

APPENDIX 2

Investigation of governance and decision-making processes with regard to planning application 14/AP/1872 for the redevelopment of the former Tuke School site at 2-4 Woods Road, London SE15 2PX

Timeline

08/07/2014	Site notices displayed on Woods Road, Consort Road and within Cossall Park. However, one site notice was not sufficiently well attached and fell down. A local resident subsequently alerted the Planning Division and it was put back up. Neighbour consultation letters sent and a press notice placed.
07/10/2014	Application approved by Planning Committee, subject to conditions and completion of a legal agreement (s.106 agreement).
07/11/2014	Date by which the legal agreement was to be entered into, otherwise the Head of Development Management is authorised to refuse permission, if appropriate.
09/11/2014	According to the lawyers for the developers, they were informed by the council's lawyers that the application would have to go back to Planning Committee on 02/12/2014, due to them having gone past the target date for the completion of the agreement.
02/12/2014	Negotiations on the legal agreement are ongoing, with some matters unresolved. The lawyers for the developers are told that the Head of Development Management will table a late and urgent report to Planning Committee that evening. They object to a report being tabled that they have not had a chance to read and comment on and query whether the item can truly be "late and urgent", as the need to report back to Planning Committee had been identified in early November. The Head of Development Management responds by pulling the report and instructing one of his managers to issue the refusal, as set out in the committee resolution.
02/12/14	Notice of refusal of the planning application was placed on the website.
03/12/2014	Official letter goes out from the Head of Development Management to the headteachers of John Donne School (and other objectors), formally notifying them that planning permission has been refused.
04/12/2014	The Director of Planning instructs officers to take down the notice of refusal from the website and replace it with a place marker saying "this document is no longer available".
05/12/2014	According to the Headteachers of John Donne School, they are informed by the council that the decision (to refuse) has been changed and the status of the decision on the application is now "undecided" and that the decision to refuse is now said to be an administrative error by the council.
09/12/2014	The Friends and Headteachers of John Donne School write separately to Councillor Fiona Colley, complaining about the changing status of the application and more generally about the handling of the application. They ask a number of specific questions and also express general concerns about procedural issues, due process and transparency.
15/12/2014	The Chief Executive initiates the present investigation into their complaints and notifies them of this.
18/12/2014	The application is brought back to Planning Committee as a late and urgent item, with the paper proposing a retrospective extension of the target date for completing the legal agreement to 13/1/2015 and stating that terms have been agreed in full and all that remains to be done is to execute the agreement. The effect would be to restore the original decision to approve the application.
18/12/2014	The Friends and Headteachers of John Donne School write separately to the Chief Executive, expressing their concern that the application is returning to

	Planning Committee before the investigation she has initiated has reached its conclusion. The letter from the Friends raises a number of specific questions in addition.
18/12/2014	The Chief Executive responds to say that whatever the outcome of the investigation, the application will need to return to Planning Committee for its status to be resolved and it is for members of the committee to decide whether or not to defer the item until the investigation is complete.
18/12/2014	The application returns to Planning Committee and members agree to defer their decision, pending a full report on the negotiations and handling of the application, to be provided to them on 3 February. They also agree to a retrospective extension of the target date for completing the legal agreement to the date of that next meeting (varying the date proposed in the report).
18/12/2014	The Chief Executive notifies the Friends and Headteachers of John Donne School of the Planning Committee decision.

Background to the application and Planning Committee 07/10/2014

1. The application proposed the redevelopment of the site to provide 122 residential units in a new building fronting Woods Road and Cossall Park ranging from 4-7 storeys high, a new 2-storey building at the rear and provision of car parking, cycle parking and amenity space.
2. As part of the Building Schools for the Future programme Tuke School, a special needs secondary school, relocated to a new building in Daniel Gardens, SE15, which opened in 2010. The buildings on the site subsequently became vacant and were demolished, and the site had been cleared by the time of the application being heard.
3. John Donne Primary School is located to the east of the site. Concerns about the development raised by John Donne School relating to loss of privacy and security for children in their playground, and the potential for overshadowing and loss of natural light are addressed in paragraphs 79, 80, 82, 86, 87, 88 and 92-94. Their concerns about temporary disturbance during the construction period are addressed at paragraphs 99-100.
4. According to the report, two public exhibitions were held by the developer at 2 Woods Road on 19 and 20 March 2014. Prior to this a leaflet was sent to 250 local residents, the Head Teacher of John Donne School and ward councillors informing them of the exhibition. The exhibition was attended by 60 people over the two days. Attendees at the exhibition were asked to complete a questionnaire and provide feedback and 26 completed questionnaires were received. While there were some other objections, most of the people who visited the exhibition did not support the proposals on the basis that they objected to the council's decision to release the land for residential development and wanted to see a school built.
5. Fifty-five objection letters were received from neighbours and local groups, including John Donne School. The objections are summarised at the end of the report under different headings; some clearly relate to the school e.g. "disruption for parents parking, coaches for school trips and safe routes to and from the school". The minute records that Planning Committee heard a representation from two spokespersons for the objectors and asked questions of them.
6. Planning Committee approved the application, subject to conditions and completion of a legal agreement. They further resolved that "in the event that the legal agreement is not entered into by 7 November 2014, that the Head of Development Management is authorised to refuse planning permission, if appropriate, for the reasons set out in paragraph 151 of this report".

7. Paragraph 151 reads as follows. “The proposal, by failing to provide for appropriate planning obligations secured through the completion of a S106 agreement, fails to ensure adequate provision of affordable housing and mitigation against the adverse impacts of the development through projects or contributions in accordance with saved policy 2.5 'Planning Obligations' of the Southwark Plan (2007), strategic policy 14 'Delivery and Implementation' of the Core Strategy (2011), policy 8.2 'Planning obligations' of the London Plan (2013) and the Planning Obligations SPD (2007).”

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8. The report explains the chain of events as follows.
9. “It was not possible to meet the original deadline of 7 November. The most important item still under discussion was the type of shared ownership housing to be provided in the development. Whilst this was set out in paragraph 55 of the original report, the fine details had not been agreed by the due date. However, it is now the case that the precise terms have been agreed in full and all that remains is for the agreed version of the document to be circulated and executed by the relevant parties.
10. It is unusual for planning agreements not to be finalised within the prescribed timescale. When the deadline was passed, it was originally intended to bring the application back to the planning committee meeting held on 2 December in order to apply for an extension of time. However, instead of this a planning refusal was inadvertently issued.
11. The planning refusal did not take into account that a refusal was to be issued in accordance with the circumstances outlined in paragraph 151 of the original report. However, these clearly did not apply since the proposal did not have an inadequate provision of affordable housing – on the contrary the amount had been agreed and the only item to be concluded was the type of shared ownership housing.
12. As a result, there was not sufficient authority to issue a refusal, and in the absence of adequate reasons, the notice was withdrawn and the relevant persons notified.”
13. The draft minute of the meeting reads as follows:
“Members agreed that a final decision on the application would be made following a full report on the negotiations and the handling of the application to be provided to the Planning Committee on 3 February.”

Findings and conclusions

14. The relevant facts, as we understand them, are set out in the timeline above. Matters of governance and practice are considered below.
15. There is no doubt in our minds that the Head of Development Management had the delegated authority to refuse planning permission on 7 November 2014, if he was unable to negotiate a satisfactory s106 agreement with the developers by that date. However, it is not clear whether he still had delegated authority when the refusal was issued on 2 December 2014.
16. Normally, s106 agreements are successfully negotiated within the time allocated by Planning Committee. However, very occasionally, it has been known for negotiations over a s106 agreement to continue beyond the time limit set by the committee and to be brought to a successful conclusion without referral back. Because the original decision in these cases is always to approve the application, once the s106 agreement has been successfully concluded, no further reference back to committee is required for there to be an approval in place, even if negotiations have continued beyond the time limit set by the committee. However, this could open the decision to

the risk of legal challenge and, in these circumstances, Legal officers would advise that the matter be referred back to committee for a further decision.

17. It appears that there has never before been a case in Southwark where negotiations over the s106 agreement have gone beyond the time limit set by the committee and a refusal issued. In this case, when negotiations over the s106 agreement were not going as smoothly as he would have wished, the Head of Development Management decided to tackle the issue by making a report back to Planning Committee on 2 December. It was only when the lawyers for the developers objected to the way he was managing the reporting process that he decided to issue a refusal instead.
18. Although this is a grey area in terms of legal governance, it is arguable that the Head of Development Management did not have had the delegated authority to issue the refusal when he did, on three grounds:
 - 1) As set out in the 18 December report to Planning Committee, the specific circumstances set out in paragraph 151 of the original report, underpinning the exercise of the authority to refuse, may not have been present.
 - 2) The authority to negotiate the s106 agreement and the authority to refuse the application were delegated by Planning Committee with an explicit time limit of 7 November. That authority may therefore have expired by 2 December, when the refusal was issued.
 - 3) Even if the authority had not expired owing simply to the passage of time, the Head of Development Management may be deemed to have relinquished his authority when he decided to refer the matter back to Planning Committee and communicated this decision to the developers.
19. On this basis, we conclude that it is at least arguable that the Head of Development Management had no continuing delegated authority to refuse the application on 2 December 2014. It follows that the notice of refusal of the application issued on 2 December 2014 and communicated to the objectors on 3 December may have been invalid, because it was, at least arguably, issued without authority. In our view, the Director of Planning was therefore right to remove the notice of refusal and to describe the status of the application as “undecided” and requiring further consideration by Planning Committee. Given the uncertainty of the legal status of decision-making on the application by this point, a reference back to Planning Committee was essential in the interests of good governance.
20. We therefore conclude that the refusal notice was issued in error. The better course of action would have been to refer the matter back to Planning Committee, as the Head of Development Management originally intended.

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