

Town and Country Planning Act 1990
Section 78 appeals

ON BEHALF OF

Islington London Borough Council

IN RESPECT OF

Residential Development at:

SITE AT KINGS CROSS CENTRAL –
TRIANGLE SITE, LAND BETWEEN
YORK WAY, THE THAMESLINK 2000
RAIL LINE AND THE EAST COAST
MAIN LINE, LONDON

SUMMARY PROOF OF
EVIDENCE IN RESPECT OF
AFFORDABLE HOUSING
PROVISION

BY

HUGH LACEY BSc (Hons)

PINS reference:

APP/V5570/A/07/2051902/NWF

APP/X5210/A/07/2051898

LPA Reference: P041261

2004/2311/P

21st January, 2008

1.0 Summary and Conclusions

- 1.1 The proof of evidence considers the adequacy of the proposed provision of on-site affordable housing by the appellants (Argent (Kings Cross) Limited, London and Continental Railways Limited and Excel Limited) on the proposed mixed use development site known as the 'Triangle site', which is situated partially in the London Borough of Islington ("LBI"), and partially in the London Borough of Camden ("LBC").
- 1.2 On the 24th May 2004 the Appellants submitted planning applications in respect of the King's Cross Opportunity Area 'Main Site' and the 'Triangle Site' (the subject site). The application for the Triangle Site was submitted to both the LBC and the LBI. In September 2005 the Appellants revised the planning applications and submitted the amended applications to the Councils. LBI West Area Planning Sub-Committee considered this on the 18th April 2006 and the Committee resolved to grant planning permission subject to amendments to the draft section 106 obligations which included a request that the overall number of dwellings be reduced from 246 to 200.¹
- 1.3 Following this Committee meeting the Appellant put a discussion proposal to the West Area Planning Sub-Committee via a letter dated 7th December 2006 which proposed 200 dwellings overall, of which 80 were proposed to be affordable, although the proportion of affordable floor area remained the same (26.6%).² Since this time the proposals have been amended once more as a result of further discussions between LBC and the Appellants³ and have reverted to proposing 246 dwellings overall of which 84 (34.1%) would be affordable. The affordable floor area remains the same as it has throughout (26.6% of the overall residential floor area) although the mix of intermediate and social rented dwelling types is different to that proposed within both the 200 and the previous 246 dwelling scheme.
- 1.4 On the 10th July 2007 the LBI's West Area Planning Committee refused the application before them. The formal Decision Notice on the 17th July 2007 stated in respect of affordable housing;

¹ LBI West Area Planning Sub-Committee Report and Minutes of 18 April 2006 – **CD5.15**

² Letter from Appellants to LBI dated 7 December 2006 – **CD1.38**

³ LBC Development Control Committee Report of 18 October 2007, paragraph 9.3, page 14 – **CD4.4**

“The proposed development is considered unacceptable by reason of the affordable housing offer being deficient in terms of overall percentage, tenure mix, and the particular nature of the shared equity element having regard to the provision for the recycling of staircasing receipts. As such the proposed development is considered to be contrary to Policy H16 of Islington’s UDP 2002 and the UDP Strategic Housing Policy concerned with housing variety and mix, Islington’s Affordable Housing SPG, Policies 3A.7 and 3A.8 of the London Plan, Policy CS18 of Islington’s Core Strategy (as adopted as non statutory guidance for development and control purposes) and PPG3 “Housing”.

(LBI West Area Planning Sub-Committee Decision Notice, 17 July 2007 – **CD5.21**)

1.5 My proof of evidence therefore considers in detail the appellant’s affordable proposals and concludes that they are deficient in the following areas;

- i. at 34.1% the proportion of affordable housing being proposed by the Appellants upon the Triangle Site is less than the 50% required by the adopted London Plan. It further appears that this level of provision is reliant on public funding being secured to support the purchase of the affordable properties at the predetermined transfer price. Where this funding is not forthcoming (and there is no guarantee that it will be particularly as the scheme has not been discussed with the Housing Corporation) then the 34% affordable provision will be reduced to 27% and the tenure split altered in favour of intermediate accommodation.
- ii. the appellants affordable proposals will provide 43% social rented accommodation and 57% intermediate accommodation on the basis that an Affordable Housing Provider can pay a predetermined transfer price of £2493 per sq m unilaterally set by the appellant. The fallback position where this price cannot be paid by an AHP reverts to 27% social rented and 73% intermediate (alongside a reduction in quantity of affordable to 66 units i.e 27% rather than 34%). This does not accord with the 70:30 tenure split (in favour of social rent) set out within the adopted London Plan, and neither does the draft section 106 obligations document provide mechanisms to secure this proportion even if sufficient grant funding were to be made available.

- iii. the Appellant has not included in the draft section 106 Obligations document satisfactory mechanisms to ensure PPS3 compliant recycling of subsidy in respect of the intermediate products to be provided directly by them. The shared equity proposals limit recycling obligations on the appellant to the first 15 years from the initial sale, thereafter no obligation exists to recover subsidy for further affordable provision. The right to buy Homebuy proposals only provide for the right to buy discount element to be recovered by the appellant within the first 5 years but it is not clear if this is subsequently recycled whereas there are no obligations to recycle the Right to Buy Homebuy Loan element.
- iv. the intermediate products will not provide additional choice within the intermediate affordable housing offer of either LBC or LBI given that the analysis evidences that they are only affordable to those households with significant savings or on incomes that are just below those necessary to access the private market. On this basis they are only capable of 'top slicing' broadly 5% of affordable needs which exist in LBC and LBI on the evidence of the Housing Needs surveys.
- v. The appellant has not provided any evidence in the form of a financial viability appraisal that supports the proposed level of affordable provision as being the maximum that the site can deliver both in respect of tenure mix and quantum of affordable properties. In this respect no explanation has been provided as to why the Mayor's strategic target of 50% affordable housing provision cannot be met. This is of particular relevance given the site is in the ownership of Central Government who committed to 50% affordable provision on publically owned sites in the Housing Green Paper "Homes for the Future: more affordable, more sustainable". **(CD2.8)** This approach to affordable housing provision on public land is fully supported by the Mayor in his 'Draft Mayor's Housing Strategy' at paragraph 67 (appendix 16 to the main proof).

1.6 In essence therefore this Inquiry is considering the proposed development of publicly owned land within the context of a Central Government commitment to procure 'at least' 50% affordable housing (and this is supported by the GLA in 'The Draft Mayor's Housing Strategy' – see Appendix 16.0 of the main proof) and the determination of the Mayor to

force Councils to adhere to the London Plan target of 50%. In the absence of any reasoned justification for inability to meet such expectations it is entirely reasonable to regard a proposal for less than 50% as deficient and concerns regarding the inability to meet the Mayor's tenure expectations are similarly legitimate.

- 1.7 My evidence demonstrates that the Appellants' affordable housing proposals are deficient in respect of the proportion, tenure split, proposed transfer price, affordability and the recycling of subsidy. The proposals do not meet the Government's objective of securing at least 50% affordable housing provision on sites disposed of for development by Central Government nor do they meet the strategic regional targets of 50% provision with a 70:30 tenure split laid down in the London Plan. Furthermore the constraints of the draft section 106 obligations document preclude both 50% and tenure split of 70:30 from being achieved even if grant funding is made available.
- 1.8 It is evident that when the LBI West Area Planning Sub-Committee refused to grant planning permission for the scheme proposed by the Appellant, they were correct to do so as the affordable housing proposals have not been demonstrated by the Appellants to provide the maximum viable proportion of affordable housing, provided in the preferred tenure split, to include appropriate mechanisms for the recycling of subsidy, or to be affordable as defined in the adopted London Plan or national guidance. Substantial amendments to the draft section 106 obligations document were made by the Appellant on 10 January 2008 which suggests the appellant accepted the Committee's decision that the original proposals were indeed deficient.
- 1.9 Given the significant strategic importance of the subject site to London, the site's status as publicly owned land, and the issues of concern set out in my proof of evidence in respect of the Appellants' affordable housing proposals, the conclusions drawn by the Secretary of State in this appeal will be of paramount importance to local authorities, affordable housing providers, and developers across the nation when agreeing future affordable housing proposals.

21st January, 2008

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