

Committee: Strategic Development	Date: 9 th January 2014	Classification: Unrestricted	Agenda Item Number:
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Report of: Director of Development and Renewal	Title: Town Planning Application
Case Officer: Jane Jin	Ref No: PA/13/2108
	Ward: Mile End and Globe Road

Location: Suttons Wharf North, Palmers Road

Existing Use: Residential Development

Proposal: Application under s.73 of the Town and Country Planning Act for a variation of Condition 22 of the Planning Permission PA/11/3348 dated 30/03/12 to seek minor material amendments to the approved Suttons Wharf North development comprising the conversion of a part ground floor, first and second floor levels to **create 8 residential units and retain 107sq.m of commercial floor space** on the ground floor; and associated minor alterations to Block B.

2. BACKGROUND

- 2.1 The above application was reported to the Strategic Development Committee on the 21st November 2013 with an Officers recommendation for APPROVAL. The Committee resolved NOT TO ACCEPT officers' recommendation to GRANT planning permission (subject to conditions) for the development mentioned for the Application under s.73 of the Town and Country Planning Act for a variation of Condition 22 of the Planning Permission PA/11/3348 dated 30/03/12 to seek minor material amendments to the approved Suttons Wharf North development comprising the conversion of ground, first and second floor levels to create **10 residential units** and associated minor alterations to Block B.
- 2.3 Following Members' resolution not to accept officer's recommendation the applicant has amended the proposal to address Members' concerns which now include an element of commercial floor space for retention. This report will detail the reasons for refusal as outlined by the Members and discuss in detail of the amended scheme which aims to address the concerns raised.
- 2.3 Officers recorded that Members were minded to refuse planning permission for the following reasons:
- Overdevelopment of the site;

- Loss of the commercial units given the need for such uses for existing residents (for example to provide much needed childcare facilities); and
- Lack of marketing evidence/exploration work to inform the lack of demand for the commercial units.

3.0 AMENDED PROPOSAL

- 3.1 The application is now proposing to provide 8 residential units and provision of 107sq.m of A1 retail floor space on the ground floor of Block B. The proposed residential units comprise of 2 x1 bed units; 3x 2 bed units; and 3 x 3bed units.
- 3.2 Whilst the amended proposal is for A1 retail use, it is considered by officers that the proposed commercial space can either accommodate B1 or A1 uses as per consented scheme and therefore, if the subject application is approved, it is recommended for the commercial unit to have a flexible use, either B1 or A1 Use Class.
- 3.3 The proposed retail or office space would provide 107sq.m which would be appropriate in size in the context of the site location's proximity to the District Centres. If the space is first taken up as a retail space, it can be regarded as a local shop as per policy DM2 of the Managing Development Plan as it would be located around 300m away from the District Centres. Furthermore, if the space is taken up as a B1 use, this is likely to be of a small medium enterprise unit and therefore would be acceptable. Nonetheless, as initially reported in the main report, given the location of the site, it would be preferable not to have any commercial uses in this location on pure policy grounds. In any event, the small scale nature of the proposed uses can be supported which is a response to the Members' and local residents' concerns.
- 3.4 The applicant has also carried out a health check of the existing Roman Road District Centres. It has been identified that the general health of the Roman Road East District Centre is generally good with National representation such as Barclays Banks, Nationwide, Superdrug etc., with majority of the shops comprising of independent retailers. However, 12 vacant small scale shops were identified within this centre. Within Roman Road West District Centre, there are a number of convenience stores providing access for 'top-up' facilities and variety of non-retail facilities such as banks and restaurants. The health check showed that there are 6 small scale vacant shops in the Roman Road West District Centre at present. The proposed flexibility of the use as either A1 or B1 would ensure that the space can be utilised to suit the demand at the time of the construction of Building B being completed.
- 3.5 All initially notified neighbouring residents/occupiers were re-notified about the revised proposal, and at the time of writing, three comments were received which raises the following objection.
- *Objection as same as before – need of retail/office space and the revised proposal is not a compromise*

- *Demand for parking, and impact from deliveries and the highway network generally*
- *Under served by public transport and 450 residential units would put a huge additional strain on the infrastructure; no mitigation has been sought*

[Officer comment: The first two points have already been addressed in the main report; in relation to the last point, the proposal is for additional 8 residential flats and impact on highway as discussed in the main report would be applicable. The original consent for the site wide development has already contributed towards, amongst other things, public transport to mitigate its impact.]

3.6 Officers are of the view that this amended proposal should be approved.

4.0 PROPOSED REASON FOR REFUSAL

4.1 In the case where the Members are still not satisfied with the current revised proposal, Officers have drafted the following refusal reasons to cover the issues raised can be applied to the amended scheme.

1. The proposed development, by virtue of the resultant total quantity of the residential units on the application site, will result in an over-development of the site, contrary to policy SP02 of the Core Strategy 2010, and policy 3.4 of the London Plan 2011.

2. The proposed development, by virtue of the loss of a large quantum of the consented A1 and B1 uses and the applicants failure to properly investigate alternative non-residential uses to serve the local community, would be contrary to the Strategic Objectives S01, S05 and S06 of the Core Strategy.

3. The proposal, due to lack of adequate marketing evidence or exploration works, fails to satisfactorily justify the loss of the consented A1 and B1 uses contrary to policy DM16 of the Managing Development Document 2013.

Consideration

4.2 It is the professional view of officers that it is unlikely that all of the reasons for refusal could be successfully defended at an appeal.

4.3 In relation to the first reason, whilst the density of development, in pure numeric terms, would be outside the recommended density range in Table 3.2 of the London Plan 2011, it should be remembered that the density range is set out to optimise the land for housing.

4.4 The London Plan states that, '*A rigorous appreciation of housing density is crucial to realising the optimum potential of sites, but it is only the start of planning housing development, not the end.*' It further states that '*It is not appropriate to apply Table 3.2 mechanistically. Its density ranges for particular*

types of location are broad, enabling account to be taken of other factors relevant to optimising potential – local context, design and transport capacity are particularly important, as well as social infrastructure, open space and play.'

- 4.5 Therefore, Members should note that the density only serves an indication of the likely impact of a development. Typically high density schemes may have an unacceptable impact on the areas already reported in the main report, paragraphs 9.24 – 9.26. As concluded, the proposed 10 additional units would not have the 'symptoms' of over-development and therefore would be acceptable.
- 4.6 It should be noted that the original consented scheme for the site had a density range of 1037hr/ha and the proposed 10 additional units or 8 additional units would only see an increase of this range by 1.25% or 0.75%, respectively. As stated in the main report, the proposed residential units would not worsen the conditions on the local highway network; privacy would be maintained; there would be no increased sense of enclosure as the new residential units are within the existing building footprint; access to sunlight and daylight to future occupiers would be acceptable; sufficient amenity space would be available for the future and existing occupants and impacts towards the public open space and social and physical infrastructure would be mitigated through the use of financial contribution sought.
- 4.7 It would not be appropriate to indicate that the proposal for 10 additional units or the revised proposal for 8 units would result in the whole of the application site being an over-development when in fact the site has already demonstrated its acceptability through its original consent.
- 4.8 With regard to the second reason for refusal, Members are reminded that the proposal in question is to change the use of the consented A1 and B1 Use Classes to residential and not D1 use, such as nursery spaces. Therefore, there would be no planning policy requirement to change or to explore other alternative uses. What officers and Members have to consider is the proposal, which is to change the use to residential and whether the residential use is an appropriate land use. The full acceptability of proposed 10 residential unit have been assessed which are detailed in the main report and still applies to the revised proposal for 8 units. This reason for refusal would be unacceptable and unjustifiable.
- 4.9 Nonetheless, it is worthwhile to note that the application site has a consent for D1 Use Class which would be retained that was originally identified for a health care provision at the time of original consideration in 2002/03. Since then, NHS has confirmed that the space within Block A is no longer required as it would be a surplus to their required floor space. The applicant has confirmed that an application has recently been submitted (at the time of writing) which will seek to use the consented D1 space for other uses which fall within the D1 use Class. The applicant is currently liaising directly with the Council's Early Years Services to identify whether there is a demand for such space in this locality by any service providers or the Early Years Services themselves, such as children centres or nurseries. Therefore, the current implemented consent would retain a

floor space of 1,907sq.m of D1 Use Class. Therefore, it would be difficult for the officers to justify the second reason for refusal and is unlikely to be successful at an appeal.

- 4.10 The third reason for refusal is also difficult to justify as the application was supported by a commercial appraisal which sets out the supply and demand of B1 office spaces and A1 retail spaces within the location and also looks at the existing provisions within the borough. It was indicated at the meeting that the real marketing exercise was not undertaken by the applicant. However, unlike residential developments, the commercial units are rarely marketed off plan and it is not until the physical space becomes available that the spaces are marketed. This is the case of the current proposal and Block B is currently being constructed and therefore the physical space is not present to market to potential tenant/purchaser.
- 4.11 In addition to this, it is clear that the Council's adopted policies direct the B1 and A1 uses to appropriate locations. The current planning policy status is that retail uses are directed to town centres and offices are directed to preferred office location. In this instance, due regard have to be had on the current planning policies and these have changed since the original approval in 2003. The consented uses are no longer appropriate in the location and the demand for these spaces is identified elsewhere in the borough. This is clearly evident through Prior Approval applications recently submitted to the Council for conversion of office spaces within Suttons Wharf South, and Victoria Wharf, both off Palmers Road, which are being assessed at the time of writing. Notwithstanding this and as outlined in the earlier paragraph 3.3, the revised proposal for 107sq.m would be provided and officers are supportive of the applicant's response to the concerns raised by Members and nearby residents/occupiers.

5.0 IMPLICATIONS OF THE DECISIONS

- 5.1. Following the refusal of the application the following options are open to the Applicant. These would include (though not be limited to):
- 5.2. 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”.

- 5.3. There are two financial implications arising from the appeal 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)

- 5.4. A future appeal, should it be successful, the developer may elect to either renegotiate planning obligations previously agreed or prepare a unilateral undertaking 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).
- 5.5 Whatever the outcome, your officers would seek to defend any appeal.

6.0 CONCLUSION

- 6.1 All relevant policies and considerations have been taken into account. Whilst officers' remain satisfied that planning permission for the amended proposal should be GRANTED, Members are directed to revised proposal and also the draft reasons for refusal together with the officers comments, viewed alongside the previous report and the updated report presented to the Strategic Development Committee on 21st November 2013 (see Appendices 1 and 2) and determine the planning applications as appropriate.

6.0 APPENDICES

- 6.1 Appendix One - Committee Report to Members on 21st November 2013
- 6.2 Appendix Two – Update Report to Members on 21st November 2013