

29 March 2021

## **Former Master Brewer site, Freezeland Way**

in the London Borough of Hillingdon

planning application no.4266/APP/2019/3088

### **Planning application**

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008.

### **Update**

To consider any material changes to policy since the Mayor's resolution to grant planning permission on 3 September 2020.

### **Recommendation**

That the Mayor agrees that the policy and guidance changes since the Representation Hearing do not materially affect the resolution to grant planning permission made on 3 September 2020.

### **Context**

1 On 3 September 2020 the Mayor, acting as local planning authority, resolved to grant conditional planning permission in respect of London Borough of Hillingdon planning application 4266/APP/2019/3088 subject to the prior completion of a Section 106 legal agreement.

2 The Mayor also gave delegated authority for the Head of Development Management to negotiate the Section 106 legal agreement and gave delegated authority to refuse permission by 3 December 2020, which was subsequently extended twice to 3 May 2021, should the Section 106 agreement not be completed.

3 Good progress has been made on Section 106 agreement negotiations since the Representation Hearing and the legal agreement is in agreed form. All the S106 obligations agreed and set out in the Hearing Report have been secured and all necessary conditions agreed, subject to amendments undertaken under delegated authority after discussions with Hillingdon Council and in response to the publication of the New London Plan. The holding direction from the Secretary of State has also been lifted.

### **Planning policy and guidance update**

4 Owing to the time that has elapsed since the Representation Hearing, there have been a number of changes to policy that must be considered and are discussed further below.

## New London Plan

5 At the time of the Representation Hearing, the New London Plan was intended to be published in its final form and had been sent to the SoS alongside a schedule of the Panel Inspector's post-EiP recommendations, and the Mayor's response to them.

6 On 10 December 2020, the SoS issued a series of Updated Changes and two further Directions. In terms of the two further Directions under Section 337 of the Greater London Authority Act 1999 (as amended), Direction DR4 (specifically regarding updated para 6.4.8) is not relevant to this particular application and the other, DR12 relates to Policy D9 (Tall Buildings), which is relevant.

7 On 21 December 2020, the Mayor submitted to the Secretary of State his Publication London Plan with amendments designed to address all Directions, which represents the most up to date version of the Mayor's London Plan.

8 On 29 January 2021, the Secretary of State confirmed that he had no further matters to raise and that the Publication London Plan (December 2020) conformed with the previous Directions and could now be published. The Mayor subsequently published his London Plan on 2 March 2021.

9 On 2 March 2021, the New London Plan was published. Accordingly, the plan now has full weight requiring an update to the assessment originally undertaken and the previous London Plan (2016) has been superseded.

### *Changes made through Updated Changes*

10 In terms of the Updated Changes since the Representation Hearing, of particular relevance to this case are DR1 (relating to Policy H10 (Housing mix)), DR2 (Policy D3 (Optimising site capacity)), DR5 (Policy G2 (Green Belt)), DR9 (Table 10.3 (Residential parking)) and DR10 (Policy T6.3 (Retail parking)).

11 The proposed housing mix remains appropriate for this site, given its town centre location and accessibility. The Council did not resolve to refuse the application for this reason. Policy D3 seeks to optimise site capacity. GLA officers consider that the proposal is the most appropriate form and land use for the site. As a higher density development, it is appropriately placed in a well-connected location. The implications of the changes to Policy G2 are not material as no harm was identified to the Green Belt and the application does not propose development within it and would not cause harm to the Green Belt.

12 In terms of car parking, it is recognised that this constituted a reason for refusal from the Council (residential and commercial). The Hearing Report addresses the acceptability of the proposed parking provision at paragraphs 281-291. This concludes that the proposals are acceptable below the maximum standards, noting that there is no minimum standard. GLA officers consider that the Updated Changes reflected in the new Plan do not materially affect this conclusion, noting in particular that each 3 bed unit would be provided with a parking space. GLA officers note that whilst the Council included the under-provision of commercial vehicle parking spaces as a reason for refusal this related to the potential for overspill parking and possible impact the surrounding street network not on the grounds that it would impact on the

viability of the town centre. Overall, the level of residential and commercial car parking remains acceptable.

### *Changes made through further SoS Direction*

13 The SoS Direction regarding Policy D9 (Tall Buildings) primarily sought to ensure that tall buildings are only brought forward in appropriate and clearly defined areas, as determined by the boroughs. The ItP London Plan Policy D9(B3) already stated that “Tall buildings should only be developed in locations that are identified in Development Plans”, however, the SoS considered that the policy should go further and following his Direction, London Plan Policy D9(B3) now states that “Tall buildings should only be developed in locations that are identified as suitable in Development Plans” (the new words inserted as a result of the SoS’s Direction are underlined and in italic)

14 The Hearing Report notes that this site is not in a location where the Local Plan supports tall buildings and that the scheme is in conflict with Policy DMHB 10 in this regard. The Hearing Report also sets out GLA officers view that the application was contrary to (then) ItP London Plan Policy D9 for the same reason, although this did not form part of the statutory development plan at that time. Policy D9 of the now adopted 2021 London Plan states that development plans should define what is considered a tall building for specific localities and identify suitable locations. As set out within the hearing report this site does not fall within an area identified in the Local Plan as suitable for tall buildings. As such, the Hearing Report noted the principle of a tall building in this location was in conflict with the (then) draft policy in D9.

15 However, the Hearing Report considered that the application scheme was in accordance with other requirements for tall buildings set out in draft Policy D9 in terms of its visual impacts at different distances; aiding legibility and wayfinding; having exemplary architecture and materials; avoiding harm to heritage assets; not causing adverse glare; and minimising light pollution. Functional impacts such as internal and external design; servicing; entrance capacity; area and transport capacity; maximise benefits to the area; and would not interfere with communications. Environmental impacts such as wind, daylight, sunlight, and temperature; air movement (dispersal of pollutants); and noise creation have been mitigated by way of planning condition or obligation. Given the site’s location and context there are no cumulative impacts to consider.

16 The “Conclusion and planning balance” section of the Hearing Report identified that “there are development plan policies that are not fully complied with, namely Local Plan Policies DMHB 18(A) and DMHB 10 (parts (i) and (ii)), in respect of private amenity space the appropriateness of this site for tall buildings in principle, respectively”. As the new London Plan is now part for the development plan, there is now a further element of conflict with the development plan in that the scheme does not fully accord with new London Plan Policy D9. As set out in the Representation Hearing Report in relation to Local Plan policies DMHB 10 (parts (i) and (ii) and DMHB 18 (A) and above in relation to new London Plan Policy D9, the proposals would however comply with the other criteria in these policies. It is further noted that the proposals were not subject to independent design scrutiny in line with the requirements of London Plan Policy D4 (Part D). However, it is not possible to ensure compliance with this requirement retrospectively and notwithstanding this, the scheme has undergone significant design scrutiny by the GLA and the Council.

17 As set out in the Hearing Report, a conflict with some development plan policies does not necessarily mean that there is an overall conflict with the development plan as a whole, as development policies can pull in different directions. Paragraph 2 of the Hearing Report sets out eight reasons why the application is considered to be acceptable in planning policy terms. GLA officers acknowledge that some of the policies referred to in this paragraph no longer form part of the development plan. However, the Local Plan policies remain relevant to the assessment of the application. Furthermore, the (then) draft London Plan policies referred to in paragraph 2 of the Hearing Report remain relevant to the assessment of this application and the majority of these were afforded significant weight at the time. With the exception of D4 and D9, GLA officers consider the scheme to comply with these policies now that those policies are part of the development plan. Where new policy requirements have emerged which now form part of the statutory development plan (the new London Plan) these have been captured through appropriate planning conditions/obligations (outlined below at paragraph 26-30). As such, notwithstanding the conflict with parts of policies DMHB 18(A) and DMHB10 of the Local Plan and policies D4 and D9 of the London Plan, it is considered that the proposals would accord with the development plan, read as a whole.

### *Heritage*

18 As set out in the Hearing Report, GLA officers considered that the heritage impacts of the proposed development were acceptable. Policy HC1 of the New London Plan is now part of the development plan, replacing London Plan (2016) policy 7.8. Policy HC1 provides, *inter alia*, that development proposals affecting heritage assets and their settings should conserve their significance by being sympathetic to the assets' significance and appreciation within their surroundings. As explained in the Hearing Report, the appeal scheme would result in some less than substantial harm to a number of heritage assets. Unlike paragraph 196 of the NPPF, Policy HC1 does not contain any provision for the balancing of heritage harm against wider public benefits. The same is true of Local Plan policies HE1, DMHB1, DMHB2, DMHB3 and DMHB4. Following the SoS's decision in the Citroen Site call-in case (PINS ref APP/G6100/V/19/3226914), officers recognise that in light of the less than substantial heritage harm, the appeal scheme would not be in accordance with policies which seek to prevent harm to heritage assets. As such, the scheme is not considered to be in accordance with London Plan policy HC1 or Local Plan policies HE1 or DMHB1 - 4. However, in light of paragraph 196 of the NPPF and the need to consider the compliance of the scheme with the development plan overall, the policy conflict caused by the less than substantial heritage harm must be weighed against the countervailing public benefits and aspects of policy compliance.

19 In this case it is considered that the low level of heritage harm is outweighed by the public benefits of the scheme and that the conflict with the heritage policies does not indicate that the scheme is contrary to the development plan, read as a whole, noting that the only other policies that the application is in conflict with is DMHB 18(A) and DMHB10 of the Local Plan and D4 and D9 of the London Plan. The public benefits of the scheme include the regeneration of a vacant site; a significant amount of high quality housing, including 35% affordable housing; new public spaces; new commercial uses; improved access across the site; enhancements to the Green Belt; transport improvements; as well as economic and regenerative benefits to the wider area. Further benefits may arise from the £1.365 million contribution towards public transport enhancements.

## Hillingdon Council

20 The Council's Local Plan has not changed since the original resolution was made. In addition, there have been no new local Supplementary Planning Documents or Guidance published since the Representation Hearing.

### **Planning balance**

21 As discussed above, the 2016 London Plan that was in place at the time of the Representation Hearing has been superseded by the 2021 London Plan, so the policies of the 2016 London Plan are no longer material considerations. As well as the adoption of the new London Plan and the policies within it now having full weight, the key changes to the wording of the policies is set out above. Further consideration of additional/amended conditions and/or S106 obligations to ensure compliance with other requirements of the 2021 London Plan are set out in the next section of this report.

22 There are development plan policies that are not fully complied with, namely Local Plan Policies DMHB 18(A) and DMHB 10 (parts (i) and (ii), in respect of private amenity space the appropriateness of this site for tall buildings in principle, respectively and Policies D4 (design scrutiny) and D9 (tall buildings) of the London Plan. As noted above, there is also a conflict with London Plan policy HC1. The proposals would however comply with the other criteria in these policies. There is no conflict identified with any other adopted development plan policies.

23 However, a conflict with some development plan policies does not necessarily mean that there is an overall conflict with the development plan as a whole as development plan policies can pull in different directions. GLA officers have considered the whole of the development plan and consider that, overall, the proposal accords with it. This report and the Hearing Report (where still relevant) sets out all relevant material considerations, none of which, individually or cumulatively, are considered to warrant refusal of planning permission.

24 The scheme provides a high standard of residential accommodation, including compliance with space standards; aspect; privacy and overlooking; daylight, sunlight and overshadowing; noise and vibration; and air quality. The new public spaces and routes would be of a high quality. Given the circumstances of this site, the scale and massing is considered acceptable within this accessible local centre, marks the location of the station and would have an acceptable visual impact.

25 In terms of the NPPF presumption in favour of sustainable development in circumstances where the proposed development is considered to accord with an up-to-date development plan, as noted in the Hearing Report it is considered that Hillingdon's Council has a demonstrable five year housing land supply (5YHLS). The Council also passed the housing delivery test in 2020 with a 235% result. Overall therefore the tilted balance is therefore not engaged in respect of this application.

26 When considered overall, the development complies with the current development plan and there are no material considerations to indicate that planning permission should not therefore be granted.

## **Changes to planning conditions and S106 obligations**

27 Following the publication of the new London Plan (March 2021) there are several new policies which now have full weight and which would need to be met through the imposition of appropriate planning conditions/obligations.

28 Policy D5 of the London Plan at part B5 requires that all developments where lifts are installed, as a minimum have at least one lift per core (or more subject to capacity assessments) which would be a suitably sized fire evacuation lift suitable to be used to evacuate people who require level access from the building. The proposals have been conditioned to require that prior to above ground works for each building details must be submitted to and approved by the Council which demonstrate compliance with the requirements of London Plan Policy D5 part B5.

29 Policy D8 of the London Plan at Part O requires that ensure the provision and future management of free drinking water at appropriate locations in the new or redeveloped public realm. The provision of free drinking water within the public realm has been secured by way of planning condition.

30 Policy S12 of the London Plan requires major development proposals to include a detailed energy strategy to demonstrate how the zero-carbon target will be met within the framework of the energy hierarchy, verify and report on energy performance and calculate whole life-cycle carbon emissions through a nationally recognised Whole Life-Cycle Carbon Assessment and demonstrate actions taken to reduce life-cycle carbon emissions. The S106 agreement has been updated to reflect the requirement to demonstrate how the zero-carbon target will be met. The originally agreed carbon offset payment has been reviewed in line with the requirements of the London Plan and the latest GLA energy guidance, which utilises a different SAP methodology which has resulted in the reduction of the payment. The revised calculated and agreed figure of £474,164 has been secured as part of the S106 agreement. Planning conditions and S106 obligations in respect to verifying and reporting on energy performance and calculating whole life-cycle carbon emissions have been imposed. As such the proposals would meet the requirements of Policy S12 of the London Plan.

31 Policy S16 of the London Plan requires a number of measures to ensure London's global competitiveness, including the provision of sufficient ducting space for full fibre connectivity infrastructure and providing for mobile connectivity. The applicant has confirmed that sufficient space is available within the buildings to deliver full fibre connectivity and this will be secured by condition.

## **Representations**

32 Since the representation hearing the Mayor has received an additional 6 representations including 1 comment from a member of the public and 5 representations from the London Borough of Hillingdon Council. A summary of these representations is set out below:

- Requirement for a new hearing to be held
- Adoption of the new London Plan and compliance with the Development Plan
- Principle of tall buildings
- Need for archaeological surveying

- Heritage protection

33 The Council has also drawn attention to further published evidence to demonstrate a 5 year housing land supply, although this does not affect the Mayor's resolution as the 'tilted balance' was not engaged at the time of the Representation Hearing.

34 Having considered the above representations, GLA officers have proposed various planning conditions and Section 106 obligations in response to the issues raised. Having had regard to these, GLA officers are satisfied that the comments do not raise any new material planning issues that have not already been considered in the representation hearing report, hearing report addendum and this report.

## Legal considerations

35 Under the arrangements set out in Article 7 of the Order and the powers conferred by Section 2A of the Town and Country Planning Act 1990 the Mayor is acting as the Local Planning Authority for the purposes of determining this planning application.

## Decision record – recommendation agreed



**Sadiq Khan**  
Mayor of London

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