

Committee: Strategic Development Committee	Date: 12 April 2016	Classification: Unrestricted	Agenda Item No: 6.
Report of: Corporate Director of Development & Renewal		Title: Planning Application for Decision	
Case Officer: Gareth Gwynne		Ref No: PA/15/02527	
		Ward: Whitechapel	

1.0 APPLICATION DETAILS

Location: 34-40 White Church Lane and 29-31 Commercial Road, London, E1

Existing Use: Mixed Use – Residential use above ground floor with primarily A1 and A3 uses on ground floor

Proposal: Demolition of existing buildings at 34-40 White Church Lane and 29-31 Commercial Road and erection of a ground floor plus 18 upper storey building (75.5m AOD metre) with basement to provide 155sqm (NIA) of flexible use commercial space (B1/A1/A3 Use Class) at ground floor and 42 residential units (C3 Use Class) above with basement, new public realm, cycle parking and all associated works.

Drawing Numbers:

3316 PL 01 rev P1, 3316 PL 02 rev P1, 3316 PL 03 rev P1, 3316 PL 04 rev P1, 3316 PL 200 rev P1, 3316 PL 201 rev P3, 3316 PL 202 rev P4, 3316 PL 203 rev P4, 3316 PL 204 rev P4, 3316 PL 205 rev P2, 3316 PL 206 rev P2, 3316 PL 207 rev P2, 3316 PL 208 rev P2, 3316 PL 209 rev P3, 3316 PL 210 rev P1, 3316 PL 211 rev P1, 3316 PL 300 rev P3, 3316 PL 400 rev P3, 3316 PL 401 rev P2, 3316 PL 402 rev P4, 3316 PL 403 rev P3, 3316 PL 404 rev P2, 3316 PL 405 rev P1, 3316 PL 406 rev P3, 3316 PL 407 rev P2, 3316 PL 410 rev P1, 3316 PL 411 rev P1, 3316 PL 412 rev P1, 3316 PL 413 rev P1, 3316 PL 414 rev P1, 3316 PL 420 rev P2, 3316 PL 421 rev P1, 3316 PL 422 rev P1, PL 500 rev P1, PL 501 rev P1, PL 502 rev P1, PL 503 rev P1, PL 504 rev P1, PL 505 rev P1, PL 506 rev P1, PL 507 rev P1

Supporting Documents:

- Design and Access Statement
- Landscape Strategy
- Planning Statement
- Daylight and Sunlight Assessment
- Heritage, Townscape and Visual Impact Assessment
- Statement of Community Involvement
- Economic Statement
- Energy Assessment and Sustainability Assessment
- Air Quality Assessment
- Wind/Microclimate Assessment
- Acoustic Assessment
- Transport Assessment
- Financial Viability Assessment

- Archaeological Desk Based Assessment
- Soil Contamination Risk Assessment
- Indoor Play Space Plan, dated December 2015
- Landscape Masterplan (1426/002 Rev. E)

2. BACKGROUND

- 2.1 This application for demolition of existing buildings at 34-40 White Church Lane and 29-31 Commercial Road and erection of a ground floor plus 18 upper storey building with basement to provide flexible use commercial space at ground floor and 42 residential units above with basement, new public realm, cycle parking and all associated works was reported to Strategic Development Committee on 10th March 2016.
- 2.2 The Committee resolved, by way of a unanimous vote, not to accept the officer recommendation to grant planning permission, resolved that permission should be refused and indicated the following reasons for refusal:
- Insufficient provision of affordable housing;
 - High residential density in excess of London Plan;
 - Height of the building;
 - The servicing arrangements;
 - The child play space and communal amenity space;
 - The design of the ground floor entrances;
 - Impact on local infrastructure from the scheme;
 - That the scheme would be out of keeping with the character of area and would change the character of the area.
- 2.3 This report considers the reasons for refusal in the context of the officer's original assessment of the application and whether these are likely to be sustainable in the event of an appeal.

3. COMMITTEE REASONS FOR REFUSAL

Insufficient provision of affordable housing

- 3.1 Members expressed comments with regard to the proportions of affordable housing that could be delivered by the scheme. Policy SP02 of the Core Strategy requires developments to provide 35-50% affordable housing. The London Plan requires development to provide the maximum reasonable amount of affordable housing, subject to viability.
- 3.2 In this case the applicant initially submitted the scheme with 17% affordable housing, through negotiation and robust interrogation of their viability assessment it was found that an extra 9% could viably be provided and the affordable housing offer changed including the provision of four 3-bedroom units, set at Borough framework rents inclusive of service charges. This is the maximum affordable housing the scheme can viably provide and as such a refusal reason based upon the proportion of affordable housing within the scheme would be challenging to defend on appeal.

Residential density

- 3.3 The proposed development would have a residential density of 2,857 ha/ha, after taking into account the proportion of vertically mixed non-residential floorspace. The appropriate London Plan density range for the sites with a central setting and PTAL of 6a is 650 to 1,100 ha/ha. The proposed density is therefore around 160% greater than the upper limit of the London Plan target. Whilst density on its own is unlikely to be a sustainable reason for refusal, care does need to be taken to ensure that the scheme achieves a high standard of design and amenity, and does not exhibit symptoms of overdevelopment.
- 3.4 As stated previously, the London Plan makes clear, and as reiterated in the GLA Stage 1 response received to this scheme, these density ranges should not be applied mechanistically and a density above the stated range may be acceptable; where the scheme is exemplary in all other respects. In this instance, there are symptoms of overdevelopment which are often characteristic of high density development proposals.
- 3.5 Hence if the Committee are minded to include density as a reason for refusal, it should be linked to consideration of the symptoms of over development.
- 3.6 In this case, a number of the reasons given by Members would indicate an overdevelopment of the site, including lack of adequate child play space and the absence of any communal amenity space at all. A large number of proposed habitable rooms would suffer from overlooking from the hotel suites in the extant consent at 27 Commercial Road. Due to the height of the proposed building this affects the windows of habitable rooms at every floor above the 5th floor, meaning future residents of the proposed dwellings will suffer overlooking and a lack of privacy.

Height of the building and impact on character of the area

- 3.7 The officer view as set out in the original report is that the height and massing of the buildings would be appropriate to their context. The tower height would be comparable to the approved proposed building opposite at 27 Commercial Road and the site is towards the edge of the tall building cluster in Aldgate. It is situated between the proposed 21 storey tower opposite and an 18 storey tower further east on Commercial Road.
- 3.8 However the Committee drew attention to the unusually close relationship of this development with the approved scheme at 27 Commercial Road and also the impact it would have on the immediate character of low rise, finer grained development on Whitechurch Lane. The Committee referred to this location as transitional and providing a buffer between the core of the tall building cluster around the former gyratory in the Preferred Office Location to the west and the more sensitive Conservation Area focussed around Altab Ali Park.
- 3.9 Whilst it would be difficult to argue that a tall building in this location would be inappropriate in planning policy terms, the relationship and cumulative impact with the extant consent at 27 Commercial Road material to the consideration of acceptability of the proposal for an additional tower. Whitechurch Lane is a relatively narrow street and whilst having a mixed character at it's southern with some modern development north of Assam Street; the street still includes relatively fine grain, two, three and four storey shops, warehouses and other buildings on the west side and further north.

- 3.10 Officers have interpreted the Committee's concerns as being principally about the height of the building and the harm caused by the cumulative impact with the proposed hotel opposite.
- 3.11 Two building of significant height, bulk and mass in such close proximity would have a more dramatic impact of the character of Whitechurch Lane than a single tower by creating a "canyon effect" which contrasts greatly with the finer grain, low to medium rise character of the street. Whilst there are tall buildings close to one another within the core of the cluster, this occurs generally as part of a comprehensive development (e.g. Aldgate Place) and rarely occurs to this extent on individual sites separated by a narrow street.
- 3.12 The development would cause harm to the local townscape, combining with the approved scheme opposite to dominate the southern end of the street creating an oppressive and overbearing form of development that would adversely affect the visual amenities of the area. The development would also intrude further into views from within the Whitechapel High Street Conservation Area and the close proximity of the proposal to 27 Commercial Road would cause the built forms to coalesce from certain perspectives.
- 3.13 Hence if the Committee are minded to include height as a reason for refusal, it should be linked to consideration of the relationship with the extant consent at 27 Commercial Road, and its negative impacts on local townscape and the setting of Whitechapel High Street Conservation Area.
- 3.14 In this case the height of the building is also a function of the density of the scheme which involves a consideration of whether the proposed development exhibits symptoms of over development.

Servicing arrangements

- 3.15 With regard to the reason of refusal related to servicing and deliveries, officers note there is an opportunity for future residents to utilise 20 minute length drop off/collection from loading bays on Commercial Road and that there are no loading restrictions imposed in White Church Lane itself so the scheme could reasonably expect to replicate the existing arrangement used which is refuse collection from White Church Lane. An approach to servicing accepted by Transport for London any by the Borough's Highways & Transportation Team.

Child play space and communal amenity space

- 3.16 The original officer's report expressed reservations about both the quantum and the quality of the on-site child play space and communal amenity. This concern is borne from it being only a single play space area, being small in absolute size terms, being internal space *only* (with a relatively low floor to ceiling height for such a purpose) and some uncertainty how this space can be successfully managed to enable it be used simultaneously by different user groups.
- 3.17 The Committee also expressed concerns on the reliance on the cited off-site open spaces due to the cumulative pressure placed on these play spaces from the scale of new residential developments coming forward in Aldgate, the lack of formal sports courts within these park spaces and in the case of Chaucer Gardens the degree of physical severance from the proposed development site by Commercial Road. Given it is a very busy arterial that forms a part of the A12 truck road.

- 3.18 Whilst the development will include private amenity space, the scheme does not include any communal amenity space which is contrary to local plan policy DM4 which requires 82sqm to be provided on-site.
- 3.19 The applicant has provided information about access to open spaces nearby and has offered to enter into negotiations to secure financial contributions to improve open spaces.
- 3.20 Officers have noted the additional information and the offer to contribute to improvements (if this was lawful in terms of the CIL Regulation 123 list and regulation 122 requirements for planning obligations). However the shortfall in communal amenity space and child play space is substantial in this case and the open spaces cites do not provide the same function as on-site communal amenity space. The most appropriate remedy to address the Committee's concerns would be an alternative scheme with a lower density and a more generous on-site provision of play space and amenity space.

The design of the ground floor entrances

- 3.21 There is no Local Plan or London Plan policy requirement to provide a single entrance for all tenures within a proposed single block residential scheme. Officers are also mindful of the applicant's subsequent stated willingness to provide all tenures access to the Assam Street and Commercial Road entrances to the scheme, and all tenures regular access to a lift.

Impact on local infrastructure from the scheme

- 3.22 The development contribution to local infrastructure to allow for the impacts that arise now falls under the Community Infrastructure Levy (CIL). If permission was granted and development implemented there would be a liability to pay the Tower Hamlets and Mayor of London CIL charge. The payment is combined with other CIL receipts on a borough wide basis to help deliver local infrastructure, such as schools, health facilities and transport infrastructure based on the Council's identified priorities.
- 3.23 If the Committee is minded to refuse permission a further reason refusal is recommended that relates to the absence of a signed Section 106 legal agreement to secure agreed and policy compliant financial and non-financial contributions including affordable housing, skills, training and enterprise and site specific matters identified in the original report, that are not covered by the Borough CIL. This reason would protect the Council's position in the event of an appeal.

4. ADDITIONAL REPRESENTATIONS AND PROSPECTIVE CHANGES TO SCHEME

- 4.1 Since the publication of the Committee Report the Council has received no additional representation from local residents or the wider community.
- 4.2 The applicant's agents have met with officers and amendments have been proposed to the application and drawings prepared to reflect these proposed amendments. The suggested changes to the scheme primarily focus on:
- Offering shared access to the two ground floor entrances and cores to the residential proposed under all tenures (market, intermediate and affordable rented).

- A proposed increase in the affordable housing offer to 35% affordable housing (including provision of 6 x 3 bedroom affordable rented units and 4 intermediate units) and an associated increase in the proposed internal play area room to a space occupying 73sq.m.

- 4.3 There is no obligation on local planning authorities to accept changes to an application after it is submitted. In practice, however the Council will accept changes made to planning applications where these seek to address issues raised by statutory or internal consultees or respond to matters raised by local consultation. Officers did not accept the amendments as the proposed changes to the scheme do not get to the root of Committee Members intended reasons of refusal. Given the nature of the Committee's objections, officers consider that a fresh application with a revised proposal should be made.
- 4.4 An increase in the total percentage of affordable housing would be welcome in principal. However, a viability assessment was submitted in support of the previous affordable housing offer which concluded that the previous amount was the maximum that was viable. In the absence of any further evidence, the amount now offered is effectively not viable, would therefore conflict with London Plan and Local Plan policies and should not be accepted.
- 4.5 The proposed increase in play-space provision from 40sqm to 73sqm would be welcome in going some way towards addressing planning policy requirements. However if the amended affordable housing offer was accepted the child yield of the proposed development would increase to 124sqm. There would still be a significant short fall, and there are still problems with the quality of the internal play space provided.
- 4.6 In the view of Officers, the increase in the size of the indoor play area to 73sq.m would not address adequately Members concerns about the basic quality and practical usability of that single play space, nor would it meet in full the child play space provision required for children under 16. Furthermore, as referenced above, the amendments do not address the absence of on-site communal amenity space, which is a separate policy requirement.

5. IMPLICATIONS OF REFUSING PLANNING PERMISSION

- 5.1 The officer recommendation has been to grant planning permission but it is the Committee's prerogative to disagree with that recommendation if there are clear planning reasons for doing so.
- 5.2 In coming to an alternative view the Committee has to take into account the provisions of the development plan, any other relevant policies and relevant material considerations.
- If planning permission is refused, there are a number of routes that the applicant could pursue:
 - Appeal to the Secretary of State. An appeal would be determined by an independent Inspector appointed by the Secretary of State. Whilst officers have recommended approval, any appeal would be vigorously defended on behalf of the Council.
 - To pursue an alternative scheme. The applicant could commence pre-application discussions on an amended scheme that seeks to address the reasons for refusal and submit a fresh planning application.

- 5.3 In this case the applicant has not indicated what course of action they might pursue if any.

Financial implications - award of costs

- 5.4 In dealing with appeals, all parties, including the Local Planning Authority, are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
- 5.5 Unreasonable behaviour in the context of an application for an award of costs may be either:
- procedural – relating to the process; or
 - substantive – relating to the issues arising from the merits of the appeal.
- 5.6 An example of the former might be failing to keep to the requirements of an appeal timetable to submit statements of case or other evidence. An example of the latter might be taking a decision which could be described as unreasonable in the context of all of the evidence available to the decision maker. It is this latter aspect that the Committee members in their role as decision makers need to be mindful of.

6. RECOMMENDATION

- 6.1 The proposal has not been amended and has been considered in the context of the relevant Development Plan policies and the officer recommendation to **GRANT** planning permission remains unchanged.
- 6.2 However if members are minded to **REFUSE** planning permission the following reasons are recommended:

Overdevelopment

1. The proposed development would deliver high density development in excess of the density matrix ranges outlined by Policy 3.4 of the London Plan (incorporating alterations 2015), without demonstrating exceptional circumstances as required by the London Plan and London Housing Supplementary Planning Guidance. The proposals would show demonstrable symptoms of over development of the site, through the failure to provide any communal amenity space, failure to include an adequate amount and quality of child play space combined with problems of poor outlook and loss of privacy for future residents.

As such the scheme would fail to provide a sustainable form of development in accordance with paragraphs 17, 56, 61 of the NPPF and would be contrary to the Development Plan, in particular policies 3.4, 3.5, 3.6, 7.1, 7.4, 7.6 and 7.7 of the London Plan (2015), policies SP02, SP06, SP10 and SP12 of the Tower Hamlets' Core Strategy (2010) and policies, DM4, DM24, DM25, DM26 and DM27 of the Tower Hamlets' Managing Development Document (2013).

Negative impacts on local townscape

2. The cumulative effect of the proposed development by reason of its height and scale combined with close proximity to the consented serviced apartments and hotel at 27 Commercial Road would result in an overbearing and incongruous form of development at the southern end of Whitechurch Lane, harming the visual enmities of the area and negatively impacting on local townscape. The development would be visible from the Whitechapel High Street Conservation Area, and the cumulative impact of two buildings of comparable height in close proximity to one another would affect views from within the conservation area causing harm to its setting and its significance as a designated heritage asset. The public benefits of the development would not outweigh the harm caused.

As such the scheme would fail to provide a sustainable form of development in accordance with paragraphs 17, 56, 61 of the NPPF 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 (2015), policies SP02, SP06, SP10 and SP12 of the Tower Hamlets' Core Strategy (2010) and policies, DM23, DM24, DM25, DM26 and 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.

Ability to secure planning obligations

3. In the absence of a legal agreement to secure agreed and policy compliant financial and non-financial contributions including affordable housing, 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 and the draft consultation version LBTH Planning Obligations SPD (April 2015).