

**AVONMOUTH HOUSE,
6 AVONMOUTH STREET, LONDON, SE1 6NX**

**AN APPEAL UNDER SECTION 78 OF THE TOWN
AND COUNTRY PLANNING ACT 1990**

APPEAL REFERENCE: APP/A5840/W/22/3303205

**Rebuttal Proof of Evidence of
Roger Antony Hepher BA (Hons) MTP FRICS MRTPI FRSA AAoU**

on behalf of

Tribe (Avonmouth House) Ltd

06 December 2022

- 1.1 This proof of evidence supplements my Main Proof and Summary Proof, both dated 16 November 2021. It responds to matters raised by Ms Zoe Brown on behalf of the London Borough of Southwark ("LBS") in her Proof of Evidence (undated). It should be read alongside Mr Coleman's and Ms Lewis's rebuttal of Mr Craig's Proof of Evidence (undated).
- 1.2 I note that since Ms Brown prepared her Proof, the Health and Safety Executive has written to LBS confirming that it is satisfied with the revised plans and additional information submitted by the Appellant on 27 October 2022. On this basis, LBS has withdrawn the fire safety reason for refusal, so there is no need for me to respond to this matter raised in Ms Brown's Proof. This position has now been confirmed in a Supplementary Statement of Common Ground.
- 1.3 Another issue has arisen at a late stage concerning the extent to which the student rooms should be subject to a "nominations agreement" with a higher education institution ("HEI").
- 1.4 I should begin by noting that there is no standardised legal definition of a "nominations agreement" in the context of Purpose-Built Student Accommodation ("PBSA"), but the intention is that it should be genuinely available to meet the need for such accommodation and support higher education providers as necessary.
- 1.5 London Plan Policy H15 requires that "the majority of the bedrooms in the development are secured through a nomination agreement for occupation by students of one or more higher education provider". In other words, just over 50% of the rooms. This position is well understood in the development and funding market.
- 1.6 Southwark Plan Policy P5 addresses two scenarios: one where all student housing is let at market rates (in which case 35% conventional affordable housing is required, as well as 27% affordable student housing) and one where "all" the student housing is the subject of a nominations agreement (in which case at least 35% of the student housing must be affordable, subject to viability, and there is no requirement for conventional affordable housing). Policy P5 does not address other permutations. But LBS is now taking the position that a development must fall into one or other of those categories, and that the appeal scheme - which provides 35% affordable student housing - must have all the student rooms nominated, in the sense that they are "ring-fenced" for the local HEIs.
- 1.7 The development plan of course consists of both the London Plan and the Southwark Plan. Both are up-to-date and they are supposed to be consistent with each other. That being the case, it is my view that the Southwark Plan policy does not cover the type of development represented by the appeal scheme - it covers the 100% market (direct let) situation and the 100% nominations situation, where 100% of the accommodation is effectively ring-fenced for certain HEIs. It does not cover a scheme like the appeal scheme that falls between these two extremes.
- 1.8 At this point I should note that the Appellant is in regular contact with funders and investors in the PBSA sector and also with relevant HEIs. Its recent experience has been that an agreement

which gives a 100% monopoly position to HEIs will seriously damage, if not destroy, the prospects of the PBSA ever being built. This is because the monopoly position of the HEIs is likely be utilised to depress rents to well below open-market levels. I append letters from Savills and Atrium ARE on this subject, which speak for themselves.

- 1.9 In my view, London Plan Policy H15 is applicable to the appeal proposals and is therefore the development plan policy which should determine what happens in this case, although, as set out below, the Appellant is prepared to offer a modified undertaking which gives the local HEIs a right of first refusal to nominate students and, potentially, to take up *all* the proposed accommodation.
- 1.10 It is appropriate to consider whether this interpretation of policy thwarts any legitimate objective of Southwark's policies. In my view it does not. The Council's concern is to ensure that a scheme that is not essentially a market housing scheme provides 35% affordable student accommodation, to assist underprivileged students. The appeal scheme achieves this objective, and the policy interpretation I have outlined above does too. LBS's policy does not require that the remaining 65% of the housing is subsidised in any way.
- 1.11 I can see that it could be argued that the Council wants to maximise the chances of the 65% unsubsidised student housing being occupied by students from a local Southwark institution rather than students from an out-of-Borough institution, although I do not believe this objective is expressed in the Southwark Plan, and I am not convinced it is a legitimate planning objective in the context of London. However, lest the inspector should take the view that it is legitimate, I will make two points.
- 1.12 First, the appeal site is located "on the doorstep" of two of the major Southwark higher education institutions. It is not in some remote part of the Borough. It is highly likely that it will be occupied by students studying at one or other of the nearby institutions.
- 1.13 Second, in an attempt to reach an accommodation with the Council over the 14 storey scheme that was approved at Committee one week ago, the Appellants have offered a "first refusal" clause, giving agreed higher education institutions the opportunity to nominate students up until a short time before the start of each academic year. After a certain date, the operator would be free to let untaken rooms on the open market. They are willing to offer the same clause in respect of the appeal scheme. In this way, although the 65% market accommodation is not "ring-fenced" exclusively for the local HEIs, a nominations agreement will be in place which gives local students legally enforceable priority over 100% of the proposed PBSA.
- 1.14 I now respond to various points made by Ms Brown in her Proof, including her assessment of the planning balance at section 8.
- 1.15 Ms Brown paraphrases London Plan Policy D4 'Delivering good design' at paragraph 5.3(6) of her Proof and mentions the specific part of the policy that says "*that major developments that are referable to the Mayor should undergo at least one round of design review*". In response, I confirm that the Appellant would have welcomed a design review of the proposals, however, in

this case, the almost complete lack of engagement by LBS meant that there was no opportunity for such a review. However, the Appellant engaged an independent townscape and heritage expert, Citydesigner, to work alongside the architect and, as such, the design was subject to design scrutiny. Notwithstanding the above, the GLA concluded in their Stage 1 response that *“The building would be of **good quality in appearance with well-considered architecture and detailing that references local character.**”* [my emphasis] (CD 6.11, p. 12, para. 57).

- 1.16 Turning to the planning balance, Ms Brown has identified “planning harm” arising from (1) impact on the townscape and local character; and (2) failure of the scheme to meet the highest standards of fire safety. Ms Brown has attached “significant weight” to both, although as explained at paragraph 1.2 above, matter (2) has been resolved, which leaves the single matter of townscape and local character.
- 1.17 Against this, Ms Brown identifies 7 planning benefits to which she attributes varying degrees of weight. I disagree with the number and weighting of the planning benefits that Ms Brown has arrived at for reasons set out below. However, even if Ms Brown’s assessment of the planning harm versus benefits is considered to be accurate (notwithstanding the “significant weight” attributed to fire safety which has since fallen away and the disagreement surrounding townscape¹), there is, cumulatively, a great deal of weight (4 “limited weight” and 3 “moderate weight”) to balance against what seems to be a very insubstantial, single objection on townscape.
- 1.18 My assessment of the planning balance differs from Ms Brown’s; in particular:
- Ms Brown (para 8.8) attributes limited weight to the provision of 10% affordable workspace due to *“the uncertainty as to whether it will be actually be [sic] used for employment purposes...”* and therefore the risk that affordable workspace would never be provided. However, as Ms Brown goes on to say, the space could become educational floorspace (Class F1(a)). In fact, this is the only alternative use in the event that the space is not implemented as Class E. Educational floorspace would create a clear planning benefit in its own right which has been overlooked by Ms Brown.
 - Ms Brown (paras. 8.10-8.11) has attributed limited weight to the delivery of 233 PBSA rooms and limited weight to the provision of 35% affordable PBSA rooms. She seems to have arrived at this conclusion on the basis that a similar 14 storey scheme *“is likely to be taken to the Planning Committee on 29 November with a recommendation for approval”*, thus she has focussed only upon the benefits of the additional two floors of accommodation in isolation. The scheme before the Inspector is the 16 storey scheme (not the 14 storey scheme) and it must be considered on its own merits. Ms Brown’s approach is fundamentally flawed.

¹ It is the Appellant’s position that the proposals do not cause harm at all; Ms Brown purports that “significant weight” must be attached to the harm to the townscape and local character identified by Mr Craig.

- In the weighting exercise, Ms Brown has failed to acknowledge several key planning benefits as set out in paragraph 7.6 of my Main Proof, including (a) financial benefits from construction; (b) ongoing economic expenditure effects; (c) fiscal benefits to LBS (annual business rates on the non-residential floorspace and New Homes Bonus for the PBSA); and (d) sustainability and ecological benefits, including “urban greening” (Urban Greening Factor score of 0.4) on a site which currently has no vegetation or biodiversity value.

1.19 As foreshadowed in paragraph 1.17, in my view, Ms Brown has been unduly conservative in her assessment of the planning balance by attaching too little weight to the 7 planning benefits she identifies and by failing to recognise additional, reasonable, planning benefits flowing from the proposals. Contrary to Ms Brown’s assessment, I come to the conclusion that the planning benefits are far greater, more wide-ranging and would outweigh any alleged harm identified by LBS.

1.20 On balance, when the proposals are viewed as a whole against the development plan and the objectives in the NPPF, the scheme constitutes sustainable development and satisfies the policy requirements to grant planning permission without delay.

28 November 2022

The Savills logo consists of the word "savills" in a lowercase, sans-serif font, colored red, set against a solid yellow rectangular background.

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Dear James,

RE: AVONMOUTH STREET (6), ELEPHANT & CASTLE, SE1 6NX | REF: 21/AP/4297

As your investment agents tasked with securing institutional investors to fund the development of purpose built student accommodation ("PBSA"), the nomination and occupation obligations within the Section 106 Agreement is a key consideration.

We understand that the Council are looking to impose a restriction within the Section 106 Agreement that 100% of the bedrooms are subject to a Nominations Agreement, which varies from the New London Plan, where the majority the bedrooms must be Nominated.

Our professional opinion is that this will have a very negative impact on the investment valuation of the property, and in some instances, will stop investors even considering the site as suitable for purchase.

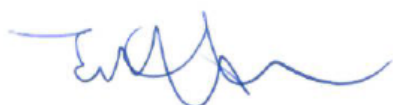
This obligation essentially creates a monopoly for the local Universities to agree rents on the bedrooms other than the 35% affordable, at sub-market levels, which cannot be controlled or forecast. Such uncertainty dramatically increases the risk involved for purchasers and therefore has a detrimental impact on value.

We understand Tribe intend to partner with a University (HEI) and are committed to providing 35% of the rooms at the affordable level plus a further number of beds (to collectively equate to the majority of bedrooms as per New London Plan) under Nominations Agreement to the Universities.

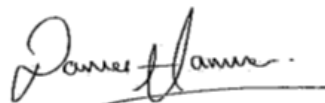
In respect of remaining bedrooms, we would suggest giving the University a first right of refusal through a Nominations Agreement that they must commit to by 1 December in the preceding year ahead of the start of the new academic year in following year, and if the University do not wish to take up this right, there must be an ability to direct let the beds.

Please let me know if you have any questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Holmes".

Jonathan Holmes
Investment Director and Development Funding Head
UK Investment

A handwritten signature in black ink, appearing to read "James Hanmer".

James Hanmer
Director
Head of UK PBSA & Co-living
Operational Capital Markets

Tribe Avonmouth House Ltd
Sealand House
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CM16 4LG

28th November 2022

Dear James,

Re: Avonmouth Street (6), Elephant & Castle, SE1 6NX | Ref: 21/AP/4297

As the appointed investment agents tasked with securing an institutional investor to fund the development of the application site, the nomination and occupation obligations within the Section 106 Agreement, is a key consideration.

I understand that the Council are looking to impose a restriction within the Section 106 Agreement that 100% of the bedrooms are subject to a Nominations Agreement, which varies from the New London Plan, where the majority the bedrooms must be Nominated.

Our professional opinion is that this will have a harmful impact on the investment valuation of the property, and in some instances, will stop funders even looking at the site. This obligation essentially creates a monopoly for the local Universities to agree rents on the units other than the 35% affordable, at sub-market levels, which cannot be controlled or forecast, and such uncertainty will have a detrimental impact on value.

I am fully aware that you want to partner with a University (HEI) and are committed to providing 35% of the rooms at the affordable level and will discuss the remaining units with Universities. We would suggest giving the University a first right of refusal on the remaining 65% through a Nominations Agreement and if the University do not wish to take all of the remaining 65% of the units, there must be an ability to direct let the beds.

Please let me know if you have any questions.

Yours sincerely,



Andrew Simcock
Managing Director

hghconsulting.com