AVISON YOUNG

S.78 of the Town and Country Planning Act (1990) (as amended)

Appeal against the non-determination of planning application ref. 24/AP/2074

The Aylesham Centre, Rye Lane, Peckham, SE15 5EW

Rebuttal Proof of Evidence of Nicholas Alston BA(hons), DipTP, MRTPI on behalf of the Appellant, Berkeley Homes (Capital) Plc – Planning.

October 2025

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1. Introduction

1.1 My name is Nicholas Alston and I am employed as a Principal (Senior Director) at Avison Young.

1.2 This Proof of Evidence Rebuttal ('Rebuttal') relates to the appeal (the 'Appeal') against the non-determination of planning application ref. 24/AP/2074 (the 'Application'). It sets out a rebuttal to evidence submitted by the following:

- Mike Ibbott (MI); and
- Jed Holloway (JH).

1.3 This rebuttal is structured as follows:

- **Section 2** – housing matters;
- **Section 3** – retail matters;
- **Section 4** – planning balance; and
- **Section 5** – Other

1.4 This Rebuttal has been prepared by me as a planning expert. It should be read alongside my Proof of Evidence (POE) and evidence (including rebuttals) submitted by other experts which I will refer to:

- Judith Stichtenoth of dRMM Studio, who covers design and architecture matters;
- Lewis Eldridge of the Townscape Consultancy, who covers heritage and townscape matters;
- Pascal Levine of DS2, who covers (affordable housing) viability matters; and
- Sasha Gordon of Quod, who covers socio-economic and equalities matters.

1.5 My evidence makes reference to a Statement of Common Ground (SOCG) (CD8.4) with the Council. It makes reference to a number of Core Documents (referred to as 'CD__').

1.6 My evidence also makes reference to appendices attached to this POE which include new evidence that I have prepared in order to rebut points raised in the evidence (POE's) submitted by MI and JH.

1.7 As a chartered Town Planner acting as an Expert Witness in a Public Inquiry, I am bound by the RTPI Code of Professional Conduct (February 2016). I confirm that the opinions expressed are my true and professional opinions.

2. Housing Matters

Single Housing Market

2.1 JH and MI make numerous references to meeting local housing needs throughout their POEs. I will refer to paragraph 3.1-3 of my POE which refers to paragraphs 1.4.4 and 4.1.2 of the London Plan which confirms that decision makers should treat London as a single housing market. Accordingly, where housing need is a relevant material consideration in the determination of a planning application, the relevant geographic extent of that need should be London as a whole.

Deliverability of 35% Affordable Housing in London Borough of Southwark

2.2 MI presents data in paragraphs 5.15-5.16 of his POE regarding housing approvals and completions over the past 3 year period, including a breakdown by tenure. He argues that this provides evidence to demonstrate that there is 'no fundamental impediment to delivering 35% affordable housing in the Southwark context'.

2.3 In undertaking this comparison MI does not account for the lag time between approvals and completions therefore this is not a like for like comparison.

2.4 I will also note that his conclusions consider percentages only (not actuals) and therefore do not take into account a critical point: There is a significant difference between the number of homes approved and the number of homes completed. This is explained in Table 2.1 below (which uses the figures set out in the tables at paragraphs 5.10-5.13 of MI's POE):

Table 2.1 Approvals v. Completions Comparison (2022-25 Total)

2022-25 (Total for 3 Year Period)	Market	Affordable	Total
Approvals	4,608	3,058	7,666
Completions (delivered)	2,633	1,586	4,219
Not delivered	1,975 (43% of approvals)	1,472 (48% of approvals)	3,447 (45% of approvals)
London Plan Annualised Requirement	-	-	7,065

2.5 As set out in Table 3.2, the argument presented by MI demonstrates that:

- Most (if not all) planning permissions for major development in LBS include 35% affordable housing. This is as per my evidence (refer to para 8.9 of my POE) and the 'Golden Rule' that was discussed by Members of the LBS Planning Committee at its meeting on 15th July 2025 (Appendix D of my POE, including paragraphs: 1.199, 1.210 and1.237), which makes it clear that applications with less than 35% are unlikely to be approved in LBS.

- Some (55%) of these homes were deliverable.

- A significant proportion (45%) of these homes were not deliverable.

2.6 Therefore, MI's evidence demonstrates that there is a fundamental impediment to delivering 35% affordable housing on a significant number of sites in Southwark. While MI's evidence is historic looking, my view is that this is likely to continue (and worsen) going forwards. This accords with the evidence set out in Appendix A and paras 11.13-15 of my POE; the Council's Housing Policy Viability Study that underpins the NSP (CD6.23); the Council's independent viability assessor (BPS) (CD 7.4/5), and LBS Officers as confirmed in their report to the 15th July 2025 Planning Committee (OR) (paragraphs 299-327) (CD3.1).

2.7 I will note that the sharp reduction in recent and forecast completions has been recognised by the Deputy Mayor of London, stating at a conference in September 2025 that there is an 'increasing sense of urgency as development grounds to a halt..... with City Hall working with Government on immediate measures', and that 'no work has begun on thousands of potential homes in the capital for which there is planning permission because of [similar] viability concerns'. He also recognised that the 35% threshold for the Fast Track route was no longer 'delivering' (refer to Article at Appendix F). I understand that the Deputy Mayor also made specific reference to the Stag Brewery appeal noting that if the application was submitted now with 7% affordable housing (justified by viability) then GLA would likely accept it.

Planning Policy Requirements (Affordable Housing)

2.8 The evidence of MI (paragraphs 5.17-5.31) repeatedly suggests that development plan policies require a minimum of 35% affordable housing to be provided. This is not correct. Development Plan policies require the maximum deliverable level of affordable housing to be provided – there is no minimum or fixed percentage requirement. Planning policies, and the planning system as a whole, cannot require developments to provide more than this.

2.9 As set out in para 11.10 of my POE, the relevant development plan policies are London Plan Policies H4-H6 (CD4.1) and NSP Policy P1 (CD4.2), which should be read together as a whole:

- The strategic target is for 50% of new homes delivered across London to be genuinely affordable (H4).

- Major developments are required to contribute towards achieving this target by providing affordable housing through the Threshold Approach (H4). There is no fixed percentage requirement (noting that NSP Policy P1 refers to 35% but qualifies this as being subject to viability so in practice this is not a minimum policy requirement).

- The Threshold Approach seeks to secure the maximum reasonable level of affordable housing that a scheme can deliver and be secured via s.106 agreement. The maximum reasonable level is determined by requiring applications to follow either the Fast Track Route (by providing 35%) or the Viability Tested Route. Both are approaches are compliant with NSP Policy P1 and London Plan Policy H5.

The Proposed Level of Affordable Housing

2.10 MI's evidence suggests that there is a 'shortfall' in affordable housing provision. This is not correct.

2.11 Similarly, JH suggests at paragraph 13 of his POE that the proposed level of affordable housing is 'very low'. I disagree with this.

2.12 In my view, the reference point for this matter is whether the Proposed Development accords with development plan policy requirements.

2.13 The policy compliant level of affordable housing for the Proposed Development is 0%. The Proposed Development includes 12%, so 12% in excess of policy requirements ('policy plus'). This is as confirmed by the Council's independent viability expert (BPS) (CD7.4/5) and as agreed by LBS Officers in the OR (CD3.1).

2.14 Accordingly, in my view there is no shortfall in the level of affordable housing, nor is the level 'low' – it is higher than required.

The Weight to be Given to Viability Evidence in Decision Making

2.15 MI's POE challenges the level of weight that should be given to viability appraisals at the decision making stage. JH makes a similar point at para 15/16 of his POE.

2.16 As set out at para 11.11 of my POE, I note that NPPF para 59 states that the weight to be given to a viability assessment is a matter for the decision maker. My view is that the decision maker must consider this in the context of the development plan which must have primacy (as per s.38(6) of the 2004 Planning and Compulsory Purchase Act).

2.17 Development plan policy requires the maximum reasonable level of affordable housing to be provided, with the actual amount to be determined on the basis of viability (London Plan Policies H4-H6 and NSP Policy P1). The role of viability is embedded into the wording and operation of the policies themselves, therefore the decision maker (the Mayor and LBS) has already determined that significant weight should be given to viability in the application of affordable housing policies. Viability evidence therefore must be given full weight by decision makers – not doing so would be in conflict with the development plan.

2.18 I note that JH refers to the *Schneck* judgement which confirms the point above that the decision makers must give the development plan primacy.

Affordability of Market Units

2.19 JH's POE (para 16) suggests that the private units will be unaffordable and therefore have an adverse impact on the surrounding area. The sale price of the market units is unknown. It will be determined by the market based on what future purchasers choose to pay (and therefore can afford), noting that London should be treated as a single housing market. I will defer to the evidence of Pascal Levine and Sasha Gordon for further details.

Impacts on Values of Existing Homes in the Surrounding Area

2.20 JH (para 19) and MI suggests that the Proposed Development could increase rents in the area. I will defer to the evidence of Pascal Levine and Sasha Gordon on this matter.

Displacement of Existing Communities

2.21 JH (para 20) suggests that the Proposed Development could displace existing communities. I will defer to the evidence of Sasha Gordon on this.

Affordable Housing Tenure Mix

2.22 JH's POE (para 18) suggests that the tenure mix of the affordable housing does not accord with NPPF para. 66. I disagree. The tenure mix of the affordable housing comprises 71% Social Rent and 29% Intermediate, as per the proportions of the 25:10 mix required by NSP Policy P1.

2.23 Furthermore, a s.106 obligation has been prepared to secure the opportunity to provide Community Land Trust housing.

2024/25 Authorities Monitoring Report

2.24 MI's evidence makes reference to the Council's 2024/25 Authority Monitoring Report (AMR). This was published on 25th September 2025 (5 days before evidence associated with the Appeal was exchanged and without notifying the Appellant). This has been added to the Inquiry Core Documents (CD6.41).

2.25 I have reviewed the completions data in the AMR in the context of the Housing Trajectory at Annex 2 of the NSP. This identifies that completions over the past 5 years (of all tenures) have fallen significantly short of the borough's housing requirements and significantly short of what the borough considered deliverable at the point that that the NSP was prepared. This reinforces the evidence set out in Section 9 and Appendix A of my POE. I expand on this below:

Housing Trajectory

2.26 The Housing Trajectory at Annex 2 of the NSP (CD4.2) identifies the following supply of deliverable and developable sites (base date of April 2020):

- Years 1-5 (April 2020 to March 2025): 15,830 (+1,165 in excess of the target of 14,665) (deliverable)
- Years 6-15 (April 2025 to March 2035): 33,410* (+9,860 in excess of the target of 23,550) (developable)

  Sub-total: 49,240 (against a 15-year target of 38,215)

Completions

2.27 When read together, Tables 3.1.3 and 3.1.4 of the AMR (CD6.41) provide details of completions for the 5-year period 2020-25.

2.28 This identifies total completions of 7,386 homes, which is less than half (46.7%) of the 'deliverable' supply identified by the Council in Annex 2 of the NSP (15,830) for this period.

2.29 This confirms that the majority of the housing land supply identified by the Council as being 'deliverable' in 2020 as part of the preparation of the NSP has proven to not be deliverable in practice.

2.30 The aforementioned completions figure provided in the AMR (7,386) equates to 62.7% of the London Plan/NSP housing requirement for 2020-25. My POE (Section 8 of Appendix A) uses London Datastore data to identify completions over the period 2020-25, which indicates that completions totalled 7,910 over this period, equating to 65% of the London Plan requirement. While the figures are slightly different, they effectively validate (support one another) in confirming the point that completions over the past 5 years have fallen significantly short of the requirement and the expectations of LBS.

Five Year Housing Land Supply

2.31 MI's evidence (para 3.21) identifies that LBS has produced updated information on its Five Year Housing Land Supply (5YHLS). Summary details were set out in the 2024/5 AMR (CD6.41) which are replicated in Table MI2 of MI's POE.

2.32 The schedule of sites that make up the identified supply of deliverable sites is not included in MI's evidence nor published on the Council's website (as part of the AMR or elsewhere). This was requested by the Appellant and was provided by the Council on 8th October 2025. This is enclosed at Appendix B.

2.33 MI's evidence states that the Council is able to demonstrate a 7.21 year supply of deliverable housing land (Table MI2). His evidence identifies at para 9.25 that only moderate weight should be given to the public benefit of providing market housing as a consequence (suggesting a lack of need), inferring that greater weight should be attributed to this if the Council were unable to demonstrate a 5YHLS.

2.34 I have reviewed the summary table MI2 of MI's evidence and the associated schedule of sites. My review concludes that the Council does not have a 7.21 year supply of deliverable housing land. It is significantly less than this.

2.35 I provide an explanation of this below, which considers Table MI2 of MI's POE row by row:

(A) Annual Target and (B) Southwark Plan Requirement

2.36 No comments.

(C) Overall Supply of Deliverable Sites

2.37 As noted above, LBS has historically over-estimated what sites are 'deliverable' in practice.

2.38 Table MI2 identifies a 5-year (2020-25) deliverable supply of land with capacity for **19,330** homes, plus a 5-year assumption of 2,615 on small sites and 2,272 on windfall sites – a total of **24,217** – an average of around **4,800** per annum.

2.39 In order to sense check this, I have referred to Table 8.1 of Appendix A of my POE and Table 3.1.3 of the Council's 24/25 AMR (CD6.41). Completions in 2024/25 were around **1,000** homes. Delivery rates would therefore need to more than quadruple in 2025/26 and be sustained at that level for 5 years for the Council's identified supply of deliverable housing land to be delivered in practice.

2.40 I consider this unrealistic, particularly when considered in conjunction with the evidence set out in Section 9 of Appendix A of my POE which indicates a collapse in residential starts across London in 2024/5, including just 40 new homes being started in 2024/25 in LBS. The evidence is further reinforced by the publication of Molior's Q3 2025 Residential Development in London report on 14th October 2025 (enclosed at Appendix E), which states the following (number of homes within schemes containing 20+ private homes only):

- Only 3,248 private homes were started in London in the first 9 months of 2025;
- There are currently around 40,000 private homes under construction in London, of which 5,300 are halted part-built (stalled). It forecasts that just 15-20,000 new homes will be under construction on 1st January 2027. This is set against a typical 60-65,000 at any given time between 2015-2020.
- There were just 5,933 new private home sales in London in the first 9 months of 2025.
- Built-to-Rent completions are forecast to fall significantly (to nil) due to a fall in construction starts in 2023/4.

2.41 In light of this, I have reviewed the schedule of 'deliverable' sites provided by the Council to reach a view on whether the identified sites should be treated as 'deliverable', for the purposes of the definition at Annex 2 of the NPPF and having regard to the guidance set out in the PPG (paragraph 007: Reference ID: 68-007-20190722). If deliverable, I have also considered whether the anticipated timing of completions is realistic.

For ease of reference the NPPF definition of 'deliverable' is as follows:

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- *sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*

- *where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.*

2.42 The results of the review are enclosed at Appendix C (of this rebuttal).

2.43 The review indicates that around **8,172** homes have been identified by LBS that in my view should not be treated as being deliverable on the following grounds:

- They do not have planning permission, and there is no clear evidence of homes being completed within 5 years. This has regard to guidance I have been provided by Berkeley Homes who has advised that a realistic programme for the delivery of new homes in London (apartment-led schemes with tall buildings) from the point in time that planning permission is granted is as follows:
    - 18 months to complete detailed design.
    - Followed by 6 months to achieve Gateway 2 approval.
    - Followed by 36 months to build out.

- The identified capacity has been amended by changes to the planning application or subsequent amendments which have not been captured in the schedule;

- The identified capacity is on sites whose planning permissions have expired; or

- Market intelligence that the Appellant's team has obtained from sources such as Molior and via conversations and correspondence with the respective landowner/developers (see Appendix D) has indicated that schemes have stalled.

2.44 The review indicates that a more realistic estimate of the supply of deliverable sites is around 11,000 homes (19,330 – 8,172) plus windfalls and small sites which equals around **16,000**.

(D) <u>Deficit</u>

2.45 Table MI2 identifies a deficit of **2,209** homes. In my view this is incorrect – the correct figure should be **5,281**.

2.46 Table 3.13 (the first one) of the AMR (CD6.41) sets out net completions for 2022-25 (4,856) then subtracts the housing requirement (7,065) to identify a historic shortfall in delivery (a deficit) of -2,209 homes. This is the figure that has been used by the Council for (D).

2.47 My view is that the deficit has been under-calculated. The PPG advises that the level of deficit or shortfall should be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5-year period. My view is that the relevant 'adopted plan' is the London Plan (2021) as this sets the housing requirement and that the relevant base date should be

1st April 2019 as this is the operative period for the housing requirement set out in Table 4.1 of the London Plan (PPG ref. 022 Reference ID: 68-031-20190722).

2.48 Table 3.13 (the first one) of the 24/25 AMR (CD6.41) read in conjunction with Table 3.1.4 of the AMR identifies total completions for the period 2019-2022 of 3,993. The relevant housing requirement for this period (2019-22) was 7,065, equating to a shortfall (deficit) of -3,072, and therefore a total deficit of **5,281** (2,209 + 3,072).

(E) 5 Year Housing Requirement

2.49 The formula is correct but the figure (13,984) is not correct because the value of (D) is not correct.

(F) Buffer

2.50 The requirement for a 20% buffer is correct but the figure (2,975) is not correct because the value of E is not correct.

(G) Total Requirement, (H) Adjusted Annual Requirement, and (I) Overall Supply

2.51 These figures are all incorrect because the input values are incorrect.

Revised Summary Table

2.52 I have set out below a revised summary table that takes account of the above comments and sets out my estimate of the more realistic 5YHLS position.

Table 2.2 Updated Estimate of 5YHLS Position

Annual Target	**A**	**2,355**	
Southwark Plan Requirement	B	11,775	
Overall Supply of Deliverable Sites	C	16,045	19,330 – 8,172 = 11,158 + 2,272 windfalls + 2,615 small sites
Deficit	D	5,281	
5-Year Housing Requirement	E	17,056	B+D
Buffer Applied	F	3,411	20%
5-Year Housing Requirement + Accrued deficit + 20% Buffer	G	20,467	E+F
Adjusted Annual Housing Requirement	H	4,093	G/5
Overall Years supply	I	3.92 years	C/H

2.53 In accordance with Table 3.2, my view is that that the details provided by LBS indicates that the borough has a deliverable housing land supply of around 3.9 years.

2.54 This reinforces the evidence set out in my POE that there is a significant and urgent need to deliver new homes in LBS, and that the provision of homes of all tenures should be treated as a very significant public benefit.

3. Retail and Town Centre Matters

Amount of Non-Residential Floorspace

3.1 Paragraphs 6.2 to 6.3 of MI's POE seek to provide a comparison between the existing and proposed non-residential floorspace. JH also considers this at para 33 of his POE.

3.2 In order to provide as clear as possible details to enable a like-for-like comparison I have provided a further table below which should be read in conjunction with Table 3.1 in the Planning Statement (AC04) (CD1.8) and Tables 5.1 and 5.4 in the Planning Statement Addendum (AC04A) (CD2.6).

Table 3.1 Existing v Proposed Non-residential Floorspace

Non-Residential Floorspace		**Floorspace (sqm) (GIA)**		
		Existing	**Proposed**	**Change**
(a) Retail	Supermarket	4,975.70	4,436*	-539.7
	Retail Units	5,109.20**	3,812.70***	-1,296.5
	Sub-total (a)	**10,084.90**	**8,248.70**	**-1,836.2**
(b) Other Main Town Centre Uses	Workspace (E(g))	0	2,725.30	2,725.3
	Sub-total (a) + (b)	**10,084.90**	**10,974.00**	**+889.1**
(c) Ancillary Internal Space	Internal mall/atrium	1,392	0	-1,392.0
	Internal plant and service yard (supermarket)	0	1,544.70	+1,544.7
	Internal Basement Car Park (supermarket)	0	4731.3	+4,731.3
	Sub-total (a) + (b) + (c)	**11,476.90**	**17,250.00**	**+5,773.1**
(d) Other (non-Main Town Centre Uses)	Petrol Filling Station	98	0	-98.0
	Total (a) + (b) + (c) + (d)	**11,574.90**	**17,250.00**	**+5,675.1**

*Excluding internal service yard and plant.
**This comprises a mix of E(a), E(b), and Sui Generis uses (refer to Table 2.1 of Appendix B of my POE)
*** Flexible use class E(a-g) and drinking establishments (E(g) limited to 320sqm and Drinking Establishments limited to 350sqm GIA).

3.3 I will reiterate (with reference to paragraphs 6.9, 7.9 and 8.9 of my POE) that LBS Officers did not object to the proposed mix and amount of non-residential floorspace either at the pre-application or post-application stages (including in the Committee Report) (OR, CD3.1).

Small Shops

3.4 Paragraphs 6.4-6.8 of MI's POE and para. 40 onwards of JH's POE challenge whether the Proposed Development accords with the requirements of NSP Policy P32 with regards to Small Shops. I respond to this below:

Existing Small Shops

3.5 A measured floorspace survey was submitted as part of the planning application (Appendix I of Appendix I of the Planning Statement Addendum (AC04A)). The floorspace of each shop unit is set out in Table 2.1 of the Planning Statement (AC04). As per paragraph 2.11 (of the Planning Statement), Table 2.1 confirms that there is one existing shop unit that extends to less than 80sqm (GIA) (including storage). This is currently occupied by the Applicant and is used as a consultation hub (Sui Generis use) via a temporary planning permission. The use will revert to retail (E(a)) once this expires. In addition to the existing small shop unit referenced above, it is also agreed that there are also 10 hand carts within the internal mall atrium which comprise Small Shops.

3.6 The details set out above as to which existing units comprise Small Shops is based on GIA floorspace figures (which include storage). The NSP definition excludes storage.

3.7 I have revisited the Measured Floorspace evidence to reach a view as to whether any further units should be treated as Small Shops. The survey provides Gross Internal Area (GIA); Net Sales Area (NSA); and Back of House (BOH) figures only – GIA excluding storage area has not been measured. I have made an updated judgement at whether any further units could comprise Small Shops in Table 3.2 below:

Table 3.2 Small Shops

Unit No.	GIA (sqm)	NSA (sqm)	Small Shop	Comments (re. whether a Small Shop)	Occupier	Small or Independent Business
2	169.5	105.4	No	NSA and GIA in excess of 80sqm	Duses Shoes	Yes
2A	456.9	201.6	No	NSA and GIA in excess of 80sqm	Nandos	No National multiple
3	184.6	88	No	NSA and GIA in excess of 80sqm	Vacant	-
4	174.6	70.4	No	GIA is substantially in excess of the Small Shop definition. NSA is slightly below. 104.2sqm of back of house floorspace. An assumption has been made that more than 9.6sqm of this is likely to be non-storage (office, staff room, corridors etc)	Cardfactory	No National multiple
5	748.8	507.2	No	NSA and GIA in excess of 80sqm	Poundland	No National multiple
6	610.9	293.9	No	NSA and GIA in excess of 80sqm	JD Sports	No National multiple
7	231.9	75.9	No	GIA is substantially in excess of the Small Shop definition. NSA is slightly below. 156sqm of back of house floorspace. An assumption has been made that more than 4.1sqm of this is likely to be non-storage (office, staff room, corridors etc)	EE	No National multiple
8	224	65.8	No	GIA is substantially in excess of the Small Shop definition. NSA is slightly below.	Greggs	No National multiple

				158.2sqm of back of house floorspace. An assumption has been made that more than 14.2sqm of this is likely to be non-storage (kitchen, office, staff room, corridors etc)		
9	232.8	115.6	No	NSA and GIA in excess of 80sqm	Holland & Barrett	No National multiple
10	712.4	519.6	No	NSA and GIA in excess of 80sqm	Market Place Peckham	No 6 branches across the UK
11	91.5	56.6	Not clear (maybe)	GIA is slightly in excess of Smal Shop definition. NSA is slightly below. Could be a Small Shop	Ladbrokes	No National multiple
11A	299.9	105.1	No	NSA and GIA in excess of 80sqm	Wing Tai	Not clear
12	295.9	182.3	No	NSA and GIA in excess of 80sqm	Vacant	-
14	141	104.8	No	NSA and GIA in excess of 80sqm	Pak Butchers	Yes
15	133	86.5	No	NSA and GIA in excess of 80sqm	Vacant	-
15A	68	43.8	Yes	-	Consultation Hub	No
15B	82.9	49.9	Not clear (maybe)	GIA is slightly in excess of Small Shop definition. NSA is slightly below. Could be a Small Shop	Just for You Fashion	Yes
16	93	73.2	Not clear (maybe)	GIA is slightly in excess of Smal Shop definition. NSA is slightly below. Could be a Small Shop	Factory Outlet	Yes
17	157.6	112.1	No	NSA and GIA in excess of 80sqm	Image	Yes
18	4,975.7	3,230.5	No	NSA and GIA in excess of 80sqm	Morrisons	No National multiple
-	98				Morrisons Petrol Station	No National multiple
Total	**10,182.9**					

3.8 Table 3.2, above, indicates that Units 11, 15B and 16 could also fall within the definition of Small Shops (alongside 15A and the handcarts).

3.9 I note that JH queries whether the individual food vendors operating within the Market Place should be treated as Small Shops. I will refer to paragraph 2.14 of my POE which sets out my view on the planning characteristics of the Market Place. My view is that Unit 10 (as a whole) is the relevant shop for the purposes of Policy P32 and this exceeds 80sqm (excluding storage) and therefore is not a Small Shop. It is also the relevant planning unit in my view.

Proposed Small Shops

3.10 The Application proposes 3,812.7sqm (GIA) of floorspace to be provided as 'retail units' (refer to Table 3.1 above). The number of retail units and the size of each retail unit is not defined as part of the Application. The units shown on the proposed floorplans are intended to be capable of being sub-divided in line with occupier requirements.

3.11 NSP Policy P32 requires 10% of the retail floorspace to be provided as Small Shops. As per para 9.77 of the Planning Statement Addendum (AC04A) (CD2.6), it is proposed that 10% of the 'retail unit' floorspace (381sqm) will be provided as Small Shop units. This is to be secured via a s.106 obligation. The intention is that this will comprise a range of unit sizes of up to 80sqm (excluding storage) in order to be suitable for existing and a range of future occupiers.

3.12 The OR (para 94-98) indicates that this approach to applying the 10% policy requirement is acceptable to Officers. The drawing on page 73 of the Design and Access Statement illustrates where some of these small shops could be located (as discussed at para 94-98 of the OR).

Provision of Suitable Space for Existing Occupiers of Small Shops

3.13 The Application assumes that all existing occupiers (except Morrisons) will be displaced from the Site following the demolition of the existing Aylesham Centre.

3.14 Notwithstanding this, I will note that there will be an opportunity for some existing occupiers, including occupiers of Small Shops, to relocate to new retail accommodation in Phase 1 which will be provided prior to demolition (which includes Small Shops) (refer to the proposed Accommodation Schedule, CD2.3):

- Block L: 16.5sqm (GIA)
- Block N: 97.4sqm (GIA) (this would meet the definition of a Small Shops if the unit included >17.4sqm of storge).

3.15 All other existing occupiers, including those of Small Shops will be able to return to the Site in Phase 2 which is to include a range of retail unit sizes including at least 10% Small Shops (by floorspace).

3.16 Consideration has been given to the feasibility of providing temporary accommodation (including Small Shops) on the Site during the construction period prior to the completion of the new retail units in Phase 2. Owing to the physically constrained nature of the site, it was concluded that this was not a feasible proposition as all available land would be needed for construction purposes (including compounds) as necessary to deliver the site allocation. I will defer to the evidence of Judith Stichtenoth for further details.

Provision of Relocation Support for Existing Occupiers of Small Shops

3.17 The Application identifies Unit 15A and the handcarts as being Small Shops. As explained above (Table 3.2), in revisiting this matter, my view is that Units 11, 15B and 16 might also comprise Small Shops.

3.18 As identified in Table 3.2 above, Units 15A, 15B, 16 and the handcarts are occupied by Small or Independent Businesses (for the purposes of the Fact Box on page 159 of the NSP). As a consequence, relocation support is to be provided to these occupiers under the terms of the Business Relocation Strategy (BRS), which is to be secured via a s.106 obligation. One of the intentions of the BRS is to provide support to existing occupiers of Small Shops to secure suitable alternative accommodation that is affordable to the particular occupier.

3.19 While Ladbrokes does not meet the definition of a Small or Independent Business, it is to be provided support under the Business Relocation Strategy as it occupies a Small Shop (Unit 11). This ensures that all occupiers of units that might reasonably meet the definition of a Small Shop are supported.

Provision of Affordable Space for Existing Occupiers of Small Shops

3.20 The Business Relocation Strategy provides a right to return to the completed development for all existing occupiers that meet the definition of Small/Independent Business or who occupy a Small Shop. This includes preferential lease terms, including a discount to market value, to help ensure that units in the completed development are affordable to existing occupiers. I will note that existing occupiers do not benefit from discounted lease terms at present.

Conclusion

3.21 On the basis of the above and the evidence in my POE, it is my view that the Proposed Development accords with NSP Policy P32 (Small Shops) (in addition to also complying with Policy P33). I will refer to paragraphs 94-98 of the OR to confirm that LBS Officers considered the approach to Small Shops to be acceptable.

Small and Independent Businesses

3.22 JH has queried which units the Appellant considers meet the definition of Small or Independent Businesses as set out in the Fact Box in the NSP. I will refer to Table 2.1 above and paragraphs 2.12-2.23 of Appendix B of my POE for details. I will also refer to the draft s.106 agreement which includes a list of occupiers under the definition of 'Local Independent Operators' and which are to be provided with support as part of the Relocation and Small Shops Strategy (the BRS) secured by the s.106 agreement.

3.23 I note that JH queries whether the individual food vendors operating within the Market Place should be treated as Small or Independent. Again, I will refer to paragraph 2.14 of my POE which sets out my view on the planning characteristics of the Market Place. My view is that Market Place is the relevant business for the purposes of Policy P33 and this is not a Small or Independent Business.

Market

3.24 Para 2.1 (and throughout) of MI's POE refers to the Site as accommodating a 'market place' (all lower case). This is incorrect. The Site does not include a market or market place.

3.25 The Site includes a retail unit (Unit 10) which is in use as a food hall, trading under the brand name of 'Market Place' (the full name is 'Market Place Food Hall', as described on its website). Market Place operates from multiple locations across London including Vauxhall, Harrow, St Pauls and Peckham. Further details are at para. 2.14 of my POE.

Specialist Goods

3.26 The evidence of MI and JH could be interpreted as suggesting that existing retailers are focussed on the sale of specialist goods including those that serve the local Afro Caribbean and West African communities. This is misleading.

3.27 I will refer to Table 2.1 of Appendix B of my POE for details of the Site's existing retail offer, noting that it is dominated by multiple retailers with specialist goods provision limited to Wing Tai and Pak Butchers (Units 11A and 14) plus some limited specialist goods sold from hand carts (such as herbal teas).

3.28 I will note that this is notably different to the rest of the town centre which has a different character that is more dominated by independent retailers and those selling specialist goods, including those that serve the local Afro Caribbean and West African communities.

3.29 I will further note (with reference to para.2.22 of Appendix B of my POE) that my observational review of the remainder of the town centre in September 2025, indicates that (on the whole) the general range of specialist goods sold by existing occupiers on the Site are also stocked by other retailers elsewhere in the town centre.

Acceptability of Workspace

3.30 The evidence of JH queries the acceptability of the provision of workspace (use class E(g)) as part of the Proposed Development.

3.31 Workspace is not a use required by the Allocation (NSP74), but it also does not preclude it and its acceptability should be determined against the development plan as a whole having regard to relevant material considerations which include national planning policy.

3.32 Workspace is a Main Town Centre use (NPPF Annex 2). NPPF para 91 confirms that town centres are the preferred locations for Main Town Centre uses. London Plan Policies SD6, SD7 and SD8 alongside NSP Policies SP4, AV14, and P30 are consistent with national policy and therefore support the principle of all Main Town Centre uses in town centres, including offices. Peckham is classified as a Major Town Centre in the London Plan, where employment uses are supported (policy SD8).

3.33 I will also refer to the Development Brief and the OR (CD3.1, paragraphs 83-85) which confirms that the Council supports the provision of workspace as part of the Proposed Development and note that it will provide a service to the general public.

Supermarket

3.34 Paragraph 61(e)(i) queries whether the supermarket use is secured. I enclose a letter from Morrisons at Appendix A which confirms that they are supportive of the Proposed Development and are under contract with the Appellant, ensuring the long term future of Morrisons at the Site.

4. Planning Balance

Scope of Public Benefits

4.1 Paragraphs 7.10-27 of MI's evidence sets out his view on the scope of public benefits associated with the Proposed Development, with MI concluding that the provision of affordable homes is the only element of the scheme that would amount to a public benefit for the purposes of a NPPF para 215 balancing exercise. This conflicts with the PPG guidance that MI refers to at para 7.20 of his POE and my views set out in my POE (Section 14). I further note (with reference to para 7.24 of MI's POE) that meeting the requirements of planning policy, which results in an improvement, is a public benefit that should be accounted for in a heritage and overall planning balance. I will refer to the Vistry Homes Ltd v Secretary of State for Levelling Up, Housing And Communities & Ors (Rev1) [2024] EWHC 2088 (Admin) judgement to support this point (enclosed at Appendix G).

4.2 I note that JH accepts that the Proposed Development generates a much broader scope of public benefits for the purpose of the overall planning balance.

Planning Benefits v Public Benefits

4.3 MI's evidence (para 9.23) seems to seek to distinguish between public benefits and planning benefits, suggesting that some planning benefits are not public benefits. I disagree with this as a matter of principle. The planning system operates in the public interest, therefore planning benefits must be public benefits.

Weight to be Given to Benefits

4.4 MI reaches the view that the provision of housing should be given moderate weight given that the borough has a 7.21 year housing land supply. For the reasons set out in Section 2 of this rebuttal it is clear to me that this is a significant over-estimate of the 5YHLS, and therefore, even on MI's approach, much greater weight should be given to this. In my view, regardless of the 5YHLS position in Borough, very significant weight should be given to the benefit of housing. As referred to above, decision makers should treat London as a single housing market, and there is no doubt that London is in dire need of housing.

4.5 MI gives limited weight to affordable housing provision, and while JH considers that the delivery of affordable housing is 'always a benefit' he also considers this to be harmful due to the low level of affordable housing (which seems contradictory).

4.6 While I appreciate that this is a matter of professional judgement, I generally disagree with the level of extent of weight that JH/MI have attributed to both benefits and harms, which in my view are weighted significantly in favour of the proposal.

4.7 I will refer to the full scope of public benefits in my POE.

5. Other

Planning Policy Framework/Material Considerations

5.1 The evidence of MI (including at paragraphs 3.17 and 7.6) sets out a list of documents described as 'guidance that is particularly material in this case'. A number of these documents do not comprise guidance, they comprise evidence base documents. In this context, I note that JH makes repeated references to the draft Peckham Area Character Study which has no planning status and is in draft (and therefore should be of limited consideration).

EQIA Matters

5.2 I will defer to the evidence of Sasha Gordon to respond to the equalities related points raised in the evidence of MI and JH associated with the loss of retail and proposed housing.

Heritage Impact Assessment

5.3 The LPA considered that the application satisfied its validation requirements, and that the scope of matters that would typically be considered in a standalone Heritage Impact Assessment was covered in full in the submitted HTVIA (the scope of which was pre-agreed with the Council as part of the EIA Scoping exercise). I will defer to Lewis Eldridge for further details on this matter.

Tall Buildings

5.4 JH suggests at para 30/31 of his POE that development plan policies relating to tall buildings (including London Plan Policy D9 have not been satisfied. I will refer to para 9.140 (onwards) of the Planning Statement (AC04) (CD1.8) and the DAS (AC02A) (CD2.4) that address this.

Appendix A

Letter from Morrisons

Date: 23/09/2025

Subject: Letter of Support- Planning Application by Berkeley Homes for Redevelopment of 24/AP/2074 - THE AYLESHAM CENTRE, RYE LANE, LONDON, SE15 5EW

Dear Sir/Madam,

We are writing to confirm Morrisons full support for the planning appeal submitted by Berkeley Homes for the redevelopment of the above site in Peckham. We are aware that this letter could be referenced as evidence during that appeal process.

As the operator of the current supermarket on site, we recognise that redevelopment is needed to secure Morrisons' long-term future in Peckham and we have been in contract with Berkeley Homes since 2021 to deliver a new, modern store as part of the wider redevelopment. Throughout this period we have worked closely with their team to help shape a proposal that ensures continued food retail provision for the community while supporting wider regeneration aims for the area.

A key and welcome component of the proposal is the delivery of a brand-new, purpose-built Morrisons store. This new facility would allow us to significantly improve the offer to our customers, deliver a more sustainable and efficient store, and ensure we can continue serving the local community for decades to come.

We believe that the proposed development offers a major benefit to Peckham, not only in terms of housing and public realm improvements but also through securing the long-term future of Morrisons on this site. This application safeguards a vital local service and supports local employment, both now and for the next generation.

We therefore strongly support Berkeley Homes' appeal and urge the application to be approved.

Yours faithfully

Georgina French
Senior Property Manager- Assets and Development
Wm Morrison Supermarkets Ltd.

Appendix B

LBS 5 Year Housing Land Supply Schedule

Site Allocation				5 and 15 Year Land Supply as per Southwark Plan Annex 2						Revised Block 1 Live (Southwark Plan years 1-5)								Revised Block 2 Live (Southwark Plan years 6-10)						Revised Block 3 Dec 2024 (Southwark Plan years 11- 15)					
Area Vision	Site Reference Number	Site Address	Planning Approval Reference	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025	6-15 Years	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025	TOTAL: 1-5 Years (2020/21 - 2024/25)	Comparison (Annexe 2 / Revised, 1-5 yrs)	Comparison (Annexe 2 / Revised, 1-5 yrs) PER SITE ALLOCATION	2025/26	2026/27	2027/28	2028/29	2029/30	TOTAL: 6-10 Years (2025/26 - 2034/35)	2030 / 31	2031 / 32	2032 / 33	2033 / 34	2034 / 35	TOTAL: 11-15 Years (2030/31 - 2034/35)
				As per SP Annex 2	As per SP Annex 2	As per SP Annex 2	As per SP Annex 2	As per SP Annex 2	As per SP Annex 2	V1 January 2025	V1 January 2025	V1 January 2025	V1 January 2025	V1 January 2025	V1 January 2025	V1 January 2025	V1 January 2026	Projected for future supply more specifically	Projected for future supply more specifically	Projected for future supply more specifically	Projected for future supply more specifically	Projected for future supply more specifically	V1 January 2025	Projected for future supply more specifically	Projected for future supply more specifically	Projected for future supply more specifically	Projected for future supply more specifically	Projected for future supply more specifically	V1 January 2025
Aylesbury	NSP01	Aylesbury Estate, Landed Bounded by Albany Road, Portland Street, Westmoreland Road and Bradenham Close	14/AP/3843 (FDS parent)		276								149		149	-127	-1	420	261				681						0
			17/AP/3885 (FDS 1st S73)	NEW APPLICATION									4		4	4		8					8						0
			22/AP/1063 (FDS 2nd S73)	NEW APPLICATION											0	0			60				60						0
		Aylesbury Estate Land Bounded By Albany Road Portland Street Bagshot Street Alvey Street East Street And Dawes Street	14/AP/3844 (outline)						567				122		122	122							0	285		178		1520	1983
		Aylesbury Plot 18 Within Land Bounded By Thurlow Street To The East Dawes Street To West Inville Road To The South And Plot 9 (A/B) Of The Aylesbury Regeneration To The North London SE17	16/AP/2800 (RMA - plot 18/phase 2a)	NEW APPLICATION											0	0							0						0
		Aylesbury Estate Site Phase 2B Land Bounded By Thurlow Street And Albany Road And Kinglake Street And Bagshot Street	22/AP/2226 (amended scheme for phase 2b)	NEW APPLICATION											0	0					640		640						0
TOTAL: Aylesbury Area Vision				0	276	0	0	0	567	0	0	0	275	0	275	-1		428	321	0	640	0	1389	285	0	178	0	1520	1983
						1-5 years	276	6-15 years	567																				
	NSP02	Site Bordering Great Suffolk Street and Ewer Street	20/AP/1009						40								0												
			24/EQ/0123	NEW APPLICATION																									
	NSP03	62-67 Park Street	N/A						80						0	0	0						0		80				80
	NSP04	185 Park Street	14/AP/3842 (NMA for 19/AP/5478 increase by 6 units)		81	82					81	88			169	6	6						0						0
	NSP05	London Fire and Emergency Planning Authority	17/AP/0367 (196 units due to NMAs)		132	67					132	64			196	-3	-3						0						0
Bankside and Borough	NSP06	1 Southwark Bridge Road and Red Lion Court	21/AP/0599						261							0	0												
		Red Lion Court 46-48 Park Street London Southwark SE1 9EQ	22/AP/1602	NEW APPLICATION												0													
	NSP07	Landmark Court	19/AP/0830				36								0	-36	-36	36					36						0
	NSP08	Land between Great Suffolk Street and Glasshill Street	N/A	NEW APPLICATION											0	0	0						0					66	66
	NSP09	Swan Street Cluster - 275 Borough High Street and 7 Trinity Street	N/A						23						0	0	0						0		23				23
	NSP10	7-14 Great Dover Street	N/A						59						0	0	0						0		59				59
	NSP11	200 Great Dover Street	N/A						16						0	0	0						0		16				16
	NSP12	19, 21 and 23 Harper Road, 325 Borough High Street, 1-5 and 7-11 Newington Causeway, SE1	18/AP/0657		13										0	-13	-13						0						0
			23/AP/0479	NEW APPLICATION											0	0				192			192						0
TOTAL: Bankside and Borough Area Vision				0	226	149	36	0	479	0	213	152	0	0	365	-46		36	0	192	0	0	228	0	178	0	0	66	244
						1-5 years	411	6-15 years	479																				
Bermondsey	NSP13	~~Biscuit Factory and Campus~~	~~17/AP/4088~~			~~179~~	~~180~~	~~189~~	~~1000~~						0	-548	-548						0						0
		Biscuit Factory and Campus	23/AP/2124 (S73 increase units from 1536 to 1624) (superseeded 17/AP/4088)	NEW APPLICATION											0	0			1624				1624						0
	NSP14	Tower Workshops	N/A						178						0	0	0						0		178				178
	NSP15	Chambers Wharf	07/AP/1262 (Phase 1)	180						180					180	0	0						0						0
			07/AP/1262 (Remaining Capacity) (NMA 24/AP/1547)						407						0	0				384			384						0
TOTAL: Bermondsey Area Vision				180	0	179	180	189	1585	180	0	0	0	0	180	-548		0	1624	384	0	0	2008	0	178	0	0	0	178
						1-5 years	728	6-15 years	1585																				
	NSP16	Conoco House, Quadrant House, Edward Edwards House and Suthring House	20/AP/3250						124						0	0	0	66					66						0
	NSP17	Friars House, 157 -168 (160) Blackfriars Road	20/AP/0556																										
	NSP17	Friars House, 157 -168 (160) Blackfriars Road	24/EQ/0141																										
	NSP18	Land enclosed by Colombo Street, Meymott Street and Blackfriars Road	15/AP/0237																										

		Ludgate House and Sampson House, 64 Hopton Street	~~12/AP/3940 (Ludgate and Sampson — Parent)~~		~~85~~	~~85~~	~~87~~									0	-257						0						0							
		Ludgate House and Sampson House, 64 Hopton Street	17/AP/2286 - S73 (Ludgate - Building C (3) and Sampson D (9))	NEW APPLICATION												0	0						0						0							
		Ludgate House and Sampson House, 64 Hopton Street	18/AP/3696 - (Ludgate - Building C (3))	NEW APPLICATION												0	0						0						0							
		Ludgate House and Sampson House, 64 Hopton Street	19/AP/1950 - S73 (Ludgate - Building 2, other changes to building 1 and 3 but doesnt impact sqm))	NEW APPLICATION												0	0		120		120		240						0							
		Ludgate House and Sampson House, 64 Hopton Street	24/AP/0284 - (Ludgate - Building 2)	NEW APPLICATION												0	0				9		9						0							
		Ludgate House 245 Blackfriars Road	22/AP/2295 (Ludgate - Building 1 (A))	NEW APPLICATION												0	0						0						0							
	NSP19	Sampson House	18/AP/1603 - S.73 (Sampton House - Parent)				170	171								0	-341	-598	170	171			341						0							
		Sampson House	21/AP/3723 (Sampton - Building 9)	NEW APPLICATION												0	0						0						0							
		Sampson House	22/AP/3442 (Sampton - Building 5)	NEW APPLICATION												0	0				9		9						0							
		Sampson House	24/AP/3299 (Building 5)	NEW APPLICATION												0	0					2	2						0							
	NSP20	~~Southwark Underground Station The Cut, 68-70 - Blackfriars Road~~	~~20/AP/1189~~													0	0	-16					0						0							
		~~Southwark Underground Station The Cut, 68-70 - Blackfriars Road London Southwark SE1 -~~	~~24/EQ/0027 revision to 20/AP/1189~~													0	0						0						0							
		Southwark Overground Station	24/AP/2770 (replaces 20/AP/1189)	NEW APPLICATION												0	0					105	110.9	215.9						0							
		Southwark Station and 1 Joan Street	20/AP/0969 (Council scheme)				16									0	-16		25					25						0							
	NSP21	McLaren House, St George's Circus	N/A							215						0	0	0					0	200	15					215						
	NSP22	~~Land between Paris Gardens, Colombo Street, Blackfriars Road and Stamford Street~~	~~16/AP/5239~~		~~96~~	~~96~~	~~96~~									0	-288	0					0						0							
		Land between Paris Gardens, Colombo Street, Blackfriars Road and Stamford Street	23/AP/1854							433						0	0					100	100	200	100	133				233						
	NSP23	~~1-5 Paris Garden And 16-19 Hatfields London SE1 8ND~~	~~17/AP/4230 (commercial)~~																																	
		4-5 Paris Garden And 18-19 Hatfields (Including Part 6 Paris Garden, Flank Wall Of 17 Hatfields And Undercroft Servicing Route) London, SE1 8ND	23/AP/3068																																	
TOTAL: Blackfriars Area Vision				0	181	367	354	0	772							0	-902		381	171	138	205	212.9	1107.9	300	148	0	0	0	448						
						1-5 years	902	6-15 years	772																												
	NSP24	Camberwell Station	23/AP/2880 - Change of Use from arches to mixed commercial																																	
	NSP25	Burgess Business Park: 21-23 Parkhouse Street London SE5 7TQ	19/AP/0469						33							0	0	0		33			33						0							
		Burgess Park Business Park: 25-33 Parkhouse Street London Southwark SE5 7TQ	20/AP/0858						109							0	0		128				128						0							
		10-12 Parkhouse Street	20/AP/0581	NEW APPLICATION												0	0						0						0							
		5-7 Cottage Green And 69 Southampton Way London Southwark SE5 7ST	21/AP/1254	NEW APPLICATION												0	0						0						0							
		Burgess Industrial Park Parkhouse Street London SE5 7TJ	21/AP/1342	NEW APPLICATION												0	0					386	386						0							
		35-39 Parkhouse Street London SE5 7TQ	19/AP/2011						100							0	0				85		85						0							
	NSP26	Butterfly Walk and Morrisons Car Park and Police station	19/AP/7057						230							0	0	0			145		145						0							
	NSP27	Valmar Trading Estate	~~19/AP/0864~~			~~21~~	~~22~~									0	-43	-43					0						0							
			21/AP/4714	NEW APPLICATION												0	0			43			43						0							
	NSP28	Camberwell Bus Garage	N/A						264							0	0	0					0	264						264						

	NSP29	Abellio Walworth Depot	N/A						196						0	0	0						0	196					196
	NSP30	Land Between Camberwell Station Road and Warner Road	N/A						63 (64 in Annex 2)						0	0	0						0	64					64
	NSP31	Iceland, 120-132 Camberwell Road	N/A						39						0	0	0						0	39					39
	NSP32	49 Lomond Grove	N/A						39						0	0	0						0	39					39
	NSP33	83 Lomond Grove	N/A						50						0	0	0						0	50					50
	NSP34	123 Grove Park	17/AP/4124 (24/AP/1228 - VAR - doesnt change units)		9										0	-9	-9	9					9						0
	NSP35	Camberwell Green Magistrates Court	23/AP/2786						150						0	0	0		144				144						0
	NSP36	Denmark Hill Campus East	20/AP/2768						187						0	0	0		187				187						0
TOTAL: Camberwell Area Vision				0	9	21	22	0	1397	0	0	0	0	0	0	-52		137	407	230	386	0	1160	652	0	0	0	0	652
						1-5 years	52	6-15 years	1397																				
Crystal Palace and Gypsy Hill Sites	NSP37	Guys and St Thomas Trust Rehabilitation Centre, Crystal Palace	N/A						103						0	0	0						0	103					103
TOTAL: Crystal Palace and Gypsy Hill Area Vision				0	0	0	0	0	103	0	0	0	0	0	0	0		0	0	0	0	0	0	103	0	0	0	0	103
						1-5 years	0	6-15 years	103																				
Dulwich	NSP38	The Grove Tavern, Lordship Lane	N/A						63						0	0	0						0	63					63
TOTAL: Dulwich Area Vision				0	0	0	0	0	63	0	0	0	0	0	0	0		0	0	0	0	0	0	63	0	0	0	0	63
						1-5 years	0	6-15 years	63																				
East Dulwich	NSP39	Kwik Fit and Gibbs and Dandy, Grove Vale	N/A						19						0	0	0						0	19					19
	NSP40	Dulwich Hamlet Champion Hill Stadium, Dog Kennel Hill	19/AP/1867						219						0	0	0			219			219						0
	NSP41	Railway Rise, East Dulwich	24/AP/2314						53						0	0	0			197			197						0
	NSP42	Dulwich Community Hospital, East Dulwich Grove	16/AP/2740																										
	NSP43	Goose Green Trading Estate	19/AP/5617						83						0	0	0						0	83					83
TOTAL: East Dulwich Area Vision				0	0	0	0	0	374	0	0	0	0	0	0	0		0	0	416	0	0	416	102	0	0	0	0	102
						1-5 years	0	6-15 years	374																				
Elephant and Castle	NSP44	69 Borough Road 82-83 Borough Road London Southwark SE1 6DR	24/AP/1958						438						0	0	0			200	200	200	600	200	92				292
	NSP45	Bakerloo Line Sidings and 7 St George's Circus	N/A						100						0	0	0						0	100					100
	NSP46	63-85 Newington Causeway	~~21/AP/4297~~						~~93~~						0	0	0						0	~~93~~					93
			23/AP/0958	NEW APPLICATION											0	0				45	45		90						0
			24/AP/3621	NEW APPLICATION											0	0						97.2	97.2						0
	NSP47	Salvation Army Headquarters, Newington Causeway	24/EQ/0018	NEW APPLICATION											0	0	0						0	57					57
	NSP48	~~West Site Elephant And Castle Shopping Centre, 26, 28, 30 And 32 New Kent Road And Arches 6 And 7 Elephant Road And London College Of Communications Site, Elephant And Castle London SE1 6TE~~	~~24/EQ/0094~~	~~NEW APPLICATION~~											0	0	-481						0						0
		Elephant and Castle Shopping Centre and London College of Communications	16/AP/4458					481	496						0	-481		149	200	200	200	200	949	30					30
			21/AP/1104	NEW APPLICATION											0	0		4					4						0
	NSP49	London Southbank University Quarter, 103 Borough Road	17/AP/4233 (student/ commercial)																										
		South Bank University 21 Keyworth Street	23/AP/0792- non-resi Class F1- MAY 23																										
	NSP50	1-5 Westminster Bridge Road	N/A						21						0	0	0						0	21					21
TOTAL: Elephant and Castle Area Vision				0	0	0	0	481	1148	0	0	0	0	0	0	-481		153	200	445	445	497.2	1740.2	501	92	0	0	0	593
						1-5 years	481	6-15 years	1148																				
Herne Hill and North Dulwich	NSP51	Bath Hill Trading Estate	N/A						45						0	0							0	45					45
TOTAL: Herne Hill Area Vision				0	0	0	0	0	45	0	0	0	0	0	0	0		0	0	0	0	0	0	45	0	0	0	0	45
						1-5 years	0	6-15 years	45																				
London Bridge	NSP52	Sainsbury Outpatient Pharmacy Solomon Centre Guys Hospital St Thomas Street SE1 9RT	20/AP/3101																										
		Nuffield House 18-19 Newcomen Street London Southwark SE1 1UL	21/AP/1719 - Non-resi (hospital)																										
		Margret House 111 Snowsfields London Southwark SE1 3SS	23/AP/0572 - Rewal of COU sui generis (hostel) to Class E(g)(i) (offices)																										
		Site Known As Snowsfields Quarter Including 92-95 Snowsfields, 96 Snowsfields (The Miller Pub), NCP London Bridge Car Park, And 111 Snowsfields (the Former Margaret House), London, SE1 3SS.	23/EQ/0162																										
	NSP53	Land between Melior Street, St Thomas Street, Weston Street and Fenning Street	18/AP/0900		181	181									0	-362	-362	362					362						0
		Becket House 60-68 St Thomas Street	20/AP/0944																										
	NSP54	Land between St Thomas Street, Fenning Street, Melior Place, and Snowsfields	19/AP/0404						121																				
		Land Bounded By St Thomas Street Fenning Street Vinegar Yard And Snowfields Including Nos. 1-7 Fenning Street And No. 9 Fenning Street SE1 3QR	18/AP/4171																										
	NSP55	Colechurch House 1 London Bridge Walk	20/AP/3006- change in use - bar - FEB21 (temporary permission)																										
		Colechurch House London Bridge Walk	20/AP/3013																										
TOTAL: London Bridge Area Vision				0	181	181	0	0	121	0	0	0	0	0	0	-362		362	0	0	0	0	362	0	0	0	0	0	0
						1-5 years	362	6-15 years	121																				
	NSP56	Bricklayers Arms	N/A																										
	NSP57	Rich Industrial Estate Crimscott Street And Willow Walk	15/AP/2474 (Phase 1 and 2)				203	203				276			276	-130	-139			130			130						0
		Rich Industrial Estate Crimscott Street And Willow Walk	20/AP/2993 (Phase 3)	NEW APPLICATION											0	0				53			53						0
		20 Crimscott Street	19/AP/1286				9								0	-9		9					9						0
		Sultra House 29-31 Pages Walk	20/AP/1120					8						8	8	0							0						0
		18-19 Crimscott Street	17/AP/3170 (22/AP/3170 NMA reduction 12 units from 55)			43						43			43	0							0						0
		24 Crimscott Street	21/AP/0681																										

	29-31 Pages Walk, 20-24 Crimscott Street	**24/EQ/0121 (Includes 21/AP/0681 and 20/AP/1120)**	NEW APPLICATION										0	0					140		140							0
	23-25 Pages Walk	**25/EQ/0075**	NEW APPLICATION																		0	28						28
NSP58	Car Park Adjacent To 25 Mandela Way	23/AP/0950						1955																						
	Parliamentary Press Mandela Way	21/AP/1093																												
	Progress House 5 Mandela Way London Southwark SE1 5SS	25/AP/0201													0															
	Empty Land at 105 Pages Walk	22/EQ/0191	NEW APPLICATION										0	0							0							0
NSP59	Southernwood Retail Park 2 Humphrey Street	18/AP/3551				270	271	183					0	-541	-541	270	271			183	724							0
	170 Dunton Road (Tesco Store and Car Park)	19/EQ/0101	NEW APPLICATION										0	0							0	876						876
NSP60	Salisbury Estate Car Park	19/AP/1506				26					26		26	0	0						0							0
NSP61	96-120 Old Kent Road (Lidl Store)	N/A						180					0	0	0						0	180						180
NSP62	Former petrol filling station, 233-247 Old Kent Road	18/AP/0928			24						24		24	0	0						0							0
NSP63	Kinglake Street Garages	16/AP/4589				21					21		21	0	0						0							0
NSP64	4/12 Albany Road	N/A						24					0	0	0						0	24						24
NSP65	Former Southern Railway Stables	24/AP/0012						103					0	0	0				32		32							0
NSP66	57 Glengall Road	17/AP/2952		9									0	-9	-671						0	9						9
	49-53 Glengall road	17/AP/4612				90	91						181	0		90	91				181							0
	Malt Street Regeneration Site Land Bounded By Bianca Road Latona Road Haymerle Road Frensham Street And Malt Street	17/AP/2773 (Hybrid including Phases 1, 2 and 3) (269 units have been removed from outline total potential and recorded under RMA)				210	210	880					420	0		420			611		1031							0
	Malt Street Regeneration Site Land Bounded By Bianca Road Latona Road Haymerle Road Frensham Street And Malt Street	20/AP/3242 (RMA for Hybrid App 17/AP/2773)	NEW APPLICATION										0	0		269					269							0
	Nyes Wharf Frensham Street	17/AP/4596				76	77						0	-153		77	76				153							0
	Land At Cantium Retail Park 520 Old Kent Road London SE1 5BA	18/AP/3246				94	94	925					94	-94		90	923	94			1107							0
	3-5 Latona Road London SE15 6RY	18/AP/4003				10							0	-10				10			10							0
	596-608 Old Kent Road Land at Livesey Place	18/AP/3284				93	93	186					0	-186		93	93	186			372							0
	16 Peckham Park Road And 1 Livesey Place	18/AP/0564		5									0	-5					5		5							0
	14-22 Ossory Road	19/AP/7610					35	36					35	0		36	35				71							0
	Bianca Warehouse 43 Glengall Road & 1 Bianca Road	20/AP/0039					270						0	-270		270					270							0
	Horizon Industrial Estate 95 Haymerle Road	20/AP/3822					20	20					0	-20			20	20			40							0
	596-608 Old Kent Road And Land At Livesey Place London SE15 1JB	24/EQ/0195	NEW APPLICATION										0	0					550		550							0
	2-10 Ossory Road	21/AP/3246	NEW APPLICATION										0	0			117				117							0
	~~54 - 80 Ossory Road~~	~~20/AP/0504~~	~~NEW APPLICATION~~										0	0							0							0
	7-17 Latona Road	22/AP/2748	NEW APPLICATION										0	0							0	10						10
	93 Haymerle Road	23/AP/1294	NEW APPLICATION										0	0		9					9							0
	55 Glengall Road	18/EQ/0373	NEW APPLICATION										0	0							0	8						8
	Rexel - 24-50 Ossory Road	19/EQ/0082											0	0							0							0
	50 Ossory Road	25/EQ/0060	NEW APPLICATION																				177					177
Old Kent Road	Chevron Apartments 294-304 St James's Road	19/AP/6395 (Annex 2) (new application for 18/AP/0930)					15						0	-15			30				30							0
NSP67	272 St James Road	18/AP/0156				50	50				100		100	0	-13						0							0
	310-330 St Jamess Road	21/AP/1667	NEW APPLICATION										0	0				161			161							0
	Land Corner Of Old Kent Road And St James Road	20/AP/0188																										
	Wetton House 278 St James Road London Southwark	24/AP/1168	NEW APPLICATION										0	0			7				7							0
	(Wetton House) 294-304 St Jamess Road	18/AP/0930				8					8		8	0							0							0
	551A Old Kent Road London Southwark SE1 5EW	22/AP/0124	NEW APPLICATION									2	2	2							0							0
	St James Industrial Mews, 276 St James Road	20/EQ/0048	NEW APPLICATION										0	0					30		30							0
NSP68	Ruby Triangle Site Land Bounded By Old Kent Road Ruby Street And Sandgate Street	18/AP/0897				288	288	576					0	-576	-1348		288	288	576		1152							0
	2 Varcoe Road London	18/AP/2895				37	37					74	74	0							0							0
	Sandgate Street and Verney Road	18/AP/0196					111						0	-111			111				111							0
	~~651-657 Old Kent Road~~	~~19/AP/1710 (superseeded by 24/AP/0255)~~				~~65~~	~~66~~	~~131~~					0	-131							0							0
	651-657 Old Kent Road London	24/AP/0255 (S73 to superseede 19/AP/1710)	NEW APPLICATION										0	0				292			292							0
	6-12 Verney Road	17/AP/4508				169	169						0	-338					338		338							0
	6-12 Verney Road	23/AP/0948 (once approved superseedes the 17/AP/4508)																										
	~~Credon House Verney Road~~	~~19/AP/7550 (superseeded by 21/AP/3247)~~					~~28~~	~~29~~					0	-28							0							0
	Credon House Verney Road	21/AP/3247 (superseeded by 19/AP/7550)	NEW APPLICATION										0	0				22			22							0
	Units 1-3 Wevco Wharf Sandgate Street London Southwark	25/AP/2097	NEW APPLICATION										0	0							0							0
	32 Verney Road	24/EQ/0179	NEW APPLICATION										0	0							0							0
	~~Wevco Wharf~~	25/EQ/XXXX	NEW APPLICATION										0	0							0							0
	671-679 Old Kent Road	20/AP/2701						270				106	106	-164							0							0
	2A Ruby Street	20/AP/1872	NEW APPLICATION										0	0			1				1							0
	24-32 Murdock Street	22/EQ/0094	NEW APPLICATION										0	0							0	60						60
	Wevco Wharf	22/EQ/0197 (same site as 24/EQ/0119)																										
NSP69	19-35 Sylvan Grove	23/AP/0582	NEW APPLICATION										0	0	0			298			298							0
	747-759 And 765-775 Old Kent Road And Land At Devonshire Grove	23/AP/1862 (superseedes 19/AP/2307 and 19/AP/1239)	NEW APPLICATION										0	0					514		514							0
	~~Daisy Business Park 19 - 35 Sylvan Grove SE15 1PD~~	~~19/AP/2307 (superseeded by 23/AP/1862)~~	NEW APPLICATION										0	0							0							0
	~~747-759 & 765-775 Old Kent Road and Land at Devonshire Grove~~	~~19/AP/1239 (superseeded by 23/AP/1862)~~	NEW APPLICATION										0	0							0							0
	737 Old Kent Road	25/EQ/0120	NEW APPLICATION																			282						
	789 Old Kent Road	23/AP/2365												0														
	171-177 Ilderton Road	16/AP/1092			8					9			9	1							0							0

		~~17-147 Ilderton Road~~	24/AP/3696																														
		~~Land At 313-349 Ilderton Road London SE16~~	~~17/AP/4819 (superseded by 20/AP/1329).~~	NEW APPLICATION												0	0							0							0
		60A And 62 Hatcham Road And 134-140 Ilderton Road	17/AP/3757				50	36				50	36			86	0							0							0
		180 Ilderton Road	17/AP/4546		42	42						84				84	0							0							0
		Iberia House 2 Hatcham Road	17/AP/4649				33									0	-33							0	33						33
		~~78-94 Ormside Street~~	~~18/AP/1049 (superseded by 23/AP/226).~~				~~86~~									0	-56							0							0
		78 - 94 Ormside Street	23/AP/2226 (supersedes 18/AP/1049)	NEW APPLICATION												0	0						49	49							0
		~~301-303 Ilderton Road~~	~~18/AP/2761 (superseded by 20/AP/2560).~~					~~46~~								0	-46							0							0
		~~79-161 Ilderton Road~~	~~18/AP/2497~~				~~78~~	~~79~~	~~155~~			~~0~~	~~0~~			~~0~~	~~157~~							~~0~~							~~0~~
		79-161 Ilderton Road London Southwark SE16 3JZ	24/AP/3687	NEW APPLICATION												0	0					532		532							0
	NSP70	227-255 Ilderton Road	19/AP/1773 (21/AP/3281 NMA for 253 units)				63	64	127							0	-127	-339	253					253							0
		257 - 283 Ilderton Road	23/AP/1317													0	0							0			236				236
		313-349 Ilderton Road	20/AP/1329 (superseedes 17/AP/4819)				39	40	79				158			158	79							0							0
		12-38 Hatcham Road	21/AP/1121	NEW APPLICATION												0	0							0	49						49
		301-303 Ilderton Road	20/AP/3560 (superseedes 18/AP/2761)	NEW APPLICATION												0	0					59		59							0
		Ilderton Wharf 1 - 7 Rollins Street London SE15 1EP	24/AP/3575 (superseedes 21/AP/4757)	NEW APPLICATION												0	0					270		270							0
		118-120 Ormside Street and 16-28 Penarth Street*	22/AP/1603	NEW APPLICATION												0	0					159		159							0
		Land Opposite 257-283 Ilderton Road	22/EQ/0063																														
	NSP71	Aldi Store - 840 Old Kent Road	19/AP/1322				42	42	84							0	-84	-84	168					168							0
		812 Old Kent Road	19/AP/0994						138							0	0							0						154	154
	NSP72	684-698 Old Kent Road (Kwikfit garage)	N/A						65							0	0	0						0		65					65
	NSP73	636 Old Kent Road	~~17/AP/1646~~	-	42	-				-		-				0	-42	-42						0							0
			18/AP/3463 (Granted at appeal)	NEW APPLICATION												0	0			46				46							0
TOTAL: Old Kent Road Area Vision				0	98	117	2080	2713	5876	0	9	453	479	84	1025		-3983	2054	2109	1554	3816	232	9765	1559	478	0	0	154	2191	
						1-5 years	**5008**	6-15 years	**5876**																						
Peckham	NSP74	Aylesham Centre and Peckham Bus Station	24/AP/2074						850							0	0	0						0	850						850
	NSP75	Blackpool Road Business Park	N/A						250							0	0	0						0		250					250
	NSP76	Land between the railway arches (East of Rye Lane including railway arches)	N/A																												
	NSP77	Copeland Industrial Park and 1-27 Bournemouth Road	23/AP/3136						270							0	0	0					270	270							0
TOTAL: Peckham Area Vision				0	0	0	0	0	1370	0	0	0	0	0	0		0	0	0	0	0	270	270	850	250	0	0	0	1100	
						1-5 years		0	6-15 years	1370																					
Rotherhithe	NSP78	Rotherhithe Gasometer	24/AP/0753	NEW APPLICATION												0	0	0					151	151							0
	NSP79	City Business Centre Lower Road London Southwark SE16 2XB	23/AP/3487	NEW APPLICATION												0	0	0				60.4	50.4	110.8							0
	NSP80	Canada Water Sites C And E Surrey Quays Road	12/AP/4126						796							0	0	0						0							0
		Units 1 And 4 Canada Water Retail Park London Southwark SE16	23/AP/0562	NEW APPLICATION													0														
		Units 1 And 4 Canada Water Retail Park	21/AP/2655													0	0							0							0
		Units 1 And 4 Canada Water Retail Park London Southwark SE16	23/AP/0571													0	0	0						0							0
		Former Mulberry Business Centre Land Bounded By Canada Street; Quebec Way; And Harmsworth Quay London Southwark	NMA for 13/AP/1429 (20/AP/1986)													0	0							0							0
		Canada Street Quebec Way And Harmsworth Quays Print Works	13/AP/1429	170	171						33	308			341	0							0							0
	NSP81	~~Harmsworth Quays, Surrey Quays Leisure Park, Surrey Quays Shopping Centre and Robert's Close~~	~~N/A - can be deleted?~~						~~2735~~	~~Units 1 And 4 Canada Water Retail Park London Southwark SE16~~						0	0							0							0
		Canada Water Masterplan - Land Bounded By Lower Road (West), Redriff Road (South), Quebec Way (East) Surrey Quays Road And Canada Water Dock (North) And Site At Roberts Close	18/AP/1604 (hybrid - detailed for A1 and K1 and outline for rest of phases)			265	100	100					265			265	-200	-200				200	237	437	410	384			2699	3493	
		Plot H1 and H2	24/AP/0350														0														
		Plot G	22/AP/2439 (Plot G)	NEW APPLICATION												0	0							0							0
		Plot F	21/ap/4712 (Plot F)	NEW APPLICATION												0	0							0							0
		Plot L	21/AP/3775 (Plot L)	NEW APPLICATION												0	0							0							0
		~~Canada Water Doc Side~~	~~23/EQ/0245~~	NEW APPLICATION												0	0							0							0
	NSP82	Croft Street Depot	N/A						56							0	0	0						0	56						56
TOTAL: Rotherhithe Area Vision				170	171	265	100	100	3587	0	33	308	265	0	606		-200	0	0	0	260.4	438.4	698.8	466	384	0	0	2699	3549	
						1-5 years		806	6-15 years	3587																					
Walworth	NSP83	Morrison's Walworth Road	N/A						129							0	0	0						0		129					129
	NSP84	330-344 Walworth Road	N/A						46							0	0	0						0		46					46
	NSP85	~~Chatelaine House 182-202 Walworth Road~~	~~13/AP/1122~~			~~54~~										0	-54	-54						0							0
		Chatelaine House 182-202 Walworth Road	24/AP/0892	NEW APPLICATION												0	0	0		136				136							0
TOTAL: Walworth Area Vision				0	0	54	0	0	175	0	0	0	0	0	0		-54	0	136	0	0	0	136	0	175	0	0	0	175	
						1-5 years		54	6-15 years	175																					
				350	1142	1333	2772	3483	17662	180	255	913	1019	84	2451		-6629	3551	4968	3359	5752.4	1650.5	19280.9	4926	1883	178	0	4439	11426	
						1-5 years	9080	6-15 years	17662																						
Peckham	PNAAP5	Site of the former Wooddene estate	13/AP/0876	10							333				333	323							0							0
	PNAAP7	Copeland Road car park	16/AP/3503	67						67					67	0							0							0
	PNAAP16 and PNAAP9	Sumner House and Land at south of Sumner Road (Flaxyards site)	16/AP/4018		168						168				168	0							0							0
	PNAAP20	190 Rye Lane	15/AP/4587	20						22					22	2							0							0
	PNAAP23	~~269-273 Rye Lane~~	~~16/AP/1896~~		~~28~~										0	-28							0							0

	PNAAP26	Former Acorn/Peckham neighbourhood office, 95A Meeting House Lane	16/AP/4124	29						29					29	0							0						0
Rotherhithe	CWAAP4	Albion Primary School	15/AP/0647 and 17/AP/1234		50										0	-50			50				50						0
	CWAAP10	41-55 Rotherhithe Old Road	11/AP/0963	17						17					17	0							0						0
TOTAL: Canada Water and Peckham and Nunhead AAP				143	246	0	0	0	0	135	501	0	0	0	636	247		0	50	0	0	0	50	0	0	0	0	0	0
						1-5 years	389	6-15 years	0																				
				493	1388	1333	2772	3483	17662	315	756	913	1019	84	3087	-6382		3551	5018	3359	5752.4	1650.5	19330.9	4926	1883	178	0	4439	11426
						1-5 years	9469	6-15 years	17662				**1-5 years**	**3087**	**Comparison (Annexe 2 / Revised, 1-5 yrs)**	**-6382**					6-10 yrs	19330.9					11-15 yrs	11426

Appendix C

Review of 5 Year Housing Land Supply Schedule

Site Allocation			Revised Block 2 Live (Southwark Plan years 6-10)								
Site Reference Number	**Site Address**	**Planning Approval Reference**	**2025/26**	**2026/27**	**2027/28**	**2028/2029**	**2029/2030**	**TOTAL: 6-10 Years (2025/26 - 2029/30**	**Appellant's RAG Rating Green = Deliverable Yellow = Part Deliverable Orange = Unlikely to be Deliverable Red = Not Deliverable**	**Appellant's Review of LBS Planning Register**	**Appellant Sourced Market Intelligence**
NSP01	Aylesbury Estate, Landed Bounded by Albany Road, Portland Street, Westmoreland Road and Bradenham Close	14/AP/3843 (FDS parent)	420	261				681		Detailed application submitted in conjunction with wider masterplan outline (14/AP/3844) Development has commenced (pre-commencement conditions discharged and works are on site) Estimated construction period 2019-2026	- 27 Sept 25 -There are three 'packages' here: - A is 229 units, including 14 originally permitted as private, and completed during Q2 2023. It was all delivered as 100% social rent for LB Southwark. - B is 352 units, including 112 originally permitted as private. Again, it is being delivered as 100% social rent for LB Southwark. The residential units completed in Q1 2025. - C is 321 units, including 190 private, 179 of which will be BTR (Cores 4A and 4B), leaving 11 to be sold (Core 3A). Construction will run through to Q2 2026.
		17/AP/3885 (FDS 1st S73)	8					8			
		22/AP/1063 (FDS 2nd S73)		60				60			
	Aylesbury Estate Site Phase 2B Land Bounded By Thurlow Street And Albany Road And Kinglake Street And Bagshot Street	22/AP/2226 (amended scheme for phase 2b)				640		640	-640	Application is pending determination. Approved by committee (2025). Decision notice not yet issued	- No Molior commentary indicating progress
NSP07	Landmark Court	19/AP/0830	36					36	-2	Application ref. 23/AP/2810. Amends permission to reduce number of homes to 34. Construction has commenced, due to complete 2027.	- No Molior commentary indicating progress
NSP12		23/AP/0479			192			192		Planning permission granted (Feb 2024) Demolition of existing buildings and redevelopment to provide a mixed-use development comprising purpose-built student residential rooms (Sui Generis), affordable residential dwellings (Use Class C3), employment floorspace (Use Class E(g)), together with access, cycle parking, hard and soft landscaping and other associated works. 444 PBSA Pre-commencement conditions have been discharged	- No Molior commentary indicating progress
NSP13	Biscuit Factory and Campus	23/AP/2124 (S73 increase units from 1536 to 1624) (superseded 17/AP/4088)		1624				1624		Pre-commencement conditions have been discharged. Construction has commenced. Completion expected 2027. Completion forecasts (all by 26/27) seems ambitious, but assume achievable within 5 years	- 29 Sept 25 - All the multifamily blocks are underway. The seven block groupings are: • Buildings 1 to 5: 359 units - 272 private, 87 DMR (pro-rata, yet to be finalised), main contractor McAleer & Rushe, Block 5 (Peek Court) completed Q3 2025 and is said to be leased up, the rest complete from Q4 2025 to Q1 2026. • Buildings D/E: 225 units - 170 private, 55 DMR (pro-rata, yet to be finalised), main contractor McAleer & Rushe, completes Q1 2027. • Building F: 230 units - all private, main contractor McLaren, completes Q1 2027. • Buildings S/T: 472 units - all private, main contractor John Sisk & Son, completes Q3 2027. • Building V: 82 units - all social rent equivalent, will be developed by London Square / Square Roots, reserved matters application 24/AP/2337 was permitted on 18/02/2025,but construction has yet to start. • Building W: 69 units - all social rent equivalent, will be developed by London Square / Square Roots, not started. • Buildings O/P/Q: 187 - all social rent equivalent, will be developed by London Square / Square Roots, not started. 'Consultation with the developer by the Appellant's team (October 2025) confirms the development is progressing.
NSP15		07/AP/1262 (Remaining Capacity)			384			384		NMA (24/AP/1547) withdrawn. 24/AP/3801 submitted - resolution to grant at committee (22 July 2025) S73 reduced number of private homes from 407 to 384 (all affordable delivered in 2015 (182 homes))	
NSP16	Conoco House, Quadrant House, Edward Edwards House and Suthring House	20/AP/3250	66					66		Pre-commencement conditions discharged. Construction has commenced. Expected completion Q3 2027.	- No Molior commentary indicating progress

NSP19	Ludgate House and Sampson House, 64 Hopton Street	19/AP/1950 - S73 (Ludgate - Building 2, other changes to building 1 and 3 but doesn't impact sqm))	120		120			240		Construction underway, expected to complete Q4 2026	- 25 Sept 25 - Completion anticipated Q4 2026
	Ludgate House and Sampson House, 64 Hopton Street	24/AP/0284 - (Ludgate - Building 2)			9			9			
	Sampson House	18/AP/1603 - S.73 (Sampton House - Parent)	170	171				341		Pre-commencement conditions discharged. Implementation confirmed by COL 23/AP/3075	- 8 Feb-25 - A lawful development certificate confirms that the permission has been implement. - There has been no update since the 8th Feb 24.
	Sampson House	22/AP/3442 (Sampton - Building 5)			9			9			
	Sampson House	24/AP/3299 (Building 5)					2	2		No conditions submitted since approval of NMA in June 2025	
NSP20	Southwark Overground Station	24/AP/2770 (replaces 20/AP/1189)				105	110.9	215.9		Programme October 2025 - August 2027 Pre-commencement conditions discharged	- Molior has no indication of an update on this development. Assumed to not be progressing anytime soon. - Site is predominantly PBSA
	Southwark Station and 1 Joan Street	20/AP/0969 (Council scheme)	25					25		Pre-commencement conditions discharged Lawful Development Certificate granted (24/AP/1652) August 2024 to confirm the permission has been implemented.	- No Molior commentary indicating progress
NSP22	Land between Paris Gardens, Colombo Street, Blackfriars Road and Stamford Street	23/AP/1854				100	100	200		Permission granted November 2024 NMA (25/AP/0300) currently pending No pre-commencement conditions discharged. Mixed use (mainly office/residential) in 3 buildings of 22-44 storeys.	BH understand that there is a million sqft of commercial space in a location where the office market is struggling and therefore won't be coming forward for some time. Hines are understood to be considering selling the site.
NSP25	Burgess Business Park: 21-23 Parkhouse Street London SE5 7TQ	19/AP/0469		33				33	-33	Permission granted 14/04/2022 No pre-commencement conditions discharged. No evidence of implementation - assume permission has expired	- Permission on the site lapsed unimplemented in Apr-23. - KF Savills and M1 were marketing the site in Jun-24 but BH are not aware of any transaction of the site.
	Burgess Park Business Park: 25-33 Parkhouse Street London Southwark SE5 7TQ	20/AP/0858	128					128	-19	Permission granted for 109 homes - reduced from 128 during the application determination. Pre-commencement conditions discharged Programme Dec 2022-Nov 2024 - Molior suggests this is now pushed to 2027	
	Burgess Industrial Park Parkhouse Street London SE5 7TJ	21/AP/1342				386		386	-386	Site does not have planning permission Number of homes reduced during application from 386 to 375. 12 blocks of 2-13 storeys Application resolved to grant at planning committee 26th July 2022. S.106 agreement not signed therefore application still pending determination. Extension of time letter issued agreeing extension up to 31st December 2025, noting lack of progress on the s106 owing to site ownership issues.	
	35-39 Parkhouse Street London SE5 7TQ	19/AP/2011			85			85	-85	Site does not have planning permission Planning Register states that the application is pending determination. No pre-commencement conditions discharged	There is no update on any progress on the site.
NSP26	Butterfly Walk and Morrisons Car Park and Police station	19/AP/7057			145			145		Planning permission granted on 07/03/2023 - expires March 2026 No pre-commencement conditions discharged.	- Application successfully gained full planning permission Mar-23.
NSP27		21/AP/4714		43				43		Application approved April 2025 No pre-commencement conditions discharged	- S106 signed Apr-25. No conditions have been discharged as of today.
NSP34	123 Grove Park	17/AP/4124 (24/AP/1228 - VAR - doesn't change units)	9					9		Pre-commencement conditions discharged. Construction programme September 2025 - January 2028	
NSP35	Camberwell Green Magistrates Court	23/AP/2786		144				144	-144	Site does not have planning permission Resolution to grant at planning committee 02 April 2025 Decision Notice not issued. No evidence that homes are deliverable within 5 years	- Application was successful at committee in Apr-25. - S106 to be signed
NSP36	Denmark Hill Campus East	20/AP/2768		187				187		Planning Permission granted 21 December 2022. No pre-commencement conditions discharged. Development has not commenced. Permission expires 21 December 2025. Uncertain whether deliverable	

NSP40	Dulwich Hamlet Champion Hill Stadium, Dog Kennel Hill	19/AP/1867			219			219	-219	Planning permission granted in February 2022. Condition 2 requires development to commence within three years, therefore assume the permission has expired. As confirmed by Cover Letter relating to an NMA (25/AP/2018) (August 2025) planning permission has not been implemented.	Application approved in Feb-22. Works have not yet commenced. In Jun-25, LBS agreed to lease additional land to DHFC to facilitate construction of a new stadium and residential development. Our understanding is that Levy Real Estate were subtly marketing the site throughout 2024 after a prospective purchaser pulled out of a deal to acquire.
NSP41	Railway Rise, East Dulwich	24/AP/2314			197			197	-197	Site does not have planning permission Resolution to grant at planning committee 02 April 2025 Decision Notice not issued. Programme assumes completion 39 months post decision notice. No evidence of intention to deliver within 5 years	The application material seems to suggest 53 homes & up to 360 PBSA units.
NSP44	Borough Triangle Site At 18-54 Newington Causeway 69 Borough Road 82-83 Borough Road London Southwark SE1 6DR	24/AP/1958			200	200	200	600	-600	Berkeley Homes Site. Planning permission granted June 2025.	No delivery within five years. Refer to letter from Berkeley Homes
NSP46	6 Avonmouth Street	23/AP/0958			45	45		90		Pre-commencement conditions discharged. Construction underway.	
		24/AP/3621					97.2	97.2	-97.2	Site does not have planning permission. Application pending determination. No evidence to demonstrate deliverable within 5 years	
NSP48	Elephant and Castle Shopping Centre and London College of Communications	16/AP/4458	149	200	200	200	200	949		S73 (21/AP/1104) commenced construction during Q1 2022. In total the scheme is 983 units, including 646 private, and it is being delivered in two phases: - Phase 2 is 485 units - 313 open market rent, 45 LLR, 124 DMR and three social rent, it commenced during Q1 2022 and will complete during Q1 2026. It will also include a new UAL campus, plus retail, office and leisure space. - Phase 3 was be 498 units - 333 open market rent, 12 LLR, 37 DMR,116 social rent, plus an arts venue and was to commence once UAL has decanted from its existing campus on site. However, application 25/AP/0978 was submitted on 29/04/2025 seeking to enhance fire safety and increase the number of units to 507 - 342 open market rent, 116 social rent, 49 DMR. There would also be 452 student bedrooms.	- Phase 2 is expected to complete Q1-26 - Phase 3 application submitted Apr-25
		21/AP/1104	4					4		as above	
NSP53	Land between Melior Street, St Thomas Street, Weston Street and Fenning Street	18/AP/0900	362					362		Pre-commencement conditions discharged. Development has commenced. Completion was programmed for July 2025	No commentary available
NSP57	Rich Industrial Estate Crimscott Street And Willow Walk	15/AP/2474 (Phase 1 and 2)			130			130		Complete	
	Rich Industrial Estate Crimscott Street And Willow Walk	20/AP/2993 (Phase 3)			53			53	-53	Site does not have planning permission Resolution to grant at planning committee 02 May 2025 for 183 homes	The completed blocks, Crosse, Tannery and Pickle Factory, sold out during Q1 2023. A further 130 units were permitted, including 79 private, however, they are pending demolition. LB Southwark resolved to grant application 20/AP/2993 on 14/05/2025. That means the last phase is now 183 units, including 123 private across a single building with three cores rising to 14 storeys. The s106 amendment has yet to be signed.
	20 Crimscott Street	19/AP/1286	9					9			No data found
	29-31 Pages Walk, 20-24 Crimscott Street	24/EQ/0121 (Includes 21/AP/0681 and 20/AP/1120)				140		140		21/AP/0681 granted planning permission December 2023	No data found
NSP59	Southernwood Retail Park 2 Humphrey Street	18/AP/3551	270	271			183	724	-183	PP granted 20/01/2022 for hybrid. Phase 1 (detailed) = 541 dwellings - Assumed deliverable Phase 2 (outline) = 183 dwellings - Reserved matters not yet approved. No evidence of deliverability within 5 years Condition 2 requires phase 1 to commence within 5 years. RM for Phase 2 required within 12 years. No pre-commencement conditions discharged. Programme assumed 2022-2034	- No Molior commentary indicating progress since planning achieved
NSP65	Former Southern Railway Stables	24/AP/0012				32		32	-32	Site does not have planning permission Application ref. 24/AP/012 dismissed at appeal. No evidence of deliverability within 5 years	Appeal ref 3353206 lodged against 24/AP/0012 has been dismissed. The inspector found that the development would significantly harm the character and appearance of the Old Forge and the surrounding area.
	49-53 Glengall road	17/AP/4612	90	91				181			Southern Housing Group completed in Q3 2025 - there is not a single builder visible on site. However, final sign-offs and Gateway 3 approval are awaited before Southern Housing will commence marketing ... it is hoped that his will happen before the end of the year. There are 170 units in the scheme - permitted as 105 private plus 65 affordable. However, 89 private units were switched to affordable, leaving just 16 to be marketed for open market sale.
	Malt Street Regeneration Site Land Bounded By Bianca Road Latona Road Haymerle Road Frensham Street And Malt Street	17/AP/2773 (Hybrid including Phases 1, 2 and 3) (269 units have been removed from outline total potential and recorded under RMA)	420			611		1031	-1031	Fresh planning application submitted October 2025 (application documentation states that 17/AP/2773 has stalled and that only Phase 1 (row below) will be delivered) First completions expected 2030/31	

	Malt Street Regeneration Site Land Bounded By Bianca Road Latona Road Haymerle Road Frensham Street And Malt Street	20/AP/3242 (RMA for Hybrid App 17/AP/2773)	269					269		Berkeley Homes Scheme. Under construction. Forecast programme for completions is unrealistic.	
	Nyes Wharf Frensham Street	17/AP/4596	77	76				153	-153	Fresh planning application submitted October 2025 (application documentation states that 17/AP/4596 will not be delivered) First completions expected 2030/31	Refer to letter from Berkeley Homes
	Land At Cantium Retail Park 520 Old Kent Road London SE1 5BA	18/AP/3246	90	923	94			1107	-1107	Commencement confirmed by CoL (24/AP/0986)	Refer to correspondance between Berkeley Homes and London Metric, which confirms that the landowner intends to retain the site in retail use and not deliver 18/AP/3246
	3-5 Latona Road London SE15 6RY	18/AP/4003			10			10	-10	Planning permission granted 26/06/2021 Some conditions discharged. No evidence of works commencing - assume expired.	- No Molior commentary indicating progress
NSP66	596-608 Old Kent Road Land at Livesey Place	18/AP/3284	93	93	186			372		Commencement confirmed by CoL (25/AP/0413) No demolition works have commenced on site Assume stalled	No data found
	16 Peckham Park Road And 1 Livesey Place	18/AP/0564				5		5	-5	PP granted 03.08.2018 No pre-commencement conditions discharged - Assume expired	No data found
	14-22 Ossory Road	19/AP/7610	36	35				71		CoL (24/AP/2679) confirms implementation of planning permission. Works may have stalled, but not clear	The site has been sold to Summix
	Bianca Warehouse 43 Glengall Road & 1 Bianca Road	20/AP/0039	270					270		PBSA Planning permission granted, pre-commencement conditions discharged, works continuing.	No data found
	Horizon Industrial Estate 95 Haymerle Road	20/AP/3822		20	20			40	-3	Planning permission granted April 2025 for 37 homes - not 40	StoneBuild Developments was successful with application 20/AP/3822 which was approved under delegated powers on 23/04/2025. Permission took 226 weeks from the original application. It is currently a vacant light industrial building. The new scheme will include one apartment block. With a maximum height of eight storeys. There will be 37 residential units: 27 private, 10 affordable. The affordable is six Social Rent, four Shared Ownership.
	596-608 Old Kent Road And Land At Livesey Place London SE15 1JB	24/EQ/0195				550		550	-550	Duplicate site? See above planning permission which has been counted. 24/EQ/0195 not on planning register	- No Molior commentary indicating progress since planning achieved. Understand Civic Centre is being sold for PBSA.
	2-10 Ossory Road	21/AP/3246		117				117		Planning permission granted 17.01.2023 No pre-commencement conditions discharged. Expire January 2026	It is reported that the site has been sold unconditionally via JLL. Oct-24
	93 Haymerle Road	23/AP/1294	9					9		PP granted 11 July 2025 no pre-commencement conditions discharged	No data found
	Chevron Apartments 294-304 St James's Road	19/AP/6395 (Annex 2) (new application for 18/AP/0930)		30				30	-30	Planning application refused 06.02.2025	Application 19/AP/6395 has been refused on two grounds: failure to conclude a S106 agreement, and fire safety concerns.
NSP67	310-330 St Jamess Road	21/AP/1667			161			161	-161	Site does not have planning permission. Resolution to grant at planning committee 12 November 2024 No evidence that the site is deliverable within 5 years	- No Molior commentary indicating progress since planning achieved
	Wetton House 278 St James Road London Southwark SE1 5JX	24/AP/1168		7				7	-7	Site does not have planning permission Application submitted 23.04.2024 - still pending	No data found
	St James Industrial Mews, 276 St James Road	20/EQ/0048				30		30	-30	not an LBS reference number, not clear what this is	Construction believed to be completed Jun-16
	Ruby Triangle Site Land Bounded By Old Kent Road Ruby Street And Sandgate Street	18/AP/0897		288	288	576		1152		Planning permission granted 2019 Pre-commencement conditions discharged. Construction commenced. Note: scoping opinion (25/AP/2430) for up to 730 new homes, 900 PBSA and 200 hotel rooms	
	Sandgate Street and Verney Road	18/AP/0196		111				111		Planning permission granted and pre-commencement conditions discharged, works commenced.	May have stalled
	651-657 Old Kent Road London	24/AP/0255 (S73 to supersede 19/AP/1710)			292			292		Pre-commencement conditions discharged, works continuing on site, expected to complete March 2027	74 units had sold by the end of Q3 2025. Construction is progressing - the affordable units will start completing in Q4 2026 and the private units will complete in March 2027.
NSP68	6-12 Verney Road	17/AP/4508				338		338	-338	PP granted 10.02.2022 No pre-commencement conditions discharged. No works appear to have commenced. PP expired 10.02.2025	Site has reportedly been bought by British Land to develop as a logistics hub
	Credon House Verney Road	21/AP/3247 (superseded by 19/AP/7550)			22			22		PP granted 17.01.2023 No pre-commencement conditions discharged. Works have no commenced.	The 26 social rented units proposed here by Summix are to be gifted to LB Southwark as off-site provision for a student housing development at 2-22 Ossory Road.
	2A Ruby Street	20/AP/1872		1				1		PP granted 03.03.2021	Part of the site has been piled, but we are told that further work will be on hold for the foreseeable future. The plan was

NSP69	19-35 Sylvan Grove	23/AP/0582			298			298	-298	Site does not have planning permission (for application 23/AP/0582) Resolution to grant at 28 November 2023 planning committee. S.106 agreement not yet signed. Extension of Time agreed until 30 November 2025. Previous planning permission (19/AP/2307) granted January 2022 for 219 homes and 2,986sqm B1 in buildnigs of 5-32 storeys. No conditions discharged. Assume not progressing (23/AP/0582) intended to replace if granted planning permission	The site was reported for sale via C&W in Nov-24
	747-759 And 765-775 Old Kent Road And Land At Devonshire Grove	23/AP/1862 (supersedes 19/AP/2307 and 19/AP/1239)				514		514		Pre-commencement conditions discharged. Development commenced Programme 2025-2027	Application approved Apr-25
NSP70	78 - 94 Ormside Street	23/AP/2226 (supersedes 18/AP/1049)					49	49		PP granted 04.09.2024 No pre-commencement conditions discharged. Programme assumes delivery 2023-2027	The site is reported to have been for sale Jan-25
	79-161 Ilderton Road London Southwark SE16 3JZ	24/AP/3687				532		532	-532	Site does not have planning permission Application 24/AP/3687 submitted 13 December 2024. Resolution to grant at planning committee 14.05.2025 No PP issued	Tide is reported to have bought the site Sep-25
	227-255 Ilderton Road	19/AP/1773 (21/AP/3281 NMA for 253 units)	253					253		Completed Q3 2025	At the end of Q3 2025 the situation is as follows: Construction completed during Q3 2025. But a number of sales have fallen through in the process. The new sales total is 123 units, leaving 40 to sell. The price list shows 1-beds from £447,000, 2-beds from £550,000, 3-beds from £683,000 and an average of £690 psf. The one unit shown on earlier price lists has been reduced by 6%.
	301-303 Ilderton Road	20/AP/3560 (supersedes 18/AP/2761)				59		59		PP granted 23.06.2023 Pre-commencement conditions discharged PP expires 23.06.2026	- No Molior commentary indicating progress
	Ilderton Wharf 1 - 7 Rollins Street London SE15 1EP	24/AP/3575 (supersedes 21/AP/4757)				270		270	-100	Application ref. 21/AP/4757 granted permission June 2024 for 170 homes Application ref. 24/AP/3575 submitted 05.12.2024. Pending determination. Resolution to grant at planning committee 02.07.2025	Resolution to Grant Jul-25 for student and 79 affordable homes
	118-120 Ormside Street and 16-28 Penarth Street*	22/AP/1603				159		159	-159	Site does not have planning permission Application submitted 06.05.2022. Resolution to granted at planning committee 14.06.2023 EoT agreed until 30.11.2025	- No Molior commentary indicating progress
NSP71	Aldi Store - 840 Old Kent Road	19/AP/1322	168					168		Complete	Metropolitan Thames Valley commenced construction during Q4 2022. The scheme is 168 units, including 113 permitted as private, and will complete during Q4 2025. The scheme is being delivered as 100% affordable.
NSP73		18/AP/3463 (Granted at appeal)		46				46		Allowed at appeal Pre-commencement conditions discharged. Construction commenced Completion expected 2027	
NSP77	Copeland Industrial Park and 1-27 Bournemouth Road	23/AP/3136					270	270	-270	PP (23/AP/3136) granted 18.07.2024 for use of the site as storage and distribution - no housing	- No Molior commentary indicating progress
NSP78	Rotherhithe Gasometer	24/AP/0753					151	151	-151	Site does not have planning permission Resolution to grant at planning committee 12.11.2024 No evidence of deliverability within 5 years	- No Molior commentary indicating progress
NSP79	City Business Centre Lower Road London Southwark SE16 2XB	23/AP/3487				60.4	50.4	110.8	-110	Site does not have planning permission Resolution to grant at planning committee 08.10.2024 No evidence of deliverability in next 5 years	Blue Coast Capital and The SOCO were successful with application 23/AP/3487 at planning committee on 08/10/2024. Permission took 36 weeks from the original application. It is currently a three-storey business centre. The new scheme will include two apartment blocks. With a maximum height of 17 storeys. There will be 240 residential units: 216 sui generis class co-living units, 24 Class C3 affordable units. In addition, the applicant has agreed a £1.4 million payment in lieu of affordable housing.
NSP81	Canada Water Masterplan - Land Bounded By Lower Road (West), Redriff Road (South), Quebec Way (East) Surrey Quays Road And Canada Water Dock (North) And Site At Roberts Close	18/AP/1604 (hybrid - detailed for A1 and K1 and outline for rest of phases)				200	237	437	-437	Construction on Zones A and K complete (under detail of original application). No other phases have started construction. Reserved matters for 21/AP/3775 (Zone L) & 21/AP/4712 (Zone F) & 22/AP/2439 (Zone G) permitted S.73 application pending determination (25/AP/0242). The viability statement in support of the Section 73 states at para 2.8 'Compounded by a period of sustained high build cost inflation and muted value growth, the viability of the Masterplan has become severely challenging to the extent that the HPP scheme cannot secure further investment and delivery cannot be progressed. Stalled. Evidence indicates not deliverable in next 5 years	

NSP85	Chatelaine House 182-202 Walworth Road	24/AP/0892		136				136		PP granted 04.09.2025 No pre-commencement conditions discharged programme 2025-2027	- No Molior commentary indicating progress
CWAAP4	Albion Primary School	15/AP/0647 and 17/AP/1234		50				50		Expected to complete Q3 2025	LB Southwark commenced construction during Q4 2022. The scheme is 50 units and will complete in Q3/Q4 2025 (pushed back from summer 2024). The tenure mix being delivered is 13 private sale, 25 social rented and 12 intermediate.
TOTAL			**3551**	**5018**	**3359**	**5752.4**	**1650.5**	**19330.9**	**-8172.2**		

Appendix D

Appellant Correspondance Regarding 5 Year Housing Land Supply

Berkeley
Designed for life

FAO Nicholas Alston
Avison Young
The Met
24 Percy Street
London
W1T 2BS

13th October 2025

Re: Berkeley Homes: Southwark Site Allocations

Dear Mr Alston,

I write to confirm Berkeley Homes' housing delivery forecast on its land ownerships across two Southwark site allocations. I will take each in turn.

NSP44 – Borough Triangle
Southwark Council is currently forecasting 600 homes to be delivered on Berkeley's ownership over the next five years. The site achieved consent on 17.06.2025 and detailed design is currently underway ahead of a Gateway 2 submission. Given the length of time required for detail design and Gateway approvals, Berkeley Homes is not forecasting any delivery on site within the next five years.

NSP66 – Malt Street and Nye's Wharf
Southwark Council is currently forecasting 1,453 homes to be delivered on Berkeley's land ownerships over the next five years. Phase 1 was delayed for some time due to significant viability challenges and has only recently restarted after the project obtained grant funding. We are currently forecasting the delivery of approximately 286 homes within the next five years.

Phase 2 and Phase 3 will not come forward in line with the extant consent due to similar viability constraints. For this reason, a fresh planning application was submitted on 03.10.2025 and is awaiting validation by the Council. No delivery on these phases is forecast within the next five years.

I trust that this clarifies the position on these two sites.

Kind Regards,

Chloe Young

Development Director

Berkeley Homes (Capital) plc
61 Leman Street, London E1 8NZ
Tel: 020 7977 9100

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OUR VISION 2030
TRANSFORMING TOMORROW

From: Valentine Beresford
To: Charles Cadogan
Subject: RE: Cantium Retail Park
Date: 13 October 2025 10:18:26
Attachments: image001.png
image002.png
image003.png

This message was sent from Valentine Beresford . Please be careful opening attachments or clicking links and report any suspicious emails to securitythreats@berkeleygroup.co.uk

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Hi Charlie,
As you know we are a Real Estate Investment Trust, long secure income is our "mantra"..... Cantium is no exception with an average lease term of c 12 years. The scheme has relatively recently become fully let or regeared with tenants such as B&Q, Tapi, Pets at Home, Starbucks, BK- all of whom trade exceptionally well. On the whole we are long term holders of strong geographies such as this, but even if we did sell this asset (and there are no sacred cows in our portfolio) given the lease terms here and strong tenant line up there is little to no chance of there being any redevelopment for alternative uses (resi etc) until the end of the leases.
All the very best
Valentine

ValentineBeresford
Investment Director
LondonMetric Property PLC
One Curzon Street
London | W1J 5HB
T+44 (0) 20 7484 9000
www.londonmetric.com
D +44 (0) 20 7016 1880
M +44 (0) 7860 211 378
Valentine.Beresford@londonmetric.com

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From: Charles Cadogan
Sent: 13 October 2025 10:02
To: Valentine Beresford
Subject: RE: Cantium Retail Park

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Hi Valentine,
I hope you are well and had a good trip away recently.
I have a question regarding Cantium Retail Park and London Metric's aspirations for the site. Presumably, given the sites strong fundamentals Metric would not be amenable to dispose any time soon?

See you soon.

Best,

Charlie Cadogan
Land Graduate

Berkeley_Berkeley

Our Values – Have Integrity – Be Passionate – Respect People – Think Creatively – Excellence Through Detail

Berkeley Homes (Capital) plc

61 Leman Street, London, E1 8NZ

Mobile 07929108615

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Appendix E

Residential Development in London, Q3 2025, Molior

Residential Development in London

Developments with 20+ Private Homes

MOLIOR

Q3 2025



This report covers schemes with 20+ private homes; all numbers refer to homes for private sale or rent.

Construction start means significant piling has commenced; technical implementation isn’t enough.

By sales we mean absorption; absorption isn’t counted in advance of construction start.

London is the Greater London Authority area.

Published 14/10/2025

MOLIOR

Between 2015 and 2020, there were 60-65,000 homes for private sale or rent under construction in London at any given time.

Today, that number has fallen to 40,000 … and 5,300 of those are halted part-built.

With a surge of completions expected in 2026, Molior forecasts that just 15-20,000 new homes will be actively under construction on 1st January 2027.

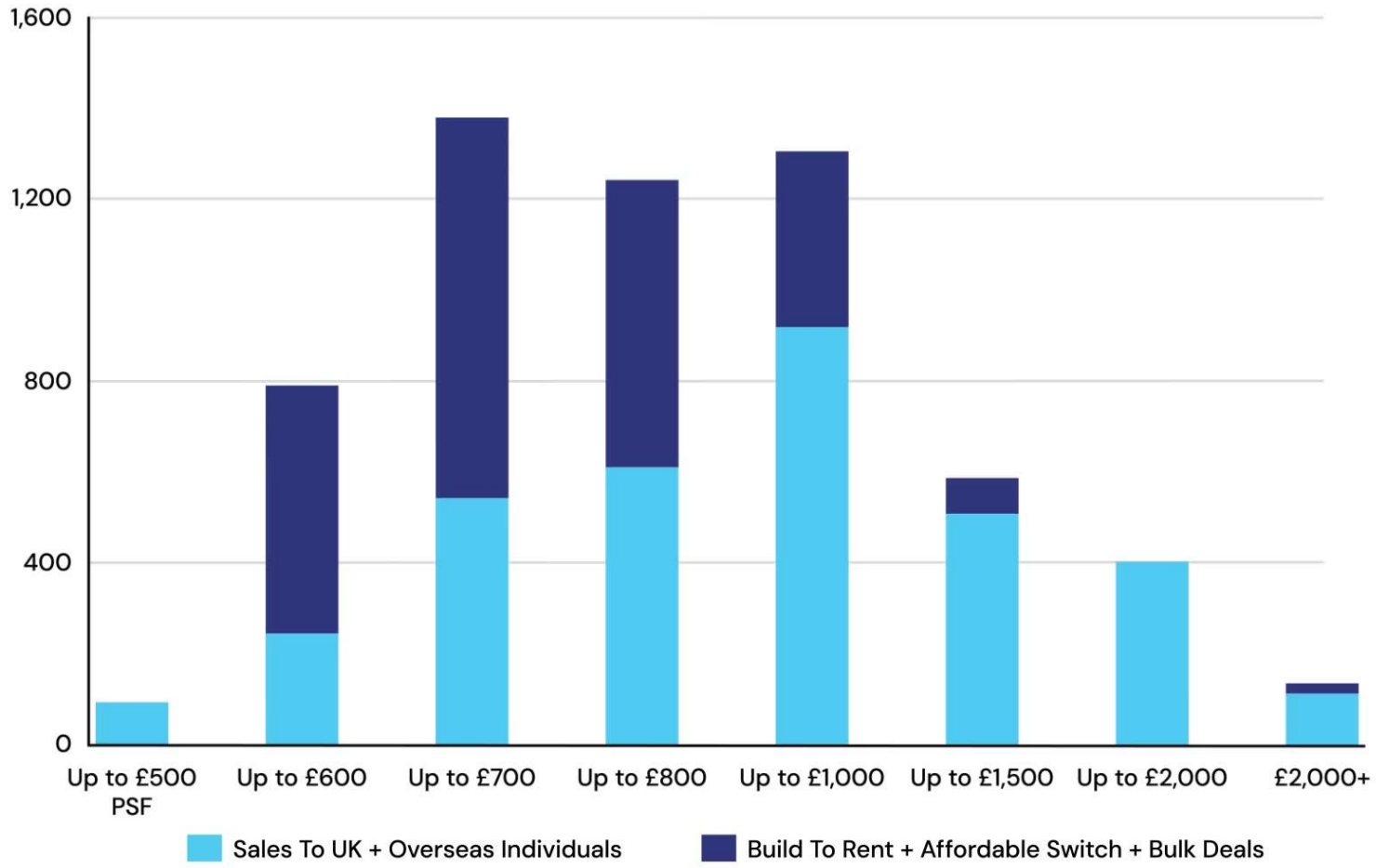
That is, unless Government removes unnecessary development costs and adjusts stamp duty.

MOLIOR

1. **Sales Rates Are Very Low**
2. And Build-To-Rent Has Ended In London
3. No Buyers = No Construction Starts
4. Prices Need To Fall But Cannot
5. Leaving 281,000 Permissions Unbuilt

MOLIOR

Sales By £PSF During Q1-Q3 2025



London had just 5,933 new home sales in Q1-Q3 2025.

Sales rates are weak across all local markets and at every price point.

At prices up to £600 psf - the level at which most London owner-occupiers can buy - sales to individuals are virtually non-existent.

MOLIOR

Sales By Segment 2024 + 2025

	2024 Q1	2024 Q2	2024 Q3	2024 Q4	2025 Q1	2025 Q2	2025 Q3
Schemes selling 12+ PQ							
Build to Rent	550	969	615	1,987	531	97	495
Help to Buy	-	-	-	-	-	-	-
Switched to Affordable	488	509	107	120	337	255	448
Overseas Sales	547	379	330	409	390	410	214
Bulk Deal	118	67	210	147	50	111	176
Normal UK Sales	426	321	454	428	389	383	208
Sub Total	2,129	2,245	1,716	3,091	1,697	1,256	1,541
Schemes selling <12 PQ	551	629	710	542	574	450	415
Total	2,680	2,874	2,426	3,633	2,271	1,706	1,956

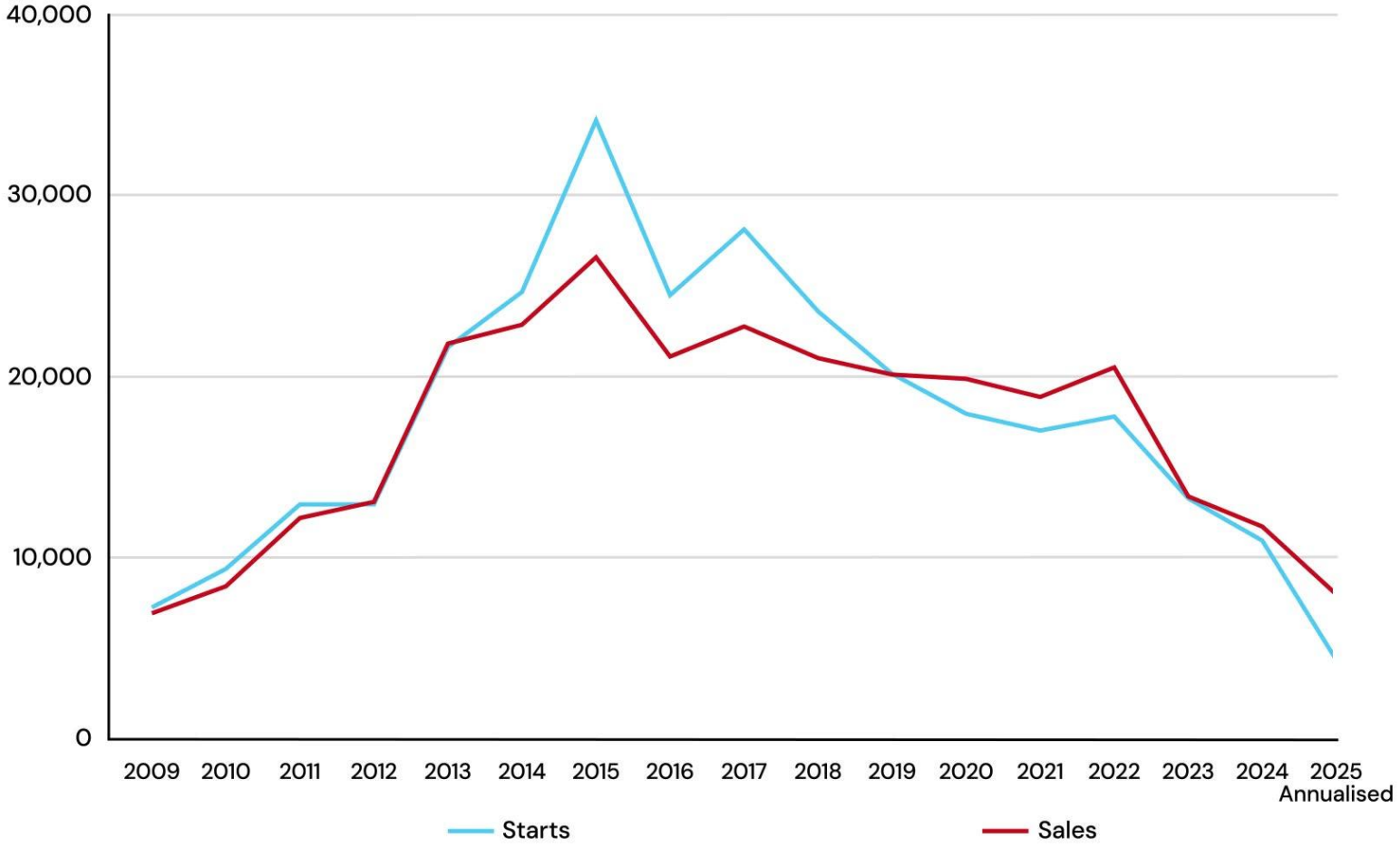
Sales rates are weak across every absorption segment.

All buyer groups are largely absent from the market, leaving sales well below the 22,000 units per quarter required to meet government targets.

Low sales rates are directly contributing to fewer construction starts.

MOLIOR

Sales Rates + Construction Correlation Since 2009



Early sales cause urban apartment construction.

The correlation between sales and starts is important. Early-stage sales show funders that a scheme is viable and financeable.

The loss of off-plan investors over the past decade has been a major factor in London's residential development decline.

MOLIOR

1. Sales Rates Are Very Low
2. **And Build-To-Rent Has Ended In London**
3. No Buyers = No Construction Starts
4. Prices Need To Fall But Cannot
5. Leaving 281,000 Permissions Unbuilt

MOLIOR

Multifamily Development / Investment Is A Success In London

Investor	Scheme	Borough	Gross £psf
Long Harbour	The Draper	Barnet	£45
Related Argent	The Maple	Barnet	£43
Quintain	Luna + Solar	Brent	£56
PIC	The Wiltern	Ealing	£37
Greystar	Momento Hayes	Hillingdon	£45
Ridgeback Group	Kew Curve	Hounslow	£41
Grainger	Fortunes Dock - Seraphina	Newham	£42
Greystar	Pearl Yard	Southwark	£70
Qatari Diar	Shard Place	Southwark	£69
Lendlease	Parkside	Southwark	£50
Vertus	50 Charter Street	Tower Hamlets	£60
Long Harbour	The Eades	Waltham Forest	£49
Moda Living	Embassy Boulevard	Wandsworth	£65

These are the biggest launches of Q1-Q3 2025.

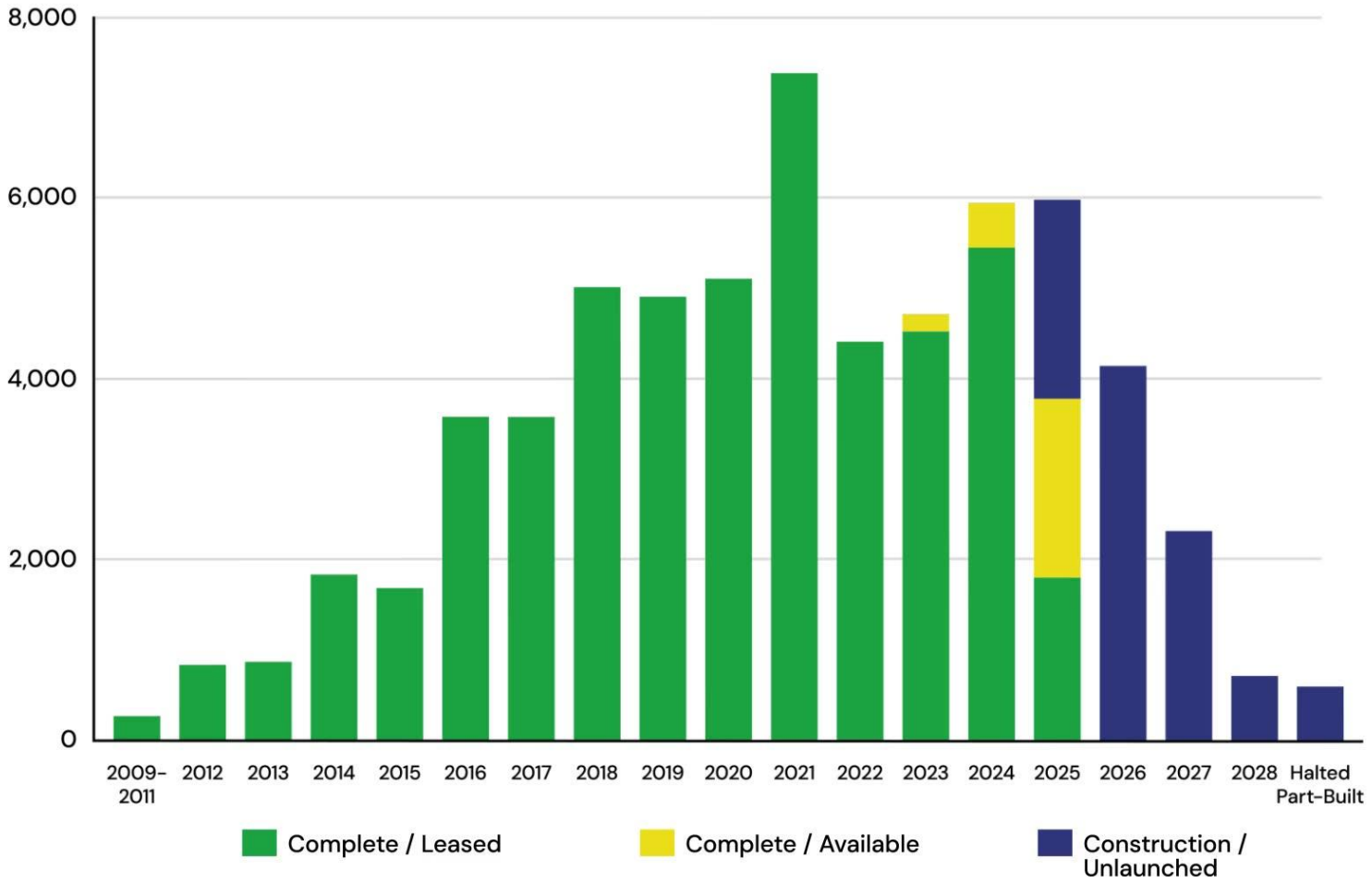
The average lease-up rate across these projects is 26 homes per month, and ...

Grainger's Seraphina is leasing at 50 homes per month.

Greystar's Pearl Yard is leasing closer to 100 homes per month.

MOLIOR

Multifamily Completions Profile 2009-2028



Build-to-rent completions are about to plunge.

Interest rates rose during 2022, then the Liz Truss budget pushed them higher.

This stopped new money from funding London multifamily development.

Completions are set to disappear after 2027 because construction starts fell in 2023 / 2024.

MOLIOR

Multifamily Completions Forecast For 2028



Rental markets will be starved of new supply.

For decades, the completion of new developments has helped limit rental growth in London - housing young Londoners, often in the early stages of their careers.

But with few Build-to-Rent or Buy-to-Let completions after 2027, London can expect higher rents and increased overcrowding.

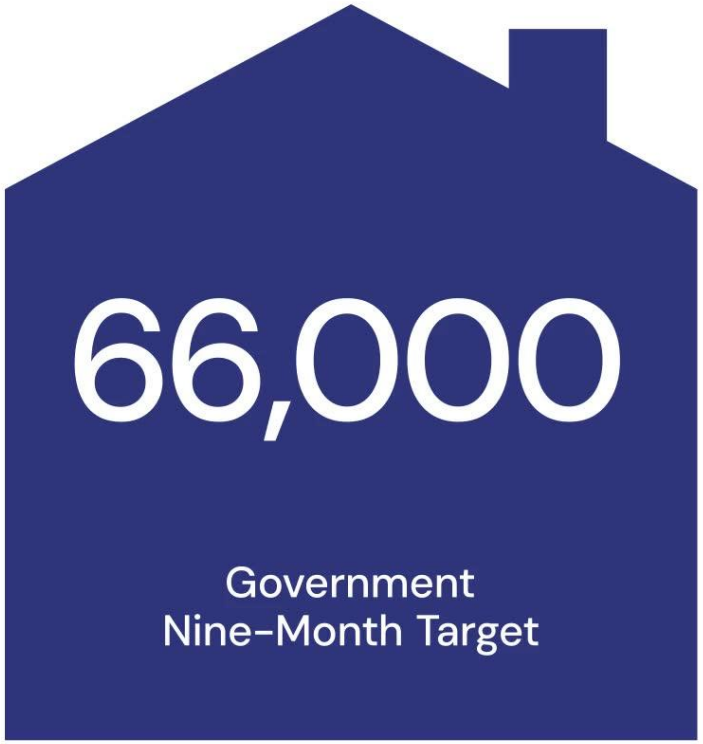
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Construction Starts Q1-Q3 2025





There were 3,248 private starts in Q1-Q3 2025.

London is now on track for fewer than 5,000 private construction starts in 2025.

Starts have been falling for a decade because sales rates and profitability have been falling for a decade.

Building Safety Regulator delays have made things worse in 2025.

MOLIOR

Construction Halted At The End Of Q3 2025



Work has stopped at one in six construction projects.

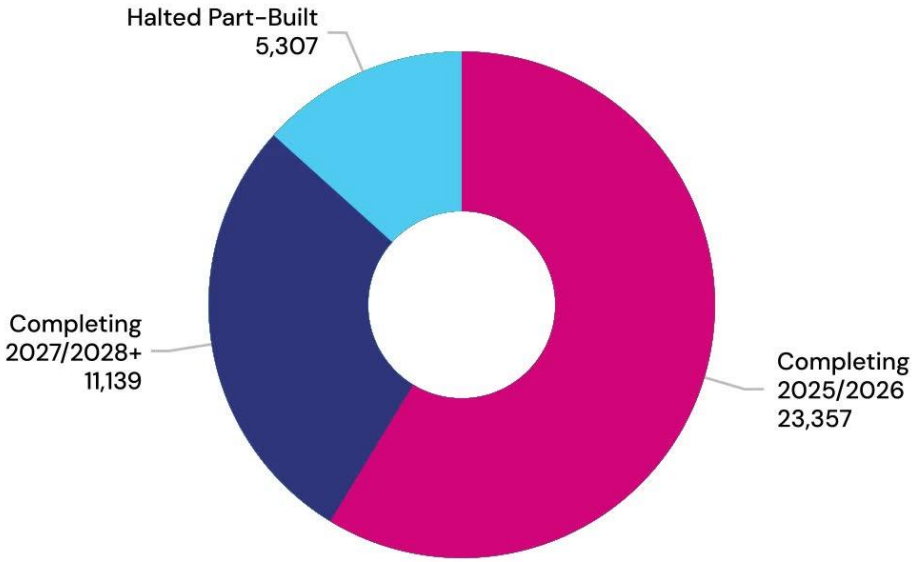
Such schemes are halted, with the gates padlocked, usually for one of two reasons.

Often the building contractor has gone bust, with rising construction costs being the main cause of distress.

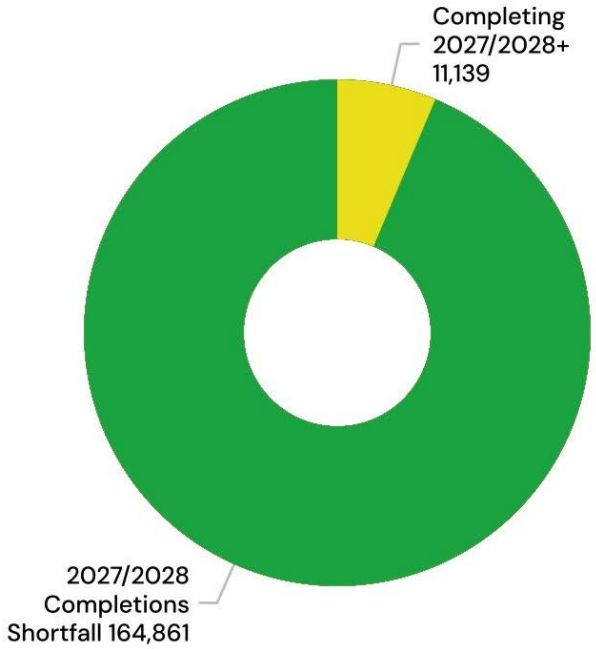
In other situations, work is deliberately on hold because the sales market is so weak.

MOLIOR

Construction Completions Forecast For 2027 + 2028



39,803 Homes Are Under Construction



Expected Completions Shortfall = 94%

Government targets look impossible to achieve.

The left-hand image shows most of the 40,000 homes currently under construction will be completed by the end of 2026.

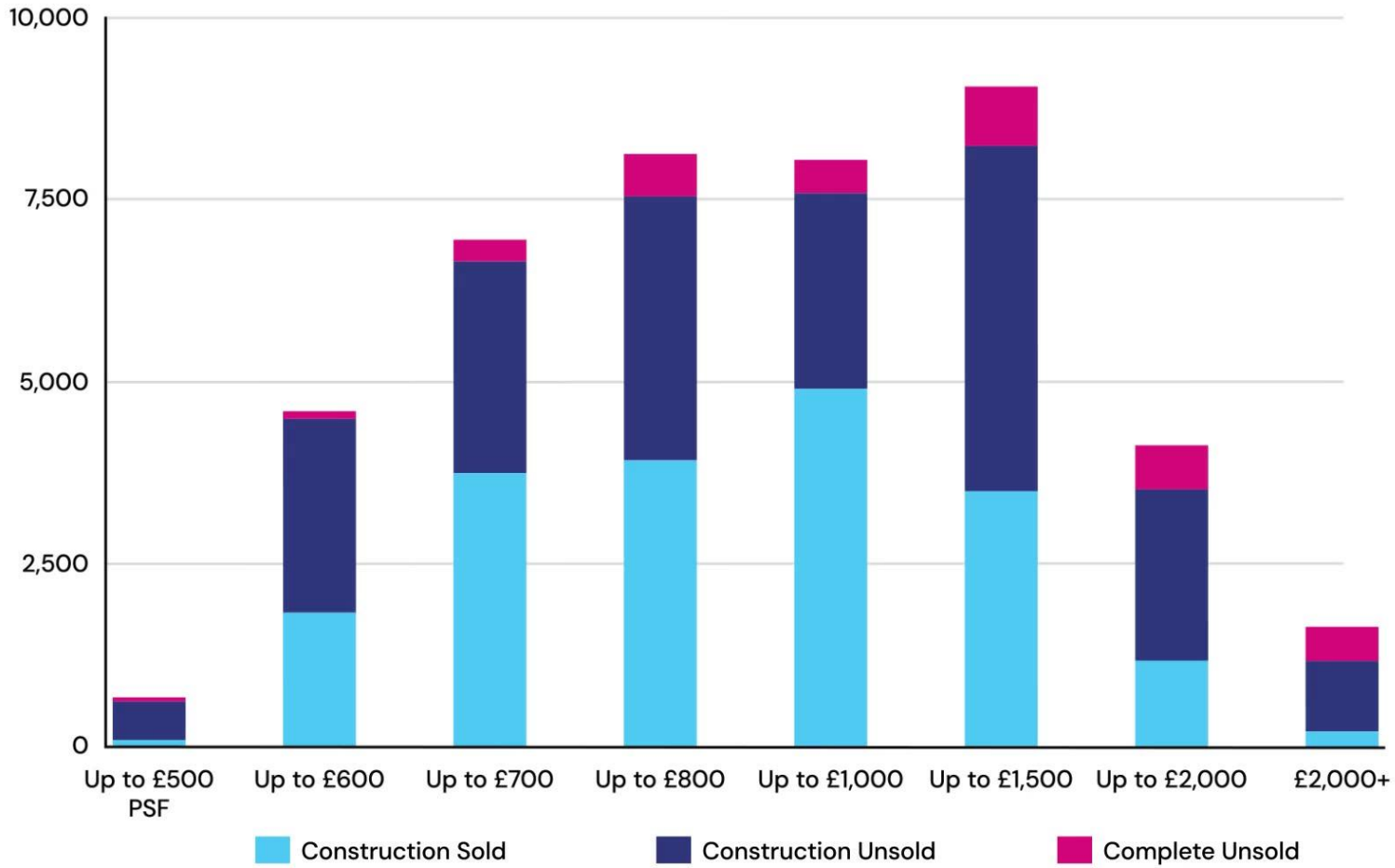
The right-hand image shows completions expected in 2027 and 2028. The yellow segment is just 6% of the Government's 176,000-home, two-year London target.

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Pricing Of Unsold Homes At The End Of Q3 2025



Unsold homes exist across all price points.

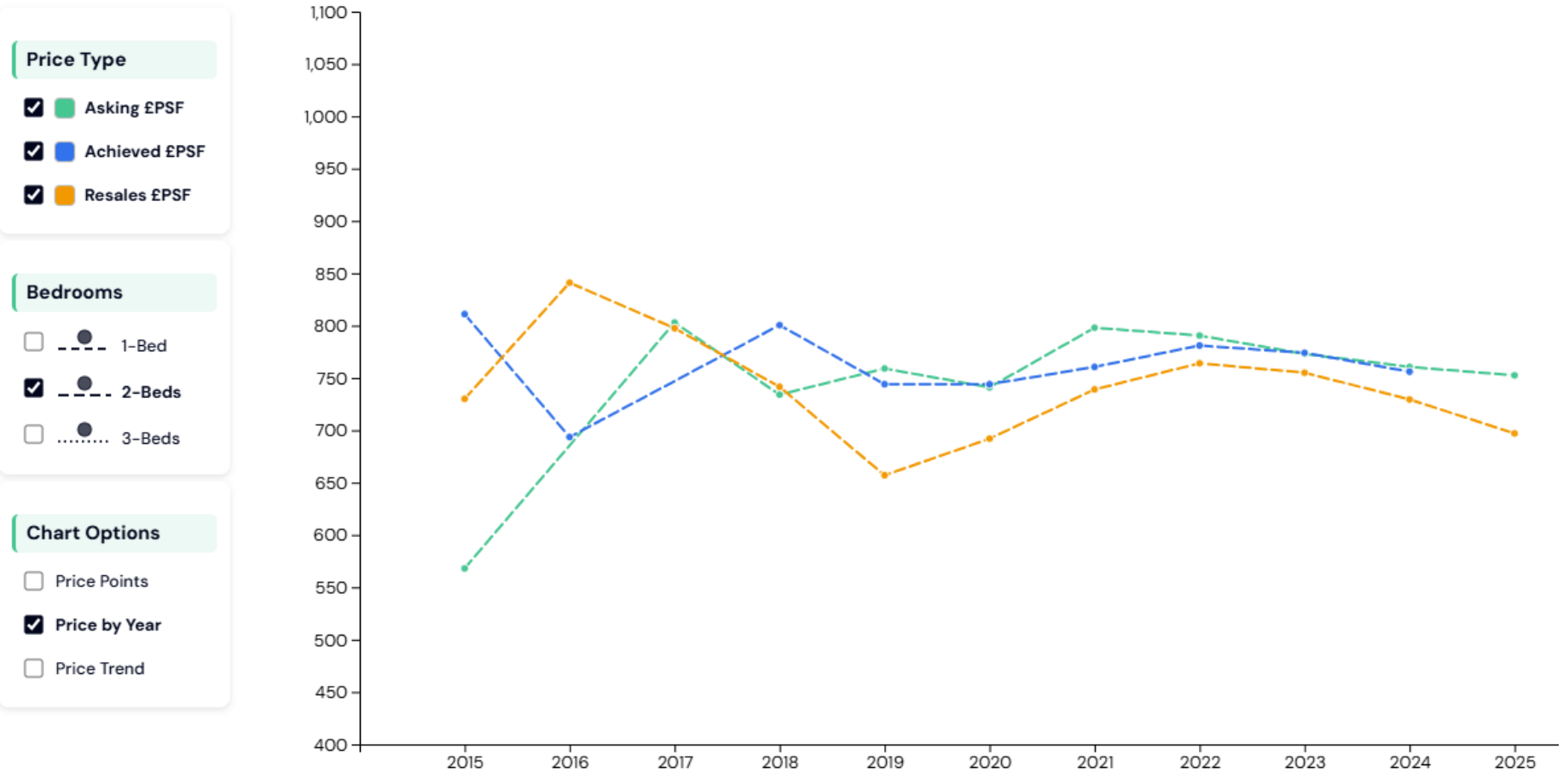
Under construction sold v unsold sits at about 50%; this is healthy.

Slow sales have triggered some price discounts, but price-distress is alleviated by the rental market.

At completion, developers are renting unsold homes leaving few homes complete but unoccupied.

MOLIOR

Pricing Growth Since 2015 In £PSF



Prices are not rising … this is Acton W3.

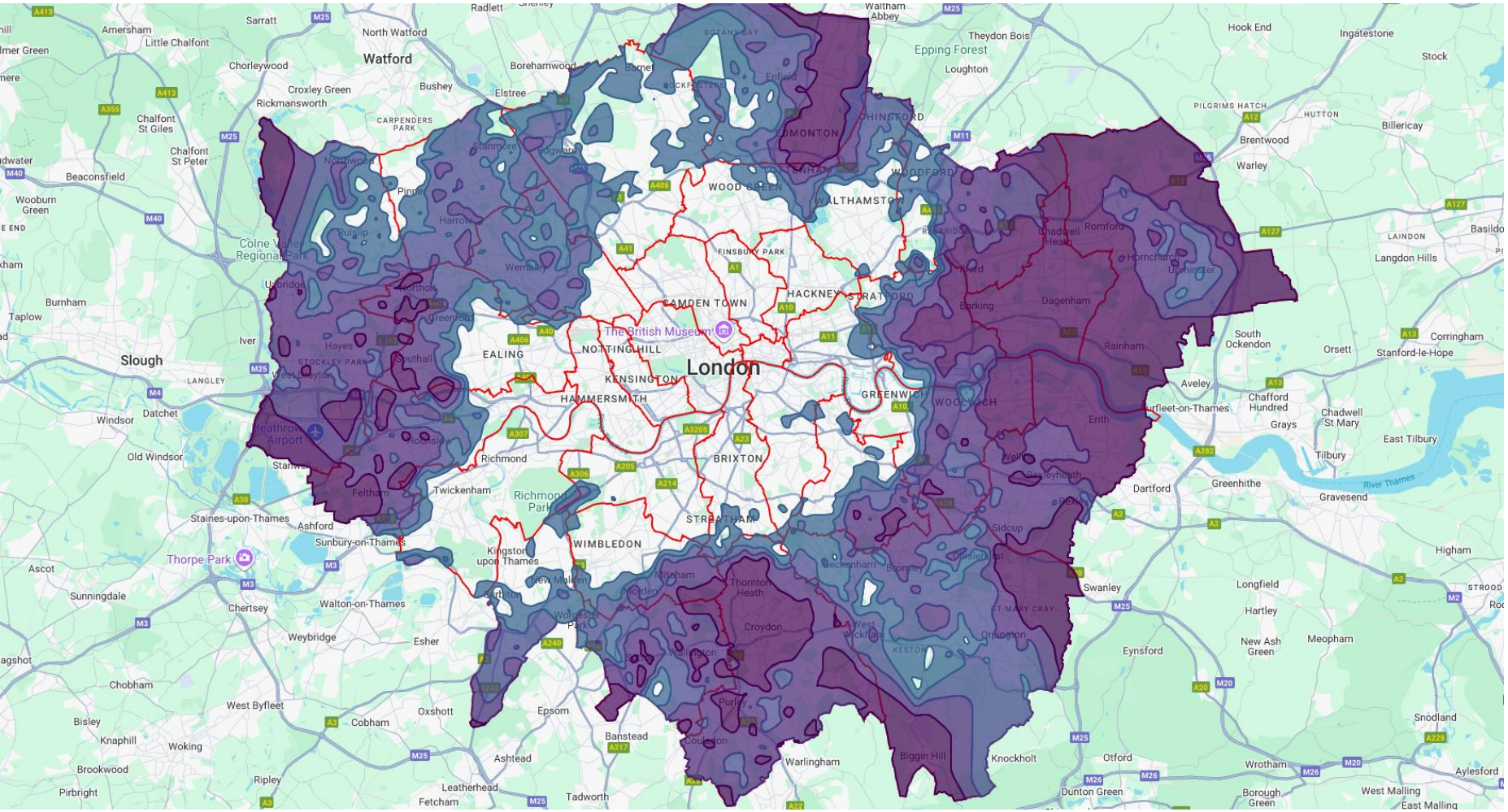
Patterns vary by location but in general prices have been flat for ten years and are now falling.

As sales rates are low, prices are clearly too high.

However, the costs of both construction and planning obligations give developers little freedom to reduce prices.

MOLIOR

Pricing Across London Above + Below £650 PSF



Development is unviable across half of London.

Development costs are high, so it is unviable to build profitably in half of London - areas under £650 psf.

This is even if the land is provided free and there are no planning obligations like CIL and affordable housing.

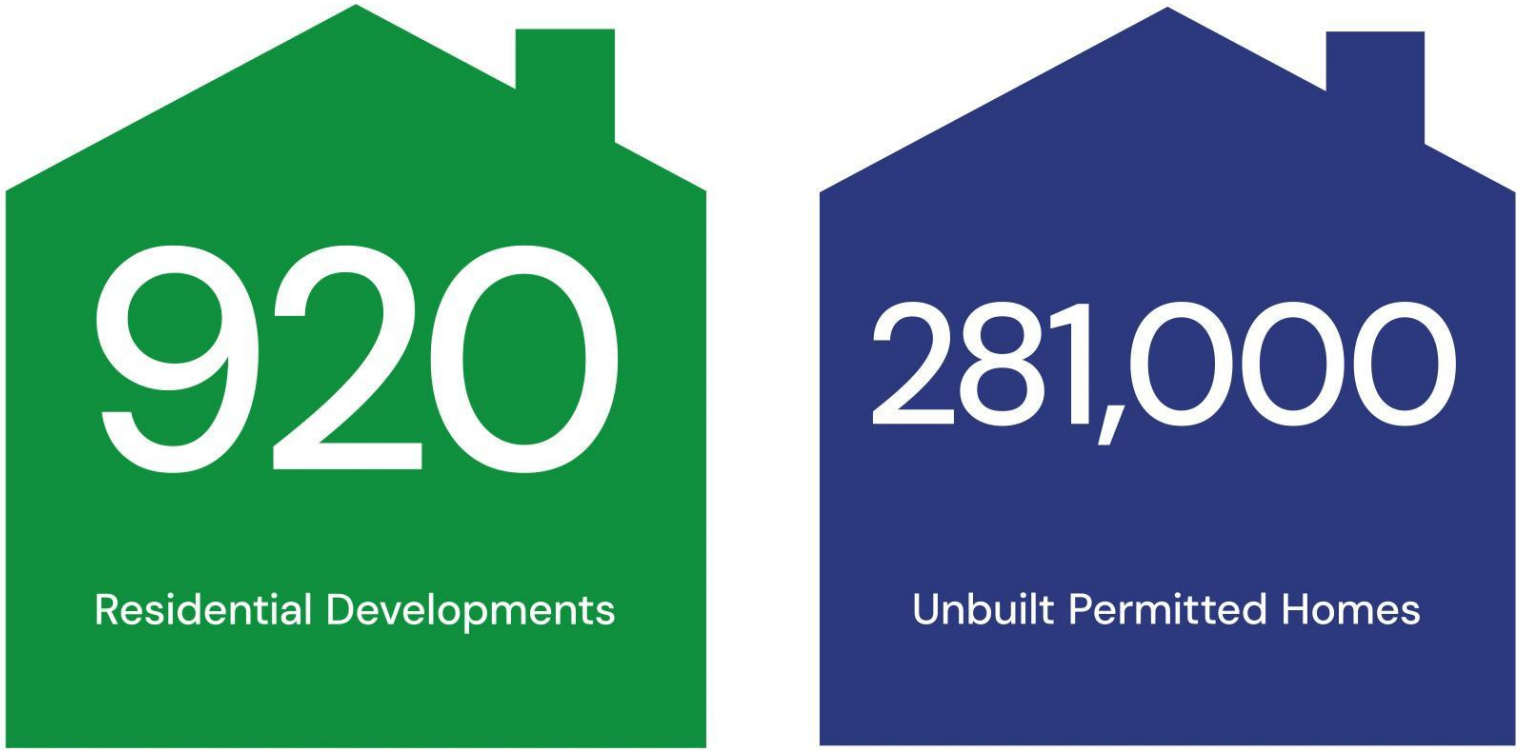
Though exceptions do exist, pockets of high value that coincide with lower-cost buildings.

MOLIOR

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Planning Permissions Unbuilt At The End Of Q3 2025



London has 281,000 unbuilt permissions.

These numbers are private + affordable C3 permissions.

The numbers include outline consents, detailed consents and unbuilt phases of schemes partly under way.

Also included are projects successful at committee but still waiting S106 sign-off.

MOLIOR

Planning Permissions Most Likely To Be Built



Just 10,000 homes are in a value v height sweet spot.

Development below £650 psf is mostly unprofitable; such schemes contain 54% of unbuilt permissions.

Funders are wary of BSR delays in developments above 18m; such schemes contain 90% of unbuilt permissions.

Only 10,000 unbuilt homes are in higher value areas and in lower rise buildings.

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Planning Applications Since 2009



Planning applications in London are unfashionable.

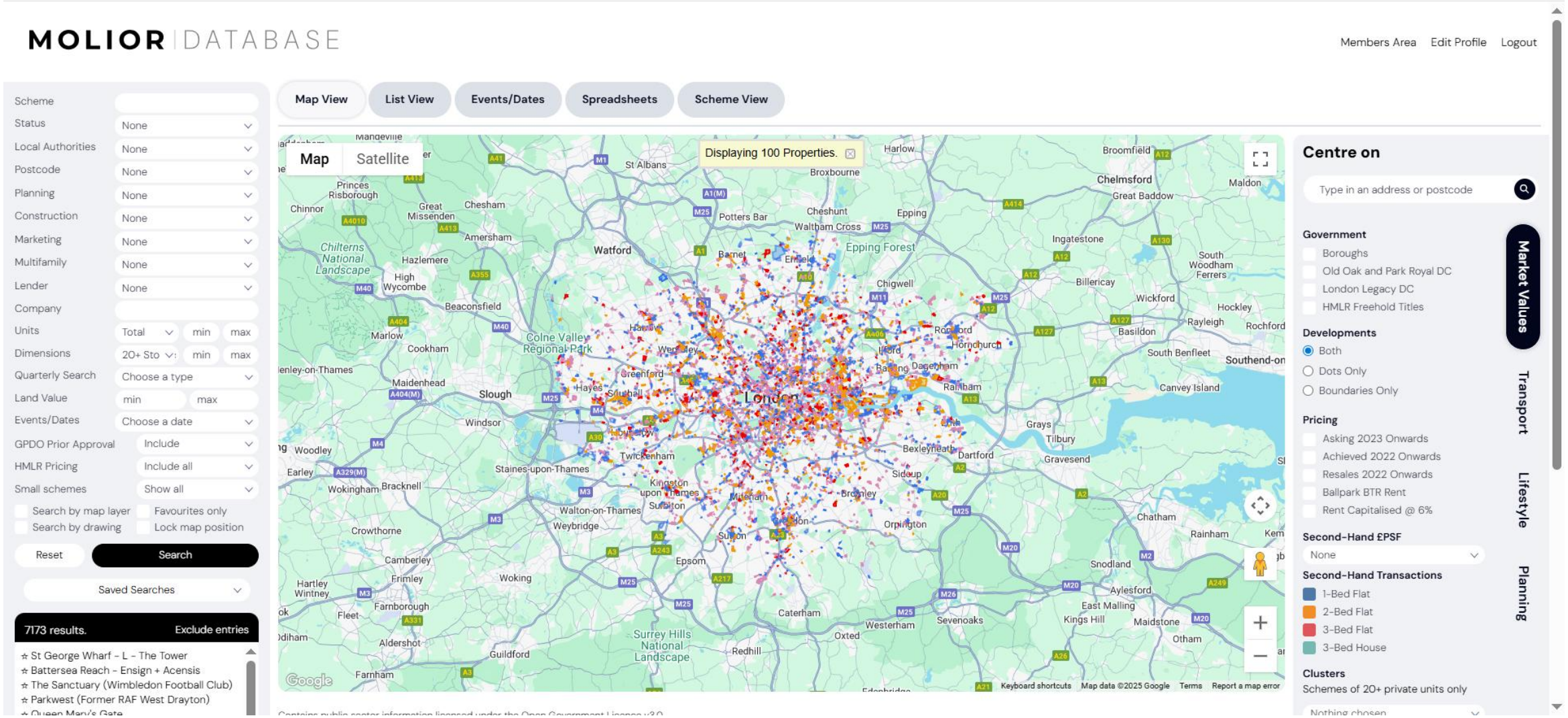
Falling development profitability during the last decade means new planning applications have also fallen.

This graph shows net private additional applications.

The lines avoid double counting duplicated applications, such as when second stair-cores demand redesigns.

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Appendix F

Article



Sadiq Khan deputy hints at major policy shift to increase homebuilding

27th September 2025

Deputy Mayor for Planning, Jules Pipe, has told a high-level conference to expect "immediate measures"

CHARLES WRIGHT

As London's housing crisis deepens, pressure is mounting on Sir Sadiq Khan to

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Could a dramatic City Hall announcement be imminent? That was certainly the expectation among development professionals at the Shaping London's Future conference held by leading planning chambers Landmark last week "Everyone is waiting for the GLA (Greater London Authority) announcement," said one attendee as the session began.

That made Jules Pipe, Sir Sadiq's deputy for planning and overseer of the London Plan, the Mayor's long-term blueprint for development in the capital, something of a star attraction. And while participants may have been disappointed not to hear specific pledges from him, Pipe suggested there isn't long to wait. There was an "increasing sense of urgency" as development ground to a halt, he said, with City Hall working with government on "immediate measures".

Speakers set out the now familiar cocktail of challenges which, according to Tom Dobson of planning consultancy Quod, meant that in the coming period "most developers aren't going to be building very much". Soaring costs, high inflation and interest rates and falling sales, coupled with the pressures of new building safety rules and the demand to provide high levels of affordable housing, new infrastructure and other public provision, were all making schemes increasingly unviable.

Two recent schemes were highlighted, the 1,000 home Stag Brewery development in Mortlake and the 52-storey, 434 home Cuba Street scheme at Canary Wharf, where developers had successfully argued for large reductions in an initial 30 per cent affordable home provision, to enable works to proceed. Meanwhile, as Pipe himself pointed out, no work has begun on thousands of potential homes in the capital for which there is planning permission because of similar viability concerns.

With homelessness increasing, the situation is all the more acute because affordable housing built by private developers under "Section 106" agreements with boroughs, in return for planning permission, makes up more than half of the total affordable supply in the city.

More homes in London were also critical for UK economic growth, said Landmark KC Rupert Warren, while his colleague Zack Simons KC pointed out that with the capital allocated almost one in four of new homes in government plans, there would be "no hope" of reaching that target "unless London does its bit". The Mayor's London Plan, added fellow KC Russell Harris, must "become a delivery machine…because if it doesn't, no-one else will".

"I'm very alive to the reality of development in the current climate," said Pipe. "We

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Pipe added that viability challenges were not all due to City Hall and borough planning rules and other regulations. Wider economic pressures were in play, and more investment in transport – particularly City Hall's top three proposals, for the Bakerloo line and Docklands Light Railway extensions and the new West London orbital line – was vital for meeting the city's 10-year 880,000 home target.

But he also accepted that for potential new development what had been a flagship, and initially successful, Khan policy, offering a "fast track" through the planning process in return for 35 per cent affordable housing, was no longer delivering. And changes brought in by City Hall at the end of last year, designed to speed up delivery by allowing more flexibility on the type of affordable housing provided, had "not been enough".

The Mayor would now be "increasingly active" in exercising his power to "call in" major planning applications and take over decision-making from the borough in order to push schemes through, Pipe promised. But beyond that, what could the emergency City Hall guidance, which is now clearly expected – perhaps in the next few days, according to some observers – look like?

Pushing that 35 per cent threshold down is the main demand, with viability expert James Brierley, from the Newmark consultancy putting his money on a reduction to 20 per cent. "Developers want to build, and schemes should provide what they can and maximise the amount of affordable housing, recognising that affordable delivery is the government focus," he said. "But we need a bit of pragmatism and realism."

Simons highlighted what he said was the "biggest constraint" on housebuilding in London, its extensive Green Belt, covering 22 per cent of the city's land area. The government's changes to planning rules allowing some release of Green Belt land, alongside strict affordable quotas, was a "once in a generation" opportunity to get building, he said, and urged developers to "strike while the iron is hot".

Follow Charles Wright on Bluesky. Photo: New homes at Brent Cross Town.

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Categories: News

Tags: housing, Jules Pipe, planning

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as New Town locations

5 Comments

Metal Mickey says:
27th September 2025 at 7:07 pm

So khan will allow multiple buildings in London, but very few will be for social housing, Wow, thanks for looking after the poorer classes

REPLY

Dave Hill says:
28th September 2025 at 10:42 am

I think the problem is that around half of affordable homes built in London, including for social rent, are supplied as a by-product of private developments.

At the moment, there is almost no private housing development at all, which means almost no affordable and/or social housing through that channel either. Asking the private sector to supply a small proportion may mean that at least some in forthcoming – as opposed to none at all as at present.

REPLY

mark orr says:
28th September 2025 at 2:53 pm

OK so who builds the remaining 50% of affordable not a by-product of private developments I'd like to see some stats ?

Dave Hill says:
1st October 2025 at 1:26 pm

It varies a bit year by year, but broadly speaking a bit over half of all forms of "affordable" – low cost home ownership, social rent, affordable rent – are built through the Mayor's government-funded affordable homes programme. The rest are built by private sector developers as conditions for receiving planning consent for their residential schemes as a whole (via Section 106 agreements). It is the latter that has almost completely dried up. Hence the growing calls for the Mayor to "fast-track" schemes with less than 35% affordable within them.

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Let's build lots of houses but pretty much only a handful only are affordable. We'll be no better than we are now. The government can press on developers if they really wanted to and nationalise house building if necessary. Alternatively give smaller firms the opportunity to win the contracts.

REPLY

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment *

Name *

Email *

Website

Notify me of follow-up comments by email.

Notify me of new posts by email.

POST COMMENT

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My Beautiful Laundrette at the Cinema Museum

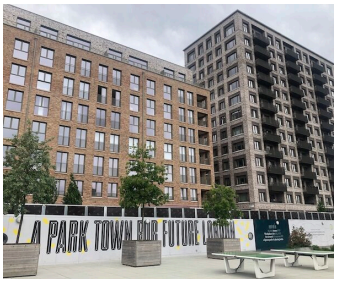
DAVE HILL

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NEWS



Government confirms Crews Hill in Enfield and Thamesmead riverside picked as New Town locations



Sadiq Khan deputy hints at major policy shift to increase homebuilding



Enfield: Local Green Belt housing event hears polite but firmly-opposed views

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Appendix G

Vistry Homes Ltd v Secretary of State for Levelling Up, Housing And Communities & Ors (Rev1) [2024] EWHC 2088 (Admin)

Neutral Citation Number: [2024] EWHC 2088 (Admin)

Case No: AC-2024-LON-000765
and AC-2024-LON-000778

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 August 2024

Before :

THE HON. MR JUSTICE HOLGATE

- -

Between :

AC-2024-LON-000765
VISTRY HOMES LIMITED **Claimant**

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) ST ALBANS CITY AND DISTRICT COUNCIL
(3) COLNEY HEATH PARISH COUNCIL

Defendants

AND

AC-2024-LON-000778
FAIRFAX ACQUISITIONS LIMITED **Claimant**

-and-

(1) SECRETARY OF LEVELLING UP, HOUSING AND COMMUNITIES
(2) HERTSMERE BOROUGH COUNCIL
(3) HERTFORDSHIRE COUNTY COUNCIL
(4) ALDENHAM PARISH COUNCIL

Defendants

- -
- -

Mr. Zack Simons (instructed by **Clarke Willmott Solicitors**) for the **First Claimant** in the first claim**.**
Dr. Ashley Bowes and **Mr. Harley Ronan** (instructed by **Pinsent Masons LLP**) for the **Claimant** in the second claim**.**

Mr. Robert Williams (instructed by the **Government Legal Department**) for the **First Defendant** in both claims**.**
Mr. Wayne Beglan and **Ms. Olivia Davies (**instructed by **Hertsmere Borough Council)** for the **Second Defendant** in the **second claim.**

The third defendant in both claims did not appear and was not represented, nor was the fourth defendant in the second claim.

Hearing dates: **9-10 July 2024**

- -

Approved Judgment

This judgment was handed down remotely at 16.00 pm on 07/08/2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Mr Justice Holgate:

Introduction

1. These two claims for statutory review brought under s.288 of the Town and Country Planning Act 1990 ("the TCPA 1990") concern decisions by Inspectors on planning appeals relating to large residential schemes in the Green Belt. It was common ground that each constituted "inappropriate development" for the purposes of Green Belt policy in the National Planning Policy Framework ("the NPPF").

2. Accordingly, each development was, by definition, harmful to the Green Belt and could not be approved unless "very special circumstances" ("VSC") existed. That is, the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, had to be "clearly outweighed" by the other material considerations (paras. 152 and 153 of the NPPF):

> "152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 153. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

3. In each case the Inspector found that substantial weight should be given to the harm that would be caused to the Green Belt, that harm would also be caused to the local landscape and, in one appeal, other matters.

4. Each proposed development is located in a district, the City of St. Albans in one case and Hertsmere Borough in the other, which largely falls within the Green Belt and where there have been longstanding issues with the local planning authority ("the LPA") identifying an adequate supply of housing land in accordance with the NPPF. Therefore, the Inspectors in each case treated the contribution which each scheme would make to the provision of general market housing and affordable housing as benefits attracting substantial weight in the "very special circumstances" balance, weighing against the harm in the other side of the balance.

5. Thus far, the claimants do not challenge any part of the respective decision letters.

6. In each case the Inspector went on to assess how much weight to give other benefits, before striking the overall planning balance. Each claimant seeks to challenge the way in which the Inspector dealt with just two of the benefits. In the claim brought by Vistry Homes Limited ("Vistry") the grounds of challenge relate to:

   (i) The development of "previously developed land" ("PDL") as a benefit (para. 123 of the NPPF); and

(ii) The provision of a net gain in biodiversity ("BNG") as a benefit (para. 180(d) of the NPPF).

7. In the claim brought by Fairfax Acquisitions Limited ("Fairfax") the grounds of challenge relate to:

(i) The provision of economic benefits from the construction and occupation of the proposed dwellings (para. 85 of the NPPF); and

(ii) The provision of BNG as a benefit (para. 180(d) of the NPPF).

The BNG issue is common to both cases.

8. Neither claimant alleges that the Inspector in its case failed to take into account the relevant benefits. Instead, each complaint relates to the relative weight given by the Inspector to those benefits.

9. For that reason it is important to recall what was said by Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759 at p.780 F-H:

> "The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into Wednesbury irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.
>
> This distinction between whether something is a material consideration and the weight which it should be given is only one aspect of a fundamental principle of British planning law, namely that the courts are concerned only with the legality of the decision-making process and not with the merits of the decision. If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State."

10. A challenge to an Inspector's decision on matters of weight would not appear to be promising. Furthermore, in these cases the benefits in question were not the main issues on which the appeals were contested. Indeed, the parties said rather little about the benefits. Accordingly, it would not be surprising to find that the Inspectors' reasoning was correspondingly succinct. In one instance Fairfax even seeks to criticise an approach taken by the Inspector which was common ground between the parties at the public inquiry.

11. We should also not lose sight of two facts. First, the extent of the difference between the weights applied to the benefits was not very great. The weight which the claimants asked the Inspectors to place on each of the benefits the subject of the present claims was no more than "significant". The Inspector gave moderate or neutral weight to the two benefits in the Vistry appeal and limited weight to the two benefits in the Fairfax appeal. Second, the decisions attached much greater weight to other, self-evidently important subjects, such as harm to the Green Belt, or the provision of affordable housing.

12. The general principles upon which a statutory review under s.288 is conducted were summarised in *St. Modwen Developments Limited v Secretary of State for Communities and Local Government* [2018] PTSR 746 at [6] – [7].

13. The claimants seek to challenge the Inspector's conclusions on weight by a number of routes depending upon which finding is being criticised. First, it is said that the finding is flawed because it is based upon a misinterpretation of the NPPF. Here it is necessary to distinguish interpretation from application of policy (see e.g. *East Staffordshire Borough Council v Secretary of State for Communities and Local Government* [2018] PTSR 88 [8]-[9]; *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 1450 at [32]). Normally, a party raising such an argument should at least identify (i) the policy wording said to have been misinterpreted, (ii) the interpretation of that language adopted by the decision-maker and (iii) how that interpretation departs from the correct reading of the policy (*Trustees of Barker Mill Estates v Secretary of State for Communities and Local Government* [2017] PTSR 408 at [83]).

14. Second, it is said that the application of the NPPF by the Inspector was irrational. Here counsel is using the term in the second sense identified by the Divisional Court in *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at [98], namely a demonstrable flaw in the reasoning leading to a conclusion – significant reliance upon an irrelevant consideration, or absence of evidence to support an important step in the reasoning, or "a serious logical or methodological error" in the reasoning (approved by the Supreme Court in *R (Finch) v Surrey County Council* [2024] UKSC 20 at [56]).

15. Third, it is said that the reasoning on particular conclusions was legally inadequate.

16. In order to provide the context for the grounds of challenge, it is necessary to summarise the contents of each Inspector's decision letter in some detail. This exercise also reveals the care and skill with which each Inspector carried out his task. I will then address the grounds of challenge in the following order:

    (i) Use of PDL (Vistry);

    (ii) Economic benefits (Fairfax);

    (iii) BNG (Vistry and Fairfax)

17. The hearings of the two claims took place one after the other, but the parties agreed that the court may take into account written and oral submissions and materials in both cases when determining each claim. I wish to express my gratitude for the helpful written and

oral submissions from all counsel and for the single set of bundles which the parties agreed to cover both cases.

The planning appeal in Vistry's case

The planning application

18. On 5 August 2022 Vistry made an application to St. Albans and City District Council ("SACDC") for outline planning permission for the demolition of an existing house at 42, Tollgate Road, Colney Heath and stables, and the erection of up to 150 dwellings, 81 as market housing, 60 as affordable homes (40%) and 9 as self-build or custom houses. The means of access was to be approved as part of the application. Matters relating to layout, scale, appearance and landscaping were reserved for subsequent approval. The site also comprised a substantial area of open pasture land to the rear of 42-100, Tollgate Road.

19. SACDC refused the application on 25 May 2023 and Vistry appealed to the Secretary of State. A public inquiry was held in September 2023. The Inspector issued his decision letter on 26 January 2024. The decision took into account the revised version of the NPPF dated 19 December 2023 and the written representations of the main parties on that document.

Colney Heath and the appeal site

20. Colney Heath is a small, nucleated village between St. Albans to the north west, Hatfield to the north east, Welham Green to the south east and London Colney to the south west. The village comprises 3 clusters of development separated and surrounded by open countryside, a mixture of fields and woodlands (DL 6).

21. The appeal site is located adjacent to the southernmost part of the village. The River Colne runs along its south western boundary. It has an area of 7.82ha, nearly all of which comprises open fields. In the north west corner of the site there is a small equestrian facility (manège, stables, stores and hardstandings). That facility, together with the curtilage of 42 Tollgate Road, occupies around 3,000 sqm, just 3.8% of the overall site. The appeal site is almost entirely free of buildings and other development. The fields are used for grazing and exercising horses (DL 6, 7 and 19). The development area of the appeal scheme, including the access, amounts to 4.06ha or about 52% of the overall site area (DL 20).

The development plan

22. The relevant policies are contained in the "Saved Policies" of the old-style (pre-Planning and Compulsory Purchase Act 2004) City and District of St. Albans Local Plan Review ("the Local Plan"). The whole of the district lies in the Green Belt save for some specified towns and settlements. However, Colney Heath is not a specified settlement. It is a "Green Belt Settlement" where the Green Belt is "washed over" the whole village (DL 8).

23. SACDC is preparing a new local plan to cover the period running to 2041. It is at an early stage, having only undergone consultation under reg. 18 of the Town and Country

Planning (Local Planning) (England) Regulations 2012 (SI 2012 No. 767). The document proposes changes to Green Belt boundaries to meet the development needs of the district, but not at Colney Heath. The Inspector gave limited weight to the policies in the emerging local plan, as was common ground between the parties (DL 9).

Main issues in the planning appeal

24. Because of the publication of the reg. 18 version of the emerging local plan, paras. 77 and 226 of the NPPF only required SACDC to demonstrate a 4-year supply of housing land, rather than a 5-year supply (DL 11). But there was still a substantial shortfall. In another case it might have been necessary for the Inspector to apply the tilted balance in para. 11(d)(ii) of the NPPF, but here, in accordance with case law, it was only necessary to apply para. 11(d)(i) of the NPPF and the VSC balance under Green Belt policy. The parties therefore agreed that the appeal turned on whether VSC were shown to exist (DL 12 and 13).

25. The Inspector decided that the main issues in the appeal were:

> "14. In view of the above, and having regard to everything I have read, heard and seen in this case, the main issues in this appeal are:
>
> - The effect of the proposed development on the openness and purposes of the Green Belt;
>
> - The effect of the appeal proposal on the landscape character and appearance of the area;
>
> - The effect of the proposed development on the setting and significance of nearby heritage assets, including the Grade I listed North Mymms Park House, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn, and the non-designated heritage assets of North Mymms Park and Tollgate Farm;
>
> - Whether the site's location is or can be made sustainable in transport terms; and
>
> - Whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, including the provision of housing and any other benefits which the proposed development may bring, so as to amount to the very special circumstances necessary to justify the proposed development."

Effect on Green Belt openness

26. Paragraph 142 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence (para. 142 of the NPPF and DL 17).

27. The change from open fields to development across more than half of the site would have a significant impact on the spatial openness of the Green Belt in this location (DL 20).

28. The Inspector assessed in some detail the impact of the scheme on the visual component of openness at DL 21 to DL 26.

29. The site can be seen from a number of locations on surrounding roads and footpaths (DL 21). From each location the site is seen as part of a corridor of open fields and countryside, running along the River Colne to the south and west of Colney Heath. The views from Tollgate Road have very strong connections to the wider landscape with open fields and woodland blocks. In visual terms the site makes an important contribution to the openness of the Green Belt (DL 22).

30. The appeal proposal would infill around three-quarters of the gap between the houses on Tollgate Road and the woodland along the River Colne (DL 23).

31. In response to Vistry's suggestion that the site is visually contained, the dwellings would be clearly visible above existing and proposed boundary planting filling the open space on the appeal site. Any "containment" or screening provided by proposed landscaping would reduce the visual openness of the site rather than mitigate the effect of the development on the openness of the Green Belt (DL 24). Activity, traffic movement and street lighting in dark hours would also affect openness (DL 25).

32. At DL 26 the Inspector concluded:

> "26. Overall, the loss of openness on the appeal site due to the permanent change from fields used for horses to a housing estate of up to 150 dwellings, which would be built across more than half of the site and be clearly visible from surrounding roads and footpaths, intruding into the corridor of open land between Colney Heath and the River Colne, would be substantial. The resulting harm to the openness of the Green Belt in this location would, therefore, be substantial."

Effect on Green Belt purposes

33. The Inspector dealt with this subject at DL 27 to DL 32.

34. It was common ground that the proposed development would conflict with the purpose of safeguarding the countryside from encroachment (DL 27). The Inspector rejected Vistry's suggestion that the appeal site makes a weak contribution to that purpose. The site is clearly visible from a range of public vantage points within and around Colney Heath and it forms part of a swathe of land alongside the River Colne which is visually connected to the countryside to the southeast and northwest. In its current form, the appeal site makes "a strong contribution to the purpose of the Green Belt in safeguarding the countryside from encroachment" (DL 28).

35. Unlike other Green Belt sites referred to, the appeal site was not contained, rather it forms part of the open countryside (DL 29 to DL 30).

Overall conclusions on Green Belt harm

36. In DL 31 to 32 the Inspector concluded:

> "31. In this case, the appeal proposal would constitute a substantial incursion of urban development into the open countryside to the south of Colney Heath, extending the settlement well beyond the existing ribbon of housing on Tollgate Road. This would cause substantial harm to the key purpose of the Green Belt in this location in safeguarding the countryside from encroachment.
>
> 32. Paragraph 153 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Accordingly, the harm to the openness and purposes of the Green Belt, in addition to the harm by reason of inappropriateness, carry substantial weight against the appeal proposal."

Effect on landscape character and appearance

37. The Inspector dealt with the effect on landscape character at DL 33 to DL 43 and on appearance or visual impact at DL 44 to DL 50.

38. Although the appeal site has a settlement edge on its north eastern boundary (the back of properties in Tollgate Road), its predominant character is rural. It forms part of a corridor of open countryside along the River Colne, which includes Colney Heath Common to the northwest and the parkland landscape of North Mymms House (a grade I listed building) to the south east (DL 33).

39. The development would result in the loss of much of the rural character of the site. Only the portion within a Local Wildlife Site adjacent to the River Colne would remain undeveloped, but this would mostly be hidden from Tollgate Road by the proposed housing (DL 35). The development would be an urbanising influence projecting into the Colne Valley (DL 36).

40. Although the site is not a "valued landscape" within para. 180(a) of the NPPF it has "the intrinsic character and beauty of the countryside" (para. 180(b)). The development would substantially erode the contribution and value of the site to the rural character of the area and setting of Colney Heath (DL 37).

41. Vistry's assessment underestimated the visual impacts of the proposal; that of SACDC was fairer (DL 38). The landscape of the appeal site had at least a "medium" quality and value (rather than "low to medium"). The impacts would be substantial and visually intrusive and could not be adequately mitigated. This would be a "substantial adverse" effect which would not reduce over time (DL 39 to DL 40).

42. The impact of the development on the "surrounding landscape" would be moderate at year 1 and the urbanising influence would remain at that level (DL 41). Within the "wider landscape" the new development would be clearly visible as a new urban extension into the countryside south of Colney Heath. This would noticeably change

the character, scale and pattern of the landscape and townscape in the area resulting in a moderate adverse impact in year 1 reducing to a slight adverse but not negligible impact over time (DL 42 to DL 43).

43. The Inspector then carried out a similarly detailed and careful analysis of visual impacts on a number of receptors (DL 44 to DL 50). The impacts varied but, for example, the housing would be "very prominent" in a view from Tollgate Road, even at year 15, "extending the settlement towards the river, urbanising, disrupting and foreshortening the view." There would be a "substantial adverse" effect reducing to "moderate adverse" over time (DL 46). Other impacts were less severe.

44. The Inspector set out his overall conclusions on landscape and visual impacts at DL 51 to DL 52:

> "51. Based on the landscape and visual evidence I have seen and heard, I do not share the appellant's view that the appeal site is visually contained or that the impacts of the proposed development on the surrounding landscape would be limited and localised. The site is clearly visible from the surrounding roads, footpaths and dwellings on all sides, in nearby and middle distance views. Its
>
> existing open farmland character would be replaced by urban development, which would have adverse effects on the existing rural setting of Colney Heath and the views of countryside from surrounding receptors. The adverse visual and landscape effects would range from 'substantial' and 'moderate' in the first year following the completion of the development, to 'slight' after 15 years with landscaping mitigation. However, in a number of locations, the impacts would remain at a 'substantial' or 'moderate' adverse level over time.
>
> 52. Overall, I consider that the adverse landscape and visual impacts would cause significant harm to the landscape character and appearance of the appeal site and the surrounding area. In my view the proposed development would fail to recognise the intrinsic character and beauty of the countryside on the site and to the south of Colney Heath. As such it would be contrary to paragraph 180(b) of the Framework. It would also be contrary to Policy 2 of the Local Plan which seeks to safeguard the character and setting of Green Belt settlements, including Colney Heath."

Harm to heritage assets

45. The Inspector dealt with the effect of the scheme on heritage assets at DL 53 to 64. The Inspector found that the proposal would cause "less than substantial" harm to designated heritage assets which made it necessary for that harm to be balanced against public benefits under para. 208 of the NPPF (DL 64). At DL 145 the Inspector found that those benefits outweighed heritage harm, so that that harm, taken by itself, did not

constitute a freestanding reason for refusal. But in the VSC balance, the heritage harm carried "great weight" against the proposal (DL 146).

Sustainability of location in terms of transport

46. The Inspector addressed this subject at DL 65 to DL 89 in relation to all modes of transport. The scheme fared better in some respects than others. He gave his overall conclusions in DL 89:

> "89. That said, I concur with the Council that the limitations on the appeal site's location in terms of access by sustainable modes of transport may not be sufficient to fail the policy tests in paragraphs 109 and 114 of the Framework and, therefore, justify the dismissal of the appeal in their own right. However, the lack of a genuine choice of sustainable modes of travel to access medical facilities, and the incoherent, indirect and unsafe cycling routes from the village, are important material considerations which weigh against the proposed development in the overall planning balance."

Market and affordable housing

47. The Inspector dealt with this subject at DL 90 to DL 95. In summary the Inspector said:

(i) The shortfall against the 4 year requirement of housing land in SACDC's district remains substantial (DL 90);

(ii) There has been a serious under-delivery of housing in the district over a number of years (DL 91);

(iii) Even if the emerging local plan is adopted by December 2025, the housing trajectory in that plan shows that delivery on allocated sites would not begin until 2028/9, in around 5 years' time. In the meantime, the delivery of housing would continue to fall well short of the number of dwellings required each year with the associated problems identified (DL 92);

(iv) The proposed development would be delivered in the next 5 years, making a material contribution to the supply. The provision of 81 units of market housing should carry very substantial weight in favour of the development (DL 93);

(v) There is a shortfall in the supply of affordable dwellings of 2,220 dwellings, which is projected to increase over the next five years. The provision of 60 units on the appeal site would represent a social benefit to which very substantial weight should be given (DL 94 to DL 95).

48. The Inspector also gave substantial weight to the provision of 9 dwellings on self-build and custom plots (DL 96 to DL 98).

49. The Inspector dealt with economic benefits (DL 99 to 101) and ecology including BNG (DL 102 to DL 104). Up to this point there is no challenge to the decision. He then dealt with PDL (DL 105 to DL 117).

50. The Inspector turned to address a range of issues raised by third parties, none of which told against the appeal proposal (DL 118 to DL 141).

Very special circumstances

51. The Inspector summarised the main harm which the scheme would cause at DL 142 to DL 144 and at DL 146 to DL 147:

> "142. The starting point in this case is that the appeal proposal constitutes inappropriate development in the Green Belt, which paragraph 152 of the Framework establishes is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. In carrying out the 'very special circumstances' test, it is important to note that under paragraph 153 of the Framework, for 'very special circumstances' to exist, the harm by reason of inappropriateness and any other harm resulting from the proposal must be 'clearly' outweighed by other considerations. So, it is not sufficient for the factors in support of the proposal to merely outweigh the harm. Rather, for the appeal to be allowed, the overall balance of benefits against harms would have to weigh decisively in favour of the appeal scheme, not just marginally.
>
> 143. Beginning with harms, in addition to the harm by reason of inappropriateness, I have found that the proposed development would cause substantial harm to the openness of the Green Belt at Colney Heath and to its purpose in safeguarding the countryside from encroachment. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt. Accordingly, the harm to the openness and purpose of the Green Belt, in addition to the harm by reason of inappropriateness, each carry substantial weight against the appeal proposal. In my view these comprise a comprehensive range of Green Belt harm, not merely by reason of inappropriateness, but to the fundamental aim and purposes of the Green Belt.
>
> 144. In terms of other harms, the proposed development would also cause significant harm to the rural landscape character and appearance of the appeal site and the surrounding countryside to the south of Colney Heath, which I have established would be contrary to both national and Local Plan policies. Whilst the Council did not rely on the harm to landscape character as a separate reason for refusal, it is a distinct harm to be considered alongside the Green Belt harm in the overall balance. In my view, for the reasons I have given above, the level of landscape harm which would result, adds further significant weight against the appeal proposal.
>
> …

> 146. However, this does not constitute a finding of 'no heritage harm' and therefore a neutral factor in the overall Green Belt balance. Instead, the harm to the designated heritage assets remains an impact to which paragraph 205 of the Framework indicates great weight should be given, irrespective of the finding of less than substantial harm to their significance. Accordingly, the fact that the proposed development would harm rather than conserve the settings and significance of the Grade I and Grade II listed buildings, carries great weight against the appeal proposal in the Green Belt balance. The very minor harm to the non-designated heritage assets adds a minimal degree of further weight against the proposal.
>
> 147. In respect of access by sustainable modes of transport, notwithstanding the proposed improvements to the 305 bus service, which would be a benefit arising from the appeal scheme, the lack of a genuine choice of sustainable modes of travel to medical facilities, and the inadequacies of the cycling routes from the village to other key facilities, would result in journeys being made by car rather than more sustainable modes. In my view, these factors carry a moderate amount of weight against the proposed development."

52. The Inspector dealt with the main benefits of the proposal at DL 148 to DL 149:

> "148. Turning to the benefits of the proposal, there is a pressing need for additional housing in St Albans District, which the appeal scheme would help to address. The shortfalls against the requirement for a 4-year supply of housing land and the need for affordable housing are substantial. Although there is an emerging Local Plan, which allocates sites to meet housing needs over the next 20 years, this is unlikely to result in the delivery of sufficient new homes to meet the shortfalls within the next 5 years. Therefore, the construction of up to 150 new homes, including 60 affordable units, are key benefits of the appeal proposal, which, given the shortfalls and the Government's objective to significantly boost the supply of homes, should be accorded very substantial weight in the overall Green Belt balance.
>
> 149. In addition, the provision of 9 plots for SB&CB housing within the appeal scheme, although small in number, represents a benefit attracting substantial weight, given the level of unmet demand for this type of housing in the District. The proposed development would also deliver material economic and ecological benefits, in the form of jobs, increased trade for local services, and a 10% BNG, both of which I consider should attract moderate weight in favour of the appeal proposal. I also attach moderate weight to the improvements to the 305 bus service, which would result from"

53. The Inspector decided that all other matters should carry neutral weight, including the use of PDL land to carry out the development (DL 150).

54. The Inspector struck the overall VSC balance in DL 152:

> "152. Accordingly, I have considered the totality of the benefits of the proposed development against the totality of its harms. Even though the provision of market and affordable housing attracts the highest level of weight of any consideration in this case, overall I judge that the housing and other benefits do not clearly outweigh the combination and extent of harms to the Green Belt, landscape character and appearance, and heritage assets, and arising from the limitations in the choice of sustainable transport modes. Therefore, I conclude that the other considerations in this appeal do not clearly outweigh the harm that I have identified."

55. It followed that, applying paras. 11(d)(i) and 152 of the NPPF the proposal should not be approved and the appeal dismissed (DL 153). The application of s.38(6) of the 2004 Act led to the same conclusion (DL 154 to DL 155).

The planning appeal in Fairfax's case

The planning application

56. On 7 September 2022 Fairfax made an application to Hertsmere Borough Council ("HBC") for outline planning permission for the erection of up to 195 new houses, of which 45% would be affordable, safeguarded land for the expansion of a nearby primary school and the provision of a medical centre on land south of Shewley Road, Radlett, Hertfordshire. The application included the means of access, but matters relating to layout, scale, appearance and landscaping were reserved for subsequent approval.

57. HBC refused the application on 2 March 2023 and Fairfax appealed to the Secretary of State. A public inquiry was held over 6 days in August and October 2023. The Inspector issued his decision letter on 26 January 2024. He took into account the revised version of the NPPF dated 19 December 2023 and the written representations of the main parties on that document.

The appeal site

58. Radlett is a settlement with a population in 2021 of 10,060.

59. This greenfield site has an area of 11.45ha. The majority of the site is an agricultural field used as pasture. The western boundary backs on to the rear gardens of housing in "suburban streets" of Radlett and the grounds of Newberries Primary School. Sherley Road forms the site's northern boundary. To the east lies a 40ha block of woodland, Newberries Wood and The Gorse.

60. The whole of the site lies within the Green Belt. About 8ha of the site would be developed for housing, the medical centre and access roads. It was common ground that the proposal was for "inappropriate development" in the Green Belt.

The main issues

61. In DL 4 the Inspector said that the main issues in the appeal were:

> "a) The effect of the proposed development on the openness and purposes of the Green Belt;
>
> b) The effect of the proposed development on the character and appearance of the area, specifically on the landscape; and
>
> c) Whether any harm to the Green Belt, any harm to the landscape and any other harm, is clearly outweighed by other considerations, so as to amount to the very special;"

Green Belt issues

62. In DL 8 the Inspector referred to paras. 152 and 153 of the NPPF. The overriding main issue in the appeal was whether the benefits of the proposed development clearly outweighed its overall harm, so as to establish VSC. It was common ground that there was both a spatial and a visual aspect to the effect of the development on openness. The object of para. 142 of the NPPF is to prevent built or urban development extending on to open Green Belt land, including land next to or surrounding the existing built-up area of settlements not in the Green Belt (DL 10).

Effect on openness

63. The majority of the site would be permanently developed with new buildings and access roads and there would be the activity associated with the housing and the new GP surgery. The proposal was in direct conflict with the spatial policy to keep the land open. Substantial weight had to be given to that harm (DL 11).

64. The Inspector dealt with visual effects on the openness of the Green Belt in DL 12 to DL 15.

65. The woodland block to the east of the site and in the southern part of the site would generally shield it from wider views in the surrounding Green Belt countryside. In that context he described a number of "glimpsed views" (DL 12). He acknowledged that the suburban housing within Radlett along the whole of the western boundary of the site impacted on its character (DL 13). He said that, as such, the proposed development would not be particularly visible compared to other parts of the Green Belt in the locality or the Borough, which were not enclosed by a thick woodland belt. The site is "relatively visually self-contained" (DL 14). Nevertheless, he decided that the loss of 8ha of Green Belt land to built development would clearly have a "significant adverse effect upon its openness, which would be a physical manifestation of its inappropriateness."

Green Belt purposes

66. The first relevant purpose was "to check the unrestricted sprawl of large built-up areas" (para. 143(a) of the NPPF). There was an issue as to whether Radlett qualified as such an area. The Inspector decided that it did (DL 17). He then went on to find that although the proposal would be visually contained by the woodlands, the new development would still represent the further sprawl of Radlett (DL 18). There is no legal challenge to these conclusions.

67. The second purpose of Green Belt policy is "to prevent neighbouring towns merging in to one another" (para. 143(b) of the NPPF). The site performs "moderately" in relation to this purpose (DL 24). The development would reduce the gap between Radlett and Borehamwood to the south east from 1.7km to 1.4km and between Radlett and Shenley from 1km to 0.9km. But the Inspector considered that the smaller the gaps between the settlements the more important those gaps are for the purposes of para. 143(b). The existing gaps are relatively small, which is characteristic of the Metropolitan Green Belt. It is important to preserve open land spatially between such settlements if Green Belt policy is to remain effective in these areas (DL 19 to DL 21).

68. The third purpose of Green Belt policy is "to assist in safeguarding the countryside from encroachment" (para. 143(c) of the NPPF). The appeal site performs "strongly" in relation to this purpose (DL 24). Development would clearly encroach upon open countryside (DL 22 and DL 24). The Inspector noted that a study carried out by HBC's consultants had suggested allocating the appeal site for housing development but (a) that was in connection with an earlier review of the local plan which had been withdrawn and (b) it is well established in case law that the "exceptional circumstances" test for altering Green Belt boundaries in such a review is less strict than the VSC test for dealing with individual planning applications (DL 25 to DL 29). Again, none of these conclusions is challenged.

Conclusions on Green Belt harm

69. The Inspector set out his conclusions on the Green Belt issue at DL 30 to DL 31:

> "30. The proposed 8 Ha of built development would have a significant adverse effect on the Green Belt's openness, which would be a physical manifestation of its inappropriateness. In terms of the Green Belt purposes, the development would have a moderate adverse effect on purpose 'a) to check the unrestricted sprawl of large built-up areas'. It would have a moderate effect on purpose 'b) to prevent towns merging into one another', and a strong effect or impact on purpose 'c) to assist in safeguarding the countryside from encroachment'.
>
> 31. Whilst this significant effect on openness and adverse impact on Green Belt purposes may well be 'inevitable' (in the appellant's words) as a result of the inappropriate development of up to 195 homes and a new medical centre, such inevitability does not lessen its considerable harm to the Green Belt, to which I must give substantial weight."

Landscape issues

70. The Inspector addressed this subject at DL 32 to DL 44. He accepted that the site has no landscape designation and is not a "valued landscape" for the purposes of para. 180(a) of the NPPF.

71. A principal issue between the parties was the sensitivity of the site and its characteristics to residential development (DL 33). Landscape sensitivity is a combination of its value and the susceptibility of those characteristics to change (DL 36 to DL 38). The Inspector explained why he preferred the approach of HBC's consultant to that of Fairfax. The latter focused on the site's relative containment by woodland blocks and existing housing, rather than the effects of the proposed development on the site's intrinsic characteristics as an open, pastoral field. The Inspector disagreed with Fairfax's contention that the site has a stronger relationship to the residential area of Radlett than the wider countryside. The settlement edge did not affect the intrinsic, pastoral open character of the site as an agricultural field, which would be "substantially adversely affected" by the scheme (DL 39 to DL 43).

72. The Inspector concluded that there would be substantial adverse landscape effects on the site as the result of the permanent residential development of 8ha of countryside (DL 44).

Benefits of the scheme

73. The Inspector then went on to explain why the appeal proposal would not cause any other harm (DL 45 to DL 48) before addressing the benefits of the scheme (DL 49 to 99).

74. The Inspector stated that as a matter of general principle "mitigation of the effects of the development and measures that do no more than ensure compliance with development plan policies cannot be benefits" (DL 49).

75. He adopted a scale of weighting for the benefits in the case in descending order of importance: very substantial, substantial, significant, moderate, limited and very limited (DL 52).

76. On the contribution of new market housing, the Inspector recorded that HBC could only demonstrate a 2.25 years supply of housing land as against a requirement of 5 years supply. This was a shortfall of 2,088 homes based on the requirements of HBC's Core Strategy (2012 to 2027). Given that 80% of HBC's area is in the Green Belt, the new local plan will have to allocate at least some Green Belt land for greenfield housing development. But the Inspector had little confidence that the LPA is moving forward effectively to meet local housing needs through the plan-led system (DL 54 to DL 55). The Inspector said that where there is a chronic failure to deliver housing, as in Hertsmere Borough, and there is no short or medium term solution for remedying a persistent shortfall, the delivery of new housing must be encouraged and treated as an important priority, reflecting the objective in para. 60 of the NPPF of significantly boosting the supply of housing (DL 57). The Inspector gave substantial weight to the provision of 195 new homes (DL 60).

77. He then gave very substantial weight to the provision of 45% of these homes as affordable. The delivery of affordable housing in Hertsmere Borough had been "woefully inadequate" because it is mainly provided on the back of schemes for new market housing and there had been a "general chronic failure" to deliver such schemes. There was a need for 503 affordable housing dwellings between 2020 and 2036, or 8,048 dwellings over the 16 year period (DL 61 to DL 65).

78. The Inspector then assessed the weight to be given to a series of other benefits:

- Land for the expansion of Newberries Primary School (DL 66 to 70) – limited weight.
- The shell and core of a new medical centre (DL 71 to 83) – moderate weight.
- Works to improve a Puddingstone geological sequence (DL 84 to DL 86) – limited weight.
- BNG (DL 87 to 91) – limited weight.
- Accessibility and transport initiatives (DL 92 to DL 93) – very limited weight.
- Economic benefits (DL 94 to DL 98) – limited weight.

79. The inspector struck the VSC balance at DL 100 to DL 104:

> "100. Regarding harm, the development would have a significant adverse effect on Green Belt openness, which would be a physical manifestation of its inappropriateness, a moderate adverse effect on Green Belt purposes a) and b), and a strong effect on purpose c). I must give this Green Belt harm substantial weight, as mandated by the NPPF.
>
> 101. Added to this harm to the Green Belt there would be substantial adverse landscape effects on the character and appearance of the area as a result of the permanent residential development on approximately 8 Ha of the site.
>
> 102. Regarding the other considerations, the benefits of the proposal to be balanced against such harm, these are weighted as follows: substantial weight to housing supply, very substantial weight to the AH, moderate weight to the new surgery facility, limited weight to the school expansion land, the RIGS Plantation enhancement, BNG and the economic benefits, and very limited weight to the transport initiatives.
>
> 103. Having regard to these benefits, they do not clearly outweigh the overall significant harm to the Green Belt and the substantial adverse landscape effects on the character and appearance of the area. I have explained above my conclusions on the benefits with regard to my weighting scale set out above.

> Whilst these are of course a matter of judgement, I would add that, even if greater weight was to be attributed to some of these benefits – for instance if I had given significant weight to the new health facility and to the economic benefits – the totality of these other considerations would still not clearly outweigh the overall harm that the development would cause.
>
> 104. Consequently, the VSCs necessary to justify the proposed development do not exist. In making this judgement I am aware that the benefits, either individually or in total do not need to be 'very special' or even 'special'. But they do in total need to clearly outweigh the overall harm, which they do not in this case."

80. Essentially for the same reasons the Inspector found that the proposal would conflict with the statutory development plan (DL 105). He also explained that the conflict with Green Belt policy was sufficient to disapply under para. 11(d)(i) of the NPPF the presumption in favour of sustainable development (which arose because of the inadequate housing land supply). Consequently, there was no need for the Inspector to go on to consider para. 11(d)(ii) of the NPPF.

Vistry (Ground 2) – Development of PDL as a benefit

81. Chapter 11 of the NPPF is entitled "Making effective use of land." This can include the use of "previously-developed" or brownfield land. Paragraph 123 of the NPPF states:

> "123. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.[49]"

82. Importantly, this policy is qualified by footnote 49:

> "Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity."

83. Paragraph 124 states:

> "124. Planning policies and decisions should:
>
> (a) …
>
> (b) …
>
> (c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to

> remediate despoiled, degraded, derelict, contaminated or unstable land;
>
> (d) …"

Vistry accepts that it could not rely upon the encouragement given by para. 124(c) to the use of brownfield land because the appeal site lay outside the settlement of Colney Heath.

84. The Glossary in Annex 2 to the NPPF contains the following definition of "PDL":

> "**Previously developed land**: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape."

85. The basic definition of PDL refers to land which is or was "occupied by a permanent structure, including the curtilage of the developed land." Plainly, "the developed land" refers to the land which has been developed by the erection of a structure, for example, a building. So in that case the curtilage would refer to the curtilage *of that building*. Even then, Annex 2 of the NPPF makes it clear that not all of the curtilage may be developed. Finally, PDL may include "any fixed surface infrastructure."

86. The word curtilage is used in a number of different legal and policy contexts in planning, for example permitted development rights. Here, the Secretary of State has chosen to use this term as part of the definition of PDL. The word "curtilage" in the NPPF must be interpreted according to relevant legal authority. The leading decision on what is the curtilage of a building remains *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2022] QB 103.

87. It is important to emphasise that when the term "curtilage" falls to be applied in the definition of PDL, or in planning cases more generally, close attention must be paid to all the reasoning in *Hampshire* on the meaning of curtilage.

88. The core principle is that the land must be so *intimately connected* with the building as to lead to the conclusion that the land forms part and parcel *of the building*. Practitioners and decision-makers need to be clear about what that principle means, by a careful study of all relevant parts of the Court's reasoning.

89. The present case does not raise the issue whether there was a legal error in the finding on "curtilage". But it is appropriate for the court to highlight a few points. Curtilage

refers to land which *belongs* to a building. It is sometimes treated as synonymous with an appurtenance. If the extent of a curtilage is properly assessed, it should be sufficiently proximate to the building that a reference to "the building" could be treated, without artifice, as including the land as well ([48] to [51] and [68]). As Nugee LJ stated, curtilage refers to "bits of land that go with a building, of 'relatively limited' extent" ([135]), whilst recognising that the extent of a curtilage may vary with the nature and size of the building [55].

90. It is irrelevant to ask whether the building and land together form part of some residential or other unit. Functional equivalence is irrelevant. Likewise, it is irrelevant to ask whether the enjoyment of an area of land is advantageous or convenient or necessary for the full enjoyment of the other. The criteria for determining the extent of a planning unit, and indeed the very concept and purpose of planning unit, are all irrelevant to identifying a curtilage ([47], [61] and [115]). If the Secretary of State had meant to use, for example, the notion of a planning unit as the basis for defining and associated with a building he would have needed to use language to that effect, instead of opting for "curtilage".

91. Vistry contended that the whole of the appeal site other than the equestrian buildings along the north western boundary of the site constituted the curtilage of those buildings and therefore was part of the PDL. In other words, green open pasture land representing about 96% of the appeal site was thought to represent the curtilage of buildings and hardstanding at one end of the site occupying the remaining 4% of the overall area (assuming that 42, Tollgate Road is included in that 4% figure).

92. In the statement of common ground for the inquiry, Vistry and HBC agreed that the pasture land "is in lawful equestrian use" (para. 6.12). In the proof of evidence of Vistry's planning consultant it was said that from a description of the use of the site for equestrian purposes it was clear that the fields formed "an essential part" of the use of the stables and manège. It was simply for that reason that the witness thought that "the paddocks have a clear intimate association with the stable buildings and manège such that they form part and parcel of the same curtilage."

93. With respect, that superficial line of reasoning conflicted with the decision in *Hampshire*. It failed to apply the reasoning in that case. The test is whether the land in question forms part and parcel *of the building*. The test is *not* whether the fields and buildings form one messuage or parcel of land. That is simply the consequence of applying the correct legal test properly (see *Hampshire* at [61] to [65]). The statement by the planning consultant that the pasture land, stable buildings and manège form part and parcel of the same curtilage involves the same error of law as the Court of Appeal identified in [63] of *Hampshire*.

94. Unfortunately in cross-examination HBC's planning witness was asked to agree with that erroneous legal analysis and did so. The closing submissions for HBC and Vistry did not address the proper test and the reasoning in *Hampshire*.

95. In this way the Inspector was led to accept that the whole of the appeal site constituted PDL, either as developed land or curtilage land (see DL 106 to DL 108).

96. Given that Vistry's appeal was dismissed by the Inspector and there is no procedure in a challenge under s.288 of the TCPA 1990 for the service of a Respondent's Notice akin to a cross-appeal, there is no issue in this case about the legal correctness of DL 106 to DL 108. However, if Vistry were to succeed in having the decision quashed, it would be necessary for the new decision-maker to approach the issue of the extent of the PDL land on the correct legal basis, applying *Hampshire*.

97. The challenge brought by Vistry relates to the second part of the Inspector's handling of the PDL issue in which he arrived at the conclusion at DL 117 that the status of the appeal site as PDL did not carry any weight in favour of the proposed development in the VSC balance or was a neutral factor (see DL 150). This must be approached on the basis that the Inspector's finding on the extent of PDL is not impugned.

98. The Inspector summarised para. 123 of the NPPF and the qualification of that policy by footnote 49 (DL 109). In DL 110 he correctly stated that para. 154(g) of the NPPF defines the circumstances in which the redevelopment of PDL would be treated as "appropriate" and therefore not subject to the presumption against new buildings in the Green Belt:

> "154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
>
> a) …
>
> g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
>
> – not have a greater impact on the openness of the Green Belt than the existing development; or
>
> – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
>
> …"

99. In DL 111 the Inspector referred to the decision of the Court of Appeal in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] PTSR 737 for the uncontroversial proposition that the proviso in para. 154(g) on the circumstances in which PDL may be developed or re-used in the Green Belt means that the NPPF's encouragement of development on brownfield land is not unqualified where that land is located in the Green Belt (see [13]). However, the decision does not assist on the issues which arise in Vistry's challenge.

100. At DL 122 the Inspector said:

> "112. I have concluded above that the proposed development would cause substantial harm to the openness and purposes of the Green Belt. As such it would not qualify as an exception under paragraph 154(g) and would, therefore, constitute inappropriate development in the Green Belt. Accordingly, the appeal proposal would conflict with the Framework's policy on the approach to the re-use and redevelopment of PDL in the Green Belt."

There is no challenge to that conclusion.

101. Vistry's challenge relates to the reasoning which follows:

> "113. Whether or not this policy conflict and the resulting Green Belt harm would be outweighed by other considerations is the subject of the 'very special circumstances' test, which I deal with below. However, in circumstances where the appeal proposal does not comply with the Framework's policy on the re-use of PDL in the Green Belt, it would undermine that policy to then attach weight to the development and use of PDL in favour of the appeal proposal, when carrying out the 'very special circumstances' Green Belt balancing exercise.
>
> 114. I have been referred to the Maitland Lodge appeal decision, in which the Inspector attached positive weight to the use of PDL within the Green Belt, in the light of the Framework's policy on making effective use of PDL. However, this was in a context where the Inspector had already concluded the proposal would not cause substantial harm to the openness of the Green Belt, and was, therefore, an acceptable use of PDL in the Green Belt that did not constitute inappropriate development in the Green Belt. Accordingly, he did not need to determine 'very special circumstances' and the use of PDL was capable of being weighed as a free-standing material consideration as part of the overall planning balance. The circumstances in this appeal are very different, and accordingly, the Maitland Lodge decision does not offer a comparable precedent for me in determining this issue.
>
> 115. The appellant also suggests that the appeal site is a sequentially preferable location for development over other non-PDL Green Belt sites, in the context of the need for housing in the District. This is based on the expectation in paragraph 147 of the Framework that plans should give first consideration to land which has been previously-developed, in circumstances where it has been concluded it is necessary to release Green Belt land for development. However, paragraph 147 of the Framework clearly applies to the preparation of development plans. Therefore, whether or not the appeal site should be considered a sequentially preferable site over non-PDL sites within the Green

> Belt, is a matter to be determined through the preparation and examination of the emerging Local Plan rather than this appeal.
>
> 116. I note that in the Maitland Lodge decision, the Inspector regarded the sequential preference of that site as PDL in the Green Belt as a positive benefit. However, again, that was in a context where the appeal proposal was not inappropriate development in the Green Belt or harmful to the Green Belt. In this appeal, notwithstanding the PDL status of the site, the proposal would constitute inappropriate development in the Green Belt, due to the substantial harm it would cause to the openness of the Green Belt."

102. Mr. Simons criticises DL 113 as having misinterpreted the NPPF. He points to the Inspector's language "it would undermine that policy to then attach weight to the development and use of PDL in favour of the appeal proposal" in the VSC balance. He makes 2 submissions. First, in a case where the use of PDL falls outside para. 154(g), the Inspector read the NPPF as precluding the inclusion of that use of the PDL as a free-standing planning benefit in the VSC balance. Second, the issue of whether the proposal would conflict with Green Belt policy for the purposes of footnote 49 (so as to disapply the policy encouragement in para. 123 of the NPPF for the use of PDL) depends upon the application of the VSC test. That test requires all forms of harm to be weighed against all other planning considerations which must include the benefit of using PDL in the Green Belt. Mr. Simons seeks to rely upon my judgment in *Monkhill Limited v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 1432 at [39(12)] (and see also the Court of Appeal [2021] PTSR 1432 at [18]).

103. I should say straight away that *Monkhill* was not concerned with the relationship between PDL and Green Belt policies in the NPPF. Nothing that was said in that case can be taken as supporting Vistry's submissions or providing any assistance on the issues raised here.

104. I am unable to accept Mr. Simons' first submission. The second sentence of DL 113 involves the application, not interpretation, of policy in the NPPF. As he himself said, the Inspector was simply dealing with an issue of weight, in particular, whether to attach any weight to the use of PDL when carrying out the VSC balance. He did not use any language to suggest that he read the NPPF as precluding the inclusion of the use of PDL as a benefit in that balance.

105. The words "would undermine that policy" indicate that the Inspector was expressing a planning judgment. Plainly, he would have had well in mind his findings on the serious harm that the proposal would cause to the openness and purposes of this particular part of the Green Belt and the fact that the proposal involved the erection of buildings across largely open, green pasture land. He was entitled to say as a matter of judgment that no weight should be given to the use of land of that nature for built development, given the harm to this part of the Green Belt it would cause. That was a perfectly rational judgment. The Inspector did not conflate para. 154(g) with para. 153. The conclusion that the Inspector's reasoning in DL 113 was no more than a perfectly straightforward application of policy is sufficient to dispose of Vistry's first complaint.

106. There is an air of unreality about the alternative approach for which Vistry contends: namely, that some positive weight had to be given to the development of green, open pasture land in view of its description as PDL, notwithstanding the harm those buildings would cause. That begs the question what would that benefit be? How would its weight be assessed?

107. Mr. Simons accepted that in the circumstances of the present case (and the Inspector's findings), the only benefit which could be claimed for the use of PDL would be what he described as a general, sequential preference for choosing PDL sites in the Green Belt over non-PDL sites in the Green Belt. This was based upon para. 147 of the NPPF.

108. LPAs may review and alter Green Belt boundaries in exceptional circumstances but only through the plan-making process (para. 145). It is in that context that para. 147 says that:-

> "Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport."

109. It will be noted that para. 147 of the NPPF gives "first consideration" to the use of certain types of Green Belt land, not limited to PDL but also including land well-served by public transport. It does not suggest that PDL should be released from the Green Belt, irrespective of the nature and/or level of harm to the Green Belt that the release of any specific site would cause. These are obviously material considerations to be taken into account, particularly where PDL which comprises green, open pasture land is able to serve important Green Belt functions. Plainly the necessary judgments may involve comparative assessments between different Green Belt sites, both PDL and non-PDL. Paragraphs 145 and 147 of the NPPF allow for that to happen through the local plan process. Ordinarily, *ad hoc* decision-making on individual planning applications and appeals does not provide a suitable, adequate process for the comparative exercise across a district which is likely to be needed.

110. Once para. 147 of the NPPF is read properly in context it is impossible to see how the Inspector's treatment in DL 114 to DL 116 of the "sequential preference" issue and of the decision by an Inspector in the Maitland Lodge planning appeal could possibly be faulted.

111. I reject Mr. Simons' submission that the Inspector in the present case failed to deal sufficiently or properly with the Maitland Lodge appeal decision. The Inspector found that the use of PDL land in that case fell within the category of appropriate development, so that the VSC test did not have to be applied. His observations on a "general" sequential preference for PDL land in the Green Belt did not address para. 145 of the NPPF. But then, he did not need to do so because he proceeded on the basis that the site had already been found to be suitable for development and to be removed from the Green Belt: "*therefore*, the appeal site in general is sequentially preferable to non-PDL sites in the Green Belt …' (DL 38 to DL 39 of the Maitland Lodge decision).

112. The Inspector's reasoning in the present case amply satisfied the requirements laid down in *North Wiltshire District Council v Secretary of State for the Environment*

(1993) 65 P&CR 137, 145. Indeed, for the reasons I have given, I do not see why the Maitland Lodge decision had any "precedent value" for the purposes for which Vistry sought to use it in its appeal. Consequently, I do not consider that the Inspector in the present case was obliged to deal with it, although no doubt he thought it prudent to do so.

113. For completeness, I will address the submissions about the relationship between paras. 123, 153 and 154 of the NPPF together with footnote 49, as a matter of interpretation. That footnote makes it necessary for a decision-maker to determine whether a proposal for the development of PDL in the Green Belt conflicts with Green Belt policy. The first two situations are straightforward.

114. First, if it is decided that the development falls within para. 154(g) of the NPPF, and so is "appropriate", there is no conflict with Green Belt policy and, of course, there is no need to apply the VSC test.

115. Second, if the development falls outside paras. 154(g) of the NPPF, there is no conflict with Green Belt policy if it is demonstrated that the benefits of the proposal and any other material circumstances clearly outweigh all harm, even if the PDL status of the land is not taken into account as a benefit.

116. The third situation is where the development is inappropriate and the VSC balance does not demonstrate that the overall harm from the proposal is clearly outweighed by all other considerations other than the use of PDL for development. In those circumstances, should any benefit from using PDL be added to the balance? Of course, that adjustment would make no difference if, as in the present case, the decision-maker decides that no weight should be given to the PDL factor. But I will put that type of case to one side.

117. It was suggested that there is circularity in the relationship between para. 123 of the NPPF and Green Belt policy where the issue of whether there is conflict with that latter policy depends on applying the VSC test. But is there circularity? If there is circularity in the policy, it would be necessary to break into the circle at some point, so that the policy could be properly applied. But the starting point should be that policies, particularly those like the NPPF which are designed to be used as a practical tool for everyday decision-making, are not drafted so as to create circular arguments, or to be question-begging.

118. The key here is footnote 49. The policy support in para. 123 of the NPPF for the development of PDL is contingent or conditional upon there being no conflict with other policies in the Framework. In this context, footnote 49 does not indicate that that policy support in para. 123 should be weighed against any conflict with another policy of the Framework. Instead, it plainly states that that policy support does not apply if there would be a conflict with another NPPF policy. In effect, footnote 49 simply raises the question whether the proposal would *otherwise* accord with, or conflict with, another NPPF policy. Accordingly, there is no requirement in the Framework for the policy support in para. 123, or the benefit of using PDL in any particular case, to be weighed in the VSC balance in order to determine whether there would be a conflict with Green Belt policy.

119. Put simply, if the VSC balance would otherwise weigh against the proposal, I do not see why that outcome should change simply because of the inclusion of the PDL factor as a benefit, when footnote 49 says that the policy support or the use of PDL does not apply if the scheme conflicts with another NPPF policy.

120. In his reply Mr. Simons pointed to para. 154(f) of the NPPF, which treats limited affordable housing for local community needs as "appropriate development" and submitted that there is no reason in principle why a larger scale "inappropriate" scheme should not be considered as beneficial in a VSC balance. No doubt that is correct. But whether it would be treated as beneficial would be a matter of judgment in each case. There is no policy requirement that it should be so treated. But in any event, this is not a true analogy because, there is no equivalent to Footnote 49.

121. For all of these reasons, this ground of challenge in Vistry's claim must be rejected.

Fairfax (Grounds 6 and 7) – Economic benefits

122. As in many other cases, Fairfax put forward as economic benefits of their proposed housing, the creation of employment for the workers involved in the construction of the development, expenditure in the local area by residents of the new homes and increased tax receipts for HBC.

123. The challenge relates to DL 95 to DL 97 which resulted in the Inspector attaching only limited weight to these benefits:

> "95. I acknowledge NPPF paragraph 85, which states that significant weight should be placed on the need to support economic growth and productivity. But that does not mean that such economic benefits should always be afforded significant weight in any particular case, despite the Inspectors in the Little Bushey Lane, Clappers Lane and Yatton 22 appeals deciding that they did in those cases.
>
> 96. Rather, that very much depends on all the circumstances of the case. To my mind, lesser weight should attach to such benefits where the location of new development is fundamentally contrary to national and local policy, as it is here, because the aim of the plan-led system is to deliver sustainable development.
>
> 97. The fact that the spatial strategy in the CS is out-of-date due to the lack of a 5YHLS does not negate its soundness and compliance with the NPPF as a whole. Economic growth and productivity, the economic objective of sustainable development, does not necessarily trump environmental objectives. Whilst 80% of Hertsmere is Green Belt and housing development on some of it may well be inevitable, exactly where such development should occur, and the economic benefits that would attach to it are a matter for the new local plan."

124. Initially, Fairfax sought to challenge DL 95 as involving (a) a misinterpretation by the Inspector of the statement in para. 85 of the NPPF that "significant weight" should be placed on supporting economic growth and (b) a failure to address the reasoning in other appeal decisions on the same policy (grounds 4 and 5). However, in the light of the decision in *Bewley Homes plc v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 1166 (Admin) Fairfax decided not to pursue those grounds of challenge.

125. Dr. Ashley Bowes submitted on behalf of Fairfax that it was irrational for the Inspector to reduce the weight to be given to the scheme's economic benefits on the grounds that the location of the proposed development was contrary to national and local planning policy, in the absence of evidence, or a finding, that such benefits could be delivered in a way which would not be contrary to those policies (i.e. on other sites). Secondly, he submitted that by reducing the weight to be given to those benefits by reference to a factor which was also included in the harm scale of the VSC balance, the Inspector double-counted the same consideration (ground 6). In the alternative, Dr. Bowes submits that the Inspector's reasoning on this subject was legally inadequate because there is a substantial doubt as to whether his decision was based on relevant and rational grounds (ground 7).

126. Dr. Bowes accepts, rightly in my judgment, that grounds 6 and 7 cannot succeed as grounds of challenge. This is because in DL 103 the Inspector made it clear in the alternative that if he had accepted that significant weight be given to the economic benefits, as Fairfax had contended, the benefits of the scheme would still not have clearly outweighed the overall harm so as to satisfy the VSC test. Accordingly, it is inevitable that the appeal would still have been dismissed. It therefore follows that any error of law that Fairfax might be able to establish under grounds 6 or 7 could not be a material error of law. Alternatively, if Fairfax were to succeed on grounds 6 or 7 alone, the court would refuse to quash the Inspector's decision because it is inevitable that, even if a putative legal error had not been committed, he would still have dismissed the appeal (*Simplex GE (Holdings) Limited v Secretary of State for the Environment* [2017] PTSR 1041).

127. I therefore deal briefly with Fairfax's grounds of challenge under this heading.

128. It is well-established that benefits or other material considerations do not have to be unique to qualify as very special circumstances. But I accept the submission of Mr. Robert Williams for the Secretary of State that when deciding how much weight to give to a benefit, a decision-maker *may* take into account the fact that the type of economic benefit relied upon would arise in any housing development or, in a similar way, any employment development. HBC made that very point in para. 108 of their closing submissions, which was not contested in Fairfax's closing submissions.

129. Against that background, there is no legal reason why the Inspector was not entitled to take into account as a factor reducing the weight to be given to the economic benefits, the fact that the scheme was fundamentally contrary to local and national policy and the aim of the plan-led system to deliver sustainable development (DL 96). There is no legal requirement for the decision-maker to be satisfied that (or to consider whether) those benefits could be achieved elsewhere in compliance with those policies before he can take into account conflict with those policies on the issue of weight. For example,

an Inspector does not have to be able to identify likely alternative policy-compliant scenarios or sites (see by analogy *Trusthouse Forte Limited v Secretary of State for the Environment* (1987) 63 P & CR 293). We are dealing in this case with benefits of a type which can be delivered by development in general.

130. The Inspector was also entitled to judge that where a local plan is out-of-date, and even where some development will inevitably need to take place on Green Belt land, issues of where such development should take place, and concomitant economic benefits realised, are matters for the local plan. It is not necessary for a decision-maker to be able to invoke the policy on prematurity in paras. 49 to 50 of the NPPF in order to be able to make a planning judgment of that kind (DL 96 and DL 97) lawfully.

131. I also accept the submissions of Mr. Wayne Beglan for HBC. He referred to the emphasis in the NPPF upon the plan-led system for the delivery of *inter alia* economic priorities as well as meeting housing needs (paras. 11, 15 and 47). There is no reason why an Inspector cannot give greater weight to benefits achieved in accordance with the plan-led system and lesser weight to those which are not. That does not involve impermissible double-counting with the weighing of harm resulting from the development, such as harm to the Green Belt or to the landscape.

132. There is no merit in the complaint that the Inspector's reasoning was legally inadequate. It does not give rise to any doubt, let alone a substantial doubt, as to whether the Inspector erred in law.

133. For all these reasons, grounds 6 and 7 in the challenge by Fairfax must be rejected.

The provision of BNG as a benefit (Vistry ground 1 and Fairfax grounds 1, 2 and 3)

134. At the time of both decisions the relevant national policy on BNG was set out in para. 180 of the NPPF which, in so far as is relevant, states:

> "180. Planning policies and decisions should contribute to and enhance the natural and local environment by:
>
> a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
>
> b) …
>
> c) …
>
> d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
>
> …"

135. Paragraph 186 of the NPPF states:

> "186. When determining planning applications, local planning authorities should apply the following principles:
>
> a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
>
> b) …
>
> c) …
>
> d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate."

136. Thus, although the NPPF states that planning decisions should contribute to and enhance the natural environment by providing net gains for biodiversity, it does not set any numerical targets.

137. In neither of these two cases did the development plan contain policies setting a numerical target for BNG.

138. Section 98 and sched.14 to the Environment Act 2021 ("the 2021 Act") introduced a requirement for a condition to be included in the grant of certain planning permissions for the provision of BNG. The 2021 Act achieved this by inserting s.90A and sched. 7A into the TCPA 1990.

139. Global decline in biodiversity is described in the literature as a matter of great concern. It was discussed at the UN COP 26 meeting in November 2021. The nations involved adopted the Glasgow Climate Pact. Paragraph 38 emphasises the importance of protecting, conserving and restoring nature and ecosystems including the protection of biodiversity.

140. A report by the House of Commons Environment Audit Committee in June 2021 ("Biodiversity in the UK: Bloom or bust?" HC 136) referred to the UK as being one of the most nature-depleted countries in the world. In December 2018 DEFRA had published consultation proposals on whether the delivery of BNG through planning permissions should become mandatory for new developments. In its response to consultation the Government (July 2019) decided to promote legislation requiring development to provide 10% BNG and so the 2021 Act was enacted.

141. Section 90A simply gives effect to sched. 7A. The schedule provides for certain grants of planning permission to be subject to a condition to secure that the biodiversity gain objective is met (para. 1(1)). Paragraph 2(1) provides that the objective is met if "the biodiversity value attributable to the development" (as defined) exceeds the pre-

development biodiversity value of the onsite habitat by at least "the relevant percentage", namely 10% (para. 2(3)).

142. The biodiversity value of any habitat refers to "its value as calculated in accordance with the biodiversity metric" (para. 3). That metric is a document published by the Secretary of State and laid before Parliament, "for measuring, for the purposes of this Schedule, the biodiversity value … of habitat …" (para. 4).

143. Paragraphs 13 to 21 of sched. 7A contain provisions requiring the grant of planning permission to be subject to a deemed condition preventing the commencement of development until a biodiversity gain plan has been submitted to and approved by the planning authority.

144. The requirement to provide 10% BNG secured by condition on the grant of planning permission was brought into force on 12 February 2024. But it does not apply to a planning permission granted in relation to an application made before that date (regs. 2 and 3 of The Environment Act 2021 (Commencement No.8 and Transitional Provisions) Regulations 2024 (SI 2024 No.44). Accordingly, the new legislative requirement could not have applied if planning permission had been granted on either Vistry's appeal or Fairfax's appeal.

145. An issue has arisen in a number of planning appeals as to whether the introduction of the BNG 10% requirement is relevant, and if so how, to the weight which may be given in the determination of a planning application or appeal in which the developer commits to increasing the BNG related to the development site, whether an increase of 10% or some other figure.

146. For example, in *NRS Saredon Aggregates Limited v Secretary of State for Levelling Up, Housing and Communities* [2024] Env. L.R. 18; [2024] JPL 616 Eyre J held that in a case where the developer had proposed BNG in excess of 10% but the new statutory requirement was not yet applicable, the decision-maker was not entitled to reduce the weight that would otherwise be given to the first 10% of the BNG because of the impending legislative requirement to provide 10% BNG ([55] to [56]).

147. In *R (Cala Homes (South) Limited) v Secretary of State for Communities and Local Government* [2011] EWCA Civ 639 the Court of Appeal accepted that future legislative provisions could be relevant, where the point was conceded by the developer's counsel ([20] and [33]). Here there is no suggestion by defence counsel that *NRS Saredon* was wrongly decided. For my part, I agree with the essential reasoning of Eyre J. The soundness of that decision is underscored by reg. 3 of SI 2024 No. 44. The statutory BNG condition is only imposed where an application for planning permission is made on or after the date on which the relevant provisions in sched. 7A of the TCPA 1990 came into force (see *R (Weston Homes plc) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2089 Admin).

148. It is clear from the decision letters in *Weston Homes*, the present cases, and the other appeal decisions to which they refer, that the assessment of the weight to give to BNG improvements, in the context of the new legislation, has proved to be problematic. With the benefit of helpful submissions from counsel, I will set out some brief, non-

exhaustive guidance to assist decision-makers. This also forms part of the context in which to consider the criticisms made of the decision letters in these two claims.

149. I begin with the position on and after 14 February 2024, the date from which the new provisions have been in force.

150. It is sometimes suggested that where a development makes provision for something which is required by a policy or by legislation, that cannot be regarded as a benefit at all. So, for example, DL 49 of the Fairfax decision states: "…measures that do no more than ensure compliance with development plan policies cannot be benefits." There is no legal principle which supports statements of that kind.

151. The assessment of how much weight to give to a benefit is a matter of judgment. In principle, the same is true of a decision as to whether a measure constitutes a benefit (or a disbenefit or a neutral factor). But all such judgments are subject to the application of public law principles by judicial review (or statutory review under s.288 of the TCPA 1990). Those principles include the obligations on decision-makers (i) to take into account considerations which are mandated by legislation or which are "obviously material", (ii) to disregard legally irrelevant considerations and (iii) to avoid irrationality in reaching findings and conclusions. One type of irrationality is a conclusion which is so unreasonable that no reasonable authority could ever have come to it, or a decision which is outside the range of reasonable decisions open to a decision-maker. Another type of irrationality involves a demonstrable flaw in the reasoning of the decision-maker, including a serious logical or methodological error (see the *Law Society* case and [14] above).

152. Where a development is required to provide a measure in order to overcome or mitigate, or compensate for, a harm caused by that project, ordinarily that measure could not rationally be described as a benefit. So, for example, where a development would result in a loss of biodiversity, the provision of additional biodiversity on the same site or on other land nearby in order to completely offset that loss, so that in overall terms there is no net reduction in biodiversity attributable to the development, is not a benefit. It is simply the development "consuming its own smoke."

153. But as the name and definition of BNG indicates, that term refers to an improvement in biodiversity. That goes beyond offsetting the adverse impacts of a development scheme. It increases biodiversity in order to help redress a general national problem, which is not caused by the development proposed. On any view, that would be a benefit of the proposed scheme. It is difficult to see how rationally anyone could say otherwise. However, the scale of that benefit and the weight to be attached to it are separate considerations.

154. I do not see why the identification of what is, and what is not, a benefit should be altered, because what would otherwise be recognised as an improvement or benefit is the subject of a requirement imposed by planning policy or by legislation. Whether a measure should be treated as a benefit, depends upon *inter alia* its nature and purpose, including whether it would help to meet a need which is, or is not, related to the development proposed. For example, we often find in decision letters that substantial weight is given to the provision of general housing where there has been a shortfall in the delivery of dwellings to meet local policy requirements. Sometimes very substantial

weight is given to the benefit of providing affordable housing in a scheme, although that level of provision is meeting a policy requirement in a development plan.

155. It is difficult to see how logically a decision-maker could give no weight at all to, for example, the provision of 10% BNG because that equated to the 10% requirement in sched. 7A. The fact that such a requirement is imposed by legislation is simply a mechanism for ensuring that a wide range of developments contribute to the collective effort of improving biodiversity in England. It does not alter the nature or purpose of the improvement in biodiversity which is provided, or the underlying justification for the requirement to reverse a national decline in biodiversity over many years.

156. It also follows that where a development would provide BNG of 20%, a decision-maker is not entitled to say that only that part of the BNG which exceeds 10% can qualify as a benefit in deciding whether to grant planning permission.

157. I turn to consider questions of weight. If a decision-maker were to reduce the weight which he *would otherwise give* to a 40% provision of affordable housing because the development will provide the level of housing required by the development plan, that would also be objectionable, certainly in the absence of any logical explanation. The decision-maker should be assessing how the developer's contribution of affordable housing stands in relation to *inter alia* the justification in the development plan for the level of affordable housing required by the policy. Key considerations could include the level and nature of the need for affordable housing in the district and any shortfall in delivery.

158. Similarly in relation to BNG, a decision-maker should consider the nature and purposes of the requirement and of the contribution being made. Schedule 7A of TCPA 1990 imposes a blanket requirement for the provision of 10% BNG for a broad range of development to alleviate a national problem. This benefit is of a generalised nature. It may be contrasted with the benefit of providing affordable housing which is related to (a) the highly specific needs identified by a LPA for its area and (b) ensuring that the release of housing land meets the need for affordable housing as well as general housing. Such considerations may affect the weight to be given to benefits. This is a matter for the decision-maker.

159. Similarly, it is for the decision-maker to decide how much weight to give to generalised economic benefits which would arise from the carrying out of development within a wide range of types throughout a district (see [128] above).

160. During the hearing we saw how little help can be gained from looking at the decisions of Inspectors on other planning appeals. Usually there is insufficient information to help determine true comparability. Understandably weights are not expressed in numerical terms. Inspectors will vary as to the term used and their scale of values may differ. Moreover, as the Fairfax Inspector pointed out, decisions letters often do not explain why a particular weighting was adopted. It can be meaningless simply to compare percentages of BNG without also being told the absolute size of the increase in biodiversity units. For example, DL 90 of the Fairfax decision refers to another site where the development provided an increase of over 7,600% for hedgerows. Whilst that might seem impressive at first sight, I was told that this percentage increase was so

large because the provision of hedgerows in the existing or baseline situation was so low.

161. Having said all this, I do accept Mr Williams' submission that the statutory requirement for BNG of 10% can properly be used as a simple *benchmark* for comparing the BNG to be provided for a proposed development. This was recognised in *NRS Saredon* at [51]. But, where relevant, the limitations of using percentages as a comparator should be appreciated (see [160 above]) and the decision-maker must not commit any of the potential errors identified above.

162. In addition, where substantially more than 10% BNG is offered, it may be necessary for a decision-maker to consider reg. 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) and the principles in, for example, *R (Wright) v Energy Severndale Limited* [2019] 1 WLR 6562. However, I did not receive submissions on this particular point.

163. Where the application for permission was made before 14 February 2024 the statutory 10% requirement should not be treated as having been applicable, nor should that be the effect of the decision-maker's reasoning. However, it was common ground between the parties that the 10% BNG provision in sched.7A to the TCPA 1990 may be used in such cases, but only as a benchmark, in assessing the weight to be given to a BNG contribution. It must not be used to reduce the weight that the decision-maker would otherwise have given to the provision of BNG in a particular case.

The Vistry decision letter

164. The issue between the parties on BNG was of a very narrow compass. It was not presented to the Inspector as an issue on which his decision would turn. The parties agreed that the BNG proposed would be a benefit. SACDC said that it had moderate weight whereas Vistry said it was significant.

165. SACDC's case was that because the BNG was proposed to be off-site that should attract less weight than on-site BNG, which was preferred (see para. 186(a) of the NPPF).

166. Vistry's planning consultant said that the proposal to provide 10% BNG was "a measurable net gain" (see para. 186(d) of the NPPF). Vistry said that national policy did not support giving greater weight to on-site rather than off-site BNG. It is surprising to find such a small dispute ending up as a legal challenge in the High Court.

167. The Inspector dealt with it at DL 103 to DL 104:

> "103. However, the Ecological Impact Assessment submitted with the appeal confirms that there would be an overall net loss in area based habitats, due to the loss of grassland habitats on the north eastern part of the site. This cannot be mitigated on-site, but the appellant proposes to compensate for the loss by delivering a 10% biodiversity net gain (BNG) off-site, through a Biodiversity Offsetting Scheme, secured through the S106 agreement.

> 104. The proposed 10% BNG would be equivalent to the minimum level of BNG mandated in the Environment Act 2021, which is expected to apply to all major development proposals, such as the appeal scheme, during 2024. Given that at the time of writing the statutory requirement for BNG is not yet in force, I consider that the commitment to its provision in advance would be a benefit in favour of the appeal scheme. However, because the gain proposed would be at the minimum of the level set out in the Act, I attach no more than moderate weight to it."

168. The Inspector did not decide in favour of moderate rather than significant weight because the BNG would be provided off-site. Instead, he had regard to the 10% requirement in sched. 7A. Vistry makes no criticism of the fact that the Inspector had regard to that legislation. Instead, the claimant's complaint relates to the way in which he used sched.7A.

169. In summary, Mr. Simons submitted that the Inspector erred in law by treating sched. 7A as if it applied to the proposal when it did not. He relies on the following statements in the decision letter:

(i) The 2021 Act was "expected to apply to all major development proposals, such as the appeal scheme, during 2024."

(ii) The Inspector referred to Vistry's commitment to provide BNG "in advance," i.e. of the requirements of the 2021 Act coming into force. He mistakenly inferred that sched.7A would apply to the appeal proposal eventually.

He also relies upon the Inspector's failure to refer to the transitional arrangement in SI 2024 No. 44, which provided that the BNG statutory requirement would not apply to an application such as that made by Vistry. Mr. Simons criticises the last sentence of DL 104 for treating sched 7A as if it was already in force and as if it prescribed a minimum level of BNG.

170. I agree with Mr. Williams that there is no merit in Vistry's criticisms under this ground of challenge.

171. The Inspector would have been well aware of the material provided to him by Vistry's team. For example, para. 5.95 of the proof of Vistry's planning consultant referred to the 2021 Act and made it plain that it would not apply to the appeal scheme because of transitional measures. Paragraph 16 of his witness statement before this court also states that this was common ground with SACDC. The mere absence of any reference to this agreed point in the decision letter does not indicate that the Inspector treated the 2021 Act as if it did apply to the appeal scheme.

172. Vistry's reading of DL 104 is selective. The passage needs to be read as a whole. The first sentence of DL 104 did not treat the 2021 Act as becoming applicable to the appeal scheme. The words "such as the appeal scheme" did not mean that when the 2021 Act came into force it would apply to that scheme. "Such as" simply referred to future proposals of the same nature as the appeal scheme.

173. The second sentence of DL 104 lends no support to Vistry's case. On the contrary, the Inspector referred to the BNG commitment as being provided in advance of the 2021 Act coming into force, and therefore a benefit. The clear implication is that if the Inspector had thought that the Act would apply to the appeal scheme when it came into force on some future date, then he would not have treated the 10% BNG as a benefit. The fact that he treated the BNG being provided by the proposal as a benefit in the VSC balance demonstrates that he did not labour under the misapprehension that sched.7A of the TCPA 1990 would eventually apply to the appeal scheme.

174. Accordingly, there is no basis for criticising the Inspector as having wrongly treated the 2021 Act as applicable to Vistry's scheme and therefore committing the error identified in *NRS Saredon*.

175. In the last sentence of DL 104 the Inspector assessed the weight to be given to the 10% BNG provided by the appeal scheme, using the requirement in the 2021 Act as a benchmark. That was entirely permissible. There was no legal flaw or inadequacy in the Inspector's reasons.

176. For these reasons, Vistry's ground 1 must be rejected.

The Fairfax decision letter

177. The Inspector dealt with BNG at DL 87 to DL 91:

> "87. The Regulations for introducing a mandatory 10% biodiversity net gain are about to take effect, but the BNG in the proposal would be a minimum of 20%, and so must be a benefit. This would be delivered by sowing an arable field (3.64 Ha) situated 870m to the southeast of the appeal site with a wildflower grass seed mix to create a total of not less than 19 native species, which the appellant would be obliged to do through Schedule 4 of the S106. The appellant says that this should be given significant weight on the basis of the previous appeal decisions at Clappers Lane (moderate weight) and Little Chalfont (substantial weight).
>
> 88. In contrast, the Council says it should be given limited weight, because the Burston Nurseries appeal decision, where the BNG was much greater, only gave it moderate weight.
>
> 89. I accept that the weight afforded to BNG in any particular case should reflect the extent to which it exceeds what will very shortly be a legal requirement to provide, a minimum of 10%.
>
> 90. The Little Chalfont decision, where BNG was also 20%, gave it substantial weight, although there is no explanation why. The Clappers Lane decision, where the BNG was capable of being above 10%, gave it moderate weight. Again, there is no explanation why. In the Burston Nurseries decision, where BNG

> was over 137% for habitats and over 7,600% for hedgerows, it was given moderate weight, again with no explanation.
>
> 91. Given the considerable range of betterment that BNG can and regularly does deliver, as set out in the examples above, I consider that the mere doubling of the BNG percentage in this case above what will very soon be the legal requirement, is a fairly modest BNG. Consequently, I afford it only limited weight."

178. In summary, Dr. Bowes submits :-

Ground 1
The Inspector erred in law by assessing the weight to be given to the proposed BNG on the basis that the 2021 Act required 10% BNG to be provided in any event;

Ground 2
In the alternative, if the Inspector did not err in law as alleged under ground 1, his decision to afford only limited weight to the proposed BNG was irrational, in that it was logically incomprehensible;

Ground 3
In the further alternative to grounds 1 and 2, the Inspector's reasons give rise to a substantial doubt as to whether he took his decision on relevant and rational grounds.

179. Dr. Bowes criticises the first sentence of DL 87 as implying that if the BNG proposed had only been 10% it would not have been a benefit because the 10% BNG requirement of the 2021 Act was "about to take effect." Dr. Bowes then submits that that error explains and infects the reasoning in DL 89 and DL 91. The Inspector gave weight to BNG in excess of 10% because of what he saw as the impending effect of the 2021 Act. He submits that, in the same vein, DL 89 implies that BNG at or below 10% would not be a benefit at all and DL 91 implies that it could carry no weight. He says that the Inspector made an error of law of the same kind as was upheld in *NRS Saredon*.

180. It is necessary to recall the well-established principle that a decision letter is addressed to the parties in the planning appeal who are familiar with the issues in the case (*South Bucks District Council v Porter (No.2)* [2004] 1 WLR 1953 at [26] and [36]) and, I would add, points of common ground.

181. In the closing submissions for Fairfax at the public inquiry, leading counsel asked for the proposed BNG to be assessed in comparison with the 10% requirement in the 2021 Act, while noting that it was not yet in force (paras. 72 and 75). In para. 75 he referred to the assessment in other planning appeal decisions of the weight to be given to "BNG significantly above 10%." In its closing submissions to the inquiry HBC took the same approach (para. 106). The LPA submitted that "the BNG provided is a modest gain over and above the 10% that soon will be the legal minimum."

182. In my judgment the Inspector took the same approach in his decision letter as the parties had urged upon him. He used the 10% requirement in the 2021 Act as a benchmark against which to compare the 20% BNG proposed by Fairfax. It is incontrovertible that

DL 89 and DL 91 took that approach. Indeed, in DL 91 the Inspector had in mind "the considerable range of betterment that BNG can and regularly does deliver". On a fair reading of the decision letter as a whole, DL 87 is to the same effect. The Inspector stated in DL 87 that "the BNG in the proposal would be a minimum of 20%, and so must be a benefit." Given that Fairfax's submission plainly stated that the 2021 Act was not in force, and given also that the Inspector made the same point in DL 87, DL 89 and DL 91, there is no basis for the Court to infer that he treated BNG of 10% and below as not being a benefit, or as having a discounted weight. Instead, he used the impending legislation as a benchmark as he was entitled to do. Ground 1 fails.

183. Once the decision letter is read fairly, and in the light of the closing submissions of the parties at the public inquiry, the allegation under ground 2 of irrationality or illogical or incomprehensible reasoning falls away. There is also no merit in the reasons challenge under ground 3. There is no doubt, let alone a substantial doubt, as to whether the Inspector made a public law error.

184. Accordingly, Fairfax's challenge to the Inspector's decision on the BNG issue must be rejected.

Conclusion

185. For the reasons set out above, the claims brought by Vistry and Fairfax are dismissed.

Contact details

Enquiries

Nick Alston
(0)20 7911 2056
nick.alston@avisonyoung.com

Visit us online
avisonyoung.com

Avison Young

The Met, 24 Percy Street, London W1T 2BS

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