

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

**AN APPEAL IN RESPECT OF THE AYLESHAM CENTRE, RYE LANE,
PECKHAM, SE15 5EW**

AGAINST THE DECISION BY LONDON BOROUGH OF SOUTHWARK

BEFORE: Inspector M Shrigley BSc MPlan MRTPI

APPEAL REFERENCE: APP/A5840/W/25/3366760

RULE 6 PARTY CLOSING STATEMENT



Photo Credit: Aylesham Community Action, Peckham: 2025

INTRODUCTION AND SUMMARY

1. For all the many documents before you, Sir, the issues in this appeal are simple. Following two weeks' worth of detailed evidence, matters have further narrowed. There is even more clarity that consent ought to be refused.

2. In particular, it is now clear that:

2.1.1. From the **local voices** that came to speak before this inquiry, we have learned that this is the wrong development which ignores Peckham's and London's needs. Local traders have been ignored and ultimately the 'mind body and spirit of Peckham' will be damaged if consented¹;

2.1.2. This proposal has shown scant disregard for the allocation policy **NSP74** and how it sits in local, strategic and national policy. The proposals fail NSP74's own clear requirements, the 'indicative' 850 units is used to drive the rest of it, and all undermined by the lack of affordable homes;

2.1.3. On the evidence relating to **heritage concerns**, the Appellant requires the Inspector to find that the Aylesham Centre ("AC") is execrable² in order for their 'internal balance' argument to succeed. In reality, given the highly localised harm, the highest this can be put is that it of relatively poor architectural quality and is '*indifferent [in] character which does little to enhance the conservation area.*'³ The response from this development will be harmful, inconsistent with what the CA Appraisal seeks to achieve and ultimately an inappropriate way forward;

¹ Reverend Dean Pusey's impassioned contributions were clear and unequivocal

² In the words of RHKC: **synonym**: awful, terrible, disgusting, very bad.

³ CA Appraisal, paragraph 4.4.3

- 2.1.4. There are other harms to **heritage assets** beyond the CA which the Appellant has either downplayed or failed to assess properly or at all⁴;
- 2.1.5. On **townscape** evidence from the architect of the scheme, we learned that both the windows and the colour features in many of the scheme were directly inspired by the ‘execrable’ Aylesham Centre. Both the Council and ACA have identified townscape harms from Block L and other harms from tall buildings (ACA);
- 2.1.6. On **viability** and affordable housing concerns, the Appellant seeks to use viability processes to circumvent national and local policy requirements from this site. We know that whilst the appropriate guidance and narrow parameters in inputs have been adhered to, in reality this has been largely driven by the wrong type of development which uses viability to undermine the allocating policy;
- 2.1.7. **Socio-economic impacts:** the damage to Peckham will be significant and irreversible, including the high likelihood of increased rents, the displacement of small shops and small/independent businesses, and harms to its global majority communities;
- 2.1.8. On **housing land supply** position, the Council’s case should be preferred as demonstrating a 5YHLS position, meaning that the *tilted balance* is not engaged. In any event, this is not a development that will materially contribute to the numbers in the next 5 years if at all. The trajectory is highly ambitious and unrealistic;.

⁴ Including but not limited to the designated 58 Peckham High Street and the Baptist Chapel

- 2.1.9. On the ultimate **planning balance**, this proposal does not accord with an allocating policy in an up to date local plan. There are many material considerations to consider, and all weigh heavily against the proposal;
- 2.1.10. The overarching impression that emerged during the inquiry is a crystal clear social consensus from such diverse communities; a clear political consensus in the elected officials who stood up against it, and a united position represented in the case advanced by the Council and the R6.
3. As we close this inquiry, the Appellant needs to persuade this Inspector, in light of the evidence heard, that **(a)** the heritage harms to the RLPCA are clearly balanced by the benefits of the proposal in a ‘clear and convincing’ way; **(b)** that the development meets the overall aim of meeting Peckham’s identified housing need and policy NSP74’s core objectives; **(c)** that even notwithstanding the position on viability, the overall harms are outweighed by the benefits. This is quite a tall order.
4. It is worth taking a moment to reflect on this throughout these closings, but first it is worth turning to the context of Peckham and the community action group.

CONTEXT

5. The context of this appeal is perhaps the key overarching constant that must be kept in mind. It is about the story of Peckham and whether this scheme should feature in the next chapter. It is common ground between all the parties that this development represents one of the most important decisions for Peckham in a generation. It is not hyperbolic to observe that what makes part of the heart of Peckham beat will be stopped if this is consented. This special place, as you track its history through the CA appraisal and other texts, will never be the same again.

6. The Southwark Local Plan and NSP74 represent the collective wisdom of what is appropriate for this site, as examined only very recently, with all the compromises required to make it work. It is an opportunity to support the 93% in need of affordable housing. It is an opportunity to support the businesses providing culturally specific services to Peckham's diverse and inclusive ecology.⁵ The planning system is there to facilitate this collective expression by ensuring that policies are adhered to as closely as possible, mindful of all the relevant material considerations.
7. Crucially, any highly context specific and mandatory requirements must be adhered to as closely as possible, and any departures robustly justified by the Appellant. This is a matter of judgement for the Inspector. Instead, here we have the weaponisation of one part of the local and strategic London Plan focused on viability matters to undermine the rest. Reading the '*plan as a whole*' should not mean simply giving priority to those policies that favour your proposal, whilst either caveating or ignoring the rest. The word 'must' should be given the ordinary meaning intended by the policy. This is not what the planning system is about. This is not what our Inspector should be facilitating.
8. The people here are united in two fundamental factors: that this development should not feature in their future, but that something ought to be done about their dire present circumstances. The two are not mutually exclusive. The latter can only be achieved through a development that meets their needs – in terms of not only housing, but also retail, heritage and culture, and community as a whole.

⁵ CD 4.03, Southwark Plan, Table A, Policy SP1 supporting text: '*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.*'

9. From all the local councillors who spoke, to the Council in this case, the local people, the consensus against this proposal is unanimous. To consent this proposal would be contrary to all the aspirations of the people in Southwark as expressed in the SP.

MAIN ISSUES

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

10. The Appellant's case on this issue has been found wanting. The first proposition that they seek to establish is that the '*existing site **significantly** harms the character and appearance of the area **and** the Rye Lane Conservation Area.*'⁶ This proposition fails at the first hurdle and Mr Lewis Eldridge ("LE") accepted twice in both XX that if the Inspector does not accept this proposition, then the 'internal balance' assessment fails, and there will need to be benefits found to justify the harm caused in the planning balance. For the following reasons, the Inspector should reject this argument.
11. **First**, there is no evidence on which the Inspector is able to rationally reach such a conclusion. At most, the CA appraisal, the architect of this scheme, the documentary evidence right up until when the proofs were submitted, have always maintained that the harm from the AC on the CA is to a low degree: 'detracting', 'poor architectural quality', 'negative' and there is a consensus that a form of development to address this should come forward. The Appellant has accepted that the harms are limited to certain aspects of the design, largely scale and horizontality. In fact, the Appellant's architects clearly see positives in the AC too, having considered its partial retention, and having incorporated its colour and arch motif into its proposals.

⁶ See paragraph 38-47 of the Appellant's opening remarks.

12. It is in this context that the harm must not be overstated by the type of adjectives we've heard. It is unnecessary and unsupported by the copious amount of evidence. Stronger criticisms only appeared much later on as part of the Appellant's proofs; and the language offered by RHKC at the inquiry seems to be entirely his own overstating of the position, rather than anything put forward by the relevant experts. In this light, this inflation of criticism is revealed as a last-ditch attempt to conjure up a neutral effect on the RLPCA. Even then, the Appellant dare not go so far as to suggest there is a benefit; and this says nothing of the outstanding heritage harm to other assets.
13. The evidence from the **scheme's architect** runs counter to the Appellant's own rhetoric.⁷ If such rhetoric and arguments on the nature of this harm had credence, then Berkeley Homes would not have taken so much inspiration from the existing structure. If it was so ghastly, then why have they sought to incorporate its tonality into its buildings?⁸ They would not have incorporated the Aylesham Centre's distinctive arches as a motif, despite now seeking to suggest these were inspired by 'railway arches'.⁹ Most importantly, such criticisms *would* and *should* have been mentioned earlier in the application process given the heritage harm that's now claimed to be caused by the AC. The fact that these alleged egregious harms were never previously mentioned should allow the Inspector to draw his own adverse conclusions.
14. **Second, the scale of the AC and the size of the CA** as a whole should calibrate how the highly localised harm should be understood. LE accepted that the Inspector should have in mind the CA as a whole, and the fact that the 'negative elements' highlighted

⁷ Indeed Ms Stichenoch sought to distance herself from the opening statement by making clear that these 'are not the words' that she would use to describe the Aylesham Centre.

⁸ CD 1.05 – Design and Access Statement, page 79

⁹ CD 1.05 – Design and Access Statement, page 135

in the appraisal name a number of detracting features, of which the AC is only one.¹⁰ The list contains a number of detracting and negative elements which, together, cause some harm to the CA as a whole. And this makes sense. The Appellant seeks to elevate the harm of the AC, on its own, as being so harmful that it has the capacity to harm the CA as a whole.¹¹ This is plainly not right. By definition, as LE accepted, it can only be detracting and negative harm to that specific part of the CA it occupies.

15. These two points, on their own, are enough to displace their starting point. For all these reasons and the reasons contained in the evidence, the Inspector should reach the view that the harm is just negative and detracting. No one has sought to suggest that the AC *adds* to the CA. How could it when the Appellant has owned the site for many years and failed to adequately maintain the shopping centre. What was once a colourful and airy shopping centre is now covered in tarpaulin and neglected. Its removal will be positive, but alone is not enough to reach the view that it would amount to an internal balance when its replacement (and associated purported benefits) are thrown into the mix. At its highest, that would be, in line with the *Stonehenge* case, a neutral act.¹²
16. **Third, the improvements** extolled must also not be overstated. Whilst the Appellant relies on the officer's report that discusses the harm from the development being 'localised and focused'¹³, it must follow that any specific (if accepted) benefits can be characterised in the exact same way. LE accepted in XX any attempts to enhance the CA through the new development would need to be an appropriate response. We agree. And the CA appraisal specifically highlights that the 'opportunity' that exists to

¹⁰ See 4.4 of the CA Appraisal

¹¹ See Appellant's opening remarks

¹² CD 11.04, *Stonehenge*, para 195

¹³ CD 3.1, paragraph 255

redevelop the site needs to involve the centre, the car park site and the bus station.¹⁴ Failure to achieve all three, regardless of the reasons, is inconsistent with the appraisal's explicit indication of the appropriate response. Given the scale, massing and height of the buildings proposed, contrary to the CA appraisal, they fail to respect the prevailing building heights and dominate views out of the CA.¹⁵

17. **Fourth**, we have heard a great deal about the **permeability** of the development and how this will be a heritage benefit. If this is properly achieved, we agree that it would be a benefit (albeit not necessarily a heritage one), but – again – it should not be overstated. LE accepted that the idea of permeability is not a feature of this part of the CA, and in so far as it is, it is represented only by the AC and the arcade as it currently stands. And we agree with Mr Bevan that – at most – this would be townscape benefit but would not register as a heritage benefit.
18. Crucially, in order for such permeability to come close to registering in heritage terms, it must fulfil a number of functions, as highlighted in the CA appraisal. To that end, there is a need to demonstrate that the shops being proposed respond to the character of Rye Lane, namely *‘an area of low-cost shopping centre with a strong ethnic character, reflected in both its shops and churches..’*¹⁶ LE accepted that there was no evidence before this inquiry that could demonstrate the development responding to the type of character and needs specifically highlighted in the CA appraisal.¹⁷

¹⁴ See 4.4.3 of the CA Appraisal

¹⁵ See 4.5.3 of the CA Appraisal

¹⁶ See CA Appraisal, 3.4.4 – see overall 3.4 overall.

¹⁷ LE XX

19. This is precisely why the net loss of retail and the failure to have an adequate business relocation package, a strategy that ensures the character of Peckham is not erased, are all part of the heritage harm.
20. It is in this context that the evidence heard from **Mr James Rose**, the Aylesham trader in the food court, and **Mr Mamud Hossain**, one of the handcart traders, is central not just to the concerns of ACA, but the heritage harm that will come from this development.¹⁸ It is also perhaps telling that in innocent moments in the inquiry, such as the reference to Waitrose instead of the Morrisons, are instructive of the deep lack of understanding for this part of Peckham by the Appellant. Bringing us back to the words of the Reverend Pusey, '*whose Peckham is this?*', we should be highly sceptical when LE says this development seeks to respond positively to the 'distinctive feel' of Peckham, without telling us what he and his clients consider this to mean.
21. What we do know, though, is that it is not the Peckham that exists today, nor the one described in the CA appraisal where its long and eclectic history is recorded.

Other considerations

22. ACA does not seek to duplicate the evidence of the Council in relation to the impact on the CA and the specific views and vistas highlighted in the appraisal. It is worth pointing out that the preservation and perpetuation of the heritage in Peckham is a credit to the local community. Since the 1970s various local organisations and campaign groups have fought to protect the area.¹⁹ In the face of changing political priorities, the community has consistently asked: 'can we get this right for Peckham?' In this appeal, we ask that the Inspector do the same in making his decision.

¹⁸ CD 12.17 and other remarks not written down

¹⁹ CD 8.14- POE Hegarty, paragraph 3.3

23. To that end, there are other wider points to highlight which ACA considers have been left out of account by the Appellant on views and locally listed buildings. They include:

23.1. On the **Bussey Building**, there is a specifically highlighted reference in NSP74 to the need to '*minimise impact on the view to the city*' from its rooftop. This is because the policy is explicitly recognising it as part of Peckham's cultural townscape. The Appellants are unapologetically of the view that this is impossible if the scale of housing required is to be built – this is because they've decided to treat the 'indicative' figure as being mandatory and to be exceeded, even though the application site is significantly smaller than the allocation site. This is a poor response and shows no respect for the rest of the allocation.

23.2. As **VP 33** demonstrates, this publicly accessible location will have its view to the City completely obliterated, and any attempts to justify this by references the ability to have such a view 'glimpses' is an insult to our collective intelligence. This view will now be covered by a wall of buildings, and any attempts to 'minimise' the impact, if attempted at all, have clearly failed. The Appellant has instead chosen to 'maximise' the number of units to 867.

23.3. On **Peckham Square**, the Appellant treats it as a benign improved setting given the wall of development in the background. The square is a civic threshold into the CA, most notably embodied in the Stirling Prize winning library, where skyline openness and views towards historic roofscapes contribute to communal value.²⁰ VP 17 shows increased backdrop mass from mid-site blocks, further reducing openness and altering the composition valued by the CA appraisal.

²⁰ RLPCA, page 24, 3.5 – Sub Area 2 – Peckham High Street and Peckham Square

- 23.4. LE does not assess communal value and his conclusions ignore the experiential harm at this particular threshold. The confirmed guaranteed removal of the arch will only make it worse.
- 23.5. On the **Peckham Levels and the multi-storey** car park (Council-owned and registered as an Asset of Community Value), the impact is even more grave. As VP 31 demonstrates, the view from this location which contains Frank's café, an art gallery, important cultural places with a strong pull to Peckham, will now be experienced completely differently and negatively. The Appellant has failed to understand how the view is a key part of these spaces and their cultural, social and economic value;
- 23.6. RLPCA emphasises the **Jones & Higgins** clocktower's landmark role, clear sky to its silhouette, and the importance of the skyline openness in the staggered crossroads. Increasing backdropping is antithetical to that significance and cannot be a benefit within the appraisal's own terms.²¹ The Appellant's neutral/beneficial outcomes are inconsistent with the defined heritage values.
- 23.7. On the impact on the **listed and locally listed buildings**, there could not be a more different assessment between ACA and the Appellant. Ms Hegarty's evidence – which incidentally remains largely unchallenged – are contained in her assessment.²² Both NSP74 and SP26 capture the need to address impacts on locally listed buildings, and given the location of some of them in the CA, they clearly have a strong relationship with that designated asset. To that end, the

²¹ RPLCA, page 25, 3.5.7; and 3.6, *Views and Vistas*

²² See Hegarty POE pages 31-38

questions asked about, for example, the impact on the views from the CA on the clocktower, would equally apply to this most important locally listed asset.

- 23.8. Peckham's heritage is not found only in its buildings. It is found in how its buildings are used, in their known and unknown histories, and in the fluid and evolving sense of change that courses through its streets. Peckham's intangible heritage is innately interwoven with its tangible heritage, and to truly understand Peckham's distinctive heritage, you must understand the interplay between the tangible and intangible. LE accepted he failed to assess at all the latter.
24. **Sixth**, perhaps the most damning part to the Appellant's case relates to their failure to address the concerns of **Historic England**. Before delving into them, a few observations. Whilst HE's commentary on this site can be characterised as 'advisory', it cannot in reality be said to be a 'No Objection' letter. LE accepted this as much. The correspondence, which does leave the ultimate judgement to the Council, raises multiple and significant harms to the CA. These cannot somehow be explained away, and it is surprising that the Appellant fails to even mention the concerns in their openings, or indeed grapple with it in the evidence of LE and NA. It is also common ground that 'significant weight' should be given to HE's concerns.
25. Turning to what the law says about departure from a statutory consultee's comments, this remains exactly as stated by Counsel for ACA, although it would appear to be disputed by RHKC. Any attempts to seek to distinguish this case does little to assist the Appellant. The words of HE speak for themselves and they are directed to the same development.

26. To be clear, the current stated position of the law is as follows:

“In Shadwell Estates Ltd v. Breckland District Council [2013] EWHC 12 (Admin) Beatson J considered the approach to be taken when a decision maker considers the views of statutory consultees, and stated at paragraph 72:

72: Secondly, a decision-maker should give the views of statutory consultees, in this context the "appropriate nature conservation bodies", "great" or "considerable" weight. A departure from those views requires "cogent and compelling reasons": see R (Hart DC) v Secretary of State for Communities and Local Government [2008] EWHC 1204 (Admin) at [49] per Sullivan J, and R (Akester) v Department for the Environment, Food and Rural Affairs [2010] EWHC 232 (Admin) at [112] per Owen J. See also R (Jones) v Mansfield DC [2003] EWCA Civ. 1408 per Dyson LJ at [54].²³

27. In short, in order for this Inspector to depart from HE’s advice to the Council, to which he must attached ‘*considerable*’ weight, and which is now relevant to his decision, there would have be ‘*cogent and compelling reasons*’. None exist here. Pre-application advice was given to the Appellant by HE in April 2024²⁴, almost a year after the design brief had been completed and the architects began work on the development.²⁵
28. The clear advice was to reduce the scale, massing and height of the development. In September 2024, further advice was given to the Council in relation to the proposals and their likely harmful impact, including on height and massing, and the harm to be caused to the Conservation Area.²⁶

²³ [Visao Ltd v Secretary of State for Housing, Communities and Local Government, 2019 WL 00591176](#)

²⁴ CD 7.10

²⁵ May 2023

²⁶ CD 7.11, **Summary**: “However, we consider that the overall height and distribution of tall buildings would have in an incongruous relationship with the more modest-scale and fine grain townscape along Rye Lane and Peckham High Street, from some locations appearing as an enormous wall of development in the background of key views of the Rye Lane Peckham Conservation Area. We consider that these impacts would cause harm to the conservation area’s character.” (emphasis added)

29. In this context, what are the ‘*cogent and compelling reasons*’ for this Inspector to depart from the advice of HE? LE confirmed very clearly that,
- 29.1. There have been no material changes or updates to the development since these damning comments were received from Historic England;
- 29.2. HE were considering the same DAS from July 2024, as updated in December 2024, but the latter did not materially change the scheme;
- 29.3. The AVRs before HE are exactly the same ones as those before this inquiry;
- 29.4. HE did not dispute the principle of development, and were conscious of the requirements contained in NSP74;
- 29.5. HE identified an inordinate amount of harm and even described the development as a ‘wall’.
30. Bringing these elements together, there are no good reasons, still less any ‘cogent’ or ‘compelling’ reasons for this Inspector to depart from those comments. They are fatal to these proposals, which explains the ‘head in the sand’ approach from the Appellant. The fact that the scheme has been under the scrutiny at this inquiry does not displace the position, if anything it further underscores the level of harm that still persists and remains unaddressed. There are no reasons to depart from the position.
31. Finally, the suggestion that the **GLA** did not object to this scheme must also be taken with great caution. As their response demonstrates, they found ‘less than substantial’ harm to six heritage assets, some listed and some not – including a mid level of harm to the RLPCA.²⁷ What is also clear is at the time when their views were being canvassed, the full level of affordable housing was still on the table. It would also

²⁷ CD 7.20

appear that at least one of the viewpoints, specifically related to the Grade II 58 Peckham High St, was either not before them or they failed to assess it. Crucially, they do not offer any clues as to what the overall planning balance ought to be.

32. **In sum**, as we know, the NPPF 213 clearly states that any harm must have ‘clear and convincing justification’, as mirrored in policies D9 (LP) and P17 (SP). There is a clear consensus that the harms to be caused by this development will be harmful, intolerable and unacceptable. This consensus is contained in the evidence of the GLA, the Council, HE and ACA. LE accepted that he stood alone on the opposite side of that assessment. The Inspector’s ultimate conclusions are safer by sticking close to these conclusions.

VIABILITY – the adequacy of affordable housing provision

33. The fundamental difference between the Appellant and the Council/ACA is simple. The Appellant wants to give primacy to LP H5 and references to ‘*subject to viability*’ as the key, leading consideration above all else. They see the viability process as a free pass to override key planning questions: other relevant housing policies in the development plan and NPPF, the particular needs of the local community, and the commercial reality as to what can reasonably be delivered.
34. This is also in the context of an application which was submitted with an FVA purportedly demonstrating it was unviable, and yet sought to achieve 35%, only for this to be amended, on the same evidence, without justification. Either there was never any intention to honour such a promise or someone’s ‘poor decision’ means their competence is at large. Either way, this has drained trust in the system not just in this appeal, but all the forthcoming ones which will seek to rely on this decision if permission is granted. In any event, the following is now the position.

35. **First**, the starting point must always be the development plan adopted only three years ago, where an Examiner was clearly keen to ensure that the right level of affordable housing was to be provided.²⁸ The clear expectation and basis on which the plan was made sound related to the fact that the plan as a whole would be viable, that it was positively prepared and ultimately sound. Indeed, the Examiners said the following,

*“78. It is necessary, however, to amend the policy to provide clarity on the minimum proportion of affordable housing to be sought and the proposed 35% would provide parity with private rented schemes of less than 100 homes dealt with under Policy P1. **In light of the significant affordable housing need in Southwark, we find the minimum 35% figure to be justified and viable and so MM29 is necessary for effectiveness.** The modification would also helpfully clarify the proportions of affordable housing to be secured.”²⁹ (emphasis added)*

36. Three years later, the circumstances in Southwark and Peckham in particular, when it comes to the acute need, has only become worse. Peckham’s community has a disproportionate number of tenants in social housing, over 50%, and this is also correlated with vulnerable minority communities. We also know that the SP records that **93% of households** in Southwark have a household income that requires social and intermediate housing.³⁰ If this figure was further broken down to the Peckham level the likelihood is that it would be higher, if that is even possible! It therefore makes sense that NSP74, which should be read alongside SP1 and SP2 specifically, and uniquely asks for intermediate housing to be provided via a Community Land Trust.³¹

²⁸ CD 6.15, paras 11, 57, 66, 68-74, 75-84

²⁹ CD 6.15: Paragraph 78

³⁰ SP1, page 108, paragraph 2

³¹ See JH POE at paragraph 24 for the plethora of other policies offended

It is a fundamentally misleading reading of how these policies sit together to say that P1 and H5 simply override all the other policies and material considerations.

37. It is in this context that the viability process has been weaponised to advance a poorly conceived proposal that seeks to provide 88% market housing, in a climate where sales are down significantly for the type of tenure and mix being advanced. The 12% affordable housing on offer remains unexplained and unlikely to be delivered. This cannot, on any rational view, be said to be a scheme that seeks to deliver a ‘mixed and balanced’ community. It is insulting to say that 1 unit delivers a ‘mixed / balanced community’. Similarly, Mr Alston’s view – that 12% affordable housing, or even a single affordable housing unit for that matter, would satisfy the overall aim of meeting the local housing need, and would carry very substantial weight – is plainly ridiculous.
38. **Second**, the history leading up to this point raises more questions than it answers. In **July 2024** the original FVA claimed to be in deficit of £143m, even though Berkeley claimed then that despite the deficit, they have ‘*every confidence in its own ability as an urban regeneration specialist to bring value growth and a placemaking premium to the development.*’³² And on the wider market, the commissioned Savills report sought to demonstrate confidence in the market only last year.³³
39. The shortcomings of the FVA as submitted throughout demonstrates that, at best, the purported ‘reasonable maximum’ in reality is not 0%. We know this because an extra 12% is on offer and Mr Levine accepted that we have no evidence that this figure represents the ‘tipping point’ for delivery.³⁴ Mr Levine accepted that the ‘commercial

³² CD 1.23, page 4/276 and 16.3 and 16.4

³³ CD 1.23, page 48, Savills Market Report, Table 2

³⁴ This was the answer given to the questions posed by RTKC

view’ 12% sits outside the viability assessment and is not capable being considered as part of the ‘reasonable maximum’ in the way policy expects. This similarly cuts across the highly specific expectations contained in Policy H5 for transparency.³⁵

40. Mr Levine also accepted that, at most, Policy H5 of the LP is the only basis that it can be said that the ‘planning system’ cannot require anymore.³⁶ That may strictly right but it is not the end of the story. The reality is that the ‘planning system’ in this context is much wider and more comprehensive than one part of one policy across three major material considerations (LP, SP and the NPPF). Critically, beyond the FVA, Policy H5 (and its supporting text) contemplates seeking a greater level of policy compliance as part of any viability assessment and its application on a site.³⁷

41. The net result of this contrived process is that, contrary to the context set out above, Policy H5 is leveraged to bear down on policy requirements to say the scheme is policy ‘compliant’ within an objectivised process, blind to the various other relevant housing policies not being complied with. And yet, a wholly non-transparent offer is touted as being ‘policy plus’ *benefit* in the planning balance. This tension sits at the heart of this case and the lack of trust in the process. This is because an ordinary member of the public will struggle to understand how policies are being used to bear down on requirements, whilst still maintaining overall benefit in favour of granting consent.

³⁵ LP Policy H5(G), page 192

³⁶ There is also a crucial difference between whether the planning system can “ask for more”, and whether or not the scheme is acceptable on a planning balance – *Schneck* (CD 11.03) makes clear it is perfectly legitimate to hold, regardless of viability (i.e. regardless of inability to ask for more) that the scheme is too high a price to pay, particularly in the context of Peckham.

³⁷ LP 4.5.12 “...*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 reasonably supported or whether further obligations **or a greater level of policy compliance could be achieved.***” (emphasis added)

42. The affordable housing offered above the FVA/H5 level serves to show the limitations of this process and why *less* weight should be afforded to the FVA here. Frankly speaking, this is a subversion of the process and should be treated as an anathema to what the LP, SP and the NPPF seek to achieve. To endorse such an outcome would fundamentally undermine public confidence especially when it was on the basis of the July 2024 FVA that the initial consultation on this scheme took place. Particularly when as Mr Levine tells us, remarkably, that only ‘*some weight*’ should be attached to Berkeley’s initial application which contained said FVA.
43. Yet Mr Alston’s suggestion that policy H5 somehow affirms that *full* weight should be given to the FVA cannot be reconciled with paragraph 59 of the NPPF – clearly the Inspector retains full discretion and must have regard to “all circumstances”. The simple ‘commercial reality’ that the Appellant is offering a higher amount of affordable housing, and the detailed evidence from Mr George Venning highlighting the warping effects of the FVA process, reveal why it should be afforded *less* weight in this case.³⁸ The Appellant has failed to look beyond the FVA and so has not provided any evidence in response to these wider circumstances.
44. **Third**, by the time we arrive in **December 2024** and a new FVA is submitted, Mr Levine is being asked to argue against what his clients were seeking mere months before.³⁹ The Inspector is invited to draw negative conclusions from the fact that **(a)** the change in position is not adequately explained given market conditions had little to

³⁸ NPPF 59 does not seek to fetter the discretion, and makes clear that a decision maker should have ‘regard to *‘all the circumstances in the case including whether the plan and viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.’*

³⁹ CD 2.35, reducing the scheme from 877-867, change in unit mix, a reduction to 12%, developer still targeting 19.12% as realistic – see Sections 7.4, 9.2 and 10.1.

do with a scheme that remained unviable; **(b)** the endorsement of BPS means little given nothing had changed; **(c)** the ‘commercial decision’ remains unexplained; and **(d)** in all likelihood the intention was to promise 35% with no intention of delivering in order to secure local consent. This is a highly cynical way to engage with the planning process.

45. **Fourth**, the Inspector is invited to take the purported ‘risk’ of a commercial developer in this case with sacks full of salt. This is one of the largest housebuilders in the UK and a dominant figure in the London market. The site was bought in 2021 and owned outright by them, and they’re in the business of profit making. The AC has deteriorated in the intervening period. They have told us that they have confidence in their abilities to make this work. Indeed, there would never have been a purchase of the site without a realistic prospect of bringing it forward for an appropriate development. They have a contractual arrangement with Morrisons that they will have to fulfil and an allocation supporting their proposals. The notion that they are taking untold risk which should be rewarded by being spared policy obligations is, frankly, for the birds. In any event, while the Appellant’s financial position is irrelevant to the FVA and policy H5, it does not change the reality of the impact of the development, the overall aim of local housing need, and the need to deliver mixed and balanced communities.

46. **Fifth**, there are some poor decisions made by the developer on the scheme that have demonstrably meant costs have risen. Mr Levine claims in his POE that the **Morrisons** trading obligations is a significant cost that should be part of the equation. It is noteworthy that in both the July FVA⁴⁰ and Dec FVA⁴¹ this is not identified as such and instead explained only a cost of ‘*unlocking opportunity*’ and that ‘*without their*

⁴⁰ See for example, paragraphs 2.9-2.12, 3.4 of the July FVA

⁴¹ See for example, paragraphs 2.10, 3.27-3.28 and 6.1, 8.17-8.22 of the December FVA

agreement, there is no development'. Despite knowing the position on phasing implications as far back as July 2024, the Appellant now wishes to leverage this poor contractual position to undermine policy requirements to meet affordable housing. The Inspector should be wary about endorsing such an approach as this would only further encourage similar behaviour. And ultimately, the price will be paid by the people of Peckham.

47. Another poor decision with disastrous consequence relates to the **basement car park**. The July FVA mentions the 140 space car park but no rationale at all whether any other option was explored, and Mr Levine accepted there was no evidence to support the same. There has therefore always been an assumption that it was the only option available. In reality this was an expensive choice that is now – again – being leveraged against providing adequate affordable homes. The cost is said to be around **£29.5m** to be accrued in the first two years of the development, and no guarantee that in a further amendment to the proposal a cheaper and more efficient option could not be brought forward. To give an apt comparison of the lunacy of this figure, the agreed Benchmark Land Value between the Council and the Appellant is **£29.3m**. In other words, they are purporting to spend *more* than the sum they've agreed to have bought the land for on an underground car park. How does this make any commercial sense?
48. The other major change to which the Appellant refers in relation to viability is the **overall health of the housing market**. They point to the 'significant slowdown' in sales that has compounded the various challenges, including the risks to be borne by a developer. Again this is used as leverage to put pressure on affordable homes. None of this makes sense. The **Molior Report** from Q3 2025 was accepted by Mr Levine as representing the latest and best available evidence of the residential private market in

London.⁴² The document clearly links the lack of sales to a lack of buyers, meaning no construction starts, and that ‘prices need to fall but cannot’. So we now have an absurd situation where even the overseas buyers and second home investors (on which the Appellant has continually relied) have dried up and the market is seeking another potential bailout of some sort from the government.

49. The government cannot control the markets at all, so it is using the planning levers to give the developers an opportunity to avoid meeting their policy obligations. The recent announcements do not amount to a change in position no matter how much the Appellant seeks to emphasise them as such. In the hope that they will start building again. That’s despite the type of housing they do not wish to build being exempt from the lethargic and totally unsustainable market they’ve now created and desperately attempting to maintain. At most, the recent ‘emergency’ announcement is nothing more than the product of years’ worth of lobbying by Berkeley and other housebuilders. This is a pursuit of a means that has forgotten the end, abandoning the overall aim of housing delivery and the requirement for mixed and balanced communities.
50. It was on reflecting on these conditions that Mr Levine struggled to answer the question of when he precisely reached the view that ‘no reasonable developer’ would not proceed with this development. This is because given his involvement in the pre-app since 2022, Berkeley homes were always going to proceed in July 2024, on materially worse terms and circumstances.⁴³ The only answer offered being that ‘a commercial view’ was taken for internal purposes, without the transparency or scrutiny of external consumption. Not able to tell us the tipping point for the development’s deliverability prospects.

⁴² CD xxx

⁴³ See XX by RTKC

51. The Appellant will undoubtedly repeat its reliance on the recent appeal decisions at the *Stag Brewery* and *Cuba St*. We do not need to tell the Inspector that neither of these decisions are binding on him and they must be read on their facts and nothing more. In so far as it assists, the following observations are added. Both of these decisions did not place viability on a pedestal above all other policy considerations. They both required a careful balancing exercise of benefits vs harms which is what we are asking the Inspector to do in Peckham.
52. Neither of these appeal decisions fetter an Inspector's judgement and weight to attach to any particular part of any evidence base. The Courts have repeatedly told us that weight is firmly in the hands of a decision maker, only subject to an irrationality challenge. Indeed, we do not need the Inspector to explicitly find that a particular weight is required specifically to be attached to the FVAs in order for our case to succeed. All we ask is to understand how it sits in the wider framework of evidence.
53. In the *Stag* case the benefits were overwhelming; there was the delivery of a school, community use floorspace, a new boathouse for the local rowing club, a cinema, an office space where an actual need was identified, and financial contributions towards a medical facility. How does this come close to even comparing to this site?
54. On the *Cuba St* case, again this is fact specific and had fewer benefits to what was on offer at *Stag*. But the inordinate amount of harms raised in this case did not feature in that case. Indeed interested parties raised largely issues around congestion, access to services and the living conditions of residents.

Review Mechanism

55. What happens in the future on the issue of viability is hugely important for the community. The fact that we do not dispute the agreed position by the Council and the Appellant does not negate these points which speak to how we capture future benefits. To that end, viability reviews need to be comprehensive to meet the requirements of London Plan Policy H4 and H5⁴⁴ and the three issues identified below mean that the reviews as drafted do not meet this test.⁴⁵ Viability reviews will not provide the maximum viable amount of affordable housing if either the inputs to those reviews, or the arrangements for using any surplus profit arising from the reviews, prevent this happening. Given that the legal agreement no longer contains a blue pencil clause, ACA's concerns can no longer be cured, and therefore the issues identified below are highly material and necessarily fatal to these proposals. The three issues identified are:
56. **First**, fixing the finance rate at 8% does not allow an accurate assessment of viability as the scheme progresses.⁴⁶ This could result in unjustified costs being included that reduce viability and with that the effectiveness of the reviews. The review mechanism has no way of curing this concern.
57. **Second**, assuming a developer return on market housing of 20%⁴⁷, which is at the top of the range rather than in line with agreements on other similar schemes, presents a further hurdle to be overcome before additional affordable housing is provided through the reviews and so this further reduces the effectiveness of the reviews.

⁴⁴ Paragraph 4.4.3 of the London Plan

⁴⁵ As drafted in the UU dated 4 November 2025

⁴⁶ Definition of 'Updated Viability Appraisal' draft UU dated 4th November 2025

⁴⁷ Definition of 'Target Profit' draft UU dated 4th November 2025

58. **Third**, the adoption of a surplus share⁴⁸ of 50:50 provides the developer with a greater share of any super profit than that set out in either established guidance or precedent planning agreements. This again reduces the effectiveness of the reviews and reduces the number of affordable homes that can be provided if viability improves.
59. On **finance costs**, the Appellant adopted a figure of 8% finance costs in their FVA dated July 2024 when the Bank of England Base rate was 5.25%. Since that date the rate has reduced by 1.25% to 4% but the Appellant has not moved their position on finance costs at all. Again, these are not new points, they are just pointing out the obvious. Fixing the finance rate at 8% would simply serve to underestimate viability and so prevent the delivery of additional affordable homes within the Appeal Scheme if consent is granted.
60. As Mr Venning's evidence demonstrated, small changes in the finance rate impact significantly on the viability outcomes. On the current agreement, this will not be fixed. The FVAs submitted during the course of the planning application show that the difference in the monetary amount of finance costs between 7% and 8% is approximately c£5m.⁴⁹ **This is the equivalent to at least 12 affordable homes**⁵⁰.
61. A more equitable approach would have been to have a variable rate agreed at each review, and this is not on offer. It would also appear from what we heard from Mr Levine that this may have been acceptable to the Appellant. It is therefore our view, not being party to the agreement, that limb (b) should have been removed from the definition of Updated Viability Appraisal. This is no longer available.

⁴⁸ Definition of 'Surplus' draft UU dated 4th November

⁴⁹ DS2 FVA April 2025 assumed 8% finance rate and cost of £56,626,192; BPS FVA April 2025 assumed 7% finance rate and cost of £51,444,989

⁵⁰ Assuming a value difference of £413k

62. On the **profit** of market housing, a more suitable developer return than 20% would be 17.5% on GDV for Market 'For Sale' Housing in line with the s106 precedents set out in Mr Venning's evidence.⁵¹ out in the table at paragraph 4.17 of Annex C to Mr Venning's evidence (ref). Again, this is not part of these proposals.
63. As was stated at the inquiry, a figure of 17.5% return on market housing was agreed on two recent appeal schemes repeatedly referenced by the Appellant during this inquiry - Stag Brewery and Cuba Street.⁵² The Appeal scheme is not dissimilar to those in terms of risk profile to these two schemes. In the Stag Brewery decision at paragraph 167, the Inspector notes that '*the proposals carry a high degree of risk. The scale of the proposal, its waterfront location, heritage considerations and the complex phased construction and occupation are factors affecting the risk level*'. Cuba Street is a very tall building of up to 52 storeys on a constrained urban site.
64. A figure of 20% return on market housing is unusually high for a scheme in London. It has not been possible to find any examples of a figure of 20% in s106 agreements apart from those two schemes referenced in Annex C.
65. In his evidence to the Inquiry, Mr Levine confirmed the scheme would come forward on the basis that the FVAs showed an out-turn profit of between 8% (his position) or 15% (the Council's position). He confirmed that he was not aware of the Appellant's target commercial return. It is therefore not clear what would be a suitable target return to include in the s106 agreement from the evidence presented. Using precedent target

⁵¹ Paragraph 4.17 of Annex C to Mr Venning's evidence

⁵² In the s106 agreements for both Stag Brewery and Cuba Street, the figure of 17.5% is referenced in the Target Return and the Surplus share can be seen in the formulas. These are not before this inquiry and given the discreet points being made, it would be unnecessary to burden the inquiry with this information.

returns from s106 agreements to set the profit hurdle is therefore a more appropriate approach in this case.

66. To give the Inspector an understanding of the consequences of this, the impact of adopting a developer return of either 17.5% or 20% on the market homes is explained in our evidence.⁵³ We set out that on a current day basis, the target return is increased from £94m to £106m if a target of 20% on the market housing is adopted rather than 17.5%. A similar difference of £12m is shown in BPS Addendum Feb 2025.⁵⁴
67. The same table shows that higher growth will be required to meet a higher target return. Again, the consequences of this are worth keeping in mind. Because profit is percentage-based and this is then applied to the higher values generated by growth, profit based on 20% could generate an additional £20m for the developer before any additional affordable housing is provided compared to adopting 17.5%. The surplus profit shown in the table if 17.5% is adopted could provide approximately **40 additional affordable homes** assuming all of the surplus was used for that purpose.
68. On **surplus share**, the appropriate approach is well established in both planning guidance and through precedent s106 agreements. It should be remembered that a surplus share only applies to a ‘super profit’ generated above the agreed target return. The Mayor’s Affordable Housing and Viability SPG (2017) sets out that ‘*a surplus share is not typically appropriate for Early Stage Reviews*’ and ‘*for Late Stage Reviews the surplus should be split 60/40 between the LPA and developer with 60 per cent of surplus profit used for additional affordable housing*’.⁵⁵

⁵³ Paragraphs 4.8 and 4.15-4.16 of Annex C

⁵⁴ Profit @ 20% = £110,654,586 Profit @ 17.5% = £97,779,457 Difference £12,875,129m

⁵⁵ CD 5.02 – Paragraph 3.65

69. The Council's Affordable Housing SPD in Section 4.5 states that '*The council follows the GLA's guidance when conducting and imposing review mechanisms.*' The Mayor's SPG sits higher in this hierarchy and should therefore be given more weight than the Council's Development Viability SPD 2016 on which the 50:50 surplus share split on all reviews may be based.
70. There are also numerous precedents for adopting the approach set out in Mayoral guidance. On all of the s106 agreements referenced in our evidence, 100% of the surplus on the Early Stage Reviews is retained by the Council.⁵⁶ For all of the Late Stage Reviews a minimum of 60 per cent of the surplus profit is by the Council for additional affordable housing. This is missing for this scheme.
71. The **surplus share** should therefore be as follows:
- 71.1. For the Early Stage Review 100% to the Council
- 71.2. For the Late Stage Review 60% to the Council and 40% to the Developer.
72. There is no adopted policy position in respect of Mid Stage Reviews but they are envisaged in the London Plan as being as a chance to deliver additional on-site affordable housing and so are more like Early Stage Reviews.
73. Where there were a **Mid Stage Review** in the s106 agreements referenced at paragraph 3.17, the following approach was taken:
- 73.1. Stag Brewery – two Mid Stage Reviews with 100% to the Council
- 73.2. New Barnsbury Estate (46% affordable housing) - 75% to the Council.

⁵⁶ Paragraph 3.17 of Annex C of Mr Venning evidence

74. ACA's view has always been that the surplus share on the Mid Stage Review should be 100% to the Council in line with Stag Brewery. It is not. If this is not accepted then the surplus share should be no less than 60% to the Council in line with planning guidance on Late Stage Reviews. The impact in terms of the delivery of affordable housing on the surplus share is explained in para 4.17 of Annex C. Obviously if the Developer was to retain a 50% share, then the reduction in affordable housing and the increase in Developer profit would be even greater.
75. **In sum**, overstating the finance rate and target return alongside arrangements for a surplus share that is not in line with Mayoral guidance would mean the reviews cannot be considered comprehensive and so would be contrary to policy H4 of the London Plan. The approach would reduce the amount of money available for providing additional affordable housing on review if viability improves and instead provide the Developer with an unjustified surplus profit contrary to Paragraph 10 of the PPG on Viability which states that *'In plan making and decision making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission'*⁵⁷
76. In light of the choices made by Berkeley Homes, the review mechanisms are insufficient and this is another factor which weigh heavily against these proposals.

⁵⁷ Referenced at paragraph 3.20 of Annex C to Mr Venning's evidence

SOCIO-ECONOMICS

77. In **Peckham** and **Southwark**, deprivation indices still map a hard truth: general deprivation remains visible in overcrowded and insecure housing, long waiting lists, and the everyday arithmetic of low incomes that do not stretch to rising rents, childcare, or heating.⁵⁸ It must be borne in mind that the shocking statistics for Southwark will be even worse in Peckham. These pressures do not fall evenly. Intersectionality matters, because Black and minority ethnic families, migrants, disabled residents, young renters, and single parents experience layered disadvantage in the labour market, in access to stable homes, and in the chance to build assets in their own neighbourhoods.⁵⁹
78. Despite this, it is only fair to acknowledge that some regeneration has begun to shift the dial in places, which in many ways is what is baked into NSP4's ambition; i.e. the right mix of homes, the improvement of public spaces, unlocking employment and training, and raising the standard of new homes, responding to the right type retail floorspace to meet local need. But its promise is fragile when affordability thresholds exclude local people like this scheme seeks to do, or when displacement shadows every crane on the skyline.
79. The test is whether regeneration actively reduces deprivation rather than relocating it: delivering genuinely affordable, quality homes, helping to secure living-wage jobs and apprenticeships for residents, protecting social infrastructure, and putting communities in the room where decisions are made. What Berkeley Homes are seeking to do here is the complete opposite. What they seek here is erasure and the cleansing of the community and everything that it stands for. What they offer may be attractive to

⁵⁸ The evidence of Dr Jelali appended to Mr Holloway's evidence is commended to the inquiry

⁵⁹ See Jed Holloway's POE paragraph 17-28

investors and those seeking second homes, but there is no real measure of progress for local people, no pathway to stability, dignity, and belonging.

80. As the GLA Housing Research Note⁶⁰ makes clear: *“The geographical distribution of market-rate housing supply matters. If it is focused only in low-income areas it can lead to localised increases in prices and rents in those areas (while still improving affordability elsewhere), if the impact on demand resulting from improvements in local amenities and services outweighs the impact on supply”*⁶¹.
81. While the notion of ‘*improvement*’ is a disputable term here – likely coming from the perspective of wealthier shoppers – it seems the retail changes proposed would meet the criteria. This research, and the data from CBRE highlighting above-average rent increases in regeneration areas reveal the likelihood that local rents will increase (for both residents and businesses).⁶² This will place a further strain on an already financially precarious community and risk indirect displacement. As usual, Ms Gordon’s response is to quibble with methodology and not provide a clear response. Consequently, the scheme fails to meet the policy requirements to improve places for local communities (SP ST2), supporting existing residents and local businesses (SP SP2), and enable people to remain in their homes for longer (SP SP5).
82. In this context, you have **Ms Gordon** on behalf of the Appellant not even grappling with the most stark statistic relating to people’s incomes (**93%**) or the particular socioeconomic realities of Peckham, instead seeking to deal with this as an intellectual exercise canvassing different views from economists. She dismissed Dr Jelali’s well-

⁶⁰ CD 6.11

⁶¹ CD 6.11 - Paragraph 1.6

⁶² CD 9.04 and 9.05

researched and cited evidence as an ‘emotional’ appeal. It is why you have **Mr Alston** boldly and incredibly stating before the inquiry ‘*deprivation does not necessarily correlate with housing need*’ and proudly asserting on his professional profile that he’s in the business of leveraging his clients’ assets (i.e. the AC) and the planning system is simply a sharp tool towards that endeavour.⁶³

83. Ms Gordon’s evidence does not even come close to grappling with Peckham’s circumstances let alone how this development will exacerbate the situation by seeking to provide a development in which 93% of Peckham’s residents will not be able to afford, in which 88% of it will be importing need outside of Southwark and most of London, and whose local businesses will face the biggest disruption to their commerce lives in a generation. In an area where in the last census the population has decreased by 3% and schools closing due to the fall in birth rates. Perhaps the most shocking understanding of what it means to be a ‘*mixed and balanced*’ community was captured by Ms Gordon telling the inquiry a mere 2% is enough to reach the threshold.

84. Ms Gordon was prepared to accept in XX that the African heritage goods and services businesses based in the town centre form a unique and significant part of the local economy.⁶⁴ And yet her evidence lacks the basic curiosity to connect the people who live in these areas, many of whom lack the basic security to have a secure home, to the cheap retail offering and commercial uses that they rely upon, the kind of shops that rely on these customers, and how ultimately this redevelopment will snuff this out. It

⁶³ Quote: “*His expertise is focused on using the planning system to add value to his client’s property assets and to unlock development opportunities.*” Mr. Alston may have changed his profile summary online now to give lip service to community matters, but we already know where his instincts have always been. And no amount of online profile editing will help him now.

⁶⁴ CD 4.02, The Southwark Plan 2019-2036, page 98

will do this by introducing a wholly different demographic, not provide the housing that's needed locally, introduce town centre uses that are only going to price out local businesses and all the associated impacts. This is missing in the Appellant's analysis. Ms Gordon also fails to understand the extent that the businesses onsite provide specialist goods or otherwise serve Peckham's diverse communities. Her approach takes an overly restrictive and simplistic view and fails to understand how Peckham's ecosystem of mutual support. For example, Pak's halal butchers, run by a man of South Asian heritage, also expressly supplies Nigerian and broader African goods.

85. All this may have been an intellectual exercise for Ms Gordon whose sole role was to advance the benefits of market housing for a developer she considers is deserving of a profit. But the reality that Berkeley meets in Peckham is not one they can wish away, or seek to build an island of tall buildings that are unaffordable for local people in a context of disproportionate need generating substantial socio-economic impacts.

86. **In sum:**

- 86.1. The public sector equality duty pursuant to section 149 of the Equalities Act 2010 is not a procedural nicety, it compels our Inspector now to consider, and act upon, the distributional effects of this regeneration on protected groups, including the removal or minimisation of group-specific disadvantages. The Appellant, through Ms Gordon's evidence has failed to do this. It explains away the impact on "non-white" businesses as "small in the context of the high street as a whole", but this is an illegitimate approach to the duty, needs to consider the impact on each individual affected. The Appellant relies on alternative space elsewhere but has not tested its viability or suitability (noting in particular the huge barrier of fit-out costs). The reliance on availability in Elephant and Castle

is entirely speculative and ignores the reality of mass displacement there resulting from redevelopment – all the more egregious since some of the handcart traders *were already displaced* from there. As this duty cannot be delegated, we submit that this lack of evidence is fatal and would render it unlawful to allow the Appeal;

86.2. On any objective measure, social, economic, environmental, it does not meet local need that present in a disproportionate manner: what RTKC aptly described as the impact nexus of a poor community by every measure;

86.3. This view is one that is shared by both the Council and the GLA⁶⁵;

86.4. This is in the context of a developer who very much specialises in delivering financial uplifts with confidence, and who could also do a great deal to tackle these issues⁶⁶; and there is no alternative economic modelling presented at this inquiry to demonstrate that such an endeavour is unachievable. Ultimately what this amounts to is who gets the benefit from uplift, and whether the local community is included or simply shut out;

86.5. A scheme that improves an area's built environment but leaves original residents—particularly those sharing protected characteristics—no better off, or worse, unable to remain, fails that duty in spirit and in substance. Therefore, a first-order criterion is whether outcomes for existing residents improve, disaggregated by protected characteristics, without disproportionate displacement. The Appellant has failed this.

⁶⁵ See CD 3.1, page 137

⁶⁶ CD 1.23

87. In sum, in socio-economic terms, this scheme fails multiple local and national policies, including **LP GG1, GG4, SP ST2, SP1, SP2 and SP5, NPPF 8, 61, 90 (a) and (c), 96 (a) and (c), 98 (d)** to name but a few. A lack of viability cannot justify these failings (and therefore harms of the scheme), and no amount of comparing Mortlake in Richmond to Peckham in Southwark assists the Appellant's case.

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

88. It was on the first day that the Inspector heard from Mr James Rose, an Aylesham trader in the food court say, '*there is no Market Place, we are Market Place.*' He explained in a shaking emotional voice how this development and how it has come forward represents a 'cultural setback for the community'. Contrast this with the evidence of Mr Alston for whom the loss of retail floor space is nothing more than a numerical exercise. Contrast with the way they have persistently refused to include even two small shops into their calculation until the last possible moment, and still fail to give Mr Rose and his fellow food vendors the full support they are entitled to. This captures the core of how this proposal and the damage it will cause should be best understood.
89. The context in which this issue ought to be assessed is pretty clear. It is common ground that there will be a net loss of retail floorspace from this development, which is in direct conflict with the express requirement contained in NSP74.⁶⁷ The policy seeks to prevent this loss and implicitly and seeks an exceedance of the minimum that's currently on site, especially when one considers the express reference in the SP supporting documents that retail uplift targets "will mainly be accommodated" through the AC and two other shopping centre sites⁶⁸.

⁶⁷ NSP74 is in mandatory terms and states to provide '*at least the amount of retail floorspace currently on site.*'

⁶⁸ Paragraph 4.72 of CD 6.34, as referenced at paragraph 35 of Mr Holloway's proof

90. The total reduction is substantially greater than the Appellant suggests, after accounting for the loss of the atrium space and the potential for a large proportion of the flexible space to be used for workspace and other non-retail uses.
91. There is no evidence base to suggest that there is a specific need for workspace in this location; none is mentioned in the site specific requirements and the Appellant has failed to provide any evidence specific to Peckham, relying instead on vague commentary about high streets in general. Mr Alston accepted⁶⁹ that retail does not mean offices by any measure (whether in Use Class terms or otherwise). Based on the Appellant's own evidence, Peckham town centre is 'demonstrably healthy', with its "unique character", "diverse convenience retail offer" and "extensive provision of independent retails, including those selling specialist goods" all being highlighted as its strengths⁷⁰. The Appellant also notes a low vacancy rate (11% as compared to the national average of 15%).⁷¹ Finally, the Appellant's indirect reliance on potential compensatory retail to be provided on the bus station by some phantom development is unsupported by evidence, and overlooks the site allocation requirement relates to each development, not the site allocation as a whole.
92. Against that backdrop, we are now in a position by the end of this inquiry to understand the following very clearly. **First**, there is an explicit acceptance that a mandatory requirement of NSP74 to meet or exceed the baseline is failed, and the proposal does further damage by proposing a substantial net reduction. Mr Alston accepted that the failure to meet the mandatory requirements would necessarily attract a higher order of

⁶⁹ In answer to RTKC's questioning in XX

⁷⁰ Paragraph 3.26 of Appendix B to Mr Alston's proof (CD 8.07-1)

⁷¹ Alston POE, Part 1, page 39/300

harm, especially given that the ‘must’ suggests a higher expectation that they will be met. He also conceded that failure to meet them will require a stronger justification.

93. **Second**, Mr Alston does not appear to have to grapple with some essential details sitting behind NSP74’s highly specific request in relation to this. The first relates to the need to prevent the loss of existing retail floorspace is directly related to the core aim of sustaining Peckham’s distinctive, independent retail character that the history of this town shows and as captured in the CAA. Why else would a policy be so prescriptive about this particular element? And the absolute loss of retail floorspace, combined with the small/independent traders serving diverse, low-income communities, fundamentally undermines the core aim of this part of the policy’s prescription. This is why this breach is particularly egregious.
94. **Third**, to treat Market Place with all the trading businesses under one roof as, in the words of Mr Alston, as just ‘one shop unit’ and nothing more speaks to the fundamental misunderstanding of what is at stake. It ignores the character of Peckham where you can walk through one frontage unit and meet multiple shops selling many goods and services. It also ignores the clear definition of small shops in the SP.
95. **Fourth**, the Appellant is distorting the need to ‘diversify and compliment’ the existing retail offer into a justification for the net loss of retail floorspace and back-door justification of failure to meet policy. There is no justification for the type of uses they wish to introduce, there is no evidence base to support the workspace being offered. The only conclusion to reach is this is part of the overarching aim of not seeking to preserve what makes Peckham special, but rather uproot and displace.

96. **In sum**, the net loss of retail floorspace, contrary to NSP74 and SP Policy 35, is more than likely going to weaken Peckham town centre's vitality and viability by reducing footfall, narrowing the business mix into a homogeneous few, and ultimately increasing the risk of vacancy. This is all contrary to what local and national policy intend.

Small Shops and Business Relocation

97. **SP32** is exacting on the approach to be taken to small shops. In mandatory terms it makes clear that small shops 'must' be maintained where they are at risk of displacement from a development. Additionally, a full consideration of the feasibility of providing affordable and suitable space for existing occupiers is required in the completed development. Like for like replacement or bespoke terms are needed as part of this.
98. The final proposed s106 agreement drafting offers a 'right to return' for the two bricks and mortar small shops and for the handcart traders. However, this is undermined by the lack of temporary relocation onsite (as required by SP P33(3)), the high chance the businesses will not successfully temporarily relocate offsite, lack of support with fit-out on their return, and the lack of consultation to ensure the spaces offered is actually affordable or suitable for them. For the handcart traders, there is no offer of a reduction below market rent. In the latest version of the S106 we understand that the 'right to return' is available to accommodate in Peckham Yards but this is still heavily and subject to 'reasonable endeavours.'
99. The Appellant refused to offer anything for these businesses until very late in proceedings, despite these points being flagged months ago – and what they are offering now still falls short of policy requirements. The testimony from Mr Rose and Mr

Hossain on the first day highlighted the lack of any meaningful consultation to date. All of this speaks to a lack of care for not only these businesses, but also Peckham's identity, such that the Appellant cannot be trusted to deliver for these businesses. Where there is any uncertainty in the s106 obligations, the worst should be assumed. The Appellant's express preference is to pivot towards higher end occupiers, ostensibly to 'diversify' and elevate the offer, but in reality it is part of a wider strategy to push out long established businesses relied upon by a community that desperately needs everyday low cost offers. To be absolutely blunt about this, the Appellant's real goal is to create a new commercial landscape that appeals to wealthy investors; this is because to them the existing businesses are an inconvenient blocker on that goal. This is the context in which to read much of their legal drafting.

100. Further, there have been no proper feasibility studies undertaken to assess these risks. There has been no real attempt to grapple with the concerns raised. And ultimately, contrary to the policy, this will damage consumer choice within the town centre from the range of shop unit sizes currently provided. As the scheme's architect accepted, there is no evidence of any of the scheme's shops will actually cater for Peckham's existing residence, or that they will be affordable to business owners currently in situ.⁷²
101. To leave this for another date, on what is a full application, is to abandon choice, to leave the community at the mercy of a developer who has not demonstrate any real intention to serve their interests.

⁷² See the Reasons contained within P32, page 161 of the Southwark Plan

102. **SP33** should also be read alongside P32. Again, this is another policy that is worded in mandatory ‘must’ terms: the Appellant must provide a business relocation strategy, written in consultation with affected businesses, and which must “set out viable relocation options”. The Appellant has similarly failed to meet these criteria.
103. It is accepted that displacement won’t occur for some years, and so flexibility to adapt to change is needed. But that does not justify a lack of a robust strategy at this stage. And the level of uncertainty that persists in the short term cannot be overstated. The only way to get a realistic assessment of the likelihood of viable relocation in the future would be to consult with businesses and test at present, and in particular **(a)** what those businesses want, **(b)** whether there are viable relocation spaces, and **(c)** whether the proposed package will lead to successful relocation. None of this has been done, leaving no evidence to suggest that this will be sufficient at the time of the decision.
104. On the contrary, there is substantial evidence to suggest that it will not be sufficient: the evidence from Latin Elephant (both their Relocation Impact Assessment⁷³ and oral evidence from Ms Sarah Goldzweig⁷⁴ reveal that a similar package, albeit with a substantially larger relocation fund per trader, led to many businesses being permanently displaced. Some of those businesses quoted fit-out costs *over four times higher than the total amount being offered in the present case*.
105. This lack of evidence and testing must also be considered with regard to the public sector equality duty.

⁷³ CD 9.03

⁷⁴ CD 12.11

106. To give an apt comparison, the fund set aside for the relocation is c.£200k, around £8k for each business. This is less than the amount the Appellant will spend under the cycle hire docking station contribution. And as Mr Holloway explained the wording of the provided in the legal agreement are clearly carefully crafted to make it as difficult as possible to enforce, and as easy as possible to ensure that return is nigh impossible for anyone who survives this process. Existing Retail BMTs only have a “*right to request that they return*” (assuming they can survive in the meantime); any offer of Affordable Retail space comes at the cost of Affordable Workspace, excludes fit out costs, and is only offered for 5 years (falling short of the P35 requirement to provide Affordable Workspace or alternative affordable space for 30 years).
107. This is really crucial when one keeps in mind the thrust of the policy clearly states, ‘*Small and independent businesses are more vulnerable than larger companies and multiples and are unlikely to have the corporate resources available to seek specialist advice on relocation and mitigate the risks to the business. This places disproportionate burden on small enterprises and may affect the overall viability of their business...*’⁷⁵ This is precisely why getting this right now at consent stage is critical to all of them.
108. We strongly associate ourselves with the Council’s points on this at paragraphs 76-95 of their written closings.

⁷⁵ P33 supporting text, see page 163, of the Southwark Plan

PLANNING BALANCE

109. Mr Alston, a self-confessed ‘advocate’ for this scheme, who sees the planning system as simply a vessel through which to leverage his clients’ assets, has not undertaken any proper balancing exercise when assessing this proposal. From the very beginning he has sought to see this scheme through the lens of the viability evidence alone, and everything else needs to fit into that, or it just didn’t register in his narrow purview. This was perhaps most evident when asked any particular question on an issue, he would find every way possible to crow bar into an answer viability commentary.
110. In light of the evidence heard at this inquiry, we would invite the Inspector to undertake the following balancing exercise. Pursuant to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Act 2004 planning decisions should be made in accordance with the development plan, *unless* material considerations indicate otherwise. For all the reasons set out, this proposal fundamentally fails to accord with the highly specific requirements of NSP74 in an up to date local plan. There is no justification for why such failure should be acceptable. This should be given **substantial** weight against in the planning balance.
111. The heritage harms to designated assets should be given **substantial** weight in the overall balance, meaning the scales begin tipped against this development. For those other non-designated assets, these too have a strong relationship with the designated assets, and the harms identified should similarly be given **significant** weight.
112. In failing to meet local policy requirements, this proposal similarly fails to meet multiple national policies as set out above, and this should similarly weigh heavily against the scheme being advanced. This means that the application of Paragraph 11(c) of the NPPF is similarly failed by this development.

113. Turning to the benefits and harms of the proposal, in the context of a 5 years supply, the shortfall in this case is not considerable by any stretch of the imagination. The Council's position should be preferred in any event, and failing this, it is highly likely that this scheme will not deliver what it promises within the 5 year period.
114. Mr Holloway's evidence was fair and clear on the **benefits**: he was generous enough to give **significant** weight to the market housing to be provided, but a borderline **moderate/significant** weight to low level of affordable housing being offered. The appellant's reliance on NPPF 125(c) does not assist a site already allocated for development even if it is a brownfield site. **Neutral** is the right calibration. The workspace being offered should similarly be given **limited** weight given its lack of evidence base and clear direction of seeking to drive out local businesses.
115. The harms are inordinate and overwhelming:
- 115.1. Breach of site allocation – **substantial** weight.
 - 115.2. Heritage harm – **substantial** weight.
 - 115.3. Net loss of retail – **substantial** weight.
 - 115.4. Shift in retail proposed – **substantial** weight.
 - 115.5. Permanent displacement of businesses, and the likely failure to meet the PSED requirements – **substantial** weight.
116. The counterfactual that there is a '**do nothing scenario**' for Berkeley Homes is nothing more than conjecture and speculation. The long history of involvement, significant investment to date and position in the market means that a refusal will not (and indeed cannot) immunise this site from a future compliant development coming forward. It simply avoids banking a sub-optimal and harmful version now.

OVERALL CONCLUSION

117. Sir, the case against this scheme is comprehensive and overwhelming. Nothing has galvanised the whole of Peckham more than the fight against this sub-optimal proposal. The community is desperate for change and regeneration, but not at any cost, and not like this. Berkeley's response to date has been poor and unbecoming. It is easy to predict in the Appellant's closings in a few moments the caricaturing of the community as being essentially anti-development. That would be lazy and speak volumes.
118. The reality of the final position is this: the site has a clear policy prescription in what should come forward, how it should respond to its local context, and how it should give meaning to the needs and aspirations of the local community. The proposal before you is a major missed opportunity.
119. The harms to be caused are significant and demonstrable. The benefits are limited, and with the lack of adequate affordable housing, pretty generic.
120. For all these reasons and the reasons contained in the Council's evidence, we respectfully invite you to dismiss this appeal.

HASHI MOHAMED

Landmark Chambers

180 Fleet Street

16 November 2025