

**Decision Maker:** Development Control Committee

**Date:** 25 November 2014

**Decision Type:** Urgent Non-Executive Non-Key

**Title:** **APPEALS BY RELTA LTD AGAINST THE COUNCIL'S  
DECISION TO REFUSE PLANNING PERMISSION/NON  
DETERMINATION FOR DEVELOPMENT AT DYLOM  
INTERNATIONAL LTD WORSLEY BRIDGE ROAD LONDON  
SE26 5BE**

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**Chief Officer:** Jim Kehoe

**Ward:** Copers Cope

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1. Reason for report

This report focusses on two specific cases:-

- Application DC/13/01973, which was dismissed on appeal in an Inspector's decision dated 18<sup>th</sup> March 2014. A copy of the appeal is attached at Appendix A.
- Application 13/03467, which was considered by the Committee on 9<sup>th</sup> July 2014 and where it was decided to contest an appeal made on 3<sup>rd</sup> June 2014 against non-determination. A copy of the Minutes is attached at Appendix B.

There are now two 'live' appeals that will be the subject of a Public Inquiry in January 2015. There are no planning applications before the Council on the site at this time.

The general planning merits were addressed in previous reports on the above cases.

The reason for this report is to update Members on the following matters:

- a) The quashing of the 18<sup>th</sup> March 2014 Inspector's decision by a Consent Order following a High Court challenge;
- b) An offer made by the appellant dated 15<sup>th</sup> October following the outcome of the High Court challenge.

The full implications of the above on the Council's case at appeal including Legal advice are dealt with in Part 2 of the agenda.

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## **2. RECOMMENDATION(S)**

**Members are asked to consider the outcome of the High Court Challenge and the details of the subsequent offer made by the appellant in relation to the two appeals to be heard by the Planning Inspectorate in January 2015.**

### Corporate Policy

1. Policy Status: Not Applicable Existing Policy New Policy: Further Details
  2. BBB Priority: Children and Young People Excellent Council Quality Environment Safer Bromley Supporting Independence Vibrant, Thriving Town Centres Not Applicable: Further Details
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### Financial

1. Cost of proposal: Estimated Cost No Cost Not Applicable: Further Details
  2. Ongoing costs: Recurring Cost Non-Recurring Cost Not Applicable: Further Details
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding:
- 

### Staff

1. Number of staff (current and additional):
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance None: Further Details
  2. Call-in: Not Applicable Applicable:
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes No Not Applicable
2. Summary of Ward Councillors comments:

### **3. COMMENTARY**

**Application Nos:** 13/01973 and 13/03467

**Ward:** Copers Cope

**Address:** Dylon International Ltd Worsely Bridge Road  
London SE26 5BE

**OS Grid Ref:** E: 536890 N: 171285

**Applicant:** Relta Ltd

**Description of Development:**

Erection of a five storey building comprising 74 residential units; A1 retail; A3 café/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.

**Key designations:**

- Biggin Hill Safeguarding Birds
- Biggin Hill Safeguarding Area
- London City Airport Safeguarding
- London City Airport Safeguarding Birds
- Local Distributor Roads

## BACKGROUND

The Dylon site has a lengthy and complex planning history and the table below is intended as an aide-memoire to assist Members as to the current position regarding the various applications:

TABLE ONE- Planning History					
COMPARISON OF PROPOSALS					
Proposal	09/01664 Appeal Allowed & Development Commenced	09/01664 Appeal Allowed & Development Commenced	13/01973 Appeal Dismissed 18/03/2014 Appeal Quashed 25/09/2014 to be redetermined on 13/1/2015 alongside 13/03467	13/03467 Inquiry Scheduled 13/1/2015 to be heard alongside 13/01973	14/01752 Application Refused 4/9/2014
Whole or Part site	Total (All Buildings)	Building A03 only	Building A03 only	Building A03 only	Building A03 only
Residential Units	149	0	74	74	55
B1 office Floorspace	6,884m <sup>2</sup>	6,884m <sup>2</sup>	0	0	1,468m <sup>2</sup>
A1 Retail	449m <sup>2</sup>	449m <sup>2</sup>	249m <sup>2</sup>	249m <sup>2</sup>	249m <sup>2</sup>
A3 Café	135m <sup>2</sup>	135m <sup>2</sup>	113m <sup>2</sup>	113m <sup>2</sup>	113m <sup>2</sup>
D1 Creche	437m <sup>2</sup>	437m <sup>2</sup>	624m <sup>2</sup>	624m <sup>2</sup>	624m <sup>2</sup>
Affordable Housing (in kind)	£80,000	£80,000 (overall Scheme)	£80,000 (overall Scheme)	£80,000 (overall Scheme)	£80,000 (overall Scheme)
Financial Contributions	Highways Improvements	Highways Improvements	£272,087.49 Education & Healthcare Infrastructure	£272,087.49 Education & Healthcare Infrastructure and £346,736 in-lieu of on-site employment floorspace	

### The Quashing of the 18<sup>th</sup> March 2014 Inspector's decision

On 25th April 2014 the appellant judicially challenged the Inspector's decision of 18<sup>th</sup> March 2014 on 4 grounds:

1. An alleged failure to take into account the impact of the decision on housing supply
2. An alleged failure to undertake a lawful balancing exercise
3. An alleged erroneous application of Policy EMP3

#### 4. Alleged procedural unfairness and prematurity

The Council filed its acknowledgement of service as an interested party and stated that it opposed the appeal.

By Consent Order dated 25<sup>th</sup> September 2014 the Treasury Solicitor consented to judgement being entered against the Secretary of State with regard to the third ground. As the Secretary of State was not prepared to defend his Inspector's decision, the Council was not in a position to oppose the Consent Order.

The appeal decision dismissing the application (13/01973) was duly quashed and is scheduled for rehearing and redetermination by the Planning Inspectorate on 13<sup>th</sup> January 2015 alongside the current appeal under 13/03467.

#### Appellants Offer of 15 October 2013

Following the outcome of the High Court case quashing the appeal decision on the duplicate application the appellant put forward the following offer addressed to the Chief Planner for Members consideration, which is repeated below:

*“As we have shown, the development remains fundamentally unviable even with 100% market housing. The viability analysis speaks for itself and was accepted by the inspector, Ms Ava Woods. Your published reports of 9 July and 4 September plus the missing one all confirm that the council has obtained external advice and that this remains the case.*

*This said, I would much rather spend the cost of an unnecessary inquiry on an early negotiated solution which you can recommend to your Members than waste it on an unnecessary inquiry. ;*

*I would therefore like to propose for your consideration a solution which brings an end a decade of industrial dereliction and replaces it with very real benefits for the Council; a solution which creates local jobs and benefits the residents of lower Sydenham, and provides a much needed enhancement the local landscape, a degraded townscape, and uplifts the character of an area which is desperately in need of regeneration. .*

*The redetermination of the quashed decision on an agreed basis is the obvious mechanism for achieving this..*

*In the interests of saving time and costs on both sides and also the time and costs of the Planning Inspectorate, we wish to make the London Borough of Bromley an offer as follows ;*

*1. The London Borough of Bromley DO NOT contest the appeal of application App no: 13/03467/FULL1 Appeal Ref. 2219910 – 74 units Dylon.*

2. *Relta Ltd will undertake to pay contributions to LB Bromley through a Section 106 agreement;*

*Education £195,117.49*

*Healthcare £ 76,970.00*

*Employment £346,736.00*

***Total           £ 618,823.49***

3. *Relta Ltd will undertake to pay the appropriate Mayoral CIL.*

*The 7 objectives (which hopefully coincide with your own) are quite simply:*

1       *Avoiding a costly time consuming and unnecessary contested appeal or redetermination (with an inevitable claim for costs on our side in either such case) .*

2       *Making a start on the provision of much needed housing in an area in desperate need of regeneration.*

3       *A significant contribution to the five year housing supply and to the minimum annual provision for the area plus health and education contributions.*

4       *Remediating and bringing derelict, empty and unused brownfield land back into beneficial use with leading edge architecture the quality of which has been noted by successive inspectors*

5       *Providing inward investment and a major enhancement to the character and appearance of this part of Lower Sydenham.*

6       *A transformational prestige project in a run down and neglected area.*

7       *Making a difference.*

*The housing imperative for London has never been stronger.*

*The Mayor's Housing strategy has been published. The Further Alterations to the London plan are further forward than they were at the last inquiry.*

*Both these documents provide added impetus for this type of transformational housing led project; there is a need not only to meet but to exceed the increased housing requirements. The Mayor and deputy mayor for London are both on record to this effect.*

*Meanwhile that there has been no market interest at all in the consented offices despite a further eight months marketing since the February inquiry.*

*Despite intensive and continued marketing of the consented offices since 2010 (including a further 8 Months since the February inquiry) there has been no market interest. There has now been four years plus marketing – the thoroughness and intensity of which has been remarked upon by your own external advisors.*

*By comparison the Hayes Court application where the Council concluded that NPPF para 22 applied and that 24 months unsuccessful marketing on a site of some 45,000 sq. ft. of existing B1 office space was sufficient.*

*It should be noted that the Hayes Court decision was the very next agenda item to RELTA's – no mention of London Plan Policy 4.1 and 4.2 appeared at any stage in that report the Council accepted that the marketing of the site for 2 years was adequate, that there was no commercial interest in the site and the Paragraph 22 of the NPPF applied.*

*Part J permitted development for B1 Office to C3 Residential is now proposed to be extended – thus signalling the Government's priorities in meeting housing needs.*

*As regards the suggested reasons for refusal*

*1 EMP3 has been soundly despatched by the Secretary of State's submission to judgement and is not a sustainable as a ground of refusal*

*2 EMP4 was dismissed as a ground of refusal by Ava Woods – it was in any event clearly targeted at industrial development and the previous chapter in the planning history has as Ms Woods observed been brought to an end by the making of a material start on the 2010 consent. It also precludes office development over 2,000 sq metres which is to be focused in the town centres of Bromley Orpington Penge and Beckenham.*

*3 Policies 4.1 and 4.2 of the London Plan are essentially permissive policies – i.e. they encourage commercial development and mixed use rather than prevent much needed housing development. The current proposals in any event involve mixed commercial uses on the ground floors.*

*No references whatever were made to policies 4.1 and 4.2 of the London Plan as reasons for refusing the Glaxo development.*

*The Glaxo development contained nearly half a million square feet of existing usable B1 floorspace.*

*Whilst the Glaxo development was referable to the GLA at no stage did the GLA object to the Glaxo scheme on this basis. The GLA planning officers' supported of the redevelopment of the Glaxo site for housing. Policies 4.1 and 4.2 of the London Plan did not feature in the GLA report on the application. Nor did Policies 4.1 and 4.2 feature at all in the recent Council decision to redevelop nearly 45,000 sq feet of office development at Hayes Court.*



*Policy 4.2 in any event is only applicable to:*

*viable sites (all parties accept that the Dylon site is not viable)*

*sites with good public transport links – the Dylon site has a PTAL rating of 2.*

*The Dylon site does fit within any of the examples identified in the supporting text.*

*4 Paragraph 22 of the NPPF applies and, as a result, permission for the 74 unit scheme should be granted – a further 7 months of abortive marketing has elapsed since the inquiry without receipt of any interest of any kind in relation to the office element. In short there is no realistic prospect of this type of office development in this sort of location ever becoming viable. Any idea that would ever become so could only be based on a mixture of ignorance and wishful thinking.*

*It should be noted, finally that the consented office element of the 2010 Dylon consent (which would be replaced under the current scheme by housing) is contrary to Policies EMP1 EMP4 and T1. As such the very policy (EMP4) on which the Council continue to rely actually opposes large new office development schemes of over 2,000 sq. metres in a peripheral locations such as lower Sydenham.*

#### *4.3. Office Development Policy EMP1*

*Proposals for large new office development (more than 2,000 sqm) are to be located on defined proposals sites or within Bromley, Orpington, Penge and Beckenham town centres. Outside these locations, large new office development will be permitted only on sites that are highly accessible by public transport and by other modes of transport.*

*The consented scheme is more than 3 time this size.*

*The site is not highly accessible; it has a PTAL score of 2. The Policy conflict with Policy EMP4/EMP1 and T1 was highlighted by the 2010 inspector. There is surprisingly no reference to this in either your July or September reports*

*Hopefully, the Secretary of State's submission to judgement provides an opportunity for all of us to regroup, reconsider and realise a much needed regeneration project in an area where inward investment of any kind is long overdue.*

*We remain committed to a negotiated solution if possible, practicable and achievable and there are no preconditions of any kind to a further dialogue on the above should you wish to take up, clarify, discuss or report further on the above offer.”*

The appellant has subsequently submitted the following main terms for the S106 obligation/agreement:-

<b>1 The Education Contribution being £195,117.49</b>
<b>2 Employment Contribution being £346,736</b>
<b>3 Healthcare Contribution being £ 76,970</b>
<b>4 Affordable Housing Contribution of £80,000</b>
<b>5 Contribution to the Council's reasonable costs of making traffic management orders</b>

The appellant has also written to advise that if the Council agree to the terms of their latest offer on 25<sup>th</sup> November, each party bears its own costs.

The full implications of the above on the Council's case at appeal, including Legal advice, are dealt with at Part 2 of the agenda.

**4. POLICY IMPLICATIONS**

None from this report

**5. FINANCIAL IMPLICATIONS**

Not directly from this report

**6. LEGAL IMPLICATIONS**

Not directly from this report

**7. PERSONNEL IMPLICATIONS**

Not directly from this report

<b>Non-Applicable Sections:</b>	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	As appended