

Update Report

Update Report to the Planning Decisions Committee

Agenda item 6

Subject: Eton Manor Landscaping and New Entrance

Anne Ogundiya, Senior Planning Development Officer

Application reference: 13/00444/FUL

Meeting date: 25 March 2014

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1. **Additional Representations:** Since the drafting of the Planning Committee Report two further letters of representation have been received (both are attached):
 2. MGS on the Heads of Terms:
 - Request assurances that the arrangements proposed will be adhered to and meet expectations;
 - MGS welcomes the proposed LCS cascade mechanism;
 - MGS consider that they have the experience and are best placed to manage Leyton Jubilee Park;
 - Query: That LBWF will agree with LLDC a minimum specification for the plots without MGS. MGS comment that the minimum specification for improvements at Marsh Lane should be bench-marked to the intended specification for Eton Manor and that they as users are consulted.

Applicant Response

- Waltham Forest Council is proactively seeking for new allotment tenancies to be exclusively offered to borough residents, managed through a centralised waiting list unless, as with this case, there are extraordinary reasons for not having such an arrangement. WF are satisfied that the HoT document allows for a suitable tenant allocation process which accommodates the needs of MGS, LCS residents and WF residents;
- MGS will be consulted on the plot specification as they are best-placed to advise on the current state of the Leyton Jubilee Park site, although the basis for this specification will be the normal WF allotment standards;
- Waltham Forest appreciates the detail provided as to the LJP site, which will be beneficial in discussions going forward.

Officer Response

Officers are satisfied that the HoT ensures that the facilities provided are in line with those that would have been required by condition to be provided at Eton Manor. The HoT will include a mechanism for both parties to agree a minimum specification using reasonable endeavours.

3. Second Letter of Representation: queries the reporting of the LB Hackney representation from the Office of the Mayor, and asks Members to disregard it.

PPDT Response: Officers are satisfied that the matter has been reported accurately as set out on page 71 under paragraph 2.2 and paragraph 9.1 (page 83). Hackney has expressed support and that is a material consideration and should be reported

Objection: The proposals are not development requiring planning permission; the Heads of Terms does not meet the statutory tests for acceptable planning obligations and could be seen as buying planning permission; and any permission would be unenforceable and legally flawed. The objector questions whether the Lee Valley Regional Park Authority is in a position to be parties to the agreement.

PPDT Response: In terms of policy, the development is acceptable on its own terms. It does not need the s.106 to make it acceptable in planning terms., it is required to mitigate the loss of allotment provision as secured by the 2007 planning permission. The 106 is not a reason for granting permission. The Heads of Terms meet the tests;

The issue regarding the proposals being development not requiring planning permission is dealt with on page 70 (section 2.2) of the Committee Report. Members will recall that permitted development rights across the QEOP have been removed;

Officers do not agree that the recommendation conditional on completion of a s106 agreement is legally flawed and likely to be ineffective or not realistically enforceable;

Officers are satisfied that the landowner LVRPA has powers to enter into the s.106 under section 1 of the Localism Act 2011. The HoT (point 10 on page 103) makes it clear that if the agreement is not signed the currently permitted allotments at Eton Manor will have to be provided in accordance with the existing planning permission. Should that occur and the planning permission is not implemented the LPA can take enforcement action.

Sent: 24 March 2014 11:09 - Subject: RE: MGS/Section 106 – MGS REPRESENTATION

Hello Anne,

I'm writing to comment on the amended HoT/106 document having had the chance to mull it over with some diggers. I've especially been considering the possible *outcome* of this document, and my main concern is this:

If the document (or perhaps an alternative arrangement) doesn't define a desired outcome in explicit terms, anything that MGS might at this point, through implication, *assume* will happen will not be realised.

It is for this reason also that we need to be very sure of the legitimacy and content of the arrangement, to prevent wriggling at a later date.

Please note that I comment in the interest of ensuring that precision at this stage could go a long way to preventing misunderstanding as the agreements are formulated.

I don't know what process the PDT have adopted in order to formulate the content of the current document, but I would assume you will have had to take advice from a number of sources to inform that content. There is a technical emphasis in the document for setting out an administrative schedule to the issue of tenure to named MGS members. MGS recognise the importance of establishing a clear schedule in this respect and understand that this is required in order to complete LLDC's discharge of responsibilities to MGS. Notwithstanding I would respectfully draw your attention to points that might have a positive bearing on the arrangements within the s106 document:

- The current document describes a process whereby 50 nominated MGS members will be granted security of tenure at Marsh Lane. It goes on to say that as these tenancies are yielded the individual plots will revert to a LBWF resident/LCS cascade mechanism. MGS welcomes the intention to make a percentage of these plots available to LCS residents, but we also recognise that self-managed sites (such as other LBWF sites) almost always provide a better administrative and community model for a successful amenity. Indeed, some sites in Waltham Forest have come to arrangements with the Local Authority to run their own waiting lists. MGS have managed, despite massive setbacks in accommodating total relocation and significant site problems, to get Marsh Lane to a state where it is 100% tenanted and flourishing. MGS believe we have developed the skills and experience to see the community and the site through the next set of relocations - with this in mind it would be disappointing if MGS and LBWF were not given the opportunity to come to an amicable arrangement regarding MGS' continuing self-management of that site.

As mentioned, the s106 document emphasises procedural matters, but is less definitive regarding :

The parties agree to the following:

1. LBWF will agree with LLDC a minimum specification for the plots offered to MGS members.

The summary of the heads of terms states that this minimum specification should cover soil quality, drainage, water supply, storage and composting facilities. It also states that the minimum specification should be drawn up between LLDC and LBWF (excluding MGS). MGS believe we should have legitimate expectation that the minimum specification for improvements at Marsh Lane should be bench-marked to the intended specification for Eton Manor. It should be noted that these plans received planning approval. The Eton Manor (and Pudding Mill) specifications were drawn up through a semi-formal process of design consultation with an independent landscape design team, facilitated by LLDC - this was in mind of the original commitment by the ODA to produce allotments greater in quantity *and quality*. The reason for the legitimate expectation would be that if the LBWF plans are approved, and that the site at Marsh Lane represents mitigation, that mitigation should at

least be satisfactory in design/appointment if not in location. MGS have not been consulted on this matter, and I would respectfully ask that LLDC/PDT consider the following points:

MGS, as users of the Marsh Lane site, are in the best position to comment on the amenity and should be consulted to determine and agree the specification.

- The benchmark for the scope of works should be informed by the intended Eton Manor designs. (The process of coming to realising these designs is recorded).

Additionally, and for clarity I would bullet-point the main design aspects that might be reviewed:

- Soil quality: I have received few complaints in respect of Marsh Lane.
- Drainage: Remaining problems are limited to a (relatively small) specific area.
- Water supply: currently acceptable, but possibly requiring extension in some areas.
- Composting facilities: Every gardener has a compost heap - not an issue.
- Storage: There is no secure lock-up for equipment required to maintain the site - we have had 3 decent lawn-mowers stolen since being at Marsh Lane. Individual tenant's storage sheds were installed at the outset - these were very poor in quality, many are now insecure and not fit for purpose.
- Community building/facility: The QEOP allotments designs featured decent structures to act as a multi-purpose hub that would provide a social meeting point for the community and visitors, space for schools to utilise by arrangement, a meeting space, a modest kitchen facility, easy-access toilet (and secure storage). The location, size and structure of this facility should be carefully considered to balance function with impact to the surrounding area.
- Access: due to access restrictions Marsh Lane has never been able to enjoy free provision of black compost or manure in the same way as other LBWF allotments (a function built into the QEOP designs).
- Border plantings: there has been some loss of original plantings to the site - these could be improved to provide greater harmony with the new works at LJP.
- Raised beds area for local schools/elderly or disabled gardeners: we envisage a location close to the main entrance that is accessible and easy to maintain.
- Former Pylon area: This area was originally intended to provide further plots and sits within the footprint of the Marsh Lane site - it would be prudent to review this area, and the general tail-end of the plots to a decent resolution.

I hope this goes some way to identifying our reaction to the s106 document, and sincerely hope that the LLDC are at this stage able to support MGS and ensure that the agreements entered into will meet expectation.

Date: 21 March 2014 15:19 - Subject: 13/00444/FUL further matters - OBJECTION

Dear Ms Ogundiya

I am pleased to see that my response and comments have now been reported though I would have appreciated an explanation for the previous omission.

Please note these further procedural and legal matters with reference to the current version of the 23 March committee report 'Eton Manor Landscaping'

Letter of support from Hackney Council

I am pursuing a complaint against Hackney Council with regard to the constitutional and statutory powers of the Mayor to express support for a planning application in this way.

The report states on P3:

"The letter from the Office of the Mayor of Jules Pipe, Mayor of Hackney, was sent to PPDT by Office of the Mayor of Hackney as a letter of support and was reported accordingly."

However the position expressed by Hackney Council to date is that it was not a consultation response and was not directed to the PPDT, ie. the LLDC as LPA.

It is also apparent from the text of the letter of 20 November 2013 that it was not sent to the PPDT.

So I am unclear what backing there is for the claim that was sent to PPDT by the Office of the Mayor of Hackney, since neither the letter nor Hackney Council appear to confirm this.

Regardless of how the PPDT acquired the letter, it was evidently not sent directly and so should not be treated as a letter of support in the report.

I would therefore suggest that the Committee are asked to disregard this letter.

Section 106 agreement.

Having studied the content of the Heads of Terms, the agreement does not properly meet the statutory tests for acceptable planning obligations in Reg. 122 of the CIL Regulations 2010 and as set out in Circular 05/2005 and hence planning approval on this basis would appear to be an error of law. There are several other problems:

The proposal does not appear to be one to which a Section 106 agreement can be applied. As I suggested previously it does not appear to be a development within the scope of the TCPA. The officer response on P2 that it is a *"straightforward new application replacing proposed allotments with new landscaping proposals"* fails to acknowledge that landscaping of the proposed type is not development and does not require permission. Clearly the s106 relates to the 'meadow' area of the application only - it does not appear there are footpaths or entrance signage associated with this, though these also would not generally require planning consent.

The s106 tests:

1. *Is it necessary to make the development acceptable in planning terms?*

No, there is nothing in s9 (Assessment of Planning Issues) in the planning officer's report to suggest that the proposal under consideration is itself unacceptable in planning terms.

2. Is it directly related to the development?

No. How tenancies are allocated at other allotment sites is unrelated to the development in question, and this is not a planning matter.

The LPA have confirmed on P2 of the 23 March report that "*Past promises regarding the relocation of MGS members are not material planning considerations (which can only relate to the use and development of the land)*" yet the agreement deals largely with these promises.

3. Is it fairly and reasonably related in scale and kind to the proposed development?

Difficult to answer as it bears no relation to the development itself.

The agreement could be seen as 'buying' of planning permission through agreeing to assist the LLDC with its inconvenient requirement to provide allotments and with its commitment to MGS plottolders displaced by the CPO and Olympics development. This is explicitly contrary to the intentions of section 106.

Given that planning approval has been deemed to be dependent on the completion of the section 106 agreement, whether the signatories are capable of being parties and whether it can be enforced and will achieve its stated aims are material planning considerations.

It is questionable whether the LVRPA are currently in a position to be parties to the agreement. It is unclear whether signing this agreement is within their statutory powers, and the Members who gave approval to supporting the application were not told of the Section 106 or of any legal implications associated with the application.

Normally a s106 would be secured by a charge on the land. I would be surprised if the LVRPA were willing to agree to this, and there has certainly be no Member approval.

In the absence of a land charge there does not seem to be any mechanism for enforcing the agreement, while given the failure of the agreement to meet the statutory tests it would almost certainly prove legally unenforceable even if there were a will to do so.

Given all the above, I believe it is mistaken to recommend approval conditional on completion of a s106 agreement that is legally flawed and likely to be ineffective or not realistically enforceable.

Regards