

Subject: MSG Sphere, land to the west of Angel Lane:
Advertisement consent (19/00098/ADV)

Meeting date: 24 January 2023

Report to: Planning Decisions Committee

Report of: Daniel Davies, Principal Planning Development Manager

Borough: London Borough of Newham

FOR DECISION

This report will be considered in Public

1 EXECUTIVE SUMMARY

- 1.1 On 22 March 2022, the Planning Decisions Committee (PDC) resolved to grant planning permission for a multi-use entertainment venue incorporating a main auditorium (capacity for up to 21,500 people), a smaller music venue and night club (capacity for up to 1,500 people), members lounge, restaurants, external podium and terraces for entertainment, assembly and leisure, the construction of new pedestrian and vehicular bridges, highway and access works and other works incidental to the development. A new entrance to Stratford Station is also proposed as part of the package of planning obligations but this element would be the subject of a separate consent that would need to be obtained based on an outline specification secured as part of the S106 agreement.
- 1.2 The Committee also considered a separate application for advertisement consent (19/00098/ADV) for the display of adverts on the Sphere's external façade, digital billboards, the LED ribbon display, MSG branding and advertising on the bridge gates and upper façade terrace walls.
- 1.3 Members voted to grant advertisement consent for a period of 25 years subject to:
 - a) The conditions and informatives set out in the report: and
 - b) Additional controls and a review after the first five years of operation
- 1.4 The package of mitigation secured was recognised by the Committee as being extensive and appropriate, but it was acknowledged that there was a residual degree of uncertainty about how visual intrusion would impact amenity because whilst there has been extensive analysis and assessment of the amenity and safety impacts the precise nature of the digital display is unprecedented.
- 1.5 Given the unprecedented scale and longer than normal period of the consent being applied for, a five-year review was requested by Members, the details of which were required to be reported back to the Planning Decisions Committee for approval. The principal reason for the review being to ensure that appropriate controls would be in place to ensure that any unforeseen health and wellbeing impacts could be addressed should they arise.
- 1.6 The details of the proposed five-year review mechanism and additional controls to be secured by s.106 legal agreement and updated conditions are appended to this report.

The Digital Display Monitoring Group (DDMG), as a group of appropriately qualified specialists and representatives from public authorities, will continue to have the principal role in monitoring the operational impacts of the sphere on the local community but its remit now includes additional controls in relation to health and wellbeing impacts. The DDMG, will have the power to impose additional controls and mitigation to address health and wellbeing impacts should they arise.

- 1.7 The local planning authority (LPA) will determine whether additional controls are needed to address health and wellbeing impacts at the end of the five-year review period. These additional controls include changes to the Digital Display Management Strategy operational framework, reducing the luminance of the sphere façade and its hours of operation.
- 1.8 Officers are satisfied that with health and wellbeing impacts clearly within the remit of the DDMG and the scope of the five-year review, there is a clear pathway to address unforeseen effects should they arise.
- 1.9 Additional controls have also been secured which will contribute towards efforts to minimise the likelihood of adverse health and wellbeing impacts including regulating the brightness of the façade with respect to ambient daylight and seasonality. These controls, in addition to those already secured, in officers view, amount to an acceptable package of precautionary measures and provide a clear robust legal mechanism through which additional mitigation can be introduced, if necessary. The review would be informed by public feedback and independent scrutiny and address the substantive reasons for the review being requested.
- 1.10 It was envisaged that there would be a single section 106 agreement that would secure the mitigation required for both the planning permission and the advertisement consent. However, the applicant has requested that the obligations that relate to the use of the digital display and the associated five-year review be moved into a separate section 106 agreement that would relate to the advertisement consent only. Officers are satisfied that this is an acceptable approach and the Heads of Terms (HoT) appended reflect this approach.
- 1.11 Based on this analysis, the review mechanism and package of mitigations are acceptable and are recommended to be approved.

2 RECOMMENDATIONS

Application for advertisement consent (19/00098/ADV)

- 2.1 **APPROVE** the review mechanism and additional controls proposed to the advertisement consent (19/00098/ADV) for the reasons given in this report subject to:
 - a) The completion of a legal agreement to secure the planning obligations set out in the recommended Heads of Terms at appendix 1 of this report.
 - b) Additions and amendments to the conditions and informatives resolved to be approved by the Committee at its 22 March 2022 meeting as set out at appendix 2.

Delegated authority for 19/00098/ADV

- 2.2 **AGREE** to delegate authority to the Director of Planning Policy and Decisions to:
 1. Include details of the advertisement consent to the Mayor of London alongside the stage 2 referral of the planning application for the development to the Mayor of London and consider any direction from the Mayor of London and to make any consequential changes as the Director of Planning Policy and Decisions considers reasonably necessary:

2. Finalise the recommended conditions and informatives as set out in main report and Appendix 2 of this report including such refinements, amendments, additions and/or deletions (including to dovetail with and where appropriate, reinforce, the planning obligations to be contained in the section 106 legal agreement(s) as the Director of Planning Policy and Decisions considers reasonably necessary:
3. Finalise the legal agreement in accordance with the Heads of Terms as set out in Appendix 1 of this report, including refining, adding to, amending and/or deletions (including to dovetail with and where appropriate, reinforce the final conditions and informatives to be attached to the planning permission and advertisement consent) as the Director of Planning Policy and Decisions considers reasonably necessary:
4. Complete the s.106 legal agreement(s) referred to above and issue the advertisement consent.

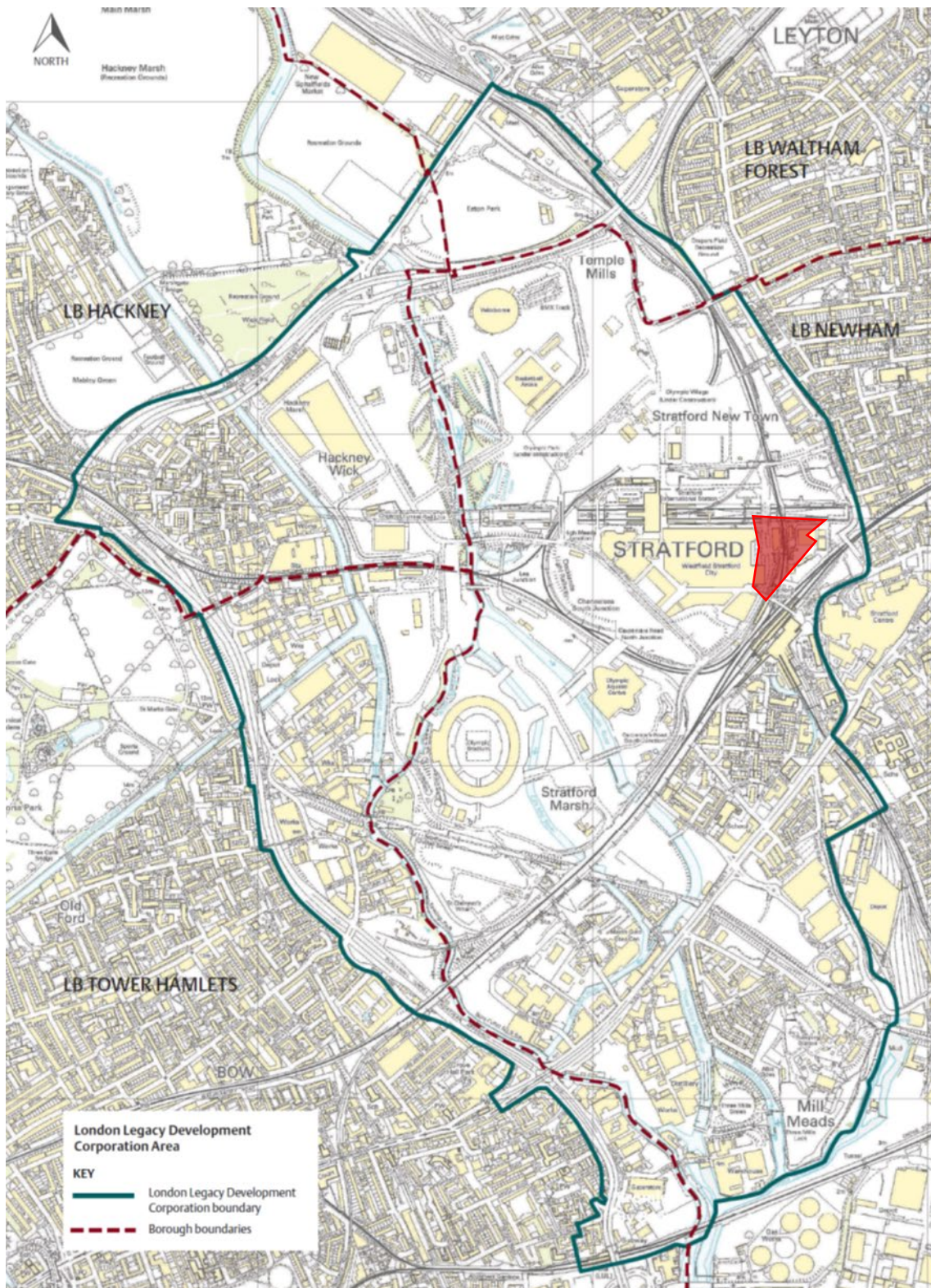
3 FINANCIAL IMPLICATIONS

3.1 NONE.

4 LEGAL IMPLICATIONS

4.1 The recommendation is that with the review mechanism and additional controls set out in the appendices to this report that consent is granted, subject to the satisfactory completion of the s.106 legal agreement(s) to ensure mitigation of the impacts of the development.

Site Plan



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Location: Land lying to the west of Angel Lane, Stratford, London E15 1AA

Borough: London Borough of Newham

Proposal: 19/00098/ADV: Application for advertisement consent comprising the illuminated display of Sphere building and LED displays located on the podium, lift cores and bridge links.

Applicant: Stratford Garden Development Limited

Agent: DP9 Ltd

5 BACKGROUND

- 5.1 On 22 March, the Planning Decisions Committee resolved to grant planning permission for the MSG Sphere venue which incorporates a main auditorium (capacity for up to 21,500 people) a smaller music venue and nightclub (capacity for up to 1,500 people), members lounge, restaurants, bars, external podium and terraces for entertainment, assembly and leisure, the construction of new pedestrian and vehicular bridges, highway and access works and other works incidental to the development. A new entrance to Stratford Station is also proposed as part of the package of planning obligations but this element would be the subject of a separate consent that would need to be obtained based on an outline specification secured as part of the s106 agreement.
- 5.2 The venue, designed by Populous, will be covered in LED panels designed to display digital content across the entire façade of the sphere building which could include moving images, artistic content and branded advertising. Members voted to grant advertisement consent to display digital content on the building for a period of 25 years subject to the conditions and informatives set out in the case officer report and a five-year review mechanism, with additional controls, which the Planning Decisions Committee requested should be brought back for approval. This report considers the five-year review mechanism and the additional precautionary mitigation measures proposed to be secured by legal agreement.
- 5.3 The main report and analysis that informed the vote on the advertisement consent are detailed in the 22 March 2022 Planning Decisions Committee papers. This report does not revisit those issues but focuses on the 5-year review and additional controls requested by PDC at that meeting.

6 THE SITE

- 6.1 The site, measuring 2.93 hectares, is a vacant triangular plot bounded on all sides by railway lines. It was previously used as a surface coach park during the London 2012 Olympic and Paralympic Games and was accessed via a temporary ramp built to connect the site to Angel Lane. It is part of the Metropolitan Town Centre and allocated in the local plan for a large town centre use with supporting elements and a link bridge.
- 6.2 Located between Westfield Stratford City Shopping Centre and the historic traditional Stratford High Street and Broadway, the site benefits from being in close proximity to diverse retail, sports and leisure facilities, including the London Aquatics Centre, Copper Box, London Stadium and complementary uses such as pubs, restaurants and local hotel operators.
- 6.3 Stratford Station is the main transport facility serving the site which is served by the Jubilee and Central London Underground Line, the Overground, Docklands Light Railway (DLR), TfL Rail, Greater Anglia and the Elizabeth Line. The site has a PTAL Access Level rating of 6b which is the best possible for public transport.
- 6.4 A detailed description of the site and its adjacencies are set out in the body of the main (22 March 2022) report to Planning Decisions Committee.

7 ADVERTISING PROPOSALS – PROPOSED ADDITIONAL CONTROLS AND 5-YEAR REVIEW

- 7.1 The proposals to display advertisements on the façade of the main building and within the MSG site remain as those considered and resolved to be approved at the Planning Decisions Committee in March 2022. Appendix 2 of this report provides a summary of the controls on the digital display which were agreed at PDC at that time by a combination of both planning conditions and s.106 legal agreement heads of terms.
- 7.2 In the March 2022 PDC report it was proposed that there would be a single section 106 agreement that would secure the mitigation required for both the planning permission and the advertisement consent. However, the applicant requested that the obligations that relate to the use of the digital display and the associated five-year review be moved into a separate section 106 agreement that would relate to the advertisement consent only. Having taken legal advice on this matter, officers are content that there are benefits in separating the obligations relating to the mitigation of impacts from the digital display from the other planning obligations relating to transport, event management and control, public realm and other environmental mitigation and controls.
- 7.3 Separate HoTs for the advertisement consent are now proposed and have been included at Appendix 1 to this report. The HoTs capture the mitigation previously agreed by PDC in March 2022, together with the five-year review and the additional controls so that the comprehensive set of mitigation and controls in relation to the digital display are set out together.
- 7.4 In terms of the principal additions, the Digital Display Monitoring Group (DDMG) will play an enhanced role in monitoring the operational impacts of the sphere's digital display on the local amenity. One of its central functions will be to monitor, and where necessary address, adverse 'Health and Wellbeing' and 'Road and Rail Network' impacts. The DDMG will have the power to impose additional controls and restrictions to address adverse impacts should they arise, in accordance with the three tiers of mitigation (Tier 1-3 measures) including reducing the luminance of the display and the operational hours of the display.
- 7.5 The local planning authority will determine whether additional controls are needed to address Health and Wellbeing Impacts at the end of the five-year review period. These additional controls include changes to the Digital Display Management Strategy operational framework, reducing the luminance of the sphere and hours of operation.
- 7.6 Additional controls have also been secured which will contribute towards efforts to minimise the likelihood of adverse Health and Wellbeing Impacts i.e., regulating the brightness of the façade with respect to ambient daylight and seasonality. A key aspect of the proposed five-year review will be the presentation of complaints and mitigation measures implemented over the preceding five years, together with the benefits that have arisen from the use of the sphere's digital display over the preceding five years.

8 REPRESENTATIONS

- 8.1 Representations in relation to the advertisement consent that were originally received are dealt with in the main case officer report and are not repeated in this report as the issues raised were considered at the Planning Decisions Committee meeting in March 2022, where advertisement consent was resolved to be approved subject to agreement on the five-year review and additional controls. Following the March 2022 PDC meeting and in light of the Committee's decisions AEG submitted representations in relation to the five-year review which state that:
 - a) The review should be informed by ongoing public feedback:

- b) The complaints telephone line should be operational for the full five-year review period:
 - c) Residents should be able to raise complaints through means other than just the telephone line and be provided with a dedicated person to whom complaints can be raised in person:
 - d) The applicant should be required to keep a full written and publicly available record of all complaints made and responses to/actions taken in response to those complaints:
 - e) The review should be informed by independent consultation with local residents to understand their experiences of the façade:
 - f) The review should include the period for the relevant planning authority to impose additional controls on the advertising, including the power to require the illuminated façade to be switched off entirely:
 - g) The review should allow for the impacts to be independently assessed.
- 8.2 Officers have taken AEG's representations into account and consider that the proposed Heads of Terms set out a process that would be informed by ongoing public feedback, independent scrutiny and permit the LPA to impose additional controls should unforeseen adverse effects arise in relation to health and wellbeing or public safety.

9 ACCEPTABILITY OF THE FIVE-YEAR REVIEW AND ADDITIONAL CONTROLS

- 9.1 The main consideration for members is the acceptability of the proposed five-year review mechanism and the additional controls.
- 9.2 To recap, the applicant committed to the submission of a digital display management strategy (DDMS), that will need to be approved by the local planning authority, which will detail the operational measures that will be implemented in the interests of public safety, amenity and human health. These measures include, amongst other things, restricting the display of flashing images, determining the maximum speed of moving images and the zoning of display material. Brightness and the hours of operation are also controlled and as a precautionary measure the applicant has committed to providing blackout blinds to occupiers of student and residential properties with a direct view of the Sphere's external façade.
- 9.3 The applicant has also committed to setting up and resourcing a Digital Display Monitoring Group (DDMG) that will comprise specialists and representatives from the relevant public authorities and have responsibilities for monitoring the impacts of the development and advising on the implementation of mitigation. It was envisaged that the recommendations of the group would only be mandatory in respect of matters relating to road and rail safety but following further negotiation with the applicant they have agreed that the DDMG's responsibilities are expanded to include health and wellbeing impacts.
- 9.4 The inclusion of health and wellbeing impacts within the scope of the DDMG means these impacts are now a central consideration during and at the end of the five-year review period and that there will be a group of appropriately qualified specialists and representatives of the relevant public authorities with expertise to advise on the implementation of mitigation measures and to monitor the effectiveness of additional mitigation measures over time.
- 9.5 Officers are satisfied that the additional controls mean that the DDMG is likely to be even more effective and that it has the relevant tools and powers to address health and wellbeing impacts, including requiring reductions in the luminance levels and reducing the operational hours of the digital display. Further precautionary measures have been secured in the revised s.106 heads of terms, including mechanisms to regulate the

daytime brightness of the Sphere digital display with reference to ambient light levels and to take into account diurnal and seasonal changes in daylight.

- 9.6 Officers are satisfied that the measures contained within the 5-year review and the additional controls around health and wellbeing impacts included within the scope of the DDMG addresses the Planning Decisions Committee requests and provides a clear mechanism through which additional controls could be introduced should unforeseen adverse effects arise from the operation of the digital display.
- 9.7 The LPA will ultimately determine whether any changes are necessary at the end of the 5-year review period and MSG would be obliged to operate the Sphere's external display in accordance with the outcome of the five-year review for the remaining period of the consent (20 years). In the event MSG are not satisfied with the decision of the LPA at the end of the five-year review period, there is a dispute resolution clause provision that would take effect, whereby an independent expert would be appointed to settle the dispute This is not an unusual clause and would normally apply in any event.
- 9.8 Officers are satisfied that the recommended obligations as a whole as set out in Appendix 1, including the additional controls and 5-year review requested by PDC are necessary, reasonable and proportionate and amount to an acceptable package of mitigation measures and recommend that they should be approved.

10 THE PUBLIC SECTOR EQUALITY DUTY

- 10.1 A detailed assessment was provided in the main officer report (22 March 2022) and the proposed changes do not change the conclusions of that assessment.
- 10.2 Taking account of the suite of mitigation measures proposed, it is not considered that these Advertisement Proposals are likely to result in any material negative impacts for people with any of the relevant protected characteristics. In so far as any negative impacts do remain, officers consider that these are minor.

11 HUMAN RIGHTS IMPLICATIONS

- 11.1 A detailed assessment was set out in the main officer report in respect of human rights considerations. The proposed planning obligations set out in this report do not change the conclusions of that assessment.

APPENDICES

Appendix 1 – Digital Display Heads of Terms

Appendix 2 – Digital Display Controls Overview