

# PLANNING COMMITTEE

## UPDATE SHEET

(List of additional information, amendments and changes to items since publication of the agenda)

17 April 2019

### 4(a) Island Site, City Link

#### Further Responses

**Axis on behalf of Conygar:** Further to discussions with officers regarding the maximum parameter height of the proposed residential tall building BG7 (Manvers Street), it has been agreed that this maximum parameter should be reduced to ensure that it is no taller than the proposed hotel tall building BG1 (London Road). The effect of this would be a reduction in height of circa 16m or 5 residential storeys from that originally proposed. The parameter plans will be formally amended to reflect this change.

**Lichfields on behalf of intu:** Still has concerns regarding the nature and scale of retail development proposed. Do not believe these concerns have been fully addressed in the Officer's report. In particular, the suggested measures to control the nature of development in the summary planning conditions and S106 obligations are vague, and we are not convinced they can adequately or effectively control the development.

The applicant has not demonstrated the Use Class A3-A5 uses are only 'ancillary' to the Creative Market and will not have a wider role. The 4,153 sq.m of "local floorspace" has been excluded from the impact assessments. The site is in an out of centre location, over 300m from the Primary Shopping Area, as confirmed by the applicant. The Officer's report incorrectly states the site is 'edge of centre' (paragraph 7.8). The development is three times higher than the top end of the floorspace envisaged in the LAPP for the application site (PA68). The development is therefore significantly out of proportion to, and not in accordance with, the Island Site SPD or the emerging site allocation in the LAPP.

The Officer's report clearly indicates these are relevant concerns and as a result recommends the nature of uses should be strictly controlled. If not strictly controlled, this development has the potential to undermine the vitality and viability of the City Centre and planned investment. However, the report does not offer a clear strategy on how the development will be controlled to ensure it will complement rather than compete with the City Centre.

The 'Issue (iv) Section 106 Obligations' in the Officer's report does not clarify how the Council intends to "limit the scope of the use of the 'Creative Market' element of the proposal to ensure that the estimates of trade diversion from the city centre accord with the submitted sequential and retail impact assessment and to ensure that this particular element of the development serves a complementary role to existing retailers in the city centre and other catchment centres." The planning application should not be approved until this has been adequately addressed.

Furthermore, the summary conditions regarding the other elements of the development (set out in 'Appendix A' of the Officer's report as a list of 'matters to be addressed by conditions') do not adequately control the development.

We set out below the conditions that must be included if the Council is minded to grant planning permission.

**1. restricting size and use class of units** – a condition should set maximum floorspace thresholds that the development should not exceed for each use. Controls on the A1 Class floorspace is needed to control convenience and comparison mix (further details are required from the applicant). In addition, to ensure the development remains distinct in character from the City Centre, restrictions on the maximum size of each unit are essential. We note the summary condition refers to units not exceeding 280 sq.m, in line with the Sunday trading Act. This threshold is too high. Most small shop units are normally 50 to 100sq.m. Goad Plan information indicates the City Centre has over 500 medium sized Class A premises of between 100 to 280 sq.m, which indicates the proposed development will compete directly with a large section of the City Centre. To secure the necessary controls, planning conditions should ensure individual Class A1 to A5 units are small and do not exceed 100 sq.m (gross).

**2. preventing change of use of units without prior consent from LPA** – Permitted Development Rights for Change of Use should be removed to ensure these are subject of planning permission and due consideration of implications for the City Centre;

a) Paragraph 7.9 of the Officer's report states "outside of the 'Creative Market' element, a wider restriction on permitted changes of use of retail and commercial units is considered to be unnecessary". We disagree - the Council should seek to apply conditions across the whole of the development, to ensure the development will be implemented in accordance with the nature of development tested in the applicant's impact assessment.

**3. a legal agreement restricting type of tenants to independent traders** – to ensure the distinctive character of the development is secured and the distinctiveness from the City Centre maintained;

a) The Officer's report notes that the applicant's assessments have been based on a "very specific commercial offer", with "niche and independent craft/retail and food and drink offer" (paragraph 7.9). However, this has not been included in the draft conditions and therefore it is unclear how the Council intends to control the types of occupiers.

**4. a no poach clause** - in a similar form to that set out in Appendix F of the applicant's Second Update Report, a clause restricting the occupation of uses within part A of the use class order, unless that operator commits to retaining its presence in the City Centre for a minimum period of five years from the date of occupation in Creative Market.

a) The no poaching clause proposed and drafted by the applicant in the First Update of their Sequential and Impact Assessment (Appendix F), and it is unclear why this has not been included in the Officer's draft conditions.

Notwithstanding the concerns set out above, should the Committee decide to resolve to grant planning permission our client would like to be consulted further to review the wording of proposed planning conditions and the draft S106 agreement.

**Conservation Officer:** The site is located to the south east of the City Centre and forms part of the wider setting of a large number of heritage assets of high significance. To the north west of the site is the Lace Market Conservation Area with the most significant landmark being the grade I listed St Mary's Church. Further to the north and west are the Old Market Square Conservation Area, the grade I listed Nottingham Castle and the Nottingham Council House. To the south west is the Station Conservation Area which includes the grade II\* listed Nottingham Station. To the north east is the Old Sneinton Conservation Area which stands on higher ground and includes the landmarks of Greens Windmill and St Stephens Church (both Grade II listed). Immediately adjacent to the development site are the Grade II listed Great Northern Warehouse, Low Level Station (now Virgin Active) and Turnover Bridge over Nottingham Canal. Other Assets of local significance are the eighteenth century waterway of the Nottingham Canal and the Alexander Warehouse.

The development of the Island Site has the potential to impact on the setting of all the above assets to varying degrees. Overall the masterplan layout for the scheme and the design parameters set out in the supporting documentation demonstrate a commitment to a high quality scheme that will complement and regenerate a long term vacant and strategic site. The public benefits of such a scheme are substantial from both a socio-economic and place-making perspective. The scheme also presents a high potential to secure beneficial enhancements to the setting of Nottingham Canal, the Low Level Station and the Great Northern Warehouse through appropriate landscaping and the development of complementary buildings.

The proposed masterplan does raise some concerns from a heritage perspective however. The potential harm to the historic environment will be "less than substantial", but these impacts should be mitigated and reduced as far as possible in order for the wider public benefits of the scheme to outweigh them in line with paragraphs 193 and 196 of the NPPF (2018).

- Building BG1 which is located between the Low Level Station and the Canal basin has been shown as one of two tall buildings on the site. The potential for this building to interrupt wider views of City Centre heritage assets and to act as a physical barrier between the Canal basin and the Low Level Station are a matter of some concern. It is felt that the detailed design of this building should seek to adequately mitigate these impacts at the reserved matters stage.

- Building BG7 is the tallest proposed building on the site and is positioned to the eastern edge opposite the Manvers Street and Sneinton Hermitage junction. This location has long been identified as potentially suitable for a tall, landmark building, but there is some potential for this to adversely affect the prominence and historic setting of St Stephen's Church and Green's Windmill which are positioned in elevated locations among generally more low rise development in Sneinton. When viewed from Nottingham Castle a building of the height proposed would also break the horizon in views to the east. However, the limited degree of harm to the setting of the historic environment will be mitigated by the proposed reduction in the mass at the top of the tower and the quality of the building's architecture will be subject to further scrutiny at the reserved matters stage.

- It is noted that the Great Northern Warehouse has been omitted from the application site boundary. This listed building at risk is in urgent need of a sensitive scheme of repair and conservation that can allow it to contribute positively to the

local distinctiveness and history of the site. A condition should be added to the decision to definitively secure its future at a suitable phase in the delivery of the development.

Subject to adequate mitigation and appropriate design being negotiated at the reserved matters stage, the impacts identified above can be mitigated to an adequate degree. The potential harm to the historic environment resulting from the outline proposals should therefore be outweighed by the overall public benefits of the scheme. As a result the application would be considered to meet the requirements of paragraph 196 of the NPPF and to comply with policies BE12, BE10 of the Nottingham Local Plan and Policy 11 of the Greater Nottingham Aligned Core Strategy.

1. **Axis:** The response of Axis on behalf of Conygar is noted and welcomed.

2. **Lichfields:** It is accepted that the site should be defined as being 'out of centre' rather than 'edge of centre', which is an error in para. 7.8 of the report. However, this point has been recognised in the independent assessment carried out on behalf of the Council, which concludes that the sequential test and retail impact assessment has been satisfied. The level of control over the proposed retail uses within the development is to be determined by S106 planning obligations (7.56 point 5.) and planning conditions (Appendix A, 5 & 6). Whilst the detail of these control measures are still to be fully determined, the level of control to be applied will reflect the conclusions of the independent assessment and therefore the concerns being expressed on behalf of intu regarding the potential impact on the future vitality and viability of the City Centre. It is also emphasised that the independent assessment carried out recognises that the sequential impact assessment has been based upon the Creative Market's very specific commercial offer and that if this concept was to attract mainstream retailers or branded operators then the result would be a different pattern of trade diversion from the city and other centres and outcome on retail impact. It is therefore essential that appropriate controls are secured to ensure that the scheme serves a complementary role to existing retailers in the city and other centres (which may include a 'no poach clause' or units not being occupied by multiples that are already represented in the city centre). The report aims to provide sufficient confidence that these matters are able to be addressed using a combination of S106 obligations and planning conditions.

It is considered that the proposed 280sq.m threshold for the size of a retail unit is appropriate and flexible for the site, allowing for a convenience store within what may become a sizeable residential community and yet ensuring that larger retail units are not permitted at an out of centre location. It is considered that the intu's proposed limit of 100sq.m would be unnecessarily restrictive and could deter a range of appropriate retail units from being able to be established.

As para 7.9 of the report states, restriction on permitted changes of use of retail and commercial units is considered to be unnecessary. There is no such restriction on retail uses within the city centre and, without adequate justification, it is considered that it would be inappropriate to apply this here.

Points 3 and 4 of intu's further response will be the subject of further review as part of the S106 controls intended to apply to the 'Creative Market' element of the proposed development. As above, these controls will ensure that the proposed scheme serves a complementary role to existing retailers in the city centre.

**3. Conservation Officer:** This response is noted.

Additional Background Papers (Axis, 16.4.19, Lichfields, 16.4.19, Conservation Officer, 10.4.19)