
**PROOF OF EVIDENCE OF
JED HOLLOWAY LLB LLM LPC
ON BEHALF OF AYLESHAM COMMUNITY ACTION**

**Planning Appeal Inquiry
Aylesham Centre, Rye Lane, London, SE15 5EW
App ref: 24/AP/2074
PINS ref : APP/A5840/W/25/3366760**

Introduction

1. I appear at this Inquiry as a planning witness on behalf of the Rule 6 party, Aylesham Community Action ('ACA').
2. I am a solicitor with over 5 years' experience working in planning law. For the last two years I have run the 'Planning Voice' project at Southwark Law Centre, providing free legal advice and broader support to individuals and community campaigns negatively affected by redevelopment. The project focuses on campaigns seeking to ensure development maximises public benefits and meets the needs of local communities.
3. I have worked closely with the ACA campaign throughout the planning process to scrutinise the Appellant's proposals, increase public engagement, and push for stronger policy compliance and increased public benefit. Until a recent move, Southwark Law Centre's offices were immediately adjacent to the Aylesham Centre site.
4. Prior to this role, I worked at leading planning firm Town Legal, representing stakeholders from all aspects of the development process: developers (even including companies affiliated with the Appellant), local authorities and third parties.
5. I am very familiar with the Aylesham Centre site and have spoken to many of the owners of the small shops and small/independent businesses located there. I have also spoken extensively with members of the local community to hear their concerns and to assist them in navigating the planning regime.
6. I acknowledge I am not a chartered member of the RTPI, but believe my experience as a planning lawyer, particularly my work in Southwark and in relation to this proposal, make me well-placed to give planning evidence at this Inquiry.
7. The evidence which I have prepared and provide for this proof is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.
8. All defined terms are as set out in ACA's Statement of Case unless indicated otherwise.

Scope of evidence

9. My evidence is structured as follows:
 - a. consideration of the main issues identified by the Inspector;
 - b. consideration of additional planning issues, including the displacement of small shops and small/independent businesses, the proposed shift towards

- high-end retail and the failure for all proposed homes to meet Nationally Described Space Standards (NDSS);
- c. an assessment of the overall planning balance; and
 - d. consideration of broader legal issues, including the public sector equality duty and consultation requirements.
10. I refer to relevant legislation, policy and guidance where appropriate, but have sought to avoid unnecessary duplication and limit quotations to what is necessary.

Main issues

11. In this section, I consider the three main issues identified by the Inspector at the Case Management Conference. I support the Council's putative reason for refusal relating to each of these issues, but also expand on these reasons to provide further grounds for dismissing the Appeal.

Adequacy of affordable housing provision (relating to putative reason for refusal 1)

12. This is by far the largest site allocation for housing in Peckham, and the community will only get this opportunity once. The level of affordable housing in any redevelopment of this site will have massive repercussions, not just on the local housing market, but also on local cultural identity.
13. The Proposed Development delivers a very low level of affordable housing: just 50 social rented units and 27 shared ownership units out of 867, constituting only 12% by habitable room.
14. While I do not endorse the viability assessment put forward by the Council (and note the GLA's concerns), I am not in a position to dispute its conclusion that the Proposed Development cannot viably deliver more affordable housing following the standard approach to viability. However, viability is only one of many considerations in relation to affordable housing. Below I analyse the further policy requirements and material planning considerations which indicate that, regardless of viability, the affordable housing position under the Proposed Development is unacceptable.
15. Paragraph 59 of the NPPF states that "*the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case*". I would encourage the Inspector to give the viability assessment a lower weight in this case, noting the factual circumstances raised in the proof of evidence of ACA's affordable housing witness, George Venning, which demonstrate that the viability assessment is particularly far from the economic reality in this case.

16. Beyond viability, there are various other factors that indicate that the unaffordability of the private units and very low level of affordable housing under the Proposed Development will have an unacceptable adverse impact on the local area, as detailed in the following paragraphs.

Socioeconomic impact

17. There is an acute need for social housing in Peckham, as demonstrated by George Venning's proof of evidence and Council data. Within the context of the already high levels of need across Southwark¹, Peckham has the highest levels of negative income² and particularly dire accessibility to housing³. The very low levels of affordable housing proposed fail to meet this local need.
18. Accordingly, the Proposed Development fails to meet the requirement of paragraph 66 of the NPPF, which states that planning decisions relating to major development *"should expect that the mix of affordable housing required meets identified local needs, across Social Rent, other affordable housing for rent and affordable home ownership tenures"*. Conversely, the vast majority of residents in Peckham will not be able to afford the private units on-site⁴, such that these units do not meet local need.
19. It is likely that the Proposed Development will increase rents in the area – as per paragraph 163 of the Officers Report, this is *"often an effect of large-scale schemes"*.
20. The Proposed Development also threatens to displace existing communities, particularly vulnerable residents and Peckham's well-established global majority communities. This is evidenced by the academic research of Dr Habiba Jelali (Appendix 1), and captured by the following passages from the draft Peckham Area Character Study:
 - a. *"There are also concerns about some ongoing and planned developments. They may have an impact on housing affordability, local businesses and income inequality. There are concerns about rising housing costs undermining support networks. This could lead to increased social isolation and fears of exclusion."* (page 72);
 - b. *"Many [young Peckham residents] felt the regeneration in the area was for financial gain rather than to solve existing local problems... Others were more positive about regeneration. Yet they still had concerns that local people and businesses were unlikely to benefit. They are worried people might be priced out of the area"* (page 75).

¹ As demonstrated in the Strategic Housing Market Assessment Update (September 2019)

² Page 14 of the Council's Joint Strategic Needs Assessment Factsheet on Poverty (March 2025)

³ Page 52 and broader 'Social Equity' section of draft Peckham Area Character Study (December 2023)

⁴ As further evidenced in George Venning's proof

21. This displacement is a harm in itself, made worse by the equalities context. But it also brings a secondary harm: this demographic shift would also undermine Peckham's unique identity, which depends on the cultural diversity of its communities.
22. Paragraph 64 of the NPPF states that, where a need for affordable housing is identified, this need should be expected to be met on-site unless the agreed approach contributes to the objective of creating mixed and balanced communities. For the reasons above, the failure to meet Peckham's (and Southwark's) identified affordable housing need will in fact adversely impact what is already a mixed and balanced community.
23. In light of all the above, the very low level of affordable housing should not merely be considered a lack of a benefit; it should also be considered an active harm to the existing local community and the cultural fabric of Peckham.

Lack of compliance with various development plan policies

24. There are many policies throughout the development plan that focus on ensuring development is inclusive and supports existing communities. Due to the adverse socioeconomic impacts above resulting from the very low levels of affordable housing, the Proposed Development threatens to do the very opposite: actively displacing the existing diverse and inclusive communities of Peckham, making it less affordable and undermining its cultural identity. I set out the relevant policies below; the large number of them demonstrates the importance in policy terms of including a more nuanced social analysis into planning decision-making beyond viability, and the need to ensure development actually meets local needs and works for local people.

London Plan

- a. GG1 (Building strong and inclusive communities) – this policy seeks to ensure *“inclusive growth”* through a *“more equal city”* and *“an inclusive London where all Londoners... can share in its prosperity, culture and community, minimising the barriers, challenges and inequalities”*. It also seeks to ensure new developments *“reinforce or enhance the identity”* of neighbourhoods.
- b. GG4 (Delivering the homes Londoners need) – subparagraph B repeats the strategic target of 50% of all new homes being genuinely affordable; subparagraph C requires the creation of *“mixed and inclusive communities”* with homes that *“provide for identified needs”*.

Southwark Plan

- a. Strategic policy ST2 (Southwark's Places) sub-paragraph (4): *“ensure that developments improve our places for local communities through delivery of regeneration in our Opportunity and Action Areas to achieve our targets”*.

- b. SP1 (Homes for all) – *“ensuring that vulnerable residents and families are helped to find the right housing”* and *“enabling our residents to take pride in and feel responsible for their homes and local areas”*.
 - c. SP2 (Southwark Together) – focuses on supporting existing communities (including both residents and local businesses), reducing inequalities and enhancing local distinctiveness.
 - d. SP5 (Thriving neighbourhoods and tackling health inequalities) – subparagraph 5 focuses on *“Enabling people to remain in their homes for longer”*.
25. Furthermore, the site allocation NSP74 requires development on this site to *“provide new intermediate affordable housing through a community land trust”* (CLT). Notably, this is the only policy in the entire Southwark Plan to require CLT. The Proposed Development fails to secure any CLT, instead delivering shared ownership. Any vague commitments to exploring delivery as CLT are unmeasurable and not guaranteed. George Venning’s proof of evidence highlights how CLT would be much more beneficial than shared ownership, particularly in the current economic context.
26. The case of *Schneck v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 3335 (Admin) confirms that insufficient affordable housing can constitute a reason to refuse planning permission. Paragraph 74 of the judgment states:
- “I accept that in principle it may be open to a decision-maker to conclude that consenting residential development which makes no contribution towards affordable housing is too high a price to pay even where the viability evidence demonstrates that none can be afforded. The scope for such a conclusion to be reached lawfully depends on the applicable policy.”*
27. In that case, the claimant successfully challenged the refusal of permission, but only because the local planning authority and Inspector had relied on an alleged breach of a policy that was subject to viability. However, the above quote shows that the refusal would have been legitimate had it relied on other policies not subject to viability (or, I would add, sufficiently strong material considerations). I note that case concerned a proposal with no affordable housing, but the principle can be extended to a proposal with an insufficiently low amount of affordable housing, particularly where a specific requirement (i.e. CLT) is not met.
28. I would encourage the Inspector to find that the very low level of affordable housing here is too high a price to pay, regardless of viability, based on the extensive policy breaches and other material considerations set out above. At the very least, it forms one of the planning harms which, when taken together, amount to substantial harm that outweighs the planning benefits, as per my planning balance exercise below.

Harm to local townscape (relating to putative reason for refusal 2)

29. I rely on the heritage proof of evidence prepared by ACA's heritage witness, Claire Hegarty, for the assessment of heritage harm. Her evidence expands on the heritage harm identified by the Council and concludes that there is harm to the significance of not only the Rye Lane Peckham Conservation Area, but also two Grade II and five locally listed buildings, as follows:
- a. Rye Lane Peckham Conservation Area – medium to high level;
 - b. 58 Peckham High Street (Grade II listed) – medium level;
 - c. Baptist Chapel (Grade II listed) – medium level;
 - d. 98-104 Peckham High Street (locally listed) – very high level;
 - e. Jones and Higgins building (locally listed) – high level;
 - f. 86-88 Peckham High Street (locally listed) – high level;
 - g. 47-49 Rye Lane (locally listed) – medium level; and
 - h. 96 Peckham High Street (locally listed) – medium level.
30. I agree with the Council's analysis that the heritage harm constitutes a breach of the various development plan policies referenced in its second putative reason for refusal. I agree with Claire Hegarty's view that the Proposed Development also breaches Southwark Plan policy P17 (Tall buildings), as well as corresponding London Plan policy D9. Furthermore, I believe the failure to adequately take into account the locally listed buildings mentioned above amount to a breach of Southwark Plan policy P26 (Local list).
31. I note that site allocation NSP74 says "*development of up to 20 storeys could be appropriate*" on the site, but this is conditional upon: taller development being set back from the Rye Lane shopping frontage to mitigate its impact; massing being directed to the east of the site to minimise impact on the view to the City from the Bussey Building rooftop; and careful consideration being given to the neighbouring residential areas and important local heritage buildings. Pursuant to Claire Hegarty's evidence and my own analysis, I do not believe any of these conditions have been met. Therefore, I do not believe that the Proposed Development is compliant with the 'approach to tall buildings' under the site allocation.
32. Paragraph 212 of the NPPF states that "*great weight*" should be given to the conservation of designated heritage assets, "*irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance*". Paragraph 213 goes on to state that any harm to or loss of significance of a designated heritage asset should require "*clear and convincing justification*". Paragraph 215 states that where a development will lead to less than substantial

harm, this harm should be weighed against the public benefits of the proposal. This informs my planning balance exercise below.

Loss of retail floorspace (relating to putative reason for refusal 3)

33. The Proposed Development would result in a loss of up to 3,546 sqm of retail and related commercial/sui generis⁵ floorspace, taking into account the potential for up to 320 sqm of the proposed flexible floorspace to be used as workspace.
34. This is in clear contravention of:
 - a. the site allocation requirement that redevelopment must *“provide at least the amount of retail floorspace currently on the site”*; and
 - b. the requirement under Southwark Plan policy P35(3) that development must *“retain retail floorspace or replace retail floorspace with an alternative use that provides a service to the general public, and would not harm the vitality and viability of the centre”*. The proposed alternative use here – i.e. workspace – does not provide a service to the general public.
35. The Southwark Plan targets – 76,670 sqm net new retail floorspace in the borough and 7,000 sqm in Peckham⁶ – are dependent on an uplift on the Aylesham Centre site. The ‘Site Allocations Methodology Report Update’ (EIP82b) from May 2021 states that *“Growth of retail will mainly be accommodated in the redevelopment of three large shopping centres within the major town centres of Elephant and Castle, Peckham [i.e. the Aylesham Centre] and Canada Water”* (see paragraph 4.72). The reduction of retail floorspace under the Proposed Development will seriously impact the ability to achieve this target, contrary to policy ST2(4).
36. Retail is a fundamental part of the distinctive character of the Aylesham Centre and town centre more generally, as the site allocation requirement demonstrates. Significantly reducing the retail offering at this key location will threaten the vitality of the town centre, contrary to paragraph 90 of the NPPF.
37. The Appellant seeks to shift the focus away from the loss of retail floorspace by referring to ‘main town centre uses’ as defined in the NPPF. This approach should be rejected for the following reasons:
 - a. It obfuscates the clear policy requirement to retain or increase existing retail floorspace (not main town centre use floorspace) both generally and specifically in relation to this site.

⁵ This includes the internal mall/atrium that contains the handcart trader stalls (1,392 sqm) and the petrol filling station (98 sqm).

⁶ See policy ST1 and Table A

- b. It overlooks the active decision of policymakers not to include a requirement for 'employment floorspace' in this site allocation. All three other Peckham site allocations (NSP75, NSP76 and NSP77) include requirements to retain or provide employment floorspace. The policy target for an uplift in employment floorspace in Peckham is expected to be delivered entirely on these three other allocated sites.
 - c. Contrary to the Appellants assertions, policies relating to 'main town centre uses' do not give general support for office/workspace coming forward on any given town centre site, as detailed below.
 - i. NPPF paragraph 90 states planning policies should "*allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed*". In this case, planning policies make clear that the type of development needed is retail, not office/workspace. In addition to the Southwark Plan policies above, the London Plan gives Peckham the lowest possible 'office guideline' rating of C i.e. "*Protect small office capacity – These centres show demand for existing office functions, generally within smaller units*".
 - ii. London Plan policy SD7(B) states: "*Boroughs should support the town centres first approach in their Development Plans by: 1) assessing the need for main town centre uses, taking into account capacity and forecast future need 2) allocating sites to accommodate identified need within town centres, considering site suitability, availability and viability...*". In making the Southwark Plan, the Council have assessed that retail use is needed on this site, not office/workspace.
 - iii. Southwark Plan policy P35 states main town centre uses should be "*located in town centres and local centres*" but goes on to state such development must "*be of a scale and nature that is appropriate to the role and catchment of the centre*". The Council has made clear that retail floorspace is the appropriate main town centre use for this site. Policy P35 immediately goes on to require retention of retail floorspace (as quoted above).
 - d. The Appellant has not supplied any evidence to demonstrate a specific need for office/workspace to justify this deviation away from the policy position.
38. In any event, even on an assessment of main town centre use floorspace (which I do not endorse for the reasons above), the Proposed Development still results in a net loss. The Appellant's alleged uplift of commercial / main town centre use floorspace depends on the inclusion of the supermarket car park, service yard and associated plant, amounting to 4,731.3 sqm. However, the existing supermarket floorspace

figure *excludes* these aspects (see table at paragraph 80 of the Officers' Report). If a consistent approach is taken, the total proposed main town centre use floorspace becomes 10,974 sqm i.e. a net loss of 601 sqm.

Other planning issues

Small shops and small/independent businesses

39. The Proposed Development is highly likely to displace the existing small shops and small/independent business on-site. This is contrary to Southwark Plan policies P32 and P33, as detailed below.

Small shops

40. A small shop is defined in the Southwark Plan as “*a market stall or shop measuring less than 80sqm GIA in floorspace (excluding storage)*”. Throughout its planning application documents, the Appellant erroneously claims there is only one existing small shop on-site: unit 15a, last used as the Appellant's ‘consultation hub’. In reality there are many further small shops:
- a. All handcart traders in the atrium (as accepted by the Council at paragraph 95 of the Officers' Report);
 - b. Just For You Fashion (Unit 15b) and Factory Outlet (Unit 16). The Appellant confirmed in email correspondence on 14 January 2025 (Appendix 2) both have a GIA of less than 80 sqm (excluding storage) yet has continued not to consider them to be small shops; and
 - c. All food vendors in Market Place Food Hall. These vendors are directly comparable to those in ‘Mercato Metropolitano’ on the Borough Triangle site in Elephant & Castle, where the Appellant accepted each vendor was a small shop (and small/independent business) entitled to protection under policy. However, the Appellant has inexplicably taken a different approach here.
41. Policy P32(1) states:
- “Development must retain small shops where existing small shops are at risk of displacement from a development. There should be full consideration of the feasibility of providing affordable and suitable space for existing occupiers in the completed development. Replacement shops should be like for like in terms of floorspace or bespoke to suit the requirements of the business, including provision of storage and servicing space.”* (emphasis added)
42. Each of the above small shops are at risk of displacement from the Proposed Development, and therefore must be retained, with full consideration of providing

them with affordable and suitable space with either like for like floorspace or bespoke terms. However, none of this is proposed, and does not seem to have even been contemplated by the Appellant.

43. Instead, the Appellant has focused exclusively on policy P32(2), which requires delivery of 10% retail space as small shops. This is a separate aspect of the policy and does not achieve compliance with policy P32(1). Nor does reliance on a general Business Relocation Strategy (BRS) pursuant to policy P33 (discussed below) achieve compliance with policy P32(1); support with relocation and vague commitments to explore opportunities for a return to site are not sufficient.
44. My Planning Voice colleague and I have spoken frequently with the handcart traders, some of whom have been operating there for over 20 years, and some of whom were relocated there after already being displaced from the Elephant & Castle Shopping Centre due to redevelopment. They expressed their desire to remain on-site, and for negotiations to begin as soon as possible, in order to give them certainty for business planning. However, they said there had been no meaningful consultation to date – only one limited survey that focussed on relocation and did not even ask if they wished to remain on-site. In late 2024, handcart traders collectively sent an objection letter setting out their concerns. I am not aware of any further discussion between the Appellant and the handcart traders following that letter.
45. I have also personally spoken to many of the owners in the Market Place Food Hall; all of them said they had not been consulted at all by the Appellant (the Appellant has also failed to include them as small/independent businesses, as considered below). They too expressed a need for open dialogue and certainty as soon as possible.

Small and independent businesses

46. A small business is defined in the Southwark Plan as “*a business operating with 50 employees or less*”. An independent business is defined as “*a business operating on no more than 3 sites*”. The requirements of policy P33 apply equally to small businesses and independent businesses, and so in this proof I consider the two terms together (as small/independent businesses).
47. Again, the Appellant has failed to identify all small/independent businesses. In addition to the 15 businesses identified in the Appellant’s BRS (being Duses Shoes, PAK Butchers, Just For You Fashion, Factory Outlet, Image (Furniture), and the 10 handcarts), the following businesses are also small/independent businesses:
 - a. All food vendors in Market Place Food Hall. As stated above, the Appellant accepted the Mercato Metropolitano food vendors on its Borough Triangle site were small/independent businesses, and there is nothing in policy terms to distinguish them (nor has the Appellant attempted to justify this distinction).

- b. Wing Tai (Unit 11A) – the Appellant initially excluded this business, based on spurious evidence suggesting it might operate on more than 3 sites. In an email dated 10 October 2024, the Appellant accepted that this business is in fact an independent business (see Appendix 3). The Appellant suggested Tree Shepherd entered into discussions with this business, but no evidence of these discussions has been provided, and the BRS Addendum makes no reference to this change of position. Disappointingly, the revised Equalities Impact Assessment (dated after this email correspondence) reverts to the previous mistaken position that Wing Tai is not an independent business (see paragraph 4.58). Therefore, I have little confidence that a meaningful consultation has in fact occurred.
48. Southwark Plan policy P33 sets out multiple requirements for small/independent businesses (and small shops), many of which are not being satisfied by the Proposed Development. I set out relevant extracts of the policy and provide commentary below. As an overarching comment, this policy requires the preparation of a full BRS as part of the application documents. Whilst I appreciate there is a long delivery timeline, and the position may change over time, there needs to be consultation with affected businesses at an early stage, and clear and measurable minimum commitments set out at the time the planning decision is being made. This is necessary not just for the businesses to have sufficient certainty for business planning, but also so the decision maker can make a fully informed decision. Any allusions to future commitments are unmeasurable and not guaranteed.
 1. *Where existing small or independent businesses or small shops may be displaced by development a business relocation strategy, written in consultation with affected businesses, must be provided. The business relocation strategy must set out viable relocation options.*

Commentary:

 - The existing BRS has not been written in consultation with affected businesses. While some (but not all) of them have been surveyed (see Appendix 1 of BRS), this survey was of limited scope. It did mention return to site, and only gave limited response options that did not allow for a meaningful dialogue.
 - Crucially, the existing BRS does not set out viable relocation options.
 2. *All business relocation strategies must include:*
[...]

4. *Details of engagement with existing businesses on site regarding re-provision of premises or relocation options; and*
5. *Details of engagement with the council, local agents, businesses, business associations and workspace providers to secure occupiers for new employment space.*

Commentary:

- While details of engagement with some businesses have been provided, this does not include all applicable businesses, and details of engagement are limited and do not set details of re-provision of premises or relocation options.
- While there are commitments to using an agency service down the line, no detail is provided of current engagement with the council, local agents, businesses, business associations and workspace providers to secure occupiers for new employment space.

3. *Where existing businesses are accommodated in new development the strategy should include:*

1. *Specific business requirements including servicing, fit out and ownership or lease terms; and*
2. *Temporary relocation arrangements or scheme phasing to allow the continuation of the business during construction. Temporary relocation should be contained on site or as close to the original site as possible; and*
3. *Options for temporary relocation should consider the cost and practical arrangements for businesses where multiple moves may not be feasible.*

Commentary:

- The BRS alludes to handcart traders potentially returning to site – but there is no certainty this will be delivered, and the Appellant has not sought to understand their business requirements.
- None of the detail required under the above subparagraphs has been provided.

4. *Where existing businesses are proposed to be relocated the strategy should include:*

1. *Reasons why existing businesses cannot be located on site; and*
2. *Details of relocation options explored with individual businesses and the assistance and support that will be provided. Statements from the businesses are required to show evidence that the relocation option is suitable for the viable continuation of the business; and*
3. *Identification of alternative premises in Southwark. Where no suitable premises exist, premises should be identified in adjacent boroughs; and*

4. *Statements from existing businesses should they wish to cease trading rather than relocate; and*
5. *Collaboration with other landowners to establish whether suitable workspace for existing businesses could be accommodated in different phases of the development programmes*

Commentary:

- Beyond the potential retention of handcarts, it does not seem that the Appellant has considered retention of small/independent businesses on-site. Contrary to subparagraph 1, no reason has been given.
 - No detail of relocation options explored or alternative premises identified have been provided, contrary to subparagraphs 1 and 2. From the evidence available, and from my discussions with businesses, it does not seem that specific relocation options have been explored with businesses.
49. Unless a full and robust BRS, which accurately lists all small/independent businesses, consults them in detail, sets out the above detail, and sets out clear and measurable commitments to be secured via s106, policy P33 has not been complied with. I reserve the right to make further comments on the details of the BRS once I have seen the full terms as set out in the draft s106 agreement.
 50. These small shops and small/independent businesses are a key part of Peckham's "*proudly diverse range of communities and rich cultural heritage*" (draft Peckham Area Character Study, page 76). Some of them form part of the specialist West African offering noted in the Peckham Area Vision (Southwark Plan AV.14), and the others serve other global majority communities. Even if these businesses are successfully relocated to another area (which seems very unlikely on current proposals), losing them in Peckham would impact the vitality and distinctive character of the town centre (contrary to NPPF paragraph 90) and its inclusivity (contrary to London Plan policy GG1). The Proposed Development would also be contrary to Southwark Plan policy SP2, which refers to "*championing existing and new business growth and supporting small shops and businesses through regeneration*", as well as reducing inequalities and enhancing local distinctiveness. I discuss the equalities implications further in relation to the public sector equality duty below.

New businesses proposed – change in retail offer

51. The Appellant's 'Retail / Main Town Centre Use Strategy' (Appendix II to its Planning Statement) and the CF Commercial reports (appended to that strategy) set out the proposals for retail occupiers on the Proposed Development. Most proposals are for "*artisan*", "*specialist*" and "*premium*" businesses (see section 5.7 of CF Commercial Stage 1 report – electronic page 210 of Planning Statement onwards). The clear

intention is to bring in more expensive, high-end options – a move away from the more affordable and accessible options currently on-site and Rye Lane more generally.

52. Dr Jelali's research (Appendix 1) highlights the links between retail 'transformations' such as this and increased local rents, cultural erosion and indirect displacement.
53. The draft Peckham Area Character Study notes the following about the existing offering on Rye Lane, and community fears about how it is changing:
 - a. *"Peckham is praised for its diversity, community links and cultural life. The area is seen as vibrant and authentic. It is an area with a rich and multicultural community. This includes a significant West African community."* (page 66)
 - b. *"There are concerns about some of the changes in Peckham. There has been an increase in pricier shops, bars and restaurants."* (page 66)
 - c. *"There are concerns about new cafes, restaurants and bars. People feel these often cater to wealthier white residents. Some preexisting residents worry they are being left out."* (page 71)
 - d. *"There is a contrast between Bellenden Road and Rye Lane. White, higher-income groups use Bellenden Road more. Diverse lower-income groups use Rye Lane more."* (page 71)
54. The Appellant's approach to retail would accelerate the trend of shops run by and for the multicultural lower-income groups being lost in favour of pricier shops serving higher-income groups. In doing so, the Proposed Development fails to meet the various development plan policies about supporting existing communities and reducing inequalities set out above. It also erodes the distinctive character and vitality of Peckham, contrary to paragraph 90 of the NPPF. It moves from diversity to homogeneity, making Rye Lane a second Bellenden Road.
55. I note that the Council Public Health team included the following in its response to the Application: *"It is recommended that retail units are prioritised for Afro- Caribbean [sic] food and product retail in line with the current percentage highlighted in the retail analysis (for example 36% of Afro-Caribbean food retail to all food retail)".* No such prioritisation is proposed. I would suggest more specifically that retention of the *existing* Afro-Caribbean shops on-site (as well as other small/independent businesses) is prioritised.
56. This shift to less affordable retail is also incongruent with the market trends acknowledged in the Appellant's own evidence. Section 6 of the CF Commercial report looks at 'Strategic Trends for Town Centres and Implications for Peckham Town Centre & Aylesham'. It notes that rising inflation is *"likely to result in less discretionary spending and a greater focus on value"* and that the current offer *"includes a wide selection of branded and independent discount offers that can cater for value driven*

customers". Therefore, a pivot to higher-end and discretionary spending offerings seems to be an unwise approach in the current climate, particularly in an area with a high level of lower income individuals particularly vulnerable to increased inflation. Again, this risks adversely impacting the vitality and viability of the town centre.

57. The Retail / Main Town Centre Use Strategy claims that the proposed retail constitutes "*under-represented occupier types within the Peckham town centre*". However, the CF Commercial report does not actually suggest these occupier types are under-represented, or present any evidence to justify that position. Rather, it says there is "*opportunity for*" them, or that the town centre "*could support*" them (see section 5.7). In fact, it acknowledges that the town centre already "*benefits from a wide range of F&B offers*" (paragraph 5.6.5). Furthermore, this position is based on data that is in places incomplete and now out of date – for example, the large Peckham Pulse Leisure Centre is inexplicably excluded. The reality on the ground is that there is already an increasing number of 'premium' offers similar to those proposed by the Appellant. Any suggestion that there is a need for these businesses is unjustified and should be rejected.

Breach of NDSS

58. The Appellant's Accommodation Schedule confirms that 15 of the 1b1p properties in the Proposed Development (in buildings E and M) would have a gross internal floor area of 37.1 sqm. Contrary to paragraph 354 of the Officers Report, the floor plans show that these units would have baths, not showers. Therefore, the minimum requirement under the NDSS is in fact 39 sqm (not 37 sqm). This means that these units are below the NDSS and accordingly breach London Plan policy D6(F) and Southwark Plan policy P15(10). The NDSS is an absolute minimum, and any unit falling below it cannot be said to be of adequate size.
59. I note further that these units would only have space for a single sized bed, further undermining the adequacy of these units.

Planning balance

60. Below I weigh the purported planning benefits of the Proposed Development against the potential planning harms, reaching the conclusion that the harms substantially outweigh the benefits in this case. This is my professional judgment as to how to weigh each purported benefit and harm, which I hope is helpful to the Inspector. Of course, it is for the Inspector to conduct his own balancing exercise.
61. Purported planning benefits (as per section 10 of the Appellant Statement of Case):

- a. **Use of suitable brownfield land:** I accept that the site is suitable brownfield land, and pursuant to NPPF paragraph 125(c) substantial weight should be given to the value of using such land for homes and other identified needs.

However, I would qualify that due to:

- i. the low level of affordable housing reduces the public value of this housing and its ability to meet local need. This will result in a development producing an unbalanced and not properly mixed community, contrary to what local and national policy expects;
- ii. the adverse socioeconomic impact of delivering such a high proportion of private rent in this area (as detailed below); and
- iii. the failure to deliver an uplift of residential floorspace, for which there is an ‘identified need’, in favour of employment floorspace, for which there is no identified need in relation to this site.

Paragraph 125(c) states that such developments should be approved unless substantial harm would be caused. I believe the above alone amounts to substantial harm, let alone before the broader harms (detailed below) are taken into account.

- b. **Place-making** – delivery of “*distinctive new buildings... designed to be authentic and complement the existing character of Peckham*”: given the significant townscape and particularly heritage impacts of the Proposed Development (as detailed in the proof of evidence of ACA’s heritage witness, Claire Hegarty), I disagree that this can be considered a planning benefit.
- c. **Place-making** – delivery of 1.02ha of new public realm: I accept the delivery of public realm is a planning benefit. However, I would qualify this benefit as follows:
- i. This 1.02ha includes ancillary areas, such as service roads, loading bays and slivers of land behind buildings, all of which are of low amenity value. In reality, the amount of public realm actually intended for public amenity is much lower.
 - ii. This residual public realm is intersected and overlapped by the services roads and loading bays, diminishing its amenity value.
 - iii. As noted in the GLA’s objection (see paragraph 30), large portions of the public realm will not receive more than 2 hours of sunlight in March, therefore failing to meet the test in section 3.3 of the BRE Guidelines. Again, this diminishes its amenity value.

- iv. The Proposed Development fails to meet the Urban Greening Factor policy requirement of 0.4.

In light of the points above that undermine both the quantity and quality of public realm, I attach a lower weight to this benefit.

- d. **Homes** (867 new homes, 50 of which being social rent and 27 of which being intermediate housing):

- i. The failure of 15 units to meet NDSS standards undermines their planning benefit.
- ii. The delivery of affordable housing, particularly social rent, is always a planning benefit. However, the very low amount of affordable housing being offered here means that I attach less weight to this benefit.
- iii. The Proposed Development fails to meet the unique site allocation requirement for CLT (see George Venning's proof of evidence for further analysis).

- e. Town centre:

- i. **Supermarket** – the Proposed Development does not 'secure' Morrisons for the long term as the Applicant suggests (as it does not affect the contractual position). There is in fact a net loss of supermarket floorspace. I do not consider continuity of trading to be a benefit, so much as a mitigation of a potential harm caused by development. Therefore, I attach no weight to this.
- ii. **New retail units** – the Proposed Development results in a significant net loss of retail floorspace. In light of this, and the other adverse impacts of the Applicant's approach to retail, I consider this aspect of the Proposed Development to be a harm (as set out below) and not a benefit.
- iii. **Workspace** – for the reasons set out above, there is no policy intention or identified need for workspace to be delivered on this site. Delivery of workspace is coming at the cost of delivery of retail, for which there is a policy requirement and identified need. Therefore I attach limited weight to this benefit.
- iv. **Increasing town centre expenditure** – while this can be considered an economic benefit when viewed in isolation, it must be viewed in the context of the potential economic harms arising from the development (detailed below), which undermine this purported benefit.

f. **Jobs/training:**

- i. While the creation of construction jobs is a planning benefit, it is a short-term benefit to which I attach relatively low weight.
- ii. The estimated increase in operational stage jobs is relatively minor (around 100) and must be viewed in the context of the inappropriate shift from retail to workspace – in light of this I attach relatively low weight to this benefit.
- iii. The proposed skills and training opportunities are a benefit, but I attach a relatively low weight to it, which may be even lower depending on quantum and the specific terms of the s106 agreement. S106 obligations often allow the developer to deliver a payment in lieu if local participants can't be identified.

62. Planning harms:

- a. **Housing / socioeconomic harm:** the unaffordability of the private units and very low level of affordable housing present an active harm to the local community. The Proposed Development is likely to increase rents in the area and displace existing communities, particularly those from ethnic minority and lower income communities. This will undermine the cultural fabric and inclusive communities of Peckham, contrary to various development plan policies. This will have a permanent and irreversible effect, and I attach substantial weight to this harm.
- b. **Heritage:** the Proposed Development will cause less than substantial heritage harm not only to the Rye Lane Peckham Conservation Area, but also to two Grade II listed buildings and five locally listed buildings. This heritage harm results in breaches of multiple development plan policies, and a failure to comply with the approach to tall buildings under the site allocation. Collectively I attach substantial weight to these heritage harms, noting paragraph 212 of the NPPF and the great weight to be given to the conservation of heritage assets (irrespective of the scale of harm).
- c. **Loss of retail floorspace:** the Proposed Development will result in a significant loss of retail floorspace, in breach of clear site allocation and policy requirements. The Southwark Plan retail targets are greatly dependent on an uplift on this site. This threatens to undermine the town centre's distinctive character and vitality. The Appellant has instead favoured workspace, for which there is no policy requirement and no identified need on this site. I attach substantial weight to this harm.

- d. **Small shops and small/independent businesses:** the Proposed Development will displace many (if not all) of these businesses, and fails to meet the requirements of Southwark Plan policies P32 and P33. The loss of these businesses will undermine Rye Lane's identity and distinctive retail offer, targeted at Peckham's ethnically diverse and lower-income communities. I attach substantial weight to this harm.
 - e. **Shift in retail / Introduction of high-end businesses:** the Appellant proposes to bring in businesses targeted at higher-income groups, at the expense of existing businesses catering to ethnically diverse and lower-income groups. This will accelerate an existing trend about which the local community has expressed serious concerns. This is particularly inappropriate when, as the Appellant's own research demonstrates, rising inflation is likely to result in a greater focus on value. It will create a homogeneity (making Rye Lane another Bellenden Road) that will undermine the cultural fabric and vitality of the town centre, contrary to policy. I attach a substantial weight to this harm.
63. As demonstrated throughout my evidence, the Proposed Development is contrary to many development plan policies, and I consider those policies to be most important for determining the Appeal. Therefore, pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 11(c) of the NPPF, the Appeal should be dismissed. I do not believe material considerations indicate otherwise; in fact, I believe the various material considerations set out above further indicate dismissal of the Appeal.
64. Pursuant to the most recent Housing Delivery Test, delivery of housing was not substantially below the housing requirement over the previous three years assessed. I have not seen evidence in relation to the Council's five-year housing land supply. Therefore, I have not seen anything to suggest that the development plan policies are out of date such that NPPF paragraph 11(d) is engaged. In the event the Inspector finds the development plan to be out of date, I believe that the policies in the NPPF protecting designated heritage assets provide a strong reason for refusing the development proposed (pursuant to 11(d)(i)). Furthermore, I believe that the adverse impacts of allowing the Appeal would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole (pursuant to 11(d)(ii)). I note that many of the harms identified in this proof relate to ineffective use of land, poor design and the lack of provision of affordable housing.

Other legal considerations

Public sector equality duty

65. Section 149 of the Equality Act 2010 requires public authorities to have due regard to the need to (amongst other things): eliminate discrimination, advance equality of opportunity and foster good relations. These duties apply in relation to those who share a relevant protected characteristic and those who do not. This proof will focus on the protected characteristic of race and how it intersects with socio-economic status, noting the Council has chosen to include socio-economic status as part of the duty (in its constitution and statement of community involvement documents).
66. A common method of satisfying the duty is the preparation of an equalities impact assessment. The duty applies to the Council and Inspector in their decision-making; while it does not apply directly to the Appellant, the Appellant has taken the common approach of preparing the equalities impact assessment on which the Council and Inspector rely when making their respective decisions.
67. There are no specific outcomes prescribed to meet this duty, but it must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. It must be more than a box-ticking exercise.
68. I have serious concerns that the Appellant's Equalities Impact Assessment (EQIA) does not provide a sufficient basis for the Inspector to satisfy the public sector equality duty, for the following reasons:
 - a. The Appellant relies extensively on the delivery of affordable housing as an equalities benefit / mitigation of potential equalities impacts. In the revised EQIA following the extensive reduction in affordable housing, the Appellant has simply restated its reliance without any assessment of how the large reduction changes the position and undermines this benefit / mitigation.
 - b. The Appellant has given no thought to the potential indirect equalities impacts of the Proposed Development, particularly now that the affordable housing offer has been greatly reduced. As evidenced above, the Proposed Development is likely to increase rents and displace existing communities, particularly lower-income groups and those from global majority ethnicities. While I appreciate the environmental impact assessment regime is separate to the public sector equality duty, it is telling that the Appellant failed to consider the indirect socioeconomic impacts to nearby residents.
 - c. The EQIA acknowledges that the Proposed Development will have "*disproportionate impacts*" on the independent business owners on-site and their customers, who are "*non-white*". The Appellant tries to understate these impacts by suggesting they "*will be small in the context of the high street as a*

whole and its diverse retail offer”, and claims these impacts will be managed through the BRS. It later refers to *“the availability of alternative space both new (on-site) and elsewhere on the high street”*. Firstly, I disagree that the impact will be small; I believe the loss or displacement of around 25 relevant businesses is likely to be significant. In any event, the Appellant provides no evidence to justify this position. Secondly, the proposed BRS fails to meet the requirements under Southwark Plan policy P33, and overlooks the additional requirements for small shops under policy P32(1), and so cannot be relied upon as sufficient mitigation. Thirdly, there is no evidence that there is availability of alternative space either on-site or elsewhere on the high street. The Appellant’s intention seems to be to displace most (if not all) of these businesses and has no control over whether off-site locations will be available to businesses at the relevant time. In my experience supporting businesses displaced from other schemes, it has been incredibly hard for them to find viable relocation opportunities – an issue no amount of relocation funding alone can solve. Finally, the BRS is intended to assist the business owners, but does not necessarily mitigate the loss to the *customers* of that shop – this is an oversight in the Appellant’s approach.

69. Accordingly, the Appellant’s approach fails to consider certain equalities impacts, and fails to offer sufficient mitigation, such that the Inspector does not have a sufficient basis to meet the public sector equality duty should he be otherwise inclined to allow the Appeal.

Consultation

70. In fulfilling its duty to produce a statement of community involvement (pursuant to a18(1) of the Planning and Compulsory Purchase Act 2004), the Council produced two documents: a ‘Statement of Community Involvement’ (SCI) and a ‘Development Consultation Charter’ (DCC). The DCC states it should be read as part of the SCI.
71. The DCC requires the production of an ‘Early Engagement Strategy’ (EES). The DCC describes the purposes of the EES as follows:

“The purpose of this document is to ensure that developers engage with residents and local stakeholders from the start of the development process. Early engagement is essential to ensure that residents and local stakeholders have a say in the development. It can also help to identify elements in the design of the scheme that may have a detrimental impact on certain individuals or groups.”
72. The EES must include a ‘Facts-Based Audit’ of the site, including stakeholder analysis, heritage considerations, site layout etc. The DCC states the EES is a *“requirement for pre-application discussions”*. However, despite this clear requirement, the Appellant failed to produce an EES at the start of the development

process (i.e. following the new design brief in November 2023), or even during pre-application discussions. Instead, it produced an EES in July 2024 as part of the application documents.

73. Clearly, this delay undermined the entire purpose of the EES, to ensure the Appellant engaged with residents and local stakeholders in a meaningful way from the start of the development process and to allow the community to identify elements in the design that may have a detrimental impact on certain individuals or groups.
74. While other forms of consultation were undertaken at an early stage, none of them achieved the aims of the EES. No Facts-Based Audit was presented for consultees to review and critique, and there wasn't sufficient presentation of design proposals such that consultees could identify potentially problematic elements. As is clear from the many objections and complaints raised throughout the process, many consultees felt they were never given an opportunity to meaningfully comment on the proposals as a whole or have concerns translated into substantive changes.
75. The Council and Appellant pursued an alternative approach to consultation: the Aylesham Centre Community Forum (ACCF). This was a closed, invite-only forum of certain local stakeholders, including ACA. While there was initial optimism, the ACCF failed to be effective in practice. Key stakeholders were excluded, including small businesses and traders, local TRAs, local faith groups, and also concerned local individuals without an affiliation. There was no prescribed process or structure for the meetings. Meetings were largely used up with one-way information updates from the Appellant, rather than listening to shareholders or engaging in open discussion. Agendas were often circulated the day before or on the day, without the opportunity for stakeholders to consider, discuss in advance, or influence topics to be discussed. ACA members attending ACCF meetings formally raised these concerns throughout the process. In light of all the above, the ACCF was conceptually very different to, and failed to meet the consultation objectives of, the EES.
76. Case law has established that a clear and unambiguous commitment in a local planning authority's statement of community involvement can amount to a 'legitimate expectation'⁷. If a decision unfairly frustrates a legitimate expectation, that can give rise to a challenge of unlawfulness by way of judicial review. While the legitimate expectation was given by the Council (and not the Inspector), in my view the principles set out under the SCI and DCC should apply to all planning decisions in the borough, including decisions taken by an Inspector at appeal. At the very least, this consultation framework, and the failure to adhere to it, should form a material consideration in favour of dismissal of the Appeal.

⁷ For example *R (Kelly) v London Borough of Hounslow* [2010] EWHC 1256 (Admin) and *R (Holborn Studios Limited) v Hackney LBC* [2017] EWHC 2823 (Admin)