

PRESENT

Members of the Committee

Councillor Paul Warrick (Chairman)
Councillor James Husband (Vice-Chairman)
Councillor Sam Mackover (Vice-Chairman)
Councillor Robert Atkinson
Councillor Terence Buxton
Councillor Carol Caruana
Councillor Dent Coad

Others in Attendance

Mr Jonathan Bore, Executive Director of Planning and Borough
Development
Mr Graham Stallwood, Head of Development Management
Mr Steve Roberts, Senior Planning Officer (Strategic Developments)
Ms Heidi Titcombe, Principal Solicitor
Mr Jerome Treherne, Governance Administrator

A1 APOLOGIES FOR ABSENCE AND MEMBERSHIP

Apologies were received from Councillors David Campion, Ian Donaldson, Professor Sir Anthony Coates and Robert Freeman. Councillor Sir Merrick Cockell decided not to sit on the Committee because of his prior involvement as Leader of the Council during which time the Cabinet had discussed proposals for the redevelopment.

A2 MEMBERS' DECLARATIONS OF INTEREST

There were none.

A3 Minutes of the Meetings held on 20 November and 6 December 2012 and 23 May 2013

The Chairman requested several minor corrections to the minutes for 20 November:

- The addition of 'a' before 'fund of £8m' on page 3, second last paragraph;
- the spelling of complimentary should be complementary in the last sentence on page 7;
- deletion of 'jobs at' in the fourth paragraph on page 15, and

- the insertion of 'not' before 'want to stop' in the second paragraph on page 16.

Subject to the above amendments, the minutes of the meetings held on 20 November, 6 December 2012 and 23 May 2013 were signed as correct records.

A4 STR10 – Marlborough Primary School, Draycott Avenue, SW3 3AP

The Senior Planning Officer explained that all three applications before the Committee were linked by section 106 (S106) obligations but the construction times for each phase did not overlap and therefore there would be no build up in vehicle movements. He showed slides of aerial views of each site, photographs of montages of the application site from nearby streets as well as section drawings. He highlighted the gradual increase in the height of the proposed building as viewed from Sloane Avenue and the change of land use from commercial to residential at the Conservation Area boundary. It was noted that Conditions 26 and 28 controlled the materials to be used. He drew attention to Condition 36 that would preserve the corner stonework of the former Harrods Depository building.

Referring to the Addendum, the Chairman noted significantly more residents had been consulted than was apparent from the officer report.

In response to Councillor Mackover's query on cycle parking spaces, the Senior Planning Officer confirmed the Director of Transport had advised that 16 spaces was the correct number for a development of this size.

Councillor Dent Coad questioned whether community access to sports facilities outside school hours had been secured and the Senior Planning Officer advised that community access was covered in the S106 unilateral undertaking which would detail the hours and available spaces for public use. From the outset he said, community access to the multi-use games area (muga) formed part of the scheme but advised that the school hall and other areas had not yet been secured for community use.

Councillor Dent Coad highlighted the need to protect local residents from noise and nuisance especially during the demolition phase. The Senior Planning Officer drew attention to Condition 3 that required a Construction Traffic Management Plan (CTMP) to be approved by the Local Planning Authority (LPA) before any works could start. The unilateral undertaking also included a monitoring fee for council transport officers to monitor works to ensure they conformed to the CTMP.

In response to the Chairman's query over the recommended unilateral undertaking, the Senior Solicitor explained this was necessary because land earmarked for phase one belonged to the Council. She advised that should the Committee choose, clauses in the S106 agreement concerning community use could be strengthened. The Executive Director of Planning and Borough Development emphasised that firstly, a key factor in securing community use was the building's design which should enable the maximum degree of such use. Secondly, rather than negotiating prescriptive agreements at this stage, detailed discussions between the school and Planning Officers later on, often led to greater community access. Councillor Atkinson referred to experience with other schools which, he said underlined the need to get clear confirmation of community access agreed at an early stage. The Senior Planning Officer referred to the planning obligations listed in page 12 of the report which reinforced access requirements linked to the Community Access Plan which obliged access to be monitored and reviewed after three years.

Councillor Dent Coad asked about the implications of a subsequent Listed Building status being imposed to which the Senior Planning Officer advised that should this occur, it would change the scope of the development and therefore the application would have to return to the Committee.

Councillor Buxton considered that it was critical that suitable materials be used for the school building, commercial buildings with the commercial entrance to the shops and particularly the visitor entrance to the site from Draycott Avenue. The Senior Planning Officer said no firm details on materials had been decided and Conditions 26, 28, 33 and 34 covered use of materials. The Committee asked that recommended details for all these Conditions be referred to the Planning Applications Committee in due course for approval.

The Committee voted unanimously to grant the application.

RESOLVED – That planning permission be granted subject to the conditions specified in the report and subject to

1) there being no direction to the contrary by the Mayor of London and the prior completion of a Unilateral Undertaking in accordance with S106 of the Town and Country Planning Act 1990 (as amended) as set out in the report and

2) delegating to the Executive Director, Planning and Borough Development the authority to negotiate the terms of Unilateral Undertaking (based on the obligations set out in this report)

and to issue the planning permission following completion of the S106 Unilateral Undertaking and

3) conditions 26, 28, 33 and 34 being referred back to the Planning Applications Committee for approval.

Action by: Executive Director of Planning and Borough Development

STR11 – Clearings 1 & 2, Draycott Avenue, SW3 2NA

The Senior Planning Officer set out the interim school element of the scheme. He showed slides of aerial views of the site, the proposed main entrance and teaching spaces. He drew attention to the letter from the resident of 37 Ives Street in the Addendum Report that expressed concerns about noise from play grounds. The Senior Planning Officer reported the Director of Environmental Health's advice that because of the boundary fence treatment there would be no material noise impact on neighbours. The Senior Planning Officer pointed out that Condition 4 prohibited use of the muga between hours of 6pm and 8am.

The Senior Planning Officer agreed with the Chairman that reference to the total contributions of £51,800 for the interim and new school was set out in paragraph 2.4 of the report, not 2.1 as stated in the Addendum Report. He confirmed that consent was sought for four years, not three, for the demolition of Clearings 2 and provision for the land to be used for the interim school.

In relation to the chain and gates to be in place for four years, the Committee noted Condition 13 covered boundary treatment.

The Committee voted unanimously to grant the application.

RESOLVED – Grant planning permission:

to adopt the recommendation in the report and grant planning permission subject to conditions and subject to the prior completion of a S106 agreement.

Action by: Executive Director of Planning and Borough Development

STR12 - Clearings 1 & 2, Draycott Avenue and RBKC Depot, Denyer Street, SW3 2NA

The Senior Planning Officer set out the residential elements of the scheme. He showed slides of aerial views of the site and montages of the scheme from neighbouring streets. The planned

form of the residential units demonstrating how smaller units and plant would be set back so less visible from street level.

He drew attention to references in the Addendum Report to the CTMP which was to contain the points detailed in the officer report and to the contribution to the Local Procurement Code Contribution. He referred to the figures in the Addendum Report that clarified the maximum amount of affordable housing available in the scheme and explained that if the school was provided under-budget, the surplus would be allotted to affordable housing but if it overran the budget, there would be less money for affordable housing. He also explained that the contribution for the interim and new school was not paid to the Local Planning Authority but being made available in an escrow account prior to work on the interim school commencing. He advised that the s106 prevented commencement of the Clearings residential development until this money had been made available and the schools constructed.

In response to the Chairman's question on the loss of office space, the Senior Planning Officer advised that the Committee was asked to balance the loss of office floor space against the wider benefits of the scheme as detailed in paragraph 4.7 of the report. The Executive Director of Planning and Borough Development pointed out that 77 per cent of the B1 space that could be lost was currently used for storage and no Council policy covered this type of use. He judged the loss of this B1 space would have a small impact.

Councillor Dent Coad questioned the costing for the provision of a new school especially as, if it proved more expensive, the amount allocated for affordable housing would be less. The Senior Planning Officer reported that as part of the viability of the scheme, the costing of the school had been appraised by consultants and chartered surveyors and they had both concluded it to be robust. Officers, he said, were confident the school could be delivered at this price. He advised Councillor Dent Coad that additional cost in the building of the school would need to be justified to the Council and any overspend leading to less money for affordable housing would not benefit the developer commercially.

Councillor Mackover asked for more explanation on the design of windows in residential properties next to Listed Buildings on the former Shuckburgh Arms site. The Senior Planning Officer referred to Condition 23 which required the Planning Department to review the proportions of the ground and upper floor windows and enabled it to enforce minor changes to the scheme. The Committee requested that proposed materials and landscaping details for the residential units as referred to in Conditions 7, 19, and 20 should be referred to the Planning Applications Committee in due course for approval.

The Chairman invited representatives from John Lewis plc to the table to answer further questions and the following came forward: Mr Jeremy Collins (Director of Property), Mr Keith Hearn Senior Director (Planning) CBRE, Ms Sue Stephens Acquisitions and Development Manager and Mr Stephen Wright (Head of Planning and Principal Planning Lawyer).

Councillor Dent Coad sought reassurance on how such a large building site would function in a way to minimise the detrimental impact on neighbours and how the developer engaged with local residents. Mr Wright responded as follows:

- there was already a significant basement in the Clearings site so the amount of excavation required would be less;
- a series of consultation events had taken place with residents;
- the developer had discussed with the Milner Residents Association and other residents the plan to manage the site;
- the developer was committed to minimising adverse impacts;
- the Conditions attached to the application and the Construction Management Plan formed the basis for controlling activities on the site and went further than other schemes, and
- the proposal would provide off-street parking and not lead to greater pressure on resident' parking provision nearby and the development would supply residents with services they could use.

Mr Hearn said a continued dialogue would be maintained with residents to warn them of especially noisy phases in the works. He commented that residents often became reconciled to developments if they knew in advance what activities were to take place.

Councillor Buxton asked about the escrow account for section 106 payments and why the normal system for payment was not to be followed. Mr Collins explained that two new schools were to be delivered by the applicant before there would be any profit for the developer and for this reason a different payment structure had been agreed by the Council and John Lewis plc lawyers. Mr Wright pointed out that the S106 agreement prevented any building of residential units on the Clearing's site until the temporary school and permanent school had been completed. Ms Stevens referred to the S106 planning obligations which committed the developer to building an interim school and that the funding was only permitted to be used to build the school. She confirmed to the Chairman that an escrow account protected the interests of both parties.

The Principal Solicitor advised that the usual practice would be for the School Works Sum to be paid to the Planning Authority but instead the Applicants were proposing to "make the sum available"

in an escrow account. She believed it was unclear what "make available" meant and this needed more clarity. Paying the Sum into an escrow account, the terms of which had not been specified and were unclear was not the normal approach and she questioned its suitability. She said there were some restrictions in the proposed agreement but these were subject to unnecessary exceptions and complicated terms. No agreement had been reached regarding the terms between lawyers and they were subject to further negotiation. However, how the School Works Sum should be paid was a matter for the Committee to decide.

The Executive Director of Planning and Borough Development emphasised that the Council could not force a developer to enter an agreement and the position of the applicant had to be taken into account in designing payment methods. He advised that the key issue was not how normal the payment method was, but whether it risked the interests of the Council and in this case, he was satisfied that the Council would not be exposed to undue risk.

Councillor Mackover expressed concerns that agreement did not seem to have been reached over the escrow account method. The Chairman added that the Committee needed to be satisfied that the payment scheme was safe and reliable for the Council and was concerned that he has seen no heads of terms.

Mr Wright confirmed that the applicant and Council Officers had held lengthy discussions over several months on the issue of payment method and was surprised at the level of disagreement. Mr Hearn reported a number of discussions with Council Officers on the terms of the proposed agreement and on a positive dialogue with the Council on the S106 agreement. Mr Collins stated unequivocally that the escrow account was not a mechanism to block money from going to the Council and the proposed use of this legal structure would not disadvantage the Council.

The Chairman proposed that because of the gap in the Committee's knowledge and understanding of the proposal payment mechanism that had just emerged, it should adjourn so that council officers and those representing the applicant could discuss this matter further without Members being present.

The Committee adjourned at 8pm and reconvened at 8.26pm.

The Executive Director of Planning and Development reported that an understanding had been reached with the applicant and read a statement as follows: that John Lewis plc will provide planning obligations 'not to implement the Interim School Permission until the School Works Sum has been paid into an escrow account, details of which shall be agreed in advance by the owners and the LPA.' This clause would be incorporated into the heads of terms.

In response to Councillor Mackover's question on oversight of the arrangement as amended in the statement, the Executive Director of Planning and Development advised it was normal for the Executive Director of Planning and Development in consultation with the Chairman to finalise S106 agreement terms.

Councillor Dent Coad expressed continued unease over the payment mechanism to which Mr Collins responded by describing the escrow account as a legal mechanism which was not uncommon in the sale of domestic property.

The Principal Solicitor expressed satisfaction with the additional wording in the statement but reminded the Committee that the LPA still had to agree the terms of the agreement.

The Chairman asked for a formal vote on the STR12 application and the Committee.

RESOLVED –

By four votes to three (Councillors Atkinson, Caruana and Dent Coad not in support) to grant the application in accordance with paragraph 1 of the recommendation and subject to

a) Conditions 7, 19, 20 and 26 being submitted to a future Planning Applications Committee for approval, and

b) the prior completion of a S106 agreement incorporating the planning obligations specified in the report and the obligations 'not to implement the Interim School Permission until the School Works Sum (£26,625,950) had been paid into an escrow account, details of which were required to be agreed in advance by the owners and the LPA, and

c) delegating to the Executive Director, Planning and Borough Development the authority to negotiate the terms of the S106 planning obligations (based on the obligations set out in this report and the obligations specified in paragraph b above) in consultation with the Chairman of the Major Planning Development Committee and to issue the planning permission following completion of the S106 planning agreement.

Action by: Executive Director of Planning and Borough Development

A5 Any Other Oral or Written Items which the Chairman Considers Urgent

There were none.

The meeting ended at 8.35pm

Chairman

