

196-222 King's Road, Chelsea

in the Royal Borough of Kensington and Chelsea

planning application no. PP/15/04338

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

Partial demolition of the existing buildings, with extensions and alterations to provide a mixed use scheme comprising cinema, retail, public house use, office, residential uses, and roof top bar.

The applicant

The applicant is **Cadogan Estate Limited** and the architect is **Paul Davis + Partners**.

Strategic issues

The principle of development with the range of uses proposed in this town centre location is supported in strategic terms as established at stage 1. The housing, inclusive design, climate change and transport issues that were raised have been addressed, with suitably worded planning conditions secured. The applicant has worked with TfL on addressing the matters concerning Crossrail 2 proposals and the scheme will not hinder Crossrail 2 infrastructure.

The Council's decision

In this instance Kensington and Chelsea Council has resolved to grant permission.

Recommendation

That Kensington and Chelsea Council be advised that the Mayor is 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 refusal or direct that he is to be the local planning authority.

Context

1 On 14 July 2015 the Mayor of London received documents from the Royal Borough of Kensington and Chelsea 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 Category 1B (c) of the Schedule to the Order 2008: *"Development (other than development which only comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings outside Central London and with a total floorspace of more than 15,000 square metres."*

2 On 25 August 2015, Sir Edward Lister, Deputy Mayor and Chief of Staff, acting under delegated authority considered planning report D&P/3247a/01, and subsequently advised RBKC Council that the application did not comply with the London Plan, for the reasons set out in paragraph 73 of the above-mentioned report; but that the possible remedies also set out in that paragraph of that report could address these deficiencies.

3 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. On 13 October 2015 RBKC Council decided that it was minded to grant planning permission, and on 11 November 2015 it 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, direct RBKC Council under Article 6 to refuse the application or issue a direction to RBKC 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 24 November 2015 to notify the Council of his decision and to issue any direction.

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

Update

5 At the consultation stage RBKC Council was advised that the scheme was generally acceptable in strategic planning terms but did not fully comply with the London Plan in relation to the following issues:

- **Housing:** The applicant's viability assessment should be made available before the application is referred back at stage 2 to verify the above and to justify the maximum reasonable amount of affordable housing is being secured at this site. The applicant should confirm the net residential density calculation for the proposal, based on the Mayor's Housing SPG. The Council should confirm that the unit mix reflects the needs in the Borough and is appropriate for the location.
- **Climate change mitigation:** The applicant has broadly followed the London Plan energy hierarchy however, the carbon dioxide savings fall short of the targets set within Policy 5.2 of the London Plan. There are outstanding matters detailed within the energy section of this report that require further clarification before the case is referred back at Stage 2.
- **Transport:** The scheme is generally acceptable in transport terms, subject to revisions being made to cycle parking provision and conditions being secured as part of any planning permission in relation to deliveries/servicing, construction logistics, and travel planning. Noting the location of the site within a defined Crossrail 2 'area of surface interest' further discussion is required between the applicant and TfL.

6 Taking each of the matters in turn, the following is noted:

Housing

7 The existing site has eight residential units. The redevelopment of the site would provide 47 residential units (including the five affordable units) and would therefore provide 39 new units at the site. This is supported by London Plan policy 3.4 and would assist the Council in contributing towards the Council's annual housing target and is supported. The housing composition matters raised at stage 1 are addressed below.

Density

8 At stage 1, the density of the scheme was queried. The applicant has subsequently confirmed that the density of the current scheme is 574 habitable rooms per hectare and 204 units per hectare, which shows a slight increase than the previous scheme, although broadly similar. This is acceptable for this location.

9 To address the stage 1 matter regarding residential density floor space efficiencies of the units, the applicant has been required to work within the constraints of the existing Friese Green House, where the affordable units are located. The private residential blocks are new build and are therefore not constrained in the same way. Overall, all units exceed the London Plan floor standards and the size of the units and floor space efficiencies are considered appropriate in this context and reflective of market requirements for this area.

Mix

10 As requested at stage 1, the Council has confirmed that the revised mix is still appropriate despite the provision of smaller units only as the site is in a town centre location and is therefore more suited to 1-2 bedroom homes. Noting that the Council applies its policy flexibly in light of individual site circumstances, this is supported.

Affordable housing

11 The level of affordable housing provision for this scheme is five affordable housing units within the refurbished Friese Green House, comprising 3 x 1 bedroom units and 2 x 2 bedroom units, all of which would be RBKC affordable rent. In floorspace equates to approximately 8.8%. This is below the 50% policy requirement making it non-compliant with local policy. This is also a reduction from the previous scheme (application ref. PP/14/03650) where it was concluded that nine on site affordable units and a further commuted payment of £4.62m in lieu of affordable housing was the maximum reasonable amount of affordable housing for the development at the time of submission.

12 On the basis of the information received, the applicant has demonstrated that as a result of the changes to the scheme required to overcome the reasons for refusal and the associated increase in build costs, together with the additional payment of £1,653,394 towards the Borough's Community Infrastructure Levy (CIL) to contribute towards infrastructure now required, the proposal for five on site affordable housing units represents the maximum reasonable amount of affordable housing for the development, in accordance with Core Strategy Policy CH2 (p).

13 The applicant's viability assessment has shown that only five affordable units can be achieved on site. This has been independently assessed for the Council by BPS, using the residual land value method. In order for the development to be technically viable, the residual land value of the proposal must be greater than the benchmark land value (in this case value of the existing uses on the site). Any increase in value is available for planning obligations, including the provision of affordable housing and financial contributions in lieu of affordable housing. It has also been noted that the change in layout to address the previous reasons for refusal have resulted in a reduction in the number of affordable units combined with the financial contributions it can currently support. As such, this upfront provision of five affordable housing units has been satisfactorily demonstrated as being the maximum reasonable, and is secured in the draft section 106 agreement. The outstanding affordable housing matters have been suitably addressed.

Climate change mitigation

14 The applicant has undertaken a detailed dynamic overheating assessment to address concerns raised in the stage 1 report. The applicant has assessed nine apartments considered the worst case using the CIBSE TM52 methodology and the CIBSE TM 49 weather files. Following the assessment the applicant has determined that some dwellings will require further mitigation measures to meet the CIBSE TM52 criteria, these include lower g-value between 0.4 and 0.35. Using the weather files of CIBSE TM49 it was determined that additional measures would be required for all dwellings including a g-values of between 0.35 and 0.23 and external louvers to a small number of dwellings. The applicant has stated that the aspiration is for all dwellings to meet the TM49 weather files and condition 53 covers the detailed measures outlined, to be agreed by the Council to mitigate against overheating.

15 The applicant has confirmed that all building uses will be connected to the site wide heat network. This is confirmed in Appendix of the submitted energy statement and conditions 40 and 55 secure this/ No further information is required.

16 At stage 1 the applicant was required to provide information on the management arrangements proposed for the CHP system, including anticipated costs, given that the management of a small CHP could impact the applicant's long-term financial viability. The applicant anticipates that the management and on-going maintenance of the proposed development's building services will be provided by a professional facilities management company and run on-behalf of the client. The applicant has also stated that the management of the associated heating bills will be made possible by the localised dwelling heat meters and landlord's energy meters within the plant room.

17 The applicant has also undertaken a CHP selection and cost analysis and maintenance costs have also been accounted for in accordance with the CIBSE assessment method. Following this approach the applicant is reporting a Simple Payback period of 6.4 years. No further information is required.

18 To address the matters raised at stage 1 on renewable energy, the applicant has stated that it will seek to agree the final photovoltaic (PV) design solution with the Council at detailed design stage through an appropriately worded condition. It is acknowledged that the PV area will be subject to change during the detailed design however at this stage the applicant should commit to the maximum PV (176 sq.m.) that has been determined to be feasible. With regard to the proposed condition 54, the Council is requested to ensure that the PV area and efficiency has been maximised, and that the cost of PV should not be compared with the offset fund as this should only be used once all available on-site measures have been fully utilised. No further information is required and overall, the climate change elements have, on the whole, been suitably addressed.

Transport for London's comments

19 In response to the issues raised by TfL within the Stage 1 report, suitable conditions have been identified in regard to a delivery and servicing management plan, separate demolition and construction traffic management plans, and a travel plan. Adequate cycle parking has now been identified in accordance with policy 6.9, which will be secured by condition. TfL recommend that the language of condition 20 be modified to ensure that it clearly states that the requirement is for cyclist's changing and showering facilities as well as parking (the condition currently refers only to storage and could be misconstrued).

20 A condition will be attached to ensure that development would not hinder the potential delivery of Crossrail 2 infrastructure. RBKC Council has identified a Crossrail s106 payment of £269,868, which in this case would be offset against the higher Mayoral CIL sum of £1,653,394.

21 The development will also provide a small s106 contribution towards the enhancement of public realm upon adjacent Borough roads, in addition to monitoring sums relating to the various plans secured by condition. The s106 agreement will ensure that occupiers within the development will not be eligible to apply for car parking permits.

22 The development is therefore considered to be in accordance with the policies set out in Chapter 6 of the London Plan 2015.

23 It should be noted that TfL have not given consent for the bus stop relocation sought to facilitate the proposed scheme of demolition / construction. The details of this matter should be addressed between the applicant, RBKC and TfL separately, following the grant of permission.

Response to consultation

24 The RBKC publicised the application by sending notifications to 245 local owners/occupiers on 24 July 2015, as well as issuing site and press notices (in the Kensington & Chelsea Chronicle) on 24 July 2015. The RBKC received six letters of support to the application, including a letter from the Chelsea Society, Curzon Cinema and the Sydney Street and District Residents Association. A summary of the nature of the nature of comments received is detailed below:

- The proposal is a considerable improvement to the earlier refusal.
- Pleased to see the retention of the pub on the King's Road, with a larger cinema auditorium.
- The design is attractive and of a high quality and an improvement on the existing buildings.
- The proposals will offer an opportunity to improve the cinema offer at the site.
- Improvement to the retail offer in this part of the King's Road.

25 Nine letters were received objecting to the application, including an objection from the Cinema Theatre Association, and the Theatres Trust. These objections are summarised below:

- The cinema re-provision is not acceptable and would not meet the cultural needs of the area.
- King's Road is well supplied with retail outlets and public houses.
- The proposal would result in the loss of the 1934 stone façade.
- Noise and disturbance from proposed roof top bar. Insufficient information is provided regarding this operation.
- Noise will travel towards Burntall Street due to the additional height of the buildings.
- Noise and disturbance from increased use of Hemus Place and due to the increased frequency of deliveries.
- Reversing delivery vehicles.
- No attempts to mitigate noise from the increased activity given the proximity of residential properties.
- Nothing in the revised documents and plans about sunlight, traffic, waste management etc. or any consideration for the tenants of Friese Green House.
- Concerns regarding the lack of detail for the cinema layout.
- Noise and disruption during construction.

- The introduction of retail units will change the character of Chelsea Manor Street.
 - The proposal reduces the level of affordable housing provision, contrary to policy.
 - Consideration needs to be given to the impact of the works on the proposals for Crossrail 2.
 - Additional bulk to rear would result in harm to the living conditions of neighbouring properties.
 - Loss of retail floor space will harm the vitality and viability of the King's Road.
- 26 Two letters were received commenting on the application, summarised as:
- Access to shops on King's Road should be maintained during works; and
 - If the cinema provision has improved from the refused application then a previous objection is withdrawn.

Statutory consultees

27 The following statutory consultee responded as follows:

- **Thames Water**- has raised a number of issues in relation to existing wastewater infrastructure, piling method statement, and groundwater risk management permit. Condition 46 addresses the need for a sustainable urban drainage strategy prior to commencement, however the other requirements specified should also be conditioned as recommended by Thames Water and the necessary informatives it states secured.

28 Overall, the various objections and issues raised have been suitably addressed through the use of planning conditions, informatives and provisions within the draft Heads of Terms of the section 106 agreement.

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

29 Under Article 7 of the Order the Mayor could take over this application provided the policy tests set out in that Article are met. In this instance the Council has resolved to grant permission with conditions (if applicable) and a planning obligation, (amend as appropriate if a dual recommendation) which satisfactorily addresses the matters raised at stage I, therefore there is no sound planning reason for the Mayor to take over this application.

Legal considerations

30 Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor has the power under Article 6 to direct the local planning authority to refuse permission for a planning application referred to him under Article 4 of the Order. He also 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. In directing refusal the Mayor must have regard to the matters set out in Article 6(2) of the Order, including the principal purposes of the Greater London Authority, the effect on health and sustainable development, national policies and international obligations, regional planning guidance, and the use of the River Thames. The Mayor may direct refusal if he considers that to grant permission would be contrary to good strategic planning in Greater London. If he decides to direct refusal, the Mayor must set out his reasons, and the local planning authority must issue these with the refusal notice. 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

31 Should the Mayor direct refusal, he would be the principal party at any subsequent appeal hearing or public inquiry. Government Planning Practice Guidance emphasises that parties usually pay their own expenses arising from an appeal.

32 Following an inquiry caused by a direction to refuse, costs may be awarded against the Mayor if he has either directed refusal unreasonably; handled a referral from a planning authority unreasonably; or behaved unreasonably during the appeal. A major factor in deciding whether the Mayor has acted unreasonably will be the extent to which he has taken account of established planning policy.

33 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

34 The various housing, inclusive access, climate change and transport issues raised at stage 1 have been addressed. Clarification of the floorspace of the private and affordable units has also been provided and accepted. The necessary mitigation measures and conditions/informatives imposed at the site, as part of this proposal, address the stage 1 concerns, however the Council should secure the various recommendations in addition to the SUDs condition to address the concerns raised by Thames Water. In the previous application (currently going through an appeal) the applicant was recommended to have regard to the outstanding energy and transport matters taking into consideration the Crossrail 2 consultation at the time. These matters have now been adequately addressed.

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