planning report PDU/2165/02
8 August 2008
Kender Triangle NDC
in the London Borough of Lewisham
planning application no. DC/08/68448

Strategic planning application stage II referral (old powers)

The proposal
Demolition of remaining buildings on the site and their replacement with 1 to 10-storey blocks, comprising 173 residential units, 3,389 sq.m. commercial and community uses (including doctor’s surgery, library, gym, cafe, creche), up to 47 car parking spaces and associated pedestrian and vehicular access, landscaping and associated works.

The applicant
The applicant is the New Cross Gate New Deal for Communities and Rydon Construction, and the architect is Feilden Clegg Bradley Studios LLP.

Strategic issues
The principle of mixed-use development on this site is recognised as key to the regeneration of the New Cross Gate New Deal for Communities area and is supported by strategic planning policy. Issues relating to playspace, access, energy, employment and transport have been satisfactorily addressed, with appropriate conditions and clauses in the section 106 agreement secured where appropriate. The level of affordable housing has been justified. The net loss of social rented units as part of the wider Kender regeneration scheme is extremely disappointing; however, given the benefits of the scheme as a whole it would not be in the interests of good strategic planning to refuse the application on that basis.

Recommendation
That Lewisham Council be advised that the Mayor is content for it to determine the case itself, subject to any action that the Secretary of State may take, and does not therefore wish to direct refusal.

Context
1 On 2 May 2008 Lewisham Council consulted the Mayor of London on a proposal to develop the above site for the above uses. Under the provisions of the Town & Country Planning (Mayor of London) Order 2000 the Mayor has the same opportunity as other statutory consultees to comment on the proposal. This report sets out information for the Mayor’s use in deciding what comments to make.
2 The application is referable under Category 1C of the Schedule to the Order 2000: “Development which comprises or includes the erection of a building… more than 30 metres high and outside the City of London.”

3 On 11 June 2008 the Mayor considered planning report PDU/2165/01, and subsequently advised Lewisham Council that the proposal was acceptable in principle with regard to strategic planning policy subject to the resolution of the following issues:

- Further information relating to local housing need and the wider Kender regeneration programme was required to justify the proposed unit mix.
- Further information was requested from the applicant on a number of matters relating to the Three Dragons Toolkit including the benchmark values used to assess the scheme, costs, revenues and levels of assumed grant listed within the toolkit.
- Further information was requested to justify the net loss of 12 affordable units and 41 social rented units on the site due to the proposals.
- The applicant was requested to supply SBEM modelling to calculate the baseline emissions for the non-domestic elements of the scheme and to provide a figure for the CO2 reductions due to energy efficient design.
- Further detail was requested on the availability and carbon intensity of the proposed biofuel and on how the hot water produced with the solar thermal collectors would be integrated into the site-wide heating network.
- Further detail was requested on the sustainable drainage strategy for the site.
- The level of car parking was requested to be reduced, trip generation and highway impacts reconsidered and linkages to local pedestrian and cycle networks improved.
- Planning conditions were required to address noise, air quality, transport, climate change, flooding.
- Further information was requested relating to the employment and training issues relating to the scheme.

4 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. Since then, the application has been revised in response to the Mayor’s concerns (see below). On 10 July 2008 Lewisham Council decided that it was minded to grant planning permission for the revised application, and on 31 July 2008 it advised the Mayor of this decision. Under the provisions of the Town & Country Planning (Mayor of London) Order 2000 the Mayor may direct Lewisham Council to refuse planning permission, and has until 13 August 2008 to notify the Council of such a direction. This report sets out the information needed by the Mayor in deciding whether to direct refusal.

5 The Mayor of London’s decision this case, and his reasons, will be made available on the GLA website www.london.gov.uk.
Update

Housing

Unit mix

6 In response to the concerns over the proposed unit mix and lack of family housing (48.5% 1-bedroom units, 49% 2-bedroom units and 2.5% 3-bedroom units), further information has been supplied relating to local housing need in Lewisham. The Lewisham Housing Needs Study (2002) notes that “the main shortfall is for two bedroom accommodation (1,177 per annum) although the shortfall relative to the supply is greatest for four bedroom accommodation, where the shortfall means that only 6.8% of households needing this size would be able to secure suitable affordable housing.”

7 In addition, the applicant notes that the concentration of one-, two- and three-bedroom units as part of this application will contribute towards meeting the growing need for these units in the area and is supported by the Lewisham UDP policy HSG6 which states that a mix of dwellings should be provided in accordance with the housing needs of the area, the nature of the development, and the proposed relationship with its surroundings. The supporting text for the UDP also notes that the provision of housing for the growing number of two-person households is particularly encouraged within the Sustainable Living Areas – and the proposed development is within 500 metres of a Sustainable Living Area.

8 The applicant has also noted that the context for the scheme is the wider Kender Regeneration Masterplan that will provide a total of 98 social rented three-, four- and five-bedroom houses and of which this application forms ‘Phase 3’. More detailed analysis of the information supplied in relation to the wider Kender scheme seems to demonstrate that 191 three-bedroom units have been/are to be lost through the programme and regardless of arguments relating to the improved quality and location not being suitable for family sized development, it is disappointing that so many family units have been lost through the programme.

9 However, given that Lewisham Council housing officers have agreed the mix of the scheme and the wider scheme, the unit mix is accepted.

Three Dragons Toolkit

10 The applicant has re-submitted the toolkit as requested previously. The figures included in the toolkit are now accepted as producing a transparent analysis of the financial viability of the scheme that demonstrates that the level of affordable housing proposed is the ‘maximum reasonable amount’. Given the uncertainty relating to the provision of grant for the affordable housing elements of the scheme, the applicant has agreed to the use of the section 106 agreement to secure the level of affordable housing provision at 35%.

Loss of social rented units

11 It was previously noted that further justification based on local specific housing need should be provided to support the net loss of 12 affordable units and 41 social rented units (through conversion to intermediate) on the site, for example, from the Lewisham housing needs survey. The applicant has noted that the number of units, mix and tenure have been devised and agreed as part of the wider Kender regeneration programme of five housing regeneration sites, which consists of 357 existing council homes being/will be demolished and replaced/will be replaced with around 725 new units. Of these, around 336 (46%) will be for rent, 122 (17%) for shared ownership and 267 for private sale. The percentage of affordable reprovision across all sites works out at 63% but this entails a conversion of social rented to intermediate.
12 This is contrary to London Plan Policy 3A.12 ‘Loss of housing and affordable housing’ which notes that DPD policies should prevent the loss of housing, including affordable housing, without its planned replacement at existing or higher densities and the Housing SPG, which notes that estate regeneration and redevelopment schemes should be undertaken on the basis that a) there is no net loss of housing provision and b) there is no net loss of affordable housing provision.

13 However, paragraph 20.2 of the Housing SPG notes that “Replacement of social rented units by intermediate provision may be acceptable where this can be justified by a requirement to achieve a wider range of types of provision in a neighbourhood” and local need and a desire to create mixed and balanced communities in an area characterised by high concentrations of social rented accommodation has been cited by the applicant as the reason for this loss of social housing and change in tenure mix.

14 The applicant has also noted that the proposed housing tenure and mix has been discussed and agreed with the local planning authority and Council housing officers. Whilst the loss of social rented units across the wider Kender regeneration scheme is extremely disappointing, given the wider benefits of the scheme as a whole it would not be in the interests of good strategic planning to refuse the application on this basis.

**Children’s play space**

15 The applicant had previously agreed that some play space provision will be made on-site and that the detail of play facilities to be provided within the scheme’s amenity space would be agreed following further detailed discussion.

16 This discussion has been deferred and will now occur as part of the landscaping proposals at the request of Lewisham Council. The provision of playspace on the site has though, been secured through the section 106 agreement and this is acceptable in the circumstances.

**Energy**

17 The applicant was previously requested to supply SBEM modelling to calculate the baseline emissions for the non-domestic elements of the scheme. This modelling has now been supplied and demonstrates that through energy efficient design alone, the scheme achieves a 29% improvement in carbon dioxide (CO2) emissions over Building Regulations target emissions rating. The applicant has now provided sufficient calculations and demonstrated satisfactory CO2 savings for both the domestic and non-domestic elements of the scheme.

18 Further detail and guarantees have also been provided on the availability and carbon intensity of the proposed biofuel. A local supplier has been identified and written confirmation provided that based on the anticipated fuel consumption figures for the dual fuel boiler, the supplier will be able to meet the demand and supply 78 tonnes of rapeseed oil per year to the development.

19 Based on the Department for Transport’s ‘Carbon and Sustainability Reporting within Renewable Transport Fuel Obligation’ report January 2008, the proposed rapeseed oil has a carbon intensity of 55g CO2/MJ. Following recalculation of the CO2 emissions of the rapeseed oil based on the above methodology, overall CO2 savings from the biofuel are 3%, compared to the original claimed 26% savings.

20 Although not specifically raised at stage one, dual fuel boilers are not normally acceptable in principle due to difficulties in ensuring the use of renewable fuel. The applicant has, however, provided satisfactory guarantees as to the availability and security of supply of the biofuel. The applicant has also agreed to the inclusion of a clause in the section 106 agreement committing to
the installation, operation and retention for the life of the development use of biofuel as the lead fuel for the boiler. In this instance GLA officers are satisfied that this represents a genuine commitment to the use of renewable fuel and the proposal is therefore consistent with strategic planning policy.

21 Further information has also been provided to demonstrate how the solar thermal installation would be integrated into the site-wide heating network, where one hot water circuit is used to supply the development’s domestic hot water and space heating needs. Indicative drawings have been supplied which demonstrate that the roof space is capable of supporting 128 solar thermal collectors with 410 sq.m. of active collection surface, which would provide 40% of the development’s annual hot water demand.

22 The installation of the solar thermal system remains subject to securing grant, for which the applicant has identified the Low Carbon Buildings Programme Phase 2 as a potential source. The applicant has agreed to the inclusion of a ‘best endeavours’ clause in the section 106 agreement to implement future renewable energy measures. GLA officers are satisfied that given the nature of the scheme and associated financial constraints, this is the best solution achievable and taking account of the superior CO2 savings being achieved through energy efficiency measures, can be accepted in line with London Plan energy policies.

Transport for London’s comments

23 TfL raised concerns at stage one in relation to car parking, site access, servicing, construction proposals, trip generation, highway impact and pedestrian and cycle linkages. Alongside the need for additional information on those matters, TfL also requested the submission of a construction management plan and a travel plan to be secured for the site. In light of TfL’s highway scheme for the Kender Triangle area and the applicant’s contribution towards its implementation, it is accepted that no additional mitigation measures are required to accommodate the impact of the proposed development on the transport network.

24 Additional information has been received from the applicant since stage one to address TfL’s concerns and subsequent agreement has been reached on most of the outstanding issues. Although TfL still considers that cycle and pedestrian linkages could have been further investigated by the applicant, TfL can now support the proposals ‘in principle’ subject to satisfactory wording of the section 106 agreement and detailed design.

25 TfL welcomes Lewisham’s planning committee report dated 10 July 2008 and the transport conditions attached to it. The implementation of a car club scheme, a green travel plan, a code of construction practice and construction method statements for the entire site and prior to occupation, are all supported. Additionally, the requirement for the applicant to use their best endeavours to implement the ‘no-car parking’ scenario, as outlined in the application, and to restrict construction traffic movements to inter-peak periods with the aim of reducing the impact on the road network, are all welcomed by TfL.

London Development Agency’s comments

26 The applicant has satisfactorily addressed outstanding issues raised by the London Development Agency and the Agency continues to support this proposal.

Employment and Training strategy

27 In January 2008, the applicant has opened a job centre at New Cross Road, in close proximity to the redevelopment proposal. Funding has been secured until March 2010 and
currently employs 5 full time staffs in providing employment advice. These services include careers guidance, job brokerage, job search support, advice on interview techniques, skills enhancement to local people.

28 The job centre has established links with employers in the public and private sectors across different industries and will continue to expand partnership with potential employers. The LDA opines that the applicant is currently implementing an employment and training strategy. Compliance to London Plan (2008) policies 3B.1 “Developing London’s economy” and 3B.11 “Improving employment opportunities for Londoners” is therefore demonstrated.

Builder’s yard

29 The LDA was concerned that the redevelopment would result in a loss of employment sources and therefore requested a relocation strategy. However, the applicant has adequately explained the issue in relation to the builder’s yard which has been operating without planning permission.

30 Given Lewisham Council supports the proposed site assembly and change of use, requesting a planning obligation to mitigate the impacts of redevelopment might not be practicable. On balance, the benefits of this project outweigh the loss of a builder’s yard.

Creche

31 The applicant has clarified the access to, and phasing of, the creche. The creche is linked to the proposed doctor’s surgery, library and gym and would only be available to visitors using these facilities on a short term basis. The LDA is disappointed that childcare provision will not be provided on-site, nevertheless, the LDA considers that the aspirations set out in London Plan policy 3A.18 “Protection and enhancement of social infrastructure and community facilities” have been met.

Summary

32 The London Development Agency considers that the scheme conforms to relevant policies in the London Plan (2008) and does not raise further strategic issues.

Response to consultation

33 The Local Planning Authority advertised the application in the local press and through site notices. Letters of consultation were sent to 844 neighbouring properties including The Telegraph Hill Society and the Kender Tenants and Residents Association.

34 From this consultation, one letter was received from the Telegraph Hill Society raising a number of issues relating to the density and design of the scheme in relation to the surrounding area. The Society did not, however, object to the principle of the redevelopment of the site. Some letters of objection were also received from neighbouring properties, raising issues with: design detail, and in particular the New Cross Road (Library) elevation; loss of privacy/overlooking; increased noise and disturbance; loss of daylight/sunlight; inadequacy of parking arrangements/traffic impact; displacement of business from current premises.

35 The majority of these issues are local level that can be adequately addressed by the planning authority through the use of appropriate planning conditions. 71 signed copies of a pro-formal letter of support along with other letters of support were also received.

Legal considerations
36 Under the arrangements set out in article 5 of the Town and Country Planning (Mayor of London) Order 2000 the Mayor has the power to direct the local planning authority to refuse permission for a planning application referred to him under article 3 of the Order. In doing so the Mayor must have regard to the matters set out in article 5(2) of the Order, including the principle purposes of the Greater London Authority, the effect on health and sustainable development, national policies and international obligations, regional planning guidance, and the use of the River Thames. The Mayor may direct refusal if he considers that to grant permission would be contrary to good strategic planning in Greater London. If he decides to direct refusal, the Mayor must set out his reasons, and the local planning authority must issue these with the refusal notice.

Financial considerations

37 Should the Mayor direct refusal, he would be the principal party at any subsequent appeal hearing or public inquiry. Government guidance in Circular 8/93 (‘Award of Costs in Planning and Other (including Compulsory Purchase Order) Proceedings’) emphasises that parties usually pay their own expenses arising from an appeal.

38 Following an inquiry caused by a direction to refuse, costs may be awarded against the Mayor if he has either directed refusal unreasonably; handled a referral from a planning authority unreasonably; or behaved unreasonably during the appeal. A major factor in deciding whether the Mayor has acted unreasonably will be the extent to which he has taken account of established planning policy.

Conclusion

39 The principle of mixed-use development on this site is established in policy terms and recognised as key to the regeneration of the New Cross Gate NDC area. The quantum of affordable housing provision currently does not meet London Plan targets but has been justified in financial viability terms through the resubmitted toolkit. While there is concern over the mix of units, the lack of family provision and particularly the net loss of social rented units on the site (and as part of the wider Kender regeneration scheme), this has been justified on local need and has been agreed with Lewisham Council housing officers.

40 The playspace provision, access, energy, climate change, employment and transport proposals have now been satisfactorily addressed with the relevant aspects of the proposal secured via planning condition or section 106 agreement as appropriate.

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