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All councillors on the LBHF

Planning Applications Committee

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Councillor Matt Thorley (Vice-Chairman)
Councillor Colin Aherne
Councillor Michael Cartwright
Councillor Georgie Cooney
Councillor Oliver Craig
Councillor Rachel Ford
Councillor Peter Graham
Councillor Wesley Harcourt
Councillor Alex Karmel

July 3rd 2012

Dear Councillor,

Imperial West Phase 2 planning application: PAC meeting July 10th 2012

We are writing to you to set out the reasons why we believe that a decision by the PAC to approve the above application will prove to be unlawful.

There are many other reasons, on planning grounds, why the application should be refused. These we have set out in previous objection letters, which can be seen on our website at www.imperialfolly.org.uk. The PAC agenda item also contains information on the objections submitted by this association, and by many other bodies and individuals.

We are not rehearsing these points here. Instead we would urge you to think carefully about the legal difficulties that the council is likely to encounter if the committee on July 10th decides to approve the Imperial West application.

Planning considerations

The planning policy context for this application is set out at paragraph 3.0 of the committee report. This context ranges from the new NPPF, through the London Plan, to the Council's Core Strategy and other local planning documents. The position is not straightforward.

Paragraph 3.12 comments on the 'emerging policy' from the draft White City Opportunity Area Planning Framework (WCOAPF) and states that this document '*carries less weight than adopted policies*'. Preparation and publication of the revised version of the 2011 WCOAPF has been much delayed. A second round of consultation, to meet statutory requirements, was due to take place last autumn, then in early 2012, and then scheduled for this July. It has yet to start.

This leaves the council in the position of being asked to determine the Imperial West application, for a very major scheme within the area of the WCOAPF, without new planning guidance in place.

The draft 2011 version of the WCOAPF was never approved by any committee of the council (merely seen at a 'Cabinet Briefing' in February 2011). The document promoted the idea of a cluster of very tall buildings adjacent to the Westway (A40M). These proposals led to angry public meetings, many written objections, and to strong opposition from RBKC.

The public have yet to see what revised wording on very tall buildings (and which locations within the White City masterplan) will be included in the revised WCOAPF. Consultation has yet to take place, let alone adoption.

The 2004 White City Opportunity Area Planning Framework

In contrast to the 2011 version of the WCOAPF document (never formally approved by the council) there remains the earlier version of the WCOAPF formally adopted by the council in July 2004 and endorsed by the GLA at that time.

This document is briefly referred to in the PAC report on the Imperial application at para 3.6. Officers in the Planning Division have sought to portray this document to this Association as being outdated or redundant, as a result of changes to employment policy for the White City area. **But please question your officers as to if, when, and how this document ceased to form part of the council's adopted planning policy framework for the area?** We can find no evidence of such a decision, and have not been given a clear answer to queries. RBKC, in the committee report to its own PAC on 3rd March 2012, states that '*The 2004 White City OAPF does remain as the adopted site-specific planning document.*

This is important, because the 2004 version of the WCOAPF includes a very clear and site-specific statement on the Woodlands site. The document, while commenting that '*Building height may generally rise towards the A40 and A3220*', goes on to state in definitive terms '**North of the A40 building height and massing must respect the adjacent residential area.**' The Woodlands site is the only part of the White City OAPF that lies north of the A40 Westway.

This key policy statement has been routinely ignored, as an inconvenient truth, in Environmental Statements and other material submitted by Imperial College and its consultants. It was ignored in the PAC report on the Imperial

Phase 1 application approved by the council in October 2010. And now it is being ignored once again in the report to PAC on July 10th.

This Association and others have repeatedly reminded the Planning Division that the statement is there, as a firm commitment of adopted planning policy. PAC members can read it for themselves on page 21 of the 2004 WCOAPF. The document can be found at http://www.lbhf.gov.uk/Images/White_City_tcm21-21991.pdf.

Neighbouring residents and businesses are entitled to rely on such a statement carrying material weight in any planning decisions on the Woodlands site. As the PAC report itself states, adopted policy carries greater weight than emerging policy. We believe that a High Court judge would share this view, on examination of the evidence. **For this policy statement from the 2004 WCOAPF to be omitted from the PAC report means that elected members are not being given the facts that are relevant to the recommended decision on July 10th, and risk the decision being struck down as a result.**

Core Strategy policies for White City

Given that no new version of the WCOAPF has yet surfaced for statutory consultation, the council is in the position of having to place greater reliance on strategic policy statements made in the 2011 Core Strategy. PAC on July 10th will therefore need to look at these statements with care, if minded to approve the Imperial West application.

This was not the position that Imperial College envisaged at the time of developing its masterplan and its proposals for the Woodlands site. At the time of pre-application negotiations (which reached an advanced stage in terms of informal commitments that the council would approve an application with very tall buildings), it was assumed that the new version of the WCOAPF would be in place by late 2011/early 2012.

The relevant Core Strategy policies are rehearsed at paragraphs 3.107 and 3.108 of the PAC report and are also set out below. These strategic policy statements do not, in our view, give adequate justification for approving a development of the height, mass and density of the current Imperial West Phase 2 proposals.

- The Core Strategy states (para 4.5) that *'The council will expect most of the new development to be low to medium rise, however a limited number of tall buildings of exceptionally good design may be acceptable, in particular, close to the A40 and A3220 and in any other areas identified in the White City OA planning framework Tall buildings strategy* (our emphasis).
- It also states (at para 7.20) *'Parts of the area such as alongside the A40 and A3220 are less sensitive to the impact of building height, so tall buildings could be considered as part of the approach to urban design provided they are of exceptional design quality. The WCOAPF will set out a tall buildings strategy* (our emphasis). *Any buildings*

that are visible from RBKC should have regard to that borough's Core Strategy policy CL2 (subject to adoption).

- In the absence of revised version of the WCOAPF, or the updated Tall Buildings Strategy that is due to form part of this planning framework, these strategic policy statements do no more than canvass the possibility of very tall buildings within the OAPF area and at the Woodlands location.
- These policy statements from the Core Strategy refer to, and are hence subject to, other more detailed planning documents which are not yet available, even for public consultation purposes.
- The policy statement for Strategic Site WCOA1, set out in bold text in the Core Strategy, makes no mention whatsoever of tall buildings and refers instead to the need for *'a comprehensive approach to the development of the area which provides high quality places for living and working that are well integrated with, **and respect the setting of, the surrounding area**'* (our emphasis). Can PAC members convince themselves that the Imperial West proposals meet this description?
- The proposed Imperial Phase 2 buildings will not only be visible from RBKC, but will have very significant detrimental impact, as the Royal Borough has pointed out in relation to its adopted policy CL2.

Hence the Core Strategy, in the current absence of a new version of the WCOAPF does not provide the justification for the Imperial West proposals. On the contrary, the proposals conflict entirely with policy statements in the 2004 adopted version of the WCOAPF, and breach other policy statements in the London Plan and the Borough's Core Strategy, along with RBKC planning requirements.

Strategic Environmental Assessment

The decision in the Shepherds Bush Market Judicial Review case suggests that a Strategic Environmental Assessment should also be carried out for the new WCOAPF, given that it 'sets a framework for future development'. We think it questionable whether the present LBHF document titled 'Sustainability Appraisal Consultation Draft', prepared as part of the 2011 White City OAPF, will meet this requirement.

Affordable Housing and Financial Viability Assessment (FVA)

The Imperial West Phase 2 application includes no affordable housing in the normal sense (only accommodation for Imperial 'key workers'). This is contrary to London Plan requirements and to the LBHF Core Strategy policy for White City East, as referred to above. The PAC report attempts to justify this departure at paragraphs 3.46 to 3.84.

This section of the report examines the Financial Viability Assessment undertaken by the District Valuer Service. Given that the application is hybrid, and no reliable forecasts can be made of future income from those elements submitted for outline approval only, it is welcome that the council proposes (para 3.77 and 3.78) a mechanism to re-evaluate financial viability

at a later date. This will be needed to ensure that there is no further scope to increase the ratio of affordable housing within the 35 storey residential tower.

Despite the length of this section of the committee report, it does not provide members with a key piece of information. What level of profit or return on investment is Imperial and its financial partner Voreda Capital anticipating from the completed development?

The report states (para 3.72) that Imperial College is '*an educational establishment and non-profit making*' and hence '*the proposal is not a regular "market" based scheme*'. As we have previously pointed out to planning officers, this is a naïve view of what is happening. Imperial has entered into an off balance sheet joint venture with Voreda Capital, to finance the Imperial West development. Imperial's own reports (available to the public) make clear that it is seeking a very substantial financial return on its original £28m acquisition of the Woodlands site.

The College Council on 12.02.2010 was provided with reasons for selecting Voreda Capital as a development partner, as follows: *A range of options and partners were considered; however it was deemed that Voreda Capital were the best potential partner as they agreed to investment terms that reflected the need to deliver a significant upfront return to the College Fund through the land sale; provided a preferential return to the Fund on an IRR of over 20% on the development and were also being willing and able to take the majority interest in the scheme, thus keeping it off the College balance sheet.*

The College has sought to justify its need for very sizable investment returns on the development by arguing the need to raise income to support its 'academic mission'. But it is not the role of the planning system to allow a university to cross-subsidise its academic ventures through denial of affordable housing to eligible residents in the borough, as required under London-wide and council planning policies. The College's 'global reputation' (which features heavily in the PAC report) is no justification for the council failing to apply planning policies in the same way as to other applicants, and as the law requires.

Are councillors satisfied that this 'over 20%' level of profit or return on investment is in line with what the council has previously allowed to commercial developers, when considering affordable housing and financial viability on other major developments? In making a decision to approve the application, with no affordable housing as such, PAC members need to be very clear that the right questions have been asked on financial viability, and all relevant information provided to the District Valuer. Since the original FVA in this case was provided to the council by Savills, who are longstanding property advisers to the College, close scrutiny is needed. Paragraphs 3.46 to 3.84 of the committee report do not provide all the answers.

Conclusions

- The reputation of the council as a planning authority willing to work within the law is already under serious question. Two legal challenges are ongoing, at Earls Court and Shepherds Bush Market. Does the council wish for a third?
- Should not councillors be extremely cautious in making decisions on major developments in the White City area, before all elements of an updated and robust planning framework are in place?
- Are PAC councillors fully confident that the information in the PAC report for (July 10th) is sufficient for them to make a reasoned and considered decision on the application, in the light of the points made above?

We believe the proposed Imperial West development to be a poorly conceived development, with grossly excessive density, mass, and height for this part of London.

Far from being buildings of 'exceptionally good design' (as required by the Core Strategy, the scheme lacks coherence and architectural quality. The RBKC Architectural Appraisal Panel, chaired by Will Alsop, shares this view.

Approval will set a disastrous precedent for the former Dairy Crest site south of Westway, and the Marks and Spencer site lying beyond.

In this letter, we have focused on the legal reasons why PAC councillors should reject the application at this point in time. For those wishing to see more information on the scheme, and the reasons why it has been so strongly opposed by local people over the past 18 months, please see at www.imperialfolly.org.uk

We urge councillors on the committee to reflect, take note of legal risks, and to refuse or defer the application until such time as the future of the White City Opportunity Area is settled through meaningful public consultation and a properly adopted planning framework for the area.

Yours sincerely,

Henry Peterson
Chair, St Helens Residents Association

cc Andrew Slaughter MP
Sir Malcolm Rifkind MP
Cllr Nicholas Botterill, Leader LBHF
Cllr Victoria Brocklebank-Fowler
Cllr Merrick Cockell, Leader RBKC
Cllr Tim Ahern, RBKC
Mayor for London
Sir Edward Lister, GLA

Colin Wilson, GLA
Rosemary Pettit, Hammersmith Society
Amanda Frame, Kensington Society
Baroness Eliza Manningham Buller, chairman of Imperial College Council
Jeremy Newsum, Imperial College Fund
Derek Myers, joint Chief Executive RBKC/LBHF
Nigel Pallace, LBHF
Matt Butler, LBHF
John McNally, LBHF