APP/A5840/W/22/3303205

AVONMOUTH HOUSE, 6 AVONMOUTH STREET, LONDON SE1 6NX

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. At the opening of the inquiry, the Inspector set out what the main issues were said to be: a list which did not appear to be controversial. I will address those matters in that order.

2. Before I embark upon that exercise, I should mention two themes which, in my submission, run through the evidence:

i. general failure on the part of the professional officers of the Council to engage in any meaningful or consistent way with this application from the date of its submission in October 2021 until the date when appeal was made. This is, as I said in opening, highly regrettable and should cause you to take a very dim view of allegations now made as part of the Council's case that the application the subject of this appeal was inadequately supported or deficient in some other way;

ii. the consequential contrast in the nature and quality of the evidence called by the principal parties: on the one hand, the Appellant's witnesses have been intimately involved in the evolution and presentation of the proposals since their inception and fully appraised of all contextual matters; on the other, Mr Craig first looked at the matter in September and was then "kept away" from the 14 storey scheme

in case he had to defend a refusal, whilst Ms Brown arrived at the Council in mid-October, and as she walked through the door was assigned the task of giving the Council's planning evidence with only weeks to go before submission of proofs and precious little time to acquaint herself with the wider background. We have, of course, been unable to test the professional opinion of the senior officer who recommended the second application for approval and who has not been called by the Council to give evidence to this inquiry.

iii. Accordingly, I submit that Ms Lewis, Mr Coleman and Mr Hepher, who have all been closely involved in the appeal proposals for 18 months or more and whose intimate knowledge of the relevant materials was self-evident, are experts of rare distinction, whose evidence and professional opinions, based upon extensive experience and depth of knowledge, should attract great weight in the decision-making process.

Issue 1: The effect of the proposed development on the character and appearance of the area

3. As ever, this issue requires the exercise of professional judgment and is one in respect of which an Inspector is both able and fully entitled to reach their own conclusions. However, it is not a judgment to be taken in a vacuum, but rather by reference to analysis of a range of key contextual factors. In this case, it is submitted that foremost amongst these factors will be:

   i. The strategic and local policy context;

   ii. The physical context;

iii. The Council's resolution to grant planning permission for the 14 storey scheme;

iv. The proposals themselves and the suite of documents supporting the planning application: DAS, HTVIA etc

v. The balance of the expert evidence of Ms Lewis, Mr Coleman, the GLA Stage 1 Report vs. that of Mr Craig.

4. I turn to consider each of these briefly.

Strategic and local policy context

5. All witnesses have referred to policy D3 of the London Plan 2021[1] ("LP") which requires the optimizing of site capacity through the design led approach.

6. Mr Craig agreed in XX:

i. that limbs A & B of D3 are engaged in this case;

ii. that this policy is in part a recognition of London's urgent needs for new development and the limited opportunities to satisfy those needs;

iii. that the policy is an injunction to "make the most of" the opportunities where the location justifies this; and

iv. that the appeal site has the highest PTAL score achievable (6b) and "exceptional connectivity".

[1] CD7.01

7. Of course good design is critically important to a "design led approach", but it is the means to the end – and that "end" is optimization. The Council's points about hierarchy are completely misconceived. Ms Brown in fact put it correctly in her proof of evidence[2], in which she said that D3 set out "a fundamental principle that all development must make the best use of land by following a design-led approach". In XX she agreed that: "the policy imperative is optimization". In Mr Hepher's words: D3 is not a licence for flights of fancy, but the question must be asked; has the greatest amount of "useful development" been "squeezed" from the opportunity?

8. Beyond this essentially generic policy, there are of course the agreed range of site allocations which wash over the appeal site and seek to encourage its redevelopment for mixed use purposes: it is within the Elephant & Castle ("E&C") Main Town Centre, the E&C Opportunity Area and site allocation NSP46.

9. Cumulatively, as Mr Hepher put it, these allocations anticipate and encourage transformational change along Newington Causeway and the appeal development will simply merge into an evolving townscape. This effect is well illustrated on Figures 2.3 and 2.5 of Ms Lewis's proof.

10. It is agreed that the appeal proposals do not give rise to conflict with or prejudice to the future redevelopment of the remaining areas covered by the NSP46 allocation.

[2] Para.5.3 (5)

The physical context and setting of the appeal site

11. Mr Hepher and & Ms Brown were in agreement that the site is "relatively less sensitive" for the development of a taller building - a fact which is reflected in the wording of policy NSP46 and, of course, the Council's recent resolution to grant planning permission for the 14 storey scheme. As Ms Lewis and Mr Coleman explained, the context is already changing, but currently in flux with a strong emerging emphasis on taller buildings. The Tibbalds Framework[3] commissioned by the Council is entirely consistent with this emerging picture.

12. Mr Craig's "backland" or "backwater" point is, of course, far too simplistic an assessment. As Ms Lewis explained[4], the site is the "other side" of an important urban block with its own important frontage to Newington Gardens and an opportunity to address and "enclose" the gardens. Mr Coleman explained[5] in Re X that this meant "enclosure" in place-making terms and not by physical incursion into the gardens. It is a phenomenon well known and understood across London and other cities where open spaces are fringed with buildings to their mutual benefit.

13. It is accepted that the present building on the appeal site is relatively low key and makes no impact on the street scene, but the site still lies fully within the Main E&C Town Centre and Opportunity Area. PBSA is the "perfect fit", as the site can be utilised far more effectively as currently proposed and yet without generating large amounts of traffic. Ms Brown confirmed in XX that there was no expectation of any

[3] See CD8.21
[4] In XinC
[5] In ReX

material increase in car movements. The proposed pocket park will reinforce the present tranquil character.

The resolution to grant pp for 14 storeys scheme

14. There was no suggestion from Mr Craig that the 14 storey scheme should do other than provide "the baseline" for the design and townscape judgments to be made in determining this appeal. The issues are thus:
    a. whether the building is, as Mr Craig alleges "two storeys too high"; and
    b. whether the so called "crown" is acceptable in terms of its architecture and materials palette.

15. Mr Craig's criticisms of layout and ancillary service provision seemed entirely randomly expressed, with complete disregard for the principles established by the 14 storey scheme – and the obligation on the Council to set out its case in its Statement of Case (which makes no criticisms of internal arrangements).

The submitted planning application, supporting DAS & HTVIA

16. It is deeply ironic that, the Council having "sat" on the application for 9 months, the Council's only design witness had the bare faced effrontery to say, over a year after the submission of the application, that the Appellant should have submitted further views, dusk views, winter views, long views, and submitted the scheme to DRP review.

17. To crown this irony, the similar 14 storey scheme was apparently considered acceptable by officers and members without the need for any of these additional submissions or DRP (and, of course, DRPs are convened by the relevant local planning authority).

18. This is palpably a bad point. The DAS and HTVIA are very thorough and the range of 13 separate viewpoints examined serves to confirm this. None of these views is especially sensitive, save for Trinity Square Conservation Area, where Mr Coleman was very clear that there would be no views of the appeal scheme. In most of these views, Mr Coleman was also clear that the appeal building would be an enrichment to the townscape and not an intrusion. He described the key view as the oblique one from Newington Causeway (View 11) from where he was confident that the building will appear very successfully in the townscape, with the top well-articulated by the pilasters, signaling that there is more than might be supposed to be found at Avonmouth Street, just on the other side of the zebra crossing.

The expert evidence before the inquiry

19. Whilst Mr Craig is not a qualified architect, Ms Lewis and Mr Coleman most definitely are. Ms Lewis is the principal of a very successful practice and a top scoring member of Southwark's Panel of Architects, a highly coveted accolade, as she explained, administered by the most senior officers in the Council. Her schemes have an impressive track record of receiving unanimous approval from local planning authorities, including LB of Southwark, where her 25 storey Ilderton Wharf scheme

was singled out for special praise. Nationally, as she added in oral evidence, her practice was a Finalist in the recent Housing Architect of the Year awards.

20. Mr Coleman's experience was accepted by Mr Craig[6] to be exceptional and he has become regarded as a leading authority on all aspects of urban development, taking great care about the projects to which he is prepared to lend his support. He collaborated with Stitch Architects during a period of focused design development in May and June 2021 in order to craft the appeal scheme, making suggestions and testing different approaches to the handling of the massing, experimenting with the "crown" of the building and "encouraging more attention to the top to make it more special"[7]. He was in no doubt that Stitch Architects had produced a building with which he was very happy to be associated.

21. The attempt by the Council[8] to characterize the appeal proposal as driven by developer greed was desperate and fell apart as Ms Lewis and Mr Coleman gave their evidence, as that was plainly not the way in which the appeal scheme evolved. Equally doomed was the attempt to suggest to Ms Lewis that her scheme was simply a copy and paste of the KFC proposal for Tribe on the Old Kent Road. Ms Lewis explained in X in C that her practice's brief was simply to optimize the site with good design. This process began with setting an optimum height after exploring a range of options between 10 and 20 storeys. As Mr Coleman subsequently recorded in his evidence, 20 was rejected as "too ambitious", 18 was "a possibility", but 16 storeys

[6] In XX
[7] Oral evidence Day 2.
[8] In XX of the Appellant's witnesses

was clearly identified as the "optimum" height, after testing through the Vu-City software. Mr Coleman particularly mentioned the fact that capping the building mass at 16 storeys meant that the building would not break aggressively through the canopy of the trees in Newington Gardens (see View 7), but would sit at that level, in contrast to the plainly visible Eileen House and Kite buildings.

22. Subsequently, the architects experimented with the planes, stepping forward, dividing the mass and crafting the top two floors, all with added cost implications as Ms Lewis explained.

a. Height/transition

23. The Appellant's witnesses simply do not accept that there is anything remotely unacceptable about the 2 storey "crown" element of the building in terms of its absolute height. The building will sit notably below the nearby 24 storey Kite building and far below the 41 storey Eileen House, which is so prominent at this location. It would plainly deliver a transition between the core part of E&C and the areas beyond.

24. We do ask the Inspector to note the 13 storey building approved by the Council further down Newington Causeway at Kings Place, which will step down a further 3 storeys from the appeal scheme, again appropriately. To suggest that the appeal site needs a building of more "domestic scale" or should reflect that scale is both a serious architectural misjudgment and would lead to the waste of a rare and valuable opportunity, whilst flying in the face of both the 14 storey scheme already approved for the site and the 13 storey scheme approved much further down Newington

Causeway. The rationale and planning justification for this development will be entirely irrelevant and unknown to passers-by, who will only be aware of its role within the wider streetscape.

25. It is notable that neither Mr Craig nor Ms Brown mention the Kings Place consent in their proofs of evidence when articulating their "transition" point. Indeed, Ms Brown readily admitted[9] that she was not aware of this scheme when she wrote her proof. The fact that a NMA application is before the Council to adjust the phasing on this permission is neither here nor there – and a complete red herring - for the purposes of the Council's transition point.

26. In this context, as Mr Coleman was at pains to explain, focusing on individual static views where a smaller building might momentarily "appear" taller than – or as tall as – a building that is actually considerably taller than it is a fool's errand. As one moves through the townscape, the rules of perspective demand that the relative height of buildings (and other static objects) is constantly in flux. However, human beings do not experience townscape as a series of static views; the experience is a kinetic one. The human eye learns to appreciate relative scale and will soon detect that the appeal scheme is a full 8 storeys shorter than the Kite building and will be only 3 storeys taller than Kings Place on the Newington Causeway/Harpur Road junction. Detailed study of view 10 in this context is unlikely to be fruitful, especially as it does not show the consented Kings Place building on the near left hand side of the image, on which site the Council has permitted the 13 storey element of this redevelopment.

[9] In XX

b. “The crown”

27. Design. As Ms Lewis and Mr Coleman explained, the 15th and 16th storeys would only occupy a relatively small part of the site’s footprint. However, they also confirmed that these floors were an important part of the proposed building and integral to the design, which was sculpted to remove mass at the highest levels, creating a “jewel-like” element at its apex. It is not a “bolt on” to the 14 storey structure which the Council has recently resolved to approve, but the outcome of mass reduction from a 16 storey starting point.

28. Detailed attention was also paid to the elevations with the articulated panels giving relief, light and shade, with fenestration to all elevations save for Tiverton Street, which is so far set back from available viewpoints that it will be a very minor feature indeed in street views and will completely disappear, as the viewer moves along the street towards the building.

29. Mr Coleman reinforced the evidence of Ms Lewis, that the “crown” with its piers, relief and light and shade would give the apex of the building “a sense of life and lightness” which is absent from the 14 storey scheme which the Council has resolved to approve.

30. Colour. Ms Lewis explained[10] that the proposed materials palette was deliberately strong and confident, with the use expensive glazed red brick to allow “the crown” to shimmer.

[10] XinC

31. Mr Craig's proof contains multiple references to colour, essentially (and simplistically): pale is good; red/aubergine is bad ("far more harmful" said Mr Craig in XX). The Appellant disagrees, although Ms Lewis explained that there could be merit in a greyer palette too.

32. We accept that there is plainly room for legitimate disagreement on this matter and the Appellant is happy to leave to details of the submission of materials and palette for approval to pursuant planning condition if the appeal is allowed. I note that, despite the discouraging comments in the Council's Statement of Case that varying the materials palette would make no difference to the Council's negative assessment, Mr Craig acknowledged (in XX) that the effect of changing the colour of the crown to paler tones meant that he no longer considered the impact at View 9 to be a "significant adverse impact".

33. Finally on this issue, Ms Lewis and Mr Coleman were very clear that whilst the 14 building is acceptable, the better building is the appeal scheme: its greater height and sculpted upper level would deliver a more elegant composition, with three contrasting heights and the jewel-like apex.

<u>The GLA – CD6.11</u>

34. As well as the expert opinions of two highly qualified architects, the inquiry also has the benefit of detailed input from the GLA, with its extensive design experience. Mr Craig told the inquiry[11] that the GLA were "thorough" and "dig deep" in their

[11] XinC and XX

assessment of applications. He also agreed that the Inspector should take note of the GLA's views as they were responsible for policy D9 and they had role of ensuring that it is applied consistently across London. The GLA's Stage 1 Report is undeniably supportive of the appeal scheme and identifies that it would make a positive contribution to the townscape (as policy requires). However, Mr Craig had the gall to say that, in his view, GLA had "had an off day" in supporting the appeal scheme, without having canvased any of his criticisms of the GLA's conclusions or approach with the officers responsible for them.

35. The GLA[12] expressly conclude that the "perceived massing of the proposed development is mitigated by its distinctive consecutive parts, achieved by alternating planes and contrast in brickwork tones that separate its elevations". Mr Craig accepted in XX that, diametrically opposed to his position, the contrasting brickwork colour was the source of positive comment – and not objection – from the GLA design team.

36. In conclusion on this issue, it is submitted that you may confidently conclude that the appeal proposal will make a positive contribution to the townscape at Avonmouth Street and beyond and thereby satisfy all relevant policy tests, including D3 of LP.

[12] CD6.11, para 78

Issue 2: Whether the proposed development would make adequate provision towards local infrastructure requirements

37. This reason for refusal was not framed by reference to policies H15 of LP or policy P5 of SP. Moreover, there has been no application to amend the Council's Statement of Case in this respect. Indeed the treatment of these policies in Ms Brown's Proof of Evidence is salutary: Ms Brown states at para.7.8 that the proposal "would also meet a growing need for PBSA which has been identified in LP Policy H15 and SP 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**". There was no errata sheet submitted, nor supplementary proof offered by the Council to displace these paragraphs.

38. However, the Council's policy case has morphed and then ballooned into the detailed paper submitted 15 minutes before the opening of the 1st Round Table session ("RT1") on Monday. This action has been extremely regrettable and compounds what has already been a sorry story in relation to the handling of the appeal development.

39. The two RTs have revealed that central to the Council's case is the proposition that its SP Policy P5 positively intended a nomination agreement to have a significant rent suppression effect, so as to generate a third "intermediate" category of rent level for PBSA, beyond the "affordable" and "market" rents referred to in policy.

40. That proposition was advanced by Ms Godinet in RT1 and then clung to in RT2 by Mr Ainslie notwithstanding that:

    i. Ms Brown, the Council's sole planning witness, expressly agreed with me in XX that there is no development plan document or evidence base document of which she was aware – at either GLA or Southwark level – which evidences any positive, purposive intent for the existence of a nominations agreement to drive down rents to any given level or proportion of open market rent. In my submission, this is highly significant. The financial motors and other implications of the Council's approach would surely need to have been fully explored before they could have been considered and endorsed by the LP Inspectors in a way which differs so sharply from the London Plan approach in policy H15, especially given the presence of acute housing needs[13] across London, which are far from unique to Southwark;

    ii. The absence of any legal or planning policy definition of a "nominations agreement" ("NA") in the SP or elsewhere; and

    iii. The fact that no one at SBC ever seems to have seen a NA.

41. The "senior" policy is the LP policy H15, developed by the GLA and subject to extensive scrutiny. As Mr Hepher said in both his written and oral evidence, H15 is the gold standard, and is understood by Councils and the PBSA sector alike. It is especially important as the LP looks to the whole of London to solve the student accommodation crisis in the capital and does not allocate borough-wide targets[14]. Consistency is therefore important. H15 offers freedom for the PBSA provider as to

[13] Said to be basis for s different approach in Southwark
[14] See LP para.4.15.3

which model it deploys for the accommodation proposed so long as 35% is affordable student accommodation and the majority (51% or more) is subject to a "nomination agreement" in favour of named HEIs. The Appellant is and always has been content with an approach of this nature and its Option B in the submitted UU reflects this policy approach. It would be entirely content with Option B.

42. The junior (borough) policy, albeit one adopted slightly later in time (notwithstanding the parallel processes) is P5. This was subject to some "last minute" Modifications which were apparently inserted to achieve consistency with the LP, but do not seem to achieve that effect.

43. P5 seeks to single out "speculative" proposals (to use the words of the IR[15] para.82) for direct let accommodation. That is not what we have here: the firm intention has always been to cater for the unmet need arising from the large HEIs located 3-5 minutes' walk from the appeal site, which do not have access to adequate accommodation. Both University of London and LSBU have expressed clear interest in the appeal proposals and LSBU has actually expressed keen interest in the Class E/F floorspace as well. It will be very much in the interests of the Appellant to strike a deal with either or both these HEIs - which are expressly named in the UU. [16]However, this deal cannot be at any price or the economics of the scheme fall apart and it will simply not be built. The Appellant wants to be able to charge a fair open

[15] INQ-09

[16] The HEIs expressly welcome the provision of "affordable" bedspaces (the 35%) and refer to "appropriate rents" for the balance, not seeking to second guess how negotiations will be concluded.

market rent for its PBSA (which, for the avoidance of doubt, is a completely different animal to a conventional flat in London on the books of Foxtons[17]).

44. It may well be that "bulk discounts" will be negotiated with the HEIs, as Mr Hepher explained in evidence[18]. However, the Appellant cannot be subject to the risk of a ransom/monopoly position and, of course, on the other side of the coin, the HEIs are unlikely to want to commit indefinitely to taking all 233 bedspaces. There must therefore be room for both parties to strike a deal which suits them both. It may well be that some accommodation is ultimately "direct let", varying in amount/proportion from year to year depending upon supply and demand, but this proportion cannot be ascertained in advance, even if it is always likely to be the minority (as per LP Policy H15), where 35% is expressly affordable accommodation.

45. Notwithstanding the above, the UU Options A and C both satisfy P5(3) as <u>all the bedspaces</u> will be subject to nomination rights in favour of HEIs: Option A giving the HEIs a right to nominate as many students as it wishes up until the Pre-Emption Date (set sensibly to cover the hectic first couple of months of the academic year when decisions about the next year's accommodation are taken "at pace"); whereas Option C offers a more ringfenced arrangement, but subject to the caveat that a ransom/monopoly position is avoided by the definition of Open Market rent.

[17] Apparently Ms Graham Paul's "go-to" agents
[18] XX'd day 4

46. It is the Appellant's submission that Options A-C are policy compliant and each would be acceptable, albeit that Option B would not fit the straitjacket of the SP Policy P5.

47. It follows that there are workable policy complaint approaches (Options A-C of the UU) on the table which the inspector is urged to support.

48. The FVA which supported the original planning application[19] for the (now) appeal scheme was submitted in October 2021, before the publication of the SP EiP IR[20] or adoption of the SP in February 2022 - in a different market and a different economic world. Whilst this FVA tested a "suppressed rent" model, the scheme was over £2m "under water" (ie the RLV of £4.86m was more than £2m below the BLV of £7m)[21], even in those much sunnier economic climes. The Appellant fully expected engagement with the Council on the issue of viability in the normal way and chased the Council repeatedly for feedback both generally and specifically in relation to the appointment of its own FVA consultants: see CD 4.04, 4.05 & 4.06. However, the ball was not only dropped, but completely lost by the Council and there has never been any engagement with the Council or its consultants on the viability of the appeal scheme.

49. The position could not have been more different with the second application, when the Council's consultants, Avison Young, considered that it was not appropriate to

[19] INQ-12
[20] INQ-09
[21] See the conclusions on p.20

assume a "suppressed market" rent in the absence of ring-fenced, monopoly induced rents, but that, even with an 65% direct let rental assumption, viability was marginal and that it was not appropriate to seek any further contributions. The conclusions of the Council's consultants expressly referenced the "environment of rising interest rates, rising build costs and economic instability which could impact upon the GDV"[22], before going on to conclude that the offer of 35% affordable student rooms could be supported. So, AY have told the Council that the 14 storey scheme cannot sustain a ring-fenced/monopoly rental model.

50. The Council seems to suggest that the Appellant is changing its position, but the development for which planning permission is sought has not changed one iota. In the context of the current planning obligation, the Appellant is perfectly entitled to revisit very recently adopted policy and establish precisely what it was actually obliged to do to meet policy requirements, especially in the light of the rapidly deteriorating economic picture and the difficult funding environment, as explained by Mr Hepher. The offer is in the UU is driven by primarily by policy, with which it is complaint. As it happens, this offer is also reinforced by the material before the inquiry in relation to viability. The Council, which so singularly failed to engage effectively on any matter in relation to this application, cannot now complain about changes which have - almost inevitably - come about due to its dilatory processing of the application.

51. The conclusion is, therefore, to use the (agreed) terms in which the Inspector has framed the second issue: yes, the UU does make adequate provision towards local infrastructure requirements.

[22] P.37

Issue 3: Whether or not any conflict with the development plan and harm arising is outweighed by other considerations?

52. The Appellant's position is clear: there is no conflict with the development plan and no harm arising from the development. On the contrary, there is an extensive list of design, townscape and other vitally important planning benefits set out in detail in section 7 of Mr Hepher's proof.

53. The Council will no doubt assert that the proposal is contrary to P5. It will assert that this is a speculative direct-let scheme and so should have been tested under policy P5(2) to provide 35% affordable housing ("AH") and 27% affordable student accommodation ("ASA"). Whilst the Appellant disagrees fundamentally with this approach and has not seen the need (nor been asked) to produce yet another FVA, the most recent FVA before the inquiry is the Council's Avison Young Report[23], which concludes that nothing than more 35% ASA can reasonably be sought by the Council, even on an approach which assumes that all of the 65% non-ASA units are direct let. Whilst the appeal scheme would include the construction of the (more costly[24]) Floors 15 and 16 and bring with it another 14 units (to rise from 219 to 233), the schemes are broadly comparable and you have an indication that, even on the Council's misconceived approach, there is no suggestion that there a large pot of untapped

[23] INQ -10
[24] S Lewis XX'd

developer profit waiting to be diverted by the Council to subsidise other policy objectives.

54. Moreover, the policy objectives as stated in the "Reasons" for P5 are all met:

i. Reason 1. The need for more student accommodation is recognised. This is what is being provided – in response to a local unmet need arising from the requirements of two local HEI supporters of the scheme. In this context, it is also important to note that the appeal site forms part of a much larger allocation for mixed use development, NSP46, which was never envisaged primarily as a housing allocation (with a modest 93 units expected across the whole allocation). So this is not a case of a PBSA developer displacing an expected housing opportunity. Mr Hepher, with his very extensive experience across London, found the appeal site to be "one of the best sites for PBSA I have ever seen"[25], a position reinforced by the Council's resolution to grant permission for the 14 storey scheme.

ii. Reason 2. There is no suggestion by the Council that this particular location is disproportionately supplied with PBSA schemes or that Southwark now has "too much" student accommodation; indeed this is the only PBSA development of which we are aware in this locality.

iii. Reason 3 is ungrammatical, no doubt due to the multiple modifications to the policy, but the Council has not suggested that > 35% ASA should be provided.

[25] XinC

There will be a nomination agreement in place in perpetuity for as long as the site is used for PBSA.

iv. Reason 4 is met. The Mayor's guidance for the affordable rents will be applied.

55. Additionally, and most importantly, the appeal scheme will also relieve pressure at the low cost end of the general housing market to the extent of 93 homes (using the GLA's approved metric). This is precisely the market sector where pressures are greatest in Southwark and where the contribution made will be most meaningfully felt.

56. Other multiple benefits of the scheme are set out by Mr Hepher in his evidence, which will definitely be delivered by the appeal scheme and may or may not be delivered by any other scheme. It is submitted that this much needed scheme has been held up for long enough by the Council. The Appellant cannot be sent back to square one again.

57. Finally, if you agree with Appellant on the application of policies H15 and P5, but find some townscape harm, then expressly ask you to prefer Mr Hepher's analysis of the benefits of the scheme and the weighing of the planning balance[26], especially as Ms Brown's exercise omits to include a critical benefit (the relieving of pressure on low cost general market housing) which she accepted in XX attracted "substantial weight". Having loaded the balance incorrectly, it must follow as matter of approach

[26] Proof section 7

and logic, that Ms Brown's overall balancing exercise is unreliable and should be set aside. In fact, the list of benefits is so extensive that, even had Ms Brown not fallen into a fatal error, her striking of the balance in favour of refusing the appeal defied credulity.

58. Accordingly, it is submitted that there is a wide range of powerful considerations which would be more than capable of tipping the balance in favour of allowing the appeal - if there were to be any prior finding which required this exercise to be embarked upon.

Conclusion

59. For all the above reasons, the three main issues should be firmly resolved in favour of the Appellant and it is respectfully requested that this appeal be allowed.

THOMAS HILL KC **22nd December, 2022**

39 ESSEX CHAMBERS
81 CHANCERY LANE
LONDON WC2A 1DD