

Addendum Planning Committee Report

London Thames Gateway Development Corporation

Planning Application LTGDC-08-145-FUL Addendum Report

Report of the Director of Planning

1. Summary

- 1.1 This is an Officer's addendum to a report which considers an application by MCRP (No. 1) LLP and is tabled as item number 3 for consideration by London Thames Gateway Development Corporation Committee Members. It seeks to update Members regarding correspondence that has been received since that report was completed.

2. Further representations received

- 2.1 LTGDC received a letter from the London Borough of Newham on 8th September 2009, setting out the Council's formal consultation response regarding the updated affordable housing / S106 options and the recommendations set out in LTGDC's officer report to LTGDC planning committee. In summary, the Council's outstanding concerns regarding affordable housing are not considered to have been satisfactorily resolved and LB Newham's objection to the application is maintained. A copy of that representation is appended to this addendum at Appendix 1 and Members are recommended to consider this representation.

3. LTGDC officer conclusion

- 3.1 LTGDC officers have carefully considered LB Newham's representation and do not consider that it raises any new issues that have not previously been comprehensively considered.
- 3.2 Newham officers confirm that the Council agrees with the applicant's assertion that on balance given present market conditions the scheme is unviable and unlikely to be built in the short term.
- 3.3 LTGDC officers have considered the Secretary of State's Flemmingate decision (Appeal reference APP/E2001/V/08/1203215) together with Newham's assertion that, 'given that the development is unviable and unlikely to be built in the current economic climate it is rational that the level of affordable housing/s106 contributions is assessed based on real values at the time of implementation, not ones based on current market conditions'.

- 3.4 The Flemmingate case pertained to an outline planning application where the development is to come forward in a phased manner over a period of up to 6 to 8 years, with its main residential element coming towards the end of the development process. In contrast the Broadway Chambers proposal seeks full planning permission, with LTGDC officers minded to grant a maximum 3 years in which to commence the whole development (not phased). As such, development is envisaged to be delivered in the short-medium term, not the long term, and not in phases. Section 73 (5) precludes the applicant from seeking to extend the time within which the development must be started. Therefore, it is appropriate for the viability of the development to be assessed at the time of the application.
- 3.5 That said, Officers have assessed the financial information submitted by the applicant, which make projections / forecast sales values over forthcoming years. Therefore, future variations in anticipated sales values have been considered and scrutinised. In view of this Officers do not consider that future assessments of viability would be necessary for a scheme of this nature.
- 3.6 Officers contend that if planning permission were refused there is a strong possibility that no development would come forward for some time, i.e. no delivery of any new housing (affordable or otherwise). This is because the factors applied in the financial information that has been submitted by the applicant are considered to be equally applicable to other developers/proposals for this site.
- 3.7 Table 3A.1 (Housing Provision) of The London Plan (Feb 2008) sets Newham an annual monitoring target of 3,510 additional homes each year [Ten Year Target = 35,100 additional homes]. The proposed development will make a contribution to meeting this target and the housing needs of the Borough set out in Newham's letter dated 8 September 2009.
- 3.8 LTGDC was established for the purpose of regenerating the London Thames Gateway urban development area.
- 3.9 In accordance with London Plan policy 3A.3, the proposed development would achieve the maximum intensity of use compatible with local context and design principles in Policy 4B.1 and with public transport capacity.
- 3.10 Officers have considered whether the proposed level of affordable housing is sufficient to refuse the grant of planning permission.
- 3.11 On balance, taking account of the provisions of the development plan and material considerations, namely, site constraints, viability and LTGDC's purpose and functions, officers maintain their recommendation that Committee Members resolve to grant planning permission subject to conditions and the completion of a s106 agreement as detailed in LTGDC's officer report number LTGDC/09/PC39 (item number 3). The s106 agreement will secure the provision of 10% on-site intermediate (34 no. units) + off-site equivalent 17 no. units) social rented commuted payments (£2.04m @ £120k/unit) = total affordable offer of 51 units or 15% by unit number. Members are also asked to note that the s.106 agreement will include a claw-back arrangement, which will secure additional payments in lieu of on-site affordable housing provision should viability improve. These funds could

then be applied to facilitate additional off-site affordable housing provision in [the Borough/LTGDC's area.

CASE OFFICER: Amanda Reid for John Allen, Director of Planning

Date: 10 September 2009

Appendix 1. LB Newham letter dated 8th September 2009



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Ask for: Chris Gascoigne
Our ref: 08/01953/LTGDC

Date: 08/09/2009

Dear Amanda,

RE: 08/01953/LTGDC
Site: 2 Broadway, Stratford, London, E15

I am writing with regard to the above mentioned application for planning permission.

On the 11th June 2009 and 17th August 2009 the Council wrote to the LTGDC objecting to the application and recommended that planning permission should be refused on the basis of the inadequate level of affordable housing proposed.

On 26th August 2009 the applicant submitted two updated affordable housing/S106 offers. In summary, the options propose the following:

Option 1:

- 10% on-site intermediate (34 no. units: 15 x 1-bed, 15 x 2-bed and 4 x 3-bed); +
- Commuted payment of £2.04m towards off-site social rent (5% / equivalent 17 no. units @ £120k/unit); +
- S106 contribution of £3,000 per unit (£1.026M); +
- S106 overage clause.
- Total affordable housing offer of 51 units or 15% by unit number.

Option 2:

- 10% on-site intermediate (34 no. units); +
- Commuted payment of £840k towards off-site social rent (2% / equivalent 7 no. units @ £120k/unit); +
- S106 of £6,000 per unit (£2.052M); +
- S106 overage clause.
- Total affordable housing offer of 41 units or 12% by unit number.

It is understood that the application is scheduled to be presented to the LTGDC's Planning Committee on 10th September 2009 with a recommendation that planning permission is granted based on Option 1.

This letter sets out the Council's formal consultation response regarding the updated affordable housing/S106 options and the recommendations set out in the report to the LTGDC's Planning Committee.

In summary, the Council's outstanding concerns regarding affordable housing have not been satisfactorily resolved and the Council's objection to the application is maintained. The Council's key concerns are set out below.

1. Affordable Housing

The Council previously expressed concern that the proposal offered a low level of affordable housing which did not include social rented housing or family sized affordable housing. Although the Council appreciates that the amended options do now include commuted sums towards off-site social rented housing as well as some on-site 3-bed intermediate accommodation, overall we do not consider that the options adequately address affordable housing need or policy expectations, for the following reasons.

The London Borough of Newham has the highest housing need in London with 35,000 people on its waiting list. The Council is also forecasting a drop of 75% in its affordable housing completions in the years 2008-2011. The proposed combined levels of on and off site affordable housing in both options (15% or 12%) remain very low in relation to London Plan policy expectations to deliver 50% affordable housing and are also below the levels of affordable housing delivered in other comparable high density developments permitted in the locality. Based on the Borough's housing needs the Council generally seeks to achieve an affordable housing provision of 35% within new developments. The proposed low level of affordable housing would set an undesirable precedent for future developments in the Borough which would have a detrimental impact on the Council's ability to meet housing needs.

The commuted sum options proposed are low and would deliver comparatively little social rented housing (5% or 2%) in relation to the overall quantum of development proposed. The tenure split between off-site social rent and on-site intermediate housing would be 33/67 for Option 1 or 17/83 for Option 2. Both options are contrary to London Plan policy requirements to achieve a 70/30 tenure split between social rent and intermediate housing. The options are also contrary to the Council's tenure split preference of 60/40, which is based on the Borough's housing needs.

In view of the Council's concerns regarding the unacceptable affordable housing offer the Council has asked the applicant to explore the potential for on-site social rented housing. The applicant has demonstrated that the development has been designed in a way that makes the inclusion of social rented housing impossible without significant changes. It is also apparent that the inclusion of social rented housing on-site would, given the existing design and specifications, reduce the viability. This leads the Council to question the appropriateness of a design concept which excludes on-site social rented housing but also has a development cost which restricts the availability of funding towards reasonable off-site social rent.

In terms of family sized affordable housing, the applicant has offered 4 x 3-bed intermediate units on site. The commuted sums could also reasonably be used towards or family sized (3-bed+) social rented housing. As a result the development could deliver 21

(6%) family sized affordable units in Option 1, or 11 (3%) in Option 2. The Council agrees that the site is less suitable for family housing. The Council also acknowledges that the principle of on-site intermediate housing has always formed part of the discussions about this site. However these discussions were always on the basis that the affordable housing offer would include an appropriate commuted sum which could be used towards off-site social rented accommodation including family housing. In the absence of an appropriate commuted sum towards social rented housing the Council does not consider that the overall level of family sized affordable housing delivered is acceptable in relation to the quantum of development proposed.

As discussed in section 2 of this letter, the applicant has reasonably demonstrated that in the current economic climate the scheme is unviable and cannot provide an increase in affordable housing. The current affordable housing/S106 offer is in effect proposed in the absence of viability. When making a decision regarding the application the LTGDC need to weigh up the relevant planning issues. The Council would reiterate that although we support the design quality of the development and the aspiration for a high quality fit-out, we do not consider that the planning benefits of the development outweigh the significant shortcomings in relation of affordable housing policy expectations. Overall the proposed affordable housing offer is unacceptable and the Council objects to the application.

2. Financial Appraisal / Overage

Although there remains some disagreement between the parties regarding a number of aspects of the financial appraisal (as detailed in the Council's letter dated 17th August 2009), the Council agrees with the applicant assertion that on balance given present market conditions the scheme is unviable and unlikely to be built in the short term.

In light of this situation the applicant has offered a S106 overage agreement (referred to as clawback) to allow future payments towards affordable housing in the event that market conditions improve. Although the Council is encouraged by the applicant's agreement to a S106 overage clause, at our meeting on 24th August 2009 we also discussed the Secretary of State's recent appeal decision regarding Flemmingate whereby in acknowledgement of the current economic climate she recommended a S106 clause requiring submission of viability testing and affordable housing provision prior to implementation.

Given that the development is unviable and unlikely to be built in the current economic climate it is rational that the level of affordable housing/S106 contributions is assessed based on real values at the time of implementation, not ones based on current market conditions. The Secretary of State's recommendation is the Council's preference in view of the current development viability and the resulting low level of affordable housing offered. In the event that the LTGDC resolves to grant planning it is the Council's view that this should be reflected in the S106.

3. Impact on Other S106 Contributions

The Council's Development Control Committee Report dated 10th June 2009 (paragraph 8.24.11) identified that contributions received through the S106 should be used by the LTGDC towards the costs of provided the listed items of infrastructure and services to mitigate the impacts of the development. The total cost of the items listed in the committee report is approximately £2,206,000. This cost is broadly consistent with the Option 2

contribution offer of £6,000 per unit (which totals £2,052,000), but exceeds the Option 1 contribution offer of £3,000 per unit (which totals £1,026,000). Both options are also below the £10,000 per unit required in the LTGDC's S106 strategy.

Although Option 1 is preferable in terms of affordable housing delivery, the level of contributions offered in Option 1 means that the development is unable to fully mitigate its impacts in terms of other key planning matters such as transportation, open space, skills training and education, as detailed in the Council's Committee Report. This leads the Council to conclude that with Option 1 the development cannot be justified or considered acceptable in relation to these other planning matters. This issue needs to be considered by the LTGDC when making a planning decision.

Conclusion

The affordable housing offers remain contrary to policy expectations and the Borough's housing needs. The planning merits of the proposal are not considered to outweigh the significant shortcomings in affordable housing.

As a consequence the Council objects to the application on the basis of the unacceptable level of affordable housing and recommends that the LTGDC should refuse planning permission for the reason set out below.

Reason for Refusal:

1. The proposed development would provide an inadequate amount of affordable housing that fails to meet housing needs and achieve a mixed and balanced community, contrary to Policy S20 of the London Borough of Newham Unitary Development Plan (adopted June 2001 and saved from 27/09/2007 by direction from the Secretary of State), Policies 3A.9 and 3A.10 of the London Plan (Feb 2008: Consolidated with Alterations Since 2004) and the London Plan Housing SPG (Nov 2005).

In terms of a way forward, the Council's preference is that the scheme is redesigned so that it can incorporate some on-site social rented housing. If the applicant wishes to progress with the existing concept the Council considers that the level of on-site intermediate housing combined with the level of commuted sum towards off-site social rent should be closer to meeting the Council's housing needs by achieving a total affordable housing provision of 35% with a 60/40 split between social and intermediate tenures.

If the LTGDC does resolve to grant planning permission for the existing development, in this instance the Council considers that the LTGDC should seriously consider the use of a S106 clause requiring submission of viability testing and affordable housing provision prior to implementation, as suggested in the Secretary of State's appeal decision regarding Flemmingate. This approach would be a reasonable response to the current economic climate, the development viability and the resulting unacceptable level of affordable housing.

If, against the Council's recommendation, the LTGDC resolves to grant planning permission based on the current S106 options, in this instance the Council considers that maximising on-site affordable housing should take priority over other S106 financial

contributions and that Option 1 should therefore be pursued subject to any sums recovered via the overage (clawback) clause being directed towards off-site social rented accommodation until a provision of 35% affordable housing is delivered. The Council also requests to be consulted regarding the revenue triggers and thresholds.

The Council requests that the LTGDC's Planning Committee are updated regarding the Council's views, as set out in this letter.

Yours sincerely,



Chris Gascoigne

TEAM LEADER
DEVELOPMENT CONTROL
MAJOR APPLICATIONS: LTGDC & ODA AREA TEAM
For **PHYSICAL REGENERATION & DEVELOPMENT**

cc Lorraine Hughes – GVA Grimley
David Watkinson – GLA

