

Andrew Piatt
Haliwells
St James Court
Brown Street
Manchester
M2 2JF

Our Ref: APP/Z4310/A/06/1177155
APP/Z4310/A/06/1197765

16 November 2006

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEALS BY MARO DEVELOPMENTS LTD
APPLICATION Nos: 04F/2635 AND 05F/1009
LAND AT BRUNSWICK QUAY, LIVERPOOL, L3**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, N A C Holt, TD BArch(Hons) DipTP DipCons RIBA, MRTPI who held a public local inquiry which opened on 6 June 2006, into your clients' appeals under Section 78 of the Town and Country Planning Act 1990 against the decision of Liverpool City Council to refuse planning permission for:-

- a) the erection of a mixed development consisting of a building of 51 storeys (with a height of 166.25m AOD) and two buildings of 10 storeys incorporating 489 apartments plus 4 live/work units; hotel (class C1) 35 beds; retail uses (A1 A2 A3) 924 sq m; plus servicing areas, basement car parking (455 spaces), landscaping with associated works and accessed from Sefton Street via Brunswick Way roundabout following demolition of existing premises (Scheme A); and,
- b) the erection of a mixed development consisting of a building of 51 storeys with a height of 166.25m AOD and two buildings of 10 storeys incorporating 2947 sq m replacement office accommodation (class C3); 414 apartments; hotel (class C1) 51 beds; retail uses (class A1, A2, A3) 1000 sq m; 851 sq m community use facility (class D1); plus servicing areas, basement car parking (446 undercroft spaces), landscaping with associated works, and accessed from Sefton Street via the Brunswick Way roundabout following demolition of existing premises (Scheme B).

2. The Inspector, whose conclusions are reproduced in the Annex to this letter, recommended that Scheme A be dismissed and Scheme B be allowed and planning permission be granted, subject to conditions. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR). For the reasons given below, the Secretary of State agrees with the Inspector's conclusion with regard to Scheme A but disagrees with his recommendation with regard to

Scheme B, where she also considers that the appeal should be dismissed. She therefore refuses planning permission for both Scheme A and Scheme B.

Procedural Matters

3. In reaching her decision the Secretary of State has, like the Inspector (IR 4), taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the application.

Policy Considerations

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the North West (March 2003) (RSS13), and the City of Liverpool UDP adopted November 2002 (UDP). The Secretary of State agrees with the Inspector that the main relevant development plan policies for these appeals include those set out in IR 31-33.-
5. Other material considerations include those documents identified by the Inspector in IR 34-37. The Secretary of State has also taken into account the consultation paper on PPS 3 *Housing*, published for consultation on 5 December 2005, but as that document is still in draft and may be subject to change, she affords it little weight.
6. The Secretary of State has had special regard to the desirability of preserving the listed buildings and their settings or any features of special architectural or historic interest which they possess, as required by sections 16(2) and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In view of the possible impact of the proposal on conservation areas, the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of those areas, as required by section 72(1) of the same Act.

Main Issues

7. The Secretary of State agrees with the Inspector that the main issues in these appeals are those set out in IR 297.

Design Considerations

The inherent quality of the design including its fitness for purpose and sustainability credentials

8. The Secretary of State has carefully considered the evidence and the Inspector's conclusions on the inherent quality of the design of the proposal including its fitness for purpose and sustainability credentials. She, like the Inspector, agrees

that the result, subject to the detailed execution of the buildings, is likely to produce an exciting and elegant sculptural composition (IR 304). She also agrees that the proposals would provide an attractive new high quality public space and the mix of uses would provide a degree of attraction and generate vitality and interest at pedestrian level (IR 306). Furthermore, given the indications in IR 308 on the sustainability of the buildings and in terms of fitness of purpose, the Secretary of State considers that the development would provide high quality accommodation which would be well suited to those who live and work in the city and would make a significant contribution to the public realm around the appeal site (IR 309). These factors count in favour of allowing the proposals. However, the Secretary of State shares CABE's view that a function more significant than high value housing, or the relatively limited mix of uses proposed in Scheme B, would have been more appropriate for such an "heroic" building (IR 306). She places more importance on this matter than the Inspector and for that reason gives slightly less weight than the Inspector to the otherwise successful design quality inherent in the proposals.

Whether the site is suitable for a building of the height proposed having regard to matters including its location, the visual impact on the skyline and waterfront of Liverpool, the effect on views from sensitive locations including heritage assets and the effect on the immediate locality

9. The Secretary of State agrees with the Inspector's view (IR298) that in relation to design the differences between the two appeal schemes are minor in nature. She does not agree with the Inspector's conclusion (IR346) that the site is suitable for a building of the height proposed for the reasons set out below.
10. As to the relevant policies relating to this matter, the Secretary of State agrees with the Inspector's reasoning and conclusions as set out in IR 310-314. She agrees that in general little weight can be attached to the Council's draft Tall Buildings SPD, due to the uncertainty attached to its progress and its final content (IR 314). Nevertheless, the Secretary of State agrees with the Inspector that the draft SPD serves to illustrate the initial thinking of the Council, and in that regard she takes into account that the proposal does not lie within one of the areas identified by the Council for tall buildings, and that the Council's draft policy states that tall buildings that mark only their development will not generally be supported. Due to the limited weight to be attached to the draft SPD, she considers these two matters weigh only slightly against the proposal.
11. Notwithstanding the merits of the inherent design of the buildings proposed, the Secretary of State is not persuaded that the site is somewhere that merits marking with a tall building. She is not persuaded that it is of significance in terms of the topography and morphology of the city (IR 321). The Secretary of State sees force in the Council's argument that the site is not of importance to the cityscape of Liverpool and takes into account that it was acknowledged by one of the appellant's witnesses as being "not prominent" (IR189). She also notes that any support for the location from English Heritage was expressed to represent a preliminary view (IR 291). This lessens the weight she attributes to that support.
12. Furthermore, the Secretary of State considers that the impact of the proposals on some views from the Wirral and upon heritage assets weigh against the

proposals. The impact of the proposal from distant views and the Wirral waterfront are considered by the Inspector in IR 326-334. The Secretary of State agrees that the proposal could appear as an interesting additional feature on the skyline from some of these views (IR 326). However, she shares the concerns expressed by Wirral Borough Council (IR 294) regarding the impact on views from Rock Park Conservation Area. She notes that the tower would be seen immediately to the left of the Anglican Cathedral and if the observation position was changed it would obscure the Cathedral along a short stretch of the waterside (IR 330). She also notes that the Roman Catholic Cathedral would move in and out of view as the observation point was changed (IR 330). She further notes that the tower would appear considerably taller than the Cathedral (IR 331). For these reasons she considers that there would be a detrimental impact on these heritage assets and therefore disagrees with the Inspector that the tower would not detract from the overall scene (IR 331). She therefore concludes that this factor weighs against the proposal.

13. The Inspector considers the impact of the proposal on heritage assets at IR 336-338. The Secretary of State is less sanguine than the Inspector with regard to the proposal's impact from a number of these views. Whilst she accepts that in some of these views the proposal would be seen as part of a busy and varied city scene, the proposal would be much taller than any other building in the city, so the Secretary of State considers that its impact would be significant. She considers that the setting of the World Heritage Site would be harmed by the proposal (for example, from views A2, A3 and A4), and that there would be a detrimental impact on views from Albert Dock (for example, view A9), as the tower would be a modern distraction from an area of strong continuity. She also believes that there would be some detrimental impact on the setting of the Cathedrals. The Secretary of State concludes that the settings of these listed buildings would be harmed and the character or appearance of the conservation areas in which they are located would not be preserved or enhanced. She gives this consideration considerable weight.
14. In considering the design of the proposals therefore, the Secretary of State agrees with CABE that they could work well in their own terms as a set piece. She agrees with the Inspector that they are of a high quality (IR 346), but she does not consider that the proposed buildings are appropriate for this location because of their visual impact on the skyline and waterfront of Liverpool, and their effect on views from and to sensitive locations including heritage assets. She considers that by virtue of their size and prominence, they may harm the qualities of the Liverpool waterfront that people value, particularly given their impact on the World Heritage Site, conservation areas and listed buildings. The Secretary of State is mindful of the fact that the World Heritage Site has been designated for its outstanding universal value, and she places great weight on the need to protect it for the benefit of future generations as well as our own. For the reasons given above, the Secretary of State does not agree with the Inspector's conclusions at IR 346.

The physical consequences of the proposal in terms of matters such as microclimate and overshadowing

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on the physical consequences of the proposal as set out in IR 343-345.

Employment Considerations

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on employment considerations as set out in IR 347-364. She agrees that in the past the BSBC provided a useful contribution to employment opportunities locally, but that if the site was to be brought back into employment use it is unlikely that it would be in its historical form. She also agrees that considering the overall supply of employment land and sites in the City, the loss of a site that would represent less than 1% of the overall supply would not have a material impact. She further agrees that the proposals would be contrary to the letter of criterion i of policy E1 and considers that, because of that, neither proposal complies with policy E1. However, she notes that the Council themselves have not regarded the policy as representing a total embargo on non employment uses in Primarily Industrial Areas and therefore gives limited weight to the breach of policy E1. Finally, in relation to employment considerations, she agrees that scheme B would be preferable in view of the additional number of jobs that would be created (IR 364).

Housing Considerations

17. The Secretary of State has carefully considered all the evidence and the Inspector's conclusions on housing considerations in IR 365-389. For the following reasons, she considers that the proposals would not comply with certain development plan policies relating to housing and would run the risk of harming the delivery of the Council's SPD objectives.

18. The Secretary of State, like the Inspector (IR 372), considers that the Liverpool City Council New Housing Development – Supplementary Planning Document (July 2005) (SPD) is an important material consideration. She agrees that this does not carry the same weight as development plan policy, but, given that it was approved by the Council after extensive consultation, she affords it significant weight.

19. In terms of housing supply, whilst the Secretary of State accepts that the required housing provision in Liverpool may be increased in the revised RSS, she accords little weight to the emerging RSS as it is still at consultation stage, and accepts the Inspector's conclusion that there is no question of an immediate shortage of housing land (IR 367). Furthermore, she takes into account that if the required housing provision were adopted as currently proposed, there would still be about 12 years supply of housing land (IR 367) reduced from 21 years at the current RSS level. For these reasons, she agrees with the Inspector (IR 368) that the draft interim RSS does not lend material support to the case for the proposals.

20. Turning to the effect of the proposed additional housing units on housing strategies for the area, the Secretary of State agrees with the Inspector (IR388)

that in market terms development of the type proposed would not adversely impact upon progress within the ZoOs. However, she agrees with the Inspector (IR 384) that if the provision of City Centre type apartments continues unabated there is a danger that the RSS targets for the City will be exceeded to the extent that the Council could be forced to curtail housing provision generally, including that on non-clearance sites in the priority areas. She agrees that this would have potentially damaging consequences for the regeneration of the ZoOs, and that even scheme B would have a significant impact on supply, particularly as the nature of the development would present difficulties in phasing (IR 384).

21. The Secretary of State also agrees (IR 389) that the Council are justified in seeking to curtail residential development within the HMRI area, but outside not only the ZoOs but also the formal City Centre boundary. The Secretary of State accepts that the impact on the ZoOs by way of exceeding current RSS housing targets is not conclusive, but agrees with the Inspector (IR 389) that there would be conflict in this case with policy H3 of the Council's SPD, and considers that the appeal proposals give rise to sufficient risk of undermining the ZoO objectives to afford some negative weight to this matter. Furthermore, the Secretary of State agrees with the Inspector that the appeal proposals would not assist in meeting the main objectives of the HMRI, despite providing further housing valued at Council Band C and above (IR 381).
22. The Secretary of State therefore considers that the lack of numerical need for housing at this time, coupled with the potential risk of undermining the regeneration of ZoOs, amounts to a conflict with policy H3 of the Housing SPD and there would also not be strict compliance with UDP policy E1. The Secretary of State agrees that the potential conflict would be less with scheme B in that it would provide 75 fewer apartments than scheme A. The Secretary of State considers that the provision of 414 dwellings in scheme B or 489 in Scheme A in the context of 21 years of supply of housing land against the current RSS figures could be sufficient in their own right to harmfully impact the regeneration of the wider HMRI area. She considers this to conflict with the objectives of UDP policy UR7. The Secretary of State does not agree with the Inspector (IR 408) that the advantages of scheme B outweigh the harm arising from the conflict with UDP policy E1 with the objectives of Policy UR7 and the conflict with policy H3 of the Housing SPD. She considers that this conflict would be serious and affords it significant weight against both proposals.

Regeneration and Other Benefits

23. The Secretary of State has considered carefully the perceived benefits that would accrue from the proposal which are set out by the Inspector in IR 390-399. She agrees with the Inspector (IR 390) that the proposals could act as a catalyst for further investment, and could assist the continued rejuvenation of central Liverpool. However, whilst she shares the Inspector's view that such benefits would be likely, she does not consider that these would be as significant or "considerable" as the Inspector, and has therefore attached less weight to them. Her reasons for this are set out below.
24. In assessing the weight to be given to the potential regeneration benefits of the proposal, the Secretary of State has taken into account the strong likelihood that

this area would “continue to be regenerated come-what-may” (IR 394). She is satisfied that, if the proposed development were not built, it is very likely that there would be future regeneration benefits in this area anyway. She therefore affords limited positive weight to the additional benefits in this respect that may be forthcoming by way of the proposal.

25. In terms of the benefits that would be provided to nearby residents and the wider community, the Secretary of State agrees that the lack of job opportunities provided by scheme A is a serious shortcoming (IR 397). She also agrees that scheme B would generate a comparable number of jobs to BSBC and would provide more diversity in the range of uses, including space that would be available for community use and a larger hotel. However, scheme B would still be primarily a residential development and, despite the recognised benefits above, she agrees with the Inspector that it would have been desirable if uses of greater civic significance had been included within the scheme (IR 398). The Secretary of State agrees that scheme B would provide more benefits than scheme A, and would provide an acceptable mix of uses, but she still considers that the benefits that would accrue for the community are not particularly significant. She notes in this respect that the Inspector recognises that, while the proposals would provide additional facilities that would be available to the residents of the nearby ZoO, they would not have an immediate and direct effect on the conditions within it (IR 396).

26. The Secretary of State’s concerns regarding the appropriateness of the location for buildings of this scale and regarding the uses proposed and regarding the negative impact of the proposals upon the achievement of HMRI objectives, as set out above, cause her to question how much of a catalyst for further investment the proposed development would be and how much it would contribute to the regeneration of the area overall. The Secretary of State notes that the Council is circumspect about the potential regenerative benefits of the appeal proposals (IR 210 – 213). Whilst she notes the appellant’s claim that the appeal proposals “would bring tangible regeneration benefits, a beacon of regeneration that would send a strong message of investor confidence in Liverpool” (IR 116), she does not consider these benefits would have the overall effect claimed by the appellant.

27. In conclusion, the Secretary of State agrees in principle with the Inspector that the proposal would contribute to some degree towards the regeneration of the area. However, for the reasons given she does not consider that this is as significant a factor as the Inspector, nor does she afford it as much weight as he does.

Other Matters

28. The Secretary of State agrees with the Inspector’s reasoning and conclusions on those other matters addressed at IR 400-405.

Conditions and S106 undertakings

29. The Secretary of State has considered the Inspector’s conclusions on the planning conditions and S106 undertakings as set out in IR 410-411. The

Secretary of State has considered the benefits that would be gained from the S106 undertakings. She does not consider these to be sufficient to outweigh the harm of the proposals. As she has decided not to grant planning permission for this application, she has not found it necessary to reach a conclusion on the proposed conditions.

Overall Conclusions

30. The Secretary of State considers that the proposals would have excellent inherent architectural qualities, and that they gain some support from UDP Policy GEN 1, due to their contribution to the regeneration of the area of and around the site. However, for the reasons given above, the Secretary of State concludes that the appeal proposals conflict with UDP policies HD18, HD5, E1, and with the objectives of RSS Policy UR7. She considers that the appeal proposals are contrary overall to the development plan.
31. As the Secretary of State considers the appeal proposals to conflict with the development plan, she has considered whether there are material considerations to justify determining the appeals other than in accordance with the development plan.
32. She considers the positive contribution to the immediate public realm and the potential to achieve a sustainable form of development to weigh in favour of the proposals. She also considers that the proposals would be of a high quality, though she does not consider that the proposed buildings would be appropriate in this location.
33. However, the Secretary of State considers that the harm to the setting of the World Heritage Site, and to the setting of and views from listed buildings and conservation areas, weighs against the proposals, as does the conflict she has identified with Policy H3 of the Council's Housing SPD.
34. Having balanced the material considerations for and against the proposals, the Secretary of State concludes that the material considerations which apply to the appeal proposals are insufficient to outweigh the conflict with the development plan. She has therefore determined the appeals in accordance with the development plan.

Formal Decision

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation to dismiss Scheme A, but disagrees with his conclusion to allow Scheme B.
36. She hereby dismisses your client's appeal and refuses planning permission for application Ref 04F/2635, dated 21 January 2004 for the erection of a mixed development consisting of a building of 51 storeys (with a height of 166.25m AOD) and two buildings of 10 storeys incorporating 489 apartments plus 4 live/work units; hotel (class C1) 35 beds; retail uses (A1 A2 A3) 924 sq m; plus servicing areas, basement car parking (455 spaces), landscaping with associated works and accessed from Sefton Street via Brunswick Way roundabout following

demolition of existing premises (Scheme A), on land at Brunswick Quay, Liverpool, L3.

37. She also dismisses your client's appeal and refuses planning permission for application Ref 05F/1099, dated 22 March 2005 for the erection of a mixed development consisting of a building of 51 storeys with a height of 166.25m AOD and two buildings of 10 storeys incorporating 2947 sq m replacement office accommodation (class C3); 414 apartments; hotel (class C1) 51 beds; retail uses (class A1, A2, A3) 1000 sq m; 851 sq m community use facility (class D1); plus servicing areas, basement car parking (446 undercroft spaces), landscaping with associated works, and accessed from Sefton Street via the Brunswick Way roundabout following demolition of existing premises (Scheme B), on land at Brunswick Quay, Liverpool, L3.

Right to challenge the decision

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.
39. A copy of this letter has been sent to Liverpool City Council and all those who appeared at the inquiry.

Yours faithfully,

Anna C Macintyre
Authorised by the Secretary of State to sign in that behalf