

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

**APPELLANT'S SHORT OPENING**

1. It is a matter of considerable regret that the Appellant has been obliged to bring this appeal against non-determination. However, after waiting for 9 months with a minimal degree of progress being made with the determination of its application, originally submitted in November 2021, it felt that it had little choice but to pursue the appeal route.
2. The submission of a second application, which the Council resolved unanimously to approve on 29<sup>th</sup> November, 2022 has revealed that there is not, after all, a great deal between the Appellant and the Council. Indeed, after various twists and turns, including a late intervention by HSE (now resolved), the remaining points of disagreement appear to be very narrow indeed.
3. Before I turn, briefly, to these, it is critically important to say a word about the planning context for the appeal proposals, especially given the degree of common ground on these points which will reduce the amount of focus on them at the inquiry.
4. The appeal site is not an ad hoc opportunistic redevelopment proposal. It is directed to site which is:

- i. Within an allocated Major Town Centre, already heavily influenced by tall buildings;
  - ii. Within the Mayor's Central Activities Zone;
  - iii. Within a designated Opportunity Area; and
  - iv. Expressly allocated for redevelopment in the Southwark Plan 2022 at site allocation NSP46, with the potential tall buildings flagged up in the policy text (subject to normal considerations).
5. What is more, it is a site with the best possible access to public transport (PTAL 6b), served by multiple regular bus services, a key London Underground station and a mainline station. For accessibility, is as good as it gets in London if not the UK. It is also within a stone's throw of several major Higher Education Institutions (HEIs), but within an area which presently lacks provision in the way PBSA. As is common ground, adequate provision of PBSA takes the pressure off the use for student accommodation of conventional housing (which is, of course, in huge demand in Southwark).
6. It is submitted that there is an *absolutely compelling* case for allowing an intensified use of the appeal site for the currently proposed mix of uses, which includes flexible employment/community space (in which one of the local HEIs has already expressed a keen interest).
7. With the submission of evidence for this inquiry and the withdrawal of the putative Reason for Refusal in relation to alleged heritage impacts, it has become clear that

there are in reality only two matters of dispute and that one of those may still be capable of resolution.

8. The first issue is the alleged impact of the top two storeys of the 16 storey element of the proposed building. Ms Lewis, the very able and experienced scheme architect and Mr Coleman, an independent urban design and townscape consultant, who has been involved in the evolution of the design from its earliest stages, will give evidence that the scheme is not merely acceptable, but will make a positive contribution to the townscape. I will not attempt to foreshadow that evidence in any detail now, other than to note that Mr Craig for the Council, never previously involved in the appeal scheme during its determination period, has raised a number of matters for the first time in his evidence that we have sought to address, insofar as time has allowed, in our rebuttal evidence. This includes looking again at the materials palette for the 16 storey element, which the Appellant is happy to see controlled by planning condition, should you deem that appropriate in due course.
9. The second outstanding matter is the terms of the planning obligation in relation to the nomination of students to occupy the proposed accommodation by the specified HEI(s). The Appellant is a dedicated provider of student accommodation. It has no issue whatsoever with linking this accommodation formally to one or more local HEIs, so that these providers have “first call” on the accommodation in perpetuity.
10. However, the scheme has to be viable or it simply will not be built. The Appellant’s and Council’s FV consultants reached a sufficient level of agreement as to the FVA, such that it is not presently the subject of any live dispute or evidence before this

inquiry. Both parties' advisers assumed, quite correctly, that 35% of the accommodation will be expressly dedicated as Affordable Student Accommodation, for which the (discounted) rental will be specified externally by the Mayor. The balance of the accommodation has been assessed on the basis that the Appellant may charge a normal market rent for student accommodation in this part of London. Again there was no dispute about this. However, if the 65% market rent element of the accommodation is restricted so that it may *only* be occupied by one or possibly two local HEIs, this will give those HEIs an overwhelmingly - and artificially - strong negotiating position in determining the rent to be paid, as the "market" will effectively *just* be those two HEIs. This will have the consequence that rents will be driven down well below open market level and the value of the scheme will fall well below what both FV consultants have assumed in assessing the viability of the scheme. The consequence will be that funders and investors will walk away - and the scheme will not be built. As I understand the position, this matter is still under review and solutions are still being sought to this issue.

11. I remain hopeful that a solution can be found preserves the right of nominations to the local HEIs without compromising the viability of the scheme, and we will keep you fully apprised of progress.
12. Beyond, that there is agreement on all aspects of the planning obligation and, so far as I am aware, no other live issues between the Appellant and Council.
13. On the basis of the evidence which I shall call and the submissions which I shall make, I expect to be able to invite you at the close of proceedings to allow this appeal.

**THOMAS HILL KC**

**14<sup>th</sup> December, 2022**

**39 ESSEX CHAMBERS**

**81 CHANCERY LANE**

**LONDON WC2A 1DD**