

Committee: OVERVIEW AND SCRUTINY	Date: 7 October 2008	Classification: Unrestricted	Report No.	Agenda Item No. 6.1
Report of: Assistant Chief Executive Originating Officer(s): Amanda Thompson Team Leader, Democratic Services			Title: Cabinet Decision Called-in: 33 - 37 The Oval and Bethnal Green Gasholders Site, E3 Wards: Bethnal Green North	

1. SUMMARY

- 1.1 The attached report of the Interim Corporate Director, Development and Renewal was considered by the Cabinet on 10 September 2008 and has been "Called In" by Councillors Archer, Eckardt, Golds, Hussain and Snowdon. This is in accordance with the provisions of Part Four of the Council's Constitution.

2. RECOMMENDATION

- 2.1 That the Committee consider the contents of the attached report, review the Cabinet's provisional decisions arising and decide whether to accept them or refer the matter back to Cabinet with proposals, together with reasons.

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

Brief description of "background paper"

Cabinet report – 10 September 2008

Name and telephone number of holder
and address where open to inspection

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3. THE CABINET'S PROVISIONAL DECISION

3.1 After considering the attached report the Cabinet provisionally agreed:-

- 1) That the Corporate Director Development & Renewal be authorised, after consultation with the Lead Member for Resources and Assistant Chief Executive (Legal Services), to enter into a conditional agreement (subject to the revocation [planning consent]) with the Developer to acquire land known as 33-37 The Oval, as identified on the plan attached at Appendix A to the report (CAB 039/089); and
- 2) That the Chief Executive be instructed to commission a comprehensive investigation to establish whether the Authority has put in place adequate controls to prevent a recurrence of the procedural errors, referred to in the body of the report (CAB 039/089).

4. REASONS FOR THE 'CALL IN'

- 4.1 At the Cabinet meeting on the 10th September 2008 the Cabinet was asked to either: note the report and risk for compensation arising out of the situation with 33-37 The Oval; or enter into a conditional agreement with the Developer to acquire the land. The reason that these two options were placed before the Cabinet was that planning permission had been granted for the site without the Council consulting with the Health and Safety Executive (HSE) as it was legally required to do due to the presence of a gas works. This failure to consult has left the original planning permission vulnerable to legal challenge by the HSE and both the Council and the Developer exposed to costs arising out of this.
- 4.2 Officers informed the Cabinet that this situation arose due to both technical and human error. The transference of planning records from paper to the electronic system of GIS meant that gasholder safeguarding data was not available to officers who went ahead with the application without checking the paper records. The human failure was that the case officer failed to note the gas works during his site visit.
- 4.3 We, however, are concerned that this situation is not as straight forward as that and believe that this issue needs further scrutiny.
- 4.4 The Developers had a design statement produced by the Neptune Group for the site in March 2005. This statement sets out full details of the area, the sit and the proposed development. This document was then lodged along with an application for development with the Council on the 19th April 2005. On virtually every page of this document there is a reference to the presence of the gas works. At this point officers should have been on notice that the HSE should be consulted under Article 10 of the General Development Procedure Order.

- 4.5 On 29th September 2005, as part of the planning application procedure, a Delegated Planning Application Report was drawn up by officers for this development recommending that the Council grant planning permission. In paragraph 3.1 the document clearly states that *"to the west is the Pritchards Road gas works site, which seems to be still partially in use"* and contained a map at the back of the document that clearly shows the gas works. Officers could not then have been as ignorant of the presence of the gas works as was stated to Cabinet. In section 5 of the report it goes on to state which agencies had been consulted in relation to this development and the HSE was not mentioned. When this document was reviewed before being placed before members the gas works should have been noted and the HSE informed.
- 4.6 We then have some trouble in following what happens next. According to the Cabinet report of the 10th September 2008 the application was considered and permission issued on the 19th December 2005. The report does not state which committee but it must be assumed that this was placed before the Strategic Development Committee (SDC) for approval. This date does not, however, correlate with the case file on this development that states the decision was granted on the 15th December 2005. While in the documents placed before the SDC on the 16th November 2006 regarding an application to amend the original plans the date was given as the 12th December 2005. Council officers are clearly uncertain as to when planning permission for this site was granted and this in itself is very worrying.
- 4.7 A letter was sent out to the Developers dated the 15th December and it must be assumed that the correct date for approval was the 15th December 2005 despite the fact that this letter seems to predate the SDC meeting in the evening.
- 4.8 As search of both the electronic and hard records for meetings of the Council on the 15th December show no mention of a SDC meeting. In fact there is no mention of any SDC meetings for the whole of December that year. If one goes backwards and forwards of this date you will still not be able to find any mention of The Oval site application being placed before the SDC. This is hugely worrying to the undersigned members as not only are they not able to examine the original papers placed before the SDC but a very important meeting that may well land the Council with very high costs has been erased from the public record making it now impossible to determine what actually happened. It is this lack of documentation that may explain why officers are unable to provide an exact date for this application being approved.
- 4.9 It is our belief that when this application was presented to members of the SDC it would have made mention of the gas works either in the body of the report or by reference to the site plans. Any member reading these documents would have been aware that a gas works site existed and that the HSE had not been consulted. The SDC, therefore, failed in its duty to ensure this planning application was issues properly.
- 4.10 In the letter of the 15th December 2005 sent to the developers it makes it clear that development of the site shall not begin until the site has been inspected

and judged safe for human habitation. This would include both “*potential on-site and off-site sources*” as well as both an investigation of the “*site based on the findings of the desk study and walkover.*”

- 4.11 According to the case file the desk study lead to the approval of plans submitted for the site on the 13th January 2006, while none of the documents make clear when the site visit happened. It can be stated, however, that if officers where ignorant of the presence of the gas works and the need to inform the HSE, which we do not agree with, then they became fully aware of it on or around the 13th Jan 2006 when the plans the site were approved. We cannot accept, as a result of this, that the stated reasons of both a technical and human error lead to this situation. At all times officers were aware of the gas works and it must be assumed so were members and the HSE should have been notified.
- 4.12 It is also the case that development of the site could not legally go ahead as a potential off-site source threatened the safety of any future residents of The Oval. The planning permission was therefore flawed at the point of inception and a new application should have been submitted and no works begun.
- 4.13 In the spring of 2006 the HSE and the national grid raised concerns about the planning decision but were past the time-limit when they could challenge the decision. This shows that the Council was aware that it had failed to consult the HSE no later then 4 months after the original decision was made and that as a result the decision granted in Dec 2005 was unsafe. At this time officers should have sought to amend the decision granted and resolve this issue.
- 4.14 Instead the officers entered into discussions with the Developers, HSE and National Grid to negotiate a way forward. This lead to a new application for planning permission being submitted on 1st August 2006 and being discussed at the SDC on 16th November 2006. Rather then seek to rectify the problem of the HSE, officers advised the Council grant planning against the HSE advice which meant that the Secretary of State could call in the application. This in fact happened and as a result the developer withdrew the new application and proceeded to implement the original permission. In the past year and half the Council has not prevented the development of the site which is now considerable. No information has been placed before members as to why officers sought to proceed with the flawed application over the objection of the HSE and risk involving the Secretary of State.
- 4.15 Officers are now concerned that the HSE would seek to persuade the Secretary of State to require the Council to revoke the original permission which would leave the Council liable to compensation. We, however, do not think that this will be the case. The developer clearly proceeded with the development knowing that the planning permission was not valid and that it may be revoked. He has thus not innocently incurred his costs. This issue was not fully brought to the attention of the Cabinet and may well have changed their decision.

4.16 The full costs regarding the second option of the council purchasing the land have not been discussed in the report of the 10th September 2008. Officers have requested that the Cabinet agree to a scheme that has not been fully costed and to which the cabinet will bind the Council to fund. This is a breach of the fiduciary duty owed by members to the residents of Tower Hamlets and as such should not have been agreed to.

4.17 We are also concerned that when this issue was placed before Cabinet the Lead Member for resources was not present and so the Cabinet did not discuss the issues of affordability of either option placed before it. We feel that before taking such an expensive step that this matter be fully discussed with reference to the Council finances

5. ALTERNATIVE COURSE OF ACTION PROPOSED:

The Call In members therefore suggest the following alternative course of action for consideration:-

- a) That a full investigation by officers be undertaken to find out what exactly officers knew in relation to this site and a report laid before the Cabinet- including why the original SDC meeting has gone missing from the official record,
- b) An investigation be undertaken of why officers sought to proceed with this application despite the objection of the HSE in August to November 2006 in the full knowledge that the Secretary of State could challenge it and why they allowed building work to continue on a flawed planning application,
- c) That a full report should be drawn up by officers and laid before the Cabinet stating what legal liabilities, if any, the Council will be subject to- if necessary legal counsel should be sought,
- d) That an investigation be undertaken by officers to determine if by his actions the developer has incurred his own costs due to his actions in continuing to develop the land using a flawed application and its results communicated to the Cabinet,
- e) That officers draw up a full report on the costs and liabilities to be incurred by the Council should it proceed with purchasing the land from the developer, with special regard being placed on the current fall in land prices, and then placed before the Cabinet,
- f) That this issue be then sent back to Cabinet to be fully discussed and an opportunity be given to the Lead Member for resources to inform members as to the affordability of both option

6. CONSIDERATION OF THE "CALL IN"

6.1 The following procedure is to be followed for consideration of the "Call In":

- (a) Presentation of the “Call In” by one of the “Call In” Members followed by questions.
- (b) Response from the Lead Member/officers followed by questions.
- (c) General debate followed by decision.

N.B. – In accordance with the Overview and Scrutiny Committee Protocols and Guidance adopted by the Committee at its meeting on 6 June, 2007, any Member(s) who presents the “Call In” is not eligible to participate in the general debate.

- 6.2** It is open to the Committee to either resolve to take no action which would have the effect of endorsing the original Cabinet decisions, or the Committee could refer the matter back to the Cabinet for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.