

Delegated Report (Members Briefing)		Analysis sheet		Expiry Date:	29/09/2010
		N/A / attached		Consultation Expiry Date:	03/09/10
Officer			Application Number(s)		
Neil McDonald			2010/4273/P		
Application Address			Drawing Numbers		
Kentish Town Sports Centre Prince Of Wales Road London NW5 3LE			Covering statement; letter from Camden Property Services dated 02/08/2010.		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Variation of condition 21 (relating to various section 106 and other obligations on the developer) as attached to planning permission ref. 2007/4426/P dated 13/05/2008 (for refurbishment and restoration of the Kentish Town Sports Centre plus works of conversion and new build to provide 10 self-contained flats and 4 town houses) in order to secure the car free obligations by condition rather than s106.					
Recommendation(s):		Granted			
Application Type:		Variation or Removal of Condition(s)			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	01	No. of objections	01
			No. Electronic	01		
Summary of consultation responses:	<p>Site notice only</p> <p>1 response received objecting to the proposed variation which would allow prospective owners of the flats not to be required to accept Section 106 agreements relating to car free housing. Already Grafton Road suffers from an almost impossible parking problem, which, of necessity, forces cars into already crowded adjoining streets.</p> <p>Another (at least!) 10 cars would make parking almost impossible and create dangers to the hoped-for increase in pedestrian traffic resulting from the restoration of the swimming baths.</p> <p>If the Prince of Wales Road flats can remain car-free, so should these Grafton Road flats.</p> <p>[See officer response to Inkerman Area Residents Assoc below]</p>					
CAAC/Local groups* comments: <small>*Please Specify</small>	<p>Inkerman Area Residents Association object to the removal of the section 106 condition for car free housing. The area is already under considerable pressure for parking. Residents feel that the removal of this control is cynically exploiting their original cooperation with the plans for Kentish Town Sports Centre when the main application was submitted.</p> <p>[Officer response: The car-free requirement as originally agreed is not being removed but will be retained as a planning condition instead of by section 106 in the normal way. The reason for this is that the Council is the developer of these flats instead of a private developer as originally envisaged. There is no provision in law for the Council to enter into a section 106 agreement with itself and therefore a condition is seen as the appropriate tool. The Council will be able to maintain control of the properties as freeholder and ensure through the leases that the car-free status of the flats continues in force.</p> <p>The car-free requirement was only originally imposed on the 7 PoW Road flats, therefore the Grafton Road flats, and the town houses will continue to enjoy entitlement to parking permits]</p>					

Site Description

Grade II listed public baths and leisure centre owned by the Borough of Camden. The site is located within the Inkerman Conservation Area.

Relevant History

Council Own Planning Permission and Listed Building Consent granted 13/05/2008 for **Refurbishment and restoration of the centre to provide 2 swimming pools, learner pool, gym & studio spaces including internal and external alterations to the building; works of conversion, partial demolition and extensions to provide 10 self-contained flats (3 x 1 bed, 7 x 2 bed) and 4 x 4 bed town houses.** (2007/4426/P and 2007/4428/L). Draft S106 to be signed by the selected developer as a condition to implementation of the residential parts of the scheme (which will be contracted out externally). This covers relevant contributions, affordable housing (i.e. 3 units for shared ownership), car-free housing on the Prince of Wales flats, construction management plan, post-construction BREEAM statement and community working group for construction management.

Approvals of details have been issued in respect of discharging conditions 2 (energy strategy), 3(ii) (new glazed doors to PoW Rd elevation), 5 (partial details of bat boxes), 6 (feasibility for a green roof), 12 (soil and groundwater investigation), 16 (construction management plan for the sports centre) 18 (community working group) and 19 (landscaping). Details of glazed doors to ground floor elevation of Prince of Wales Building have been submitted pursuant to Condition 3(ii) and are currently under consideration (ref 2010/3100/P. Partial discharge/removal of condition 4 (BREEAM assessment) was granted under reference 2008/2362/P on 30/03/09 subject to replacement condition 1 requiring submission of BREEAM final code certificate.

March 2010 -Condition 21 (requiring a section 106 agreement to be entered into covering various matters relating to the residential development) was varied to more clearly define the heads of terms required for each of the 3 residential components of the development and allow sufficient flexibility for the Council to undertake certain parts of the works without having to enter into a section 106 agreement with itself. (2010/0096/P)

Details are still outstanding in respect of conditions 3i, iii, iv and v (various revised design details), 4 (as amended by permission ref 2008/2362/P granted on 30/03/09 and requiring a final BREEAM certificate), 5 (full details of bat boxes –for the town houses only), 14 (travel plan), 15 (service management plan) and replacement conditions 21A, B, C & D (as imposed in response to the section 73 application ref 2010/0096/P approved on 16/03/2010).

Relevant policies

London Borough of Camden Replacement Unitary Development Plan –Adopted June 2006

SD2 – Planning obligations, SD8 – Disturbance, SD9 – resources and energy, N4 – Providing public open space, H2 – Affordable housing, T3 – Pedestrians and cycling, T7 – Parking, T8 – Car free housing, T9 – Impact of parking, T12 – Works affecting highways.

LDF Core Strategy and Development Policies

The Inspector's Report into the Camden Local Development Framework Core Strategy and Development Policies Development Plan documents ("DPD"s) was published on 13th September and found the policies in the DPDs to be sound.

This means "considerable weight" can now be given to these LDF policies even though at this stage they have yet to be formally adopted by the Council. Where there is a conflict between UDP policies and these LDF policies the Planning Inspectorate would consider it reasonable to follow the latter.

However prior to formal adoption UDP policies should still be taken into account as the Council's adopted Development Plan.

CS6 - , CS11, CS15, CS19, DP3, DP17, DP18, DP19, DP21, DP22, DP23, DP32, DP26, DP28.

Assessment

Relevant background

Condition 21 was attached to the original permission to secure various matters in connection with the residential development that would be secured under section 106. It was envisaged that the residential fit out of the flats and construction of the town houses would be undertaken by third party developers who would subsequently be able to enter into the section 106 once the development phases for the relevant parts of the development was reached.

The March 2010 variation of condition 21 was granted in response to a change in the Council's intentions which would involve itself developing the 7 flats fronting Prince of Wales Road. This provided for more of the relevant matters to be secured by condition as the Council is unable to enter into a section 106 agreement with itself, while the occupier instead of the developer (in this case the Council) would be required to sign a section 106 in respect of ongoing obligations relating to car free housing and sustainability. At the same time the opportunity was taken to more clearly define the heads of terms by separating out what was required for each of the 3 residential components of the development.

A replacement condition 21 was imposed which stated the following:

REPLACEMENT CONDITION 21A

The internal fitting out of the three flat units adjacent to Grafton Road shall not be commenced until such time as a planning obligation under Section 106 has been entered into between the developer (being the person or persons fitting out the units) and the Council to secure the following:-

- i) Provision of the three units as affordable housing for shared ownership; and*
- ii) a Sustainability Plan demonstrating the ability of the units to meet target Eco-homes level 3 and 50% credits achieved in energy, water and materials and to ensure that the units remain in compliance with the Sustainability Plan*

REPLACEMENT CONDITION 21B

The internal fitting out of the seven flat units adjacent to Prince of Wales Road shall not be commenced until such time as a Sustainability Plan setting out sustainability measures to be employed in the carrying out of the development of the units in their fabric and in their subsequent management and occupation based on an assessment under the Code for Sustainable Homes achieving a target Level 3 and 50% of the credits in each of the Energy Water and Materials categories, shall be submitted to and approved by the Local Planning Authority. The relevant flat units shall not be occupied until they have been issued with a final Code certificate of compliance and accompanying statement confirming that by reasonable endeavours the above targets have been met.

REPLACEMENT CONDITION 21C

The seven flat units adjacent to Prince of Wales Road shall not be occupied until such time as a planning obligation under Section 106 has been entered into between the purchaser(s) of the units and the Council to secure the following:-

- i) a Post Completion Sustainability Statement undertaking not to occupy or permit occupation of the units otherwise than in strict accordance with the requirements of the Sustainability Plan as has been approved by the Local Planning Authority in pursuance of Replacement Condition 21B above; and*
- ii) that the units are retained as car-free housing.*

REPLACEMENT CONDITION 21D

The development of the Town Houses on Willes Road (3 units) and Grafton Road (1 unit) shall not commence until such time as a planning obligation under Section 106 has been entered into between the developer and the Council to secure:-

- i) payment of an education contribution of £51,716*
- ii) payment of a public open space contribution of £3,429*
- iii) a Sustainability Plan demonstrating the ability of the units to meet target Eco-homes level 3 and 50% credits achieved in energy, water and materials and to ensure that the units remain in compliance with the Sustainability Plan; and*
- iv) a Construction Management Plan including a community working group.*

Reason: *In order to ensure that the residential development is properly planned for in terms of infrastructure, facilities, services and other recognised objectives in accordance with policies SD2, SD8, N4, H2, T3, T7, T9 and T12 of the London Borough of Camden Replacement Unitary Development*

Plan 2006.

Reason for current variation

The replacement condition (21C) as currently worded would require individual purchasers of the PoW Road flats to enter into a s106 agreement to secure car-free housing and for each individual flat owner to sign a section 106 agreement regarding an ongoing commitment to abide by a Sustainability Plan. This was seen by Property services as presenting an unnecessary disincentive for potential purchasers who would be unaccustomed with section 106 in the context of buying property. In any case as freeholder, the Council would be able to ensure compliance through the inclusion of suitable clauses within the lease agreements rather than section 106.

Consideration

After further consideration and internal liaison with Parking Services and Transport Engineering, Officers have determined that it is possible for car free control to be effected through an amendment to the local Transport Management Order which would link to a replacement planning condition instead of section 106 agreement in this case. Officers are therefore satisfied that there would be no prejudicial impact on parking in the area from the proposal since the 7 flat units would just as effectively be retained as car-free as they would with a section 106 agreement in place.

Similarly officers are of the view that a planning condition rather than a section 106, accompanied by a clause in the leases for the flats would suffice just as well for ensuring ongoing compliance with the sustainability plan.

The application for a further variation of condition 21 (replacement condition 21C) as applied for can therefore be approved.

Other changes to condition 21

Since the previous variation, a drafting error was identified in the replacement condition 21 which caused the incorrect BRE quality standards to be referred to in parts A, B and D. Officers are proposing that this be rectified in any replacement condition to reflect Eco-homes being required for the converted flats within the listed building (as opposed to the Code for Sustainable Homes) and the 'Code' be required for the town houses.

Recommendation:

That the application to remove existing replacement condition 21 be approved subject to the four-part replacement condition being imposed in its place as set out below

Conditions and reasons

- 1 Replacement Condition 21(parts A – D) of the planning permission reference 2010/0096/P granted on 16/03/2008 (itself a replacement of condition 21 of planning permission reference 2007/4426/P granted on 13/05/2008) is hereby removed subject to the following replacement conditions being imposed:***

REPLACEMENT CONDITION 21A

The internal fitting out of the three flat units adjacent to Grafton Road shall not be commenced until such time as a planning obligation under Section 106 has been entered into between the developer (being the person or persons fitting out the units) and the Council to secure the following:-

- i) Provision of the three units as affordable housing for shared ownership; and***
- ii) a Sustainability Plan demonstrating the ability of the units to meet target Eco-homes rating Very Good and 60%, 60%, 40% of the credits achieved in each of the Energy, Water and Materials categories and to ensure that the units remain in compliance with the Sustainability Plan.***

REPLACEMENT CONDITION 21B

The internal fitting out of the seven flat units adjacent to Prince of Wales Road shall not be commenced until such time as a Sustainability Plan setting out sustainability measures to be employed in the carrying out of the development of the units in their fabric and in their subsequent management and occupation based on an assessment under Eco-homes achieving a target rating Very Good and 60%, 60%, 40% of the credits in each of the Energy, Water and Materials categories, shall be submitted to and approved by the Local Planning Authority. The relevant flat units shall not

be occupied until they have been issued with a final Code certificate of compliance and accompanying statement confirming that by reasonable endeavours the above targets have been met.

REPLACEMENT CONDITION 21C

The seven flat units adjacent to Prince of Wales Road shall:

- i) Not be occupied otherwise than in strict accordance with the requirements of the sustainability plan as has been approved by the Local Planning Authority in pursuance of Replacement Condition 21B above.***
- ii) At all times be retained as car-free housing meaning that occupiers of the flats shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a residents parking permit to park a vehicle in a residents parking bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.***

REPLACEMENT CONDITION 21D

The development of the Town Houses on Willes Road (3 units) and Grafton Road (1 unit) shall not commence until such time as a planning obligation under Section 106 has been entered into between the developer and the Council to secure:-

- i) payment of an education contribution of £51,716***
- ii) payment of a public open space contribution of £3,429***
- iii) a Sustainability Plan demonstrating the ability of the units to meet target Code for Sustainable Homes level 3 and 50% credits achieved in Energy, Water and Materials and to ensure that the units remain in compliance with the Sustainability Plan; and***
- iv) a Construction Management Plan including a community working group.***

Reason: In order to ensure that the residential development is properly planned for in terms of infrastructure, facilities, services and other recognised objectives in accordance with policies SD2, SD8, N4, H2, T3, T7, T9 and T12 of the London Borough of Camden Replacement Unitary Development Plan 2006.

DISCLAIMER

Decision route to be decided by nominated members on Monday 27th September 2010.

For further information see

<http://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-applications/development-control-members-briefing/>