

Meeting: 10th September 2009
Agenda Item: 3
Report No: LTGDC/09/PC39



Planning Committee Report

London Thames Gateway Development Corporation

Planning Application LTGDC-08-145-FUL Report

Report of the Director of Planning

APPLICANT:	MCRP (No. 1) LLP
AGENT:	GVA Grimley Limited
PROPOSAL:	Demolition of existing buildings and erection of two buildings of ground plus 35 storeys and ground plus 10 storeys for a residential led mixed-use scheme comprising 342 residential units (use class C3), 1,040 sq.m. of commercial floor space (Use Class B1), 694.5 sq. m. of retail floor space (Use Class A1-A4) and 124 sq. m. of leisure floorspace (Use Class D2) with associated landscaping, amenity space, parking and plant.
LOCATION:	2 Broadway Chambers, Broadway, Stratford, London E15 4QS

1. Summary

- 1.1 This report relates to an application that LTGDC officers withdrew from Planning Committee on 11 June 2009 and the Committee subsequently considered and resolved to defer at its meeting on 9 July 2009, to enable discussion between LTGDC and the Applicant in respect of affordable housing and LTGDC's Planning Obligations Community Benefit Strategy.
- 1.2 Commercially sensitive monetary figures are not provided in this report. Those figures are available to Committee Members in Part II to this report.
- 1.3 The reports to June and July Planning Committees are appended to this report at Appendix 2.

2. Update

- 2.1 Members will recall that the London Borough of Newham's formal consultation response dated 11th June 2009 was received by LTGDC on 15th June 2009. That representation stated that the application was considered together with an update by Newham's Development Control Committee on the 10th June 2009 and that on balance, whilst the development is considered to be acceptable in terms of design, massing, layout, impacts on amenity, density and the quality of residential accommodation, the Council objects to the application on the basis of the unacceptable level of affordable housing. LB Newham therefore recommended LTGDC to refuse to grant planning permission for the following reason:

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 (February 2008: Consolidated with Alterations Since 2004) and the London Plan Housing SPG (Nov 2005).

- 2.2 A copy of Newham's representation was appended to the July report addendum at Appendix 1.
- 2.3 The Applicant submitted two financial appraisals on the 26th June 2009, based on an offer of 10% on site intermediate housing and an initial contribution of £2.05m (£6,000 per residential unit) in respect of LTGDC's Planning Obligations Community Benefit Strategy ("the Strategy"), stating that it reflects a negative land value and is therefore made in the absence of viability. At that time, LTGDC and the Applicant had not agreed a threshold level, which if exceeded would trigger the need for payment of the balance of the Discounted Standard Charge, i.e. £4,000 per residential unit; or the threshold level, which if exceeded would trigger the need for payment of the deferred element of the Standard Charge i.e. up to a maximum of £22,600 per residential unit.
- 2.4 On 23 July 2009, following further discussions after the deferral by the Committee at its July meeting, the Applicant submitted two options (both with and without social housing grant) in order to increase the affordable housing offer, which they stated can be used either independently or together. Those options being:

Option 1: Increase the amount of on-site intermediate affordable housing and reduce the s106 contribution. Illustrations provided at 10%, 11% and 12% on-site intermediate with resultant reduced s106 contributions of £2,193, £1,000 and £zero per residential unit respectively.

Option 2: Use any s106 monies which would otherwise have been generated once triggers are met, to provide off-site affordable housing. Illustrations are based on £90k/off-site affordable housing unit.

- 2.5 The submitted information was assessed by LB Newham Housing Services and Valuers and LTGDC Valuers. The options demonstrated that any increase in the provision of on-site affordable housing would result in a decrease in monies paid

towards the Strategy. A disparity remained as to appropriate 'trigger thresholds' between the appraisals which, accordingly, were not agreed. The affordable housing offer was still considered to be low. The assumed cost of an off-site affordable housing unit at £90k was considered to be too low. LTGDC also felt that a number of the additional allowances illustrated in the submission were not admissible. The detailed content and mechanisms included in the submission were considered to require further refinement and were not agreed.

- 2.6 A revised analysis dated 30th July 2009 was submitted by the Applicant on 31st July 2009, illustrating two options, as follows:

Option 1: Intermediate housing at 10%, 11% and 12% with resultant decreases in the s106 offer to achieve the same viability;

Option 2: Use of an overage clause in a s106 to achieve additional off-site affordable housing units @ £120,000/unit; and

Options 1 & 2 combined: At 10%, 11% and 12% on-site intermediate; with total contributions towards The Strategy reaching £zero after 11%.

- 2.7 Having considered the submissions made by the applicant The London Borough of Newham made a formal representation to LTGDC dated 17th August 2009. Newham stated that:

“the affordable housing offer remains contrary to policy expectations and 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, unless there is an appropriate increase in provision for affordable housing.

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).

If, against the Council's recommendation, the LTGDC resolves to grant planning permission based on the current S106 offer, in this instance the Council considers that allocation options maximising on-site affordable housing should take priority over other S106 financial contributions and that an affordable housing focussed S106 overage clause should be pursued”.

- 2.8 A copy of Newham's representation (dated 17th August 2009) is appended to this report at Appendix 1.

- 2.9 LTGDC and LB Newham met with the Applicant on 19th August 2009. Subsequently, the Applicant provided three appraisals showing the impact on

viability of 25%, 30% and 35% affordable housing, with 60% of the affordable housing provision being off-site payment(s) in lieu of on-site social rented accommodation. An appraisal was also provided illustrating the impact of a proposal with 25% on-site with a 60/40 social/intermediate split. Those appraisals illustrated that none of the scenarios are viable as they would all generate negative land values (in excess of circa £20m).

2.10 Further, the Applicant also provided additional scenarios which assume the entire social rented component on-site (as opposed to a commuted payment for off-site social rent). Again, this scenario demonstrates the scheme to be unviable.

3. Applicant's final offer in respect of affordable housing and LTGDC's Planning Obligations Community Benefit Strategy

3.1 On 26th August 2009, the Applicant submitted its final offers, comprising two options, as follows:

Option 1: 10% on-site intermediate (34 no. units) plus 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, plus s106 contribution of £3,000/unit (£1.026m) plus a claw-back arrangement.

Option 2: 10% on-site intermediate (34 no. units) plus 2% off-site (equivalent 7 no. units) social rented commuted payments (£840k @ £120/unit) = total affordable offer of 41 units or 12% by unit number, plus s106 of £6,000/unit (£2.052m) plus a claw-back arrangement.

3.2 The applicants have stated that the offer(s) is made subject to the following conditions:

1. The offer is made on a without prejudice and subject to contract basis;
2. The offer is made in the absence of any viability as shown in the submitted financial appraisals;
3. The conditions of the offer are all as per the Applicant's previous offer made 25th June save for the actual % affordable, s106 contribution and relevant baseline / trigger thresholds;
4. Any s106 or statutory commuted payments would be made on a 20/80 split, namely 20% of Base payment is due at start on site with the remaining 80% or the Base payment plus any Deferred amounts paid at practical completion of those relevant private residential units;
5. The commuted sum for providing one off-site social rented unit is assumed as being £120,000/unit;
6. Social Housing Grant has been assumed in the offer at circa £37,500/intermediate unit. Should Grant not be available at the stated level then the thresholds (baseline and triggers) will need to increase;
7. A proportion of the on-site intermediate units could be larger family units (up to 10% could be 3 bed units with the remaining 90% (by unit number) split equally between 1 and 2 units). For the avoidance of doubt 10% on-site intermediate by unit numbers equates to 15 x 1 beds, 15 x 2 beds

- and 4 x 3 beds. Newham have expressed that the provision of on-site family units is key to their local housing needs;
8. Protect - Commercially sensitive (fees / values / cap rates);
 9. The Applicant would support in principle the option of providing additional off-site rented units to meet London Borough of Newham's housing needs, which would be achieved through the clawback "overage" agreement. In Option 2, the Applicant would prefer to see an additional 3% (or 10 no. off-site commuted payments) such that the total affordable housing offer achieved was 15%, as per Option 1;
 10. The calculation of the average private sales receipts to determine any Deferred charge is based on all private residential units sold historically (within the project) up to the end of the year in which practical completion of a particular unit occurs;
 11. Payment of any Deferred charge then occurs by the end of the next Quarter after the end of the year;
 12. Deferred charges apply only to the private residential units as per the LTGDC draft s106 agreement. There is no deferred charge for any affordable housing units (on or off site);
 13. Trigger thresholds are subject to indexation of inflation only (excluding deflation) using the Royal Institution of Chartered Surveyors (RICS) London Residential Index or other similar agreed Index from the time of signing the s106 legal agreement until completion of the last residential unit;
 14. Protect - Commercially sensitive (values);
 15. Trigger thresholds are calculated as an average of the total receipts for all private residential units;
 16. Basis of commercial assessment – Protect – Commercially sensitive; and
 17. The consent is issued with a five year life.

4. Officer consideration of Applicant's offer

- 4.1 PPS3: Housing (November 2006) states that: In Local Development Documents, Local Planning Authorities should:
- Set an overall (i.e. plan-wide) target for the amount of affordable housing to be provided. The target should reflect the new definition of affordable housing in PPS3. It should also reflect an assessment of the likely economic viability of land for housing within the area, taking account of risks to delivery and drawing on informed assessments of the likely levels of finance available for affordable housing, including public subsidy and the level of developer contribution that can reasonably be secured. Local Planning Authorities should aim to ensure that provision of affordable housing meets the needs of both current and future occupier, taking into account information from the Strategic Housing Market Assessment.
 - Set out the approach to seeking developer contributions to facilitate the provision of affordable housing. In seeking developer contributions, the presumption is that affordable housing will be provided on the application site so that it contributes towards creating a mix of housing. However, where it can be robustly justified, off-site provision or a financial contribution in lieu

of on-site provision (of broadly equivalent value) may be accepted as long as the agreed approach contributes to the creation of mixed communities in the local authority area.

- 4.2 ODPM Circular 05/2005 provides guidance regarding Planning Obligations. In accordance with that guidance LTGDC's Planning Obligations Community Benefit Strategy seeks to pool a fair and reasonable scale of contributions, secured through planning obligations, to ensure that development contributes appropriately towards the infrastructure that needs to be provided in the LTGDC area.
- 4.3 Importantly, the Circular notes that contributions policies must be applied flexibly and must have regard to the circumstances of individual sites.
- 4.4 London Plan policy 3A.9 (Affordable housing targets) states that 50 per cent of housing provision should be affordable, within that, the Londonwide objective is that 70 percent be social housing and 30 per cent intermediate provision. Mixed and balanced communities are also promoted. The policy states that DPD policies should take account of the most robust available assessment of housing capacity, and of potential sources of supply, such as:
 - local authority developments, including net gain from estate regeneration
 - affordable housing schemes funded independently of planning contributions from private development
 - affordable housing secured through planning agreements or conditions on private residential or mixed use (including residential) development
 - long term vacant properties brought back into use
 - provision form non-self-contained accommodation.
- 4.5 London Plan policy 3A.10 (Negotiating affordable housing in individual private residential and mixed-use schemes) states that Boroughs should seek the maximum reasonable amount of affordable housing when negotiating on individual private residential and mixed-use schemes, having regard to their affordable housing targets adopted in line with Policy 3A.9, the need to encourage rather than restrain residential development and the individual circumstances of the site. The London Plan encourages Boroughs to apply targets in a flexible manner, taking account of the individual circumstances and costs for the site, the availability of public subsidy and other scheme requirements.
- 4.6 The Mayor of London published his draft London Housing Strategy in May 2009, for public consultation. The consultation period ended on 31st August 2009. One of the key proposed changes is the abolition of the current 50% affordable housing target.
- 4.7 The London Borough of Newham LDF is not sufficiently advanced to be afforded material weight in the decision making process of this planning application.
- 4.8 London Borough of Newham Policy H7, entitled 'Affordable Housing in New Residential Development' was not saved by the Secretary of State and therefore expired on 27th September 2007.

- 4.9 London Borough of Newham Policy S20 states that the Council will seek through negotiation, to make provision towards the Borough's affordable housing needs in new housing schemes. The proposed approach would accord with this policy.
- 4.10 To this end, LTGDC officers and advisers have undertaken a lengthy examination of the viability case submitted by the Applicant, and have arranged for an independent cost review of the proposals to be completed by quantity surveyors Cyril Sweett. The evaluation exercise conducted by LTGDC considered all aspects of the Applicant's development appraisal, and accounted for representations made by LB Newham on cost and value inputs as well as the Valuation Office, who are presently providing an advisory role to the Mayor of London's Office on viability assessments.
- 4.11 During the course of negotiations, concessions were made by the Applicant on elements of value and cost within their current viability case in a bid to achieve consensus against LTGDC's own assessment of viability. As a result of the assessment undertaken LTGDC accepts the Applicant's assertion that against current development parameters and policy requirements the scheme is clearly not viable, and achieves only a nominal return which would be far from what would be normally acceptable against a project of this size and complexity.
- 4.12 The applicant expects that an improvement in market conditions will allow a more favourable consideration of the project's prospects for delivery in the short to medium term, and is keen to secure a planning permission which could be implemented should these expectations materialise. For these reasons the applicant has been keen to negotiate and agree the parameters under which the scheme would return to viability and would in turn be implementable. Negotiations have therefore been conducted in relation to a "trigger level appraisal", which describes the circumstances under which the applicant's current S106 offer would be delivered.
- 4.13 A key precursor to implementation of the scheme would be an improvement in achievable private residential sales values in the region of approximately £'protect – commercially sensitive' per square foot, which would return the viability of the project to a level of 'protect – commercially sensitive'% profit on revenue, which would be accepted by funders, and is the trigger level applied by the Valuation Office. The timescale for a change of this magnitude is clearly uncertain, and for these reasons the agreement of appropriate inputs within the trigger appraisal is subject to some debate. The applicant's offer reflects private sales revenues reaching £'protect – commercially sensitive' per square foot before a position of viability allowing the scheme to be implemented is achieved. Against this LTGDC has conducted a number of trigger threshold tests, considering varying appraisal inputs over the medium term. These studies suggest depending how appraisal inputs are manipulated that arguments could be raised that the necessary revenue threshold for implementation is anywhere up to £'protect – commercially sensitive' per square foot less than the £'protect – commercially sensitive' per square foot threshold linked to the applicant's offer. Whilst this gap represents a significant sum of money, the UDC accepts that in the period between these viability assessments, and the point where revenues rise to allow implementation a number of key variables on the project are no doubt likely to change.

- 4.14 It should be highlighted that the form of offer presented by the Applicant, leaves them fully at risk in respect of market movements going forward and given the scale of the project a small movement in any one of a number of parameters would materially impact upon the viability appraisal. At present interest costs in the appraisal are calculated at a rate of 7%, supported by the Bank of England base rate being at an historic low. As a first example, were the assumed financing costs within the appraisal to increase, each half point interest rate movement would add approximately half a million pounds to the overall project costs.
- 4.15 Similarly in arriving at their offer, the scale of the project dictates that the Applicants are required to undertake an assessment of future build cost movements. Current estimates of cost inflation vary, and as with all forecasts weaken considerably the further they are set into the future, particularly with the unknown effect of the Olympic Park's impending construction deadline. The forecast of construction inflation also needs to be considered against varying expectations of the necessary sales revenue growth, which would allow the project's commencement to be funded. For these reasons the timing risk associated with construction cost inflation is also significant. By way of example one year's cost inflation to the project at historic trend levels of 3-4% per annum would add between two and two and a half million pounds to the project costs.
- 4.16 As the applicant is fully exposed to not only the above, but a significant number of other commercial risks, LTGDC is satisfied that the Applicant's offer is within reasonable grounds of commercial tolerance taken against unconstrained market uncertainties which remain for the applicant and the future timeline under which the project is to be delivered.
- 4.17 LTGDC officers have considered the above options and proposed conditions. Option 1 would be favoured, as it offers the higher affordable housing percentage, being: 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 plus s106 contribution of £3,000/unit (£1.026m), in addition to the clawback arrangement.
- 4.18 LTGDC supports the Mayor of London's strategic target that 50% of all additional housing should be affordable. At Planning Committee Members request, officers have sought an increase in the provision of affordable housing. The viability case presented by the Applicant demonstrates that the 50% target is not deliverable in the case of the subject development. LTGDC will still seek to apply the Strategy, accepting a reduced initial payment towards the Discounted Standard Charge because it has been demonstrated that the development would otherwise be unviable.
- 4.19 The provision of affordable housing offered may be acceptable, subject to appropriate planning conditions and planning obligations in the context of this scheme because evaluation of the financial appraisal to date demonstrates that the viability position of the scheme may be detrimentally undermined if a higher proportion of affordable housing were required by LTGDC at this time. This would have a significant adverse impact on the delivery of housing in this instance and discord with London Plan Policy 3A.10, which allows targets to be applied flexibly, taking account of individual site costs, the availability of public subsidy and other

scheme requirements. Whilst the offer may be acceptable to LTGDC in broad terms, the Applicant's suggested conditions (listed at section 3.2 above) are not accepted. In particular, LTGDC would only grant planning permission for three years based upon the current economic climate and not that of five years time. LTGDC would expect there to be some recovery in residential values going forward from September 2009. Officers consider it important that consideration is given not just to the short term, but also to longer term economic recovery and the role of s106 in that recovery. Any resolution to grant planning permission would be subject to amendment of the suggested conditions to the satisfaction of LTGDC.

- 4.20 It has been demonstrated that the design of the buildings do not lend themselves favourably to being able to provide Social, Intermediate and Private tenures all together from an operation or cost efficiency point of view. As such, if approved, social housing provision would be off-site.
- 4.21 The site is less suitable for family housing and the proposed dwelling mix is considered acceptable. That said, the potential offer of additional 3 bed intermediate housing can be considered further, in consultation with LB Newham, taking into account its housing needs.
- 4.22 LTGDC officers agree that funds secured through the s106 should be made available for the provision of off-site social rented accommodation, subject to realised sales values and agreed trigger mechanisms.
- 4.23 The Applicant has not demonstrated where any off-site affordable housing units would be located. If LTGDC were minded to resolve to grant planning permission, it would seek assurance that any commuted sums to be apportioned for the provision of off-site social housing are used to provide social housing in addition to any units that are already scheduled to be delivered. LTGDC will collect the commuted sums and only release them to Newham when it is satisfied that viable and available sites have been identified. This would demonstrate actual delivery of additional social housing.
- 4.24 Officers accept that the Applicant's offer is made in the absence of viability.
- 4.25 Officers have considered Newham's objection. It is noted that Newham accept the viability case presented by the Applicant on which LTGDC 's officers have reached their conclusion.

5. Conclusion

- 5.1 ODPM Circular 05/2005 (Planning Obligations) states that Local Planning Authorities are to consider each planning application on its merits and reach a decision based on whether the application accords with the relevant development plan, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused. However, in some instances, it may be possible to make acceptable development proposals which might otherwise be unacceptable, through the use of planning conditions or, where this is not possible, through planning obligations.

- 5.2 LTGDC officers find that the proposed development accords with the provisions of the development plan (London Plan).
- 5.3 Officers have considered the scheme viability in the current economic climate as described in section 4 of this report.
- 5.4 An offer has been made in respect of LTGDC's Planning Obligations Community Benefit Strategy ("the Strategy"), which is subject to further negotiations between the Applicant and LTGDC Officers. LTGDC would seek the Applicant to contribute an initial Discounted Standard Charge of £3,000 per residential ("the Base payment") unit as follows:
- 5.5.1 20% of Base payment i.e. £600 per unit, payable on implementation of the planning permission;
- 5.5.2 80% of Base payment i.e. £2,400 per unit, payable on practical completion of the residential units comprised in the proposed development; and
- 5.5.3 The balance of Discounted Standard Charge, i.e. £7,000 per unit, payable on practical completion of the residential units comprised in the proposed development, subject to realised average sales values, exceeding a threshold level, which remains to be agreed.
- 5.5 In addition to the above, and in accordance with the Strategy, the Applicant should pay the deferred element of the Standard Charge (i.e. balance up to £22,600) per residential unit, subject to realised average sales, exceeding threshold levels, which also remain to be agreed.
- 5.6 Heads of terms for a Section 106 Agreement :
- In line with the Applicant's Option 1 offer dated 26th August 2009 the Applicant / Developer shall commit to provide 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 and a claw-back arrangement;
 - Financial contributions to be subject to indexation in accordance with Building Cost Information Service (BCIS) All-in Tender Price (From April 2007);
 - Payment of LTGDC's Standard Charge in accordance with its Planning Obligations Community Benefit Strategy (March 2008);
 - Submission of and adherence to a Framework Travel Plan – conforming to the TfL guidance document 'Guidance for residential travel planning in London' (2008). To be secured, managed, monitored and enforced;
 - Commitment to renewables (min 20% reduction in CO₂ emissions);
 - Submission of and adherence to a Local Labour Commitment Scheme;
 - Future residents of the development to be excluded from obtaining parking permits for the surrounding on-street CPZ;
 - Provision of TV reception mitigation measures;
 - Payment of a financial contribution towards works to the public highway within the vicinity of the application site and the entering into of a section 278 agreement for that purpose;
 - Environmental Monitoring;

- Payment of a financial contribution towards CCTV;
- Payment of LTGDC's legal, professional and monitoring costs.

- 5.7 Whilst LTGDC officers are content that an offer has been made in respect of financial contributions, which broadly accords with development plan policy and the Strategy, negotiations are ongoing with regard to the terms of the section 106 agreement. Officers remain confident that acceptable terms can be agreed in line with the above.
- 5.8 The financial viability of the proposed development is considered to be a material consideration in the determination of the application, which, on balance, could be granted planning permission with the imposition of appropriately worded planning conditions and planning obligations in accordance with Circular 05/2005.
- 5.9 LTGDC's officer report dated 11th June 2009 recognised that the scheme is one which represents a very good design solution to this prominent site which would provide a landmark development that supports the regeneration of Stratford providing a positive impact it can have on the image of Stratford, within the wider Lea Valley area. On balance, it is considered that these considerations outweigh the development's failure to fully comply with affordable housing development plan policies.
- 5.10 Consequently, Members are requested to agree to delegate authority to the Director of Planning to: (i) grant full planning permission subject to the conditions and informatives listed at section 11.1 of the main officer report dated 11th June 2009, together with any amendments or additions that he considers necessary; (ii) approve the level of affordable housing provision at no less than 10% on-site intermediate (34 no. units) and 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 plus a clawback arrangement; and (iii) approve the realised average sales values, which would trigger payment of the balance of the Discounted Standard Charge and the deferred element of the Standard Charge respectively by the Applicant; subject to:
- 1) Referral of the application to the Mayor of London as a Stage 2 referral confirming that LTGDC is minded to grant planning permission;
 - 2) Any direction by the Mayor of London;
 - 3) The completion of a legal agreement under S106 of the Town and Country Planning Act 1990 (as amended) and other relevant legislation between LTGDC and the Applicant covering the Heads of Terms set out at 3.5 above.

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

Appendix 1: Letter from London Borough of Newham dated 17th August 2009

Appendix 2: Officer Report dated 9th July 2009, including appendices, and Officer Report dated 11th June 2009, including appendices and addendum.