



Appeal Decisions

Inquiry held on 13 January 2015

Site visit made on 12 January 2015

by J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2015

Appeal A: APP/G5180/A/14/2219910

Dylon International Ltd, Worsley Bridge Road, Bromley, SE26 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Relta Ltd against the Council of the London Borough of Bromley.
- The application Ref DC/13/03467/FULL1, is dated 14 October 2013.
- The development proposed is the erection of a five storey building comprising 74 residential units; A1 retail; A3 café/restaurant; and a D1 crèche/nursery on the site of building A03 in place of approved building forming part of implemented planning permission (DC/09/01664/FULL1) of 15 April 2010 for redevelopment of former Dylon site.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Appeal B: APP/G5180/A/13/2206836

Dylon International Ltd, Worsley Bridge Road, Bromley, SE26 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Relta Ltd against the Council of the London Borough of Bromley.
- The application Ref DC/13/01973/FULL1, is dated 5 July 2013.
- The development proposed is as per appeal A.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Background

1. On 15 April 2010, conditional planning permission was granted on appeal Ref APP/G5180/A/09/2114194 (the 2010 appeal) for the demolition of existing buildings on the former Dylon site and its redevelopment with a scheme including B1 office accommodation (6,884m²), A1 retail (449m²), A3 café/restaurant (135m²), D1 crèche (437m²) and 149 residential units with ancillary parking and private landscaped open space.
2. In that appeal, the Inspector noted that the scheme had been designed by an acclaimed architect of international standing. He concluded that the proposal showed a skilled design which would enhance the character and appearance of the area and set a benchmark for future development.

3. The site lies within the Lower Sydenham Business Area and comprises vacant office, workshop and storage buildings totalling (6,230m²). The Inspector in the 2010 appeal was convinced, on the evidence before him, that redevelopment of the site for new industrial accommodation would not be viable. However, he found no reason to doubt that the proposed offices would be occupied and, given that they would provide a similar quantum of business floorspace as that replaced, there would be no loss of employment and no evidence to show that the proposal would have an adverse impact on business activities in the remainder of the Business Area.
4. The 2010 appeal Inspector also found that there would be no material adverse impact on neighbours' living conditions or on highway conditions. He further concluded that submitted planning obligations concerning the provision of 51 units of affordable housing on the site and ensuring the funding of traffic orders were necessary to make the development acceptable in planning terms, directly related to the development and fairly related to it in scale and kind.
5. All pre-commencement conditions attached to the 2010 permission have been discharged and it is agreed that a material operation has been undertaken, such that development has commenced and the 2010 permission is extant. However, despite some 3 years of rigorous marketing following the 2010 appeal decision, there was no interest in the B1 office space. Having concluded that the overall scheme was not viable with office space included, the appellant applied to replace the block comprising the office space (block A03), with one incorporating 74 flats, A1 retail, A3 café/restaurant and a D1 crèche/nursery. The proposal included no material changes to the design or appearance of that block, other than the introduction of balconies to the rear of block A03.
6. That application was not determined within the prescribed period, but the appellant's appeal Ref APP/G5180/A/13/2206836 (the 2014 appeal) against non-determination was dismissed on 18 March 2014. By that stage, the Council agreed that the scheme could not support the provision of affordable housing on site. Having regard to the National Planning Policy Framework (the Framework) and the appellant's up to date evidence on viability, the Inspector concluded that a commuted sum of £80,000 towards the provision of affordable housing elsewhere in the Borough was the maximum the proposed redevelopment of the entire Dylon site could reasonably provide.
7. The Council relied on Policy EMP4 of the Bromley Unitary Development Plan (UDP), adopted 2006, which seeks to resist the loss of land within allocated Business Areas to non-Class B uses. However, the Inspector found that this policy did not command the weight normally accorded to a development plan policy, because of inconsistency with the Framework. Nevertheless, she concluded that the loss of potential employment space would outweigh the other acknowledged benefits of the scheme, including the provision of a substantial number of new homes.
8. The Inspector in the 2014 appeal concluded that *"the evidence pointed to signs of recovery in the office market and the attraction of completed high quality offices in this location remains to be tested"*. Also, in terms of the marketing that had been undertaken, she felt that *"the period of less than 4 years does not provide a long enough basis for coming to properly informed conclusions on the long term prospects of the permitted office floorspace"*, particularly in the

context of a recession. She found that to allow the loss of this valuable employment resource would be premature and contrary to UDP Policy EMP3.

9. Policy EMP3 provides that: *"the conversion or redevelopment of offices for other uses will be permitted only where: (i) it can be demonstrated that there is no local shortage of office floorspace and there is evidence of long term vacancy despite marketing of the premises; and (ii) there is no likely loss of employment resulting from the proposal."*
10. The appellant challenged the 2014 appeal decision in the High Court on a number of grounds. An order (Ref CO/1911/2014) quashing that decision was made by consent in October 2014. It was accepted that the Inspector had erred in her interpretation of Policy EMP3, because it only applies to existing office space, rather than proposed office space. Consequently, it was agreed that she had erred in her determination of the appeal. The redetermination of that appeal is now the subject of appeal B before me. Appeal A relates to a duplicate application, which the Council also failed to determine. Both appeals concern precisely the same scheme and they give rise to the same considerations.

Common ground

11. At a meeting of its Development Control Committee on 25 November 2014, the Council reconsidered its stance in relation to these appeals and resolved not to contest them. A very helpful Statement of Common Ground (SOCG) invites me to allow both appeals and sets out the reasons for the Council's change in position. Those reasons and the agreed position can be summarised as follows:
 - (i) Since the 2014 appeal decision, there has been a further period of continuous marketing which failed to attract any interest in the office element of the 2010 appeal scheme;
 - (ii) Paragraph 22 of the Framework provides that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. On the available evidence, and further consideration of the appellant's viability analysis, there is no reasonable prospect now, or in the foreseeable future, of the consented office development proceeding.
 - (iii) Given the terms of the High Court Order, the main justification of the 2014 Inspector's decision (Policy EMP3) does not apply;
 - (iv) Although her decision was quashed because of her approach to UDP Policy EMP3, the 2014 Inspector disagreed with the Council's principal reasons for opposing the proposals, namely the issue of affordable housing and Policy EMP4;
 - (v) There is a need to maximise the use of previously developed land and increased emphasis on meeting London's housing needs and a housing led economy recovery, in the light of progress on the draft Further Alterations to the London Plan (FALP);
 - (vi) When completed, the scheme will significantly improve the nature of the area, as well as providing job opportunities during construction

and thereafter, through the retail, commercial and community use elements;

- (vii) Notwithstanding the reduced weight to be attached to UDP Policy EMP4, the approved office element of the scheme is contrary to that Policy and EMP1, because those policies require large office space developments (exceeding 2000m²) to be located in town centres;
 - (viii) The presumption in favour of sustainable development applies in accordance with paragraph 14 of the Framework; and
 - (ix) Planning contributions are offered in relation to education, employment, healthcare, affordable housing and the costs of making traffic management orders.
12. I did not hear oral evidence from the appellant, but on the basis of the detailed proofs from its planning consultant and 3 chartered surveyors, as well as the December 2014 proof from the Council's Head of Planning Strategy, I have no reason to disagree with points (i) – (viii) above. I am satisfied that all of those points are correct, but the planning contributions referred to at point (ix) above require further discussion (below).

Planning contributions

13. A completed agreement under sections 106 and 106A of the 1990 Act was submitted to the inquiry¹ which discharges previous obligations relating to the use and development of the Dylon site, but provides for contributions as follows: Education (£195,117.49); Employment (£346,736); Healthcare (£76,970); Affordable Housing (£80,000); and reimbursement of the Council's reasonable costs incurred in making any traffic management orders as a result of the development of the site.
14. I must be satisfied that each of these contributions meets all of the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), namely that they are (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. Indeed, the section 106 agreement provides that, if I conclude that any contribution fails to meet one or more of the tests, such that I attach no weight to it, then that contribution shall not be payable. I am also mindful of advice in the Planning Practice Guidance (PPG) that obligations must be fully justified and evidenced².
15. Policy 8.2 in the Revised Early Minor Alterations to the London Plan, adopted 11 October 2013 provides, among other things, that Boroughs should set out a clear framework for negotiations on planning obligations in development plan documents and it will be a material consideration whether a development makes an appropriate contribution towards meeting the requirements made necessary by, and related to the proposed development. UDP Policy IMP1 simply provides that the Council will seek the attainment of planning obligations, where appropriate, in accordance with Government guidance. The Council's Planning Obligations Supplementary Planning Document (SPD), adopted December 2010, sets out more detailed guidance.

¹ Inquiry document 3.

² Permalink ID 23b-004-20140306 Last updated 06 03 2014.

16. The development will clearly necessitate additional education provision and the agreed education contribution has been calculated in accordance with the SPD and using current cost per pupil place values. Similarly, the development will increase the demand on healthcare provision. The healthcare contribution has been calculated in accordance with the SPD and using the NHS London Healthy Urban Development Unit model. It is clear from the evidence that the agreed education and healthcare contributions satisfy all of the CIL tests.
17. Turning to affordable housing, the Inspector in the 2014 appeal considered this against the background of Policy 3.12 of the London Plan and UDP Policy H2. The former encourages negotiations to achieve the reasonable maximum provision of affordable homes and the latter sets a target of 35% affordable homes on sites such as this, whilst providing flexibility on the basis of the affordability of the scheme. However, I have already referred to the conclusion in the 2014 appeal that a commuted sum of £80,000 towards the provision of affordable housing elsewhere in the Borough was the maximum the proposed redevelopment of the entire Dylon site could reasonably provide to comply with the relevant policies. The parties agree that little will have changed in viability terms since that 2014 appeal decision. I therefore have no reason to differ from the 2014 appeal Inspector on this aspect and conclude that the affordable housing contribution meets the CIL tests.
18. It may be that the Council resolves to make one or more traffic management orders to control parking on adjoining public highways as a result of this development. The agreement to meet the reasonable costs of such orders is in line with the SPD and also satisfies the CIL tests.
19. Finally, at £346,736, the employment contribution is the largest agreed sum. In relation to such contributions, paragraph 3.31 of the SPD states that conditions or "*planning obligations may be sought on a case by case basis in major development proposals borough wide, and especially in areas where unemployment levels are above the Borough average³.*" In her December 2014 proof, Ms Manuel recognises this and says there is "*no formula for this, with contributions being required on a case by case basis. The figure offered is the developer's judgement of the maximum additional cost that the scheme can bear. The Council considers that the proposed Employment Contribution in lieu, to be put to use elsewhere within a Business Area, is a strong material planning consideration when considering the adverse impact of the loss of employment land.*"
20. The SOCG indicates that the sum offered and agreed equates to about £50/m² of the gross employment floor area which was to be provided in the 2010 appeal scheme and which would be replaced with housing units in the schemes before me. In oral evidence for the Council, Ms Manuel indicated that the cost of developing new small business units, or expanding existing accommodation, would far exceed £50/m² and therefore the contribution would not fund like for like provision. In addition she said that, having regard to London Office Floor Space Projections, the office space included in the 2010 appeal scheme would support 500 – 550 jobs and training costs would be £600 - £700 per job.

³ It has not been suggested that the site is in an area where unemployment levels are above the Borough average. Indeed, whilst this evidence is of some age now, appendix 3 to the SPD indicates that Jobseekers Allowance claimant rates for the Copers Cope ward were 1.34 – 2.08, against the Borough average of 1.7.

21. The site has not been in actual employment use since 2006⁴ and, as already indicated, the Inspector in the 2010 appeal accepted that redevelopment of the site for new industrial accommodation would not be viable in foreseeable market conditions. In the 2014 appeal, the Inspector noted that the 2010 permission "has been implemented; the former industrial use is lost and the site is unlikely to revert to such use." For that reason, she questioned the relevance of London Plan Policy 4.4, which concerns the management of industrial land. Nevertheless, as noted in paragraph 22 of the 2014 appeal decision, the 2010 appeal Inspector concluded that there would be no loss of employment, on the basis of a similar quantum of business floorspace forthcoming from the proposal at the time, and he found no reason to anticipate that the offices would not be occupied. However, it is now agreed that there is no reasonable prospect of the site being used for office purposes.
22. I accept that the site is still within a Business Area, where UDP Policy EMP4 seeks to resist the loss of land to non-Class B uses. However, as indicated in the 2014 appeal, that policy carries reduced weight. Furthermore, it does not support office development on the scale approved in 2010 anyway, whilst London Plan Policy 4.2 only encourages new office development in viable locations. The Local Plan Draft Policies and Designations continues to safeguard employment use in this area, albeit that this document is at an early stage and carries limited weight. However, whatever the underlying general need for employment land in the Borough, this is a site where the former industrial use has been lost and is unlikely to return and which has no reasonable prospect of being used for offices. Allowing these appeals will permanently remove potential for further employment uses on this site but, on the evidence before me, there is no reasonable prospect of it being put to such use anyway. Whilst not seeking to argue that the employment contribution would be inappropriate, the appellant indicated in opening that any loss of employment land in this case is illusory⁵ and I agree.
23. Paragraph 22 of the Framework indicates that, in these circumstances, applications for alternative uses should be treated on their merits. These proposals would enable previously developed land, which has been unused since 2006, to be redeveloped with a high quality scheme, improving the area and providing much needed housing and a modest contribution to the provision of affordable housing elsewhere. Furthermore, in addition to the jobs created during the construction phase, the SOCG records that 59 full time jobs would be generated by the retail, commercial and crèche elements still to be included in the scheme and this gain needs to be seen in the context of a site which has supported no employment since 2006. In these circumstances, notwithstanding the appellant's willingness to provide the employment contribution, I am not persuaded that it has been fully justified and evidenced. I am not satisfied that such a contribution is necessary to make this particular development acceptable in planning terms on this site and in the particular circumstances of this case. Even if a contribution could be justified to mitigate against the loss of the hope of some more significant future employment use, there is insufficient evidence before me to indicate what level of contribution would be fairly and reasonably related in scale to this development. In all these circumstances, this contribution does not therefore meet the CIL tests and I attach no weight to it.

⁴ See Mr Stephenson's December 2014 proof, paragraph 3.2.

⁵ Inquiry document 2, paragraph 98.

24. Whilst my conclusion on this point effectively saves the appellant £346,736, this is not a case where this saving should be used to increase the affordable housing contribution, to bring it closer to the target in UDP Policy H2. This is because, even with 100% market housing, plus the ground floor commercial and community uses, the scheme is not viable in objective or policy terms⁶. The appellant is prepared to accept less than a benchmark profit, having regard to the site history, purchase price and holding costs.

Conclusion

25. Notwithstanding my findings in relation to the employment contribution, having regard to: the other benefits and contributions already outlined; the support of paragraph 22 of the Framework; the presumption in favour of sustainable development in paragraph 14 of the Framework (given that UDP Policy EMP4 is out of date and EMP3 does not apply); and all other matters raised, I am satisfied that both appeals should be allowed, subject to conditions.

Conditions

26. The SOCG sets out suggested conditions and these have been devised against the background of discussions in the 2010 and 2014 appeals and the conditions actually imposed on the overall scheme in 2010. In addition to the usual condition concerning commencement of development, for the avoidance of doubt and in the interests of proper planning, it is necessary to require the development to be carried out in accordance with the submitted plans, including the slab levels shown. To ensure the satisfactory appearance of the development, it is necessary to impose conditions concerning landscaping and the use of materials. Conditions relating to car and bicycle parking and the submission of a Travel Plan are necessary in the interests of highways safety and to encourage sustainable modes of transport.

27. To safeguard local amenity, I will require the works to be carried out in accordance with an approved Construction Method Statement. A condition concerning the Lifetime Homes Standard and wheelchair accessibility is necessary to achieve an inclusive environment in accordance with Supplementary Planning Guidance to the London Plan. The implementation of approved measures to minimise crime and require the use of renewable and/or low carbon energy sources is necessary to ensure a safe and sustainable environment. To ensure the proper and sustainable drainage of the site, I shall require surface water drainage works to be implemented in accordance with details to be submitted and approved.

28. For the avoidance of doubt, where the suggested conditions refer to conditions imposed in the 2010 appeal decision, I have cited the appeal reference, as well as the Council's application reference.

Decisions

Appeals A: APP/G5180/A/14/2219910

29. The appeal is allowed and planning permission is granted for the erection of a five storey building comprising 74 residential units; A1 retail; A3 café/restaurant; and a D1 crèche/nursery on the site of building A03 in place of

⁶ Statement of Common Ground, paragraphs 8.3 and 8.4 and 2014 Inspector's decision at paragraph 30, 39 and 41.

approved building forming part of implemented planning permission (DC/09/01664/FULL1) of 15 April 2010 for redevelopment of former Dylon site at Dylon International Ltd, Worsley Bridge Road, Bromley, SE26 5HD in accordance with the terms of the application, Ref DC/13/03467/FULL1, dated 14 October 2013, subject to the conditions set out in the attached schedule.

Appeal B: APP/G5180/A/13/2206836

30. The appeal is allowed and planning permission is granted for the erection of a five storey building comprising 74 residential units; A1 retail; A3 café/restaurant; and a D1 crèche/nursery on the site of building A03 in place of approved building forming part of implemented planning permission (DC/09/01664/FULL1) of 15 April 2010 for redevelopment of former Dylon site at Dylon International Ltd, Worsley Bridge Road, Bromley, SE26 5HD in accordance with the terms of the application, Ref DC/13/01973/FULL1, dated 5 July 2013, subject to the conditions set out in the attached schedule.

J A Murray

INSPECTOR

Richborough Estates

Schedule of conditions (applies to both appeals)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The hard and soft landscaping shall be completed in accordance with the details approved under condition 2 of the planning permission dated 15 April 2010 (hereafter referred to as the 2010 permission) granted on appeal Ref APP/G5180/A/09/2114149 (local planning authority application Ref 09/01664/FULL1). The approved details of landscaping shall be carried out in the first planting season following the first occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 3) The external surfaces of the building hereby permitted shall be constructed in accordance with the details of materials approved under condition 5 of the 2010 permission.
- 4) Before first occupation of the buildings hereby permitted the basement parking spaces shall be completed in accordance with the approved drawings and thereafter shall be kept available for such use for the users and occupiers of the development.
- 5) Before any part of the development hereby permitted is first occupied the bicycle parking spaces shown on the approved plans shall be provided and fitted with stands in accordance with details which shall have been submitted to and approved in writing by the local planning authority, and the facilities shall be permanently retained thereafter.
- 6) The buildings shall not be occupied until a Travel Plan has been submitted in accordance with condition 12 of the 2010 permission and approved in writing by the local planning authority. The Plan shall address the additional 74 residential units hereby permitted and shall include measures to promote and encourage the use of alternative modes of transport to the car. It shall also include a timetable for the implementation of the proposed measures and details of the mechanisms for implementation and for annual monitoring and updating. The Travel Plan shall be implemented in accordance with the agreed timescale and details.
- 7) The development hereby permitted (including any works of demolition) shall be implemented in accordance with the Construction Method Statement approved under condition 13 of the 2010 permission.
- 8) All dwellings shall meet Lifetime Homes standard (as designed) and ten percent of the units shall be designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users in accordance with the GLA Best Practice Guide on Wheelchair Accessible Housing as set out in Appendix 7 of the SPG to the London Plan Shaping Neighbourhoods Accessible London: Achieving An Inclusive Environment October 2014
- 9) The development hereby permitted shall be implemented in accordance with the details of measures to minimise the risk of crime in relation to the residential component of the development approved under condition 16 of the 2010 permission. The approved measures in relation

to any part of the development shall be implemented before that part of development is first occupied and thereafter permanently retained.

- 10) The scheme for the 20% energy supply of the development by use of renewable and/or low carbon energy sources shall be implemented in accordance with the details approved under condition 17 of the 2010 permission in accordance with the approved timetable and shall be in place and operational prior to that occupation of that part and thereafter retained as operational.
- 11) The development hereby permitted shall be carried out in accordance with the slab levels shown on the approved drawings.
- 12) The development hereby permitted shall be carried out in accordance with the following approved plans except for variations approved pursuant to the terms of other conditions: P01A/101 Rev A, 103 Rev B, 201-203 Rev B, 204-205 Rev A, 209 Rev A, 210-211 Rev B, 301-303 Rev A.
- 13) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in Table 1 of the Technical Guidance to the National Planning Policy Framework and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: (i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; (ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

William Upton of counsel	Instructed by the Director of Legal Services, London Borough of Bromley Council
He called	
Mary Manuel BA(Hons) Dip Urb Plan MSc	Head of Planning Strategy, London Borough of Bromley Council

FOR THE APPELLANT:

Russell Harris QC	West and Partners
He called no witnesses	

DOCUMENTS SUBMITTED AT THE INQUIRY

1	Inspector's Route Map to Simplified Planning Obligations
2	Appellant's opening submissions
3	Copy completed Agreement under sections 106 and 106A of the Town and Country Planning Act 1990
4	Council's opening submissions

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