

AYLESHAM CENTRE

APP/A5840/W/25/3366760

CLOSING SUBMISSIONS ON BEHALF OF THE LONDON BOROUGH OF SOUTHWARK

Introduction

1. The central purpose of the planning system is to deliver the right type of development in the right location. It seeks to do so through a plan led process that can identify opportunities to recycle and reuse land so that it delivers greater public benefits.
2. Where those choices are made, they involve a delicate set of balances. New development will result in change: economic, social and environmental. The extent to which that change will be beneficial will inevitably require a balance to be struck; where large scale change is proposed the balance becomes all the more important.
3. In Peckham, the Council has recognised the need to recycle and reuse a clearly underused parcel of land comprising the existing Aylesham Centre, Morrisons supermarket, a large open car park, a petrol station and a bus station. It has recognised the delivery of new development on this site can bring a range of public benefits. It has also recognised that this scale of change will need to be carefully managed, not least because Peckham is a special, but in many ways vulnerable, place.
4. The Council's position in this appeal is not to question the importance of delivering change at this site and the benefits such change would bring, but

rather to challenge the balance that has been struck in the particular proposals before this Inquiry. The allocation of the site for development in Policy NSP74 was on the basis not simply that development should come forward at all costs, but that it should come forward in an appropriate form and on appropriate terms. In that context, the Council identifies three clear problems with these proposals that justify resisting them and making sure that when change does come to this part of Peckham, it is the right change.

5. First, Peckham specifically, and Southwark generally, has an acute and enduring need for affordable housing tenure types. That means that every opportunity site where new housing can be delivered needs to make a material contribution to meeting that need. If it does not do so, the change which comes fails to meet a central purpose of the planning system, namely, meeting local housing needs.
6. Second, Peckham has a unique historic environment, being part of the series of villages in Southwark which are now town centres¹. It is not a carefully composed, nor particularly grand or elegant town centre. But it is rich with historic character which reveals a deep and powerful urban history. The way in which these proposals interact with that historic environment are therefore critical.
7. Third, Peckham's role as a town centre is defined by its diverse collection of retail functions many of which are small businesses reflecting Peckham's distinctive character, itself derived from its long history as a home to people of many ethnicities. This site, which forms part of a Peckham retail core established over centuries, is identified as a place to retain and grow retail floorspace so that it continues to play a proper role in supporting and enhancing the vitality of Peckham.

¹ Southwark Plan (CD4-02) paragraph 1, page 30.

8. These submissions will demonstrate that these fundamentals are not properly addressed in the appeal scheme, and that it is not an unrealistic ambition that they should be properly addressed. On each count the Council was entitled and remains correct to say more needs to be done. None of these submissions will challenge the proposition that significant change at this site is necessary, welcome, and in accordance with the strategy of the development plan and national policy. On the contrary, they will show that such change does not need to come at the expense of good planning; and that granting permission for these proposals is a long way short of good planning.
9. It is not the case that the bigger the scheme the greater the need for it to come forward at all costs. Rather, the bigger the scheme the more important it is that we get it right.

Affordable Housing Need

10. The essential facts on this issue are not in dispute. The proposal is to secure 12% affordable housing by habitable rooms, meaning the overall mix will be 790 market homes and 77 affordable homes. Whilst some parameters are disputed, the agreed position is that assessing viability in accordance with GLA guidance and Policy H5 of the London Plan, the scheme is shown to deliver a profit for the developer but at a level which is below the expected profit, meaning that no affordable housing can be provided whilst being “viable” for those assessment purposes.
11. The dispute is whether this is a complete answer to the reason for refusal. Mr Alston’s evidence is that this is necessarily a complete answer; that the out-turn of the assessment anticipated in London Plan Policy H5 is always determinative.
12. This is an oversimplified approach that elevates one part of one policy in the development plan well beyond its intended purpose. The Appellant is keen to

emphasise that the outcome under policy H5 is usually determinative and that the Council has not produced an appeal decision showing the contrary. But as the Inspector will appreciate, care needs to be taken in treating other appeal decisions as precedents. The Inspector must consider the evidence and submissions made on *this appeal* and should not accept the Appellant's invitation to infer that the same points could have been made, and were not made, elsewhere. The Inspector can also take comfort from a clear judicial finding that in particular circumstances it may be open to a decision-maker to conclude that permission should not be on the basis that the failure to provide affordable housing is "too high a price to pay" notwithstanding the outcome of a viability appraisal.²

13. The starting point of the Council's case is that the outcome of a viability appraisal is not determinative of the planning outcome. As a matter of principle that must be correct:

- a. Viability testing is just one part of the relevant development plan policies. Compliance with those paragraphs of particular policies plainly does not answer the question as to compliance with the development plan as a whole, or indeed as to whether other material considerations should indicate a different outcome.
- b. The development plan³ and the NPPF⁴ expressly recognise that the weight to be given to viability appraisals is a matter for the decision-maker. Those words must be given effect. Mr Alston wrongly suggests that they simply do not apply where the relevant development plan policies have embedded a viability test. That is obviously nonsense, because all up to date development plans contain viability tests.

² CD11.3 *Schneck v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 3335 (Admin) at [74]

³ Southwark Plan (CD4-02) Policy IP3, page 211.

⁴ Paragraph 59.

- c. Whilst the profit or loss of a particular development is generally irrelevant to planning, viability is relevant to planning for a particular purpose, namely, to ensure that beneficial development proposals are deliverable. The “true question”⁵ is not whether development is or is not economically viable, but what would be the planning consequences if the development were not viable. That is clear from the NPPF and PPG on Viability, as set out below, and moreover, is recognised by the Supreme Court.⁶ Where the evidence indicates that proposals are deliverable, then the weight to be given to an apparently different answer from viability testing needs to be approached with circumspection since it may not be relevant to planning.

14. Whilst Mr Alston finds himself ‘bewildered’ by the Council’s case, that can only be because he has not looked beyond the terms of Policy H5 and considered it in the context of these basic planning principles: (a) compliance with one part of one policy in the development plan is not determinative of compliance with the development plan as a whole; (b) even where proposals do comply with the development plan, other material considerations may nonetheless justify refusal; (c) the weight to be given to evidence on a particular issue remains a matter for the decision-maker, and the relevance of viability evidence is because it goes to deliverability.

The Development Plan

15. The Southwark Plan makes plain that the delivery of affordable housing is essential to planned growth in the Borough.

16. Despite improvements in the last decade, the Borough remains one of the most deprived in the country, particularly in the context of barriers to housing.⁷ The

⁵ Agreed by Mr. Levine and Mr. Alston in cross-examination.

⁶ *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council and another* [2010] UKSC 20; [2011] 1 A.C. 437, paragraph 59.

⁷ Southwark Plan (CD4-02), paragraphs 4-5, page 30.

Plan's strategic targets include: 'Aim to deliver 50% of all new homes as social rented and intermediate homes, with a minimum requirement of 35% (25% social rented and 10% intermediate) in planning applications'.⁸ Affordable housing is part of the first strategic vision of the plan.⁹ To that end, Policy ST1 sets as an overall strategic policy 'to enable a better quality of life for Southwark's diverse population'. Peckham is identified as having capacity for 1,370 new homes, of which more than 60% are at the Aylesham Centre and surrounding land.¹⁰

17. Policy SP1 sets a clear strategic policy for housing: "homes for all". The Council sets out to 'lead the way in London to build more homes of every kind in Southwark' and sets a target of 50% of all new homes as social rented and intermediate homes. This will be achieved by, amongst other things, 'encouraging developers to increase the provision of social rented and intermediate homes on sites beyond 35%'.¹¹ The supporting text makes crystal clear why this "upwards of 35%" approach resonates through the Southwark Plan:

'There are high levels of deprivation relating to barriers to housing and services across Southwark, this measures the physical and financial accessibility of housing and local services. Over three quarters of residents live in communities ranked in the 20% most deprived in England. This covers a significant part of the borough. When looking at the sub-domain that focuses on housing affordability, overcrowding, and homelessness 97% of our residents live in the 20% most deprived communities in England.'

18. Consequently, through Policy P1, the Southwark Plan seeks the maximum viable amount of social rented and intermediate homes, with a minimum of 35%, subject to viability.¹² In this respect, the Southwark Plan goes purposefully

⁸ *ibid*, page 34.

⁹ *ibid*, paragraph 1, page 44.

¹⁰ Southwark Plan (CD4.02) Table A, page 49.

¹¹ Southwark Plan (CD4.02) Table A, Policy SP1, paragraph 4, page 51.

¹² Southwark Plan (CD4.02) Policy P1, paragraph 1, page 106.

further than the London Plan which seeks up to 50% affordable housing, with a fast-track route for proposals involving at least 35%. In Southwark, even proposals offering more than 35% require viability testing to see if a greater percentage can be provided. Table 1 sets out a requirement of ‘a minimum of 35%’¹³.

19. This deliberate policy choice was scrutinised in the Local Plan examination in 2021 and found to be sound, based on evidence that the likely viable affordable housing delivery would be in the range of 35-50%. It is also a choice informed by the stark facts set out in the supporting text to Policy P1¹⁴:

‘Our Strategic Housing Market Assessment (SHMA) identifies a need for 2,077 social rented and intermediate homes per annum which is approximately 71% of Southwark’s total housing need. CACI Paycheck data confirms that 93% of households in Southwark have a household income that requires social and intermediate housing. There is a high proportion of residents that require some type of affordable housing, as such, we require social rented and intermediate housing to be provided on all developments, as either on site, as a priority in major developments, or contributions for minor developments.’

20. Policy IP3 paragraph 3 notes that the ‘weight to be given to a viability assessment will be assessed alongside other material considerations, ensuring that developments remain acceptable in planning terms’.¹⁵ Priority is given to the provision of affordable housing ‘due to the acute need for affordable housing delivery’.¹⁶

21. Accordingly, the Southwark Plan:

¹³ *ibid* page 107-108; The Appellant has fixated on a politician describing this as a “golden rule”. Members are entitled to express themselves as they see fit, so whether or not this is a “golden rule” does not really matter: the point remains that it is the “minimum” in the adopted plan.

¹⁴ See also the bar chart of income distribution in Figure 2, page 110.

¹⁵ Southwark Plan (CD4.02) page 212.

¹⁶ Southwark Plan (CD4.02) Policy IP3, supporting text, paragraph 3, page 212.

- a. Sets out a clear and unambiguous policy intent to deliver affordable housing;
- b. Expects delivery of affordable housing on all developments, but as a priority on major developments;
- c. Expects at least 35% affordable housing with no maximum and in doing so pushes beyond London Plan requirements to reflect Southwark's specific socio-economic challenges;
- d. Identifies beyond doubt that the significant majority of local housing need is in affordable tenure types;
- e. Consistently with the NPPF, notes that the weight to be given to a viability assessment will be assessed alongside other material considerations.

22. All of this is, and has been, assessed as being consistent with the London Plan. Policy GG4(B) seeks to 'support the delivery of the strategic target of 50 per cent for all new homes being genuinely affordable' and Policy GG4(C) seeks to 'create mixed and inclusive communities'.¹⁷ Policy H4 reaffirms the 50% strategic target and sets out some of the measures to achieve that aim including 'requiring major developments which trigger affordable housing requirements to provide affordable housing through the threshold approach'. Delivering more genuinely affordable housing is a 'key strategic issue for London'.¹⁸

23. As to the 'threshold approach', the reasoned justification explains¹⁹:

'4.4.4 Schemes are expected to deliver at least the threshold level of affordable housing without **grant or public subsidy** and to increase this proportion

¹⁷ London Plan (CD4.01) Policy GG4, page 22.

¹⁸ London Plan (CD4.01) Policy H4, Para 4.4.1, page 174.

¹⁹ *ibid* page 174-175.

through the use of grant and other subsidy, where available. Only where there are clear barriers to delivery and it is fully justified through detailed viability evidence, in line with the methodology and assumptions set out in Policy H5 Threshold approach to applications and the Mayor's Affordable Housing and Viability SPG, should a lower level of affordable housing be considered.

4.4.5 Given the extent of housing need identified for affordable housing in the 2017 SHMA, the delivery of overall housing targets should not be relied on as a reason for reducing affordable housing delivery or other policy requirements, subject to the approach in this policy, Policy H5 Threshold approach to applications and Policy DF1 Delivery of the Plan and Planning Obligations. In previous years where there has been a relaxation in affordable housing and other planning requirements this has typically led to higher land values, rather than an increase in housing delivery. Whilst the Plan sets out a clear approach for significantly increasing housing delivery in London, the London SHMA has identified that 65 per cent of London's need is for affordable housing. Therefore, it is crucial that residential and mixed-use development contributes directly towards the provision of affordable housing and other policy requirements that support the delivery of sustainable development.'

(emphasis added)

24. Policy H5(B) then sets out the threshold approach which initially sets 'a minimum of 35 per cent' affordable housing.²⁰ Under Policy H5(F), there is a 'viability tested route'²¹. Part (G) explains that where 'a viability assessment is required to ascertain the maximum level of affordable housing deliverable on a scheme, the assessment should be treated transparently and undertaken in line with the Mayor's Affordable Housing and Viability SPG'²². The reasoned justification explains:²³

'The aim of a viability assessment is to establish whether the proposed level of affordable housing and other contributions are the maximum that can be

²⁰ London Plan (CD4.01) Policy H5, page 176.

²¹ *ibid* page 177.

²² *ibid*.

²³ *ibid* page 180, paragraph 4.5.12.

reasonably supported or whether further obligations or a greater level of policy compliance could be achieved.'

25. Accordingly, the London Plan:

- a. Sets a strategic target of 50% affordable housing with delivery of affordable housing being a 'key strategic issue';
- b. Expects a minimum of 35% affordable housing and provides the viability tested route as an exception to that general rule;
- c. Sets the objective of the viability tested route to identify whether there are 'clear barriers to delivery' of the 35% minimum, and whether the proposals are the 'maximum that can be reasonably be supported'.

26. Taking the development plan as a whole, the priority to delivery of affordable housing is absolutely clear, together with the expectation that this will be at a minimum of 35%. That requirement has been found to be sound. The use of a viability appraisal to justify less than this minimum is countenanced, but as an exception to the rule. The overall purpose of viability testing is to show if there is a 'clear barrier to delivery' of the development plan's 'key priority' of affordable housing or whether a greater level of policy compliance could be achieved. The weight to be given to such evidence is a matter of judgment, having regard to the overall acceptability of the proposal in planning terms. Delivery of market housing is not a justification for failing to delivery affordable housing.

National Policy

27. The overall aim of the NPPF's policies on housing is to 'meet an area's identified housing need, including with an appropriate mix of housing types for the local

community'²⁴. The 'mix' referred to here is the 'size, type and tenure of housing needed for different groups in the community' including 'those who require affordable housing'.²⁵ On-site provision of affordable housing sits within an objective of creating 'mixed and balanced communities'.²⁶ The expectation for major developments involving the provision of housing is that 'the mix of affordable housing required meets identified local needs, across Social Rent, other affordable housing for rent and affordable home ownership tenures'²⁷. Plans are required to set a framework for meeting identified housing needs.²⁸ Plans should be 'aspirational but deliverable'.²⁹

28. In respect of viability, the NPPF states:

'59. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. 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, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning practice guidance, including standardised inputs, and should be made publicly available.'

29. The PPG on Viability develops this theme, explaining that the 'role for viability assessment is primarily at the plan making stage'³⁰, with policy requirements being set to generally avoid the need for further viability assessments at

²⁴ Paragraph 61

²⁵ Paragraph 63

²⁶ Paragraph 64

²⁷ Paragraph 66

²⁸ Paragraph 15

²⁹ Paragraph 16(b) and 36(b)

³⁰ Paragraph: 002 Reference ID: 10-002-20190509

decision making stage. Landowners and promoters should engage in the plan-making process and ensure that their proposals are policy compliant. At application stage, ‘it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment’³¹. The weight to be given to such an assessment is for the decision maker.

30. Thus, national policy makes clear that planning to meet housing needs means planning to meet the needs in a way which reflects the needs of the local community for affordable housing. The primary place to test viability is through assessing whether plan policies are “deliverable” and therefore “sound”. Viability testing at application stage is an exception to the general rule, must be justified by the applicant, and the weight to be given to the assessment is for the decision maker.

Viability and Deliverability Evidence in this Case

31. At 12% the proposed affordable housing provision falls well short of the development plan’s minimum requirement. It also demonstrably fails to meet identified local housing needs, of which 71% are for affordable tenure types, as assessed through the SHMA³². There is no suggestion in this appeal that the position is better now than it was when the plan was adopted.

32. The putative justification for not providing a more policy compliant scheme at or above the 35% minimum is the financial viability appraisal (FVA) carried out in accordance with the relevant practice guidance. The Council accepts that this shows that the allowable profit is not met even with no affordable housing provision. On the facts of this case, however, there are compelling reasons not to give this the full – and determinative – weight, as the Appellant invites the Inspector to do.

³¹ Paragraph: 006 Reference ID: 10-006-20190509

³² Accepted by Mr Alson on cross-examination.

33. First, and fundamentally, the output of the FVA does not show in this case what is deliverable at the site. The evidence on this is clear:

- a. The Appellant proposed to deliver 35% affordable housing when it made the application. The change in position was a 'commercial' decision³³. It was not because of a fundamental change in the FVA between July 2024 and December 2024.
- b. The Appellant expects to deliver the appeal scheme, notwithstanding that the proposed 12% affordable housing is more than what the FVA shows to be 'viable'.
- c. The Appellant has consistently proposed to deliver development at this site with an affordable housing level in excess of that shown under an FVA to be 'viable'. It has maintained that these proposals are deliverable, for example in July 2024 when it sought planning permission, and explained its reasons for believing that to be so.³⁴
- d. Mr Levine and Mr Alston accepted that the FVA (and Mr Levine's evidence to the Inquiry) does not show and cannot show the point at which the development would not be deliverable. Mr Levine's evidence was that he cannot see any developer delivering the scheme at 35% affordable housing, but the critical part of his evidence was as follows:

'Turney KC: [At] 35% you say no developer would bring a scheme forward. That's your evidence and that's as far as it goes.

Levine: It is.

³³ As confirmed by Mr. Levine during cross-examination by Hashi Mohamed on behalf of the ACA.

³⁴ Financial Viability Assessment (CD 1.23) paragraph 16.4 'Whilst there is a viability gap on a present-day basis, Berkeley has confidence in its own ability as an urban regeneration specialist to bring value and a placemaking premium to the development'.

Turney KC: But where that point lies between 12% and 35% we don't have any evidence, do we?

Levine: No. No. Not in front of you.'

34. Pausing here, the critical point is that the FVA is only relevant to the extent that it evidences that the scheme will *not be deliverable* at a higher level of affordable housing: that is the "true question"³⁵ for the legal relevance of viability to planning, but also abundantly clear from local (whether there is a 'clear barrier to delivery') and national (whether the proposals are 'deliverable') policy.

35. The bottom line is that there is no evidence that more than 12% affordable housing would not be *deliverable* in this development. The appellant believed 35% affordable housing to be deliverable in July 2024, and this Inquiry has heard no evidence as to where a deliverable scheme might sit between 12% and 35% affordable housing.

36. In the context of a development plan which seeks the maximum provision, up to and beyond a strategic target of 50% affordable housing, this is a clear reason for refusing the scheme.

37. Second, the evidence is that the position adopted in this appeal is an outlier, at odds with the assessed position under the Southwark Plan and with what has actually been delivered since the plan adoption – 38% of new housing being delivered as affordable³⁶. Whilst there is no doubt that the London housebuilding environment is particularly challenging at present,³⁷ the proposals here would lead to a radically different result from that which has been planned for, and which has been shown to be deliverable elsewhere in the Borough.

³⁵ *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council and another* [2010] UKSC 20; [2011] 1 A.C. 437, paragraph 59.

³⁶ Mike Ibbott Proof of Evidence (CD8.13.1) paragraph 5.12, page 32.

³⁷ As recognised by the Secretary of State and the Mayor of London in considering whether a new 20% fast track should be introduced. See "Homes for London" Policy Note dated 23 October 2025 (CD6.43).

38. Third, the scale and nature of *this* site justifies giving less weight to the output of the FVA process. This site is identified to meet over 60% of new housing delivery in Peckham up to 2036. It is a major plank of housing delivery in Southwark. Southwark's housing need predominantly lies in affordable tenure types. If this site is developed for 790 market homes, and just 77 affordable ones, there would be no realistic scope for it contributing to meeting the predominant type of housing need. In the context of Peckham this would be a decidedly unmixed, and unbalanced, community. When the development plan is read as a whole, together with the NPPF, it is plain that this would be an unintended outcome. The London Plan makes clear that delivery of market housing is not a reason not to provide affordable housing. This cuts across the Appellant's suggestion that the housing benefits of this proposal are just as weighty at 12% as if they were coming forward at the development plan minimum affordable housing level.

39. Whilst the Secretary of State and the Mayor of London are considering lowering the threshold for the 'fast track' in London³⁸, to encourage sites to come forward at 20% affordable housing, that does not alter the position here. The proposals are promised to be the subject of a consultation which has not yet commenced. The development plan is, and will remain, unchanged. Even if those changes were implemented, they would incentivise the delivery of 50³⁹ more affordable homes in this scheme, so they can scarcely be said to amount to an endorsement of what is before this Inquiry.

³⁸ "Homes for London: a package of support for housebuilding in the capital" (CD 6.43)

³⁹ A figure which Mr Ibbott was pulled up on by Mr Harris KC in cross examination, but which was then agreed by Mr Alston in his cross examination.

Heritage and townscape harm

40. Peckham's rich heritage is recognised in Southwark Plan's Peckham Area Vision: 'An area of heritage value, particularly in the conservation areas with many interesting Victorian, Edwardian and inter-war buildings, including Peckham Rye Station, and the Baptist church with the former Jones and Higgins department store at the heart of Peckham town centre' with development required to 'reveal and enhance Peckham's underlying historic townscape'. These proposals materially fail in this respect.
41. In light of the way the Appellant now puts its case⁴⁰, the Inspector must first establish what level of harm is caused to the significance of the Rye Lane Peckham Conservation Area by the existing Aylesham Centre. The Inspector must then assess whether the replacement of the Aylesham Centre with the proposed development would cause a greater degree of harm to such assets. If it would, the inexorable conclusion is harm to the significance of the Conservation Area. The same test can be applied when the other relevant heritage assets are considered.
42. The Conservation Area Appraisal describes the Aylesham Centre as having 'an indifferent character which does little to enhance the conservation area'.⁴¹ Mr Bevan's assessment concurs; the Aylesham Centre is uninspiring and its long façade with strong horizontal emphasis is a faint echo of the Victorian department store it partially replaced. Despite this modest reflection, the Appellant condemned the Centre in its opening submissions, describing it as a 'monumental, dead eyed, postmodern monoculture'. Mr Eldridge later described it as a 'clear and considerable detractor' in the Conservation Area, whilst acknowledging that this was a departure from the Appraisal. In her proof of evidence, Ms. Stichtenoth describes the Aylseham Centre as being of 'poor

⁴⁰ Arguing for an 'internal heritage balance' to justify a conclusion of 'no harm' to the principal designated heritage asset, namely the Rye Lane Peckham Conservation Area.

⁴¹ Rye Lane Peckham Conservation Area Appraisal (CD 6.01) at paragraph 4.4.3.

architectural quality’⁴², and in evidence at this Inquiry she used the words ‘very low architectural and urban design quality’.

43. These criticisms and hyperboles were not advanced in any documents before the exchange of proofs in September 2025. The purported heritage benefits of ridding Peckham of this apparent monstrosity were not mentioned at all in the HTVIA submitted with the planning application, and there was no hint that the view expressed in that document of ‘no harm’ to the Conservation Area was underpinned by a visceral and scathing critique of what thus far had been regarded as merely ‘indifferent’.

44. On the contrary, the Appellant initially sought to retain the façade of the Aylesham Centre in its proposed scheme, with drawings at the pre-application stage reflecting this design choice up until January 2024.⁴³ If the façade was as harmful as the Appellant now says it is, retention would never have been on the table, less still featured on the cover of the first four rounds of pre-application presentations.

45. Even once the Appellant moved away from retention of the Aylesham Centre’s façade, the scheme’s architects drew heavily on the Aylesham Centre in designing the rest of the scheme of the proposed development. Being reminded of this in cross examination appeared to be excruciating. Inspiration for colour choices was taken from the Aylesham Centre,⁴⁴ as were the arch motifs that feature throughout the proposed designs.⁴⁵ The Design and Access Statement clearly states that ‘the inspiration for the arch lunette motif [on building B] is taken directly from the existing Aylesham Centre.’⁴⁶ The Appellant draws on these features and extrudes them up in its designs, particularly in Block L,

⁴² Judith Stichtenoth Architecture and Design Proof of Evidence - Part 7 (CD8.08-7) page 131, paragraph 5.1.28.

⁴³ Pre-App Presentation (CD7.01-2) page 440; 455; 463; 495; 670

⁴⁴ Design and Access Statement Part 3 (CD2.04-03) page 79.

⁴⁵ Design and Access Statement Part 4 (CD2.04-04) page 122; 135; Design and Access Statement Part 5 (CD2.04-05) page 155.

⁴⁶ Design and Access Statement Part 4 (CD2.04-04) page 137.

where the whole design ethos seeks to achieve the lasting preservation of the Aylesham Centre's architectural attributes.

46. When questioned about this inspiration, Ms. Stichtenoth claimed the arch motifs were inspired by railway arches in the Peckham area. This point was made for the first time in her proof of evidence⁴⁷ and does not feature in any other written documents before the Inspector, including nowhere in the Design and Access Statement.

47. Similarly, the Appellant (albeit more through Mr Harris KC than his witnesses) sought at the last minute to 'call out' the harm to the Conservation Area from the low-lying expanse of the backland on which Morrisons, its car park, and the petrol filling station sit. In particular Mr Harris KC focused on the shopping centre service yard and its prospective resurrection as an amenity area as somehow turning harm to benefit, although in cross-examination Mr Alston accepted that he had not identified this area as delivering any heritage benefits at all.⁴⁸ As a general point, Mr Eldridge's evidence appeared wholly consistent with Mr Bevan's on this point. This area makes 'zero' contribution to the significance of the Conservation Area because it is 'neutral' in it. As Mr Eldridge accepted, the principal impact of the scheme in views which take in both the backland and parts of the Conservation Area is simply to prevent those views from being obtained at all.

48. All of this begs the question: if the Aylesham Centre and its surrounds was such a negative feature, a clear and considerable detractor, why has it been used so enthusiastically in designing the replacement scheme? Mr Eldridge confirmed that upon reading the Design and Access Statement he did not express any concern regarding the inspirations taken from what he described as a clear and considerable detractor. He also accepted that if the Inspector concludes that

⁴⁷ CD8.08-07 Paragraph 5.1.37

⁴⁸ He confirmed that his identified benefit was at the Morrisons North Service Yard, which will become "Peckham Yards".

the extent of the Aylesham Centre's harm to the Conservation Area has been overstated, then his conclusion of no harm to the Conservation Area falls away.

49. The answer lies in part in the nature of the evidence heard at the Inquiry. Although Ms. Stichtenoth spoke clearly and enthusiastically to her scheme, when challenged on various aspects she seemed far more hesitant. She willingly accepted that her evidence was 'marking her own homework'. Although evidence from the scheme architect can help to understand and explain design choices, it can never be an objective assessment of the impacts of the scheme on its receiving townscape. Ms. Stichtenoth's discomfort in seeking to explain the Appellant's newly formed case on the extent of the harm caused by the existing Aylesham Centre was apparent as she was taken to page after page in the DAS. For Mr Eldridge, an objective view might have been possible, but in truth he has been part of this scheme for longer even than Ms. Stichtenoth. The fact that he could not explain why his (now) reliance on an 'internal heritage balance' was omitted from his assessment in the HTVIA is perhaps the most telling evidence of a change of position.

50. The Council's position – through a truly independent expert in the form of Mr Bevan – is that this harm has, indeed, been overstated, and it is against this backdrop that the harm that would be caused by Block ABC and Block L ought to be assessed. The critical point is not that the existing Aylesham Centre is of particular architectural merit or that there is any case for its retention. Rather, that in latterly switching to a strategy of attacking the existing site as a conservation detractor, the flaws in the Appellant's assessment are exposed.

Block ABC

51. Peckham's transition from village to bustling multi-cultural suburb underlies the Rye Lane Peckham Conservation Area designation. The appreciation of this transition and its significance would be harmed by Block ABC, which would drastically alter the character and appearance of Rye Lane.

Height and Massing

52. Officers expressed concerns with the height, massing and alignment of Block ABC, stating that the proposals would result in a 'direct and enduring impact on the significance of the Conservation Area' by obstructing views of the Jones and Higgins Clocktower.⁴⁹ Although the Appellant repeatedly sought to gloss over this part of the report, the harm was clearly identified and the view was *in terms* the same harm identified by Mr Tsoukaris in his expert assessment of the application.⁵⁰ The Officers' Report continued that there was harm to the Jones and Higgins building 'especially due the discordant scale and massing' of Block ABC.⁵¹

53. The Conservation Area is characterised by buildings of two to four storeys⁵² and the Conservation Area Appraisal states that new buildings within the Conservation Area should be between three to four storeys.⁵³ It is therefore no surprise that Officers raised concerns when faced with a proposal that abruptly rises to seven storeys fronting onto Rye Lane.

54. The Aylesham Centre is subservient to the Conservation Area. It is low-rise and responds well to the neighbouring Clock Tower and the Bank Wing. At three storeys in height, it sits level with the lowest shoulder of the Clock Tower building. Block A would sit above this shoulder at a height of five storeys.

55. Mr Harris KC brought Ms Stichtenoth to the pre-application minutes from the 1 November 2023 meeting wherein Ms Jeater, the Council's Design and Conservation Team Leader, suggested seven storeys was too tall but five storeys with two upper storeys set back was a possible alternative.⁵⁴ What Mr Harris did not bring Ms Stichtenoth to is the minutes of the later meeting held

⁴⁹ Planning Committee (Major Applications B) Report (dated 7th July 2025) (CD3.1) paragraph 215.

⁵⁰ CD7.15.

⁵¹ Planning Committee (Major Applications B) Report (dated 7th July 2025) (CD3.1) paragraph 243.

⁵² Rye Lane Peckham Conservation Area Appraisal (CD 6.01) at paragraph 3.1.5

⁵³ Rye Lane Peckham Conservation Area Appraisal (CD 6.01) at paragraph 5.3.6.

⁵⁴ Pre-application Minutes (CD 7.02) page 68, paragraph 4.9.

on 21 February 2024 wherein Mr Tsoukaris, the Council's Head of Design, Conservation and Transport, suggested setting the shoulder lower at ground plus three storeys with the upper storeys set back.⁵⁵ This change was never advanced. The Council therefore maintains that the height and scale of Block ABC significantly harms the surrounding heritage assets.

56. Not only does the height and scale negatively affect the Clock Tower and Conservation Area as a whole, it also harms the Grade II listed 58 Peckham High Street. The skyline currently visible above the building will be entirely removed as is clear from View 10 Peckham High Street (north side, at Melon Road)⁵⁶:

Current view:



⁵⁵ Pre-application Minutes (CD 7.02) page 86, paragraph 2.16.

⁵⁶ HTVIA (CD1.27-2) pages 96 and 97.

Proposed view:



Building Line

57. The Aylesham Centre brought the historic Jones and Higgins upper storey building line forward. The proposed development not only repeats this mistake, it compounds it by increasing the height of the new building line from the previous three storeys, to five storeys. The result of this design choice is that views of the Clock Tower looking north-east up Rye Lane would be entirely removed. The Clock Tower would no longer be visible when one is standing outside the Grade II listed Rye Lane Baptist Chapel, and there would no longer be a relationship between the Chapel, and the locally listed Bank Wing and Clock Tower. That sense of connection would be lost. This key sequential relationship within the Conservation Area is visible in the historic view of Rye Lane from 1920, depicted in the HTVIA⁵⁷:

⁵⁷ HTVIA (CD1.27-2) page 23, figure 4.11.



58. The harm is most apparent when one appreciates the current and proposed versions of View 9 Rye Lane / Highshore Road in the HTVIA⁵⁸:

Current view:



⁵⁸ HTVIA (CD1.27-2) pages 93 and 94.

Proposed view:



59. The impact of Block ABC on this view is a function of its height and alignment. As Ms Stichtenoth accepted, the effect of the scheme is to remove a view of the Clock Tower for a long stretch of Rye Lane, from just south of the Baptist Chapel to beyond the current entrance to the Aylesham Centre. Moreover, she accepted that it was possible to retain that view. The Sheppard Robson scheme had done so by setting the buildings on Rye Lane back in order to create a 'new vista towards the clock tower', as captured in the below drawing:⁵⁹

⁵⁹ Pre-App Presentations Part 1 (CD7.01-1) page 144.



60. This set back was the prevailing design at the time the Design Brief⁶⁰ was written, yet nowhere in the Design and Access Statement does the Appellant grapple with the consequences of its decision to propose a building of the scale, height and position it does: losing the view of the Clock Tower from up Rye Lane, losing the relationship between three crucial heritage assets, and thereby harming the character and appearance of the Conservation Area.

61. Ms. Stichtenoth's written evidence contended that it would not be possible to deliver 850 homes within the NSP74 allocation with a three to four storey block on Rye Lane, she accepted in cross examination that this was an overstatement, since the change would result in the loss of between 26 and 40 units on the current floorplans. On the current proposals that would mean between 841 and 827 units on the application site, with the bus station readily capable of accommodating the balance. The critical importance of this point is that the harm caused by the Block ABC is avoidable.

⁶⁰ CD7.17.

62. Although the Appellant repeatedly sought to gloss over it, the clear identification of this harm was spelt out by Mr Tsoukaris in his expert assessment of the application⁶¹, and repeated in the Officer's Report:⁶²

63. A further issue with Block ABC's building line is the double storey retail plinth. This does not align with the first floor of the Bank Wing. It steps forward, thus harming a locally listed heritage asset and undermining its significance.

Fenestration/ Bays

64. Block ABC's façade, fenestration and bay layout is chaotic. It does not mirror or even respond to the character of Rye Lane. This is unsurprising, given that when Ms Stichtenoth was asked by Mr Harris what the windows on Block ABC reflected, she responded 'they reflect the internal layouts of a residential scheme'. This "inside-out" design approach does not align with the Conservation Area Appraisal, nor does it reflect good contextual design. Reflecting what is happening inside the building is not what Block ABC's façade ought to be doing. It should be preserving the character and appearance of Rye Lane Peckham Conservation Area.

Permeability

65. Mr Bevan was asked a number of questions in cross-examination regarding the concept of permeability as a heritage benefit. He maintained that while permeability may be an urban design benefit, it is not a heritage benefit. In any case, the introduction of two routes through the Rye Lane frontage would not be a heritage benefit, as this part of the Conservation Area was not permeable until the introduction of the Aylesham Centre arcade in the 1980s.

⁶¹ CD7.15.

⁶² CD3.1

Block L

66. Block L's excessive height would result in townscape harm and would be contrary to Policy D9 of the London Plan concerning tall buildings. Ms Stichtenoth claimed in her evidence that the proposed development steps down at its edges. Block L clearly does not do so. Its cliff-like form is not stitched into the wider townscape. There is no attempt at transition into built form, and the bottom two storeys would be used for cycle storage, offering no sense of activation or animation, a clear failing against Policy D9 which requires 'a direct relationship with the street, maintaining the pedestrian scale, character and vitality of the street'. Policy D9 continues that where, as here, 'the edges of the site are adjacent to... open spaces there should be an appropriate transition in scale between the tall building and its surrounding context to protect amenity'. There is no such transition between the open bus station and the cliff face of Block L.

67. Block L could be a welcome public face to the proposed development. Instead, as currently designed, it creates an impermeable and uninviting wall at the edge of the site, causing townscape harm.

Methodological Flaws

68. The Appellant does not identify any heritage benefits in its HTVIA. Mr. Eldrige explained that he conducted an internal heritage assessment, per *Stonehenge v Secretary of State for Transport* [2021] EWHC 2161 (Admin), but there is no evidence of this in the HTVIA. The HTVIA uses EIA language and judgments which are not appropriate and do not look at the aggregate impact of the harm to individual assets in the Conservation Area.

69. These methodological flaws have infected Mr Eldridge's conclusions on heritage harm. The approach taken means a thorough assessment of the significance of the Conservation Area, listed buildings, and non-designated

assets has not been conducted, and the impact of Block ABC on the character and appearance of the Conservation Area has not been robustly examined. Hence the difference in conclusions reached as between Mr Eldridge and Mr Bevan.

70. It is not until Mr Eldridge came to write his proof of evidence that he outlined adverse and beneficial elements which feed into the internal heritage assessment. One such adverse element is a low level of less than substantial harm to Grade II listed number 58 Peckham High Street. This harm is ultimately said to be outweighed in Mr Eldridge's assessment. He reaches the conclusion that Block ABC would have a neutral effect on the character and appearance, and significance, of the Conservation Area.⁶³

71. Internal assessment aside, a finding of heritage harm, regardless of whether it can be mitigated, results in a breach of Policy P20 of the Southwark Plan and Policy HC1 of the London Plan. Mr Alston accepted this point under cross-examination. The countervailing balance is simply not relevant to the question of development plan compliance.

A medium to high degree of less than substantial harm

72. Mr. Eldridge agrees that the Inspector must afford great weight to heritage harm, and that less than substantial harm does not mean a less than substantial objection to the grant of planning permission. He further accepts that views of statutory consultees should be given significant weight. Notable, in this regard, is Historic England's view of the proposed development:

'the overall height and distribution of tall buildings would have in an incongruous relationship with the more modest-scale and fine grain townscape along Rye Lane and Peckham High Street, from some location appearing as an enormous wall of development in the background of key views of the Rye Lane Peckham

⁶³ Lewis Eldridge Heritage and Townscape Proof of Evidence (CD8.10-1) paragraph 172, page 49.

Conservation Area. We consider that these impacts would cause harm to the conservation area's character.⁶⁴

73. Despite the Appellant's protestations to the contrary, as a matter of law the views of Historic England must be given 'great' or 'considerable' weight and the Inspector should only depart from Historic England's advice for 'cogent and compelling reasons'.⁶⁵

74. In another paragraph disregarded by the Appellant, Officers noted that there would be a high level of less than substantial harm on account of the 'monolithic design, sheer seven-storey scale and massing' of Block ABC.⁶⁶ Officers concluded that the design, scale and massing of Block ABC would fail to comply with Chapter 16 of the NPPF and Policy HC1 of the London Plan, as the character and appearance of the Conservation Area would not be preserved or enhanced.⁶⁷

75. Mr Bevan reaches a similar conclusion of medium to high levels of less than substantial harm to the significance of the Conservation Area, 58 Peckham High Street, the Clock Tower and the Bank Wing.⁶⁸ The Council invites the Inspector to reach the same conclusion.

⁶⁴ Historic England Post-Application Report (September 2024) (CD7.11) page 1.

⁶⁵ *Visao v SSHCLG* [2019] EWHC 276 (Admin) at [23]

⁶⁶ Planning Committee (Major Applications B) Report (dated 7th July 2025) (CD3.1) paragraph 253.

⁶⁷ Planning Committee (Major Applications B) Report (dated 7th July 2025) (CD3.1) paragraph 256.

⁶⁸ Robert Bevan Proof of Evidence (CD8.12) paragraph 7.4.8.

Retail

76. NSP74 states that redevelopment of the Site must (insofar as relevant):

- ‘Provide at least the amount of retail floorspace currently on the site’;
- ‘Diversify and complement the existing retail offer in the town centre, with new opportunities for a range of shop sizes, including suitable space to attract a variety of retailers to Peckham’

77. Having considered the Officers’ Report, the Council’s Planning Committee resolved that had the Appellant not appealed against non-determination, it would have refused the Application on the basis that the proposed development would breach these two requirements in NSP74, thereby resulting in harm to the vitality and viability of the town centre.

Floorspace Loss

78. There is currently 10,084.9sqm (GIA) of retail floorspace on the site. The Appellant proposes a reduction to 8,248.7sqm (GIA), resulting in a loss of 1,836.2sqm (GIA).⁶⁹ This equates to a loss of 18.2% of retail floorspace. In small shops terms, assuming the units are the maximum policy size of 80sqm⁷⁰. This floorspace loss would be equivalent to 22 small shops.

79. The further point to note in relation to the 1,836.2sqm (GIA) figure is that it is measured against what is referred to as “flexible retail”, which encompasses use classes E(a-g). One of the agreed planning conditions requires 75% of the floorspace earmarked for flexible retail uses to be restricted to use classes E(a-c). Accordingly, 25% of the remaining flexible retail floorspace could fall within use classes E(d-g), which account for non-retail uses such as recreation and fitness. Mr. Alston therefore accepted that the full extent of the potential loss of

⁶⁹ Table 5.1, Page 12, Statement of Common Ground (CD8.04).

⁷⁰ Policy P32 of the Southwark Plan defines a “small shop” as ‘A market stall or shop measuring less than 80sqm GIA in floorspace (excluding storage)’.

retail floorspace is not captured by table 5.1 in the Statement of Common Ground. There could be an additional loss of up to 953sqm (GIA).⁷¹ A loss of 18.2% is therefore a best-case scenario, with the worst case being a loss of 2798sqm, or 27.7% (roughly equivalent to 35 small shops at maximum 80sqm).

80. The CF Commercial Report dated September 2025⁷², commissioned by the Appellant, notes at paragraph 7.1 that 'there is new demand from different types of occupiers away from retail.' Further, at paragraph 7.1.2 there is said to be 'a change in occupier demand for the local area with F&B / Hospitality / Boutique Fitness occupier demand increasing'. The worst case in terms of quantum of floorspace loss therefore presents as the more likely state of affairs if permission is granted.

81. The Appellant's reliance on an increase in Main Town Centre Use floorspace is misleading. Policy NSP74 could have referred to Main Town Centre Uses, but it does not. This was a deliberate policy choice. What NSP74 requires is the retention of existing retail space, and this requirement is not met by the proposal.

82. The loss of retail floorspace must be set against the backdrop of Policy ST1⁷³ of the Southwark Plan which sets a target of 7,000sqm of new retail floorspace for Peckham Town Centre, and Policy ST2⁷⁴ which envisages an uplift in retail, leisure and community use floorspace (excluding education and health) of 7,139sqm for Peckham. Further, paragraph 4 of the supporting text attaching to Policy SP4 reads as follows:

⁷¹ 25% of 3,812.70, the proposed retail floorspace (excluding the supermarket).

⁷² Nicholas Alston Planning Proof of Evidence Appendices Part 1, Appendix B - Assessment of impact on town Centre Vitality and Viability (including Health Check) - Appendix B – CF Commercial Report Update (September 2025) (CD8.07-1), page 35.

⁷³ Southwark Plan (CD4.02) page 45.

⁷⁴ Southwark Plan (CD4.02) page 49.

‘Southwark has a strong hierarchy of town centres which are projected to increase by 76,670sqm retail floorspace between 2019 and 2036 (6,560sqm convenience retail, 42,130sqm comparison goods retail, 27,980sqm food and beverage). 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 and Canada Water.⁷⁵
(emphasis added)

83. To a similar effect, Policy AV.14 states that development in Peckham should ‘complement and improve the town centre with more large and small shops [and] market stalls’. Peckham’s vitality and viability is bolstered by the Town Centre’s robust retail function. The dilution of that retail function in floorspace terms warrants the refusal of this application.

Small and Independent Businesses

84. The result of the reduction in floorspace presented by the proposed development is exacerbated by the Appellant’s failure to align with Policy P32⁷⁶ and Policy P33⁷⁷ of the Southwark Plan.

85. The Appellant accepts that there are 2 existing small shops on site and 8 existing handcart operators which constitute small shops for the purposes of Policy P32. What the Appellant does not accept is that the businesses operating from “Market Place” are small shops. Under cross-examination, Mr. Alston described the question of the Market Place operators as a ‘grey area’. The Council refutes this reading of Policy P32. The Market Place operators meet the definition of “small shop” for the purposes of that policy. There is no relevant difference between the handcart operators who pay a licence fee to the Appellant, and the Market Place operators who pay a licence fee to Market Place, the entity. Policy P32’s definition of small shop does not distinguish

⁷⁵ Southwark Plan (CD4.02) page 61.

⁷⁶ Southwark Plan (CD4.02) page 161.

⁷⁷ Southwark Plan (CD4.02) page 162.

between licensees and sublicensees, nor does it refer to “units”. It refers simply to ‘a market stall or shop’ below 80sqm.

86. The existing small shops, the handcart operators and the Market Place operators all benefit from the protection in paragraph 1 of Policy P32, as they are all at risk of displacement from the proposed development. Paragraph 1 reads as follows:

‘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. (...)’

(emphasis added)

87. There is dispute between the Council and the ACA, and the Appellant, on the interpretation of paragraph 1. The Appellant has focused on the question of feasibility contained in the second sentence of paragraph 1 and has implied that this provides a gloss on the retention requirement in the first sentence. The Council’s position is that the difference in language used as between the two sentences - “must” in the first sentence and “should” in the second sentence – is crucial. The retention requirement is absolute. Support for this distinction can be found in the Court of Appeal’s judgment in the case of *R (on the application of Asda Stores Ltd) v Leeds City Council* [2021] PTSR 1382. Paragraph 36 of the judgment makes clear that “should” cannot be equated to “must” in that the latter is imperative, while the former is not.

88. Despite the imperative to retain small shops in the proposed development:

- a. The Appellant did not instruct CF Commercial to explore whether existing small shops would want to occupy space in the new development.⁷⁸ Mr.

⁷⁸ Nicholas Alston Planning Proof of Evidence Appendices Part 1, Appendix B - Assessment of impact on town Centre Vitality and Viability (including Health Check) - Appendix B – CF Commercial Report Update

Alston admitted under cross-examination that the Appellant had not established what the businesses needed currently, or in the future.

- b. The Appellant did not produce any evidence in the CF Commercial reports or elsewhere showing attempts to size or distribute the proposed units in a manner which meets the requirements of the existing operators. Mr. Alston also accepted this fact under cross-examination.
- c. It was only at the stage of the section 106 roundtable discussion that the Appellant offered to make space available for the handcart operators in the “Peckham Yards” portion of the development. Mr. Alston accepted in cross-examination that accommodating the handcart operators in this way would require planning permission, and he agreed that the provision for handcarts could have been designed into the scheme but that the Appellant decided not to do so.
- d. It was only in the final iteration of the section 106 agreement that the Appellant agreed to treat handcart operators and Market Place operators equally, by also offering the latter the opportunity to return to Peckham Yards.⁷⁹
- e. Still, there is no right to return for handcarts and Market Place operators, there is merely an opportunity to return that is subject to the Developer using reasonable endeavours to obtain the necessary consents.⁸⁰
- f. Market Place operators will not have a right to return to any food hall on a first come first basis, they will merely have an opportunity to contact a future lessor and express an interest in returning, on arm’s length market terms.⁸¹

(September 2025) (CD8.07-1), page 25, makes clear that the focus in terms of relocation of existing businesses is on large multi-chain operators.

⁷⁹ Clause 9, Part 5, Schedule 2 Section 106 Agreement.

⁸⁰ *ibid*

⁸¹ Clause 11.1.1, Part 5, Schedule 2 Section 106 Agreement.

89. Mr. Alston ultimately accepted in cross examination that the handcart and Market Place operators would only get an opportunity to return if the Appellant's reasonable endeavours were fruitful. He accepted this meant that the Appellant was not meeting the retention requirement in paragraph 1 of Policy P32, though he explained this failure to comply with policy was mitigated through adherence to Policy P33.

90. However, the Appellant also fails to align with Policy P33 in several important respects:

- a. The current version of the Business Relocation Strategy has not been written in consultation with the affected businesses.
- b. Paragraph 3(2) of Policy P33 states that temporary relocation arrangements or scheme phasing should be provided for to allow the continuation trading during construction. Many of the small shops and independent businesses will struggle to survive if there is a lengthy period during which they are unable to trade, yet no meanwhile locations have been identified or offered to them.
- c. Viable relocation options have not yet been identified, in accordance with paragraph 1.
- d. The Final Relocation and Small Shops Strategy secured by the section 106 agreement would only apply to operators that occupy any part of the Site at the date of the Planning Permission and continue to occupy any part of the Site at the date the Strategy is approved by the Council.⁸² If permission is granted, no operator who occupied the Site after that grant would be afforded protection. Additionally, as Mr Holloway pointed out on behalf of ACA, the existing operators benefit from monthly rolling licences only and

⁸² See the definition of "Local Independent Operators" in the section 106 agreement.

they could be removed from the Site by the Appellant before the final Strategy is agreed, leaving them with no protection.

91. It is ultimately not acceptable for the Appellant to rely on planning obligations to be secured at a future date, in a strategy not yet approved, in order to mitigate non-compliance with a clear and absolute development plan policy requirement to retain existing small shops.

92. Turning back to Policy P32, paragraph 2 mandates that at least 10% of floorspace in the proposed development will be provided as small shops. Despite this clear requirement, the Appellant's schedule of accommodation⁸³ identifies only five units that would meet the definition of small shop (195sqm total) and the Design and Access statement identifies a mere six (197sqm total).⁸⁴ Given that 10% of the proposed retail floorspace amounts to 381sqm (GIA) in this case, the designs only provide for just over half of the space required. Mr. Alston suggested that other bigger units can be subdivided in future, but the Appellant should have designed the requisite amount of small shops floorspace into its scheme from the outset. Instead, the Appellant merely relies on the definition of "small shop units" in the section 106 agreement as prescribing that 10% of the proposed retail floorspace be provided as small shops. The definition cross-refers to Part 5 Schedule 2 of the agreement, but no obligation to deliver 10% floorspace per Policy P32 is set out there, or anywhere else in the agreement.

Vitality, Viability, Diversification and Complementarity

93. If permission is granted, the Appellant's failure to comply with aspects of NSP74, Policy P32 and Policy P33, as already outlined, will result in harm to the vitality and viability of Peckham Town Centre, contrary to Policy P35 of the

⁸³ Accommodation Schedule (CD 2.03), page 3.

⁸⁴ Aylesham Centre Design and Access Statement (CD1.05), page 73.

Southwark Plan⁸⁵. It will also result in a breach of the requirement in NSP74 to diversify and complement the existing retail offer in the Town Centre.

94. Ms Gordon at paragraph 1.29 of her Rebuttal Proof of Evidence simply states, by reference to the Equalities Impact Assessment,⁸⁶ that specialist goods are offered elsewhere in Peckham Town Centre.⁸⁷ This ignores the purpose of Policies P32 and P33 which are intended to protect the business owners currently operating from the site, the majority of whom are from non-white ethnic backgrounds, and several of whom sell specialist goods.

95. Ms Gordon also overlooks the fact that the requirement to diversify and complement is linked to the retail offer of the Town Centre as a whole. Market traders and independent retailers, many of whom sell West African Goods, feature heavily in Peckham's existing retail ecosystem. The proposed development's retail offer, as evidenced in the CF Commercial Report from September 2025,⁸⁸ is generic and would not complement the existing offer. The Appellant intends to give commercial incentives to large multiples, indicating that the proposals are not specific to Peckham and do not appreciate the extent to which Peckham's small and independent retailers, including those in the Aylesham Centre, are the backbone of the Town's vitality. They are what make Peckham unique.

Planning Balance

Introduction

96. The Appellant has sought to draw distinctions throughout between the conclusions of Officers, and the reasons for refusal adopted by the Members. Whilst there are points of difference, they are in areas where Members are

⁸⁵ Southwark Plan (CD4.02) page 164.

⁸⁶ CD1.25.

⁸⁷ Sasha Gordon Rebuttal Proof on Socio-Economic Matters (CD8.26).

⁸⁸ Nicholas Alston Planning Proof of Evidence Appendices Part 1, Appendix B - Assessment of impact on town Centre Vitality and Viability (including Health Check) - Appendix B – CF Commercial Report Update (September 2025) (CD8.07-1).

perfectly well-equipped to make their own judgement. In respect of heritage impacts, there is no material difference when the Officers' Report is read as a whole, rather than with material sections omitted.

97. Moreover, the Inquiry has heard evidence on the planning issues from a hugely experienced and independent planner, Mr Ibbot. He has the benefit of having sat on both sides of the fence, in multiple senior local authority roles and latterly predominantly working for applicants and appellants.

98. By contrast, Mr Alston's evidence was clearly influenced by his admitted role as 'one of the leading advocates for the scheme'⁸⁹. His enthusiastic admission on this point suggests that his role as an expert is not properly understood: his duty is to make an impartial assessment, and absolutely not to 'advocate' for the scheme.

Housing land supply

99. In his written evidence, Mr Ibbott explained that one of the factors which tempered the weight to be given to the delivery of market housing on the Site was the fact that the Council could demonstrate a five year housing land supply. This is not a point which is concerned with the application of development plan policies to this case, but the extent to which market housing needs can be met elsewhere is plainly material to the weight to be given to the particular benefit of market housing delivery.

100. It has never been part of the Appellant's case that the 'tilted balance' applies. This seems to be a new point, dreamt up in the run up to the Inquiry, as a means of challenging the Council's housing land supply position.

⁸⁹ Cross examination of Mr Alston by Richard Turney KC. See to similar effect his answers to Mr Mohamed's questions.

101. As Mr Alston admitted in cross examination, this is not a case where paragraph 11d of the NPPF is relevant. His case is that the proposals accord with the development plan and that paragraph 11c applies. When asked which policies he would consider to be out of date under paragraph 11d, he pointed to Policies SP1 and SP2 of the Southwark Plan. He accepted that even those policies *were* to be treated as out of date, it would not lead to a different outcome. He said that the key point was the weight to be given to the delivery of housing.

102. It is in this context that the housing land supply dispute has emerged. In other words, nothing turns on whether the supply is just above or just below five years, because whether or not footnote 8 is engaged makes zero difference for either party's case. The further reason why this is not a point of significance is that, in any event, the appeal proposals cannot contribute to the five year supply. In other words, granting permission here will not add to the deliverable supply.

103. With that in mind, it is plainly unnecessary and inappropriate for a single conclusion to be reached on the Council's land supply position. As Mr Ibbott accepted, there are wider delivery issues and the new evidence from the Appellant indicates that some sites are affected by those issues, and he was content to give housing delivery 'significant weight'. The Council's published supply demonstrates a supply of just over five years and there is no good reason to depart from that conclusion, given it is not necessary to make a finding on this issue to determine the appeal.

Heritage

104. For the reasons set out above, the proposals would cause a medium to high degree of less than substantial harm to two designated heritage assets and further harm to a number of non-designated assets. The law requires that harm to the setting of a listed building or to the character and appearance of a

conservation area is given great weight and that it is treated as a primary and substantial objection to the grant of planning permission. That is particularly so in this case given (a) the level of harm (b) the significance of the asset and (c) the fact that much of the harm is avoidable whilst still delivering the site allocation.

Development plan

105. The starting point is development plan compliance. Policy NSP74 is the most important policy for the determination of the appeal. Whilst there is compliance with parts of the Policy there is a clear breach of the mandatory requirements ('must') to:

- a. Provide at least the amount of retail floorspace currently on the site; and
- b. Diversify and complement the existing retail offer in the town centre, with new opportunities for a range of shop sizes, including suitable space to attract a variety of retailers to Peckham.

106. NSP74 also recognises the need for 'careful consideration' to be given to important local heritage buildings, noting the site is 'also within the setting of a number of important unlisted buildings on Peckham High Street and Rye Lane, including Jones and Higgins Clock Tower and 43-49 Rye Lane'.

107. In light of the importance of the retail proposals to Peckham (supported by Policies ST1, ST2, SP4, and AV14) and the importance of Peckham's historic townscape (again supported by AV14), the non-compliance with these parts of the policy is sufficient to conclude that the policy is breached.

108. In respect of affordable housing, for the reasons set out above the level of affordable housing is inconsistent with the 'minimum' level of affordable housing sought in Policy P1, notwithstanding the provision of a viability appraisal under Policy H5 of the London Plan. When Policy P1 is understood

in the context of the strategic policies of the development plan (including London Plan Policy GG4, and Southwark Plan Policy SP1) and given the quantum of housing involved, this amounts to a conflict with the affordable housing policies of the development plan as a whole.

109. In respect of heritage harm, as Mr Alston accepted in cross examination the relevant development plan policies do not contain a weighting exercise. Harm to designated heritage assets – here, the Conservation Area and 58 Peckham High Street – is a breach of policy HC1 of the London Plan and Policies P19 and P20 of the Southwark Plan; and harm to non-designated heritage assets is a breach of Policy P21 of the Southwark Plan. There is also harm to the townscape, contrary to Policy P13 of the Southwark Plan and Policies D1, D4 and D9 of the London Plan. There is a further breach of Policy AV14 as a result of heritage harm.

110. The retail proposals cause further policy breaches in relation to Policies P32 and P33 and harm to the vitality and viability of Peckham Town Centre contrary to Policies AV14 and P35 of the Southwark Plan and Policies SD6 and E9 of the London Plan.

111. These policy breaches are sufficient to support a conclusion that the proposal is inconsistent with the development plan taken as a whole.

Other material considerations

112. The scheme does have undoubted benefits, but as Mr Ibbott explained, those benefits could be delivered through a scheme which meets the requirements of the site allocation, makes a proper contribution to affordable housing, and which avoids or minimises heritage and townscape harm. This necessarily tempers the weight to be given to benefits, as explained by Mr

Ibbot.⁹⁰ Nonetheless, significant weight should be given to the implementation of the allocation and the development of brownfield land. The provision of housing generally should also be given significant weight, as Mr Ibbott fairly accepted in cross examination.

113. However, against these factors, NSP74 gives a once-in-a-lifetime opportunity for Peckham which should deliver on the principal issues.

114. Affordable housing should be provided at a far greater level than proposed, particularly in the absence of any evidence that a greater level of affordable housing provision is not deliverable, and in the context of an application which was made with a commitment to 35% affordable housing.

115. Heritage harm – to which great weight must be given – can to a significant degree be avoided through a more rational and sympathetic approach to the key Rye Lane frontage.

116. There is no good reason for the scheme to fail on a key objective of providing at least as much retail floorspace as will be lost, and no good reason for the approach to Peckham's true retail character to be so ill conceived. The fact that the Appellant has scrambled to accommodate Market Place and handcart operators after hearing their compelling testimony on day on the first day of this Inquiry is illustrative of there being a better solution than the one presented by the proposed development.

117. Finally, the Inspector must have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The need to advance equality of opportunity is therefore an important material consideration. There can be no doubt that a scheme for the delivery of allocation NSP74 at 12% affordable housing and with a loss of retail floorspace, would be materially worse for

⁹⁰ Mike Ibbott Proof, paragraph 9.26 (CD 8.13)

advancing equality of opportunity than a scheme at the minimum of 35% affordable housing which retains all of the retail floorspace and makes provision in accordance with the other plan policies to ensure business continuity.

118. In cross examination, Ms Gordon accepted that the more effective the scheme was in retaining businesses, the better the s 149 objectives would be met. She also accepted that those in need of affordable housing are disproportionately those with protected characteristics. It is therefore self-evident that in respect of housing provision, a scheme with more affordable housing would better advance equality of opportunity.

119. These legal considerations underscore the basic proposition that significant change in a location such as this must be executed in the right way to ensure that benefits are truly delivered for the community.

Conclusion

120. For all the reasons set out above and in the Council's evidence, the Inspector is invited to dismiss the appeal.

Richard Turney KC
Louise McCormack

Landmark Chambers

17 November 2025