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Dear Graham

King's Cross: Triangle Site

Over the last few months, we have been considering the implications of the resolution, by the Islington West Area Planning Sub-Committee on the 18th April 2006, to grant planning permission for the Triangle Site development, subject to a number of amendments.

We have been examining the practical implications of the Islington amendments to the draft agreed conditions and the draft agreed heads of terms for a Section 106 Agreement.

We have now reached a number of conclusions. The purpose of this letter is to advise you of those conclusions and to suggest a constructive way forward.

Condition 26

Clearly, the key amendment made on the 18th April was that to condition 26, capping the number of residential units at 200, unless otherwise approved by the Local Planning Authority. We have had to consider the implications of the amendment for matters such as the affordable housing content and overall viability, which have been based on the 246 residential units proposed in the application.

We have concluded that a 200 unit scheme could be deliverable and viable, provided that we address, as part of any planning permission, a number of implications and consequences, not raised or addressed on the night, that nonetheless flow directly from the Islington resolution.

The Affordable Housing Content (Block B)

The West Area Sub-Committee did not address how the change to condition 26 might impact upon the affordable housing content set out in the draft heads of terms for a Section 106 Agreement.

We have considered the consequences in some detail. Our conclusions are set out in the attached sheet. We are proposing essentially the same affordable housing floorspace (4,503 square metres net internal floor area, compared with 4,502 square metres net internal floor area in the March 2006 heads of terms), but with a different composition in terms of unit mix and unit sizes. Overall, there would be 80, instead of 84 affordable housing units, within Block B. The number of social rented units would stay the same (36), and there would be an increase in the number of larger 2-bed and 3 bed social rented units (19, compared with 3 in the March 2006 heads of terms). There would be fewer 1 bed social rented units (8 instead of 15) and the 1-bed unit size would be increased (48 square metres net internal floor area, compared with 45.5 metres net internal floor area in the March 2006 heads of terms).

Overall, the social rented housing floorspace would be 2,385 square metres net internal floor area (compared with 2,034 square metres net internal floor area in the March 2006 heads of terms).

There would be corresponding changes in the intermediate provision. The number of intermediate units would be 44, as compared with 48 in the March 2006 heads of terms. In essence, the scheme would be 'losing' the 4 x 3-bed intermediate units that formed part of the draft agreed package. At the same time, we propose to update the mix of intermediate tenures, to simplify the provision around a reduced number of intermediate products and make it appropriate and deliverable for a 200 unit scheme. The updated mix would be 26 x shared equity units, 10 x Homebuy units (no change) and 8 x Right to Homebuy units (no change). There would no longer be any Shared Ownership or Sub Market Rented units.

We believe that these proposed adjustments to the affordable housing content are appropriate and consistent with the planning policy objectives of both your Council and Camden Council.

Condition 18 – Housing Delivery Plan

The proposed adjustments described above would mean a change to condition 18, concerning the Housing Delivery Plan. The words "shared ownership and key worker sub market rented" should be deleted from lines 6 and 7.

This minor amendment flows directly from the Committee's resolution and its consequences for the affordable housing content of the scheme.

Market Housing (Block A) – Residential Cores

The above adjustments would retain the same market housing floorspace within Block A, but again with a different composition. Specifically, to comply with condition 26 as

amended, Block A would have 120¹ market housing units, compared with 162² previously.

With only 120 units, Block A would no longer need all 3 cores shown on the Parameter Plans TS004 – TS009; indeed, to construct 3 cores would not be economic. Only 2 cores would be required to support 120 units and these cores are likely to be in slightly different locations.

Consequently, I propose a small amendment to condition 22, dealing with Parameter Plans and the Development Specification. I propose to add a rider after the sub-para (a) to (f) as follows:

“save that the number of residential cores within Block A may be reduced to two provided that the number of units within Block A does not exceed 200. The location of the revised cores within Block A are to be submitted to and approved by the local planning authority as part of the relevant Reserved Matters approvals.”

This amendment flows directly from the Committee's resolution to amend condition 26 and is a necessary consequence of that decision, looking at the scheme and its deliverability as a whole.

Condition 33 - Car Parking

Your Sub-Committee resolved to amend sub-para (a)(i) within condition 33 to refer to a ratio of 0.4 spaces per residential unit. As I read it, this amendment means that the Islington condition now matches the Camden condition approved on the 9th March 2006. As such, I do not see that any further action is required from either planning authority, in order to grant planning permission.

New Conditions

The West Area Planning Sub-Committee further resolved to add two new conditions.

First, the Sub-Committee resolved to add a condition requiring all reserved matters to be reported to the sub-committee.

It seems to me that how reserved matters are to be dealt with, procedurally, within Islington, is not something which can or should be included as a planning condition. If nothing else, how would an applicant discharge it?

Second, the Sub Committee resolved to add a condition requiring “the details of the hours of opening of the gates to the open space at first floor level to be submitted as part of the Reserved Matters approval agreed by the LPAs.” Clearly, there remains

¹ 200 units less 80 affordable housing units = 120 market housing units

² 246 units less 84 affordable housing units = 162 market housing units

some work to be done, to turn this into a properly drafted condition. Camden has not imposed such a condition, and to that extent the two resolutions are clearly different, but to my mind that does not make them inconsistent or incompatible.

New Informative

The West Area Planning Sub-Committee resolved to add a new informative:

“to express the need for detailed design issues at reserved matters approval to address all environmental issues such as acoustics, room sizes, energy use of the development.”

The draft conditions and heads of terms for a Section 106 Agreement already include various requirements to provide further information on acoustics, housing design and energy, at a later stage. For example, conditions 37 to 44 deal with acoustics; condition 18 and HoTs 25, 33 and 34 with housing design; and condition 11 and HoTs 54-66 with energy.

As such, I consider the new informative to be unnecessary. At the same time, I am not opposed to its presence. The Camden resolution does not include such an informative, and to that extent the two resolutions are clearly different, but to my mind that does not make them inconsistent or incompatible.

Section 106 Agreement Heads of Terms: Para 77

The Sub-Committee resolved that a number of “key specified commitments” should be added to para 77 in the heads of terms, in relation to the operation of the Code of Construction Practice (CoCP) on the Triangle Site.

Construction Impact Group

The first commitment sought is “a mechanism for local residents’ representatives on the King’s Cross Construction Impact Group and the developers and their contractors should jointly discuss draft construction plans and monitor their implementation with the Council and residents through a mechanism based on the tripartite ‘St Pancras model’ currently used to deal with CTRL works in that area.”

In my view, the heads of terms already address these points. Para 77 refers to the Developer having due regard to the CoCP submitted in September 2005 and the fifteenth bullet point refers to “active monitoring and reporting results to the Construction Impact Group.”

The CoCP itself provides further detail. Section A2 (see attached extract) deals with liaison/consultation and refers to the continuation of the Construction Impact Group. Terms of reference for the existing Construction Impact Group are included within the CoCP at Appendix 2 (also attached).

It may assist you to see how we envisage addressing these points within the full Section 106 Agreement. I have attached sections U (Support for Implementation Panels) and DD (Code of Construction Practice) from the full Section 106 Agreement for the Main Site, as approved by Camden's Development Control Committee on 16th November 2006. You will see there:

- Confirmation that the Construction Impact Group would allow for liaison with residents and others regarding potential impacts and mitigation;
- Obligations concerning the first convening of such Implementation Panels;
- Requirements to, in the manner set out in the CoCP, consult with local residents and businesses, particularly at the start of or during major civil and infrastructure works and where particular or local effects may be anticipated; and
- The reporting of monitoring results to the Construction Impact Group for review.

These provisions take full account of the existing CTRL mechanisms. We propose to include similar provisions within the Triangle Site Section 106 Agreement. In my view, they would more than deliver the commitments sought by your Sub-Committee.

Construction Impacts

The second commitment sought is "An undertaking that construction impacts 'will not be worse than' those predicted in Part 23 of the Environmental Statement."

We have no problem with the suggestion that environmental impacts should be managed in the way set out in the Environmental Statement. It is questionable, however, whether the undertaking suggested would deliver that, or indeed have any particular practical benefit. I enclose a copy of Part 23 of the Environmental Statement and you will see that it summarises the predicted environmental effects of the King's Cross Central development as a whole, and the significance of those effects, with and without the Triangle Site, at the construction stage (see extract attached).

I believe we have included more practical and robust mechanisms to manage environmental impacts within the Section 106 Agreement for the Main Site. Section DD, referred to above, includes for example an obligation to use best practice from time to time in the management of environmental impacts of construction as a guiding principle (clause 2). Furthermore, there is a commitment to prepare Construction Environmental Management Plans and use best practicable means to control and limit any impacts and effects (clause 3). There is also a mechanism to review the CoCP over time (clause 4).

We propose to include similar provisions within the Triangle Site Section 106 Agreement. In my view, they would more than deliver the commitments sought by your Sub-Committee.

Public Relations

The third commitment sought is for “provision of good quality, timely and well distributed information on construction impacts to local households and businesses; a comprehensive complaints procedure; and a dedicated helpline at all times of works.”

In my view, the heads of terms already address these points. Para 77 and the CoCP include appropriate references to public relations, a Community Relations Team, a helpline and website and advance notification procedures.

Section DD of the Section 106 Agreement for the Main Site, referred to above, shows how we envisage addressing these points within the full Section 106 Agreement. We propose to include similar provisions within the Triangle Site Section 106 Agreement. In my view, they would more than deliver the commitments sought by your Sub-Committee.

Working Hours

The fourth commitment sought is “precise and restrictive conditions on the occasions when working outside the core hours will be considered to be justified.”

The suggestion appears to be that the Section 106 Agreement includes additional planning conditions on working hours. Of course, this is not appropriate or possible.

I believe we have included a more practical, flexible and ultimately more robust mechanism within the heads of terms for the Triangle Site (para 77) and the full Section 106 Agreement for the Main Site, both of which ‘bind in’ the CoCP document, as reported above. As part of the Main Site Section 106 Agreement, the Developer is required to carry out the Development “having due regard to the CoCP” (clause 1), which includes a section on working hours at section B2 (attached).

In my view, ‘binding in’ the CoCP in this way, through the Section 106 Agreement, would more than deliver the commitment sought by your Sub-Committee. Of course, both Camden and Islington would also have their normal powers under Section 61 of the Control of Pollution Act.

Reducing Road Miles

The last commitment sought is “there should be a full assessment directed to reducing road miles for construction materials and waste.”

In my view, the heads of terms already address this point. Para 77 refers to the Developer having due regard to the CoCP submitted in September 2005 and the ninth and twelfth bullet points refer to “limiting inconvenience...from increases in traffic flows and the disruptive effects of construction traffic on local and main roads” and “the management of the disposal of waste, including surplus spoil.”

The CoCP itself provides further detail. Section C1 (see attached extract) deals with traffic management and the preparation of a Traffic Management Plan. It would, for example, include traffic management procedures for waste disposal vehicles. Paras C1.13 and C1.14 state that options would be considered for reducing the quantities of construction materials requiring transport by public roads as far as reasonably practicable and that delivery vehicles would be used to take materials away from site where practicable.

In my view, 'binding in' the CoCP, through the Section 106 Agreement, as stated in the Heads of Terms and already delivered through the Main Site Section 106 Agreement wording, referred to above, would more than deliver the commitment sought by your Sub-Committee.

Conclusions on Islington Amendments

We have concluded that a 200 unit scheme could be deliverable and viable, provided that we address, as part of any planning permission, the implications and consequences highlighted above. These implications and consequences were not raised or addressed on the night of the 18th April Sub-Committee, but they nonetheless flow directly from the Islington resolution.

We have also concluded that replicating, within the Triangle Site Section 106 Agreement, similar provisions to those included within the Main Site Section 106 Agreement, sections U (Implementation Panels) and DD (Code of Construction Practice), would more than deliver the commitments sought by your Sub-Committee in relation to para 77 of the Heads of Terms.

These conclusions offer a constructive way forward. Carrying them through would, in due course, require reconsideration of the Triangle Site by Camden Council's Development Control Committee. However, the application would not need to be referred back to your West Area Sub-Committee, as the scheme adjustments and planning obligations proposed are in line with, and deliver on, the resolution by that same Sub-Committee on 18th April 2006.

I would of course be grateful for your assessment of the above position, as I see no point in the application playing ping-pong between the two committees.

Islington Noise Conditions

We have also considered the practical implications of the differences between the two resolutions, in terms of their noise conditions. Various Islington conditions on noise are different, in a number of respects, from those imposed by Camden. A suggested way forward is set out below.

Condition 38

As we have discussed, there are a number of typographical errors within the draft conditions attached to your 2 April 2006 Committee Report (for example, condition 7 line 3; condition 23, line 2; condition 25, line 3; title to conditions 27 and 29). I believe there is one such error within condition 38, part b. As it reads in the report, the condition currently makes no sense. I believe that a number of words, included within the condition reported to Camden's Development Control Sub Committee, are missing:

"special attention to be given to reducing the"

These words should be inserted after "thumps)" and before "the noise level", in line 3.

Condition 39

The Islington version of this condition is a little different from the Camden version. We would question the justification and appropriateness of the Islington wording, where it is different (for example, the condition refers to a distance criterion "subject to final agreement; how does that work?) and, ideally, the wording would be adjusted to match the condition imposed by Camden.

If you decide not to make such an adjustment and leave the wording as per your Committee report (subject to the typo in line 2), then from a planning and delivery point of view, the position would be less than ideal. That said, we are talking about technical wording differences, not something which, in my view, would render the two resolutions inconsistent or incompatible.

Condition 40

As I understand it, draft condition 40 in the Committee Report was deleted through the Addendum report, which was endorsed by Members.

Condition 42

There is no 'matching' condition for condition 42 in the Camden resolution. That said, it is not really a condition at all. If anything, it is an informative. It is, in my view, unnecessary. At the same time, I am not opposed to its presence, particularly if it becomes an informative. Its presence within the Islington resolution is not something which, in my view, would render the two resolutions inconsistent or incompatible.

Condition 43

We would question the justification, appropriateness and drafting of this condition, which has no parallel in the Camden resolution. It is not clear what the phrase "commercial development" refers to, in the context of the Triangle Site development.

From a planning and delivery point of view, this position is less than ideal. That said, and looking at the amended drafting within the Addendum report endorsed by Members, I do not think the presence of this condition within the Islington resolution is something which, in my view, would render the two resolutions inconsistent or incompatible.

Condition 44

See my comments above on condition 43. We would question the justification, appropriateness and drafting of this condition, which has no parallel in the Camden resolution.

From a planning and delivery point of view, this position is less than ideal. That said, I do not think the presence of this condition within the Islington resolution is something which, in my view, would render the two resolutions inconsistent or incompatible.

In short, I believe that there is a way forward, notwithstanding that there are some differences between the two sets of conditions. Ideally, of course, we would address these differences in the interests of good planning and delivery.

You will no doubt undertake your own appraisal of the planning position. I would be grateful if you could complete that appraisal as quickly as possible, bearing in mind the timetable that we are all working to. If you are able to confirm that Islington can and will move forward on the basis suggested in this letter, then the next step would be for Camden to consider its position with regard to the Islington amendments and, potentially, put a report in front of its Development Control Committee.

I look forward to hearing from you shortly.

Yours sincerely

Robert Evans
Director

Cc: Roger Groom - London and Continental Railways Ltd
Edwin Davies - Exel Holdings Ltd
Bob West - London Borough of Camden (King's Cross Team)