

<b>Committee:</b> Strategic	<b>Date:</b> 28 <sup>th</sup> July 2016	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Director of Development and Renewal	<b>Title:</b> Application for Planning Permission
<b>Case Officer:</b> Jermaine Thomas	<b>Ref No:</b> PA/15/03073
	<b>Ward:</b> Canary Wharf

## 1. APPLICATION DETAILS

**Location:** South Quay Plaza 4, Marsh Wall, London, E14

**Existing Use:** The site comprises of a temporary marketing suite.

**Proposal:** Erection of a 56 storey building comprising of 396 Residential (Class C3) Units, Community Use (Class D1) together with basement, ancillary residential facilities, access servicing, car parking, cycle storage, plant, open space and landscaping and other associated works.

The application is accompanied by an Environmental Impact Assessment.

(Amended Description)

## 2. BACKGROUND

2.1 This application for planning permission was considered by the Strategic Development Committee on 12<sup>th</sup> May 2016. A copy of the original report is appended.

2.2 Members were minded to REFUSE planning permission on the following grounds:

- Excessive density
- Impact on infrastructure particularly the transport network, the highway and social infrastructure including education and health facilities.
- Unacceptable level of affordable housing.
- Impact on residential amenity in terms of sunlight and daylight.

2.3 In accordance with Development Procedural Rules, the application was **DEFERRED** to a later committee to enable officers to prepare a deferral report to provide wording for reasons for refusal and provide commentary on the detailed reasons for refusal on the application.

## 3. REVISED OFFER / AMENDMENTS TO SCHEME

3.1 Following negotiations with Council officers, the applicant has submitted a series of amendments to address the objections of members and maximise the public benefits delivered by the development.

3.2 The followings is a summary of the amendments to the proposal:

- 189sqm community facility (D1 use) provided at ground floor level
- All 49 on site affordable units (1,2,3 and 4 beds) provided at Social Target Rent Level
- Replacement of 27 intermediate units with 27 market sale units
- A £7 million commuted sum to deliver affordable units off site
- S106 clause securing expansion of approved SQP2 Nursery from 678sqm to 891sqm prior to occupation of the development (SQP4)

### ***Social Infrastructure***

3.3 The applicant has replaced the previously proposed 189sqm retail floor space (A1 – A4 use) with 189sqm of D1 floor space at ground floor level of the South Quay Plaza 4 development (SQP4). An initial desktop exercise by Quod on behalf of the applicant has identified the following community functions (D1 uses), which could be provided on site to serve the local area:

- Dentist
- Optician
- Pharmacy
- Learning or outreach centre for the police or Citizens Advice Bureau
- Other independent practitioners such as Physiotherapist
- Satellite GP facility

3.4 An existing section 73 planning application (PA/15/03074) has also been amended to increase the floor area of the approved Nursery (D1 use class) on South Quay Plaza 2 (SQP2) from 678sqm to 891sqm. The increase in capacity of the SQP2 nursery is proposed to meet any increase in demand for nursery places resulting from the SQP4 development. The delivery of the proposed extended nursery would be secured by a clause within SQP4 legal agreement which stipulates that SQP4 development cannot be occupied until 891sqm of nursery floor space is provided on SQP2. The acceptability of the section 73 application which includes the proposed extension to the Nursery, and reconfiguration to the approved landscaping provisions and child play space on South Quay Plaza 1-3 (SQP1-3) is currently being considered by officers.

3.5 The introduction of social infrastructure on South Quay Plaza 4 and extension of the approved nursery on the associated South Quay Plaza 2 development site as a consequence would result in the securement of additional public benefits for the development and wider area.

### ***Affordable Housing***

3.6 The applicant has revised the proposed housing mix and offer. The previously proposed 27 intermediate units would now be provided as market sale units. All of the 49 rented units would remain on site and be provided at social target rent level. A cash in lieu payment of £7m would be provided to deliver all the intermediate units off site.

3.7 The following tables sets out the new housing mix:

*Number and Percentage of units and habitable rooms by tenure*

	<b>Number of units</b>	<b>% units</b>	<b>Habitable Rooms</b>	<b>% hab rooms</b>
<i>Open Market</i>	347	88%	909	82%
<i>Social Target rent</i>	49	12%	196	18%
<i>Intermediate</i>	0	0%	0	0%
<b>TOTAL</b>	<b>396</b>	<b>100%</b>	<b>1105</b>	<b>100%</b>

*Dwelling numbers and mix by tenure*

	Studio	1 bed	2 bed	3 bed	4 bed
Open Market	0	184	126	37	0
Affordable rent	0	14	14	14	7
Intermediate	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>198</b>	<b>140</b>	<b>51</b>	<b>7</b>
<b>Total as %</b>	<b>0</b>	<b>50%</b>	<b>35%</b>	<b>13%</b>	<b>2%</b>

- 3.8 The 7m commuted was proposed by the applicant with the intention of increasing the affordable housing offer to 29.3% overall. This was based on the notion that the cost to deliver an intermediate habitable room off site was £55k, as previously advised and adopted by the Council.
- 3.9 BNP Paribas acting on behalf of the Council however have undertaken an exercise to confirm the cost today of delivering off site affordable housing units within the borough. The findings of the study confirmed that the cost to deliver off site intermediate housing in the absence of an identified donor site would be 87,500 per hab room. The methodology was based on the reasonable assumption that the borough wide Private Sales Value of properties is approx. £850 per square feet.
- 3.10 Following the Council's adoption of the updated off-site cost of £87,500 to deliver an Intermediate habitable room, the proposed £7m commuted sum would now equate to a reduced affordable housing provision of 25%.
- 3.11 Although, it may be viewed that the headline affordable housing offer has not increased since being presented to members at Committee on 12 May 2016, it should be noted that the applicant did propose the £7m commuted sum with the clear intention of increasing the affordable housing offer to 29.3%.
- 3.12 BNP Paribas have also confirmed that the additional cost to the applicant to deliver 1 and 2 Bed rooms at Social Target Rent is £1.99m. Had the £1.99m been added to the £7m commuted sum instead to deliver additional affordable housing off site (equating to a £8.99m commuted sum), the scheme would have provided a 27% affordable housing provision overall (based on the updated cost of 87,500 per off site habitable room).
- 3.13 While, if the Council were still securing only 55k per hab room, the commuted sums would have resulted in significantly higher affordable housing offers overall as shown below:
- £7 million would have delivered a 29.3% affordable housing provision overall.
  - £8.99 million would have delivered a 32.5% affordable housing provision overall.

- 3.14 The securing of a 25% affordable housing offer overall, despite the Council's recent adoption of the new updated off-site costs for delivering affordable housing within the borough is therefore welcomed by officers.
- 3.15 The delivery of all 49 rented units (1, 2, 3 and 4 beds) at social target rent levels, removal of all of the on-site intermediate units and securing of a commuted sum of £7m importantly also maximises the affordability of the proposed housing products and successfully mitigates wider affordability issues within the borough.
- 3.16 The revised affordable housing offer provides a significant increase in the overall public benefits of the scheme, in particular in comparison to the development presented at committee on 12 May 2016.

### ***Viability***

- 3.17 The additional cost for applicant to deliver all affordable 1 and 2 beds at Social Target Rent levels instead of Borough Framework is £1.99 million. The proposed commuted sum is £7m. The Council's Viability Consultants BNP Paribas have confirmed that the financial uplift the development secures from converting the on-site Intermediate units to private market sale units would be circa £4 million. The total cost of the enhanced offer by the applicant is therefore an additional £4.99m (£8.99m minus £4m).
- 3.18 The scheme previously presented to members at Committee at 12 May 2016 designed with all of the affordable housing provided on site was deemed unviable by BNP Paribas. The revised offer which results in an additional cost of £4.99m to the applicant ensures that the development is still unviable.

## **4. SUMMARY OF ISSUES RAISED BY MEMBERS AND OFFICER'S RESPONSE**

### ***Density***

- 4.1 Members objected to the density of the proposed development with it being more than double what is recommended within the density matrix which takes into consideration the PTAL of the application site.
- 4.2 Officers of the Council and TfL agree that the PTAL for the site is 4 when taking into consideration the existing South Quay footbridge in the calculation of PTAL. The London Plan recommended density range for the development site is 650 to 1100 hr/ha.
- 4.3 The proposed amendments to the development do not reduce the density of the development, and as such it remains at 2483 hr/ha.
- 4.4 The site is located within the Isle of Dogs Opportunity Area which is characterised by a number of approved dense developments such as City Pride (5,804 hr/ha), Millharbour Village (2,490 hr/ha) Meridian Gate (2,850 hr/ha) and Arrowhead Quay (3,357 hr/ha). The site also forms part of the Council's Managing Development Document Site Allocation 17 (Millennium Quarter) which identifies the area as a comprehensive mixed-use development opportunity to provide a strategic housing contribution and a district heating facility. Such designations and allocations as a consequence justify why such a departure from the density matrix could be acceptable.

- 4.5 London Plan Policy 3.4 states that the density ranges are not intended to be applied in a wholly prescriptive manner. Given the very considerable need for housing in borough, an Inspector at an appeal would need to see actual adverse effects caused by the amount of development, prior to the issue of density itself being a material factor of sufficient weight to justify refusal.
- 4.6 In light of the above, it would be extremely difficult to secure a refusal of a permission on a purely numerical density argument. The justification must be based upon on the actual effects of a scheme resulting from symptoms or characteristics of over-development.
- 4.7 The proposed development consists of only one symptom of over development as discussed in the committee report, which is the inadequate access to sunlight and daylight for neighbouring homes. However, it must be acknowledged that as the application site is a cleared development site orientated to the south of existing residential units, it is likely that most proposed development of a strategic nature and designed to meet the aspirations of the site allocation and Isle of Dogs Opportunity Area would be likely to impact on the neighbouring residential properties to the north and northwest.
- 4.8 There is only one demonstrable qualitative characteristic of over-development of which would be likely to arise from any realistic development proposed on site. It is also considered that the merits of the development which are discussed throughout this report (see section 6) constitute the required exceptional circumstances that justify a deviation from policy in this regard. It is officers' opinion that it would be difficult to defend a refusal on the grounds of density at an appeal.

#### *Impact on infrastructure*

- 4.9 Members objected to the impact of the development on infrastructure, particularly the transport network, the highway, and social infrastructure including education and health facilities.

#### Highways

- 4.10 The first objection to the impact on infrastructure is that on the transport network and the highway. The Transport Assessment provided with the application and the subsequent assessment by the Council's Highway and planning officers confirmed that the scheme would result in a net increase of only four car parking spaces in comparison to the approved South Quay Plaza 1-3 development, as the development would be primarily a "car free" scheme. The relevant consultation responses from both the Council's highways officer and TfL also did not suggest there would be any adverse impact on the transport or highway network. DLR were also consulted separately from TfL and raised no objection. Such responses are a material consideration in the assessment of the application, and any subsequent appeal.
- 4.11 With regards to public transport, TfL acknowledge that there may be a possible current deficiency in bus provision in the morning rush hour. Any deficiency and resulting impacts of the development on bus capacity however would be mitigated by CIL and a contribution of £200,000 which is secured specifically for additional bus provisions.
- 4.12 It is considered that there is no evidence to suggest there would be any adverse demonstrable impacts on the highway network or to challenge the conclusions of LBTH Highway and TfL officers. Accordingly, officers consider that the refusal of the application on highway grounds would be very difficult to defend at appeal.

## Education and Health

- 4.13 With respect to the absence of education and health facilities, it should be noted that the application site forms part of wider development site which includes South Quay Plaza 1-3 and that falls within Site Allocation 17: Millennium Quarter. The site allocation and the Local plan policies promote the delivery of housing on this site but not the delivery of education and health infrastructure in particular.
- 4.14 The adopted procedure to mitigate any effects of a development on the capacity of health and education facilities is to secure financial contributions via the Council's Community Infrastructure Levy (CIL) and any appropriate section 106 obligations. It is therefore considered that it would be unreasonable to refuse the application based on any perceived impacts on local infrastructure, in particular regarding health and education matters.
- 4.15 Notwithstanding the above, the applicant has revised the scheme to provide 189sqm of D1 floor space at ground floor level of the development. While, the approved Nursery (D1 use class) on South Quay Plaza 1-3 development which will be linked to this development scheme via section 106 agreement is also to be increased in floor area from 678sqm to 891sqm to meet additional demand in nursery places resulting from the proposed development and increase its overall capacity to serve the wider area.
- 4.16 The delivery of social infrastructure within the development, expansion of the approved nursery on the associated South Quay Plaza 1-3 development combined with the securement of LBTH CIL would therefore address member's previous objections. The delivery of such provisions would also significantly decrease the likelihood of a successful appeal.

## *Affordable Housing*

- 4.17 Members objected to the level of affordable housing proposed at 25%, which included the delivery of 3 and 4 bedroom units at Social Target Rent levels.
- 4.18 The applicant in response sought to increase the affordable housing offer to 29.3% by providing a £7m commuted sum in lieu. While, also providing all of the 1 and 2 bed rented units at Social Target Rent Levels.
- 4.19 As discussed previously, it has since been confirmed independently that the cost for the Council to deliver an intermediate habitable room off site is actually £87.5k, which in turn results in the proposed £7m commuted sum equating to a 25% affordable housing offer overall.
- 4.20 Whether or not the headline affordable housing offer was 25% or 29.3% (as initially intended by the applicant), it is noted that the development would still not achieve the 35 to 50% affordable housing target stated within the London Plan and Local Plan.
- 4.21 The provision of affordable housing is subject to considerations of viability. This is a central thrust of the NPPF, which states that an otherwise acceptable development should not be turned down because it cannot make appropriate contributions to matters such as affordable housing, due to a lack of viability.

- 4.22 In this case, the applicant submitted a viability appraisal which indicated that a policy compliant level of affordable housing (35-50%) would not be viable. A conclusion which was verified by Council's own financial viability consultants BNP Paribas.
- 4.23 The enhanced affordable housing offer which now includes a £7m commuted sum and all rented units being provided at Social Target Rent in turn substantially reduces the viability of the scheme even further. Nevertheless, the applicant has taken the commercial decision to absorb such costs. The applicant's ability to provide an enhanced offer is due to the fact that the viability of a scheme takes into account the requirement for a developer make a profit, which allows for a commercial decision to be made to forego some of that profit in order to secure additional public benefits for example. It should be noted however that it is risky to defend an appeal on the premise that an Inspector at appeal would insist upon a developer accepting less than a normal commercial developer's profit. In short, in the event that the applicant was refused by members and later allowed at appeal there is a possibility that the revised and enhanced affordable housing offer would not be secured.
- 4.24 Notwithstanding the above, if members still do not accept the viability of the scheme as a reason for the failure of the development to meet affordable housing targets, it would need to be evidenced why such a failure is not outweighed by the other benefits of the scheme contrary to LBTH Core Strategy policy SP02 'Urban Living For Everyone' which states:

*'Given the extent of housing need, Tower Hamlets has set an affordable housing target of up to 50%. This will be delivered through negotiations as a part of private residential schemes, as well as through a range of public initiatives and effective use of grant funding. In some instances exceptional circumstances may arise where the affordable housing requirements need to be varied. In these circumstances detailed and robust financial statements must be provided which demonstrate conclusively why planning policies cannot be met. Even then, there should be no presumption that such circumstances will be accepted, if other benefits do not outweigh the failure of a site to contribute towards affordable housing provision.'*

- 4.25 This report read in conjunction with the committee report dated 12 May 2016 clearly sets out why and how the proposed development provides public benefits (see section 6). At appeal there is a real prospect that an Inspector would conclude the other benefits of the scheme outweigh the failure of the site to contribute towards affordable housing provision, especially when the affordable housing offer overall is 25% and includes a commuted sum of £7m and all 49 of the on-site affordable units being delivered at Social Target Rent Levels.
- 4.26 In this instance, it is therefore considered that the failure to provide a 35% to 50% affordable housing provision overall would be difficult to defend at appeal.

#### *Sunlight / Daylight*

- 4.27 Members previously concluded that the merits of the development were outweighed by the negative impacts of the application due to the sunlight and daylight failings to nearby buildings.
- 4.28 With respect to the sunlight and daylight findings, it is of note that the application was supported by a Daylight and Sunlight Assessment, which was in turn assessed by Daylight and Sunlight consultants on behalf of the Council.

- 4.29 The Council's sunlight and daylight consultants generally considered the effects to be greater than those set out in the applicant's assessments. Accordingly, they concluded that there would be moderate to major adverse impacts on Discovery Dock West, Discovery Dock East, and Pan Peninsular West.
- 4.30 Given the above and in accordance with the findings presented in the committee report, it is clear that there are some adverse impacts which would need to be considered on a planning balance and therefore could conceivably form the basis for a reason for refusal which is properly supported by evidence.
- 4.31 Prior to refusing the application based on sunlight and daylight impacts however Members need to be taken into consideration that a loss of sunlight and daylight is a necessary consequence of the erection of a tall building almost anywhere in a compact urban area, especially on a cleared site such as this. Finally, it is important to note that any adverse effects are only matters which can be weighed in the overall planning balance and cannot, without further consideration, be assumed to form the basis for a successful refusal of permission in isolation, and that development on a cleared site will always result in higher than expected levels of losses.
- 4.32 In short, the major adverse sunlight and daylight impacts on neighbouring properties (demonstrable harm) must be weighed against the public benefits of the scheme. Such an exercise is undertaken in the following section of the report.

## **5. PUBLIC BENEFITS Vs. HARM**

- 5.1 The proposed development is located on a development site, which is located within Managing Development Document Site Allocation 17 identified as a location for the delivery of strategic residential development. The site and surrounding area is situated within Tower Hamlets Activity Area and the Isle of Dogs Opportunity Area, which is identified as a suitable location for the intensification of uses.
- 5.2 The proposed high quality mix use residential development scheme would provide much-needed market and affordable housing within the borough in accordance with the site's policy designations, and with very limited environmental effects and no statutory consultees objecting to the scheme.
- 5.3 The proposed affordable housing offer provides a commuted sum of £7m to deliver off site affordable housing, all 49 affordable units on site at Social Target Rent Levels and absent of any intermediate units on site which often generate affordability issues for residents within the borough maximises the affordable housing offer.
- 5.4 The development which in numerical terms would be overly dense would not result in any major manifestation of the harm which would be expected of schemes which are too dense and constitute an overdevelopment of a site.
- 5.5 There would be major adverse impacts caused by effects of the development on daylight and sunlight of neighbouring properties, but such impacts are not out of the ordinary in the context of a confined urban environment, or unexpected when a cleared strategic development site, as such as this is to be developed.
- 5.6 The proposed expansion of the nursery on the associated South Quay Plaza 1-3 development site, delivery of social infrastructure (D1 use class) on the application site and the securement of a LBTH CIL financial contribution of £6,471,374 would provide substantial public benefits for the residents of the development and wider area.

- 5.7 The proposed development set within an expansive public realm offer, and combined with the improvement works to South Quay Square, creation of a new cycle and pedestrian access route to a potential new South Quay bridge and the removal of unnecessary vehicle access points and routes to and through the site would substantially enhance the visual and public amenity of the wider area.
- 5.8 In light of the above, it is considered that it cannot be demonstrated that any harm resulting from the scheme would “significantly and demonstrably” outweigh the benefits which the scheme would bring.
- 5.9 In conclusion, officer’s advice that it is very unlikely an Inspectorate at appeal would uphold any of the previously suggested reasons for refusal.

## **6. IMPLICATIONS ARISING FROM A DECISION TO REFUSE THE APPLICATION**

- 6.1 In the event that the Committee resolves to refuse the application, the following options could be exercised by the applicant.
- 6.2 The applicant could withdraw the application and later approach the Council for further pre-application advice on an amended proposal and thereafter submit new applications.
- 6.3 The applicant could request that the application to be called in by the Mayor of London as part of the stage II referral.
- 6.4 The applicant could exercise their right to appeal to the Secretary of State against the Council’s decision and lodge an application for costs. The appeal would be determined by an independent inspector appointed by the Secretary of State.
- 6.5 Section 4 and 5 of this report throughout sets out the officer’s assessment of how unlikely the Council would be in defending the reasons for refusal at appeal. However if the Committee do resolve that the application should be refused on grounds relating to excessive density, impact on infrastructure, unacceptable level of affordable housing and/ or impact on residential amenity in terms of sunlight and daylight, officers will seek to defend the Council’s position.

## **7. RECOMMENDATION**

- 7.1 Officers’ original recommendation as set out in the officers’ report for Strategic Development Committee on 12<sup>th</sup> May 2016 to **GRANT** planning permission for the proposal remains unchanged.
- 7.2 However, if Members are minded to refuse planning permission for this scheme, then the proposed refusal reasons are as follows:

### *Reasons for Refusal:*

1. The proposed development by reason of its excessive density constitutes overdevelopment of the site, which is exhibited by the resulting inadequate access to sunlight and daylight for neighbouring residential properties. There is no exceptional circumstance to justify exceeding the advised density range for this development site. The development is contrary to the NPPF, policies 3.4 of the London Plan (MALP 2016), SP02 of the Core Strategy (2010), SQ1 of the South Quay Masterplan (2015) and the London Plan Housing SPG (2016).

2. The proposed development with an affordable housing offer of 25% would fail to maximise the delivery of Affordable Housing and as a consequence not meet the Borough's identified housing need. No other benefits of the scheme outweigh the failure of the site to appropriately contribute towards affordable housing provision. The development is contrary to the NPPF and policies 3.12 of the London Plan (MALP 2016), SP02 of the Core Strategy (2010) and DM3 of the Managing Development Document (2013).
3. The proposed development fails to mitigate its impact on the transport network, highways, local services and social infrastructure contrary to the requirements of the NPPF and policies 3.2, 3.16, 3.17, 3.18, 6.3, 6.11, 6.12, 6.13 and 8.2 of the London Plan (MALP 2016), SP02, SP03, SP07, SP08 and SP09 of the Core Strategy (2010) and DM8, DM20 and DM22 of the Managing Development Document (2013).
4. The proposed development by reason its height, scale and mass, combined with its proximity, orientation and separation distance to neighbouring residential properties would result in major adverse sunlight and daylight failures to existing residential units. This resulting harm of the development would significantly and demonstrably outweigh the benefits of the scheme. The development is contrary to the NPPF and policies SP10 of the Core Strategy (2010), DM25 of the Managing Development Document (2013) and Building Research Establishment (BRE) Guidance (2011).