

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

PINS REF: APP/N5660/W/20/3248960

LPA REF: 19/02696/FUL

AND IN THE MATTER OF THE PROPOSED REDEVELOPMENT OF THE FORMER
WOODLANDS NURSING HOME, DUGARD WAY, LONDON SE11 4TH

CLOSING SUBMISSIONS ON BEHALF OF
STOP THE BLOCKS

INTRODUCTION

1. Following the hearing and testing of all the evidence in this public inquiry, it is abundantly clear that the appeal brought by Anthology Kennington Stage Ltd (“Anthology”) pursuant to s. 78(2)(a) of the Town and Country Planning Act 1990 should be refused. This is not a marginal appeal where the planning balance only just tips against granting permission but rather one in which it has been convincingly demonstrated that the planning harms substantially outweigh the public benefits such that planning permission should be refused.
2. The proposal to erect a part 24 and part 29 storey building (“Block B”) and a peripheral lower development of part 3 and part 4 storeys (“Block A”) comprising a total of 258 residential units is an overdevelopment of the appeal site at the former Woodlands Nursing Home on Dugard Way, London, SE11 4TH which (i) is unacceptable in design terms; (ii) has unacceptably harmful impacts on the amenity of existing and future residents; (iii) substantially harms two heritage assets by development in their setting; (iv) offers inadequate and poor quality amenity space; (v) fails to comply with policies protecting the retention of social infrastructure; and (vi) presents an unacceptable flood risk to future occupiers, including future disabled occupiers, on the ground floor of Block A.

THE LAW

3. Section 70(2) of the Town and Country Planning Act 1990 provides,

“(2) In dealing with an application for planning permission ...the authority shall have regard to -

(a) the provisions of the development plan, so far as material to the application,

...and

(c) any other material considerations.”

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides,

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”

SITE CONTEXT

5. The key to unlocking this appeal is to identify the proper context of this site. Three issues flow directly from that starting point: (a) the suitability of a tall building such as Block B on this site; (b) whether and to what extent the site will be overdeveloped; and (c) the reasonable expectations of existing and future occupiers of residential amenity including daylight and sunlight.

6. First the Woodlands nursing home site has not been specifically identified by the development plan as a site suitable for tall buildings. The fact that it has not been identified as an inappropriate site is irrelevant in policy terms. London Plan policy makes clear that tall and large buildings should be part of a plan-led approach to changing or developing an area. There is no development plan policy supporting a building of up to 29 storeys such as Block B on the Woodlands Nursing Home site.

7. London Plan Policy 7.7 provides,

- “A Tall and large buildings should be part of a plan-led approach to changing or developing an area by identification of appropriate, sensitive and inappropriate locations. Tall and large buildings should not have an unacceptably harmful impact on their surroundings
- B Applications for tall or large buildings should include an urban design analysis that demonstrates that the proposal is part of a strategy that will meet the criteria below. This is particularly important if the site is not identified as a location for tall or large buildings in the borough’s LDF
- C Tall and large buildings should:
- a generally be limited to sites in the Central Activity Zone, opportunity areas, areas of intensification or town centres that have good access to public transport
 - b only be considered in areas whose character would not be affected adversely by the scale, mass or bulk of the tall building
 - c relate well to the form, proportion, composition, scale and character of surrounding buildings, urban grain and public realm...particularly at street level
 - d individually or as a group, improve the legibility of an area by emphasising a point of civic or visual significance where appropriate, and enhance the skyline and image of London
 - e incorporate the highest standards of architecture and materials including sustainable design...
 - f have ground floor activities that provide a positive relationship to surrounding streets

- g contribute to improving the permeability of the site and wider area where possible
- h incorporate publicly accessible areas on the upper floors, where appropriate
- i make a significant contribution to local regeneration.”

8. Second as the development plan does not support Block B on the appeal site, it is “*particularly important*” pursuant to London Plan Policy 7.7B above that the criteria in 7.7C are satisfied.

9. Third in conflict with London Plan Policy 7.7C(a), the proposals are not in the Central Activity Zone, an opportunity area or a town centre. The fact that the site is adjacent to the Elephant and Castle Opportunity area does not assist the Appellant. To the contrary: the Opportunity Area Framework (CD 1/49) applies a nuanced approach to the development of tall buildings within the opportunity area.

10. Fourth the OAPF does not, in any event, support the development of tall buildings in the “character areas” closest to the appeal site.

11. The appeal site is closest to the Pullens and West Square character areas. Pullens is characterised within the OAPF as comprising of 2-3 storey housing around the Newington Estate (CD 1/49 Pg 109) and 4 storeys around Amelia and Iliffe Street. As a result, SPD 43 (Pg 111) provides that development in the Pullens character area should

- “
- *Conserve or enhance the significance of the Pullens estate conservation and its setting area by:*
 - ...
 - *Relating to existing building heights which are generally 4 storeys”*

12. The plan of the Pullens character area at Pg 110 of the OAPF demonstrates the extent of that area. The site now occupied by the Uncle building to the east of Dante Road was

left deliberately out of the Pullens character area and placed in the Central character area where high rise development has policy support (Pg 76 and SPD 23).

13. Situated to the north of the appeal site is the West Square character area within the OAPF whose pattern is described as *“typical of an early London suburb”* (Pg 114). Pursuant to SPD 47 (Pg 117) development in that area should relate to existing building heights which are generally 2-4 storeys.
14. As a result, while the appeal site adjoins the boundary of an opportunity area, the planning framework which governs that area does not support a tall building in the locations closest to the appeal site on the basis that the characters of those areas are incompatible with high rise development. As a result, the boundary with the opportunity area does not support high rise development of the appeal site. The individual policies within the Framework which deal with the areas closest to the appeal site militate against the development of tall buildings in the Pullens and West Square character areas adjacent to the appeal site.
15. Fifth the emerging Elephant and Castle cluster is, as a result of the deliberately and carefully crafted Framework policies, developing to the north and east away from the appeal site. This is aptly demonstrated by the surrounding “Building Heights” analysis at page at Pg 26 of Mr Graham’s proof of evidence. Whilst Mr Graham memorably claimed that the centre of the isochrones at Pg 25 of his evidence was a random point selected by his team, Pg 26 of his evidence reveals that having regard to those developments which have been consented and those which are under construction the centre of the existing cluster will move roughly to the Elephant and Castle shopping centre which is located much further to the north and east of the appeal site than the central point alighted upon by Mr Graham. That is important because it demonstrates that the cluster is not expanding to the west but to the east and further away from the appeal site.
16. Sixth it is accepted by the Appellant the appeal site is bounded by low density two to three storey housing on three sides and the Bellway Water Tower housing development on the 4th side which is three to five storeys. Curiously, the Appellant contends that whilst this form of development surrounds the site it is “not representative of the character of the area”. A site visit reveals that it is precisely representative of the

character of the area. The appeal site is surrounded by conservation areas and modest low-rise development.

17. Seventh to the west of the site is the Cotton Gardens Estate whose tallest element is 20 storeys. However, as will have been seen on the site visit, that development is (a) 9 storeys lower than the tallest part of the appeal scheme; (b) has much more green space around it than the appeal site such that it does not appear discordant or overbearing in its surroundings; and (c) as noted by Professor Saint it deploys its bulk in a far more subtle and appropriate way than the proposed Block B.
18. Eighth if points four to seven above are accepted then it follows that there is a conflict with London Plan Policy 7.7C (b) and (c). The scale, mass and bulk of Block B will impact adversely on the character of the area nor will Block B relate well to the form, proportion, composition, scale and character of surrounding buildings or urban grain.
19. Ninth as to Policy 7.7C (d), it will also have a detrimental impact on the legibility of the area and the Cinema Museum as, despite its purported film reel motif, Block B will not be easy to find by pedestrians or other visitors to the site as a result of its backland location. It does not sit on a main road so a pedestrian having identified Block B owing to its height will not be easily able to find Block B or the Cinema Museum from the surrounding streets.
20. Tenth the architectural design of the building is extremely poor contrary to Policy 7.7C(e). Prof Saint characterised the celluloid film reel motif as an embarrassment and Block B as horribly bulky. The attempt to break up the bulk by providing a part 24 and part 29 building does not serve to slim down the building and Block B will be far less slender and far more imposing than the existing tall buildings in Elephant and Castle.
21. Eleventh the ground floor of Block B and the undercroft arrangement will not result in promoting an active ground floor frontage. On the contrary the lack of meaningful ground floor activity will mean that there will likely be little footfall at ground floor level for substantial portions of the day and night. Ground floor activity is wholly reliant on the comings and goings by the residential occupiers as there is no commercial activity proposed at ground floor level which would promote an active ground floor frontage. Additionally, as a result of the inactive ground floor frontage, a pedestrian route through

the site at night will not be a safe environment. That absence of a sense of safety is heightened by the fact that the site is not set on any main road.

22. Twelfth there is no evidence of any contribution to local regeneration other than the cost of the development itself and the short term employment created during the construction phase. The alleged £100m figure is not supported by evidence. Moreover, this could be applied to any development of this scale and is not a unique benefit associated with this scheme. As a result, it cannot be said there is any substantial contribution to local regeneration.

SITE DENSITY/OVERDEVELOPMENT

23. The current proposal is demonstrably an overdevelopment of the site. It is a proposal which maximises housing on the site resulting in unacceptable harm rather than optimising site capacity as required by the Secretary of State's proposed revisions to emerging London Plan Policy D3 (CD1/20). The case on overdevelopment is demonstrated by the following factors.
24. First the development plan is clear: "*optimising site capacity means ensuring that development takes the most appropriate form for the site*". As accepted by Mr Considine, optimising site capacity means achieving as much development on the site as possible without causing unacceptable harms to existing and future occupiers. Many of the unacceptable features of the appeal scheme can be traced back to overdevelopment: (i) the bulk and scale of Block B; (ii) the double banked corridors of Block A; (iii) the overshadowing caused by Block B and impact on daylight and sunlight on existing and future occupiers; (iv) the unacceptable overlooking from Block A into the Renfrew Road living rooms and gardens; (v) the 50% single aspect flats of Block A and the 33% single aspect flats of Block B; (vi) the lack of communal amenity and playspace of sufficient quality; (vii) the heritage harm from Block B looming above and diminishing the significance of the Water Tower and Master's House; (viii) the unacceptable flood risk caused to the future ground floor disabled occupants of Block A; (ix) the poorly designed waste management plan; (x) the poorly designed cycle arrangement and; and (xi) the inability of refuse and other service vehicles to safely service the site. These are all indicia of a development which seeks to maximise the

amount of housing provided to the detriment of existing and future occupiers. On any view, the appeal scheme fails miserably to optimise site capacity through a desire to achieve as much development as possible on the site at any cost.

25. Second the appropriate site area for determining site density is 0.5ha. Mr Maher has included a plan at Figure 1 Pg 12 of his proof of evidence which demonstrates precisely the site area being developed. It would be artificial to apply a site area of 0.7ha as contended by the Appellant as this includes substantial areas of land (the Masters House and the North and South Lodges) which are outside the area of land being developed. Mr Maher was not cross examined on this point. The commentary to adopted London Plan Policy 3.4 at Para 3.31 specifically provides that the site area to be used in the density calculation should be the “net residential area”. The Masters House and North and South Lodges, therefore, must be excluded from the calculation of the area being developed.

26. Third this is not a “central” site as contended by the Appellant and is distinct in character and location from the emerging high-rise cluster in the Elephant and Castle for the reasons set out above. For the purposes of the density matrix within London Plan Table 3.2 (CD1/1 Pg 101) it is appropriate to treat the site area as urban. It fits precisely within the “urban” definition of the density matrix which provides,

“Urban – areas with predominantly dense development such as, for example, terraced houses, mansion blocks, a mix of different uses, medium building footprints and typically buildings of two to four storeys, located within 800m walking distance of a District centre or along main arterial routes.”

27. The area in which the appeal scheme is situated cannot reasonably be described as an area of “very dense development” with “large building footprints”. As such, it is simply not a central site as much as the Appellant would like it to be. Mr Considine in cross examination was desperate to refer to the Mayor of London’s SPG (CD1/36) in this context and the fact that the site is within 800m of the Elephant and Castle. This was in apparent support of his proposition that the site should be classified as central. However, (i) the SPG does not trump the adopted London Plan; and (ii) Paragraph 1.3.34 of the SPG highlights that character of areas around the CAZ and town centres can change quickly and that the Central and Urban settings should be applied to a shorter distance

where a character appraisal prepared or agreed by a Borough indicates a tighter boundary would be appropriate. As Pullens and West Square are the closest character areas to the site, it is clear that these are appraised as urban rather than central areas. As a result, there would be no basis to find that the appeal site was a central area simply on the basis that it was within 800m of the centre of Elephant and Castle.

28. Fourth applying the density matrix, this 258 flat scheme on a 0.51 hectare site results in a site density 1139 hrh which is 62% above the highest density anticipated in the density matrix. It is also higher than the 1100 hrh anticipated for a central site. A development of approximately of half of what is proposed would be an appropriate density for the site and would, in all likelihood, avoid the planning harms identified here. An optimisation of site capacity is demonstrated by the adjacent 3-5 storey Bellway Homes development which was completed in 2010 and is located to the southeast of the site. It is an example of a development near the appeal site which has been successfully integrated into its surroundings. That scheme comprises 113 units of accommodation in distinct flat blocks and a terrace of houses. The Appellant's witnesses to this inquiry confirmed that such a scheme had not even been countenanced by them for this appeal site. That demonstrates, in our submission, that the Appellant had in mind a certain amount of development that they wanted to achieve from the outset rather than commencing with a consideration of the most appropriate form of development of the site as required by the development plan.

29. Fifth the Appellant appears to place great reliance on Policy H1 of the Lambeth Local Plan (CD1/3 Pg 44) and its stated aim to "*maximise the supply of additional homes in the borough to meet and exceed the annual housing target*". It is almost as if they are asking to be congratulated on bringing forward additional housing at any cost. However, in order for the appeal scheme to be compliant with Policy H1, it must comply with **all** of its terms. This includes at (iii) "*seeking levels of residential density consistent with London Plan guidelines, having regard to...quality of design and impact on existing and future residents...*". The appeal scheme demonstrably does not comply with this limb of Policy H1 for the reasons set out above and below.

RESIDENTIAL AMENTIY

30. The impacts on residential amenity of existing occupiers (both in terms of Block A overlooking on Renfrew Road and in terms of daylight and sunlight impacts) and on future occupiers (in terms of amenity space provision and single aspect windows) are unacceptable.
31. First the single aspect nature of Block A is particularly harmful with respect to its impacts on overlooking the houses and gardens on Renfrew Road. Some of the west facing Block A flats only have an outlook towards the houses and gardens on Renfrew Road from their bedrooms and living rooms (see Floorplan CD2/23 Plan Nos. T20101 P3 and T20102 P2). Six flats in Block A at first and second floor levels will have balconies at the end of their living rooms which directly overlook the living rooms and gardens of the houses on Renfrew Road at a distance of 6.5m to the gardens and substantially less than 20m to existing Renfrew Road living rooms at ground floor level contrary to Policy Q2. Two further south facing Block A flats have balconies that provide oblique views to Renfrew Road gardens and living rooms. Overlooking from bedroom to living room is generally considered less harmful than living room to living room and there are a number examples of the latter in Block A in the present scheme. Unacceptable overlooking and perceived overlooking from the living rooms of Block A flats will materially and detrimentally impact upon the residential amenity of the existing occupiers on Renfrew Road contrary to Policy Q2(iii) of the Lambeth Local Plan.
32. Second in the addendum submission by Kim Loddo MA (Cantab) DipArch MPhil RIBA ARB to the inquiry dated 23 November 2020, she offers a rebuttal to Mr White's suggestion that the relationship between Block A and the houses on Renfrew Road is akin to the relationship between Freeman and Bolton House (part of the Bellway Tower development) and the houses and gardens on Dante Road. That is an inappropriate comparison: (a) the separation distances between Dante Road habitable rooms and the east facing windows at Bolton House are 20m at their closest and tightest whereas the distance between Block A balconies and some of the houses on Renfrew Road are 16-17m; (b) Bolton and Freeman House slope towards the boundary to avoid impacting daylight and sunlight on existing occupiers; (c) at Bolton House there are only two velux windows which look skyward at a high level on the stair return and two further obscured windows on the corner which are a bathroom and stair window; (d) Freeman House has six extremely small windows at a high level which are all either bathrooms or kitchens

(these are shown in the photos appended to Ms Loddo's submission); and (e) the planning permission for those blocks required all windows on the elevation facing Dante Road to be obscured glazed and at high level. As a result, the comparison with Block A and Renfrew Road and the position at Bolton and Freeman House and Dante Road does not support the adverse impacts resulting from Block A.

33. Third daylight and sunlight impacts on future and existing occupiers should not be underestimated. There are unacceptable impacts on levels of sunlight amenity to existing gardens, levels of daylight to existing habitable rooms and levels of daylight to future occupiers of Block A. It is agreed that 13 neighbouring gardens would not achieve the 2 hour sun on the ground criteria on 21 March in any year. The impacts are particularly acute on Castlebrook Close and Brook Drive. The fact that some gardens may achieve that criteria in the days following 21 March in any year should not be attributed great weight. The 2 hour sun on the ground test is a modest test which is miserably failed by the appeal proposals in a number of instances. As soon as that criteria is eroded the value of the application of that already modest test is diminished rendering the value of the test pointless. It is intended to be an objective standard.
34. The principal point of difference between Mr Dias and Mr Lane on daylight and sunlight impacts was identifying the target VSC value to which existing and future occupiers had a reasonable level of expectation in this location. As set out above, the appeal scheme is not in a "central" area as it sits in an area which is predominantly low rise with important suburban characteristics. Consequently, the appropriate VSC target value is 20% as contended by Mr Dias rather than mid-teens as contended by Mr Lane.
35. Mr White sought to undermine Mr Dias' evidence by suggesting that his draft report in November 2019 was different to the analysis he offers to this inquiry as he used 15% VSC as a benchmark in his draft report. However, Mr Dias was steadfast in his evidence that the November 2019 report contained a draft analysis which was informed by a desktop exercise only. He had not visited the site at the time of that draft report and had not taken account of its suburban characteristics. It was thus wholly unsurprising that he was unable to reach a final conclusion at that stage on the appropriate VSC target until he had visited the site. That explanation was an entirely credible one. He has not materially and substantially changed his position. Mr Dias' evidence on the levels and

numbers of major adverse impacts as a result of the proposed development remains uncontradicted and entirely unshaken in cross examination.

36. Fourth approximately 50% of Block A windows and 33% of Block B windows are single aspect. That results in a policy conflict with Policy H5 which provides that,

“Proposals for new residential development...will be expected to:

- (i) provide dual-aspect accommodation, unless exceptional circumstances are demonstrated.”

37. No exceptional circumstances have been demonstrated and none could be offered by Mr Graham or Mr Considine. The high point of their case is that they have succeeded in providing single aspect accommodation in other schemes so they do not see why the same cannot be the case here. That is an unacceptable approach and results in unacceptable levels of amenity for future occupiers of these flats. A more flexible approach to the interpretation of this policy might be acceptable if the development were the conversion of a historic building. However, that is not this scheme.

38. Fifth, a substantial number of single aspect Block A windows from studio flats face north eastwards towards Block B. As a result, the amount of sunlight and daylight in these flats will be very poor.

39. Sixth both the quantum and quality of amenity space is unacceptable. The quantum of amenity space is set out by the Appellant at Pg 14 of CD3/16 where a calculation is provided of amenity space amounting to 3250m² which formed the basis of the level of space accepted in the SoCG. There is an agreed policy requirement of 2630m². Any later calculation has not been agreed with the LPA and should be disregarded. The proposed amenity space includes 669m² of “internalised balcony space”. This is, in reality, space that would otherwise form part of people’s living rooms. There has been no demonstration that these living rooms are oversized. Therefore, when calculating the quantum of amenity space, internalised balcony space must be discounted unless exceptional circumstances are demonstrated: see Para 5.26 to Policy H5 CD1/3 Pg 49.

No exceptional circumstances have been offered or demonstrated. As soon as one subtracts the internalised balcony space, 2581m² of amenity space is offered.

40. From that figure, it is necessary to subtract the area which is to be taken up by disabled parking. Policy T6 of the emerging London Plan (CD1/2 Pg 479) provides at Paragraph G(1) that for 3% of dwellings at least one parking space per dwelling must be demonstrated from the outset. This means that the scheme must provide 8 disabled spaces from the outset. Paragraph G(2) provides that the parking design and management plan must demonstrate how an additional 7% of dwellings could be provided with one space per dwelling in future upon request. This would be an additional 18 spaces. Therefore, in the event that additional parking spaces had to be provided, the amenity area on the northern boundary of the site would have to be subtracted from the communal amenity space calculation as this space would be used for disabled parking. This would bring the total further below policy requirements. Whilst the Appellant stated that in their experience the full 10% would be unlikely to have to be provided, that assertion was unevicenced and should be given little weight.
41. Additionally, Mr Maher offers evidence that substantial areas of the space offered is of poor quality. The area between Block A and Block B over which waste will be moved should not be taken into account as “amenity space” on any view. It is the space used to service the two buildings and move waste on a daily basis from Block B to Block A. Mr Maher offers evidence at Pg 71 of his proof of evidence on the correct amenity space calculation. This results in 1483m² of usable good quality amenity space only for the appeal scheme. Even this figure is generous as it encompasses some of the space being used as the swept path for vehicles.
42. Lambeth’s emerging design code SPD of February 2020 at CD1/46 at Para 2.57 should be given weight and this document provides that in order to be successful, amenity space should be private and should not be publicly accessible. Pg 15 of CD 3/16 demonstrates the large extent of public accessibility across the proposed amenity space. Residential occupiers will share this space with pedestrians, cyclists, motorised scooters and moped riders. Only the residential gardens and soft landscape can properly be described as usable amenity space. Even then, the area between Blocks A and B is likely to be in shadow for much of the day and will be susceptible to higher levels of wind as a result

of being sandwiched between the two buildings. On that basis both the quantum and quality of what is proposed is unacceptable.

HERITAGE

43. All the experts who have provided evidence to this inquiry on heritage matters agree that the appeal proposal causes harm to heritage assets and to conservation areas. There is disagreement about the extent of that harm and to which assets and parts of the conservation areas it applies. However, the finding of any harm to a heritage asset or to the character or appearance of a conservation area must be given “considerable importance and weight”¹ such that there is a strong presumption against the grant of planning permission.

44. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides (CD6/7),

“(1) In considering whether to grant permission...for development which affects a listed building or its setting...the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

45. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides,

“(1) In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

(2) The provisions referred to in subsection (1) are the planning Acts...”

¹ Paragraph 23 of *East Northamptonshire District Council v SSCLG* [2015] 1 WLR 45

46. Section 91(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that “*the planning Acts*” has the same meaning as in “*the principal Act*”. The principal Act is defined at s. 91(1) as “the Town and Country Planning Act 1990”. The Town and Country Planning Act 1990 defines “*the planning Acts*” at s.336 as including that Act.

47. The statutory requirement to pay special regard or attention to the desirability of “*preserving*” the asset, its setting or the character or appearance of the conservation area means that special regard must be paid to the desirability of “*doing no harm*”: see Sullivan LJ at Paragraph 23 of *East Northamptonshire District Council v SSCLG* [2015] 1 WLR 45. It was further held by Sullivan LJ at Paragraph 23,

“There is a “strong presumption” against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of “considerable importance and weight”.

48. That presumption applies equally to harm caused by development in the setting of listed buildings and it applies whether the harm is substantial or less than substantial regardless of where that harm falls within the less than substantial category. In addition to the harms relied upon by the LPA, StB contends that substantial harm is caused to the Grade II listed Water Tower and Master’s House by the development of Block B in their setting.

49. Planning policy guidance on the Historic Environment provides at Paragraph 18,

“Whether a proposal causes substantial harm will be a judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset’s significance rather than the scale of the

development that is to be assessed. The harm may arise from works to the asset or from development within its setting.”

50. The starting point, therefore, is to identify the key elements of the architectural and historic significance of both buildings. As to the Water Tower, Dr Miele’s evidence at Paragraph 7.30 erroneously states that the Water Tower owes its significance to “its imposing and distinctive architectural style”. Dr Miele accepted in cross examination that this is at odds with the reasons for designation CD1/52 which provide,

“The water tower of 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.”

51. It follows that the Water Tower is of special architectural interest **as an** “imposing” building constituting a rare feature in inner London. This is a key submission. It is not the architectural style which is “imposing” as Dr Miele accepted. A key element of significance derives from the fact that it is an imposing feature. It is submitted that the key reason that it is so imposing is that its setting is a silhouette of clear sky when viewed from George Mathers Road. As accepted by Dr Miele the principal public view of the Water Tower is the one from George Mathers Road shown at Pg 37 of his proof of evidence (Figure 3). This is a similar view to that which has been assessed by Mr Graham at Pg 5 of his rebuttal proof (CD 9/14) where the form of Block B is inserted into the silhouette of the water tower. That image demonstrates that the silhouette is vastly diminished and eclipsed by Block B. The water tower will no longer stand as an imposing tower in its principal public view. It will lose entirely that key element of significance in the only public view in which it can be fully appreciated.

52. Similarly, the principal public view of the Master’s House is upon entering the appeal site. Once again, its setting is the silhouette of a clear sky. Its statement of significance notes that it is “*of rarity value as the principal building of a Victorian metropolitan workhouse, of which only a few survive in London*”. It is described as being “*of special*

interest for the architectural quality of the exterior, whose principal elevations are virtually intact and highly ornate for a workhouse of the time, especially so for London.”

As its distinctive architectural quality can presently be appreciated against the background of a clear sky, the presence of Block B will dominate its silhouette to the extent that it will compete with it and distract entirely from its distinctive qualities. The impact of that harm is heightened when one considers that it is one of only few principal workhouse buildings which still survive.

53. Such harm, whether substantial (as contended by StB) or less than substantial, must be given “considerable important and weight” by the decision maker (see Paras 22-23 of *East Northamptonshire District Council v SSCLG* [2015] 1 WLR 45). However, in the event the Inspector finds that substantial harm is caused to the Water Tower or the Master’s House then Paragraph 195 of the NPPF applies which provides that,

“Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and*
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
- d) the harm or loss is outweighed by the benefit of bringing the site back into use.”*

54. It is not contended by the Appellant that the substantial harm is necessary to achieve public benefits that outweigh that harm. Planning permission should therefore be refused in accordance with Paragraph 195 of the NPPF.

LOSS OF C2 USE

55. The loss of the nursing home on the site is the loss of a C2 use. Mr Considine pointed to Policy S1 of the emerging London Plan (CD1/2 Pg 239-240) to justify the loss of the social infrastructure use on the site. However, that policy provides at Paragraph G,

“Redundant social infrastructure should be considered for full or partial use as other forms of social infrastructure before alternative developments are considered, unless this loss is part of a wider public transformation plan (see Part F2)”

56. However, he was unable to point to any *“wider public service transformation plan”* which justified the loss of the C2 use nor any consideration of other forms of wider social infrastructure. It is accurate to say that the Lambeth Clinical Commissioning Group, whose position is recorded at Paragraph 10.1.7 – 8 of the Officer’s Delegated Report (CD 5/2), indicated that its decision to close the nursing home was *“a managed process...which ensured that people were transferred to Greenvale if they needed continued specialist care or moved to other in-patient nursing homes either within Lambeth or in another Borough”*. However, that does not indicate a *“public service transformation”* nor that other forms of social infrastructure were considered. Paragraph 5.1.1 of the commentary to Policy S1 provides,

“Social infrastructure covers a range of services and facilities that meet local and strategic needs and contribute towards a good quality of life. It includes health provision, education, community, play, youth, early years, recreation, sports, faith, criminal justice and emergency facilities.”

57. In order for the proposals to be policy compliant there should have been a consideration of these other forms of social infrastructure for the site. The Appellant has not demonstrated that the site could not be used for an alternative form of social infrastructure for which there is a defined need in the locality. As a result, their approach is also inconsistent with adopted London Plan Policy 3.16.

CYCLE PARKING, WASTE MANAGEMENT AND REFUSE COLLECTION

58. There are further conflicts with development plan policies relating to the integration of cycle parking and with waste management. These are further indicators that the site is overdeveloped.
59. First 289 of the more than 400 cycle parking spaces are not integrated, convenient or accessible in conflict with London Plan Policy 6.9B(a).
60. A significant proportion of the cycle spaces for Blocks A and B would be placed within the basement of Block A. This immediately reduces the convenience of those spaces for Block B users making it less likely that they will actually use those spaces. The bicycles parked in the basement area of Block A will have to be removed via one lift only which is highly likely to cause extreme inconvenience at rush hour with residents from Blocks A and B seeking to use the lifts at the same time to access the cycle parking areas. This lack of convenience will mean that cycle parking at the site will be under used on account that it is not integrated, convenient or accessible and therefore conflicts with development plan policy.
61. Second there is insufficient space within Block B to accommodate the recycling/refuse needs of that buildings. The space in front of Block B, therefore, is likely to become a dumping ground for overflow waste or redundant furniture contrary to Lambeth Local Plan Policy Q12(a).
62. Third the waste management regime proposed by the Appellant will 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 stored for collection. Block A, which contains the affordable housing flats, is therefore the dumping ground and the compacting/crushing site for Block B's waste. This is contrary to Lambeth Local Policy Q12(b)(i) which requires that in new-build schemes refuse storage areas should be fully integrated into the building.
63. Fourth STB have demonstrated that the refuse collection arrangements from the appeal site by refuse vehicles will prove problematic. Mr Maher gave evidence that inadequate arrangements have been made for servicing the site contrary to Lambeth Local Plan Policy T8. He demonstrated that,

- a. the swept path plan submitted by the Appellant is inaccurate as it does not show the metal gates at the Dugard Way entrance through which refuse and fire vehicles will pass which narrows the clearance between the piers. The gates are outside the redline of the application and cannot be unilaterally removed by the Appellant. They have, in fact, recently been re-installed. The video shown to the inquiry was of a refuse vehicle exiting the site with extreme difficulty without any gates in place at the entrance to Dugard Way;
- b. a refuse or fire vehicle taking the path shown by the Appellant in their swept path analysis in the waste management plan is likely to hit those gates as the plan shows almost no clearance on the swept path when the vehicle exits;
- c. whilst it is acknowledged that this is an existing problem, the appeal proposals will exacerbate that problem substantially with refuse vehicles having to access Block A. In all likelihood, owing to the convoluted multi point turn shown in the waste management plan swept path, that vehicle will reverse along Dugard Way and be in conflict with pedestrians and other users of that section of road which has no pavements. No reason has been given for the inconsistency between that swept path and the swept path provided within the transport report.

UNACCEPTABLE FLOOD RISK

64. StB has presented convincing evidence to demonstrate that the appeal should be dismissed on flood risk grounds. That evidence was not challenged in cross-examination. The Appellant has failed to conduct a proper sequential and exceptions test in accordance with the requirements of the development plan (London Plan Policy 5.12 and Local Plan Policy EN5). That failure is inconsistent with London Plan Intend to Publish Policy SI12 Paragraph C, the National Planning Policy Framework (Para 163) and the relevant NPPG Flood Risk and Coastal Change guidance on the matter.
65. The document at CD2/15 Pg 12 purports to be a flood risk assessment which covers the sequential and exceptions Test. However, it is clear from its face that no proper

sequential or exceptions test has been performed. The sequential test is said to have been passed, in a single sentence, because the SFRA states that “*vulnerable development may be acceptable*”. That is not a proper sequential test. It does not even begin to comply with Paragraph 33 of the NPPG which requires the Appellant to consider whether there are other suitable sites within an area at lower flood risk.

66. There is no need to set aside development plan policy and other national and emerging planning policy on this matter especially in a local planning authority area which has shown year after year that it has more than five years’ housing land supply. Indeed, it performs the seventh best across London on delivering against its share of the targets set out in the London Plan (refer Appendix 1 to Mr. Maher’s PoE).

67. The Appellant has also ignored the “strong recommendation” of the Environment Agency (EA) to raise Block A by 65cm (CD7/25 letter of 19 October 2020). The EA state that there are “*other constraints present at this site at this juncture*”. Absent disclosure as to what these are, that is not a good reason to permit development without compliance with the statutory consultee’s strong recommendation. Clearly the Appellant is constrained for “Wheatcroft” reasons from making the revisions to the scheme at this public inquiry that are necessary to address the EA’s concerns so late in the day after having submitted an appeal. These alleged constraints are not a good enough reason for the flood risk to be overlooked.

68. The Appellant instead has offered to raise the building by 10cm only and to have a “flood risk mitigation strategy” (draft condition 12). This is a tokenistic offer and wholly inadequate relative to current EA flood risk modelling. Moreover, it still will not address the requirements of the Appellant’s flood risk adviser (Para 4.13 of CD 2/15) that the basement should not have openings to allow flood water to enter: the Block A basement still relies on two vents for the circulation of air (refer CD8/1 drawing 6057 T20099 P6). The ground floor plans for Block A (refer CD 8/1 drawing 6057 TA20110 P6) show the outlets for these vents on the eastern and western flanks of the proposed building.

69. Rather, the Appellant needs to think about evacuation as a way of mitigating the harm caused by flooding. The flats on the ground floor of Block A have been designed

specifically for disabled people. Getting out frail and disabled residents in the event of a flood would prove difficult on any view and it is the very flats that residents such as these would occupy which would carry the greatest flood risk.

70. You heard oral evidence from Mr Maher about how other local authorities along the River Severn in Shropshire have secured such evacuation strategies for re-use of riverside heritage assets but this has only been possible because of the surrounding steep topography that allows residents to escape to higher ground. You will have noted on your accompanied site visit, by contrast, that the topography on the appeal site is entirely flat and there is no convenient local refuge.

71. You are also deprived of the opportunity of issuing a split decision, approving Block B but refusing Block A in the unlikely event that you found Block B acceptable. This is because the two buildings are directly linked to one another. Block A serves as the waste compaction site for Block B and will provide the bulk of the cycle storage to serve both blocks. Moreover, the UU submitted by the appellant relies on the scheme delivering family housing and this is one of the purported benefits of the scheme which the appellant has referred to. These few benefits fall away if Block A is excluded from the scheme.

OVERALL PLANNING BALANCE

72. When considering the overall planning balance, the only real benefits of the scheme lay in the provision of market and affordable housing. Even those benefits should be attributed moderate weight. There are no social benefits as accepted by Mr Considine. The economic and regeneration benefits have been overstated and have not been demonstrated beyond a figure plucked from the air as to the construction cost. There are no real environmental benefits: the high point of the Appellant's case is that it wants to be congratulated for bringing forward a car-free scheme. Of course, the overdeveloped nature of the site means that there is no space for the requisite number of disabled parking spaces without interfering with amenity space let alone enough space for the provision of residents parking. It is no surprise, therefore, that the scheme is car free.

73. Lambeth does not require the additional market housing in the form provided nor does it require the type of affordable housing on offer through this appeal scheme either. The need for housing is driven by London Plan Policy 3.3 (CD1/1 Pg 108) which provides,

“The Mayor recognises the pressing need for more homes in London in order to promote opportunity and provide a real choice for all Londoners in ways that meet their needs at a price they can afford.”

74. The market housing will, in any event, be out of reach of majority of the residents of Lambeth as accepted by Mr Ireland in cross examination. As evidenced by the Lambeth SHMA 80% of Lambeth residents earn £60,000 or less. The phantom young professionals for whom the market housing is allegedly intended and to whom Mr Ireland made reference to justify the over provision of one and two bedroom units do not exist. The market housing will simply be out of reach for them. At current market rates, as accepted by Mr Ireland, a one bedroom flat is likely to be in excess of £405,000 (based on average prices for a 550 sq foot flat in the area) and a two bedroom flat at almost £780,000 (based on average price for an 800sq foot flat in the area). These are astronomical prices which are out of reach to the vast majority of Londoners. 56% of the scheme (comprising the market element) would be out of reach of the vast majority of Lambeth residents. The unit size mix is wrong because the Appellant is not catering for real people: they are squarely aimed at attracting high net worth individuals and foreign investors. Indeed, the Secretary of State has further directed (CD1/20) that Policy H10.9 of the London Plan Intend to Publish should be revised to address “the need for additional family housing”.

75. Additionally, the scheme fails to bring forward even a single three bed market or shared ownership unit against the backdrop of an established policy requirement for family sized housing in Lambeth: see Lambeth Local Plan Policy H4A(ii). As to the affordable element 60% are studios and 1 bed flats; 33% are 2 bed flats and 8% three bed flats. That is a direct conflict with Policy H4(a)(i) which requires not more than 20% 1 bed units and 40% three bedroom + units. The Appellant has shown no good reason to depart from established policy on unit size mix.

76. The LPA has more than five years' housing land supply and there is no need to set aside the strategic development plan policies in this case. Lambeth scored 121% in the SSHCLG's Housing Delivery Test and, as such, is the seventh best performing local planning authority in London. It has been exceeding its current housing land supply target of delivering 1,559 new homes per year. The current Lambeth development plan target is for at least 17,295 new homes by the year 2030 focusing on town centres such as Brixton and Streatham and opportunity areas such as Vauxhall and Waterloo.
77. The high level of shared ownership housing is not the affordable housing that Lambeth needs. Indeed the SHMA at CD1/29 Para 3.28 demonstrates that in June 2017 there were few shared ownership schemes that can be accessed at less than the amount required to enter the private rental market. Table 3.29 concludes that only 5.4% of housing need is met by shared ownership for the reasons explained at Para 3.30.
78. The SHMA establishes that what the Borough requires is affordable rented properties to accommodate those on the Borough's waiting list. Only 9% of the overall housing provision in the appeal scheme is for affordable rented properties. The table below Para 3.29 demonstrates where housing need is most acute: that is three bedroom affordable rented housing. 90% of those who are eligible for affordable housing cannot afford a three bed market rented property nor can 89% afford a three bed shared ownership house. This scheme only delivers 9 three bed units of truly affordable rented housing and no units at all of three bed shared ownership housing.
79. For all these reasons whilst the provision of affordable and market housing is an undeniable benefit of the scheme, it should be given no more than moderate weight. During cross examination of Mr Holt, the Inspector was keen to establish whether he would fall into error if he did not give the provision of housing and affordable housing in this scheme substantial weight. However, as established by Mr Maher, the Vauxhall island site (CD7/5) appeal decision contained a commitment to provide £30m towards affordable housing and did not suffer from the affordable housing drawbacks outlined above. In the Brentford scheme (CD7/12), the developer offered 50% affordable housing and a comprehensive range of other public benefits including a nursery in a

local authority area where the Hounslow Local Plan policy is for 40% affordable housing (see Para 6.12.2 of the Inspector's report to the Secretary of State).

80. Finally, the other purported benefit of the scheme, relied on to a great extent by the Appellant, is to the Cinema Museum. It is quite clear that, in the event that the Inspector determines that this is a material consideration, it presents an extremely modest benefit and should be given limited weight. If permission is granted, the Cinema Museum moves from a year to year lease to a five year lease with an option (on unknown terms) to purchase a long lease of the site. On any view, they are not substantially bettering their position. The Cinema Museum could not point to any real reason as to why their home within the Master's House was at risk if the scheme were not granted permission and could not think of a reason (other than a change of personnel) as to why it could not partner with another provider of housing such as Peabody to bid for the site again in the future were it to become available as they had done previously.

CONCLUSION

81. As I said in my opening to this inquiry, the views of local residents are, at times, lost in the technical and complex arguments at planning inquiries. The strength of those views and their merit should not be underestimated. The thoughtful and eloquent contributions made by third parties to this appeal must not be disregarded. We have heard from planners, architects, surveyors and a highly respected Professor of Architecture. These are people who know and who have evidenced that this scheme is completely unjustified and unjustifiable in policy terms.

82. The proposed development is, quite simply, is an overdevelopment of the appeal site. Block B's scale and massing is not respectful of the characteristics of the immediate surrounds and causes substantial harm to the heritage assets. For a number of residents on Renfrew Road, their privacy will be obliterated by the introduction of Block A which will have balconies which are 6.5m from the ends of their gardens. The juxtaposition of Block A so close to the gardens of existing residents and Block B so close to the modest two storey houses on Castlebrook Close is without parallel. Those residents on Castlebrook Close, many of whom are in social housing and less confident in speaking

up for themselves, will suffer from the sunlight in their gardens and the daylight in their homes being substantially adversely impacted.

83. The conflicts with the development plan are significant and, in some cases, extreme. The benefits, including the market and affordable housing, are moderate at best. The planning harms substantially outweigh the public benefits such that planning permission should be refused.

6 December 2020

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