

Item No:	Classification	Committee:	Date:
	Open	Planning Committee	11 October 2011
From: Head of Development Management		Title of Report: <u>Addendum</u> Late observations, consultation responses, and further information.	

PURPOSE

- 1 To advise Members of observations, consultation responses and further information received in respect of the following planning application on the main agenda. These were received after the preparation of the report and the matters raised may not therefore have been taken in to account in reaching the recommendation stated.

RECOMMENDATION

- 2 That Members note and consider the late observations, consultation responses and information received in respect this item in reaching their decision.

FACTORS FOR CONSIDERATION

- 3 Late observations, consultation responses, information and revisions have been received in respect of the following planning applications on the main agenda:

3.1 **Item 6.1: SEA CONTAINERS HOUSE**

3.2 Condition 33

Condition 33 prohibits the installation of external telecommunications equipment on the roof of the buildings. However, there are a small number of satellite dishes already on the roof of the existing building, which would be retained under the proposals. These dishes are shown on the submitted plans. It is therefore recommended that the condition be revised, with the new wording shown underlined.

Other than as shown on the submitted drawings, and notwithstanding the provisions of Parts 24 and 25 The Town & Country Planning [General Permitted Development] Order 1995 [as amended or re-enacted], no additional external telecommunications equipment or structures shall be placed on the roof or any other part of a building hereby permitted.

3.3 Comments from the Head of Development Management

The changes to the condition are considered acceptable, and after taking account of all of these additional matters, the recommendation remains that planning permission be granted subject to completion of a S106 agreement, and referral to the GLA.

3.4 Item 6.2 – Eileen House, Newington Causeway

3.5 MoS have submitted a further letter of objection in relation to this scheme (attached). MoS objects on the basis that the proposal:

- a) fails to provide office space in an area where there is a shortfall of such space, which is contrary to policy and contrary to the Core Strategy vision for the Elephant and Castle;
- b) fails to provide 35% affordable housing or any social housing (assumed to mean social rented);
- c) fails to provide 60% of 2 or more bedroom units;
- d) fails to meet the design standards in London Plan;
- e) fails to meet sustainability targets in relation to Code for Sustainable Homes, Breeam and Carbon reductions.
- f) Is not a viable scheme

On this basis it is suggested the scheme should be refused.

3.6 Officer Comment:

The issue of the shortfall in business space is addressed in the main report (paragraphs 199-205) and the reasons why this is considered acceptable are detailed therein. Similarly the reasons for recommending acceptance of affordable housing below 35% and no social rented tenure are also addressed in the main report. Viability has formed part of that consideration.

In respect of the provision of less than 60% 2 or more bedrooms and units below the London Plan standards the applicant has stated that internal alterations can be made to address both matters in order to meet the required standards. This will be secured by condition.

Similarly in relation to the Code for Sustainable Homes, Breeam and Carbon reductions the applicant has confirmed that Level 4 CSH and Breeam Excellent can be achieved. The current requirement to achieve carbon reductions at 44% below 2010 Building Regulations can also be achieved. These will be secured by condition. Consequently a refusal of planning permission on these grounds would not be considered justified.

3.7 Noise Issues

In the letter the Ministry of Sound raise further objections in relation to the scheme on the grounds that:

- a) the Eileen House site falls into category D of PPG24, is contrary to PPG24 and should be refused on this basis;
- b) the noise mitigation strategy is unenforceable;
- c) the glazing specification will not achieve the Council's required noise levels
- d) the proposed development would lead to successful noise nuisance claims against MOS. As a result MOS would close.

- 3.8 The approach to PPG24 has been addressed in the main report. In particular the assumptions contained in PPG24 relating to the attenuation of noise by windows are considered to be dated and the glazing specification would provide a much greater level of attenuation than is assumed in PPG24.

The noise mitigation strategy requires the provision of high glazing specification windows and mechanical ventilation. To that extent it is enforceable. Whether future occupiers choose have their windows closed at night is a matter for them. The potential consequences of them not closing the windows and commencing claims in nuisance are addressed in the main report.

Rupert Taylor has advised that the glazing specification will be effective at achieving the Council's required internal sound levels including those relating to the maximum levels of noise emanating from MoS. A condition is proposed to require a glazing specification that would result in the levels being met.

Officers have advised in the main report that they do not consider that it is likely that a noise nuisance would be likely to be successful as any potential claimant would have to establish that it is reasonable to expect to be able to sleep undisturbed in an inner London location with windows open. Even without the presence of MoS the noise levels of the location are such that a future occupier would be likely to be disturbed if they tried to sleep with their windows open. Even so a successful claim in nuisance cannot be ruled out.

Officers have also advised as to the likely level of financial impact upon the MoS if a claim were successful. In the most recent letter MoS identifies a cost of £900,000 for mitigation works not including further costs for further structural works.

MoS also states that the club would have to shut for 20 weeks result in a loss of turnover (note this is not a loss of profit) of over £2.5m. MoS contends that this period of closure would harm MoS's international brand. It contends that such financial impact upon the business would be devastating and the MoS club would have to close permanently.

MoS has not provided information regarding the level of turnover of the MoS club or its annual profit to place these sums in context.

Members will need to have regard to these matters and give them weight in the planning balance.

Officers remain of the view that on balance the benefits of the proposed development outweigh the potential consequences of the grant of planning permission for MoS.

MoS also objects to the advice given in the main report to the effect that the overall planning balance weighs in favour of granting planning permission. MoS contends that if it is the case that noise levels cannot be met with windows shut this would be reason enough to refuse planning permission. As set out above, the advice from Rupert Taylor is that a glazing specification can be found that will result in the required noise levels being met. If members disagree then a conflict with policy would arise which would have to be given weight in favour of refusal and placed in the planning balance alongside all of the other relevant consideration which weigh both in favour of grant and in favour of refusal.

MoS contends that the provision of sealed windows should be considered by Members. It contends that "natural ventilation" can be achieved in accordance with the Sustainable Design and Construction SPD through the use of passive whole-building ventilation systems or heat recovery systems.

The Council's Sustainable Design and Construction SPD specifies that mechanical systems should only be used alongside natural ventilation. Passive whole-building ventilation systems or heat recovery systems are no substitute for the ability to achieve natural ventilation through window openings. The Residential design standards similarly seek dual aspect in order to allow for cross ventilation which would not be achieved through mechanical systems.

Officers have reconsidered the planning balance in the light of the above but remain of the view that on balance planning permission should be granted.

3.9 Cllr Morris has submitted an objection on several grounds:

She objects to the height of the building, the provision of 2 bed units below the 60% requirement, one bed units below the space standards, non-compliance with energy and sustainable design; shortfall in affordable housing and no socially rented; concerned about the relocation of the bus-stands that will have an impact on residents and traffic movements in Borough Road. Questions the relationship of the University to the development and if it is receiving any money from the development (*Officer comment* – The University occupy part of Eileen House on a lease. The developer is understood to have an option on the purchase of the site but does not own it. The existing lease and future sale are separate matters.) The Scheme fails to provide a predominance of dual aspect units and under-provides in terms of amenity space and childrens' play space. Supports the MoS's concerns and does not want to lose this valuable internationally recognised club. Considers this does not represent positive regeneration of the Elephant and Castle but is contrary to the vision for the E& C as set out in the Core Strategy.

3.10 *Officer comment* - Many of the issues raised are covered above being similar to issues raised by MoS. In respect of the relocation of the bus stands this will occur on phase 2 of the public realm scheme and is dependent on TfL's agreement. The location of the bus stands is undetermined. With regard to dual aspect units provision at 41 % is below the desired level of a minimum of 50%. However this is considered to be mitigated in part by the provision of particularly generous balconies across the development.

3.11 Further Clarifications

In respect of the Human Rights section paragraph 210 incorrectly entered as 201) – final bullet point should read as follows:

- *Article 1, Protocol 1 (Protection of Property)* – this right prohibits interference with individuals' right to peaceful enjoyment of existing and future property / homes. Article 1 provides that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law". As set out above, the possibility of a successful claim in nuisance against MoS by a future occupier cannot be ruled out. Accordingly the grant of planning permission for the proposed development has the potential to result in MoS being required to alter its operation and/or to expend funds to mitigate noise emanating from its premises. As a result, the grant of planning permission has the potential to interfere with MoS's human rights. Accordingly, planning permission can only be granted consistent with the rights if the benefits of the proposed development outweigh the impact upon MoS. As set out above, Officers consider that this is the case.

3.12 Paragraph 408 should read as follows:

This approach has been endorsed by *Lough v First Secretary of State* [2004] 1 WLR 2557 and clearly shows that human rights considerations are also material considerations in the planning arena which must be given proper consideration and weight. It is acceptable for the Council to strike a balance between the legitimate aim of the provision of a mixed use development against potential interference with some individual rights.

(The last sentence of this paragraph in the main report is deleted.)

3.13 Conditions

Condition 22 in respect of the Breeam rating should be varied to require “excellent” rating as follows:

- a) Before any fit out works to the commercial premises hereby authorised begins an independently verified BREEAM report (detailing performance in each category, overall score, BREEAM rating and a BREEAM certificate of building performance) to achieve a minimum ‘excellent’ rating shall be submitted to and approved in writing by the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any such approval given;
- b) Before the first occupation of the building hereby permitted, a certified Post Construction Review (or other verification process agreed with the local planning authority) shall be submitted to and approved in writing by the Local Planning Authority, confirming that the agreed standards at (a) have been met.

Reason: To ensure the proposal complies with Core Strategy Policy 13 High Environmental Standards and Saved Policies 3.3 Sustainability and 3.4 Energy Efficiency of the Southwark Plan 2007.

Condition 15 regarding sound insulation between residential and commercial premises containing a party element should be deleted as it is not relevant to the development.

The following condition should be inserted to secure the required internal noise levels:

Prior to the commencement of development a report providing details to demonstrate all new residential premises shall be designed to ensure that the following internal noise levels are not exceeded as a result of entertainment noise sources (from the Ministry of Sound) with windows closed:

Frequency (Hz)	31.5	63	125	250	500	1000	2000	4000	8000	'A'
LS max (dB)	60	47	38	26	19	15	12	9	7	27

Reason: To ensure that the occupiers and users of the proposed development do not suffer a loss of amenity by reason of excess noise from the Ministry of Sound in accordance with Core Strategy policy 13 'High Environmental Standards' and Saved Policy 3.2 Protection of Amenity of the Southwark Plan 2007 and PPG 24: Planning and Noise.

The following condition should be added to ensure provision of Code for Sustainable Homes Level 4;

No development shall take place until the Local Planning Authority has been provided with an independently verified Code for Sustainable Homes interim certification that seeks to achieve a minimum level 4 rating. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that a code level 4 has been achieved.

Reason: In the interests of sustainable development in accordance with Strategic Policy 13 of the Southwark Core Strategy 2011.

The following condition should be added to ensure that a satisfactory mix of dwellings is provided:

No development shall be commenced until plans at a scale of 1:50 have been submitted to and approved in writing by the Local Planning Authority showing the detailed layout of each residential unit demonstrating compliance with Table 3.3 Minimum Space Standards of the London Plan 2011.

Reason: To ensure a satisfactory standard of accommodation in accordance with Policy 3.5 of the London Plan 2011

The following condition should be added to ensure the provision of a minimum of 60% 2 bedroom or more units:

No development shall be commenced until plans at a scale of 1:50 have been submitted to and approved in writing by the Local Planning Authority showing the provision of a minimum of 60% 2 bedroom or more sized units.

Reason: To ensure an appropriate mix of residential units in accordance with Strategic Policy 7 of the Core Strategy 2011.

The following condition should be added to ensure CO2 emissions meet the Core Strategy requirement:

No development shall be commenced until a detailed energy assessment report has been submitted to and approved by the Local Planning Authority to demonstrate that the development will achieved a minimum of 44% CO2 reductions over 2010 building regulations.

Reason: To ensure a sustainable development in accordance with Policy 5.2 of the London Plan and Strategic Policy 7 of the Core Strategy 2011.

3.14 Item 6.3 - 89-93 Newington Causeway

MoS have submitted a further letter of objection in relation to this scheme (attached). MoS objects on the basis that the proposal:

- Is of excessive height and outside the identified primary and secondary clusters for tall buildings;
- Provides no social housing; and
- Provides a fraction of the amenity space required by the Council's own Residential design SPD.

On this basis it is suggested the scheme should be refused.

3.15 *Officer Comment:* The issue of height is fully addressed in the main report paras 95-105. The conclusion within the reports is that the proposed building is considered to fit well within both the existing and emerging context and would not over-dominate its surroundings and would remain subservient in height to the buildings with the core and secondary clusters of the Elephant and Castle.

The issue of the lack of social (rented) housing is also addressed in the report (para 90). A key consideration in this regard is the restricted nature of the site which can only accommodate a single core.

In respect of the shortfall in amenity space the issue is addressed in the main report at paras 109 -112. Given the restricted nature of the site in this central urban area the level of amenity space is considered acceptable. Taking into account the merits of the scheme in terms of the provision of housing, the contribution to regeneration within the Elephant and Castle opportunity area the balance is considered to lie in favour of granting planning permission.

In relation to the issue of noise the submission made by MoS in respect of the application at Eileen House the same comments are considered to apply to the site at 89-93 Newington Causeway. Members are directed to the previous item at paragraphs 6.7 and 6.8 above.

- 3.16 The applicant has submitted comments in response to the MoS submission. They refer to legal advice they have obtained in relation to a potential nuisance claim:

".....in my Opinion dated 26th March, 2011, I observed: "even if noise from MoS did reach a level which was audible at the Site with windows/doors open at night, the Court [in any nuisance claim] would have to consider whether any interference was "unreasonable" - at a building specifically designed and equipped to protect occupants from high levels of existing external noise (to which MoS makes a modest contribution). As mentioned, I cannot see any prospects of a claim on the basis postulated succeeding". I have no reason to alter this view.

A later opinion repeats the substance of the above:

"In my opinion, it would be perverse of the Council to allow the very low risk of a nuisance claim against MoS to cast a sterilising pall over the regeneration of large tracts of land in its vicinity, which are otherwise accepted to be eminently suitable for redevelopment to assist with the provision of the new homes and jobs urgently needed in this part of London.

Accordingly, I continue to take the view that the Council can properly grant permission for the Development as recommended by its Officers."

However the applicant is concerned at the imposition of a condition which seeks to specify the internal noise criteria in terms of an L_{max} rather than an L_{eq} noise index. They consider that the L_{eq} noise index does take account of the fluctuating nature of entertainment noise.

In essence the applicant considers that the issue of entertainment noise has been fully considered within the design of their scheme. Glazing to the required specification can be provided and secured by conditions as advocated in PPG24.

- 3.17 *Officer Comment:* The reason for using the L_{Smax} criterion is to address the specific entertainment noise coming from the MoS as opposed to any other sounds such as traffic noise.

- 3.18 Condition 10 should be amended to include reference to L_{Smax} specifically as follows:

Prior to the commencement of development a report providing details to demonstrate all new residential premises shall be designed to ensure that the following internal noise levels are not exceeded as a result of entertainment noise sources (from the Ministry of Sound) with windows closed:

Frequency (Hz)	31.5	63	125	250	500	1000	2000	4000	8000	'A'
LS max (dB)	60	47	38	26	19	15	12	9	7	27

Reason: To ensure that the occupiers and users of the proposed development do not suffer a loss of amenity by reason of excess noise from the Ministry of Sound in accordance with Core Strategy policy 13 'High Environmental Standards' and Saved Policy 3.2 Protection of Amenity.

REASON FOR LATENESS

- 4. The comments reported above have all been received since the agenda was printed. They all relate to an item on the agenda and Members should be aware of the objections and comments made.

REASON FOR URGENCY

- 5 Applications are required by statute to be considered as speedily as possible. The application has been publicised as being on the agenda for consideration at this meeting of the Sub-Committee and applicants and objectors have been invited to attend the meeting to make their views known. Deferral would delay the processing of the applications/enforcements and would inconvenience all those who attend the meeting.

Lead Officer: Gary Rice - Head of Development Management

Background Papers: Individual case files.

Located at: 160 Tooley Street London SE1.