

<b>APPLICATION FOR NON-MATERIAL CHANGES TO PLANNING PERMISSION</b>			
<b>Item No.</b>	<b>Classification:</b>	<b>Date:</b>	<b>Meeting Name:</b>
	OPEN	24/10/18	Delegated
<b>Report title:</b>	<p><b>Development Management planning application:</b> Application 18/AP/3225 for Variation: non-material changes</p> <p><b>Address:</b> THE HEYGATE ESTATE AND SURROUNDING LAND BOUND BY NEW KENT ROAD (A201) THE NORTH, RODNEY PLACE AND RODNEY ROAD TO THE EAST, WANSEY STREET TO THE SOUTH, LONDON SE17</p> <p><b>Proposal:</b> Non-material amendment to outline planning permission ref. 12/AP/1092 (for Outline application for: Redevelopment to provide a mixed use development comprising a number of buildings ranging between 13.13m (AOD) and 104.8m (AOD) in height with capacity for between 2,300 (min) and 2,469 (max) residential units together with retail (Class A1-A5), business (Class B1), leisure and community (Class D2 and D1), energy centre (sui generis) uses. New landscaping, park and public realm, car parking, means of access and other associated works) in order to: - Amend the description of development to: "Outline application for: Redevelopment to provide a mixed use development comprising a number of buildings ranging between 13.13m (AOD) and 104.8m (AOD) in height with capacity for between 160,579sqm GEA (min) and 254,400sqm GEA (max) residential floorspace together with retail (Class A1-A5), business (Class B1), leisure and community (Class D2 and D1), energy centre (sui generis) uses. New landscaping, park and public realm, car parking, means of access other associated works." - To amend condition 2 part b to cross-refer to the approved plans and documents listed at condition 6. - To submit an amended Development Specification (October 2018) and amend condition 6 to list the Development Specification (October 2018) as the approved version.</p>		
<b>Ward(s) or groups affected:</b>	North Walworth		
<b>From:</b>	Victoria Crosby		
<b>Application Start Date</b> 05/10/2018		<b>Application Expiry Date</b> 02/11/2018	
<b>Earliest Decision Date</b> 28/10/2018			

### **RECOMMENDATION**

- 1 That the non-material changes to the permitted scheme be agreed

### **BACKGROUND INFORMATION**

- 2 The detailed background information relating to this development is set out in the

report on the original planning application 12/AP/1092 granted 27/03/2013 for:

Outline application for: Redevelopment to provide a mixed use development comprising a number of buildings ranging between 13.13m (AOD) and 104.8m (AOD) in height with capacity for between 2,300 (min) and 2,469 (max) residential units together with retail (Class A1-A5), business (Class B1), leisure and community (Class D2 and D1), energy centre (sui generis) uses. New landscaping, park and public realm, car parking, means of access and other associated works.

The application is accompanied by an Environmental Statement submitted pursuant to the Town and Country Planning (Environmental Impact Assessment) 2011.

### **Details of proposal**

3 The changes proposed by Lendlease to the development approved by the outline permission are:

(i) To amend the description of development from that set out above to the following:

"Outline application for: Redevelopment to provide a mixed use development comprising a number of buildings ranging between 13.13m AOD and 104.8m (AOD) in height for residential (Class C3) together with retail (Class A1-A5), business (Class B1), leisure and community (Class D2 and D1), energy centre (sui generis) uses. New landscaping, park and public realm, car parking, means of access other associated works."

This would remove the words "with capacity for between 2,300 (min) and 2,469 (max) residential units" from the development description of the 2013 permission.

During the course of this NMA application, the wording has been changed to include the residential floorspace approved in the outline permission (as detailed later in this report).

(ii) To amend condition 2 "development plots" which lists the development plots and requires the reserved matters to be in accordance with the plot related parameters and principles, by adding the words "(as listed at Condition 6)" into part b of the condition in order to cross-refer to the approved plans and documents listed at condition 6. Condition 2 would be amended as follows, with the added words underlined for emphasis:

*The Development Plots hereby permitted and identified on Drawing Reference: P03 P-1 are:*

*a) Development Plot H1; Development Plot H2; Development Plot H3; Development Plot H4; Development Plot H5; Development Plot H6; Development Plot H7; Development Plot H10; Development Plot H11a; Development Plot H11b; Development Plot H12; Development Plot H13; PAV.1*

*b) The Reserved Matters for these respective Development Plots shall be in accordance with all plot related parameters and principles hereby approved, including those set out in the Parameter Plans, Design Strategy Document and Development Specification (as listed at Condition 6) and such further relevant plot-specific parameters and principles as are referred to elsewhere in these conditions.*

#### **Reason**

*For the avoidance of doubt and to identify the Development Plots to which Reserved Matters Applications need to be submitted and approved and to ensure that the Reserved Matters Applications are in accordance with the relevant approved parameters and principles.*

(iii) To amend condition 6 "approved plans and documents" to list the amended Development Specification (October 2018) as the approved version. The amended version includes limited changes which are set out in the assessment section below. Condition 6 would be worded as follows with the deleted wording struck through and new wording underlined:

*"The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans and documents:*

*P01 P-0 Outline Planning Application Boundary*

*P03 P-1 Proposed Maximum and Minimum Plot Extents at Ground & Mezzanine Levels*

*P04 P-1 Proposed Maximum and Minimum Plot Extents at Upper Levels*

*P05 P-1 Proposed Minimum Publicly Accessible Realm*

*P06 P-1 Proposed Uses at Ground, Mezzanine & Basement Levels*

*P07 P-1 Proposed Uses at Upper Levels*

*P08 P-1 Proposed Maximum Plot Extent and Heights*

*P09 P-1 Proposed Minimum Plot Extent and Heights*

*P10 P-1 Proposed Vehicular Access Plan*

*Development Specification (~~September 2012~~)(October 2018)*

*Design Strategy Document (Consolidated Version February 2013)*

*Reason:*

*For the avoidance of doubt and in the interest of proper planning."*

- 4 For this application DP9 has provided an application form, a letter explaining these changes, and a new Development Specification document (October 2018). An amended version of the Development Specification document (October 2018) was provided by the applicant on 31st October to correct some small changes to wordings in several sections of the report that were not key for this NMA application but resulted in a longer list of changes from the approved version - e.g. referring to "Plan 03" rather than "Parameter Plan 03" in the approved version.

## **KEY ISSUES FOR CONSIDERATION**

### **Summary of main issues**

- 5 The main issue in respect of this application is to determine if the proposed changes are:
- (a) non-material and do not require the submission of an application for planning permission by reason that they :
- (i) do not in themselves constitute development, or
  - (ii) are considered to be so trivial or inconsequential that they may be regarded as *de minimis*, that is legally of no consequence, and that planning permission is not required
- or (b) are materially different from the permitted development and require the submission of an application for planning permission.

### **Planning policy**

- 6 This application is to be determined on matters of fact and degree and planning law in respect of the extent and effect of the proposed change to the permitted development. Matters of planning policy are not a relevant consideration.

- 7 The detailed planning policy relating to this development is set out in the report on the original planning application.

### **Assessment of the proposed changes**

- 8 (i) The applicant is seeking to clarify the way in which the outline planning permission operates, particularly in terms of the quantum of residential development approved. A proposal description alone does not define or restrict a development. The description sets out what can be carried out as a result of the planning permission but this does not mean that anything else is prohibited as it is the role of the conditions to a planning permission to identify what cannot be done. It is the conditions that list the approved drawings (the approved parameter plans in this case) and approved documents (such as the Development Specification in this case) that prescribe and define the approved development.

While the description of development on the outline permission refers to "*capacity for between 2,300 (min) and 2,469 (max) residential units*", these unit numbers were not secured or restricted by a condition on the outline permission, nor restricted by the approved drawings, nor the approved documents listed by conditions on the outline permission. The approved documents for the outline permission instead refer to the floorspace minimum and maximum sqm areas for different Use Classes across the site, and per plot, as matched by the massings allowed by the parameter drawings. The floorspace figures by Use Class are set out in in table 4.1 of the approved Development Specification, and table 4.2 of the approved Development Specification sets the minimum and maximum floorspace for each plot.

Rather than remove all reference in the description to any quantum of the residential development approved (as the wording suggested by the applicant would do), it is therefore considered appropriate to change the description of development by substituting the reference from numbers of units to the approved floorspace of residential use. While including the floorspace figures in the description would not by themselves limit the approved development, the inserted floorspace figures would be in line with those within the approved documents listed in the outline permission conditions. Their inclusion in the description of development would better inform the reader as to the scale and type of development approved when read as part of the full description, which refers to the other uses and the range of heights approved.

The revised description of development would read as follows (amended wording underlined):

*Outline application for: Redevelopment to provide a mixed use development comprising a number of buildings ranging between 13.13m (AOD) and 104.8m (AOD) in height with capacity for between 160,579sqm GEA (min) and 254,400sqm GEA (max) residential floorspace together with retail (Class A1-A5), business (Class B1), leisure and community (Class D2 and D1), energy centre (sui generis) uses. New landscaping, park and public realm, car parking, means of access other associated works.*

This is an accurate description of the development that the outline permission granted. It does not change the quantum of development approved by the proposal. It is an appropriate change to the proposal description to clarify the permission, and is a non-material change. The applicant has agreed to this revised proposal description.

- 9 (ii) The proposed change to condition 2 by cross-referring to the approved parameter drawings and documents listed in condition 6 does not result in a material

change to the outline planning permission. This change adds nothing new but merely reinforces the reference in another condition to the approved information of the outline permission. This is a non-material change.

- 10 (iii) The change to condition 6 would refer to an updated Development Specification. The revised Development Specification (October 2018) document received 31/10/18 is the same as the approved version on the 2013 permission except for the following listed areas. It had already been amended in certain sections by two earlier NMAs (15/AP/0306 and 18/AP/1799) in terms of the floor areas of plots H12, H11A and H11B. The changes now proposed relate to:
- At section 2.10 it refers to the Design Strategy Document consolidated version February 2013; this was the approved DSD for the 2013 outline permission and came after the Development Specification September 2012 was written. This change is a correction and has no impact.
  - Importantly, table 4.1 which sets the minimum and maximum total floorspace by use class has not changed.
  - The minimum and maximum GEA floorspace for each development plot in table 4.2 have only changed where previously agreed in a NMA - for the maximum floorspace of Plot H12, and a recent NMA which changed the maximum floorspaces of Plots H11A and H11B. This updates the table in line with previous NMAs.
  - Similarly table 4.3 which sets the uses in each plot has changed only where a recent NMA has included additional Class A and B1 uses for Plot H11B. Section 4.18 also adds in Plot H11B as a plot with potential for retail floorspace, and section 4.20 for office floorspace. These changes are corrections that have no impact.
  - A key change is to amend sentence 4.13 which in the approved version stated "*The maximum and minimum possible levels of residential floorspace could accommodate between 2,300 and 2,469 units depending on the precise mix of unit sizes*". This would be revised to be "*The maximum and minimum possible levels of residential floorspace could accommodate a range of residential unit numbers depending on the precise mix of unit sizes.*"
  - Appendix B lists the parameter plans and updates where previously approved NMAs have resulted in new drawing revision numbers.

These changes to the approved Development Specification mainly consolidate changes made on earlier NMAs to provide an up-to-date DSD. The only new change is to sentence 4.13 to remove reference to the number of residential units the approval could provide. The use of the word "could" in the approved version is a further indication that the 2013 outline permission did not restrict the maximum number of residential units within the approved quantum of residential floorspace. These changes to the approved Development Specification are considered to be non-material amendments to the outline permission.

- 11 These non-material amendments also need to be considered cumulatively with previously approved non-material amendments made to the outline planning permission. Since the 2013 outline permission was granted, there have been nine other non-material amendment applications approved which have made changes to the 2013 approval:
- 14/AP/2031 – approved changes to condition 6 (approved plans and documents) to allow the potential for gaps between buildings on Plots to be delivered at ground floor level; and the introduction of a colonnade typology within the Heygate Masterplan.
  - 15/AP/0306 – correcting a drafting error in the approved development specification relating to the maximum permissible floorspace of plot H12.
  - 16/AP/5075 – changes to the accesses to plots H04, H05 and H13 and park promenade for vehicles and servicing.

- 17/AP/0597 – changes to plot H4’s maximum parameter envelope of block F, minimum height of the podium and reduction in the minimum extent of the southern edge of block D.
- 17/AP/1718 – changes to the penthouses in plot H2
- 17/AP/1987 – changes to plot H5’s maximum parameter of block E, the minimum height of the podium, increase the maximum height of block E and the minimum extent of the southern edge of block A.
- 17/AP/2412 - changes to allow for more of the permanent park design into Phase 1 of the Park and amendments to the temporary and permanent parklands.
- 17/AP/3816 - amend the minimum parameter height of the pavilion PAV.1 to 7m AOD to allow for a lower height of a single storey pavilion.
- 18/AP/1799 - amend the parameter plans and development specification for plots H11A and H11B (which form MP4):

Plot H11A:

- Increase maximum GEA by 3,834sqm.
- Amend the maximum plot component extent for the mid-rise blocks Block A (by a 1.3m extension) and Block B (by a 2.4m extension) to enable 4 balcony projection towards the courtyard.

Plot H11B:

- Reduce the maximum GEA by 3,834sqm
- Amend the permitted uses at ground floor to include Classes A1-A5 and B1.
- Amend the maximum plot component height for Block B (mid-rise block) increasing the maximum AOD from 40.45m to 42.55m to accommodate the lift-overflow on the Heygate Street frontage.

- 12 These previously agreed changes were to plots where reserved matters have been approved, with the exception of the park pavilion. Most of the affected plots are under construction or have been completed. When considered cumulatively with the previously agreed non-material amendments, the proposed changes to the proposal description, and the wordings of conditions 2 and 6 are considered still to be non-material.
- 13 The proposed changes to the wording of the description and two conditions would not affect the scope and conclusions of the Environmental Impact Assessment carried out within the 2012 application. The change to the proposal description would insert the residential floorspace figures which the 2012 ES assessed, and the amended condition wording would refer to the updated Development Specification document that also states the same floorspace figures.
- 14 These change sought do not affect the mitigation measures secured on the 2013 permission through conditions and planning obligations. The definition of “Development” in the section 106 is *“redevelopment of the Site in accordance with the Planning Permission to provide a mixed use development comprising residential (C3), retail (A1-A5), commercial (B1), leisure and community (D1 and D2), and energy centre (sui generis) uses, new landscaping, park and public realm, car parking, means of access and other associated infrastructure and works and which for the avoidance of doubt excludes Demolition”*. In turn the definition of “Planning Permission” is *“the Planning Permission for the Development in the form of the draft attached hereto as Schedule 1 to be issued pursuant to the Application”* (i.e. the draft decision notice. Neither of these definitions refer to the number of residential units.
- 15 The obligations on the developer in Schedule 3 of the 2013 section 106 agreement relate to:
- Affordable housing - requires the completed development to provide 25%

affordable housing of which no more than 50% shall be shared ownership units, i.e. it relates to percentage of the completed development and not to a set number of market or affordable housing units above the minimum secured provision of affordable units at a total of 2.300 units.

- Employment, training, apprenticeships and local procurement - relates to reserved matter stages, the construction phase, and the methodology which is based on floorspace rather than residential units.
- Highways and transportation - the car club, permit restrictions, parking provision, travel plan, pedestrian and cycle routes, cycle hire, bus stand and bus service enhancement matters are not linked to a certain number of residential units. The listed highway works are related to the completion of certain plots, not to a number of residential units.
- Park - the area of the park and its phased delivery is not related to a number of residential units. The recent RMA for H11B showed that the central park area can be further enlarged as the footprint of H11B has not taken up the full plot area.
- Public realm - requires the public realm to be completed prior to the occupation of any plot, without reference to a number of residential units.
- Children's play provision - does not refer to a number of residential units, but each RMA needs to show how the playspace requirement would accommodate the anticipated child yield for that part of the development.
- Health facility - the health contribution is calculated at RMA stage based on the number of dwellings in the RMA, so the council would continue to receive the contribution based on the actual number of units proposed. Other triggers in this section relate to the occupation of the 750th and 1800th dwellings; the RMAs approved to date exceed these unit numbers so this current NMA would not affect the s106 requirements.
- Community space - the community space contribution is calculated at RMA stage based on the number of dwellings in that RMA, so the council would continue to receive the contribution based on the actual number of units proposed. There are triggers relating to the occupation of the 750th and 1800th dwellings; the RMAs approved to date exceed these unit numbers so this NMA would not affect the s106 requirements.
- Energy strategy - the final requirement in this clause requires a final site wide energy strategy to be provided with the first reserved matters for the final phase, without referring to a number of residential units.
- Affordable retail provision, offer and lease - is not linked to the number of residential units.
- Wheelchair accessible dwellings - requires 10% of dwellings or habitable rooms to be wheelchair accessible dwellings without fixing a number of wheelchair units.
- Servicing and management plan - is not linked to the number of residential units.
- Off site trees - requires a strategy and any failure to meet the off site tree delivery requirements is linked to a contribution on a per tree payment basis.

16 The obligations in Schedule 4 relate to the payment of financial contributions:

- Off site sports and children's play provision contribution - paid on occupation of the 1200th dwelling. The RMAs approved to date exceed this unit figure with construction well underway, so this payment will be forthcoming irrespective of this NMA.
- TMO contribution - was paid on implementation.
- Education - is calculated on the number of dwellings in a plot at occupation stage, so the council would continue to receive the contribution based on the actual number of units constructed.
- Employment in construction - five phased payments that are not related to the number of residential units.
- Employment in the development - related to the completion of the first building

with a Class A or B use within so it is not affected by the number of residential units.

- Strategic transport tariff - payment is related to the practical completion of the Northern Line Ticket Hall Works and not affected by the number of residential units.

17 The change to the description of the development would not affect the mitigation and public benefits secured by the section 106 agreement.

### **Conclusions on the materiality of the changes**

18 The changes to the proposal description, condition 2 and condition 6 are non-material amendments.

### **Consultations**

19 This application is to be considered on the basis of planning law and the material facts relevant to the change(s) proposed. Therefore there is no requirement for consultation with third parties to seek their views on the application.

### **Community impact statement / Equalities Assessment**

20 The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three “needs” which are central to the aims of the Act:

a) The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act

b) The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

c) The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

21 The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership.

22 The Council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights

23 The Council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this application.

### **Human rights implications**

24 This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with

conventions rights. The term 'engage' simply means that human rights may be affected or relevant.

- 25 This application has the legitimate aim of seeking to make non-material changes to the 2013 permission for the mixed use redevelopment of the former Heygate Estate. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/H1064A  Application file: 18/AP/3225  Southwark Local Development Framework and Development Plan Documents	Chief Executive's Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone:: 020 7525 1412 Council website: www.southwark.gov.uk

## APPENDICES

No.	Title
Appendix 1	

## AUDIT TRAIL

Lead Officer	Simon Bevan Director of Planning
Report Author	Victoria Crosby
Version	Final
Dated	6/11/18
Key Decision	No

## CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER

Officer Title	Comments Sought	Comments included
Strategic director, finance and governance	No	No
Strategic director, environment and social regeneration	No	No
Strategic director, housing and modernisation	No	No
Director of regeneration	No	No
Date final report sent to Constitutional / Community Council / Scrutiny Team		Not applicable

**APPENDIX 1**

**Consultation undertaken**

**Site notice date:** n/a

**Press notice date:** n/a

**Case officer site visit date:** n/a

**Neighbour consultation letters sent:** n/a

**Internal services consulted:**

n/a

**Statutory and non-statutory organisations consulted:**

n/a

**Neighbour and local groups consulted:**

n/a

**Re-consultation:** n/a

**APPENDIX 2**

**Consultation responses received**

**Internal services**

None

**Statutory and non-statutory organisations**

None

**Neighbours and local groups**

None