

Mayor and Cabinet		
Report Title	Greyhound Public House – response to Sydenham Local Assembly	
Key Decision	No	Item No.
Ward	Sydenham	
Contributors	Executive Director of Resources & Regeneration	
Class	Part 1	Date: 22 October 2014

1. Summary

- 1.1 The Sydenham Local Assembly requested that a full report go to Mayor and Cabinet, including what options are available to the Council to progress the rebuilding on The Greyhound.
- 1.2 This report sets out a response to the matters raised by the Sydenham Local Assembly.

2. Purpose

- 2.1 To respond to the matters raised by the Sydenham Local Assembly in a report to Mayor and Cabinet on 1 October 2014.

3. Recommendation

- 3.1 The Mayor is recommended:
 - (1) To note the content of the report and request that a further report is prepared by the end of January 2015 to update progress.

4. Policy Context

- 4.1 The content of this report is consistent with the Council's policy framework. Planning decisions are made on the basis of compliance with the development plan. The development plan for the borough consists of the London Plan and adopted Lewisham local plans including the Core Strategy, Lewisham Town Centre local plan, and the Site Allocation local plan. The Development Management local plan is due for adoption by the Council in November. The development plan for Lewisham is part of the Council's policy framework and is the spatial implementation mechanism for the Sustainable Community Strategy (SCS). It has a central role in implementing the six strategic objectives of the SCS.

5. Background

- 5.1 The Sydenham Local Assembly requested that a full report go to Mayor and Cabinet, including what options are available to the Council to progress the rebuilding of The Greyhound.
- 5.2 At the Mayor and Cabinet meeting on 1 October 2014, it was agreed that the Executive Director for Resources & Regeneration be asked to respond at the October 22nd meeting.
- 5.3 The Sydenham Local Assembly requested that the report should include the following key areas:
- A timeline of key dates in relation to the site, including the creation of the Conservation Area;
 - A description of the decisions made and information used to arrive at the granting of planning permission in April 2013;
 - The rationale for agreeing that homes on the site could be let before completion of the full scheme;
 - Legal views on the options now available to the Council;
 - All of the above information should be provided within the context of the Council's policies on public houses.

5.4 A response to these key areas is given in Section 6 below

5.5 **Chronology**

- 5.5.1 Planning permission and conservation area consent were granted in May 2010 for partial demolition of the pub with full restoration to provide pub/restaurant use, a new public square, residential and commercial units with parking and access provision. This was part of a wider scheme affecting not only the pub but also adjoining land. The S106 agreement was signed by those with an interest in the land in the development site.
- 5.5.2 .Between January and March 2012, the pub was substantially demolished, apart from the front elevation. The Council then prosecuted, and in March 2013, Purelake New Homes Limited were convicted of the offence of substantial demolition of the pub without conservation area consent and were fined.
- 5.5.3 From the 1 March 2012 the registered owners of the area of land on which the pub is situated is Barnett Waddingham Trustees Scotland Limited, Barry John White, Gerald Anthony Dowd and Linda Sollitt as trustees of Purelakes New Homes Director's Pension Scheme.
- 5.5.4 The planning obligations attached to the 2010 consents required the restoration and refurbishment of the pub.
- 5.5.5 A new application was submitted in September 2012 for the rebuilding of the public house. In April 2013 Planning Committee (C) granted permission subject to the variation of the original Section 106 agreement. This required

the consent of the signatories to the original agreement, or their successors in title.

- 5.5.6 Planning officers were hopeful that a resolution may be found, however subsequent to negotiations between the registered owners, Hexagon's solicitors, and the legal representatives of both the commercial and residential owners, they failed to reach an agreement to enable the Deed to be signed. The Council unfortunately is not in a position to influence this process as it is a matter for the relevant potential signatories to resolve. Planning officers have made efforts with all parties in an attempt to establish the reasons why this has stalled.
- 5.5.7 The Head of Planning met with Purelake on 28th February 2014, and following a meeting with Hexagon, Cllr Chris Best and the Council's relevant officers, on the 13th June 2014, Purelake indicated they would be submitting a fresh planning application for the Greyhound building, which would be different from the outstanding submission. This application has not been submitted to date.

6. Key areas identified by the Sydenham Local Assembly

6.1 A timeline of key dates in relation to the site, including the creation of the Conservation Area

- 6.1.1 At its meeting on 5 September 2007 Mayor & Cabinet agreed to designate the Cobb's Corner area, which includes the Greyhound Pub, as a Conservation Area. The decision became effective two days later on 7 September 2007. At the same meeting Mayor & Cabinet also agreed to extend the existing Sydenham Thorpes Conservation Area to include parts of Sydenham Road (the adjacent high street), and to locally list the Greyhound Pub and Postal Sorting Office in Silverdale.

6.2 A description of the decisions made and information used to arrive at recommending the granting of planning permission in April 2013

- 6.2.1 Subsequent to the unlawful demolition works undertaken to the Greyhound, construction works commenced in 2012 to rebuild external walls. The retention of the works, including an enlarged basement area, required a retrospective planning application, which was formally submitted in September 2012 (DC/12/81431). The application also proposed the construction of a new roof, a bay element to the western elevation, first floor function rooms, an internal refuse store and associated landscaping works. The use would be for A3/ A4 purposes.
- 6.2.2 The proposal was similar to the 2010 consented scheme, albeit with some amendments to the internal layout. Apart from the western bay, the external footprint would be the same as the previous approval. The new roof would be similar in appearance to the original building but of a slightly greater height.

- 6.2.3 It was proposed that salvaged facing brick and traditional materials would be used to the external envelope to replicate the historic appearance of the former Greyhound building, whilst a restored glazed timber screen would be reinstated at ground floor to the east elevation of the building. The proposal also included the reuse of tiles from the former drinking corridor to an internal bay area.
- 6.2.4 The enlarged basement was considered to improve the viability and potential for a drinking establishment to operate as it would accommodate a kitchen, office and storage rooms, thereby maximising the usable floorspace for customers on the upper floors.
- 6.2.5 Officers considered that whilst the rebuilding of the Greyhound could not be expected to reproduce the historic character of its predecessor, the reconstruction of the building would serve to reinstate a significant local landmark feature and reference point to the area. The proposed works would contribute to a new Greyhound building befitting of the prominent location, whilst preserving and enhancing the Cobbs Corner Conservation Area. For these reasons, permission was recommended and authorised by the Council's Planning Committee, subject to appropriate conditions and agreement upon a Deed of Variation.

6.3 The rationale for agreeing that homes on the site could be let before completion of the full scheme

- 6.3.1 Conditions (21) and (22) of the 2010 consent required that details be submitted to and approved in writing by the local planning authority in respect of the rear tiled wall of the Greyhound Public House and the internal drinking corridor. Subsequently, they should be implemented prior to first occupation of the residential units. The conditions were as follows:

- (21) Details of the construction, including materials and exact design of the proposed rear tiled wall of the refurbished public house shall be submitted to and approved in writing by the local planning authority and the rear tiled wall shall be constructed in accordance with the approved details before any of the residential units hereby approved are occupied, unless the local planning authority has given written consent for any variation.
- (22) Details of a scheme for the reuse of the salvaged tiles from the former 'drinking corridor', including location and exact design, to be used in a location within the refurbished public house shall be submitted to and approved in writing by the local planning authority and the rear tiled wall shall be constructed in accordance with the approved details before any of the residential units hereby approved are occupied, unless the local planning authority has given written consent for any variation.

- 6.3.2 Following significant works on site including the substantial demolition of the Greyhound pub and completion of the housing element of the scheme, Purelake in July 2012 submitted a Section 96a non-material planning

application to the Council proposing an amendment to the wording of Conditions (21) and (22). The aim of this application was to avoid any potential delay in the hand-over to Hexagon Housing Association of the completed residential units. It was therefore proposed the two conditions should refer to first occupation of the commercial units, rather than the residential units as originally stated. This would still give the Council some form of control to encourage the scheme to be completed as envisaged.

6.3.3 As part of the discussions with the applicant, it was clear that Hexagon Housing Association had undertaken significant preparatory work during 2011 and 2012 to ensure that residents were ready to move into the building on its completion and these arrangements were at a late stage when the unlawful demolition works were undertaken to the Greyhound. It was also clear from site inspections that significant construction works were required to complete the Greyhound building.

6.3.4 Officers were aware that Hexagon Housing had tenants ready to occupy the 40 residential units and that any delay would result in a significant housing issue for the tenants concerned, Hexagon and the Council. The timely release of the units for tenants who required accommodation was the primary consideration in the application being granted permission. The application was subsequently approved under delegated powers in September 2012.

6.3.5 The new conditions still retained the requirement that details were submitted prior the occupation of the commercial units.. The new conditions read as follows:

21) Details of the construction, including materials and exact design of the proposed rear tiled wall of the refurbished public house shall be submitted to and approved in writing by the local planning authority, and the rear tiled wall shall be constructed in accordance with the approved details before any of the commercial units (A1/A3/A4) hereby approved are occupied.

22) Details of a scheme for the reuse of the salvaged tiles from the former 'drinking corridor', including location and exact design, to be used in a location within the refurbished public house shall be submitted to and approved in writing by the local planning authority, and shall be constructed in accordance with the approved details before any of the commercial units (A1/A3/A4) hereby approved are occupied.

6.4 Legal views on the options now available to the Council

6.4.1 In response to the significant delays encountered in redeveloping the Greyhound, and the signing by all interested parties regarding the Deed of Variation, the Council has now sought advice from Leading Counsel in relation to what options are available to progress matters.

6.4.2 Counsel advised that the provisions of the original S106 Agreement relating to the 2010 consent, namely the 'Restoration and Refurbishment Works' referred

to in the provisions of Schedule 10 are still capable of being enforced against the current owners of the relevant part of the land.

6.4.3 Schedule 10 of the Agreement places an obligation on the Owner of the land to 'construct and complete the Restoration and Refurbishment Works, in accordance with details to be approved by the Council.

6.4.4 'Restoration and Refurbishment Works' are defined as 'the works to the Greyhound Public House including the reinstatement of the former drinking corridor tiles within the building in a scheme to be agreed with the Council and the design and implementation of a new ceramic rear elevation to the building in accordance with the plans and Design & Access Statement submitted as part of the Application.'

6.4.5 The Council have written to the registered proprietors of the Greyhound site advising that due to the unsatisfactory state of the site, and the significant time that has passed without the Deed of Variation having been signed since the outcome reached at the April 2013 Committee, they are requested to provide officers with a detailed schedule setting out their proposals for compliance with the provisions of Schedule 10 of the S106 Agreement.

6.4.6 If such details are not submitted within an agreed timescale, the Council will seek to commence appropriate legal proceedings against the owners of the site to ensure compliance with the S106 Agreement.

6.5 A timeline and description of the Council's policies on public houses

6.5.1 The Planning Service first suggested a specific policy designed to protect local pubs, from a change of use, as part of the preparation of the Development Management Local Plan (DMLP). The DMLP, as with all statutory plans, has to be produced according to regulations. This involves public consultation at several stages including 'issues and options'; 'preferred options'; 'further options' and proposed 'submission document'.

6.5.2 The first draft policy on protecting local pubs was included at the 'further options' stage of preparing the DMLP. The Mayor approved the Further Options DMLP for public consultation at his meeting held on 14th November 2012 and Full council approved it at the meeting held on 28th November 2014. The public consultation on this document took place from 2nd December 2012 up to 31st January 2013.

6.5.3 The pubs policy was again included in the 'proposed submission' document which was recommended for submission to the Secretary of State for an independent examination by the Mayor at his meeting held on 22nd May 2013 and approved for submission by the Full Council on 26th June 2013. The submission plan was subject to statutory consultation for six weeks and the representations made were summarised and submitted to the Secretary of State on 15th November 2013. The Public Examination was held on 26th February 2014 and the Inspector Report received on 23rd July 2014. The Mayor received a report recommending adoption at his meeting held on 3rd

September 2014 and as required by regulations it is due to go to the full Council meeting on 26th November for formal adoption.

- 6.5.4 When adopted by resolution of the Full Council the DMLP will become part of the development plan for the borough and then full weight can be given to its policies in the decision making process. The National Planning Policy Framework (NPPF) states that 'decision takers may also give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)'.
- 6.5.5 The Council policy on pubs did not change from the Further Options version to that contained in the adoption version which is set out below:

Pubs policy for Adoption DMLP: DM Policy 20 Public houses

1. The Council will only permit the change of use or redevelopment of a public house (A4) after an assessment of the following:
 - a. a viability report that demonstrates to the Council's satisfaction that the public house is no longer economically viable, including the length of time the public house has been vacant, evidenced by the applicant of active and appropriate marketing for a constant period of at least 36 months at the existing use value
 - b. the role the public house plays in the provision of space for community groups to meet and whether the loss of such space would contribute to a shortfall in local provision, including evidence that the premises have been offered to use or to hire at a reasonable charge to community or voluntary organisations over a 12 month period and there is no longer a demand for such use
 - c. the design, character and heritage value of the public house and the significance of the contribution that it makes to the streetscape and local distinctiveness, and where appropriate historic environment, and the impact the proposal will have on its significance
 - d. the ability and appropriateness of the building and site to accommodate an alternative use or uses without the need for demolition or alterations that may detract from the character and appearance of the building.
2. Where the evidence demonstrates to the Council's satisfaction that a public house is not economically viable, but where the building is assessed as making a significant contribution to the local townscape and streetscape, or is assessed as making a positive contribution to the historic environment, the Council will require the building to be retained, and for the ground floor to remain in use for a range of non-residential uses, including D1, as appropriate.

3. The proposed change of use of a public house for residential use will only be acceptable where:
 - a. the proposal has been assessed against parts 1c and 1d of this policy and the impact of the proposal on these features; and
 - b. where the Council is satisfied that residential use is acceptable, the accommodation to be provided is to be of the highest quality and meet the requirements outlined in DM Policy 32 (Housing design, layout and space standards).

7. Legal Implications

- 7.1 The legal advice received from leading counsel is summarised in paragraph 6.4 of this report.
- 7.2 The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 specifies those functions that are not to be the responsibility of an authority's executive. This includes the function of determining whether, and in what manner, to enforce—
 - (a) any failure to comply with an approval, consent, licence, permission or registration granted as mentioned in paragraph (2)(a);
 - (b) any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject; or
 - (c) any other contravention in relation to a matter with regard to which the function of determining an application for approval, consent, licence, permission or registration would not be the responsibility of an executive of the authority,

Paragraph (2) (a) of those regulations includes the functions of imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted in the exercise of a function specified in [column \(1\) of Schedule 1](#). Schedule 1 encompasses the functions relating to town and country planning and development control and in particular the powers in relation to agreements under S106 and enforcement provisions.

- 7.3 Therefore whilst the Sydenham Local Assembly is permitted to refer this matter to the Mayor. The Mayor may only note the information contained within the report. Any decisions relating to the issues contained within this report, including any potential legal proceedings can only be taken by Council, its Planning Committees or officers with the relevant delegated authority.
- 7.4 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.4.1 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

7.4.2 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

7.4.3 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

7.4.4 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

7.4.5 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8. Financial Implications

- 8.1 There are no specific financial implications arising from this report although there are costs being incurred by the Council in terms of officer time and external legal opinions on the matters raised, however these are currently being contained within existing budgets. These costs and any future costs arising may need to be considered in light of any enforcement action should it be required.

9. Crime and disorder implications

- 9.1 There are no specific crime and disorder implications in this case.

10. Equalities implications

- 10.1 *Shaping our future*, Lewisham's Sustainable Community Strategy for 2008-2020, sets out a vision for Lewisham;-

“Together we will make Lewisham the best place in London to live work and learn.”

This is underpinned by hard-edged principles for:

- **reducing inequality** – narrowing the gap in outcomes for citizens
 - **delivering together efficiently, effectively and equitably** - ensuring that all citizens have appropriate access to and choice of high quality local services
- 10.2. The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities to support the Sustainable Community Strategy and to ensure compliance with the Equality Act 2010.
- 10.3 A full Equality Analysis Assessment (EAA) (previously known as Equality Impact Assessment) was carried out for the policies in the Council's Core Strategy in February 2009. The overall assessment was that the policies in the Core Strategy would not discriminate and that most policies have a positive impact. Three potential adverse impacts were identified: protection of employment land; designation of mixed use employment locations; and concerns of community groups about the amount of new housing development putting undue stress on the existing network of facilities (shops, transport, health facilities, community facilities and other services) particularly in the Deptford/New Cross area.
- 10.4 The Site Allocations DPD followed on from the Core Strategy and identifies sites, usually 0.25 hectares and above which area likely to be developed during the lifetime of the LDF (2011 – 2026). The Core Strategy sets out the policy context and principles for the development of the allocated sites.

- 10.5 An EAA of the Site Allocations DPD was undertaken in 2011 to identify the positive and negative impacts of the Core Strategy DPD and as a consequence the Site Allocations DPD, on three protected characteristics that were not included in the earlier EIA as it pre-dated the Equality Act 2010. This EAA also provided an update on the Core Strategy EIA.
- 10.6 The Development Management Local Plan proposes specific objectives and policies to help ensure that new development complies with inclusive design principles to ensure that the town centres are safe, attractive and inclusive places. Planning applications for development will need to demonstrate how proposals meet these objectives and policies. The DMLP was the subject of an EAA in 2012.
- 10.7 *Shaping our future*, Lewisham's Sustainable Community Strategy for 2008-2020, sets out a vision for Lewisham;-

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- 10.8 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities to support the Sustainable Community Strategy and to ensure compliance with the Equality Act 2010.

11. Environmental implications

- 11.1 There are no specific environmental implications from this report.

12. Conclusion

- 12.1 The Greyhound site has remained in a poor condition since the stalling of development in 2013, which has resulted in an adverse and unacceptable impact upon the character of the Cobbs Corner Conservation Area and the streetscene generally.
- 12.2 The current impasse with regard to the completion of the Deed of Variation has prevented the commencement of building works in connection with the 2012 planning application. Despite the undertaking of negotiations between officers and interested parties, this matter has not progressed, and the condition of the site continues to deteriorate. It is therefore appropriate that

the Council commences appropriate legal proceedings against the proprietors of the site to ensure compliance with the S106 Agreement that seeks the restoration and refurbishment of the Greyhound building.

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Development Management Local Plan	2014	Laurence House	Planning Policy	Brian Regan	No

If you have any queries on this report, please contact Gavin Cooper, Development Management, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8774.