

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE STRATEGIC DEVELOPMENT COMMITTEE

HELD AT 7.30 P.M. ON TUESDAY, 3 OCTOBER 2006

**COMMITTEE ROOM, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE
CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Rofique U Ahmed (Chair)

Councillor Ohid Ahmed
Councillor Louise Alexander
Councillor Alibor Choudhury (Vice-Chair)
Councillor Rupert Eckhardt
Councillor Ahmed Hussain
Councillor Ahmed Adam Omer

Councillor Waiseul Islam
Councillor Joshua Peck

Other Councillors Present:

Councillor Denise Jones
Councillor Bill Turner

Officers Present:

Isobel Cattermole	– (Service Head, Resources, Children's Services)
Stephen Irvine	– (Development Control Manager, Planning)
Michael Kiely	– (Service Head, Development Decisions)
Neil Weeks	– (Legal Advisor)
Ian Wilson	– (Interim Chief Executive)
Louise Fleming	– Senior Committee Officer

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Rupert Bawden and Abjol Miah. Councillors Josh Peck and Waiseul Islam deputised respectively.

2. DECLARATIONS OF INTEREST

Councillor Josh Peck declared a personal interest in item 6 which related to Bonner Primary School, as he had been approached by local residents.

Councillor Rofique Ahmed declared a personal interest in item 6 as the local ward member for Mile End & Globe Town.

Councillor Louise Alexander declared a prejudicial interest in item 8.1 which related to Land bound by Hackney Road and Austin Street, including Mildmay Mission Hospital, Hackney Road, London E2 7NS, as she had submitted an objection to the Council in respect of the application.

Councillor Ahmed Hussain declared a personal interest in item 8.1 as the application involved the NHS and he was employed by a local PCT (Primary Care Trust).

3. UNRESTRICTED MINUTES

The minutes of the meeting held on 14th September 2006 were confirmed and signed as a correct record by the Chair.

4. RECOMMENDATIONS

- 4.1 The Committee NOTED that the Chair had agreed to the submission of the Update Report of the Head of Development Decisions in accordance with the urgency provisions at Section 100B(4) of the Local Government Act 1972 to ensure Members have before them all relevant facts and information about the planning applications set out in the agenda.
- 4.2 The Committee RESOLVED that, in the event of recommendations being made by the Members of the public, applicants or their agents, the task of formalising the wording of any additional conditions be delegated to the Head of Development Decisions along the broad lines indicated at the meeting.

5. PROCEDURE FOR HEARING OBJECTIONS

The Committee noted the procedure for hearing objections.

6. BONNER PRIMARY SCHOOL

Mr Neil Weeks, Interim Senior Planning Lawyer, introduced the report and informed the Committee that two requests for deputations had been received, Mr Tom Ridge on behalf of the Save the Bonner School Campaign and Mr Martin Tune on behalf of Bonner Primary School. He advised the Committee to hear the representations of the two deputations, after which he would give detailed legal advice as to the Committee's powers in relation to the item.

Members expressed concern that the item had come before the Committee when it related to a decision made by the Cabinet. The view was also expressed that Members should hear the legal advice before deciding whether or not to hear the speakers.

Mr Weeks explained that the report had been generated by a motion passed at the meeting of the Council on 13 September 2006 to “refer the demolition of the Old Bonner School to a meeting of the planning committee to enable officers to consult on this decision, and enable a proper debate involving residents and councillors...”. The motion should have been referred to the Cabinet, which had originally made the decision to demolish the school. The Strategic Development Committee did not, therefore, have any discretion to make any recommendations. However, it was felt that the motion should be reported to the Committee for information, due to the level of concern on the issue expressed by full Council.

The Committee resolved that pursuant to Rule 27 of the Council Procedure Rules to suspend Rule 20.1 to enable the deputations to make their representations.

Mr Tom Ridge spoke on behalf of the Save the Bonner School Campaign in objection to the demolition. His letter of representation had been circulated to Members prior to the meeting. In particular, he disagreed with the statement in the report to the Committee which stated that the demolition of unlisted buildings was not a matter which required planning consent and made reference to paragraph 29 of Circular 10/95.

Mr Martin Tune, Headteacher of Bonner Primary School, spoke in support of the demolition of the old school. His letter of representation was tabled for Members at the meeting. He stressed the need for improving external curriculum and outdoor play facilities for the pupils and the newly built school building was preferred by both staff and children at the school.

Mr Weeks provided the Committee with legal advice relating the demolition of buildings. In reference to paragraph 29 of Circular 10/95, other than a dwelling-house or a building adjoining a dwelling-house, the demolition of a building did not constitute development, as stated in section 55 of the Town and Country Planning Act 1990 and the Town and Country Planning (Demolition – Description of Development) Direction 1995. The demolition of a dwelling-house or a building adjoining a dwelling-house was permitted by virtue of class 31 of the General Permitted Development Order (GPDO) subject to a prior notification procedure and other limitations. Circular 10/95 constituted government guidance on planning controls over the demolition of certain buildings. The Circular only applied to those buildings where there were planning controls over demolition. This would only be the case where a dwelling-house or a building adjoining a dwelling-house was involved and the advice in paragraph 29 could only be applicable in those circumstances. Article 4(3) of the GPDO did not permit any development which was contrary to any condition imposed on a planning permission granted under Part III of the 1990 Act. Therefore, when a dwelling-house or a building adjoining a dwelling-house required demolition as part of a redevelopment, the advice in paragraph 29 of Circular 10/95 pointed out that the local planning authority could impose conditions controlling the proposed demolition as part of its consideration of the redevelopment. Article 4(3) provided the power to do this. That was not the case with Bonner School. The matter fell squarely

within the provisions of the Town and Country Planning (Demolition – Description of Development) Direction 1995 and its demolition was therefore, as a matter of law, outside the scope of planning control as it did not constitute development. Something that did not constitute development could not be brought within the scope of statute by reference in a circular.

Mr Weeks also advised the Committee of its powers and functions, as set out in Part 3 of the Council's Constitution. They did not include power to review decisions by the Cabinet to demolish unlisted buildings. While the decision to let the contract to demolish the old school might raise significant issues of local interest in some quarters, it was not a matter listed within the terms of reference of the Strategic Development Committee, or indeed of the Development Committee. Accordingly, the terms of the motion did not disclose a proper reference to an "appropriate body or individual" as required by Part 4 of the Constitution. If the motion as passed formed an item of business on an agenda of either Committee then officers would be obliged to advise that committee, in due course, that it did not have the remit to make decisions on demolition.

The motion, howsoever it came about was, nevertheless, at least a formal expression of concern by the Council, as a corporate body, that the demolition of the old school should be reconsidered. In these circumstances, it could be difficult to persuade a judge that the demolition of the building should not be restrained prior to the matter being dealt with by the Council one way or another.

The motion was plainly in direct conflict with the Cabinet's decision of December 2002 which had been implemented. If it was only referred to the Strategic Development Committee to confirm that it has no jurisdiction to consider the demolition of the old school building, there would be a risk attached of further injunctive proceedings and consequential uncertainty. The matter could have been returned back to the full Council but there would be nothing it could do to resolve the issue. Accordingly, the Committee was advised that the motion would be referred to Cabinet, which authorised the demolition, to consider it and make a key decision on its merits.

Members asked questions relating to the reasons for the Council's opposition to the listing of the building; the allegation that the applicant had not stated in the original application that demolition would be involved; the difference between a dwelling-house and a building; the need for playground space and whether alternatives had been sought.

Mr Weeks informed the Committee that the representations made by the Council in respect of the listing of Bonner School were made as the owner of the building and were based on an assessment of the educational needs of the area, the history of the development and the Council's contractual obligations. Both English Heritage and the Secretary of State agreed that the building should not be listed. No challenge had been made to the decision within the following statutory 28 day period.

Mr Michael Kiely, Head of Development Decisions, confirmed that the original planning application had, in fact, been publicised in accordance with statutory requirements by the posting of a site notice and writing to local residents. He also informed the Committee of the Council's dual role as the owner of the land and the Local Education Authority. It would have been improper for the Council not to have made representations to English Heritage regarding the listing of the building. Mr Kiely also reiterated the legal advice given in relation to Circular 10/95 relating to demolition and stressed that a local authority could only operate within the power granted to it, otherwise it would be undertaking an ultra vires act.

Ms Isobel Cattermole, Head of Strategic and Operational Services – Children's Services, informed the Committee of the alternative options which had been explored for the provision of outdoor play space for the children at Bonner School. She explained that it was not feasible to use an area on the opposite side of a busy road and that the Council had a duty of care to the pupils of the school.

Mr Weeks reminded Members that the appropriate forum for questions was at the meeting of the Cabinet and reminded Members that the Committee had no power to make a decision on the issue. Mr Weeks was asked if there had been anything reviewed by the Courts which could assist the Committee. Mr Weeks advised that this particular matter had been looked at by both the Administrative Court and the Court of Appeal who had both upheld the Council's position. Members expressed concern that there would not be an opportunity when the matter was discussed at Cabinet to ask questions. However, the Committee was given an assurance that any Member wishing to ask a question on the matter at the meeting would be given an opportunity to do so.

On a vote of 5 for, 1 against and 3 abstentions, the Committee RESOLVED that it confirmed that the demolition of unlisted buildings is not a matter which requires planning consent and under the functions set out in the Council's Constitution, the Committee has no power to consider the demolition of the old school building.

7. WEIGHT OF THE LOCAL DEVELOPMENT FRAMEWORK PRIOR TO ITS ADOPTION BY COUNCIL

Mr Michael Kiely, Head of Development Decisions, presented the report which contained advice relating to the emerging Local Development Framework and the appropriate weight to be attached to it when considering planning applications. Members were reminded that each planning application would have to be determined on its own individual merits.

The Committee RESOLVED that the policies within the Local Development Framework, approved on 13th September 2006, generally be given significant weight as a material consideration when determining planning applications, prior to its adoption and note that the adopted Unitary Development Plan remains the statutory planning instrument until such time.

The Committee NOTED that

- (i) the weight of the policies in the Local Development Framework is likely to increase as each successive stage towards adoption is reached. Furthermore, the weight of individual policies may vary depending on the outcome of the consultation on the submission Development Plan Documents; and
- (ii) the Council may seek to refuse a planning application on the grounds of prematurity. However, it will be required to clearly demonstrate how the granting of that planning permission would prejudice the outcome of the Development Plan Document process.

The Committee adjourned for a short break at 9.00 pm and resumed at 9.10 pm.

8. DEFERRED, ADJOURNED AND OUTSTANDING ITEMS

8.1 Land bound by Hackney Road and Austin Street, including Mildmay Mission Hospital, Hackney Road, London E2 7NS (Weavers)

Councillor Louise Alexander left the room and did not return for the duration of the item.

Mr Stephen Irvine, Development Control Manager, presented the report which detailed the reasons for refusal for based on views expressed by Members at the meeting of the Committee held on 14th September 2006. It was proposed that only reasons 1 and 3 as detailed in the agenda report be put forward as the grounds for refusal.

On a vote of 5 for and 2 against, the Committee AGREED that the application for the demolition of existing buildings (excluding community centre) and redevelopment to provide a campus of six buildings comprising:

- a part five, part six storey building along Hackney Road to provide a new church and retail space (Class A1 to A5) with residential units above;
- a five storey building centrally located to provide offices with residential units above;
- a six storey building centrally located to provide offices with residential units above;
- a six storey building along Austin Street to provide a Primary Care Centre and residential units;
- three storey town houses along Austin Street with adjoining commercial/retail premises (Class B1/A1 to A5); and

- a 23 storey residential building incorporating social services facilities and a four storey hospital facility and detox unit plus parking, serving and cycle bay provision, landscaping and highway works

on land bounded by Hackney Road and Austin Street including Mildmay Mission Hospital, Hackney Road, London E2 7NS be REFUSED for the following reasons:

- 1) The development would be insensitive to the context of the surrounding area, by reason of design, mass, scale, height and use of materials. As such the proposal is contrary to:
 - a) Policies DEV1 and DEV2 of the Tower Hamlets Unitary Development Plan 1998, which require development to take into account and be sensitive to the character of the surrounding area, in terms of design, bulk, scale and the use of materials and the development capabilities of the site;
 - b) Policies 4B.1, 4B.3, 4B.8 and 4B.9 of the London Plan 2004 that provide location and assessment criteria for tall buildings;
 - c) Policy DEV6 of the Tower Hamlets Unitary Development Plan 1998 in that the development does not meet the criteria for high buildings located outside the Central Area Zone;
 - d) Policy UD1 of the Preferred Options: Core Strategy and Development Control Development Plan Document 2005, which requires the bulk, height and density of the development to relate to surrounding building plots and blocks and the scale of the street;
 - e) Policy UD2 of the Preferred Options: Core Strategy and Development Control Development Plan Document 2005, which requires tall buildings outside identified tall building clusters to satisfy a number of development criteria;
 - f) Policy DEV2 of the Local Development Framework (Submission Document) Core Strategy and Development Control Development Plan Document 2006, which requires development to be designed to the highest design quality standards; and
 - g) CP48 and Policy DEV27 of the Local Development Framework (Submission Document) Core Strategy and Development Control Development Plan Document 2006, which specify the criteria to assess tall buildings.
- 2) The proposed development would have an adverse impact upon the residential amenity of surrounding owners/occupiers particularly in terms of impact on daylight and sunlight and overlooking from the proposed roof terrace of the hospital building. As such the proposal is contrary to:

- a) Policy DEV2 of the Tower Hamlets Unitary Development Plan 1998 which requires the protection of the amenity of residential occupiers in terms of loss of privacy or material deterioration of day lighting and sun lighting conditions;
- b) Policy UD2 of the Preferred Option: Core Strategy and Development Control Development Plan Document 2005, which requires tall buildings outside of the central area not to result in adverse impacts on the privacy, amenity or overshadowing or surrounding properties; and
- c) Policy DEV1 of the Local Development Framework (Submission Document) Core Strategy and Development Control Development Plan Document 2006, which requires development to protect, and where possible seek to improve, the amenity of existing and future residents and building occupants, as well as the amenity of the surrounding public realm. To ensure the protection of amenity, development should not result in the loss of privacy to, nor enable the overlooking of, adjoining habitable rooms; not result in a material deterioration of the sunlighting and daylighting conditions of surrounding habitable rooms, create an inappropriate sense of enclosure to surrounding buildings and open space; and not adversely impact on visual amenity.

Councillors Ohid Ahmed, Rofique Ahmed, Alibor Choudhury, Josh Peck and Ahmed Omer voted for the recommendation. Councillor Rupert Eckhardt and Councillor Ahmed Hussain voted against.

8.2 Rodwell House, 100-106 Middlesex Street, London E1 (Spitalfields & Banglatown)

Mr Michael Kiely, Head of Development Decisions, introduced the site and proposal for the demolition of existing buildings and redevelopment by the erection of buildings between 5 storeys (26 metres) and 35 storeys (119 metres) high for mixed use purposes comprising 32,458 sq m of student accommodation, 772 sq m of residential, and 8,825 sq m of offices (B1), shop (A1), and gymnasium and 186 sq m of community uses, formation of associated car parking and highway access as well as hard and soft landscaping works at Rodwell House, 100-106 Middlesex Street, London E1.

Mr Stephen Irvine, Development Control Manager, presented the officers report and the update report. He outlined the differences between the current and approved applications in terms of scale and height. He informed the Committee that the applicant had agreed to a number of conditions to address the concerns of the residents. The residents of Brody House had therefore withdrawn their objections. However, two residents of the Wexner Building expressed their disappointment at the withdrawal of the objection and reiterated their original objection.

Members asked questions relating to the Local Development Framework and the response from English Heritage. Mr Irvine informed the Committee that English Heritage had responded to the first, but not the second application.

On a vote of 5 for and 2 against, the Committee AGREED that the application for the demolition of existing buildings and redevelopment by the erection of buildings between 5 storeys (26 metres) and 35 storeys (119 metres) high for mixed use purposes comprising 32,458 sq m of student accommodation, 772 sq m of residential, and 8,825 sq m of offices (B1), shop (A1), and gymnasium and 186 sq m of community uses, formation of associated car parking and highway access as well as hard and soft landscaping works at Rodwell House, 100-106 Middlesex Street, London E1 be GRANTED subject to the conditions outlined below

- 1.1.1 The satisfactory completion of a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (and other appropriate powers) to include the matters outlined in Section 1.2 below, and the conditions and informatives outlined in Sections 1.4 and 1.5 below; and Section 278 of the Highways Act 1980, to include the matters outlined in paragraph 1.3 below.
- 1.1.2 The application first be referred to the Mayor of London pursuant to the Town and Country Planning (Mayor of London) Order 2000, as an application for a new building exceeding 30 metres in height.
- 1.1.3 The Committee confirm that it had taken the environmental information into account, as required by Regulation 3 (2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999.
- 1.1.4 A Statement be placed on the Statutory Regulatory confirming that the main reasons and considerations on which the committee's decision was based, were those set out in the Planning Officer's report to the Committee (as required by Regulation 21(1)(c) of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999.

Legal Agreement

1.2 Section 106 agreement to secure the following:

- 1) Provide £150,000 towards open space improvements to relieve the pressure that will arise from the new student housing on existing open space and recreational facilities within the Borough.
- 2) Provide £100,000 for public realm improvements within the vicinity of the site.
- 3) Preparation of a right of way "walking agreement" for the widened Frying Pan Alley. (The walkway agreement is usually under Section 35 of the highways Act).
- 4) Equipment upgrade to mitigate the adverse effects on DLR radio communications (such as a booster to offset signal interruption).
- 5) Provide £250,000 towards Public Art/Cultural facilities including the preparation and implementation of a public art strategy including involvement of local artists.

- 6) Provide £150,000 towards employment initiatives such as the Local Labour in Construction (LliC) or Skillsmatch in order to maximise the employment of local residents.
- 7) Provide £1,444,820 towards healthcare to mitigate the demand of the additional population on healthcare services.
- 8) TV reception monitoring and mitigation.
- 9) Preparation of a Travel Plan (for both the residential and commercial component).
- 10) Completion of a car free agreement to restrict occupants applying for residential parking permits.
- 11) The community building facing Bell Street is to be provided at a peppercorn rent and maintained at the applicants cost.
- 12) Production of a Management Plan relating to the student accommodation

1.3 Section 278 agreement to secure the following:

Repaving and improvement of Frying Pan Alley and the relocation of parking bays caused by the new parking and servicing entrance in Bell Lane.

Conditions

1.4 That the following conditions be applied to any planning permission:

- 1) Time limit for Full Planning Permission
- 2) Details of the following are required
 - Elevational treatment including samples of materials for external fascia of building:
 - Ground floor public realm (including open space and pedestrian route)
 - All external landscaping (including lighting and security measures), walkways, screens/canopies, entrances, seating and litter bins:
 - The design of the lower floor elevations of commercial units including shopfronts and community space;
 - Signage strategy.
- 3) Landscape Management Plan required
- 4) Parking – maximum of 4 cars and a minimum of 606 cycle spaces
- 5) Hours of construction limits (8 am to 6 pm Mon-Fri)
- 6) Details of insulation of the ventilation system and any associated plant required
- 7) Hours of operation limits – hammer driven piling (10 am to 4 pm)
- 8) Wheel cleaning during construction required
- 9) Details required for on site drainage works
- 10) Black redstart habitat provision required
- 11) Land contamination study required to be undertaken
- 12) Full particulars of the refuse/recycling storage required
- 13) Code of Construction Practice (referred to as Construction Method Statement in the ES), including a Construction Traffic Management Assessment required

- 14) Details of finished floor levels required
- 15) Details of surface water source control measures required
- 16) Biomass heating and renewable energy measures to be implemented
- 17) Monitoring Control Regime for construction phase to be implemented
- 18) Details to ensure that the development incorporates gas protection measures
- 19) Bat Survey to be undertaken
- 20) Bat roosts and bird nest boxes to be incorporated into the fabric of the new buildings
- 21) Ground bourne vibration limits
- 22) Details of the design of the cycle store required
- 23) Restrict hours of use for roof terrace on 5th floor of the Bell Lane building to the following:
 - Monday to Friday: 8 am to 6 pm
 - Weekends and Bank Holidays: 12 noon to 6 pm
- 24) Conditions requiring details for approval in respect of acoustic treatment and detailed design of windows on the 1st to 4th floors on the southern elevation of the Bell Lane façade facing Brody House.
- 25) Acoustic mitigation measures at the lower level of the southern elevation of the tower.

1.5 Informatives

- 1) Corporation of London advice
- 2) Thames Water advice
- 3) Metropolitan Police advice
- 4) Environment Agency advice
- 5) Surface water drainage advice
- 6) Entertainment licensing advice
- 7) Site notice specifying the details of the contractor required
- 8) Standard of fitness for human habitation, means of fire escape and relevant Building Regulations

The meeting ended at 9.40 p.m.

Chair, Councillor Rofique U Ahmed
Strategic Development Committee