

Aylesham Centre, Peckham.
Opening Submissions of the Appellant.



1) Introduction and summary: The Main Moving Parts.

1. This brown field proposal which delivers the transformational aspirations of the Development Plan for this part of Peckham, while helping to meet the now recognised and overwhelmingly pressing housing and affordable housing needs of the area and London should be granted without delay.
2. The proposal is a good fit for the requirements of the development plan allocation. It will deliver now against the backdrop of urgent need, 867 homes across a well thought out masterplan area consisting of 16 well-conceived buildings and their public realm.
3. It will remove the monumental, dead eyed, post-modern monoculture of the Aylesham Centre façade, which looks like the back of a small multistorey car park on Rye Lane, and replace it with active frontage, well-considered, apt and high quality architecture and much needed homes and activation.
4. It will make full use of the wasteland back land of the site, which for generations has been an indictment of the ability of the planning system to deliver change.
5. The case made against the proposal now relies on 3 linked propositions, each of which is inappropriate and incorrect.

6. First, remarkably and clearly in error, it is said that the urgent meeting of market housing need at a time of delivery crises by the provision of 867 homes should now be given “*limited*” or “*only moderate*” weight in the determination of this application.
7. Put simply such a proposition is simply unsustainable. Once this error is corrected, and once appropriate substantial or very substantial weight is given to the public benefit of delivering more than 800 homes, then this by itself is sufficient to mean that planning permission should not be withheld in the circumstances of this case.
8. Second, (and contrary to officer and independent viability consultant’s advice) it is said that the provision of more than the maximum amount of affordable housing required by the provisions of the development plan, as applied to the allocation, is nonetheless insufficient (see Reason for Refusal 1).
9. Third, it is then said that the heritage implications of the proposal are of an order that could be justified if the application provided 35% affordable housing, but that the affordable housing benefits “foregone” or lost as a result of the 12% affordable housing provision, means that the heritage balance should now instead result in the refusal of the application as a whole (see Reason for Refusal 2).
10. We deal with the pivotal and clearly incorrect allegation of only modest weight to housing generally as a public benefit first.
11. London is in the midst of a housing crisis, the like of which has not been seen since the 1930s. The Mayor and the Secretary of State have in the last few days explained that the London housing market has been hit by a “Perfect Storm” of economic constraints that has resulted in a complete collapse of delivery of housing of any type across the capital.
12. These identifications of the serious issues and the need for them to be addressed are to be given the fullest and most urgent weight. They reflect demonstrable and evidenced facts about the London housing market, now set out in a joint central government/GLA document.
13. This crisis needs to be dealt with urgently by ensuring that the capital begins producing the tens of thousands of houses that are needed now. This is not a time to be putting off decisions which are critical to addressing the urgency of meeting housing need locally or in London-wide terms to “another time”.
14. The application and allocation site in this case is among the largest and potentially most productive housing sites in the capital. Its delivery should not be unduly delayed.
15. It is a brownfield site where there is a very clear presumption in favour of development. The value of which **must** be given substantial weight (and which should only be refused where the objections are substantial).
16. It is allocated as being able indicatively to deliver circa 850 C3 homes.
17. There is not now, and there never was, a “fixed” or any level of affordable housing required for the delivery of the allocation as is sometimes seen (see below). The provision of affordable housing of any type on the site has always been accepted as being “*subject to viability*” (see below).

18. Refusing permission now on the allocation site would mean that 867 homes would be at a stroke lost to the meeting of the pressing need. This (in a case where the overwhelming number of units in the scheme (over 750) is not the subject of any complaint or concern) would represent a very substantial harm. Such loss of opportunity is not of course even contemplated by those who place no or little value on the delivery of market homes.
19. In all of these circumstances, the delivery of this number of homes market and affordable in this context can only be given very substantial weight.
20. We then turn second to the allegation that the affordable housing produced is in the circumstances, inadequate.
21. To address the delivery crisis and to ensure delivery can even begin to restart, even the most unconstrained sites in the capital will soon very likely be being granted planning permission at 20% affordable housing, without the need for any viability testing. (see the Emergency provisions Note, CD 6.43)
22. This reflects the real urgency of the need for delivery of new homes generally now and of the economic challenges of providing affordable housing in the capital. In short, it is a recognition by government that seeking too high a level of affordable housing even on unconstrained sites restrains the delivery of housing overall.
23. This site it is definitively **not** one of the least constrained sites.
24. Indeed, so constrained is it as an inner city, previously developed, large retail site, that all parties to this inquiry also agree that the “*maximum*” policy-identified proportion of affordable housing that could be sought from the planning system and the operation of the development plan policies following full viability testing is 0% affordable housing.
25. It follows that the 12% affordable housing being provided in this case by the Appellant is, by definition, more than the proportion which could be required by the planning system or by the allocation or by the development plan. It is more than the maximum required.
26. As such, it is a very powerful additional benefit of the proposal beyond the provisions of the allocation and the provisions of the development plan. It cannot be a harm, much less a harm driving a reason for refusal.¹ Elected members were specifically advised of this inevitable conclusion having regard to the development plan and its requirements. (Para 299 OR CD3.1)
27. They chose to reject that advice.
28. Thirdly, the suggestion that there is somehow a “lost” level of public benefit which shifts the heritage balance from grant to refusal is now in the real world, neither an appropriate nor an accurate suggestion to make.
29. It relies on the delivery of a benefit associated with a level of affordable housing that is (and is agreed now to be) simply unattainable. There is in the real world no “loss” of 35% affordable housing. At a requirement of 35% no reasonable developer would deliver the allocation at all.

¹ Of course a refusal will mean no housing and no affordable housing at a time of maximum need- see below.

30. The notional public benefit associated with 35% affordable housing thus only exists in a world where the scheme could not be built at all and none of the benefits (including the 35%) would be realised.
31. The refusal of this application, in effect based on the absence of benefits associated with an always unattainable 35% affordable housing (what the Council inadmissibly calls its “Golden Rule”²), will simply result in all of the benefits of the proposal including the policy plus benefits of the affordable housing being set aside and not delivered at all at this time of urgent need.
32. It will also likely mean the long-term stymying of any allocation delivering development on the site, since the scope for reasonable reduction in volume of the development is in economic terms vanishingly small.
33. There is no requirement for a given or fixed level of affordable housing in the allocation. This is deliberate. Delivery of the allocation was the most important factor with the level of affordable housing (including Community Land Trust affordable) being determined by reference to the development plan’s nexus of policies which seek to ensure viable delivery.
34. Further, and the reason that these failures are all interlinked, the planning and heritage balances now, and previously undertaken by the Council and other objectors, necessarily proceeded on the false premise that little or only moderate weight should be given to the market housing (see above).
35. That is a clear error already addressed. But it is of fundamental importance here too. Choosing to give the inappropriate weight to housing delivery in the round clearly alters significantly the overall weight to be given to benefits and the proportionate influence on that weight of the relevant affordable housing contribution. Consistently undervaluing the delivery of market housing, and limiting the public benefit in effect to affordable housing alone, obviously and incorrectly skews the balance exercise and renders it close to meaningless.
36. When these benefits are given their proper weight (including housing, affordable housing and all the regeneration benefits) any reasonable identification of alleged heritage or other harm would be swamped by the benefits of the proposal.
37. It is to that aspect of the case that we now turn using the Inspector’s Main Issues as a guide.

2) The effect on character and appearance, having special regard to the Rye Lane Conservation Area

38. The Appellant’s case on character and appearance rests on the following four basic propositions.

Proposition 1: The existing site significantly harms the character and appearance of the area and the Rye Lane Conservation Area (RLCA).

39. This first proposition is obvious but is massively underplayed by objectors to this proposal. The application site is located in the heart of the Peckham Major Town Centre, and yet it

² Southwark operates a “Golden Rule” which finds no expression in its DPDs to the effect that no application will be taken to Committee unless it proposed 35% affordable housing.

is clearly failing positively to contribute to Peckham's townscape or its lively character or where relevant the RLCAs character and appearance or significance.

40. This brownfield site as a whole is woefully underutilised, with an absence of vitality and movement.
41. It is made up of the existing Aylesham Centre, a surface level car park and a petrol station.
42. Other than on Rye Lane, there are at present no frontages to the site. The petrol station and car park, which cover a significant part of the site, are an eyesore and represent a harmful and inexplicable gap within Peckham's townscape.
43. Its main façade in the Conservation Area is literally monumental, unarticulated, thoroughly dispiriting and below mediocre.





44. Those that find salvation in its comic low slung scale and disproportionate width at the heart of this town centre are plainly wrong. The centre doesn't hold or frame the site – it is an undistinguished ribbon of bricks.
45. The Centre and its surrounds thus very significantly detract from the character appearance and significance of the Conservation Area. This is recognised in the Conservation Area Appraisal, which acknowledges that the Aylesham Centre is a negative element and encourages redevelopment and enhancement of the site. This too would be in line with paragraph 219 of the Framework, and the requirement to optimise brownfield sites in inner London.



46. Any assessment of the impact on character and appearance must as a matter of fact and law, have regard to this existing state and function of the site as the starting point for a comparison with the appeal scheme. That task must be done accurately and for the contribution of the site, as a whole, to the Conservation Area, as a whole.
47. The Listed Building and Conservation Areas Act requires the proposal to leave the Conservation Area unharmed, so the existing detracting position sets the context for the consideration of the statutory test in heritage terms.

Proposition 2: The planning system has sought to remedy this underdeveloped and profoundly harmful position by way of a requirement for transformative redevelopment

48. An assessment of the impact on character and appearance of both the town centre and the Conservation Area must also have regard to the policy ambitions for the function of the site in the future. The Council has long recognised both the existing harmful position of parts of the Conservation Area and the need for transformation on the site. That aim for radical change has never been seen as harmful in principle to the Conservation Area given the potential to enhance the character and appearance identified above.
49. There have been years and years of failed attempts to deliver the significant change needed at this site.
50. The Council's process of planning for significant redevelopment of the site first began in 2009.³ Extensive consultation following the Peckham and Nunhead Area Action Plan then

³ When work first began on the Peckham and Nunhead Area Action Plan, which allocated the site.

culminated in the adoption of the New Southwark Plan, which allocated the site⁴ for comprehensive mixed-use development, and as one of only four key development opportunity sites in Peckham.

51. The site allocation itself makes clear the scale of change that is required. NSP74 sets out several site requirements, including that development must provide new homes (with an indicative capacity of 850 homes), retain the existing supermarket use, provide at least the amount of retail floorspace currently, diversify and complement the existing town centre retail offer, and provide enhanced public realm, new green links and active frontages.
52. NSP74 also sets out requirements on the form that high density redevelopment should take. The allocation provides that the redevelopment can include taller buildings, subject to consideration of impacts, and that development of buildings up to 20 storeys can be appropriate. The allocation states that taller development should be towards the east of the site. The suitability of the site for such taller and denser buildings cannot in principle be re-argued. The allocation was found to be sound and importantly to be deliverable.
53. Then, following the last failure (of a number) to meet the aspirations of the site allocation, Council officers sought the appointment of new local architects and agreed with the Appellant a design brief (May 2023) for the site. This set out the ambition to develop an “*iconic and transformative sustainable mixed-use development*”, and guided heights and set placemaking provisions that officers would wish to see.
54. It is self-evident that this planning policy and its brief are deliberately intended to significantly change the character and appearance of the area including to and in the setting of the Conservation Area.

Proposition 3: The appeal scheme complies with the plan-led approach to the site (and its consideration of the place of the allocation in and adjacent to the RLCA)

55. The proposal delivers a development which accords with the policy requirements for the site.
56. We will hear the design presentation shortly from the principal architects dRMM, which will detail the design of the proposals. This will illustrate the level of understanding of the requirements of the development plan and how these were curated alongside design officers in a way which met the requirements of the allocation and with which at that stage officers were comfortable in terms of heritage and townscape balance.
57. The scheme clearly meets the Council’s ambitions for the site. In short, the masterplan has been designed in response to its town centre location and to deliver the site allocation, height and massing has been located towards the east with no building higher than the 20-storey height indicated in the allocation, the scheme delivers enhanced permeability and high quality public realm, and the design has been focussed on positively responding to the designated and non-designated heritage assets.

Proposition 4: The objections raised in heritage and design terms are unfounded

58. The following themes arise from the evidence.

⁴ Including the bus station land, which is not included within the appeal scheme.

The Council's concerns are in fact very narrow

59. The approach to the great majority of the site has attracted substantial support from the Council. The Council's support in relation to many aspects of character and appearance is made clear in the officer report (CD 3.1). In the officers' own words:

- Extensive discussions have taken place with officers over the design for the site, including layout, access, tall building location, heights, and distribution of uses (paragraph 205).
- With regard to the locations of taller buildings, the Appellant has worked constructively with officers to provide views of the scheme, and the location of taller buildings would leave views of the head and shoulders of Jones & Higgins clocktower free from a clutter of buildings in the background when approached from the north and west (paragraph 209).
- There is a general acceptability as to the organisation of heights across the site, with no building above the 20-storey height limit set in NSP74 and the taller building located on the eastern part of the site to preserve the protected borough view (paragraph 210).
- The scheme has been shaped around views of Peckham (paragraph 211).
- Views from Peckham Hill Street would provide a layering effect as part of an evolving townscape, with a scale and calm architectural language that is appropriate (paragraph 212).
- The simple layout of the development would be permeable and would create routes and connections through the site, with a hierarchy of spaces and character areas informed by existing spaces in the Peckham area (paragraph 213).
- The distribution of massing to the west of the site would be lower and quieter than the east, and (other than buildings A, B and C, where the concern is height, not design) would respond well to the townscape and Conservation Area (paragraph 218).
- The height, scale and massing of the central blocks (G, H, J and K) and the podium blocks (L, M, N, P and Q) would generally be acceptable (paragraph 219-220)
- In the main, the proposed development complies with tall buildings policies, including policy D9 of the London Plan and policy P17 of the Southwark Plan (paragraph 225).
- The overall masterplan for the development would generally confirm with the urban design principles of the site allocation (paragraph 227)
- There would be a good level of permeability and legibility, and in general the massing would be appropriately distributed across the centre of the site (paragraph 227).
- There would be clear areas of activity and a variety of spaces which would complement the existing townscape of Peckham and add vibrancy and interest to a complex and mature existing townscape (paragraph 227).

60. The Council's residual concerns are deliberately narrowly drawn around the terrace of three buildings A, B and C, and a (belatedly added) concern in relation to the height of building L. The reason for refusal which was resolved should frame the Council's case at this inquiry reflects the narrowness of the residual concerns.
61. For the Council, it is important to note there are no complaints about the generality of the proposal or the way way in which over 770 homes in the blocks to which no issue is taken are provided as part of a development plan-led approach to transformational regeneration.
62. This absence of general objection and the associated conclusion that other parts of the proposal do not cause heritage harm is both correct, accurate and critical. The buildings which have been framed by the collaboration of officers and the Appellant, and which are not the subject of any objection, also establish a context within which the buildings which are in dispute fall to be considered.
63. Those who now represent elected members appear to have mislaid this part of the case altogether without any thought as to the consequence for this allocation.

The height, scale and mass of A, B and C

64. This issue is the Council's primary concern with the development at this inquiry. But it is right to note that such concerns only crystallised into likely objection when it became clear that 35% affordable housing was on any case simply not achievable.
65. It is ironic to note that it is in the area of proposed buildings A, B and C that the existing built development makes one of the more harmful contributions to the significance of the Rye Lane Conservation Area.



66. Three local architects with national reputations but also with specific understanding of the local area, namely Downen Farmer Architects (Building A); Feix & Merlin (Building B); and Jas Bhalla Works (Building C), were selected to work on the design of these buildings together with the principal masterplan architect, in line with the Design Brief.



67. Particular attention was given to the design of these buildings, given their existing harmful impact including collaboration with officers and rigorous testing against townscape views.
68. As will be explored in the evidence, the height, scale and mass of these buildings create a positive relationship with the non-designated heritage assets and the character of Rye Lane and the Conservation Area.
69. This part of the proposal sits in the Conservation Area which is what the courts have called an area designated asset. And the Conservation Area is large. The overall test for the identification of harm to the character and appearance of a CA is to judge the existing position and then to ask whether the proposal leaves the character and appearance unharmed (*South Lakeland Test*).
70. The courts have made clear that where a proposal, as here, makes a variety of impacts on a designated asset that when assessing the impact of a project on a heritage asset it is permissible to combine both the beneficial and the adverse effects *on that asset*. The courts have said this is “*not so much a balancing exercise as a realistic appraisal of what would be the net impact of the project on the asset, viewed as a whole and not partially*” (*Stonehenge CD 11.3*).
71. When considering the Conservation Area as a designated asset this is a particularly sensible position to take or else substantial positive impacts which form part of the net impact might

be left out of account. The heritage cases made against the proposal demonstrably fall into this error.

72. This “realistic appraisal of the net impact” is the approach that has been taken by the Appellant (and other Inspectors in CA cases) is urged on the Inspector here.
73. The Appellant’s case is that when examining the areas of significant enhancement across the Conservation Area as a whole compared with the existing identifiable harmful context then there is overall no net heritage harm caused to the Conservation Area.
74. In truth, and for the reasons set out elsewhere, the overwhelming scale of public benefits of the scheme would, in any event, outweigh any reasonably identified level of less than substantial harm even if such harm were to be found.

The detailed design of A, B, C

75. Great care has been shown by the three diverse local architectural practices who have successfully designed the three buildings.
76. Officers agreed with this. Officers’ opinion was that although there were concerns with height that the design of the A, B, C block had been successfully articulated and was coherent taking its cues from the historic shopfront and welcoming new routes through the site (paragraph 214 of the officer report). They praised the vertical framework proposed with tall ground floor shopfronts facing the street.
77. However, all of this is set aside at the inquiry (as it must, to establish that the proposal harms character and appearance compared to the existing contribution) and new concerns as to the detailed design are now raised. The alleged failure to reflect the scale and verticality of the A, B, C buildings misses completely the points recognised and curated in terms by officers over many months.
78. There is a notable inconsistency of approach by those opposing the development between the treatment of the existing façade and its scalar monumental depressing presence, which is much less articulated than the proposal, and the allegation that in terms of character and appearance the existing execrable condition is less harmful than that proposed.
79. An examination of the evidence and the architect’s presentation will explain how the proposal enhances the character and appearance of the area compared to its current state.

The height of building L

80. The Council’s allegations in relation to building L did not originally form part of officers’ recommended reason for refusal. This was a matter that was added subsequently through an addendum report. It says in terms which are simply as clear as they can be that the officer report identifies that townscape harm would arise from the height of the proposed Block L but concludes that it would not cause any heritage harm. The reason for refusal has been altered to reflect this.
81. The Council’s material concerns as to the height of building L are thus stated to be in relation to townscape only. The reason for refusal as amended quite clearly and deliberately does not raise heritage concerns re Block L as a reason for refusal.

82. Notwithstanding this, those representing elected members now allege setting harm to the Conservation Area which is said to result in an alleged upper end of less than substantial harm to the significance of the Conservation Area itself.
83. This allegation completely fails to grapple with the existing contribution of the site at this location to significance and the fact that the other buildings in this setting which are not judged by the Council to harm the Conservation Area.
84. The impact alleged (high end of less than substantial harm to the RLCA as a whole) is (outside the reason for refusal) based on a site which makes very little contribution to RLCA significance is patently and simply wrong. It is a useful benchmark of accuracy and sensitivity to impact, of the Council's witness.

The additional concerns raised by Aylesham Community Action group

85. The Community Group's allegations raise several further issues on character and appearance, which are not endorsed by either the Council or the Appellant's witnesses. In particular, the Group allege harm to a number of additional non-listed heritage assets.
86. In short, these additional matters which will be addressed in evidence do not found any reason to refuse permission. The design of the proposal, which crucially delivers the scale of change required by the Council's site allocation, has carefully taken account of these assets, and far from causing harm, in many cases improves on their appreciation of these assets.

3) The acceptability of retail floorspace loss in relation to impact on vitality and viability of the town centre

87. The existing retail floorspace on site (GIA) is 10,084.90 sqm, including the Morrisons store.
88. The proposal will provide 8,248.70 sqm of retail, including the replacement Morrisons and new drinking establishments, as well as 2,725.30 sqm of workspace (totalling 10,974 sqm of main town centre uses).
89. Officers rightly noted that the site allocation includes the bus station land. The reference in the allocation to providing at least the same amount of retail floorspace envisages and properly anticipates some of this retail use coming forward on the bus station land and its frontages. It follows that the requirement (which relates to the allocation site) is capable of resulting in no retail loss as part of the subsequent redevelopment of the balance of the allocation land. There is no allegation that the application should be refused because the bus station site is not yet ready to make its contribution.
90. Officers additionally and sensibly did not consider in any event that the quantitative nature of the floorspace proposed would lead to conflict with the site allocation. Officers noted that the retail floorspace provision proposed was, in part, due to the inclusion of floorspace for drinking establishments and workspace within the development, both of which officers considered "*to be positive and would introduce greater commercial diversity on the site*" (paragraphs 83-85 of CD 3.1).
91. Both of these factors mean that the terms of the allocation cannot be said to be breached by this proposal which is for part of the allocation site.

92. Members inexplicably disagreed with their officers on this issue and added this further reason for refusal, without any evidence of any material harm that would be caused to the vitality and viability of the town centre. They were invited to withdraw it but declined.
93. Overall, the development will deliver the ambitions of the site allocation and enhance the vitality and viability of Peckham as a Major Town Centre (as well as the viability, character and appearance as a result of the proposals).
94. As will be explored in the evidence, the retail and commercial offer has been a fundamental part of the proposals. This includes: the new active frontage, retail loop, additional footfall, a range of unit sizes (including small shops) and an offering which reflects modern retail trends. A business relocation strategy will provide support for existing small and independent businesses on the site, either through provision of space within the new development or provision of relocation support.
95. There will be no harm to the vitality and viability of the town centre. Quite the opposite. The development will deliver a demonstrable enhancement to the town centre.

4) The adequacy of affordable housing provision relative to any social rented and intermediate home local needs

96. Both the Council and the Community Group's case on affordable housing and viability is confused and confusing. Given this, there is a need in this opening and in public (and in addition to what has already been said) to set out some basic principles on viability that will apply to this and any other case in London because of the provisions of the development plan which cannot simply be sidestepped. We also touch upon the emergency document issued in the last few days by central government and the Mayor of London.

The policy

97. Planning viability is an objectivised test designed to ensure that the planning system secures the maximum amount of affordable housing that is viable in accordance with development plan policies and national guidance.
98. The planning system in London can only seek from a development the "*maximum level*" of affordable housing when judged against development plan policies.
99. The London Plan (see policy H5) part of the Development Plan sets out (for now) a threshold approach to the delivery of affordable housing where the threshold represents the default "maximum" and does not need to be tested.
100. It is, at the moment, a requirement of policy H5 that to follow the Fast Track Route, applications must meet or exceed the relevant threshold (see H5(B)). Thus, if you provide 35% or 50% affordable housing (the thresholds can be amended from time to time to reflect viability issues – and soon will have to be 20% as suggested) then no viability assessment is required and there will be no need for reviews. In other words, 35% (and soon to be 20%) is accepted even on the least constrained sites to always constitute the maximum provision.
101. However, the policy recognises that there will be cases where the threshold level is still not viable. Rather than burden these sites with a threshold level (35% or 50% or soon to be 20%), which would likely lead to non-delivery of housing overall, the plan pragmatically allows for lower levels of affordable housing or even no affordable housing to be provided,

through a viability tested route, if that can be shown to be the “*maximum level of affordable housing*”.

102. The Southwark Plan (policy P1) follows the same approach, similarly providing that developments must provide the “*maximum viable amount*” of affordable housing, and that the minimum amount of 35% is “*subject to viability*”.
103. Therefore, if a scheme is delivering the maximum level of affordable housing, as established through a viability assessment in accordance with both limbs of the development plan, then the policy of the development plan when read as a whole is complied with.
104. Accordingly, the fact that a proposed development cannot deliver 35% or 50% (or 20%) affordable housing does not mean that affordable housing policy is breached. As long as a development is delivering the maximum viable amount of affordable housing then in London, the policy is met.
105. This is a longstanding position which is extremely clear in London. There is no reason why these policies should not be applied to the circumstances of this case and elected members were told that this was the case (see paragraph 229 of the Officers report).
106. Most recently the Inspector in the Stag Brewery appeal decision (CD 11.1) had to interpret and apply this policy position. He did so with a clarity worth following. He first addressed the meaning of the relevant London Plan policies:

“158.Policy H5 requires applications to follow a viability tested route, requiring detailed supporting viability evidence. Schemes following this route must be subject to reviews at various stages, and through the viability assessment process the appellant should demonstrate that the proposal delivers the maximum level of affordable housing possible.”

107. He went on to find that the offer of 7.5% affordable housing within that scheme exceeded the maximum viable provision which was (as in this case) agreed to be nil and concluded that:

“174. As such, I consider that the proposed development provides the maximum possible amount of affordable housing at this stage... I therefore conclude that the development would have a positive effect on the local supply of affordable housing, and that it would not conflict with Local Plan Policy LP36, ELP Policy 11 and London Plan Policies H4 and H5, for the reasons set out above.”

108. When addressing the planning balance (see paragraph 198), the inspector then found that given the viable position was zero provision of affordable housing, “*substantial beneficial weighting*” should be attributed to the affordable housing which was being provided beyond policy requirements.

109. That is the correct approach. The Inspector should follow it in this case.

The site allocation and the appeal scheme

110. Site allocation NSP74, when adopted in the Southwark Plan, was specifically required to be deliverable in order to be a sound allocation. It did not set out or require a fixed

proportion of affordable housing. Neither did it suggest that an alternative method of identifying the “maximum level” of affordable housing was appropriate

111. The appeal scheme has thus been subject to the viability tested route. Both BPS (the Council’s advisor) and the Appellant have concluded that no affordable housing is viable. This is agreed. The Council’s and Community Group’s witnesses at this inquiry are clear that they do not seek to dispute this viability position.
112. Therefore, the 12% offer of affordable housing within the appeal scheme clearly exceeds the policy requirement for applications to provide the maximum amount (0%) of affordable housing in the circumstances of the development plan and its allocation.

The Council and Community Group’s position

113. Despite accepting the position that the maximum viable provision of affordable housing here is zero, and that therefore the offer of 12% within the appeal scheme exceeds policy requirements, both the Council and the Community Group assert that limited weight should be given to the viability assessment.
114. This is an irrational position to take in the circumstances of the development plan here. It is in direct conflict with the extremely clear development policy position and recent appeal decisions.
115. Moreover, the approach contended for by the Council and the Community Group would entirely impede any delivery of the site allocation.
116. Based on the very clear, and uncontested viability evidence, there is no reality in which a developer could deliver the site allocation incorporating 35% affordable housing now or in the foreseeable future.
117. The Council and Community Group’s irrational approach to this issue then infects their planning balance exercise. Mr Ibbott, the Council’s planning witness, quite remarkably in his proof (paragraph 9.26) dismisses the benefits of the appeal scheme because he says:

“In my view, all the benefits of the Development are capable of being achieved in a scheme that were otherwise acceptable in terms of: the delivery of the minimum 35% affordable housing; adequate provision of retail floorspace in the Town Centre (including small shops), and reprovision and assistance for existing small traders in the Aylesham Centre, without undue impact on the Town Centre’s vitality; and without unacceptable levels of less than substantial harm to heritage significance.”

118. This position is clearly internally inconsistent with his own evidence on the ability to secure 35% affordable housing and is irrational. There is no deliverable 35% affordable housing scheme and so to devalue the weight to benefits based on the assumption that there is, is an inappropriate comparison to make. In reality, the alternative to the current proposal would be no development on the site, An insistence on a minimum of 35% affordable housing will result in no delivery of the Council’s site allocation at all.

4) The overall planning balance, having regard to planning policy, any harm, or benefits

119. The appeal scheme complies with the development plan and should be approved without further delay (para 11 NPPF).

120. National policy is also firmly in support of the grant of permission. Even if any net heritage harm is caused, this will be comfortably outweighed by the overwhelming public benefits of the scheme. The delivery of the Council's ambition for the site brings with it more than sufficient benefits to outweigh any heritage or other harm. The underweighting of the delivery of 867 market homes as a moderate public benefit is a fundamental and fatal error.
121. This is the case whether or not the Council are able robustly to demonstrate a five-year housing land supply or relevant Housing Delivery Test score (they clearly, comically⁵ and unambiguously **cannot** do either, thus giving rise to the tilted balance in paragraph 11(d) of the NPPF, as applied by officers). London is a single housing market. There is both a chronic and a highly acute need for housing in London, along with a catastrophic drop off in development starts and completions. More homes of all tenure are needed to be delivered now. Substantial weight will be given to such delivery.
122. Moreover and yet a further presumption in favour of the grant, paragraph 125(c) of the NPPF now requires decision makers to give "*substantial weight to the value of re-using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused.*"
123. There is nothing which amounts to substantial harm in this case.
124. The alleged harms raised by the Community Group in relation to socio-economics are without merit. Increasing housing supply reduces pressure on housing prices, and if homes are not built, the pressure on house prices will continue to be exerted with negative social and economic consequences.
125. Pursuant to the public sector equality duty, the Inspector will need to have due regard to the need to eliminate discrimination, and advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. This is not a duty to achieve a particular result, but a duty to have regard to the need to achieve these goals. Officers considered that this statutory duty was complied with. The Inspector has comprehensive information before him to pay due regard to equalities matters, and can comply with this statutory duty in granting planning permission.
126. The planning balance points firmly points in the direction of a grant of permission. The delivery of this key allocated site should not be delayed any longer.

RUSSELL HARRIS KC

ANJOLI FOSTER

Landmark Chambers

⁵ The Council's Rule 6 statement relied on a 2021 assessment of land supply. Then the Council's planning proof referred for the first time to an "assessment" of 7.21 years, which must rank as the least robust assessment of 5-year land supply ever. It is not a robust assessment of anything. Then 4 days ago, we received a late note from the Council reducing their supply, even on their own case, from 7.21 years to 5.04 years. The Housing Delivery Target result to be released in early January on known and published figures will be in the low 60s reflecting the fact that delivery has very significantly fallen across London- see the Emergency Note.

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