEV2 and DEV50 of the Unitary Development Plan 1998, policies SP03 and SP10 of the core Strategy 2010 and policy DM25 of the Managing Development DPD Submission Version 2012.

Officer's Comments

- 5.10 The application included a Noise Assessment which formed part of the Environmental Assessment. Members raised concerns at the planning committee with regard to the increased noise levels on local roads arising from increased vehicular movements. The Council's Environmental Health Officer has advised that road traffic noise arising from the increased vehicular movements are not considered in noise assessments for proposed developments.
- 5.11 The proposed industrial use also has associated noise levels which potentially impact upon local residential amenity. Officers would however note that it has been demonstrated within the application that the impacts of the proposed noise can be appropriately mitigated.
- 5.12 The LTGDC have assessed the Noise impacts of this planning application and have resolved to grant planning permission as it is considered that the measures proposed coupled with the obligations secured mitigate against the impact of the proposed development.
- 5.13 While the above reason has been derived on the basis of the Members' concerns, given the ability to mitigate the concerns of the noise impact through the imposition of conditions and planning obligations, officers do not consider that this is an appropriate reason for refusal.
- 5.14 Considering this, Officers do not consider that impacts of noise generation constitute a defensible reason for refusal on this planning application.

Reason 4

- 5.15 The proposal will increase vehicular movements along Orchard Place resulting in an unacceptable vehicular and pedestrian conflict within the immediate locality to the detriment of highway safety and adversely affecting the freeflow of traffic, contrary to policy 6.7 of the London Plan (2011), policies SP09 and SP10 of the Core Strategy Local Development Framework (2010), saved policies DEV2, T16 and T19 of the Council's Unitary Development Plan (1998), policies DEV1 and DEV17 of the Council's Interim Planning Guidance (October 2007) and policies DM20, DM21 and DM25 of the Managing Development DPD (Submission Version May 2012).

Officer's Comments

- 5.16 Members indicated that they considered that the number of vehicular movements arising from this development was excessive and would cause an unacceptable impact on the vehicular and pedestrian movements on Orchard Place. It was also considered that as a high number of people use Orchard Place to access Trinity Buoy Wharf, there was the potential to cause conflict on the road. Officers wish to advise that the application has been through substantial discussion and negotiation with both the Council and TfL's Highway engineers, and the impacts of the proposal are not considered to cause transportation impacts. As such, it is not considered that this reason is an appropriate reason for refusal.
- 5.17 The LTGDC have assessed the Transportation matters within this planning

application and have resolved to grant planning permission as it is considered that the proposal does not give rise to a substantial increase in vehicular movements or cause a concern for highway safety in the area. In addition, the LTGDC have imposed an additional condition restricting the total quantity of aggregates and cement imported to the site to prevent intensification of the site.

- 5.18 As such, Officers do not consider that impacts on transportation constitute a defensible reason for refusal on this planning application.

#### Reason 5

- 5.19 The proposal, in terms of its design, bulk, elevational treatment and impact upon views represents an inappropriate form of development and fails to preserve or enhance the character, appearance and townscape setting of this prominent riverfront location. As such, the proposal fails to accord with policies DEV1 and DEV8 of the Unitary Development Plan 1998, policies SO20, SO21, SO22, SO23 and SP10 of the Core Strategy 2010, policies CON5 and DEV2 of the Interim Planning Guidance 2007 and policies DM24 of the Managing Development DPD (Submission Version 2012).

#### Officer's Comments

- 5.20 Members indicated that they considered that the proposal failed to provide an appropriate design solution in this prominent riverfront location. Whilst the design is typical of an industrial site and building, it is not considered by Members that this is appropriate in this location.
- 5.21 This is considered to be an appropriate reason for refusal.

#### **Implications of the decision**

- 5.22 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 decision and submit an award of costs application 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 Council would vigorously defend any appeal.

#### **6.0 SUGGESTED REASONS FOR REFUSAL**

- 6.1 If the Committee is still minded to refuse the application, subject to any **direction** by **The Mayor of London**, officers consider that the appropriate reasons for refusal should read:
- 6.2 1. The proposal, in terms of its design, bulk, elevational treatment and impact upon views represents an inappropriate form of development and fails to preserve or

enhance the character, appearance and townscape setting of this prominent riverfront location. The scheme would also fail to enhance the quality and usability of the FAT Walk as it terminates at the East India Dock Basin. As such, the proposal fails to accord with policies DEV1 and DEV8 of the Unitary Development Plan 1998, policies SO20, SO21, SO22, SO23, SP04 and SP10 of the Core Strategy 2010, policies CON5 and DEV2 of the Interim Planning Guidance 2007 and policies DM10 and DM24 of the Managing Development DPD (Submission Version 2012).

## **7.0 CONCLUSION**

- 7.1 All relevant policies and considerations have been taken into account. It is recommended that Members consider the draft reason for refusal and officers comments alongside the previous reports and addendum reports presented to the Strategic Development Committee on 31<sup>st</sup> May 2012, the Information Report presented on the 5<sup>th</sup> July 2012 and the Committee Report of the 16<sup>th</sup> August 2012 (see Appendix one, two and five) and determine the planning application as they see fit.

## **8.0 APPENDICES**

- 8.1 Appendix One - Committee Report to Members on 31<sup>st</sup> May 2012
- 8.2 Appendix Two – Addendum Report to Members on 31<sup>st</sup> May 2012
- 8.3 Appendix Three – Information Report to Members on 5<sup>th</sup> July 2012
- 8.4 Appendix Four – Objections Raised to Safeguarded wharves Review 2011/2012
- 8.5 Appendix Five - Safeguarded Wharves 2011/2012- GLA Response to representations submitted (Extract only)
- 8.6 Appendix Six – Committee Report to Members on 16<sup>th</sup> August 2012