

Committee	PLANNING COMMITTEE (C)	
Report Title	Sydenham Gas Holder Station, Bell Green, London SE26 4PX	
Ward	Bell Green	
Contributors	Geoff Whittington	
Class	PART 1	11 <sup>th</sup> September 2018

Reg. Nos. DC/17/100680

Application dated 08.03.2017

Applicant Kier Property Development Ltd and Southern Gas Network

Proposal The removal of existing gasholder's and associated equipment and redevelopment of land to the east of Perry Hill, SE6 to provide:-

- 1,855 sq m (A1 Use Class) Food Store and 100 car parking spaces, and cycle stores;
- 168 sq m (Use Class A1) Coffee Shop & 325 sq m (Use Class A3) Restaurant, fronting Alan Pegg Place, including outdoor seating and cycle stores;
- 1,104 sq m (B8 Use Class with ancillary offices) Depot for Southern Gas Networks consisting of a two-storey building and service yard, together with associated car parking and cycle stores;
- Boundary treatment, and hard/ soft landscaping works including the provision of a new garden area.

Background Papers

- (1) Case File LE/214/A/TP
- (2) Local Development Framework Documents
- (3) The London Plan (2016)

Designation

PTAL 3

Development Site

Local Open Space Deficiency

Area of Archaeological Priority

Curtilage of Listed Building (partial)

## **1.Introduction**

- 1.1. This paper which is presented to Members and should be read in conjunction with the 23 November 2017 Committee Report and associated background papers (Committee report and minutes attached as Appendices A & B).

## **2.Background**

- 2.1. The application for the redevelopment of the Gasholder site was submitted in March 2017.
- 2.2. This application was presented to the Lewisham Strategic Planning Committee on the 23<sup>rd</sup> November 2017 with a recommendation for approval.
- 2.3. Following a deliberation by Members, the application was refused permission on four grounds set out below.

1. *The siting of the proposed development and associated car-parking would result in the unacceptable loss of existing ancillary green open space to the north of Livesey Hall, which would serve to have an adverse and unsympathetic impact upon the historic character, prominence and setting of the Grade II Listed building, War Memorial and front boundary wall, contrary to Policy 7.8 Heritage assets and archaeology of the London Plan (2016), Core Strategy Policy 15 'High quality design for Lewisham and Core Strategy Policy 16 'Conservation areas, heritage assets and the historic environment of the Core Strategy (2011), and DM Policy 30 'Urban design and local character' and DM Policy 36 'New development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens' of the Development Management Local Plan (2014).*

2. *The application, by reason of additional traffic and congestion generated by the retail units would impact detrimentally upon the surrounding gyratory and local residential streets, contrary to Policy 6.12 'Road network capacity' of the London Plan (2016), Core Strategy Policy 14: 'Sustainable movement and transport' (2011) and DM Policy 29 'Car-parking' of the Development Management Local Plan (2014).*

3. *The provision of the proposed additional A1 floorspace within the wider Bell Green retail park would exceed the prescribed maximum retail limit of*

*16,110sq.m as set out in the Core Strategy (2011), thereby harming the retail character and viability of adjacent shopping centres, contrary to Policy 4.7 'Retail and town centre development' of the London Plan (2016), Spatial Policy 4 'Local Hubs' and Core strategy Policy 6 'Retail hierarchy and location of retail development' of the Core Strategy (2011), and DM 13 'Location of main town centre uses' of the Development Management Local Plan (2014).*

*4. The application fails to demonstrate sufficiently that traffic and vehicular movement associated with the proposed development would not increase levels of air pollution within the area and would therefore have an unacceptable impact upon amenity, contrary to Policy 7.14 'Improving air quality' of the London Plan (2016), Core Strategy Policy 9 'Improving local air quality' of the Core strategy (2011), and DM Policy 23 'Air quality' of the Development Management Local Plan (2014).*

### **3. Appeal Update**

- 3.1. The applicant has submitted an appeal against the refusal of planning permission to the Planning Inspectorate which the Council will need to defend.
- 3.2. Officers have therefore instructed sought advice, including from Counsel, as to how the reasons for refusal best be defended at appeal and minimise any award of costs against the Council.
- 3.3. In supporting the Council's decision for this application, the external consultant appointed to defend the appeal confirmed that he is in agreement with the position of officers, as supported by environmental health officers and external retail impact advisors, as set out in the original committee report.

#### *Retail Impact*

- 3.4. Paragraphs 6.53 to 6.71 of the Committee Report set out officer's assessment of the retail impact. A full assessment of impact was undertaken on the Council's behalf by Lichfields.
- 3.5. Following the lodging of the above appeal, given that permission had been refused contrary to officers advice, in order to allow for an impartial review the matters raised, officers engaged an external consultant to handle the appeal.
- 3.6. The consultant advised that he supported the conclusions of the original officers report, which reflected the conclusions of the work carried out by Lichfields.
- 3.7. The 3<sup>rd</sup> reason for refusal bases the committee's objection primarily upon the breaching of the guideline limit set out in the Core Strategy. The breaching of

that limit in itself is cited to be the reason that the scheme would harm “*the retail character and viability of adjacent shopping centres*”. The analysis undertaken in providing officers recommendations to committee took into account this figure, and all relevant subsequent tests and considerations, necessary to be applied for this scheme, and all the more relevant given that the figure from the Core Strategy is some 7 years old now, and to be regarded in the context of a different context in regard to population growth and general planning considerations.

- 3.8. Aside from specific reference to this guideline limit, no further detailed counter evidence was provided, upon which to adequately support or inform this reason for refusal. The submitted evidence set out the impact of the scheme upon adjacent shopping centres, and did not conclude that impact to be materially harmful. The reason for refusal was reliant upon the act of breaching a guideline limit in principle constituting a harm. It did not state that the harm was material, or whether the specific degree of impact in the supporting reports were themselves harmful. Reasons for refusal constructed in this manner will always be liable to provide difficult to defend, or indeed identify the specific harm, in order to focus on a specific area of challenge in any subsequent appeal.
- 3.9. In the absence of such specific identified valid deficiencies, or robust further advice, no meaningful defence of this reason for refusal could be provided by the Council.
- 3.10. As such no evidence has been able to be put forward in order to support reason for refusal no.3.
- 3.11. It must be noted that the Inspector is not prevented from reaching their own opinion on the subject, and those having made representations on the planning application, and those making representations on the appeal, can also have their opinions heard on the subject.

#### *Air Pollution*

- 3.12. The 4<sup>th</sup> reason for refusal states that the “*application fails to demonstrate sufficiently that traffic and vehicular movement associated with the proposed development would not increase levels of air pollution within the area and would therefore have an unacceptable impact upon amenity*”.
- 3.13. The information and evidence provided in support of the application was carried out with due regard to the required standards set out in industry guidance and planning policy and guidance. It was reviewed by officers with relevant expertise in that field by the Council. Paragraphs 6.128 to 6.131 of the Committee Report summarise the conclusions of that exercise.
- 3.14. Crucially, paragraph 6.130 includes the following statement “In regard to emissions arising from traffic generated by the operation of the development, based upon data including trip lengths and emission factors, it would be air quality neutral”
- 3.15. The conclusions set out within the applicant Air Quality Assessment, which have been reviewed and accepted by the relevant officers, determine that a ‘negligible

impact' would arise through the development. For construction activities this can and would be mitigated by steps secured by condition, and in the operational phase, the application satisfies the relevant standardised assessment methodologies.

3.16. Further, the application would generally exert a negligible impact based on the anticipated impacts of associated vehicular movements. The very limited relative degree of impact is such that a very significant change in impact arising from significant revised traffic movements / congestion would have to be demonstrated. Even in that instance (that the impacts would not fall within the 'negligible' classification) this would not on the basis of planning policy and guidance, dictate that permission be refused.

3.17. Therefore, again in the absence of very specific evidence upon which a very significant different traffic / congestion impact could be identified and very significantly increased air quality impacts might then arise, no meaningful defence of the reason for refusal has been able to be provided.

3.18. As such no evidence has been able to be put forward in order to support reason for refusal no.4.

3.19. Again, it must be noted that the Inspector is not prevented from reaching their own opinion on the subject, and those having made representations on the planning application, and those making representations on the appeal, can also have their opinions heard on the subject.

#### *Conclusion*

3.20. For the above reasons, only reasons for refusal 1 & 2 are being defended.

3.21. The Council's Statement of Case to this effect has been provided to the Planning Inspectorate and the appellant, and the Public Inquiry is currently due to occur in early 2019.

#### **4. Recommendation**

4.1 That members of this Committee note this update.