

25 February 2016

**Footzie Social club, Station Approach, Lower
Sydenham, SE26 5BQ****in the London Borough of Bromley****planning application no. DC/15/04759/FULL1****Strategic planning application stage II referral (new powers)**

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008.

The proposal

Demolition of the existing buildings and redevelopment of the site by the erection of a basement plus part eight part nine storey building comprising 253 residential units (128 x one bed; 115 x two bed and 10 x three bed units) together with the construction of an estate road, car and cycle parking spaces and landscaping of the east part of the site to form an open space accessible to the public.

The applicant

The applicant is **Relta Ltd** and the architect is **Ian Ritchie Architects**.

Strategic issues

Bromley Council has resolved to refuse permission for this application. The Mayor must consider whether the application warrants a direction to take over determination of the application under Article 7 of the Mayor of London Order 2008.

Having regard to the details of the application, the matters set out in the committee report and the Council's draft decision notice there are **no sound planning reasons for the Mayor to intervene** in this particular case and therefore no basis to issue a direction under Article 7 of the Order 2008.

Should the scheme be considered at appeal or a revised application submitted the applicant, together with the Council and/or planning inspector should have regard to the matters raised in this report relating to **land use principles, urban design, affordable housing, inclusive access, energy and climate change** and **transport**.

The Council's decision

In this instance Bromley Council resolved to refuse permission, however the applicants have recently submitted an appeal against non-determination.

Recommendation

That Bromley Council be advised that had the applicant not submitted an appeal against Bromley Council's non-determination of this application, the Mayor would have been content for it to

determine the case itself, subject to any action that the Secretary of State may take, and does not therefore wish to direct that he is to be the local planning authority.

Context

1 On 22 December 2015, the Mayor of London received documents from Bromley Council notifying him of a planning application of potential strategic importance to develop the above site for the above uses. This was referred to the Mayor under Categories 1A and 3D of the Schedule to the Order:

Category 1A: *“Development which comprises or includes the provision of more than 150 houses, flats, or houses and flats.”*

Category 3D: *“Development on land allocated as Green Belt or Metropolitan Open Land...which would involve the construction of a building with a floorspace of more than 1,000 square metres or a material change in the use of such a building.”*

2 On 28 January 2015, the Mayor considered planning report D&P/3633a/01, and subsequently advised Bromley Council that the application did not comply with the London Plan for the reasons set out in paragraph 88 of the above-mentioned report, which should be addressed before the application is referred back to the Mayor.

3 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. On 9 February 2016 Bromley Council, resolved to refuse planning permission for the application, and on 10 February 2016 advised the Mayor of this decision. Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008 the Mayor may allow the draft decision to proceed unchanged, or issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application and any connected application. The Mayor has until 25 February 2016 to notify the Council of his decision and to issue any direction.

4 The Council’s draft decision notice includes the following 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. Furthermore the substantial level of harm that would arise from the development by way of harm to the MOL, design, and amenity and flood risk is considered to outweigh any housing land supply or other socio-economic benefits that would arise or 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 (2012) and Policies 7.17 of the London Plan (2015) and G2 of the UDP (2006).*
2. *This site is considered to be an inappropriate location for a tall building as its fails to satisfy the requirements of Policy BE17 of the UDP. Furthermore, the proposal by virtue of its scale, form and monolithic appearance, amount of development, adverse impact on the Landscape and the Skyline, poor response to the existing street network and connections, failure to improve or enhance the legibility and character of the area, adverse podium design, lack of active frontage and poor public realm amounts to overdevelopment of the site and fails to provide a scheme of high quality design contrary to the aims and objectives of the NPPF (2012), Policies H7, BE1 BE4 and BE18 of the UDP, Policies 7.1, 7.2, 7.3 7.4, 7.5*

and 7.6 of the London Plan, The Mayors Housing SPG and SPG1 Good Design Principles and SPG2 Residential Design Guidance.

3. *The proposal by virtue of its podium design, poorly considered access arrangements, outlook for some of the ground floor units; and questions over the ability of single aspect flats to promote natural ventilation and mitigate solar gain; or provide adequate amenity in terms of noise when windows are open fails to demonstrate that a high quality living environment with satisfactory standards of amenity will be provided for future residents. Furthermore it has not been demonstrated that the development is capable of providing 10% wheelchair provision across all tenures, with suitable access, car parking and internal layout. The proposal is therefore contrary to Policies H7 and BE1 of the UDP, Policies 7.1, 7.2, 7.3 and 7.6 of the London Plan, The Mayors Housing SPG, SPG2 Residential Design Guidance and the Bromley's Affordable Housing SPD (2008).*
4. *This site lies within Flood Zone 2 and 3 and meets the requirements for Sequential Test in the NPPF. Despite the ability of the design to mitigate flood risk, the approach taken has significant adverse effects on the quality of the development. As such it has not been demonstrated that an appropriate solution to mitigate potential flood risk can be achieved in accordance with the aims and objectives of the NPPF (2012) and Policy 5.12 of the London Plan.*

5 The Mayor's decision on this case, and the reasons, will be made available on the GLA's website www.london.gov.uk.

6 The applicant has recently submitted an appeal against Bromley's non-determination of this application within 13 weeks. The appeal is proposed to be linked with the appeal against an earlier refused application on this site (LPA ref: DC/15/00701/FULL1/GLA ref: D&P/3633/01) which is due to be heard at public inquiry in May 2016.

Article 7: Direction that the Mayor is to be the local planning authority

7 The initial policy test regarding the Mayor's power to take over and determine applications referred under Categories 1 and 2 of the schedule to the Order, is a decision about who should have jurisdiction over the application rather than whether planning permission should ultimately be granted or refused.

8 The policy test consists of the following three parts, all of which must be met in order for the Mayor to take over the application:

- a) significant impact on the implementation of the London Plan;
- b) significant effects on more than one borough; and
- c) sound planning reasons for his intervention.

9 Parts (a) and (b) of the test identify the impact an application would have on the Mayor's policies and the geographical extent of the impact, whilst part (c) deals with the reasons for the Mayor's intervention, having regard to the Council's draft decision on the application. These tests are intended to ensure that the Mayor can only intervene in the most important cases.

10 This report considers the extent to which the policy tests under Article 7(1) apply in this case and whether, therefore, the Mayor should direct that he is to be the local planning authority and apply the tests set out under Article 7(3) of the Order 2008. In this instance the second does not apply (see paragraph 7 (4) of the Order).

Policy test 7(1) (a): Significant impact on the implementation of the London Plan

11 London Plan Policy 3.3 seeks to increase London's supply of housing and in doing so sets borough housing targets. Bromley's target in the London Plan is to deliver 641 additional homes per year between 2015 and 2025, and this development represents nearly 40% of Bromley's annual housing target. While the delivery of new homes in London is welcome, it must be in the right locations taking into account other policies of the London Plan and national policy within the NPPF. As detailed in the consultation report, the site is designated Metropolitan Open Land where London Plan Policy 7.17 applies equally as if it were Metropolitan Green Belt. As such, the proposed development is inappropriate and very special circumstances (VSC) must exist to outweigh the harm caused to the open character.

12 The consultation report responds to the VSC case put forward by the applicant. In summary, the applicant has argued:

- a) that the land does not meet London Plan criteria as defined in Policy 7.17 for designating MOL and is thus erroneously designated;
- b) that the development would assist in meeting housing need and Bromley Council will be unable to meet the increased housing target in the London Plan without developing sites such as this;
- c) that a number of other schemes have been recently granted on MOL and
- d) that the proposals would have limited impact on the openness of the MOL and would deliver a number of benefits in improving the MOL.

13 The GLA's response to these matters is as follows:

14 As outlined in the consultation report, the Local Development Framework process is the appropriate way to challenge the designation of MOL, rather than the planning application process, so that MOL boundaries can be considered strategically by the Council and the Mayor. Notwithstanding this, it is GLA officers' view that the site does meet the necessary criteria in Policy 7.17 for designating MOL.

15 With regard to housing supply, the applicant has submitted an assessment which identifies a number of discrepancies in the calculation of the Council's five year housing supply land and as a result has removed a total of 704 residential units, which would result in the five year supply being reduced to 4.1 years. On this basis, the applicant argues that as the Council cannot demonstrate a five year supply of housing which would meet the borough's housing delivery targets. Additional information from the applicants was also received by Bromley Council prior to its committee meeting, in the form of a draft report critiquing the deliverability of Opportunity Sites within Bromley Town Centre Area Action Plan and contending that this negatively affects the prospects of Bromley's Housing Zone bid to the GLA.

16 In response, and as set out in the consultation report, it should be noted that the London Plan housing targets are based on a Strategic Housing Land Availability Assessment (SHLAA) which was tested and endorsed at Examination in Public. A key principle of the SHLAA and London Plan is that the target can be met without the need to consider designated open space. Bromley Council has in previous years been able to demonstrate a five year housing supply in its Annual Monitoring Reports, and indeed has reported annual completions above the target. The Council recently agreed its updated housing land supply paper (June 2015) based on the GLA's latest Strategic Housing Land Availability Assessment (SHLAA 2013). In its committee report, the Council has defended its position and contends that the five year supply is deliverable. GLA officers are satisfied with the Council's position in this regard.

17 Nonetheless, even if the Council's position with regard to housing land supply were vulnerable as suggested by applicant's own assessment and were to be accepted as a VSC, the NPPF and London Plan policy make it clear that those circumstances must outweigh the harm that would be caused to the MOL from inappropriate development. In this case, for the reasons set out within the consultation report in relation to the design, height and mass, the harm would be significant, and GLA officers are of the view that the harm would not be outweighed by the benefits of the scheme in relation to housing supply and improved landscape.

18 With regard to other examples of developments being granted in Green Belt and MOL, each planning application must be assessed on its own merits, and therefore these are not relevant to the consideration of this specific planning application and is not, therefore, an argument of very special circumstances for this application.

19 In terms of the improvements to the MOL proposed by the development (e.g. opening up the site to public access, retaining and enhancing the open space and landscape features on the eastern side adjacent to Pool River, improving its recreational value, and enhancing biodiversity), the benefits are recognised but arguably could be achieved without the scale of inappropriate development proposed and would in most cases be a policy requirement of any development. Although these improvements are welcomed, therefore, they cannot be fully accepted as very special circumstances and do not in themselves outweigh the harm to MOL.

20 In conclusion, the applicant has put forward a number of factors to justify inappropriate development on MOL. Whilst the improvement to the landscape and provision of public access is welcomed, by itself it is not a very special circumstance. With regard to housing need, GLA officers are satisfied with the Council's position in this regard and have been assured that the Council is, and will continue to be able to, meet its housing target over the next five years. Furthermore, if such a case arose that it was demonstrated and verified that the Council's housing supply calculations were in correct, this should be corrected through the Local Plan review process as a first priority. In any case, GLA officers are of the view that the development would be harmful to the open character of the MOL. In light of the above, very special circumstances to outweigh the harm caused by the inappropriate development on MOL have not been demonstrated.

21 The delivery of new homes and development on MOL are both issues that impact significantly on the implementation of the London Plan, so policy test 7(1) (a) is met.

Policy test 7(1) (b): Significant effects on more than one Borough

22 This policy test is not applicable in this case as the development is a referral under Category 1A, as noted in paragraph nine above.

Policy test 7(1)(c): Sound planning reasons for intervening

23 Notwithstanding parts a) and b), part (c) of the policy test is whether the Mayor considers there to be sound planning reasons to intervene. Having regard to the details of the proposal and the Council's draft reasons for refusal, together with the issues highlighted in the consultation report and described above, there are no sound planning reasons to intervene in this case as the proposals conflicts within a number of policies in the London Plan.

24 In order for the Mayor to issue a direction that he is to be the local planning authority, all relevant policy tests must be met. Given that policy tests (a) and (c) apply, that the development is considered to conflict with the London Plan and Bromley Council has resolved to refuse the application, there is no basis to issue a direction under Article 7.

Issues outstanding

25 Notwithstanding the above, should the scheme progress to appeal or a revised application submitted the applicant should have regard to the following matters considered below.

Impact on openness

26 Paragraph 79 of the NPPF makes it clear that the essential characteristic of Green Belt/MOL is its openness and permanence. Whether or not very special circumstances exist to outweigh the harm caused by inappropriate development on MOL, it is also necessary to consider the impact on the openness and character of the MOL. At consultation stage, it was concluded that the height, scale and mass of the proposed building has a harmful impact on the open character of the MOL. Regard has also been had to the applicant's submission of an appendix to their MOL assessment, including additional Accurate Visual Representations (AVRs) of the proposed development. The additional AVRs do not change GLA officers' view that the proposed development would harmfully affect the open character of the MOL.

Playing fields

27 At consultation stage, GLA officers requested further information to demonstrate that the site met the exceptions outlined in Paragraph 74 of the NPPF which seeks to protect land in use, or last used, as a playing field, to justify the loss of the land for sporting/recreation purposes.

28 The applicant submitted information to confirm that the site has not been used as a playing field for more than 8 years. The Council has not pursued a refusal reason on this basis. Given the statutory representation from Sport England, the application would be required to be referred to the Department for Communities and Local Government (DCLG), in the event of a resolution to grant permission.

Affordable housing

29 At consultation stage, while GLA officers noted that the proportion of affordable housing met Bromley Council's policy for 35%, GLA officers requested a financial viability appraisal to be carried out in order to demonstrate that the maximum reasonable amount of affordable would be delivered. This was on the basis that the site is a greenfield, windfall site that will have a low existing use value, and would not have been purchased based on its development potential.

30 The applicant has not provided a viability assessment. Whilst it is noted that Bromley Council has not proposed a reason for refusal on this issue, the GLA is of the view that further evidence is needed to demonstrate that the maximum reasonable amount of affordable housing is being proposed.

Mixed and balanced communities

31 At consultation stage, GLA officers requested further detail on the unit schedule, in particular the breakdown of unit types across the tenures, and the location of affordable units.

32 Whilst GLA officers noted that the proportion of family sized units was low at approximately 4%, the Council's committee report does not raise specific concern with the proportion of family sized units in the scheme, and states that the local housing market has a need/demand for two bedroom properties. The mix is therefore acceptable.

33 A detailed breakdown of unit types across tenures has not been provided, and if the proposals were to succeed at a later date, further information would be required on this matter.

Density, design and height

34 GLA officers noted in the consultation report that based on the characteristics of the site and its surroundings, the site can be regarded as having a 'suburban' setting in terms of the density matrix (Policy 3.4, Table 3.2). The proximity of Lower Sydenham railway station is acknowledged, but the area is predominantly characterised by low-rise housing development and low density industrial areas with open space. The applicant disagrees with this view, considering the setting to be 'urban' based on the Inspector's assessment of the setting of the Dylon 1 scheme.

35 Policy 3.4 acknowledges that the density matrix should not be applied mechanistically, as other factors such as the surrounding context, layout and residential quality will also inform the appropriate density range. In this case, the site is in MOL where any development must be designed to maintain openness. GLA officers agree with the Council's view in this regard that the setting of a site within the MOL should not be the same as a site of previously developed land within an industrial estate (such as Dylon 1). Even if VSC for inappropriate development were to be accepted to allow the principle of residential development to proceed, the design, density, mass and height of such a development would still be expected to be sensitive to its surroundings and respect the open character and visual amenity of the MOL.

36 As noted in the consultation report, the height, mass and design of the proposed development does not sit well in its open context. Whilst reduced in height from the previous scheme, the development would still result in a visually prominent nine storey wall of development when viewed from the MOL. This impact is apparent from the AVRs shown in the applicant's later appendix to their MOL assessment. There remains a strategic concern therefore about the design and density of the development. Additionally, matters regarding the street level activity and pedestrian realm to the western frontage have only partly been addressed. The landscaped design solution for the eastern frontage does not help to provide an increased degree of natural surveillance to the MOL to the east. Therefore, fundamental concerns remain as to the design of the ground floor/podium level and further discussion would be required on this before the appeal or if the application was resubmitted.

Children's play space

37 As no detailed information on the unit mix across the affordable tenures was provided at the consultation stage, officers were unable to calculate the final requirement for children's playspace based on the methodology within the Mayor's Play and Informal Recreation SPG (2012). This information is still required. The applicant should also provide an indicative play space strategy. This information should be submitted at appeal or with a resubmitted application.

Inclusive access

38 The consultation report broadly supported the inclusive design aspects of the scheme although further information was requested to clarify how safe and inclusive access to the public realm surrounding the site would be secured. Information should include the levels, gradients, widths and surface materials of the paths and how they are segregated from traffic and turning vehicles, how any level changes on the routes will be addressed, how wheelchair users would access the site safely and conveniently given its secluded position and how step free access to the podium deck from the open space will be achieved. Further clarification on the number of blue badge spaces within the development is required, and how these spaces would be actively managed and reviewed.

Energy and flood risk

39 The consultation report noted that the applicant had resubmitted the energy statement from the previous application without any revisions and therefore the applicant is required to update the energy statement to account for any changes to the scheme since the previous

application, for example updated in carbon emission figures due to the changes in number of residential units. An updated assessment has not been provided so this matter is still outstanding.

40 Additional information was also requested from the applicant regarding the community heating assumptions, the CHP manufacturer data sheet showing efficiency based on Gross values, and the consideration of photovoltaic panels within the scheme.

41 Similarly, the flood risk assessment and drainage strategy were not revised to support the current application and the applicant should confirm that these statements remain relevant to the current proposals. In particular, the applicant should confirm that the basement arrangement remains unchanged as this forms an integral part of the flood storage strategy.

Transport for London

42 At consultation stage, TfL raised a number of matters to ensure London Plan compliance. Legible London, Construction Logistics, Delivery and Servicing, and Travel Plans and electric vehicle charging points were requested to be secured by condition or through the Section 106 (S106) agreement. Car and cycle parking proposals together with the car club were considered acceptable and in accordance with London Plan policy 6.13.

43 TfL noted that the access arrangement proposed would not give sufficient priority to pedestrians and cyclists over motor vehicles. Footway materials, pedestrian and cycle design should be revisited in line with London Plan Policies 6.9 and 6.10. These comments have been reflected in Bromley Council's committee report.

44 TfL requested a S106 contribution for bus stop improvements on Worseley Bridge Road, including step free access, re-painting, and a new traffic sign on the southbound shelter, located in LB Lewisham. LB Bromley has sought a total figure of £30,000 to fund these works through the S106 agreement. The works will be delivered by Bromley and Lewisham councils respectively.

45 Overall the transport issues raised at Stage 1 could be addressed satisfactorily with the mitigation packages as described in the LB Bromley committee report. Should this application progress to appeal or be resubmitted, the aforementioned issues would again need to be addressed. TfL considers the application to be in accordance with the London Plan and acceptable in strategic transport terms.

46 Mayoral CIL for this development would have been payable at a rate of £35 per sq.m. in the proposed development totalling £481,150 (for 13,747sq m of chargeable floorspace), and this would be confirmed by the applicant and the borough prior to commencement. LB Bromley has yet to adopt a local borough CIL.

Response to consultation

47 Bromley Council's committee report confirms that the application was advertised by way of letters to nearby owners/occupiers, site notices and a press notice. As a result of statutory consultation, the Council's committee report confirms that 3 letters of objection were received.

48 A letter from the applicant was also sent directly to the Mayor, dated 29 December 2015 (received 5 January 2016), and has been considered in the GLA's assessment of the proposals.

49 Matters raised by objectors related to the following:

- Proposal ought to have been submitted as part of the original Dylon scheme to allow the full impact of both schemes to be considered as part of an overall masterplan
- Significant impact on the local area
- Further pollution and congestion

- Development is out of keeping with local areas
- Blocking of sunlight
- Overlooking
- Lack of suitable infrastructure to support a development of this scale
- Overall loss of green space and trees

50 Other statutory consultees responded as follows:

- **Network Rail:** No objections, subject to measures being taken to safeguard the company's land and infrastructure.
- **Environment Agency:** No objections subject to conditions.
- **Thames Water:** No objections subject to conditions
- **Sport England:** The development would appear to be sited on an existing area of playing field, Should the Council be minded to grant permission, the application should be referred to the DCLG.
- **Historic England:** No objection subject to conditions to secure a programme of archaeological investigation.
- **Lewisham Council (adjoining borough):** Previously raised concerns regarding the increased demand for parking and the impact on the junction at Station Approach are still valid despite the reduction in the number of flats, and the Council objects unless these matters are addressed.

51 It is considered that the statutory responses and those received from local interested parties to the Council's consultation, as well as the letter received directly to the Mayor, do not raise any material planning issues of strategic importance that have not already been considered by the Mayor at the consultation stage and/or in this report or addressed in detail within the Council's planning committee report.

Legal considerations

52 Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor has the power to issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application and any connected application. The Mayor may also leave the decision to the local authority. If the Mayor decides to direct that he is to be the local planning authority, he must have regard to the matters set out in Article 7(3) and set out his reasons in the direction.

Financial considerations

53 Should the Mayor take over the application he would be responsible for holding a representation hearing and negotiating any planning obligation. He would also be responsible for determining any reserved matters applications (unless he directs the council to do so) and determining any approval of details (unless the council agrees to do so).

Conclusion

54 Having regard to the details of the application, the matters set out in the committee report and the Council's draft decision notice there are no sound planning reasons for the Mayor to intervene in this particular case and therefore no basis to issue a direction under Article 7 of the Order 2008.

55 While the issues raised in the consultation report in respect of playspace, flooding, inclusive design, energy and transport could be addressed via the submission of further information and/or conditions, fundamental issues with regards the land use principle, design, density and layout and affordable housing remain a strategic concern.

56 Should the scheme progress to appeal or a revised application submitted the applicant, together with the Council and/or planning inspector should have regard to the issues raised in this report, relating to these issues.

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