

10 March 2016

## Land at Corner of Broomfield Street and Upper North Street (“Phoenix Works”)

in the London Borough of Tower Hamlets

Planning application no. PA/15/00641

### Strategic planning application stage II referral

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 existing buildings and redevelopment of site to provide 153 residential units in buildings ranging from three to fourteen storeys as well as 28 undercroft and surface parking spaces and a central landscaped courtyard.

### The applicant

The applicant is **Fairview New Homes Ltd** and the architect is **Collado Collins**.

### Strategic issues

Tower Hamlets 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 should have regard to the matters raised in paragraphs 16 to 35 of this report.

### The Council’s decision

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

### Recommendation

That Tower Hamlets Council be advised that had the applicant not submitted an appeal against the 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 24 March 2015 the Mayor of London received documents from Tower Hamlets Council notifying him of a planning application of potential strategic importance to develop the above site for the above uses. The application was referred to the Mayor under the following Categories of the Schedule to the Order 2008:

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

2 On 30 April 2015 the Deputy Mayor considered planning report D&P/3612, and subsequently advised Tower Hamlets Council that whilst the application was generally acceptable in strategic planning terms, the application did not fully comply with the London Plan for the reasons set out in paragraph 68 of the report. Possible remedies were set out in that paragraph.

3 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site and its history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. It should be noted that since the Stage 1 report was considered, the applicants submitted amendments to the proposed scheme. The height of the proposed tower was reduced from 16 to 14 storeys and the block on Upper North Street was reduced to 7 storeys in height. The number of residential units was reduced from 162 to 153 and amendments were made to the ground floor layout and the number of parking spaces. The amendments have not significantly affected the GLA’s assessment of any strategic issues, except where they have addressed comments from the Stage 1 report, which are outlined in paragraphs 16 to 35 below.

4 On 8 October 2015 Tower Hamlets planning officers presented a report to Tower Hamlets Strategic Development Committee (SDC) recommending that the application (as revised) was approved. The committee resolved to defer the application pending a site visit, and the application was heard again by the SDC on 19 November 2015. At that meeting, the SDC resolved to overturn the officers’ recommendation for approval and to refuse the application pending the preparation of a supplementary report. On 18 February 2016, officers presented the supplementary report to the SDC and the committee resolved to refuse planning permission. On 26 February 2016 the council notified 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, direct the Council under Article 6 to refuse the application or issue a direction to the Council under Article 7 that he is to act as the Local Planning Authority for the purposes of determining the application. The Mayor has until 11 March 2016 to notify the Council of his decision and to issue any direction.

5 However, since the Stage 2 referral was received from Tower Hamlets Council, the applicants have submitted an appeal against non-determination. If the appeal is registered as valid then the Planning Inspectorate would act as the planning authority in the determining of this case. In that instance, this report should be read for information and consideration during the appeal.

6 The Council’s draft decision notice includes the following reasons for refusal:

1. The proposed development would result in overdevelopment of the site, evidenced by the residential density which would substantially exceed the range set out in table

3.2 of the London Plan, without having demonstrated exceptional circumstances and in a location outside of the nearest town centre, not supported by Local Plan policies relating to density. The development would have an overall scale and bulk of development that would be harmful to the visual amenities of the area and harmful to residential amenity of neighbouring properties through loss of daylight and sunlight. The proposed development would therefore conflict with policies 3.4 and 7.4 of the London Plan (2015), the London Housing SPG (2012), policies SP02 and SP10 of the Core Strategy (Tower Hamlets Local Plan), DM24 and DM25 of the Managing Development Document (Tower Hamlets Local Plan).

2. The proposed development would result in an unsatisfactory design relationship between the proposed buildings and the Limehouse Cut canal and its towpath, arising from the proliferation of projecting balconies, the proximity of ground floor private amenity terraces and an unbroken elevation that would dominate this section of the canal towpath. The relationship of ground floor residential terraces would not provide adequate separation to provide a suitable level of privacy for the occupiers of the proposed units. The proposals would therefore adversely affect the special character of the canal and its use and enjoyment by the public for leisure and recreation as part of the London and Tower Hamlets Blue Ribbon Network. The proposed development would conflict with policies 7.4, 7.6 and 7.24 of the London Plan 2015; policies SP04 and SP10 of the Core Strategy (Tower Hamlets Local Plan) and policies DM12 and DM24 of the Managing Development Document (Tower Hamlets Local Plan).

3. The proposed high density and high rise development would conflict with the place making vision for Poplar, included in Annex 9 to the Core Strategy (Tower Hamlets Local Plan), which seeks to focus higher density development in and around Chrisp Street town centre; provide lower and medium density, lower rise family housing around Bartlett Park and ensure new buildings are responsive and sensitive to the setting of Bartlett Park, Limehouse Cut and the conservation areas in Poplar.

7 The decision on this case, and the reasons will be made available on the GLA's website [www.london.gov.uk](http://www.london.gov.uk).

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

8 The applicant has recently appealed against non-determination. If this appeal is made valid then the Planning Inspectorate would become the planning authority for the determination of the application. Otherwise, the Mayor would have to consider whether or not to take over and determine the application.

9 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.

10 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.

11 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.

12 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**

13 The application which is proposed to be refused relates to residential development that includes provision for 153 flats. The London Plan strongly supports the delivery of new housing (Policy 3.3) and the proposed development represents approximately 3.9% of Tower Hamlet's annual housing target. The delivery of housing is strongly welcomed in principle, however it is not considered that the refusal of this scheme in itself would undermine Tower Hamlet's ability to achieve its housing targets.

14 In coming to this view, regard has been had to paragraph 7(3) (a) of the Order which states:

*In deciding whether to give a direction the Mayor must take account –(a) where the application relates to development which falls within Category 1A of the Schedule, of the extent to which the council of the London Borough in which the development is or is to be situated is achieving, and has achieved the applicable development plan targets for new housing, including affordable housing.*

15 In this case, it is noted that Tower Hamlets has the highest housing target of all London Boroughs. According to the latest AMR data, housing delivery in Tower Hamlets has been declining since 2008 and has not met deliver targets since this time. Delivery of affordable housing is also not meeting the Council's Core Strategy target of 50% of new housing, with approximately 24% delivered in the last eight years. The proposed development of 153 dwellings (including 34% affordable housing) would make a small contribution to the overall housing targets at a time of significant shortfalls in housing delivery across London. However, it is noted that the site is not within an Opportunity Area in which the delivery of a significant amount of new housing is expected to be concentrated. For this reason, and given the relative scale of the scheme in comparison to other major schemes in Tower Hamlets, in this instance it is not considered that the scheme significantly impacts on the implementation of the London Plan.

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

16 Para 7(4) of the Order sets out that where a development falls within Category 1A of the Schedule, namely that over 150 homes will be delivered, this test does not apply. As the application is for 153 homes, this test does not need to be applied.

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

17 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 outstanding issues from stage one

described in paragraphs 17 to 37 below, had the scheme not been subject to a non-determination appeal there would have been no sound planning reasons to intervene in this case.

## **Outstanding strategic issues**

18 At Stage 1, Tower Hamlets Council was advised that the application was broadly acceptable in strategic planning terms. However, the proposal did not fully comply with the London Plan as further information was required in relation to strategic issues with respect to housing, affordable housing, urban design, inclusive access, climate change, flood risk and transport before the application was referred back to the Mayor. The applicant has provided a response to some of the issues raised at Stage 1. Taking each of these points in turn the following is noted:

### Housing

19 At Stage 1 it was noted that the Council should confirm that the proposed unit mix is in line with local needs; the applicant should reconsider the layout of the ground floor units and details of playspace should be provided once the final tenure mix is determined.

20 In response, Tower Hamlets Council has confirmed in its committee report that the housing mix in the private, intermediate and affordable tenures is acceptable in terms of its local needs.

21 Whilst the layout of the units has not been altered, privacy screens have been shown on revised drawings which on balance addresses concerns regarding privacy between units.

22 It has been predicted that the development would contain 50 children considering its tenure and housing mix, and therefore 500 sq.m. of child play space is required. The development would provide a total of 808sqm of communal amenity space which could meet this requirement. An additional landscape strategy has been submitted by the applicant showing formal and informal play areas at ground and podium levels totalling 557 sq.m. This meets the requirements of London Plan policy and the Mayor's 'Shaping Neighbourhoods: Play and Informal Recreation' SPG, although details of the treatment of these areas, including play equipment, should be secured via condition in any future application or if the application is considered at appeal.

### Affordable Housing

23 At the consultation stage, the GLA had not been provided with the financial viability appraisal or the Council's independent report, to demonstrate that the scheme provided the maximum reasonable amount of affordable housing.

24 The applicant has submitted a viability assessment which was independently assessed by Tower Hamlets Council. Both reports have been provided to GLA officers. As a result of the independent assessment of their report, the applicants agreed to increase their affordable housing offer to 34.2% by habitable room. The independent review of the applicant's viability report has demonstrated that the 34.2% affordable housing offer is the maximum that the scheme can viably provide. The GLA is satisfied with this assessment and the affordable housing offer complies with London Plan policy.

25 The proposed affordable housing would have a tenure split of 68:32 in favour of affordable rent/intermediate tenures, which is not strictly in line with the London Plan's preferred 60:40 split, but is close to Tower Hamlet's Local Plan target split of 70:30. The tenure split broadly meets Tower Hamlet's local requirements and the Council is satisfied with the proposed tenure, and this scheme is considered to meet London Plan policy requirements.

## Urban Design

26 The GLA's Stage 1 report raised concerns regarding the way the proposed development addressed the canal towpath and the changing levels of Bow Common Bridge, including the quality of the proposed public realm. GLA officers suggested that changes were made to the entrance arrangements and to the building line of the building along the tow path.

27 Since the Stage 1 report, the scheme has been revised to lower the height of the tower by two storeys, and amendments to the entrance arrangements have been made, although the applicant has not revised the building line. However, they have clarified that the proposed retaining wall along the towpath is required at this height and in this position by the Environment Agency as a flood defence. In this respect, even if the building line were moved back there would be no benefit to the public realm in terms of widening the towpath. Further detailed drawings have been provided of the treatment of the wall fronting the towpath. This would consist of a brick wall and railings which would allow visual permeability, and would incorporate lighting to provide illumination of the towpath. On balance, it is considered that these details demonstrate that the building would relate acceptably to the public realm. Further detailed drawings of the design and materials for the proposed building have been submitted, and are welcomed.

## Inclusive design

28 The Stage 1 report requested further clarity regarding the entrance to block A, as the original design resulted in a convoluted route to gain entrance to the building.

29 In response, the applicant has redesigned the entrances to Block A, creating level access from Upper North Street. The amendments have addressed the GLA's concerns regarding access.

## Climate change

30 At the consultation stage, the GLA advised that the application was broadly compliant with the London Plan's energy policies, but that further information in the form of sample SAP worksheets should be provided to support the carbon savings claimed. The layout of the proposed PV panels was also requested, as well as evidence of how London Plan Policy 5.9 has been addressed to avoid overheating and minimise cooling demand.

31 The applicant has provided further information on how the cooling demand will be reduced and a sample compliance sheet for Part L which shows that the overheating risk is slight for the sample model. Sample SAP sheets have also been provided. A layout of the PV array has also been submitted. The additional information submitted satisfies the previous requests for further details and demonstrates that the development complies with the London Plan in respect of climate change.

## Flood risk

32 At the consultation stage it was requested that the applicant's drainage strategy was revised to improve the sustainability of surface water drainage by draining to the canal.

33 The applicant has responded to confirm that drainage to the canal was investigated but not found feasible due to the topography of the land which falls away from the canal, meaning that directing surface water into the canal could only be achieved via pumping. However, a 50% reduction in surface water discharge can be achieved within the scheme via the implementation of other sustainable drainage systems.

34 Whilst officers consider that there is still scope to investigate the discharging of surface water to the Limehouse Cut to improve the sustainability of the proposal, the scheme is demonstrated to meet the London Plan's minimum requirements in terms of surface water management and so on balance no objections are raised to the proposals in this respect. Should the scheme be considered at appeal or a new application submitted, then it should be fully demonstrated why discharge to the canal is not feasible.

### Transport

35 At Stage 1, TfL raised a number of concerns relating to trip generation, junction capacity assessment, site access, car and cycle parking, pedestrian assessment and the travel plan.

36 The applicant has subsequently provided clarification and revisions to address these issues. They include decreasing the proposed car parking and increasing the number of cycle parking spaces in line with London Plan standards and undertaking a PERS audit to identify local pedestrian improvement needs. A sum of £10,000 has been offered towards a new pedestrian crossing on Bloomfield Street which could be secured within a Section 106 agreement. Revised plans have included amendments to the design of the site access to address safety. The applicant has agreed to provide cycle hire memberships to future residents. Tower Hamlets Council has also agreed in principle that a car park management plan, travel plan, service and delivery plan and construction logistics plan could be secured through the Section 106 agreement or conditioned as appropriate.

37 As such, TfL considers that the strategic transport impact of the proposals is capable of being mitigated. Should the application be considered at appeal or a revised application submitted, the S106 agreement should include the agreed transport mitigation measures outlined in the paragraph above.

## **Response to consultation**

38 Tower Hamlets Council's committee report confirms that the current application was advertised by way of 845 notification letters sent to neighbouring properties in March 2015, together with a notice in the local press and site notices. Following initial consultation, the scheme was amended by way of reducing the height of the proposed tower from 16 to 14 storeys and raising the height of the block fronting Upper North Street by one storey, making it 9 storeys in height. Further letters were sent to those properties who had previously objected to the scheme, notifying them of the proposed amendments. Since the latest consultation took place, the height of the proposed development on Upper North Street has been reduced by 2 storeys to be 7 storeys in height.

39 As a result of statutory consultation, a total of 102 individual representations were received, including 50 letters in support and 52 letters in objection. A petition in support signed by 34 people and a petition in objection signed by 29 people were also received.

40 Matters raised in support include the following:

- Provides new homes
- The appearance of the building is better than the current building
- Support the proposed parking restrictions [reference to the developer's offer to restrict new occupiers from applying for on-street parking permits]

41 The petition and a number of letters of support are contingent on the scheme not providing a public pedestrian link to the Limehouse Cut Towpath due to concerns about anti-social behaviour that a public link may create.

42 Matters raised in objection include the following:

- Lack of consultation undertaken by the developer;
- The size and height of the building is out of scale with neighbouring buildings;
- Loss of daylight, sunlight, views and privacy;
- The development goes against Tower Hamlets policy for the Bow Common and Poplar area;
- The proposal will increase wind speeds at ground level;
- Noise and disturbance from construction.

43 The following groups and statutory bodies were also consulted and responded:

- **Environment Agency:** Originally raised concern that the submitted FRA did not provide a suitable basis for assessment as it did not identify the presence of flood defences on the site or how the defence level can be maintained or raised. The applicant has subsequently submitted additional information, which shows a sea defence wall to a crest level of 5.28m AOD which is the current statutory flood defence level, with the capability of increasing the height of the wall to meet the Environment Agency's long-term future proofing plans. This has satisfied the EA's comments.
- **Canals and Rivers Trust:** No objections to the principle of the development, however access and egress to the towpath should be clarified as this is not a public right of way. Further information on the drainage strategy is requested, and a financial contribution towards the improvement of the canal environment.
- **Thames Water:** Conditions and informatives recommended.
- **Metropolitan Police:** No objections raised subject to conditions.

44 In relation to the objections raised, local issues and matters of residential amenity, including privacy, loss of light and noise have been considered by the Borough in their report and Borough officers considered them acceptable. GLA officers concur with that view. The strategic issues raised, including height, massing and design, have been dealt with in this report and in the Stage 1 report.

## Legal considerations

45 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 (the next four words are optional) 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

46 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

47 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. However the scheme is compliant with London Plan policies and had Tower Hamlets been minded to approve it, officers would have recommended that the Mayor support the scheme. It is noted that an appeal against non-determination has recently been lodged and if this appeal is made valid then this report should be read for information as to the Mayor's position.

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for further information, contact GLA Planning Unit (Development & Projects Team):

**Colin Wilson, Senior Manager – Development & Projects**

020 7983 4783 email [colin.wilson@london.gov.uk](mailto:colin.wilson@london.gov.uk)

**Justin Carr, Strategic Planning Manager - Development & Projects**

020 7983 4895 email [justin.carr@london.gov.uk](mailto:justin.carr@london.gov.uk)

**Katherine Wood, Senior Strategic Planner (case officer)**

020 7983 5743 email [katherine.wood@london.gov.uk](mailto:katherine.wood@london.gov.uk)