

TOWN AND COUNTRY PLANNING ACT 1990

Appeal Site: Woodlands Nursing Home, 1 Dugard Way, London SE11 4TH

Development: Redevelopment of the former Woodlands and Masters House site retaining the Masters House and associated ancillary buildings; demolition of the former care home; the erection of 29 storeys building and peripheral lower development of 3/4 storeys, to provide 258 residential units, together with servicing, disabled parking, cycle parking, landscaping, new public realm, a new vehicular and pedestrian access, and associated works.

Appellant: Anthology Kennington Stage Ltd

PROOF OF EVIDENCE ON BEHALF OF THE STOP THE BLOCKS COMMUNITY ACTION GROUP

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Planning Inspectorate Appeal Reference: APP/L3245/A/17/3203094

Lambeth Council Planning Application Number: 19/02696/FUL

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SUMMARY OF PROOF OF EVIDENCE

I have prepared this evidence on behalf of Stop the Blocks (StB), an unincorporated group of residents in the Kennington area that was formed in response to the proposals by Anthology. I understand the group has a mailing list of 280 interested residents who have offered professional and financial support to oppose the development at Dugard Way.

I find that this proposal is manifestly contrary to the development plan and national policy.

There was insufficient information submitted with the application to enable the council to determine this case, especially with regard to flood risk, having regard to government advice in the NPPF. The appellant's revisions do not address these shortcomings and errors.

The scheme represents the loss of specialist (Use Class C2) accommodation.

The site is in a distinct location separate from the Elephant and Castle OAPF and there are no policy expectations now or in the future that a development of the scale of the appeal proposal will be supported.

The proposal is an overdevelopment of the site with a number of defects. It significantly exceeds the London Plan density matrix. That this is an overdevelopment is reflected in other deficiencies too. These include the poor relationship between the two blocks, insufficient levels of amenity and play space in an area with a deficiency of open space already and the convoluted servicing relationship and difficulties getting service vehicles to access the site. The tower (Block B) is visually discordant in its surrounding context. All of the best trees on this site would have to be felled.

Its off site impacts will be severe both with regard to the degree of harm to heritage assets as well as to the living conditions of nearby residents including overlooking – especially on Renfrew Road to the west – as well as overshadowing. It will materially affect many residents' right to a private life.

The council has more than five years' housing land supply. This is rare in London. It does not need to write a Housing Delivery Test Action Plan. The presumption in favour of sustainable development test set out at paragraph 11(c) and (d) of the National Planning Policy Framework (the NPPF) does not apply to the appeal scheme.

The proposed benefits offered by the development do not outweigh these significant social losses and environmental harms and the scheme is further unacceptable both through the lost opportunity to deliver more family accommodation that is genuinely affordable.

1. INTRODUCTION

Qualifications and Relevant Experience

- 1.1 My name is Vincent Pierce Maher. I am a chartered town planner with over 30 years' experience in the private and public sectors. I have advised developers, local authorities and community groups on planning matters and have advised developers on many occasions on how to engage effectively with communities affected by controversial planning and infrastructure proposals.
- 1.2 I hold a Masters of Arts degree (Oriental Studies) from Cambridge University, a Masters in Civic Design from the University of and Masters degrees in Social Research (London South Bank University) and Business Administration (Macquarie University, Sydney).
- 1.3 I have lived in Kennington for many years and own a flat in the Bellway Water Tower development. I have been to the Cinema Museum several times to watch films there and I have been shown around the museum.
- 1.4 I have previously advised the Stop the Blocks group (StB) on how the planning application and appeal process works and went to a meeting at the GLA offices on their behalf before the planning application was submitted. I subsequently offered to write a planning statement for StB when the planning application was submitted. I advised StB to obtain its own expert heritage advice (CD 6/4) during the processing of the application which I read and signed off. I further advised residents to get expert advice on the daylight,

sunlight and overshadowing report (DSOR) prepared by the appellant (CD6/5). A number of residents with a connection to StB had already commissioned a report on this subject. During the preparation of this proof of evidence, StB residents also commissioned their own research on servicing arrangements to the proposed development.

- 1.5 I am aware of my duties as an expert witness. In this case, I am giving my services to StB at this public inquiry for free principally because I have chosen StB as a Continuing Professional Development project for my RTPI membership, using this hands on experience of watching the dynamics of a community group form in response to a planning proposal, thereby combining my professional interests of town planning and social research.

2. STRUCTURE OF EVIDENCE

2.1 The appeal proposal is a major residential planning application for 258 new flats in two blocks. Block A is three/ four storey and Block B extends to 29 storeys in height. The council officer's report (Appendix 1 to CD5/1) indicates that had an appeal not been lodged, it would have refused planning permission for 13 reasons covering the following matters:

- inadequate provision of affordable housing;
- unsatisfactory residential unit mix;
- impact on townscape including heritage;
- impact on the living conditions on neighbouring residents;
- the quality of accommodation proposed including the relationship between the two proposed blocks (Block A and Block B);
- flood risk issues;
- poor cycling layout;
- inadequate provision of renewable energy options;
- absence of a policy compliant s106 agreement; and
- inadequate information on servicing and other matters.

2.2 The statement of common ground (SoCG) circulated on 2 October (CD7/2) confirms where the council has conceded some points and I address them in this proof of evidence.

2.3 This proof of evidence is primarily concerned with addressing those issues in the council officer's report where I am professionally competent to do so but it also raises other issues in the planning statement I prepared for StB in September 2019 (CD 6/3) with the original planning application where I reached a different view to that set out in the council officer's report on three matters. These are: (a) the loss of specialist accommodation; (b) the impact of Block A on Renfrew Road; and (c) how the site would be serviced from the Dugard Way entrance. I have also written this evidence to take on board the revised plans prepared by the appellant during September and October 2020 and updates in planning policy since the appeal proposal was first submitted to Lambeth Council.

2.4 As well as reviewing relevant planning policies and revisions to the scheme, I have also sought to investigate the status of the gates at Dugard Way that have been temporarily removed. I have measured the width of this entrance, watched vehicles servicing the Bellway Water Tower development and NHS facilities. I also spoke with the crew of a Lambeth Council refuse vehicle servicing the site on 2nd September 2020. A video of a vehicle leaving the site can be viewed on the on YouTube:

<https://www.youtube.com/watch?v=fFFOJI8ZSB4&feature=youtu.be>).

2.4 My evidence is structured in the following way:

- Section 3 provides a description of the site and surroundings.
- Section 4 reviews relevant planning history associated with this site and surrounds and I refer to and comment on pre application advice given on

an earlier proposal on the site as well as other applications referred to by the appellant.

- Section 5 contains my assessment of the deficiencies in the details and plans submitted with the application and then reviews the revised scheme that the appellant submitted in September 2020.
- Section 6 sets out the relevant planning policy background pertinent to the appeal.
- Section 7 sets out and assesses the main planning issues that I consider this case raises and I offer comments on those issues where I am professionally competent to do so.
- At Section 8, I consider the other pertinent points raised by the appellant and all other material considerations in this case including the heads of terms of the s106 agreement that is being negotiated referred to in the SoCG as well as the various schedules of proposed planning conditions.
- I set out my conclusions to the scheme in Section 9.

2.5 I am mindful that this proof of evidence has been submitted on behalf of a Rule 6 party covering a number of matters. I have therefore tried to make my proof as brief as possible and not repeat some matters - for example, detailed coverage of all relevant development plan policies - that the appellant's and the council's witnesses will no doubt be obliged to do.

2.6 On a final point, this proof was finalised and printed off before Tier 2 coronavirus restrictions came into force in London. At the time of finalising

this proof, I had spotted some omissions in the Core Document list circulated by Donald Considine of TP Bennett relating to the CD2 section of the list the appellant had submitted with the planning. I suggested some new reference numbers for relevant documents to him and Jeff Holt at the council. I am assuming the reference numbers I have quoted here are correct.

3. SITE AND SURROUNDINGS

- 3.1 The officer's report on this case (CD5/1 – sections 1 and 2) gives a fair summary of the site and surroundings. The report accurately records other features in the area including heritage assets in the vicinity of the appeal site. Part of the site is within the Renfrew Road Conservation Area. The site enjoys excellent access to public transport.
- 3.2 However, it is necessary to make two points not covered by the appellant or the council so far.
- 3.3 The first point relates to the appeal site area. While the site area covered by the appeal proposal (the red line area) is 0.7 ha, I calculate the area affected by the proposal is 0.51 ha only (see Figure 1) as the Cinema Museum and the North and South Lodges are effectively excluded from the development. No works are proposed as part of this application to either of these buildings regardless of the description of development on the planning application form. It is important to make this distinction because the 0.51 ha area is the basis from which to apply the London Plan Density Matrix (Table 3.2) of the London Plan.

Figure 1 Appeal site layout (the net site area)



3.4 The second point is that there is one critical element missing from both the case officer's report and the appellant's various reports. Access to the site from Renfrew Road/ Dugard Way has historically been via a pair of gates (see Figure 2). These gates are outside the red line area of the application and are maintained by the company responsible for the upkeep of the adjacent

Bellway Water Tower development. This is a critical factor in the scheme as the appellant will need to show that the site can be satisfactorily serviced.

Figure 2 Gates to Dugard Way



3.5 As a resident and leaseholder in the adjacent Bellway Water Tower development, I know the gates were temporarily removed without conservation area consent due to damage from traffic including from refuse vehicles servicing the NHS facilities on the site. There is nothing preventing the re-introduction of these gates which will make servicing of the site by refuse vehicles impossible. As matters stand, servicing of the site by refuse vehicles is highly problematic and, in the real world, involves a convoluted five point turn for a refuse vehicle to access the site. The approval of the appeal scheme will serve to intensify that problem. This is considered in further detail below.

4 PLANNING HISTORY

- 4.1 There are no relevant planning applications on the site.
- 4.2 The council gave pre application advice to Savills in September 2016 in 16/03689/PREAPP for a 94-flat scheme (CD6/11). In this case, officers confirmed that they would not be likely to support such as a scheme for a number of design and heritage reasons related to its scale and bulk and the loss of specialist accommodation. This is up-to-date advice based on the current development plan and is post-NPPF too so this advice from the local planning authority should be given considerable weight.
- 4.3 Close to the appeal site, the council approved a flatted development at the Bellway Water Tower development off George Mathers Road – application reference 08/00425/FUL providing up to five storeys of new housing. The council approved some infilling on its own land at nearby Knight’s Walk to the west of Renfrew Road (application reference 17/05992/RG3 amended by 19/01817/NMA) for a development of between four and seven storeys.
- 4.4 I have reviewed other cases referred to in the appellant’s Planning Statement (CD 2/24 pages 9 to 12 and in the Statement of Common Ground with the council (CD7/1)) including sites approved by Lambeth Council to support high rise housing at Lollard Road, SE11 (application reference 14/00509/FUL) and other high rise sites in the Elephant & Castle Opportunity Area Planning Framework (OAPF).

4.5 It is a long-established planning principle that each development proposal must be considered on its own merits. The Lollard Road site is some distance away and forms part of a large council housing estate west of Kennington Road (A23). It sits within a cluster of other high rise towers. The Elephant & Castle is a district town centre location with established high rise too that is subject to a long term “place changing” regeneration initiative supported by Southwark Council and the Mayor of London where development plan policy and an OAPF specifically directs more intensive development there. The appellant acknowledges the application site is outside the OAPF area. I set out later in this proof the planning policies that apply to that area that do not apply to the appeal site.

4.6 Thus, the sites and decisions referred to by the appellant are materially different to this site and should not be given much weight in this appeal. Indeed, more weight should be given to recent decisions closer to the appeal site such as the Bellway Water Tower development and land off Knight’s Walk. These are in the immediate vicinity of the site where similar development plan policies apply.

5. PROPOSED DEVELOPMENT AND PLANS

- 5.1 The Core Document list correctly identifies the planning application details and documents submitted with it but at the time of finalising this proof does not include the appellant's planning statement (CD 2/24) accompanying the application.
- 5.2 It is fair to say the original planning application contained a number of errors and inconsistencies within it. Some of the plans are poor and unclear, for example, the Masterplan did not have a scale or reference. Some pages in the microclimate wind assessment (CD2/25) show the prominent modern extension on the side of The Water Tower, others do not (Figures 3.1 and 3.2).
- 5.3 The Flood Risk Assessment (CD 2/15, section 4.13) states that the basement will have no external openings to avoid flood water leaking in but the basement has vents which have an outlet at ground floor level thus putting the basement at risk of flooding.
- 5.4 There was also an inconsistency in the editing and presentation of various documents. This gives the impression of a poorly thought through scheme.
- 5.5 By way of another example relating to cycle parking provision, the basement plan to Block A (drawing reference 6057 T20099 Rev P3) purported to show bicycle stands (not numbered on the plan but estimated to be 285 spaces) but the function of other "shapes" shown on this plan was unclear and there is no

key to this plan to help interpret them (although this has been corrected by the substitution of drawing reference 6057 TA 20099 Rev P6). Thus, it was not possible to work out how many cycle spaces are to be provided. There were further inconsistencies within the documentation submitted on this point. The planning application form states that 420 cycle parking spaces will be provided and the bulk of these are in the basement of Building B. The Transport Assessment (CD 2/20) states that 411 spaces will be provided and these will be located at ground floor level. They are not.

5.6 I have reviewed the plans since and spotted additional inconsistencies:

- The landscape plan 709-FHA-XX-00-DP-L-001 is inconsistent with the swept vehicle path drawings 184104/AT /01 and /02 Rev K. I have ringed the discrepancies in yellow at Figure 3 (overleaf) which show landscaping where the swept path analysis purports that a service vehicle would turn in. It is also inconsistent with the new masterplan.
- On affordable housing, the planning report (CD 2/24, first mentioned at paragraph 2.25 and repeated throughout the document) incorrectly states that 50% of the homes will be affordable.
- On heritage matters, the heritage adviser reports in the Heritage, Townscape and Visual Impact Appraisal (HTVIA) (CD 2/13) acknowledges that there will be harm to heritage assets but the planning report (CD 2/24, paragraph 2.25) states that the proposals will significantly enhance these assets while later acknowledging harm to them.

- On flood risk, the appellant incorrectly stated on the application form (CD2/1 Question 12) that an FRA was not needed even though the site is in Flood Zone 3 and has indeed submitted one.
- The Daylight, Sunlight and Overshadowing Report (DSOR) had to be corrected and the appellant submitted many later documents (CD2/12 is the corrected version and not the version submitted with the application).

Figure 3 Conflict between landscape plan compared with the swept vehicle path and refuse collection points



6 RELEVANT PLANNING POLICY BACKGROUND PERTINENT TO THIS APPEAL

6.1 In this section of the proof, I identify the development plan and the policies which are pertinent to the appeal scheme. I then review relevant national planning policy and other planning policy considerations in this case such as The London Plan (Intend to Publish) version issued in December 2019. I am of course mindful of the legal responsibility set out in section 38(6) of the Planning and Compulsory Purchase Act 2004 but I have deliberately aimed to keep this section of the proof brief because the council has already covered most relevant policies in its case officer's report. The Inspector has determined a number of cases in Lambeth and is therefore likely to be familiar with the development plan too.

Development plan for Lambeth

6.2 The two relevant development plan documents in the Lambeth development plan covering the appeal site are the London Plan (2016, consolidated with alterations since 2011) (the London Plan) and the Lambeth Local Plan (2015) (the Local Plan).

The London Plan

6.3 The officer's report (CD 5/1) identified a list of policies that were considered relevant to this case and which are included in the Core Documents list (CD1/1 to CD1/4). These appear mostly relevant to the case although policies covering the Central Activities Zone or the Opportunity Areas and Intensification Areas (Policies 2.10 to 2.13) do not apply to the appeal site. The nearest Opportunity Areas and Intensification Areas to the site covered by

Policy 2.13 and referred to in Map 2.4 and Annex 1 of the London Plan are at the Elephant & Castle in Southwark and at Waterloo and Vauxhall/ Nine Elms in Lambeth. The site is not in the London Strategic Cultural Area either. However, it is covered by Policy 7.11 which seeks to protect views across London.

6.4 Policies 4.6 and 4.7 are also pertinent to the retention of the Cinema Museum.

Policy 4.6 reflects the Mayor's commitment to the arts, culture, sports and entertainment and Policy 4.7 sets out the Mayor's approach to town centre development including "main town centre uses" in the NPPF. The appellant's documentation in various places incorrectly refers to the Elephant & Castle as a Major Centre using the terminology of the London Plan (for example, in section 3.8 of the Design and Access Statement (CD 2/3) and paragraphs 3.2.3 and 4.3.2 of the Planning Statement (CD 2/24)). Annex 2 of the London Plan identifies the centre as a District Centre (171), on a lower rung in the retail hierarchy.

6.5 For ease of reference, I repeat the rest of the list in the officer's report below:

- 1.1 Delivering the strategic vision and objectives for London
- 2.9 Inner London
- 3.1 Ensuring equal life chances for all
- 3.2 Improving health and addressing health inequalities
- 3.3 Increasing housing supply
- 3.4 Optimising housing potential
- 3.5 Quality and design of housing developments
- 3.6 Children & young people's play and informal recreation facilities
- 3.8 Housing choice
- 3.9 Mixed and balanced communities
- 3.10 Definition of affordable housing
- 3.11 Affordable housing targets
- 3.12 Negotiating affordable housing on individual private residential & mixed use schemes

- 3.13 Affordable housing thresholds
- 3.15 Coordination of housing development and investment
- 5.1 Climate change mitigation
- 5.2 Minimising carbon dioxide emissions
- 5.3 Sustainable design and construction
- 5.4 Retrofitting
- 5.4 A Electricity and gas supply
- 5.5 Decentralised energy networks
- 5.6 Decentralised energy in development proposals
- 5.7 Renewable energy
- 5.8 Innovative energy technologies
- 5.9 Overheating and cooling
- 5.10 Urban greening
- 5.11 Green roofs and development site environs
- 5.12 Flood risk management
- 5.13 Sustainable drainage
- 5.14 Water quality and wastewater infrastructure
- 5.15 Water use and supplies
- 5.16 Waste net self-sufficiency
- 5.17 Waste capacity
- 5.18 Construction, excavation and demolition waste
- 6.1 Strategic approach
- 6.3 Assessing effects of development on transport capacity
- 6.4 Enhancing London's transport connectivity
- 6.7 Better streets and surface transport
- 6.9 Cycling
- 6.10 Walking
- 6.12 Road network capacity
- 6.13 Parking
- 7.1 Lifetime neighbourhoods
- 7.2 An inclusive environment
- 7.3 Designing out crime
- 7.4 Local character
- 7.5 Public realm
- 7.6 Architecture
- 7.7 Location and design of tall and large buildings
- 7.8 Heritage assets and archaeology
- 7.11 London View Management Framework
- 7.12 Implementing the London View Management Framework
- 7.13 Safety, security and resilience to emergency
- 7.14 Improving air quality
- 7.15 Reducing and managing noise
- 7.18 Protecting open space and addressing deficiency
- 7.19 Biodiversity and access to nature
- 7.20 Geological conservation
- 7.21 Trees and woodlands
- 8.1 Implementation
- 8.2 Planning obligations

- 8.3 Community infrastructure levy
- 8.4 Monitoring and review

Local Plan

6.6 The officer's report (CD 5/1 Appendix 3) identifies a list of pertinent policies that are relevant to this case. I concur with the case officer that these are relevant to this case.

6.7 Again, for ease of reference, I repeat the list below.

- D1 Delivery and monitoring
- D2 Presumption in favour of sustainable development
- D3 Infrastructure
- D4 Planning obligations
- EN1 Open space and biodiversity
- EN3 Decentralised energy
- EN4 Sustainable design and construction
- EN5 Flood risk
- EN6 Sustainable drainage systems and water management
- EN7 Sustainable waste management
- H1 Maximising housing growth
- H2 Delivering affordable housing
- H4 Housing mix in new developments
- H5 Housing standards
- H8 Housing to meet specific community needs
- Q1 Inclusive environments
- Q2 Amenity
- Q3 Community safety
- Q5 Local distinctiveness
- Q6 Urban design: public realm
- Q7 Urban design: new development
- Q8 Design quality: construction detailing
- Q9 Landscaping
- Q10 Trees
- Q11 Building alterations and extensions
- Q12 Refuse/recycling storage
- Q13 Cycle storage
- Q15 Boundary treatments
- Q20 Statutory listed buildings
- Q22 Conservation areas
- Q23 Undesignated heritage assets: local heritage list
- Q25 Views

- Q26 Tall and large buildings
- S1 Safeguarding existing community premises
- S2 New or improved community premises
- T1 Sustainable travel
- T2 Walking
- T3 Cycling
- T4 Public transport infrastructure
- T6 Assessing impacts of development on transport capacity
- T7 Parking
- T8 Servicing

6.8 The site is not an allocation in the Local Plan¹. It is not covered by any other designation apart from Policy Q25, a policy that seeks to protect views towards various landmarks, including the World Heritage Site at Westminster.

6.9 The Local Plan was adopted in September 2015 and it is now just five years old. Nonetheless, the relevant policies for this appeal appear broadly consistent with the current NPPF and are not out-of-date.

Other material considerations – planning policies

6.10 The most relevant planning policies are: the NPPF; the London Plan Intend to Publish; and relevant SPDs and SPGs associated with the current London Plan and Local Plan. There are other documents of use too.

National Planning Policy Framework (NPPF)

6.11 The Inspector will plainly be familiar with the NPPF and I do not intend to quote it at length except to point out relevant paragraphs pertinent to the assessment of the merits of the scheme as well as planning conditions in the event that the appeal is allowed.

¹ Nor was it identified in the SHLAA that helped the council demonstrate how it would meet its housing target.

6.12 Paragraphs 2 and 3 of the NPPF explain its status in decision making. The NPPF is a material consideration and its policies must be read as a whole including its footnotes and annexes.

6.13 **Section 2** (and paragraph 7) reaffirms that the purpose of planning is to contribute to the achievement of sustainable development (as defined by the Government). Sustainable development has three overriding objectives.

- The economic objective is to help build a strong, responsive and competitive economy, by ensuring the sufficient land of the right type is available in the right places.
- The social objective is to support strong, vibrant and healthy communities fostering a well-designed and safe environment with accessible services and open spaces that reflect current needs and support communities.
- The environmental objective is to protect and enhance the natural, built and historic environment and mitigating and adapting to climate change, including moving to a low carbon economy.

6.14 **Section 4** of the NPPF covers decision-making. Paragraph 47 confirms a decision maker's responsibility to determine a planning application in accordance with the development plan unless material considerations indicate otherwise. At paragraph 48, decision-makers are advised to give emerging plans weight according to their stage of preparation, the extent to which there are unresolved objections and their degree of consistency with the NPPF.

Paragraphs 54 to 57 give advice on planning conditions and s106 planning obligations repeating the tests in Regulation 122 of the CIL Regulations 2010.

- 6.15 **Section 5** of the NPPF covers housing. The government's objective is to boost significantly the supply of housing to meet the needs of groups with specific housing requirements (paragraph 59), covering a range of tenures including affordable housing (paragraphs 61 and 62). At least 10% of homes in major developments should be available for affordable home ownership unless this would exceed the level of affordable housing required in the area (paragraph 63). Housing policies must identify sites for development (paragraphs 67 to 72) and continue to maintain supply and delivery (paragraphs 73 to 76).
- 6.16 **Section 7** of the NPPF covers town centres. It encourages "main town centre uses" such as museums and cinemas to be located in town centres first.
- 6.17 **Section 8** of the NPPF seeks to promote healthy and safe communities to be achieved, among other means, through improved social interaction (paragraph 91), safe use of shared space (paragraph 92) and access to a network of open spaces (paragraph 96).
- 6.18 **Section 9** seeks to promote sustainable transport. The planning system should pursue opportunities to promote walking, cycling and public transport (paragraph 102). At paragraph 103, *significant development should be focused on locations which are or which can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes* Paragraphs 110 and 111 affirm this will be achieved through (a) giving priority

to pedestrian and cycle movements; (b) addressing needs of disabled people; (c) creating safe and attractive places reducing conflicts between road users; (d) allowing for efficient delivery of goods; and (e) enabling charging of plug-in and other ultra-low emission vehicles, as well as through the provision of travel plans.

6.19 **Section 11** directs decision makers to make effective use of land in their plan making and decision-making functions. As well as optimising the use of land, this also means achieving appropriate densities (paragraph 122) that take account of (a) identified housing need; (b) local market conditions; (c) infrastructure; (d) the desirability to maintain an area's prevailing character; and (e) the importance of securing well-designed, attractive and health places.

6.20 **Section 12** promotes well-designed places, confirming at paragraph 124 that the "creation of high quality buildings and places is fundamental to what the planning and development process should achieve". Paragraph 127 identifies six criteria by which all developments should be assessed. They are all pertinent considerations in this case.

6.21 Paragraph 130 confirms that permission should be refused for "*development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions*". Paragraph 131 states that great weight should be given to outstanding or innovative design.

6.22 **Section 14** refers to climate change, flooding and coastal change. Development should be steered away from land at high risk of flooding. Sites already assessed through the strategic flood risk assessment (SFRA) in the

plan making process do not need a sequential test. However, other sites do (paragraph 163). Major development should incorporate sustainable drainage systems (SUDS) (paragraph 165). Development should not be permitted if there are other reasonably available sites (paragraph 158).

6.23 **Section 15** seeks to conserve and enhance the natural environment. It is only directly pertinent to this scheme on matters to do with land contamination (paragraphs 178 to 183). It may also be a minor consideration in the context of the ecological research the appellant commissioned.

6.24 **Part 16** seeks to conserve and enhance the historic environment including heritage assets (which are defined in Annex 2: Glossary). It requires local plans to set out a positive strategy for the conservation and enjoyment of the historic environment (paragraph 184) and advice on how to assess proposals affecting heritage assets (paragraphs 189 to 192). The NPPF (paragraph 193) advises there are three types of potential harm to heritage assets. These are: substantial harm, total loss or less than substantial harm. If it can be shown that the harm to the listed buildings will be substantial, then the Inspector can only approve the scheme in exceptional circumstances.

National Planning Practice Guidance (the NPPG)

6.25 The most pertinent elements of the NPPG relate to flood risk² and heritage³.

The NPPG advice on flood risk confirms the need to steer development away

² <https://www.gov.uk/guidance/flood-risk-and-coastal-change#sequential-approach>

³ <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#decision-making-historic-environment>

from Flood Zone 3 and only to consider development if no other sites in Flood Zones 1 and 2 are available.

- 6.26 Its advice on heritage directs readers to the NPPF advice on terminology and the importance given to the significance of a heritage asset.

London Plan Intend to Publish

- 6.27 The latest draft of the London Plan (the Intend to Publish version) has not been adopted as the development plan. At the time of writing this proof of evidence, the Secretary of State (SoS) has issued a direction to the Mayor of London seeking to address a number of matters and policies covering its “ambition”; approach to small sites; employment land; mix of housing; optimising density; and aviation, notwithstanding the Court of Appeal decision on the Airports National Policy Statement (CD1/20).
- 6.28 I anticipate substantial revisions will be necessary and a revised HRA and IIA will then have to be carried out to take account of modifications to the current draft plan before it can be adopted. This assumes the law on Sustainability Appraisal does not change with the end of the Brexit transition stage and indeed that the new London Plan is not then judicially challenged. I do not anticipate this new London Plan being adopted any time soon.
- 6.29 Nonetheless, the emerging draft plan should be given significant weight as it shows the intent of the current Labour Mayor of London especially around the delivery of more housing and more affordable housing too. Moreover, its policies have been prepared on the basis of evidence that has been tested at an Examination in Public (EiP) by a panel which stated that it was an

appropriate basis for the strategic planning of Greater London. Relevant policies to take into account are:

- GG1 Building strong and inclusive communities
- GG2 Making the best use of land
- GG3 Creating a healthy city
- GG4 Delivering the homes Londoners need
- GG6 Increasing efficiency and resilience
- SD10 Strategic and local regeneration
- D1 London's form, character and capacity for growth
- D2 Infrastructure requirements for sustainable densities
- D3 Optimising site capacity through the design-led approach
- D4 Delivering good design
- D5 Inclusive design
- D6 Housing quality and standards
- D7 Accessible housing
- D8 Public realm
- D9 Tall buildings
- D11 Safety, security and resilience to emergency
- D12 Fire safety
- D13 Agent of Change
- D14 Noise
- H1 Increasing housing supply
- H4 Delivering affordable housing
- H5 Threshold approach to applications
- H6 Affordable housing tenure
- H7 Monitoring of affordable housing
- H10 Housing size mix
- H11 Build to Rent
- H12 Supported and specialised accommodation
- S2 Health and social care facilities
- S4 Play and informal recreation
- HC1 Heritage conservation and growth
- HC2 World Heritage Sites
- HC3 Strategic and Local Views
- HC4 London View Management Framework
- G1 Green infrastructure
- G5 Urban greening
- G6 Biodiversity and access to nature
- G7 Trees and woodlands
- SI1 Improving air quality
- SI2 Minimising greenhouse gas emissions
- SI3 Energy infrastructure
- SI4 Managing heat risk
- SI5 Water infrastructure
- SI6 Digital connectivity infrastructure
- SI7 Reducing waste and supporting the circular economy

- SI8 Waste capacity and net waste self-sufficiency
- SI12 Flood risk management
- SI13 Sustainable drainage
- T1 Strategic approach to transport
- T2 Healthy Streets
- T3 Transport capacity, connectivity and safeguarding
- T4 Assessing and mitigating transport impacts
- T5 Cycling
- T6 Car parking
- T6.1 Residential parking
- T7 Deliveries, servicing and construction
- T9 Funding transport infrastructure through planning
- DF1 Delivery of the Plan and Planning Obligations

6.30 It is also worth considering the SoS proposed revisions to the Mayor of London in draft Policy D3 (CD1/20) as it relates to density. This is the policy that will most likely replace London Plan Policy 3.4 and Table 3.2.

A The design of the development must optimise site capacity.

Optimising site capacity means ensuring that development takes the most appropriate form for the site. Higher density developments should be promoted in areas that are well connected to jobs, services, infrastructure and amenities by public transport, walking and cycling.

B Where there are existing clusters of high density buildings, expansion of the clusters should be positively considered by Boroughs. This could also include expanding Opportunity Area boundaries where appropriate.

D Gentle densification should be actively encouraged by Boroughs in low- and mid- density locations to achieve a change in densities in the most appropriate way. This should be interpreted in the context of Policy H2.

6.31 The revisions put forward by the SoS do not support the scale of density anticipated in the appeal scheme.

- 6.32 In Criterion A, the SoS is still concerned with “Optimising site capacity”. “Optimising” is not the same as “maximising”. In directing the Mayor to review the proposed policy on optimising density, the other parts of the London Plan Intend to Publish covering topics such as heritage, design and flood risk management do not go away.
- 6.33 In Criterion B, the SoS is inviting the Mayor of London to expand clusters of high density buildings. However, the SoS is clearly saying that this should only be done through the expansion of Opportunity Area boundaries where necessary (that is, the next version of the London Plan after the current Intend to Publish version has been adopted). The SoS clearly envisages such expansion taking place through the plan making process in Lambeth, Southwark and at the Greater London Authority level.
- 6.34 Outside of Opportunity Areas – see Criterion D - a “gentle densification” is to be actively encouraged. This is an appropriate response for the site and immediate context which does not have the high density of the Elephant & Castle. The effect of the SoS direction to the Mayor is to confirm yet again that place changing proposals of the scale of the appeal scheme should only be pursued through the plan making process. The London Plan Intend to Publish does not anticipate the scale of development proposed.

Lambeth Local Plan Review

- 6.35 The Lambeth Local Plan Review is still undergoing its EiP so its emerging policies will have less weight than the London Plan Intend to Publish. However, it too has been prepared following the preparation of evidence to

justify its stance on strategic matters. I have reviewed the 2017 Strategic Housing Market Assessment (SHMA) (CD1/18) as it gives a recent assessment of the borough's current market housing and affordable housing needs positions. Its Digital and Cultural Industries Strategy⁴ is pertinent to considering uses such as the Cinema Museum.

6.36 The appeal site is not included in the Local Plan Review as an allocation in this draft plan. The 2018 update to the SFRA for this Local Plan Review did not cover the appeal site either.

Supplementary Planning Guidance, Supplementary Planning Documents and other advice

6.37 Relevant SPG guidance from the London Plan includes:

- Affordable Housing and Viability SPG (August 2017);
- Housing SPG (March 2016);
- Social Infrastructure (May 2015);
- Accessible London: Achieving an Inclusive Environment (October 2014);
- The control of dust and emissions during construction and demolition (July 2014);
- Character and Context (June 2014);
- Sustainable Design and Construction (April 2014);
- Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy SPG (2013);
- Shaping Neighbourhoods: Play and Informal Recreation SPG (Sep 2012);
- London View Management Framework (March 2012);
- London Cycle Design Guide (2014);

6.38 Relevant SPDs associated with the Lambeth Local Plan include:

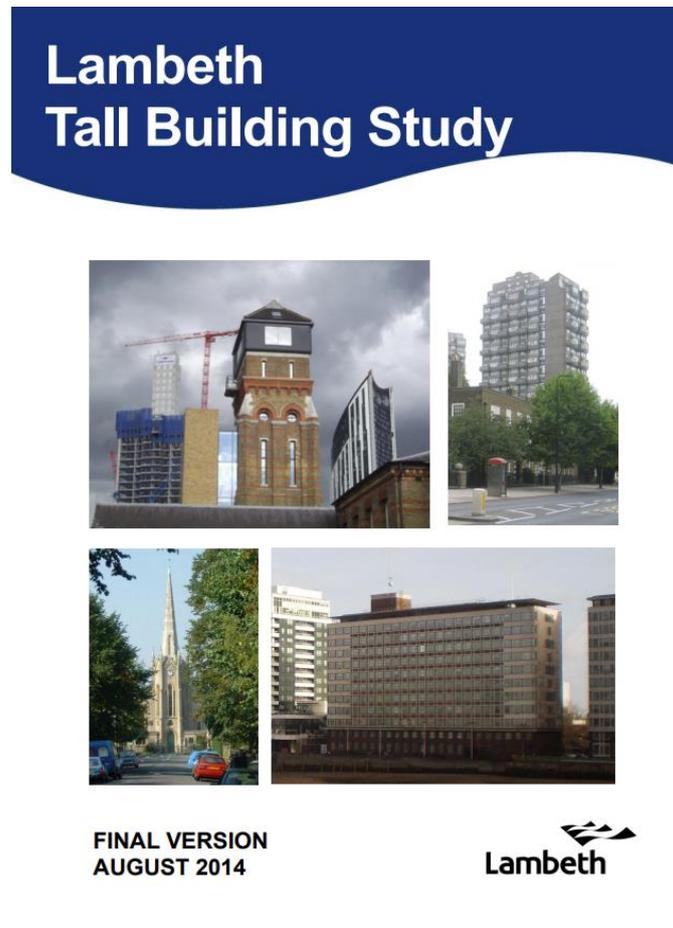
- Development Viability SPD (2017);
- Employment and Skills SPD (2018);
- Refuse & Recycling Storage Design Guide (2012);
- Waste Storage and Collection Requirements - Technical Specification;

⁴ <https://moderngov.lambeth.gov.uk/documents/s99629/Lambeth-Creative-Digital-Industry-Strategy--October-2018.pdf>

- Air Quality Planning Guidance Notes

6.39 Historic England's advice on assessing the setting of listed buildings⁵ and tall buildings⁶, and studies that helped inform the current Local Plan (for example, its advice note on tall buildings⁷ - whose front cover includes the Water Tower at Kennington shown at Figure 4 overleaf) have some weight too as material considerations.

Figure 4 Lambeth Tall Buildings Study cover



⁵ Refer Historic England Advice Note 3 <https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/>

⁶ <https://historicengland.org.uk/images-books/publications/tall-buildings-advice-note-4/heag037-tall-buildings/>

⁷ <https://www.lambeth.gov.uk/sites/default/files/Lambeth%20Tall%20Building%20study%202014%20FINAL.pdf>
Note that this does not have SPD status.

Implications

6.40 Arising out of this brief review of relevant development plan and other policies, the following conclusions can be drawn:

- National and development plan policies emphasise the need to boost the supply of housing. Lambeth has an ambitious housing target to achieve and Lambeth is on track to achieve this without this development. The thrust of the evolving London Plan Intend to Publish is to intensify further new housing. The site enjoys excellent access to public transport and should be considered for intensive development.
- However, the delivery of substantial amounts of new housing must be done in a plan-led manner. The appeal site is not in one of the Opportunity Areas or Intensification Areas in the London Plan and does not otherwise accord with development plan policies.
- The appeal scheme also has to address other strategic planning policy and development management tests covering affordable housing, its impact on the surrounding townscape and heritage, the quality of accommodation, access and servicing.
- My assessment of the development plan is that the Lambeth Plan is broadly in conformity with the 2019 NPPF and therefore not out of date.

6.41 In later sections of this proof of evidence, I now set out to show how the appeal scheme performs against these quoted policies.

7. MAIN ISSUES RAISED BY THE COUNCIL'S CASE OFFICER REPORT

7.1 Arising out of the foregoing analysis of policy and the main issues raised in the case officer's report, the revised plans submitted by the appellant and my own observations, I consider that the appeal proposal raises the following main issues. These are:

- Whether there is sufficient information before the Inspector to enable him to determine this appeal on the basis of accurate proposals;
- Whether the principle of housing (within Use Class C3) on this site is acceptable;
- Whether the tenure and amount of affordable housing is acceptable having regard to the provisions on the development plan;
- Whether the residential unit mix is acceptable having regard to the provisions of the development plan;
- The impact of the development on the surrounding townscape including heritage assets;
- The impact of the proposal on the living conditions on neighbouring residents by reasons of overlooking and overshadowing;
- Whether the quality of accommodation proposed is acceptable including the relationship between the two proposed blocks (Block A and Block B);
- Whether the proposal addresses pertinent flood risk issues given that it is located within Flood Zone 3;
- Whether the cycle parking layout is acceptable;

- Whether the scheme makes sufficient provision of renewable energy options;
- Whether there is adequate information on servicing and other matters and whether the scheme provides an acceptable solution; and
- The planning benefits of the scheme including the proposed draft s106 agreement.

7.2 I note that the council has conceded some points in its SoCG. I support the council's approach in resisting the proposal broadly but I reach a different or slightly different view on a number of main issues. These relate to:

- (a) the adequacy of the information submitted;
- (b) the principle of housing on the site;
- (c) the impact on neighbours;
- (d) cycling layout; and
- (d) servicing issues.

7.3 I will therefore comment on these five main issues first before assessing the other main issues which the proposal raises.

(a) Is there sufficient information before the Inspector to determine the planning application? Are the proposals accurate?

7.4 No. There is insufficient information before the inspector at the time of writing on flood risk management and the plans are still inconsistent with one another.

- 7.5 On the subject of flood risk management, at the time of writing this proof of evidence, the appellant has still not submitted a sequential and exceptions test as required in section 14 of the NPPF (on climate change, flood risk and coastal change) and NPPG advice and therefore by the development plan policy. This is vital to steer development away to areas of lowest risk of flooding. The council's own Strategic Flood Risk Assessment (SFRA) for the Local Plan 2015 rightfully considered this matter for proposed allocations in Vauxhall/ Nine Elms and Waterloo⁸ but has not covered this site.
- 7.6 Turning to the plans accompanying this appeal, the appellant has submitted a new ground floor cycling area (drawing reference 6057 TA 20100 Rev P5) and clarified the layout of the subterranean plan (drawing reference 6057 TA 20099 Rev P6) but there are still conflicts between the landscape plan and the swept path plan. I cover these later in this proof.

(b) Is housing (Use Class C3) acceptable on this site in principle?

- 7.7 There are two matters of principle here: first, the extent to which the development will meet the council's housing target; and, second, the loss of specialist accommodation.

Meeting the borough's housing target

- 7.8 Clearly, the provision of 258 new homes (minus the Use Class C2 bedspaces lost from the historic use of the site) on previously developed land close to public transport will make a contribution towards local, London wide and

⁸ <https://www.lambeth.gov.uk/sites/default/files/rr-flood-risk-assessment-report.pdf>

national directives and accords with national policy in the NPPF on this matter. This is an important benefit of the scheme albeit not a substantial one having regard to Lambeth's overall development plan target.

7.9 The current Lambeth development plan target is for at least 17,295 new homes to the year 2030 focusing on town centres (Brixton and Streatham) and opportunity areas and intensity areas such as Vauxhall and Waterloo which have already been the subject of extensive analysis as part of the SFRA. The application site is not in any of these areas and is not identified in the Local Plan either as a housing allocation on which the delivery of the council's housing target will depend. Notwithstanding this, Local Plan Policy H1 requires the council to maximise development on sites to help meet this target and this site is a potential windfall.

7.10 While this scheme would theoretically make a contribution to Lambeth's development plan target, the latest published data from Lambeth (September 2019⁹ - expected to be updated imminently for 2020) shows the council has been more than meeting its current five year housing land supply target of delivering 1559 new homes a year (the figure for 2018/19 was 2288 homes). Clearly annual numbers may fluctuate in the coming years reflecting economic and political forces influencing the whole of the inner London housing market that are outside of the council's control such as the consequences of the coronavirus.

⁹ https://www.lambeth.gov.uk/sites/default/files/pl_Annual_Position_Statement_2019.pdf

7.11 The council had forecast in its September 2019 statement of housing delivery it would score 115% in the MHCLG Housing Delivery Test¹⁰ (the last round of results were released in February 2020). It actually scored 121% (see Appendix 1 to this proof). Lambeth is the seventh best performing local planning authority in London. It does not need to prepare a housing delivery test action plan. There is therefore no need to set aside strategic development plan policies or other planning principles in the planning balance when considering this application for housing.

Loss of aged care facility

7.12 The proposal will result in the loss of a care home last used to house over 30 elderly mentally infirm residents, many of whom were Lambeth residents. Local Plan Policy H8 seeks to retain this type of local community accommodation and it is appropriate to do so especially in the light of steep rises in housing land prices over recent decades. The supporting text (refer paragraph 5.50 explains the types of housing covered by this policy:

Housing to meet specific community needs can include sheltered housing with care support, staffed hostels, residential-care and nursing-care homes, extra-care housing and supported housing provision for children, older persons and other client groups. These forms of specialist housing often provide essential accommodation for the most disadvantaged and vulnerable residents.

¹⁰ As set out in paragraph 215 of the NPPF. More detailed advice on action plans for failing LPAs.

7.13 The NHS appears to have satisfied the council that, as it does not need the accommodation and has found alternative accommodation, Local Plan Policy H8 has therefore been addressed.

7.14 However, London Plan Policy 3.16 sets a different test. It was adopted after the Local Plan so the provisions of s38(5) of the Planning and Compulsory Purchase Act 2004 apply when assessing conflicting policies. I have quoted the relevant part of the policy below.

Proposals which would result in a loss of social infrastructure in areas of defined need for that type of social infrastructure without realistic proposals for re-provision should be resisted. The suitability of redundant social infrastructure premises for other forms of social infrastructure for which there is a defined need in the locality should be assessed before alternative developments are considered.

7.15 In this case, neither the appellant nor the NHS nor the local planning authority has explored the possibility of the site being used for other forms of supported care that the private sector or a registered provider could deliver such as sheltered housing, a private nursing home or a foyer scheme for young people, an extension of the nearby alcohol recovery centre on Brook Drive or other social or community infrastructure in an inner city deprived part of Lambeth as would be expected when addressing the policy. The appellant has not sought to incorporate any Use Class C2 accommodation into the scheme either to offset the loss of this community use and social infrastructure either.

Selling the land at market value for C3 uses¹¹ might deprive some charities or care providers out of bidding for this land.

7.16 As the appellant has not assessed the suitability of reusing redundant social infrastructure or carried out an appropriate social needs impact assessment as indicated in the Social Infrastructure SPG, the proposal is at face value contrary to London Plan Policy 3.16 and the Social Infrastructure SPG too as well as London Plan Intend to Publish Policy H12.

(c) What is the impact of the proposal on the living conditions on neighbouring residents by reasons of overlooking and overshadowing?

7.17 The key development plan policies to consider are Local Plan Policies Q1 and Q2. Policy Q1 does not set any hard and fast standards on matters such as minimum distances between buildings either but planners across the country have worked to the long established principle of keeping a minimum of 21m (70') distance between habitable rooms.

7.18 The development plan also requires applicants to submit a BRE compliant daylight and sunlight study to assess overshadowing (Local Plan Policy Q2) and this helps quantify the impact on neighbours.

7.19 With regard to overshadowing, residents adjoining the site in combination with StB, again at my recommendation, commissioned their own peer review of the scheme (CD6/5). I do not offer any expert witness evidence on this subject or

¹¹ <https://www.gov.uk/government/publications/land-value-estimates-for-policy-appraisal-2019> The figure for Lambeth is £36.295,000 per hectare

the extent to which the appellant's Sunlight and Overshadowing Report (DSOR) shows compliance with relevant development plan policy. The conclusions of the report are that the report was faulty in its methodology because it took place without site visits to individual houses and, further, it identifies a number of nearby flats and houses whose occupants would experience a major adverse effect.

7.20 However, regardless of whether the scheme causes significant harm or not, it is worth quoting the conclusions of the DSOR (CD2/12, paragraph 10.3) which set out the DSOR author's observations on the site in the conclusions. I quote from this below:

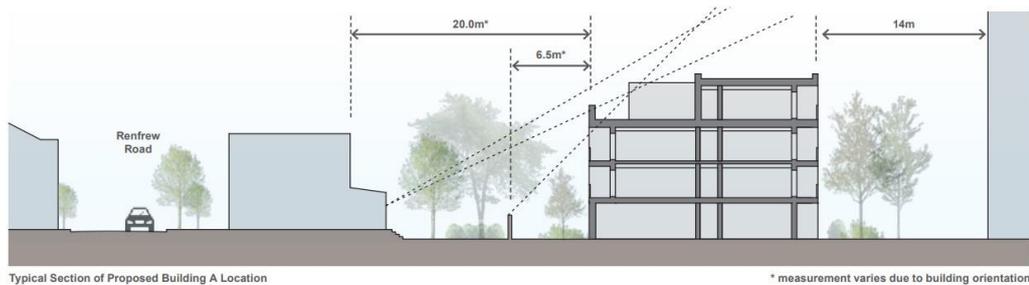
"10.3 The existing site is low-rise and in the most part, completely undeveloped. As a result, the majority of the existing levels of daylight and sunlight within the surrounding residential properties looking over the site are very high and more akin to what one would expect in a village environment as opposed to central London. The site is therefore somewhat unique in that regard."

7.21 As I read it, the expert is rightly gauging the starting context for any development and, indeed, in my opinion, the scale of change is likely to have significant adverse changes relative to the current level of living conditions in any case. It certainly exceeds the "gentle densification" approach sought by the SoS in revisions to the London Plan Intend to Publish.

7.22 There are a number of other serious deficiencies in the scheme that are a direct consequence of its height and scale. These are set out below:

- The new buildings and especially Block B would be visually overbearing by reason of its height when viewed from across the neighbourhood but its adverse impacts would be significant when viewed from those homes closest to the site, most notably from Castlebrook Close, Brook Drive and Sullivan Road to the north, the Water Tower and a number of the Bellway development flats to the south and east.
- The harm would be compounded by a loss of daylight and sunlight especially for residents to the north, east and west of the site.
- The relationship between Block A and the houses on Renfrew Road is particularly poor as shown in Figure 5 below (taken from the appellant's plans) resulting in overlooking. Distances between habitable rooms are significantly less than the 21m good practice referred to above.

Figure 5 Relationship between Block A and Renfrew Road



- The plans show that there would be a 16m distance between first floor living rooms in Block A and existing living rooms at ground floor level on Renfrew Road and only a 6.5m distance to existing gardens. Overlooking distances are often taken between the bedrooms on the upper floors on the basis that ground floor living spaces are separated by garden fences. Bedrooms overlooking gardens and living spaces can be less of an issue

because of the differing pattern of use. However, in this instance, Block A has upper floor living rooms and balconies which will mean that there will be direct overlooking of and loss of privacy to the existing gardens and living rooms.

7.23 I conclude that this element of the scheme falls short of policy expectations in Local Plan Policies Q1 and Q2.

(d) Is the cycle parking layout acceptable?

7.24 No. The scheme has improved through the provision of additional cycle parking at surface level (refer Plan 6057 TA 20100 Rev P5) on the north eastern edge of the site.

7.25 There remains one critical deficiency with this aspect of the scheme. The cycle parking provision still falls short of London Plan Policy 6.9 requirements because a good proportion the bulk of the spaces will not be integrated, convenient or accessible and this is a further reflection of the design deficiencies of the overall scheme that arise from the amount of new homes proposed. The bulk of the cycle parking spaces would remain in the basement area of Block A. Cycles parked in the basement would have to be removed via a lift, further reducing the convenience of these spaces for residents of Block B and presenting conflicts between users going into the subterranean bike shed and others leaving especially at peak times such as the morning commute to work or school. This is particularly inappropriate for so long as the current coronavirus pandemic enforces social distancing.

7.26 It is suggested that these spaces will not be attractive to Block B residents and therefore not likely to be used or that some residents will use lamp posts or other spaces to secure their bikes to.

(e) Is there adequate information on servicing and other matters? Does the appeal scheme provide an acceptable solution to these matters?

7.27 No. In addition to adequate cycling provision, the appellant is obliged to show appropriate maximum levels of car parking and demonstrate that the site can be adequately serviced (refuse collection etc.) in accordance with Local Plan Policies T1, T3, T7, T8, Q12 and Q13 as well as the maximum car parking standard table in the London Plan and London Plan Policies 6.9 and 6.13 and London Plan Intend to Publish T6.1. The appellant must also demonstrate measures to promote alternative modes of transport including cycle provision and safe pedestrian access. The appellant has submitted a number of studies on this matter and committed to contributions to a car club and a control in on street parking in the surrounding area as part of a s106 agreement.

Car parking provision

7.28 The proposed scheme is a low car development. This will support London-wide and national initiatives to promote more use of sustainable transport modes if reinforced through a s106 legal agreement and planning conditions to implement a travel plan.

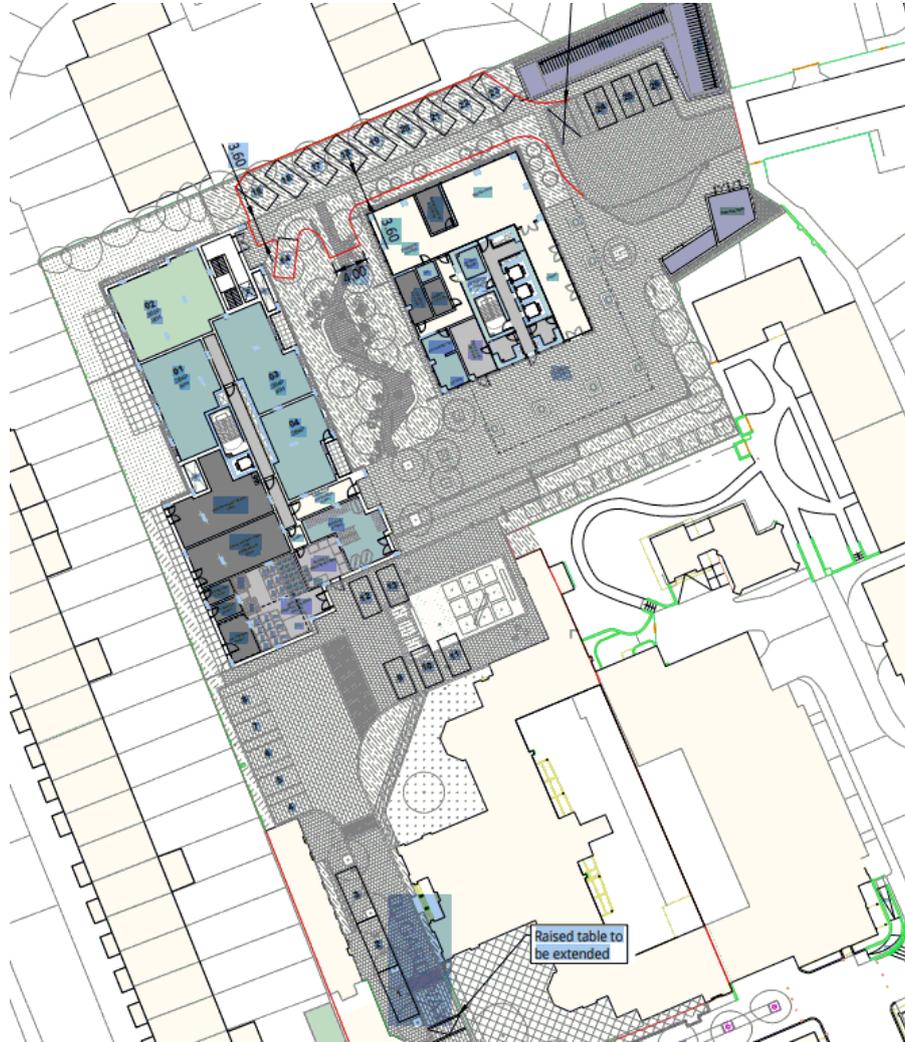
7.29 However, the scheme does need to make provision for cars for disabled people. Policy T6.1G of the London Plan Intend to Publish version requires developers to

- “1) *ensure that for three percent of dwellings, at least one designated space is provided from the outset*
- 2) *demonstrate as part of the Parking Design and Management Plan, how an additional seven per cent of dwellings could be provided with one designated disabled persons parking space.”*

7.30 Effectively, the appellant must show that the site could accommodate 26 car parking spaces on site. This is not only necessary for development plan policy reasons but also because of the council’s – and now the Inspector’s – public sector equality duty under the Equality Act 2010 to have due regard to addressing the needs of people with “protected characteristics” including the disabled and elderly. The lack of convenient parking for disabled people is a deficiency in the nearby low car Bellway Water Tower scheme.

7.31 The draft schedule of conditions also requires parking for disabled people at the ratio of 1:10 flats and the appellant has submitted new plans that show illustratively how this could be achieved (Figure 6). It would only be achieved by taking up the landscaped buffers on the northern and south eastern sides of the site and a number of spaces would not be well located relative to the blocks they serve (especially Bays 1 to 3). It would be difficult to collect refuse from Block A if the five new spaces closest to that block (9 to 13) were used for disabled residents.

Figure 6 Provision of disabled parking (illustrative plans)



7.32 In addition, having regard to the development plan standards and the policy of the London Plan Intend to Publish, none of the disabled spaces are identified as being adapted for electric charging contrary to London Plan Policy 6.13 that requires a minimum of 20% provision of electric car parking spaces. This could be remedied via a planning condition if the Inspector were to allow the appeal.

Refuse collection

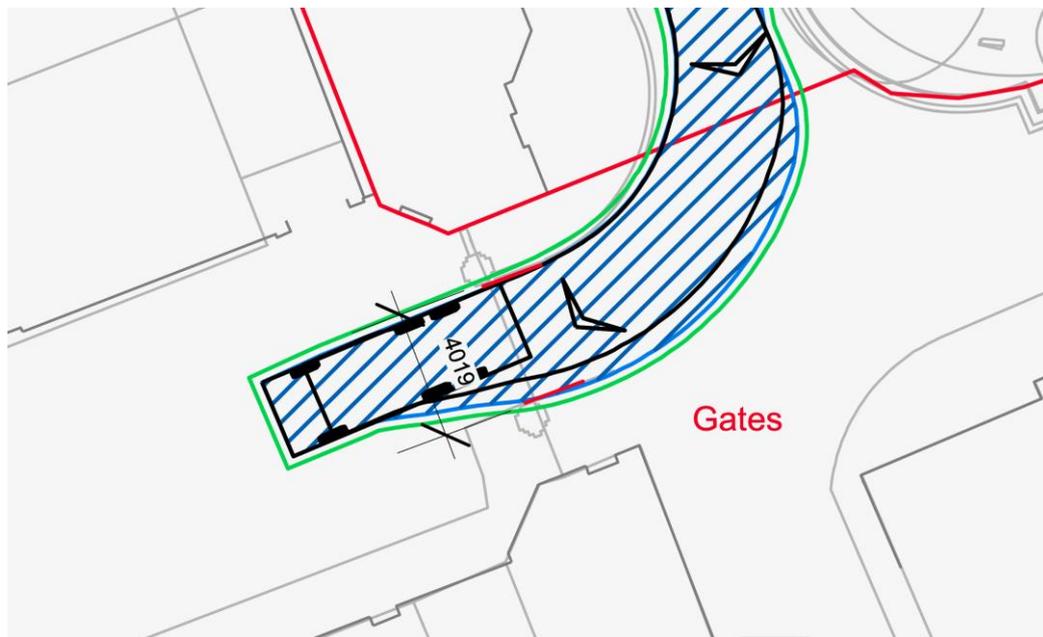
- 7.33 The level of provision falls short of expectations of Local Plan Policy Q12 and the relevant SPG too which requires 14,190 litre waste and 8,514 litre recycling space as well as a storage area for redundant goods¹². The plans submitted with the application do not set out the quantity provided and the waste management plan submitted with the planning application (I could not find a CD reference for this at the time of finalising this proof of evidence - refer Table 3.3) shows less than this level of provision albeit some waste will be compacted to reduce overall volumes.
- 7.34 Equally importantly, given the constrained vehicular access into the site from Dugard Way, it is critical to ascertain if access to Block A – the main collection area – is satisfactory for a refuse vehicle to turn into and out of the site in forward gear.
- 7.35 The appellant has supplied a vehicle swept path analysis for a 10.6m vehicle (CD 2/20). It purports to show that a convoluted five point turn is needed for a refuse vehicle to enter and leave the site in forward gear and assumes that the turning space is not blocked by another vehicle (for example, a Tesco delivery van or taxi).
- 7.36 Moreover, the plan shows almost no clearance on the swept path when the vehicle exits and even then the plan is inaccurate. It does not show the metal gates (temporarily removed) which narrow the clearance between the piers

¹² The SPG asks for 55L storage for waste and 33L for recycling per dwelling in large residential developments as well as additional storage areas for redundant household goods, such as furniture and white goods, which are reusable.
https://www.lambeth.gov.uk/sites/default/files/refuse%20and%20recycling%20design%20guide%202013%20final_0.pdf

and misrepresents the line of the existing pavement. The actual roadway has a much tighter radius than that shown in the drawing.

- 7.37 A vehicle taking the path shown in the diagram would be likely to hit the piers/gate occasionally (see Figure 7). If the appellant has to remove the gates permanently to gain access to the site, it will be necessary to alter the red line of the application and the developer is therefore potentially exposed to a ransom strip claim.

Figure 7 Swept path analysis extract with gates included



- 7.38 This servicing arrangement is unsatisfactory and unsafe for a scheme that is essentially car free – or not if 26 spaces are to be provided for disabled residents and visitors - and especially one where access from Dugard Way will be a shared surface and a scheme that seeks to encourage increased permeability with the wider neighbourhood. It is highly likely that service vehicles would have to reverse along Dugard Way. There is therefore the

potential for conflict between cyclists, pedestrians and service vehicles and conflicts between service vehicles and trees proposed to be planted along the boundary with Renfrew Road as they mature. It is submitted that this layout is inconsistent with relevant development plan policy too.

7.39 The Cinema Museum is substantially underused in part because of its future uncertainty. If it were to operate at full capacity (in part due any long term lease the developer offers), an intensification of use of the museum to its full potential would reasonably result in further conflicts (coach parking for big events or school trips, additional servicing of the museum building, evening film screenings at the museum, taxis dropping off and picking up passengers). It is clear that this element of the scheme has not been successfully thought through and it leads me to the view that it would not be an appropriate public benefit if the museum were to be encouraged to expand on the site. It is, after all, a main town centre use and would be better sited in a town centre location consistent with national and local development plan policies. There are great opportunities now for the museum to relocate to a town centre location following the very recent liberalisation of the Use Classes Order (new Use Classes E and F) and as a result of long term changes to retail patterns that will likely follow as a result of the coronavirus. The cinema museum was previously sited in Brixton town centre before relocating here.

7.40 In addition, the layout and arrangements for refuse collection for Block B are convoluted. There is no space in Block B to accommodate the recycling/ refuse collection needs of residents of that building. Accordingly, the appellant proposes a management regime to move waste daily from a holding area at

the southern end of Block B to a larger dedicated refuse area in Block A where it would be compacted and then stored there for collection. Block A is therefore both the dumping ground and compacting/ crushing site for Block B's waste! Block A is of course where the affordable housing flats would be located. In all my professional life, I have never seen such an arrangement so would not understand how it would work. Where would the waste be compacted? Would the waste be compacted in the open air? Is the activity of waste compacting noisy? How often would the waste compacting take place?

7.41 I have considered whether it would be possible to impose a planning condition to regulate the movement of waste around the site in the interests of general amenity and to protect residents of Block A from being disturbed by waste compacting noise but find that it would be difficult for the council to enforce one and the imposition of such a condition would therefore be inconsistent with advice in the NPPF (paragraph 55). It is therefore suggested that the space in front of Block B could become a dumping ground for overflow waste or redundant furniture on occasions such as when a resident moves out of Block B over a weekend.

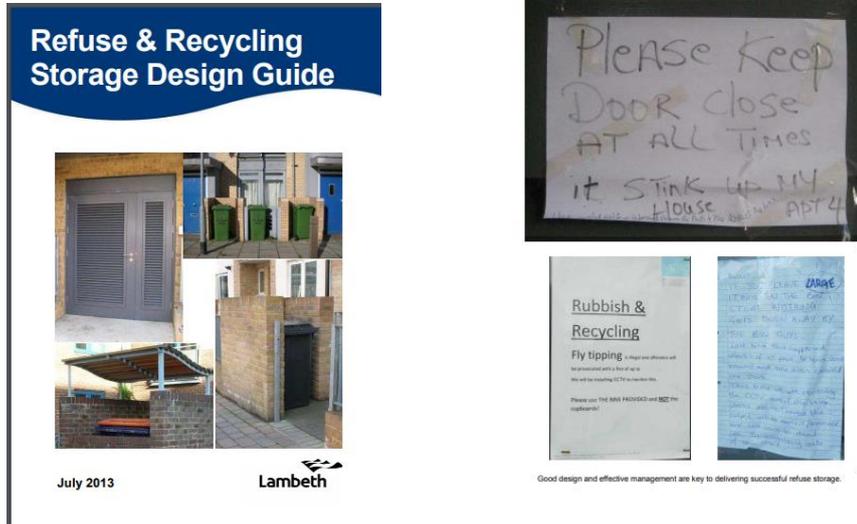
7.42 From personal experience, I have observed this problem of dumping in other modern high rise developments with managed refuse arrangements such as at the UNCLE development in the Elephant & Castle (see Figure 8) and would be concerned that passers-by would see a similar sight to that which shoppers see on the way to the shops at the Elephant and on Knights Walk to the west.

Figure 8 UNCLE development, Elephant & Castle - external refuse storage area



7.43 The council's Refuse & Recycling Storage Design Guide (refer Figure 9) shows many other graphic examples of the consequences of poorly designed refuse facilities in flatted developments. Good design is essential in delivering successful refuse storage.

Figure 9 Refuse & Recycling Storage Design Guide front cover



ASSESSMENT OF APPEAL SCHEME AGAINST THE OTHER MAIN ISSUES

7.44 I now assess the scheme against the other main issues which this proposal raises.

Has adequate provision of affordable housing been made?

7.45 The mix of housing by tenure derived from the application form is identified in Table 1 below. This equates to 43.8% of all flats as affordable contrary to Local Plan Policy H2 (a) (i) which seeks **at least** 50%. Moreover, the split in subsidised tenures is not 70:30 in favour of affordable rent as the development plan requires (Local Plan Policy H2 (a) (iii)).

Table 1 Housing mix by tenure (number of flats)

Housing tenure	Studios and 1 ¹³ bedroom	2 bedroom	3 bedroom	TOTAL	%
Market	54	91	-	145	56.2
Intermediate	66	23	-	89	34.5
Affordable rent	-	15	9	24	9.3
TOTAL	120	129	9	258	

7.46 Calculating the tenure mix by the number of bedrooms in the scheme and noting the provision of two and three bedroom social rented housing to meet local family housing need, the proportion of affordable housing by bedroom actually falls to 41.8% (refer Table 2). Overall, the market housing provision is predominantly two bedroom flats but the offer for affordable housing skewed towards studio flats. Thus the scheme represents a lost opportunity to secure more family sized accommodation for lower income households.

Table 2 Housing mix by tenure (number of bedrooms)¹⁴

Housing tenure	1 bedroom	2 bedroom	3 bedroom	TOTAL	%
Market	54	182		236	58.3
Intermediate	66	46		112	27.7
Affordable rent		30	27	57	14.1
TOTAL	120	258	27	405	

7.47 I do not offer any expert witness to assess the affordable housing viability statement and acknowledge that, consistent with London Plan Policy 3.12 and Lambeth’s Development Viability SPD, there is going to be some negotiation to secure the “maximum reasonable amount” of affordable housing. That said, the Lambeth SHMA 2017 (CD1/18, paragraph 3.14) makes clear that the

¹³ Figures derive from the application form. It is assumed that one bedroom flats also includes studios in Block B.
¹⁴ Percentages do not round up to one decimal point.

provision of shared ownership accommodation can only meet a very small proportion (5%) of total affordable housing need in the borough and, further, that the need for housing is greatest for two, three and four bedroom homes (refer paragraph 4.10). Thus, the appellant's offer not only falls short of the expectations of the development plan but, moreover, it provides the wrong mix of tenures and does not deliver homes for those households in the borough in the greatest need either.

7.48 Notwithstanding this, there are other shortcomings in this element of the scheme that fall short of policy expectations that seek to integrate different tenures within the same development so that they are tenure blind that has long been an aspiration in planning. Two obvious criticisms of the appeal scheme are as follows:

- The social rented provision is solely in Block A and much of it has the poorest outlook including single aspect flats; and
- Block A effectively serves as the bin store and cycle shed for Block B;

7.49 It is clear from the above analysis that the provision of affordable housing, the mix and poor integration of different tenures in combination is inconsistent with the development plan.

Is the mix of homes appropriate having regard to the provisions of the development plan?

7.50 No. The limited provision of family sized housing is particularly disappointing and at odds with the development plan policy. Local Plan Policy H4 requires at least 80% of all affordable units to be 2 + bedrooms and a balanced mix of

unit sizes for market housing. London Plan Policy 3.8(b) identifies the “provision of affordable family housing is addressed as a strategic priority”.

What is the impact of the development on the surrounding townscape including heritage assets?

7.51 The proposal will have negative impacts in its wider townscape and on its local context including heritage assets too. I cover both matters below.

Townscape considerations

The tower (Block B) in its context

7.52 The appellant’s supporting statements with the appeal proposal (HTVIA, Design and Access Statement, Planning Statement) have made a number of connections between this site and the Elephant & Castle but this is clearly not the only context. There is another context too that is inner city in nature and characterised by historic urban streets and squares and a relatively fine urban grain. This grain of the surrounding area is illustrated in Figure 10.

Figure 10 View from UNCLE tower



7.53 It is also characterised area by mid rise flats and houses with small gardens
(see Figure 11).

Figure 11 Tight urban grain



Gilbert Road



Renfrew Road



7.54 Block A appears to acknowledge this lower scale but I have identified other weaknesses with this block which I consider later in this proof of evidence having regard to its impact on Renfrew Road residents to the west.

7.55 I have more significant concerns with Block B. By the appellant's own account, as referred to in the Design and Access Statement, it is a tower block that would be significantly less slender than other recently completed towers at the Elephant & Castle (refer CD2/3 page 80 – 1:32 vs 1:4).

7.56 The architects have attempted to disguise this by articulating the tower as two interlocking blocks - one at 24-storeys and the other at 29 storeys. Overlaid on this massing is a “clip-on” façade, which purports to refer to film reels, and to differentiate between the two volumes using a change in the colour of the cladding. The views of the tower in the wider context demonstrate that these devices are unsuccessful. The proposed tower looks “stumpy” and blocky in comparison to the other towers in the Elephant & Castle cluster. This is a particularly poor response and the opposite of advice given to the appellants by the planners in Lambeth and in Southwark that it should set down from the Elephant & Castle (summarised in CD 5/1).

7.57 I consider that there are further design problems associated with the isolated nature of Block B outside the Elephant & Castle Opportunity Area. In the changing South London skyline, there has been a clear plan-led tall building strategy has been to create a series of clusters in places like Opportunity Areas such as Vauxhall/ Nine Elms, Waterloo and Elephant & Castle often taking advantage of historic post war office development but also consistent with London Plan Policy 7.7 that seeks to direct tall and large buildings to the Central Activities Zone. Tall buildings are grouped together with a central tall tower set amongst further towers that step down to the edge of the cluster. This is not only intended to avoid isolated tall buildings but it also creates smooth transitions between low rise and high rise areas. The proposed tower clearly stands in isolation from the other towers at the Elephant & Castle. Most of the views from the HTVIA show it as isolated, fragmenting rather than reinforcing the Elephant tower cluster. The appeal site sits apart from this

cluster. It is not located on a main street and would therefore be hard to find too.

7.58 Being outside the existing cluster has significant consequences: the other towers at the Elephant & Castle cluster are adjacent to major roads and some distance away from any existing housing. They benefit from being adjacent to significant public open spaces that provide amenity and avoid significant overshadowing or overlooking of nearby buildings. They are easy to navigate to. By contrast, Block B would be isolated and embedded in an existing inner city urban area. Not only would it be hard to find for a pedestrian on foot but to paraphrase from the case officer's report (CD 5/1, paragraph 10.4.19), the route to the Cinema Museum would pass through an undercroft beneath Block B which has a 90 degree turn along its length, creating poor legibility for users approaching from either direction.

7.59 The poor legibility, the undercroft arrangement and the absence of night time activity at pedestrian level combined are a cause for concern especially if Block B becomes a route for late night visitors coming to and leaving the Cinema Museum.

7.60 Notwithstanding this design shortcoming, Block B would clearly cause significant harm to nearby residents both because of its visual impact as well as overlooking and overshadowing. The medium density scale of the immediate surrounding area and its heritage constraints means there is no prospect of future development to help integrate the tower into the overall townscape.

Contextual relationship between Block B, the Master's House (Cinema Museum) and Water Tower

7.61 The immediate context for the proposed new tower comprises is the listed buildings associated with the former workhouse.





7.62 These masonry buildings are characterised by simple façades, and are embellished by highly crafted decoration (cills, string courses, lintels etc) and key elements (entrances, major rooms etc). By contrast, the proposed façade treatment of the new tower is a lightweight cladding that bears no relation to the weight and solidity of the surrounding masonry buildings. The elevations crudely abstract a pattern from an idea relating to “Cinema” (that is, the framing of film reels) and superimpose it as a “clip on” façade device - completely masking the actual structure and internal organisations of the building itself. This disjunction between the façade treatment and the internal organisational structure gives the façade a flimsy appearance completely at odds with the character of the listed buildings.

- 7.63 The result is a building that feels alien and inappropriate to its site and context, and that will dominate and undermine the many valuable qualities of the existing former workhouse complex. The cladding will feel cheap, brash and lightweight. The scale of the giant film motif and the crudity of its detail will completely overwhelm the distinctive form and delicate decoration of the listed Water Tower which currently acts as a symbol of the former workhouse and focal point in the surrounding area.
- 7.64 The foregoing analysis therefore shows that as Block B deviates from its local distinct development pattern and the wider cityscape context, it therefore fails the policy tests of Local Plan Policies Q5 (a) and (b). Policy Q6, Policy Q7(ii) and Policy Q26 as well as London Plan Policies covering design (7.6, 7.7 and 7.8). The analysis further shows why the tower does not deliver design excellence either, the fallback position required by Local Plan Policy Q5 (c) or “buildings of the highest architectural quality”, the starting point for London Plan Policy 7.6. Nor does it provide “an outstanding or innovative design to help raise standards elsewhere” either (NPPF paragraph 131). It fails to take the opportunities available for improving the character and quality of Kennington and the way the area functions (NPPF, paragraph 130) and this failure, combined with the scheme’s other shortcomings, reinforces its unacceptability.

Heritage considerations

- 7.65 The most relevant development policies against which this element of the proposal needs to be assessed are Local Plan Policies Q18, Q20, Q22 and Q26 and London Plan Policy 7.6, 7.7 and 7.8.
- 7.66 The main heritage considerations are to assess the degree of harm the proposal is likely to have on nearby designated heritage assets, that is, the Renfrew Road Conservation area in which the site is located and nearby conservation areas as well as a number of Grade II and locally listed buildings.
- 7.67 The appellant's HTVIA concludes (CD 2/13, paragraph 7.6) that the harm is less than substantial. Such adverse effects relate principally to the introduction of a new tall building on the north area of the site, which would have the potential to have a markedly changed visual impact on the established setting of historic buildings and or areas, and so detract from some of the existing positive townscape characteristics of the area."
- 7.68 I told StB to commission its own research on this matter (CD6/4) which comes to a different view on this matter and accords with my own observations. I do not propose to offer extensive expert witness evidence on this matter.
- 7.69 However, I consider there are two conflicting heritage issues to consider when making a planning judgment on the scheme. On the one hand, keeping the Cinema Museum operating may help keep one of the listed buildings in the area in productive use (I understand a 999 year lease has been offered), and would support Local Plan Policy ED11. However, the building could just as

easily be converted to housing or another use compatible with its historic use or indeed social infrastructure to make up for the loss of extra care Use Class C2 accommodation. Little weight should therefore be given to this benefit. It is also acknowledged that there will not be any demolition of any designated heritage assets.

7.70 However, on the other hand, the proposal is likely to cause substantial harm to the setting of a number of heritage assets. In coming to this view, it is important to review critically the HTVIA. In my opinion, there are a number of flaws in this document:

- The site is located in the north of the borough and its flat topography makes any new high rise sensitive, an observation of the Lambeth Tall Buildings Study (CD1/12).
- The HTVIA does not give substantial weight to the significance of a cluster of “municipal” listed buildings in the site’s immediate context including the former workhouse buildings, the Water Tower and the courthouse on Renfrew Road. They clearly have strong group value and clearly relate to one another architecturally as well as with their former municipal and health uses.
- The setting of the listed building at the Water Tower has to be the whole of the former Lambeth hospital site including the Bellway development as it is the landmark on the site and arguably the civic buildings in the Renfrew Road Conservation Area. Indeed, the list entry for the building by the then English Heritage gives the following reasons for its designation:

*'The water tower to the former Lambeth Workhouse and Infirmary is designated for the following principal reasons: * of special architectural interest as an imposing and distinctive water tower in the Venetian Gothic style, constituting a rare feature in inner London; * historic associations with Lambeth Workhouse and Infirmary; * group value with the former workhouse administrative block, whose style it complements, and with the nearby former courthouse and fire station in Renfrew Road (qv); a good ensemble of Victorian public buildings.'*

Such an interpretation would accord with relevant Historic England advice on the setting of listed buildings (Historic England Advice Note 3¹⁵).

- The introduction of such an incongruous form as Block B will compete unduly with this existing fine landmark building and markedly affect its setting in a way that the Bellway development flats do not. The choice of a “film reel” finish to Block B does not acknowledge the original, historic role of the former Lambeth Workhouse/ Hospital site either.
- A building of the scale of Block B is not necessary as a pathfinder to get to the Cinema Museum. The Water Tower already serves as a landmark to direct visitors to the museum.
- The scheme will bring incongruous high rise development closer to boundaries of Renfrew Road and Walcot Square conservation areas than the high rise development in and around the Elephant & Castle. It can be

¹⁵ <https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/>

concluded that the proposals would not preserve the appearance of these conservation areas.

7.71 Arising from the foregoing analysis, it is clear that the proposal is both inconsistent with development plan policy (Local Plan Policies Q18, Q20, Q22 and Q26 and London Plan Policies 7.6, 7.7 and 7.8) and the relevant legal tests in the Planning (Listed Buildings and Conservation Areas) Act 1990.

Is the quality of accommodation proposed acceptable including the relationship between the two proposed blocks (Block A and Block B)?

7.72 No. This is manifestly an overdevelopment of the site. I consider first of all its density and then I look at other aspects of the development.

Density

7.73 The London Plan establishes a density matrix for the number of homes it expects new housing schemes to provide depending on a site's public transport accessibility level and the form of housing proposed (Table 3.2). It is important to read these density figures as guidelines and not a prescriptive mathematical requirement to be complied with.

7.74 The site is located in an urban setting with excellent access to public transport. The London Plan Table 3.2 therefore identifies the site as Urban and there is a policy expectation that new housing will deliver between 200 and 700 habitable rooms¹⁶ per hectare (hrh). It is not appropriate to categorise this as Central as the appellant has suggested as the site is set back from a main road and surrounded by lower scale generally residential development.

¹⁶ A habitable room is a living room, dining room, study or bedroom but not a toilet or kitchen.

Moreover, the site is not within 800m of a Major Centre. The Elephant & Castle centre is a District Centre.

7.75 The application drawings do not show the detailed layout of flats within Block B but the applicant has suggested that the scheme has 581 habitable rooms (see Table 3)¹⁷. Given that the net development site area is 0.51 hectares, the resultant density of this housing scheme is 1139 hrh, over 62% above the highest density anticipated in the density matrix.

Table 3 Estimate of total number of habitable rooms

Housing tenure	Studio	1 bedroom	2 bedroom	3 bedroom	TOTAL
Market	27	182	81	0	290
Intermediate	0	132	69	0	201
Affordable rent	0	0	45	45	90
TOTAL	27	314	195	45	581

7.76 This high density in excess of the density matrix threshold is the first indication that the proposal represents an overdevelopment of the site. Other elements of the scheme including its layout and level of amenity space and servicing difficulties as well as its off site impacts on neighbours reinforce this view.

Other quality of accommodation considerations

7.77 The London Plan provides a number of other criteria for assessing the quality of new schemes including requiring minimum floorspace for flats (refer Table 3.3) and adequate and good quality playspace provision (London Plan Policy 3.6). Local Plan Policy H5 has more prescriptive standards for private garden

¹⁷ Table 3 assumes that the 3 bedroom/ 5 person flats have five habitable rooms each.

and open space in new housing schemes and makes reference to the London Plan Shaping Neighbourhoods: Play and Informal Recreation SPG (2012) too. Both the Local Plan and SPG place emphasis on this space being of a high quality.

- 7.78 The schedule of accommodation appears to show that each flat meets the minimum floorspaces in the London Plan but it is unclear if each of the flats can provide the minimum storage areas required by Table 3.3 of the London Plan given that the applicant has not provided full floor plans for the flats in Block B.
- 7.79 There are two ways of calculating how much amenity space should be provided in this scheme. Local Plan Policy H5 requires at least 50 sqm of communal space plus a further 10 sqm per flat either as a balcony, terrace or garden area. This would require the development to provide 2630 sqm (that is, $50 \text{ sqm} + (258 * 10 \text{ sqm})$) to be policy compliant. Using the appellant's plans, Figure 12 below shows a provision of only 1483 sqm. A good proportion of this would disappear if 10% disabled parking provision were made on site. In addition to this figure, a number of the flats in Block A have modest balconies.
- 7.80 In combination, this does not equate to 3,250 sqm as the SoCG appears to agree on. It is certainly inappropriate to include space within individual flats as "internal balcony space". This is clearly just the living rooms of individual flats and this is not what the development plan policy requires. The flats are not located on a busy street or railway line where open balconies might not be

acceptable. Other high rise buildings such as the UNCLE scheme have balconies.

Figure 12 Amenity space provision

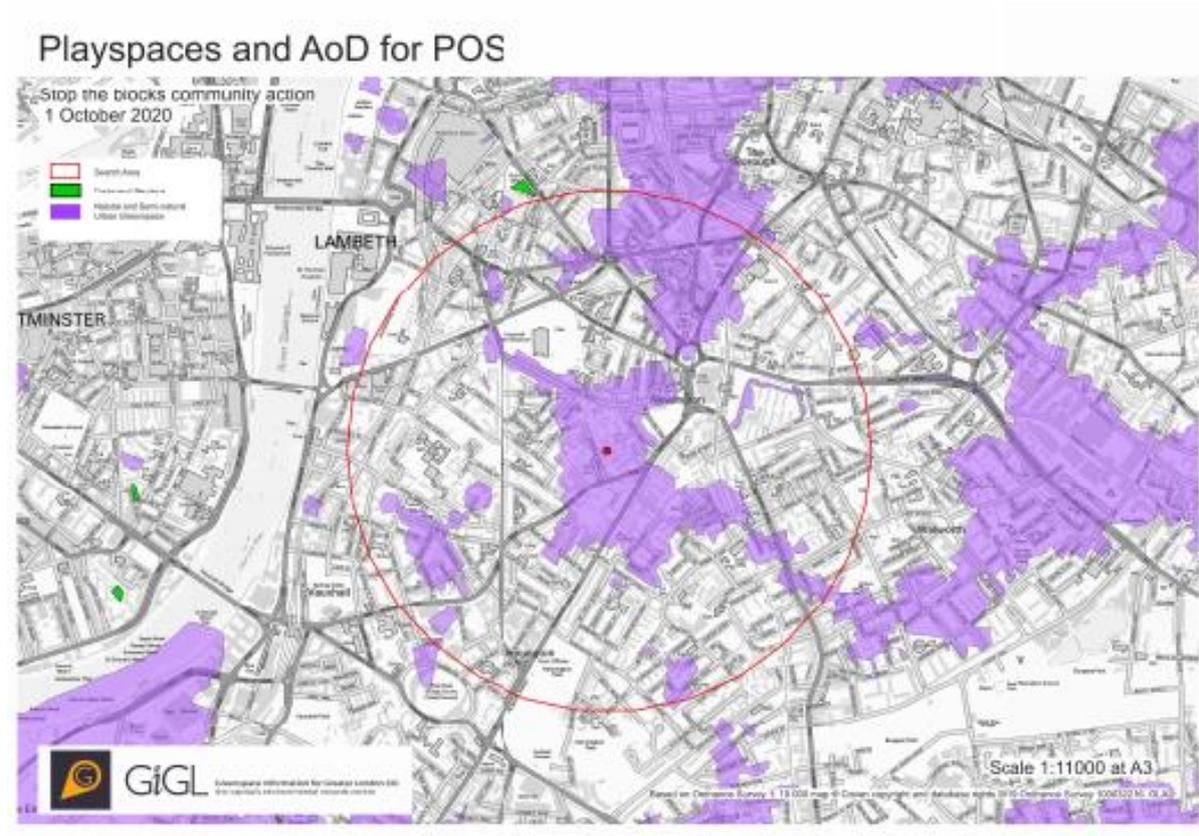


7.81 The 2012 SPG adopts a more complicated way of assessing the amount of children's play space within amenity space using empirical data on child yield by housing tenure and accommodation type. The empirical data for child yield in social housing is likely to be out of date and questionable as the SPG predates the implementation of the "bedroom tax" in 2013 affecting recipients

of Housing Benefit and financial caps in Housing Benefit thereafter that will force larger, low income families to occupy housing even more efficiently. This is a particularly important factor to take into account on a site in Zone 1 in the north of the borough where rents are higher than other parts of Lambeth. It is reasonable therefore to assume that child yields in the affordable housing element of the scheme will be considerably higher now. Like the Local Plan, the SPG requires provision of 10 sqm of play space per child.

7.82 Using the dated SPG data in the absence of any other recent empirical data on child yield would suggest the site would have a child yield of around 45 children and therefore require 450 sqm of play space. Only one equipped play area is shown and that is less than this requirement. The only other potential space for active recreation is the 360 sqm south of Block B but it is referred to as a “simple pedestrian square” in the design and access statement (CD2/3, page 62). Overall, the level of amenity and play space provision is unsatisfactory in the context of an inner urban area already deficient in access to local, small and pocket parks (refer Figure 13). It is therefore inappropriate for the appellant to assert that older children will use St Mary’s Churchyard in nearby Southwark as that would add to play space stress in that part of London too.

Figure 13 Playspace deficiency – 1km radius from Dugard Way, SE11
(source: GiGL)



7.83 Not only does the provision of amenity and play space on site fall short of development plan requirements when measured by area and that of the SPG but it is poorly laid out too. The amenity space between Blocks A and B is likely to be in shadow for much of the day being sandwiched between two buildings and exposed to microclimate induced wind events contrary to Local Plan Policy Q2. The communal space to the west of Block A does not provide for privacy to residents of individual ground floor flats on that part of the scheme either. If this space were converted into individual back gardens to

address this privacy objection, it would result in a reduction in the overall communal space for all residents.

Accommodation layout

7.84 The desire to secure such a large number of homes has resulted in other shortcomings in relation to the quality of accommodation that fail the development plan tests in Local Plan Policy H5.

- The layout of Block A is particularly poor, being 18m deep with double banked corridor access and a number of single aspect flats.
- The interiors to these flats – and especially those orientated north-east - are therefore likely to be dark and pokey for much of the day compounded with an outlook onto Block B at close quarters (14m away) which is likely to cause residents on Block A to use curtains or blinds to maintain privacy and thus make habitable rooms even darker.
- All of the studios in Block B are single aspect too albeit with a southern orientation that maximises solar access but this potentially expose the residents of these flats to overheating in the summer.

7.85 The appellant has not offered any “exceptional reasons” as the development plan requires to depart from this development plan policy that seeks to restrict single aspect housing. The design solution in this scheme is especially poor for a new build development rather than the conversion of a building where some compromise might be expected.

Other deficiencies

7.86 The development has other deficiencies as a direct result of the amount of new housing proposed. It would see the felling of all the trees of arboricultural worth in the north eastern corner of the site contrary to Policy Q10 of the Local Plan.

Has the appellant addressed pertinent flood risk issues given that it is located within Flood Zone 3 ?

7.87 No. This site is in Flood Zone 3, an area at high risk of flooding¹⁸. Ordinarily new housing is not supported without a Flood Risk Assessment (FRA) and sequential/exception tests showing the justification for this site as well as how the applicant will provide means of escape, and ensuring the scheme will not add to flood risk elsewhere (refer NPPF, London Plan Policy 5.12 and Local Plan EN5 and Annex 5). At the time of writing this evidence, the EA still had objections to the FRA relating to its methodology which the applicant must correct.

7.88 If the buildings have to be raised to cover the theoretically increased risk of flooding to the year 2100, the appellant will be obliged to submit revised plans (Block A will need to be raised by 0.65 m because of its ground floor sleeping accommodation) and a revised DSOR. No such revisions have been made or could be offered at this late stage. Rather, the appellant currently intends to raise Block A by 0.10m and have an evacuation plan in place to help disabled people leave the building. There is a missed opportunity here to have two

¹⁸ Theoretically, at high risk. The raised embankment along the Thames Southbank and the Thames Flood Barrier reduce the likelihood of inundation.

storey maisonettes in Block A with sleeping accommodation on the first floor that might address the EA's concerns and, at the same stroke, deliver the larger family homes that Lambeth needs.

7.89 Notwithstanding this, the FRA is also deficient in that it has not addressed the sequential and exception tests which the Inspector – and not the EA - must now take into account when determining this appeal. As I have set out, this is contrary to the development plan. Put simply, the appellant has to demonstrate that there are no other development sites outside of Flood Zone 3 that could accommodate this amount of housing. The appellant has not and this omission falls short of advice in the NPPF (paragraph 158) and advice in the Government's NPPG as well as London Plan Policy 5.12 and Local Plan EN5 and Annex 5.

7.90 The final drawings will also need to make clear precisely where the vents serving the underground cycle parking area will be located to prevent flood water cascading into the basement store and details of a management plan to evacuate the buildings in a flood event could be covered via a planning condition.

7.91 I have no views on the drainage elements of the scheme and all parties appear to agree it must be designed consistent with SuDS principles. This element of the scheme could be covered via a planning condition.

Has adequate provision of renewable energy options been made?

7.92 I did not raise this matter in my first appraisal of the scheme in September 2019. I do not offer any expertise to query the Energy Strategy provided by appellant as part of the application but note that the council considers this unsatisfactory. I agree that carbon offsetting could be achieved through a s106 contribution consistent with London Plan Policy 5.2.

What are the planning benefits of the scheme including the proposed draft s106 agreement?

7.93 I offer brief comments on the heads of terms of the s106 that is being negotiated between the council and the appellant.

(a) On site affordable housing – I do not know the final offer so cannot comment on this matter.

(b) Carbon Offset Contribution (£231,678) – this is a requirement of the development plan. There is nothing special with this contribution. It could be provided at any site.

(c) Connection to future energy network – again this is a requirement of the development plan.

(d) Employment and Skills Plan – this too is a requirement of the development plan.

(e) Employment and Skills Contribution (£167,700) – this is a requirement of the development plan.

(f) Parking Permit free – this is essential and consistent with the development plan.

(g) Car Club Membership for three years – it is unclear why membership is only offered for three years. I would recommend that the appellant clarify this when the s106 and draft conditions are being discussed.

(h) Travel Plan over five years and one off monitoring contribution (£5,300) – this too is a requirement of the development plan.

(i) Low Traffic Neighbourhood contribution (£50,000) – it is unclear what this means. I would recommend that the appellant clarify this when the s106 and draft conditions are being discussed.

(j) Way finding legible London signage contribution (£15,000) – this is nice but it is unclear why this is necessary. I would recommend that the appellant clarify this when the s106 and draft conditions are being discussed.

(k) Monitoring costs. This is a matter for the appellant and the council to reach agreement on.

(l) The Appellant has offered to grant a lease to the occupiers of the Cinema Museum prior to first occupation and to include this in the Section 106 Unilateral Undertaking. It is unclear how this meets the tests in Regulation 122 of the CIL Regulations 2010.

7.92 Many of the benefits associated with the scheme are not site specific such as employment training and CIL contributions. I agree with the case officer that the lease to the Cinema Museum is not a public benefit. Theoretically, the retention of the use of the site as a cinema will support an arts venue consistent with Policy 4.6 of the London Plan. However, I do not consider that it is appropriate for the Cinema Museum to expand its activities on this site. It is a main town centre use and there might be more benefit in the relocating the group to a town centre site and developing the listed building for a more

valuable end use, including housing. Indeed an expanded museum and cinema is likely to cause disturbance to local residents.

7.93 Further, the link between Charlie Chaplin, the Cinema Museum and Block B is tenuous and I have already suggested that an expanded museum would be more appropriate in a town centre.

7.94 The heads of terms of the s106 agreement do not overcome the serious design deficiencies which I have identified in this scheme.

8. OTHER PERTINENT POINTS RAISED IN THE CASE

Appellant's statement of case

- 8.1 I have reviewed the appellant's statement of case (CD 3/2) submitted with the appeal. I find this to be biased and reads like an advocate's statement. It has not attempted to give a fair assessment of the appeal proposal's performance against the development plan and national policy as I have attempted to do here. It continues to be selective in its identification of relevant sites to compare the application with (section 5 – planning history). Nor does it address the council officer, StB and other experts' views such as Historic England on the deficiencies of the scheme. It attempts to sell the benefits of more housing without addressing the scheme's obvious defects. It is incorrect in other matters (for example, paragraph 4.4). The site is not adjacent to the Elephant & Castle OAPF boundaries. The appellant has still not provided a sequential and exception test to justify building new homes in Flood Zone 3 as required by the NPPF.
- 8.2 The appellant advises that the scheme is funded by the GLA Homes for Londoners programme (paragraph 1.4) and confirms that the Mayor is strongly supportive of the scheme in principle. That does not make this current proposal in conformity with the development plan. Moreover, the GLA's advice is clearly just strategic and the GLA have not done the detailed analysis that the case officer's report has conducted.
- 8.3 I am not minded to alter my opinion about the scheme having read the appellant's statement of case.

Planning conditions

- 8.4 A new draft schedule of conditions has been prepared by the appellant for the inspector's consideration (CD7/1) in the event that the appeal is allowed. This schedule differs from the bullet point list in Appendix 2 to the appellant's statement of case (CD3/2).
- 8.5 I think either schedule of conditions is broadly acceptable and addresses the extensive development plan schedules of policies I referred to in Section 6 of my proof of evidence. However, I offer a number of suggestions on how the more detailed schedule in CD7/1 could be improved as this will help inform the round table discussion on this matter that will take place towards the end of the public inquiry.
- 8.6 There are two omissions in the schedule of conditions. First, the appellant commissioned WYG to conduct ecological research on the site (CD2/8). This confirmed the ecological attributes of the site but is also recommended the planting of native species and installation of bat boxes. I recommend that the appellant comply with their ecological advisor in this regard in accordance with London Plan Policy 7.19 and Local Plan Policies EN1 and Q9 and also improve fauna connectivity with local sites of interest for nature conservation (SINCs) including nearby Mary Harmsworth Park and land south of Fitzalan Street. Second, the appellant gave a commitment in the planning statement to "build in accordance with sustainable development principles" (CD 2/24) – whatever that means - but has not offered a condition to address this.

- 8.7 The latest schedule of conditions has been greatly improved since the first articulation of them.
- 8.8 I offer more detailed comments below on some of them.
- 8.9 **Condition 4** would be improved if the appellant confirmed at point ix. the mechanism for communicating with residents immediately adjoining the site and likely especially on Renfrew Road to the west and the Police House, residents in the Bellway Homes scheme (to the south and east) and residents on Castlebrook Drive to the north as well as the occupants of NHS complex to the south is set out in this condition. There is likely to be goodwill with residents if the appellant were to modify this condition or clarify at the public inquiry its approach on this matter.
- 8.10 In my experience of other controversial, place changing planning proposals, I have negotiated with developers in previous local authority roles and advised infrastructure operators in commercial practice on communication tactics with affected residents. In one recent case in Shropshire, I persuaded a housebuilder to agree to provide a named member of the construction team during construction and for the developer to agree to meet with residents once monthly at a local venue. The Jamyang Buddhist Centre on Renfrew Road or the Cinema Museum would be ideal places to meet when it is safe to do so in the context of the coronavirus pandemic. Alternatively, the appellant should identify alternative virtual methods of direct communication with affected residents.

- 8.11 Given the extent of local concern about the scheme, it would be beneficial for the local community if the developer used such public sessions to answer questions about the air quality and dust management (**condition 9**), piling method (**condition 10**), environmental noise (**condition 26**), building plant noise (**condition 31**) and lighting (**condition 33**) - where a poorly designed scheme could significantly disrupt the ability of residents on Renfrew Road from using their back gardens in perpetuity – and post construction waste management (**condition 36**).
- 8.12 **Condition 15** has been prepared because the appellant accepts it is necessary to impose a condition on solar glare. The need for a condition of this sort in a residential neighbourhood whose characteristics I have described above demonstrates why a high rise tower of the form proposed is inappropriate here. The same principle applies to **condition 29** which seeks to regulate the acoustics of play space.
- 8.13 The appellant accepts that **condition 25 – parking design** – is necessary but has shown that it could only be achieved at the expense of nearly all the tree planted areas and would hinder servicing of the site by refuse vehicles. This reinforces why the scheme is an overdevelopment of the site.
- 8.14 **Condition 32 – servicing plan** does not mean anything. Even if a developer could prepare a service plan, how would it be enforced? How would pizza or Tesco delivery drivers know about the servicing plan? How would the condition control when Amazon delivery drivers could come?

8.15 While these conditions (with my suggested additions and amendments) are necessary to address defects in the scheme, they do not make the proposal acceptable in overall terms and indeed I have demonstrated why it is unacceptable.

Other matters

8.16 Having considered all matters raised by the appeal proposal afresh including the revised plans submitted in September 2020, I do not find anything that would justify me coming to another recommendation on this case.

9. CONCLUSION

- 9.1 I have demonstrated that this proposal is manifestly contrary to the development plan and national policy as well as the latest draft of the evolving London Plan.
- 9.2 There was insufficient information submitted with the application to enable the council to determine this case, especially with regard to flood risk, having regard to government advice in the NPPF. The appellant has still not prepared a policy compliant sequential and exceptions test. The appellant did not factor in the presence of gates (outside the red line boundary) on the access to the site from Renfrew Road when considering access to the site either.
- 9.3 The scheme represents the loss of specialist (Use Class C2) accommodation and the appellant has not conducted the appropriate London Plan test to examine its potential for another purpose.
- 9.4 The site is in a distinct location separated from the Elephant and Castle OAPF and there are no policy expectations that a development of the scale of the appeal proposal will be supported. The emerging London Plan Intend to Publish Policy D3 only encourages “gentle densification”.
- 9.5 The proposal is an overdevelopment of the site with a number of serious defects. It significantly exceeds the London Plan density matrix. That this is an overdevelopment is reflected in other deficiencies. These include the poor relationship between the two blocks, insufficient levels of amenity and play space in an area with a deficiency of open space already and the convoluted servicing relationship and difficulties getting service vehicles to access the

site. The tower (Block B) is visually discordant in its surrounding context. All the best trees on the site would be felled.

- 9.6 Its off site impacts will be severe both with regard to the degree of harm to heritage assets as well as to the living conditions of nearby residents including overlooking – especially on Renfrew Road to the west – as well as overshadowing to residents to the north. It will materially affect many residents' right to a private life.
- 9.7 The council has more than five years' housing land supply. It is currently the seventh best performing local planning authority in London (out of 34) with regard to delivering on its government set housing target. It does not need to write a Housing Delivery Test Action Plan. The presumption in favour of sustainable development set out at paragraph 11 of the National Planning Policy Framework (the NPPF) does not apply to the site. The need to boost significantly the supply of housing does not justify a departure from development plan policy.
- 9.8 There are benefits that arise from the scheme – most obviously the delivery of more housing. However, the proposed benefits offered by the development do not outweigh these significant environmental and other harms and the scheme is further unacceptable through the lost opportunity to deliver more family accommodation that is genuinely affordable.
- 9.9 I am not aware of any other material planning considerations that weigh in favour of the proposal to sufficiently outweigh the harm I have identified above. The proposal is not sustainable development.

9.10 Given these serious deficiencies, I respectfully recommend that the appeal be dismissed.

Appendix 1 London LPAs performance against Housing Delivery Test – 2019 (source: MHCLG)¹⁹

Local Planning Authority	Housing Delivery Test 2019 score
Hillingdon	184%
Hammersmith and Fulham	169%
Harrow	169%
Sutton	157%
Wandsworth	140%
Bexley	130%
Lambeth	121%
Richmond upon Thames	121%
Ealing	120%
Merton	110%
Waltham Forest	107%
Hounslow	
Westminster	102%
Lewisham	101%
Southwark	93%
Greenwich	90%
Hackney	87%
Kingston upon Thames	78%
Enfield	77%
Newham	77%
Tower Hamlets	75%
London Legacy Development Corporation	69%
Islington	63%
Redbridge	60%
Kensington and Chelsea	57%
Haringey	55%
Havering	33%

¹⁹ <https://www.gov.uk/government/publications/housing-delivery-test-2019-measurement>

