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Our ref JD.KXRLG
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16 October 2006

Dear Sirs,

Kings Cross

We received your brief response on 3 October, 25 days after our pre-action letter. We are disappointed to note that despite taking considerably more time than the 14 days indicated by the pre-action protocol, your letter does not address many of the points raised in our pre-action letter. We would appreciate a fuller response on the points raised in the pre-action letter which we believe speaks for itself. Without prejudice to that general request, we draw your attention in particular to the following matters.

While some of the flaws in the Committee's March decision can potentially be cured by advice from Officers in advance of the November meeting, we are of the view that the development proposals as they stand cannot lawfully be granted planning permission. Unless Officers and yourselves address that contention appropriately in correspondence to us and in advance to Members, it remains our intention to seek judicial review. We reserve our position on the making of such an application pending receipt of further correspondence and receipt of the Officers' Report in respect of the November meeting.

We remain hopeful that the cost and delay incurred by judicial review can be avoided by the submission of amended development proposals which address the issues we have raised.

Preliminary point

Your letter does not satisfactorily address the issue of the adoption of the Revised Unitary Development Plan ("RUDP"). The Committee remains under a statutory duty to determine the application in accordance with the development plan. Officers' advice to members in March was that they had not identified any material departure from development plan policy in the proposals. The adoption in the

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RUDP of a target of 50% affordable housing on the site means that the proposals are not now in conformity with the development plan. The failure of the proposals to conform with the newly adopted RUDP is not merely a changed "material consideration", rather it necessitates a different approach to the decision whether to approve the proposals.

1. Affordable Housing

We note you accept that members were given incorrect advice in written answers to their queries as to the relevant policy target for social housing as a proportion of affordable housing. We contended that the advice was wrong in three respects. You have responded to only one of those inaccuracies. We respectfully refer you to the letter before action.

Please clarify whether the Committee will now be given an opportunity to fully reconsider affordable housing provision.

2. Heritage and Conservation Issues

Your letter does not address our contention that the Committee *could* not and *cannot* make a properly informed decision as to the effect of the proposals on the character and appearance of the area and the justification for demolition in the absence of information on detailed design and external appearance.

2A. Use of outline applications

We respectfully draw your attention the recent decision (dated 2 October 2006) of the Secretary of State in relation to Land at Corys Wharf, London Road, Purfleet, Essex (APP/M1595/A/04/1169851 and 1169789). Paragraph 63 of the letter declares that the Secretary of State 'does not consider that outline applications provide sufficient information to enable her to conclude that [the applications] would result in developments of an acceptable standard' and that 'that there is a significant objection to the proposal on the basis that because the application is in outline, the design could not be carefully assessed at the application stage, as would be the case with a full application'. The points apply with full force to the present applications.

In addition, paragraph 46 states that 'The Secretary of State agrees with the Inspector…that tall building proposals should not be granted permission on the basis of outline applications.' We have already made this point any you have failed to respond to it.

3. Environmental Impact Assessment.

Your response on this issue is extremely general in nature and we would appreciate it if you would address the points in dispute in detail.

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You assert that a proper analysis was undertaken of the likely significant effects of the development and that that analysis took into consideration the guidance in relevant case law. Please specify how that guidance was taken into account and where you assert it was considered. In particular, we would be grateful for an indication of how you say the guidance of Elias J. in *British Telecommunications Plc, Bloomsbury Land Investments v Gloucester City Council* [2001] EWHC Admin was considered, with reference to the relevant parts of the "analysis" to which you refer.

4. Strategic Environmental Assessment

Would you please clarify what the "masterplan strategy" for the Kings Cross Opportunity area referred to in the RUDP is? Is it the outline planning permission or some other document?

5. *Air Quality*

We note your intention to remind the Committee of the relevant policy on Air Quality. You do not elaborate as to whether the Committee will be advised that the proposals are not in conformity with that policy context.

We do not accept your suggestion that we are saying that planning permission cannot be granted under any circumstances. That is not our position. We append a summary of some of the measures you may consider taking to extinguish the adverse effects of the development on air quality and which, if taken, could enable permission lawfully to be granted.

6. Blue Ribbon Network

Again, you assure us that the Committee will be made aware of the policy context. We respectfully suggest it would be appropriate to evaluate the proposals against that policy context.

7. Critical Mass and Floor Limits

Your letter does not properly address the points raised in our letter on this issue.

We note your intention to ensure Officers respond to material changes since March in a further report to committee. We note that Officers will be advised to address some of the shortcomings in the March report in that report. We anticipate therefore that at least on some issues, the new report will provide a fuller response to the issues we have raised in our pre-action letter. So far as we can tell from your letter, it apparently remains the Officers' intention to advise the Committee to approve the proposals. Our view remains that the proposals as they stand cannot lawfully be granted planning permission. We would therefore be grateful if we could have sight of the new report 14 days in advance of the Committee meeting to enable us to respond to the advice contained therein.

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Further Concerns

Finally, we confirm that we have no further concerns at present, but reserve our position.

We look forward to hearing from you at the earliest opportunity.

Yours faithfully,

John Dunkley
EARTHRIGHTS SOLICITORS

cc: Each of the interested parties
enc: Appendix: Air Quality Issues

Appendix: Air Quality Issues

We refer you to the following points from Camden Green Party's response to the proposals as to some of the means by which the adverse impact of the proposals on air quality might have been addressed.

Car-parking provision

Camden Green Party's response to the revised plans and deputation to the DC committee both made the following point:

"The Kings Cross area has some of the best public transport provision in the UK and Camden's UDP states that, "The Council will grant planning permission for development proposals for the Kings Cross Opportunity Area where proposed car usage and car parking provision is at minimum levels necessary and where the provision of car-free housing is maximized."

Yet, the development proposes no properly car-free housing at all, with even the student accommodation including car parking spaces.

The overall provision of car-parking is for 0.5 spaces per unit. That the officers' report proposes to accept this level of parking provision despite the serious deviation from these policies is unacceptable. ***There is no reason at all why car-free housing at or even above 75% could not be achieved in Kings Cross Central.***" [quoting from GP deputation submission]

Green Roofs

Camden Green Party's comments on the second set of plans said:

"We regard the 15% target for green and brown roofs as inadequate. Many more roofs would be suitable and these roofs should be included in the plans wherever possible, not simply as showcases. A much higher target should be included in the plans before they are accepted." [quoting from GP response to revised plans]

Infrastructure Improvements in the area for pedestrians and cyclists,

Camden Green Party's comments on the revised plans said:

"More pedestrian links from the North of the development area to the surrounding neighbourhoods are needed, particularly to Maiden Lane and towards Camley Street.

The only pedestrian route in this direction in the new plans is still the pedestrian/cycle bridge across Camley Street Natural Park. We are concerned that this bridge may not be safely accessible at all times by pedestrians, for example at night."

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And:

"The cycle interchange/storage/parking/hire facility proposed for Zone B is welcomed. However, significant cycle parking is also required in the North of the development and this should be included in the plans."

Green Space and Wildlife

Camden Green Party's comments on the revised plans said:

"The grassed open spaces in the plans are not sufficient for sports or other exercise, and no new space for wildlife is proposed, even to replace the existing areas of biodiversity on the brownfield site.

The amenity of Camley Street Natural Park is threatened by the new bridge, and the biodiversity of both Camley Street and the canal is threatened by the overshadowing that will result from the tall buildings proposed for the southern side of the canal." [quoting from GP response to revised plans]

Further Measures

1. Making use of the canal for transportation would reduce the number of lorry trips servicing the development throughout its life (replacing construction traffic and then afterwards to move household and business waste and recycling). This requirement was specified in the UDP, but not included in the plans – this was raised in both Camden Green Party's sets of comments (on the original and revised plans) and in its deputation to the DC committee.

2. Creating more green space for trees and wildlife would help to improve air quality as plants naturally filter pollutants and can screen sensitive areas from the worst effects of particulates (see Camden Green Party's original comments above on lack of green space).

3. Better infrastructure for walking and cycling in the development area, and in surrounding areas via S106.

4. Via S106, more support for improved and cleaner public transport should be given, e.g. to increase bus frequency and to prioritise the introduction of cleaner hybrid buses on routes through the area.

5. There is no reason why the adverse effect of the development on air quality should not be offset through comprehensive contributions in the section 106 agreements sufficient to negate the impact. Proper impact assessment of such measures would be necessary.