

Cabinet

Tuesday 18 January 2022

11.00 am

Ground floor meeting rooms, 160 Tooley Street, London SE1 2QH

Supplemental Agenda No. 3

List of Contents

Item No.	Title	Page No.
16.	Bankside Yards - appropriation for planning purposes Addendum report.	1 - 6

Contact

Email: paula.thornton@southwark.gov.uk; constitutional.team@southwark.gov.uk
Webpage: www.southwark.gov.uk

Date: 18 January 2022

Item No: 16.	Classification: Open	Date: 18 January 2022	Meeting Name: Cabinet
Report title:		Addendum Bankside Yards – acquisition for planning purposes	
Ward affected:		Borough and Bankside	
From:		Director of Planning and Growth	

PURPOSE

1. To advise members of further information and clarification.

RECOMMENDATION

2. That members note and consider any further information and amendments.

FACTORS FOR CONSIDERATION

3. Following publication of the cabinet report, the council has received detailed legal representations on behalf of one of the owners of property rights that will be impacted by the recommended course of action. This addendum summarises the points raised and clarifies a number of matters that arise in the body of the report. The addendum also deals with representations made by a resident and clarifies a number of other points.
4. Councillor Dennis' Forward to the report refers to *“the threat of injunctions being used by three affected owners”*. This should refer to *“the threat of court proceedings by three affected owners, including two threats of injunction”*.
5. This is slightly updated from the report, which refers to one threat of injunction having been seen by the council at that time.
6. Councillor Dennis also makes reference to the scheme being *“net zero”*. This is noted to be the developer's intention, but amendments to the energy strategy are required to achieve this. It is therefore not listed or considered within the package of minimum benefits as set out below.
7. Paragraph 12 of the report and paragraph 3 of Appendix D is deemed to be replaced by the following:

“Extensive public benefits would be provided by the various Scheme permissions and associated s106 agreements. The package of benefits secured includes as a minimum:

- a) *An in lieu affordable housing payment of at least £65m (subject to upwards only viability review and indexation);*

- b) *Substantial employment during construction including training and apprenticeships; a commitment that goods and services for the development of the Scheme be procured locally; a minimum of £277,000 towards the community project bank; and £2m Mayoral CIL;*
- c) *Extensive highways and public realm improvements that will see just under half of the ground floor area of the site open to public access; creation of new east west and north-south pedestrian and cycle routes across the site; improvements to the Thames Path; refurbishment of a section of railway arches; and the setting out of a new public square and a public garden;*
- d) *Provision of public toilets to the south of Blackfriars Station, level access lifts as well as two cultural spaces, one that will provide a range of benefits to the LGBTQ+ community around the themes of social, cultural, wellbeing, support and advice; and*
- e) *A mix of uses including residential and employment, leisure and cultural space that will deliver 489 new homes and space for an estimated 3,700 (full time equivalent) jobs.*

Any reference to public benefits in the report (and appendices) should be read as a reference to the minimum benefits identified above. In arriving at the list of minimum benefits, it is recognised that there are a number of different planning permissions across the site, not all of which may be capable of being relied upon simultaneously. The assessment of minimum benefits does not rely upon the carrying out of works pursuant to inconsistent planning permissions.

For information, additional benefits secured by the grant of a new permission in 2020 in respect of part of the Site (the BYE Permission) include an increase of at least £3m for the in lieu affordable housing payment; an additional 116 homes (including 37 on-site affordable units), bringing the total residential provision to 605; and the provision of affordable workspace. This permission would also generate £9.1m (indexed) Borough CIL.”

- 8. Reference to “reserved matter” permission(s) in paragraphs 2 and 7 of Appendix D should read “variation” permission(s).
- 9. Appendix F is further updated as follows:
 - a) An additional respondent (to be deemed added to the table at #16) made the following comments in response to the notification letter: (i) no one would wish to hold up a scheme that will bring vibrancy to the bankside area, but it can’t be correct for rights of individuals to be overshadowed in this way; (ii) there has been limited communication and small offers of compensation from the developer. A more transparent schedule of remuneration should be agreed for all parties; (iii) has received a proposal from the Council about the Statement of Community Involvement, which promotes engagement with the community. Seems at odds with the current proposal; and (iv) asks Council to wait and insist developer treats affected residents in a fair, open and serious manner.

Response: An offer of compensation has been made to this respondent. Even if the council exercises its powers, the developer has committed to honour offers already made.

- b) Respondent #15 has provided two further letters to the council dated 13 and 14 January making it clear that they are considering a legal challenge in the event that cabinet proceeds to approve the recommendations. These letters repeat a number of the previous points that are already addressed in Appendix F, but the following additional points are noted:
- (i) Section 203 cannot be used to override this party's rights as they have already been impacted before implementation of Section 203.

Response: Cabinet is directed to the response to respondent #15 in Appendix F. In particular, it is noted that in response to point 19, it is stated that: "Works already undertaken will not benefit from the S203, but this does not prevent the Council from exercising its powers in relation to the remainder of the works". (The same point is addressed in response to Respondent #14 at point 12: "The S203 procedure would only override rights that are infringed after it takes effect. It will not apply to rights that have been impacted before this time. The council has taken independent legal advice from a leading QC and is comfortable that the procedure is entirely lawful and legitimate." This remains the case.

The council is aware that Building 3 is at an advanced stage of construction and that the works carried out to date have had an impact on some rights to light. Works already carried out in advance of the acquisition of land by the council would not benefit from the protection conferred by the engagement of section 203. A number of additional large buildings are however anticipated to be constructed, some of which will interfere with rights to light, and therefore the recommendation to exercise the Council's powers remains as set out in the report.

It is incorrect that S203 cannot be used following implementation of a planning permission. The protection conferred by section 203(1) applies to work carried out on land that has been acquired by the council. For the reasons set out in the main report the risk of claims for injunctions or for damages is an unacceptable risk for the developers and makes financing of the Scheme problematic. If the council does not acquire the land and thereby engage the provisions of section 203 (in respect of works carried out after the time of the acquisition), it is highly unlikely that the Scheme will proceed in the form which has been consented.

- (ii) The rights to be overridden have not all been identified and negotiations with those persons have not begun, let alone reached a point of last resort. The obligation on the Developer and Council is to

identify and engage with all those affected, regardless of any assessment as to materiality.

Response: The Developer has identified all parties with a potential to be impacted, but approaches have not yet been made where it is considered the risk of an actionable interference giving right to claim an injunction is low and / or it is considered that they do not benefit from a right of light. Officers are satisfied that genuine efforts have been made to reach agreement with all properties where a material impact on rights of light has been identified (i.e. parties that may have injunctable rights). This distinction is considered reasonable and proportionate in the circumstances. All parties will receive compensation to the extent that rights are infringed.

- (iii) The report justifies use of Section 203 based on delay, but in its letter to the respondent (13 January 2022) the council stated that “The Council does not feel that the pace of delivery is a relevant consideration for the use of its powers”.

Response: Rights of light negotiations lead to uncertainty, which can impact on funding and the ability of a developer to proceed. Works are currently ongoing on the site and the decision as to whether or not to engage S203 is not dependent on the speed of delivery to date.

- (iv) There is no evidence that the development is undeliverable or unviable.

Response: If the council does not acquire the land and thereby engage the provisions of section 203 it is highly unlikely that the Scheme (excluding Building 3) will proceed in the form which has been consented. The cutbacks required to avoid any rights to light infringements are substantial and would impact on the quantum of development and the benefits, including the affordable housing payment, that the Scheme would be able to provide.

- (v) The report does not identify the relevant planning permission that will deliver the development and ignores concerns about the deliverability of the scheme in light of the inconsistent planning permissions.

Response: The currently implemented permission is a minor material amendment of the original 2014 permission (ref. 18/AP/3696). It is anticipated that works on BYW (Ludgate) will rely on this permission and works on BYE (Sampson) will be undertaken pursuant to the 2020 BYE Permission. Until another permission is implemented, there is no issue of inconsistent permissions; and the assessment of minimum benefits does not rely upon the carrying out of works pursuant to inconsistent planning permissions.

- (vi) The benefits are confused and overstated.

Response: The benefits were incorrectly addressed in the report and Appendix D, which is corrected in this addendum.

- (vii) The respondent's client does not consider that the point of last resort in negotiations has been reached.

Response: Based on the evidence reviewed, it is clear that the financial sums are so far apart that there is no reasonable prospect of resolution in a reasonable time period and therefore negotiations with this party have reached last resort.

- (viii) Council has not undertaken any assessment as to whether the substance of offers made is genuine and reasonable. The Council has also not sought the views of the parties (or their professional advisors).

Response: The recommendation to Cabinet to consider acquisition of the Bankside Yards site has been carefully considered and is considered to be a measure of last resort. Based on the evidence reviewed, it is clear that negotiations have failed with some parties (with three parties threatening court proceedings, including two injunctions) and a number of negotiations have been stalled for some time with no active signs of progress being made. It is clear that if the Council does not acquire the land and thereby engage the provisions of section 203 (in respect of works carried out after the time of the acquisition) it is highly unlikely that the Scheme will proceed in the form which has been consented.

10. All references in the report to there being 15 respondents should be deemed updated to 16 – see 3(a) above.

REASON FOR URGENCY

11. Delay in considering this matter creates financial uncertainty for an investor in the borough and puts at risk a package of significant public benefits.

REASON FOR LATENESS

12. The new information/amendments/corrections to the main report and recommendation have been noted and/or received since the committee agenda was printed. They all relate to an item on the agenda and members should be aware of them.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
As set out in the main report		

CABINET AGENDA DISTRIBUTION LIST (OPEN)**MUNICIPAL YEAR 2021-22**

NOTE: Original held by Constitutional Team; all amendments/queries to
Paula.thornton@southwark.gov.uk

Name	No of copies	Name	No of copies
Members (paper copies)		Chief Officer Team	
Kieron Williams	1	Eleanor Kelly	1
Jasmine Ali	1	Duncan Whitfield	1
Members - electronic Versions (no hard copy)		David Quirke-Thornton	1
Evelyn Akoto		Michael Scorer	1
Helen Dennis		Caroline Bruce	1
Stephanie Cryan		Officers	
Alice Macdonald		Doreen Forrester-Brown	1
Darren Merrill		Norman Coombe	1
Rebecca Lury		Ian Young	1
Jason Ochere		Others	
Catherine Rose		Louise Neilan	1
Ian Wingfield		Paula Thornton, Constitutional Officer	5
Victor Chamberlain		Total: 16	
Peter Babudu		Dated: 15 November 2021	
Victoria Olisa			
Gavin Edwards			
Margy Newens			
Leanne Werner			
Jack Buck			
Sarah King			
Ali, Humaira			
Anood Al-Samerai			
Group Offices - electronic			
Aine Gallagher, Cabinet Office			
Paul Wendt, Liberal Democrat Group Office			