



## Appeal Decision

Inquiry Held on 28-31 October, 4-7 and 17 November 2025, closing in writing 8 December 2025

Site visit(s) made on 2 and 5 November 2025

by **M Shrigley BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> May 2026

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**Appeal Ref: APP/A5840/W/25/3366760**

**Aylesham Centre, Rye Lane, London SE15 5EW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 in relation to non-determination of a planning application.
  - The appeal is made by Berkeley Homes (Capital) Plc against London Borough of Southwark Council.
  - The application Ref 24/AP/2074, dated 12 July 2024, was undetermined by the Council.
  - The development proposed is for the demolition of existing buildings and phased redevelopment to provide a replacement supermarket and associated service yard and car parking (Use Class E(a)), flexible retail, leisure (including drinking establishment), and commercial accommodation (Use Class E/Sui Generis), dwellings (Use Class C3), landscaping and associated works.
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### Decision

1. The appeal is dismissed and planning permission is refused for the demolition of existing buildings and phased redevelopment to provide a replacement supermarket and associated service yard and car parking (Use Class E(a)), flexible retail, leisure (including drinking establishment), and commercial accommodation (Use Class E/Sui Generis), dwellings (Use Class C3), landscaping and associated works at Aylesham Centre, Rye Lane, London in accordance with the terms of the application, reference, Ref 24/AP/2074, dated 12 July 2024.

### Application for Costs

2. An application for the award of costs was made by Berkley Homes Plc against London Borough of Southwark Council (LBSC). That application will be the subject of a separate decision.

### Procedural Matters

3. Given the planning application subject to the appeal was not determined by LBSC only putative reasons for refusal are contended by them. A Statement of Common Ground (SoCG) included in the case bundle informs me of their overall position. I have taken that into account alongside the separate technical submissions made by the Rule 6 Party in addressing the main issues.
4. Without prejudice to the outcome of the appeal it was agreed during proceedings that the appellant would be given until 1 December to produce a completed Planning Obligation related to its overall reasoning. A completed

obligation was subsequently received slightly beyond that period. However, it is legally binding and therefore informs my decision.

## **Main Issues**

5. The main issues are: (1) whether or not the height, scale and mass of the proposed development would result in harm, and the level of any harm, to the local townscape having regard to the special character and appearance of the Rye Lane Peckham Conservation Area; (2) the acceptability of retail floorspace loss in terms of the impact to the vitality and viability of the town centre; (3) the adequacy of affordable housing provision inclusive of any social rented and intermediate home local needs; and (4) the overall planning balance having regard to related planning policy, any harm, or benefits.

## **Reasons**

### *Local townscape/ Rye Lane Peckham Conservation Area (RLPCA) impacts*

6. During my site visit I could see the low rise scale of the Aylesham Centre. Its front elevation entails a continuous building line abutting Rye Lane, a bustling shopping area. Ornatly detailed historic buildings flank each side, one being a prominent clocktower. Buildings with well-articulated upper floors lie opposite. In contrast, the rear elevation aspect of the Aylesham Centre is markedly open in character owing to a surface area car park, petrol station, and an adjacent bus station. There is a variety of other historic buildings nearby such as a chapel and a train station with elevated railway lines, supported in places by brick archways, bisecting the wider townscape. Peckham Arch close to the public library is also a noticeable feature along Peckham High Street. Elsewhere a multistorey car park building and residential buildings of varying heights are further strong characteristics of the locality.
7. I acknowledge that a narrow section of the overall appeal site falls within the RLPCA, encompassing the front elevation of the Aylesham Centre. Both LBSC and the Rule 6 Party argue the impact of the development on the character and appearance of the area would be unacceptable. Broadly speaking, they contend higher levels of harm would be apparent than the appellants' assessments find.
8. Centrally, LBSC's putative reasoning contests the appropriateness of the height, scale and massing of proposed Blocks A, B, and C as well as Block L relative to all heritage and townscape character impacts. Whereas, the Rule 6 Party argues a series of further additional harms.
9. In particular the Rule 6 Party advances a detailed analysis of impacts to relevant local designated and non-designated assets (some of which are linked to the Peckham Townscape Heritage Initiative to improve Peckham), differing from the appellants' assessments of harm. In the main the Rule 6's analysis finds harms ranging from medium to very high in level. Compared to the appellants' assessment conclusion of either no or low levels of harms.
10. In gauging the arguments, I note from a local policy perspective the appeal site is already allocated for redevelopment through Southwark Plan (SP) Policy NSP74 which sets out various criteria. It specifically requests that taller development should be set back from the Rye Lane shopping frontage towards the eastern end of the site to mitigate its impact. Although a 20 storey height limitation is supported it cites careful consideration would also need to be given to local heritage buildings. Furthermore, it seeks that development massing

should be directed to the east of the site to minimise impacts on views toward the City from the Bussey Building rooftop.

11. As an informative and precursor to Policy NSP74, LBSC's Conservation Area Appraisal (2011) advocates new buildings should be between three to four storeys. Notably, it specifically lists the Aylesham Centre under 'negative elements' citing it has an 'indifferent' character which does little to enhance the conservation area. It highlights due redevelopment opportunity.
12. Beyond that references for a more comprehensive design approach to achieve SP compliance, incorporating the bus station owned by Transport for London (TfL) are applicable. It would be speculative to assume if, or when, the bus station would be redeveloped, acknowledging bus station use retention is a clear NSP74 expectation. Thus, accounting for the aspirations documented in the SP, I have given most weight to the current proposal evidenced as constituting the most available and achievable development option.
13. Linked to the disputes, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision-makers determining planning applications for development within Conservation Areas to pay special attention to the desirability of preserving or enhancing their character or appearance. Furthermore, section 66 of the Act requires me to pay special regard to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest, which they possess.
14. Related to that legal provision the National Planning Policy Framework (the Framework) advises me that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. This should be factored when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
15. In line with the Framework, I give great weight to the conservation of designated heritage assets. Importantly, the significance of the RLPCA arises both from a collection of designated and non-designated assets, and from other buildings as well as groups of buildings without formal individual designation but nonetheless make a positive contribution.
16. This includes various Victorian, Edwardian and inter-war buildings such as Peckham Rye Station, a Baptist Church and the former 'Jones & Higgins' department store. The latter now existing separated into the locally listed clocktower and former bank at 47-49 Rye Lane buildings either side of the Aylesham Centre frontage.
17. The Jones & Higgins department store was a historic large scale employer, once rivalling shopping offers in central London. Its estate stretching the east side of Rye Lane, from Peckham High Street to Hanover Park. This ties to recognition that Peckham developed from a rural hamlet to a metropolitan satellite and place of resort in the 18<sup>th</sup> century before suburbanisation in the 19<sup>th</sup> century and its role as a shopping centre.
18. I recognise the clocktower is a prominent local landmark part of Peckham's identity. Its grand main façade generates architectural interest through its

- decorative venetian-esque references, oriented towards Peckham High Street at the junction with Rye Lane. In a similar vein, architectural interest in 47-49 resides in its three-bay composition, animated roofline, decorative dormers, tall chimneys, and party walls differentiated by terracotta corbels and finials.
19. The prominence of the clocktower, as well as its setting within the RLPCA contribute to its significance. Taken alongside the affiliated no.47-49 building and coupled with the Jones & Higgins store history the buildings are valuable and endearing built assets to Peckham. Sharing connections to the historic town centre core.
  20. Essentially LBSC and the Rule 6 Party maintain a less abrupt scaled relationship against the buildings along Rye Lane within the RLPCA is warranted. In essence, outside of various elevational criticisms their combined suggestion is that a lower number of storeys and set back would offer a better alternative.
  21. I accept that replacement of the Aylesham Centre is an opportunity for the street scene to be considerably enhanced. Notwithstanding, LBSC's Conservation Area Appraisal does not expressly use the term harmful.
  22. Notionally, a new building or building with a far less exaggerated and repetitive low rise frontage would result in an improved relationship with fine grain buildings along Rye Lane. Thereby improving the street scene. But, compared to the status quo the appeal proposal would not lead to an appropriate or meaningful visual improvement. Instead, it would be harmful.
  23. That is because proposed blocks A, B, and C would rise some seven storeys in an overly domineering fashion, acknowledging the height of the Aylesham Centre sits level with the shoulder of the clocktower building. Their fenestration and overall elevational composition would not tie in successfully with surrounding historic buildings. The proposed façades would appear uninspiring, overly uniform and disconnected from the surrounding positive ornate and varied qualities of closest nearby buildings and their own interesting prominent individual fenestration detailing and associated rooflines. In the absence of an appropriate set back and coupled with their overall height and mass, those blocks would not respond sensitively to Peckham's historic village core.
  24. I acknowledge the proposed projecting and recessed balconies as well as bright colour tones are intended to generate elevational interest alongside arch motifs in the design. But the overall resultant impact would fail to introduce a high quality complementary modern façade which enhances the street scene or which supplements local distinctiveness. The appellant is disparaging about the credentials of the building to be replaced but does not offer an appropriate design solution. Previous earlier design iterations linked to the site allocation do offer further useful insight, acknowledging there is likely a myriad of creative ways to respond to scale, securing appropriate elevational and building form interest, roofline variety, or even increased greenery.
  25. The blocks would be out of scale, visually intrusive and unduly diminishing to the clocktower and 47-49 Rye Lane. This would be apparent from Rye Lane, Peckham High Street and Peckham Square. They would harmfully obstruct views of the clocktower from public vantages along Rye Lane. The resultant visual relationship would detract from the historic value of the street scene within the RLPCA where the clocktower is read as an important landmark.

26. Moreover, the settings of two grade II listed buildings, 58 Peckham High Street and the Rye Lane Baptist Chapel, would be adversely impacted. The Baptist Chapel is one of Peckham's longest standing places of worship, connecting modern Peckham to its 19<sup>th</sup> century religious and social development. Early Georgian gentility and smallness of scale is crucial to the significance of no. 58.
27. Less than substantial harm to the setting of 58 Peckham High Street as well as its historic interest would occur through removing its prominence from local views with Blocks A, B and C overtaking the skyline view and its modest scale.
28. The Baptist Chapel is deliberately set back highlighting its importance, and there is intervening built form. Even so, it is still a significant component of the setting of the RLPCA and is experienced in the street scene with glimpses of the clocktower, former bank wing and the streetscape of other interesting interwar buildings when walking towards Peckham High Street.
29. Owing to its size and prominence, the appeal scheme would have an unduly forceful presence on the street scene in proximity of the Baptist Chapel. I find by virtue of that relationship there would be detriment to its setting, also of a less than substantial level given the distances and intervening development.
30. The statutory response of Historic England (HE) is significant. It signals that the overall height and distribution of tall buildings would have in an incongruous relationship with the more modest-scale and fine grain townscape along Rye Lane and Peckham High Street. From some public locations appearing as an enormous wall of development, thus resulting in harm. The combined submissions from HE, LBSC (including Design Review observation) and the Rule 6 Party strongly suggest to me a design opportunity has been missed in key views within the RLPCA.
31. With respect to resultant impacts arising from Block L. The building contains some archway detailing in the lower segment. It would stand at 10-11 storeys facing the bus station, with walls of different tones of orange brick as well as some metalwork.
32. From more distant viewpoints along Peckham High Street close to the junction of Marmot Street there is existing tree greenery to consider. Otherwise from closer public views, I accept it would rise cliff-like in the townscape and would fail to respond to its context successfully. It would tower over its setting, dwarfing Purdon House and would forcefully preside over the open bus station. Akin to other elements of the appeal scheme the elevational treatments could be more characterful and bespoke to lessen its imposing stature or produce a better relationship outcome with its surroundings.
33. In this case, I do find that the massing of Block L coupled with its elevational articulation would be monolithic and unrelenting. The height and massing of the building would be damaging to the townscape from public vantages.
34. Similarly, the additional heritage harms alleged by the Rule 6 Party through its assessment diminishing the significance of locally listed buildings is more convincing, albeit I do not completely agree with all of their analysis. Even when considering surrounding forms, distances, cumulative arguments and that tall buildings are often a feature of urban centres.
35. I have considered impacts to 86-88; 96 (The Bun House), and 98-104 Peckham High Street including from the views near the junction of Peckham Hill Street

- and Peckham High Street and near to Peckham Arch. Their individual historic significance is generated by a mixture of elements such as: modesty of scale; pairings; building styles reflecting the evolution of Peckham; their role in Peckham's social and commercial history; and roofline interest alongside individual architectural detailing.
36. The pairing of 86-88 and the separate profile of 96 Peckham High Street would be harmed by the height and bulk of Blocks D, E, G and K forming a merged backdrop of new buildings which would disrupt and overpower their low roofline stature including chimneys, and the attractive mouldings detail of no.96.
  37. In relation to 98-104 Peckham High Street, an adverse visual disruption to its skyline would result, by virtue of the combined volume of Blocks D, G, and K. It would create an overwhelming mass in the backdrop to those properties eroding architectural interest associated to them.
  38. Bringing all points together, I find all of the individual and collective harms to heritage assets I have identified equate to less than substantial harm categorised by the Framework. More specifically, because of the less than substantial harm disputes formulated by the main appeal parties and their witnesses, I attribute: high levels to the RLPCA overall; medium levels in relation to: two grade II designated assets (the Baptist Chapel and 58 Peckham High Street), and the locally listed buildings 47-49 Rye Lane and 96 Peckham High Street. And high levels to the locally listed Clocktower, 86-88 Peckham High Street and 98-104 Peckham High Street.
  39. The non-designated heritage asset harm apparent carries substantial weight because of the overarching significance to Peckham's evolution. Acknowledging the RLPCA boundary placement in any event.
  40. In some respects, there would be a deliberate juxtaposition between old and new which would not be inappropriate in principle, given Peckham already exhibits eclectic built forms within its townscape. Nevertheless, there is scope to improve all resultant scheme wide impacts to reduce harm and to ensure high quality. For example, through improved scale, elevational detailing and overall quality, window forms, material palettes, greater greenery prominence as opposed to hard engineered surfaces, colour choice, and more considerate layering.
  41. From other impact perspectives, the photographic evidence submitted shows local views of London's iconic cityscape would be prevented from the roof top of the Bussey and Multistorey buildings. I appreciate those impacts have caused objections to the scheme. Those matters are connected to allocation policy wording and the density of new development it supports. Although the wording is clear, the interruption of private views is not determinative. Thus, having regard to the main issues of the case, it is only the public vantage point impacts my decision focuses on when assessing substantive harm.
  42. The Bussey Building and other local buildings are evidenced to be successful cultural anchors in the RLPCA. That is important to acknowledge because Peckham's social characteristics have in many respects brought existing buildings historic or otherwise back to life as a form of self-regeneration. Adding to the areas prevailing urban distinctiveness. Nonetheless, I have no strong basis to conclude there would be a material erosion to cultural heritage

or local creativity in that regard or that innovative ideas would be stymied. Burgeoning and established surrounding uses would still be able to flourish.

43. Overall, I find that the height, scale, and massing of the development would harm the RLPCA, relevant nearby designated and non-designated heritage assets, and the local townscape. Collectively such harms would be contrary to the aims of: London Plan (LP) Policies D1, D4, D9 and HC1; SP 2022 policies: P13; P17; P20; P21; NSP74 and AV.14 as well as the Peckham Conservation Area Appraisal which combined seek to: uphold good design principles, including securing exemplary tall building architectural design and optimal solutions comparative to site constraints; utilisation of the heritage significance of a site or area through integrating the conservation and enhancement of heritage assets and their settings with innovative and creative contextual architectural responses that contribute to their significance and sense of place; as well as delivering benefits that conserve and enhance the historic environment.
44. There would be conflict with Section 12 of the Framework of achieving well designed places. Which highlights the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design being a key aspect of sustainable development, creating better places in which to live and work and making development acceptable to communities. There would also be conflict with Section 16 of the Framework seeking to protect heritage assets from harm. As directed by the Framework there are public benefits I must also consider, these are within the planning balance section of my decision letter.

*Retail floorspace /vitality and viability of the town centre*

45. In gauging town centre impacts, SP allocation Policy NSP74 sets an indicative residential capacity of 850 homes as well as the requirements of redevelopment must consider including: retention of the existing supermarket and bus station capacity; retail provision; public realm; east west green linkage; intermediate affordable housing as well as detailed design and accessibility guidance.
46. I acknowledge the size of the proposed retail units have been informed by retail studies, and there is no argument that sequential tests should be applied. As confirmed in LBSC's committee report, there would be a loss of class E (a-c) floorspace, ranging from 964.3sqm to 1,634.3sqm depending on how the flexible retail proposed floorspace is used.
47. Section 7 of the Framework relating to 'Ensuring the vitality of town centres' is applicable. It highlights the role town centres play at the heart of local communities and encourages a positive approach to their growth, management and adaptation endorsing a town centre first approach.
48. The LP identifies Peckham as a major town centre. LP Policies SD6; SD7; SD8 and SD9 combined seek to protect the vitality and viability of London's varied town centres by strategically concentrating higher order comparison goods retailing; and via securing opportunities for higher density employment, leisure, and residential uses in high quality development. SP policies P35 and NSP74 require the development to provide at least the amount of retail floorspace that is currently on the site.

49. It is relevant to also note that the site falls within the Peckham Action Area Core where new development is expected by the SP, in tandem with policy NSP74. Peckham town centre is defined by its diverse collection of retail functions many of which are small businesses reflecting its distinctive character. Peckham having a burgeoning sector of small and medium sized enterprises, with a strong focus on creative industries nearby including at Copeland Park, the Bussey Building, the railway arches, and at Peckham Levels.
50. Within the SP at AV.14, Peckham's Area Vision sets out several aims. These include complimenting and improving the town centre with more large and small shops, market stalls, entertainment, cultural, community and leisure spaces alongside new employment space for small and medium enterprises including start-ups. At the same time, it advocates new development should provide as many homes as possible of all tenures including social housing, while respecting the local character and not compromising the operation of existing commercial and night time uses, particularly in the town centre.
51. In doing so development is invited to: reveal and enhance Peckham's underlying historic townscape; increase or improve local open spaces and squares, prioritising walking and cycling; improve public transport; improve servicing and waste management and contribute to public realm corridors adjacent to historic railway arches as lively accessible spaces for creativity; and to provide new jobs and retail.
52. Whilst the proposed loss of retail floorspace on the site is noted by LBSC officers, the inclusion of drinking establishments and workspace within the development in their view would still lead to greater commercial diversity. I agree, that although such uses are not included in the site allocation policy, they are main town centre uses which would support retailers by encouraging dwell time, creating jobs and adding to existing footfall during the day and night.
53. Moreover, the workspaces envisaged falling under class E (g) are unlikely to compromise living conditions. Maker type spaces are expected in these areas which would generate animation and activity to the locality. Plus, LBSC concur in principle to a planning condition preventing class E (g) uses along the Rye Lane frontage in order to maximise the active frontages along this street in accordance with SP Policy P37.
54. Additionally, Policy NSP74, encompassing the bus station site, sets out a requirement for active frontages with retail, community or leisure uses at ground floor level fronting Peckham High Street. Hence, it expects some retail uses to come forward on the bus station site where currently there are none.
55. Akin to the views of LBSC officer's within the submitted committee report I accept despite the loss of retail floorspace, workspace and drinking establishment uses would otherwise positively impact vitality and viability.
56. Likewise, increasing the number of residents living in the town centre core has obvious economic advantages through increased footfall and local spending to acquire goods and services. Positively impacting on town centre considerations at scale.

57. Further issues arise toward the content of any Business Relocation Strategy (BRS) when measured against SP Policies P32 'Small shops' and P33 'Business relocation'. Components heavily contested by the Rule 6 Party and members of the public. In that those policies specify development must retain small shops where they are at risk of displacement from a development, allowing for independent businesses or shops to be duly protected.
58. Specific objections in this regard cite: inadequacy of the BRS; inadequate consultation/no agreement with the affected businesses; the financial contribution would be deficient for fitting and other relocation costs; and it does not set out viable relocation options if it was utilised.
59. Unit 15A within the Aylesham Centre as well as the hand cart operators do have interface with SP Policies P32 and P33, the latter owing to similarity with market stalls. SP Policy P33 requires a BRS to be provided, in consultation with affected businesses, setting out viable relocation options.
60. I appreciate that the BRS sets out the broad timescales of what would be worked to given Policy P33 aims. Assuming the appeal was successful the appellant would not expect to have vacant possession until roughly around 4-5 years following the completion of Phase 1 works. LBSC concede the requirements of the businesses impacted could change during that time. Consequently, in their view it is reasonable to have detailed discussions closer to the time, provided that businesses have sufficient notice to plan for change.
61. BRS suitability is also tied to planning obligation considerations but the principle of using such a mechanism is otherwise feasible. The circumstances explained by the appellant towards the timing and phasing to allow further negotiation when practicalities are known or better gauged, rather than predicted, are reasonable justifications for dealing with some aspects of P33.
62. Furthermore, the submitted Relocation Impact Assessment, Current State of Play for Elephant and Castle Traders (April 2025) does give me useful insight of the real life challenges posed by displacement.
63. The obligated sums applied there are considerably higher than the £200K relocation package proposed in this appeal. Additionally, I note LBSC did contribute towards a relocation site, and substantial relocation funds. Whereas in the current appeal no such support is purported by LBSC.
64. However, it is not a detailed costs analysis. Options available within Peckham may well be different. Therefore, direct like for like comparison would not be appropriate and the appellant's reasonable endeavours to assist with relocation through other suitable alternatives possible are material. On balance, I find that adequate and appropriate mitigatory protections would be possible.
65. All in all, there would be some discordance with LP Policies SD6 and E9; and SP Policies P32, P35 and NSP74. However, I find that the loss of retail space would not harm the vitality and viability of the town centre. But rather the scheme would deliver a positive net effect, including from footfall, which would complement its role and status. There would be adverse effects to some independent traders within the Aylesham Centre but those can be sufficiently mitigated. There is otherwise ample scope remaining to diversify and enhance the existing retail offer, acknowledging the bus station site is part of the SP

allocation and opportunities within the town centre. Overall town centre business interests would be respected.

*Affordable housing provision adequacy*

66. At a national level, Paragraph 36 of the Framework conveys that plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure. It advises me such policies should not undermine the deliverability of the plan.
67. That is in the broader context of Section 4 of the Framework encouraging decisions on proposed development to be undertaken in a positive and creative way to secure developments that will improve the economic, social, and environmental conditions of an area. It specifically notes that decision-makers at every level should seek to approve applications for sustainable development where possible.
68. The evidence highlights Peckham specifically, as having an acute need for affordable housing. The SP emphasises that the delivery of affordable housing is essential to planned growth. The Borough is referenced as one of the most deprived in the country, particularly in the context of barriers to housing. With some 93% of households in Southwark having a household income that requires social or intermediate housing. The appeal scheme proposes to secure 12% affordable housing by habitable rooms. This would equate to a split of 790 market homes and 77 affordable homes altogether.
69. Adopted strategy contained within LP Policy GG4 aims to create a housing market that works better for all Londoners through amongst other things: more home delivery; supporting a strategic target of 50% for all new homes being genuinely affordable; and to create mixed and inclusive communities. LP Policies H4, H5, H6 and H7 collectively focus on affordable home delivery in more detail. They aim to ensure the 50% strategic target referred to through a number of specific measures including: grant funding and strategic partners; public sector land use; off-site contributions as well as endorsing a threshold approach; and a fast track route for proposals entailing 35% affordable homes. H5 specifying the threshold approach to be taken.
70. Yet, in Southwark owing to the unique challenges it faces, even development schemes offering more than 35% still require viability testing to see if a greater percentage can be provided. SP Policy P1 seeks the maximum viable amount of social rented and intermediate homes, with a minimum of 35%, subject to viability. The acute need for affordable housing is reflected in SP Policy IP3.
71. The SP deliberately makes affordable home delivery a priority stemming from need and the socio-economic challenges within the Borough. It is also relevant that the Peckham Area Character (December 2023) identifies higher areas of deprivation around Peckham town centre, with low access to housing across Peckham, and particularly in the town centre.
72. I give substantial overarching weight to the demonstrable affordable housing needs evidenced within the Borough which the SP seeks to alleviate. The 12% affordable housing offer made by the appellant is on the basis that although the scheme would be unviable, it is able to offer a commercial undertaking

- because of the development's risk profile and looking forward over an eight year build programme.
73. Following a robust financial assessment process, LBSC concurred that the reasonable maximum provision of affordable housing subject to viability in this case would be 0%.
74. Irrespective of viability considerations, LBSC and the Rule 6 Party submit that taking the development plan as a whole, the priority to delivery of affordable housing is paramount, together with the expectation that this should be at a minimum of 35%. In their combined view viability should not always be determinative. Given the intentions of the SP and local housing challenges I note this is a well-intended position they hold, with residents welfare in mind.
75. However, market circumstances do alter over time. Thus, viability testing at an application stage is a justified mechanism. I also recognise there is scope to conclude on this issue in favour of LBSC's putative reasons for refusal. Doing so would accord with the principles applied within *Schneck v Secretary of State for Levelling Up, Housing and Communities* [2022] judgement.
76. Whilst there are appeal decisions or emerging precedents referred to on other cases their context differs and their overall merits are not directly comparable. Therefore, I am not bound by reference to those. The development plan and the Framework both expressly recognise that the weight to be given to viability appraisals is a matter for the decision maker.
77. My colleagues findings on soundness of the SP as well as its relatively recent adoption have also been referenced. Even so, the development plan does not offer me a complete picture of the current and market circumstances to which any development can be potentially constrained by. Accordingly, I give most weight to the present circumstances to which LP Policy H5 and SP policies are triggered including the appellant's viability assessment case. The appeal proposal does go beyond the maximum amount of affordable housing which can be reasonably expected, which is a zero level of provision. Moreover, a planning obligation would be able to undertake appropriate early, mid, and late stage reviews to secure a better affordable home arrangement if market circumstances were to alter.
78. I have had regard to the guidance on the use of review mechanisms as set out in the Mayor's Affordable Housing and Viability SPG (2017) and in the LBSC's Affordable Housing SPD. I am satisfied planning obligation wording would be able to address issues raised by scenario testing.
79. Conflict with NSP74 in respect of Community Land Trust (CLT) homes is also referred to. CLT being a form of intermediate affordable tenure that would meet an identified local need. Markedly, NSP74 is the only site allocation within the SP that requires an element of CLT homes. Nevertheless, an s106 would be able to include a mechanism to use reasonable endeavours to facilitate CLT homes in Phase 2. In light of the appellant's viability position, flexibility is warranted. It would be appropriate to ensure due exploration of CLT home securement in the manner proposed. A tighter expectation to automatically secure CLT homes would be overly restrictive and counterproductive.
80. Overall, although there is some conflict with SP Policy NSP74, the appellant's underlying viability position is material. Importantly, I do not find the appeal

scheme itself would give rise to social or economic harms acknowledging mitigation can be applied by way of legal undertaking. Other remaining countervailing parts of the development plan, and the current circumstances evidenced, lead me not to oppose the level of housing provision or mix expected. Ultimately, the new housing and affordable housing proposed would still benefit the area on an allocated site.

*Other planning considerations*

81. I acknowledge Paragraph 8 of the Framework emphasises the social objective of sustainable development to support strong, vibrant, and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations. Moreover, Paragraph 61 confirms the Government's objective of significantly boosting the supply of homes.
82. The appeal scheme would redevelop an area of underutilised land within a highly sustainable town centre location to deliver crucial private and affordable housing for the conurbation and would promote the use of non-car modes of travel thereby assisting with reducing air pollution. There would also be betterments to pedestrian permeability and connectivity from the layout; Biodiversity Net Gain (BNG) improvements of some 89.91%; new job creation; as well as new building energy efficiency advantages and renewable energy delivery components attached to the design. I give substantial collective weight to such benefits in line with the environmental, social and economic objectives of the Framework and in the context of the new measures announced to ramp up housebuilding in London by government during October 2025.
83. Outside of the main issues, housing land supply figures were broached during proceedings with LBSC lowering their supply calculation from 7.21 years to just marginally above 5 years. The appellant claiming LBSC does not come close to having an adequate supply. With respect to this issue, I am cognisant LBSC undertook a detailed review of the schedule of deliverable sites provided by the appellant in light of the definition of deliverable in the Framework glossary and related planning practice guidance. Sites with a resolution to grant are relied upon by LBSC because it implies the site is suitable and available.
84. I realise the absence of a completed s106 obligation can be a procedural matter, not necessarily a reflection of viability or intent. Where negotiations are advanced, and there is no evidence of delay or objection, LBSC contend sites should be treated as having a realistic prospect of delivery.
85. That said, notionally in cases where there is no prospect of obtaining an appropriate undertaking a diminished housing supply figure may well directly result. But that situation cannot be assumed. Mainly owing to the scope for technical issues to be potentially resolved, following any formal determination process expected. And because, commercial decisions taken by applicants and landowners themselves would also be subject to latitude and variance.
86. Any planning obligation, or revision, relevant would be subject to independent detailed negotiations between LBSC and applicants. This would cover issues often involving a range of other circumstances to be factored, of which I am not fully privy to, having regard to the full schedule provided.

87. Still, some of the information regarding the Berkeley and Canada Water sites stalling was uncontested during proceedings. Focusing on those sites alone it suggests to me that LBSC's revised position is overly optimistic and an inadequate supply is likely, which I have accounted for.
88. I also acknowledge the Secretary of State publishes the Housing Delivery Test (HDT) results for each local authority in England annually, measuring net homes delivered in a local authority area against the homes required, using national statistics and local authority data. LBSC's December 2024 HTD score being 82% as specified in the agreed SoCG and the appellant indicating during proceedings a worsening position is likely which was also not contested.
89. Important separate Public Sector Equality Duty (PSED) interests also are disputed owing to potential harm to local communities, including alleged: disproportionate impacts to traders potentially subject to displacement; as well as inadequate impact analysis for the scheme. For assessing those matters, I have had regard to the duty itself as well as the legal principles outlined in *Baker v Secretary of State for Communities and Local Government [2008]* and *R (Harris) v London Borough of Haringey [2010]*.
90. I note the information provided entails the appellant's Equalities Impact Assessment; Statement of Community Involvement which included consultation with the Aylesham Community Forum; and its initial BRS which, featured some consultation with the existing businesses in the Aylesham Centre carried out by a specialist engagement charity. Moreover, equalities were fully considered by LBSC and the SP examining Inspector when allocating the site for redevelopment. Such analysis remains relevant to this appeal decision.
91. Contrary to the Rule 6 Party's position I disagree the PSED would be deferred by virtue of an additional equalities impact assessment being provided as part of a final BRS. Such a clause if applied within any planning obligation would be to assess any changes during Phase 2 of the development, approximately 5 year's post any consent, when the traders would be directly affected.
92. PSED would not be ignored should permission be granted at this stage. Instead, there would be an appropriate mechanism to take further stock of changes should there be any. Accordingly, bringing all points together I accept there is enough information available to understand if the PSED can be complied with now. I find that the duty would be complied with.
93. I have carefully considered the high number of other public objections and criticisms to the appeal proposal claiming: increased prices would drive residents out of the area; people would purchase the flats as investments and not live in them; too many 1 and 2 bedroom homes and not enough 4 bedroom homes; affordability problems; lack of provision for families and young people; gentrification would arise rather than regeneration; no benefits for existing residents; security and safety issues; overcrowding problems; public/amenity spaces are too limited/small; overshadowing/ light loss; overheating; maintenance issues; lack of a community garden; accommodation deficiencies for occupants; inadequate daylight/natural light levels; loss of privacy; negative consequences for existing surrounding uses; and that community engagement was tokenistic and not meaningful.
94. Furthermore, a range of other objections are present pertaining to: absence of sustainable drainage principles; other drainage inadequacies impacting on the

River Peck; unacceptable pressure on public services; fire safety concerns; construction impacts being detrimental to living conditions and public footpath use for too long a time; highway safety erosion from vehicle routing; as well as unacceptable transport impacts and environmental impacts in the round.

95. But there is nothing compelling to suggest any of those factors outside of the main issues of the case, either taken in isolation or combination, should weigh significantly against granting permission bearing in mind: the totality of the appeal evidence; the thoroughness of the officer committee report; technical consultee advice coverage; LBSC's subsequent putative reasons outlined; and the scope available for planning conditions or planning obligation use.

### **Planning Balance and Conclusion**

96. Pursuant to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, local planning authorities and other decision makers should first have regard to the development plan and then to any other material considerations.
97. If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
98. Contrary to the appellant's primary contentions, I have found that there is only partial compliance with the adopted development plan for the area, taken as a whole, bearing in mind all disputes made by LBSC and the Rule 6 party combined. Specifically, I find conflict with: SP Policy NSP74 in respect of CLT homes, design, heritage, tall buildings, and retention of retail; and LP Policies HC1, D1, D4 and D9, and SP Policies P13, P17, P20 and P21 and Area Vision AV.14 regarding harmful heritage and townscape impacts.
99. Although there would be some conflict with LP Policies NSP74, SD6 and E9, and SP Policies P32 and P35 I do not find that the appeal development would be deleterious to town centre vitality and viability, or to local business interests overall. Equally, the appellant's underlying viability position is material. Accordingly, I find no harm from the reduced affordable housing provision as a result.
100. Consequently, linked to the appellant's other contentions when applying paragraph 11 (d) of the Framework the policies which are most important for determining the application are not out-of-date. And in other respects, the site is already allocated for housing development.
101. With respect to heritage impacts, Paragraph 212 advises me great weight should be given to a designated asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. And that such harm should be weighed against the public benefits of the proposal.
102. The Framework also advises me that the effect of an application on the significance of a non-designated heritage asset should be considered in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required

- having regard to the scale of any harm or loss and the significance of the heritage asset. I have applied such approaches.
103. Factoring significance evidence there would be less than substantial heritage asset harm to a range of relevant designated and non-designated heritage assets. I give great weight to the conservation of designated heritage assets. And substantial weight to the non-designated asset harm and overall townscape harm interlaced in the arguments made.
104. The collective public benefits on offer carry substantial overarching weight. They include: the delivery of the SP site allocation developed over a 10 year horizon with the aim of rejuvenating the area; more efficient use of previously developed land in a highly sustainable location; increased pedestrian permeability and connectivity; the facilitation of air quality improvements owing to greater reliance on sustainable modes of transport and with the promotion of cycling; increasing housing supply for Londoners as well as Peckham's residents via 867 new homes, allowing for family provision as well as wheelchair accessibility needs; increasing much needed affordable housing provision (albeit at 12%); some urban greening betterment as well as ecological and notable BNG improvements; new external play space; plus the overall linked social and economic benefits from large scale town centre investment supporting its primary retail function and infrastructure which would provide and sustain employment in the process.
105. However, in this case such benefits do not outweigh the harm to the relevant designated heritage assets important to the area. Having regard to the Framework, there is no reason for me to conclude a design better responding to those heritage assets could not be achieved.
106. And from a wider decision making perspective those public benefits are still applicable, as well as other benefits attributed to the scheme such as renewable energy delivery features embedded in the design; more energy efficient buildings; and betterment through modernised retail area provision, new adaptable commercial floorspaces and workspaces.
107. In undertaking the balancing exercise, I am cognisant there is a critical need to provide new homes of all tenures for Londoners urgently and at scale coordinated by SP allocation policies and the strategic policies of the LP. Moreover, there is acute affordable housing need in Peckham which some of the new home provision would alleviate. I accept that the totality of benefits would be considerable in this context.
108. Nonetheless, the direct benefits arising from the development comparative to harm to the RLPCA including designated and non-designated asset harm and to the townscape give me insufficient reasons to allow the appeal. From a Framework application perspective, the proposal would not be a sustainable form of development in light of such harms.
109. The circumstances of the case do not lead me to accept new housing and other associated betterments at all costs. Furthermore, SP Policy NSP74 entails a generational opportunity for Peckham which should be carefully managed to ensure a more optimally designed scheme for future generations.
110. For clarity, even with 35% affordable housing as initially proposed in the planning application process and accepting a worsening housing land supply

position of less than 5 years purported by the appellant, I would still have found that the level of harm in this case would not be overridden.

111. Although the appeal scheme does have some positive design attributes and high order benefits, the elements of harm identified are not outweighed. There are no other material considerations for me to conclude otherwise. As I have found the appeal scheme to be unacceptable based on the main issues of the case, I need not consider the detailed content of the submitted planning obligation further.

112. For the reasons set out above the appeal fails.

*M Shrigley*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Turney Counsel (KC)

Louise McCormack

### WHO CALLED:

Robert Bevan BA MCD Dip UD Heritage/townscape witness

Mike Ibbott MA MPhil MBA MRTPI Planning witness

### FOR THE APPELLANT:

Russell Harris Counsel (KC)

Anjoli Foster

### WHO CALLED:

Judith Stichtenoth Dipl.Ing. Arch., AK, ARB, RIBA Design/Architecture witness

Lewis Eldridge BSocSc (Hons), MAUD, MSc, IHBC Heritage/townscape witness

Sasha Gordon BA (Hons) Socio-economics witness

Pascal Levine MRICS Viability witness

Nicholas Alston BA(hons), DipTP, MRTPI Planning witness

### FOR THE RULE 6 PARTY:

Hashi Mohamed Counsel

### WHO CALLED:

Claire Hegarty BA, PGDip, RIBA Heritage witness

George Venning MArch	Affordable housing witness
Jed Holloway LLB, LLM	Planning witness

INTERESTED PARTIES (WHO SPOKE AT THE INQUIRY):

Cllr David Parton	LBSC
Cllr Jasmine Ali	LBSC
Cllr John Batteson	LBSC
Reverend Dean Pussey	Interested party
James Rose	Interested party
Sarah Goldzweig	Interested party
Bill Morris	Interested party
Mahmud Hussain	Interested party/ Trader
Janine Below	Interested party
Dr Anna Minton	Interested party

DOCUMENTS SUBMITTED DURING THE INQUIRY:

- 1) Appellant's Opening
- 2) Council's Opening
- 3) R6's Opening
- 4) Appellant's scheme presentation
- 5) Draft planning obligation agreement/draft list of planning conditions including pre-commencement
- 6) CIL compliance statement
- 7) Written closings of the Council
- 8) Written closings of the Rule 6 Party
- 9) Written closings of the Appellant
- 10) Appellant's written costs claim
- 11) Council's written response to the costs claim
- 12) Appellant's final written response
- 13) Appellant's agreement to a set of draft conditions including pre-commencement
- 14) Drafts of planning obligation
- 15) Completed planning obligation dated 4 December 2025

