

**115-129A Scrubs Lane NW106QU (North Kensington Gate southern site)
16/0119/FULOPDC
Stage 2 representations to the Mayor of London**

Introduction

1.1 We ask that the Mayor of London uses his powers under Article 6 of the Mayor of London Order 2008 to override the decision of the OPDC Planning Committee on April 5th 2017 to approve the above application, and to refuse the application.

1.2 The grounds for refusal of the application are detailed below and can be summarised as:

- insufficient weight given to the views of Borough Councils and of Historic England, opposing the application.
- failure to accept that the current planning policy framework for this part of the OPDC area does *not* support a 22 storey building at a density of 435 housing units per hectare at the applicant location (PTAL level 1b). Adopted and emerging OPDC policy *resists* such a development.
- an OPDC Planning Committee decision which took account of irrelevant considerations, outside the content of the current Development Plan for the area, including a *direction of travel document* of no material weight.
- a breach of legislation in the publication of representations from local residents on the OPDC website

1.3 We ask the Mayor to intervene over this decision in order to avoid loss of public confidence in the decision-making processes of the Old Oak and Park Royal Development Corporation. The grounds set out below are grouped under the three policy tests to be applied should the Mayor decide to call-in the application under Article 7 rather than to direct refusal under Article 6.

Significant impact on implementation of the London Plan

2.1 The application breaches a series of policies in the London Plan, as have been identified by the representations from LB Hammersmith & Fulham and RB Kensington and Chelsea. The proposed development is only the third major application to be determined by the OPDC Planning Committee and will set an important precedent for proposals in the remainder of the OPDC area.

2.2. The proposed density of the development at 435 housing units per hectare is in excess of the London Plan Density Matrix for even the most central sites with the highest level of public transport accessibility and is wholly inappropriate to an urban location with a PTAL level of 1b (and no certainty of improved public transport infrastructure). The proposals are contrary to London Plan Policy 3.4, which states *local context, design and transport capacity are particularly important*.

2.3 As pointed out in the observations from LB Hammersmith and Fulham, the affordable housing provision at 27% by unit and 30% by habitable room falls below the 40% policy

requirement contrary to London Plan policies 3.11 and 3.12. The proposals are short on family units and will not contribute to a sustainable and successful part of London at a 'new Old Oak'.

2.4 All but 7 of the 44 units classed as affordable are intermediate units (shared ownership) with the remaining 7 units being London Living rent. This does not provide any significant volume of new housing units within reach of residents in one of the most deprived wards in London. The proposed affordable housing provision is inadequate and falls below the expectations set out in the GLA Stage 1 response of 7 November 2016.

2.5 As stated by LB Hammersmith & Fulham in its objections to the application, the proposed height, massing, design and relationship of the buildings to the street would not assist in establishing townscape character or in the creation of a sense of place for Scrubs Lane and are contrary to London Plan policies 7.4. and 7.7.

2.6 Historic England considers that the development *would result in a prominent adverse impact to the setting, character and appearance of the St Mary's Conservation area*. RB Kensington and Chelsea consider that *given the widespread visibility of the 22 story tower within the western part of the cemetery and its visual intrusion on the setting of its many listed tombs and mausoleums, the harm is extensive*. RBKC define the harm from the development, on balance, to be *significant*.

2.7 LB Hammersmith and Fulham identifies harm to the St Mary's Conservation Area, the Grand Union Canal Conservation Area, the Grade 1 Park and Garden of Kensal Green Cemetery, and the war memorial.

2.8 All three bodies (Historic England, LBHF and RBKC) take the view that the public benefits from the scheme do not outweigh the harm caused, and object to the application. It should not be that the views of the independent members of the OPDC Planning Committee, who have limited local knowledge of the location and no local accountability, should prevail over these three bodies. If this decision is allowed to stand, it will open up a wider set of issues on OPDC decision-making.

The development would have significant effects that are likely to affect more than one London borough

3.1 The proposed development is located close to the boundary of Hammersmith & Fulham and of Kensington & Chelsea and will affect views and transport routes in both boroughs.

3.2 RB Kensington and Chelsea featured this application as the sole item in its March 17th edition of the Borough's Planning Bulletin. See at <http://rbkc.newsweaver.co.uk/PlanningBulletin/1pylr8zh26d662qm6dy2w2?email=true&a=11&p=51599087>. The Bulletin stated *The Royal Borough has raised objections to the Scrubs Lane proposals by Aurora Developments for a 22-storey tower. This tall and isolated tower would be seen widely in views from the Grade I listed Kensal Green Cemetery, and would cause significant harm given the extensive impact and high heritage significance of the cemetery and conservation area. There would be no associated benefits that would justify or*

outweigh the resultant harm. This application has caused significant local concern amongst residents of North Kensington.

3.3 The 41 written objections from the public and the oral representations by the MP for Hammersmith (Andrew Slaughter) at the committee meeting, were given insufficient weight in the subsequent discussion and decision of the OPDC Planning Committee on April 5th 2015. Written representations from the public, mainly relating to the design and appearance of the proposed tower, were not faithfully or adequately covered in the 130 page report placed before the committee.

3.4 Three out of the four elected councillors with places on the committee voted for refusal of the application. The application was approved by the committee (subject to Mayoral Stage 2 consent) on the basis of votes in favour cast by one borough councillor from LB Brent, the three independent members of the committee, and the committee chair.

3.5 These latter four members of the committee are appointments of the former Mayor of London. In dismissing the well evidenced written objections from LB Hammersmith & Fulham and of RB Kensington and Chelsea, and in statements made at the committee, these appointed members have demonstrated a presumption that the views of those living in and around the OPDC area, and of their elected councillors and Member of Parliament for Hammersmith, should be set aside in the interest of seeing early development at Old Oak - even when such development is contrary to planning policy and to the material considerations on which this application should have been determined.

Sound planning reasons for refusal at Stage 2

4.1 It was stated several times in the discussion at the committee on April 5th, by the chair of the committee and by the OPDC Director of Planning, that the officer recommendation to approve the application was 'within the policy framework'.

4.2 The OPDC Local Plan is currently at Regulation 18 stage and as a result has gathered limited material weight (as acknowledged in the April 5th committee report at paragraph 5.4). The 2010 LB Hammersmith & Fulham Local Plan retains some (but reducing) weight in relation to the OPDC area. London Plan policies apply, as noted above. The 2015 Old Oak Opportunity Area Planning Framework was adopted as supplementary planning guidance to the London Plan in November 2015 and has material weight in the determination of this application.

4.3 Contrary to what was stated in discussion on the application at the committee, policies in the adopted OAPF and emerging policies in the Regulation 18 OPDC Local Plan do *not* support a building of 22 storeys and a density of 435 housing units per hectare on the applicant site.

4.4 The 2015 OAPF states in relation to 'sensitive edges'

- *There are sensitive locations within and adjacent to Old Oak and Park Royal, which include: designated heritage assets (including their setting) (such as the Grand Union Canal, Wormwood Scrubs and St. Mary's Cemetery), existing residential communities and public amenity spaces.*

- *New development close to sensitive locations will be expected to demonstrate how it responds to the specific characteristics of that sensitive location. Buildings in these sensitive edge areas would need to achieve the highest quality design and material use.*
- *In many instances sensitive locations tend to be positioned at the edge of Old Oak. It is important that new development adjacent to sensitive locations help mediate the transition in scale with the surrounding areas.*
- *To help manage this densities and heights in these locations may be lower.*
- *However, there may be some opportunities for a taller element where it clearly helps create a moment of interest and achieves the highest quality design*

4.5 Far from providing policy support for a 22 storey building on the applicant site, the OAPF requires new development to '*mediate the transition in scale*' and to respond to designated heritage assets including St Mary's Cemetery.

4.6 Historic England in its second set of comments (para 6.29 of the committee report) states *Scrubs Lane (and in particular the east side) has rightly been identified by OPDC as a sensitive edge and, in our view, is an entirely inappropriate location for tall buildings.*

4.7 Draft Policy OSP4 in the Regulation 18 Local Plan on Densities and Building Heights and the map included in this section of the Draft Plan shows this site as a 'sensitive edge' with an appropriate density of 300 units per hectare, as acknowledged in the committee report for April 5th (para 7.52).

4.8 The Regulation 18 OPDC Local Plan includes a specific section on Scrubs Lane which again gives no policy support for the application. The 'vision' at 4.32 is that *Scrubs Lane will be transformed into a pleasant street, respectful of surrounding heritage assets, with a high quality public realm.* And at 4.134 this document states *Development will be designed to respond to heritage assets, their setting, and existing residential communities. New buildings on the eastern side of Scrubs lane will be mindful for the surrounding heritage context, responding sensitively in their design and management.*

4.9 The nearest that this section of the Regulation 18 Local Plan comes to supporting a tall building at this location is in the Preferred Policy Option sub-paragraph f) which reads *recognise that there will be opportunities for taller elements on Scrubs Lane where these achieve the highest standards of design, are mindful of the surrounding context and deliver a co-ordinated approach to placemaking*'. Historic England, RBKC and LBHF (as well as local councillors) have been very clear that they do not consider the application to be *mindful of the surrounding context*. And the architectural design of the proposed building has been criticised by RBKC, the MP for Hammersmith, local councillors, and in objections submitted by local residents as being very far from *the highest standards of design*.

4.10 The concept of Scrubs Lane as a suitable location for a series of tall towers surfaced within the OPDC only after public consultation on the Regulation 18 Local Plan concluded in early 2016. The first draft of a *Scrubs Lane Direction of Travel* document was considered by the OPDC Planning Committee in December 2015. A revised version was approved at the 5th April meeting of the committee, as an agenda item prior to the application for 115-129A Scrubs Lane.

4.11 The *Direction of Travel* document introduced the concept of a series of four 'clusters' along Scrubs Lane, with *a single taller building in each cluster*. Elsewhere in the street, the document envisages buildings of 6-8 storeys. The *Direction of Travel* document carries no material weight and is not part of the Development Plan (see para 5.6 of the April 5th OPDC committee report).

Procedural problems in the treatment of the *Scrubs Lane Direction of Travel* document and in the handling of the planning application

5.1. Planning applications must be determined in accordance with the development plan unless there are material considerations that indicate otherwise.

5.2 The OPDC *Scrubs Lane Direction of Travel* document has not been the subject of public consultation and currently represents nothing more than a 'work in progress'. The committee report on 115-129A Scrubs Lane states *Whilst the document is not a material consideration in the determination of this application, the principles within it are referenced in relevant sections of this report. The Direction of Travel will inform the content of the Local Plan and a future Supplementary Planning Document for Scrubs Lane, both of which will be subject to public consultation this year.*

5.3 If not a material consideration, the document should not have been referenced in the committee report or in the advice given to the committee in the discussions on April 5th.

5.4 It became clear during the three hour discussion and consideration of the 115-129A Scrubs Lane application on April 5th that several Planning Committee members were treating the *Direction of Travel* document, and the previous presentation of views of tall buildings in Scrubs Lane shown to the committee in December 2016, as a significant factor in their decision-making.

5.4 During the latter stages of the committee discussion, it was also evident that the outcome of the meeting, in terms of approval or refusal of the application, was becoming uncertain. There was discussion on possible deferral of a decision to a future meeting. In summing up at this stage of the meeting the Chair stated *'the committee has agreed in the past that this is a site that is acceptable for a taller building'* referring back to the December 2016 discussion and presentation on the 4 'clusters' in the *Direction of Travel* document. And that *'I think we feel comfortable that what is proposed fits into the policy framework'*.

5.5 Independent member Gordon Adams referred to the *Direction of Travel* document in his concluding remarks as to why he strongly supported the application. While the OPDC Director of Planning pointed out at this juncture that the document was not a material consideration, the comments already made and the references in the officer report, showed that a number of committee members had in their minds the concept of a series of 'clusters' long Scrubs Lane with a tall building in each. This concept does not feature in the OPDC OAPF, nor in the Regulation 18 Local Plan.

5.6 The decision to approve the application was made by five votes to three. In the closing stages of the discussion, a number of reasons were given by members of the committee as

to how they would be voting. Apart from references to the *Direction of Travel* document, these included an argument on the adverse consequences of 'the message' that would be given to future developers by a refusal, and of the 'pioneering' nature of a development by a 'heroic' developer, early in the life of the OPDC. These are not relevant planning considerations.

5.7 Public law requires decision-makers to take account of relevant considerations, and to avoid basing decisions on irrelevant considerations. While it may be reasonable for members of the OPDC Planning Committee to look ahead at the wider context of the emerging masterplan, it is not acceptable for the determination of a planning application to be substantially influenced by a document (*Scrubs Lane Direction of Travel*) which is accepted by all parties *not* to be a material consideration as of April 2017.

5.8 The second procedural reason for asking that the application for 115-129A Scrubs Lane to be reconsidered by the Mayor relates to the handling of public objections. There were 41 objections from the public during the initial consultation on the planning application. In publishing these objections on the OPDC website, the OPDC staff stripped out names and addresses of objectors leaving only the text of the representations.

5.9 Legislation requires publication of names and addresses of those making representations on planning applications. This requirement has been breached in the case of this application.

5.10 As pointed out by the MP for Hammersmith in his oral statement to the committee on April 5th, this made it impossible for him to know from which parts of his parliamentary constituency (or the neighbouring parliamentary constituency of Kensington) objections were being made. The applicant, or anyone with an interest in the objections/representations, could not identify how close to the site an objector lives and hence assess the basis of the objection or the impact on quality of life of neighbours of the site.

5.11 The fact that OPDC committee members were provided with copies of full representations does not overcome the fact that the statutory planning register operated by the OPDC does not comply with legal requirements. This deficiency was brought to the attention of the OPDC on April 3rd and no response has as yet been received.

Conclusion

6.1. For all the above reasons, we ask that the Mayor of London exercise his powers under Article 6 of the Mayor of London Order 2008 to refuse this application. The decision of the OPDC Planning Committee of 5th April is at risk of being found by a Court to be unsound.

6.2 The London Plan, adopted OAPF, and the Regulation 18 OPDC Local Plan, when coupled with the objections from LB Hammersmith & Fulham, Royal Borough of Kensington and Chelsea, Historic England, views from elected councillors on the OPDC Planning Committee, from the MP for the area, and from local residents, all point towards refusal of the application.

6.3 The decision on this application is of significant importance in setting a precedent for further developments proposed in the ODC area. The 'vision' of Old Oak, launched by a previous Mayor of London, envisaged a 'Canary Wharf of the West' at Old Oak. Housing targets and densities, consequential on this simplistic vision, were built into the London Plan Further Alterations Annex 1 on Opportunity Areas.

6.4 It seems clear that in the process of preparing a Local Plan for the OPDC area, The Corporation's planners have concluded that buildings over 20 storeys on a 'sensitive edge' of the opportunity area, and adjacent to three conservation areas, will send a signal to the development market that proposals which fall outside a series of London Plan policies, and which are strongly opposed by the Borough Councils involved, will be found acceptable by the OPDC in advance of consultation and adoption of an OPDC Local Plan.

6.5 This is not a decision which the Mayor should be supporting. Hence this request for intervention at Stage 2.

Hammersmith Society
St Helens Residents Association (North Kensington)
April 2017