



Planning Committee

15 October 2014

Report from the Operational Director, Planning & Regeneration

Wards affected:
Mapesbury, Willesden Green, Dudden Hill,
Brondesbury Park

110 Walm Lane, Public Inquiry – Affordable Housing

1.0 Summary

- 1.1 This item was deferred from the Planning Committee meeting of the 17th September 2014. The item was deferred to allow Members more time to consider the background documentation associated with the item.
- 1.2 Following the Council's decision in March 2014 to refuse planning permission for the redevelopment of 110 Walm Lane (including the Queensbury Public House) an appeal has been submitted by the applicant, Fairview New Homes Ltd. The appeal is due to be determined through the Public Inquiry procedure. During the appeal a Planning Inspector will examine whether the Council's reasons for refusal were reasonable and justified in planning terms. The Council cited three reasons for refusal which are set out in detail below. The second reason for refusal relates to affordable housing provision, identifying concerns that the applicant's proposal did not make adequate provision for on-site affordable housing within the scheme.
- 1.3 Following the submission of the appeal, the applicant has issued a revised affordable housing offer to the Council, which they intend to present to the Inspector during the appeal process. The revised offer proposes all affordable housing to be provided on-site. The purpose of this report is to provide information on the revised affordable housing offer so that the Planning Committee can decide whether the revised offer would adequately address the relevant reason for refusal.

2.0 Recommendations

- 2.1 That the Planning Committee:-
 - i) agree to the principle of the revised affordable housing offer from Fairview New Homes Ltd subject to securing a suitable 'open book' review of the scheme viability and affordable housing offer taking into account both the costs and revenues achieved by the development.

ii) delegate authority to the Head of Planning or such other duly authorised officer to agree, under advice from the Director of Legal Services and Procurement, the exact terms of a s106 or other legal agreement to secure the revised affordable housing offer should the Planning Inspector be minded to allow the appeal and grant planning permission.

iii) note that the appeal will still be fully contested by the Council on the remaining reasons for refusal.

3.0 Consultation

3.1 Following publication of the original report to the Planning Committee on the 17th September 2014, concerns have been raised by the 'Save the Queensbury' group, Councillor Krupesh Hirani and other residents regarding a number of matters. In summary the concerns raised include:-

i) That insufficient public consultation has been undertaken in respect of revised affordable housing offer by Fairview New Home Ltd.

ii) That insufficient policy context was provided within the previous report and that the revised proposal still fails to meet the 50% affordable housing target set out in the Core Strategy

iii) Negative impact on community activity, especially for toddler groups

These matters are considered below.

Insufficient Consultation

3.2 The planning application for the proposed development, now the subject of the appeal, was subject to widespread public consultation as set out in the main committee reports which are background documents to the item. This consultation involved sending out 1189 letters to local residents and businesses as well as advertising the application by way of site and press notices. In response to the consultation on the planning application the Council received 174 representations. The officer's report to Committee set out that the lack of affordable housing was amongst a number of issues raised by the objectors to the application.

3.2 When the application was reported to Planning Committee in March 2014, in accordance with standard practice, notification of the meeting was sent to only those 174 residents that had made representations on the application. The purpose of this is to ensure the notifications are targeted at only those residents that have expressed an interest in the application.

3.3 The minimum requirement for consultation on the appeal is to notify all statutory consultees and any interested parties that made representations on the planning application of the appeal and the Inquiry arrangements. However, given the time that has elapsed since the decision and the public interest in the proposal notifications inviting comments on the appeal and providing details on the Inquiry arrangements, were sent to 1271 local residents and businesses. This comprised of the original 1189 consultees plus those residents who made representations although they were not directly contacted as part of the original consultation.

- 3.4 Although consultation on the appeal went beyond the minimum requirements, notification letters regarding the report to the planning committee on 17th September 2014 on the revised affordable housing offer were only sent to those residents and other interested parties who had submitted representations in respect of the planning application. 179 hard copy letters were dispatched in total. This is similar to the level of notification that was given in respect of the planning application when it was reported to Planning Committee in March 2014 and is, again, in general accordance with the Council's standard practice in terms of taking a more focussed approach when providing notification of committee agenda items.
- 3.5 Officers are aware that due to a technical issue at this time the notification letter to the 'Save the Queensbury' group' was not generated with a valid postal address. However, officers had informed the group of the agenda item and committee date prior to the dispatch of the notification letters. All other notification letters appear to have been dispatched with a valid address.
- 3.6 Following the deferral of the item from the Planning Committee agenda on the 17th September, in response to concerns raised, a further 1271 notifications were sent out on 22nd September 2014 to inform local residents that the matter would be reported back to the Planning Committee on 15th October 2014 and to signpost the relevant documentation on the Council's website. Officers consider that there has been sufficient public consultation regarding this matter and that all statutory requirements to consult have been fulfilled.

Affordable Housing Policy and Provision

- 3.7 Concerns have been raised that insufficient information was provided in the report the Planning Committee on the 17th September 2014 in relation to the planning policy context regarding the requirements to provide affordable housing within new developments in Brent. It should be noted, that the policy context in relation to affordable housing was provided within the report on the planning application which was presented to the Planning Committee in March 2014, which is a background document to the September report. However, for the avoidance of doubt officers would like to provide the following clarification in relation to the planning policy context of the matter under consideration.
- 3.8 The National Planning Policy Framework (NPPF) was adopted in March 2012. The NPPF "sets out the Government's planning policies for England and how these are expected to be applied" and is a material consideration in the determination of planning applications. Paragraph 173 of the NPPF states:-
- "Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."*
- 3.9 Planning applications should be determined in accordance with the development plan and other material consideration, including the NPPF. The development plan for

Brent comprises of the London Plan 2011 (as amended 2013), Brent's LDF Core Strategy 2010 and 'saved' policies within Brent's Unitary Development Plan 2004.

- 3.10 Policy CP2 of the council's Core Strategy sets out that "the borough will aim to achieve the London Plan target that 50% of new homes should be affordable". Although the 50% target was removed from the London Plan when it was revised in 2011, London Plan policy 3.11 continues to "seek to maximise affordable housing provision" and goes on to state that "Boroughs should set an overall target in LDF's for the amount of affordable housing provision needed over the plan period". Therefore the Council will continue to seek deliver 50% of the new homes delivered across the borough as affordable.
- 3.11 However, where the provision of 50% affordable housing on a particular site would result in the development being unviable then London Plan policy 3.12B states that "Negotiations on sites should take account of their individual circumstances including development viability, resources available from registered providers (including public subsidy), the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements."
- 3.12 As set out in the remarks section below, the appellants revised affordable housing offer, whilst below 50%, has been reviewed by independent consultants who have advised that, on the basis of current assumptions, the revised offer of 12 shared ownership units is the maximum amount of affordable housing that can be provided as part of the proposal. However, in accordance with London Plan policy 3.12B, officers are recommending that should the revised offer should subject to securing a suitable 'open book' review of the scheme viability and affordable housing offer taking into account both the costs and revenues achieved by the development.

Impact on Community Activity

- 3.13 In March 2014 the Planning Committee did not find reason to refuse the original planning application, which is now the subject of the appeal, on the basis of the impact of the development on community activity, especially toddlers groups, provided that an appropriate Community Access Plan could be secured as part of any development. This is referred to in the Council's third reason for refusal (see below).
- 3.14 Although this issue is not directly related to the matter of affordable housing which is the subject of this report, Members are advised that Officers will contend the appeal on the basis of the third reason for refusal and will be seeking to secure an appropriate Community Access Plan should the Planning Inspector be minded to allow the appeal.

4.0 Remarks

- 4.1 The subject site is located on the eastern side of Walm Lane, on the edge of Willesden Green town centre. The site is occupied by a two/three storey building which accommodates the Queensbury public house and some first floor office accommodation, used in connection with the former Conservative Club. The site lies within the Mapesbury Conservation Area and also borders the Willesden Conservation Area. The site is located in close proximity to Willesden Green

Underground Station (Grade II Listed). The Queensbury public house is currently listed as an Asset of Community Value.

4.2 The proposal submitted by Fairview New Homes Ltd, under planning application ref. 13/3503, would involve the *“Demolition of existing Public House and Conservative Club and erection of 2 to 10 storey building containing A4/D1 use unit on ground floor and 53 residential units on the ground and upper floors (13 x one bed, 30 x two bed and 10 x three bed). Formation of revised vehicular access from Walm Lane to basement car park comprising 23 parking spaces and associated amenity space, landscaping works and pedestrian access from Walm Lane, subject to Deed of Agreement dated under Section 106 of the Town and Country Planning Act 1990, as amended”*.

4.3 In March 2014, the Planning Committee resolved to refuse permission for the proposed development against the recommendation of officers. The application was refused for the following reasons. It is the second reason for refusal, highlighted in **bold**, that is the subject matter of this report:-

1. The proposed development, by reason of its height, scale, massing and density, would appear unduly prominent and out of character in the street scene and in the wider locality. The development would fail to preserve or enhance the character and appearance of the Mapesbury Conservation Area in which the site is located and would adversely impact on the nearby Willesden Green Conservation Area and the setting of the Grade II Listed Willesden Green Station. As a result, the proposal fails to comply with the National Planning Policy Framework 2012; Policies 3.4, 3.5 and 7.4 of the London Plan 2011 and Revised Early Minor Alterations to the London Plan published on 11 October 2013; Policies BE2, BE3, BE9, BE10, BE23, BE25, BE27, H12 & H13 of Brent's Unitary Development Plan 2004; Supplementary Planning Guidance 17 "Design Guide for New Development", October 2001; Mapesbury Conservation Area Design Guide.

2. The proposed development would provide insufficient provision of on-site affordable housing. As a result, the development would fail to comply with National Planning Policy Framework 2012; Policies 3.8, 3.9, 3.10, 3.11, 3.12 and 3.13 of the London Plan 2011 and Revised Early Minor Alterations to the London Plan published on 11 October 2013; Policy CP2 of Brent's Core Strategy 2010; S106 Planning Obligations SPD, July 2013.

3. In the absence of a legal agreement, the development would not secure a Community Access Plan, sustainability measures, job & training opportunities for local residents, adherence to the Considerate Contractors Scheme, a Travel Plan and restrictions to prevent future residents from applying for parking permits. As a result, the proposal fails to comply with the National Planning Policy Framework 2012; Policies 3.16, 4.6, 5.2, 5.3, 5.6, 5.7, 5.9, 5.13, 6.3, 6.13, 8.2 of the London Plan 2011 and Revised Early Minor Alterations to the London Plan published on 11 October 2013; Policies CP19 and CP23 of Brent's Core Strategy 2010; Policies EP2, EP14, TRN3, TRN4, TRN10, TRN23, TRN34 and CF2 of Brent's Unitary Development Plan 2004; Supplementary Planning Guidance 17 "Design Guide for New Development", October 2001; S106 Planning Obligations SPD, July 2013.

4.4 At the time of determination, the applicant proposed to provide 10 (18.9%) of the 53 homes as affordable, shared ownership, units as well as a cash in lieu contribution of £138.346 towards the off site provision of affordable housing. The offer was

reviewed by an independent consultant, BNP Paribas, instructed by the Council to assist with the negotiation of affordable housing on the site. BNP Paribas advised that in viability terms the proposed affordable housing offer would be acceptable.

- 4.5 Whilst acknowledging the advice on viability, this affordable housing offer was found to be unacceptable by the Planning Committee during their consideration of application given the “insufficient provision of on-site affordable housing”. As noted above, the proposal did not provide all affordable housing ‘on-site’.
- 4.6 Following the submission of an appeal against the decision, Fairview New Homes Ltd have approached the Council to see if this particular matter can be resolved prior to the Public Inquiry. They have issued a revised affordable housing offer which would increase the provision of shared ownership units from 10 to 12 (22.6%), an increase of 2 units. The affordable housing offer would therefore be delivered wholly on site and no longer include a cash-in-lieu contribution.
- 4.7 The 2 additional shared ownership units have been created by changing the tenure of 2 ground floor units that would have been private under the previous proposal. The proposal does not affect the layout or design of the building, nor does it affect the overall mix or quantity of units that would be provided within the scheme. The new shared ownership units would comprise 1x2-bed (3 person) and 1x 2-bed (4 person) units, both of which would share a core with the other private units within the scheme. As the units would be within a mixed tenure core it would be for the Registered Provider to negotiate a suitable service charge for the units. The following table summarises the changes between the original and revised affordable housing offers.

Shared Ownership	Original AH offer	Revised AH Offer
1-bed (2person)	3	3
2-bed (3 person)	3	4
2-bed (4 person)	0	1
3-bed (4 person)	4	4
Total	10	12
Cash-in-Lieu	£138,346	£0

- 4.8 This revised offer has been reviewed by BNP Paribas and they have confirmed that, in viability terms and on current assumptions, the revised offer of 12 shared ownership units is acceptable. However, they highlight the sensitivity of such appraisals to changes in assumed future sales values and have recommended that, if the offer is accepted by the council, this be subject to securing a suitable ‘open book’ review of the scheme viability and affordable housing offer taking into account both the costs and revenues achieved by the development.
- 4.9 Having considered the revised affordable housing offer within the context of the previous decision, the appeal and the advice given by BNP Paribas, officers consider that the revised offer constitutes an improved position on the matter of affordable

housing. As such, on balance, officers consider that the principle of the revised offer should be accepted, subject to the terms set out in paragraph 2.1 of this report.

- 4.10 In terms of the implications of accepting these recommendations on the Council's appeal case, whilst this would clearly narrow the matters in dispute, it is considered that the Council would maintain sufficient grounds to contest the appeal, particularly in relation to the design and heritage impacts of the proposed development. The Council have appointed an expert Design and Heritage witness to provide evidence to support the council's case at the public inquiry.

5.0 Financial Implications

- 5.1 Under the Public Inquiry appeals process the Council is required to bear the cost of hosting the Public Inquiry and the cost of preparing and presenting the Council's case. If the revised affordable housing offer is accepted by the Council this may reduce the duration of the Inquiry (which is currently programmed for 5 days) and the resources required to contest the appeal.
- 5.2 Under the planning appeals process, the Planning Inspector has legal powers to make an award of costs where it is found that costs have been incurred by one party due to unreasonable behaviour of another party.

6.0 Legal Implications

- 6.1 There are no particular legal implications associated with this matter other than it will be necessary to negotiate the exact terms of s106 or other legal agreement to secure the affordable housing contribution should the Inspector be minded to allow the appeal.

7.0 Diversity Implications

- 7.1 There are no particular diversity implications associated with this matter.

8.0 Staffing/Accommodation Implications

- 8.1 Staff resources will be required to contest the appeal. If the revised affordable housing offer is accepted then the council will not need to put forward an officer to prepare and provide evidence to the Inquiry in relation to the issue of affordable housing.
- 8.2 The Council are required to host the Public Inquiry and conference rooms at the Civic Centre have been reserved for 5 days. If the revised affordable housing offer is accepted by the Council this may reduce the duration of the Inquiry.

9.0 Environmental Implications

- 8.1 No significant environmental implications are anticipated.

10.0 Background Papers

- 10.1 Officers report to Committee, 12th March 2014 (including Supplementary report Decision notice 13/3503, dated 19th March 2014

Minutes of Committee meeting 12th March 2014

Revised Plan indicating ground floor units to be shared ownership

Letter from BNP Paribas, dated 4th August 2014

Contact Officers

Any person wishing to inspect the above papers should contact Ben Martin, Area Planning, Planning & Regeneration 020 8937 5231

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