



Ministry of Housing,
Communities &
Local Government

Marlon Deam
Dp9 Ltd
100 Pall Mall
London
SW1Y 5NQ

Our ref: APP/A5840/W/19/3225548
Your ref:

29 April 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY PEACHTREE SERVICES LTD
LAND AT BURGESS BUSINESS PARK, PARKHOUSE STREET, LONDON SE5 7TJ
APPLICATION REF: 17/AP/4797**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Christina Downes BSc DipTP MRTPI, who held a public local inquiry starting on 21 August 2019 into your client's appeal against the decision of the London Borough of Southwark to refuse your client's application for planning permission for demolition of the existing buildings and redevelopment of the site to provide 499 residential units, up to 3,725m² (GIA) of Class B1 commercial floorspace, up to 128m² (GIA) of Class D2 leisure floorspace and up to 551m² of Class A1-A3 floorspace within 13 blocks of between 2-12 storeys (max AOD height 41.95m), with car and cycle parking and associated hard and soft landscaping, in accordance with application ref: 17/AP/4797, dated 21 December 2017.
2. On 24 April 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's

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comments at IR4 and IR500, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the Inquiry

6. In December 2019, the Mayor issued the “Intend to Publish” version of the emerging London Plan. After considering that Plan, on 13 March 2020 the Secretary of State for Housing, Communities and Local Government wrote to the Mayor making a series of eleven Directions to the Plan. The Mayor cannot publish the London Plan until the Directions have been incorporated, or until alternative changes to policy to address identified concerns have been agreed.
7. The New Southwark Plan was submitted to the Secretary of State on 16 January 2020 for examination. As this draft of the revised plan was not substantially materially different from the version of the plan available to the Inspector and parties at the Inquiry and may be subject to further change, the Secretary of State is satisfied that this does not affect his decision, and does not warrant further investigation or a referral back to parties. The Secretary of State also received a representation on behalf of the appellant on 28 April 2020 which refers to the draft New Southwark Plan and its submission for examination. The Secretary of State is satisfied that the issues raised in the letter do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A copy of letter of 28 April 2020 may be obtained on written request to the address at the foot of the first page of this letter.
8. The 2019 Housing Delivery Test results were published on 13 February 2020. LB Southwark’s score changed from 80% (2018 measurement) to 93% (2019 measurement). As this would not represent a material change to any calculation of LB Southwark’s housing land supply and there was no dispute between parties that the Council could demonstrate a 5 year housing land supply, the Secretary of State is satisfied that this does not affect his decision, and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan includes the London Plan (2016) (LonP), London Borough of Southwark Core Strategy (2011) (CS) and saved policies of the Southwark Plan (2007) (SP). The Secretary of State considers that relevant development plan policies include those set out at IR341-346.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (‘the Framework’) and associated planning guidance (‘the Guidance’), as well as the Council’s Residential Design Standards and Technical Update Supplementary Planning Document (2015) (RDS SPD) and the Mayor’s Greater London Authority Housing Supplementary Planning Guidance (2016) (Housing SPG). The revised National Planning Policy Framework was published on 24

July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
13. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas

Emerging plan

14. The emerging plan comprises the draft New London Plan (NLoP) and draft New Southwark Plan (NSP). The emerging London Plan is at an advanced stage of preparation, and the Secretary of State has directed the areas where changes must be made. The policies which are relevant to this case where changes must be made include policy D3 (density). However, details of the way in which the Plan will deliver the aims set out in the Secretary of State's directions are not yet finalised. The Secretary of State therefore considers that these policies in the emerging Plan carry moderate weight. Other policies in the emerging Plan which are relevant to this case and where no modifications have been directed include D9 Tall Buildings (referred to as policy D8 in IR406) and policy H1 (Increasing housing supply). The Secretary of State considers that these policies carry significant weight.
15. The NSP was submitted to the Secretary of State on 16 January 2020 for examination. The Secretary of State considers that the emerging policies of most relevance to this case include those identified in IR345, IR348 and IR349. However, the Secretary of State also notes that there have been amendments to the NSP since the end of the Inquiry and some references to emerging policies in the IR are now incorrect. Namely, draft policy P9 (now revised to P14 – Residential Design); draft policy P26 (now revised to P29 – Office and business development) and draft allocation NSP 23 (now revised to NSP22 – Burgess Business Park). The Secretary of State has inserted the amended references in this letter where relevant.
16. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State acknowledges that the draft NSP has been submitted for examination but considers that it may still be subject to change and agrees with the Inspector that relevant policies should carry limited weight (IR348-349).

Main issues

Approach to Decision Making

17. The Secretary of State has noted that there is no dispute that the Council can demonstrate a 5-year supply of deliverable housing and agrees with the Inspector that the presumption in favour of sustainable development does not apply in this case (IR347).

Density and exemplary standard of accommodation

18. The Secretary of State agrees with the Inspector's approach in IR350-353 to considering whether an exemplary standard of design would be achieved.
19. For the reasons given in IR353-377 the Secretary of State agrees with the Inspector that, looked at in the round, there have been too many compromises in this case and that the size of a significant proportion of the residential units and wheelchair housing is of particular concern (IR378). The Secretary of State also agrees that the quantum of amenity space being proposed would not meet, let alone exceed, the standards in the RDS SPD (IR379).
20. The Secretary of State agrees with the Inspector's conclusions in IR381 that the compromises that have been made in the design of the development have been at the expense of the overall quality of the living environment. He also agrees with the Inspector that the nature of accommodation overall is less than exemplary and shares the Inspector's concerns over the quality of accommodation (IR502 and IR507). He further agrees with the Inspector that, even if the scheme could be considered acceptable or satisfactory in the round this would not be sufficient to justify a density that would be 40% above the accepted range in local and strategic planning policy. The Secretary of State agrees that the proposal would conflict with Strategic Policy 5 in the CS. The Secretary of State affords the harm significant weight against the proposal.

Employment land and premises

21. For the reasons given in IR382-400 the Secretary of State agrees with the Inspector that the proposal would not comply with saved policy 1.2 in the SP or Strategic Policy 10 in the CS because it would introduce housing into land that is protected for industrial uses. However, he also agrees with the Inspector that the proposal would not result in a detrimental effect on the Borough's stock of employment land and premises (IR401-402). The Secretary of State further agrees that the appeal scheme would provide new and good quality Class B premises and there would be a significant increase in number of available jobs relative to what currently exists at the site (IR501). The Secretary of State agrees with the Inspector that the benefits should be afforded significant weight.

Design quality, character and appearance

22. For the reasons given in IR 404-414 the Secretary of State agrees with the Inspector that the proposed development would cause some harm to the character and appearance of the area and fail to relate successfully to the existing townscape (IR419). The Secretary of State also agrees with the Inspector that the brick chimney would be diminished and rather overwhelmed by the scale and proximity of its new neighbours (IR412). Whilst the proposal would provide a vibrant public realm and introduce permeability and routes through from Wells Way and Parkhouse Street where none exist now (IR413 and IR503), benefits which the Secretary of State agrees should be afforded significant weight, the Secretary of State also agrees with the Inspector that the design overall would not be exemplary (IR419, IR507 and IR508). The Secretary of State affords this harm significant weight against the proposal.
23. The Secretary of State also agrees with the Inspector for the reasons in IR415-418 that there would be a small degree of harm to the significance of the former Church of St George. He further agrees that this be at the low end of the scale of less than substantial harm in terms of paragraph 196 of the Framework.

24. The Secretary of State agrees with the Inspector that the proposed development would conflict with policy 7.7 in the LonP, Strategic Policy 12 in the CS and saved policy 3.20 in the SP (IR419).

Accessibility and transport

25. For the reasons given in IR420-432 the Secretary of State agrees with the Inspector that the proposal would be in accordance with saved policy 5.3 in the SP concerning walking and cycling. The Secretary of State is also satisfied that the development would not have an unacceptable impact on highway safety (IR433).

Living conditions of existing residents

26. For the reasons given in IR434-455 the Secretary of State agrees with the Inspector that in many ways the proposed development would be able to successfully integrate with the existing residential uses on adjoining land. However, he shares the Inspector's concerns about the effect on the daylight of some properties in Parkhouse Street and Wells Way which would result in unacceptable harm to those residents (IR456 and IR508). The Secretary of State affords this harm significant weight against the proposal. The Secretary of State agrees with the Inspector that there would be conflict with policy 7.6 in the LonP and saved policy 3.11 in the SP.

Other issues

27. The Secretary of State notes that the flood risk assessment recommends that floor levels should be 300mm above existing ground levels in the parts of the northern and eastern parts of the site that are at medium or high risk of surface water flooding or at risk of groundwater flooding. He agrees with the Inspector that this could be controlled through a planning condition (IR457-459).

28. For the reasons given in IR460-461 the Secretary of State is satisfied that the ecological interest and biodiversity value of Burgess Park would not be compromised by the appeal development.

29. The Secretary of State agrees with the Inspector that the significance and the contribution made by the settings of listed buildings and structures within the vicinity of the appeal site would be preserved if the appeal development were to go ahead (IR463). The Secretary of State has considered the former Church of St George and the chimney of the former confectionary factory in paras 22 and 23 of this letter.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR286-312 and IR466-467, the recommended conditions set out in Annex Three of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

31. Having had regard to the Inspector's analysis at IR313-339 and IR468-497, the planning obligation by Unilateral Undertaking dated 29 October 2019, paragraph 56 of the

Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion in IR498 that the obligation by Unilateral Undertaking, other than those obligations specifically referred to and listed in IR499, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Strategic Policies 5, 10 and 12 in the CS; saved policies 1.2, 3.11 and 3.20 in the SP and policies 7.6 and 7.7 in the LonP, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
33. The Secretary of State considers the scheme would regenerate a brownfield site and would provide new, good quality Class B premises. He further considers there would be a significant increase in the number of available jobs relative to what currently exists at the site. This would also exceed the jobs that could reasonably be provided if it were to be redeveloped for industrial uses. He affords these benefits significant weight.
34. The proposal would also provide 35% of homes as affordable and the Secretary of State affords this benefit significant weight. While the provision of 499 homes in general would also be a benefit, the Secretary of State affords this moderate weight due to the less than exemplary nature of the accommodation overall.
35. The Secretary of State also considers that the benefits of a vibrant public realm and permeability and routes through should attract significant weight. The Secretary of State considers the refurbishment of the existing chimney should be given limited weight as it would, to some degree be overwhelmed by its neighbours. The Secretary of State gives moderate weight to the jobs generated during construction as well as increased spending in the local and wider London economy.
36. Weighing against the proposal, the Secretary of State has great concerns about the quality of accommodation it would offer and affords this significant weight. The Secretary of State also considers that rather than optimising the use of the land resource the scheme has sought to maximise it and this has resulted in a quality of development that at several levels would not be satisfactory. He considers that design, overall, would not be exemplary and affords this significant weight. The Secretary of State also affords significant weight to the unacceptable harm caused to some existing residents by the loss of daylight.
37. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the Church of St George is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. Overall the Secretary of State agrees with the Inspector at IR505 that the benefits of the appeal scheme, identified in paragraphs 33-35 of this letter, are collectively sufficient to outweigh the identified 'less than substantial' harm to the significance of the heritage asset. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

38. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan i.e. a refusal of permission.

39. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

40. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission

Right to challenge the decision

41. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

42. A copy of this letter has been sent to London Borough of Southwark Council and The Local Group, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Jean Nowak
Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Housing, Communities and Local Government

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 7 November 2019

TOWN AND COUNTRY PLANNING ACT 1990
COUNCIL OF THE LONDON BOROUGH OF SOUTHWARK

Appeal made by
PEACHTREE SERVICES LTD

Inquiry Held: 21-23 August, 27-30 August, 23, 24 September 2019
Site visit held: 3 September 2019

Burgess Business Park, Parkhouse Street, London SE5 7TJ
File Ref: APP/A5840/W/19/3225548

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ABBREVIATIONS LIST

Term	Acronym
Affordable Housing Supplementary Planning Document	AH SPD
Average Daylight Factor	ADF
Controlled Parking Zone	CPZ
Community Infrastructure Levy Regulations	CIL Regs
Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document	S106 SPD
Council of the London Borough of Southwark	The Council
Local Preferred Industrial Location	PIL
Public Transport Accessibility Level	PTAL
Development Viability Supplementary Planning Document	DV SPD
Statement of Common Ground	SCG
Vertical Sky Component	VSC
Environmental Statement	ES
Transport for London	TfL
Greater London Authority Housing Supplementary Planning Guidance	Housing SPG
Habitable rooms per hectare	hrpha
London Borough of Southwark Core Strategy	CS
National Planning Policy Framework	the Framework
New Southwark Plan	NSP
No Sky Line	NSL
Peachtree Services Ltd	Peachtree
Planning Obligation by Agreement	the S106 Agreement
Planning Obligation by Unilateral Undertaking	UU
Residential Design Standards Supplementary Planning Document with Technical Update	RDS SPD
Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document	S106 SPD
Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice	BRE Guidelines
Southwark Council Core Strategy (2011)	CS

File Ref: APP/A5840/W/19/3225548

Burgess Business Park, Parkhouse Street, London SE5 7TJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Peachtree Services Ltd against the decision of the Council of the London Borough of Southwark.
- The application Ref 17/AP/4797, dated 21 December 2017, was refused by notice dated 31 January 2019.
- The development proposed is demolition of the existing buildings and redevelopment of the site to provide 499 residential units, up to 3,725m² (GIA) of Class B1 commercial floorspace, up to 128m² (GIA) of Class D2 leisure floorspace and up to 551m² of Class A1-A3 floorspace within 13 blocks of between 2-12 storeys (max AOD height 41.95m), with car and cycle parking and associated hard and soft landscaping.

Summary of Recommendation: That the appeal be dismissed

PROCEDURAL MATTERS

1. The original planning application was for demolition of the existing buildings and redevelopment of the site to provide 505 residential units, up to 3,375m² (GIA) of Class B1 commercial floorspace, up to 117m² (GIA) of Class D2 leisure floorspace and up to 570m² of Class A1-A3 floorspace within 13 blocks of between 3-14 storeys with basement, car and cycle parking and associated hard and soft landscaping. Following various discussions with the Council revisions were made and its decision was based on the amended scheme as described in the banner heading above.
2. The inquiry was conducted in accordance with the recommendations of Bridget Rosewell OBE. I undertook a telephone case conference with the 3 main parties on 5 June 2019. It was agreed that the inquiry would be held on a topic-led approach and some topics were considered by round table sessions, which were informed by dedicated statements of common ground (*Document CD J10*).
3. The Local Group was granted Rule 6 status and played a full part in the inquiry process. It comprised a number of local organisations, residents and local businesses within the local area. These included the Friends of Burgess Park, Wells Way Triangle Association, 35% Campaign, the Camberwell Society, Brunswick Park TRA and Vital OKR. Following discussions with the Appellant during the course of the inquiry, the Local Group did not present evidence on transport, which particularly related to accessibility and on-street car parking. Its concerns were addressed through the proposed planning conditions and planning obligations, which are considered later in the Report (*Document CD H4, paragraph 2*).
4. There is no dispute that the application proposal is Environmental Impact Development. An Environmental Statement (ES) was submitted in December 2017. Following the revisions to the scheme referred to above, a revised ES was submitted in August 2018. This has been taken into account in my consideration of the appeal proposal (*Documents CD A23-26; CD B19-22*).
5. As the proposal is for full planning permission, I queried why the commercial floorspace was not definitive. The response confirmed that the total amount of commercial floorspace stated in bullet 4 above could be accommodated at ground floor level. It is proposed that a minimum level of Class B1c floorspace

would be secured by condition. In such circumstances the terminology seems acceptable in order to maintain flexibility (*Document INQ 35*)

6. During the conditions and planning obligations round table discussions towards the end of the inquiry, I requested that further information should be provided on a number of relevant matters and allowed a short time after I had closed the proceedings for this to be done. It had originally been proposed to submit a Planning Obligation by Agreement. However, following discussions with the Council of the London Borough of Southwark (the Council) the Appellant decided that it would not be possible to reach agreement and that a Planning Obligation by Unilateral Undertaking (UU) would be submitted instead. I agreed to allow a short time after the close of the inquiry for this to be finalised. The fully executed document is date 29 October 2019 and is considered later in my Report (*Documents INQ 40-INQ 47*).

THE SITE AND SURROUNDINGS

7. There is a comprehensive description of the site and its surrounding area in the Statement of Common Ground (SCG) on planning matters and also some useful commentary and photographs in the Appellant's heritage and townscape proof of evidence (*Documents CD H3, section 3; POE 10, section 5*). There is an aerial photograph and plans showing the various surrounding land uses and building heights in the Design and Access Statement (*Document CD A5, pages 20, 21, 23*). The relationship of the appeal site to Burgess Park and the part that is designated Metropolitan Open Land is also found in the Design and Access Statement (*Document CD A5, page 41*).
8. Photographs of the existing site and a plan of its layout is at *Document POE 1, pages 15, 16*. Heritage assets in the vicinity and their location are shown in *Document POE 11, Appendix B*. An aerial photograph showing existing and proposed buildings over 12-storeys in height and a plan showing regeneration sites in the vicinity is at *Document INQ 2*, pages 5, 6. The site in relation to surrounding roads, railway stations, bus stops and facilities is at *Document POE 8, Appendices MT1, MT3*.

The main points are:

9. The appeal site is located on the southern and eastern side of Parkhouse Street, which has an arced configuration and has junctions with Southampton Street to the south and Wells Way to the east. The latter road runs along the eastern site boundary where there is a high brick wall reducing to a lower wall topped with railings.
10. The existing site is in two sections and the main part comprises a number of one, two and three-storey industrial buildings with a large communal yard and parking area adjacent to Parkhouse Street, from where the site draws access at the front. Unit 1 is particularly dilapidated but most of the other buildings have been re-clad with a red brickwork skin and are mainly in meanwhile uses. A tall chimney is a particular feature, which rises high above the roofline and is clad in an array of telecommunications equipment. 10-12 Parkhouse Street is a three-storey vacant office building that fronts onto that road. To the south of it is a low-lying brick Victorian building with openings on to the street that is in use as a car-wash. 45 Southampton Way is half of a pair of three-storey houses in the south-western corner of the site at the junction with Parkhouse Street. The

smaller part of the site is on the western side of Parkhouse Street and includes a three-storey commercial building with a large open yard to its south.

11. The appeal site is part of a larger industrial area. On the northern side of Parkhouse Street there are a variety of buildings of different shapes and sizes. These include traditional brick-built industrial buildings as well as large modern warehouses such as the Babcock Depot and the PHS waste transfer station. On the southern side of the appeal site is the Big Yellow self-storage depot, which is a large modern building under construction at the time of writing. Adjacent to this is a scaffolding yard that wraps around a church and recording studio.
12. The surrounding area is typified by Victorian terraced housing along with modern infill development. On the southern side of Southampton Way are the higher density residential regeneration projects of Elmington Green and Camberwell Fields. The buildings here are typically three to four storeys in height with some blocks rising to between five and seven storeys. The nearest housing to the appeal site is 1-13 (odd) Parkhouse Street, which is a two-storey Victorian terrace with small gardens to the rear. These properties all appear to have been subdivided horizontally into two flats. On the eastern side of Wells Way Nos 97-111 is a traditional terrace of town houses. No 113 is a former listed vicarage that has been subdivided into flats. To the north of the terrace beyond Coleman Road is a residential estate with a modern terrace fronting onto Wells Way.
13. To the north-west of the appeal site at the junction of New Church Road and Edmund Street, is Evelina Mansions. This is a large, six-storey red-brick Victorian mansion block built round a central courtyard garden. On the opposite side of New Church Road is the Addington Square Conservation Area. This is an enclave of elegant Georgian town houses built around green spaces which provide a sylvan setting. To the east of the Conservation Area is Burgess Park. This is a very large green amenity space that runs up to the Old Kent Road at its eastern end. It is crossed by Wells Way, where the Grade II listed former Church of St George is situated. This building has a prominent and distinctive tower that can be seen in many views from the park as well as within the surrounding townscape. On the northern side of Burgess Park is Albany Road, adjacent to which the Aylesbury Estate regeneration is taking place.

PLANNING POLICY

14. The development plan includes the **London Plan** (2016), **London Borough of Southwark Core Strategy** (2011) (CS) and saved policies of the **Southwark Plan** (2007) (*Documents CD C3; CD C8; CD C9*)
15. The **draft New London Plan** is at an advanced stage and the Mayor is considering the Inspectors' Report following the examination. The **draft New Southwark Plan** (NSP) is expected to be submitted for examination in late 2019. It will eventually replace the CS and saved policies in the Southwark Plan (*Documents CD C7; CD C22*).
16. There are various non statutory documents of relevance to the appeal. In particular, the Council's **Residential Design Standards and Technical Update Supplementary Planning Document** (2015) (RDS SPD) and the Mayor's **Greater London Authority Housing Supplementary Planning Guidance** (2016) (Housing SPG) (*Documents CD C12; CD C4*).

17. The **National Planning Policy Framework** (2019) (the Framework) establishes that the purpose of the planning system is to achieve sustainable development. Of particular relevance in this case is section 5 concerning the delivery of sufficient homes; section 6 seeking to build a strong, competitive economy; section 9 aiming to promote sustainable transport; section 11, regarding making effective use of land; and section 12, achieving well-designed places. The **Planning Practice Guidance** is a web-based resource and provides further relevant advice in respect of the above matters.

THE CASE FOR PEACHTREE SERVICES LTD

The Appellant's case is fully set out in its evidence, including its opening and closing submissions (Document INQ 38). The main points are:

INTRODUCTION

18. The context in which this appeal has come forward is important. The potential for a mixed-use residential-led scheme has long been recognised, for example in the *Southwark Employment Land Study* (2016). There has been close collaboration with, and encouragement by, the Council's officers for 3 years prior to submission of the application. An architectural practice favoured by the Council in development of their own sites was instructed to design the development¹. The pressing need for affordable housing was recognised and 35% provision maintained, despite the adverse impact on viability. Amendments were made, including reducing the height. The desire to improve permeability in the emerging local plan was accommodated. There is little more that could have been done in order to comply with the indications given by the Council's officers who, in turn, commended the scheme to members. (**Documents CD A6, paragraph 5.4; CD D1, Table 4.2**).
19. The members rejected the views of their officers but did so on limited grounds. However, the first reason for refusal focuses on minimum unit sizes and amenity space and was based upon a "tick box" approach to appraising design rather than looking at the overall quality of the scheme. There is no policy or other support for such an approach. The second reason relies on policies for the protection of employment land, but the Council no longer wishes to maintain this site in purely industrial use. Its emerging local plan allocates the site for mixed-use development and no realistic alternative means of achieving this aspiration is available. Indeed, on its own adjacent site at 21-23 Parkhouse Street it is also promoting a mixed-use scheme.
20. The evidence shows that these issues are overstated. But even if they were not, the development is exemplary in a number of other respects which have not been challenged. The decision must take the whole of the picture into account, including the numerous undisputed benefits. Policies and standards are to guide decisions, but each decision must be considered on its own merits and the aims and the aspirations for the benefit of the community which lie behind the policies must be considered. The evidence as it has emerged has not revealed any good reason to turn away the benefits that the proposal will provide.

¹ HTA Design LLP, who are working on the Aylesbury Estate regeneration on the northern side of Burgess Park, amongst other projects (**Document POE 1, section 1**).

DENSITY AND STANDARD OF ACCOMMODATION

21. In assessing the standard of accommodation to be provided, a holistic approach must be taken which balances the positives and negatives of the scheme. It is common ground that none of the relevant policies requires a "tick box" exercise. In designing the proposal, the policy requirements were treated as recommendations and a bespoke view was taken of the best provision to make for each dwelling in the context of the scheme as a whole. The role of an architect is not to tick boxes from a list, but to produce a design that responds to context and produces the high-quality buildings and places, as sought by paragraph 124 of the Framework. This scheme would soon be recognised as a vibrant and attractive new mixed-use quarter which makes a very positive addition to the area (*CD H3, paragraph 6.12*).
22. The Council wrongly suggested that minimum space standards were not subject to the principle that the best and most appropriate design solution should be devised. This has no support in policy. The correct approach is that even if minimum space standards were to be breached, the scheme could still be exemplary if it is outweighed by other factors in the balance.

Development plan policy

23. Strategic Policy 5 of the CS reflects the Council's general objective to secure as much housing as possible. It had no issues in respect of the effect on the character and appearance of the area, heritage or the principle of residential development at this location. The only basis on which there was an objection in terms of this policy related to the quality of accommodation. The applicable density range here relates to the Urban Zone, which is 200-700 habitable rooms per hectare (hrpha). The proposal would provide 984 hrpha. The language of the policy is clear that these ranges are an expectation, not a requirement (*Document CD C8, page 78-9 and paragraph 5.58*).
24. Strategic Policy 5 provides that within opportunity areas and action area cores, the maximum densities may be exceeded where developments are of exemplary design or standard. It does not though say that these are the only circumstances when such variation could occur. The Council's own practice is to regard exemplary schemes as complying with the policy even if they are not in opportunity areas or action area cores. The policy creates a general expectation as to density levels and is neither a floor nor a cap. It would not be breached by the bare fact of exceedance. In those circumstances the debate about whether or not the policy applies an exemplary design exemption outside of opportunity areas and area action cores is thus largely arid (*Document POE 3 paragraphs 6.9, 6.16*).
25. The reason for refusal relies on saved policy 4.2² in the Southwark Plan, which refers amongst other things to achieving good quality living conditions and high standards of space including outdoor/green space. In assessing whether these standards would be met an overall view must be taken and the appeal scheme would comply with its requirements. In any event, this is a permissive policy, but it does not say that a failure to meet the provisions is a reason for resisting

² Inspector's Note: It was agreed that the reference to saved policy 4.3 in the first reason for refusal was incorrect. The correct reference was to saved policy 4.2.

a proposal. On its words, saved policy 4.2 does not provide a basis for refusal even if its provisos are not met. The Council's reliance on the Gladman judgement³ is misplaced. It concerned policies that gave effect to site allocations as components of a complete spatial strategy for the location of housing. The context of the policies considered by the Court of Appeal was thus very different and cannot be applied without modification to Saved Policy 4.2 (*Documents CD C9, page 60; INQ 1, paragraphs 28-31*).

26. The Council does not allege a breach in saved Policy 3.11 in the Southwark Plan. All of the factors that should be achieved whilst securing the efficient use of land would be complied with (*Document CD 9, page 45*).
27. The Council does not allege a breach of policy 3.4 in the London Plan. This requires development to optimise housing output within the density ranges shown in table 3.2. Again, however, Policy 3.4 does not limit permissible development to those within the density ranges. It says that only developments which compromise the policy should be resisted. No such compromise has been alleged. The supporting text indicates that table 3.2 is not to be applied mechanistically and the proposal's exceedance of the specified density range does not therefore give rise to any conflict with this policy. Table 3.2 is not applied mechanistically by the Council in practice, as is shown by a number of examples. The reference in paragraph 3.28A of the supporting text to exceptional circumstances relates to those developments that comply with criteria in the Mayor's Housing SPG. It does not introduce any extra policy test (*Documents CD C3, page 100 and paragraph 3.28; POE 3, paragraph 6,7 and table 6.1*).
28. Where a proposal exceeds the London Plan's density ranges, guidance on the factors to be considered is contained in the Mayor's Housing SPG. This also makes clear that table 3.2 is not to be applied mechanistically but is a starting point for consideration. It provides its own list of considerations for whether a development is of "high quality design", and thus supportable despite exceeding the density range. There is no mention of a need for exemplary design in the Housing SPG (*Document CD C4, paragraph 1.3.50*).
29. Policy 3.5 in the London Plan concerns the quality and design of housing developments. Where a development is of exemplary design it is capable of being permissible even where it would compromise the delivery of elements of the policy. It follows that compliance with the elements of policy 3.5 is not a prerequisite of exemplary design. Policy 3.5 thus requires a balanced assessment and the positives of a development need to be weighed against its shortcomings to decide whether it is exemplary⁴. There is nothing in the policy to justify elevating space standards to a non-negotiable requirement. It treats them in exactly the same way as the other identified characteristics (*Document CD C3, page 102*).

Emerging policy and national policy

30. The use of crude density tables and ranges is contrary to the direction in which planning policy is evolving, both at the local and strategic level. Emerging policy is moving towards a requirement for the quality of a development to be

³ *Gladman Developments v Canterbury CC* [2019] EWCA Civ 669.

⁴ This was accepted by Ms Crosby in cross-examination by Mr Cameron.

commensurate with its density, so that applications are judged on their merits. Draft Policy D1 in the emerging New London Plan does not repeat the density table from Policy 3.4. Draft policy CG2 takes a similar approach. The aim is to create successful, high-density, sustainable, mixed-use places that make the best use of land. That aim is to be achieved by applying a set of criteria the application of which requires an exercise of planning judgement.

31. Similarly, the density table which was contained in earlier drafts of policy P9 in the emerging New Southwark Plan has been removed. It provides the Council's latest thinking on what amounts to exemplary development. The draft policy requires all development, large and small, to be of an exemplary standard of residential design. That suggests that development need not be exceptional in order to be exemplary. It does not create a checklist but rather a number of factors to be considered. It indicates that a proposal that meets national space standards, but does not exceed them, can still be exemplary⁵. Although it requires private and communal space standards to be exceeded, there is the proviso that shortfalls in private amenity space can be made up for in additional communal provision, as is proposed in this case. It requires the provision of "acceptable" levels of natural daylight (*Document CD C21, page 16*).

The Council's position before and at the inquiry

32. The view of the Council's planning officers, including the Director of Planning, was that the scheme was of a high enough quality to warrant the grant of planning permission. The recommendation was on the understanding that the density of the scheme was 1,415 hrpha, which is considerably higher than the correct figure of 984 hrpha. The Council at appeal has adopted a tick-box approach, which contrasts to the holistic approach taken by the planning officers in this case and also in relation to other schemes, including the Dockley Road proposal. This is not only contrary to the language of the policies themselves but also contrary to the Council's own past practice (*Documents CD E1, paragraphs 174-195; CD H3 Appendix B, paragraph 2.2; INQ 7, paragraphs 61-65*).
33. The Council's decision notice is required, as a matter of law⁶ to specify not only the full reasons for refusal, but also all the policies in the development plan which the Council regarded as relevant to its decision. In the first reason for refusal, the decision notice only specifies saved policy 4.2 in the Southwark Plan, policy 3.5 in the London Plan and the RDS SPD. There is no mention of Strategic Policy 5 in the CS or policy 3.4 in the London Plan. The Council does not allege that exceedance of density ranges in those policies is itself a reason for refusal. Also, the only basis advanced against the proposal's exemplary nature is insufficient amenity space and a failure to exceed minimum space standards. There is no criticism about outlook, privacy, or sunlight and daylight, save as a component of living standards.

Design of the appeal proposal

34. Many of the design characteristics that are relevant to an assessment of overall quality have not been criticised by the Council. The design evolution had the twin aims of optimising the housing output of the site and providing excellent

⁵ This was accepted by Ms Crosby in cross-examination by Mr Cameron.

⁶ Article 35(1)(b) of the Development Management Procedure Order.

standards of accommodation. There was wide consultation and close collaboration with the Council's officers (*Document POE 1, section 4*).

35. The site as it stands is of low quality. Much of it comprises car parking and is fenced off with poor permeability and few trees. By contrast, the proposal would introduce a vibrant mix of uses. There would be a high-quality public realm with the potential for a variety of flexible uses and activated frontages for Parkhouse Street and Wells Way. The ground floor levels have been designed with a view to clustering different types of uses together to enable a critical mass of uses. The entire proposal would be tenure blind. The height profile of the scheme has been carefully designed so that the tallest buildings would be at the centre of the site, tapering down towards the site boundaries. The scheme is sensitive to the site's historic context and has been designed to incorporate and celebrate the former sweet factory's chimney. It would also facilitate the redevelopment of the wider area, by providing potential connections to Southampton Way, as well as to the south-east of the site as a strip of land beside the Big Yellow storage building has been safeguarded for future access (*Document POE 1, section 5*).
36. As to the standard of accommodation provided, all of the dwellings would meet or exceed the minimum space standard for internal accommodation. Each dwelling was considered individually with a balance between the provision of internal space, external private amenity and outlook. In every case where a unit had a shortfall in external private amenity space, it exceeded the national space standard for its internal space. Such a bespoke approach is a hallmark of an exemplary design. The result is a scheme which was led by design, with a focus on providing homes in which people wish to live, rather than by ticking the Council's boxes. For example (*Document POE 1, Appendix 10.3*):
- Single aspect units would, on average, be 4m² larger than dual aspect units;
 - In Block B, the aesthetic demands of the overall scheme meant that balconies would not be provided. In such cases, units would on average be 16m² larger than they would otherwise have been;
 - In Block I, balconies have been removed to ensure a high standard of daylight to the units. To balance the effect of the loss of 5m² balconies, each of these units would be provided with an 7m² more internal floorspace.
 - In Block E, where a unit has a balcony which was 1.4m² smaller than expected, it was given an additional 13m² of additional floorspace, as well as a triple aspect.

There is a very high level of adherence of the proposal to the guidance for exemplary status in the Housing SPG and the RDS SPD (*Document POE 3, tables 6.3 and 6.5*).

Minimum space standards

37. The Council was wrong to conclude that the proposal could not be exemplary because some rooms were below the minimum space standards in the RDS SPD. There is nothing in the development plan to support such a contention, particularly where the identified shortfalls were only between 0.1m² and 0.2m². There was no dispute that the partition walls between rooms within properties were drawn at the planning stage as 400mm thick. However, these would inevitably be reduced to either 350mm or 300mm at the construction stage. The

effect of the reduced partition thicknesses would be to remove the identified shortfalls. If the concern remains, a condition could be imposed to require all rooms within the proposal to comply with minimum space standards at the construction stage (*Documents POE 2, pages 6-11; POE 15, paragraph 7.15-20*).

38. The concern was that certain of the bedrooms within the proposal were undersized for the purposes of wheelchair accessibility. However, that essentially related to labelling and if the relevant dwellings were described as 2 bed 3 person units rather than 2 bed 4 person units, the bedroom sizes would be acceptable⁷. The RDS SPD sets out minima for rooms. There is nothing to support the Council's approach that once a room reaches the minimum size for a double bedroom it can no longer be treated as a single bedroom, for example. The minima are recommended rather than required, which indicates a more flexible approach is required, rather than the tick-box, mechanistic approach taken by the Council. (*Documents CD C12, page 14; POE 15, paragraph 7.18*).

Private amenity space

39. It was agreed that the standards for amenity space in saved policy 4.2 are those in the RDS SPD⁸. For units with two beds or fewer there is no absolute requirement for private amenity space to be provided for each individual unit. If there is less than 10m² for a particular unit, the deficit is to be made up in additional communal amenity space. The Council sought to test each unit against the private amenity space standard individually, notwithstanding that the planning officers had agreed to adopt a global approach to this calculation at application stage. They had also agreed that where there was a shortfall in private outdoor amenity space, it could also be compensated for by the provision of extra internal space. It is regrettable that the Council now adopts a different approach. (*Document CD C12, paragraph 3.2; CD E1, paragraphs 189-190*).
40. The nature of design is such that, in many cases, to achieve one standard involves compromising another. For example, providing balconies in some cases compromises internal daylight or outlook. Similarly, whilst additional amenity space could have been provided on rooftops, the result would have been the reduction in the number of photovoltaic panels provided, with resultant adverse impact on the energy sustainability of the scheme. The approach seeks to balance these factors in a sensitive manner rather than apply a tick-box approach that results in criticism of the proposal on an unrealistic and pedantic basis (*Document POE 2, pages 14-25*).
41. 87% of the proposed development would meet the RDS SPD standard and only 8% of units would not have any private amenity space at all. Whilst the RDS SPD seeks 10m² as the ideal size of balcony for flats of two or less bedrooms, it recognises this is not always possible. In such circumstances a minimum of 3m² should be provided with the shortfall made up in the provision of communal amenity space. This was the sensible approach taken in the private amenity space assessment (*Documents CD C 12, paragraph 3.2; POE 3, table 6.4*).

⁷ This was accepted by Ms Crosby in cross-examination by Mr Cameron. She also agreed that such an amendment would have no impact on unit mix, which is dictated by the number of bedrooms not the number of person which those bedrooms can accommodate.

⁸ This was agreed by Ms Crosby in cross-examination by Mr Cameron.

Communal amenity space and children's play space

42. The RDS SPG sets out a formula for the calculation of children's play space. It was agreed that each of the proposed blocks should be considered individually⁹. The total requirement for play space for 0-5 years old children would be 810m² and the provision on-site would be 918m². In terms of the provision for older children, it is relevant that the appeal site is located so close to Burgess Park. In those circumstances, it is clearly reasonable for the proposal to provide less communal amenity space than would otherwise be the case. Indeed, the RDS SPD itself recognises the validity of such an approach. A tick-box exercise in terms of provision of each type of open space is unrealistic. It fails to recognise the physical reality of the availability of Burgess Park to the residents of the proposal and its impact on what is needed to ensure a high standard of amenity (**Document POE 1, pages 63-64**).

Sunlight

43. Saved policy 4.2 in the Southwark Plan requires high standards of natural daylight and sunlight. It makes no reference to the good practice guide: *Site layout planning for daylight and sunlight* (the BRE Guidelines) although this is referred to in the RDS SPD (**Document CD C12, paragraph 2.7**).
44. The guidance recommends that at least half of an open amenity area should receive at least 2 hours of sunlight on 21 March. However, the guidance makes clear that there is no hard and fast rule for the assessment of sunlight on open spaces. This is not a test nor a requirement, but a recommendation and a check. Applying that check, it was met for each of Blocks A, B, D, E, J and K. Block M shares amenity space with Block L and so is acceptable on that basis¹⁰ (**Document POE 5, page 53**).
45. The podium courtyards between and serving Blocks F, G, H and I would not receive 2 hours sunlight on the spring equinox. However, that would not be unusual and there are a number of courtyards in London with similar sunlight levels, which had won awards for their design quality. Indeed, courtyards of this kind are a classic example of why the BRE approach is a check to be applied flexibly, rather than a standard to be met. It is also highly relevant that in summer, when residents are likely to be using the outdoor amenity space, that part of the courtyard adjacent to Blocks F and G, which would be accessible to residents of Blocks H and I across the connecting bridge, would receive sunlight. The quality of the courtyard as an open space is not linked to its sunlight levels in March in the same way as is the case for other kinds of open space (**Document POE 7, section 5**).
46. The Council has suggested that a gap could have been left in the structure of Block I to allow sunlight to reach the courtyard. This would not be an appropriate design response and would involve a really significant design alteration. The proposal would clearly provide the high standard of sunlight referred to in saved policy 4.2.

⁹ This was agreed by Ms Crosby in cross-examination by Mr Cameron.

¹⁰ This was agreed by Ms Crosby in cross-examination by Mr Cameron.

Daylight

47. The assessment of daylight levels is dealt with, in policy terms, by the Mayor's Housing SPG. It concerns the satisfactoriness of the amenity levels provided. It is also necessary to assess the daylight target of a scheme against broadly comparable residential typologies from across London. The Planning Practice Guidance on effective use of land adopts a similar approach and also sets the standard for daylight provision as satisfactory (*Document CD 4, paragraph 1.3.46*).
48. The saved policies of the Southwark Plan show some confusion on the requisite standard. Saved policy 3.11 refers to satisfactory levels of daylight, whereas saved policy 4.2 refers to high standards. The Framework, Housing SPG and draft London Plan all support a requirement for satisfactory or adequate levels, not high ones. The Council agreed that the approach of satisfactoriness was an appropriate standard to apply in this case¹¹.
49. In any event, there would be very good levels of daylight provided for the proposed dwellings in the scheme. In almost all cases, those units that failed to provide requisite standards of Average Daylight Factor (ADF) was due to the decision to provide balconies to the units directly above. Daylight and outdoor amenity space are often in conflict and require a design judgment to be made. The rooms that failed ADF were all bedrooms, which require less natural daylight than other living rooms. The daylight assessment included a representative selection of units across the scheme. The scheme's quality would remain valid and unaltered even if individual rooms or units could be identified that showed worse ADF levels than those tested (*Documents INQ 3A, pages 35-47; POE 5, pages 32-33*).
50. The Planning Practice Guidance and Mayor's Housing SPG indicates that developments should maintain acceptable living standards. What that means in practice will be heavily dependent on context and requires a comparison with similar properties. Criticism that these lie within opportunity areas or action areas misses the point. The Mayor's Housing SPG refers to comparable residential typologies, which in this case means residential flats. The planning status of the areas is not relevant to the acceptability of daylight within the units themselves. The appeal proposal achieves higher levels of ADF and No Sky Line (NSL) compliance than the comparable sites. Of those rooms that fall below the recommended ADF figures, the majority do so marginally (*POE 5, pages 28-30; paragraphs 5.2.1-5.2.36*).
51. All of the relevant policy tests would be met. The standard of daylight and sunlight in the proposed development would be similar to, or better than, that found in comparable developments in the area. The 87% compliance with ADF recommendations is high in this urban context. The scheme should be applauded for the way in which housing output has been optimised whilst overall achieving satisfactory levels of daylight and sunlight.

Proximity to the Big Yellow storage facility

52. The rear elevations of Blocks D and E would in some places be relatively close to

¹¹ This was agreed by Ms Crosby in cross-examination by Mr Cameron.

the newly erected storage building. However, the habitable rooms concerned would be 4 single bedrooms within four separate three bedroom flats. Those bedrooms would be located in triple aspect homes that would exceed minimum space standards by 16m². This provides another example of how carefully the scheme has been designed so that other factors outweigh the relative proximity so as to maintain an exemplary standard (*Document POE 2, section 7.54*).

Noise

53. Many of the balconies, roof terraces and podium areas would meet the World Health Organisation *Guidelines for Community Noise* for external amenity areas of 55 decibels. The concerns of the Local Group related to those proposed residential units and amenity areas that would be close to the BCM scaffolding yard and Babcock depot. The latter site at 25-33 Parkhouse Street, is the subject of pre-application enquiries for mixed use development promoted by Joseph Homes. (*Documents CD B19, chapter 8, paragraphs 8.59-8.665 8.65; POE 16, appendix 1; INQ 5; INQ 25*).
54. The Planning Practice Guidance indicates that external noise impacts can be partially offset where residents have access to alternative relatively quiet amenity space, including a nearby tranquil public park or local greenspace¹². Burgess Park, which is in the immediate vicinity of the appeal site, clearly meets the final bullet of the guidance. It is clear that the approach taken in the ES, although it pre-dated the current version of the Planning Practice Guidance, is entirely consistent with it and that its conclusions are justified.
55. Paragraph 182 of the Framework sets out “agent of change” principle. The inclusion of mitigation measures makes the likelihood of complaints by future residents negligible. There is no evidence that any existing business would have any unreasonable restriction imposed on it as a result of the mixed-use development (*Document INQ 5*).

EMPLOYMENT LAND

56. The site is designated as a Local Preferred Industrial Location (PIL) in the development plan. However, it is common ground with the Council that the appeal site is appropriate for a mixed-use and there is no reliance placed on saved policy 1.2 in the Southwark Plan, which restricts development on such sites to B Class uses. The basis of the dispute relates to the quantum, and the appropriateness, of the employment space actually offered (*Document POE 15, paragraph 7.93*).

Development plan policy

57. Policy 4.4 in the London Plan seeks to protect a sufficient stock of employment land. Compliance with this policy will thus turn on whether the stock of such land would be sufficient if the proposal were to be permitted (*Document CD 3, page 151*).
58. The proposal would be contrary to Strategic Policy 10 in the CS, which protects industrial floorspace in the Parkhouse Street PIL. This does not however reflect the Council’s current aspirations or the general direction of travel. That is

¹² Planning Practice Guidance Paragraph: 011 Reference ID: 30-011-20190722.

demonstrated by the draft site allocation NSP23 in the emerging New Southwark Plan, which allocates land including the appeal site for mixed-use redevelopment (*Documents CD C8, page 94; CD C20, page 167*).

59. Amongst other things draft policy P26 in the emerging New Southwark Plan requires that the amount of employment floorspace should be retained or increased where specified in site allocations. However, draft allocation NSP23 applies its criteria not to individual proposals within the allocation area, but to the allocated area as a whole, which is larger than the appeal site (*Documents CD C20, page 54; CD E1, plan after paragraph 9*).
60. Draft allocation NSP23 includes a number of criteria divided into 3 categories. The first category are those things that “must” be provided. In terms of employment space there is no requirement that this should be the higher of the two options¹³. The type of Class B use is not specified and so Class B2 or B8 space would comply¹⁴. The Council did not dispute that the other three requirements in the “must” category would be met¹⁵. The second category relates to those things which “should” be provided and includes things which are desirable but not essential¹⁶. The provision of Class B2 or B8 space is included in this category but the Council recognised that Class B2 provision would not be suitable for this particular site¹⁷.
61. Draft policy P28 (as proposed to be modified) in the emerging New Southwark Plan requires provision of 10% affordable workspace. It is concerned with relative provision, and in those terms the proposal would be compliant (*Document CD C21, page 25*).

The existing site

62. As a generality, the appeal site’s current buildings are in a deteriorating condition¹⁸. Some parts of the site are being used by meanwhile uses. However, such uses are not representative of what the commercial market regards as acceptable. Someone can almost inevitably be found to occupy any land or building, if the terms are sufficiently favourable (*Document POE 13, paragraph 2.2*).
63. The Local Group expressed a number of views about the condition of the site, and about its potential for refurbishment or reuse. However, no internal inspection of any of the buildings had been carried out and there had been no assessment of the viability or feasibility of refurbishing any of them¹⁹. Given those limitations, and the lack of professional experience or expertise in these matters, the views of the Local Group on this point must carry limited weight.

¹³ Ms Hills accepted that the words in the policy did not require that the proposal should provide at least the amount of employment floorspace currently on the site or at least 50% of the development as employment floorspace whichever was the greater, but she considered this was the intention of the policy.

¹⁴ This was agreed by Ms Hills in cross-examination by Mr Cameron.

¹⁵ This was agreed by Hills in cross-examination by Mr Cameron.

¹⁶ This was agreed by Ms Hills in cross-examination by Mr Cameron.

¹⁷ This was agreed by Ms Hills in answer to my question.

¹⁸ This was agreed by Ms Hills in cross-examination by Mr Cameron although she pointed out that some parts were suitable for meanwhile uses.

¹⁹ This was agreed by Professor Brearley in cross-examination by Mr Cameron.

Job numbers

64. There are 57 jobs currently supported by the appeal site. This excludes meanwhile uses, which is the correct approach because such uses by their nature are temporary. Arbeit, the curator, occupies the premises rent-free. There is thus no basis for assuming that meanwhile users would take space and thus create jobs on a commercial basis. The Council has not disputed the estimated generation of 255 jobs in the appeal development (*Core Documents B2, pages 6-7; POE 13, paragraph 2.3.2-2.3.4; POE 14, paragraph 9*).
65. There was considerable debate about the number of jobs that the appeal site could generate if its current buildings were fully occupied. The Council's figure was up to 636 jobs on the basis of one job per 20m² of employment space, but this was not based on any a consideration of what the space could actually be used for²⁰. It included the meanwhile uses, which are not representative of use in a commercial scheme. It was also not based on any experience of actually letting space in the market²¹. However, The Homes and Communities Agency *Employment Densities Guide* indicates a standard of 47m² per employee for B1c use and 75m² per employee for B8 use²². Whilst those indications are general, the Council's estimate is far removed from them (*Document POE 14, paragraph 5*).
66. The 255 jobs that would be facilitated by the appeal proposal would exceed the current 57 jobs and the 137 jobs that were based at the site when Fruitful Office Ltd were in occupation. It also exceeds the potential for 82 jobs were the site to be redeveloped for B1c and B8 purposes and the 147 jobs in the unlikely and unrealistic event that the current premises were to be re-furnished (*Document POE 14, paragraphs 5, 7*).

Plot ratio

67. On the basis of market experience, a plot ratio of 40% would be appropriate for the employment space on-site to meet market demand. On that basis the replacement floorspace for the appeal site would be 5,232 m². If calculated using the highly contested 65% plot ratio figure currently contained in the draft London Plan, the re-provision of employment space on-site would be 8,502m² (*Document POE 13, paragraph 2.1.12*).
68. These calculations excluded the 2,104m² floorspace of 10-12 Parkhouse Street, which currently benefits from prior approval to convert into residential units. It is included in the Council's housing land supply not merely because of the existence of the extant approval but also because it was considered deliverable within the terms of the Framework. At this time the Council considered that the permitted development rights would be implemented if a mixed-use scheme was not secured. If a fresh prior approval application were made on expiry in 2020, it would very likely be granted. There has been no relevant change in fact or law to justify a different decision being made. This is supported by the agreed viability position, which calculated 10-12 Parkhouse St on an alternative use basis (*CD C7, paragraph 6.4.5; CD D4, appendix 1, page 12; INQ 8, paragraph 5.5*).

²⁰ This was agreed by Ms Hills in cross-examination by Mr Cameron.

²¹ Ms Hills accepted that she had no experience in this regard.

²² See *Employment Densities Guide* (second edition) 2010 Housing and Communities Agency

69. The suggestions made by the Local Group that the appeal site could be re-developed at a higher density failed to recognise commercial realities. It is right to say that existing businesses in London operate in premises with high plot ratios. However, were the appeal site to be re-developed, modern standards would be applicable in order to respond to market demand. The Local Group provided no evidence based on expertise and experience in the industrial property market. To achieve modern standards and meet market demand, a 40% plot ratio would be appropriate.

Demand

70. Demand for a certain kind of employment floorspace does not mean that the development of such accommodation can or will come forward. It will only occur if a reasonable commercial developer is able and willing to develop. This also depends on the deliverability of the proposed space and the nature of any alternative investment options for the same funds. Investment does not simply follow demand²³. It will not be provided if the capital and continuing revenue costs exceed the price that those who are seeking the accommodation are willing or able to pay. Demand and deliverability would be required before a scheme offering full commercial re-provision of the site could be assumed to come forward²⁴.
71. The Council has not at any point commissioned an agent to analyse the market for a mixed-use scheme on the appeal site itself²⁵. Amongst other things it relied on responses achieved in relation to the redevelopment of its own site at 21-23 Parkhouse Street. The fact that all the workspace providers responded promptly gives, at best, an indication of a general expression of interest, but little more. The scheme being proposed there would be primarily for flexible B1 use and would most likely comprise hybrid office space rather than the kind of flexible industrial spaces envisaged on the appeal site. This is not therefore a valid comparison. In addition, this scheme would not be viable and thus unlikely to be delivered even if permission were obtained. The scheme would involve a loss of B class floorspace from 1,467 m² at present to the proposal for 1,089 m². It seems that the Council cannot design a viable scheme that achieves full re-provision, even for its own site (*Document INQ 19*).
72. The same point emerged from the history of the Dockley Road site. The Local Group relied on a planning application made in 2015 that showed how industrial co-location could be carried out. It is significant though that after the site had been transferred to a developer, permission was granted for a scheme that did not retain the same level of employment floorspace. This is a good example of the difference between a local authority's aspirations, and what can actually be delivered in the real world (*Document INQ 7*).
73. The *Southwark Council Industrial and Warehousing Land Study* (2014) does not

²³ This point was agreed by Professor Brearley in cross-examination by Mr Cameron.

²⁴ This was agreed by Ms Hills in cross-examination by Mr Cameron. She accepted that the existence of demand was not, of itself, sufficient to justify the refusal of planning permission on the ground of inadequate re-provision of commercial space.

²⁵ Ms Hills confirmed that, while she is a chartered town planner, she has neither professional qualifications nor direct experience in the sale, letting or management of industrial premises in London.

purport to forecast likely future demand for industrial floorspace and so is not evidence of the existence or otherwise of demand at present. It proceeds on the basis that much of the stock in the Parkhouse Street employment area is of poor quality. The presence of residential uses and on-street car parking is a barrier to attracting B class uses and is only partially addressed by Parkhouse Street being one-way. These barriers apply to the current appeal site and would be a potential issue even if the site was redeveloped²⁶. Further, the study advised that some employment capacity could be retained on the site, rather than all of it. This is the basis on which the draft allocation NSP23 is being progressed by the Council (*Documents CD D3, paragraphs 3.15, 3.16, 3.22, 5.23*).

74. The *Southwark Employment Land Study* (2016) recognises that the Parkhouse Street industrial area is "off-pitch" and may find it problematic to attract investment in B class uses. The mixed-use of the site was recommended by the study although it is silent on the quantum of employment floorspace to be retained (*Document CD D1, page 51 and table 4.2*).
75. The *Old Kent Road Workspace Demand Study* (2019) actively supports the creation of improved connectivity for pedestrians and cyclists at the appeal site. There is no viability analysis for the recommended full re-provision of employment space. Large scale employment uses are not envisaged (*Document CD D2, paragraphs 4.46, 4.48*).
76. The Local Group objects to the draft allocation NSP23 on the grounds that the land should be retained in pure industrial use. This is contrary to the above evidence base, and to the Council's clear view on the direction of policy travel.

Overall supply of employment land

77. One of the objectives of policy 4.4 in the London Plan is to ensure sufficient stock of land and premises to meet the future needs of different types of industrial and related uses in different parts of London. To achieve this objective, boroughs are placed into different categories. Southwark is identified as falling within the *limited transfer (with exceptional planned release)* category. In the emerging New London Plan it falls within the *retain capacity* category (*Documents CD C3, map 4.1; CD C7, table 6.2*).
78. Policy 4.4 requires a judgement to be made as to whether it is necessary to retain a particular site in industrial use in order to achieve the policy objective. That is not an exercise that can be conducted solely on the basis of examining trends relating to changes of use of employment land against some benchmark, as the Local Group have done. In order to make an informed judgement it is necessary to consider the specific circumstances of the appeal site, the market area, the land available and the likely demand (*Document POE 13, paragraph 6.3.3*).
79. The overall stock position of the draft allocation NSP23 would remain largely unchanged after development of the appeal proposal. On the basis of current known changes there would be a reduction of 2,870m² of B class floorspace if the appeal development were to go ahead. However, this includes 10-12 Parkhouse Street within the existing floorspace figure. If this were to be

²⁶ This was agreed by Ms Hills in cross-examination by Mr Cameron.

excluded on account of its present residential extant approval, the difference would be 766m² reduction in employment floorspace. If account were also to be taken of the Class D2 and Class A uses in the proposed development, the overall loss would be 87m². This quantum of loss could not be sufficient to find conflict with policy 4.4 in the London Plan (*Documents POE 13, table 1, appendix 8*).

Deliverability

80. There is no dispute with the Council about the viability position. There was no evidence at all to indicate that the Council's aspiration for the site of a mixed-use development with a greater level of employment floorspace than that proposed would be viable or deliverable. On the contrary the Council's own advisers, GVA, indicated that an increase in the level of commercial provision on the site would result in even less profit than that calculated for the appeal scheme itself. GVA tested 4 scenarios with different densities and mix of residential and commercial uses. As the density of the scheme decreases or the level of commercial use increases there would be a detrimental impact on profit. Although scenario 4, which has the most commercial floorspace has a higher profit this is because of the higher level of risk and therefore higher profit target (*Documents INQ 8; POE 3, appendix B, appendix 4, table 1, scenario 4; INQ 12, GVA letter of 22/5/18*).
81. A notional scheme that would fully meet the Council's aspirations could not be delivered. A judgment has to be made as to whether the benefits of the appeal proposal would outweigh the fact that it could not viably fully re-provide the employment floorspace²⁷. The Council suggested that the most likely outcome if the appeal were dismissed would be a reworked scheme with a greater quantum of employment floorspace. That is unrealistic and fails to acknowledge the reality that the Council's aspirations are simply not deliverable. The true choice is between the appeal scheme or leaving the site as it is. The latter is hard to reconcile with economic reality and policy objectives, including the pressing need for housing identified in policy 3.3 of the London Plan.
82. The Local Group considers that the existing buildings could be refurbished and re-used. There is unlikely to be demand for large scale B8, or for any B2 use. Any demand for B1c use would be likely to come from small occupiers, and the buildings would have to be adapted to meet their requirements. It is highly improbable that the owners would do so.

Servicing

83. The Local Group suggested that the servicing arrangements for the appeal site were unsuitable. There was particular concern about the impracticality of unscheduled van deliveries of the kind that clean Class B1c users might rely on, having to utilise either a concierge service or a pre-booked delivery system. This misunderstands the proposal because what is actually envisaged is that deliveries of the kind in question would park in the three service yards provided on-site. Those yards will be accessible directly from the highway network and would not be controlled either by bollards or by a concierge. The concierge and booking arrangements would only be needed to admit refuse vehicles and essential deliveries that need to use the central street (*Document CD B21, Traffic*

²⁷ This was agreed by Ms Hills in cross-examination by Mr Cameron.

and Transport, annex 1, appendix I, section 2.1).

ACCESSIBILITY AND TRANSPORT

84. The Council has no objections on these grounds. Following discussions at the inquiry, it became clear that the Local Group was satisfied that its concerns could be met by way of mitigation. The UU, if found to comply with Regulation 122 of the Community Infrastructure Regulations (CIL Regs) would meet all of these concerns as follows:

- Funding would be provided for a study to consider whether the current Controlled Parking Zone would be adequate.
- Funding would be provided to cover the costs of re-surfacing Parkhouse Street, which would be capped at £50,000.
- A Travel Plan would be provided.
- The operation of the Parkhouse Street/Wells Way junction would be reviewed at the same time as the Stage 2 safety audit.
- The inclusion of permissive rights over the public realm would be included.
- As all the concerns raised have been addressed, this issue no longer remains in dispute between the Appellant and the Local Group. It follows that there is no reason to refuse the application on transport related grounds.

DESIGN, CHARACTER AND APPEARANCE AND HERITAGE

85. The Council has no objections on these grounds. It has agreed that the architectural aesthetic is well thought out and of high quality, and that by introducing routes into and across the site the proposal would transform it into a vibrant and attractive mixed-use quarter (*CD H3, paragraphs 6.11 and 6.12*).

Tall Buildings

86. The Council considers that the tall buildings at the centre of the appeal site would comply with its tall buildings policies. The guidance on location given in policy 7.7 of the London Plan is qualified by the use of the word "generally", which contemplates that tall buildings need not be limited to the locations referred to. Strategic Policy 12 in the CS provides that tall buildings "could go" in specified areas in the north of the Borough and saved policy 3.20 in the Southwark Plan says they "may" be permitted in the Central Activities Zone. (*Documents CD H3, paragraph 6.11; CD C3, page 293; CD C8, page 105; CD C9, page 52*).

87. The emerging policy takes a different approach. The draft London Plan contemplates that suitable locations for tall buildings will be identified in local plans. The emerging New Southwark Plan identifies such sites and draft policy P14 (as proposed to be modified) refers to areas where tall buildings would be acceptable, including reference to site allocations. Draft allocation NSP23 is one of those sites where tall buildings could be located, subject to considering impacts on existing character, heritage and townscape (*Documents CD C21, page 22; CD C20, page 168*).

88. If the site is to be developed in accordance with the aspirations of the Council,

tall buildings would be appropriate as part of that redevelopment. The tall buildings at the centre of the site would comply with the Council's tall buildings policies. They would be at the focus of the proposed new routes. They would be elegant in design and would contribute positively to the local skyline and the surrounding streets (*Documents CD E1, paragraph 131; POE 10, paragraphs 6.12-6.20; POE 12, paragraphs 1.6-1.20*).

Townscape

89. There is little or no dispute that, in its current state, the site is unattractive and detracts from the townscape. Redevelopment and regeneration would offer the opportunity to introduce buildings which would make a positive contribution to the townscape.
90. The Built Heritage, Townscape and Visual Impact assessment contained within the ES was carried out in accordance with the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment 3rd Edition*. That assessment concluded that the proposed development would facilitate the optimisation of adjacent sites and would result in a demonstrable improvement to the appearance, character and function of the townscape. The Council does not dispute those conclusions. The Local Group agree that regeneration would bring benefits but argue that it is not necessary to redevelop for mixed uses of the kind proposed in order to achieve those benefits. This is based upon the false premise that regeneration through refurbishment would be a realistic alternative. It would not.
91. Two differently constituted meetings of the Design Review Panel met to consider the scheme in July and October 2017. Its recommendations were discussed with the Council's Design Officer with whom there was close collaboration. In response to the July 2017 meeting of the panel, significant changes to the scheme were made. These included the introduction of service yards, and changes to the layout and diversity of public spaces, resulting in considerable enhancement of permeability. The width of the central street was increased between Blocks H and I, J and K. In response to the October 2017 meeting, the Council's Design Officer did not indicate that further changes should be made. However, further changes were made following submission of the planning application, including changes to the houses in Block A, the retention and adaptation of Block B and the reduction in height of the central blocks. At the planning committee meeting in November 2018 the Council's Design Officer gave fulsome support to the scheme. (*Documents INQ15; CD I3; POE 2, page 53, paragraph 3.11.2; POE 1, paragraph 9.9*).
92. The design has responded with aplomb to the challenges of creating a new urban quarter whilst respecting the existing context. A new route has been created, opening up the site to the public. Lower buildings address the existing smaller scale existing development at 1-13 Parkhouse Street (Blocks A and C) and Wells Way (Block M). The views from Burgess Park have been considered with great care. The taller buildings (Blocks I and J) mark the square and signal the presence of the new quarter. The scheme is the result of close collaboration with the Council's design advisers. It is a scheme that reconciles competing interests, and would, if permitted, result in a very high-quality addition to the townscape (*Document POE 1, section 8.3*).

Heritage

93. No party suggests that there would be harm to the significance of any designated heritage asset other than the former Church of St George, which is Grade II listed. The proposed development would not affect the ability to appreciate the heritage significance of this building and there would be no harm. The Council's view is there would be less than substantial harm to significance and that such harm would be of the lowest order. It does not raise a heritage objection as it is considered that the public benefits would outweigh that harm. The Council called no expert heritage evidence in support of its view that the proposal would give rise to harm (**Documents CD H3, paragraphs 6.13-6.16; POE 10, paragraphs 7.6-7.13**).
94. The Local Group did not call any expert heritage evidence. It refers the impact of the proposal on the views of the lantern of the church but does so in the context of tall building policies. There is no assessment of significance or the impact of the development upon it. In the circumstances, the only proper conclusion to come to is that the ability to appreciate the significance of the former church, whether in views from the park or elsewhere, would not be affected. The finding should be that there would be no harm. Nevertheless, in order to assist the decision-making process a balancing exercise has been undertaken and this concludes that the public benefits would outweigh the harm, having regard to the need to give considerable importance and weight to the desirability of preserving the setting of listed building²⁸ when carrying out the balancing exercise (**Documents POE 21, paragraph 1.2, 3.14, 3.78; POE 3, paragraphs 7.14, 8.6**).

LIVING CONDITIONS OF EXISTING OCCUPIERS

95. The Council does not object on these grounds and agree that the benefits of the proposed development outweigh any harm caused by overlooking, reduced daylight and sunlight, noise and disturbance (**Document CD H3, paragraph 6.22**).

Daylight and Sunlight

96. The Local Group agreed that relevant policy, including Policy 7.6 in the London Plan, requires a two-stage approach. This involves considering whether harm would occur and, if so, whether it would be acceptable or not. That two-stage approach was recognised and applied in the Buckle Street appeal decision²⁹. The Mayor's Housing SPG provides further guidance on the application of part B(d) in policy 7.6. It indicates that the degree of harm on adjacent properties should be addressed drawing on broadly comparable residential typologies within the area (**Documents CD C3, page 291; CD J12, paragraph 15; CD C4, paragraph 1.3.46**).
97. Saved policy 3.11 in the Southwark Local Plan provides that amenity of neighbouring occupiers should be protected. To the extent that this sets a higher standard than the London Plan, the latter more recent document should prevail. The RDS SPD is consistent with the London Plan in setting a standard of

²⁸ *Barnwell Manor Wind Energy v. SSCLG* [2014] EWCA Civ 137 at paragraph 29

²⁹ The Buckle Street appeal decision relies on *Rainbird v The Council of the London Borough of Tower Hamlets* [2018] EWHC 657 (Admin) at paragraphs 83-84. This judgement is attached to the Appellant's closing submissions (**Document INQ 38B**).

unacceptable loss of daylight or sunlight and in seeking to guard against *excessive* overshadowing (**Documents CD C9, page 45; CD C12, pages 19-20**).

98. In order to encourage the effective use of land, the Planning Practice Guidance looks to see whether there would be an unreasonable impact on the daylight and sunlight levels enjoyed by neighbouring occupiers. Draft policy D4 in the emerging New London Plan seeks to ensure that surrounding housing enjoys sufficient daylight and sunlight appropriate for its context. Draft policy P12 in the emerging New Southwark Plan seeks adequate daylight and sunlight for new and existing occupiers. The consistent theme of the relevant policies is that it is not appropriate to judge the acceptability of impact on sunlight and daylight by rigid application of standards or guidelines. A balanced approach must be taken to ensure that adequate or sufficient levels of amenity are enjoyed and that any impact is not unreasonable (**Documents CD C7; CD C20, page 38**).
99. This can be approached by applying the BRE Guidelines. This includes a number of different tests to determine impact. In relation to daylight an adverse effect will occur if either the Vertical Sky Component (VSC) or NSL test is failed³⁰. However, it is also important to recognise that the BRE Guidelines are not intended to be applied rigidly or inflexibly. They are more suited to lower density suburban type housing than to an inner-city environment. In the latter context, particularly in London, VSC values in the mid-teens are generally considered to be acceptable. The figures VSC, NSL and Annual Probable Sunlight Hours (APSH) are not in dispute. The dispute turns on whether overall the impact would be acceptable (**Documents POE 5, pages 28-31, 34; CD J5, paragraphs 1.6, 2.2.21; CD J11, paragraph 112; CD J14, paragraph 120**).
100. The Local Group identified properties in Southampton Way, Parkhouse Street, and Wells Way where BRE Guidelines would not be satisfied. However, it has not applied the two-stage test and it has considered whether harm would be significant. This is not the approach which the relevant policies indicate should be taken. If the Local Group's approach were to be adopted and only stage one considered, the objective of optimising potential and delivering housing to meet the pressing need would be defeated (**Document POE 24, paragraphs 1.1.2, 2.3.1, 3.3.1, 3.3.9; POE 7, paragraph 4.2; INQ 16, paragraph 4.2**).
101. The assessment on 1-13 (odd), Parkhouse Street showed that there would be a high degree of compliance in terms of VSC, NSL and APSH. There would be no additional overshadowing on the gardens of 1-11 Parkhouse Street. The main impact would be on 13 Parkhouse Street and would arise predominantly from the Block B proposal. That impact is to be considered in context, and with account being taken of the overall improvement to amenity arising as a result of the redevelopment of the appeal site (**Documents INQ 18, page 20; POE 5, 6.2.1-6.2.9, 6.3.8-6.3.16**).
102. The assessment on 77-113 (odd), Wells Way showed that all windows retain a mid-teen value or higher for VSC. There would be a lower level of compliance

³⁰ See *Rainbird v The Council of the London Borough of Tower Hamlets* [2018] EWHC 657 (Admin) at paragraph 93. Also, *R (Guerry) v LB of Hammersmith and Fulham* [2018] EWHC 2889 (Admin) at paragraph 41. These judgements are attached to the Appellant's closing submissions (Document INQ 38B).

with regard to NSL and 56 of 60 windows would meet the APSH test. However, at present many of the houses in Wells Way have a view of a brick wall on the opposite side of the road. Redevelopment would be achieved with some impact but retaining mid teen values for VSC provides a clear indication that the impact would be acceptable in this context. The rear gardens would not experience additional overshadowing (*Document INQ 18, pages 22-23; POE 5, 6.2.31-6.2.46, 6.3.17*).

103. The assessment of 45-47 (odd) Southampton Way indicates compliance with VSC but that only 4 of the 7 rooms comply with NSL, although one of these is a bedroom. None of the windows are relevant to sunlight analysis. The ground floor windows in the rear unit at No 47 already have very low levels of VSC and NSL, and as a result even a small increase in building mass on the appeal site would result in a large percentage change. At first floor the changes would be more meaningful. Given the improvements that would ensue to the amenity of the area, the impacts could not be categorised as unacceptable (*Documents INQ 18, pages 23-24; POE 5, paragraphs 6.2.55-6.2.64*).
104. Any impact on 37-39 Parkhouse Street would be likely to be academic as a planning application has been made for redevelopment of this and land to the rear. In terms of the existing houses, all VSCs would remain in the mid-teens or above. Of those rooms where the NSL test would not be met the pool of light in the front part of the living rooms would remain good. The two windows that would not meet the numerical criteria for APSH serve a first-floor bedroom (*Documents INQ 25; POE 5, paragraphs 6.2.17-6.2.30*).
105. The assessment on 56 and 60-64 (even), Southampton Way indicates that all would be compliant in terms of sunlight. In terms of daylight there would be some infringements to 60 and 62 in terms of VSC but these would be because of overhanging balconies (*Document POE 5, paragraphs 6.2.65-6.2.75*).
106. When the details are considered, and the correct policy test is applied, it is clear that the Council was right not to object on this ground.

Overlooking, privacy and loss of outlook

107. Policy 7.6 in the London Plan establishes that the policy test to be applied is whether unacceptable harm would be caused. The RDS SPD includes guidance on separation distances to prevent unnecessary overlooking and loss of privacy (*Documents CD C3, page 291; CD C12, paragraph 2.8*).
108. The Local Group argued that where there is contravention of the BRE Guidelines, outlook should be considered unacceptable. However, the guidelines do not purport to provide tests or checks to judge such matters and using them is not a rational approach. The concern relates to the relationship between the proposed development and existing homes in Wells Way and Parkhouse Street.
109. The buildings in Block A have been designed with windows which would not look towards Parkhouse Street, a design feature that would avoid unacceptable impact on privacy. The existing Block B building already contains commercial floorspace with windows facing the side elevation of 13, Parkhouse Street. There would be no directly facing windows in residential units between Block B and 13 Parkhouse Street. In order to ensure privacy, screening could be provided and secured by condition. It should though be borne in mind that an unattractive

yard with parked vans would be replaced with an attractive high-quality development. The distance from Block C to 1-13 (odd) Parkhouse Street and from Block M to Wells Way would exceed the 12m guideline referred to in the RDS SPD. In addition, the brick piers on the access deck to Block C would provide screening for the existing residential units in the extension to the rear of 45 Southampton Way (*Document POE 1, paragraphs 7.2.21, 8.4.4, 8.4.7 and figures 122, 125, 161; POE 2, figure 48; CD E1, paragraph 210*).

110. Attractive modern buildings with high quality materials and detailing would replace decaying industrial buildings. There would be a considerable improvement to outlook and no unacceptable impact on privacy.

OTHER MATTER

111. The Local Group is concerned that overshadowing of Burgess Park would give rise to adverse impacts on biodiversity and wildlife. This would not be materially different to what occurs at present. In any event, the area of the park adjacent to the appeal site is already shaded owing to the dense tree cover. There is no evidence that there would be any adverse impact on wildlife. The records for protected species in Burgess Park are for birds and bats, neither of which would be directly impacted by shading. The Local Group argues that buildings adjacent to Burgess Park should be set back and their height should be no more than five stories. The buildings in Block A would be set back and would be 1-2 storeys in height. Block B would re-use the existing building and would be no more than 5 storeys high (*Document POE 5, paragraph 6.3.29; POE 3, appendix c, page 2; POE 1, figure 78*).

THE PLANNING BALANCE

112. The proposal is not a scheme which has been promoted entirely at the developer's initiative. The Council's aspiration is that the area be transformed, and in support of that aspiration it is promoting a policy that encourages regeneration of the wider area. The appeal site lies at the centre of the wider area and, if the Council's ambitions are to be achieved, this site must come forward. It must create routes that allow the public to enjoy this island site, which has been closed off for so many years.
113. The real issue to be determined is whether the inability to re-provide the existing quantum of employment floorspace on the appeal site is sufficient reason to turn away a beneficial regeneration proposal that would provide much needed homes, enhance permeability and create new public spaces.
114. The overall impact on employment generating floorspace in the draft NSP23 allocation would not be significant. In addition, the number of jobs on the appeal site would increase. There would be no point in refusing permission on the grounds of an inadequate quantum of employment floorspace if there is no realistic prospect of a scheme being delivered to provide that quantum and realize the Council's other aspirations for the site. There is no realistic prospect that an alternative developer would deliver a mixed-use scheme that would provide an increased quantum of employment floorspace.
115. The choice is either to approve this scheme or to condemn the appeal site to continuing decay and to impede the desired regeneration of the area. Other sites to the north of Parkhouse Street may come forward but the central site

required to deliver the Council's vision for the area would continue to be an under-used and unattractive neighbour. Movement across and through the site would, as now, not be possible.

116. It is accepted that the proposal conflicts with policy 1.2 in the Southwark Plan and Strategic Policy 10 in the Core Strategy. However, it accords with many other policies in the development plan. This is a case where there are some points in the plan that support it and others that do not³¹. It is not possible, for example, to have full provision of employment floorspace and 35% affordable housing. Both of these land uses are promoted by the development plan, but on the facts of this case the policies pull in opposite directions. If the development plan is considered as a whole, the appeal scheme would comply with it.
117. However, if the Secretary of State does not agree with that conclusion, there are very strong reasons why the decision should be made otherwise than in accordance with the development plan. The scheme would provide 499 homes and 173 affordable dwellings, 119 of which would be social rent and 54 intermediate. This would make a very significant contribution in a borough with a record of providing 260 affordable units a year against an assessed need of 799 units a year (*Documents CD H3, paragraph 2.2; CD D5, page 17; CD D16, table 6.10*).
118. However, this is not a case where sole reliance is placed on the benefits of providing additional housing. The scheme would also advance the aspirations of the Council to regenerate the wider draft allocation NSP23 site, whilst providing enhanced permeability and public realm, in a vibrant new urban quarter, signalled by exemplary architecture. The overall loss of B class employment floorspace on the draft allocated NSP23 site would be about 766m². The 4,404m² of flexible commercial, retail and leisure floorspace would include affordable workspace and result in an increase in jobs. It would meet the needs of potential occupiers, particularly those looking for maker spaces, and co-working spaces.
119. In the Chiswick Curve appeal, the Secretary of State gave moderate weight to the provision of additional housing and affordable housing in an area where the Council could demonstrate a five-year housing land supply. In the present appeal the Council does not consider that to be an appropriate approach given the circumstances that exist in Southwark. The Council has reduced the weight given to the provision of the proposed 499 units to moderate on account of the contention that the design would not be exemplary. If the Secretary of State considers that the quality would be exemplary, then that attribution of weight cannot be sustained (*Document INQ 33, paragraph 35*).
120. It is abundantly clear that benefits of the scheme far outweigh any detrimental effects, in particular those arising from failure to comply with policies relating to employment land. The Secretary of State is urged to allow the appeal and grant planning permission for a deliverable regeneration scheme which meets almost all of the Council's aspirations.

³¹ *City of Edinburgh v. Secretary of State* [1997] 1 WLR 1447 at page 1459 E-G. This judgement is attached to the Appellant's closing submissions (*Document INQ 38B*).

THE CASE FOR THE COUNCIL OF THE LONDON BOROUGH OF SOUTHWARK

The Council's case is fully set out in its evidence, including its opening and closing submissions (**Document INQ 37**). The main points are:

INTRODUCTION

121. Granting planning permission for the appeal proposal would flout the plan-led approach at the heart of the planning system and would critically undermine the objective of achieving sustainable development for the two reasons on which the proposal was refused planning permission. All parties agree that the relevant adopted development plan policies are up to date.
122. The Appellant now accepts that the scheme would not accord with the relevant strategic employment land use policies and would conflict with the adopted strategy for bringing land forward at a sufficient rate to address objectively assessed need over the plan period³². In such circumstances it would clearly not accord with the development plan when read as a whole. This development would represent a departure from what the Appellant agreed was an effective strategy for achieving sustainable development.
123. There is therefore a presumption against the grant of planning permission. Indeed, as a matter of national policy, planning permission should not usually be granted. No material considerations sufficient to outweigh the accepted policy conflict have been identified. The Appellant's position was that emerging policy attracted only limited weight and certainly less weight than the adopted development plan³³. As was accepted³⁴, the proposed development would not accord with draft Policy P26 in the emerging New Southwark Plan nor with the proposed site allocation NSP23 (**Document CD C20, pages 54, 117**).
124. In the end, it was conceded that the main material consideration, which was relied upon to outweigh conflict with the development plan, was the delivery of housing³⁵. This exposes the fundamental paradox in the Appellant's case. It accepts that the Council has a five-year supply of housing land and that it passes the Housing Delivery Test. It accepts that the up-to-date policies in the adopted development plan are an effective strategy for meeting the objectively assessed need for different land uses across the Borough, including housing. In those circumstances, the provision of housing cannot justify the loss of employment land, in admitted conflict with the strategy in the Plan (**Document POE 3, paragraph 7.2**).
125. The position worsens when the quality of the proposed housing accommodation is taken into account. It is a requirement of Strategic Policy 5 in the CS that development substantially in excess of the relevant density standard be exemplary. The accommodation would fail to provide an exemplar both in terms of internal space and the quality and quantity of external amenity space. The effect of this is that the proposal would also conflict with the relevant strategic

³² These points were agreed by Mr Marginson in cross-examination by Mr Streeten.

³³ This point was agreed by Mr Marginson in cross-examination by Mr Streeten.

³⁴ These points were agreed by Mr Marginson in cross-examination by Mr Streeten.

³⁵ This point was agreed by Mr Marginson in cross-examination by Mr Streeten.

housing policy (*Document CD C 8, page 78*).

THE SCHEME

126. The site is approximately 1.59 hectares of land known as Burgess Business Park and is located adjacent to Burgess Park in Camberwell. It is some considerable distance from the nearest underground stations at Oval and Elephant and Castle and for the most part has a public transport accessibility level (PTAL) of 2, although the western end of Parkhouse Street and Southampton Way has a better PTAL of 4 (*Documents INQ 2, page 4; CD H3, paragraph 3.13*).
127. The Site forms part of the Parkhouse Street PIL, which is the only PIL outside the Old Kent Road Action Area. Within the PIL, Strategic Policy 10 in the CS and policy 1.2 in the Southwark Plan expressly prohibits the grant of planning permission other than for a Class B use. In terms of context, the appeal site is adjacent to other land in industrial uses. These include the recently redeveloped PHS site at 41-43 Parkhouse Street, a scaffolding yard and the Big Yellow storage redevelopment at 39-65 Southampton Way. In addition, the Council has itself recently applied to redevelop land at 21-23 Parkhouse Street. This proposal involves re-provision of employment floorspace, including 10% affordable workspace, in a "stacked" configuration, together with residential units and 48% affordable housing (*Documents CD C8, pages 29; 94; CD C9, page 28; POE 13, appendix 8; POE 16, paragraph 4.53*).
128. The buildings presently on the site are between one and three storeys high and are in office, light industrial, and storage use. It was not disputed that 3,398m² are currently occupied. This includes 1,581m² occupied by Arbeit, a meanwhile curator providing affordable, creative studio space for artists, designers, small businesses and start-ups. The Appellant indicated that its own experience with Arbeit had been very positive³⁶, suggesting high demand for this sort of light industrial use in the area such that it could be a suitable workspace provider in the proposed development³⁷. Until recently Fruitful Office Ltd also operated from the site. At this point the site was supporting a total of 137 employees, with additional capacity in the other units (*Documents CD H3, paragraph 3.2; POE 16, paragraphs 4.47-4.49, table 1, appendix 1*).
129. Some units on the site are a bit dilapidated and could use refurbishment. This though is in the context that the Appellant has held the site for a considerable period of time and has chosen to allow the buildings to deteriorate. Even so, many of the units are suitable for immediate occupation by viable businesses. The *Southwark Employment Land Study* (2016) describes the quality of the stock as generally fair. Apart from Unit 1, the majority of buildings are capable of refurbishment, including 10-12 Parkhouse Street³⁸. It is agreed that, on the above basis, the scheme would result in a loss of 70% of the employment floorspace presently on site, which would be an important loss of industrial employment land³⁹ (*Document POE 16, paragraph 4.50; CD D1, page 51*).

³⁶ This was confirmed by Mr Ainger in examination-in-chief.

³⁷ This point was agreed by Mr Stephenson in cross-examination by Mr Streeten.

³⁸ Mr Stephenson agreed that this building could be refurbished in cross-examination by Mr Streeten.

³⁹ This point was agreed by Stephenson in cross-examination by Mr Streeten.

130. In place of the existing B class uses, the scheme proposes 13 blocks with 4,404m² of ground floor space for commercial uses of which 3,725m² would be Class B uses and the remainder a gym and A Class uses. This would result in a total loss of 8,834m² of Class B employment floorspace. (*Documents POE 16, table 2; POE 13, appendix 8*).
131. The Appellant confirmed that the appeal scheme design was not driven by the policy context but by other factors, although it was not made clear what those might have been. There had been no requirement to achieve a particular quantum of employment floorspace⁴⁰. This seems to be the reason why this is a residential-led scheme with constrained commercial layouts and unsuitable, irregular shaped floor plans poorly configured. Only the microbrewery unit would be double height. Otherwise the units would be generic, with little difference between the maker spaces and the units proposed as creative offices with target occupiers being tech, PR, media and architectural firms (*Document POE 16, paragraphs 4.67-4.70*).
132. The same issues are evident from the approach to servicing the commercial units. The yard concept was an afterthought, introduced late in the design evolution. A part of the yard to the rear of Blocks C and D was also identified as a potential location for a courtyard garden. The central street has been described as being a traffic-free area of public realm made up of outdoor rooms populated by food-carts and pavement seating adjacent to a play area for young children aged 0-5. In truth it was identified on the swept path analysis as being required to service some of the commercial units, including 10 daily MGW or HGV movements between 7.00 and 19.00 to the microbrewery alone (*Documents POE 1, paragraphs 4.4.5, 7.2.36; INQ 2, pages 15, 33; CD B21, Traffic and Transport, annex 2, appendix B, section 2.1; CD B21, Traffic and Transport, annex 2, paragraph 3.5.2*).
133. The design of the residential accommodation can only be considered on the basis of the submitted plans referred to in the SCG on planning matters. The Appellant sought to tinker with those plans. It cannot do that as the plans are the plans that have been drawn and submitted on the Appellant's behalf (*Document CD H3 paragraph 6.2*).

DENSITY AND STANDARD OF ACCOMMODATION

Density

134. The Greater London Authority referred, in both its Stage I and Stage II reports, to the proposal displaying the symptoms of overdevelopment. This is not surprising as it would involve a density of 984 hrpha and be approximately 40% in excess of the upper limit of the relevant development plan policy density standard (*Documents CD I1, paragraph 28; CD I2, paragraph 24*).
135. Strategic Policy 5 in the Southwark Core Strategy sets density ranges with which residential developments will be expected to comply. The site is located in the Urban Zone where the density range is 200-700 hrph. By providing a broad range of appropriate densities the policy provides flexibility in determining what the appropriate development density in any given location should be (*Document CD C8, page 78*).

⁴⁰ These matters were agreed by Mr Ainger in cross-examination by Mr Streeten.

136. The policy also allows an exception to those density ranges in Opportunities Areas and Action Area Cores, which are the areas earmarked as being the most sustainable locations for a substantial level of development. Here the maximum densities may be exceeded when developments are of an exemplary standard of design. The negative corollary is a clear implication that other exceptions are not permitted. It would be nonsensical if development in excess of the appropriate density range in those most sustainable locations were required to be of an exemplary standard to accordance with the policy, but development elsewhere was not (*Document INQ 1, paragraphs 22, 23*).

Standard of Accommodation

137. The Appellant accepted that it is particularly important to scrutinise the qualitative aspects of the design of the development proposal because of the density exceedance. It was agreed that the yardstick for the acceptability of the scheme was an "exemplary" standard, which should be measured with reference to the criteria set out in the RDS SPD. It was further accepted that meeting a minimum standard was not exemplary design. The provision of a tenure blind policy-compliant mix of housing was agreed to be something expected of any development and not be an indicator of exemplary design. Finally, the Appellant agreed that the fact that a few units may be very large and have large private outdoor spaces did not mean that the overall standard of accommodation would be exemplary. Overprovision for those units could not make up for a lack of provision elsewhere⁴¹ (*Document CD C12, bullets at pages 8-9*).

Unit Sizes

138. To be regarded as exemplary, the proposed development must significantly exceed the minimum floorspace standards in the RDS SPD. The Appellant's evidence on this matter was not given by a chartered architect and does not include an expert's declaration. Its witness was not an expert but rather managed the project team designing the development from the start. He is not therefore able to approach the design of the scheme objectively. This reduces the weight given to his evidence, which is more a sales pitch for the design of the development than an objective evaluation of its merits (*Document CD C12, table 1, page 12*).

139. It was agreed that the assertion in the Appellant's evidence that all the new homes met or exceeded the minimum floorspace standards in the RDS SPD was incorrect⁴². The Appellant's solution was to thin the walls of the units in order to increase their gross internal area. Furthermore, the affordable wheelchair units in Block M would be undersized for 3-bedroom, 5-person homes. The bedroom sizes on the unit area schedule would comply with the size for single and double bedrooms in the RDS SPD. In those circumstances, the units would fall to be considered against the space standard for a 5-person dwelling. Otherwise, the larger space standard would never apply and it would always be possible to describe what is in real terms a double bedroom as one for single occupancy. The Appellant cannot simply re-badge a unit having realised that it would not meet the applicable space standard in the guidance (*CD B14, drawing number*

⁴¹ All of these points were agreed by Mr Ainger in cross-examination by Mr Streeten.

⁴² On the basis of the submitted plans, this was agreed by Mr Ainger in cross-examination by Mr Streeten.

0231; CD B23; CD C12, table 3, page 22; POE 1, paragraph 7.2.5; POE 2, section 7.16, paragraph 7; POE 15, paragraph 7.19).

140. To be exemplary, the development must significantly exceed the relevant minimum space standards. Of the proposed units, 44 would not meet, let alone exceed, the minimum floorspace requirements set out in the RDS SPD⁴³. It is therefore extremely surprising that in a development that purports to be exemplary, there are a considerable number of units that do not meet even the minimum standards. It should not be necessary to fiddle with wall thicknesses to resolve undersized units. 187 residential units (37.5%) would be below, at or within 1m² of the minimum space standard. This would be a maximum of 2.5% exceedance and was agreed not to be significant⁴⁴ (**Document POE 15, paragraph 7.21-7.22**).
141. Even taking an average, which would be skewed by the small number of units that would considerably exceed the relevant space standard, any exceedance would still be only 2.58m² per unit. This would be between 2.8% and 6.6% above the relevant minimum, depending on the type of unit. On any view such exceedances would not be significant. The development simply does not satisfy an important criterion for the assessment of whether or not the development would be exemplary⁴⁵.

Daylight and Sunlight to residential units

142. The original author of the daylight and sunlight assessment submitted with the planning application did not give evidence at the inquiry. Although the witness that the Appellant called had considerable experience in giving expert evidence and was a Member of the Royal Institute of Chartered Surveyors, he did not include an expert's declaration. This should have been done if it was intended to be objective. The changes that were made to the original assessment were not fair. For example, the worst performing unit in terms of ADF on every floor of Blocks D, E, and F had been omitted. It is difficult to see how this was coincidental when it was confirmed that the original assessment had been carefully scrutinised (**Documents CD B7; POE 5, paragraph 1.6**).
143. The RDS SPD requires that exemplary development meets good daylight and sunlight standards. However, the Appellant's conclusion was that living conditions in these terms would be satisfactory. This would be worse than good (**Documents CD C12, page 8, bullet 7; POE 7, paragraph 5.17**).

Outdoor amenity space

144. Different types of outdoor amenity space perform different functions and are qualitatively different. The provision of one sort of outdoor space therefore cannot properly compensate for under-provision of another. The RDS SPD sets minimum private amenity space standards for residential developments. In order to be considered exemplary, it says that a development should exceed those standards. Many of the proposed units would not even meet them. The

⁴³ Mr Ainger agreed that 38 of the units would not meet the minimum floorspace standard in cross-examination by Mr Streeten.

⁴⁴ These matters were agreed by Mr Marginson in cross-examination by Mr Streeten.

⁴⁵ Mr Marginson accepted that significantly exceeding floorspace standards was an important criterion for exemplary design to meet along with all the other criteria in the RDS SPD.

Appellant accepted that 79% of the units would fail to exceed the minimum standard⁴⁶. This was a significant failing in the proposal's design (**Documents CD C12, page 8, bullet 6; POE 15, paragraph 7.30**).

145. The Appellant sought to twist the policy so as to apply a lower standard of 3m² for studios, one-bed, and 2-bed flats. The RDS SPD makes clear that the appropriate standard is 10m². It was agreed that the 3m² referred to was a minimum unit of measurement and not a minimum space standard⁴⁷.
146. There would be 30 units with large private outdoor spaces of more than 20m². These do not include the houses in Block A, 3 of which would fail to meet the relevant standard. These very large private amenity spaces must be viewed in the context of outdoor amenity space provision across the scheme as a whole. The private amenity space of 78m² provided for 3 flats in Blocks G and I would exceed the total communal amenity space provision for those living in Blocks B, C, D, E, J, and K. The provision of such large private areas for a very few units cannot compensate for under-provision to other units. It would be no consolation to residents in units with little or no access to outside space that those lucky enough to live in the large units above them have the luxury of an enormous private terrace. If the private outdoor amenity space standards are properly applied, there would be an under provision of 1,581m² (**Document POE 15, paragraphs 7.28-7.31**).
147. The correct approach to the provision of communal amenity space would be to provide 50m² of communal amenity space per block in addition to making up for any shortfall in private amenity space provision. This would result in a total requirement of 1,931m². The proposed scheme would provide just 871m², which would result in an under provision of 1,060m². This would plainly be significant (**Documents CD C12, paragraph 3.2; POE 15, paragraph 7.33; POE 2, paragraph 7.33.1**).
148. It is of particular concern that the affordable housing in Block C would have no direct access to communal amenity space whatsoever. The Appellant proposed a courtyard garden to remedy this. However, the location of that garden would be within one of the delivery yards and it was agreed that such amenity provision would not be realistic⁴⁸. No good reason was given why Block C should not also have a roof garden. There would be photo-voltaic panels on every roof not in use as a terrace. If the inclusion of photovoltaics was the objective, the larger private amenity spaces could have been marginally reduced to accommodate additional panels, thereby enabling the provision of amenity space for Block C. The limited communal amenity space provision for the affordable blocks would mean that the proposed scheme would not be truly tenure blind and would not be indicative of exemplary design (**Document POE 1, page 91**).
149. The quantum of outdoor amenity space provided for private sector Blocks F and G would be adequate. However, the quality of the podium terrace provided for those blocks would fail to meet the relevant BRE Guidelines on sunlight. No consideration had been given to redesigning the layout or orientation of the

⁴⁶ This point was agreed by Mr Ainger in cross-examination by Mr Streeten.

⁴⁷ This point was agreed by Mr Ainger in cross-examination by Mr Streeten.

⁴⁸ In cross-examination by Mr Streeten, Mr Ainger agreed that such a solution would be sub-optimal.

buildings to minimise such effects, as suggested in the guidance⁴⁹. For example, introducing a break in the built form on the upper levels of the buildings could have drastically improved the quality of this outdoor amenity space (**Document CD J5, page 18**).

150. Overall, both quantitatively and qualitatively, the proposed scheme would fail to meet the requisite standard by 1,060m². Furthermore, many of the proposed gardens and communal amenity spaces would fail to achieve good levels of sunlight. Proximity to Burgess Park would be no panacea. There is a qualitative difference between public amenity space like a park, and communal amenity space. The former is a destination, where people may go for a run or a family outing. The latter is a more intimate environment, where neighbours can socialise with one-another and where children can be left to play in relative safety, close to home and without the need to cross a road. Ultimately, the serious under-provision in outdoor amenity space cannot be justified by the location of the site in relatively close proximity to Burgess Park (**Document POE 15, paragraph 7.39**).

Children's play space

151. There is no dispute that the scheme would fail to provide sufficient space to meet the standard for all age groups required in the RDS SPD by 640m²⁵⁰. Most of the play space for 0-5 years old children would be located on the roofs of disparate blocks, such that it could not be accessed by residents from other blocks. The only generally accessible play space, and the only space accessible to residents of Block C, would be a strip located on the central route through the scheme. That area is, as already noted, directly adjacent to the space where large vehicle movements to service units such as the microbrewery would take place (**Documents CD C12, page 24; INQ 2, page 33; POE 15, paragraphs 7.41-7.48**).

Other Matters

152. Some of the units in the proposed development would have a very poor outlook. In particular residents of the first and second floors of the affordable units in Blocks D and E would look from their bedrooms directly onto the wall of the new Big Yellow building, at a distance of between 6.3m and 8m. On any view, it is not an acceptable outlook in a properly planned modern residential unit (**Document POE 15, paragraph 7.54**).
153. The outlook from some residential units would be compromised due to the proximity of neighbouring buildings. They would fail to meet minimum facing distances specified in the RDS SPD. This may necessitate the use of privacy screening but that would further harm the outlook of those properties and reduce their daylight. This is a factor which the Appellant appears to have overlooked (**Documents CD C12, page 20; POE 15, paragraph 7.57-7.59**).
154. Finally, the RDS SPD indicates that in exemplary development, kitchens and bathrooms should have access to natural light and ventilation. In the vast majority of cases, the units in this development would not accord with that

⁴⁹ Both Mr Ainger and Mr Ingram accepted this point in cross-examination by Mr Streeten.

⁵⁰ This point was agreed by Mr Ainger in cross-examination by Mr Streeten.

requirement. Only 18% of the units would have an external window in their main bathroom (*Documents CD C12, page 8; POE 15, paragraph 7.65*).

155. Whether or not the proposed development would be of an “exemplary standard” is ultimately a planning judgement, to be taken with reference to the factors specified in the RDS SPD. However, it is very difficult to see how this could be the case given that it far exceeds the relevant density standard and fails to satisfy a great number of the most important criteria in the RDS SPD.

LOSS OF EMPLOYMENT LAND

156. There is no dispute that the overarching objective is to provide sufficient land to meet the economic needs of the market. Shed developments served by frequent HGV and van movements are no less important than other types of employment use. In fact, the Appellant considered that most industrial users prefer this type of site⁵¹. Southwark has what is accepted to be an up-to-date strategy to meet the need for employment uses, including Strategic Policy 10 in the CS and saved policy 1.2 in the Southwark Plan. As the site is within a PIL, industrial and warehousing floorspace is protected (*Document CD C8, page 94; CD C9, page 28*).
157. The emerging New Southwark Plan proposes to allocate the PIL for mixed-use redevelopment under draft policy NSP23. However, this attracts no more than moderate weight⁵². On any view the emerging policy would not provide a basis for departing from the up-to-date adopted policy. In any event, there was no dispute that the proposal would not accord with the draft allocation in NSP23⁵³. In particular it would not satisfy the mandatory requirement for any scheme to re-provide at least the amount of B Class employment currently on the site and the additional policy objective of providing industrial employment space (*Document CD C20, page 167*).

The market

158. The *Southwark Industrial Warehousing Land Study* (2014) makes clear that Southwark’s industrial sites make an ongoing and important contribution to the local and pan-London economy, with industrial businesses relocating to Southwark from other parts of London. This accords with the more recent findings of the *Southwark Employment Land Study* (2016), which the Appellant accepts is well founded and representative of the local market in Southwark⁵⁴. Subsequent studies include the *Old Kent Road Workspace Demand Study* (2019) (*Documents CD D3, paragraphs 5.1-5.8; CD D1; CD D2*).
159. The evidence does not support a conclusion that demand for industrial uses is limited. On the contrary, demand for certain industrial uses in Southwark is strong, with a high demand for uses including maker spaces and creative commercial space.

⁵¹ This point was made by Mr Stephenson in cross-examination by Mr Streeten.

⁵² In cross-examination by Mr Streeten, Mr Marginson considered that the draft policy only attracts limited weight.

⁵³ This point was agreed by Mr Marginson in cross-examination by Mr Streeten.

⁵⁴ This point was agreed by Mr Stephenson based on his own experience, in cross-examination by Mr Streeten.

- Industrial uses make up 25% of the employment base within the Old Kent Road area and 10% of the employment base in Southwark. The percentage of industrial type jobs in Southwark has increased significantly between 2016 and 2019 and this suggests that Southwark is bucking the trend of industrial decline across London (*Document CD D2, paragraph 2.10*).
- Southwark's industrial economy had recovered to pre-recession levels by 2010, following the 2007-2008 financial crisis. New "industrial service" uses have emerged for which there is strong demand (*Document CD D1, pages 33-34*).

160. There are relevant recent examples of development in the area around the appeal site that support the existence of demand for industrial uses in this location (*Document POE 16, appendix 1*):

- The new warehouse at 41-43 Parkhouse Street, approved in February 2018 for B2/B8 use and now occupied by PHS.
- The Big Yellow storage redevelopment at 49-65 Southampton Way.
- The Council's proposed redevelopment at 21-23 Parkhouse Street. The Council approached its Workspace Provider List and received 6 expressions of interest within a day.
- The Appellant's own experience with Arbeit who have been marketing space on the appeal site at a cost of £14 per ft². They have indicated interest in taking space in the proposed development on a commercial basis.

161. Having accepted the above, the Appellant conceded that demand was not in itself an impediment to the re-provision of employment floorspace on the site⁵⁵.

The impact

162. The effect of the proposed scheme would be the loss of 8,834sqm of employment floorspace, which is 70% of the existing provision. This would be a clear conflict with both adopted and emerging development plan policy and would represent a very significant loss of employment floorspace, which the Appellant accepted was "important"⁵⁶ (*Document POE 16, page 22, table 3 and paragraph 4.39*).

163. The Appellant sought to down-play the impact of the proposal and relied on a number of other existing industrial estates within what is defined as the "market area". However, a great number of the sites identified in Southwark were agreed to be mixed use allocations in the Old Kent Road Area Action Plan or the New Southwark Plan, or subject to planning applications for mixed use development⁵⁷ (*Document POE 13, paragraph 2.6.5 and appendix 5*).

164. Nos 10-12 Parkhouse Street was not included by the Appellant as employment land on the site because of the existing prior approval for residential use. However, it was agreed⁵⁸ that whether such a change of use would occur would

⁵⁵ This point was accepted by Mr Stephenson in cross-examination by Mr Streeten.

⁵⁶ This point was accepted by Mr Stephenson in cross-examination by Mr Streeten.

⁵⁷ This point was conceded by Mr Stephenson in cross-examination by Mr Streeten.

⁵⁸ These factors were agreed by Mr Stephenson in cross-examination by Mr Streeten.

have regard to the fact that the prior approval is soon to expire and that the units require refurbishment. It is much more likely that whoever owns the site will seek to bring forward some form of mixed-use development than implement their permitted development rights.

165. The Appellant sought to suggest that a reduction in the level of employment space provided could be justified by applying what was contended to be a market-appropriate plot ratio of 40%. This was said to be justifiable because of policy requirements for public realm in new developments and requirements for lorry handling on large distribution and logistics sites. However, it became clear that such a figure was inappropriate for the following reasons, which the Appellant accepted⁵⁹:
- There is not any policy, guidance or other industry document to support the 40% figure.
 - No policy requirement for public realm improvements on industrial sites in London generally and Southwark in particular could be identified.
 - The servicing requirements for lorry handling being referred to do not apply to the sorts of use that would take place on the appeal site. The example of a 7-acre site in Croydon is different to a much smaller site in Camberwell (*Document POE 13, appendix 2*).
 - The emerging New London Plan proposes a 65% plot ratio. It is not uncommon for smaller scale B2, B8, and B1(c) uses to be built on that plot ratio in London and the market will accept such developments.
166. Finally, the Appellant contended that the new development would have the potential to generate 255 jobs, which was significantly more than the 57 that existed at present. However, that figure is not representative as it does not take account of the 80 jobs provided by Fruitful Office Ltd up to 2018 or the meanwhile uses currently present on the site. The latter demonstrate that the site can be used even in its present condition and are indicative of a level of market demand for the space (*Document POE 13, paragraph 6.1.2; POE 16, paragraphs 4.46-4.49*).
167. One of the main reasons given for the acceptability of the nature and quantum of floorspace in the proposed development was that the co-location of B8 and B1(c) uses with residential uses was considered undesirable. This is based on an antiquated approach to land use policy. Some light industrial users prefer to co-locate with residential properties because they provide a ready market. Draft policies E7 and D3 in the emerging New London Plan specifically encourage co-location and the emerging New Southwark Plan encourages mixed use neighbourhoods, including as part of the draft allocation NSP23. The independent advice of Avison Young in the *Old Kent Road Workspace Demand Study* suggests that relevant industrial uses can be mixed with residential accommodation (*Documents POE 13, paragraph 2.4.4; CD C7, paragraph 6.7.1; CD C20, page 54, page 168; CD D2, paragraph 4.48*).
168. The other main reason given for the acceptability of the nature and quantum of floorspace in the proposed development was that stacked or multi-storey light

⁵⁹ These points were agreed by Mr Stephenson in cross-examination by Mr Streeten.

industrial floorspace was considered to be unsuitable. However, again this position is contrary to the independent professional opinion of Avison Young in the *Old Kent Road Workspace Demand Study*. Furthermore, the Appellant's own evidence is that those who have enquired regarding light industrial accommodation sometimes specify a requirement for a goods lift, which would only be relevant in a multi-storey space. The scheme proposed at 21-23 Parkhouse Street includes a 5-storey block of employment uses, which generated six expressions of interest in its first day of advertising. This indicates demand for such space (**Documents POE 13, paragraphs 4.2.9, 5.3.4; CD D2, page 59; POE 16, paragraphs 4.52-4.53**).

169. The Appellant's evidence did not identify a single credible justification for the loss of 70% of the employment floorspace on the site. On the contrary, it was very fairly admitted that if the demand exists the possibility of working up a different and viable scheme that provided more employment floorspace could not be ruled out⁶⁰.

Viability

170. There is no dispute that the appeal scheme would not be viable⁶¹. However, there is no direct correlation between the provision of employment floorspace and the percentage profit on value. This much is apparent from the scenarios prepared by GVA, all of which include 35% affordable housing, but where scenario 4, which incorporates the most commercial floorspace is significantly more viable than scenarios 2 and 3, which propose more residential units but less commercial floorspace. Insofar as the issue of risk is engaged, there has been no analysis of the different risk profiles of other developments. The nature of the risk and its acceptability to investors will turn, amongst other things, on the level of demand for employment floorspace⁶² (**Document INQ 12, GVA letter of 22/5/18**).
171. The Appellant has not looked at the viability of scenarios other than the proposed development. It is not possible to say what the viability position would be for a different scheme, including one involving a greater level of employment floorspace⁶³. The position in relation to viability is in fact better for the Council's scheme at 21-23 Parkhouse Street than the Appellant's proposal (**Document INQ 19**).
172. The viability position does not therefore weigh in favour of the proposal. The Appellant has asserted that if this scheme does not come forward then the site would not be put to any other use. That is not plausible. The Appellant has not conducted the marketing exercise required by development plan policy to establish that the site is no longer viable in its present industrial use⁶⁴. The site has been held by the Appellant for many years and the chance of allowing its investment to dwindle would be remote. If this scheme did not come forward it

⁶⁰ In answer to cross-examination by Mr Streeten, Mr Stephenson said that if the demand existed a different scheme with more employment floorspace would be unlikely, but he wouldn't rule it out.

⁶¹ This was agreed by Mr Fourt in cross-examination by Mr Streeten.

⁶² This was accepted by Mr Fourt in cross-examination by Mr Streeten.

⁶³ This was accepted by Mr Fourt in cross-examination by Mr Streeten.

⁶⁴ This was accepted by Mr Stephenson in cross-examination by Mr Streeten.

is most likely that a better scheme, which accords with what may in future be a new adopted development plan, would be brought forward.

PLANNING BALANCE

The development plan

173. This is the statutory starting point and the presumption is that a proposal that does not accord with the development plan will be refused planning permission. That presumption is stronger when, as in this case, the development plan is up-to-date. Whether or not a proposal accords with the development plan depends on reading it as a whole. Sometimes policies will pull in different directions. However, it is important not to lose sight of the purpose of having a plan-led system of development management. Development plans are prepared with the objective of achieving sustainable development. Strategic policies in particular are designed to address priorities for the development and use of land in the Borough. They set an overall strategy for the pattern, scale and quality of development required to meet objectively assessed development needs.
174. The Appellant accepts that the proposed development would not accord with Strategic Policy 10 in the Southwark CS, saved policy 1.2 in the Southwark Plan, and policy 4.4 in the London Plan. As a consequence, it was agreed that the proposed development would not accord with the relevant strategic employment land use policies and the up-to-date strategy for bringing land forward to address the objectively assessed need for different types of development. That being so, the conclusion that this development would not accord with the up-to-date development plan read as a whole is unavoidable.

Other material considerations

175. Draft policies E4, E6, and E7 in the emerging New London Plan carry moderate weight. The proposal would result in a loss of important employment space within a locally designated industrial site. It would fail to take appropriate advantage of any opportunity for intensification, for example through the 'stacking' of employment uses.
176. Draft allocation NSP23 in the emerging New Southwark Plan also attracts moderate weight and proposes to allocate the appeal site and the wider PIL for redevelopment. The draft allocation includes requirements about re-provision of B Class employment floorspace, provision of new homes, enhanced permeability and public realm. The Appellant agreed⁶⁵ that the proposed development would not accord with this emerging policy. Draft policy P26 is the relevant employment land use policy. Where retention of employment floorspace is specified in the site allocation, its loss will only be permitted in exceptional circumstances. The proposed development would conflict with this draft policy⁶⁶.
177. The benefits were agreed by the Appellant to be ancillary to the delivery of housing land. They were essentially the benefits of any scheme which may come forward under the proposed allocation in NSP23. They are not said together to carry sufficient weight to merit departing from the development plan.

⁶⁵ This was agreed by Mr Marginson in cross-examination by Mr Streeten.

⁶⁶ This was agreed by Mr Marginson in cross-examination by Mr Streeten.

178. The appeal therefore comes down to a simple question of whether the housing provision proposed as part of the scheme would merit departing from the land use strategy in the development plan. It would not for the following reasons:

- There is a 5-year housing land supply and the Housing Delivery Test is passed. In such circumstances, in accordance with the Chiswick Curve appeal, the provision of housing should only attract moderate weight (*Document INQ 33, paragraph 35*).
- In this case the proposed accommodation would be of unsatisfactory quality. This means that it conflicts with Strategic Policy 5 in the CS, which further reduces the weight to be attributed to the delivery of housing.

179. Other material considerations are matters that go beyond the remit of the strategy in the adopted development plan and might therefore provide a reason to depart from it. Matters encompassed in that strategy are not properly to be regarded as other material considerations. The adopted development plan sets out an effective strategy for meeting the objectively assessed needs for different types of development, including housing and employment. The balance between the provision of housing and employment land required to achieve sustainable development is therefore struck by the development plan.

180. In those circumstances, it is impossible to rely on the delivery of housing as a justification for departing from the land use strategy in the development plan. The loss of important employment space, contrary to the development plan, cannot be justified by the provision of housing in circumstances where the Council has met the housing delivery test and has a 5-year supply of housing land. To hold otherwise would be to rip up the plan-led system. The proposed development would not be sustainable development.

THE CASE FOR THE LOCAL GROUP

The Local Group's case is fully set out in its evidence, including its opening and closing submissions (Document INQ 36). The main points are:

181. Subject to appropriate planning obligations being agreed, it is accepted that there would be no severe residual impact on the road network and as such there is no longer an objection on accessibility grounds.

DENSITY AND STANDARD OF ACCOMMODATION

182. There has been a breach of the relevant adopted development plan policies on density and the proposed development would not provide the exemplary standard of accommodation necessary to outweigh this breach.

Density

183. Both the London Plan and the CS adopt an approach of setting out expected densities for particular areas. The density of the proposed development would be significantly higher than the maximum density indicated for its location. There is therefore a conflict with policy, but other material considerations may justify granting planning permission nonetheless. It is necessary to consider whether the increased housing levels strike the appropriate balance between the number of housing units and residential quality (*Documents CD C3, page 100; CD C8, page 78*).

184. This is underpinned by the emphasis in policy 3.4 in the London Plan on flexibility within the density ranges, and the indication that they should only be exceeded in exceptional circumstances. The instruction not to apply density ranges mechanistically must be considered in the context of the policy as a whole. This indicates that a higher or lower density within the range may be applied depending on local circumstances but does not generally advocate flexibility outside the ranges (*Document CD C3, page 100 and paragraphs 3.28, 3.30*).
185. It should also be emphasised that the policies that govern density of development are about optimising rather than maximising housing density in absolute terms. In Strategic Policy 5 in the CS, the goal of maximising housing is not unrestricted. It must be viewed alongside other policy restrictions on development, for example those that seek to concentrate housing density or taller buildings in certain locations.
186. This approach is reflected in saved policy 3.11 of the Southwark Plan, which lists six factors that developments must achieve whilst maximising the efficient use of land. These are broad principles that reflect a number of other policies in the development plan. It is agreed with the Council that a development proposal which fails to accord with these principles cannot accord with the development plan as a whole (*Document CD C9, page 45*).
187. Emerging policy does not contain numerical density ranges. However, there is a continued emphasis on development that is proportionate to the accessibility of its location and building at a density that permits a commensurate quality of accommodation. Broad principles against which the efficient use of land should be tested, similar to those in saved policy 3.11, are set out in the emerging New London Plan draft policies D1B and GG2. These also emphasise the importance of good public transport connections, design-led development and understanding existing context. In any case, it is common ground between all the main parties that the emerging development plan does not carry sufficient weight to outweigh the adopted development plan, or the adopted RDS SPD⁶⁷ (*Documents CD C7, below paragraph 1.2.8 and below paragraph 3.1A.6*).

Exemplary design

188. The density of the proposed development conflicts with the adopted development plan. However, it is accepted that such conflict could be outweighed if the development was of exemplary design. In this regard Strategic Policy 5 in the CS, when read as a whole, cannot be correctly interpreted as providing that exemplary design is not required where the expected density for sites in the Urban Density Zone which are not in Opportunities Areas and Action Area Cores is exceeded.
189. There are two elements to the requirement for exemplary design. One is design in a qualitative sense, of the order considered by the Design Review Panel in its second report on the proposed development. The other is exemplary design in a more quantitative sense, as assessed against the requirements set out in the RDS SPD (*Documents CD C12, bullets in section 2.2; CD I3*).

⁶⁷ This point was accepted by Mr Marginson in cross-examination by Mr Streeten.

190. In relation to the standard of design of the proposed development in a qualitative sense, limited weight should be given to the Appellant's evidence. It was accepted that the Design Review Panel were better qualified in professional terms to assess the design quality of the scheme⁶⁸. It could also offer a more objective view of the design quality of the scheme as it was not so closely connected with the project and did not have an interest in trying to promote the proposed development. The Panel's role and the weight to be given to its views is a matter specifically dealt with in Strategic Policy 12 in the CS and its supporting text (*Document CD C8, pages 104, 106*).
191. The second Design Review Panel report criticised a more advanced iteration of the proposed development as overly repetitive, without distinction and lacking architectural identity. These are all factors indicative of a design that is not exemplary. The Appellant accepted there had been only modest changes to the design of the proposed development following that report⁶⁹.
192. With regard to the more quantitative element of exemplary design, again some caution must be adopted in attributing weight to the Appellant's evidence as there were a number of mistakes and inconsistencies. For example, failing to take account of the correct minimum floorspace requirements for wheelchair and studio units in calculating exceedance per unit⁷⁰. This also limits the confidence to be had that the development has truly been considered on a dwelling-by-dwelling basis to achieve the best possible overall amenity for each of the 499 units. The Planning Officer's report only assessed the quality of accommodation as good in contrast to the Cantium Retail Park redevelopment, which was said to deliver a very high standard of accommodation. It is agreed with the Council that the quality of the proposed development would be at a level below good⁷¹ (*Documents CD E1, paragraph 195; INQ 11, paragraph 662*).
193. It is accepted that considering whether a scheme is exemplary pursuant to the RDS SPD is not a tick-box exercise. However, there must come a point where, looked at in the round, a scheme fails to accord with so many of the indices that it cannot be exemplary. This is the case here.

Standard of accommodation

Unit sizes

194. The rooms do not significantly exceed minimum space standards. Even where it has been suggested that unit layouts could be adjusted to meet recommended room sizes, they would still only provide a minimum.
195. It is agreed with the Council that it is inappropriate to take an average across all units when considering whether units significantly exceed space standards. However, even if this approach were adopted, the average exceedance per unit was overestimated when the correct space standards for wheelchair units and studios with bathrooms were taken into account.

⁶⁸ Mr Ainger accepted that he was not a qualified architect in cross-examination by Ms Drabkin-Reiter.

⁶⁹ This was agreed by Mr Ainger in cross-examination by Ms Drabkin-Reiter.

⁷⁰ See Ms Drabkin-Reiter's closing submissions (*Document INQ 36B, footnote 15*).

⁷¹ This was the conclusion of Ms Crosby in re-examination by Mr Streeten.

Daylight and sunlight to residential units

196. It is common ground that the starting point for assessment of daylight and sunlight within the proposed development is the BRE Guidelines and that these are incorporated in policy through the RDS SPD. In order to demonstrate exemplary design, new development should meet good daylight and sunlight standards. (*Documents CD J5; CD C12, page 8*).
197. The daylight and sunlight assessment submitted with the planning application indicates that a number of rooms would not meet the BRE recommended values for ADF. There is a further risk that the number of rooms not meeting the BRE recommended guidelines has been underestimated, since neither analysis tested all the units in the scheme. In particular, the approach taken in the appeal assessment tested half of each block. However, this risks a situation where the worst affected rooms or units fall in the half of the block which was not tested as happened in this case⁷². For example, the worst performing unit in terms of ADF on every floor of Blocks D, E, and F was omitted in the appeal assessment (*Documents CD B7, paragraph 3.1; POE 6, appendix 1, page 139*).
198. Around half of those rooms not complying with the BRE Guidelines may only have marginal shortfalls. However, even marginal shortfalls would make the room look dull and electric lighting is likely to be required⁷³. It should also be noted that screening and other privacy devices required to prevent overlooking would also reduce the amount of light received by certain rooms in the proposed development (*Document PoE, paragraph 5.1.13-5.1.14; CD J5, paragraph 2.1.8*).
199. The Appellant relied on the proposed development being located in the Urban Density Zone to justify a lesser expectation of daylight. However, the use of the word "density" does not indicate a policy designation for a particularly dense or more dense area. The Suburban Density Zone also includes the same word. When the detail of Strategic Policy 5 in the CS is considered it is clear that there would be no lesser expectation of daylight in relation to the proposed development where the proposed density would be 40% higher than that recommended for the Urban Density Zone. The Planning Practice Guidance recognises the relevance of context⁷⁴ and in this case the area around the appeal site is largely low rise with an industrial core. Even though the Appellant was relying on the direction of travel in emerging policy, this must be given limited weight as the policy has not yet been adopted (*Document CD C8, page 78*).
200. The comparators put forward by the Appellant to demonstrate that the proposed development would provide a commensurate level of daylight and sunlight were all located in either the Central Activities Zone or in designated Action Area Cores or Opportunities Areas. These are places in need of regeneration where higher density and correspondingly lower levels of daylight to rooms are expected because of their good transport links and proximity to the central London. As the Appeal Site is outside these areas it should be performing much

⁷² This point was made by Mr Streeten in cross-examination of Mr Ingram.

⁷³ In answer to cross-examination by Ms Drabkin-Reiter, Mr Ingram said that a room may look dull and may need electric lighting, but that is not uncommon in London and in the case of bedrooms there would be lower expectations.

⁷⁴ Planning Practice Guidance chapter on effective use of land (22 July 2019). Paragraph: 007 Reference ID: 66-007-20190722

better in terms of compliance with BRE recommended daylight levels, rather than at a similar level to the comparator sites.

201. The BRE Guidelines are also relevant when assessing whether outdoor amenity areas receive sufficient sunlight throughout the year. As a check it is recommended that such spaces should receive at least 2 hours of sunshine on 21 March. The proposed development fails this check by a significant margin. All the public realm, the podium garden between Blocks F, G, H and I, which includes children's play space, and the children's play space at ground level would not comply. The more detailed analysis of sun exposure at 21 March shows that most of these areas would have no sun or at most 0.5 hours of sun on the ground on that date. Even if failing the check does not mean that the spaces would be dark or unusable at all times, it is a good indication of the general quality of the space and whether it would be attractive and pleasant for most of the year (*Documents CD J5, paragraphs 3.3.1, 3.3.4, 3.3.7; POE 5, page 53, figures 17, 18*).
202. A large number of the units would have a single aspect, and many of these would face northwest or northeast. This would limit the amount of daylight they would receive.
203. A significant proportion of the bathrooms in the proposed development would be internal and therefore would not have access to natural light or ventilation. The Appellant sought to justify this on the basis that it was normal in new developments in urban locations. However, for a development to be of exemplary design the RDS SPD expects all bathrooms to have natural light and ventilation (*Document CD C12, bullets in paragraph 2.2*).

Outdoor amenity space and children's play space

204. Properly calculated and taking into account the requirements for children's play space, the proposed development would fall short of minimum standards for amenity space in the RDS SPD by a large margin. The inability to provide sufficient private amenity space or offset this with additional communal amenity space as permitted by the RDS SPD without compromising the daylight or sunlight of other properties, reducing the environmental performance of the development or compromising the use of the yard space, was a symptom of overdevelopment. It demonstrated that the proposed density would be inappropriate for its location. The Appellant is not able to rely on the nearby Burgess Park as providing better outlook for the new development, as the suggested planning condition to require a 2.4m boundary fence would restrict the outlook of at least the lower floors of Blocks A and B. (*Documents POE 15, paragraphs 7.34, 7.46; CD C12, page 23*).
205. Again, it is not correct to take an averaging approach in relation to private and communal amenity space, as residents with very limited private amenity space or in blocks with less communal amenity space would not be able to take advantage of the greater private and communal amenity space enjoyed by others.
206. The quality of the children's play space proposed at ground level would be affected by servicing of the central street as service vehicles would travel alongside it. The quality of this space will be further diminished as it would have no sunlight for most of the year (*Documents INQ 2, page 33; POE 5, pages 53-55*).

Noise

207. Saved policy 3.11 of the Southwark Plan makes clear that noise is a matter which is relevant to the efficient use of land and correspondingly the appropriate density of new development. It requires development to ensure that it does not compromise legitimate activities on neighbouring sites. This policy approach is also reflected in the *agent of change* principle in paragraph 182 of the Framework. In addition, any noise impacts of neighbouring uses on the proposed residential accommodation would make them less attractive to prospective residents, a factor which would suggest less than exemplary accommodation (**Documents CD C7, below paragraph 3.11.7; CD C9, page 45; POE 19, paragraphs 115-116**).
208. The Appellant had not carried out any long-term day-time noise monitoring in the vicinity of the Babcock Depot site, a fact borne out in the noise assessment submitted with the application. A noise model was created based on extrapolating the data from the long-term monitors at other locations on the southern and western boundaries of the site. No significant night-time noise was generated at the long-term monitoring locations. This was consistent with the common understanding of all main parties that the BCM Scaffolding use only takes place during daytime hours. However, noisy vehicle movements do take place on Parkhouse Street during the night. Such noise is unpredictable and intermittent and goes on into the early hours of the morning⁷⁵. The results from noise monitoring at other locations around the appeal site cannot therefore give an accurate picture of the noise that may be experienced at the building façades proposed along Parkhouse Street and has the potential to affect the façades of Blocks F and G (**Documents INQ 25; CD B19, paragraph 8.3 and figure 8.1**).
209. The Appellant accepted that where actual noise levels are not known it cannot be certain that mitigation would be effective⁷⁶. It is not sufficient to rely on the detailed design stage to deal with this issue. If any noise nuisance associated with existing uses such as the Babcock Depot could not be mitigated, there would be a real risk that those uses would be forced to curtail their activities.
210. The residual level of noise for balconies and gardens in Block M would be above WHO guidelines, notwithstanding some screening being provided by physical elements of the proposed development⁷⁷. The Appellant relied on the Planning Practice Guidance to justify the acceptability of higher noise levels where there is nearby quieter communal amenity space or a public park nearby⁷⁸. However, it is important to note when considering the planning balance that the guidance indicates that such alternative amenity space is only capable of partially offsetting noise impacts. It must also be viewed in the context of the present case, where the development is required to demonstrate exemplary design, and there is already a shortfall in private and communal amenity space (**Document**

⁷⁵ This information was provided by Ms Stephenson, a resident of Parkhouse Street, at the round table session on living conditions.

⁷⁶ This was agreed by Mr Maclagan in discussion at the round table session on living conditions.

⁷⁷ This was agreed by Mr Maclagan in discussion at the round table session on living conditions

⁷⁸ Planning Practice Guidance chapter on Noise (22 July 2019). Paragraph: 011 Reference ID: 30-011-20190722.

CD B19, paragraph 8.60).

211. There is no assessment of the noise impacts of servicing on residential occupiers. Some bedroom windows, which face onto the yards and central street would be as low as 4m above the ground and could therefore be affected by noise from larger vehicles servicing the light industrial units (**Document POE 19, paragraph 113**).

LOSS OF EMPLOYMENT LAND

212. There is no dispute that the proposed development would not comply with Strategic Policy 10 in the CS and saved policy 1.2 in the Southwark Plan. It is also common ground that if it would harm the quantum or quality of the borough's stock of employment land, there would be conflict with Policy 4.4 of the London Plan. Viewed in the context of a dwindling supply of industrial land in the Borough, and a direction of travel towards retention and greater protection of industrial land in Southwark and across London, this conflict is sufficient to justify refusal of planning permission for the proposed development.

213. The Local Group's assessment of whether the significant loss of employment land would be justified is to be preferred to that of the Appellant. The Local Group's evidence was given by a local industrial business owner⁷⁹ who has practical experience of local demand, the needs of small industrial businesses and the increasing loss of industrial floorspace in the Borough. By contrast the Appellant's evidence was out of touch with the reality of the situation in Southwark for reasons that include:

- Only two of the industrial parks in Southwark relied on to demonstrate sufficient industrial accommodation in the area, Glengall Road and Admiral Hyson, are protected for continued industrial uses. Some of the others have long since lost their industrial accommodation and some have planning permission or are allocated in the emerging New Southwark Plan for residential accommodation (**Document POE 13, paragraph 2.6.5**).
- The analysis of plot ratios sought to demonstrate that replacement floorspace in a pure industrial redevelopment would not be much higher than that in the proposed development. The examples relied on, including a request for 7-acre B8 sites in Croydon and a multi-storey logistics development at Heathrow, are completely different from the kind of industrial spaces available to, and sought by, businesses in inner London.
- The only justification that was given for the proffered 40% plot ratio figure was that funding would not be provided to deliver any higher ratio. However, this failed to appreciate that such plot ratios are commonplace for inner London industry. Similarly, constrained HGV access and older stock are prevalent factors for industrial areas in Southwark, so would not necessarily have the deterrent effect that the Appellant considered they would (**Document POE 13, paragraph 5.2.8**).

214. By contrast there are a number of recent co-located residential and industrial

⁷⁹ Professor Mark Brearley who was also the initiator of the VitalOKR business association and an auditor of industrial stock in Southwark.

schemes with higher plot ratios. Examples are schemes at 2-6 Occupation Road and 227-255 Ilderton Road, which have plot ratios of 115% and 75% respectively. In relation to courier depots providing last mile delivery services in Southwark, the average plot ratio is 65% (*Document POE 20, paragraphs 32, 33*).

Emerging planning policy

215. The only policy support for the introduction of residential accommodation on the appeal site is found in draft policy P26 and draft allocation NSP23 in the emerging New Southwark Plan. Limited weight should be given to these policies, given the scale of loss of industrial land in the Borough, which is not being monitored by the Council and will be a matter raised when these policies are tested at examination. However, it is clear that the proposal would not comply with this emerging policy as it would not retain or increase the amount of employment floorspace on the site. This is an obligatory element of draft site allocation NSP23. The Appellant has also not carried out the two-year marketing exercise required by emerging policy despite relying on a lack of demand to support its case that sufficient employment floorspace would be provided⁸⁰ (*Documents CD C20, pages 54 and 167; POE 20, paragraph 13*).
216. The Appellant's interpretation of the emerging policy is that employment floorspace is to be retained or increased across the whole site allocation. However, the appeal site is in the middle and takes up the majority of the allocation area. If it is more difficult to provide multi-level employment accommodation as the Appellant alleges, it would be harder to compensate for the losses of employment floorspace resulting from the proposed development across other parts of the site allocation. There would be a loss of around 3,000m² of floorspace across the whole site allocation. The floorspace within the allocation as a whole could only succeed if there was a coordinated approach between all landowners. That is not the situation in the present case (*Documents POE 16, appendix 1; POE13, appendix 8*).
217. The Appellant sought to rely on a direction of travel whereby emerging policy removes the protected industrial land designation from the appeal site and seeks to introduce residential accommodation. However, this must be understood in the light of the recent tightening of industrial land release benchmarks. This is in recognition that industrial land is being lost at an unsustainable rate. The corresponding emphasis in draft policy E4 in the emerging New London Plan and draft policy P26 in the emerging New Southwark Plan is of no net loss of industrial floorspace and effective co-location of industrial floorspace and residential accommodation (*Documents CD D13, page 14; CD C7, below paragraph 6.3.4; CD C20, page 54; POE 20*).
218. In practical terms it would be possible to come up with an effective mixed-use scheme on the appeal site. However, the significant loss of employment space which would result from the implementation of the proposed development is concerning given the extreme loss of industrial land across the Borough as a whole.

⁸⁰ In cross-examination by Mr Streeten, Mr Stephenson said that demand for B1c uses was not an impediment to the re-provision proposed. However, if the existing quantum on the site were to be re-provided there would not be sufficient demand to fill it.

Supply of industrial floorspace

219. A growing concern about the scale of the loss of industrial land is evident in recent evidence base studies and emerging policy. It is reflected in the recent lowering of the benchmark for industrial land release in Southwark from 25 ha to 21.5 ha and the revision of the designation of Southwark from the category of *limited transfer* to one where industrial stock should be retained. This benchmark has already been significantly exceeded through recent planning permissions granted by the Council. Far from indicating a managed approach to the release of industrial land, the scale of loss is uncontrolled and unmonitored, with significant negative consequences for the local and wider London economy. When considering the loss of industrial land, the size of sites is irrelevant because a large number of businesses in Southwark and inner London occupy sites that are smaller than 1 hectare (**Documents CD D13, pages 14, 210-215 and table 13.5 and figure 15.1; CD C23, Annex 1; POE 19, paragraphs 60-64; POE 20, paragraphs 5-26**).
220. The importance of a sufficient and suitable stock of industrial land is underpinned by the latest figures that indicate industrial employment makes up 10% of Borough employment as a whole and 25% in areas such as the Old Kent Road Action Area, which falls outside the more office-centric Central Activities Zone. Industrial employment is an important part of the local economy even if it generates fewer jobs than the office-based sector. Industrial businesses locate here because they need to be close to the centre of London. Examples include just-in-time businesses such as food manufacturing, steel fabrication, joinery and bespoke fabrication for arts entertainments. The representation from PHS also indicates that location is key (**Documents CD D2, paragraph 2.10; CD H6**).
221. The increasing scarcity of industrial floorspace is also demonstrated in the very low vacancy rate in the borough. It is well below the frictional vacancy rate for industrial floorspace of 8%. Some industrial land may be occupied by some non-policy compliant businesses such as retail, but in practical terms that land will not be available to industrial businesses seeking floorspace (**Document CD C23, paragraph 37**).
222. It is disputed that the existing buildings on the site are economically and physically obsolete and should be demolished. It is also disputed that this would provide any justification for a reduction in the quantum of employment floorspace. The Council's assessment of the stock in 2016 considered it as being generally fair, although some was aged and deteriorating. The *GVA Viability Report* (2018) indicated that apart from unit 1 and excluding 10-12 Parkhouse Street where there is a prior approval for residential use, parts of the site were in a reasonable condition. It is common ground that the value of the site in its current condition and use is over £15 million. Unit 5 is currently on the market and available for occupation, indicating that it is not at the end of its economic life (**Documents CD D1, page 51; INQ 12, Report page 36; POE 13, appendix 7**).

Demand for industrial floorspace

223. The evidence indicates that there remains strong demand for industrial land in this location. The planning context demonstrates that this vicinity functions well and is in demand as an industrial location. It includes BCM Scaffolding, the PHS waste transfer business and other B2, B8 and sui generis uses. Most industrial businesses looking for space in inner London will be used to working in close

proximity to residential uses. Indeed, they will have little choice but to be in such proximity if they wish to remain. The Appellant claimed that the appeal site would not be attractive to B2 and B8 users due to the preponderance of residential accommodation nearby and restricted HGV access. However, such uses are clearly taking place and thriving in the wider PIL designation. The persistence and expansion of industrial businesses in the area is not necessarily due to their freehold interest, as PHS is not a freehold owner (*Documents POE 15, paragraph 5.3-5.9; CD H6*).

224. The level of interest shown in employment floorspace in the area is an indicator of strong demand and this in itself would not be an impediment to the full re-provision of employment floorspace⁸¹. Demand in this part of Southwark is strong for builder's merchants, couriers, maintenance and cleaning, self-store operators, repairers, catering outlets and manufacturers. Demand remains stable for uses including waste transfer, recycling, passenger transport, vehicle hire and construction⁸². The Appellant considered that there would be an impact on rents as the location was not favoured by the market. However, this was contradicted by the agreed viability position which considered that commercial rents of £22.50-£29.50 per ft² can be achieved in this location. Landlords like Capital Industrial would be able to achieve rents of £15-20 per ft² following refurbishment of the existing stock on the appeal site (*Document INQ 8, paragraph 31*).

Typologies

225. The proposed development would be residential-led and focused on creative office type uses. While described as flexible B1a-B1c they would be most appropriate for B1a type uses, which is reflected in the low levels of servicing expected for the commercial units. This would limit the types of industrial occupier who could realistically use the proposed employment space. Concerns include that the proposed ceiling heights would be too low; that there would be insufficient access for goods due to the absence of goods doors and the limited yard space available for servicing; and that the design includes floor-to-ceiling windows, which would be inappropriate for industrial businesses. These concerns could be addressed by planning conditions (*Document POE 19, paragraphs 105-117; CD D12, pages 6-7, 23; INQ 34*).

Stacking and co-location

226. This would be a site where stacking of commercial uses could be achieved, at least on the first and second floors. There are a number of recent examples of viable schemes delivering multiple levels of industrial floorspace in mixed-use developments in Southwark. These show that multiple levels of industrial accommodation can be delivered in inner London without massive external spiral ramps as claimed by the Appellant. What is required is large goods lifts, generous loading bays, appropriate industrial ceiling heights and sufficient yard space. The Appellant claims that funders are not willing to invest in such schemes. If this is the case, they will have to change their approach in response

⁸¹ This was agreed by Mr Stephenson in cross-examination by Mr Streeten.

⁸² This was oral evidence given by Professor Brearley from his own experience as the initiator of a local business association. For a full list of uses referred to see *Document INQ 36B, footnote 88*.

to the direction of travel and increase in demand. However, it is not consistent with the evidence that such schemes are currently being delivered in the Borough (**Document POE 20, paragraph 32**).

227. The Appellant's approach to stacking and co-location shows that it is out of touch with the situation on the ground in Southwark. It focussed on the stacking of mid to large scale logistics, which is far removed from the appeal scheme. It relied on the fact that industrial business would prefer not to operate near residential accommodation, which is unavoidable in inner London. The Appellant accepted that there would be no in-principle reason why B1c and B8 uses could not be part of a mixed-use development so long as it was appropriately designed⁸³. Whilst the co-location of residential and industrial accommodation is a relatively new development in land use planning in England, it is gaining importance in policy as the pressure on land for both housing and employment uses increases. Draft policy E7 in the emerging New London Plan is an example (**Documents CD C7, below paragraph 6.6.1; CD C22, page 8**).
228. The Appellant asserted that a scheme with multiple levels of light industrial space would have taken up too much space and undermined connectivity⁸⁴. However, no design was ever produced for such a proposal and no detailed consideration was given to the stacking of industrial floorspace. A multi-storey office building was included early in the design process but was rejected on the basis of viability due to insufficient demand. This is unsurprising in an area that is outside the Central Activities Zone and is not characterised by office-type development. On the contrary, it is clear that there is demand for small industrial business floorspace in this location (**Document CD B19, paragraph 3.27 and figure 3.6**).

Servicing

229. The Appellant indicated that refuse would be collected once a week via the central street. However, industrial uses require far more frequent refuse collection than residential accommodation. Even the Appellant's own assessment of servicing considered that a far higher number of servicing trips would be required for the microbrewery. This and the other large maker businesses would not be served by dedicated yards. Deliveries made by larger vehicles would have to take place via the central street even for those businesses that did have yard access. Different maker businesses have different requirements, for example, a stonemason may require an occasional delivery of a very large, heavy lump of stone whilst the microbrewery will require dray deliveries once or twice a week and probably the collection of kegs for bottling and delivery of bottles and cans (**Document POE 19, paragraph 112; CD B 21, Traffic and Transport, annex 1, pages 47-48**).
230. Larger deliveries going through the central street would have an impact on the amenity of local residents, including the children's play space and other social uses proposed by the Appellant in this area. They would be hampered by the moveable furniture of cafés, the microbrewery and regular pop-up events as well as by the envisaged co-working spill-out. The Transport Assessment indicates that vehicles would not be permitted when events were taking place.

⁸³ This was accepted by Mr Stephenson in cross-examination by Mr Streeten.

⁸⁴ This was said by Mr Marginson in evidence-in-chief.

The Appellant accepted that there would need to be restrictions on deliveries and servicing for the commercial businesses to prevent harm to residential occupiers⁸⁵. However, small industrial uses may need to start work early and operate well into the evening and so conditions restricting hours of use may be unacceptable (*Document INQ 2, pages 15-16, 33; CD B21, Traffic and Transport, annex 1, paragraph 4.3.5, POE 19, paragraph 113*).

DESIGN AND TOWNSCAPE

231. The main concern is that the proposed development would be out of character with its existing context. It would introduce tall buildings outside the locations that the development plan considers appropriate. Although there would therefore be a breach of Strategic Policy 12 in this respect, it is possible to go on to consider whether the proposed development would be of exemplary design as part of the planning balance.

Planning policy

232. The relevant policy framework includes policy 7.7 in the London Plan, Strategic Policy 12 in the CS and saved policy 3.20 in the Southwark Plan. The combined effect of these three policies is that tall buildings are only permitted in specified locations within the Borough, and then only where they are of an exemplary standard of design. The London Plan supports this approach by indicating that London boroughs should designate areas that are appropriate and inappropriate for tall buildings in their local plans (*Documents CD C3 page 293; CD C8, page 104; CD C9, page 52*).
233. The policy definition of a tall building is one that is over 30m in height or is significantly taller than its surroundings. On this basis, all blocks in the proposed development apart from A, B, C and M would be tall buildings. Blocks I and J would be over 30m high and so must satisfy the additional requirements set out in saved policy 3.20 in the Southwark Plan (*Documents CD C3, paragraph 7.25; CD C8, page 107*).
234. A similar approach is proposed in emerging policy. Draft policy D8 in the emerging New London Plan requires locations for tall buildings to be identified on policy maps. Draft policy P14 (as proposed to be modified) in the emerging New Southwark Plan indicates that tall buildings may be permissible on sites identified in the site allocations. Draft allocation NSP23 is one such place. However, the emerging plan still requires tall buildings to be of exemplary architectural design. It is relevant that draft policy P14 (as proposed to be modified) has been subject to a large number of objections, including those that relate specifically to the provision for tall buildings on draft allocation NSP23. Since it has also not yet been tested at examination, any policy support for tall buildings on the appeal site should be given very limited weight (*Documents CD C7, under paragraph 3.7.12; CD P21, page 22; INQ 21*).
235. Some of the objections to draft allocation NSP23 relate to the cumulative effect of tall buildings on the local area as there are a number of proposals along Parkhouse Street and the Burgess Park boundary. A solution would be to designate the site as an Action Area Core or Opportunities Area and require

⁸⁵ This was agreed by Mr Maclagan at the living conditions round table session.

master planning to enable taller elements to be delivered in a more coherent way.

Existing character

236. The proposed development would be harmful to the character and appearance of the existing townscape. It would be overbearing and cause harm, of a less than substantial nature, to heritage assets. Whilst the area has a mixed-use character, it is predominantly low rise, with two and three-storey development in the immediately surrounding the appeal site and three to five-storey development along Southampton Way. Whilst there has been some local intensification with new residential developments nearby, this has been of a modest scale, with the tallest elements reaching around seven storeys, for example in the Camberwell Fields and Elmington Green developments on the southern side of Southampton Way (*Documents CD C8, paragraphs 5.106, 5.115; POE 10, figures 1-4; POE 21, figures 16-20*).
237. The Appellant accepted that the appeal site has no landmark significance, as required by saved policy 3.20 in the Southwark Plan for the introduction of buildings over 30m. The Appellant's aim is that the site would create a new landmark or local centre⁸⁶. However, it is not well-connected to public transport and the only attractors to the site for those who would not work or live there would be the café(s) and microbrewery. A true new local centre would potentially undermine the already established local high street on Southampton Way as well as Peckham and Camberwell Town Centres. As indicated by local residents⁸⁷ new local shops have not been successful. This has been recognised by the architects of the proposed development who have not included a great deal of retail or leisure space in the scheme (*Documents POE 10, paragraph 6.15; INQ 2, page 4*).

Exemplary design

238. The points about the lack of exemplary design demonstrated in paragraphs 188-193 above, applies equally as a further reason why tall buildings would be inappropriate on the appeal site. Furthermore, the scale and massing of the proposed development would result in a cluster of chunky buildings. Blocks C and M at the edges would start at the maximum acceptable height for their relationship with the residential properties opposite and the height of the proposed development would rise rapidly to a much taller centre. There would be nothing sculptural about the tallest block, which could not realistically be described as a "pinnacle", unlike for example the planned group of taller elements on the Wyndham and Comber Estates (*Documents POE 10, figure 16; INQ 2, page 6*).
239. The Appellant's analysis of the ratio of building height to street width is only to shoulder height. It fails to take account of the effect of the upper storeys on the streetscape below. Although streets in the Jam Factory development have a similar height to width ratio, that development is within the Central Activities Zone, where there is an expectation of higher density. The Jam Factory reaches a maximum of eight storeys and has straight streets with through views. In

⁸⁶ This was referred to by Mr Bridges at the design and townscape round table session.

⁸⁷ This was said by Dr Lorgelly at the round table session on design and townscape.

contrast, the street in the proposed development would be angled, views would be blocked by buildings at either end and the street would get narrower at pinch points. The airing yard in the centre of the nearby Evelina Mansions is 10m wide and flanked by buildings six storeys high. It is very dark for much of the time, despite a south-facing open-ended gap between the two blocks and is not a pleasant place to sit out in (*Documents CD A5, page 82; POE 21, paragraphs 3.27-3.32, 5.1-5.6 and figures 8, 9, 13*).

240. Neither of the Design Review Panel's two reports was able to support the height of the scheme. The first report questioned whether there was any policy justification for a tall building in this location and considered that the large and bulky residential blocks were an inappropriate typology for this area with its tight and intimate streetscape. It also suggested the existing chimney as a more appropriate focal point. The final design saw an increase in height of many blocks. Also, due to the height of those surrounding the chimney, it would only be visible within the development or when standing directly in front of it at either end of the central street. The development would not deliver a new public square, which is one of the obligatory requirements of draft allocation NSP23 in the New Southwark Plan (*Documents CD 13; INQ 15; POE 21, paragraphs 3.65-3.72*).

Views from Burgess Park

241. Urban development can be seen from the park. However, the southern edge of the park has a different character and is dominated by the tree line, which screens the six-storey buildings along St George's Way that can only be glimpsed through the trees. Taller residential elements in the distance to the southwest, including the Comber and Wyndham towers, come in and out of view. However, the proposed development would appear as a constant presence in the viewer's line of vision when walking along the main north-south axial routes of the park. This is clearly demonstrated by the fact that the only building to the south of the park that is currently persistently in view is St George's Church tower (*Document POE 10, figures 16-20*).
242. The visibility of the proposed development would limit the openness of views to the south and would appear as a discordant element in views of the sky. This is an important part of enjoying the natural environment and green space that the park offers for its visitors. The part of the park opposite which the development would be located is attractive and well-used (*Document POE 22, paragraphs 1.3, 4.6, 5.2, 5.4, 6.4-6.8*).
243. It is agreed that the proposed development would cause less than substantial harm to the setting of the tower of the former St George's Church and that this would be outweighed by the benefits of the scheme. However, the impact of the proposed development is relevant to the appropriateness of the appeal site as a location for tall buildings. Elements of the proposed development, which would be visible above the tree line and next to the tower would not provide a positive contribution to the landscape and skyline. They would have a harmful effect on a nearby heritage asset, even though such harm would be limited. The proposal would thus fail to accord with saved policy 3.20 and the Southwark Plan and Strategic Policy 12 in the CS in this regard (*Documents CD C8, page 104 and paragraph 5.115; CD C9, page 52; POE 21, paragraph 3.14*).

LIVING CONDITIONS OF EXISTING OCCUPIERS

244. It is common ground that development that would cause unacceptable impact on neighbouring properties would be in breach of policy 7.6 in the London Plan (*Document INQ 38A, paragraph 31*).

Daylight and sunlight

245. It is agreed that a two-stage approach should be applied. First, the BRE Guidelines are applied to consider whether any harm would be caused, and second a planning judgement is reached as to whether any identified harm would be unacceptable. There are a number of principles established in the recent *Rainbird High Court judgement* to apply to the two-stage approach⁸⁸:

- If an expert view is formed that, notwithstanding breach of the VSC guideline, rooms would remain appropriately well-lit, the reasons for that view should be given. It is not sufficient to rely on the fact that the rooms would meet the BRE Guidelines on NSL, or come sufficiently close to meeting it, to be acceptable.
- A greater reduction in VSC and NSL may be appropriate or unavoidable if new development on an underdeveloped site is to match surrounding development, but this does not hold where the proposed development is significantly taller than its surroundings.
- The judge was unwilling to express a concluded view on whether the target values in the BRE Guidelines should be different in practice in urban locations generally. He did find favour with an argument that the BRE Guidelines only allow target values to be adjusted if there are special circumstances or special requirements arising from the proposed development or its location. He noted that there is nothing in the BRE Guidelines that states that the 27% value in the VSC guideline is derived from a suburban development or that indicates that its guidelines are only applicable to developments outside an inner-city urban development.

246. The BRE tests must be applied with flexibility but they are an important first stage and are also part of the process of judging whether harm is unacceptable. When applying them, both the VSC and NSL tests are relevant and failing either would result in harm to daylight for neighbouring properties. In addition to the assessment of residual VSC levels it is also relevant to consider the amount by which they have been reduced. Large reductions of up to 55% for VSC and 66% for NSL have been underplayed in the Appellant's assessment because no differentiation has been made between rooms that would experience a percentage change in excess of 40%. The level of change to daylight is relevant to the overall planning balance on amenity impacts (*The Rainbird judgement is attached to Document INQ 38B, paragraphs 47, 93; CD J5, paragraph 2.2.21; POE 5, 6.2.10, 6.2.13*).

247. The Appellant relied on 15% as an alternative value for VSC to judge the

⁸⁸ *Rainbird v London Borough of Tower Hamlets* [2018] EWHC 657 (Admin) at paragraphs 94, 97 and 112-113. This judgement is attached to the Appellant's closing submissions (*Document INQ 38B*).

acceptability of the impacts. However, the Whitechapel and Hackney appeal decisions on which this relies related to sites in a more dense and built-up area than the appeal site. The suburban feel, given by the proximity of the area around the appeal site to Burgess Park, means that the mid-teen approach is not warranted. The Appellant relied on the location of the appeal site in the Urban Density Zone and its allocation in the emerging New Southwark Plan for more dense development. The first of these is not a legitimate justification for the mid-teen approach for the reasons given at paragraph 199 above. Also, there is no indication in draft allocation NSP23 that the site should be developed at a greater density than the existing townscape. In any event, the emerging plan should be given limited weight at this stage, as the Appellant concurs (*Document POE 5, paragraphs 6.17-6.19, 6.2.11*).

248. Although a retained VSC level of 27% may be difficult to achieve in this location, a figure of around 20% could be more appropriate. In this regard, achieving retained levels of 20% VSC in Wells Way, for example, would require a development of three to four storeys in height. This is exactly what the Design Review Panel recommended in its second report. The upper floors of 47 Southampton Way would experience a 79% reduction in VSC. This is a highly relevant impact that must be taken into account in the overall assessment of the effect of the proposed development on the amenity of neighbouring occupiers (*Documents CD 13; INQ 20*).

Overlooking, privacy and loss of outlook

249. It is agreed that the BRE Guidelines should not be applied when considering outlook. However, where there would be harm to daylight and sunlight it is likely that there would be a corresponding impact on outlook. Residents in neighbouring properties are particularly concerned about the impact when looking out of their houses that would arise from the extreme nature of the “stepping up” of the development. On Wells Way, new blocks would start at double the height of existing properties and on Parkhouse Street one storey higher and would rise to 10-storeys in the centre of the site. Residents also fear an increased sense of enclosure, particularly those living in Parkhouse Street, who would have new development both to the front and rear of their properties. This would be exacerbated by the cumulative effect of new development which is proposed along Parkhouse Street, such that residents would find themselves surrounded on all sides⁸⁹.
250. The Appellant’s view, that the quality of outlook for properties on Parkhouse Street would be greatly improved by the proposed development is subjective and not one that is shared by existing residents. In this regard, whilst it is accepted that the redevelopment of the existing industrial estate would provide some improvement to outlook, such improvement would be limited by the fact that the proposed development would also block a large amount of the sky currently visible from the Parkhouse Street properties and valued by existing residents⁹⁰.

⁸⁹ Ms Spence and Ms Joyce who live in Wells Way and Parkhouse Street spoke about these concerns at the round table session on living conditions.

⁹⁰ Ms Joyce and Ms Stephenson who live in Parkhouse Street spoke about these concerns at the round table session on living conditions.

OTHER MATTERS

251. The Appellant's contention that the affected habitats within Burgess Park are of low quality is disputed. The New Church Road wildlife area immediately to the west of the appeal site was identified in the Burgess Park Habitat Survey Report as having "moderate to high" wildlife value and the area of highest value in the park (*Document POE 22, section 2, section 6*).

PLANNING BALANCE

252. There is no dispute that all relevant policies in the development plan are up-to-date and that the tilted balance does not apply. The appeal scheme would conflict with Strategic Policy 5, Strategic Policy 10 and Strategic Policy 12 in the CS as well as a number of policies in the saved Southwark Plan and London Plan. The starting point pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 is that planning permission should be refused. The Appellant accepted that if the development was not exemplary it would fail to comply with Strategic Policy 5 and that in these circumstances the extent of conflict would be greater than if the proposed development only conflicted with Strategic Policy 10⁹¹. This applies with even greater force when conflict with Strategic Policy 12 is factored in.

253. The only policy support for the proposed development is to be found in the emerging development plan. The Appellant ascribes this limited weight, and in any event, the proposed development would not fully accord with it. The Appellant was therefore forced to rely on what was characterised as the direction of travel of emerging policy, towards permitting taller residential development on what is currently protected industrial land. However, the true direction of travel must take into account the increasing recognition of the need to retain floorspace for industrial businesses in inner London. Far from supporting the proposed development it points towards refusing planning permission as the proposal would not retain or increase the amount of industrial floorspace on the site.

254. As accepted by the Appellant the main benefit relied on in support of the scheme was the provision of 35% of the residential accommodation as affordable housing. While this is welcomed, it is itself a minimum policy requirement. It could not outweigh the conflict with other development plan policy, which indicates that this is simply an inappropriate location for the proposed development. Furthermore, it must be noted that draft policy H5 in the emerging New London Plan indicates that where a scheme would result in a net loss of industrial capacity, 50% of the new residential development should be delivered as affordable housing (*Document CD C7, below paragraph 4.4.3*).

255. The proposed development would have significant and harmful effects in terms of the amenity of future and existing residents, the impact on the borough's industrial stock and therefore its economy and the surrounding townscape. The Appellant has not demonstrated that it would not be possible to deliver the planning benefits it relies on without such negative effects. The harmful effects would be a direct consequence of the failure to accord with development plan policy. For all these reasons, planning permission should be refused.

⁹¹ Mr Marginson agreed this point in cross-examination by Mr Streeten.

OTHER REPRESENTATIONS

TO THE PLANNING APPLICATION

256. There were a very large number of representations received in response to the planning application and the re-consultation undertaken following receipt of the amended plans. The representations can be found at **Document INQ 10** and have been summarised in the Committee Report. This indicates that there were objections from the Friends of Burgess Park, Camberwell Fields Residents' Association, Wells Way Triangle Association, Camberwell Association, Southwark Green Party and Southwark Law Centre. The Committee Report includes a summary of the points raised and these have generally been recorded in the Local Party's case and the comments raised in connection with the appeal and set out below (**Documents CD E1, paragraphs 347-355; CD E2, paragraphs 13-15**).
257. There were also a large number of objections from the occupiers of nearby properties. Most points have been covered in other places, but additional concerns raised are as follows (**Document CD E1, paragraphs 356-368, 371**):
- The viability assessment shows only 35% affordable housing and it is unlikely it would be delivered. The homes would be out of the price range of the local community.
 - It is questionable whether the artist's studios would be occupied or affordable.
 - The development would be in a flood-risk zone. Surface water management and sewerage capacity in Wells Way is inadequate.
258. There was also a good level of support for the scheme, especially at re-consultation stage. This was mainly on the basis of replacing the existing dilapidated business park and the need for additional housing (**Document CD E1, paragraphs 369, 372**).

RESPONSES OF EXTERNAL CONSULTEES

259. These can be found at **Document INQ 10, section 2** and are summarised in the Committee Report at **Document CD E1, paragraphs 332-346**.
260. **The Environment Agency** raises no objection subject to conditions on contamination, sustainable drainage infrastructure and piling. It is pointed out that the site is in Flood Zone 3 and that the exception test would need to be satisfied. **Thames Water** has no objection in terms of the capacity of sewerage infrastructure. It does though point out that the existing water network infrastructure has insufficient capacity and a condition is therefore recommended with regard to necessary upgrade work. A condition is also required for a piling method statement due to the potential impact on underground water utility infrastructure (**Document INQ 48**).
261. **Historic England** does not wish to offer comment. **Natural England** advises that no statutorily protected sites or landscapes would be likely to be affected. This area would benefit from enhanced Green Infrastructure and its incorporation into the development is to be encouraged.
262. **London Fire and Emergency Planning Authority** comments that access for fire appliances and adequate water supplies for fire-fighting purposes would be

needed as required under current Building Regulations. **London Underground Infrastructure Protection** had no comments to make. **Metropolitan Police Authority** requires security compartmentalisation as more than 25 units would be served off each core. It considers that the development could achieve Secured by Design status and that this should be required by a planning condition.

263. **Transport for London** (TfL) points out that there are limited public transport options in the vicinity of the site and most of the site has a PTAL rating of 2 with the western section rising to 4. TfL welcomes the car-free nature of the development and that residents would not be permitted to apply for permits in the controlled parking zone. Parking on-site for those with disabilities would meet standards in the draft New London Plan but it should be demonstrated how additional spaces could be provided if needed. Management of the spaces should be covered in the Travel Plan.
264. Most public transport users would be likely to travel by bus and demand would be likely to rise as a result of this development and others in the vicinity. It is not clear at this stage if there would be capacity issues as bus services in the area are likely to be re-planned to accommodate growth, including in Old Kent Road. A contribution of £90,000 per annum for 4 years is sought for an extra bus in the morning peak if this were needed to accommodate the additional passengers arising from the proposed development. After 4 years TfL would take responsibility for paying the operating costs. The money would only be used if it was found that the additional bus was needed.
265. Cycling should be promoted and a contribution of £200,000 would secure the provision of a medium sized cycle docking station. This would accord with the Mayor's support for active and green modes of travel. In addition, appropriate parking facilities for residential and commercial users should be provided within the development in accordance with draft New London Plan standards and London Cycle Design Standards. The routes through the site should be accessible to pedestrians and cyclists at all times. However, the design should prevent the use of the public realm as a through route for vehicles. Updated wayfinding signage at the site boundary or within the local area would be required due to changes in the street layout and the new residents and visitors attracted to the area. In this regard a contribution of £15,000 is sought.
266. Improvements to Parkhouse Street and Cottage Green would benefit the pedestrian environment as there would be likely to be an increase in footfall on the adjoining roads. Improvements should be made to the junction of Parkhouse Street and Wells Way to improve conditions for cyclists and pedestrians. It is also suggested that a better crossing facility to Wells Way should be provided. Comments on the outline Delivery and Service Management Plan, Construction Logistics Plan and Travel Plans are also made (*Document POE 8, appendix 7*).
267. **The Greater London Authority** provided comments at the Stage 1 and Stage II referrals on 18 June 2018 and 28 January 2019 respectively. At Stage 1 it was concluded that the proposal would not comply with the London Plan and the emerging New London Plan but that changes could lead to compliance. In particular, the quantum of industrial floorspace would need to be increased; an early and late stage review mechanism would be needed as the affordable housing provision was less than the 50% required in the emerging New London

Plan; the general layout was supported but comments were made about the layout of some of the residential units and the quality of the accommodation. The Mayor also mentioned verified views to assess any impact on London Panorama 1A.2; that on-site carbon reductions should be maximised and shortfalls addressed through a contribution to Southwark's off-set fund (**Document CD I1**).

268. In the Stage II report, the Mayor decided not to intervene by determining the planning application himself. However, he maintains objections to the loss of employment floorspace, even though the revised proposals would increase this from 3,375m² to 3,725m² and 10% affordable workspace would be included. He has reiterated his requirement for early and late stage affordable housing reviews. He mentions that revisions have been made to improve residential quality but refers back to earlier concerns and the need to ensure that symptoms of overdevelopment would be limited. There are still issues to be resolved about impacts on climate change in order to satisfy policy 5.12 in the London Plan (**Document CD I2**).

TO THE APPEAL

269. There were no oral representations to the inquiry from local people. This was perhaps because the Local Group represented a range of local organisations, interest groups and residents. There were a number of written representations as detailed below (**Document CD H6**).

The main points are:

270. **Pelican Resources** own the freehold of 66 Wells Way, which also extends into Parkhouse Street. The premises have recently been redeveloped and are occupied by the PHS Group, who have submitted a separate representation. Their points are endorsed but there are two additional concerns. The first is that the design of the proposed development must ensure that the operations of existing businesses in Parkhouse Street are not compromised by amenity objections from new residents. The second is that there must be no constraints on employment traffic servicing the site from Parkhouse Street.
271. **The PHS Group** have been tenants of the above site for more than 30 years and have recently extended their waste transfer operation into 41-43 Parkhouse Street with a route through from Wells Way. This access must not be affected either during the construction or operational phases of the new development. Furthermore, there would be a significant problem if new residents objected to goods vehicles servicing the site close to their windows. The business provides services to hotels and retail uses, with the majority of customers in central London. The location of the site in proximity to this market is of key importance. Industrial accommodation is now scarce, and the cost of goods and services are rising as businesses are forced to relocate further out. Local people also need diverse employment that is close to home. Whilst housing is needed there is also a need for industrial land and strategic policies seek to achieve the right balance between the two.
272. **UK Power Networks** have a substation on the appeal site. It objects to the proposal until it can be satisfied that its operational equipment can be satisfactorily incorporated into the development.

273. **Ms L Bacon** lives nearby and does not object to a development of new homes and shops but is concerned that the scale of the proposed buildings would be out of keeping with surrounding development. She also objects to the increase in traffic that would result in a reduction in air quality and noise pollution. **Ms G Holmes** lives nearby and considers that the Council should make good its promise to compulsorily purchase the site in order to incorporate it into the Metropolitan Open Land of Burgess Park and the recently improved wildlife site. Green space is very important to provide clean air, amenity and biodiversity and plays a large part in the Mayor's *Environment Strategy*, the *London Plan* and the *Clean Air Strategy*.
274. **Mr I Ellis** states that Wells Way in particular is poorly served by public transport and that about 2 years ago the No 136 bus route was introduced to supplement the No 343 route. The Wells Way bus stops would be the nearest bus stops that new residents would use. However, the buses are already full at peak times and often do not stop so there can be a considerable wait. This is the only feasible public transport option to Elephant and Castle and is on the route to 3 schools. Additional demand could not be accommodated. There would be a major effect on traffic flow and air quality during the construction period and the public transport issue would be exacerbated further. **Mr D More** believes that if tall buildings are allowed, they will just get even higher.
275. **Dr P Lorgelly** lives nearby and commented that although the area is undergoing substantial change, the Old Kent Road area and Aylesbury Estate are provided for in the New Southwark Plan, unlike the appeal site. This is a PIL and has been run down with tenancies not being renewed. The proposal would be too tall for the area and the density would be too high, exceeding requirements by nearly 50%. This area is not listed as a suitable location for tall buildings. They would overshadow existing dwellings and have the potential to create wind corridors. The buildings on the boundary with Burgess Park would destroy its character and natural habitat. Although emerging planning policy is being relied upon, the development would not be exemplary and the carbon reduction targets in the draft New London Plan would not be met. There would be a severe impact on the already over stretched local transport network. Although new homes are needed, they should not be sub-standard as would be the case here.
276. **Mr R Potz** lives nearby and objects to the height, scale and density of development, which would be overly dominant and out of character with its surroundings. It would also detract from the prominence of the tower of the former St George's Church. Some of the perimeter blocks would be twice as high as their existing neighbours resulting in overshadowing and loss of light. The extension to Block B would lead to overlooking to the existing rear gardens of the adjoining houses in Parkhouse Street, especially no 13. The reduction of height in the ground floor commercial units from 4.5m to 4m would limit the range of businesses for which they would be suitable. The site has poor accessibility and is not therefore a suitable location for such dense and tall development. Buses are already at capacity and the transport infrastructure could not absorb the increase in residential population proposed.
277. **Mr R Jellnek** lives in Southampton Way and objects to increased traffic and pollution on an already heavily used road system. He considers the bus and transport system would be inadequate and that shops and services could not

support the scale of development, especially bearing in mind other new flats recently built in the area. He objects to the height of the new development, particularly in views from Burgess Park and surrounding homes and gardens. **Ms M Heeran** lives on the corner of Cottage Green and Southampton Way. She objects to the height of the nearest blocks on the grounds of loss of privacy in her small rear garden.

278. **Ms G Hirsch** lives in Wells Way and is concerned about overshadowing of her property and those adjoining. The new 4-storey dwellings opposite would compromise the privacy of the first floor of her home. She considers that putting curtains across the high windows would substantially change the character of the listed former Vicarage where she lives. Noise from those living in the new dwellings opposite and also from the outdoor events in the new central street are another concern. There is an objection to the brewery which, from her previous experience, would cause unpleasant odours. The bus service along Wells Way is already overcrowded and inadequate to serve the proposed development. **Ms K Tuke** lives in Wells Way and considered that the new buildings would block beautiful views of St Paul's and the City of London from the Victorian school in Southampton Way. She questions whether this is a protected view. **Dr K Bukhari** also lives on Wells way and reiterates the concerns of others about light, infrastructure and transport.
279. **Ms A Spence** lives in Wells Way and endorses the concerns of other objectors about overshadowing, impact on local services, excessive density and cumulative effects. She refers to saved policy 3.20 in the Southwark Plan which would rule out this as a location suitable for tall buildings. The draft policy in the emerging New Southwark Plan is very controversial and there have been many objections. At this stage consideration under this policy would be premature. The tall buildings would be completely out of character with the area. Furthermore, the effect on daylight and sunlight to existing homes and gardens and Burgess Park would be unacceptable. The ES indicates that it would be negative, irreversible and long term. The wildlife area at Burgess Park is vulnerable to overshadowing, artificial light and human activity. **Ms A Young** also lives in Wells Way and raises similar concerns about the scale of development and excessive density, which would be out of keeping with the area and causing overshadowing to residential properties and Burgess Park. She is also concerned about the impact on services and amenities and points out that bus services are already under strain. She objects to the cumulative impact with other nearby developments.
280. **Mr S McClelland Morris** lives in Wells Way and considers that the height of the development would overshadow existing properties surrounding the site, including his own house in Wells Way where there would be a loss of daylight and sunlight for much of the year. Bus routes Nos 136 and 343 are already busy, especially at peak times and the 2011 assessment does not reflect existing use and routes. There would be insufficient parking to accommodate new residents. The density and scale of development would not respect the local area or the nearby heritage sites. Tall buildings are not endorsed in the policies of the development plan. This is an area of poor public transport and there would be a negative impact on local townscape and local views, including from Burgess Park. The Block A houses would be close to the wildlife area in Burgess Park, which has been improved through substantial public investment. There is already a shortfall of early years education places and the proposed

development would make this worse.

281. **Dr K Joyce** lives in Parkhouse Street and does not consider that the industrial space would be exemplary design to suit creative industries and SMEs. This is an area with low footfall and poor public transport, Vehicle access would be limited and noise restrictions inevitable due to the proximity of housing. There is an over-provision of this sort of use under high-rise housing in London and the units would be likely to either remain empty or be rented at a loss. Dr Joyce does not consider that this would be a high-quality housing development due to too many design compromises. She raises similar concerns about the living conditions of future occupiers as the Local Group. She points out the poor transport links and pressure on school and nursery places and GP surgeries, especially bearing in mind other high-density development in the area. She objects to the negative impact of the proposed tall buildings on the southern side of Burgess Park, where at present low-rise buildings preserve the illusion of a large open space.
282. **Mr G Connelly** lives in Parkhouse Street and objects to the introduction of tall buildings in a low-rise area close to Burgess Park, which is a site of importance to nature. Block A would be backland development that would make no attempt to reflect the character of the adjoining Victorian terrace. These houses would be too close to the existing terrace in conflict with guidelines in the RSG SPD. There is also concern about the loss of sunlight and daylight to these existing houses and with the lack of assessment of the degree of loss of evening sun received in the rear gardens.
283. **Mr C McGee** lives in Parkhouse Street and supports the proposal. Whilst remaining concerned about the height of the adjoining buildings and the negative effect on bus routes, he feels that on balance the proposal would provide much needed housing in an appropriate location and should be supported. The existing business park is of poor quality and in close proximity to housing. He considers that demand is low and that places like Old Kent Road are a more suitable location. There is a critical need for the 35% affordable housing being offered despite the developer taking a lower profit. The provision of more employment space would make it even more unviable unless residential density were to be increased further.
284. **The Wells Way Triangle Residents Association** are part of the Local Group whose representations have already been reported above. They have raised two additional points. The first is that the Council has not raised tall building policy conflict because it is proposing a 10-storey development on its own site at 21-23 Parkhouse Street. In addition, there was a complaint, which some other objectors also shared, about the complexity of the documentation and the difficulty accessing it. This made engagement with the process more challenging. **Mrs M McClelland Morris** who lives in Wells Way has submitted a similar representation to the above.
285. **The Camberwell Society** are also part of the Local Group and for similar reasons their written representations have not been separately reported here. **Ms S Crisp** has submitted a proof of evidence on behalf of the Local Group and her written representation has therefore not been separately reported (*Document POE 22*).

PLANNING CONDITIONS

286. A list of planning conditions was drawn up by the Council and Appellant. The Local Group put forward some additional conditions relating to the B1 uses. These were all discussed at a round table session of the inquiry. I have taken account of paragraph 55 of the Framework and advice in the Planning Practice Guidance. I have changed the suggested wording in some cases to ensure that the conditions are precise, focused, comprehensible and enforceable (*Documents INQ 32; INQ 34; INQ 41; INQ 42; INQ 43*).
287. The conditions that I commend to the Secretary of State if he is minded to allow the appeal are set out in Annex Three. The numbering does not accord with that within the aforementioned documents as some conditions have not been recommended as I explain below. For the avoidance of doubt the condition numbers used hereinafter concur with those in Annex Three.
288. I have had regard to the Government's intention that pre-commencement conditions should be avoided unless there is clear justification. Conditions 5, 7, 9, 10 and 12 are pre-commencement conditions. The Appellant has agreed in writing to the first three. However, that agreement also extends to any other condition that the Secretary of State considers should be discharged before development commences. Condition 10 relates to archaeology and it is clearly important to ensure that this is properly investigated before any ground disturbance occurs. Condition 12 refers to Japanese Knotweed and again it seems to me necessary to sort out this issue before any ground disturbance in view of the invasive nature and harmful impact of this species. These matters were discussed at the conditions round table session and the Appellant raised no objections (*Document INQ 21*).
289. **Condition 1** sets out the statutory implementation period, which seems appropriate in this case. **Condition 2** meets the requirement for the development to accord with the submitted drawings in the interests of precision and proper planning. As there are a large number of drawings with a rather complex numbering system, these have been listed separately in Annex Four.
290. The demolition and construction activity involved in a project of this scale would inevitably cause disturbance and inconvenience over a prolonged period for those living and working nearby as well as road users. **Conditions 5 and 6** require management plans to be submitted to help minimise adverse impacts. I have re-worded these conditions to include a more comprehensive list of provisions that the plans should provide. The Appellant explained that separate plans would be necessary for demolition and construction phases because different operators would be involved. This seems reasonable even though the provisions are the same. Piling is likely to be used for a building project of this nature. In such circumstances **condition 3** is necessary to understand the methodology and avoid damage to groundwater and subsurface water infrastructure.
291. Thames Water has indicated that the existing water network infrastructure would be unable to accommodate the needs of the development. **Condition 4** requires that details be provided to show that the necessary upgrades have been carried out or that a plan has been prepared to show how they will be delivered within an appropriate timeframe. I have slightly re-worded the condition suggested by Thames Water in the interests of concision. **Condition**

- 11** is required in order to ensure that surface water drainage within the site is satisfactory and follows sustainable drainage principles as far as possible. Parts of the site are at risk of surface water and groundwater flooding. The Flood Risk Assessment recommends that in these areas the finished ground floor levels are set 300mm above existing ground level. **Condition 48** has been added to meet this necessary mitigation against flood risk.
292. The site and neighbouring land is in commercial use and previous uses include a laundry and confectionary factory. The preliminary risk assessment identified the potential for contamination, including to ground water. In the circumstances **condition 7** includes a stepped approach, which is a necessary and proportionate response. I have made some changes to the wording to make it more focused.
293. The proposal includes a number of new trees and **condition 8** includes the provisions to ensure that they become successfully established and endure over time. **Condition 9** seeks to ensure that existing trees, particularly those at the southern end of the site are protected during the demolition and construction period. An arboricultural survey has already been submitted and is not therefore required. I have thus re-worded this condition in the interests of precision. **Condition 18** includes the provisions for green/ brown roofs on the flatted blocks. This vegetative layer would sit below the photovoltaic panels and I was told that this had been successfully carried out elsewhere. **Condition 19** requires details of hard and soft landscaping. I have altered the implementation period for hard and soft landscaping to make it comprehensible. I have also added a requirement for details to be included for the yards and central street, which seems reasonable. All of these conditions are necessary to ensure an attractive and high-quality development.
294. **Condition 21** requires bat boxes, swift and swallow bricks. These are species identified in the Southwark Biodiversity Action Plan and were highlighted as opportunities for ecological enhancement in the Appellant's preliminary ecological appraisal. These along with the new planting mentioned above would enhance biodiversity in accordance with the provisions of the development plan and the Framework. A stand of Japanese Knotweed has been found to be growing along the south-east boundary wall. This is a detrimental invasive species and **condition 12** is necessary to ensure that appropriate action is taken to eradicate or manage it.
295. The Appellant's historic environment assessment indicates a generally low potential for significant buried archaeological assets. The most likely remains would be those associated with 19th century housing. **Condition 10** is therefore necessary and has been worded to be proportionate in terms of investigation, evaluation and recording of the archaeological resource.
296. There are a variety of materials proposed on the external surfaces of the proposed buildings. **Conditions 13 and 14** are required in order to ensure that the development has a high-quality appearance. Samples of these materials need to be provided at the start to ensure cohesive treatment of the development as a whole. However, sample-panels will be large scale mock-ups that are best viewed on-site on a block by block basis at the appropriate time. **Condition 20** requires sections to be provided through facades, balconies and windows. Such detailing can make a great deal of difference to design quality

and is needed to ensure that a high standard of appearance is achieved.

297. The appearance of the development could also be considerably diminished by the injudicious placement of pipes and flues on the exterior faces of the buildings. **Condition 36** therefore requires details of such fittings to be submitted for approval. For similar reasons **condition 35** does not permit satellite dishes or telecommunications equipment on roofs or façades. This is a reasonable restriction in this case where the highest quality of design is being sought.
298. Restrictions on permitted development rights should only be used in exceptional circumstances. The houses in Block A are relatively close to existing residential properties and back on to Burgess Park and the area that is being established as a wildlife haven. In such circumstances I consider that there are justifiable grounds why, in this case, extensions, roof alterations and outbuildings should be controlled by the Council. However, the suggested condition is a broad-brush approach, which includes a number of items that it would not be necessary to restrict such as porches, incidental hard surfaces and microwave antenna. I have therefore adjusted the wording of **condition 43** to take these points into account.
299. The development includes a number of tall buildings, which could cause interference to wireless services to existing properties in the vicinity. It is therefore necessary to carry out an assessment and carry out mitigation if this is required. This would be actioned under the terms of **condition 15**.
300. There are a number of conditions that are required to encourage sustainable travel choices. **Condition 16** relates to cycle parking and requires the specifications for storage provision in each block and the associated visitor spaces in the public realm. **Conditions 26 and 27** require a Travel Plan for the commercial development and residential uses respectively. This is necessary as the development would essentially be car-free and it is important that occupiers are encouraged to use sustainable travel modes. There does however need to be provision for parking spaces for those with disabilities and **condition 24** ensures that these are provided, including charging points to encourage the use of electric vehicles.
301. Some servicing such as refuse collection and deliveries to the microbrewery or residential properties, for example, would take place along the central street. This would be a pedestrianised space and landscaped amenity area. TfL does not wish it to be a vehicular cut through and is keen that the development would be maintained as a car-free environment. In order to prevent conflict between different functions it is proposed to have a concierge service so that deliveries and servicing would be managed and controlled. **Condition 25** requires a management plan to ensure that this is effective. It also limits the hours that servicing can take place in order to protect the amenity of residential occupiers within the development. The Local Group objected to such restriction on the basis that it would be unacceptably restrictive on some small businesses who would be working round the clock. I have extended the suggested hours from 1800 to 2000 following discussion at the inquiry. This seems to me to be a reasonable compromise, especially as the definition of a B1c use is one that can acceptably co-exist with residential uses.
302. The Local Group put forward a number of conditions relating to the Class B

- floorspace and its functioning. These were based on the conclusion that the spaces and their servicing facilities were not fit for purpose. I do not consider that these conditions are reasonable or necessary for the reasons I have given under Consideration Three of my conclusions.
303. There are various means of enclosure around the site, most of which would not be suitable as boundary treatment for the type of development being proposed. **Condition 17** requires details to be provided and is required in the interests of the amenity of the new occupiers as well as those surrounding the site. I am not though convinced that a 2.4-metre high boundary would be necessary or indeed desirable along the perimeter with Burgess Park. I have not therefore included this as a requirement.
304. The new development would be in a location that is close to existing residential properties. In addition, many of the new flats would be within relatively close proximity of each other. **Condition 22** requires details of obscure glazing or other privacy devices in certain parts of the development. This allows some flexibility in order to choose suitable screening to protect existing amenity whilst maintaining a reasonable outlook for new occupiers. There is an existing route into the site beneath 33 Southampton Way, which appears to have been blocked off for many years. This is only intended as a pedestrian and cycle route in order to improve accessibility for those living in Blocks A and B and would not be suitable as a vehicular access. **Condition 45** restricts its use accordingly.
305. The proposed development includes communal amenity space on the roofs of some buildings and within podium gardens between Blocks F/G and H/I linked by a bridge. Within some of these areas and also at street level in front of Block E, there are children's play spaces. Whether or not these spaces would be sufficient to serve the needs of the development is considered under Consideration Two of my conclusions. However, there is the general point of access because it would be expected that each block would have a secure entry system. **Condition 30** requires the necessary details of how access would be provided to the communal amenity and play spaces. **Condition 23** requires details of how the play spaces are to be provided and properly fitted out. I have re-worded these conditions to be more relevant and concise.
306. Due to the mix of uses and the proximity of other commercial uses on surrounding sites, it is important to ensure that the living conditions of residential occupiers are protected from unacceptable noise. Hours restrictions, limits on external music sources and control of the transmission of sound through the buildings are required to limit disturbance to those living in the development. Furthermore, the future occupiers of the commercial spaces are as yet unknown and so it is necessary to take a precautionary approach. In such circumstances, **conditions 28, 37-42** are reasonable and necessary.
307. The Framework emphasises the importance of healthy and safe communities. This development would have a mix of uses and the central street would be open to the general public at all times. **Condition 29** requires the scheme to comply with the Secured by Design initiative. This seeks to ensure that places where people live, work, shop and visit are safe places by building in security measures at the design stage.
308. Saved policy 4.3 in the Southwark Plan seeks to provide a mix of dwelling sizes and types to cater for a range of housing needs. In this regard it aims for 10%

of major new residential developments to be for wheelchair users. The Lifetime Homes Standards provides higher standards of accessibility through category M4(2) of the Building Regulations. Saved policy 4.2 in the Southwark Plan seeks to ensure that all new homes are built to this standard. **Condition 33** ensures these requirements are met.

309. **Condition 34** provides for the refuse storage arrangements for each block and in order to ensure that recycling is encouraged I have adjusted the condition accordingly. The ES points out that there are some balconies where wind conditions would result in discomfort. In order to mitigate the impact, solid balustrades are proposed for the respective units. This is provided through **condition 44**.
310. In order to ensure sustainable design, the commercial units would be required to meet BREEAM standards of excellent (Class A and B floorspace) and very good (Class D floorspace). This is the subject of **condition 46**. The brick chimney on the southern side of the site was originally part of the confectionary factory that stood there. It is a non-designated heritage asset, which is at present marred by a plethora of telecommunications equipment. It is intended to remove this paraphernalia and restore the chimney as a centrepiece of the new development. **Condition 47** seeks a scheme for its restoration accordingly.
311. The Local Group considered that there should be a condition that all of the B1 floorspace should be restricted to B1c use. However, this is not the proposal that has been put forward, which includes office space and a microbrewery as well. In view of the policy position in the development plan, I consider it justifiable to remove permitted development rights for the conversion of the B Class uses to residential purposes, which could be done under the scope of permitted development. **Condition 32** imposes such a restriction. It also seems to me appropriate for **condition 31** to seek a minimum of 2,023m² of the Class B floorspace as B1c use. This is indicated in the Design and Access Statement as comprising the large and small maker units (*Document CD B17, page 20*).
312. A condition was suggested that required the gates across the service yard that would be accessed off Wells Way to be 6m back from the footway. This is unnecessary as it is shown on the submitted plans.

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING (UU)

313. The fully executed Deed is dated 29 October 2019 and is *Document INQ 47*. It has been made by the freehold owners of the site, Burgess Park Nominees No 1 Limited and Burgess Park Nominees No 2 Limited and the lender who has a charge over the site, ICG Longbow Investment No 5 S.A.R.L. to the Council of the London Borough of Southwark. It is to be noted that the Appellant, Peachtree Services Limited, is the developer who has no interest in the land and therefore is not a signatory to the UU. Clause 5.4 includes a covenant to enter into a Supplemental Deed, in the form attached at Schedule 17. This is necessary to ensure that if any interests in the site are acquired that they would be bound by the obligations in the Deed. In such circumstances, the development could not be implemented until the Supplemental Deed had been completed.
314. Clause 4 of the Deed contains a "blue pencil" clause whereby a planning obligation will cease to have effect if the Secretary of State concludes that it does not comply with the CIL Regulations. The Council prepared statements

relating to the compliance of the planning obligations with Regulation 122 of the CIL Regulations (*Document INQ 29*).

315. There are 18 schedules, although there is no schedule 10 or 14. The schedules contain the main covenants made by the owners and lender to the Council in respect of the scheme. Their provisions are summarised below. A consideration of whether the obligations meet the statutory requirements and can be taken into account in any grant of planning permission, will be dealt with in my conclusions at Consideration Eight.

SCHEDULES 1-3: AFFORDABLE HOUSING and VIABILITY

SCHEDULES 15 AND 16: AFFORDABLE HOUSING MIX AND APPROVED LIST OF REGISTERED PROVIDERS

316. 173 dwellings are secured as affordable housing units with 54 being intermediate units and 119 being social rented units. There will be a mix of 1, 2 and 3-bedroom homes. A delivery mechanism is included whereby no more than 50% of the market units may be occupied until the affordable homes have been constructed and handed over to a Registered Provider ready for occupation.

317. There are mechanisms to review the viability of the development to see whether more affordable housing could be provided. The first review date is two years from the day after the grant of planning permission. It comes into effect if the planning permission has not been substantially implemented by this time. The second review date is when 75% of the market homes have been sold.

318. Provisions are included as to the basis for the viability review and the formulae to be used to determine whether additional affordable housing should be provided and how much this should be.

319. There are also provisions for the marketing and disposal of the intermediate housing.

SCHEDULE 4: WHEELCHAIR HOUSING

320. The wheelchair dwellings are defined as being 34 market units, 6 intermediate units and 10 social rented units. There are provisions to ensure that those intended as intermediate and market units are properly advertised and marketed.

SCHEDULE 5: FINANCIAL CONTRIBUTIONS

These covenants relate to the paying of the following financial contributions:

To be paid prior to any demolition:

- Archaeology contribution of £11,171

To be paid within 28 days of a written request by TfL:

- Bus contribution £360,000

To be paid before development is implemented:

- Affordable housing evaluation report monitoring contribution of £22,896.55
- Carbon green fund contribution of £581,400

- Children's play equipment contribution of £145,413
- Cycle hire docking station contribution of £150,000
- Loss of employment floorspace contribution of £84,349
- CPZ study fund contribution of £10,000

SCHEDULE 6: CAR CLUB SCHEME, HIGHWAY WORKS, BUSINESS RELOCATION AND RETENTION STRATEGY

321. Agreement is to be reached with a car club operator to put in place a scheme for the development prior to first occupation. This would include the provision of two car club spaces within the public highway and the provision of three years free membership for eligible residents.

322. The highway works would be undertaken under section 278 and/ or section 38 of the Highways Act 1980, which is to be entered into with the Council and/ or TfL. The highway works are to be completed prior to the commencement of Block F and comprise of the following:

- *Any works required following a review of pedestrian safety of the junction of Parkhouse Street and Wells Way as set out in Schedule 13.*
- *A contribution of up to £50,000 towards surfacing of Parkhouse Street.*
- Construction of a raised table across the intersection of Parkhouse Street and Wells Way, including uncontrolled crossing points on each junction arm
Removal of the central refuge on Wells Way, south of the junction with Parkhouse Street. Re-surfacing of the carriageway of Parkhouse Street.
- Re-paving footways along the section of Wells Way abutting the site, to include upgrading of street lighting.
- Planting of the new trees in the highway.
- Traffic calming measures, new drainage gullies, re-paving of footways and upgrade of lighting on Parkhouse Street
- Adoption of widened footways on Wells Way and Parkhouse Street.

If the Secretary of State considers that the proviso in bullet 3 is compliant with Regulation 122 of the CIL Regulations, in terms of being necessary and directly related to the development, then the provisions of bullets 1 and 2 would not take effect.

323. The Business Relocation and Retention Strategy relates to the existing tenants on the site and includes arrangements for any assistance they may need to find alternative locations.

SCHEDULE 7: PUBLIC REALM AND TREE PLANTING

324. The provisions secure the drainage and lighting of the public realm and its repair and maintenance. Unrestricted access is to be given to the general public other than on one day a year to prevent prescriptive rights of public access coming into effect. Temporary restrictions may be applied on prior notice to the Council or in case of emergency to enable maintenance, repair or prevention of

danger to the public.

325. The tree planting is to be carried out in the first planting season after completion of the highway works. If the 39 trees are not planted, a contribution of £3,000 is to be paid for each unplanted tree.

SCHEDULE 8: CONTROLLED PARKING ZONE

326. There is a requirement that every occupant is to be informed that they are not entitled to apply for a parking permit or to buy a contract to park in any Council car park. Those holding a disabled person's badge are exempted from this provision.

SCHEDULE 9: AFFORDABLE WORKSPACE AND COMMERCIAL UNITS

327. A detailed design specification is to be approved for the 372.5m² of affordable workspace in two identified locations, prior to the commencement of any above ground development. No more than 50% of the market housing units can be occupied until the affordable workspace units have been completed.
328. Marketing and management strategies for all of the commercial units, including the affordable workspace, must be approved by the Council before the development is first occupied. There is also provision that these strategies endure for as long as the affordable workspace remains in such use.
329. There are covenants relating to the eligibility for the affordable workspace and the appointment of a provider to manage its day-to-day operation. Also, to ensure that it continues to be used as affordable workspace if possible.
330. The commercial units are to be completed before more than 50% of the market dwellings are occupied.

SCHEDULE 11: EMPLOYMENT AND TRAINING, CONSTRUCTION APPRENTICESHIPS AND LOCAL PROCUREMENT

331. Provisions are included to identify, provide and manage employment opportunities with contracts provided for a minimum of 26 weeks. Encouragement is to be given to applications from unemployed residents of the Borough and providing apprenticeships and training in construction industry skills. The minimum targets are that 116 unemployed residents should be placed into sustained employment, 116 trained through short courses and 29 placed in new construction apprenticeships. If the relevant numbers are not achieved, a contribution is required in accordance with a formula relating to the shortfall.
332. Working with the Council, there are provisions for construction contracts, goods and services to be procured from local organisations based in the Borough as far legal and practicable. Best endeavours should be used to obtain 10% of the total value of contracts procured from organisations based in the Borough.
333. There are provisions to secure 30 jobs, on contracts of not less than 26 weeks, for unemployed Borough residents in the completed development. This will include training if necessary. If this is not satisfactorily achieved there is a contribution to pay, calculated against a formula based on the shortfall.

SCHEDULE 12: ENERGY STRATEGY, DISTRICT CHP AND ESTATE MANAGEMENT STRATEGY

334. The Site Wide Energy Strategy is to be approved before the development is first occupied and its principles applied thereafter in perpetuity. It will contain details of how the development will achieve the agreed carbon targets in the energy strategy submitted with the planning application.
335. The CHP Energy Strategy is to be approved before the development is first occupied. It will set out how energy is to be provided for the development and will show how connection can be made to the District CHP from the site boundary. The connection to the District CHP shall be made, provided it is feasible and viable.
336. An Estate Management Plan shall be approved before the first occupation of the development. This will cover the arrangements for the management and maintenance of the development. It will include provisions for all unadopted roads and shared surfaces prior to any adoption; any sustainable drainage infrastructure prior to any adoption; the storage and collection of waste; and the cleaning, maintenance and renewal of those parts of the development accessible to the public.

SCHEDULE 13: WELLS WAY PERFORMANCE REVIEW AND APPLICATION OF CPZ CONTRIBUTION

337. Provision is made for a report to be undertaken separately from the Stage 2 Road Safety Audit to determine whether the pedestrian trips identified in the Transport Assessment as being generated by the development would be likely to have an unacceptable impact on highway safety along the stretch of Wells Way between the junctions of Coleman Road and Parkhouse Street. The report will identify any impact, assess whether it would be unacceptable and put forward any necessary mitigation. If it is considered by TfL or such other overseeing organisation that mitigation is required, this would be included in the highway works detailed in schedule 6 of the Deed.
338. The CPZ Study Fund Contribution is to contribute to a study of parking conditions in the area.

SCHEDULE 18: ARCHITECT

339. Reasonable endeavours are to be used to employ the existing architect, HTA Design LLP, as lead architect for the project up to practical completion. If this proves not to be possible the Council will be notified, and reasonable endeavours will be made to employ an architect of similar calibre.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

340. Taking account of the matters that the Secretary of State wishes to be informed about, the oral and written evidence to the inquiry and my site observations, the main considerations in this application are as follows:

- **Consideration one:** Planning policy context and approach to decision making
- **Consideration two:** Whether the proposed density would be acceptable to provide an exemplary standard of accommodation for new residential occupiers.
- **Consideration three:** The effect on the Borough's stock of employment land and premises.
- **Consideration four:** Whether the appearance of the proposed development would comprise high quality design that is in keeping with the character and appearance of the surrounding townscape and Burgess Park.
- **Consideration five:** Whether the site is in a sufficiently accessible location and public transport has sufficient capacity to enable new residential occupiers, employees and visitors to the site to travel by modes other than the car.
- **Consideration six:** The effect of the proposed development on the living conditions of nearby residential occupiers with particular reference to light and outlook.
- **Consideration seven:** Other matters relating to flood risk, ecology and heritage.
- **Consideration eight:** Whether any conditions and planning obligations are necessary to make the development acceptable.
- **Consideration nine:** Overall conclusions and planning balance to determine whether the proposals would be a sustainable form of development.

CONSIDERATION ONE: PLANNING POLICY CONTEXT AND APPROACH TO DECISION MAKING

341. Apart from the south-western part, the appeal site and surrounding land is designated as a Local Preferred Industrial Location (PIL) in the development plan. Saved policy 1.2 in the Southwark Plan only permits developments falling within Class B uses and sui generis uses appropriate to a residential area. Strategic Policy 10 in the London Borough of Southwark Core Strategy (CS) seeks to protect jobs and businesses, including at Parkhouse Street. The policy refers to a possible public transport depot here, but it was confirmed that this is not now being considered as an option. There is no dispute that the proposed mixed-use development would conflict with these policies [58; 116; 127; 174; 252].

342. Strategic Policy 5 in the CS identifies the appeal site as being within the Urban Density Zone. Here the policy expects residential density to comply with the

range of 200-700 habitable rooms per hectare (hrpha). It goes on to say that in Opportunities Areas and Action Area Cores, maximum densities may be exceeded when developments are of an exemplary standard of design. Whilst there are a number of such areas within the vicinity, the appeal site does not fall into either category. The Appellant asserted that the wording allowed for other areas to exceed the density, but this does not seem to me to be a fair or sensible reading of the policy. Whether or not it is the Council's normal practice to regard higher density exemplary schemes outside areas referred to as complying with the policy this is not what it actually says. The Appellant also stated that the words "expected" to comply does not mean the same as "must" comply. It seems to me that this is a matter of semantics and to my mind the density being proposed in the appeal scheme would not accord with Strategic Policy 5 [23; 24; 27; 135; 136; 188].

343. Policy 3.4 in the London Plan seeks to optimise housing output for different types of location within the relevant density ranges, which are similar in this case to those referred to in Strategic Policy 5. The supporting text makes clear that the densities should not be applied mechanistically. However, I do not consider that this means that carte blanche is provided to exceed the ranges but rather that flexibility is appropriate within the ranges. If that were not the case it is not clear what the purpose of the ranges would be. It seems to me that the clue is in the word "optimising", which is not the same as "maximising" and implies that the ranges have been carefully considered taking account of other factors, such as the need to achieve high quality design, public transport capacity and proximity and local context and character [27; 28; 34; 184; 185].
344. The settled position at the inquiry was that the density of the appeal scheme would be 984 hrpha. This would be 40% above the ranges outlined above in both the CS and the London Plan and to that extent the proposal would not comply with them. Insofar as the effect of higher densities manifests itself in other harmful impacts it could reasonably be argued that it is those effects that need to be assessed rather than the density itself. This will be considered in the next section and also under Consideration Four [23; 134].
345. The emerging New London Plan does not set density guidelines but rather seeks to provide a criteria-based approach to making the best use of land whilst achieving high quality development. This leads to the matter of exemplary standards of design, which is referred to in Strategic Policy 5 as a justification for exceeding density ranges in Opportunities Areas and Action Area Cores. The Council considered that the proposed development would be acceptable in density terms if its design was exemplary. It is also noted that policy 3.5 in the London Plan indicates that delivery of elements of the policy could be compromised in the event that the development proposal is demonstrably of exemplary design and contributes to achieving other objectives of the Plan [29; 125; 188].
346. Saved policy 4.2 in the Southwark Plan is a permissive policy that seeks to ensure that good quality living conditions are achieved. High standards of accessibility, privacy and outlook, natural daylight and sunlight and outdoor space are expected. However, even if such standards are not achieved the specific policy wording does not seem to me to provide a basis for refusal. However, this is to some extent inconsequential as one would expect a scheme that is of exemplary design to generally achieve the good quality living

conditions referred to in the saved policy. When considering exemplary design, it was agreed that the relevant standards are those summarised in the various bullet points on pages 8 and 9 of the *Residential Design Standards Supplementary Planning Document* (RDS SPD) [25; 137].

347. There is no dispute that the Council can demonstrate a 5-year supply of deliverable housing sites in accordance with paragraph 67 of the Framework. Furthermore, there is no allegation that the most important policies for the determination of the appeal are not consistent with Framework policy. The presumption in favour of sustainable development and the "tilted balance" do not therefore apply in this case [178].
348. The Appellant places much reliance on emerging policy, particularly in the New Southwark Plan. In terms of design, draft policy P9 (as proposed to be modified) requires that all development should be to an exemplary standard. The Parkhouse Street PIL, excluding 45 and 47 Southampton Way but including the small part of the appeal site not previously designated, is allocated for mixed-use development under draft allocation NSP23. This includes various requirements, including the provision of new homes and re-provision of the amount of B Class floorspace currently on the site or at least 50% of the new floorspace for employment purposes. There are other provisions as well which will be considered later [58].
349. However, there are two points to make here. At the time of writing the New Southwark Plan had not been submitted for examination. Furthermore, there have been representations to the draft allocation, which both object and support its provisions. In accordance with paragraph 48 of the Framework, it seems to me that only limited weight can be given to this draft policy. This is actually a conclusion with which the Appellant agrees. It is also relevant to note that the reference to employment uses in draft policy P26 refers to site allocations. The site allocation in NSP23 relates to the appeal site and also the surrounding uses. Its provisions should therefore be considered for the whole allocation and not parts of it [59; 76].

CONSIDERATION TWO: DENSITY AND EXEMPLARY STANDARD OF ACCOMMODATION

350. There was much debate at the inquiry about the correct approach to considering whether an exemplary standard of design would be achieved. It seems to me that it would be unreasonable to expect a development of this scale and complexity to be perfect in every respect. The RDS SPD makes clear that in order to be exemplary the residential design standards should be exceeded. However, that is not to say that every part of the development must necessarily comply with every relevant standard in every respect. Compromises are inevitable and an overall judgement will need to be made. The Mayor makes this point in his Housing SPG where he says that a failure to meet one standard would not necessarily lead to a failure to comply with the London Plan but that a combination of failures would cause concern⁹² [28; 40; 137].
351. In applying a flexible approach though it is important to be clear that the bar is a high one and that the quality of the new living environment must be better

⁹² See *Document CD C4, paragraph 2.1.18*.

than adequate or satisfactory. Density is relevant to a consideration of this issue to ensure that optimising the housing output and providing excellent standards of accommodation have been successfully balanced.

352. I turn now to consider how the development matches up to the relevant standards individually before taking a balanced view as to whether or not the living environment for new residents could be considered exemplary. It should be noted that one of the criteria of exemplary design in the RDS SPD relates to the relationship of the scheme to its context. This is dealt with under Consideration Four.

Floorspace standards

353. The standards for new residential accommodation in the RDS SPD reflect those in policy 3.5 of the London Plan and the Government's national space standards. I would expect exemplary accommodation to not only meet the minimum requirements but significantly exceed them. The evidence suggests that at least 38 of the units (7.6%) would not meet the minimum space standards. The Appellant pointed out that at detailed design stage the wall thicknesses of the smaller units would be adjusted and that this would mean that the minimum standard would be reached in every case. However, the Council's assessment was not disputed that there would still be 187 units that would be at or within 1m² of the minimum standard. This was agreed by the Appellant not to be a significant exceedance and it would amount to over 37% of the total unit provision. The suggestion that a condition could be imposed to require minimum space standards to be achieved at construction stage would not resolve the issue. There would be a significant proportion of homes that would not have a standard of internal floorspace that would be better than adequate or satisfactory [37; 140].
354. Furthermore, the 5-person wheelchair accessible homes in Block M would fall below the space standard for a home for this number of people. Whilst there is nothing to prevent these being re-labelled as 4-person units with a spare single bedroom that seems to me to be somewhat disingenuous. People may choose to occupy their dwellings in all sorts of ways, for example a single person may choose to live in a 2-bedroom flat. On the other hand, that flat may be occupied by 2 people. The point therefore is that the unit should be of a size that would accommodate either eventuality. It follows that if the wheelchair units have two double bedrooms and one single bedroom it is not unreasonable to expect that it should meet the space standard for a 5-person unit [38; 139].
355. The Appellant has done an exercise that shows that over the scheme as a whole the total residential floorspace provided would be just under 4% more than the total minimum floorspace requirement, including the larger size requirements for wheelchair units. However, this does not seem to me to be a good method of assessing whether the units overall would be better than adequate or satisfactory for those living in them. This is because there are a small number of units that would be much larger, and this inevitably influences any averaging exercise undertaken.

Amenity space standards

356. The proposal would provide a mix of private and communal amenity space as well as children's play space. Each type of space would serve a different

- function. The RDS SPD indicates that houses should have private gardens of at least 50m² and that the length should be a minimum of 10m. Flats should have private amenity space of 10m² and for those with 2 or less bedrooms a shortfall can be made up as part of the communal space requirement, subject to the minimum size for a balcony being 3m² [39; 356].
357. Three of the five houses in Block A would not meet the private amenity space standard but the other two would significantly exceed it. Even though these dwellings would back onto Burgess Park there is proposed to be a solid boundary fence with no direct access to this amenity area from these houses. Of the flats, 21% would have 10m² or more of private amenity space and 30 flats would have in excess of 20m². The corollary to that is that 79% of the flats, some of which would be 3-bedroom and thus suitable for families, would have less than 10m² private amenity space. Furthermore, some flats would have no balcony or terrace at all, although the Appellant considered that this would be compensated by the provision of larger internal living spaces. Nevertheless, over the site as a whole there was no dispute that there would be a shortfall of 1,581m² of private amenity space [39-41; 356; 357].
358. The RDS SPD indicates that 50m² communal amenity space should be provided per development. However, in a development of this scale it would seem reasonable to apply this standard to each of the communal spaces provided and this is the approach that the Appellant has taken. Communal amenity space would be provided within roof gardens on Blocks B, D, E and L and between Blocks J and K. Podium gardens would be provided at first floor level between Blocks F and G and between Blocks H and I. The latter two amenity areas would be linked by a bridge. Apart from the space on Block E, which would be 50m² and therefore at the minimum standard, all the others would be considerably larger, particularly the podium gardens and the space on Block L and between Blocks J and K [147; 358].
359. However, there is also the shortfall in private amenity space to be taken into account. The evidence suggests that when this adjustment is made the communal amenity provision on several of the blocks would be well below the standard in the RDS SPD. Over the site as a whole the shortfall would be 1,060m², which would not be insubstantial. Furthermore, the affordable units in Block C would have no communal amenity space at all. The Appellant justified this by providing the 6 x one-bedroom units with a dual aspect and balconies of 6.6-7.7m². This seems to me rather inadequate and it was suggested that a small communal courtyard could be provided at the end of the service yard at the back of Block C. However, this would clearly be a very unsatisfactory arrangement, not least because of the proximity of manoeuvring service vehicles [148; 150; 359].
360. A total of 918m² of equipped play space for 0-5 year old children would be provided in the podium gardens and within the communal roof gardens of Blocks E and L. Whilst this would exceed the necessary requirement of 810m², it would be part of the communal amenity space provision rather than being additional to it as the RSD SPD indicates that it should. This reinforces my concerns regarding shortfall. No provision would be made on-site for children over 5 years old [42; 360].
361. The proximity of Burgess Park should be taken into account when considering

whether the level of amenity space and on-site play space for older children would be satisfactory. Burgess Park is a very large green space with many facilities for recreational pursuits. There are also equipped playgrounds and adventure playgrounds within a 10-minute walk of the appeal site for older children to enjoy. However, it should also be borne in mind that the function of these different types of amenity space is rather different with the on-site provision being used for more intimate socialising with friends and neighbours and for older children to play in relative safety near to their parent's homes. Account should be taken of the alternative provision, which is very good in this case. Nevertheless, the extent of the shortfall is a matter of some concern and will be included in the overall consideration of whether the living conditions in this development would be exemplary [13; 42; 150; 204; 361].

362. There is no reason why the various communal amenity spaces and play spaces should not be quality landscaped areas and this can be controlled through planning conditions. Not all blocks would have their own communal amenity space but apart from Block C all residents would have relatively easy access to the roof top or podium spaces. A condition would require details of how residents could access the amenity space within another block whilst maintaining security for the residents living there. Block A has no specific provision for community amenity space, but I consider that this is less important as these houses have their own gardens, albeit that three of them would be relatively small. Children from these houses would be able to play safely in their own private space or else be taken the short distance to the street level play space.
363. I do though have some concerns about the location of the street level play space outside Block E, bearing in mind the width of the street and possible conflict with servicing vehicles. I do not consider that this is an ideal arrangement by any means. The space would need to be carefully laid out and segregated to ensure that children could play safely [151].
364. There are parts of the proposed development where public areas would have restricted sunlight. The RDS SPD requires good daylight and sunlight standards to be achieved. The BRE Guidelines recommend that, as a check, half of an amenity area including a children's playground should receive at least 2 hours of sunlight on 21 March. The evidence indicates that the podium areas and the children's street level play space would not receive any sunlight on this date. Even on 21 June, when the sun is at its highest point in the sky, the southern podium terrace would only receive a very small amount of sunlight in its northern corner. It is appreciated that the northern podium terrace would receive full sunlight at this time and that a shady spot may be welcome for some. However, nearly the whole amenity area and associated play area would be overshadowed by the tall buildings around it. I consider that it would be unlikely to be an attractive, bright and welcoming amenity space for residents to enjoy [44; 45; 149].

Sunlight and daylight

365. The Framework indicates that when seeking to optimise housing densities, a flexible approach should be taken to applying policies or guidance relating to sunlight and daylight. This is so long as the development would result in acceptable living standards being provided. The Mayor's *Housing Supplementary*

Planning Guidance (Housing SPG) advocates that standards of daylight and sunlight should not be applied rigidly in higher density developments. The RDS SPD indicates that exemplary development should meet good sunlight and daylight standards. The BRE Guidelines should be used in this context, recognising that they are advice rather than policy [47; 48; 143].

366. A daylight assessment was carried out for submission with the planning application. This considered the Average Daylight Factor (ADF) for 698 habitable rooms on the ground, first and second floors of the development, which would be expected to be the worse performing. Of these 78% met the BRE Guidelines. Those that did not included bedrooms, where a lower level of daylight could be tolerated. Of the 55 living rooms that did not meet the recommended ADF value of 1.5%, 32 reached a value of between 1% and 1.485%. The remaining 23 were affected by balconies, which would restrict light but provide private amenity space [49; 142; 197; 366].
367. For the appeal, a different assessment was undertaken. This considered 882 habitable rooms of which 87% were found to meet recommended levels of ADF. However, it is to be noted that this analysis selected units on the first 8 floors and omitted a number of the poor performing units on the lower floors. It seems to me therefore to be less robust or representative of the likely outcomes. Of the 118 rooms that did not meet the recommended values, the shortfall was relatively small in all but 8 of them. Of these, 3 were living rooms on the lowest floors and would be overhung by balconies. The others were bedrooms or kitchens. A comparison was also made with other sites in the vicinity, including the Aylesbury Masterplan on the northern side of Burgess Park. Whether or not these comparator sites are in Action Areas or Opportunities Areas does not seem to me to be of particular importance because these higher density areas still require exemplary standards of accommodation [50; 51; 197; 367].
368. The RDS SPD expects natural light and ventilation to kitchens and bathrooms. In this case only 18% of the units would have bathrooms with an external window. Many of the kitchens would be part of a living and dining area or else would be provided with glazed doors to allow light to penetrate [154; 368].

Privacy and outlook

369. There would be a number of places where windows would face directly into other living room windows at a distance of less than 12m. This would have the potential for diminution of the privacy for future occupiers. The main parties have agreed that this could be mitigated through the use of screening devices or obscure glazing [153].
370. Block B would have windows and balconies facing eastwards. As things stand these windows would face towards an existing warehouse. However, some would be in close proximity to the site that the Council intends to redevelop with mixed-use buildings. If and when this takes place the present plans indicate that the nearest facades would be side elevations. The units on this side of Block B would be single aspect and I consider that here it would be likely to unduly interfere with the outlook from the units in question if their windows were either screened or obscure glazed. Nevertheless, screening devices to the first-floor balconies of these dwellings could be provided and this would ensure a reasonably private amenity area [153].

371. Blocks D and E would back onto the redeveloped Big Yellow self-storage facility at distances of 6-10m. Taking account of the height of this structure, the outlook from first and second floor windows in this direction would be compromised. In most cases the affected windows would serve bathrooms or kitchens. In the case of four flats, a third bedroom would also be affected. However, these would be large, triple aspect units and so any detriment overall would be very small [52; 152].
372. Blocks J and M would be within 1-3m of the scaffolding site. I was not made aware of any proposals to redevelop this site at present, but it is quite possible that this may happen in the future if the draft allocation NSP23 in the emerging New Southwark Plan for mixed-use development is carried forward. The units in question would be dual aspect and a number of the windows would serve bathrooms. In the circumstances it is not unreasonable to expect that the appeal site should not compromise any future development proposals on the adjacent land. Potential effects could be controlled through privacy screening or opaque glazing.
373. Planning conditions could be imposed to require obscure glazing or privacy screening where necessary as detailed above. This need not compromise the outlook from the units in question if it is sensitively done. However, there could be an effect on light penetration to the interior of the residential units. This is not a matter that has been considered in the assessments but would be relevant to the quality of the living spaces [153; 198; 304].

Noise

374. Various planning conditions have been recommended that would ensure that the proposed dwellings would have a good internal noise environment. This is important in view of the proximity of the units to commercial uses and street activity [306].
375. There are also noise sources external to the site. The Babcock Depot at 25-33 Parkhouse Street operates an emergency vehicle rescue operation on a 24-hour basis. The evidence suggests that low loaders drop vehicles off, some sit outside the site waiting with their engines running and vehicular movements take place during the night-time hours. A planning condition requires that the internal noise environment of the residential units should comply with BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings*. This would protect against noise ingress from external noise sources [208; 209].
376. To the south of the site is the BCM scaffolding operation, which operates during daytime hours. Noise levels on some of the nearest balconies are predicted by the noise model in the ES to reach levels of 72 dB LA_{eq,T}. This would be well in excess of the 55dB LA_{eq,T} recommended in BS 8233:2014 for external amenity areas. The guidance points out that such levels often cannot be achieved in urban areas. Also, the Planning Practice Guidance says that higher noise levels can be acceptable where there is a quieter communal amenity area or public park nearby. This is the case here with the on-site communal amenity spaces and Burgess Park within easy walking distance. In addition, the hours of use of the scaffolding site are restricted and, in these circumstances, it seems to me that the balconies would provide private amenity value during the times when they would be most likely to be used [53; 54; 210].

377. Paragraph 182 of the Framework requires that developments should be effectively integrated with existing businesses. Existing operations should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This is the *agent of change* principle requiring that suitable mitigation should be provided. In this case it seems to me that adequate safeguards through planning conditions would be provided to ensure that the noise environments inside and outside the new residential units would be sufficient to avoid justifiable complaints being made in relation to noise [55; 207; 209].

Conclusion

378. The Appellant was keen to emphasise that each dwelling was considered individually to ensure that a successful balance was achieved to result in an exemplary outcome overall. For example, balconies were not provided to some units in favour of more light and increased internal space. However, looked at in the round I consider that there have been too many compromises made in this case. The size of a significant proportion of the residential units and wheelchair housing is of particular concern [36].
379. In addition, the quantum of amenity space being proposed would not meet, let alone exceed, the standards in the RDS SPD. It is acknowledged that some flats would have very large balconies but that would not make up for the fact that some would have no balcony at all, that over two thirds would have balconies of less than 10m² in size and that some of these would be family sized units. Furthermore, there would be inadequate compensation through provision of communal amenity space, which would not only fall short by a significant quantum but would also include the play space for 0-5 years old children, which should be accounted for separately.
380. It may be the case that balconies have been removed for aesthetic reasons or to let more light into the units. It may also be the case that some flats have been compensated by greater internal floorspace. However, private amenity space does have an important function to individual wellbeing that is rather different to the purpose of the communal areas. Whilst Burgess Park is close at hand and would provide residents with a very convenient option for informal recreation, this would not, in my opinion, make up for the degree of shortcoming on the site itself. Furthermore, the quality of some of the children's play space is not what I would consider ideal for the reasons I have given.
381. It seems to me that overall the levels of light received would be acceptable although there would be individual flats where this would not be the case. There would also be a large number of internal bathrooms with no external window as expected in the RDS SPD. Nevertheless, I conclude that the compromises that have been made in the design of the development have been at the expense of the overall quality of the living environment. I do not judge this scheme to be exemplary in terms of the living conditions that it would provide. Even if it could be considered acceptable or satisfactory in the round, this would not be sufficient to justify a density that would be 40% above the accepted range in local and strategic planning policy.

CONSIDERATION THREE: EMPLOYMENT LAND AND PREMISES

Policy context

382. The majority of the site is within, and comprises a large part of, the Parkhouse Street PIL. It is the only such Borough designation outside the Old Kent Road Action Area and the existing industrial and warehousing uses are protected in the development plan through saved policy 1.2 in the Southwark Plan and Strategic Policy 10 in the CS. Insofar as other uses are proposed to be introduced, most notably residential, the appeal development would conflict with the development plan in this respect. These policies are consistent with the Framework and there is no dispute on this point by the Appellant [56; 58; 156].
383. Policy 4.4 in the London Plan seeks to ensure that there is sufficient stock of land and premises to meet the future needs of different types of industrial and related uses. It requires local plans to show how boroughs will plan and manage their stock of industrial land in line with these objectives. PILs are to be identified and protected where justified by evidence of demand and the change of industrial land to other uses in Southwark is within the grouping of *limited transfer (with exceptional planned release)*. The Local Group was concerned about the loss of industrial floorspace in the Borough and its effect on the workforce employed in this sector. In the emerging New London Plan, Southwark falls within the *retain* category where the policy objective is to keep sufficient land available to meet market demand. This reflects the strategic concern about the continuing loss of industrial land [57; 77; 219-221].
384. The Council is not opposed to mixed-use redevelopment in principle. This would accord with the draft allocation in the emerging New Southwark Plan and also follow the approach in the Council's own planning application at 21-23 Parkhouse Street. However, as already mentioned this emerging plan has not yet been submitted for examination and there are unresolved objections to the mixed-use allocation. In such circumstances its provisions only have limited weight and this is not disputed by the Appellant [58; 157].
385. In any event, draft policy P26 in the emerging New Southwark Plan would only support a mix of uses on this industrial land provided the development includes a substantial amount of employment floorspace. This is reflected in the draft allocation NSP23 where it is made clear that redevelopment *must* re-provide at least the amount of Class B employment floorspace currently on the site or at least 50% of the development must be Class B floorspace [59; 157; 215].
386. The proposal would provide 4,404m² of commercial floorspace of which 3,725m² would be B class uses. The existing site comprises 12,559.30m² of B Class floorspace and so the appeal scheme would result in a loss of some 8,834m². However, 10-12 Parkhouse Street has prior approval for conversion from office to residential use. This expires in 2020 but there was no evidence that it would be unlikely to be renewed. It is, from all accounts, included in the Council's housing land supply as a deliverable site. In the circumstances, it does not seem to me unreasonable to remove this floorspace (2,104m²) from the calculation, which would result in a loss of 6,730m² of Class B uses on this site [68; 162; 163].
387. However, the draft policy is not constructed on a site-by-site basis and its provisions relate to the allocation as a whole. The overall Class B floorspace in

the PIL was 23,317.6m² prior to recent redevelopments, most notably the Big Yellow self-storage development, which have resulted in a substantial increase. This means that if the appeal development were to go ahead the net loss of Class B floorspace in the PIL would only be 2,870m². If the 10-12 Parkhouse Street were also to be removed from the calculation, the loss to the allocation would be just 766m². This would be a relatively small proportion of the total in the PIL. When considering the amount of B Class floorspace that must be provided in any redevelopment scheme, the draft allocation expresses no preference between total re-provision and 50% of the development floorspace. The appeal proposal would not comply with either alternative. However, on a fair reading of the emerging policy it seems to me that the conflict that would arise would be relatively small [59; 79; 216].

Refurbishment or re-provision of existing Class B floorspace

388. There was a considerable amount of debate at the inquiry about the state of the existing buildings and whether they would be suitable for refurbishment and re-use. It was generally agreed that Unit 1 was beyond repair and would need to be demolished. At the site visit I went into the buildings and saw that many of them are being occupied by meanwhile uses or used for storage. Unit 9 is being occupied as an office by Swiss Postal Solutions and Unit 2 had until recently been occupied by Fruitful Office Ltd. On the western side of Parkhouse Street, the warehouse at Nos 15-19 was also being occupied by a meanwhile use. As I understand it the curator of the meanwhile uses, Arbeit, does not pay rent for the use of the buildings and so is able to offer space to the various small business users on a low-cost basis.
389. I was told that many of the buildings on the main part of the site were re-clad when the current owners bought the site in the 1990s. Nevertheless, since that time there has by all accounts been little further investment. I have carefully considered the view of the Local Group and the Council that the existing buildings could be refurbished. However, these views were without the benefit of any internal inspection by a qualified professional or any expertise in viability appraisal. In the circumstances, I consider that the Appellant's expert evidence on the matter is to be preferred. This concluded that most of the buildings are now generally in poor physical condition and would be unattractive to industrial tenants providing any reasonable commercial return [62; 63; 222].
390. Although I saw a large number of parked cars on the site, which gave the impression of activity, I was told that many of these were let out on separate license and had nothing to do with the use of the buildings. Taking all of these points into account, I consider that refurbishment and re-use of existing buildings other than 10-12 Parkhouse Street, would be very unlikely as a realistic or viable scenario.
391. The proximity of existing residential uses, limitations with road access and distance from strategic routes would tend to favour light industrial and smaller scale storage uses providing services to support the central London economy rather than Class B2 and larger scale logistics uses. Nevertheless, the evidence suggests that the PIL is functioning well as an industrial location as demonstrated by the redevelopment of the PHS and Big Yellow sites. The Local Group provided informed evidence of strong demand for industrial premises in the local area. The Council has indicated that it has received strong interest

from workspace providers about the affordable workspace in its proposed development at 21-23 Parkhouse Street. Furthermore, I note that Arbeit, the curator of the meanwhile uses currently operating from the site, has indicated interest in taking creative workspace in the appeal development. It seems therefore that there would be demand for the sort of uses that could be provided on this site [71; 73; 158-160; 168; 213; 223-224].

392. It is acknowledged that demand for industrial floorspace alone would not be sufficient to ensure that redevelopment would take place. A developer must be confident of sufficient return and that there would not be better investment yields available elsewhere. However, the Appellant confirmed at the inquiry that there had been no viability assessment of a scheme to redevelop the existing site for Class B purposes. I also note that no marketing exercise has been undertaken to test whether or not such a project would be likely to attract interest. Whilst marketing is not presently a policy requirement, the lack of any such market investigation means that this scenario cannot be ruled out [70; 215].
393. It is the Appellant's contention, based on market experience, that any redevelopment would be on the basis of a plot ratio of 40%. However, the Local Group provided examples where much higher densities had been successfully achieved. Much would depend on the nature of the use and its requirements for servicing and parking. However, as I indicated above, large scale logistics would be unlikely to be attracted to a site like this. If more effective use is to be made of land, especially in urban areas, there will need to be a more creative use of space and it seems to me that compromises will have to be accepted on such matters as parking, servicing space and public realm improvements. It is noted that the emerging New London Plan indicates that a plot ratio of below 65% would require exceptional justification. The Appellant has calculated that on this basis, and excluding 10-12 Parkhouse Street, re-provision would be in the region of 8,502m². I consider this to be a reasonable assessment of what could be provided through a redevelopment of the site with Class B uses [67-69; 165; 213].
394. Excluding the meanwhile uses, there are about 57 jobs currently being provided on the site. If Fruitful Office Ltd, who left only recently, were to be included this would increase to 137 jobs. The Council contended that if fully occupied the existing buildings could employ over 600 people. Whilst this may be possible in theory it took no account of the reality of the situation. I have concluded above that there is little probability that refurbishment and re-use would be a viable option. The Appellant's expert evidence was that redevelopment would most likely appeal to small B1c and Class B8 uses with a split of 30% and 70% respectively. On the basis of the Homes and Communities Agency standards this would yield some 134 jobs. I acknowledge that other types of small business workspace, including maker spaces, could yield a higher number of jobs. However, this is based on the existing meanwhile uses in refurbished buildings and not on any assessment of a potential redevelopment project [64-66; 82; 166].

The proposed provision and whether it would be suitable

395. There was a great deal of discussion at the inquiry about alternative arrangements for the co-location of employment and residential uses, including stacking of the commercial elements. Whilst the Appellant did not consider that

this would be attractive to the market or potential funders it seems to me that much more imaginative solutions will have to be accepted if the increasing demands of competing uses are to be accommodated on limited urban land resources [72; 167; 214; 226-228].

396. Nevertheless, for the reasons I have given above, I consider that the development would result in a relatively small loss of Class B floorspace from the PIL. There would be some conflict with the emerging policy in this respect, but it would be limited. There would be 255 permanent new jobs, which would be substantially more than either what exists on the site at present or what could reasonably be expected if the site were to be redeveloped for Class B uses [66; 166].
397. *The Old Kent Road Workspace Demand Study* (2019) gives consideration to the type of employment uses that could be accommodated within a mixed-use development of the draft NSP23 allocation. It identified relatively affordable uses focused on light industrial, studio and workroom space; small and medium scale industry with yards and uses such as last mile distribution. Although Class B8 uses are not proposed in the appeal scheme, there would be flexible B1a-B1c uses with a mix of different sized maker units and creative offices along with a larger office and microbrewery. A condition is proposed that a minimum of 2,023m² of the Class B1 floorspace should be used for B1c purposes only. A condition is also proposed that would not permit the change of the Class B uses to other uses through the permitted development provisions. The Unilateral Undertaking (UU) includes an obligation to ensure that the commercial units would be properly marketed and managed and that they would be completed before half of the market housing units were occupied [167; 168; 225; 311].
398. The proposal would provide 10% affordable workspace, which would accord with draft policy P28 (as proposed to be modified) in the emerging New Southwark Plan. This draft policy seeks to ensure that priority is given to existing small and independent local businesses. This covenant would provide the necessary controls to secure affordable workspace that would benefit local target occupiers [61; 118; 327-329].
399. There was considerable criticism, especially from the Local Group, about the layout and servicing arrangements of the Class B uses. The layout indicates that most of the smaller units would be serviced through the three yards where frequent van deliveries could take place at times that would not have to be pre-planned. Whilst the microbrewery and some large making spaces would be serviced from the central street this would be controlled through a Delivery and Servicing Management Plan that would be subject to the Council's approval [83; 229; 230].
400. There was also objection to the design and layout of the units with large windows and inadequate access arrangements. Whilst the Local Group's evidence on this matter was informed by experience it was also made clear that the Appellant had been in discussion with potential occupiers and that the design had taken account of their needs and requirements. I consider it highly unlikely that the developer would be putting forward commercial units that would be difficult to rent or would remain vacant because of their unsuitability. In the circumstances I have insufficient evidence to conclude that this element of the appeal scheme would not be fit for purpose [229-230].

Conclusion

401. The appeal proposal would not comply with saved policy 1.2 in the Southwark Plan or Strategic Policy 10 in the CS because it would introduce housing onto land that is protected for industrial uses. However, the existing buildings are generally unsuitable for refurbishment on any sort of commercial basis, apart from 10-12 Parkhouse Street, which has prior approval for higher value residential uses. There was no evidence that a redevelopment with Class B uses would not be viable and I consider that it is not unreasonable to surmise that a scheme of about 8,502 m² could be provided.
402. The emerging New Southwark Plan introduces a different mixed-use approach to the PIL, under draft allocation NSP23. One of the requirements is that the existing Class B floorspace must be re-provided within the allocation site. Whilst on the site itself there would be a considerable loss of Class B floorspace, on the allocation the net loss would be relatively small. It is recognised that there is strong demand for industrial premises in Southwark but on the evidence, I do not consider that the appeal proposal would compromise that demand through a significant diminution in quantum or quality of Class B stock. In such circumstances I do not consider that policy 4.4 in the London Plan would be offended [57; 79; 174; 212].
403. There would be conflict with draft policy P26 and draft allocation NSP23, although this would be relatively limited, especially when the increase in jobs is taken into account. I conclude overall that the proposal would not result in a detrimental effect on the Borough's stock of employment land and premises, notwithstanding the above policy conflicts. I return to this matter in the planning balance.

CONSIDERATION FOUR: DESIGN QUALITY, CHARACTER AND APPEARANCE

404. The Council has raised no objections in terms of the appearance or scale of the proposed development or its effect on the character of the surrounding area. The Local Group's main concerns relate to the introduction of tall buildings on this site, whether the development would be of exemplary design and its effect on views from Burgess Park and the tower of St George's Church, which is a listed building [85]

Tall buildings

405. There is no dispute that the proposed development includes tall buildings. These are defined in the CS as those being over 30m tall or significantly higher than surrounding buildings. Policy 7.7 in the London Plan requires the location of tall buildings to be part of a plan-led approach for change and development of an area. It *generally* expects such structures to be limited to the Central Activities Zone, Opportunity Areas, areas of intensification or town centres with good access to public transport. Strategic Policy 12 in the CS establishes a number of locations where tall buildings *could* go, including Action Area Cores. Saved policy 3.20 in the Southwark Plan indicates that tall buildings *may* be permitted on sites that have excellent accessibility to public transport facilities and are located within the Central Activities Zone, particularly Opportunity Areas. The use of the terminology in the aforementioned policies (with my emphases), means that location is not necessarily definitive. However, there is a strong implication, in my opinion, that the locations referred to are preferable not least

- because of their good accessibility and regeneration opportunities [86; 232; 233].
406. Draft policy D8 in the emerging New London Plan requires boroughs to define what is meant by a tall building based on context and to identify in development plans where such buildings should be located. Draft policy P14 (as proposed to be modified) in the emerging New Southwark Plan identifies a number of areas with the highest level of public transport accessibility and the greatest opportunity for regeneration, where tall buildings are expected to locate. It also refers to individual sites where taller buildings may be possible, as identified in site allocations. Draft allocation NSP23 indicates that taller buildings could be included in a mixed-use development, subject to considerations of impacts on existing character, heritage and townscape [87; 234].
407. Development plan policy does not therefore preclude tall buildings on the site, although I am not convinced that it endorses them quite so enthusiastically as the Appellant believes. The emerging development plan does not add a great deal in this respect apart from perhaps a more positive approach through the draft allocation. However, this is subject to outstanding objections, which will be considered during the period of examination [234; 235].
408. Policy 7.7 in the London Plan includes a number of requirements for tall buildings to meet. These include incorporating the highest standards of architecture and materials, establishing a good relationship with the character of the surrounding area, contributing to an improvement in permeability and making a significant contribution to local regeneration. Strategic Policy 12 requires that tall buildings have an exemplary standard of design, make a positive contribution to regenerating areas and create unique places [232].

Effect on the existing townscape

409. The appeal site occupies the larger part of a wider industrial area. Whilst most of the existing buildings are not derelict or particularly unsightly, the site contributes little to the quality or attractiveness of the existing townscape. There is little dispute that its redevelopment could bring benefits to its surroundings and it is to be noted that changes are occurring in other parts of the industrial area, for example on the Big Yellow and PHS sites. Furthermore, there are planning applications or pre-application discussions relating to other sites in the PIL on the northern side of Parkhouse Street. This is clearly an area where regeneration is likely to result in considerable change over time [89; 90].
410. There is no doubt that the height and mass of the new development would be significantly different from the predominantly domestic scale of the host environment. Although there are higher elements at Elmington Green and Camberwell Fields, for example, these tend to be at key locations and are, in any event, significantly lower than what is being proposed on the appeal site. The Big Yellow building is a substantial construction, but its box-like structure will do little to visually improve its surroundings [12].
411. The lowest buildings would be the two-storey houses adjacent to Burgess Park. The adjacent Block B warehouse would be refurbished, and the two additional storeys would be recessed to reduce their impact on the park and existing dwellings. Within the main site, Block C would be three storeys in height to respect the two-storey houses at 1-13 (odd) Parkhouse Street. On the other side of the site, Block M would be 4 storeys in height, which would acknowledge

the domestic scale of the Wells Way houses. Around the arc of Parkhouse Street, the buildings would be 8-9 storeys in height with the upper floors set back. They anticipate the future redevelopment of the industrial sites on the northern side with high and large-scale built development [91; 92].

412. The optimisation of the existing land resource would be likely to result in a more intense form of development to what exists at present. However, that does not mean to say that it should not respect its receiving environment. In its desire to create a new mixed-use quarter of landmark significance I consider that there are elements of the scheme that would not be satisfactory in this regard. My main concern is the way that the development would rise up steeply from the perimeters of the site to a series of tall central blocks. These have been designed with a contemporary warehouse aesthetic, but their height and scale would result in an imposing cluster of buildings of considerable bulk and solidity when viewed from the surrounding area. It is appreciated that upper storeys would be set back and clad with metal finishes. Also, that façades would be articulated, including with projecting balconies. Nevertheless, the closely grouped tall blocks would, in my opinion, lack finesse or distinction. The brick chimney, which is an undesignated heritage asset and considered to be an important focal feature in the new development, would be diminished and rather overwhelmed by the scale and proximity of its new neighbours [10; 35; 238; 239; 240].
413. There would be advantages to the scheme, including the creation of an L-shaped street running through the centre to open up the site and introduce permeability. There is no reason why it should not be an active, vibrant space with its proposed outdoor “rooms” that visitors and those living and working there can enjoy. The space at the confluence of the two right angled arms of the street would be limited in size and would not, in my opinion, open out sufficiently to be perceived as square, either in appearance or function [92; 132; 240].
414. The proposed development was considered on two different occasions by the Design Review Panel at pre-application stage. The Appellant complained that on both occasions the constitution of the panel was different and that there was no continuity. However, changes were made as a result of their comments, including reducing the overall height of the scheme and introducing the service yards. Nevertheless, the second Design Review Panel concluded that the design of the buildings appeared overly repetitive and lacked distinction. They raised significant concerns about the height and massing. Strategic Policy 12 states that the Design Review Panel has an important role in assessing design quality and it seems to me that the views of its qualified architects should be afforded significant weight. Although the comments related to an earlier iteration of the scheme when the proposal was to include a tower of 14-storeys, the overall concerns about height and massing remain valid and concur with my own in this respect [91; 190; 191; 240].

Burgess Park and St George’s Church tower

415. The Local Group was particularly concerned about the views of the proposed development from Burgess Park and its visual interaction with the distinctive tower of the former Church of St George on Wells Way. I made an extensive visit to Burgess Park and looked towards the site whilst moving through the

open space as well as seeing it from various viewpoints. I observed that urban development is a feature in many views out of this open green space. Examples include the distinctive towers of the Wyndham and Comber estates to the west; the high buildings and urban regeneration of the Aylesbury Estate to the north, which is currently being regenerated; and the tall buildings to the east within the Old Kent Road Action Area. However, to the south the outlook is greener and the urban area is less apparent. This is mainly because the buildings are smaller scale and there is a thick band of trees fringing this edge of the park, which provide a screen especially in the summer months. The distinctive ornate tower of the listed church rises resplendent above the treetops [13; 93; 241; 243; 276].

416. In mid-distance views and looking south-west from the main central footpath, the upper parts of the new building blocks would be apparent above the tree canopies and adjacent to the church tower. It is also to be noted that the 10-storey building proposed on the Council's site at 21-23 Parkhouse Street would also be seen within this view. Whilst this should be considered within the context of an urban park fringed with built development, there would be a degree of harm to the existing character of this edge of the park. This is clearly a well-used area that provides a valued amenity enjoyed by local people and visitors alike. Whilst they will have a kinetic experience and the picture will continually change, it seems to me that it would be diminished to some degree by the introduction of tall buildings within this vicinity [241; 242; 281; 282].
417. St George's Church was originally within an intensely developed urban location and Burgess Park comprised an area of terraced housing traversed by the Grand Surrey Canal and the wharves and factories associated with it. The area suffered considerable bomb damage in the Second World War and it was cleared over a prolonged period. The canal fell into disuse and was filled in although the creation of the park has been a project over many decades and the last phase did not take place until the 1980s. The setting of the church, which closed in 1970 and was subsequently converted to flats, has therefore substantially changed. It seems to me that its primary setting is primarily provided by the churchyard and that this would not be affected by the proposed development.
418. The park contributes to an appreciation of the heritage asset and in particular to its distinctive ornate tower. This would no doubt have been a distinguishing wayfinding feature within the urban environment in which the church originally stood. Today it still contributes that function in that it is clearly seen from many different viewpoints in the surrounding townscape. From the park it appears above the treeline with little distraction in the immediate vicinity. The new blocks would result in tall flat roofed elements which would, in my opinion, compete for attention to some degree. There would be a small degree of harm to the significance of the listed building. I consider that this be at the low end of the scale of less than substantial harm in terms of paragraph 196 of the Framework. I return to consider this further in the planning balance [93; 243].

Conclusion

419. Drawing together the above points, I consider that the proposed development would cause some harm to the character and appearance of the area and fail to relate successfully to the existing townscape context. Whilst the proposal would provide permeability through the site, which would be a positive factor, the

design overall would not be exemplary for the reasons I have given. For all of these reasons I conclude that the proposed development would conflict with policy 7.7 in the London Plan, Strategic Policy 12 in the CS and policy 3.20 in the Southwark Plan.

CONSIDERATION FIVE: ACCESSIBILITY AND TRANSPORT

420. The concerns of the Local Group related principally to the safety of pedestrians, the ability of local buses to cope with the anticipated additional patronage and the inadequacy of car parking within the surrounding streets. However, following discussions during the inquiry they agreed that the objections could be addressed through mitigation measures provided in the UU⁹³. Whether these would be acceptable would of course depend on whether the relevant obligations would meet the provisions under Regulation 122 of the CIL Regulations. I consider this below [3; 181; 84].

Pedestrian safety

421. The Transport Assessment has identified an increase in footfall along Parkhouse Street and at the junction with Wells Way. The Local Group is particularly concerned about the safety of pedestrians crossing within the vicinity of the junctions of Coleman Road, Wells Way and Parkhouse Street. They have cited a cluster of accidents within this vicinity between 2013 and 2016. However, the evidence indicates that most of these happened prior to works being undertaken in 2015, including a kerb buildout and new pedestrian refuge. Since this time there was only one personal injury accident recorded involving a pedestrian.

422. The UU includes two alternative solutions. The Appellant's preference is for a raised table to be provided at the junction of Parkhouse Street and Wells Way with uncontrolled crossing points on each arm of the junction. The existing central refuge on Wells Way would be removed. This seems to me to be a reasonable and proportionate response to the concerns of the Local Group. I do not consider that there is sufficient justification to require an additional report on pedestrian safety or further mitigation at these junctions [84].

423. Parkhouse Street will be a main pedestrian thoroughfare into and out of the site. There are covenants that include widening footways, improvements to wayfinding signage, traffic calming measures and upgrading of street lighting. A covenant requiring £50,000 towards the surfacing of Parkhouse Street does not seem to me to be justified especially as re-surfacing of the carriageway would be carried out as part of the S278 highway works. The Appellant's approach would be to use a variety of surfacing materials in order to reduce vehicle speeds. The Local Group's objection seems to be that this would be disadvantageous to cyclists. However, I see no reason why this should be the case if the surfacing is carefully considered with all road users in mind [84; 266]

Buses

424. The proposed development would not provide car parking for residents other than those with disabilities. The site has a low accessibility rating of PTAL 2,

⁹³ As there was no formal evidence by the main parties on this issue I have relied in this section mainly on the written evidence by the Local Group and the Appellant. This may be found at **Documents POE 8, POE 9, POE 23**.

apart from the western section where it rises to PTAL 4. This particularly reflects the distance from the nearest underground stations of Oval and Elephant and Castle. In such circumstances it seems likely that bus travel would be a popular modal choice either for linked trips to the station or else for the whole journey [126; 263; 264].

425. There are regular bus services into central London with routes along Wells Way and bus stops convenient to the appeal site. TfL has indicated that capacity is not a clear issue at the moment although local people have a rather different view. I was told that these particular services can be very congested, especially during peak periods [263; 264; 274; 276].
426. There is a considerable amount of growth planned for the area, including around Old Kent Road. TfL therefore considers that there may be capacity issues in the future. It has asked for a contribution of £360,000 to cover the costs of providing an extra bus in the morning peak for a period of 4 years. After this time TfL would expect to provide the necessary funding itself. The contribution is related to the cost of providing this extra bus but would only be sought in the event that TfL considered that capacity issues justified it. The relevant mechanisms are included in the UU and this approach seems reasonable and proportionate [263; 264].

Car parking

427. On-street parking in the vicinity of the appeal site is limited by virtue of a Controlled Parking Zone (CPZ). There is an obligation in the UU that all occupants are to be informed that they would not be entitled to apply for a parking permit or buy a contract to park in any Council car park. This would exclude those holding a disabled persons badge who would have provision to park on the street. This is not an unusual provision and one that is justified in this case. It would be brought into effect through Section 16 of the Greater London Council (General Powers) Act 1974.
428. In this CPZ the parking restrictions only apply between 0830 and 1800 on weekdays and the Local Group is concerned that new occupiers could still park locally in the evenings and at weekends resulting in capacity issues for existing residents and highway safety issues as people drive round looking for a space. The Deed includes a covenant to pay £10,000 to fund a study. This has been worked out as the cost of carrying out a survey at night to identify the scale of demand for kerbside parking outside CPZ controlled hours. It would also include the cost of consultation to see if any proposed changes would be supported by the local community [84].
429. There is no evidence that the area suffers from parking stress outside controlled hours at the moment or would be likely to do so with the development in place. I agree with the Appellant that it would take a great deal of dedication for a car owner living in the development to rely on kerbside parking. There may be some who would have parking provision at work or use their cars to travel but they would have to be confident that such arrangements were in place every day of the week. It seems to me that many people choosing to live in a car-free development would not be car owners and would make their journeys by public transport.
430. It is noted that the UU includes membership of a car club scheme for three

years, with the provision of two spaces near the site. This accords with draft policy P52 in the emerging New Southwark Plan and seems to be a reasonable provision and one that would further discourage the inconvenience and expense of car ownership in this location. For all these reasons I do not consider that the evidence is sufficient to demonstrate that an unacceptable issue would arise in this case or that the obligation regarding the contribution towards the CPZ Study would be necessary.

Other provisions

431. Cycling is also likely to be a popular alternative modal choice. TfL has requested a contribution to pay for a cycle docking station close to the site, which would accord with the provisions of policy 6.9 in the London Plan. The contribution of £150,000 in the UU relates to the reasonable cost of providing a medium-sized facility [265].
432. There is also provision for Travel Plans to be submitted in respect of both the residential and commercial elements of the scheme. These would be controlled through planning conditions and would be in accordance with the Framework Travel Plan and Interim Residential Travel Plan already submitted in the ES. These plans make provision for targets to be established for non-car travel modes and subsequent monitoring and review to ensure that they are being met [84].

Conclusion

433. Notwithstanding the low PTAL level for much of the site, it can be concluded that with the proposed mitigation in place the site will be sufficiently accessible and public transport will have sufficient capacity to enable new residential occupiers, employees and visitors to the site to travel by modes other than the car. The proposal would be in accordance with saved policy 5.3 in the Southwark Plan concerning walking and cycling and the Framework in terms of promoting sustainable transport. Furthermore, I am satisfied that the development would not have an unacceptable impact on highway safety.

CONSIDERATION SIX: LIVING CONDITIONS OF EXISTING RESIDENTS

434. The appeal site is part of a larger industrial estate that lies within a predominantly residential area. The site itself includes one existing dwelling, 45 Southampton Way, which would be retained. The other half of the pair, No 47 has a rear addition containing residential units that are close to the site boundary. Nos 1-13 (odd) Parkhouse Street are Victorian houses that are on the western side of Parkhouse Street. They each appear to be subdivided into two flats and the new development would be opposite and behind them. In the case of No 13, there would also be development to the north. Nos 37-39 Parkhouse Street are a pair of semi-detached houses on the northern side of Parkhouse Street between the Babcock Depot and the PHS waste transfer site [12].
435. On the eastern side of Wells Way and opposite the site is a terrace of Victorian houses and a listed former vicarage that has been subdivided into flats. Beyond this is a detached house of modern construction. To the north of Coleman Road is frontage housing at 77-95 Wells Way, which is part of a larger modern estate. Whilst impacts of the development, due to its scale, would likely to be experienced by those living further afield, it is the aforementioned residential

properties that would be most affected [12].

436. Policy 7.6 in the London Plan seeks to ensure that buildings do not cause unacceptable harm to the amenity of surrounding residential properties in relation to privacy and overshadowing, particularly if tall buildings are involved. The Mayor's Housing SPG indicates that the BRE Guidelines should be applied sensitively to higher density development and take into account local circumstances, the need to optimise housing capacity and the scope of the character and form of the area to change over time. It advises that the degree of harm on adjacent residential properties and the daylight targets should be assessed drawing on comparable typologies. The aim is to achieve satisfactory levels of residential amenity and avoid unacceptable harm [96; 244]
437. Saved policy 3.11 in the Southwark Plan seeks to maximise the efficient use of land whilst protecting the amenity of residential occupiers, amongst other things. The RDS SPD relies on the BRE Guidelines to demonstrate no unacceptable loss of sun or daylight or overlooking. Draft policies in the emerging New London Plan and New Southwark Plan indicate adequacy as the measure of acceptability. The theme throughout is that guidelines should be applied flexibly and that a balanced approach should be applied [97; 98].

Daylight and sunlight

438. Daylight

439. The *Rainbird* High Court judgement confirmed that when considering the effect on daylight and sunlight there is a two-stage process. It is first necessary to consider whether there would be a material deterioration in existing conditions and second whether any such deterioration would be acceptable. The first step is a matter of calculation applying the BRE Guidelines. The second step is a matter of judgement [96; 100; 245].
440. The main parties agreed that the Vertical Sky Component (VSC) and No Sky Line (NSL) were the correct methodologies to use in the assessment of effect of daylight on existing residential properties. There was no dispute with their application, which was applied to all relevant windows on the aforementioned residential properties. In terms of the assessment it was agreed that a flexible approach should be taken but nevertheless there was dispute about whether the level of impact was acceptable [99].
441. The BRE Guidelines indicate that a window should retain a VSC value of 27% or should not experience a change of more than 20%. This is a measure of the external obstructions that will determine the amount of sky visible in the centre of the window. It takes no account of the size of the window, the room use or size, for example. The NSL value is a measure of light distribution within the room. The BRE Guidelines are that if there is more than a 20-26% change from the existing situation the loss of daylight would be noticeable. It was agreed that an adverse effect would occur if either of these tests were failed.
442. On this basis, there would be non-compliance with one or both of these tests experienced by the majority of the front windows of residential properties in Parkhouse Street and Wells Way facing towards the site following development. The rear windows of 45/47 Southampton Way would comply with the VSC values but 3 of the 7 windows would not comply in terms of NSL. There is also a

- building to the rear of No 47, which appears to contain four flats or live/ work units. The evidence suggests that the ground floor windows receive very low levels of light anyway. However, there would be more significant changes at first floor level, with most windows failing to comply with VSC values [101-106].
443. However, there was considerable debate at the inquiry about whether a 27% VSC value was realistic in an urban context, especially when higher densities are being encouraged to optimise the use of land. In endorsing a flexible approach, the BRE Guidelines recognise that different target levels may be appropriate. However, the *Rainbird* judgement did not endorse the view that the VSC guideline is only appropriate to a suburban environment or that its guidelines do not apply to inner city areas [99; 245].
444. The Appellant considered that a mid-teen level of VSC would be an acceptable value to adopt here. Reliance was placed on two decisions by the Mayor and an appeal decision where such an approach was endorsed. I note that these preceded the *Rainbird* judgement. Furthermore, it seems to me that what would be acceptable would need to take account of the degree and extent of transgression as well as the nature of the surrounding area and the planning policy pertaining to the site. I would not *agree* that this is a suburban area, but it is an area where housing is predominantly of a domestic scale. Extant planning policy does not specifically endorse high-rise high-density development on or around the appeal site. Whilst this may change in the future the emerging policy position has only limited weight at present [99; 247].
445. In terms of residual values, I do not consider that adopting a mid-teen approach to VSC would be appropriate as a test for acceptability for the reasons I have given above. Nevertheless, I accept that a VSC level of 27% may be hard to achieve and I consider that 20%, as discussed at the inquiry, would be a more appropriate yardstick to follow in this case. On that basis the Appellant's evidence indicates that there would be a number of existing residential properties that would have reductions in daylight that I would not consider to be acceptable⁹⁴ [248].
446. There would be more than marginal infringements to the ground floor living rooms of the flats at 7 and 11 Parkhouse Street. In the case of 13 Parkhouse Street the ground floor flat's front bedroom and side bedroom and the first-floor flat's front living room and side bedroom would be thus affected. This is likely to be because of the way the development steps up on the Parkhouse Street frontage and, in the case of No 13, due to the increase in height of Block B. In Wells Way the ground floor living rooms of a number of the terraced houses would be affected. In this case it is probably because of the height of the building on the corner of Parkhouse Street and Wells Way. As for the two-storey unit to the rear of 47 Southampton Way, there is limited information with which to make a judgement. Due to its location the windows facing towards the site boundary are already compromised by existing buildings. However, it seems likely that the development would make matters considerably worse for the upper floor windows [101-105; 248; 280-282].
447. It is acknowledged that the above analysis indicates that only a limited number

⁹⁴ This information has been obtained from the Appellants daylight and sunlight evidence (*Document POE 6, Appendix 7*).

of residents would suffer impacts on daylight that I would deem unacceptable. However, these are relatively small dwellings and for the residents who occupy them the proposed redevelopment would result in a significant diminution of the enjoyment of their homes.

Sunlight

448. The BRE Guidelines measure sunlight in terms of Annual Probable Sunlight Hours (APSH) and apply to all windows facing within 90 degrees of due south. The assessment shows that the only two windows that would suffer loss of sunlight in excess of the target values in 1-13 (odd) Parkhouse Street would be two of the three rooflights in the rear living room to the ground floor flat. The infringement would be relatively small although there would be a more noticeable change in terms of winter sunlight. In Wells Way there would be about 8 windows that would experience significant reductions to existing levels of sunlight received and would be below the target value by between 1% and 5%. Most would also experience reductions in winter sunlight beyond target values. I acknowledge that the infringements would be relatively small but nonetheless they would be likely to make the rooms in question gloomier and less inviting [278-280; 282].

449. The Appellant's assessment has also considered overshadowing of existing amenity areas. Having carefully considered the analysis, I am satisfied that there would be no unacceptable loss of sunlight to the rear gardens of the Parkhouse Street properties or the area of Burgess Park behind Blocks A and B [101; 111].

Privacy

450. It is inevitable that a redevelopment of this nature would result in the potential for increased levels of overlooking to existing residential properties. At present the existing buildings are in various commercial uses and are mainly of limited height. The insertion of new housing on the other side of the road for residents living in Parkhouse Street and Wells Way would undoubtedly result in change. However, I do not consider that the window distances between new and existing properties would be particularly unusual for an urban area [109].

451. The gardens at the back of 1-13 (odd) Parkhouse Street provide a valued amenity but they are not particularly private being overlooked by adjoining windows, especially as the ground and first floors are occupied as separate residential flats. I agree that the new houses in Block A would be relatively close to the rear garden boundaries, but the upper floor windows have been designed to reduce the opportunity to look out in this direction. In any event a condition is proposed to require obscure glazing or other privacy devices to prevent overlooking to these gardens [109; 276; 282; 304].

452. The greatest potential for overlooking would be from the side windows of Block B, which would serve flats at first floor and above. I am satisfied that due to the relative floor heights, most upper floor windows would look out over existing rooftops. However, privacy devices would be justified to some first-floor windows and these would need to be devised in a way that would not provide an unacceptable outlook for new occupiers. A condition could be imposed to this effect. Subject to these controls I there would be no unacceptable overlooking or loss of privacy to existing residential occupiers or that policy 7.6 in the

London Plan would be offended in this respect [109; 276; 304].

Outlook

453. The BRE Guidelines do not apply to a consideration of outlook. Overall, the proposed development has been designed to step up in height from the edges of the site, which are proximate to existing residential properties, towards its centre. The houses in Block A would be two-storey in height. Although they would be closer to some of the rear boundaries of existing properties than the RDS SPD advises, I do not consider that *they* would be overbearing when viewed from the existing houses or their gardens. Block B is relatively close to 13 Parkhouse Street, but it is an existing building and the new upper floors have been recessed. The houses in Wells Way already face a high brick wall and the new houses that would replace it would be limited to a height of four storeys. Although there would be a taller building on the corner with Parkhouse Street, I am satisfied that it would be sufficiently well distanced not to appear overwhelming [108; 249].
454. The redevelopment of the site would undoubtedly result in a big change. For some the new outlook would be an improvement on what exists at present whereas for others the change would be unwelcome. However, it is important to remember that private views are not protected by planning policy and, in this case, I consider that the change that is proposed would not have an unacceptable impact on the outlook of existing properties [110; 250].
455. I note the concern about attractive views of St Paul's Cathedral being blocked, for example. However, as far as I am aware there would be no effect on protected views referred to in the development plan [278].

Conclusion

456. Drawing the above matters together, I consider that in many ways the proposed development would be able to successfully integrate with the existing residential uses on adjoining land. However, I do have concerns about the effect on the daylight of some properties in Parkhouse Street and Wells Way, which would result in unacceptable harm to those residents. In this respect there would be conflict with policy 7.6 in the London Plan and saved policy 3.11 in the Southwark Plan. This is a matter that I will return to under Consideration Nine, when I consider the planning balance.

CONSIDERATION SEVEN: OTHER MATTERS

Flood risk⁹⁵

457. The appeal site is within flood zone 3, which is identified as an area with high risk of flooding. However, the Strategic Flood Risk Assessment recognises that development within such areas is required and will be allowed subject to the Exception Test. The site is previously developed land and there are strong arguments for redevelopment as have been explained in previous sections of the report. It is to be noted that the site is allocated for mixed-use redevelopment in the emerging New Southwark Plan and this would bring wider sustainability benefits to the community. The Flood Risk Assessment, which

⁹⁵ This matter was not raised by the main parties. The information is from the ES.

accompanied the planning application and is part of the ES concluded that the area benefits from the River Thames flood defences. It also finds no record of historic flood events affecting this land.

458. I note that the Environment Agency raises no objection on this ground subject to the Exception Test. The site is also located within the flood warning area for the River Thames and therefore would be signed up to the Environment Agency's flood warning service in the event of an extreme flood. The Council has raised no objections on flood risk grounds and on the basis of the evidence I do not consider that this is a determining factor.

459. The Flood Risk Assessment concludes that the majority of the site would be at low risk of surface water. There would be no basements and the risk of groundwater flooding affecting the development would also generally be low. However, the flood risk assessment recommends that floor levels should be 300 mm above existing ground levels in the parts of the site at medium or high risk of surface water flooding or at risk of groundwater flooding. The Flood Risk Assessment identifies that parts of the northern and eastern parts of the site would be affected. This could be controlled through a planning condition.

Ecology

460. Burgess Park is a Site of Borough Grade II Importance to Nature Conservation. This is a non-statutory designation but nonetheless of considerable importance to the local community. Indeed, at my site visit I observed that there had been considerable improvements to the part of the park nearest to the north-western side of the appeal site. New Church Road, which once ran through the park has recently been stopped up, removed and incorporated into the park. The area, known as the New Church nature area has been significantly enhanced and this work has been recently completed. There have been new paths and landscaping to enhance its ecological value and once fully established it will provide an attractive area for wildlife. This is currently a work in progress [111; 251 273; 275; 279; 280].

461. The nearest development would be the two-storey town houses and Block B. Although the latter would be increased in height, the upper floors would be recessed. This part of the park adjacent to the site boundary is well treed and the taller elements of the scheme would be sufficiently far away not to cause unacceptable overshadowing. There would be no direct access from the appeal site to the park and I am satisfied that its ecological interest and biodiversity value would not be compromised by the appeal development [111; 251; 279].

462. Heritage assets

463. There are a number of listed buildings and structures within the vicinity of the appeal site, including the Addington Square Conservation Area. At my site visit I visited these heritage assets and agree with the main parties that their significance and the contribution made by their settings, would be preserved if the appeal development were to go ahead [93; 94].

464. The exception is the former Church of St George, which I have considered in paragraphs 415-418 above.

465. The chimney of the former confectionary factory is agreed to be a non-designated heritage asset and I have considered the effect of the new

development on that in paragraph 412 above.

CONSIDERATION EIGHT: WHETHER ANY CONDITIONS AND PLANNING OBLIGATIONS ARE NECESSARY TO MAKE THE DEVELOPMENT ACCEPTABLE.

PLANNING CONDITIONS

466. The planning conditions are at Annex Three and the justification is provided in paragraphs 289-312 of the Report and also in various parts of my conclusions.
467. It is considered that the conditions are reasonable, necessary and otherwise comply with Paragraph 206 of the Framework and the provisions of the Planning Practice Guidance.

THE PLANNING OBLIGATION BY UNILATERAL UNDERTAKING (UU)

468. A fully executed UU, dated 29 October 2019, has been submitted at *Document INQ 47*. This contains planning obligations for the purposes of Section 106 of the 1990 Act. There was a considerable amount of discussion at the inquiry about the UU and the obligations that it contained. There was also discussion of additional provisions, which I consider below. Overall, I am satisfied that the UU is legally correct and fit for purpose. A summary of its main provisions is provided at paragraphs 316-339 of the Report.
469. Strategic Policy 14 in the CS seeks, amongst other things, to use planning obligations to reduce or mitigate the impact of developments. Policy 8.2 in the London Plan indicates that strategic as well as local priorities should be addressed through planning obligations. The *Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document (S106 SPD)* provides guidance on the use of planning obligations.
470. It is necessary to consider whether the obligations that have been made would meet the statutory requirements in Paragraph 122 of the CIL Regulations and the policy tests in Paragraph 204 of the Framework in order to determine whether or not they can be taken into account in any grant of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question. It is noted that the UU contains a "blue pencil" clause that the obligations are conditional on the Secretary of State finding that they comply with the CIL Regulations. The Council has provided a useful CIL compliance statement at *Document INQ 29* and other explanatory information at *Documents INQ 27 and INQ 46*.

Affordable housing and viability (schedules 1-3, 15, 16)

471. Strategic Policy 6 requires as much affordable housing on developments of 10 or more units as is financially viable with a minimum of 35% in this case. The Affordable Housing SPD indicates a ratio of 70:30 social rent: intermediate. The various obligations to ensure that this is provided expeditiously are reasonable and necessary [18; 254; 257].
472. Even though the Appellant is willing to provide this level and mix of affordable housing, the *evidence* indicates that the appeal scheme would not be viable. Indeed, there is no dispute that the profit on value at under 7% would be far below what would normally be deemed an acceptable development return. In

such circumstances it is clear that this is not a case where more than the minimum could be provided [170].

473. The UU provides for this position to be reviewed at two points. The first would be after 2 years if the development had not got underway. The second would be when 75% of the market dwelling units had been occupied. The intention is to capture any increase in value of the scheme and thereby provide more affordable housing, for which no-one disputes there is a substantial need both in Southwark and in London generally.
474. The Appellant does not dispute that an early stage review would be appropriate. It seems reasonable to have another look at viability prior to commencement in this situation in order to meet the requirement in the strategic policy for as much affordable housing as viably possible [267; 268].
475. The dispute lies in whether the second, or late stage review, would be justified. The Planning Practice Guidance makes clear that the development plan should set out the circumstances that viability will be reassessed over the lifetime of the development. In this case where 35% affordable housing is being offered, there is no provision for late stage review in the adopted development plan. Whilst I note that the Council's Development Viability SPD makes provision for early and late stage reviews, this seems to be on the basis that there is not a policy compliant level being provided.
476. The emerging New Southwark Plan indicates that whilst the minimum provision of 35% remains, if there is less than 40% there will need to be a viability review. This is presently draft policy that has not been subject to examination. There are unresolved objections and thus the draft policy has limited weight. In the circumstances of this case, there is no justification for a second viability review.
477. The provision in terms of quantum and mix would be policy compliant and would be necessary to contribute to the considerable level of housing need in the Borough. The mechanism for delivery is linked to the occupation of market housing, which would ensure the affordable homes are provided expeditiously.

Wheelchair housing (schedule 4)

478. The 50 wheelchair units would comply with the 10% required under saved policy 4.3 in the Southwark Plan. It is necessary to ensure that the wheelchair units for sale are properly marketed and advertised to as wide an audience as possible in order that they are made available to meet identified needs.

Financial contributions (schedule 5)

479. *Archaeology contribution:* The site does not lie within an Archaeological Priority Zone but as the archaeological potential is unknown condition 10 requires a written scheme of investigation and subsequent evaluation and recording. The Council has an in-house archaeologist and the S106 SPD indicates that a monitoring contribution will be sought based on the floorspace of the development for proposals within Archaeological Priority Zones. As the appeal site is not within such an area, I do not consider that it has been demonstrated that the contribution would be necessary or reasonable.
480. *Bus contribution, cycle hire docking station contribution and CPZ study fund*

contribution: These payments have been considered under Consideration Five.

481. *Affordable housing evaluation report monitoring contribution:* This fee is based on a charge of £132.35 per unit. I was told that the Council carries out an annual audit of affordable housing provision in the Borough to ensure that it is delivered and retained. Improving its monitoring process arose as a direct result of an Ombudsman decision. The cost is worked out on the basis of officer time for a period of 5 years on the basis that the process is likely to become more efficient over time. In the circumstances I consider that there is adequate justification provided in this case.
482. *Administration cost:* Although this is not within the schedule, a payment of £21,023 is required under clause 15 of the Deed. This is to cover administration costs incurred by the Council, including monitoring the progress of the development and compliance with its terms. *The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations (2019)* allows for such a cost provided that the sum to be paid fairly and reasonably relates in scale and kind to the development. It should not exceed the Council's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development. The sum is based on 2% of the value of the contributions but there was no explanation of how this proportional fee related to the administration of the particular obligations in this case. I was told that the sum being asked for would be on the low side, but this was hardly a satisfactory answer. In the circumstances I must reluctantly conclude that the provisions required by the regulations have not been demonstrated satisfactorily.
483. *Carbon green fund contribution:* This is to meet the shortfall in the target for reduction in carbon dioxide emissions and contributions are put into the Council's green fund for projects such as installing community energy and retrofitting projects, for example. The Energy Statement indicates that some carbon emissions would need to be off-set by a payment and this is worked out in accordance with a formula in the S106 SPD. The contribution would be necessary in order to ensure that the impact on climate change is minimised.
484. *Children's play equipment contribution:* This contribution is to cover the shortfall in on-site provision of play space for older children in accordance with the GLA play space calculator. The cost of £151 per m² is the average local cost of improving play space to accommodate the children from the development in the S106 SPD. This seems a reasonable and necessary contribution to ensure that the needs of children occupying the development would be properly accommodated.
485. *Loss of employment floorspace contribution:* This is sought on the basis that there would be a loss of 8,834m² of Class B floorspace. The sum is based on a formula provided in the S106 SPD that relates to a proportion of the number of jobs that may have been provided against the cost of providing support and training for an unemployed resident to get access to a skilled job. Whilst I have no reason to doubt that the sum requested is proportionate, in this case I consider that the floorspace lost would be considerably less as explained at paragraph 387. In such circumstances the obligation would not be fairly and reasonably related in scale and kind to the development.

Car club scheme, highway works, controlled parking zone and Wells Way performance strategy (schedule 6, schedule 8 and schedule 13)

486. The justification for these covenants has been dealt with under Consideration Five. For the avoidance of doubt, I consider that the Proviso in the definition of Section 278/38 Highway Works does apply.

Business relocation and retention strategy (Schedule 6)

487. Existing tenants of the site include Swiss Postal Solutions Ltd and the car-wash and account for about 57 jobs. The S106 SPD indicates that where small business are displaced by development they should be assisted to relocate within the borough if possible. This would help maintain a strong local economy and the supply of jobs in accordance with development plan policy. The obligations are therefore necessary and justifiable.

Public realm and tree planting (schedule 7)

488. The covenants include provisions for drainage, lighting, repair and maintenance of the public realm. This is required in order to ensure that public areas remain attractive and well looked after in perpetuity. The obligations also ensure public access at all times, save for emergencies and also one day in the year to prevent prescriptive rights by default. This is reasonable as the site will be privately managed but remain publicly accessible.

489. The proposal includes the planting of 39 trees. Policy 7.21 in the London Plan requires existing trees of value to be retained, any lost to be replaced and where appropriate additional trees to be included in new developments. The proposed tree planting would comply with this policy. Draft policy P60 in the emerging New Southwark Plan includes a provision that where trees are removed for development, they should be replaced to ensure no net loss of amenity. Draft policy G9 in the emerging New London Plan has similar provisions with an objective of increasing tree cover in London by 10% by 2050.

490. The Council's Urban Forester has calculated the amenity value of the 9 trees that would be felled, taking account of their stem girth, health, maturity and canopy cover. He concluded that 39 trees would be required, having regard to the Mayor's 10% target increase. In the circumstances it seems to me reasonable to require a contribution for any of these trees that could not be planted for whatever reason so that another could be planted off-site. The cost of £3,000 per tree has been worked out to include the size of the trees and nature of the tree pits as well as subsequent maintenance. There are also two protected trees at potential risk and there is provision for the replacement value to be provided. These obligations are reasonable and necessary in order to maintain a green environment and enhance biodiversity.

Affordable workspace and commercial units

491. The justification for these covenants has been dealt with under Consideration Three.

Employment and training, construction apprenticeships and local procurement (schedule 11)

492. Giving local people the opportunity to benefit from obtaining employment and

training opportunities in respect of the new appeal development, both in the construction and operational stages, is supported by policy 4.12 in the London Plan, Strategic Policy 10 in the CS and saved policy 1.1 in the Southwark Plan. The covenants relating to these matters are therefore justified. The targets have been worked out in accordance with the S106 SPD.

493. There are penalties to be paid in accordance with the formulae in the S106 SPD if the targets are not met as a result of the Appellant failing to use all reasonable endeavours. These monies would be used by the Council to provide equivalent local opportunities. This seems reasonable and necessary because the S106 SPD indicates that such penalty contributions would be required in *exceptional circumstances*. If all reasonable endeavours are made to meet them but fail to result in a positive outcome, that would not justify penalty charges.

Energy strategy, district CHP and estate management strategy (schedule 12)

494. Policy 5.2 in the London Plan seeks to ensure that development minimises carbon dioxide emissions and there is also encouragement to use decentralised energy networks to that end. An energy strategy was submitted with the planning application which, amongst other things, included targets for the reduction of carbon dioxide emissions over and above the Building Regulations. The Site Wide Energy Strategy to be provided will demonstrate how these can be delivered across the site and must be approved prior to occupation.
495. There are also provisions to show how the development will be able to be connected to the District CHP in the future. These obligations are all necessary to ensure that the impact of the appeal scheme on climate change is minimised.
496. Obligations are included that show how the development will be managed in terms of ongoing maintenance and servicing. The latter will include access, cleansing, drainage and the collection of refuse. This will be undertaken either by a company or competent manager and the arrangements will be included in the Estate Management Plan to be approved by the Council and thereafter applied in perpetuity. These are necessary provisions to ensure that the public parts of the development would operate properly and be suitably maintained.

Architect (schedule 18)

497. I am not convinced in this case that the construction of the proposed development would necessitate the architectural practice that designed it being involved in the detailed implementation. For the reasons I have given I do not consider that the design is of exemplary quality but, in any event, this is an onerous obligation that would only be justified in exceptional circumstances. Whilst the continuation of HTA Design LLP may be desirable to the continuity of the project at detailed design stage it does not pass the test of necessity.

Conclusion

498. Drawing together the above points, I conclude that all of the planning obligations other than those specifically referred to in the paragraphs above constitute a reason for granting planning permission in accordance with Regulation 122 of the CIL Regulations.
499. For the avoidance of doubt, I do not consider that the following obligations meet

the tests in Paragraph 122 of the CIL Regulations. They have not been taken into account in my recommendation to the Secretary of State:

- Provisions for a second viability review
- Archaeology contribution (£11,171)
- CPZ Study Fund Contribution ((£10,000)
- Administration Cost (£21,023)
- Provisions relating to the Wells Way Operational Performance Review
- Provisions relating to the retention of the Architect

CONSIDERATION NINE: OVERALL CONCLUSIONS AND PLANNING BALANCE

500. The appeal proposal is Environmental Impact Assessment development. In reaching my conclusions and making my recommendation to the Secretary of State I have taken account of the environmental consequences as established in the information provided within the ES and the evidence to the inquiry.
501. The appeal proposal would regenerate a brownfield site where I have concluded that most of the existing buildings would be unlikely to be capable of viable refurbishment and re-use. The appeal scheme would provide new, good quality Class B premises, 10% of which would be affordable workspace for small businesses. There would be a significant increase in the number of available jobs relative to what currently exists at the site. This would also exceed the jobs that could reasonably be provided if it were to be redeveloped for industrial purposes. These would be benefits of significant weight.
502. The provision of 35% of the homes as affordable, with a policy compliant tenure mix, would be a significant benefit that would contribute to the very considerable affordable housing need in the Borough. Whilst the provision of 499 homes generally would also be a benefit and would help boost housing supply in accordance with the Framework, the weight should be reduced to moderate due to the less than exemplary nature of the accommodation provided overall.
503. The scheme would provide a vibrant public realm that those living and working on the site as well as visitors could enjoy. The scheme would also introduce permeability and routes through from Wells Way and Parkhouse Street where none currently exist. There would also be the ability to link through to the Big Yellow site where there is land safeguarded for a pedestrian and cycle route to Southampton Way. These benefits have significant weight. The existing chimney would be refurbished but it would to some degree be overwhelmed by its taller neighbours so the benefit arising would be limited.
504. Other advantages would include the jobs generated during construction as well as increased spending in the local and wider London economy during the construction and operational phases. These benefits have moderate weight.
505. I have concluded that the harm to the significance of the former Church of St George, would be less than substantial in nature. I attribute great weight and importance to the conservation of the heritage asset. However, the public benefits that would flow from the appeal scheme would be considerable and

would be sufficient to outweigh the identified harm in this case.

506. There is no dispute that the development plan and the policies that it contains are consistent with the Framework and therefore up-to-date. Furthermore, it is agreed that there is no issue with the Council's housing land supply or in terms of the Housing Delivery Test. In such circumstances the normal planning balance applies, and Paragraph 11 of the Framework is not engaged.
507. The proposal would conflict with the relevant employment land use policies, including Strategic Policy 10 in the CS. Setting aside whether this is a suitable place for densities above the applicable range in the CS and London Plan or whether it is a site where tall buildings would be appropriate, I have great concerns about the quality of accommodation that it would offer and also the relationship of the development with its townscape context. When considered in the round this would not be an exemplary development.
508. Overall it seems to me that rather than optimising the use of the land resource the scheme has sought to maximise it and this has resulted in a quality of development that at several levels would not be acceptable. The harm I have identified in terms of daylight and sunlight to some nearby residential properties may not be sufficient in itself to turn away the scheme but it is a further indication that the development would be out of harmony with its receiving environment. There would be conflict with Strategic Policy 5 and Strategic Policy 12 in the CS as well as other policies relating to design and residential amenity.
509. I acknowledge that there are some policies in the development plan that support the scheme. However, I consider that the most important policies to the determination of this appeal are those referred to above with which it would conflict. In such circumstances I do not consider that the appeal proposal would accord with the development plan as a whole.
510. The emerging New Southwark Plan favours a mixed-use development on the site. For the reasons I have given, I consider that there would be conflict with draft policy P26 and draft allocation NSP23 because there would be some loss of Class B floorspace. However, I recognise that the loss would be relatively insignificant. Nevertheless, these draft policies have limited weight at the present time due to the stage of the plan in the adoption process and the unresolved objections to it.
511. The benefits that I have referred to above would be of considerable importance. However, I do not consider that they would outweigh the harm that would ensue, which together are matters of substantial importance. The appeal proposal would conflict with the development plan when taken as a whole and material considerations do not indicate that it should be determined otherwise.

INSPECTOR'S RECOMMENDATION

512. That the appeal be dismissed. However, if the Secretary of State does not agree and wishes to grant planning permission, I commend the planning conditions at Annex Three.

Christina Downes

INSPECTOR

ANNEX ONE: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: COUNCIL OF THE LB SOUTHWARK

Mr Charles Streeten	Of Counsel, instructed by the Director of Law and Democracy at the Council of the London Borough of Southwark
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He called:

Ms V Crosby MA (Cantab) MA	Team Leader in the Strategic Applications Planning Team
Ms L Hills BA(Hons) MPlan MRTPI	Team Leader in the Planning Policy Team
*Ms M Foley	Solicitor acting on behalf of the Council

Participated in conditions and planning obligations sessions only

FOR THE APPELLANT: PEACHTREE SERVICES LTD

Mr Neil Cameron	Of Queen's Counsel
Mr Luke Wilcox	Of Counsel, both instructed by DP9

They called:

Mr C Ainger BA(Hons)	Partner of HTA Design Ltd
Mr J Marginson MA(Hons) MRTPI	Director of DP9
Mr G Ingram MRICS	Partner of Gordon Ingram Associates
Mr J Stephenson FRICS MCIARB	Senior Director of Grant Mills Wood
Ms M Theobald BSc(Hons) PGDip MIHT	Director of Peter Brett Associates (now part of Santec)
Mr N Bridges BSc(Hons) BArch(Hons) RIBA FRSA	Senior Partner of Bridges Associates Architects LLP
Mr R Fourt BSc(Hons) MSc FRICS	Partner of Gerald Eve
Mr M Maclagan PgDip MIOA	Technical Director of Waterman

FOR THE RULE 6 PARTY: THE LOCAL GROUP

Ms Esther Drabkin-Reiter	Of Counsel, instructed by Harpreet Aujla of the Southwark Law Centre
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She called:

Professor M Brearley BA DipArch(Cantab) RIBA	Professor of urban design and planning at the John Cass School of Art, Architecture and Design, London Metropolitan University and Proprietor of Kaymet
Mr G Venning MA(Cantab)	Director of Bailey Venning Associates
Mr J Russell BEng(Hons) MIHT CMILT	Regional Director of Motion Limited
Mr P Hearmon LLB(Hons)	Senior Surveyor at Right of Light Consulting Ltd
Dr P Lorgelly	Member of The Local Group
Ms S Crisp	Member of The Local Group

Ms H Aujla	Member of The Local Group
Ms L Stephenson	Member of The Local Group
Ms K Joyce	Member of The Local Group
Ms A Spence	Member of The Local Group
Mr J Welch	Member of The Local Group

ANNEX TWO: DOCUMENTS AND PLANS

CORE DOCUMENTS

A: Originally submitted planning application documents

CD A1	Application Covering Letter, prepared by DP9 Ltd.
CD A2	Planning Application Form, prepared by DP9 Ltd.
CD A3	Community Infrastructure Levy (CIL) – Planning Application Additional Information Requirement Form, prepared by DP9 Ltd.
CD A4	Planning Application Drawings, prepared by HTA Architects – as set out in Appendix 1
CD A5	Design and Access Statement, prepared by HTA Architects
CD A6	Planning Statement, prepared by DP9 Ltd.
CD A7	Statement of Community Involvement, prepared by Four Communications
CD A8	Energy Strategy, prepared by Waterman
CD A9	BREEAM Assessments, prepared by Waterman
CD A10	Sustainability Statement, prepared by Trium Environmental Consultancy
CD A11	Internal Daylight / Sunlight Report, prepared by Malcolm Hollis
CD A12	Historic Environment Assessment, prepared by MOLA
CD A13	Basement Construction Method Statement, prepared by Waterman
CD A14	Structural Feasibility Report, prepared by Waterman
CD A15	Equalities Statement, prepared by Volterra
CD A16	Arboricultural Survey and Impact Assessment, prepared by The Ecology Consultancy
CD A17	Preliminary Ecological Appraisal, prepared by The Ecology Consultancy
CD A18	Bat Survey Report, prepared by The Ecology Consultancy
CD A19	Phase 1 Environmental Risk Assessment, prepared by Groundsure
CD A20	Draft Construction Environmental Management Plan, prepared by Trium
CD A21	Utilities Report, prepared by Waterman
CD A22	Financial Viability Assessment, prepared by Gerald Eve
CD A23	Environmental Statement Volume I: Main Text and Figures
CD A24	Environmental Statement Volume II: Townscape, Heritage and Visual Impact Assessment (prepared by Montagu Evans and Cityscape)
CD A25	Environmental Statement Volume III: Technical Appendices
CD A26	Environmental Statement: Non-Technical Summary
CD A27	Schedule of accommodation prepared by HTA

B: Submitted revisions to planning application documents and additional submitted documentation

CD B	Planning Statement Addendum, prepared by DP9 Ltd
CD B2	Draft Business Relocation Strategy, prepared by DP9 Ltd

CD B3	Revised Arboricultural Survey and Impact Assessment, prepared by The Ecology Consultancy
CD B4	Revised Bat Survey Report, prepared by The Ecology Consultancy
CD B5	Revised Equalities Statement, prepared by Volterra
CD B6	Revised Historic Environment Assessment, prepared by MOLA
CD B7	Revised Internal Daylight/Sunlight Report, prepared by Malcolm Hollis
CD B8	Review of the Overheating Mitigation Strategy Note, prepared by Malcolm Hollis
CD B9	Revised Phase 1 Environmental Risk Assessment, prepared by Groundsure
CD B10	Revised Preliminary Ecology Appraisal, prepared by The Ecology Consultant
CD B11	Revised Energy Statement, prepared by Waterman
CD B12	Revised Statement of Community Involvement, prepared by Four Communications
CD B13	Revised Sustainability Statement, prepared by Trium Environmental Consultancy
CD B14	Revised Application Drawings, prepared by HTA Architects – as set out in Appendix 1
CD B15	Revised Accommodation Schedule, prepared by HTA Architects
CD B16	Revised Commercial Accommodation Schedule, prepared by HTA Architects
CD B17	Revised Design and Access Statement, prepared by HTA Architects
CD B18	Revised Landscape Drawings, prepared by HTA Architects – as set out in Appendix 1
CD B19	Revised Environmental Statement Volume I: Main Text and Figures
CD B20	Revised Environmental Statement Volume II: Townscape, Heritage and Visual Impact Assessment (prepared by Montagu Evans and Cityscape)
CD B21	Revised Environmental Statement Volume III: Technical Appendices
CD B22	Revised Environmental Statement: Non-Technical Summary
CD B23	Unit Area Schedules, prepared by HTA

C: Development plan documents and guidance

CD C1	The National Planning Policy Framework (February 2019)
CD C2	The Planning Practice Guidance (as amended May 2019)
CD C3	The London Plan (The Spatial Development Strategy for London Consolidated with Alterations Since 2011) (March 2016)
CD C4	Greater London Authority Housing SPG (March 2016)
CD C5	Greater London Authority Affordable Housing and Viability SPG (August 2017)

CD C6	GLA Shaping Neighbourhoods: Play and Informal Recreation SPG (September 2012)
CD C7	Draft New London Plan Further Suggested Changes (2019)
CD C8	London Borough of Southwark: Core Strategy (adopted 2011)
CD C9	London Borough of Southwark: Southwark Plan 2007 Saved Policies (Saved March 2013)
CD C10	London Borough of Southwark Proposals Map
CD C11	Southwark Development Viability SPD (adopted 2016)
CD C12	Southwark Residential Design Standards SPD with Technical Update (adopted 2015)
CD C13	Southwark Section 106 Planning Obligations/CIL SPD (adopted 2015)
CD C14	Southwark Section 106 Planning Obligations/CIL SPD addendum (January 2017)
CD C15	Southwark Affordable Housing SPD (adopted 2008)
CD C16	Draft Southwark Affordable Housing SPD (2011)
CD C17	Southwark Sustainable Design and Construction SPD (adopted 2009)
CD C18	Southwark Sustainability Assessments SPD (adopted 2009)
CD C19	Southwark Statement of Community Involvement (adopted 2008)
CD C20	Draft New Southwark Plan Proposed Submission Version (December 2017)
CD C21	New Southwark Plan Proposed Submission Version: Amended Policies 2019 (January 2019)
CD C22	Old Kent Road Area Action Plan (2017)
CD C23	GLA Land for Industry and Transport SPG (September 2012)

D: Development plan evidence base documents

CD D1	London Borough of Southwark Employment Land Study Part 1 (January 2016)
CD D2	Old Kent Road Workspace Demand Study (May 2019)
CD D3	Southwark Industrial and Warehousing Land Study (2014)
CD D4	Southwark Five and Fifteen Year Housing Land Supply: 2016 – 2031
CD D5	London Plan Annual Monitoring Report 14 2016/17 (September 2018)
CD D6	Southwark Core strategy SINC background paper (2010)
CD D7	Southwark Open Space Strategy (2013)
CD D8	Burgess Park Habitat Survey Report (London Wildlife Limited, 2013)
CD D9	Burgess Park Masterplan (2015)
CD D10	New Southwark Plan Evidence Base: Site Allocations Methodology Report
CD D11	GLA Vacant Ground Floors in New Mixed-Use Development (December 2016)
CD D12	GLA Industrial Intensification Primer (January 2017)
CD D13	CAG London Industrial Land Demand (June 2017)
CD D14	GLA Industrial Intensification Practice Note (November 2018)

- CD D15 Southwark Workspace Provider List (Summer 2019-20)
- CD D16 South East London Strategic Housing Market Assessment (June 2014)
- CD D17 London Plan Annual Monitoring Report 12 2014/15 (July 2016)
- CD D18 Southwark Biodiversity Action Plan Evidence Base 2013
- CD D19 London Industrial Land Supply & Economy Study 2015

E: London Borough of Southwark Planning Committee Report

- CD E1 Development Planning Committee Report
- CD E2 Addendum Committee report (27 November 2018)

F: Minutes from Southwark Planning Committee

- CD F1 Formal minutes from Committee meeting held on 27 November 2018

G: Decision notice

- CD G1 Decision notice (31 January 2019)

H: Appeal documents

- CD H1 Appellant's statement of case
- CD H2 Southwark Council's statement of case
- CD H3 Statement of Common Ground on planning matters (9 August 2019)
- CD H4 Local Group's statement of case
- CD H5 Local representations on the appeal

I: Consultation responses

- CD I1 Stage 1 Report from the GLA (18 June 2018)
- CD I2 Stage 2 Report from the GLA (28 January 2019)
- CD I3 Report of the Design Review Panel

J: Other documentation

- CD J1 TfL letter to PINS in relation to the appeal, 20/06/2019
- CD J2 TfL Permanent Bus Changes 12 April 2019 to 30 June 2019 document
- CD J3 TfL Bus changes consultation report (April 2019)
- CD J4 TfL Bus changes confirmed implementation dates (2019)
- CD J5 BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice'
- CD J6 The Housing White Paper (February 2017) ("Fixing our broken housing market")
- CD J7 Technical Housing Standards – Nationally Described Space Standards (March 2015)
- CD J8 Planning Appeal Start Letter, dated 16 April 2019

CD J9	Secretary of State Appeal Recovery Letter, dated 24 April 2019
CD J10	Case Management Conference Note
CD J11	Appeal Decision APP/V5570/W/17/3171437 (The Whitechapel Estate)
CD J12	Appeal Decision APP/E5900/W/17/319757 (21 Buckle Street)
CD J13	GLA Representation Hearing Report – Appendix 1 (D&P/3067/03) – Holy Trinity Primary School, London Borough of Hackney
CD J14	GLA Representation Hearing Report (D&P/3698/01) – Monmouth House, London Borough of Islington
CD J15	BS EN 17037:2018 Daylight in Buildings
CD J16	BS 8206-2:2008 (Lighting for Buildings. Code of Practice for Daylighting)
CD J17	Aylesbury First Development Site: Design and Access Statement

PROOFS OF EVIDENCE

Appellant

POE 1	Mr Ainger's proof of evidence
POE 2	Mr Ainger's rebuttal proof
POE 3	Mr Marginson's proof of evidence and appendices
POE 4	Mr Marginson's rebuttal proof
POE 5	Mr Ingram's proof of evidence
POE 6	Mr Ingram's appendices
POE 7	Mr Ingram's rebuttal proof
POE 8	Ms Theobold's proof of evidence and appendices
POE 9	Ms Theobold's rebuttal proof and appendices
POE 10	Mr Bridges' proof of evidence
POE 11	Mr Bridges' appendices
POE 12	Mr Bridges' rebuttal proof
POE 13	Mr Stephenson's proof of evidence and appendices
POE 14	Mr Stephenson's rebuttal proof

Southwark Council

POE 15	Ms Crosby's proof of evidence
POE 16	Ms Hills' proof of evidence

The Local Group

POE 17	Local Groups' proof of evidence and appendix on density and design
POE 18	Local Group's rebuttal proof on density and design
POE 19	Professor Brearley's proof of evidence
POE 20	Professor Brearley's rebuttal proof
POE 21	Mr Venning's proof of evidence
POE 22	Ms Crisp's proof of evidence and appendices
POE 23	Mr Russell's proof of evidence and appendices

POE 24 Mr Hearmon's proof of evidence

DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ 1 Court of Appeal judgement *Gladman Developments Ltd v Canterbury City Council* [2019] EWCA Civ 669 (submitted by Mr Streeten)
- INQ 2 Presentation given to the inquiry by Mr Ainger
- INQ 3A Presentation given to the inquiry by Mr Ingram on standard of accommodation
- INQ 3B Presentation given to the inquiry by Mr Ingram on living conditions
- INQ 4 Email correspondence from the Local Group regarding viability evidence (submitted by Ms Drabkin-Reiter)
- INQ 5 Appellant's note on noise issues (submitted by Mr Cameron)
- INQ 6 Letter from Arbeit Project Ltd (submitted by Mr Cameron)
- INQ 7 Planning Officer's report to Planning Committee about redevelopment proposals at Dockley Road Industrial Estate (submitted by Mr Cameron)
- INQ 8 Statement of Common Ground on financial viability
- INQ 9 Statement of Common Ground on townscape and heritage
- INQ 10 Representations to the planning application (submitted by Mr Streeten)
- INQ 11 Planning officer's report to Planning Committee about redevelopment proposals at Cantium Retail Park, Old Kent Road (submitted by Mr Cameron)
- INQ 12 Folder of viability background information (submitted by Mr Cameron)
- INQ 13 Statement of Common Ground on accessibility
- INQ 14 Summary statement addressed by Professor Brearley at the inquiry
- INQ 15 Report of the Design Review Panel (11 July 2017)
- INQ 16 Statement of Common Ground on daylight and sunlight
- INQ 17 Statement of Common Ground on employment land use
- INQ 18 Summary of Mr Ingram's evidence on daylight and sunlight
- INQ 19 Viability summary from the planning application for a mixed-use redevelopment at 21-23 Parkhouse Street (submitted by Mr Streeten)
- INQ 20 Certificate of Lawfulness relating to 47 Southampton Way (2 October 2008) (submitted by Ms Drabkin-Reiter)
- INQ 21 Representations to draft policy NSP 23 in the New Soutwark Plan (submitted by Mr Streeten)
- INQ 22 Planning Practice Guidance: Noise (submitted by Mr Cameron)
- INQ 23 Statement on affordable housing and copy of appeal decision referred to within it (submitted by Mr Cameron)
- INQ 24 Corrected window maps for VSC and NSL values relating to existing adjoining properties in Parkhouse Street, Wells Way and 47 Southampton Way (submitted by Mr Cameron)
- INQ 25 Information regarding the adjoining scaffolding site, proposed redevelopments on surrounding sites and the

- listed buildings at 73-75 Southampton Way (submitted by Mr Streeten)
- INQ 26 Booklet of reference drawings to assist with proposed condition 21 (submitted by Mr Cameron)
- INQ 27A Draft Section 106 Agreement and comments on it from the Council and Appellant (dated 7 August 2019)
- INQ 27B Draft Unilateral Undertaking relating to points at issue by the Appellant on matters in the Section 106 Agreement and explanatory correspondence (submitted by Mr Cameron)
- INQ 28 High Court judgement relating to the late stage viability and paragraph 10 of the Mayor's affordable housing and viability supplementary planning guidance 2017 (submitted by Mr Cameron)
- INQ 29 CIL compliance statement (submitted by Mr Streeten)
- INQ 30 Soutwark Streetscape Design Manual (submitted by Mr Streeten)
- INQ 31 Pre-commencement conditions statement (submitted by Mr Cameron)
- INQ 32 Draft schedule of conditions
- INQ 33 Appeal decision by the Secretary of State relating to a mixed-use development on land at Chiswick Roundabout. London W4 (APP/F5540/Z/17/3173208) (submitted by Mr Streeten)
- INQ 34 Conditions relating to the new employment uses proposed by Professor Brearley (submitted by Ms Drabkin-Reiter)
- INQ 35 Appellant's comment on the use of the words "up to" in relation to commercial floorspace
- INQ 36 Opening and closing submissions by Ms Drabkin-Reiter on behalf of the Local Group
- INQ 37 Opening and closing submissions by Mr Streeten on behalf of the Council
- INQ 38 Opening and closing submissions, including relevant caselaw, by Mr Cameron on behalf of the Appellant
- INQ 39 Site visit maps and schedule

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- INQ 40 Consultation responses from the Council's Ecologist and Environmental Team
- INQ 41 Draft servicing and Travel Plan conditions (submitted by the Appellant)
- INQ 42 Noise condition note (submitted by the Appellant)
- INQ 43 Draft materials condition (submitted by the Appellant)
- INQ 44 List of application drawings and additional drawing showing Block A house numbers (submitted by the Appellant)
- INQ 45 Corrected accommodation schedule (submitted by the Appellant)
- INQ 46 Further information on the calculation of financial contributions (submitted by the Council)
- INQ 47 Executed Planning Obligation by Unilateral Undertaking (dated 29 October 2019)

INQ 48 Further information from Thames Water about its suggested condition

PLANS

- A Application Plans (see schedule at Document INQ 44)
- B Booklet of reference drawings used at the inquiry
- C Ground and first floor plans of Block A, including plot numbers

ANNEX THREE: SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall not be carried out otherwise than in accordance with the approved plans in Annex Four.
2. The development hereby permitted shall begin not later than three years from the date of this decision.
3. No piling shall take place for each block until a Piling Method Statement for that block has been submitted to and approved in writing by the local planning authority. The Piling Method Statement shall detail the depth and type of piling to be undertaken; the methodology by which such piling will be carried out; the measures to prevent and minimise the potential for damage to subsurface water infrastructure and risks to groundwater; and the programme for the works. Any piling shall be undertaken in accordance with the terms of the approved Piling Method Statement.
4. No development shall be carried out (excluding demolition) until details have been submitted to and approved in writing by the local planning authority to demonstrate that all water network upgrades required to accommodate the additional flows to serve the development have been completed or that a suitable housing and infrastructure phasing plan has been prepared that will deliver the necessary upgrades within an appropriate timeframe. Development shall be carried out in accordance with the approved details and timeframe.
5. No demolition shall be carried out until a Demolition Environmental Management Plan (DEMP) has been submitted to and approved in writing by the local planning authority. The approved DEMP shall be adhered to throughout the demolition period and shall include the following information:
 - the parking of vehicles of site operatives and visitors;
 - details of the site manager, including contact details, and the location of a large notice board on the site that clearly identifies these details;
 - the loading, unloading and storage of plant;
 - the erection and maintenance of security hoardings;
 - details of all external lighting;
 - measures to be adopted to maintain the site in a tidy condition in terms of waste storage, separation, recycling and disposal;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during demolition;
 - all non-road mobile machinery used in connection with the demolition process shall meet the minimum emission requirements set out in the Mayor of London's *Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance 2014*.
 - A commitment to adopt and implement the Institution of Civil Engineers *Demolition Protocol*;
 - Routing of site traffic;

- The protection measures for the retained chimney in the centre of the site.

Working hours shall be limited to 0800-1800 Monday to Friday, 0900-1400 on Saturdays and no working on Sundays and public holidays.

6. No development shall be carried out (excluding demolition) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The approved CEMP shall be adhered to throughout the construction period and shall include the following information:

- the parking of vehicles of site operatives and visitors;
- details of the site manager, including contact details, and the location of a large notice board on the site that clearly identifies these details;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoardings;
- details of all external lighting;
- measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of plant and materials and similar construction activities;
- wheel washing facilities;
- a scheme for recycling/disposing of waste resulting from construction works;
- all non-road mobile machinery, used in connection with the construction of the development hereby permitted, shall meet the minimum emission requirements set out in the Mayor of London's *Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance 2014*.
- A commitment to adopt and implement the *Considerate Contractor Scheme Registration*;
- Routeing of site traffic;
- The protection measures for the retained chimney in the centre of the site.

Working hours shall be limited to 0800-1800 Monday to Friday, 0900-1400 on Saturdays and no working on Sundays and public holidays.

7. A) Prior to the commencement of development, a Phase 2 site investigation and risk assessment shall be submitted to and approved in writing by the local planning authority prior to the commencement of any remediation that might be required.
- B) In the event that contamination is present, a detailed remediation strategy to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared and submitted to the local planning authority for approval in writing. The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of

any development other than that required to carry out remediation. The local planning authority shall be given two weeks written notification of commencement of the remediation works.

- C) Following the completion of the approved measures in the remediation strategy in part B), a verification report providing evidence that all work required by the remediation strategy has been completed, shall be submitted to and approved in writing by the local planning authority.
- D) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing immediately to the local planning authority. A scheme of investigation and risk assessment, a remediation strategy and verification report shall be submitted to and approved in writing by the local planning authority in accordance with A)-C) above.
8. No development shall take place (excluding demolition) until full details of the 39 trees to be planted, to include 16 street trees, have been submitted to and approved in writing by the local planning authority. The details shall include:
- Tree pit cross sections;
 - Planting and maintenance specifications;
 - Use of guards or other protective measures;
 - The location of where the trees will be planted;
 - The species, sizes, and nursery stock type;
 - A programme of planting.

All tree planting shall be carried out in accordance with the approved details and programme. Planting shall comply with BS5837: *Trees in relation to demolition, design and construction* (2012) and BS: 4428 *Code of practice for general landscaping operations*.

If within a period of five years from the date of the planting of any tree on the site that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place in the first suitable planting season, unless the local planning authority gives its written consent to any variation.

9. No development shall be carried out (including demolition) until an Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the local planning authority. The approved AMS shall be adhered to throughout the demolition and construction period and shall include the following information:
- The means by which any retained trees on or directly adjacent to the site are to be protected from damage during the demolition and construction periods.
 - Protection measures in accordance with BS 5837: (2012) *Trees in relation to demolition, design and construction - recommendations* and BS 3998: (2010) *Tree work – recommendations*;

- Details of facilitative pruning specifications and a supervision schedule overseen by an accredited arboricultural consultant;
- Arrangements for a pre-commencement meeting with the local planning authority's Urban Forester;
- Cross sections to show surface and other changes to levels, special engineering or construction details and any proposed activity within root protection areas required in order to facilitate demolition, construction and excavation.

If within the expiration of 5 years from the completion of development any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place and that tree shall be of the same size and species unless otherwise agreed in writing by the local planning authority.

10. No development shall be carried out (including demolition) until:
 - A) A written scheme of investigation (WSI), which establishes a programme of archaeological evaluation through initial investigative trial trenching, has been submitted to and approved in writing by the local planning authority.
 - B) A report on the results of the evaluation works has been submitted to and approved in writing by the local planning authority.
 - C) A further programme of archaeological work has been carried out if it is required by the evaluation under B) above. This further programme of archaeological work shall be in accordance with a second WSI for archaeological mitigation, which shall be submitted to and approved in writing by the local planning authority for approval in writing. The development shall be carried out in accordance with the approved further programme of archaeological work.
 - D) Within 6 months of the completion of the archaeological work, a report shall have been submitted to and approved in writing by the local planning authority. This report shall detail the results of the on-site work, proposals for off-site post-excavation works, including publication of the site and preparation of the archive.
11. No development shall be carried out (excluding demolition) until a detailed Surface Water Drainage Strategy (SWDS), which incorporates sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The SWDS shall demonstrate that there would be no unacceptable risk to Controlled Waters and shall adhere to the recommendations of the 2016 *Southwark Strategic Flood Risk Assessment*. It shall include the sustainable drainage feature types, their locations, attenuation volumes, discharge rates and a timetable for implementation. The development shall be carried out in accordance with the approved SWDS and its timetable.
12. No development shall be carried out (including demolition) until a detailed method statement for the eradication or long-term management of Japanese Knotweed, and a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved method statement and timetable.

13. No above ground development shall be carried out (excluding demolition) until samples of all facing materials to be used have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved samples.
14. No above ground development on a block shall be carried out (excluding the construction of approved lift and stair cores), until sample-panels for that block to include the brickwork, bonding and pointing, have been erected on-site and thereafter approved in writing by the local planning authority. The development of each block shall be carried out in accordance with its approved sample-panels.
15. No above ground development shall be carried out (excluding demolition) until an assessment of the interference to existing television, radio and other telecommunications services has been submitted to and approved in writing by the local planning authority. The assessment shall include the method and results of surveys carried out, the measures to be taken to rectify any identified problems and a timetable for implementation. The development shall be carried out in accordance with the approved assessment and timetable.
16. No above ground development on a block shall be carried out until drawings, at a scale of 1:50, showing detailed specifications of the secure and covered cycle storage for that block and the associated visitor cycle parking for that block, have been submitted to and approved in writing by the local planning authority. The cycle parking facilities shall be provided before the first occupation of the block in accordance with the approved drawings and specifications. The cycle parking facilities shall be retained for the lifetime of the development and the space shall not be used for any other purpose.
17. No above ground development shall be carried out (excluding demolition) until details of the means of enclosure, along all site boundaries and a timetable for its provision have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and timetable.
18. No above ground development on Blocks B-M shall be carried out until details of the biodiversity (green/brown) roof for that block, including future provision for management and maintenance for the lifetime of the development, have been submitted to and approved in writing by the local planning authority. The biodiversity (green/brown) roof shall:
 - Include an extensive substrate base of a depth 80-150mm;
 - Be planted/seeded with an agreed mix of species within the first planting season following the practical completion of the building works for that block.
 - Focus on wildflower planting with no more than a maximum of 25% sedum coverage.

The biodiversity (green/ brown) roof and its future management and maintenance, shall be carried out in accordance with the approved details and shall be completed before first occupation of that block.

19. No above ground development shall be carried out until detailed drawings of a hard and soft landscaping scheme showing the treatment of all parts of the site

not covered by buildings and including the communal podium gardens and communal roof terraces, have been submitted to and approved in writing by the local planning authority. The hard and soft landscaping scheme shall include cross sections, surfacing materials and edge details to be used in any parking area, access, yard, internal street or pathway. The development shall be carried out in accordance with the approved hard and soft landscaping scheme.

The hard landscaping works shall be completed prior to the first occupation of the development and shall be retained for their intended purpose for the lifetime of the development. The soft landscaping works shall be carried out in the first planting season following completion of building works. Any trees or shrubs that are found to be dead, dying, severely damaged or diseased within five years of the completion of the soft landscaping scheme, shall be replaced in the next planting season by specimens of the same size and species in the first suitable planting season.

20. No above ground development on a block shall be carried out (excluding the construction of approved lift and stair cores) until detailed sections at a scale of at least 1:20 through the facades, balconies, parapets and heads, cills and jambs of all openings for that block have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
21. No above ground development shall be carried out until details of 2 Bat boxes, 6 Swift bricks and 6 Sparrow bricks have been submitted to and approved in writing by the local planning authority. The details shall include the location, orientation and design of the boxes and bricks and a timetable for their provision. The development shall be carried out in accordance with the approved details and timetable.
22. No above ground development on a block shall be carried out (excluding the construction of approved lift and stair cores) until details of obscure glazing or other privacy devices for that block have been submitted to and approved in writing by the local planning authority as follows:
 - Block A – House 1 (as identified on Plan C), first floor windows facing south-west towards Southampton Way; Houses 2-5 (as identified on Plan C), first floor south-east facing windows on the front elevation facing 1-13 Parkhouse Street.
 - Block B - first floor windows facing towards 13 Parkhouse Street to protect the privacy of its windows and garden.
 - Block B - balconies facing towards 21-23 Parkhouse Street.
 - Block C - windows, balconies and/ or deck accesses facing towards 45 and 47 Southampton Way to protect the privacy of existing windows and gardens.
 - Blocks D and E - windows within these blocks facing each other to protect the privacy of new occupiers.
 - Blocks E and J - windows within these blocks facing each other to protect the privacy of new occupiers.

- Blocks F and G - windows within these blocks facing each other to protect the privacy of new occupiers.
- Blocks F and I - windows within these blocks facing each other to protect the privacy of new occupiers.
- Blocks H and G - windows within these blocks facing each other to protect the privacy of new occupiers.
- Block J and M - west facing windows facing towards the scaffolding site.

The development shall be carried out in accordance with the approved details prior to the first occupation of the units affected. The obscure glazing and privacy devices shall be retained for the lifetime of the development.

23. The development shall not be occupied until the children's play spaces have been laid out and play equipment installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. This shall include details of design, materials and target age group. The play spaces and equipment shall be retained for their intended purpose for the lifetime of the development.
24. Before the first occupation of a block, the car parking spaces shall be provided and made available for occupiers of that block. The car parking spaces shall be retained for the purposes of car parking for vehicles of residents and no trade or business shall be carried out thereon. At least three of the spaces shall be fitted with active electric vehicle charging points, and at least three of the spaces fitted with passive electric vehicle charging points.
25. A Delivery and Servicing Management Plan (DSMP) for the residential and non-residential units shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development. The DSMP shall be carried out and operated as approved for the lifetime of the development. The DSMP shall also include:
 - details of mechanisms to ensure one-way east-west traffic routeing through the site.
 - Details of bollards within the development, including their positions in relation to the adjacent footways.

Servicing for the ground floor Class A, B and D2 units in Blocks B-L shall only take place between the hours of 0800-2000 Mondays to Saturdays and not at all on Sundays and public holidays. No servicing by Heavy Goods Vehicles shall take place between 0800-0900 and 1500-1600 during school term time.

26. Before the occupation of the first commercial unit, a Travel Plan for the commercial development shall be submitted to and approved in writing by the local planning authority. This shall be in accordance with the targets in the Site Wide Framework Travel Plan included in the ES and shall describe the means by which users of that part of the development will be encouraged to travel to the site by means other than the private car. The approved Travel Plan shall be implemented, monitored and reviewed at intervals to be first agreed with the local planning authority in writing. A copy of the review and action plan arising

from it shall be submitted to the local planning authority and retained thereafter.

27. Before the occupation of the first residential unit, a Travel Plan for the residential development shall be submitted to and approved in writing by the local planning authority. This shall be in accordance with the targets in the Interim Residential Travel Plan included in the ES and shall describe the means by which residents, visitors and users of residential elements of the development will be encouraged to travel to the site by means other than the private car. The approved Travel Plan shall be implemented, monitored and reviewed at intervals to be first agreed with the local planning authority in writing. A copy of the review and action plan arising from it shall be submitted to the local planning authority and retained thereafter.
28. No above ground development on Blocks B-L shall be carried out until details of a scheme for the ventilation of the non-residential units within that block to an appropriate outlet level have been submitted to and approved in writing by the local planning authority. The details shall include sound attenuation measures for any necessary plant, the standard of dilution expected and a timetable for provision. The development shall be carried out in accordance with the approved details and timetable.
29. Before the occupation of a block details to demonstrate that the block has achieved, or is on course to achieving, Secured by Design certification shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Within three months of the occupation of the final block to be completed, details of Secured by Design certification for the entire site shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

30. The development shall not be first occupied until details of how residents in each block (apart from Block A) will be provided access to communal amenity space and how each block (including Block A) will be provided access to communal play space have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
31. A minimum of 2,023m² of the Class B1 floorspace hereby permitted shall be used for Class B1c purposes only (light industry appropriate in a residential area).
32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) the B1 floorspace shall not be used for any other purpose in Classes O, P or PA of Schedule 2, Part 3.
33. 90% of the residential units shall meet Building Regulation requirement M4(2) and 10% shall meet Building Regulation requirement M4(3).
34. Before the occupation of a block, the refuse and recycling arrangements shown on the approved drawings for that block shall be provided and made available for use. The refuse and recycling storage facilities shall thereafter be retained for their intended purpose.

35. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any future amendment to or re-enactment of that Order, no satellite dishes, telecommunications masts or equipment or associated structures, shall be installed on the buildings or their roofs.
 36. No above ground development on a block shall be carried out (excluding the construction of approved lift and stair cores) until details of any exterior pipes or flues for that block have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 37. The Class A1-A3 and D2 uses shall not be permitted to open outside the hours of 0700-2300 Sunday to Thursday and public holidays, and 0700-0000 Friday and Saturday.
 38. The rated noise level from any plant, together with any associated ducting shall be 10 dB(A) or more below the lowest relevant measured LA90(15min) at the nearest noise sensitive premises.
 39. The L_{AFmax} sound from amplified and non-amplified music and speech from the Class A, B and D2 use units shall not exceed the lowest L90(5min), one metre from the facade of any sensitive receptor in all third octave bands between 31.5Hz and 8 kHz.
 40. Party walls, floors and ceilings between the A Class uses and residential dwellings shall be designed to achieve an airborne sound insulation weighted standardised level difference of at least 50dB $D_{nT,w+Ctr}$.
 41. No above ground development on Block H shall be carried out until details have been submitted to and approved in writing by the local planning authority to demonstrate how sound insulation will achieve a standardised level difference greater than 60dB $D_{nT,w+Ctr}$ for the specific Class D2 use proposed. The approved details shall be installed before the Class D2 unit is first occupied.
 42. The dwellings hereby permitted shall be designed to ensure that the following internal noise levels are not exceeded due to environmental noise:
 - Bedrooms: 35 dB $L_{Aeq,16hour}$ in the daytime; 30 dB $L_{Aeq,8hour}$ 45dB L_{Amax} in the night time
 - Living rooms- 35dB $L_{Aeq,16hour}$ in the daytime
 - Dining rooms - 40 dB $L_{Aeq,16hour}$ in the daytime
- Where the daytime means 0700-2300 and the night time means 2300-0700.
43. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement, roof alteration, chimney or outbuilding shall be carried out to the houses in Block A.
 44. Solid balustrades to balconies shall be provided to Block I at the following locations: south-west corner, levels 5-7 (inclusive); south-west elevation levels 5 and 6; south-east elevation, levels 9-11 (inclusive). The balustrades shall be

provided before the relevant unit is first occupied and shall be retained thereafter.

45. The secondary access into the site at 33 Southampton Way shall be for pedestrians and cyclists only, with no vehicle access permitted.
46. A) Before any fit out works to the commercial premises within a block begins, an independently verified BREEAM report to achieve a minimum 'excellent' rating for the Class A and B floorspace and 'very good' rating for the Class D floorspace shall be submitted to and approved in writing by the local planning authority. Details shall include performance in each category, overall score, BREEAM rating and a BREEAM certificate of building performance. The development of the block shall be carried out in accordance with the approved details in the BREEAM report.

B) Before the first occupation of the block, a certified Post Construction Review, or other verification process agreed with the local planning authority, shall be submitted to and approved in writing by the local planning authority, confirming that the agreed standards at A) have been met.
47. Within one year of the commencement of development (including demolition) a scheme for the restoration of the brick chimney on the site shall be submitted to and approved in writing by the local planning authority. The restoration works shall be carried out in accordance with the approved scheme before occupation of the final block to be completed.
48. The finished floor levels of any building that is within an area that is at medium to high risk of surface water flooding or at risk of groundwater flooding shall be at 300mm above the existing ground levels.

End of conditions 1-48

ANNEX FOUR: APPLICATION DRAWINGS

Drawing Title	Drawing Number	
Existing Plans		
Existing Site Plan	DUN-BUR_HTA-A_D01_DR_0001	P1
Proposed Site Plans		
Basement Floor Plan	DUN-BUR_HTA-A_D01-B1-DR_0100	P1
Ground Floor Plan	DUN-BUR_HTA-A_D01-00-DR_0101	P3
First Floor Plan	DUN-BUR_HTA-A_D01-01-DR_0102	P3
Second Floor Plan	DUN-BUR_HTA-A_D01-01_DR_0103	P1
Third Floor Plan	DUN-BUR_HTA-A_D01-03-DR_0104	P1
Fourth Floor Plan	DUN-BUR_HTA-A_D01-04-DR_0105	P1
Fifth Floor Plan	DUN-BUR_HTA-A_D01-05-DR_0106	P1
Sixth Floor Plan	DUN-BUR_HTA-A_D01-06-DR_0107	P1
Seventh Floor Plan	DUN-BUR_HTA-A_D01-07-DR_0108	P1
Eighth Floor Plan	DUN-BUR_HTA-A_D01-08-DR_0109	P2
Ninth Floor Plan	DUN-BUR_HTA-A_D01-09-DR_0110	P1
Tenth Floor Plan	DUN-BUR_HTA-A_D01-10-DR_0110-B	P1
Eleventh Floor Plan	DUN-BUR_HTA-A_D01-11-DR_0110-c	P1
Roof Plan	DUN-BUR_HTA-A_D01-R1-DR_0111	P1
Block Plans		
Ground and First Floor Plans Block A	DUN-BUR_HTS-A_BA-00&01_DR_0200	P3
Roof Plans Block A	DUN-BUR_HTS-A_BA-02&R1_DR_0201	P1
Basement and Ground Floor Plans Block B	DUN-BUR_HTS-A_BB-B1&00_DR_0202	P1
First and Second Floor Plans Block B	DUN-BUR_HTA-A_BB-01&02_DR_0203	P1
Third and Fourth Floor Plans Block B	DUN-BUR_HTA-A-BB-03&04_DR_0204	P1
Roof Plan Block B	DUN-BUR_HTA-A_BB-R1_DR_0204-B	P1
Ground Floor to Roof Plans Block C	DUN-BUR_HTA-A_BC-00-R1_DR_0205	P1
Ground to Fourth Floor Plans Block D	DUN-BUR_HTA-A_BD-00-04_DR_0206	P1
Fifth and Sixth Floor Plans Block D	DUN-BUR_HTA-A_BD-05&06_DR_0207	P1
Seventh Floor and Roof Plan Block D	DUN-BUR_HTA-A_BD-07&R1_DR_0208	P1
Ground to Fifth Floor Plans Block E	DUN-BUR_HTA-A_BE-00-05_DR_0209	P1
Sixth Floor to Roof Plans Block E	DUN-BUR_HTA-A_BE-06-R1_DR_0210	P1
Ground Floor Plan Block F&G	DUN-BUR_HTA-A_BF&G-00_DR_0211	P1
First Floor Plan Block F&G	DUN-BUR_HTA-A_BF&G-01_DR_0212	P2
Second to Fifth Floor Plans Block F&G	DUN-BUR_HTA-A_BF&G-02-6_DR_0214	P1
Sixth Floor Plan Block F&G	DUN-BUR_HTA-A_BF&G-06_DR_0215	P1
Seventh Floor Plan Block F&G	DUN-BUR_HTA-A_BF&G-07_DR_0216	P1
Eighth Floor Plan Block F&G	DUN-BUR_HTA-A_BF&G-08_DR_0217	P2
Roof Plan Block F&G	DUN-BUR_HTA-A_BF&G-R1_DR_0217-B	P1
Ground Floor Plan Block H&I	DUN-BUR_HTA-A_NH&I-00_DR_0218	P1
First Floor Plan Block H&I	DUN-BUR_HTA-A_BH&I-01_DR_0219	P1
Second to Sixth Floor Plans Block H&I	DUN-BUR_HTA-A_BH&I-02-6_DR_0221	P1
Seventh Floor Plan Block H&I	DUN-BUR_HTA-A_BH&I-07_DR_0222	P1
Eighth Floor Plan Block H&I	DUN-BUR_HTA-A_BH&I-08_DR_0223	P1
Ninth Floor Plan Block H&I	DUN-BUR_HTA-A_BH&I-09_DR_0224	P1
Tenth and Eleventh Floor Plans Block H&I	DUN-BUR_HTA-A_BH&I-0&11_DR_0224-B	P1
Roof Plan Block H&I	DUN-BUR_HTA-A_BH&I-14_DR_0225	P1
Ground to Fifth Floor Plans Block K&J	DUN-BUR_HTA-A_BJ&K-00-05_DR_0226	P1

Sixth and Seventh Floor Plans Block K&J	DUN-BUR_HTA-A_BJ&K-06&07_DR_0227	P1
Eighth and Ninth Floor Plans Block K&J	DUN-BUR_HTA-A_BJ&K-08&09_DR_0228	P2
Tenth Floor and Roof Plans Block K&J	DUN-BUR_HTA-A_BJ&K-10&R1_DR_0228-B	P1
Ground to Fifth Floor Plans Block L	DUN-BUR_HTA-A_BL_00-05_DR_0229	P1
Roof Plans Block L	DUN-BUR_HTA-A_BL-RA_DR_0230	P1
Ground and First Floor Plans Block M	DUN-BUR_HTA-A_BM-00&01_DR_0231	P2
Second Floor to Roof Plans Block M	DUN-BUR_HTA-A_BM-02-R1_DR_0232	P1
Block Elevations		
Block A – NW, NE, SE & SW Elevations	DUN-BUR_HTA-A_BA-S1_DR_0240	P1
Block B1 & B2 NE Elevation	DUN-BUR_HTA-A_BB-S1_DR_0244	P1
Block B1 & B2 – SW Elevation	DUN-BUR_HTA-A_BB-S2_DR-0245	P1
Block B1 – SE Elevation	DUN-BUR_HTA-A_BB-S3_DR_0246	P1
Block B2 – NW Elevation	DUN-BUR_HTA-A_BB-S4_DR_0247	P1
Block C – NW, SE & SW Elevations	DUN-BUR_HTA-A_BC-S1_DR_0250	P1
Block D – NE & SE Elevations	DUN-BUR_HTA-A_BD-S1_DR_0253	P1
Block D – SW & NW Elevations	DUN-BUR_HTA-A_BD-S2_DR_0254	P1
Block E – NE & SE Elevations	DUN-BUR_HTA-A_BE-S1_DR_0257	P1
Block E – SW & NW Elevations	DUN-BUR_HTA-A_BE-S2_DR_0258	P1
Block F&G – NW Elevations	DUN-BUR_HTA-A_BF&G-S1_DR_0263	P1
Block F&G – N Elevation	DUN-BUR_HTA-A_BF&G-S2_DR_0264	P2
Block F&G – SE Elevation	DUN-BUR_HTA-A_BF&G-S3_DR_0265	P1
Block F – SW Elevation	DUN-BUR_HTA-A_BF-S1_DR_0262	P1
Block F – NE Elevation	DUN-BUR_HTA-A_BF-S2_DR_0266	P2
Block G – S Elevation	DUN-BUR_HTA-A_BG-S1_DR_0267	P1
Block G – SW Elevation	DUN-BUR_HTA-A_BG-S2_DR_0268	P1
Block H&I – SE Elevation	DUN-BUR_HTA-A_BH&I-S1_DR_0273	P1
Block H&I – NW Elevation	DUN-BUR_HTA-A_BH&I-S2_DR_0274	P1
Block H – NE & SW Elevations	DUN-BUR_HTA-A_BH-S1_DR_0275	P1
Block I – NE & SW Elevations	DUN-BUR_HTA-A_BI-S1_DR_0276	P1
Block J&K – NW Elevation	DUN-BUR_HTA-A_BJ&K-S1_DR_0280	P1
Block J&K – SE Elevation	DUN-BUR_HTA-A_BJ&K-S2_DR_0281	P1
Block J – SW Elevations	DUN-BUR_HTA-A_BJ-SQ_DR_0282	P1
Block L – E Elevation	DUN-BUR_HTA-A_BL-S1_DR_0286	P1
Block L – NW & NE Elevations	DUN-BUR_HTA-A_BL-S2_DR_0287	P1
Block M – E, S & W Elevations	DUN-BUR_HTA-A_MB-S1_DR_0290	P1
Bay Elevations		
Block F – Façade Detail Elevation	DUN-BUR_HTA-A_BF-S3_DR_0269	P1
Block G – Façade Detail Elevation	DUN-BUR_HTA-A_BG-S3_DR_0270	P1
Block I – Façade Detail Elevation	DUN-BUR_HTA-A_BI-S2_DR_0277	P1
Block H – Façade Detail Elevation	DUN-BUR_HTA-A_BH-S2_DR_0278	P1
Block J – Façade Detail Elevation	DUN-BUR_HTA-A_BJ-SE_DR_0283	P1
Street Elevations		
Street Elevation, East – Block M, L	DUN-BUR_HTA-A_SEL-DR_0130	P1
Street Elevation, Southeast – Block E, I & H	DUN-BUR_HTA-A_SEL-DR_0131	P1
Street Elevation, Southwest – Block F, I, J	DUN-BUR_HTA-A_SEL-DR_0132	P1
Street Elevation, Northeast – Block J, E, D	DUN-BUR_HTA-A_SEL-DR_0133	P1
Street Elevation, Northwest – Block G, F, D, C	DUN-BUR_HTA-A_SEL-DR_0134	P1
Sections		
Section AA – Blocks M, K, H, G	DUN-BUR_HTA-A_SAA-DR_0113	P2

Section BB – Blocks E, I, H	DUN-BUR_HTA-A_SBB-DR_0114	P1
Section CC – Block M	DUN-BUR_HTA-A_SCC-DR_0115	P1
Section DD – Blocks C, A	DUN-BUR_HTA-A_SDD_SR_0116	P1
Landscape Plans		
Public Realm GA Plan	HTA-L_DR_00_0900	P2
Public Realm Illustrative Plan	HTA-L_DR_00_0905	P2
Private Amenity GA Plan	HTA-L_DR_ZZ_0910	P2
Private Amenity Illustrative Plan	HTA-L_DR_ZZ_0915	P2
Public Realm Sections – Page 1 of 2	HTA-L_DR_00_0920	P1
Public Realm Sections – Page 1 of 2	HTA-L_DR_00_0921	P2
Private Amenity Sections	HTA-L_DR_ZZ_0925	



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.