

## Appeal Decision

Inquiry held on 4, 5, 6 and 7 February 2014

Site visit made on 5 February 2014

**by Ava Wood Dip Arch MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 March 2014**

**Appeal Ref: APP/G5180/A/13/2206836**

**Dylon International Ltd., Worsley Bridge Road, Bromley SE26 5HD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Relta Ltd. against the Council of the London Borough of Bromley.
- The application Ref: DC/13/01973/FULL1 is dated 5 July 2013.
- The development proposed is erection of five storey building comprising 74 residential units; A1 retail, A3 café/restaurant; and D1 crèche on the site of building A03 in place of approved building forming part of implemented planning permission (DC/09/01664/FULL1) of 15 April 2010 for the redevelopment of former Dylon site.

### Decision

1. The appeal is dismissed and planning permission is refused for erection of five storey building comprising 74 residential units; A1 retail, A3 café/restaurant; and D1 crèche on the site of building A03 in place of approved building forming part of implemented planning permission (DC/09/01664/FULL1) of 15 April 2010 for the redevelopment of former Dylon site.

### Preliminary Matter

2. The Statement of Common Ground (dated 16 December 2013) records that the Council resolved to contest the appeal (I summarise) on the basis of loss of employment land, and inadequate evidence that the development is unable to support affordable housing provision or provide contributions towards healthcare or education.
3. A completed unilateral undertaking submitted at the Inquiry includes contributions towards healthcare and education and overcomes the Council's objections relating to those aspects. The remaining objections form the basis of the main issues identified below.
4. The main parties confirmed (by email dated 11 March and 12 March 2014) that no further comments were necessary in the light of the Planning Practice Guidance, which was published after the Inquiry closed.

### Main Issues

5. These are:

- The effect the proposal would have on the Borough's employment land supply and the prospect of the appeal site delivering office accommodation.
- The ability of the proposal to support affordable housing.
- Whether other material considerations would override the harm caused by one or both of the issues above.

## **Reasons**

### ***Employment Issue***

6. The development plan policies of relevance to this issue are contained in the Business and Regeneration chapter of the 2006 adopted Bromley Unitary Development Plan (UDP) and Chapter 4 (Economy) of the July 2011 London Plan.
7. 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.
8. The Council finds support in Policy 4.4 of the London Plan which is concerned with managing industrial land and premises. When the Dylon Works were operational, the appeal site would have contributed to the industrial land supply of the Borough. However, the land and building have not been used for industrial purposes for some years. Permission was granted in April 2010 for the site to be redeveloped with a housing-led, mixed use scheme which includes 6,884 sq m of B1 office accommodation. The permission has been implemented; the former industrial use is lost and the site is unlikely to revert to such a use. For that reason, the relevance of Policy 4.4 is questionable.
9. The Council also relies on UDP Policy EMP4. 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. The appeal site lies within the Lower Sydenham Business Area. I agree with the proposition that there is an element of inconsistency with the National Planning Policy Framework (NPPF) insofar as the policy fails to reflect the sequential testing of main town centre uses - in this case Class B1 offices. Furthermore, the policy does not provide the flexibility advocated in paragraph 22 of the NPPF. For reasons of inconsistency with the NPPF, UDP Policy EMP4 does not command the weight accorded to a development plan policy.
10. 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.

11. 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.
12. 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.
13. 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.
14. 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 m<sup>1</sup>. 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.
15. 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.

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<sup>1</sup> The lower figure (Table 32) reflects the falling demand for industrial and warehousing floorspace which is set against the increased figure for office floorspace.

16. 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<sup>2</sup>. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

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<sup>2</sup> Scenario 1 in GVA Grimley's report

22. 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?
23. 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.
24. 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.
25. 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.
26. 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).
27. 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.

28. 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.

### ***Affordable Housing Issue***

29. The ability of the appeal site to deliver affordable homes is considered against the background of the London Plan Policy 3.12 and the UDP Policy H2. The former encourages negotiations to achieve the reasonable maximum provision of affordable homes. The policy additionally urges the need to have regard to encouraging rather than restraining residential development. The NPPF is equally concerned with boosting significantly the supply of housing and advises the use of policies that take account of changing market conditions over time. The UDP Policy sets a target of 35% affordable homes on qualifying sites, but also provides flexibility on the basis of the affordability of a scheme.
30. The economics of providing affordable homes on the appeal site were considered by testing a variety of scenarios over the whole Dylon site: a scheme with 100% market housing; scheme with 203 market dwellings and 20 Private Rented Sector Initiative (PRSI) Units and a scheme that includes PRSIs and 20% affordable units across the whole site. The Council's evidence shows a viable development can be achieved on each of the 3 scenarios<sup>3</sup>, using an agreed Existing Use Value benchmark. The appellant's appraisals by contrast demonstrate significant deficits, even on the 100% market housing scenario. The substantive differences derive from disparities in two key variables. These are: revenues likely to be achieved for the housing elements of the development and costs (including professional costs).

### Costs

31. The scheme on the Dylon Works site was designed by a well-acclaimed architect and recognised for the quality of its architecture by my colleague in 2010. The Council's assumptions about potential cost savings by virtue of a re-design is not the approach to be recommended in these circumstances.
32. The appellant's construction costs were reviewed by consultants<sup>4</sup> appointed by the Council. Following a detailed analysis they confirmed the following: the rate per sq m was not unreasonable, if towards the upper end of their benchmark; mechanical and electrical costs were low; savings in the order of £1.8m could be achieved within the building fabric and that overheads and profits were high. They questioned the size of the basement and identified opportunities for savings. On the whole, however, the independent analysis does not seriously undermine the appellant's constructions costs.
33. The professional fees of 10% added to abnormal costs are necessary, given that such costs are likely to attract fees at least at the rate of professional fees charged elsewhere. It is not an unreasonable approach to adopt.

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<sup>3</sup> The Council agreed that anything more than 20% affordable housing would render the scheme uneconomic to develop

<sup>4</sup> Franklin and Andrews

34. Other disparities in costs flow from the differences between the parties on capital values. The s106 and Mayoral CIL costs are agreed and so is the £80,000 off-site contribution for affordable homes.
35. The independent analysis confirms that the appellant's estimated costs are reasonable for the quality of the development proposed. There is no reason for me to take an alternative view.

#### Values

36. The Council's viability witness assumed a value of £350 per sq ft for market housing, £280 per sq ft for the PRSI units and £200 per sq ft for the affordable units. The appellant's corresponding figures are £316.54, 231.54 and £169. The £350 per sq ft is based on nearest comparables (although it was generally agreed that these were few and far between). It also reflects the way the market in Outer London is achieving high values and the quality of the building to be erected. The service charge (at £3,017 per flat) estimated in the appellant's evidence is an unusually high figure. A point confirmed in the January 2014 market report prepared on behalf of the appellant which records that the "*...suggested maintenance/service charge ...are considerably higher than any development in the surrounding areas of Beckenham and Bromley.*"
37. While there may be scope to reduce the service charge to a figure more appropriate to the location and with a review of the services offered, not much can be done to reduce the size of individual units of accommodation without risking altering the design of the building. The parties agreed that higher service costs and larger sized accommodation attract lower values per sq ft.
38. The limited number of actual sales at Cowdrey Mews and Montana Gardens relied on by the Council do not provide a realistic basis on which to make assumptions about sales values. Estimated values presented for the proposed redevelopment on the adjacent site (the Maybrey site) have fluctuated significantly over time and cannot be relied on.
39. The appellant's January 2014 market report possibly provides the most up to date comparisons based on a wider sample of properties. On balance, therefore, I am inclined to side with the appellant's evidence on private sales values but recognising that the increase in values in London generally and lower service costs could improve the situation.
40. There are no precedents or formal guidance for establishing values for the PRSI units. It is difficult to come to conclusions about the merits of the witnesses' respective methodology for calculating PRSI values. The 4% difference between the respective affordable housing values (as a percentage of the open market value) does not critically affect the respective assumptions of total values.
41. Notwithstanding my view that the appellant's values on costs and revenue are to be preferred, even on the Council's analysis the 20% affordable units scenario results in a nil surplus or deficit. With such narrow margins the risks are high, as the smallest of variations could lead to a non-viable development.
42. That position was established as recently as 2012 when, in advance of an arbitration to determine benchmark land values, the appellant agreed to contribute a commuted sum of £80,000 for off-site payment towards affordable housing in the Borough. With that offer still in place, and in the light of the

appellant's conclusions on the viability of developing with 20% affordable housing, it follows 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.

***Other Material Considerations***

43. The appellant's case draws on the pressing need for additional housing in London. That the Borough is currently able to point to a 5 year supply of housing does not remove the obligation to commit to additional homes, given the shortage identified in the London Plan and no limits on maxima. The proposed increase in the FALP is a further indication of the escalation required to meet current significant shortfalls.
44. The increase in number of housing units on the Dylon Works site would help meet an urgent London-wide need with an acceptable mix of units. The PRSIs (secured through the unilateral undertaking) would widen choice of tenure, in line with up to date guidance. Development of this neglected and derelict site with buildings of the high architectural quality intended is an additional consideration to weigh into the overall balance.
45. The site already benefits from a permission that will bring forward a substantial number of additional homes on land that is currently delivering none. The proposal before me would add a further 74. But it would also lead to the loss of valuable employment floorspace and risks undermining the Council's employment strategy. While significantly boosting housing supply is strongly urged in the London Plan and the NPPF, that objective is not intended to occur at the expense of other equally important considerations, such as provision of sufficient and diverse employment land to meet a likely growing demand. On balance, therefore, loss of potential employment land in this accessible location weighs against the scheme before me, even in the face of the benefits described.

***Conclusions***

46. It is suggested that development of the site with the office accommodation would not proceed, because it would be uneconomic to do so. Viability of developing the site with 100% market housing is also questionable, but the developer is willing to proceed with a housing scheme partly because of the certainty of an end occupier. The commercial elements of the permitted scheme may not attract the same level of certainty under current market conditions. However, the evidence points to signs of recovery in the office market and the attraction of completed high quality offices in this location remains to be tested. The uncertainty may not provide optimum conditions for a speculative development, but the long term requirements of the Borough and the employment objectives of the development plan take precedence in this case.
47. Objections to the scheme were articulated by third parties at the Inquiry. However, development of the Dylon Works site for a residential-led mixed use scheme was established in 2010. Although the appeal scheme would increase the housing density on the site, the additional dwellings would be provided with on-site parking spaces at levels agreed with the highways authority. Furthermore, contributions towards education and healthcare (secured through



the unilateral undertaking) would mitigate the pressure on local services as a result of the additional dwellings.

48. The proposal falls short of meeting the development plan employment policies and aims. Loss of the office floorspace would also render it unsustainable in economic and social terms and cause the scheme to fail against the NPPF presumption in favour of sustainable developments. The benefits (including the local employment charter in the unilateral undertaking) and matters I find in favour of the scheme do not override the harm identified.
49. As I am dismissing the appeal on other grounds, it is not necessary for me to consider the acceptability of the provisions of the two submitted unilateral undertakings against the CIL Regulation tests. No other matters raised are sufficient to alter the balance of my considerations or my decision to dismiss the appeal.

*Ava Wood*  
Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr William Upton of counsel	Instructed by Director of Legal Services
He called:	
Mr Simon Greenwood	Major Developments Team, LBB
BSc(Hons) MA MRTPI	
Miss Mary Manuel	Head of Planning Strategy, LBB
BA(Hons) MSC	
Mr Simon Tuddenham	Associate Director, Colliers International
BA(Hons) MSc MRICS	

### FOR THE APPELLANT:

Mr Russell Harris QC	Instructed by West and Partners
He called:	
Mr Terence Holmes MSc	Director, P2M UK Ltd.
FRICS	
Mr John Stephenson	Senior Director, Grant Mills Wood
FRICS MCIARB	
Mr John Turner MRICS	Turner Morum Chartered Surveyors
Mr Christopher Francis	Partner, West and Partners

### INTERESTED PERSONS:

Councillor Russell Mellor	Local councillor
Mr David Wood	President, Beckenham Society and local resident

## DOCUMENTS

1	Opening submissions on behalf of the appellant
2A, 2B & 2C	Extracts from Draft Further Alterations to the London Plan (FALP)
3	Extracts from meetings held on 7 and 15 January 2014 concerning Bromley's Local Plan
4	Comparison Employment Projections Tables: London Plan 2011 and Draft FALP 2014
5	Information concerning Sites C and L (Bromley Town Centre Area Action Plan)
6	Extract from London Office Policy Review 2012
7	Details of the Maybrey Business Park proposal
8	Colliers and Turner and Morum Appraisal Comparison
9	Commentary on Colliers FVS dated 14 January 2014 – Development Costs
10	Mr David Wood's written statement and copy of letter to the chief planner
11	Service charge correction
12	Kinleigh Folkard and Hayward's estimation of achievable prices on the Maybrey Works site (sent to Colliers on 4 October 2013)

13A, 13B and 13C	Colliers' appraisals – scenarios 1b and 3 and with Class B1
14	F&A order of costs savings
15	Unilateral obligation (Education and Healthcare)
16	Unilateral obligation (Private Rented Sector Initiative and Employment Training Charter)
17	Mr Upton's closing submissions on behalf of LBB
18	Mr Harris's closing submissions on behalf of the appellant

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