

Application No : 13/03467/FULL1

Ward:
Copers Cope

Address : Dylon International Ltd Worsley Bridge
Road London SE26 5BE

OS Grid Ref: E: 536890 N: 171285

Applicant : Relta Ltd

Objections : YES

Description of Development:

Erection of five storey building comprising 74 residential units; A1 retail; A3 cafe/restaurant and a D1 creche in place of Block A03 forming part of the approved planning permission 09/01664 for the redevelopment of the Dylon site

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Flood Zone 2
Green Chain
London City Airport Safeguarding
London City Airport Safeguarding Birds
Local Distributor Roads
Metropolitan Open Land

Proposal

An appeal against the Council's non-determination of this application within the statutory 13 week period has been received and Members are requested to consider whether there are grounds upon which to contest the appeal. The application is a duplicate of application ref. 13/01973 which was dismissed at appeal against the Council's non-determination in March 2014. The proposal is summarised as follows:

- five storey building comprising 74 residential units, A1 retail (249m²) unit, A3 café/restaurant (113m²) unit and a D1 creche (624m²) in place of Building A03 which was proposed to include 6,884m² of office floorspace. This office building was approved as part of the implemented planning permission granted at appeal (LBB ref. 09/01664) for a mixed use redevelopment comprising basement car parking and 2 part five/ six/ seven/ eight storey blocks for use as Class B1 office accommodation (6884m²)/ Class A1 retail (449 sqm)/ Class A3 cafe/ restaurant (135 sqm)/ Class D1 creche (437 sqm) and 149 flats (32 one bedroom/ 78 two bedroom/ 39 three bedroom)
- additional 74 secure cycle storage spaces will be provided at basement level

- overall design and scale of the proposed building remain unchanged from that of approved Block A03
- balconies will be added to the rear elevation of the building.

The application differs from application ref. 13/01973 in that a financial contribution of £346,736 in lieu of on-site employment floorspace is proposed to be secured through a Section 106 Unilateral Undertaking.

Location

- 1.119 hectare irregular shaped site is currently occupied by part of the 1930s built former Dylon factory, including the office building to the front of the site
- site is located to the south of Station Approach and to the west of Worsley Bridge Road
- Hayes to Charing Cross railway line abuts the western boundary and the former Dylon sports ground lies to the south
- north side of Station Approach lies within the London Borough of Lewisham where the Broomsleigh Business Park extends to the north on the west side of Worsley Bridge Road and generally comprises older style business accommodation
- Gardner Industrial Estate and the Abbey Trading Estate lie to the west of the site beyond the railway line and include modern two to three storey sheds
- there are 1930s or 1940s built two and three storey industrial buildings on Worsley Bridge Road to the southeast of the site
- there are a number of sports pitches in the surrounding area, including a large area of designated Metropolitan Open Land to the south and east of the site
- there is a residential estate built in the 1990s comprising a mixture of two storey houses and a three storey block of flats opposite Worsley Bridge Road to the east of the site
- site has a Public Transport Accessibility Level (PTAL) level of 2 (low).

Application documents

- Sustainability Appraisal and Energy Statement
- Transport Statement
- Energy Assessment and Renewable Feasibility Report
- Code for Sustainable Homes Pre-Assessment
- Architectural Design Statement

The application is accompanied by an Office Market Report which includes the following points:

- office uses are not viable on market based terms - although the site is well located next to Lower Sydenham Station the evidence from marketing has proved that there is no demand for the approved office floor space
- since 2009 there has been an overall weakening of demand for offices within this part of London and supply levels have continued to increase

- no shortage of office floorspace throughout Bromley, even in preferred office locations
- it is recognised by the Council's consultants that new office development in the Borough is no longer viable, even in Bromley town centre
- suburban office market in south east London is in structural decline and this market reality will not change - prospective major redevelopment proposals in Croydon (retail led) will further divert any demand from back office/footloose "outliers" away from Bromley in the medium to long term
- latest London Policy review demonstrates that most large occupiers in Bromley are referred to as "outliers" that can easily relocate - Bromley is unlikely to be seen as a significant office area in the long term and this also impacts upon the need for offices in non recognised locations such as Lower Sydenham
- existing vacancy rates in Bromley town centre are approaching 20% and there is a realistic pipeline representing over 10 years supply
- indicators suggest there is a declining market requirement for offices in Bromley generally and a secondary area such as Lower Sydenham will decline more rapidly
- office rental levels in Sydenham (£9.50 per sq. ft. approx.) are only marginally above industrial values - there is no prospect for office development in such circumstances and this position is not going to change
- high development costs cannot be adequately "subsidised" by the residential element of the permitted scheme (on the application site) which itself attracts high costs
- there is over 69,000 sq m of existing accommodation on the market in Bromley and Lewisham in 189 buildings and a further 27,000 sq m of unimplemented permissions in Bromley town centre - many of these can be subdivided into smaller units - in quantitative and qualitative terms there is an excessive level of choice for potential occupiers
- it is recognised that there is a need to provide some new stock where circumstances allow as the limited growth areas (from SME's) in certain evolving areas of employment generation will be attracted to new flexible accommodation but the issue remains that viability is compromised and new development can rarely be justified
- offices within the permitted scheme have been marketed since 2010 but in view of the lack of any interest for the accommodation the scheme as a whole is not viable
- despite extensive marketing there has additionally been no interest shown for the site as a whole
- proposed amendment to the scheme will not have any detrimental impact on the supply of employment land (and office space in particular) in the market search area either immediately or in the longer term.

The application is accompanied by a document entitled 'Employment and Training' which states that the retail unit, café and nursery / crèche within the approved scheme will support up to 59 full time jobs. Furthermore, it is expected that an average of 162 construction jobs will be generated during the 24 month construction period.

Comments from Local Residents

Nearby residents were notified of the application and representations were received, which can be summarised as follows:

- increased traffic and pressure on road infrastructure
- increased demand for on-street parking
- poor architectural design.

Comments from Consultees

There were no objections from the Council's in-house drainage consultant.

There are no objections in terms of highways.

Thames Water have no objections.

There are no objections in terms of Environmental Health.

Any further responses to consultations will be reported verbally at the meeting.

Planning History

Planning permission was granted at appeal in April 2010 for a mixed use development on the whole factory site comprising basement car parking and 2 part five/ six/ seven/ eight storey blocks for use as Class B1 office accommodation (6884 sqm)/ Class A1 retail (449 sqm)/ Class A3 cafe/ restaurant (135 sqm)/ Class D1 creche (437 sqm) and 149 flats (32 one bedroom/ 78 two bedroom/ 39 three bedroom) (ref. 09/01664). The permission has been implemented, although the main factory buildings that would be demolished and replaced still remain on the site.

An appeal was made against the Council's non-determination of the duplicate application ref. 13/01973, and a planning inquiry was heard in February 2014. The Council contested this on the following grounds:

1. "The site is located in a Business Area in the Unitary Development Plan and the proposal would result in an unacceptable loss of employment land and would be contrary to London Plan Policies 4.1 and 4.4 and Policy EMP4 of the Unitary Development Plan as it does not provide Use Class B1, B2 or B8 floorspace and furthermore there is insufficient evidence to demonstrate that this cannot be provided.
2. The proposal would give rise to a requirement for affordable housing and a financial contribution towards education provision. Inadequate evidence has been submitted to demonstrate that the development cannot support affordable housing provision and a sufficient healthcare and education infrastructure contribution contrary to Policies H2 and IMP1 of the Unitary Development Plan and Policy 8.2 of the London Plan."

The appeal was dismissed by the Inspector, on 18 March 2014. The following are excerpts from the Inspector's decision letter:

"Supporting and promoting Outer London as an attractive location for businesses giving access to relatively affordable work space is a strategic commitment under Policy 4.1 of the London Plan. Another is ensuring the availability of sufficient and suitable workspaces. Policy 4.2 recognises and looks to address strategic as well as local differences in the interests of the strengths of the diverse office markets outside central London by (amongst others) focusing new development on viable locations with good public transport. The policy additionally encourages increases in the current stock (where there is evidence of sustained demand) and urges local authorities to develop strategies to manage long term structural changes in the office market and to support changes of surplus office space to other uses.

On the other hand, the UDP Business and Regeneration policies are underpinned by the objective of maintaining a diversity of accommodation for all business types and promoting the clustering of business types in appropriate locations. The aim accords with the broad thrust of London Plan Policy 4.1 and with the NPPF's support for achieving growth sustainably. The protection, therefore, provided by the UDP policies is a strong material consideration. In particular, UDP Policy EMP3 which is applicable, given the expectation of office accommodation on the site as a result of the 2010 appeal decision. The policy additionally allows for conversion or redevelopment of offices for other uses and does not apply a rigidly protective approach. It complies with paragraph 22 of the NPPF in that respect and should be accorded significant weight. The wording of the policy does not restrict its application to the Borough's older stock of offices only. In any case, the tests set out in the policy are relevant to considering the 'reasonable prospect' test in paragraph 22 of the NPPF.

The pre-consultation draft version of the Council's emerging Local Plan carries little weight in the determination of this appeal. I therefore see no merit in dwelling on the implications of identifying the Dylon Works site as a Locally Significant Industrial Site (LSIS) or the emerging policy relating to LSISs Equally, as Further Alterations to the London Plan (FALP) are at the consultation stage, the changes proposed to the wording of specific relevant policies carry little weight. However, the trends informing the FALP policies, such as the anticipated increase in housing need and in employment projections, are material to considering the position in Bromley.

Equally, the 2010 GVA Grimley study into Bromley's economic development and employment land, together with the March 2012 DTZ study, are pertinent (and referred to extensively in the evidence) for their findings on the demand and supply side of offices in the Borough. The December 2013 Michael Rogers report provides updated advice on the Bromley office market and, along with the aforementioned reports, is informing the local plan process.

Although Bromley's protection of its employment land in the UDP has its provenance in evidence dating back to 2004/2005, that protection has also to be seen against the background of the GLA's employment forecasts. The forecast to 2031 predicts employment growth between 2007 and 2031 of 4.9%. This was updated in Working Paper 39 and the FALP now shows a predicted increase of jobs in Bromley between 2011 and 2036 of 13.6%. The lower baseline in the early years can be explained by current employment numbers being met by the current supply. However, a higher rate of growth is predicted in subsequent periods of the Plan.

The translation into employment floorspace from these projections predicts a requirement of 133,200 sq m of office floorspace to 2031 or a total employment requirement of 120,500 sq m¹. The DTZ study also shows that, despite falls in overall employment floorspace in 2010, the supply was in balance with the expected demand. The Council's evidence demonstrates that there has been a fall in the Borough's supply of business floorspace since 2008. The effect of that decline is evidenced by the change from a balanced supply/demand position in 2010, to one of an undersupply or shortfall to the tune of 18,000 sq m at the end of 2013.

This evidence is based on the DTZ report and updated by the Council's Annual Monitoring Report. There is no indication in any of these reports or the GLA's Working Paper of a decline in demand for employment floorspace. If anything, the demand for office floorspace in the Borough is predicted to rise while for other types of employment the demand continues to fall. The lower figure (Table 32) reflects the falling demand for industrial and warehousing floorspace which is set against the increased figure for office floorspace.

In the light of these findings, the appellant's assessment of office demand and supply is, in my view, wrongly based on a scenario of Bromley maintaining its current economic characteristics and no improvement. There may be a reduction in the amount anticipated since the GVA Grimley study, but the Council's evidence of overall decline in supply and the resulting mismatch with anticipated increase in demand is persuasive.

The appellant's analysis of supply is concerning, as it extends to the market area of Lewisham and even to sites as distant from the Bromley Borough boundaries as Surrey Quays. The approach may provide an insight into the current availability of offices in the two Boroughs but does not usefully add to the debate of how Bromley is expected to meet its own identified needs. Or even if the sites referred to are critical to Lewisham's needs. Furthermore, some of the sites shown as available in the list can be discounted for reasons ranging from Green Belt location, recent approvals under the prior notification process and loss of office space in town centre Opportunity Sites to other uses.

The December 2013 Michael Rogers report records the difficulties in attracting major new investment into Bromley town centre, given the lack of Grade A office stock. However, it goes on to conclude on a more positive

note in that there are signs of improvement in the Bromley office market, increase in take-up levels and an upturn in demand. The report also warns against a diminishing supply of offices due to recent conversion into residential or redevelopment of office sites.

This report applies to Bromley town centre and not to the Borough as whole. Nevertheless, in as much as a depressed demand in the centre and the structural decline referred to in the appellant's Office Report is said to have a knock-on effect on locations outside the town centre, the reverse must also apply. In other words, the optimism and increasing demand in the town centre should extend to the more outlying areas such as the appeal site. The good transport links and high quality offices intended for the site adding to its advantages.

The appellant's evidence refers to the London Office Policy Review of 2012. Although it predicts a period of sustained but modest growth, the Review also highlights the challenges facing the office market in Outer London locations. Despite its findings, the direction or emphasis of Policy 4.2 or 4.1 in the emerging FALP have not altered. Furthermore, it is the role of the Council through its local plan process to address the sort of structural changes in the office market described in the appellant's evidence. Loss of employment land on a piecemeal basis in advance of that process, and on the basis of contradictory evidence of supply and demand, would be premature.

Given all of the above, the appeal site with its permission for the office accommodation would contribute to the Borough's supply of accessible high quality office employment opportunities, in circumstances of a predicted rise in employment to 2031, an improving take-up rate (albeit currently only studied in terms of the town centre), an estimated fall in floorspace supply and lack of Grade A offices. The permitted offices would play a role in the Council's strategy of maintaining a diverse supply of employment opportunities in accessible locations, as encouraged in the London Plan.

The appeal site has not supported any employment for some years. However, in 2010 my colleague concluded there would be no loss of employment on the basis of a similar quantum of business floorspace forthcoming from the proposal at that time. That optimistic outcome does not apply to the appeal before me, which would lead to loss of those employment opportunities. The question is whether there is a reasonable prospect of the site being developed for office purposes?

There is no dispute that there has been no interest in the intended office accommodation, either in part or in whole, despite the extensive and robust marketing exercise carried out since June 2010. In the context of the timescale of a development plan, 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. This is particularly pertinent in the circumstances of the recent deep economic recession and

the poor conditions that prevailed for speculative investment in offices, or any development for that matter.

The viability appraisals undertaken on behalf of the appellant demonstrate the extent to which the office development on the appeal site would be uneconomic. It would be subject to significant negative land values, even with the cross-subsidy forthcoming from the residential elements of redevelopment on the Dylon site. The estimated rental level of £16 per sq ft is above that currently commanded by premises in Bromley North (£11 per sq ft). The DTZ report of 2012 also confirmed that speculative development would be highly unlikely without funding and/or incentives on the basis of values in the Bromley market at prime figures of £22/23 per sq ft in 2007.

In 2010 with rental values not dissimilar to those presented in the current evidence, the assumption was that the offices would be built and occupied. Those predictions have not come to pass; it is said because detailed appraisals were not carried out at that time and the structural decline in the office market in Outer London provides no confidence in finding occupiers for the new premises. On the appellant's predictions the prospects for any office development even in Bromley town centre would be uneconomic and only forthcoming through redevelopment or refurbishment proposals.

The gloomy forecast for the future employment market in Bromley is not however shared by the GLA or Bromley Council, on the evidence of a range of studies undertaken to inform their policies. The evidence may not point to a buoyant office market in Bromley, but there is some optimism with an indication of an improvement in the Bromley office market and measures likely to be put in place (on the advice of consultants) to enable the Borough to assist with boosting the market. One such measure is to prevent the loss of employment sites or premises outside town centres to provide capacity for growth and choice for the market (DTZ Borough-wide key recommendation).

The offices forming part of the current permission are located next to a station, close to other large employment areas and represent Grade A offices of which there is a shortage, even in the town centre. The accommodation forms part of a mixed use development and is the sort of development the appellant's adviser envisages is most likely to bring forward additional offices to the market.

The timing of the marketing for the appeal site is unfortunate, given the scale and depth of the recession, but improvements recorded in the market, and even the possibility of Bromley Town Centre being cast as an Opportunity Area in the forthcoming FALP, gives cause for optimism for the future of the appeal site as an employment opportunity. To allow loss of this valuable employment resource at this stage would be premature, contrary to Policy EMP3 and harmful to the Borough's employment strategy.”

The appellant agreed to satisfy the requirements of Policy IMP1 in terms of healthcare and education infrastructure contributions ahead of the appeal. In terms of affordable housing provision, the Inspector concluded that:

“...the proposed redevelopment on the Dylon Works site would provide the reasonable maximum amount of affordable provision to comply with policies seeking to increase the affordable supply in Bromley and London as a whole.”

The Inspector concluded that the benefits of the scheme, including the significant boost to housing supply, did not outweigh the harm that would result from the loss of potential employment land in an accessible location.

The appellant has instituted an appeal to the High Court against the Inspector's decision dismissing the appeal. The appeal is made on 4 grounds as follows:

- an alleged failure to take into account the impact of the decision on housing supply
- an alleged failure to undertake a lawful balancing exercise
- an alleged erroneous application of policy EMP3
- an alleged procedural unfairness and prematurity.

No date has yet been set for the court hearing, although it is likely to be heard in October/ November of this year. The Council has filed its acknowledgement of service, and has stated that it opposes the appeal.

A different planning application has also been received by the Council for this site. This is for the erection of a five storey building comprising 55 residential units; B1 office; A1 retail; A3 cafe/restaurant; and a D1 creche in place of Block A03 of the approved permission ref. 09/01664/FULL1 for the redevelopment of the Dylon site (ref. 14/01752). The proposal involves 1,452m² office floorspace in place of 19 of the residential units proposed within this application. It is anticipated that the application will be referred to a Plans Sub-Committee for a decision in the near future.

At the time of the last planning appeal, planning permission was also being sought for the demolition of the existing buildings and redevelopment to provide a part 5, part 7 storey building with 4,122 sq m of Use Class B1 floorspace on the ground floor with 147 residential units above at the adjacent Maybrey Business Park (ref. 13/01815). The application has been withdrawn.

Planning Considerations

The proposal falls to be considered primarily with regard to the following policies:

Unitary Development Plan

- T1 Transport Demand
- T2 Assessment of Transport Effects
- T3 Parking

T5 Access for People with Restricted Mobility
T6 Pedestrians
T7 Cyclists
T15 Traffic Management
T18 Road Safety
H1 Housing Supply
H2 Affordable Housing
H7 Housing Density and Design
NE7 Development and trees
BE1 Design of New Development
BE2 Mixed Use Development
BE10 Locally Listed Buildings
BE17 High Buildings and the Skyline
NE7 Development and Trees
G6 Land adjoining Green Belt or Metropolitan Open Land
EMP1 Office Development
EMP2 Office Development
EMP3 Office Development
EMP4 Business Areas
S7 Retail and Leisure Development
C2 Community Facilities and Development
C3 Access to buildings for people with disabilities
ER7 Contaminated Land
ER9 Ventilation
IMP1 Planning Obligations

London Plan

2.6 Outer London: Vision and Strategy
2.7 Outer London: Economy
3.3 Increasing Housing Supply
3.4 Optimising Housing Potential
3.5 Quality and Design of Housing Developments
3.6 Children and Young Peoples Play and Informal Recreation Facilities
3.8 Housing Choice
3.9 Mixed and Balanced Communities
3.11 Affordable Housing Targets
3.13 Affordable Housing Thresholds
4.1 Developing London's Economy
4.2 Offices
4.4 Managing Industrial Land and Premises
4.12 Improving Opportunities for All
5.2 Minimising Carbon Dioxide Emissions
5.3 Sustainable Design and Construction
5.6 Decentralised Energy in Development Proposals
5.7 Renewable Energy
5.12 Flood Risk Management
5.13 Sustainable Drainage
6.1 Strategic Approach
6.3 Assessing the Effects of Development on Transport Capacity

- 6.9 Cycling
- 6.10 Walking
- 6.13 Parking
- 7.1 Building London's Neighbourhoods and Communities
- 7.2 An Inclusive Environment
- 7.3 Designing out Crime
- 7.4 Local Character
- 7.5 Public Realm
- 7.6 Architecture
- 7.8 Heritage Assets and Archaeology
- 7.14 Improving Air Quality
- 7.15 Reducing Noise and Enhancing Soundscapes
- 8.2 Planning Obligations
- 8.3 Community Infrastructure Levy.

Policy EMP3 of the UDP states 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.”

The subtext at paragraph 10.17 states that

“The age and configuration of some older office buildings in the Borough may be a barrier to their successful re-occupation. Many modern companies now seek flexible space that can accommodate the needs of various new technologies within the shell of the building. Rather than see these buildings stand empty for extended periods, proposals that advocate a mix of uses will be considered favourably. Appropriate mixed-use proposals will contribute to the vitality and employment opportunities within the Borough's larger town centres, while also contributing to local housing requirements.”

The site lies within a designated Business Area. Policy EMP4 of the Unitary Development Plan states that Business Areas are only suitable for Class B1, B2 and B8 use. The subtext at Paras. 10.18-10.20 of the UDP states, inter alia, that:

The business areas consist largely of land with established light industrial and warehousing uses. The Council wishes to safeguard a supply of such land in the Borough to provide for the growth and development of business and industry. Consequently, proposals in the Business Areas for uses not within Use Classes B1 to B8 will not normally be permitted.

Analysis has shown that the supply of vacant industrial sites and premises in the Borough is diminishing and that most do not generally remain vacant or undeveloped for long. In these circumstances, the extent of the Business Areas shown on the Proposals Map represents a sufficient, though limited, supply of good quality sites for modern business development. '

Policy 4.1 of the London Plan states, inter alia, that 'The Mayor will work with partners to:

- a. promote and enable the continued development of a strong, sustainable and increasingly diverse economy across all parts of London, ensuring the availability of sufficient and suitable workspaces in terms of type, size and cost, supporting infrastructure and suitable environments for larger employers and small and medium sized enterprises, including the voluntary and community sectors
- c. support and promote outer London as an attractive location for national government as well as businesses, giving access to the highly-skilled London workforce, relatively affordable work space and the competitive advantages of the wider London economy.'

The subtext at paragraphs 4.3-4.4 states, inter alia, that:

“Providing the basis for the continued growth and economic development of all parts of London is a key theme of this Plan. The capital has had a history of change and innovation, and this is likely to remain the case for the future. The role of planning is to facilitate that change in ways which ensure that all parts of London and all kinds of enterprises can flourish and contribute to the prosperity of the whole city, and all of its people...

...This Plan aims to ensure that London continues to excel as a world capital for business, while also supporting the success of local economies and neighbourhoods in all parts of the capital (see Chapter Two). Particular emphasis is placed on supporting the greater contribution outer London can make to the capital's economic success (policies 2.6-2.8). The Mayor established a Commission to identify the scope for sustainable growth there. It concluded that outer London could make a stronger contribution to growth of the capital and the wider city region, providing an attractive location for sectors which are currently located in surrounding parts of south-east England.”

Policy 4.2 of the London Plan states, inter alia, that:

'The Mayor will and boroughs and other stakeholders should:

- a. support the management and mixed use development and redevelopment of office provision to improve London's competitiveness and to address the wider objectives of this Plan, including enhancing its varied attractions for businesses of different types and sizes including small and medium sized enterprises
- b. recognise and address strategic as well as local differences in implementing this policy to:
 - consolidate and extend the strengths of the diverse office markets elsewhere in the capital by promoting their competitive advantages, focusing

new development on viable locations with good public transport, enhancing the business environment including through mixed use redevelopment, and supporting managed conversion of surplus capacity to more viable, complementary uses

- c. encourage renewal and modernisation of the existing office stock in viable locations to improve its quality and flexibility.'

The subtext at paragraph 4.10-4.13 states, inter alia, that:

“In recent decades London's economy has been increasingly service-based, and this is likely to continue. As a result, ensuring there is enough office space of the right kind in the right places is a key task for the London planning system.

Local plans and strategies should support the conversion of surplus offices to other uses and promote mixed use development in the light of integrated strategic and local studies of office demand. Informed by the independent London Office Review Panel a 'plan, monitor and manage' approach will be used to reconcile office demand and supply across the development cycles likely to be encountered over the years to 2031. This may well provide scope for changes from surplus office to other uses, especially housing, providing overall capacity is sustained to meet London's long-term office needs. The scope for re-use of otherwise surplus large office space for smaller units suitable for small and medium enterprises should also be considered.”

London Plan Policy 4.4 is concerned with the management of industrial land and states that a rigorous approach should be taken in the management of land to ensure there is sufficient stock of both land and premises to ensure the future needs of different types of industrial and related uses is met in different parts of London. The release of surplus industrial land will only be allowed where this is compatible with these requirements and where such a release contributes to local planning objectives such as housing, social infrastructure or town centre renewal. Bromley is ranked as being restricted in terms of the transfer of industrial land to other uses due to having low levels of industrial land relative to demand. Boroughs within this category are encouraged to have a more resilient approach to such changes of use.

Paragraph 22 of the National Planning Policy Framework states 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. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.’

Since the appeal decision consultation on the Draft Policies and Designations stage of the Local Plan has taken place. This included taking forward the Business Areas, with the Lower Sydenham area boundary, as within the UDP, as Locally Significant Industrial Sites. B1 , B2 and B8 are permitted uses. 'Industrial' is used to refer to all these uses. Further work is being undertaken to assess changes in employment land, in particular, non - designated land to evidence the significant loss, and the ongoing impact of the PD rights for change of use from B1 a) to C3. This work is expected to be reported to Members in September and to reinforce the importance of the existing 'business areas' to accommodate the forecast growth in employment.

The London Borough of Bromley Retail, Office, Industry and Leisure Study (March 2012) prepared by DTZ identifies a significant requirement for office space (121,000m²) driven by business services and financial services.

The London Borough of Bromley Economic Development and Employment Land Study (January 2010) states that 'the employment data suggest that there will be a need in the longer term for additional office floorspace'.

The Borough's five year supply of deliverable housing was the subject of a report to Development Control Committee in June 2013. The report concluded that Bromley is able to meet its five year supply target of 2594 units (including the 5% buffer) given that there are over 2700 deliverable units in the pipeline. The 149 units permitted on the application site under planning permission ref. 09/01664 were included within this five year supply. An updated report on the Borough's five year supply of deliverable housing is due to be referred to Members late summer 2014.

The application is accompanied by a Section 106 Unilateral Undertaking which will secure the following healthcare and education infrastructure contributions to accord with the Council's Planning Obligations SPD:

Education

Pre-School:	£17,830.42
Primary:	£72,908.56
Secondary:	£66,813.45
Further Education:	£37,565.06
Total:	£195,117.49

Health

Total:	£76,970.00
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Education and Healthcare Total £272,087.49

The Applicant has also stated that its planning obligation will secure a financial contribution of £346,736 in lieu of on-site employment floorspace. The application

states that the Council may apply the monies to towards 'the improvement of employment land supply and/or initiatives to promote employment opportunities, including the provision of funding and/or subsidisation of employment opportunities, job creation, employment training and/or apprenticeship schemes and/or other employment initiatives and/or employment development.'

As regards affordable housing, a viability appraisal of the development approved under planning permission ref. 09/01664 was undertaken prior to the commencement of the development and it was determined that the scheme could not support the provision of any affordable housing on site. This was confirmed at arbitration and it was agreed that the appellant would make a financial contribution in the sum of £80,000 to the Council towards affordable housing provision elsewhere in the borough. This was secured by the Deed of Discharge dated 4th July 2010.

The current application is accompanied by the same Financial Viability Assessment that was considered by the Inspector during the appeal in February 2014 against the Council's non-determination of application ref. 13/01973. The Inspector concluded that the £80,000 payment in lieu of on-site affordable housing was the maximum that could reasonably be supported by the scheme. Officers have received external expert advice from consultants that little will have changed in viability terms since the inspector's decision and it can therefore be considered that the same conclusion applies that the scheme is acceptable in terms of affordable housing policy.

Conclusions

Apart from the introduction of balconies to the rear elevation of Block A03 facing into the site, the appearance of the building remains otherwise unchanged from the approved scheme. The revised scheme can therefore be considered acceptable in terms of its impact on character and there will be no unduly harmful impacts on the residential amenities of the occupants of nearby residential dwellings. The acceptability of an £80,000 financial contribution in lieu of on-site affordable housing has been established through the recent appeal.

The main issue to be considered in this case is the acceptability of 74 residential units in place of the previously approved office floorspace. The Inspector's decision relating to the previous duplicate application (ref. 13/01973) is a significant material consideration in assessing the current proposal and Members should consider the extent to which the Council's position is consistent with the views of the appeal Inspector.

The Inspector considered that the previous application conflicted with Policy EMP3 of the UDP which resists the conversion or redevelopment of offices for other uses except where it is demonstrated that there is no local shortage of office floorspace and there is evidence of long term vacancy despite marketing of the premises, and where there is no likely loss of employment resulting from the proposal. The Inspector took the view that Policy EMP3 is applicable given the expectation of office accommodation on the site as a result of the 2010 appeal decision and that the wording of the policy does not restrict its application to the Borough's older

stock of offices only. The appellant has implemented the 2010 decision for a residential led mixed use scheme including 6,884 sq m office floorspace and this is therefore the existing, permitted use of the site. Policy EMP3 is therefore relevant to the consideration of the appeal scheme.

The site lies within the Lower Sydenham Business Area, to which Policy EMP4 applies. The policy applies to a range of Class B uses and seeks to resist loss of land within allocated Business Areas to non-Class B uses such as is proposed here. However, the Inspector has taken the view that Policy EMP4 is inconsistent with the NPPF insofar as the policy fails to reflect the sequential testing of main town centre uses, in this case offices. She further stated that the policy does not provide the flexibility advocated in paragraph 22 of the NPPF, and took the view that Policy EMP4 does not command the weight accorded to a Development Plan policy. Whilst the site remains designated as a business area, she concluded that the planning history suggests that the site is unlikely to revert to an industrial use. Paragraph 22 of the NPPF provides a separate test that can be considered alongside the requirements of Policy EMP4. Paragraph 24 of the NPPF states that 'local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan'. It is considered that the requirement for a sequential test is not relevant to the appeal scheme as there is an existing planning permission for a 'town centre' office use on the site. It is therefore considered that Policy EMP4 remains relevant to the consideration of the current proposal and the appeal should be contested on this basis.

The retention of the employment opportunity provided by the permitted office use is supported by London Plan Policy 4.1 which provides a strategic commitment to 'support and promote outer London as an attractive location for national government as well as businesses, giving access to the highly skilled London workforce, relatively affordable work space and the competitive advantages of the wider London economy'. It is considered that the proposed development conflicts with Policy 4.1 and this is consistent with the view of the appeal Inspector.

Policy 4.2 promotes the development of the London office market by focussing development on viable locations with good public transport links. It is considered that the loss of offices will be contrary to Policy 4.2 and this is in line with the views of the appeal Inspector.

Policy 4.4 of the London Plan is concerned with managing industrial land and premises. The appeal Inspector considered that the relevance of this policy was questionable on the basis that the planning permission for the housing led mixed use scheme had been implemented and the former industrial use was lost. The appeal site remains designated as a business area suitable for Class B1, B2 and B8 use and permission has been granted for a scheme including 6,884 sq m Class B1 floorspace. It is therefore considered that Policy 4.4 remains relevant but does not represent grounds upon which to contest the appeal.

It is intended that the appeal site will be designated as a Locally Significant Industrial Site in the emerging local plan and it is currently intended that this designation be revised to cover employment uses more generally. It is considered

that limited weight should be attached to the emerging plan but the direction of travel indicates that the site will continue to be protected for employment uses and the decision should be made in accordance with the development plan.

The Council's evidence within the London Borough of Bromley Economic Development and Employment Land Study (January 2010) and the London Borough of Bromley Retail, Office, Industry and Leisure Study (March 2012) was considered pertinent by the Inspector and remains relevant to the consideration of this appeal.

The London Office Policy Review (2012) highlights challenges facing the office market in outer London locations. The Inspector stated that it is the role of the Council through its Local Plan process to address these structural changes in the office market. Loss of employment land on a piecemeal basis in advance of that process would be premature. Members are therefore advised to rely on the Council's own evidence at this stage.

The Inspector's report and decision is a significant material consideration in terms of assessing the current proposal. As the Inspector said, there is cause for optimism for the future of the appeal site as an employment opportunity in the long term and the loss of this valuable employment resource at this stage should be resisted. This proposal does not satisfy the provisions of paragraph 22 of the NPPF, which seeks to avoid the retention of sites for employment use where there is no reasonable prospect of a site being used for the allocated use.

The appellant has offered £346,736 in lieu of on-site employment floorspace to be secured through a Section 106 Unilateral Undertaking. It is considered that this sum goes some way to addressing the loss of employment that will result from the proposal but is insufficient to address the grounds upon which the appeal was dismissed. There is a limited supply of business areas in the borough and, in principle, employment land should be retained on a site, as it cannot be easily replaced elsewhere.

Notwithstanding that the Inspector's decision is the subject of a high court challenge, Members are recommended to resolve to contest the appeal on grounds that the proposal would result in the loss of an employment opportunity and would be contrary to Policies EMP3 and EMP4 of the Unitary Development Plan and Policies 4.1 and 4.2 of the London Plan.

The appellant has laid stress on the planning benefit that the provision of further housing in London and the Borough will represent. It has also been argued in the high court challenge that this application should be approved or none of the housing in the rest of the scheme will come forward to contribute to the housing supply. This argument has been made notwithstanding the fact that a further application has also been made by the applicant for a further scheme which still provides some employment land (and will be the subject of a further determination in due course). This consideration should therefore carry little weight in the overall planning balance, and it is not of sufficient weight to indicate that the appeal should not be determined in accordance with the development plan.

RECOMMENDATION: RESOLVE TO CONTEST APPEAL

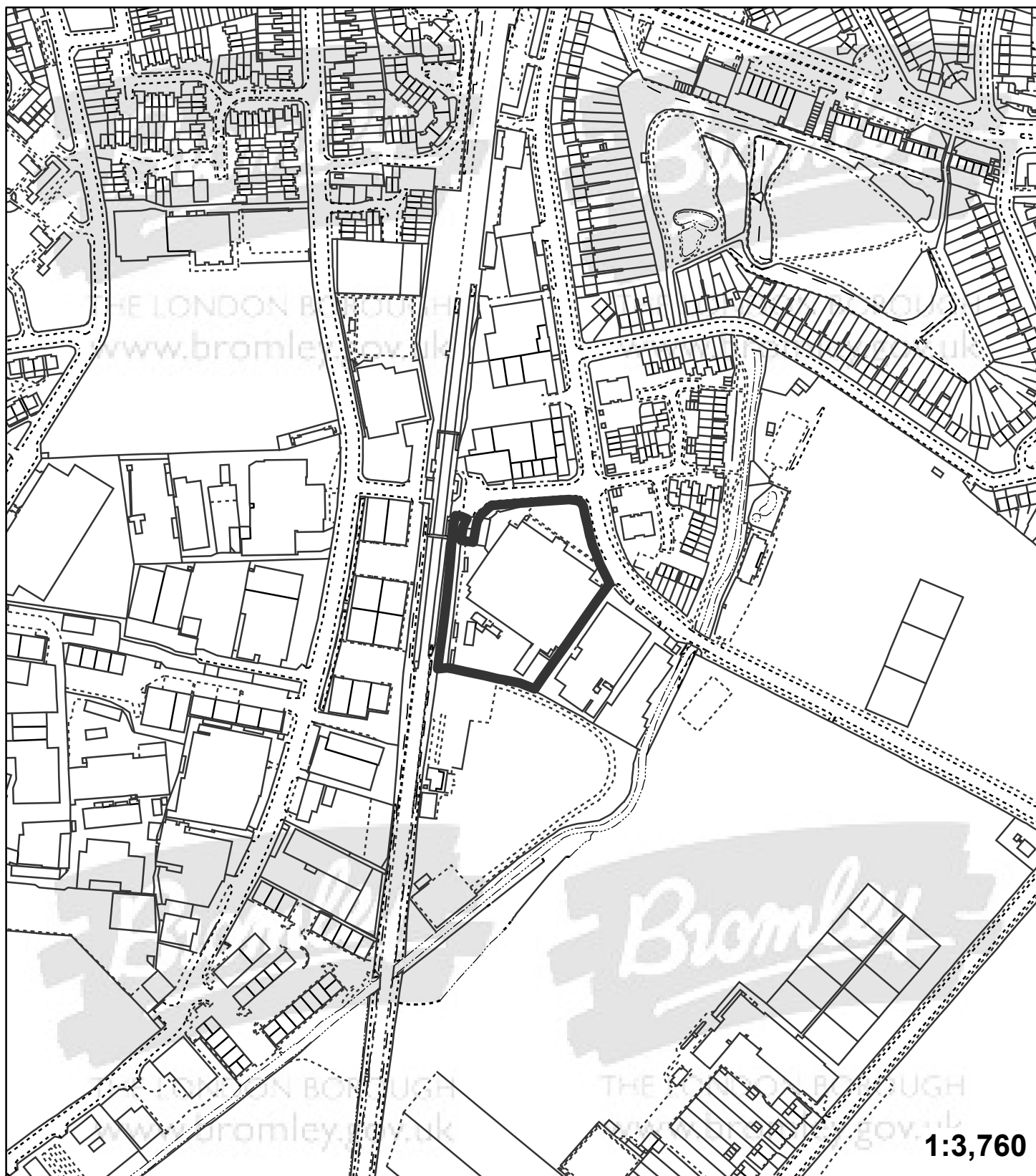
Grounds for contesting the Appeal are as follows:

- 1 The proposal has not satisfied the tests in National Planning Policy Framework para. 22 and would therefore result in the loss of a valuable employment opportunity and the long term protection of the site should continue. The proposal is contrary to the Borough's employment strategy and Policies EMP3 and EMP4 of the Unitary Development Plan and Policies 4.1 and 4.2 of the London Plan.

Application:13/03467/FULL1

Address: Dylon International Ltd Worsley Bridge Road London SE26 5BE

Proposal: Erection of five storey building comprising 74 residential units; A1 retail; A3 cafe/ restaurant and a D1 creche in place of Block A03 forming part of the approved planning permission 09/01664 for the redevelopment of the Dylon site



"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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