

PLANNING APPLICATIONS COMMITTEE

Tuesday 2 August 2016 at 7.00 pm

MINUTES

PRESENT: Councillor Malcolm Clark, Councillor Bernard Gentry, Councillor Nigel Haselden, Councillor Diana Morris (Deputy Chair), Councillor Mohammed Seedat, Councillor Joanne Simpson and Councillor Clair Wilcox (Chair)

1. DECLARATION OF PECUNIARY INTERESTS

In relation to application 16/00868/FUL, although not a declaration of a pecuniary interest, Councillor Seedat wished it to be noted that he was acquainted with three of the businesses currently occupying railway arch units in Brixton. He had not pre-determined his view of the application.

1. DECLARATION OF PECUNIARY INTERESTS

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2. MINUTES

RESOLVED: That the minutes of the previous meeting held on 05 July 2016 be approved and signed by the Chair as a correct record of the proceedings.

The Chair announced a provisional timetable for the meeting in accordance with Standing Order 9.9.1.

3. 52 WALNUT TREE WALK (BISHOPS) 15/04488/FUL

Case No. 15/04488/FUL (agenda item three, page five of the agenda pack).

The Planning Officer informed the committee that a site visit had been conducted on Friday 29th July 2016 and that it had become clear that some of the drawings included in the submitted plans were inaccurate. Officers therefore recommended that the application be deferred to enable public consultation on the amended plans.

The Chair endorsed the recommendation from officers and noted that the committee could only make a fair and balanced judgement on the application when accurate plans were available. Officers were asked to

ensure the accuracy of the land levels depicted in the revised drawings. Members requested an investigation into the reasons for the plans not being available at the time of publication, and therefore for the item being deferred.

It was MOVED by Councillor Wilcox, SECONDED by Councillor Morris, and

RESOLVED, unanimously

To defer the application to enable public consultation on the amended plans.

4. RAILWAY ARCHES 571-609 FACING BRIXTON STATION ROAD AND ATLANTIC ROAD BETWEEN BRIXTON ROAD AND POPES ROAD (COLDHARBOUR) 16/00868/FUL

Case No. 16/00868/FUL (agenda item four, page 95 of the agenda pack, page one of the addendum and page one of the second addendum).

The Planning Officer gave a presentation which included a summary of the report and subsequent addenda that had been published on Friday 29 July 2016 and the day of the meeting. Members were advised of the key material planning issues for consideration which included the proposed land use, the affordability of the units, conservation and design factors and the impact on the conservation area, improvements to public realm and impact on neighbouring amenity including during construction, and transport and servicing arrangements. The Planning Officer noted that objections had been received relating to equalities impact assessment. The officer explained that the proposal had been assessed against policies in the Local Plan which had been subject to equality impact assessment as part of the Examination process. This included site specific Policy PN3 and site 16 designation which related to a large part of the application site. The issue of equalities impact had also been raised with the applicant at pre-application stage and as a result the application was accompanied by the Tenant Management Strategy to enable existing tenants to return.

The Planning Officer noted that many objections related to non-material considerations, as reflected in the responses provided in the officer report.

The scheme needed to be assessed in land use terms against policy PN3 and site 16. The Officer outlined the proposed locations of food and drink units and advised that the proposals were considered acceptable in this respect. As regards the loss of sui generis uses, this was considered acceptable in the absence of formal policy protection for such uses and the availability of such uses elsewhere in the locality.

The Tenant Management Strategy offered a stepped rent programme for returning tenants. The Planning Officer advised that the proposal had been considered in the context of Local Plan policy ED6 and that the

opportunity for existing tenants to return was a material planning consideration.

In terms of design and conservation, existing shop fronts and additions had been identified as detrimental to the appearance of the Brixton conservation area. The scheme included the retention of existing features worthy of preservation. The proposed new shop front strategy relied on the use of the same materials and an overall design approach to tie the units together but also allowed for variation which was reflective of the existing character of the railway arches.

The proposal included improvements to public realm including the creation of a new pedestrian link and improvements to lighting and cycle parking.

The Planning Officer advised that overall the proposal was considered to be compliant with all relevant Local Plan policies and with all material planning considerations.

Following the Planning Officer's presentation the council's Legal Officer outlined for Members the scope of the public sector equality duty (PSED) as contained in s149 of the Equality Act 2010. The Legal Officer explained that the PSED applies to public sector decision making generally and outlined the requirement to give due regard to the PSED when making their decision. The component parts of the PSED were outlined to Members. In response to a question from Members, the Legal Officer confirmed that the PSED was applicable to public sector functions generally and was not specific to the particular planning application under consideration.

Following the Planning Officer's presentation and the advice from the Legal Officer, the objectors raised the following concerns:

- The Brixton railway arches were home to 50 businesses and employed approximately 150 local people. They were drawn from a very diverse range of backgrounds and were integral to the character of the town centre.
- Network Rail had not been a responsible landlord over a long period of time and too many of the tenants had to report issues such as leaks, infestations and blocked drains and deal with them on their own.
- Helen Hayes MP (who was not able to attend due to holiday absence) had three major concerns with the application:

The change of use from shops and retail (A1) to food and drink (A3): the evening economy in Brixton was already at saturation point and combining smaller units into larger units would be detrimental.

The proposal to undertake the work in two large phases had the danger of creating a 'dead zone' in the heart of Brixton and

impacting on the current traders and wider economy.

Many businesses have been very concerned about the proposed rents. Some progress had been made but many of the shops offered products at very low prices and there was not the opportunity to diversify their product range to double or treble their rent over time.

- There was a duty to meet the needs of particular groups and communities. There remained a particular issue around those traders who did not have a direct relationship with Network Rail and effectively were sub-tenants.
- Network Rail had failed to follow proper process and procedure, specifically a failure adequately to consult the community on their plans for redevelopment. All documentation and presentation material in Network Rail's community consultation material had referred to 'refurbishment' rather than 'redevelopment'. These were two different things. The Brixton community were consulted only on the refurbishment plans, not on redevelopment. To date the community had not been adequately consulted on the redevelopment of Brixton Arches. The proposed application needed to be rejected until satisfactory community consultation had been carried out regarding the development of the arches as proposed.
- There were 947 objections to the planning application and 15 comments of support.
- Existing tenants should be looked after properly.
- Announcement of the planned evictions galvanised local people into action and gave rise to the Reclaim Brixton movement.
- The development would have a detrimental effect on the character of the neighbourhood from which it may not recover both in terms of the community and the business elsewhere throughout the town.
- The arches shops were at the centre of Brixton's vibrant community and part of the attraction to visitors. The independent shops and services occupying the arches had developed over a number of decades and were highly valued local assets.
- Network Rail could refurbish each arch on a piecemeal basis and avoid shutting down the entire area as a construction site.
- The application was not in accordance with many aspects of the Lambeth Local Plan.

The applicant then provided the following information in support of the scheme:

- Network Rail had been working towards the refurbishment and redevelopment of the Arches. Some arches were in poor condition and were in real need of modernisation. The structure of the arches forming part of the railway viaduct needed to be inspected and repaired. All the units need to be stripped out to enable the work to be done and required vacant possession.
- The aim was to complete the works within one year and would

result in substantially improved interiors and services and attractive new shop fronts.

- The proposed scheme would enable Network Rail to re-accommodate all of the existing tenants planning to return as well as other new retail businesses as quickly as possible.
- Network Rail had worked with officers to ensure compliance with Council planning policies and design guidance in order to ensure that the scheme would enhance the character and appearance of this important town centre site.
- The overall number of units was being increased and a new pedestrian walkway linking Brixton Station Road and Atlantic Road was being created which would increase permeability through the viaduct and create new kiosk units for small businesses.
- Existing tenants would be offered support, possible relocation and discounted rents for 7 years.
- Network Rail had engaged with tenants over a period of 18 months and the individual compensation packages were considerably more than the statutory requirement.
- Three quarters of the existing tenants had indicated that they wished to return.
- As for the remaining units, there would be no multi-national retail chains and Network Rail would be encouraging small independent businesses. Fewer than 20 of the 4000 businesses in Network Rail's London Estate were national chains. Nation-wide 98% of Network Rail's arches were rented out to small businesses.

The Ward Councillor for Coldharbour Ward, Councillor Matt Parr, addressed the committee. Councillor Parr asked if proposed conditions could be submitted to Members that had not been addressed by officers in the second addendum. The Chair declined to accept the submission in view of its lateness but suggested that Councillor Parr could refer to them in his oral representations. Councillor Parr made the following comments:

- The existing businesses that occupied the arches were integral to the character of Brixton. The council had listened to tenants and succeeded in persuading Network Rail to ensure tenants the right to return, compensation for lease terminations and favourable rental levels for returning business.
- The arches had been neglected by Network Rail and needed to be physically improved.
- Evictions should not occur until temporary trading locations had been secured for existing tenants.
- Before eviction there should be a requirement for Network Rail to contact the sub-tenants that operated out of kiosks at the side of some units. Kiosks should be marketed first to the tenants of those units. This was an equalities issue.
- The canopy needed to be addressed and improved as part of the proposed works.

- The existing artwork displayed on the rolling shutters should be preserved and relocated elsewhere on the site.
- All proposed A3 units should have to provide customer toilets.
- The planned eviction and construction schedule would have a detrimental effect on the local economy. An alternative phased eviction schedule would ensure continuous trading in parts of the site.

Officers then provided the following information in response to questions from Members. Officers invited the applicant to provide certain of the requested information to the committee:

- The Letting Strategy was proposed to be dealt with by condition and it was for Members to determine whether the strategy met the objectives of planning policy.
- The statutory consultation process undertaken by the Council was in accordance with the Statement of Community Involvement and involved notifications through letters and site notices.
- The planning application was part refurbishment and part redevelopment. The description of development provided in relation to the application and on which the local planning authority was consulting referred to both the refurbishment and redevelopment of the arches. The Chair noted that from the perspective of Members the key point was whether what was consulted on through the statutory planning process was what was proposed.
- The proposed pedestrian walkway and changes to the shop fronts were considered redevelopment rather than refurbishment. The applicant confirmed that Network Rail's separate pre-application consultation exercise, which is not a statutory requirement, involved meetings with the community and had provided clear information about the scheme, including details of the proposed walkway and changes to shop frontages.
- The applicant confirmed details of the reduced stepped rental levels that would be available for returning tenants. The rents would be below 2015 market rent levels for the first five years followed by two years of rents at a level no higher than 2015 market rents. There would be no indexation and so it would be at a 2015 level now. An upwards rent review would be carried out in the eighth year.
- Proposed condition 4 dealt with an environmental management plan to enable the council to be satisfied that the construction work would take place satisfactorily. The council could not require the applicant to undertake all the construction work in one go or require that construction work had to be undertaken in a phased manner. The purpose of the condition was to ensure that what was proposed to be done construction-wise was satisfactory in terms of the amenity of the local area and safety in construction and other such similar considerations.
- The applicant confirmed that the structural integrity of the railway

viaduct would be assessed once the interior of units had been stripped away. Until this point, the extent of the works was unknown.

- The applicant's intention to evict all tenants simultaneously was not a material planning consideration.
- The council could not compel the applicant to complete the works within a given timescale. The applicant had indicated its intention to set about the works as quickly as they could and to bring tenants back as quickly as possible, and had indicated what flexibility it may have if structural problems were found with particular arches, but those were not matters within the remit of the local planning authority.
- The impact of the proposed works on possible future improvements to the railway station would be no different to the existing situation. The canopy and train station above the arches did not form part of the scheme and the application needed to be considered on its merits.
- The council's Urban Design and Conservation Officer explained the reasons why new security shutters would be positioned behind the glass frontages, rather than in front as was currently the case. It was noted that the Brixton Conservation Area Statement, which was subject to public consultation, identifies solid shutters as a negative contributor to the character of the area. Members were advised that the Lambeth Local Plan was opposed to the introduction of external perforated shutters. External shutters could not be accommodated within the current scheme.
- The pinch points highlighted within the new pedestrian link would be restricted by parts of the existing structure which would not be altered by the development.
- Tenants would be responsible for fitting toilets as required by Licensing and Environmental Health law. There was no planning policy available to require toilets on site or compel local future tenants to opt into the community toilet scheme.
- New double units could facilitate larger restaurant spaces and allow for additional toilet provision.
- The committee could not require the applicant to use the railway for delivery of construction materials but could include an informative to express a preference for this course of action.
- Local Plan policy dictated that no more than two in five consecutive ground floor units in the primary shopping area should be in food and drink use at one time. However, the existing food and drink related uses fronting Brixton Station Road were proposed to be retained in terms of their use and would therefore result in more than two in five consecutive units for food and drink use. Officers considered that the scheme complied with Policy PN3 on the basis that the proposals sought to facilitate the return of the existing tenants and that there would be no net increase in the number of food and drink units on Brixton Station Road.
- In response to a question about the existence of a strategy for the

re-letting of kiosks, officers noted that the existing sub-tenants did not benefit from the ability to return but that the intention was for the kiosks to be re-provided in better locations rather than sub-dividing the arches. The applicant had not submitted a strategy for the marketing of the kiosks as part of the application and officers would not have considered the submission of such a strategy to be required by Local Plan policies. Members invited the applicant to comment, recognising that whilst provision was being made for the tenants to return the only difference between the tenants and the sub tenants was that the latter did not have a contractual relationship with Network Rail and the kiosks were still part of the flavour of the arches. The applicant said that existing sub-tenants (of the kiosks) had no direct relationship with Network Rail but recognised that they did form an integral part of the character of Brixton. The applicant would be very happy to talk to any of those subtenants about whether they would like to look at taking a lease of one of the kiosks. These would be marketed on an open market basis, but some considerable weight would be given to the fact that these tenants already existed in Brixton and added to the fabric of Brixton as it stands.

- The station canopy fell outside of the development site and was not under the control of Network Rail.
- The Urban Design and Conservation Officer outlined how the shop fronts could offer scope for variety in the display of signage and presentation of shop fascias.
- The Construction Management Plan could include mitigation measures to ensure that the market traders on Brixton Station Road are not negatively impacted by the construction related activities.
- The existing pawnbroker tenant could potentially return to the arches as one flexible retail/Sui Generis unit would be retained. The unit containing the existing betting shop was identified as a change of use to a Class A1 unit, although the Council could not compel the applicant to implement that particular part of the application scheme within a particular timescale.

The committee considered points raised by speakers and information provided by officers in conjunction with the report before making the following observations:

- The 'rough and ready' character of the arches was unique to Brixton and the proposed design was unsatisfactory. The removal of external roller shutters and fundamental alteration of the shop fronts would produce an unwelcome level of uniformity and have a negative impact on the Brixton Conservation Area. The Urban Design and Conservation Officer gave further advice about the policy position in the Local Plan and established best practice which explained why the Council had in the past sought the removal of solid shutters.
- The legal advice received regarding equalities was noted. There

would not be a massive adverse effect given that most of the existing tenants would be returning but there would be an adverse effect to some extent in terms of the smaller sub-letting businesses and this needed to be addressed in some way if necessary via an informative.

- If there were found to be structural issues with the viaduct it would almost certainly lead to service disruption to the train service and the relevant works would need to be prioritised, which would mean it would be unlikely that the construction work on the scheme would run over for that reason.
- It was noted that Network Rail had moved forward from its original position in relation to the leases and encouraging more tenants to return. 75% of businesses coming back was a reasonable outcome. In terms of equalities impact, what Network Rail had said about their letting predominantly to small businesses was a key point.
- The fact of there being more than 2 in 5 A3 units was disappointing but it was noted that one of the reasons for this was to enable existing tenants to return.
- An informative could be added picking up on what Network Rail had said was in their tenancy strategy regarding the kiosks; that local businesses ought to be prioritised so as to facilitate some returning sub-tenants to those kiosks.
- It ought to be possible to carry out the refurbishment of the brickwork and the mosaic work and other work to provide a much improved and much more attractive proposition than what was presently there but at the same time to allow for some variety in the individual shopfronts. There was a response in Condition 19 to the effect that some valued public art on the application site ought to be found a home but it was too restrictive and there was probably some more public art that needed to be found a home within the vicinity.
- Future tenants should be encouraged to sign up to the community toilet scheme.
- An informative could be included to ask Network Rail to liaise with adjoining landowners to try to bring about improvements to the canopy.
- An informative should be added that if the construction took longer than envisaged, Network Rail should use their best endeavours to start moving tenants back onto the site as quickly as possible.
- The artefacts within the arches that are valued locally such as the interior of the fishmonger's (the marble slab) could be the subject of an informative to ensure that insofar as they can be they are removed intact and made available in some way to the community.

The Chair summarised the comments from Members as follows:

- It was not just a matter of maintaining anything with heritage or design worth that was already there but also a matter of enabling new opportunities for artwork or creative expression to be provided.

- An informative to be added relating to the use of the railway wherever possible for construction for reasons of congestion and air quality.
- The applicant to be asked to devise a specific strategy as part of the letting strategy which specifically addressed the re-provision of the kiosk spaces, which had particular relevance in terms of equalities impact and which the committee was to be mindful of, to make sure that there was a diversity of businesses there.
- An informative to be added regarding working with adjoining land-owner/s, recognising that although in planning terms the application was what was in the redline site, the quality of public realm goes wider than the redline site.
- There needed to be the ability to identify where the roller shutters had particular heritage value and if there was a way of re-providing them in the scheme. The applicant could be asked to work with artists who had provided some of the images.
- Through the construction management plan the applicant would have to mitigate impact on returning businesses if there were delays in construction and if construction took longer than envisaged to use their best endeavours to enable businesses to resume at the earliest opportunity. The potential impact on existing traders on the Brixton Road side should be taken into account and they should be enabled to carry on their business as much as possible.
- Informative to be added regarding toilets in the scheme to be part of community toilet scheme.
- Officer advice regarding the wording of condition 5 was provided concerning the treatment of shop fronts. Officer advice was for an informative to be included for the applicant to give consideration to the retention of roller shutters that carry street art of local significance and embrace the opportunity for new street art within the routes and public spaces of the scheme.

At the request of Members, officers summarised the above discussion:

- Informative regarding encouragement for the applicant and occupiers to join the community toilet scheme.
- The Construction Management Plan to make reference to the use of the railway where possible.
- The condition relating to the letting strategy to make specific reference to the kiosk strategy to ensure that the diversity of current businesses is reflected and also give the opportunity for current businesses to return.
- Informative regarding improvements to the public realm and the canopy.
- In relation to the roller shutters, condition 19 to be expanded to include retention of street art and opportunities for new public art as previously proposed and including giving consideration to the retention of roller shutters which carry street art of local significance. The expanded condition 19 was intended to

supersede condition 19 as proposed in the addendum.

- Also in relation to the Construction Management Plan, a specific strategy for mitigating the impact of delays and the use of best endeavours to enable swift return of tenants whilst these problems were being overcome.

Members also noted the need to address the issue of removing intact features considered to be of value and re-using them within the scheme, and the impact on existing traders on Brixton Station Road.

It was MOVED by Councillor Wilcox, SECONDED by Councillor Haselden, and

RESOLVED, by six votes to one

To grant planning permission subject to conditions as outlined in the officer's report and published addenda and subject to the following:

- i. Amendment to Condition 3 (Letting Strategy) to include a strategy for letting of the new kiosk units;
- ii. Amendment to Condition 19 (Shop Fronts and Roller Shutters) to require identification of street art on the existing shutters of character/significance and provide a strategy for their retention and/or relocation within Brixton and for embracing the opportunity for new street art within the routes and public spaces of the scheme;
- iii. Informative to be added to encourage sign-up of tenants to the community toilet scheme;
- iv. Informative to be added to request that the applicant seek to use the railway for the delivery of materials during the construction phase to minimise disruption on the highway network;
- v. Informative to be added to encourage the applicant look beyond the red-line application boundary and consider wider improvements to public realm and the appearance of the station canopy;
- vi. Informative to be added to ensure that the Condition 4 (Construction and Environmental Management Plan) includes mitigation measures for any delays in construction to assist tenants to return as soon as possible; and
- vii. Informative to be added to ensure that Condition 4 (Construction and Environmental Management Plan) includes provisions to ensure market stall traders on Brixton Station Road are not impacted upon during construction and are able to operate normally.
- viii. Informative to be added to encourage preservation of artefacts of local value.

CLOSE OF MEETING

The meeting ended at 21:35.

CHAIR
PLANNING APPLICATIONS COMMITTEE
Tuesday 16 August 2016

Date of Despatch: Wednesday 10 August 2016

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