

TRAFFORD COUNCIL

Report to: Planning and Development Management Committee
Date: 14 July 2022
Report for: Decision
Report of: Head of Planning and Development

Report Title

Member Update:
Appeal by Acre Manchester Ltd at City Point, 701 Chester Road and 2 Hornby Road, Stretford, M32 0RW

LPA ref. 104811/FUL/21
Appeal ref. APP/Q4245/W/22/3299133

Summary

This report provides an update to Members of the Planning and Development Management Committee in respect of an appeal submitted by Acre Manchester Ltd following the Committee's decision to refuse application 104811/FUL/21 contrary to officer recommendation at the meeting of the Planning and Development Management Committee on 10th March 2022. The appeal site comprises the City Point office building and curtilage at 701 Chester Road and the adjacent residential property at 2, Hornby Road in Stretford.

Counsel advice has been sought in preparation to defend the appeal and this has raised concern that the Council could have significant costs awarded against it due to unreasonable behaviour.

As a result Members voted at the meeting of the Planning and Development Management Committee held on 9th June 2022 to amend reason for refusal 3 to delete reference to the loss of footway and subsequent impact on pedestrian safety. Members further voted to give further consideration to the remaining reasons for refusal at the meeting to be held on July 14th 2022.

The advancement of the Civic Quarter AAP through Examination and into Main Modifications and the effect of its policies comprises a **material change in planning circumstances** and this is a material consideration which should now be given substantial weight.

Following this further consideration, should Members be so minded, authorisation is sought for officers to remove / or amend any or all of the reasons for refusal in the upcoming appeal in respect of planning application 104811/FUL/21.

Recommendation

That the Planning and Development Management Committee give further consideration to the reasons for refusal and if appropriate, authorise officers to remove / or amend any or all of the reasons for refusal in the upcoming appeal in respect of planning application 104811/FUL/21.

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Introduction and Background

1. At its meeting of 10 March 2022 the Planning and Development Management Committee refused planning permission contrary to officer recommendation for application ref. 104811/FUL/21. The Committee report is attached at Appendix A. This proposed: *Demolition of existing office building and erection of 169 bed hotel, comprising between 4 and 10 storeys of hotel accommodation and ancillary uses including ground floor café, plus basement with pool and gym and screened rooftop plant area and tower feature. Associated parking and servicing areas with main vehicular access off Hornby Road and associated changes to the public realm. Use of No. 2 Hornby Road for hotel staff accommodation.*

2. Three reasons for refusal were stated as follows:

-The proposed development, by reason of its design, external appearance, scale, height and massing would result in an unduly dominant and obtrusive form of development, which would be out of keeping with the character of the surrounding area. As such, the proposed development would have a detrimental impact on the character and visual appearance of the street scene and the surrounding area. It is therefore considered that the proposed development does not represent good design and would fail to comply with Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework.

- The proposed development by reason of its height, scale and massing in close proximity to adjacent residential properties, would give rise to an unduly overbearing and overdominant impact and result in harmful overlooking to the detriment of the amenity that the adjoining occupants could reasonably expect to enjoy. As such the proposal is contrary to Policy L7 of the Trafford Core Strategy and the National Planning Framework.

- The proposed development would generate an additional demand for car parking which cannot be accommodated on this site in a satisfactory manner with the result that vehicles would be forced to park on surrounding highways to the detriment of residential amenity. In addition the development would provide insufficient parking space for disabled persons. The proposed drop off and pick up point on Warwick Road would result in an unacceptable loss of pedestrian footway to the detriment of pedestrian safety. The proposal is therefore contrary to Policies L4 and L7 of the Trafford Core Strategy, SPD3: Parking Standards and Design and the National Planning Policy Framework

3. An earlier planning application ref. 98676/FUL/19 for *Demolition of existing office building and erection of 190 bed hotel, varying in height from 2 - 16 storeys of accommodation plus basement and screened rooftop plant area and tower feature. Associated parking and servicing areas with main vehicular access off Hornby Road associated changes to the public realm* was also refused contrary to officer recommendation in January 2020 with four reasons for refusal. The Committee Report is attached at Appendix B. A subsequent written representations appeal was submitted and the Inspector dismissed the appeal on the basis of two of the reasons (residential amenity and lack of parking). The appeal decision is attached at Appendix C.
4. The appellant has now appealed the most recent refusal and initially requested that the appeal was heard by way of Public Inquiry. The Council subsequently requested that this be downgraded to a Written Representations appeal and the Planning Inspectorate have now confirmed that request would be appropriate in view of the previous Written Representations Appeal decision in relation to 98676/FUL/19. The Planning Inspectorate letter is attached at Appendix D.
5. At the Planning and Development Management Committee meeting held on 9th June 2022 Members voted to authorise officers to remove the reference to the loss of pedestrian footway and consequent impact on pedestrian safety from reason for refusal 3 in relation to the submitted appeal in respect of planning application 104811/FUL/21. This was due to advice that there was no cogent or accurate evidence to support the suggestion that the proposal would result in an overall loss of pedestrian footway or undue impact on pedestrian safety and that as a result there was a significant risk that an award of costs would have been made against the Council in respect of that part of the third reason for refusal.
6. The Member update report presented at the 9th June meeting, also stated that in view of the appeal submission and potential for the award of costs, Members may also wish to consider the robustness of the other reasons for refusal if they were so minded. Members voted at the June meeting to consider the reasons for refusal again at the July meeting of the Planning and Development Management Committee. Following a request at the June meeting, accompanied site visits were arranged with officers on Thursday 23rd June, which were attended by several Members of the Committee.

Current Position

7. In the preparation of the case to defend the current appeal, Counsel advice has been sought and this has raised concern that the Council could have costs awarded against it due to unreasonable behaviour. Central Government advice in respect of costs awards in planning appeals is contained in its Planning Practice Guidance (PPG). In order to succeed in a costs application, the party applying for the award of costs must demonstrate that;
 - a party has behaved unreasonably, and,
 - the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process
8. The PPG lists examples of unreasonable behaviour. They include;
 - failure to produce evidence to substantiate each reason for refusal on appeal,
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis,

- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
9. When considering the above, Members would need to consider the evidence available to support the reasons for refusal which would be advanced at an appeal. This evidence should be clear, accurate and supported by robust analysis. The previous Inspectors appeal decision relating to this site is a material consideration. Counsel advice is that if the Council lacks cogent and accurate evidence in support of any of its objections, the position should be reviewed as a matter of urgency before the appeal advances significantly.
 10. The first reason for refusal advances an objection to the Scheme on the basis of its impact on the character and appearance of the area. The reason for refusal contains reference to the height, scale and massing of the building (as well as “design” and “external appearance”). The Inspector concluded in the Decision Letter relating to the appeal against the refusal of 98676/FUL/19 that a taller building (16 storeys with open feature on top to a height of 56.88m) on the site would not generate a harmful impact stating *‘The character in the area is clearly varied, but it contains a number of buildings that are of a not insignificant height. The draft AAP identifies the opportunity for a landmark building on the site. When these factors are taken together, the site is one that lends itself to accommodating such a building in character and appearance terms.’* Accordingly, insofar as the Council is persisting with an objection to an element of the Scheme that has been found to be acceptable by an inspector and with the current scheme at a reduced height the Council is at significant risk of a costs award in respect of the first reason for refusal.
 11. It is also relevant in relation to the appeal and the appellant’s submission that the Council’s Draft Civic Quarter Area Action Plan (CQAAP) is now at an advanced stage, with the examination in public having taken place in April 2022. This document is a material consideration in relation to this appeal and its advancement is a material change in planning circumstances relevant to this appeal. Of significant relevance to this appeal is that the Draft CQAAP identifies the appeal site as suitable for up to 12 storeys of development. Main Modifications to the CQAAP have been agreed with the Inspector and will shortly go out for public consultation, but the height parameter for this site (up to 12 storeys of development) is unchanged from the submission draft and there was no suggestion during the CQAAP Examination from any party that this height parameter should be changed. The fact that the CQAAP shows this site as being suitable for up to 12 storeys of development and that this is not the subject of a Main Modification is a material consideration that should now carry substantial weight in decision making.
 12. The second reason for refusal concerns residential amenity (unacceptable loss of outlook and potential for overlooking). Again, in order to avoid a significant risk of costs in respect of the second for refusal, the Council will have to advance cogent evidence supported by objective analysis in support of its position. Members should note that the building has been designed to prevent direct overlooking to the properties on Hornby Road through the use of angled windows and obscure glazing. The previous appeal decision did not cite potential for overlooking as a reason for dismissing the appeal.
 13. In respect of the third reason for refusal, specifically allegations of inadequate on-site parking provision, Counsel notes that the local highway authority does not object to the scheme and no evidence has been provided to support the Council’s concerns including those relating to inadequate provision of parking for disabled persons. The

proposed development complies with the required accessible parking provision as set out in adopted Council guidelines - SPD3 requires a minimum of 3 accessible parking spaces for hotels with up to 200 parking bays and 3 accessible parking spaces are shown on the plans. Unless the Council is able to advance evidence (that is clear, specific and accurate), then there is a significant risk that an award of costs will be made against the Council in respect of the third reason for refusal.

14. Further the CQAAP Policy CQ10 states this is a highly accessible location, well-served by a range of by public transport modes and that it is a policy imperative to promote modal shift away from car usage. The Inspector in the CQAAP Examination was keen to ensure that there was not *overprovision* of parking in the AAP area in order to underpin this modal shift and this will likely be reflected in his Report.
15. Counsel advice is that as matters stand, the Council faces a significant risk of costs in respect of each of the reasons for refusal. Awards of costs may be partial (for example, covering particular issues or individual reasons for refusal) or full (covering the entire costs incurred by a party in the appeal). The extent of costs associated with an appeal can be substantial.
16. In view of the appeal submission and potential for the award of costs, Members may wish to consider the Counsel advice provided in relation to the robustness of the other reasons for refusal if either:
 - (i) the Council concludes that its case (in respect of any of the reasons for refusal) amounts to the persistence of an objection in respect of an aspect of the Scheme that the previous Inspector found acceptable (e.g. its height), or,
 - (ii) lacks cogent and accurate evidence in support of any of its objections,
17. Members are advised that whatever the outcome of the further considerations in relation to the appeal the Council will still need to discuss conditions and any section 106 obligations with the appellant in respect of the appeal proceedings.
18. Members are also advised that even if all the reasons for refusal are removed and the Council does not seek to present evidence to defend the reasons at appeal, costs can still be applied for and awarded against the Council although it is likely that if this were to be the case the costs awarded would be much reduced. In order to reduce this risk further, if Members are minded to removal all reasons for refusal then officers will seek a written undertaking from the appellant that they will not apply for costs.

RECOMMENDATION

19. It is recommended that the Planning and Development Management Committee give further consideration to the reasons for refusal and if appropriate authorise officers to remove and/or amend any or all of the reasons for refusal in the appeal in respect of planning application 104811/FUL/21.