

Proof of Evidence: Ms Zoe Brown  
Appeal Reference: APP/A5840/W/22/3303205  
Location: Avonmouth House, 6 Avonmouth Street, London SE1 6NX



*The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000/1625*

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**PROOF OF EVIDENCE**

**LONDON BOROUGH OF SOUTHWARK**

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**ZOE BROWN MRTPI**

Date of Inquiry: 14<sup>th</sup> – 23<sup>rd</sup> December 2022  
Appeal Reference: APP/A5840/W/22/3303205  
LPA Reference: 21/AP/4297  
Appellant: Tribe Avonmouth House Limited  
Location: Avonmouth House, 6 Avonmouth Street, London, SE1 6NX

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## 1. Introduction

1.1 This Proof of Evidence has been prepared on behalf of Southwark Council (“the Council”) and relates to the appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990, for Avonmouth House, 6 Avonmouth Street, London, SE1 6NX (“the Site”) by Tribe Avonmouth House Limited (“the Appellant”).

1.2 My Proof of Evidence focuses on the planning assessment of the development proposal relative to the prevailing development plan and other material considerations. The evidence is presented having regard to the three putative reasons for refusal (below) that have been endorsed by Members of the Planning Committee and have been confirmed by the Inspector as the main issues for the inquiry:

- 1) The proposed development would be contrary to policies P13 (Design of Places) and P17 (Tall Buildings) of the Southwark Plan 2022 because it fails to respond positively to the existing character and context and would as a result cause harm to the local townscape. The public benefits of the scheme in providing commercial space and residential student housing do not outweigh the harm.*
- 2) The lack of a completed Section 106 agreement or unilateral undertaking fails to secure planning obligations to mitigate adverse impacts and secure public benefits.*
- 3) The proposed development would not achieve the highest standards of fire safety as required by policy D12 of the London Plan 2021 following the significant concern identified by the Health and Safety Executive*

1.3 This Proof of Evidence is structured as follows:

- Section 2 – My qualifications and experience.

- Section 3 – I describe the Site and its location.
- Section 4 – I describe the proposed development and provide a timeline of events from the pre-application, submission of the planning application and the lodging of the appeal.
- Section 5 – I outline the framework of planning policy documents and guidance of relevance to the determination of the Appeal. I also identify the principal policies relevant to the three putative reasons for refusal.
- Section 6 – I outline the case for the Council in relation to the three putative reasons for refusal.
- Section 7 – I provide a summary of other matters raised by the appellant and the objections that have been received.
- Section 8 – I consider the planning harm and the public benefits which are relevant in weighing the overall planning balance.
- Section 9 – I conclude my evidence.

1.4 My evidence in Section 6 will focus on the matters of fire safety and lack of Section 106 Legal Agreement. In relation to the impact on townscape and local character, my evidence should be read alongside the Council's other Proof of Evidence prepared by the Design and Conservation witness Mr Richard Craig. I will also rely on Mr Craig's evidence when considering the planning balance.

1.5 My evidence should also be read in conjunction with the following documents:

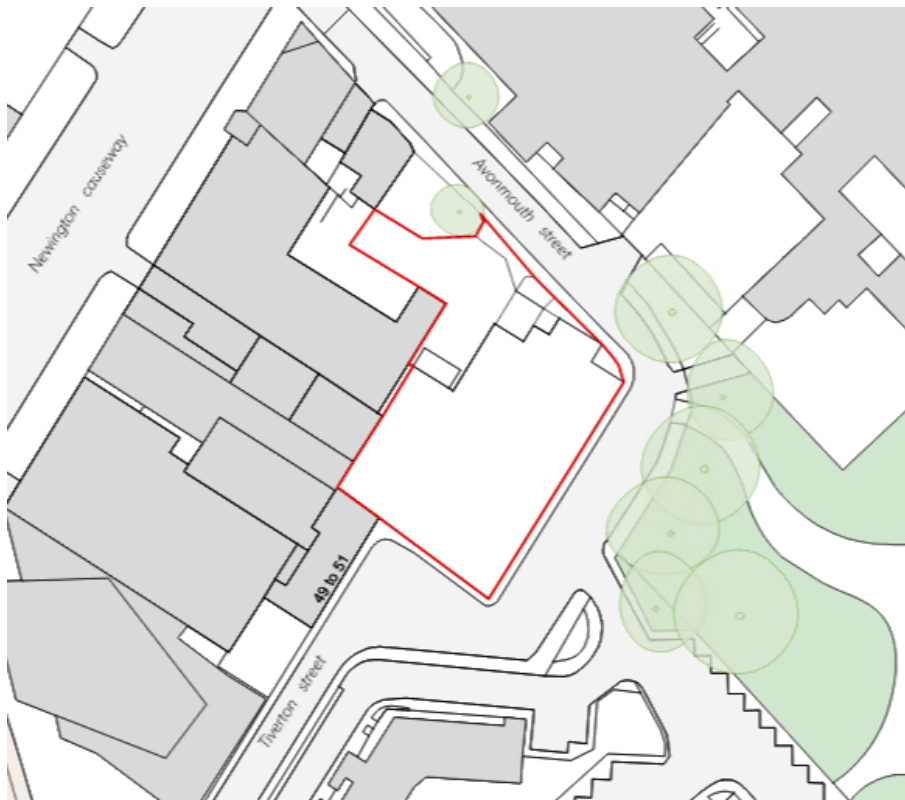
- Agreed Statement of Common Ground
- The Council's Statement of Case – 13 October 2022
- The Council's Addendum Statement of Case – 21 October 2022
- Planning Committee Report 2 November 2022
- Addendum Committee Report 2 November 2022

## **2. Qualifications and experience**

- 2.1 My name is Zoe Brown and I am a Team Leader in the Major Development and New Homes Team at the London Borough of Southwark.
- 2.2 I hold an Undergraduate degree in Geography from Royal Holloway University of London and a Masters degree in Spatial Planning from University College London. I am also currently studying for a second Masters degree in Urban Design from University College London.
- 2.3 I have been a town planner since 2016 and have been a fully chartered member of the Royal Town Planning Institute since December 2018. I have worked in both the private and public sectors and have experience dealing with a range of planning applications including major schemes for residential, mixed use and education development.
- 2.4 I am familiar with the appeal site and its context having visited a number of times in my preparation for this appeal. I had no involvement with the Avonmouth House application until October 2022, when the Appeal had already been submitted.

### 3. The Appeal site and its context

- 3.1 The Site as existing comprises a two-storey building used as a training venue and ancillary service yard located to the south of Newington Causeway. Avonmouth Street runs south east from Newington Causeway before returning south-west to wrap around the building on the Site.
- 3.2 The Site is bounded by buildings fronting Newington Causeway to the north-west, modern annexes to the Inner London Sessions Court are located across Avonmouth Street to the north, Newington Gardens open space is to the east and five storey interwar Council estate blocks, Telford and Stephenson Houses, are located to the south-east. Beyond the Site to the south-west, Avonmouth Street becomes Tiverton Street, where a 24-storey hotel known as the Ceramic Building is located.



- 3.3 The Site is within the Central Activities Zone, the Elephant and Castle Opportunity Area, and the Elephant and Castle major town centre. It is also within North Southwark and Roman Roads Archaeological Priority Zone, flood zone 3 and the air quality management area.
- 3.4 The Site is not within a Conservation Area. It is not within the background assessment area London View Management Framework (“LVMF”) views or protected local borough views. There are no protected trees within the Site nor adjacent to it. The Inner London Sessions Court building located approximately 40m to the north of the Site is a Grade II listed building.
- 3.5 The Site has a Public Transport Accessibility Level (‘PTAL’) of 6b due to its proximity to the Elephant and Castle rail and Underground stations and bus routes in the area. Access to the Site is from the northern part of Avonmouth Street, where the shared service yard and entrance to the training centre building are located.
- 3.6 To the north of the Site are the rear of buildings fronting Newington Causeway. These comprise:
- No. 2 Avonmouth Street, a four storey Victorian building in residential use with a rear elevation facing onto the Site and service yard,
  - Balppa House, 57 – 61 Newington Causeway, a five storey mixed use building with ground floor retail and residential at floors 1 – 3.
- 3.7 To the west of the Site are the following buildings:
- Coburg House, 63 – 67 Newington Causeway, a four storey office building with servicing access to the rear
  - No. 69 – 71 Newington Causeway, a four storey office building
  - No. 73 – 75 Newington Causeway, a four storey period property in office use and which is identified as an undesignated heritage asset.

- 3.8 To the west but not immediately adjoining the Site at 77-85 Newington Causeway is a two storey building hosting the Southwark Theatre. There is also a 24 storey mixed use building hosting hotel and residential use known as the Ceramic Building, addressed 87 Newington Causeway to the west of the Site. Further south along Newington Causeway, the tallest building in the vicinity of the Site comprises a 41 storey building located on Newington Causeway, addressed 251 Southwark Bridge Road.
- 3.9 Across Avonmouth Street to the north of the Site are the modern annexes to the Inner London Sessions Court, beyond which is the Grade II listed court building. To the east and south-east of the Site is Newington Gardens, a local open space, identified as an undesignated heritage asset of approximately 1.2ha.
- 3.10 To the south and south-west of the Site are two five storey interwar council estate blocks: Telford House and Stephenson House, set in ancillary landscaped amenity areas. Both blocks are part of the wider Rockingham Estate located to the south and south-west of the Site.

#### Planning history

- 3.11 Section 5 of the Council's Statement of Case and Paragraph 21 of the Committee Report set out the full planning history of the Site which largely relates to its use as a training centre.
- 3.12 At the time of writing my proof of evidence, there is still a live planning application at the Site (re: 22/AP/2227) which is due to be determined at the 29 November 2022 Planning Committee meeting. The application is for:

*“Demolition of existing building and structures and erection of a part 2, part 7, part 14 storey plus basement mixed-use development comprising 1733sqm*



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*(GIA) of space for class E employment use and/or class F1(a) education use and 219 purpose-built student residential rooms with associated amenity space, including at 7th floor roof level, and public realm works, car and cycle parking, and ancillary infrastructure..”*

#### **4. The Planning Application**

##### The Proposed Development

- 4.1 The application proposes the demolition of the existing buildings and the construction of a part two, seven and part fourteen and part sixteen storey building. A two-storey basement is also proposed, though the lower part would only cover part of the Site. The basements, ground and first floor would provide a mix of storage facilities (cycle and refuse), lobbies and a flexible non-residential space which the appellant would use as education/employment floorspace or a health hub. The floors above are proposed as student accommodation with 233 bedrooms being provided; 217 rooms being in the form of cluster flats and 16 as studios, with 12 of these being accessible units.
- 4.2 Across the Site, a total of 8789.45sqm GIA of floorspace is proposed, comprising 1733sqm employment/education/community health hub and 7056.45sqm residential student accommodation.
- 4.3 The development would be stepped from seven to fourteen and then to sixteen storeys. A lower two storey element would be on the northwest part of the Site closest to the rear of the buildings on Newington Causeway.
- 4.4 A triangular pocket park is proposed to the south of the Site, functioning as an area of public realm while a communal amenity space would be provided on the roof of the seventh floor element for residents.
- 4.5 Deliveries and servicing by larger vehicles, including refuse vehicles, would take place on Avonmouth Street as is presently the case. Smaller vehicles such those used by couriers would service the building from within the Site in the forecourt/service yard.

- 4.6 A total of 302 cycle parking spaces are proposed including; 30 Sheffield stands providing 60 spaces, 3 disabled spaces and 3 cargo bicycle spaces. The scheme would be car-free except for one blue badge car parking space in the forecourt/service yard.

The application process:

*Pre-application*

- 4.7 In June 2021 a formal request for pre-application advice was submitted (reference 21/EQ/0159) in relation to a scheme to redevelop the Site to provide a mixed use building comprising E class or F1(a) class floorspace at basement, ground and first floor levels with student accommodation across floors 2 – 16. A pre-application meeting was held with the Appellant on 17 August 2021 with the Council raising concerns around land use, including re-provision of employment floorspace, and appropriateness of the location for a tall building.

4.8 *Planning application*

- 4.9 In November 2021, the Appellant submitted an application for planning permission. The submitted proposals are similar to the pre-application version of the scheme to which the Council's pre-application advice related. The application was given the planning application reference number 21/AP/4297 by the Council and has the following description:

Demolition of existing building and structures and erection of a part 2, part 7, part 14, and part 16 storey plus basement development comprising 1,733sqm (GIA) of space for Class E employment use and/or community health hub and/or Class F1(a) education use and 233 purpose-built student residential rooms with associated amenity space

and public realm works, car and cycle parking, and ancillary infrastructure

#### *Appeal*

- 4.10 In June 2022, the Appellant made an appeal to the Secretary of State against the Council's failure to determine the application, and requested that this be heard by way of an inquiry. The Inspectorate reference is APP/A5840/W/22/3303205. On 30 August 2022, the Planning Inspectorate wrote to the Council stating that the inquiry procedure was considered suitable to determine the appeal.
- 4.11 The Council submitted their Statement of Case on 4 October 2022. Following a review of the Council's case, Officers decided to remove the heritage reason for refusal and an updated tracked change version of the Statement of Case was submitted to the Inspector on 13 October 2022.
- 4.12 Following the submission of the tracked change Statement of Case, a further review was undertaken of the documents and serious issues on fire safety raised by the Health and Safety Executive (HSE) in its consultation response came to light. The Council wrote to the Inspector to apply to add an additional reason for refusal on 21 October 2022 to be considered as part of the Council's Statement of Case. An addendum Statement of Case outlining this issue and reason for refusal was also submitted on 21 October 2022.
- 4.13 Due to the timetabling of the inquiry it had not previously been possible to report the Council's Statement of Case or Addendum Statement of Case to the Council's Members of the Planning Committee to confirm endorsement of the three putative reasons for refusal. Therefore, it was presented to the Planning Committee on 2 November 2022, and Members agreed to endorse the Council's Statement of Case as supplemented by the addendum Statement of Case. This was confirmed to the Inspector on 3 November 2022.

## **5. The legal and policy context**

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 5.2 The statutory Development Plan in relation to the proposed developments comprises the London Plan (2021) (CD 7.1) and the Southwark Plan (2022) (CD 7.2). The National Planning Policy Framework (2021) (CD 7.0), Planning Practice Guidance and a number of supplementary planning documents are important material considerations. The Statement of Common Ground outlines a full list of policies relevant to the determination of this appeal.
- 5.3 Following Members endorsement of the three putative reasons for refusal on 2 November 2022, the policies which the Council considers most relevant to the townscape and local character are summarised below:
- 1) New Southwark Local Plan (2022) Policy AV09 'Elephant and Castle Area Vision' states that development in Elephant and Castle should support the area's function as a major town centre for all Southwark residents and a central London location that attracts businesses, research, teaching, shopping, flexible business spaces and cultural activities.
  - 2) New Southwark Local Plan (2022) Policy P13 'Design of Places' states that development must ensure height, scale, massing and arrangement respond positively to the existing townscape, character and context. The policy also states that development should contribute to place, by incorporating routes, spaces, landscaping, public realm and other green infrastructure and spaces should be accessible and inclusive.
  - 3) New Southwark Local Plan (2022) Policy P17 'Tall Buildings' states that areas where tall buildings are expected are shown on the adopted policies

map. These areas are typically within the CAZ, Major Town Centres, Opportunity Area Cores and Action Area Cores. The policy outlines a number of requirements for tall buildings which are addressed in the evidence by Mr Richard Craig.

- 4) London Plan (2021) Policy D1 'London's form, character and capacity for growth' Part A of this policy sets out the requirements for assessing an area's characteristics and Part B sets out the steps for using this information to establish the capacity for growth of different areas and ensure that sites are developed to an optimum capacity that is responsive to the site's context and supporting infrastructure.
- 5) London Plan (2021) Policy D3 'Optimising site capacity through the design-led approach'. This policy sets out a fundamental principle that all development must make the best use of land by following a design-led approach. Developments should positively respond to local distinctiveness, taking account of local layouts, building forms and scale and should respond to existing character. The policy also states that development should be of high architectural quality.
- 6) London Plan (2021) Policy D4 'Delivering good design' sets out an expectation that masterplanning, design codes and appropriate modelling and digital tools are used to develop and scrutinise designs and that major developments that are referable to the Mayor should undergo at least one round of design review. The policy states that Design and Access Statements should demonstrate that the design requirements of the London Plan have been met.
- 7) London Plan (2021) Policy D9 'Tall buildings' establishes a detailed framework for the consideration of planning applications for tall buildings. The policy includes detailed criteria that relate to the visual impacts of tall

buildings, the functional impacts, the environmental impacts and the cumulative impacts.

- Visual impacts are considered to be the views from different distances, long-range views, mid-range views, immediate views from the surrounding streets. Whether part of a group or stand-alone building, tall buildings should reinforce the spatial hierarchy of the local and wider context and architectural quality and materials should be of an exemplary standard.
- Functional impacts are considered to be the ways in which the users interact with the building, particularly in relation to the design of emergency exit routes to ensure the safety of all occupants.
- Environmental impacts relate to the microclimate factors including daylight, sunlight, wind, air quality and noise which should be carefully considered and not compromise the spaces around the building.
- Cumulative impacts requires proposed, consented and planned tall buildings in an area to be considered when assessing tall building proposals.

5.4 In relation to fire safety, the relevant development plan policy is:

1) London Plan (2021) Policy D12 'Fire safety' states that in the interests of fire safety and to ensure the safety of all building users, all development proposals must achieve the highest standards of fire safety and ensure that they:

- Identify suitably positioned unobstructed outside space for fire appliances and evacuation assembly points.
- Are designed to incorporate appropriate features which reduce the risk to life and the risk of serious injury in the event of a fire,

including appropriate fire alarm systems and passive and active fire safety measures.

- Are constructed in appropriate way to minimise the risk of fire spread.
- Provide suitable and convenient means of escape and associated evacuation strategy for all buildings.
- Develop a robust strategy for evacuation which can be periodically updated and published, and which all building users can have confidence in.
- Provide suitable access and equipment for firefighting which is appropriate for the size and use of the development.

5.5 In relation to the lack of a Section 106 legal agreement, the relevant development plan policy is:

- 1) New Southwark Local Plan (2022) Policy IP3 'Community Infrastructure levy (CIL) and Section 106 planning obligations' States that where development would give rise to potential adverse impacts that would make them unacceptable in policy terms, mitigation must be secured via planning conditions and/or, where they meet the statutory tests, via planning obligations.

#### Material considerations

5.6 The National Planning Policy Framework (NPPF) (CD 7.0), Planning Practice Guidance (PPG), and supplementary planning documents are material considerations.



*National Policy*

- 5.7 The NPPF is a material consideration, with the July 2021 update the most recent version. The NPPF establishes the Government's strategy for the delivery of sustainable development and is a material consideration in the determination of planning applications. At the heart of the NPPF is the presumption in favour of sustainable development, though this does not override the statutory status of the development plan as the basis of decision-making and development proposals that conflict with the Plan should not usually be granted.
- 5.8 The following sections of the NPPF which are the most relevant to the three putative reasons for refusal are as follows:
- Section 2 – Achieving sustainable development: The planning system is to contribute to the achievement of sustainable development in its economic, social and environmental objectives. If a proposal is in accordance with an up-to-date development plan, it should be approved without delay.
  - Section 11 – Making effective use of land: The proposed mixed use scheme would make effective use of an underutilised site. Planning decisions should support development that makes efficient use of land whilst taking into account the importance of securing well-designed places.
  - Section 12 – Achieving well designed places: This section is relevant given the design related reason for refusal, as good design is a key aspect of sustainable development to create better places to live and work.

- 5.9 The PPG is a material consideration, including the sections titled 'Design', 'Determining a planning application', 'Effective use of land', 'Housing needs of different groups', 'Planning obligations' and 'Use of planning conditions'.

*Supplementary Planning Documents*

- 5.10 The Council's Section 106 Planning Obligations and Community Infrastructure Levy SPD (updated 2020) (CD 7.8) provides guidance as to how Section 106 planning obligations are used to address negative impact of development. The SPD sets out a number of standard charges which historically have been used to calculate Section 106 planning obligations, along with guidance on how obligations are negotiated.
- 5.11 Elephant and Castle SPD/Opportunity Area Planning Framework (2012) ('E&C SPD') (CD 7.3) sets out the vision for the Elephant and Castle opportunity area providing a planning framework to coordinate growth, directing development to those areas in which it is appropriate and desirable, protecting areas which are sensitive and ensuring that growth is support by appropriate physical as well as social community infrastructure.
- 5.12 A series of area-wide strategies and guidance are included in section 4 of the SPD which have informed the overarching policies which provide general principles for all development in the opportunity area, including guidance on height, bulk and massing of new buildings. Of particular relevance to this appeal is SPD17 which states that in relation to tall buildings, the tallest buildings should act as focal points towards the Elephant and Castle along main roads and strengthen gateways into the central area. Moving away from the tallest points, they should diminish in height to manage the transition down to the existing context.

## **6. The case for the Council**

- 6.1 In this section of my evidence I will explain why I am of the view that the proposal is contrary to the development plan, as set out in the three putative reasons for refusal that have been endorsed by Members of the Planning Committee and confirmed in the CMC-2 as the main matters for the inquiry.

### **Reason for refusal 1 – Townscape and local character**

- 6.2 The Proof of Evidence by Richard Craig, the Council's Design and Conservation Officer, should be referred to for the detailed assessment of the first reason for refusal (CD 8.27). My assessment draws on his evidence and summarises how the proposed development fails to comply with policies, as set out below.
- 6.3 The development plan policies relevant to design matters of character and context and the impact of tall buildings and form the part of the reason for refusal on townscape and local character are Southwark Local Plan Policies AV.09, P13 and P17 and London Plan Policies D1, D3, D4 and D9.
- 6.4 It is acknowledged that the surrounding townscape character is mixed in terms of building scale and architectural design, however, as outlined in the Council's Statement of Case the proposed 16-storey building does not successfully respond to the existing townscape of taller buildings located towards the Elephant and Castle town centre and appears excessively tall in relation to the five storey housing blocks of the Rockingham Estate.
- 6.5 Mr Craig's evidence considers each of the views within the Heritage and Townscape Visual Impact Assessment (CD 1.69) and also proposes other important views, whilst also recognises that there is no consideration in to winter views or those during dusk within the Appellants submission documents.

6.6 In summary, I would agree with Mr Craig's evidence that the proposal does not respond positively to the existing townscape, character and context of the Site, this is with particular regards to the substantially lower scale buildings in the immediate context, the views from and across Newington Gardens and those from the wider vicinity.

6.7 The proposal would be contrary to the Council's consistent approach to the emerging character of the Elephant and Castle town centre in terms of tall buildings and therefore does not comply with the relevant development plan policies.

### **Reason for refusal 2 – Fire safety**

6.8 My assessment on this matter relies upon the comments from the Health and Safety Executive ('HSE') who are a statutory consultee on 'relevant buildings' and the experts in relation to fire safety and planning

6.9 The development plan policy relevant to fire safety is London Plan Policy D12 which places great importance on fire safety to ensure the safety of all building users. All development proposals must achieve the highest standards of fire safety. Development should ensure that they are designed to incorporate appropriate features which reduce risk to life and the risk of serious injury in the event of a fire, including appropriate fire alarm systems and passive and active fire safety measures. Development should be constructed in an appropriate way to minimise the risk of fire spread and provide suitable and convenient means of escape, and associated evacuation strategy for all building users.

6.10 On 7 February 2022 HSE provided comments on the proposed drawings and fire statement (CD 6.0). In summary 'significant concern' was raised in relation to the following elements of the proposal:

- Lifts and staircases – the floors above the ground floor would be designed as a firefighting stair and the plans show that this stair would continue to the two basement levels connecting with ancillary areas. HSE have advised that this configuration would be contrary to the fire safety guidance standards which state that in single stair buildings the stair should not continue down to the basement. HSE advised that to resolve this issue “it may affect land use planning considerations such as design and layout of the building”.
- Concern regarding the proposed dry riser – due to the building being over 50m in height HSE have advised that a wet fire mains should be installed. Wet fire mains are required because of the pressures required to provide adequate water supplies at the landing valves at upper floors, and to ensure that water is immediately available at all floor levels. The provision of a wet fire main will require water tanks and pumps which are currently not accounted for on the proposed plans. HSE advised that this change “is likely to affect land use planning considerations such as design and layout of the building”.
- Fire escape routes – Concerns with the ground floor layout and escape routes from the common stairs next to the bin store have also been raised. HSE explain that the fire standard states that the access to refuse storage chambers should not be sited adjacent to escape routes or final exits. Likewise, access for firefighters to the firefighting shaft via the concierge should be available either directly from the open air or by way of a protected corridor which should not be used as circulation space and should be separated from adjoining accommodation by lobbies. HSE advised that “any consequent design change may affect the land use planning considerations such as design and appearance of the building”.

- Student accommodation layout – HSE have advised that additional firefighting lobbies are required from the stair or lift to the residential areas. HSE were also unable to confirm from the information provided that there are disabled refuse points on the upper floors with considered needed to the interaction between the refuges and the dry riser outlets. HSE advised that resolving this issue “may affect land use planning considerations such as design and layout of the building”.

6.11 The appellant was made aware of the concerns raised and it was agreed that amended drawings would be submitted. Amended drawings were provided on 27 October 2022 along with a summary statement outlining the changes that had been made. HSE have been re-consulted and I am waiting to receive their revised comments.

6.12 Whilst there is a possibility that the matters could be resolved by the time of the inquiry, as originally designed the proposal fails to achieve the highest standards of fire safety and this may or may not have been addressed by the amended drawings. Therefore, I am of the view that until HSE are satisfied with the design changes, and their objection has been withdrawn, that the proposal as currently designed would be contrary to the aims of Policy D12 of the London Plan and should be refused on this basis.

### **Reason for refusal 3 – Lack of Section 106 legal agreement**

- 6.13 In the absence of a signed Section 106 Agreement, there is no mechanism to secure mitigation in relation to a number of identified impacts, to secure a number of the public benefits that form part of the planning balance and ensure compliance with a range of development plan policies.
- 6.14 At the time of writing this proof of evidence, the Council and the appellant are still in the process of negotiating the Section 106 legal agreement.
- 6.15 The Statement of Case provides details of the planning obligations that are considered necessary. In summary these are:
- Restriction on the use of the building for student accommodation
  - Provision of a nominations agreement to secure 35% affordable student accommodation.
  - Provisions to secure the affordable workspace at a discount rent, with the associated fit out, marketing and management.
  - Jobs and training opportunities during the construction phase and operational phase, along with local procurement opportunities.
  - Transport mitigation, highways works and financial contributions for public realm improvements to Avonmouth Street and Tiverton Street, including;
    - Dedication of slivers of paved land to supplement the footway flanking the Site on Avonmouth Street and Tiverton Street and the relaying of the footway segments.
    - Extending the existing raised table fronting the Site.
    - Repaving the footways including new kerbing and buildouts fronting the Site on Avonmouth Street and Tiverton Street.
    - Narrowing and reconstructing the existing vehicle crossover on Avonmouth Street.

- Providing access arrangements such as a dropped kerb construction to accommodation refused collection.
  - Promoting a traffic management order to replace single yellow lines with double yellow lines.
  - Upgrading street lighting fronting the Site.
  - Repairing any damage to the highway during construction.
  - Provision of four street trees on Avonmouth Street.
  - Construction and maintenance of the pocket park (subject to Special Placemaking Opportunity dispensation).
  - Financial contributions will be applied towards enhancements to cycle routes in the immediate area surrounding the Site, including the resurfacing of the adjacent southbound bus lane on Newington Causeway and repairs to the highways around the zebra crossing on Newington Causeway, and improvements to bus services within the vicinity of the development.
- Carbon off-set payment.
  - Archaeological monitoring contribution.
  - Wind assessment post-construction.

6.16 The Council will continue to engage proactively with the Appellant to agree a draft Section 106 Agreement, and further detail will be presented at the inquiry as to whether the detailed terms have been agreed to overcome this objection and reason for refusal.



## **7. Other matters raised by the Appellant and objections**

7.1 Following the CMC-1 on 13 October 2022, two other matters were raised by the appellant:

- Need of the proposed development
- Effect on living conditions (daylight and sunlight)

### Need of the proposed development

7.2 Paragraphs 62-66 of the Councils Committee Report provides an outline of the Councils position in relation to the need of the development.

7.3 The application Site is located within Southwark Local Plan site allocation NSP 46 '63-85 Newington Causeway'. Redevelopment of the site allocation must:

- Provide at least the amount of employment floorspace (E(g), B Class) currently on the site or provide at least 50% of the development as employment floorspace, whichever is greater; and
- Retain the existing theatre use or provide an alternative cultural use (D2); and
- Provide active frontages including ground floor retail, community or leisure uses on Newington Causeway.

7.4 The site allocation should provide new homes and an indicative capacity of 93 has been identified. The redevelopment of this site may also include a new community health hub.

7.5 The existing use of the Site is an educational training centre with a GIA of c. 1307sqm. As part of the redevelopment proposal, 1733sqm of non-residential use floorspace is proposed as flexible employment, education or health hub use which would result in an uplift of 426sqm upon the existing floorspace. It

is agreed that the proposal would make a modest contribution to the wider site allocation requirement to provide employment floorspace, and it has been concluded in the addendum Committee Report that Officers consider there to be sufficient space still available on the rest of the site allocation to meet the employment space requirements.

- 7.6 In relation to the rest of the proposed building, floors 2-16 are proposed to be purpose built student accommodation ('PBSA'). Whilst this would provide residential floorspace, the units are not self-contained dwellings, therefore they do not contribute to the 93 residential unit requirement across the site allocation. Despite this, Officers concluded in the addendum Committee Report that the modest indicative capacity could still be provided elsewhere in the wider site allocation.
- 7.7 Given the location of the Site within the Central Activities Zone, the Elephant and Castle Town Centre and the Opportunity Area, the proposed mixed-used development is considered to be in an appropriate location and would accord with the requirements of site allocation NSP 46.
- 7.8 The proposal would also accord with the ambition to increase employment floorspace supply in the CAZ that is set out in London Plan Policy E1 and Southwark Local Plan Policy P30. It would also meet a growing need for PBSA which has been identified in London Plan Policy H15 and Southwark Local Plan Policy P5, and the requirement to provide affordable student accommodation. The Appellant has confirmed that they would secure a nominated institution for the accommodation, which means a minimum 35% of the accommodation must be affordable student rooms. The nominated institution would be secured through the Section 106 legal agreement in accordance with Southwark Local Plan Policy P5.
- 7.9 Overall, given the compliance of the proposal in relation to the relevant land use policies, no further reasons for refusal are recommended.

Effect on living conditions (daylight and sunlight)

- 7.10 The addendum Committee Report paragraphs 67 – 69 provides a summary of Officers position in relation to the impact of the proposed development on the amenity of the neighbouring properties. Overall it was concluded that the results of the Daylight and Sunlight Assessment (CD 1.55) sufficiently demonstrate that proposal would not have a detrimental impact on Telford House, Stephenson House, 57-61 Newington Causeway (Balppa House) and 2 Avonmouth Street and that the overall reductions would largely be in line with BRE guidance. In this regard, no further reasons for refusal are recommended.

Objections

- 7.11 In total eight objections were received in relation to the proposed development prior to the appeal being submitted, a further three letters were received on 31 October 2022 once the appeal had been lodged.
- 7.12 Paragraph 75 of the Councils Committee Report (CD 8.4) summarises the eight objections that had been received and outlines Officers comments on the matters raised.
- 7.13 Three further objection letters received on 31 October 2022 and an addendum Committee Report was prepared to advise Members on the matters raised. Within the addendum Committee Report (CD 8.5) officers detailed why the appeal scheme is not considered to compromise reasonable development on neighbouring sites which form the rest of the site allocation. Officers also explained that at the moment there are no definitive proposals before the Council for development on the neighbouring sites, and are of the opinion that there are design interventions that any development on the neighbouring sites could take to mitigate any impact on privacy.

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- 7.14 Officers concluded that no further reasons for refusal should be added in relation to the matters raised by the eleven contributors.

## 8. Planning balance

- 8.1 Having concluded that the proposed development would conflict with the relevant Development Plan policies in relation to townscape and local character and fire safety, I now consider whether the public benefits associated with the Scheme are so substantial they constitute material considerations that might overcome the reasons for refusal.
- 8.2 In order to make this balance I summarise the findings of my assessment in relation to the planning harm and identify the benefits associated with the scheme, and consider the weight that should be attached. In terms of the relative weighting of these issues I have adopted a scale of significant, moderate and limited to describe the weight I attribute to each of the harms and benefits.

### Planning harm

- 8.3 Section 6 outlines that the proposed development would result in a detrimental impact on the townscape and local character of the area and would not meet the highest level of fire safety.
- 8.4 The Southwark Local Plan Policies and London Plan Policies are clear that any new development, particularly tall buildings, must make a positive contribution to the London skyline and respond positively to the local character and townscape. They are also required to be of exemplary architectural design and residential quality. Having considered Mr Craig's assessment of this issue and the detailed criteria of Southwark Plan Policy P13, P17 and London Plan Policies D1, D3, D4 and D9, I have concluded that **significant weight** must be attached to the harm that he identifies.
- 8.5 In terms of fire safety, I have set out the 'Significant Concerns' expressed by HSE and the failure of the scheme as currently designed to meet the highest

standards of fire safety in accordance with the aims of London Plan Policy D12. Whilst amended plans have been submitted, this matter is still unresolved and the objection has not been withdrawn. Therefore at this time I place **significant weight** on this issue.

#### Planning benefits

- 8.6 It is agreed that the proposed would result in public benefits, however, these need to be weighed against the planning harms identified above.

#### *Land-use*

- 8.7 The proposal would result in the redevelopment of a currently under-utilised site within Southwark Local Plan allocation NSP46. The principle of the redevelopment of the Site is supported, and as outlined in the Council's Statement of Case the proposed uses are considered appropriate. The proposed development would deliver 1733 sqm of non-residential flexible floorspace which could be employment, education or a community health hub. The flexibility of the proposed space would make a positive contribution to the local area and would meet the aims of the site allocation and vision for the wider Elephant and Castle opportunity area. Therefore I place **moderate weight** on the public benefits associated with the uplift of flexible non-residential floorspace.
- 8.8 Policy P31 of the Southwark Local Plan states that developments proposing 500sqm GIA or more of employment floorspace must deliver at least 10% of the proposed gross employment floorspace as affordable workspace on-site at discount market rents. The Appellant has agreed to provide at least 10% as affordable workspace, which would be secured in the Section 106 Agreement. Whilst this is recognised as a benefit of the scheme, due to the flexibility of the use of the non-residential floorspace and the uncertainty as to whether it will be actually be used for employment purposes there is risk that affordable

workspace would never be provided. For example, the space could be subsumed as ancillary space associated with the Student Accommodation or become educational floorspace. Therefore, given this uncertainty, I give this benefit **limited weight**.

- 8.9 The proposal comprises of 233 purpose built student rooms, 35% of which will be provided as affordable student accommodation. The Appellant has confirmed that they would secure a nominated institution for the accommodation, which means a minimum 35% of the accommodation must be affordable student rooms. The nominated institution would be secured through the Section 106 legal agreement in accordance with Southwark Local Plan Policy P5. The proposal as a whole would make a positive contribution to the Mayor of London's target of providing 3,500 PBSA bedrooms in London Plan Policy H15 and the identified demand for purpose built student accommodation within Southwark Local Plan Policy P5. It would also make an important contribution towards affordable student accommodation in the locality.
- 8.10 The principle of PBSA in this location is supported by the Council. However, in relation to this appeal and the planning harm that has been identified, the concern is that the overall 16 storey height of the building makes a detrimental impact on the townscape and local character. The Inspector has been made aware that a similar 14 storey scheme (217 student bedrooms) is currently under consideration by the Council and is likely to be taken to the Planning Committee on 29 November with a recommendation for approval. Given the acceptability of a smaller scale development, when considering the weight of the benefit of the Scheme in providing affordable student accommodation my focus is upon the element of the building that is considered to cause harm and the benefit of slight increase in the total number of affordable PBSA rooms that are provided.
- 8.11 Mr Craig has identified that the principal concern in relation to the impact on townscape and local character relates to the 14<sup>th</sup> and 15<sup>th</sup> floors of the building.

Based on the submitted floorplans there are 14 bedrooms across the two floors, arranged as studios and cluster bedrooms. This would equate to an affordable PBSA of 4.9 bedrooms (pro rata). The top two floors of the building make a very minor contribution to the overall provision of affordable student accommodation within the building, in total 81.55 are provided, therefore, up to 75.09 rooms could still be provided if the 14<sup>th</sup> and 15<sup>th</sup> floors were removed. I would consider that the benefit of the additional affordable student housing bedrooms that would be created in the 16 storey scheme has **limited weight** in outweighing the harm to the townscape and local character, as a significant proportion of this benefit could still be realised without causing harm to the townscape and local character, as demonstrated in the 14 storey scheme.

*Employment and job creation*

- 8.12 During the construction and operational phases employment and training opportunity would be provided. It has been confirmed by the existing occupier of the building, etc-Venues, that the existing five members of staff on the Site will be relocated to an alternative local site. There would be no net loss of jobs on the Site as a result of the proposed development.
- 8.13 The Appellant states in their Economic Impact and Regeneration Statement (CD 3.0) that based on the anticipated construction cost an average of 78 jobs could be created, with the addition of 20% indirect jobs. In relation to the operational phase, it is recognised in the Economic Statement that the employment capacity of the proposed development depends upon the use of the floorspace being created, therefore two scenarios have been tested for when the building is operational/completed. If the non-residential floorspace was solely used for educational purposes, 38.51 could be created, alternatively if the space was used for office only up to 153.36 jobs could be created. A further 10 jobs could be created in relation to the management of the building.



- 8.14 It is recognised that there could be a significant net increase in the number of jobs on the Site, potentially up to 158, however, as highlighted in paragraph 8.8 and within the Appellants supporting statement, there is uncertainty how this space will be used. Therefore, the overall net increase could be only 33 jobs. Which based on the uplift of floorspace being created by the proposed development would be minor.
- 8.15 Overall, whilst this would still be a benefit, I would only attach **limited weight** when considering whether this would outweigh the harm caused on the townscape and local character as very similar employment benefits could still be realised if the top two floors of the building were removed. Again this is demonstrated in the 14 storey scheme.

*Public realm*

- 8.16 Public realm improvements are proposed along the buildings frontage on Avonmouth Street and Tiverton Street and includes the creation of a pocket park to the south of the Site. The provision of public realm improvements is a policy requirement for tall buildings in London Plan Policy D9 and Southwark Local Plan Policy P17. Whilst the improvements would be located outside of the red line of the application site, it has been agreed with the Highways Officers that they will be secured as part of the highways obligations in the Section 106 agreement. There is limited space around the building and therefore whilst the improvements will be small in scale, they would still make a positive contribution for future users and residents of the building, as well as the surrounding residents at Telford and Stephenson Houses. Therefore, I attach **moderate weight** to the public realm improvements as a public benefit.

*CIL and S106*

- 8.17 In relation to Mayoral and Southwark CIL, Section 143 of the Localism Act 2011 states that funding via the community infrastructure levy is a financial consideration that should be taken into account by the decision-maker in the determination of planning applications. The Site is located in MCIL2 Band 2 and Southwark CIL Zone 2 and based on the information provided by the Appellant, the Council has calculated the approximate CIL liabilities as £1,166,223.08
- 8.18 MCIL2 is intended to fund Crossrail 2. The Southwark CIL would be apportioned so that 70% is made available to the Council's Regulation 123 List (which includes education, health, libraries, open space, sports and transport infrastructure improvements in the borough), 25% is made available to local community areas and 5% funds the administration of the Southwark CIL. While the CIL amounts appear relatively large in isolation, as a tariff to be charged on a sqm basis, the CIL amounts are commensurate with similar sized developments throughout the borough. The collection and spending of

CIL receipts on strategic and local infrastructure will deliver public benefits and in determining the weight to attach to this I have had regard to the CIL monies arising through other major developments in the Elephant and Castle Opportunity Area. As such, I have attached **limited weight** to the public benefit to be derived from CIL payments.

- 8.19 The draft S106 agreement is still being negotiated with the Appellant. The current scope of the draft S106 agreement suggests that it will principally deal with matters of policy compliance or address public benefits that are otherwise reflected in this section. This is the case for the transport interventions, employment and training, carbon offset and delivery of the public realm improvements. Whilst the S106 legal agreement is still being negotiated I do not consider that any further weight needs to be attached to the Agreement as a public benefit in its own right.
- 8.20 I conclude that the conflicts between the proposed scheme and the development plan are not outweighed by the 7 planning benefits of the proposal (1 no further benefit, 4 limited weight, 3 moderate weight) as material considerations and that significant proportion of the benefits could still be realised without causing harm as demonstrated in the 14-storey scheme, which at the time of writing this proof of evidence is at an advanced stage and likely to be recommended by officers for approval at 29 November 2022 planning committee.

## **9. Conclusion**

- 9.1 In conducting the planning balance I have had regard to the individual harms and benefits arising through the appeal scheme. In assigning weight to the harms and public benefits I have considered key legislative, policy and contextual issues to inform my judgement.
- 9.2 I have identified that the proposed scheme would lead to substantial conflicts with the development plan policies on matters concerning townscape and local character, fire safety and lack of a Section 106 Legal Agreement.
- 9.3 Therefore, in light of the substantial policy conflicts and the absence of any other material considerations that would support a decision otherwise than in accordance with the development plan, it is my professional opinion that the appeal should be dismissed and the planning permission refused for the reasons endorsed by Members and outlined in the Council's Statement of Case and addendum Statement of Case.

## **10. Expert's declaration**

- 10.1 The evidence which I have prepared and provided for this appeal reference APP/A5840/W/22/3303205 in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.