

Review of Implications of Omission of MFC and MCS Land for Scheme Viability

New Bermondsey – exclusion of MFC and MCS land

Renewal Group Limited
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1. Introduction

- 1.1. Following a request by London Borough of Lewisham ('the Council') to Renewal Group Limited ('Renewal'), GL Hearn ('GLH') have been instructed by Renewal to review the implications on the delivery of the development proposals for the New Bermondsey site if two parcels of land currently owned by the Council were excluded from any land transferred to Renewal.
- 1.2. The two parcels of land are:
 - (i) **The land that surrounds the football stadium** - the freehold interest in the land is held by the Council subject to a long lease to Millwall Football Club ('MFC') who occupy the land for the purposes of car parking and circulation space around the football stadium. MFC's lease also comprises the football stadium, which is retained within the consented development.
 - (ii) **The Lions Centre, Bolina Road** – a sports centre with associated external, covered football pitch. The freehold interest in the land is owned by the Council with the property subject to a lease to the Millwall Community Scheme ('MCS') (an independent charitable trust) which expires in November 2029.
- 1.3. Together these parcels of land are referred to as 'the Council Land' within this report.
- 1.4. MFC have proposed that both the land around the stadium and that which forms the Lions Centre should be excluded from any transfer of land between the Council and Renewal so as to allow the Football Club to bring forward their own redevelopment of the land. This report will evaluate the impact on the deliverability of the consented proposals if these two parcels of land were not transferred by the Council for inclusion in the development.

2. Physical Impact on the consented New Bermondsey Scheme

- 2.1. If the Council Land was excluded from the consented scheme four phases of development would be affected:
 - Phase 3 (Stockholm) – the land within this phase (owned by Renewal) contains the southern portion of Stadium Avenue, which provides a pedestrian link between South Bermondsey Station and New Bermondsey Station.
 - Phase 4 (Stadium Avenue and Senegal Way) - the land within this phase comprises elements held by both Renewal and the Council/MFC.

- Phase 5 (Bolina West and North) – this site would be isolated from the remainder of the development until such time as the Council Land was redeveloped.
- Phase 5A (Bolina East) - relating to land currently occupied by the Lions Centre.

2.2. A phasing plan is included in Appendix A for reference.

2.3. Phase 4 (Stadium Avenue and Senegal Way) of the consented development comprises 161 units, in three buildings:

- Senegal Way 1 – a residential tower on land that is currently in the ownership of Renewal providing approximately 3,474 sq. m. of residential accommodation;
- Senegal Way 2 – a predominately residential tower that is situated to the north of Senegal Way 1 on land that is in the ownership of the Council. The building provides residential accommodation of approximately 8,647 sq. m. and ground floor retail space of 442 sq. m.
- Stadium Avenue – a large building which is to house the hotel, retail accommodation (442 sq. m. of A3 use class) and 2,311 sq. m. of office accommodation (a business incubation block).

2.4. If the Council Land was not transferred to Renewal, Senegal Way 2 and Stadium Avenue would not be delivered as part of consented development. There would also need to be a re-design of the Senegal Way 1 and 2 blocks as rather than being independent, detached blocks they are inter-related together forming one large block.

2.5. Phase 5A (Bolina East) of the development comprises a residential tower providing 239 residential units, 115 sq. m. of A3 retail accommodation and 3,663 sq. m. of D1 accommodation (a large Health Centre) If the Council Land was not transferred to Renewal, this building would not be delivered as part of the consented development.

2.6. In addition to the delivery of these buildings, the exclusion of the MFC and MCS land would affect the delivery of Stadium Avenue which is a major landscaping element and public thoroughfare that links the two stations and knits the scheme together.

3. Viability of Delivery

3.1. The exclusion of the Council Land from the New Bermondsey development will have a significant impact on the deliverability of the development to the extent that it is unlikely that the scheme would be delivered in its current consented form. The complexity and size of the project, and the inter-relationship between the different phases of development which create the transformed environment means that a developer would have significant reservations about commencing with the redevelopment of the land, even when disregarding the history of negotiations between the existing landowners. Our recommendation to Renewal, or any potential developer of the land, is that in consideration of the factors below, the delivery of the consented scheme is not viable without land assembly being complete for the entire development, including the Council's Land.

3.2. Deliverability has two key components: financial viability and practical delivery. In respect of financial viability it is clear that the exclusion of the Council Land would have a significant negative impact. The extent of the upfront infrastructure costs means that the development only derives a profit to Renewal on completion or release into the market of the later phases. The exclusion of the Council Land significantly reduces the quantum of development available to be brought forward by the Developer, and this, together with lack of control over the timescales for delivery and form of development on the Council Land puts at significant risk the ability of Renewal to derive a suitable level of profit from the New Bermondsey scheme. The exclusion of the Council Land puts at risk the placemaking aspects

of the scheme, in particular Stadium Avenue, a key placemaking feature which extends from Surrey Canal Road to Bolina Road and acts as a key link between the proposed New Bermondsey Station and South Bermondsey Station and facilitates permeability through the development. In the absence of all of the land that forms the consented development being in the ownership and control of one party, to deliver the placemaking aspects of the scheme a form of collaboration agreement would need to be entered into. Such an agreement would take a considerable amount of time to construct and execute (even when assuming two parties working together with a good relationship) and would provide a limited assurance to a Developer in the position of Renewal unless there was a provision that provided 'step-in rights' which provided the automatic transfer of the land in the event of non-performance (an element that the other land owner would be unlikely to agree to). Given that previous attempts to establish a collaborative agreement between MFC and Renewal have failed, it is unlikely that any agreement could be formed.

- 3.3. The Council's land lies at the centre of the development and provides the physical connections between the phases of development either side of Surrey Canal Road (Phases 1A, 1B, 2 and 3) and those off Bolina Road (Phases 5 and 5A) as well as the linkage between the stations. Some form of development may be brought forward on the Council Land which creates these linkages but until delivery was brought forward Renewal would be conscious that Phase 5 of the consented development would be an isolated rather than an integrated part of the overall development. With growth in values caused by placemaking a key aspect of financial viability, the lack of control over the delivery of the entire development (both in respect of its timing and quality of product) would prevent the majority of, if not all, developers from bringing forward the delivery of the consented development on land within their control, particularly when the escalation in private residential values resulting from placemaking are fundamental to financial viability. Even on the initial phases of development, this lack of control would influence values as potential purchasers would not be provided the same level of comfort regarding transformational change to the area when Renewal does not have the control of delivering the entire scheme. Therefore, whilst Phase 5 is to be delivered in the later stages of the development, its importance to viability is paramount and anything that places delivery of this or other phases in accordance with the consented scheme at risk would deter developers from commencing with the scheme given the significant upfront infrastructure costs to be incurred.
- 3.4. Whilst the exclusion of the Council Land from Renewal's control can be evaluated in financial terms, such a review is ultimately an academic exercise as the risks placed on Renewal's ability to derive a profit, which are explored further below, would be too great.
- 3.5. Turning to practical delivery matters, if MFC were to take forwards their ambition to redevelop the land around their stadium, some form of joint delivery/ collaboration agreement would need to be agreed and entered into between Renewal and MFC. We understand that Renewal and the Club have previously sought to reach agreement in respect of jointly progressing the masterplan for the scheme, but despite engaging in a process of negotiation between 2006 and 2011, the parties failed to reach any agreement on how the scheme should be brought forwards. Since that time the relationship between Renewal and Club has deteriorated further, culminating in MFC not signing the section 106 agreement for the revised s73 planning consent. Given the complexity of the agreements that would be required to bring forwards the development, and the failed attempts of both parties to reach agreement previously, it is unlikely that an agreement could be reached between Renewal and MFC.
- 3.6. The division of part of Phase 4 and the entirety of Phase 5A from the consented development scheme provides a significant level of delivery uncertainty. Whilst MFC's ambition for developing the land around the Stadium is clear, what has not been articulated in any form is how the Football Club proposes to achieve this. No planning applications have been received by the Council, MFC's interest in the land around the stadium is not conducive for residential development to be brought forward (from a commercial perspective the unexpired term is too short when factoring in development phasing, the need for planning, etc. and the user clause does not permit residential development), nor do they have any legal entitlement to the Community Scheme land. To date, MFC have not sought to engage with Renewal as to how delivery could be brought forward in-line with the consented New

Bermondsey scheme.

- 3.7. Renewal currently has the benefit of a Land Sale Agreement with the Council for its two parcels of land, which Renewal has stated that it is not willing to release. That exists as an impediment to MFC bringing forwards its own development that cannot be ignored. It is also of note that the leasehold interest held by MFC would not permit it to develop the land around the stadium for residential purposes, and as confirmed by MFC, it has no legal entitlement to the MCS land. To that extent MFC would require the Council to enter into a sale agreement to transfer its freehold interest to the Club and whilst theoretically possible, practically there are barriers to this materialising. The Council cannot simply dispose of land without due regard to its statutory obligations, and it is somewhat inevitable that any proposal to instead sell its land to MFC, would lead to years of legal challenges as to the validity of any agreement given the existing Land Sale Agreement in place with Renewal.
- 3.8. There are significant areas of practical delivery uncertainty if development of the Council Land was not brought forward by Renewal:

Planning

- (i) The piecemeal development of Phase 4 and Phase 5A does not comply with Lewisham's Core Strategy and the planning framework for the site which requires comprehensive development. The Core Strategy does allow different parties to bring forward parts of the development in accordance with an agreed masterplan and delivery strategy that ensures comprehensive development is achieved but at present no agreement between the parties exists and it is highly unlikely that one would be entered into given complexities of any agreement and the history of discussions between MFC and Renewal.
- (ii) In the absence of any agreement between MFC and Renewal, a new planning permission would be required for the New Bermondsey scheme reflecting the exclusion of the Council Land as practically Renewal would not want any consent on land within their control to be attached to land outside of their ownership over which they have no control over delivery, particularly in respect of being bound to a section 106 agreement that covers both sites. In the context of needing to achieve comprehensive development of the wider site there is a question as to whether an application on this basis would be granted consent further increasing delivery risk to Renewal.
- (iii) There is insufficient detail as to what MFC propose to deliver on the site and whether this would accord with the consented scheme.
- (iv) The reduced linkage between the two stations could reduce the PTAL of the site necessitating lower residential densities if a further planning application was required. Renewal could seek to temper the influence of this on density through seeking that Stadium Avenue is delivered and public access provided through any section 106 agreement relating to the development of the Council Land but this would still require the Developer of the Council Land to agree to this and may require a 'Grampian' condition restricting development of certain parts of Renewal's land holding until the Avenue is delivered. In the absence of any collaboration agreement between Renewal and the developer of the Council land, Renewal has no comfort that Stadium Avenue will be delivered and its development would not be influenced.

Deliverability

- (v) There would be a lack of control over the timing of delivery of the development on the Council Land and its form. Whilst the requirement for planning consent would ensure that the what is delivered on the Council Land would adhere to planning policy, Renewal will have very limited influence as to how and when phases outside their control are being delivered, what is being proposed (both in terms of land use and design) and if these accord with Renewal's ambitions for the wider site.

- (vi) There would be a lack of certainty of delivery of development on these plots of land
- (vii) The potential for competing schemes to be advanced within the same wider development. With competing developer interests this could be to the detriment of the wider scheme in terms of the quality of the built form and the level of value obtained for completed units.
- (viii) How the developer of the Council Land would contribute towards the significant site wide infrastructure and section 106 costs that would be incurred by Renewal in advance of development commencing on the land surrounding the stadium?
- (ix) There are a number of outstanding interests in land which are required to be assembled in order for the development to be progressed. It is almost certain that the current CPO case would be jeopardised if the delivery of the wider development could not be demonstrated. There are presently no agreements between Renewal and MFC or any other party in respect of the development of the Council Land and so there is a significant concern that the Council would not be able to demonstrate that the entirety of the scheme could be delivered if the CPO was confirmed. Theoretically a CPO could be advanced for a revised scheme which excluded the Council Land but for the CPO to be confirmed it will need to be demonstrated that the revised scheme accords with the planning framework for the area. To demonstrate this, it will need to be evidenced that the comprehensive redevelopment of the site is being achieved (as per Core Strategy Policy 4) and with the Council Land excluded, this could only be demonstrated if an agreed masterplan, delivery strategy and collaboration agreement were in place between Renewal and the developer of the Council Land.
- (x) How would the intended public realm and infrastructure straddling both MFC and Renewal land be delivered?
- (xi) How would a service charge strategy be formulated and implemented for public realm and infrastructure situated on land in different ownerships?

Placemaking

- (xii) Placemaking will be adversely affected in that the scheme will lose its cohesive nature. Without certainty in respect of delivery of all aspects of the development the level of investment required in the public realm to create a new, comprehensive development will not be forthcoming.
- (xiii) The linkage between the two stations and permeability through the site will be damaged thus likely reducing PTAL and necessitating lower residential densities.
- (xiv) Enhanced values created by placemaking would be placed under significant risk due to the lack of control over the delivery of development on the Council Land. This in-turn would have a negative impact on financial viability.
- (xv) The cohesion of the amenity spaces and the distinct identity of the various areas of the New Bermondsey site will be in doubt creating a potentially severely disjointed and dysfunctional place thus reducing its attraction as a 'new piece of London'.
- (xvi) Phase 4 and 5A of the scheme contain a significant number of job creating uses such as the business incubation centre, the 150 bed hotel and the new health centre. If these are not delivered then jobs will be potentially lost and placemaking further damaged.

3.9. All of these areas affect the viability of delivery. If these are unresolved when considered against the reduced level of return the vast majority of, if not all, developers and housebuilders would consider

the project to be too complex and the reward too low to warrant taking the project forward. It is reasonable for Renewal and their shareholders to take a similar position and Renewal have indicated that this is the case.

4. Conclusion

- 4.1. We are of the opinion that the exclusion of the Council Land which forms of the Lions Centre and the land around MFC's stadium would significantly affect the viability of the current proposals, both in terms of financial return and practical deliverability to the extent that the consented scheme would not be delivered.
- 4.2. Without all of the land being made available for the consented New Bermondsey development to be delivered in its entirety, we consider that there is an extremely limited prospect of the development being delivered in the comprehensive form envisioned by the Core Strategy as the level of risk to obtain a suitable return is simply too great for either Renewal or another developer to consider embarking on the project. For comprehensive development to be achieved in the scenario of the Council Land being excluded from any transfer of land by the Council to Renewal, agreement would need to be reached with MFC on a masterplan (MFC's current proposals do not accord with the consented scheme), a delivery strategy and a collaboration agreement which included 'step-in' provisions. It is highly unlikely that the necessary agreements could be reached. The land would either remain in its current form, or, if land assembly is completed for individual phases, a smaller, less ambitious form of development advanced on individual plots generating fewer public benefits (providing planning consent could be obtained).
- 4.3. The significant cost of the infrastructure works and the creation of the sports centre are incurred in the early part of the project, with a developer only deriving a profit towards the end of the development (Phase 5). Without all of the land to derive the necessary level of profit, these aspects of the development would not be delivered in their proposed form.
- 4.4. The exclusion of the Council Land from Renewal's development proposals would result in significant uncertainty about the delivery of the scheme which would impact the Council's case for the use of their compulsory purchase powers. Whilst Renewal have assembled a significant amount of land by agreement, without a CPO to complete land assembly there is little prospect of any development being brought forward across any part of the site as with the exception of Phases 2 (Ilderton Wharf) and 3 (Stockholm), land assembly is incomplete on all phases.

I trust this report meets your requirements. If you have any queries please contact David Conboy of this office.

Yours faithfully



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Appendix A: Phasing Plans / Drawings