

ADDRESS: Unit L, East Cross Centre, Waterden Road, London E15	
WARD: Wick	REPORT AUTHOR: Gillian Nicks
APPLICATION NUMBER: 2007/2974 DRAWING NUMBER: Site plan.	VALID DATE: 21.01.2008
APPLICANT: Harringay Meat Traders Ltd C/o Agent	AGENT: R.W. Stevens Woodside 7 Woodlands Avenue Hornchurch Essex RM11 2QT
PROPOSAL: Section 17 Certificate of Alternative Development for A1, A2, A3, B1, C1, C3, D1 and D2 uses.	
RECOMMENDATION SUMMARY: Issue Positive Certificate for A1, A2, A3, B1, C3, D1 and D2 use.	

ANALYSIS INFORMATION
ZONING DESIGNINATION: (Yes) (No)

CPZ		X
Conservation Area		X
Listed Building (Statutory)		X
Listed Building (Local)		X
DEA	X	

LAND USE DETAILS:	Use Class	Use Description	Floor space sqm
Existing	B8 D	Storage/distribution	
Proposed	A1 A2 A3 B1 C1 C3 D1 D2	Retail Financial and Professional Services Restaurants and Café Business Hotels Dwelling Houses Non-residential institutions Assembly and leisure	Not applicable
RESIDENTIAL USE DETAILS:	Residential Type	No of Bedrooms per Unit	
Type		Studio	1 2 3 4 5
Existing	Not applicable	Not applicable	
Proposed	Flats	Not applicable	

PARKING DETAILS:	Parking Spaces (General)	Parking Spaces (Disabled)	Bicycle storage
Existing	-	-	-
Proposed	Not applicable		

CASE OFFICER'S REPORT

1. INTRODUCTION

- 1.1 The Land Compensation Act 1961 relates to compensation for the compulsory purchase of land. Where existing permissions and assumptions are insufficient to indicate the development value of a site, the act provides a mechanism by way of Section 17 for which planning permission can be assumed by means of a so called 'certificate of appropriate alternative development'.
- 1.2 A Section 17 Certificate Application is required to state what planning permissions would have been granted if the land were not to be compulsorily acquired. Circular 06/2004 states that where:
- planning permission would have been given for development of one or more specified classes and for any development for which the land is acquired, but would have been granted for any other development – a positive certificate be issued; or
 - planning permission would have been granted for any development for which the land is acquired, but would not have been granted for any other development – a 'nil' or negative certificate be issued.
- 1.3 The applicant must state whether or not they consider there are any classes of development which either immediately or at a future time would be appropriate for the land if it were not being acquired by an authority under CPO powers. The local authority is required to issue a certificate specifying what planning permission would in their opinion have been granted.
- 1.4 The Circular makes it clear that "the purpose of the certificate is to state what, if any, are those other forms of development". In determining this it is expected that the Local Authority take account of the normal planning considerations such as:
- the character of the development in the surrounding area;
 - any general policy of the development plan;
 - national planning policy; and
 - Other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard.
- 1.5 Only those forms of development which for some reason or other are inappropriate should be excluded. Furthermore, the certificate can be at variance with the use shown by the development plan for the particular site.
- 1.6 The circular sets out three main issues for reaching a decision

1. The physical considerations – i.e. the state of the land and the area in which it is situated;
2. The current and reasonably foreseeable planning policies; and
3. identifying and **disregarding the planning consequences of the acquisition scheme and the underlying public purpose for it.**

1.7 Case law advises that all these issues must be considered at the date when the interests in land were acquired by the purchasing authority. This 'date' relates to the 'relevant date' (see History section below).

2. SITE CONTEXT (as referred to within Planning Application 2004/0132*)

2.1 The subject site is located on the western side of Waterden Road and forms part of a group of buildings known as East Cross Centre. The site is occupied by a part two, part three storey building. The two-storey element forms the eastern part of the building that faces Waterden Road and is occupied by a meat distribution company at ground floor level with a disco above. The westerly, three storey part of the building is variously occupied by offices, printers and a ballroom. Vehicular access to the site is the north.

2.2 Across Waterden Road to the east are allotment gardens. The adjoining site to the north is occupied by a bus depot with Hackney Stadium to the north thereof. To the north-west of the site are units E to H, which are two-storey type warehouse buildings. To the south is a building known as units A to D, which is a part five, part six storey building that is well set back from the road with car parking at the front. Unit A is occupied by a self-storage company.

2.3 The area is largely characterised by run down, low level, industrial/warehouse type buildings with large open areas, with the exception of the southern part of East Cross Centre, which is largely characterised by taller industrial buildings.

3. CONSERVATION IMPLICATIONS

3.1 The site does not lie within a Conservation Area..

4. HISTORY

4.1 **2004/0132** – 'Outline application for the demolition of an existing two-storey building and the erection of a replacement part 5, part 6- storey office building with ancillary car parking provision' approved in 2004.

4.2 Planning permission was refused at a neighbouring site (1 Felstead Street) for the 'Erection of buildings ranging from 4 to 12-storeys in height to provide 960 sqm of Class A1 (retail) /A2 (financial services) / B1 (office and light industry) / D1 (non residential institutions) or D2 (assembly and leisure) with 123 residential units, comprising 49 x 1 bed, 43 x 2 bed, 21 x 3 bed and 8 x 4 bed and 2 x 8/10 bed units, together with associated car parking and landscaping.

* See History Section

Demolition of existing buildings on site'. The grounds for refusal were as follows:

1. The proposal by reason of its height, scale, bulk, design and appearance would be out of scale and character with the surrounding townscape and would be to the detriment of the character and appearance of the street scene and surrounding area, contrary to policies ST1, ST2, ST4, EQ1, EQ3, EQ5, HO3 and H020 of the Adopted Unitary Development Plan and Policies 4B.1, 4B.2, 4B.7, 4B.8 and 4B.9 of the London Plan, PPS1 (Delivering Sustainable Development) and guidance on Tall Buildings by CABE and English Heritage.
2. The proposed development would result in the loss of existing and/or potential employment generating floor space and thereby prejudice the employment potential of the site and the employment needs of the Borough contrary to Policies ST1, ST25, E2 and E5 of the Adopted Hackney UDP and to the Lower Valley Action Plan (Supplementary Planning Guidance).

4.3 Whilst this application was subsequently allowed by the Inspectorate on appeal, this judgement post dated the 'relevant date' and is considered irrelevant to the determination of this certificate application. From hereon it shall be referred to as the 'appeal scheme'.

4.4 London Development Agency (LDA) acquired the subject site under CPO powers, namely the LDA Act 1998, Acquisition of Land Act 1981, Compulsory Purchase Act 1965 and the London Development Agency (Lower Lea Valley, Olympic and Legacy) Compulsory Purchase Order 2005.

4.5 The notification date on which notice was served upon the land owners subject to the above that the site would be acquired for the London 2012 Olympics was 16th November 2005. From hereon this shall be referred as 'the relevant date'.

5. CONSULTATIONS

5.1 Date Statutory Consultation Period Started: 30th January 2008

5.2 Date Statutory Consultation Period Ended: 20th February 2008

5.3 Site Notice: Yes

5.4 Press Advert: Yes

5.5 Neighbours

Not applicable.

5.6 Statutory consultees

5.6.1 Cross London Rail Links Limited
No representation received.

5.6.2 East London Line Project
No representation received.

5.6.3 English Heritage
No representation received.

5.6.4 Environment Agency
Low environmental risk.

5.6.5 Greater London Authority
No representation received.

5.6.6 Hackney Police
No representation received.

5.6.7 Invest In Hackney
No representation received.

5.6.8 London Development Agency
The scheme which the applicant proposes as appropriate alternative development of the site would not have been permitted at the relevant date of November 2005. This is primarily because the uses proposed do not accord with the relevant Development Plan policies at the time and relevant planning history indicates that the scale and quantum of development proposed would not have been permitted in this location at the relevant date.

Notwithstanding this, consider an employment generating B1 use at a scale similar to that permitted by Hackney on the site in 2004 (part 5, part 6 storey building) would be acceptable. The existing B8 and D2 uses would also have been acceptable. Any development permitted on the site at the relevant date, would have been subject to planning conditions and a Section 106 Agreement securing significant community benefits.

5.6.9 London Fire and Civil Authority
No representation received.

5.6.10 Natural England
No representation received.

5.6.11 Olympic Delivery Authority
Note that the site falls within the ODA administrative boundary and that as the relevant Local Planning Authority any actual application for planning permission would fall to be determined by the ODA Planning Authority.

Though not explicitly stated, it would appear that the dominant use being suggested as appropriate is, however, residential. Should this be the case this would not appear to accord with current local and strategic planning policy. Neither is it clear that the height and density that would be implied by this description is appropriate in terms of relevant policy.

Therefore, in coming to its conclusions in respect of the range and quantum of alternative uses that might be appropriately identified in the Certificate of Appropriate alternative development use the Council is encouraged to carefully consider the appropriateness of identifying residential or other uses that do not appear to accord with current adopted planning policy.

5.6.12 Primary Care Trust
No representation received.

5.6.13 Railtrack
No representation received.

5.6.14 Sport England
No representation received.

5.6.15 Strategic Rail Authority
No representation received.

5.6.16 Thames Water Utilities
No representation received.

5.6.17 The Countryside Agency
No representation received.

5.6.18 The Learning Trust
No representation received.

5.6.19 Transport for London
No representation received.

5.7 Other Council Departments

5.7.1 Arboriculture Officer
No representation received.

5.7.2 Conservation and Design:
No representation received.

5.7.3 Highways:
No representation received.

5.7.4 Housing
No representation received.

5.7.5 Policy
No representation received.

5.7.6 Pollution
No representation received.

5.7.7 Private Sector Housing
No representation received.

5.7.8 Transport
No representation received.

5.7.9 Waste management;
No representation received.

6. POLICIES

6.1 Hackney Unitary Development Plan (UDP) (1995)

EQ1	-	Development Requirements
EQ3	-	Tall Buildings
EQ5	-	Infill Development
EQ7	-	External works and landscape
EQ9	-	Development and the River Lee Navigation Floodplain
EQ32	-	Shop Front and Shop Signs
EQ33	-	External Advertisements
EQ40	-	Noise Control
EQ41	-	Development Close to Existing Sources of Noise
EQ42	-	Air Pollution
EQ43	-	Development of Contaminated Land
EQ44	-	Water Pollution
EQ46	-	Recycling Facilities
EQ47	-	Renewable Energy
EQ48	-	Designing out Crime
H01	-	Provision of additional housing
H03	-	Other sites for housing
H06	-	Residential use of upper floors above shop units
H020	-	Planning Standards
E1	-	Development sites
E2	-	Development within Defined Employment Areas
E5	-	Retention of sites and floors pace within Defined Employment Areas
E8	-	Employment uses and nuisance
E14	-	Access and Facilities for People with Disabilities
E17	-	Retention of Off-street Service Facilities
E18	-	Planning Standards
TR1	-	New Pedestrian and Cycle Links
TR5	-	Improvements as part of Development proposals
TR6	-	Traffic, Access and Parking
TR7	-	Car Parking
TR8	-	Parking for People with disabilities
TR12	-	Road Improvements
TR16	-	Safety in Design
TR19	-	Planning Standards
R2	-	New Shopping development

R4	-	Local shops
R10	-	Cafes, restaurants, wine bars and 'take-away' hot food shops
R13	-	Shopfronts and shop signs
R18	-	Planning standards
CS2	-	Provision of Community Facilities as part of development schemes
CS4	-	Provision of Healthcare facilities
CS6	-	Provision of Education facilities
CS7	-	Sites and Premises for community and voluntary projects
CS8	-	Places of Religious worship
CS9	-	Provision of childcare facilities
CS10	-	Planning Standards
ACE1	-	New arts, culture and entertainment development
ACE2	-	Promoting the development of arts, cultural and entertainment facilities
ACE4	-	Art and Art Space
ACE7	-	Hotel Development
ACE8	-	Planning Standards

6.2 Supplementary Planning Guidance (SPG) and other documents

SPG1	-	New Residential Development
SPG11	-	Access For People With Disabilities

6.3 Proposals

Defined Employment Area Site No. 123 – Waterden Road, Hackney

6.4 London Plan (2004)

2A.1	-	Sustainability criteria
3A.1	-	Increasing London's supply of housing
3A.2	-	Borough housing targets
3A.3	-	Efficient use of stock
3A.4	-	Housing choice
3A.6	-	Definition of affordable housing
3A.7	-	Affordable housing targets
3A.9	-	Partnership approach and sub-regional development frameworks
3A.14	-	Addressing the needs of London's diverse population
3A.16	-	The voluntary and community sector
3A.17	-	Health objectives
3A.18	-	Locations for health centre
3A.21	-	Education facilities
3A.22	-	Higher and further education
3B.1	-	Developing London's economy
3B.2	-	Office demand and supply
3B.3	-	Office provision

- 3B.4 - mixed use development
- 3B.9 - Creative Industries
- 3B.10 - Tourism industry
- 3B.12 - Improving the skills and employment opportunities for Londoners
- 3C.1 - Integrating transport and development
- 3C.2 - Matching development to transport capacity
- 3C.3 - Sustainable transport in London Borough of Hackney
- 3C.22 - Parking Strategy
- 3D.3 - Maintaining and improving retail facilities
- 3D.4 - Development and promotion of arts and culture
- 3D.5 - Sports facilities
- 3D.6 - Visitors accommodation and facilities
- 4A.1 - Waste strategic policy and targets
- 4A.6 - Improving air quality
- 4A.7 - Energy efficiency and renewable energy
- 4A.11 - Water supplies
- 4A.12 - Water quality
- 4A.14 - Reducing noise
- 4A.15 - Climate change
- 4B.1 - Design principles for a compact city
- 4B.2 - Promoting world-class architecture and design
- 4B.3 - Maximising the potential of sites
- 4B.5 - Creating an inclusive environment
- 4B.6 - Sustainable design and construction
- 4C.1 - The strategic importance of the Blue Ribbon Network
- 4C.2 - Context for sustainable growth
- 4C.8 - Sustainable drainage
- 5A.1 - Sub-Regional Development Frameworks
- 5C.1 - The Strategic priorities for East London Borough of Hackney

6.5 National Planning Policies

- PPS1 - Delivering Sustainable Development
- PPG3 - Housing
- PPG4 - Industrial, Commercial Development and Small Firms
- PPS10 - Planning for Sustainable Waste Management
- PPG13 - Transport
- PPS22 - Renewable energy
- PPG25 - Development and Flood Risk

7. COMMENT

The background regulatory position in relation to Section 17 applications has been provided above. It has been established that the date upon which consideration of this application and all relevant policies to be appropriated to it, is the 16th November 2005. Whilst currently the site falls within the Olympic Delivery Authority for determination, at the relevant date, they were not and it is entirely inappropriate to consider otherwise given the context of a Certificate 17 requiring consideration of a 'no scheme world'.

Considerations

The main considerations relevant to this application are:

7.1 The principle of the use

7.2 Design and appearance of proposed development

Each of these considerations is discussed in turn below.

7.1 The principle of the use

7.1.1 The application seeks a range of uses for approval, each of which shall be dealt with in turn as to their accordance with policy in relation to the 'relevant date'.

A Class uses

7.1.2 The application seeks a positive certificate with the inclusion of A1, A2 and A3 Class uses. Council policy ST36 and R6 supports the provision of retail development where (amongst other factors):

- no unacceptable effect is incurred upon neighbouring uses and the environment of the surrounding area in terms of appearance, noise and disturbance;
- there being adequate highway capacity to accommodate traffic attracted including peak flows, either with or without adaptation;
- adequate servicing;
- satisfactory means of access for shoppers arriving on foot or by public transport;

7.1.3 Whilst the site is not situated within a designated shopping district the principle of A1/2 class space is considered acceptable in the instance of this Certificate application.

7.1.4 Objection has been made to the principle of such use at the site, stating that it is contrary to national, regional or local policy at the 'relevant date'. Reference is made to policies ST35 and 38, inferring that the policy position does not accept the provision of retail space outside existing centres that is further supported by PPS6 – 'Planning for Town Centres'. It is considered that reference to PPS6 is not related to the subject application given that the site is outside a designated town centre area. The policy presumption is not that such use should be excluded from other areas, and Council policy R2 and R4 is considered to support the provision of such use outside the Town Centre.

7.1.5 The principle of A3 use is considered in the light of Council policy R10 where no conflict is envisaged by the principle of the use.

B1 Class Use

- 7.1.6 The site is situated within the southern part of a designated Defined Employment Area (DEA). However, the site has no specific designations with proposals detailed within the UDP relating to northern parts of the DEA.
- 7.1.7 Council policies ST24, ST26, E1, E2 and E5 seek the provision of employment generating development within DEAs, opposing proposals that would result in a reduction of such floor space. Whilst these policies are no longer safeguarded under the Secretary of States direction under Para 1 (3) of Schedule 8 to the Planning & Compulsory Purchase Act 2004 they are pertinent with the presumption to consider policy at the time of the 'relevant date'. The appeal scheme at a neighbouring site illustrates the support for this policy safeguard of employment generating floor space a couple of months prior to the relevant date and the extant permission supported an increment at the subject site. Consequently, the inclusion of this use within a positive certificate is considered acceptable and in accordance with relevant policy.

C1 Class use

- 7.1.8 This use covers hotels, and the applicant states that: "*the lower above ground floors would be suitable for commercial/leisure use including a ... hotel...*". Council policy ACE7(c) states that favourable consideration shall be given to Hotel development upon sites not identified for such development that have: '*good public transport links which are not located in predominately residential areas*'.
- 7.1.9 Whilst the site is not predominately residential, it is considered that its location is not such that it complies with the connectivity requirements under policy ACE7 (c). This accords with the policy context set out within the JAAP, where sites to the west are identified for hotel use rather than the area within which the subject site falls. Consequently, whilst a positive certificate is recommended, the inclusion of C1 class use is not.

C3 Class use

- 7.1.10 Council policy E2 states that "*Residential development will not normally be permitted within defined employment areas*". Policy H03 of the London Borough of Hackney UDP states that residential development will normally be permitted where
- a. Development of the site does not conflict with other policies, in particular with the retention of land and floor space for employment uses; ... and ...
 - c. The proposed scheme is of a high quality with minimal disadvantages to residents in the surrounding area and is compatible with surrounding uses.

It is pertinent to note that the appeal scheme to a neighbouring site was not refused on the grounds of the introduction of residential use.

- 7.1.11 Consequently, in consideration of the principle of the use it is considered that given the remit of a Certificate 17 negating the usual consideration of density

under full planning permission applications, the principle alone is acceptable in mind of the above policy context.

D1 use Class

7.1.12 This use class includes the provision of non-residential institutions, such as health centres, crèches, schools, art galleries, places of worship, education and training centres (NB not exhaustive).

7.1.13 Mindful of the pertinent UDP policies in relation to the relevant date, it is considered that the principle of D1 use is compliant.

D2 use Class

7.1.14 This Class of use encompasses cinemas, music and concert halls, bingo and dance halls, swimming baths, skating rinks and gymnasiums (but not night clubs (NB not exhaustive list). The LDA note that the site already had D2 use, and this use is also referred to within the Case officer's report for the extant permission. In principle, the proposed use is considered to be acceptable given the context of the site and the policy presumption under ACE2 of the UDP.

6.2 Design and appearance of the proposed development

6.2.1 The applicant considers a landmark building equivalent to thirty three storeys (plus two basement floors) *'could easily be accommodated onto the site'*. Objection has been made to this, and the principles of a residential led scheme. These details are irrelevant with a Certificate 17 application as the purpose is not too specifically limit the quantum of floor space, density and height of buildings. It is solely the principle of the uses, collectively or otherwise, that is under consideration.

8. CONCLUSION

7.1 In summary, it is considered that use Class A1, A2, A3, B1, C3, D1 and D2 accord with the policy presumptions at the 'relevant date, whilst Class use C1 would not. A positive certificate is therefore recommended to include the former uses.

Signed..... Date.....

**Fiona Fletcher Smith
CORPORATE DIRECTOR, NEIGHBOURHOODS & REGENERATION**

NO.	BACKGROUND PAPERS	NAME/DESIGNATION AND TELEPHONE EXTENSION OF ORIGINAL COPY	LOCATION CONTACT OFFICER
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1.	Hackney UDP (1995) and the London Plan (2004 with Alterations Feb 2008)	Gillian Nicks Deputy Team Leader (020 8356 8350)	263 Mare Street, London E8 3HT
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