



Appeal Decision

Inquiry Held on 4 June 2019

Site visit made on 12 June 2019

by **S R G Baird BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Housing,
Communities and Local Government**

Decision date: 26th June 2019

Appeal Ref: APP/G5180/W/18/3206569

Land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Relta Limited and Dylon 2 Limited against the Council of the London Borough of Bromley.
 - The application Ref DC/18/01319/FULL1, is dated 19 March 2018.
 - The development proposed is the demolition of existing buildings and the redevelopment of the site by the erection of a 4 to 8-storey development comprising 151 residential units (63, one-bedroom; 80, 2-bedroom & 8, 3-bedroom) together with the construction of an estate road, ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and the redevelopment of the site by the erection of a 4 to 8-storey development comprising 151 residential units (63, one-bedroom; 80, 2-bedroom & 8, 3-bedroom) together with the construction of an estate road, ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public on land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5BQ in accordance with the terms of the application, Ref DC/18/01319/FULL1, dated 19 March 2018, subject to the conditions attached at Annex 4.

Application for costs

2. Three applications for the award of costs were made. Two applications, one for a full award and one for a partial award, were made by the Council of the London Borough of Bromley (LBB) against Relta Limited and Dylon 2 Limited. One application for a partial award of costs was made by Relta Limited and Dylon 2 Limited against the Council of the London Borough of Bromley. These applications are to be the subject of separate decisions.

Preliminary Matters

3. The local planning authority (lpa) indicated that had jurisdiction for determining this application not been transferred to the Secretary of State it would have been refused. The putative reasons for refusal, Annex 3, refer to conflict with the London Plan (LP), the Bromley Unitary Development Plan and the draft Bromley Local Plan (BLP). The BLP was adopted in January 2019.
4. The appellants submit a S106 Unilateral Undertaking (UU) relating to: affordable housing (AH); the provision of public open space; car club spaces; a Travel Plan; wheelchair housing; electric vehicle charging points; financial contributions for education (£343,573), health (£192,072), highways (£30,000), traffic (£5,000), carbon offsetting (£137,466) and the payment of an Obligation Monitoring Fee (£2,000).
5. The inquiry was closed in writing on 25 June 2019.

Main Issues

6. The BLP designates the site as Metropolitan Open Land (MOL), which has the same level of protection as Green Belt. It is agreed that the proposed scheme is inappropriate development. The main issues are:
 - a. whether, having regard to the National Planning Policy Framework - February 2019 (Framework) and Planning Policy Guidance (PPG), the lpa can demonstrate a 5-year supply of land for housing;
 - b. the effect on the openness of the MOL;
 - c. the effect on the character and appearance of the area, with particular reference to, scale, mass, design and finish;
 - d. the implications for the living conditions of prospective residents with regard to layout and orientation;
 - e. whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, if so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Housing Land Supply (HLS)

7. Framework paragraph 73 requires the lpa to identify and update annually a supply of specific deliverable sites to provide a minimum of 5-years' worth of housing against the adopted strategic housing requirement. Further to Policy 3.3 of The London Plan 2016 (LP), Bromley should seek to achieve and exceed a minimum annual average housing target of 641 dwellings per annum (dpa). The agreed 5-year minimum requirement including a 5% buffer for the period December 2018 to 2023 is 3,365 dwellings.
8. The lpa calculates its housing land supply (HLS) position as some 5.6-years and the appellants at some 3.2-years. The difference turns on a difference of opinion on the contribution from: allocated sites; large sites with planning permission/commenced; non self-contained units, small sites started and windfalls. In examining the HLS position, I have had regard to the Maybrey Works appeal decision July 2018 (APP/G5180/W/17/3181977) and the BLP

Inspector's Report, following examination in December 2017, and published in December 2018.

9. Framework Annex 2 and PPG indicates which sites can be included within the 5-year supply. Whilst the 2019 Framework definition largely repeats the wording of Footnote 11 to the 2012 Framework, this is an overarching reference to be read in the context of the paragraph as a whole. The relevant part says that a site with outline planning permission for major development or a site allocated in the development plan can be included within the 5-year HLS. However, there is no presumption of deliverability and the lpa has to justify their inclusion with clear evidence that completions will begin within 5 years. The PPG provides a non-exhaustive list of examples of the type of evidence that would justify the inclusion of such sites in the 5-year supply.

Local Plan Allocations

10. For some sites, the lpa's evidence relies solely on the conclusion of the BLP Examining Inspector (EI). However, the EI, as did the Maybrey Works Inspector, considered the sites in the context of the 2012 Framework where the onus was on objectors to rebut the premise of deliverability. I am not aware of the extent of the evidence the EI had to consider, which post-dated the Maybrey Works decision. However, when she uses phrases such as "...there is nothing currently to suggest..." this does not suggest to me that she had the breadth and type of evidence before me or my colleague. Thus, I must temper her conclusions with the evidence now and the requirement of the 2019 Framework, which places the responsibility squarely on the lpa to provide clear evidence.
11. *Land next to Bromley North Station* is listed as contributing 120 units to the 5-year supply. This site is subject to significant constraints including, being in the setting of a Listed Building, multiple ownerships, contaminated land and the relocation costs of bus and parking facilities. Whilst in September 2018 the lpa resolved that a Masterplan should be prepared there is nothing before me to show any progress. Although a full planning application was submitted, it drew substantial public objection and was refused in October 2018 because of adverse effects on, amongst other things, the Listed Building and potential prejudice to the comprehensive development of the wider allocation. No planning appeal has been submitted and the lpa was unable to say whether there had been any post-refusal discussions or whether the viability appraisal carried out in 2017 remained valid.
12. *Gas Holder Site, Holmesdale Road*, is slated as contributing 60 units to the 5-year supply. Whilst progress has been made since the July 2018 appeal decision (the gas holders have been demolished) that would appear not to be the only impediment to development. Such sites are generally the subject of significant contamination and require extensive remediation. However, the lpa could provide no information as to the extent of the remediation required or the outcome of any discussions with potential developers. There is no planning application, no indication that one is being considered and no evidence from a potential developer or the landowner of their intentions.
13. *Land adjacent to Bickley Station*, has an allocation for 30 units. The site is Network Rail operational land and houses a scaffolding company and a telecommunications mast. The site is subject to constraints including potential contamination, a need for replacement car parking and the ticket

hall. In late 2017 Network Rail identified the potential to release this land for development in 2019. Whilst one use has left, very little appears to have happened since. The lpa provided me with a Network Rail email dated January 2019 advising that pre-application discussions would take place shortly. However, some 4 months later, there is no indication that anything has happened.

14. *Homefield Rise, Orpington*, allocated for 87 dwellings, is an occupied site on the edge of the town centre. A planning application for 105 units was refused and dismissed on appeal in 2018. Whilst a further application has been submitted this is for 9 units and has yet to be determined. Whilst these applications indicate interest in the site, the difference between the 87 dwelling allocation and the current application for 9 dwellings is unexplained.
15. The *Small Halls, York Rise site and Banbury House* are sites allocated to provide 35 and 25 units respectively and can be dealt with together. These Council owned sites are to be used for modular housing for temporary affordable housing. The lpa produced copies of a Committee report and draft minutes outlining the Council's keenness to progress these schemes. However, whilst I do not doubt the Council's commitment to taking these schemes forward, the evidence before me suggests that there is considerable work yet to be done, particularly in terms of identifying providers, dealing with potential contamination and obtaining planning permission. There is no planning timetable for the delivery of this site.

Large Sites with Planning Permission/Commenced

16. *Crystal Palace Park* is a complex and controversial site where an enabling scheme for the regeneration of this historic park (the regeneration plan) for some 200 units, of which 130 are slated to begin within the relevant 5-year period, is proposed. Outline planning permission was granted in 2007 for 130 units with a 15-year time limit. Other than the lpa indicating that a further outline planning application will be submitted in late 2019 with works likely to commence in 2021 little appears to have happened. Given that this is enabling development and residential development within the Park is controversial, the scheme will be the subject of intense public scrutiny. In these circumstances, and given the limited progress since 2007, it strikes me that the lpa's timetable is incredibly ambitious.
17. *Langley Court and Langley Court C2* is a site with outline planning permission for 179 units granted in 2014 that has been partially implemented. It is accepted that this scheme will not proceed, and a planning application has been lodged for 280 residential units and 100-unit C2 care home. The lpa resolved to grant full planning permission in November 2018 subject to the signing of a S106 Agreement. Moreover, the scheme is subject to a Greater London Authority (GLA) Stage 2 referral. Some 5 to 6 months since the lpa indicated support for the scheme there is no indication as to the progress towards signing the S106 Agreement or the outcome of the Stage 2 referral.
18. To enable sites to be considered for inclusion within the 5-year HLS the responsibility with the lpa to provide clear evidence that housing completions will begin within the relevant 5-year period. Here, what the lpa has provided comes, in my view, nowhere close to the clear evidence to demonstrate that there is a realistic prospect that housing completions will begin on site within the relevant 5-year period. Thus, without addressing the issues regarding

windfalls, dwelling uplift, completions before the base date and office to residential conversions, my conclusions on the contribution of allocated sites and sites with outline planning permission reduces the lpa's HLS to some 4.25-years. This is materially below a level of undersupply that the lpa acknowledged would be significant. Accordingly, I do not need to go there. I conclude that the lpa cannot support the submission that it can demonstrate a 5-year HLS.

Openness of the MOL

19. The extent to which the site contributes to the purposes of the MOL designation is academic. The site is designated MOL and subject to Green Belt policies and it is against this background that the proposal is to be determined.
20. One of the characteristics of the MOL is openness, which has a spatial and visual dimension. In terms of the spatial dimension and land being free from development, part of the site is previously developed land in the form of sports pavilions, storage and storage areas associated with the former industrial use of the adjoining site. The previously developed land amounts to some 38% of the site. The storage areas and single-storey buildings are barely visible from ground level outside the site. The proposed development would result in some 37% of the site being covered in buildings and as such would have no greater impact on openness.
21. The proposal comprises 2 buildings; the northern building, which would adjoin the existing 8-storey Dylon 1 development and close to the 5 to 9-storey Maybrey Works scheme, would be 5 to 8-storeys and the southern building would be 3 to 5-storeys in height. From the limited number of vantage points mostly located to the north-east and the east, views of the buildings would be limited. In most views, the lower, southern building would either be wholly screened, even in winter, by existing dense landscaping. Where views could be obtained it would be seen against the backdrop of existing development and materially below the skyline to the west and south-west. The northern building would be more visible, but its impact would be reduced in that it would barely break the skyline to the west. In this context, whilst the buildings would have a material impact on openness, that impact would be mitigated by the level of existing screening, its setting below the skyline and the gap between the buildings.

Character & Appearance

Tall Buildings

22. The lpa suggests that the appeal site is an inappropriate location for a tall building and would conflict with BLP Policy 47¹. Although the putative reason for refusal does not refer to LP Policy 7.7, the Committee report and evidence to the inquiry does, and I have considered the scheme in the light of both policies. These policies are not a bar to the development of tall buildings. Rather proposals need to be tested against the relevant criteria.
23. The supporting text to both policies defines tall buildings as those that are substantially taller than their surroundings and cause a significant change to

¹ Formerly UDP Policy BE17.

the skyline. It is important to note that the Inspectors in the 2016 appeal decision² (10-storeys) on this site and the Maybrey Works decision (5-9-storeys) were not referred to either the LP or UDP policies on tall buildings, even though the Maybrey Works site is in what the LP identifies as a sensitive location i.e. on the edge of the MOL. Moreover, the GLA when it considered the current proposal under the Stage 1 referral procedure, makes no reference to LP Policy 7.7. Given that the report is comprehensive, and the site is located within the MOL, I do not consider the GLA's lack of testing against LP Policy 7.7 to be an omission.

24. Although the site is on the edge of a swathe of MOL, the Dylon 1 building, the emerging Maybrey Works building and the extensive industrial estate to the west that houses a range of buildings of various heights are a significant part of the general surroundings. In this context, the proposed buildings, given they would descend from 8-storeys in the north to 3-storeys in the south would not exceed the general height of their surroundings. Moreover, when viewed from available vantage points, particularly to the west, the proposed buildings would not materially break or result in a significant change to the skyline. Accordingly, for the purposes of this appeal, the buildings are not tall buildings and LP Policy 7.7 and BLP Policy 47 are not relevant. This approach is consistent with that adopted by Inspectors in 2010³, 2016 and 2018 when dealing with proposals in this area.

Design, Scale and Massing

25. LP Policies 7.1, 7.4, 7.5, 7.6 and BLP Policies 4, 37 and 77, amongst other things, seek to ensure that new development achieves high standards of design, layout and space around buildings to contribute to placemaking. The appellants have sought to address the concerns expressed about the 2016 scheme in terms of height and length creating a building of monumental character that would enclose and dominate the landscaped park and the MOL to the east thus diminishing the sense of space.
26. The execution of the current scheme is fundamentally different in terms of its design, scale and mass. Instead of a single 150m long, 10-storey high block there would be 2 blocks of varying height separated by a substantial area of accessible open space. The northern block would start at 8-storeys high and descend to 5-storeys. The southern block would start at 5-storeys and descend to 3. This staggering of height combined with the separation of the buildings, the finesse of the design and detailing, particularly the extensive use of glazing, combine to create a development of exceptional architectural placemaking quality that has a lightness of touch and appearance. The setting of the development along the western edge of the site, the extent of the landscaped and publicly accessible park to the east and south combined with the lighter scale and mass of the development combine to create a development that relates sympathetically to the site and the MOL.
27. Drawing the above together, the development would not unacceptably affect the character and appearance of the area and would not conflict with the objectives of LP Policies 7.1, 7.4, 7.5, 7.6 and BLP Policies 4, 37 and 77.

² APP/G5180/W/16/3144248

³ APP/G5180/A/09/2114194.

Living Conditions

28. GLA produced Supplementary Planning Guidance (SPG) on Housing – March 2016 indicates that developments should minimise the number of single aspect dwellings (Standard 29). The SPG does not specify a level at which the number of single aspect dwellings becomes unacceptable. What it does indicate is that where single aspect units are provided, they adequately address issues such as noise, ventilation and daylight. Here, some 64 would be single-aspect of which 25 would face the railway/industrial estate and the remainder face mostly east over the park and wider MOL. The appellants' submissions that the angled nature of the windows to many of these units make them dual aspect is novel. However, these angled windows are akin to the bay window, a feature the SPG specifically indicates does not constitute dual aspect. That said, the combination of the extensive glazing, the inclusion of balconies and winter gardens would provide a high degree of natural light within the units. Moreover, on the east side of the buildings this combination would provide for a high-quality outlook. The single aspect units on the west side also have extensive areas of glazing providing adequate daylight and would be protected from unacceptable levels of noise by the provision of appropriate ventilation systems. This is not unusual for dwellings in this type of area. Whilst the outlook from the west facing flats is more urban comprising the railway and the industrial estate this is not unusual for London. Similar developments can be viewed from almost any railway line from the suburbs to the centre.
29. Three units (8, 9 & 10) on the ground-floor of the northern block would have private terraces, which it is suggested would experience a loss of privacy and also impact on No. 6. The depth, orientation and proximity to each other and their habitable room windows could lead to a degree of overlooking that would go beyond that which would normally be expected in an urban area. However, this is a matter that could be dealt with by imposing an appropriate condition.
30. The proposed development would not result in unacceptable living conditions for future residents or conflict with the objectives of the SPG or BLP Policy 37.

Very Special Circumstances

31. The considerations do not have to be rare or uncommon to be special⁴ and there is no restriction on what might be considered as an "other consideration"⁵.
32. In determining the weight to be attached to the contribution of the market and affordable housing in the absence of a 5-year HLS, I have looked at it in the wider national and local context. Ministerial speeches and Government commissioned reports stretching back several years set out in stark relief the scale of the housing crisis. The consequences of this crisis are that *"...ordinary families, young people starting out in life and many others struggling to secure that most basic of human needs – a place to call their own – and being denied the opportunities that come with it."*⁶ LP Policy 3.3 highlights the pressing needs for more housing in London and Boroughs are

⁴ Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692.

⁵ Brentwood Borough Council v Secretary of State for the Environment [1996] 72 P&CR 61.

⁶ Rt. Honourable James Brokenshire Secretary of State, MHCLG.

- required to met and exceed their required minimum allocation to close the gap between identified housing need and supply.
33. For Bromley, the 2014 South East Strategic Housing Market Assessment identifies a AH requirement of some 1,404 dpa for the next 20 years. Currently, there are some 3,477 households on the Council's, heavily circumscribed, housing waiting list. For those accepted on the waiting list, there is an average wait time of 1.3-years for a one-bed home, 2.7-years for a 2-bed home and 2.6 -years for a 3-bed home. In 2017/18 there were some 630 households accepted as homeless. In April 2019 there were some 391 households housed in temporary accommodation in the Borough and 831 households housed in temporary accommodation outside Bromley. In terms of housing affordability, the average house price in Bromley is 67% higher than the national average and the average house price to average income ratio sits at 14:26. The position on rents is just as startling. In 2017/2018, the average private rental market rent was some £1,226 as opposed to the average Registered Providers rent of some £509.
 34. Figures produced by the GLA show the provision of 858 units of AH in the last 6.5 years. The GLA figure is much higher than the lpa's own figures from the Annual Monitoring Report, which shows for the period 2012 to 2017 that 65 affordable dwellings had been provided. This figure is very similar to that noted in the Maybrey Works appeal decision when the Inspector noted in relation to AH that, "*...the Council acknowledges has not been well catered for, an average of only 13 being delivered in the last 5 years*".
 35. The future position for general and affordable housing looks bleak. Based on the lpa's existing 5-year supply figures the forecast total amount of AH is some 405 units, some 28% of the identified annual requirement. In terms of housing need, the emerging LP is currently being examined which sets a target for Bromley at 1,424 dpa; well over twice the current target. Whilst the emerging plan attracts reduced weight it does represent the most up-to-date evidence on housing need, the grave housing crisis facing London and the direction of travel. Even if this figure is adjusted following the examination, it is reasonable to assume that Bromley's housing target is going to increase materially. Considering the above, *very substantial weight* attaches to the contribution of this scheme to the provision of market housing and particularly the pressing need for affordable housing.
 36. The lpa submits that only moderate weight should be attached to the environmental and recreational benefits of the scheme i.e. a new park, Pool River restoration, Waterlink Way and Green Chain extension and improving damaged land. The appellants suggest that when these elements are assessed collectively, the recreational and environmental benefits attract very significant weight. Although the immediate area is blessed with an extensive area of recreational land it is for the most part not publicly accessible. The public park, which would include a play area and an outdoor gym, would be a significant amenity for the wider community and a positive enhancement. Framework paragraph 141 encourages the seeking out of opportunities to provide access to areas for outdoor recreation, to enhance landscapes and biodiversity and to improve damaged land. In this context, *very significant weight* attaches to the recreational and environmental benefits that would be derived from this scheme.

37. I have noted the lpa's submission that good design is indivisible from the policy context. That said, the wider area is not blessed with good quality architecture/layout and the appellants are to be commended for engaging an architect and practice of national and international repute. The building is of high architectural quality and the site layout would contribute to a significant improvement of the townscape of this part of Lower Sydenham. Accordingly, *significant weight* attaches to the architectural and townscape quality of this scheme. It is agreed that *moderate weight* attaches to the economic, locational regeneration benefits of the scheme.
38. The starting point is that substantial weight is attached to any harm to the MOL by reason of inappropriateness and any other harm resulting from the proposal. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Further to LP Policy 7.17 and BLP Policy 50, the proposal is inappropriate development and there would be material harm to the openness of the MOL. Bearing in mind, Ministerial Statements in 2013, 2014 and 2015 indicate that the single issue of unmet demand for housing is unlikely to outweigh harm/other harm to constitute very special circumstances, I conclude that, taken together, the other considerations in this scheme clearly outweigh the harm identified and amount to the very special circumstances necessary to justify the development.

Other Matters.

39. Based on the contents of the CIL Compliance Schedule, the provisions of the UU, except those relating to the Obligation Monitoring Fee, meet the tests set out in Framework paragraph 56 and CIL Regulations 122/123. I attach significant weight to the UU. On the Obligation Monitoring Fee, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggests that a lpa could or should claim monitoring fees as part of a planning obligation. Monitoring and administration are a standard function of the Council. That said, case law⁷ recognises that, given the general nature of the Framework/CIL tests, in exceptional cases (very large developments or a nationally significant project) a decision maker could conclude that the payment of a monitoring fee satisfied those tests. Neither of those exceptions apply here. In the absence of a full justification supported by evidence⁸, the payment of a monitoring fee is unnecessary to make the development acceptable in planning terms and fails the tests set out in the Framework/CIL Regulations 122 and, I have not taken it into account in coming to my decision.
40. The highway authority does not object to the proposal in terms of the impact on the local highway network. I have no reason to disagree. Station Approach is a 2-way cul-de-sac that gives access to the station and the one-way private access road that serves Dylon 1. Significant and sometimes indiscriminate on-street parking takes place on Station Approach and I can understand the residents' frustration. However, the monitoring of on-street parking and enforcement is a matter for the respective local authorities and would not justify withholding permission. The use and upkeep of the private

⁷ Oxfordshire County Council and (1) Secretary of State for Communities and Local Government, (2) Cala Management Limited, (3) William Roger Freeman, (4) Ross William Freeman, (5) Julian James Freeman (6) Cherwell District Council [2015] EWHC 186 (admin).

⁸ Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

accessway is a matter between the leaseholders and the site owner. I have noted the concerns raised about the number and capacity of trains from the adjoining station to the city. However, there is nothing to suggest that there is an unacceptable problem that it would justify withholding planning permission. There would be enough separation between the proposed scheme and the Dylon 1 development to ensure there would be no adverse effects on the living conditions of existing residents.

Conditions

41. For the avoidance of doubt and in the interests of proper planning, a condition specifying the plans is imposed (2)⁹. Conditions relating to the submission of details and the implementation of approved schemes for: the protection of trees (3); ground remediation (4); construction management (5); flooding (6, 7 & 8); finishing materials (9 & 10); hard and soft landscaping (11, 12 & 20); vehicular access, parking and lighting (13, 17 & 18); refuse/recycling bin storage and waste management (19 & 24); noise mitigation (14); security (15); a reduction in the terraces to flats 8, 9 and 10 (16); energy efficiency and management (22 & 23) and Lifetime Living (25) are reasonable and necessary in the interests of the appearance of the area, highway safety, and the protection of future residents' and neighbours' living conditions. Where necessary in the interests of avoiding duplication, precision and enforceability, several of the suggested conditions have been reworded.

Overall Conclusion

42. For the above reasons and having taken all other matters into consideration, I conclude that very special circumstances exist to justify this development. The proposal would not conflict with the provisions of the London Plan and the Bromley Local Plan when read together. The appeal is allowed.

George Baird

Inspector

⁹ The numbers in brackets refer to the conditions in Annex 4.

ANNEX 1

APPEARANCES

FOR THE APPELLANTS

Christopher Young QC and Leanne Buckley-Thomson of Counsel instructed by West & Partners.

They called:

Mr J Stacey BA (Hons), Dip TP, MRTPI.
Director, Tetlow King.

Mr I Ritchie CBE, RA Dip Arch (Dist), PCL, ARB, RIBA, RIAI, MIASBE, FRSA, FSFE, FSHARE, Hon FAIA, Hon FRIAS, Hon FRAM, Hon MCSA, Hon D Litt.
Director, Ian Ritchie Architects Ltd.

Dr C Miele MRTPI, IHBC.
Senior Partner, Montagu Evans LLP.

Mr P Finch OBE, Hon FRIBA.
Editorial Director of Architectural Review and Programme Director of World Architecture Festival.

Mr C J Francis.
Director West & Partners.

Mr S J Butterworth BA(Hons), BPI, MRTPI.
Senior Director, Lichfields.

FOR THE LOCAL PLANNING AUTHORITY

Gwion Lewis of Counsel instructed by G Ullman, Solicitor, London Borough of Bromley.

He called:

Ms C Glavin BA (Hons), MRTPI.
Principal Planning Officer, London Borough of Bromley.

Mr S J Sensecall BA (Hons), DIP TP, MRTPI.
Head of Planning, South & South West Region, Partner, Carter Jonas.

Mr S Roberts BA (Hons), PGDip, MRTPI.
Associate, Carter Jonas.

INTERESTED PERSON

Ms L Muhlholzl.
Residents' Association.

ANNEX 2

DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - LBB's first application for a full award of costs.
- Doc 2 - Appellants' response to LBB first application for a full award of costs.
- Doc 3 - LBB's final response on the application for a full award of costs; LBB's response to the appellants' partial application for an award of costs; LBB's; LBB's second application for a partial award of costs.
- Doc 4 - Appellant's application for a partial award of costs.
- Doc 5 - Appellant's response to the lpa's response on the appellants' application for costs and the appellants' response on the lpa's second application for costs.
- Doc 6 - LBB's final response to the appellants' application for costs.
- Doc 7 - List of suggested conditions and reasons.
- Doc 8 - Appellants' agreement to pre-commencement conditions.
- Doc 9 - Statement of Common Ground.
- Doc 10 - Housing Statement of Common Ground.
- Doc 11 - Appellants' LBB 5-year Housing Land Supply scenarios.
- Doc 12 - Minutes of LBB Executive Meeting 21 May 2109.
- Doc 13 - Email 24 January 2019 from Network Rail re Bickley Station.
- Doc 14 - Appellants' Small Sites Comparison Table.
- Doc 15 - Final calculated positions on 5-year Housing Land Supply.
- Doc 16 - Appellants' position on 28 Park Hill Road.
- Doc 17 - Appellants' note Office to Residential Permitted Development Slow Down.
- Doc 18 - Appellants' note Prior Approval applications office to residential permitted development April 2014 to December 2018.
- Doc 19 - Drawing No. Sk1985b - Gross External Volume Massing Overlay.
- Doc 20 - Appellants' Floor areas & volumes by level 2016 appeal scheme.
- Doc 21 - Appellants' Floor areas & volumes by level 2019 appeal scheme.
- Doc 22 - Appellants' floor area comparison - current scheme and 2016 appeal scheme.
- Doc 23 - Extract from 2012 Framework.
- Doc 24 - Mr Ritchie - Speaking Notes.
- Doc 25 - Aerial photograph.
- Doc 26 - Appeal decision 2015788
- Doc 27 - Appeal decision 3207411.
- Doc 28 - ERYC closing submissions 3207411.
- Doc 29 - Extract from LBB UDP Schedule of Proposed Sites.
- Doc 30 - Extract from LBB UDP Proposals Map.
- Doc 31 - Appellants' response to issues raised by residents.
- Doc 32 - Residents' Association response to appellants' responses.
- Doc 33 - 2016 appeal scheme layout.
- Doc 34 - Photographs of model of 2016 scheme.
- Doc 35 - Dylon 1 & 2 road & path widths.
- Doc 36 - Plan showing private gardens to Flats 8, 9 & 10.
- Doc 37 - Appellants' Small Site Approaches: Impact on LBB 5-year HLS.
- Doc 38 - S106 Unilateral Undertaking CIL Regulations Compliance Statement.
- Doc 39 - Certified copy of Appellants' S106 Unilateral Undertaking.

ANNEX 3

PUTATIVE REASONS FOR REFUSAL

1. The proposed redevelopment of this site designated as Metropolitan Open Land (MOL) for residential purposes is considered to be inappropriate development in principle. The applicant has failed to demonstrate very special circumstances or that the proposal is a sustainable form of development. In particular, the substantial level of harm that would arise from the development by way of harm to the MOL and visual harm is considered to outweigh any housing land supply or other socio-economic benefits that would arise or the benefits of opening up public access to the MOL and enhancing its landscape. As such the proposal is contrary to the aims and objectives of the NPPF (2018) and Policies 7.17 of the London Plan (2016), Policy G2 of the UDP (2006) and Policy 50 of the draft Local Plan (2017)".
2. This site is considered to be an inappropriate location for tall buildings as it fails to satisfy the requirements of Policy BE17 of the UDP. Furthermore, the proposal by virtue of its scale and massing, number of single aspect units, inadequate outlook and privacy, adverse impact on the landscape and failure to improve or enhance the character of the area amounts to overdevelopment of the site and fails to provide a scheme of outstanding design and architectural merits, contrary to the aims and objectives of the NPPF (2018), Policies H7, BE1 and BE18 of the UDP, Policies 7.1, 7.4, 7.5 and 7.6 of the London Plan, draft Local Plan Policies 4, 37, 47, 48, 50, 77, The Mayor's Housing SPG and SPG1 Good Design Principles and SPG2 Residential Design Guidance".

ANNEX 4

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following drawings:
 - 634_D2_P04A_101 REV R01 Site Plan; 634_D2_P04A_102 Site Survey Plan;
 - 634_D2_P04A_103 Section Line Location;
 - 634_D2_P04A_201 REV R01 Level 00 (Ground Level) Plan;
 - 634_D2_P04A_202 REV R01 Level 01 Plan;
 - 634_D2_P04A_203 Level 02 Plan;
 - 634_D2_P04A_204 Level 03 Plan;
 - 634_D2_P04A_205 Level 04 Plan;
 - 634_D2_P04A_206 Level 05 Plan;
 - 634_D2_P04A_207 Level 06 Plan;
 - 634_D2_P04A_208 Level 07 Plan;
 - 634_D2_P04A_209 Roof Plan;
 - 634_D2_P04A_210 REV R01 Level - 1 (Undercroft Car Parking);
 - Plan 634_D2_P04A_211 REV R01 Landscape Plan;
 - 634_D2_P04A_301 REV R01 Sections;
 - 634_D2_P04A_401 Main Elevations (East & West Side);
 - 634_D2_P04A_402 REV R01 Main Elevations;
 - (North & South Side) 634_D2_P04A_403 Partial Elevations;
 - 634_D2_P04A_410 Context elevation looking West;
 - 634_D2_P04A_411 Context elevation through Station Approach;
 - 634_D2_P04A_412 Context elevation from WBR looking SW;
 - 634_D2_P04A_413 Context elevation of PI and PII to East;
 - 634_D2_P04A_501 Part Elevation and Details.
3. Prior to the commencement of the development, including demolition and all preparatory work, a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority. The TPP and AMS shall include:
 - a) construction details of any hard surfaces within the RPA (if required);
 - b) a specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing;
 - c) there shall be no boundary treatments within the RPA;
 - d) the methodology and detailed assessment of root pruning (if required);
 - e) arboricultural supervision and inspection by a suitably qualified tree specialist;
 - f) reporting of inspection and supervision;
 - g) methods to improve the rooting environment for retained and proposed trees and landscaping.The development thereafter shall be implemented in strict accordance with the approved details.
4. Prior to commencement of the development, a remedial strategy, together with a timetable of works, shall be submitted to and approved in writing by the local planning authority:

- a) the approved remediation works shall be carried out in full on site in accordance with the approved quality assurance scheme to demonstrate compliance with the proposed methodology and best practise guidance;
- b) upon completion of the works, a closure report shall be submitted to and approved in writing by the local planning authority. The closure report shall include details of the remediation works carried out, (including of waste materials removed from the site), the quality assurance certificates and details of post-remediation sampling;
- c) the contaminated land assessment, site investigation (including report), remediation works, and closure report shall all be carried out by contractor(s) approved in writing by the local planning authority.

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

5. Prior to the commencement of the relevant part of the development a Demolition Phase and/or Construction Phase & Construction Environmental Management & Construction Logistics Plan shall be submitted to and approved in writing by the local planning authority and include the details of:
 - a) telephone, email and postal address of the site manager and details of complaints procedures for members of the public;
 - b) a dust management strategy to minimise the emission of dust and dirt during construction including but not restricted to spraying of materials with water, wheel washing facilities, street cleaning and monitoring of dust emissions;
 - c) measures to maintain the site in a tidy condition in terms of disposal/storage of waste and storage of construction plant and materials;
 - d) a scheme for recycling/disposition of waste resulting from demolition and construction works;
 - e) ingress and egress to and from the site for vehicles;
 - f) the proposed numbers and timing of vehicle movements through the day and the proposed access routes, delivery scheduling, use of holding areas, logistics and consolidation centres;
 - g) the parking of vehicles for site operatives and visitors;
 - h) a travel Plan for construction workers;
 - i) location and size of site offices, welfare and toilet facilities;
 - j) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing;
 - k) measures to ensure that pedestrian access past the site is safe and not obstructed;
 - l) measures to minimise risks to pedestrians and cyclists, including but not restricted to accreditation of the Fleet Operator Recognition Scheme (FORS) and use of banksmen for supervision of vehicular ingress and egress.

The development in the relevant Phase shall not be carried out other than in accordance with the approved details.

6. Prior to commencement of the relevant part of development, a scheme for compensatory floodplain storage works shall be submitted to and approved in writing by the local planning authority. The scheme shall set out the sequence of works for the transition from the existing situation to the completed development

and finished landscape levels whilst preventing an increased risk of flooding during the work. The development will then only proceed in strict accordance with the approved scheme.

7. Prior to the commencement of development, details of any piling or other penetrative methods of foundation construction, shall be submitted to and approved in writing by the local planning authority. The details shall demonstrate that there will no resultant unacceptable risk to groundwater. Development shall be carried out in accordance with the approved details.
8. Before the commencement of works above slab level, the following measures detailed within the approved Flood Risk Assessment (FRA) 'Dylon Phase 2 Worsley Bridge Road, Sydenham, London' (March 2018) plus accompanying report Reference Mb/Ra/Rcef60978-003 L (8th June 2018) and shall be completed:
 - A)
 - i) provision of level for level floodplain storage compensation and external ground levels as detailed in Section 9.8 of the submitted FRA and submitted drawing SK1755;
 - ii) with water entry grille thresholds set no higher than 24.00m AOD as detailed in drawings P04A/DS707 Rev 01 'Car-Park Waterflow Strategy' and SK1753 'Car-Park Waterflow Strategy - West Grill';
 - iii) ground floor (access) level set no lower than 27.0m AOD as detailed in drawing number P04A/201 Rev R1 'Level 00 (Ground Level) Plan (27.00)';
 - iv) with the lower deck car park floor level set at 24.0 m AOD as detailed in drawing number P04A/210 Rev R1 'Level -1 (Undercroft Car Parking) Plan (24.00)'.
 - B) Surface Water Infiltration Systems including the installation of the geocellular crate soakaways and the geocellular crate detention tank as per the design shown within the submitted FRA to provide an infiltration rate of 0.010 metres/hour and sufficient to accommodate flows arising from a 1 in 100 year storm return period plus a 40% allowance for future climate change with a final outflow to Pool River limited to 5 litres/second shall be completed.
9. Prior to the commencement of works above slab level, samples of all external materials, including the green roof, wall facing materials and cladding, window glass, door and window frames and decorative features shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
10. A detailed scheme for the treatment of all paved areas and other hard surfaces together with samples of the materials to be used in the construction thereof shall be submitted to and approved in writing by the local planning authority before any works involving use of the specified materials are commenced. Development shall be carried out in accordance with the approved details.
11. The soft landscaping and tree planting shall be completed in accordance with the details shown on Plan No 634/P04A/211 R1 and as set out in the Landscape Management Plan No. 634/P04A/LMP. The approved planting shall be carried out in the first planting season following the first occupation of the building and thereafter managed and maintained in accordance with the Landscape Management Plan as submitted (634/P04A/LMP) for the lifetime of the development hereby approved. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become

seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

12. The Outdoor Gym and Childs Play area shall be completed in accordance with the details shown on Plans Nos. P04A/20GP 00, 01; 02; 03; 04; 05 and 06 inclusive and as set out in the Outdoor Gym and Playground report dated March 2018 (634/P04A/OGP).
13. Prior to the commencement of works above slab level, details of a scheme to light the access drive and basement car and cycle parking areas has been submitted to and approved in writing by the local planning authority. The approved scheme shall be self-certified to accord with BS 5489-1:2003 and be implemented before the development is first occupied and the lighting shall be retained for the lifetime of the development.
14. Prior to the commencement of works above slab level, full written details, including relevant drawings and specifications of the proposed glazing and ventilation to the standard recommended in the Cole Jarman Noise Assessment (11/4200/R2/4) shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the details approved and retained for the lifetime of the development.
15. Prior to the commencement of works above slab level, details of measures to minimise the risk of crime and to meet the specific needs of the development shall be submitted to and approved in writing by the local planning authority. The security measures to be implemented in compliance with this condition shall achieve the "Secured by Design" accreditation awarded by the Metropolitan Police. Development shall be carried out in accordance with the approved details.
16. Prior to the commencement of works above slab level, and notwithstanding the detail shown on Drawing No. PO4A/201 Rev R1 a scheme showing a reduction in the size of the east facing terraces to Units 008, 009, and 010 shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
17. Prior to the first occupation of the development, the cycle parking shall be provided in accordance with the approved plans and the London Cycle Design Guide. The cycle parking shall be retained thereafter.
18. Prior to the first occupation of the development, a) the car parking and wheelchair accessible car parking spaces in the basement car park and street levels shall be provided in accordance with the approved drawings and thereafter retained; b) the electric vehicle charging points (both active and passive) shall be provided in accordance with Plan No 634 P04A/210 R1 and thereafter retained.
19. Prior to first occupation of the development, the refuse and recycling storage facilities shall be installed and fitted in accordance with the approved plans and thereafter retained.
20. The public accessible open space hereby approved shall be provided by the end of the first planting season following occupation of 50% of the residential units, unless otherwise agreed with the local planning authority in writing.

21. Prior to first occupation of the development, written confirmation shall be provided to confirm all water network upgrades required to accommodate the additional flows from the development have been completed or, a housing and infrastructure phasing plan has been agreed in writing with the local planning authority to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan. Development shall be carried out in accordance with the approved details.
22. Prior to first occupation of the development hereby permitted: a) the energy efficiency and sustainability measures detailed in the approved Energy Statement and Sustainability Appraisal, dated March 2018 Home Quality Mark Pre-assessment, dated March 2018, shall be installed and retained thereafter. b) the Photovoltaic Panel array shall be provided in accordance with the Energy Statement and Sustainability Appraisal dated March 2018 and the details shown on the approved plans.
23. Within 6 months of the first occupation of development, a post completion verification report certificate for the building shall be submitted to and approved in writing by the local planning authority. This shall confirm that the minimum standards set out in Condition 21 have been achieved and that all of the approved energy efficiency and sustainability measures have been implemented.
24. Prior to first occupation of the development, a plan for the management and collection of refuse shall be submitted to and approved in writing by the local planning authority. The Waste Management Plan shall be adhered to for the lifetime of the development.
25. The development hereby permitted shall: a) be built so that 90% of the dwellings hereby permitted accord with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' and shall be retained as such thereafter; b) be built so that at least 10% of the dwellings hereby permitted are provided as wheelchair dwellings in accordance with Building Regulations Part M4(3) 'wheelchair user dwellings' and retained as such thereafter.