

15 January 2007

Mr David Warman
Richard Max & Co
40 Drury Lane
London
WC2B 5RR

Our Ref: APP/G5750/A/05/1193216
APP/G5750/A/05/1194327

Your ref: RDM/BMM/100003.7

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEALS BY COLPY LTD AND HAWORTH LTD
MIXED USE DEVELOPMENT SCHEME AND A PASSENGER PIER AT
PERUVIAN WHARF, NORTH WOOLWICH ROAD, SILVERTOWN, NEWHAM,
LONDON E16 2AG
PLANNING APPLICATION REFS: P/05/0191 & P/05/1213**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Forster BA Dip LD MRTPI, who held a public local inquiry between 28 February and 25 July 2006 into your clients' appeals under Section 78 of the Town and Country Planning Act 1990 against the failure of the London Borough of Newham ("the Council") to give notice within the prescribed period of two decisions, namely:
 - a) the mixed-use development comprising offices (B1), residential (C3), retail (A1/A3), leisure (D2), hotel (C1) and buildings associated with the wharf for handling aggregates and other powdered products (B2), with associated car parking, formation of highway access and internal road layout, together with works of hard and soft landscaping and other works incidental to the redevelopment of the site at Peruvian Wharf, North Woolwich Road, Silvertown, London E16 2AG (reference P/05/0191) (Appeal A); and,
 - b) the development of a pier to be used for passenger transport and other ancillary works at Peruvian Wharf, North Woolwich Road, Silvertown, London E16 2AG (reference P/05/1213) (Appeal B).
2. On 1 and 21 December 2005 both appeals were recovered for the Secretary of State's own determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990. Appeal A was recovered on the grounds that it relates to residential development of more than 5 hectares or more than 150 dwellings. Appeal B was recovered as it is most efficiently and effectively decided with another recovered planning appeal, namely appeal A.

Inspector's recommendation and summary of the decision

3. The Inspector, a copy of whose report is enclosed and his overall conclusions reproduced in Annex A to this letter, recommended that both the appeals be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with his recommendation. All references to paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural Matters

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the appeals.
5. Since the close of the inquiry the Secretary of State has received a range of correspondence relating to this case. A record of the correspondence received is at Annex B to this letter and copies can be made available upon written request to the above address. The Secretary of State considers that the correspondence neither raised significant issues material to the appeals before her, nor which necessitated reference back to the parties.

Policy Considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Spatial Development Strategy for Greater London ("the London Plan"), adopted in 2004, and the London Borough of Newham Unitary Development Plan, adopted in 2001. The Secretary of State agrees with the Inspector that main development plan policies relevant to these appeals are those set out in IR 3.5-3.6.
7. Early Alterations to the London Plan relating to housing provision targets, waste, and minerals were the subject of public consultation and an Examination in Public during 2005 and 2006, and were adopted as part of the London Plan on 20 December 2006. The Secretary of State accords these revised policies significant weight.
8. The Council published draft documents relating to the replacement Local Development Framework (LDF) in February 2006 but as the emerging LDF is at a very early stage, the Secretary of State accords it little weight.
9. The Secretary of State also agrees that the key national, regional and local policy and guidance documents relevant to the proposals are set out in IR3.3. These include Planning Policy Statement (PPS) 1 *Delivering Sustainable Development*, Planning Policy Guidance Note (PPG) 3 *Housing*, PPG Note 4 *Industrial*,

commercial development and small firms, PPS6 Planning for Town Centres, PPG13 Transport, PPS23 Planning and Pollution Control, PPG24 Planning and Noise, and PPG25 Development and Flood Risk.

10. Since the close of the Inquiry PPS 3 Housing has been published on 29 November 2006. The Secretary of State acknowledges that local planning authorities are not required to have regard to PPS3 as a material consideration until 1 April 2007, although there may be circumstances when PPS3 should be taken into account prior to this date. In this case, the Secretary of State considers that PPS3 is not material to her decision because it does not affect her conclusions on the main issues as set out in paragraphs 13 to 32 of this letter. For these reasons she also concludes that its publication does not constitute a material change in circumstances in the matters relevant to these appeals to an extent that would affect her decision, or require her to refer back to the parties for further representations prior to reaching her decision.
11. The Secretary of State also notes that Planning Policy Statement 25: *Development and Flood Risk* was published after the close of the Inquiry, in December 2006. She does not consider that it raises any matter which requires her to refer back to parties for further representations, prior to her reaching her decision.

Main Issues

12. The Secretary of State agrees with the Inspector that the main issues in these appeals are those set out in the conclusions to his report and summarised at IR12.4. The Secretary of State notes the Inspector's comments at IR12.1 that the appeal relating to the passenger pier proposal hardly featured at all as an item for debate at the inquiry. She agrees with the Inspector's reasoning that the pier is a very minor adjunct to the major proposal and would very likely not be proceeded with should planning permission for the mixed-use scheme be refused, and also agrees with his conclusion that giving planning permission for the pier alone as a split decision would not be appropriate for the reasons he gives (IR12.2-12.3).

Safeguarded wharves

13. The Secretary of State observes that the relevant London Plan and UDP policies relating to safeguarded wharves are set out at IR12.5-12.6. She also notes that there is no issue between the parties that the proposal would have a major regeneration effect on this area of Newham, and that the proposal, by reactivating a redundant wharf and increasing use of the River Thames for the transport of goods, would satisfy policy 4C.14 of the London Plan. She agrees with the Inspector, however, that there is an inconsistency between the London Plan and UDP, in that the UDP allows for an exception to safeguarding that is much more commonplace than that envisaged by the London Plan (IR12.7).
14. For the reasons set out in IR12.8-12.9, the Secretary of State agrees with the Inspector that the more stringent exception of the London Plan must take precedence over that of the UDP and, therefore, applying London Plan policy 4C.15, and accepting that there is no strategic exception, redevelopment should

only be accepted if the wharf is no longer viable, or capable of being made viable, for cargo-handling.

15. The Secretary of State agrees with the Inspector's reasoning on each of the criterion against which viability must be assessed (IR12.10-12.57), and also agrees with his conclusion set out in IR12.58 that on none of the criteria listed under policy 4C.15 of the London Plan is there sufficient evidence that the wharf would not be viable in its entirety for cargo-handling. Redevelopment of the wharf is therefore unacceptable under London Plan policy 4C.15. (IR12.146)
16. The Secretary of State notes that, although the proposals do not accord with the London Plan policy on safeguarding, the Inspector considered ten material considerations put forward by the appellants (IR12.59-12.74). The Secretary of State has carefully considered the material considerations put forward by the appellants and agrees with the Inspector's conclusions on these. She agrees that despite there being some substance in the matters relating to inconsistency and flexibility, the considerations do not outweigh the conflict with London Plan policy 4C.15 (IR12.76 & 12.147).

Employment land policy

17. The Secretary of State notes that the London Plan identifies the appeals site as lying within the Thameside West strategic employment location (SEL), an area defined within the London Plan as a preferred industrial location (IR12.78). She also notes that the Council have identified this SEL in the adopted UDP and applied policy EMP4 to it, which seeks to achieve industrial and warehousing uses but strongly opposes retail and residential developments (IR12.79).
18. Whilst the Secretary of State, for the reasons set out in IR12.80-12.86, accepts that emerging regional and local planning policy clearly points to the release of surplus industrial land in East London generally, and Newham specifically, she agrees with the view of the Greater London Authority that, in relation to Planning Policy Statement 12, *Local Development Frameworks*, the policy is at too early a stage to allow extant employment allocations to be set aside. However, the Secretary of State notes that there is an extant planning permission for 80,000m² of B1 office development and a hotel on part of the site. She agrees with the Inspector that, following these permissions, a dogmatic insistence on the protection of the site to accommodate solely industrial and/or warehousing uses cannot be justified (IR12.89). For the reasons set out in IR 12.91-12.92, the Secretary of State notes the guidance within PPG4 which flags the issues that can arise where proposals for new development may be incompatible with existing industrial activities and considers that this is just such a proposal which might lead to the policy conflicts referenced.
19. The Secretary of State agrees with the Inspector's conclusion that the proposal would breach UDP policy EMP4 and policy 2A.7 of the London Plan (IR12.148). She agrees that the site lies at the heart of a strategic employment location, an area designed to meet the needs of firms with less demanding environmental requirements, and that there are examples of such firms on either side of the site. The proposal seeks to introduce residential development between these two firms, when residential use is specifically barred by UDP policy EMP4. Whilst

accepting that there is a surplus of industrial land in Newham, the Secretary of State agrees with the Inspector that there is no evidence that a structured assessment of the qualities of this site in comparison with the continuing needs of the area has been carried out (IR 12.148).

Living conditions

20. The Secretary of State agrees with the Inspector that this issue is concerned with the living conditions of the prospective occupants of the appeal dwellings, whether they would be acceptable having regard to the likely noise and air quality environments (IR 12.93).

Noise

21. The Secretary of State agrees with the Inspector that the core issues are the appropriate standard to use in measuring the likely noise of aggregate unloading and whether the amount of noise would be acceptable to the occupiers of the dwellings (IR12.94).

22. The Secretary of State observes that, despite the disagreements between the main parties over the appropriate noise standard to be used (IR12.96-12.102), the appellants provided an assessment based on both the noise standards under discussion (IR12.103-12.104 & 12.109).

23. For the reasons given in IR 12.105-12.108, the Secretary of State agrees with the Inspector's conclusion (IR12.109) that, overall, the effects of aggregate unloading operations on living conditions in the adjacent dwellings would be acceptable.

Air quality

24. The Secretary of State notes that concerns arise regarding the effect on new residential development of odours from the nearby industrial premises. She also observes that both processes are regulated under the Pollution Prevention and Control (England and Wales) Regulations 2000 (IR12.110).

25. Regarding evidence around emissions of volatile organic compounds, the Secretary of State notes that the approach taken in the submitted Environmental Statement was flawed and, regarding broader odour impacts from the process, considers that there is insufficient evidence to assess the impact on the proposed residential development (IR12.111-12.116).

26. For the reasons set out in IR12.117-12.125 & 12.150, the Secretary of State agrees with the Inspector that it is likely that there will be nuisance odours emanating from the site, which the London Borough of Newham and Environment Agency officials may decide are acceptable within the best available technique regime.

Affordable housing

27. The Secretary of State notes that, currently, the number of housing completions in Newham are exceeding the target set within the London Plan and that relevant policies seek to maximise the number of additional homes, including affordable housing, by exceeding housing provision targets (IR12.126)

28. For the reasons set out in IR12.127-12.128, the Secretary of State agrees that, within the context of the scheme, affordable housing has been maximised. She also agrees with the Inspector that the proposed affordable housing provision is acceptable, subject to the proviso that any family dwellings should be provided off-site (IR12.128-12.129 & 12.151).

Tall buildings and design issues

29. The Secretary of State agrees with the Inspector that the issue is whether an outline application is an appropriate medium for considering the acceptability of tall buildings (IR12.130). She observes that the views of CABA on the appeal proposals before her were not sought by the appellants but notes that CABA did respond to an earlier proposal for the site that included a tall building and considered this acceptable (IR12.132).

30. For the reasons set out in IR12.133-12.134, the Secretary of State agrees with the Inspector that the drawings submitted as part of the appeal evidence include sufficient detail to suggest how the buildings would look and, given the undemanding character of the environs of the wharf, considers that the relative lack of detail is not critical at this stage (IR12.134).

Waste

31. The Secretary of State agrees with the Inspector that this issue is whether the proposed use would seriously affect waste collection and treatment objectives in the development plan, having regard to alternative proposals for the site (IR12.135).

32. For the reasons set out in IR12.136-12.145 & IR12.153, the Secretary of State agrees with the Inspector that while London faces a big problem with its waste, it is not one which depends exclusively on the provision of a materials recycling facility at Peruvian Wharf, and that the case for locating one at this site is by no means overwhelming, to the extent that any other use of the site should be ruled out.

Overall conclusions

33. For the reasons given above, and summarised by the Inspector in IR12.146-12.154, the Secretary of State concludes that the appeals are not in accordance with the development plan and that there are no material considerations of sufficient weight to indicate that she should determine the appeals other than in accordance with the development plan.

Formal Decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby:-

- Dismisses appeal A and refuses planning permission for the mixed-use development comprising offices (B1), residential (C3), retail (A1/A3),

leisure (D2), hotel (C1) and buildings associated with the wharf for handling aggregates and other powdered products (B2), with associated car parking, formation of highway access and internal road layout, together with works of hard and soft landscaping and other works incidental to the redevelopment of the site at Peruvian Wharf, North Woolwich Road, Silvertown, London E16 2AG (reference P/05/0191) dated 3 February 2005 and;

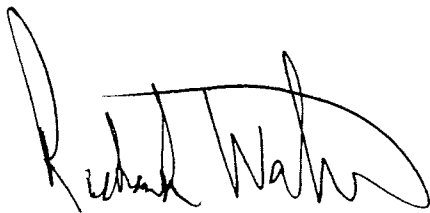
- Dismisses appeal B and refuses planning permission for the development of a pier to be used for passenger transport and other ancillary works at Peruvian Wharf, North Woolwich Road, Silvertown, London E16 2AG (reference P/05/1213) dated 26 July 2005.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.

36. A copy of this letter has been sent to the London Borough of Newham, the Mayor of London and all parties who appeared at the inquiry and asked to see a copy of the decision letter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Richard Watson', with a large, sweeping flourish at the end.

Richard Watson

Authorised by the Secretary of State to sign in that behalf

Peruvian Wharf - Inspector's overall conclusions

- i. Peruvian Wharf is a safeguarded wharf and can only be redeveloped for a non cargo handling use if it is no longer viable or capable of being made viable for cargo handling purposes. On none of the criteria listed under policy 4C.15 of the London Plan have I found evidence that the wharf would not be viable in its entirety for cargo-handling. Redevelopment of the wharf is therefore unacceptable under policy 4C.15.
- ii. Various material considerations were put forward to justify the scheme as matters to be balanced against any breach of safeguarding policy. There is substance in the matters relating to inconsistency of the GLA in dealing with other safeguarding issues, and in the need to use the downstream wharf for cement imports to give flexibility in landing aggregates on the upstream wharf. Neither of these matters are of sufficient moment to outweigh the breach of safeguarding policy however.
- iii. Apart from policy 4C.15, the scheme would breach policy EMP4 in the UDP and policy 2A.7 in the London Plan. Peruvian Wharf lies at the heart of a strategic employment location, an area designed to meet the needs of firms with less demanding environmental requirements. There are examples of such firms on both sides of the site. The proposal seeks to introduce residential development between these two firms, when residential use is specifically barred by policy EMP4. Although there is a surplus of industrial land in Newham, there is no evidence that a structured assessment of the qualities of this site in comparison with the continuing needs of the area has been carried out.
- iv. Residential use of much of the site is inappropriate because of the likely effect of industrial activities on living conditions. Noise from daytime aggregate unloading operations would affect very few dwellings and could be moderated by closing windows or balcony screens. Night time working could also be acceptable, should it become necessary, for the relatively few dwellings that would require acoustic ventilation to allow windows to remain closed.
- v. Odours arising from the resin making and meat rendering processes would be less acceptable. Predicted concentrations of emissions at Nuplex Resins would exceed odour thresholds. "Nuisance odours" could permeate the residential blocks under certain wind conditions, and could lead to widespread complaints. Local authority environmental health officials could take the view that nuisance odours emanating from both sites are acceptable within the best available technique regime, leaving complainants with no other course than to put up with them. Alternatively, complaints from occupiers could result in sustained pressure on the firms to modify their activities, possibly forcing them to accept restrictions that might make them unviable. The EMP4 opposition to residential uses in principal employment areas is intended to engender greater confidence in firms that they can operate in a relatively unconstrained way.

- vi. The scheme would produce 500 affordable homes, a proportion which meets the Newham target of 35% but is well short of the overall target for London of 50%. The London Plan acknowledges that there will be sites where abnormal costs dictate a lower level of provision for economic reasons. This is one such site. Within the context of the scheme, with its expensive aggregates box, the level of affordable provision is reasonable.
- vii. The scheme includes tall residential apartment buildings. Although an outline application, it includes sufficient detail to assess the impact of these buildings in this relatively undemanding riverside location.
- viii. If this scheme does not go ahead, an alternative proposal is to use the downstream wharf for a materials recycling facility (MRF), with an open aggregates and concrete making site on the upstream wharf. London faces a serious waste management challenge in coming years and a large number of recycling facilities will be needed. There are arguments for and against the MRF at this location, and they are not sufficiently clear-cut to say that the site must be reserved for this alternative use.
- ix. The appeal proposals would provide a significant regeneration boost to this part of Newham. The use of a large box to contain the aggregate and concrete batching parts of the scheme is a creative response to the challenge of integrating industry with housing on the same site. Assisted by double glazing and acoustic ventilation, it achieves this aspect of integration well. It is less successful with its neighbouring industry, placing blocks of apartments in tall buildings close to the boundaries, where residents will not only gaze across acres of unattractive industrial buildings but on occasions smell the odours being emitted from them. This juxtaposition would set up unacceptable tension between adjoining land uses that planning is intended to avoid.

Correspondence received from

Name and organisation	Date
Giles Dolphin, Greater London Authority	6 November 2006
Reverend Penny March, Bridges Community Project	2 November 2006
Sir Robin Wales, Mayor of Newham	7 November 2006
Single letter from a variety of stakeholders	22 November 2006