



DEVELOPMENT COMMITTEE

Report of the Corporate Director of Housing and Regeneration

Classification: Unrestricted

STANDING ADVICE ON APPLICATIONS FOR DECISION

1. INTRODUCTION

- 1.1 In this part of the agenda are reports on planning applications for determination by the Committee. The Chair may reorder the agenda on the night. If you wish to be present for a particular application you should attend from the beginning of the meeting.
- 1.2 The following information and advice applies to all those reports.

2. THIRD PARTY REPRESENTATIONS

- 2.1 Under section 71(2)(a) of the TCPA 1990 and article 33(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Committee is required, to consider any representations made within specified time limits. The Planning Officer report directs Members to those representations and provides a summary. In some cases, those who have made representations will have the opportunity to address the Committee at the meeting.
- 2.2 All representation and petitions received in relation to the items on this part of the agenda can be made available for inspection at the meeting.
- 2.3 Any further representations, petitions or other matters received since the publication of this part of the agenda, concerning items on it, will be reported to the Committee in an Update Report.

3. ADVICE OF DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER

- 3.1 This is general advice to the Committee which will be supplemented by specific advice within the reports and given at the meeting, as appropriate.

Decisions on planning applications

- 3.2 The Committee is required to determine planning applications in Section 70(2) of the Town and Country Planning Act 1990 (TCPA 1990). This section requires the Committee to have regard to:
 - the provisions of the Development Plan, so far as material to the application;
 - a post-examination draft neighbourhood development plan, so far as material to the application
 - any local finance considerations, so far as material to the application; and
 - to any other material considerations.
- 3.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 explains that having regard to the Development Plan means deciding in accordance with the

Development Plan, unless material considerations indicate otherwise. If the Development Plan is up to date and contains policies relevant to the application and there are no other material considerations, the application should be determined in accordance with the Development Plan.

3.4 The Committee has several choices when considering each planning application:

- to grant planning permission unconditionally;
- to grant planning permission with conditions;
- to refuse planning permission or
- to defer the decision for more information (including a site visit).

3.5 If the committee resolve to refuse planning permission, they must provide reasons that are based on evidence, development plan policies and material considerations. The Council may be subject to an award of costs in the event that reasons for refusal cannot be defended at appeal.

The Development Plan and other material considerations

3.6 The relevant Development Plan policies against which the Committee is required to consider each planning application are to be found in:

- The London Plan 2021;
- Tower Hamlets Local Plan 2020;
- The Isle of Dogs Neighbourhood Plan 2021.

3.7 The Planning Officer's report for each application directs Members to those parts of the Development Plan which are relevant to each planning application, and to other material considerations.

3.8 Material considerations are those that are relevant to the use and development of land in the public interest and relevant to the development proposed in the application.

3.9 National Policy as set out in the National Planning Policy Framework 2019 (NPPF) and the Government's online Planning Practice Guidance (PPG) are both material considerations.

3.10 Other material planning considerations may include (but are not limited to):

- the design, size and height of new buildings or extensions;
- the impact of new uses of buildings or of land;
- loss of light and the privacy of neighbours;
- access for disabled people;
- the provision of affordable housing;
- the impact of noise from proposed development;
- the impact of development on public transport, the highway network, parking and road safety;
- effect on heritage assets such as listed buildings and conservation areas;
- environmental impacts.

3.11 The purpose of a Planning Officer's report is not to decide the issue for the Committee, but to inform Members of the considerations relevant to their decision making and to give advice on and recommend what decision Members may wish to

take. Applicants and objectors may also want to direct the Committee to other provisions of the Development Plan (or other material considerations) which they believe to be relevant to the application.

- 3.12 The Planning Officer's report summarises statutory consultee responses, non-statutory responses and third party representations, to report them fairly and accurately and to advise Members what weight (in their professional opinion) to give those representations. Ultimately it is for Members to decide whether the application is in accordance with the Development Plan and if there are any other material considerations which need to be considered.

Local finance considerations

- 3.13 Section 70(2) of the TCPA 1990 provides that a local planning authority shall have regard to a local finance consideration as far as it is material in dealing with the application. Section 70(4) of the TCPA 1990 defines a local finance consideration.
- 3.14 The prevailing view is that in some cases Community Infrastructure Levy (CIL) and potential New Homes Bonus payments can lawfully be taken into account as a material consideration where there is a direct connection between the intended use of the CIL or NHB and the proposed development. However to be a 'material consideration', it must relate to the planning merits of the development in question.
- 3.15 Accordingly, NHB or CIL receipts will be 'material' to the planning application, when reinvested in the local areas in which the developments generating the money are to be located, or when used for specific projects or infrastructure items which are likely to affect the operation or impact on the development. Specific legal advice will be given during the consideration of each application as required.

Listed buildings and conservation areas

- 3.16 Under Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant **listed building consent** for any works, the local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 3.17 Under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects a listed buildings or its setting, the local planning authority must have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest it possesses.
- 3.18 Under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development in a conservation area, the local planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Trees and the natural environment

- 3.19 Under Section 197 of the TCPA 1990, in considering whether to grant planning permission for any development, the local planning authority must ensure, whenever it is appropriate, that adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.

- 3.20 Under Section 40 of the Natural Environment and Rural Communities Act 2006 (Duty to conserve biodiversity), the local authority “must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”.

Crime and disorder

- 3.21 Under Section 17 of the Crime and Disorder Act (1998) (Duty to consider crime and disorder implications), the local authority has a “dutyto exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment)...”

Mayor of London’s Transport Strategy

- 3.22 Section 144 of the Greater London Authority Act 1999, requires local planning authorities to have regard to the London Mayor’s Transport strategy.

Equalities and human rights

- 3.23 Section 149 of the Equality Act 2010 (Public Sector Equality Duty) (Equality Act) provides that in exercising its functions (which includes the functions exercised by the Council as Local Planning Authority), that the Council as a public authority shall amongst other duties have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 3.24 The protected characteristics set out in Section 4 of the Equality Act are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Equality Act acknowledges that compliance with the duties set out may involve treating some persons more favourably than others, but that this does not permit conduct that would otherwise be prohibited under the Equality Act.

- 3.25 The Human Rights Act 1998, sets out the basic rights of every person together with the limitations placed on these rights in the public interest. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with Article 8 rights will be legitimate and justified.

- 3.26 Both public and private interests are to be taken into account in the exercise of the Council's planning authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members having regard to the Human Rights Act 1998, to take into account any interference with private property rights protected by the European Convention on Human Rights and ensure that the interference is proportionate and in the public interest.

Environmental Impact Assessment

- 3.27 The process of Environmental Impact Assessment is governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
- 3.28 The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision-making process.
- 3.29 The 2017 Regulations set out a procedure for identifying those projects which should be subject to an Environmental Impact Assessment, and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects.
- 3.30 The Environmental Statement, together with any other information which is relevant to the decision, and any comments and representations made on it, must be taken into account by the local planning authority in deciding whether or not to grant consent for the development.

Other regulatory regimes

- 3.31 Other areas of legislation that cover related aspects of construction, environmental matters or licensable activities do not need to be considered as part of determining a planning application. Specific legal advice will be given should any of that legislation be raised in discussion.

4. RECOMMENDATION

- 4.1 That the Committee notes the advice in this report prior to taking any planning decisions recommended in the attached reports.