

PLANNING BOARD	Agenda Item: 6
17 March 2020	Reference No: 18/1594/F

Applicant: Notting Hill Genesis
Agent: BPTW Partnership

Site Address: Saxon Wharf, Norman Road, Greenwich, SE10	Ward: Greenwich West Application Type: Full Planning Permission
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ADDENDUM

- I. **Further considerations in relation to the ‘agent of change’ principle**
 - I.1 Further to paragraph 5.4 of the Planning Board report dated 19 November 2019 (Appendix 5 of the current report) the ‘Intend to Publish’ version of the London Plan was issued in December 2019. The relevant policy of this version of the London Plan is policy D13 Agent of Change.
 - I.2 It should also be noted that paragraph 182 of the NPPF 2019 states the following in relation to the agent of change principle:

“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”
 - I.3 The potential impacts of the existing wharf operations upon future residents of the proposed development and the potential for complaints against the wharf have been assessed. However, it is considered that with the imposition of conditions the proposed development would not result in unreasonable restrictions being placed upon the wharf operations. Furthermore, the proposed conditions will require the applicant to provide suitable mitigation (specifically the measures set out in Condition 21 and any further mitigation required to meet the noise criteria set out in Condition 54) prior to the completion of the proposed development.

2. Further considerations relating to the restriction of nuisance claims

2.1 As noted in paragraph 1.5 of the report, the view of the Council's legal advisors is that restricting future occupants from making or pursuing any claim for nuisance or damages would not be lawful and should not be included in the S106 agreement. The reasons for this are as follows:

- Under S106 of the Town and Country Planning Act 1990 principal obligations in a S106 Agreement can only be used for the following purposes:
 - “(a) restricting the development or use of the land in any specified way;
 - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
 - (c) requiring the land to be used in any specified way; or
 - (d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.”;
- The restrictions that were originally proposed here were on the rights of occupants to make claims, arguably rather than on the development or use of the land to which the obligations were to relate;
- Perhaps more importantly, the obligations are not in the Council's judgement considered reasonable and necessary to make the development acceptable in planning terms, particularly having regard to the planning conditions as now proposed. Therefore, they would fail to meet the legal test for S106 obligations set out in Reg 122 of the CIL Regs 2010 and cannot as a consequence constitute a reason for granting planning permission.

2.2 In any event, even if there were not a legal concern, planning officers have carefully reviewed and considered the outcome and consider as a matter of planning judgement that a restriction on occupants making claims would not have prevented the residents suffering a significant adverse impact on residential amenity as all it would do is prevent potential claims in certain circumstances. Therefore, it is considered that the previous proposal of a more limited planning condition, together with the originally proposed S106 restriction, would potentially allow for a worse planning outcome in terms of residential amenity. Even if there were not a legal concern, planning officers fully support the present proposal and accompanying additional planning conditions and revised S106 obligations as an acceptable and preferable planning outcome and nothing further is considered necessary or reasonable in order to grant planning permission.

3. **Amendments to the wording of the proposed conditions**

3.1 The conditions set out at Appendix 2 of the report have been reviewed and the following changes are recommended:

Condition 4 Demolition/Construction Air Quality Impacts

Prior to construction works commencing; a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority for a management scheme to control and minimise emissions of air pollutants attributable to the construction of the development. This should include a risk assessment and a method statement in accordance with the control of dust and emissions from Construction and Demolition Best Practice Guidance published by the Greater London Authority:

- Proposals for monitoring dust / particulates and procedures to be put in place where agreed dust / particulates levels are exceeded;
 - A dust risk assessment shall be undertaken; to include dust suppression methods to be used including details of equipment during the different stages of the development;
 - Site plan identifying location of site entrance, exit, wheel washing, hard standing hoarding (distinguishing between solid hoarding and other barriers such as heras and monarflex sheeting), stock piles, dust suppression, location of water supplies and location of nearest neighbouring receptors;
 - Confirmation if a mobile crusher will be used on site and if so, a copy of the permit and indented dates of operation;
 - Bonfire policy;
 - A demolition asbestos survey;
 - Proposals for monitoring dust and preventing or controlling unacceptable releases, including asbestos;
 - Wheel washing facilities, location and facilities for discharging the water.
- Reference shall be made to: The Mayor of London's 'The control of dust and emissions from construction and demolition' Supplementary Planning Guidance <https://www.london.gov.uk/file/18750/download?token=zV3ZKtpP> BRE four part Pollution Control Guide, Part 1 Pre-project planning and effective management; 'Controlling particles, vapour and noise pollution from construction sites'.

The development shall be implemented in accordance with the approved details.

Reason: In order to safeguard the residential amenity of prospective occupiers and ensure compliance with Policies 5.3; and 7.14 Improving Air Quality of the London Plan (2016); and Policies H.5, E(a) and E(c) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies 2014

Condition 31 Precautionary Bat Survey

Buildings assessed as having low potential are required to have one further emergence (dusk) survey in combination with a dawn re-entry survey in order to determine the presence/likely absence of bats. If more than one year passes between the most recent bat survey and the commencement of demolition and/or tree works, an update bat survey must be undertaken immediately prior to demolition or tree works by a licensed bat worker. Evidence that the survey has been undertaken shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of demolition and/or tree works.

Should the survey identify that bats are present, a mitigation strategy and monitoring scheme (to include a programme of implementation) shall be submitted to and approved by the Local Planning Authority prior to commencement of any site clearance or building operations on site (including demolition and delivery of associated machinery or materials).

The approved mitigation measures shall be implemented in accordance with the approved details.

Reason: To ensure compliance with the Habitats Regulations and the Wildlife & Countryside Act 1981 (as amended).

Condition 54 Noise Criteria Compliance

The development hereby permitted shall meet the following noise criteria:

Criterion 1

Noise levels in bedrooms at night shall not exceed 30 dB LAeq,8h and shall not exceed 45 dB LAm_{ax,f} more than 10 times per night for regular noise sources. Regular noise sources include sources which commonly occur at, or in the vicinity of, the site including wharf operations, as opposed to one-off events, or special occasions which could result in higher than typical site noise levels. The limits include all external noise sources and building services noise if applicable. The internal noise levels should be achieved with rapid ventilation (either open windows or suitable alternative) for whole dwelling ventilation purposes and to prevent overheating.

Criterion 2

Noise levels in habitable rooms during the day shall not exceed 35 dB LAeq,16h. The limit includes all external noise sources and building services noise if applicable. The internal noise levels should be achieved with rapid ventilation (either open windows or suitable alternative) for whole dwelling ventilation purposes and to prevent overheating.

Criterion 3

The rating levels according to BS 4142: 2014 on balconies due to all industrial and wharf sources operating at a cumulative maximum shall not be more than 5 dB above existing background noise levels during the daytime (0700 -2300).

Criterion 4

For public / private outdoor areas (i.e. gardens and balconies) the maximum target noise level shall be as specified within BS8233:2014. i.e.; LAeq 55 dB [BS 8233:2014 'upper guideline value'].

Prior to the commencement of any above ground works in connection with the development hereby permitted full details of any mitigation measures required in order to meet the above criteria including a requirement for windows to be fixed shut where required to meet the criteria and, where relevant, details of any alternative means of ventilation or cooling, shall be submitted to and approved in writing by the Local Planning Authority and the mitigation shall be installed in accordance with the approved details prior to the first occupation of the residential units hereby permitted.

Reason: In order to protect the amenity of future occupants of the development and to minimise the potential for conflict with the nearby safeguarded wharf in accordance with policies D1 and H5 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) and policy 7.26 of the London Plan (2016).

Condition 55

Noise Criteria Testing and Implementation Condition

a) Prior to the first occupation of each building, a scheme for testing the internal and external noise environment of the residential units, to demonstrate compliance with Criteria 1 and 2 of Condition 1 above and modelling to demonstrate compliance with Criterion 3, shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the Port of London Authority).

b) Prior to the first occupation of the residential units hereby permitted, the scheme for noise testing and modelling required by part a) above shall be implemented and the results submitted and approved in writing by the Local Planning Authority (in consultation with the Port of London Authority).

c) The results of the testing of a representative sample of properties demonstrating that the relevant criteria have been met shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development.

Reason: In order to protect the amenity of future occupants of the development and to minimise the potential for conflict with the nearby safeguarded wharf in accordance with policies D1 and H5 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) and policy 7.26 of the London Plan (2016).

Background Papers:

National Planning Policy Framework (2019)

Planning Practice Guidance

The London Plan (2016) Minor Alterations to the London Plan (March 2016)

Intend to Publish London Plan December 2019

Royal Greenwich Local Plan: Core Strategy with Detailed Policies (Adopted July 2014)

Planning Board Reports 19 December 2018 and 23 January 2019

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