

BRIEFING NOTE

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| Project: | East Float |
| Client: | Peel Land & Property (Ports) Ltd |
| File Ref: | PEEM1030 |
| Date: | 23 July 2010 |
| Subject | Phasing Controls |

Introduction

There have been discussions at various stages with regard to the Council's wish to secure some degree of control as to minimum rates of delivery of the development proposals at East Float to ensure that these do contribute to the Borough's housing and economic development needs as expected. It is agreed that this is an important issue for the Council given the length of permission which is being sought and that it would be appropriate to attach a condition(s) to the permission in order to provide for this control.

Peel have put forward proposals in respect of this control which would commit them to submit a Reserved Matters application for minimum quantum of development within 5 years of the grant of permission and a second RM package of development within 10 years. That proposal also suggested that other development which might be off site but essential to the development of East Float should also be regarded as demonstrating a satisfactory rate of progress in taking the proposals forward.

The Council has identified the need for milestones after commencement to ensure not only that RM applications are brought forward but also that development on the ground is progressed within a reasonable timescale having regard to economic conditions and other circumstances outside of the developer's control. Whilst it is relatively easy to agree the quantum of development that might be specified in any condition the more difficult matter is to identify what the most appropriate "penalty" is if the agreed performance targets are not reasonably met.

Consideration has been given to the 'forfeiting' of quantum of floorspace equivalent to the amount by which the development has undershot at any key milestone or a reduction in the period for submitting further RM applications if certain milestones are not met. Such mechanisms are not unacceptable in theory but the implications of them need to be thought through, to avoid unintended consequences.

The key issue for Peel is that any safety nets/sanctions should not inadvertently undermine investment potential. Having a permission whereby the net is drawing in around the scheme will put off potential investors. Unencumbered permissions are the most attractive to investment. With that in mind Peel has previously proposed the following:

The minimum amount of development to be required proposed as:

- 150 units or 7,500 sq m of B1 space, plus one of the following:
 - educational or skills/training complex/building
 - civic/cultural building

- major phase of public realm which provide a significant and permanent opening up of one of the quarters for public access and which assists in facilitating further development
- energy centre built out on West Float to support the development of East Float

It was considered appropriate that a 10 year period is allowed for, given current economic conditions and the lead in times. Again it was reiterated that this is the absolute minimum scenario to keep the permission alive and not an indication of Peel's expectations and intentions.

Wirral Council's Draft Conditions

In response to the above proposals, the Council suggested that a greater level of minimum performance would be necessary. The Council was therefore invited to put proposals forward for Peel to review. As the situation stands, the Council's response as set out in the schedule of draft conditions is as follows:

Minimum quantum of development to be included within first reserved matters application

The first reserved matters application shall provide for the following development:

- xx no of new dwellings or xxx residential floor space;
- xxx of retail floor space;
- xxx of commercial floor space

(Actual quanta not yet specified).

Min of 500 dwellings within 5 years

A minimum of 500 residential dwelling units within Use Class C3 of Town and Country Planning (Use Classes) Order 1987 (as amended) shall be completed within 5 years of the date of the permission hereby granted. Thereafter, a minimum of 500 units shall be completed in each subsequent 5 year period.

Mixed use condition

The floorspace hereby permitted and as further approved in accordance with condition 10 for purposes within Class B1 shall only be occupied in accordance with the following provisions;

- No floorspace shall be occupied for B1 purposes until construction contracts have been placed for a minimum of 150 residential units
- no more than 75,000 m2 gross external area of B1 offices shall be first occupied prior to the placing of construction contracts for a minimum of 2,500 residential units
- no more than 100,000 m2 of gross external area of B1 offices shall be first occupied prior to the placing of construction contracts for 4,100 residential units
- no more than 250,000 m2 of gross external area of B1 offices shall be first occupied prior to the placing of construction contracts for 8,300 residential units
- no more than 422,757 m2 of gross external area of B1 offices shall be first occupied prior to the placing of construction contracts for 13,521 residential units

Peel Response and Proposal

Peel does not consider that the minimum delivery of housing condition (500 per 5 years) is necessary, particularly in light of the Council's proposed move back to the 250pa housing figure for setting its revised target for the construction of new dwellings, which is the "without Wirral Waters figure". This will serve to safeguard against development occurring in less sustainable locations, so there is no need to also control the housing element of East Float for that reason.

Additionally, Peel has also previously stated that the mixed use condition would seriously undermine market flexibility. This condition as drafted could be hugely damaging to investment potential e.g. it

raises the prospect that a substantial office development with a firm interest from a major inward investor could not happen because the housing remains unviable, hence risking losing that inward investment opportunity. Additionally, as noted above, if the Council is not at risk from development occurring elsewhere as a result of under-delivery at WW, there is no planning justification for this approach.

Peel does recognise that there is a need to ensure that a certain amount of development has occurred in order to maintain the permission. Having reflected further on this, and bearing in mind that the total quantum of development is clearly more important than the mix, it is considered that a revised approach is appropriate. Peel therefore proposes a condition which would secure the following commitments:

- *within 5 years from the grant of the outline permission the submission of a **RM** application comprising a minimum quantum of development of **15,000 sq m** of housing/office floorspace or major education/ civic or cultural component of the development.*
- *within 10 years, from the grant of the outline permission the submission of a second **RM** application comprising a further **15,000 sq m** of housing/office floorspace or major educational / civic or cultural component of the development.*
- *within 10 years of the grant of the outline planning permission the **completion** (to practical completion certificate stage) of a minimum quantum of development of **15,000 sq m** of housing/office floorspace or major educational / civic or cultural component of the development with the proviso that development completed at Northbank East in accordance with planning permissions Ref XX and YY shall be treated as counting towards this quantum.*
- *Within 15 years of the grant of the outline planning permission the **completion** (to practical completion certificate stage) of a minimum quantum of development of **30,000 sq m** of housing/office floorspace or major education/ civic or cultural component of the development with the proviso that development completed at Northbank East in accordance with planning permissions Ref XX and YY shall be treated as counting towards this quantum.*
- ***In addition** to the above the submission, within 5 years of the grant of the outline permission, of a RM application in respect **one** of the following:*
 - *a skills/training complex/building*
 - *major phase of public realm which provide a significant and permanent opening up of energy centre built out on West Float to support the development of East Float*
 - *The remediation of land at West Float in preparation for the relocation of businesses from East Float in order to enable the East Float to progress in accordance with the approved phasing programme.**and the completion of the development approved in that RM application (to practical completion stage) within **5 years of the RM approval.***

If the Council considers it necessary to include within the controls some form of “penalty” in the event that these performance milestones are not met, Peel would propose that this should take the form of a forfeit of floorspace in proportion to the degree of “shortfall”. Hence, for example, if at the 10 year milestone only 12,000 sq m of development has been completed the amount of floorspace which could be included in subsequent RM applications would be reduced by 3,000 sq m. However Peel would also wish that it is written into the condition that the imposition of such a penalty would always be at the Council’s discretion. We consider that this would provide an appropriate balance between

giving the Council the necessary protection against the risk of “land banking” of the permission, although it is understood that the Council do not consider that this is Peel’s intention, and the imposition of controls that could pose a serious risk to Peel’s ability to secure funding and to attract occupiers and investment into East Float at the fastest rate that the market will reasonably support. Hence this element of discretion would enable the Council to have regard to the, market, funding or other economic conditions or other circumstances that have contributed to the underperformance.

TA 23 July 2010.

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