
Appeal Decision

Inquiry held on 4 to 7 and 13 and 14 July 2023

Site visit made on 13 July 2023

by OS Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2023

Appeal Ref: APP/N5660/W/23/3317382

1-4 Brixton Hill Place, London SW2 1HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by BHPD Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 22/01987/FUL, dated 26 May 2022, was refused by notice dated 14 September 2022.
 - The development proposed is demolition of the existing buildings and redevelopment of the site to provide an H-shaped building ranging from 2 to 5 storeys in height comprising 24 self-contained residential units (Class C3), together with the provision of three disabled car parking bays, refuse and cycle storage, child play area, landscaping and boundary treatment.
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DECISION

1. The appeal is allowed and planning permission is granted for demolition of the existing buildings and redevelopment of the site to provide an H-shaped building ranging from 2 to 5 storeys in height comprising 24 self-contained residential units (Class C3), together with the provision of three car parking bays for the disabled, refuse and cycle storage, child play area, landscaping and boundary treatment at 1-4 Brixton Hill Place, London SW2 1HJ, in accordance with the terms of the application Ref 22/01987/FUL, dated 26 May 2022, and subject to the conditions as listed at Annex C.

APPLICATION FOR COSTS

2. At the Inquiry an application for costs was made by BHPD Limited against the Council of the London Borough of Lambeth. I then provided time following the Inquiry for a response from the Council and any last comments by BHPD Limited, which were duly received. This application will be the subject of a separate Decision.

PRELIMINARY MATTERS

General

3. The Development Plan includes the Lambeth Local Plan 2020-2035, adopted September 2021 (the L-LP) and the London Plan, dated March 2021 (the LP). There are no emerging Local Plans of relevance to the Inquiry.
4. A number of submissions were received during and after the Inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly

relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the revised and additional documents.

Reasons for Refusal

5. The Council refused the proposal based on 16 reasons for refusal. The 2nd Reason for Refusal is in relation to loss of community facilities. However, since the application was refused, a certificate of lawful use¹ and a subsequent appeal decision² have, combined, confirmed that the entire site is in office use and that there are no existing community facilities. Therefore, the Council did not pursue this reason for refusal.
6. The 3rd Reason for Refusal is in relation to a failure to demonstrate that the maximum reasonable provision for affordable housing is proposed. Since the application was refused, the Council has reviewed the viability information and it now agrees that the proposal cannot viably provide affordable housing. Therefore, the Council did not pursue this reason for refusal.
7. The 4th Reason for Refusal is in relation to highway safety at the proposed access from Brixton Hill. However, since the application was refused, a prior approval application for the change of use of the existing building to 12 flats has been granted³. This has established the principle of the use of this access point by residential occupiers and, therefore, the Council did not pursue this reason for refusal.
8. The 8th Reason for Refusal is in relation to fire safety. The appellant has submitted a London Plan Fire Safety Report and Design Note that the Council has reviewed and confirmed is satisfactory. Therefore, the Council did not pursue this reason for refusal.
9. The 11th Reason for Refusal is in relation to a failure to demonstrate that adequate provision is made for access to the proposed car parking spaces and servicing of the proposal. Since the application was refused, additional information has been submitted to clarify the swept path of delivery vehicles and detailing a revised car parking arrangement. The Council has stated that this information adequately addresses its concerns in these regards and therefore it did not pursue this reason for refusal.
10. The 12th Reason for Refusal is in relation to refuse collection. However, the Council has since indicated that, if refuse collection were to take place from Brixton Hill, then this would overcome its concerns in this regard. This could be controlled by condition and, therefore, the Council did not pursue this reason for refusal.
11. The 13th Reason for Refusal is in relation to design standards, energy efficiency and biodiversity. However, since the application was refused, the appellant has submitted a Sustainable Design and Construction Statement and an Energy Report which the Council has reviewed and has found to be acceptable. The Council has also confirmed that appropriate biodiversity

¹ Ref 20/01597/LDCE

² Ref APP/N5660/W/22/3305193

³ Ref 23/00704/P3MA

standards could be secured by condition. Therefore, the Council did not pursue this reason for refusal.

12. The 14th Reason for Refusal is in relation to surface water flooding. However, since the application was refused, the Local Lead Flood Authority has confirmed it supports the proposal in this regard. Therefore, the Council did not pursue this reason for refusal.
13. The 15th Reason for Refusal is in relation to air quality. However, since the application was refused, an Air Quality Assessment has been submitted which the Council has found to be acceptable. Therefore, the Council did not pursue this reason for refusal.

Planning Obligation

14. The 16th Reason for Refusal is in relation to the absence of a completed s106 Planning Obligation and therefore the lack of an enforceable mechanism to secure appropriate levels of affordable housing, a car-free development, or contributions or other measures to mitigate the effect of the proposal on local infrastructure. In this regard, at the Inquiry the appellant submitted a s106 Planning Agreement in the form of a Unilateral Undertaking, dated 17 July 2023 (the UU). The UU secures:
 - an early-stage affordable housing review mechanism;
 - a late-stage affordable housing review mechanism;
 - the provision of communal open space and children's playspace, including establishing a Management Company for their ongoing maintenance;
 - extent, materials and planting details, and the ongoing management, of the green roofs;
 - an employment and skills contribution, and an Employment and Skills Management Plan including commitments to providing apprenticeships, use of local labour during construction, work experience, engagement with the local community and schools, and job advertisements;
 - three years free car club membership for the first occupant of each proposed dwelling;
 - three years cycle hire scheme membership for the first occupant of each proposed dwelling;
 - each proposed dwelling to be prevented from applying for an on-street car parking permit;
 - a contribution towards a Road Danger Reduction scheme in relation to Brixton Hill;
 - a contribution towards improving the cycling environment on Brixton Hill;
 - a contribution to off-set carbon emissions;
 - a Travel Plan monitoring fee; and,
 - a UU monitoring fee.
15. The provision and maintenance of communal open space is necessary to provide outdoor amenity space to the future occupants of the proposal and is fairly and reasonably related to the scale of the proposal. The provision and maintenance of children's playspace is necessary to provide suitable play facilities for any children that would live in the proposal and is fairly and reasonably related to the scale of the proposal. The contribution and other measures in relation to employment and skills are necessary to ensure that the economic benefits of the proposal are shared with the local area and the local population. They are reasonably related in scale because only a relatively

small proportion of local labour and only a minimum of two apprenticeships are secured.

16. The car club membership, cycle hire membership and prevention of applying for on-street car parking permit obligations are necessary to encourage travel by sustainable modes of transport. They are reasonably related in scale to the proposal because memberships are only required for three years for the first occupier. The prevention of applying for on-street car parking permit clause also ensures that there would be no unacceptable increase in on-street parking pressure. This, along with the road danger reduction scheme contribution and improvements to the cycling environment on Brixton Hill, are necessary to mitigate the effect of the proposal on highway safety. They are reasonably related in scale and kind to the proposal because the measures are in proximity to the appeal site. The prevention of applying for on-street car parking permit obligation is secured through the Greater London Council (General Powers) Act 1974 which is an effective way to secure this obligation because it does not require a restriction on the land.
17. The contribution to off-set carbon emissions is necessary to mitigate the increase in carbon emissions that would be caused by the proposal. It is reasonably related in scale and kind to the proposed development because the contribution is directly related to the calculated carbon emissions.
18. The early-stage review is partially on the basis of calculating costs. Two options are presented. Option A includes build costs, professional, agent and marketing fees, legal costs, finance costs and the UU and Community Infrastructure Levy (CIL) costs. Option B just includes build costs. The Greater London Authority (the GLA), both in its 2017 and 2019 viability guidance⁴, states that early-stage review mechanisms should only be based on build costs. The Council's guidance⁵ does not contain specific guidance on the calculation of a review mechanism. Planning Practice Guidance (PPG) has limited specific advice regarding review mechanisms but it does list the costs of a development as including build costs, finance costs and professional costs, amongst others⁶.
19. Option A is a more comprehensive reflection of the true total costs to the developer and therefore would provide a more robust and accurate calculation of the profitability of the proposal and therefore what the level of contribution, if any, to affordable housing should be. I acknowledge the GLA's guidance is focussed on build costs but it also states that early-stage review mechanisms should be based on the most robust data available, which is what Option A would provide. Therefore, in accordance with Paragraph 3.6 and the Build Costs definition within the UU, I direct that Option A should be adopted for the calculation of costs.
20. The late-stage review includes an either/or option for the allocation of any increase in profit, if identified, which is to be either 80% or 60% of the profit to go to the Council. Paragraph 6.7 of the Council's Development Viability SPD states that the profit split should typically be 80% to the Council. GLA

⁴ Paragraphs 3.50, 3.60 and 3.65 of the Homes for Londoners Affordable Housing and Viability SPG, dated August 2017 and Formula 1b of the Viability Review Mechanisms Procedure Practice Note, dated April 2019

⁵ The Development Viability SPD, dated October 2017

⁶ Paragraph: 012 Reference ID: 10-012-20180724

guidance is that 60% of the profit should be allocated to the Council⁷. The review mechanisms have been drafted in general accordance with the standard wording in the GLA guidance. The most recent GLA guidance is more up-to-date, having been released in 2019, against 2017 for the Council's guidance. I therefore direct that 60% of the profit should go to the Council in accordance with the GLA guidance, ie 0.6 as set out in Formula 3 of the UU.

21. I am therefore satisfied that all the obligations are necessary, directly related to the development, and are fairly and reasonably related in scale and kind to the development. The UU therefore meets the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) and Paragraph 57 of the National Planning Policy Framework (the Framework). Consequently, the UU would secure appropriate levels of affordable housing, a car-free development, and would appropriately mitigate the effect of the proposal on local infrastructure. I have therefore taken the UU into account and the 16th Reason for Refusal is not a main issue for the appeal.

MAIN ISSUES

22. The main issues are:
- whether or not the appeal site is an appropriate location for development of this type, with particular regard to the proposed loss of the existing office floorspace;
 - the effect of the proposal on the character and appearance of the area, with particular regard to scale, site coverage and the proposed courtyard;
 - whether or not the proposal would preserve or enhance the character or appearance of the Rush Common and Brixton Hill Conservation Area;
 - whether or not the proposal would provide satisfactory living conditions for future occupiers; and,
 - the effect of the proposal on the living conditions of neighbouring occupiers.

REASONS

Loss of Office Floorspace

23. The appeal site contains a part one, part two-storey building, formed of several parts and built at different times. The lawful use of the premises as a whole is as offices (Use Class E). It currently lies vacant. It is proposed to demolish the building and to replace it with a residential development.

Policy ED1

24. Policy ED1 of the L-LP states that proposals involving the complete loss of office floorspace will not be permitted unless three tests are all met. There is also a fourth criteria but this stands apart from the other three tests and it is common ground that this is not met because the test is that the office floorspace is replaced in the vicinity of the site, which is not proposed.
25. The first test, at part ci of the policy, is that it is demonstrated that there is no demand for office floorspace through evidence that the floorspace has been vacant and continuously marketed for at least two years. The floorspace was occupied until September 2021 by the Clapham Park Project. In the lead up to

⁷ Paragraph 3.65 of the Homes for Londoners Affordable Housing and Viability SPG, dated August 2017 and Formula 1b of the Viability Review Mechanisms Procedure Practice Note, dated April 2019

this date the occupier was winding down and had a limited presence on the appeal site. However, the building was still occupied up until September 2021, even if only partially. The building has not, therefore, been vacant for two years.

26. Marketing was undertaken in two phases, the first period began in August 2018 until October 2020 and the second period was from November 2020 to March 2022. I acknowledge that part of the marketing period was when the site was still occupied by the Clapham Park Project. However, it was offered on the basis of vacant possession and this did not, therefore, represent an obstacle for any potential purchasers. Overall, the building was marketed for nearly four years, meeting the policy requirement for two years.
27. The sales particulars⁸ emphasised the opportunity for a residential development. Offers were sought either on an unconditional or subject to planning basis, ie offers were considered on the basis of office use or as a redevelopment opportunity. No offers were received for continuation for office use. However, this could be because any parties interested in the buildings as an office opportunity would have known they would be bidding against parties interested in a residential development opportunity. It is not, therefore, possible to know if the lack of offers for the site to be used as offices accurately reflects a true lack of demand.
28. Therefore, because of the emphasis of the marketing on the residential potential of the site and because the building has not been vacant for two years, the proposal does not comply with part ci of Policy ED1. In addition, no evidence has been provided of compliance with either the second or third tests of the policy, ie parts cii and ciii, which relate to the feasibility or refurbishment or sub-division of the existing building as offices.

Fallback

29. An important material consideration is that the building is eligible to change from offices to residential use under permitted development rights subject to prior approval⁹. In this regard, prior approval¹⁰ for the change of use to 12 self-contained flats has been granted. This is a potential fallback position. It is important to establish whether or not the fallback has a 'real prospect' of being implemented, as opposed to being merely theoretical¹¹. For it to be a 'real prospect' the fallback must relate to a specific scheme that is actually intended to be implemented.
30. There is a specific fallback proposal, as set out in detail in the prior approval permission for 12 flats. It would involve converting all the existing floorspace. There are no particularly restrictive conditions attached to the approval. The two-storey buildings on the appeal site have relatively shallow footplates, a regular fenestration pattern, and natural divisions that make them appropriate for conversion to residential use.

⁸ See Appendices 3 and 4, Marketing Statement (CD1.16)

⁹ Schedule 2, Part 3, Class MA of The Town And Country Planning (General Permitted Development) (England) Order 2015 (as amended)

¹⁰ Ref 23/00704/P3MA

¹¹ See R (Mansell) v Tonbridge and Malling Borough Council [2019] PTSR 1452 (CA)

31. The large single-storey structure has a deep floorplan and a layout that does not translate well to creating liveable or high quality residential accommodation. There are three flats proposed within this area and all of them would be over-sized and include large areas of storage and inefficient use of space. All the bedrooms would only be lit by rooflights. However, a Daylight and Sunlight Assessment by Anstey Horne was submitted with the prior approval and finds that all 28 of the proposed habitable rooms, including the bedrooms, would receive adequate daylight. The living rooms for the three flats in question would receive high levels of daylight. The report concludes that the overall levels of light would be acceptable. The proposed accommodation would therefore be of sufficiently high quality to function as a 'real prospect' for the appellant to realise value in the appeal site, if the appeal were to fail.
32. I have been provided with no viability information regarding the fallback. However, this is not a requirement of policy. The fallback proposal has near to zero planning risk and likely relatively low build costs because it would be largely refurbishment rather than new build. Even allowing for the likely lower sales values because of the compromises to at least some of the proposed flats, I see no reason to believe that it would not be a viable alternative.
33. There could be other viable alternatives based on alternative proposals for redevelopment of the appeal site. However, the fallback proposal put forward is a 'real prospect' and it is therefore not necessary for me to consider other alternatives.

Overall

34. Policy ED1 of the L-LP still applies because the prior approval has not been implemented and the existing use of the building is therefore still as an office. As set out above, the proposal fails to comply with the policy. However, because of the fallback position, I attach limited weight to this conflict. The appeal site is, therefore, an appropriate location for a residential development that would result in the loss of the existing office floorspace.

Character and Appearance

Existing

35. The appeal site is an irregularly shaped plot located between New Park Road and Brixton Hill. There are a series of connected buildings on three sides of a courtyard. The buildings to the north east and south west boundaries are two-storey terraces with pitched roofs. There is a more modern relatively large and deep single storey extension with a flat roof to the western boundary. The courtyard is hard standing and is largely laid out either for car parking or vehicular access and manoeuvring. Vehicular and pedestrian access is from Brixton Hill Place, a relatively narrow road that passes through an undercroft and leads up from Brixton Hill.
36. Historical mapping shows that the site was initially developed in the late-Victorian period. At the time of the first world war there were terraces to the north east and south west boundaries and a further building within the middle of the now courtyard. By the time of the second world war, there were further additions to the two other boundaries of the site. In the 1960s the footprint was largely the same as existing although with different façade lines

to the buildings to the north east boundary. The earliest drawing within the evidence that shows the existing footprint is dated 1996.

37. The older elements of the site, ie the two-storey buildings, might have been built in Victorian times but they have since been heavily altered. The fenestration is modern, not just in material but also size and style. It is also inconsistent having likely been modified at various times by various different owners. The roof slopes are inconsistent as are the roof materials. The more modern extensions are of, at best, nondescript character and appearance. Nevertheless, the appeal site has retained a general feel of being a former light industrial site of modest scale, and the two-storey buildings still read as of the Victorian period, despite the alterations.
38. The appeal site sits in the centre of a dense urban area formed by the triangle of Brixton Hill Place, New Park Road and Moorish Road. The area is undistinguished architecturally, with a mish mash of building styles, uses, plot sizes and footprints. The commercial units fronting onto Brixton Hill are in a poor state of repair and the quality of the commercial units to the ground floor along New Park Road is varied.
39. To the north east is a fairly substantial warehouse building. To the east is the rear of the properties fronting Brixton Hill. These are part three, part four-storey Victorian terraces, likely with a mixture of flats and ancillary commercial space to the upper floors, set back from Brixton Hill and with more modern single storey front extensions for commercial units. The front extensions have a fairly large footprint in comparison to the footprints of their host properties. To the south is a long and relatively narrow five-storey block of flats called Kintyre Court, from the interwar period. To the west, all along New Park Road, are the three-storey Sultan Public House and associated beer garden, a two to three-storey building with commercial to the ground floor and flats above, and a relatively newly built five-storey block of flats and associated two storey mews house.
40. Although fairly low rise to the 'tip' of the triangle which is further, there are a number of relatively tall buildings in the vicinity of the appeal site. These include the already mentioned Kintyre Court and the block of flats on New Park Road, and also Courtney House which is an eight-storey former commercial building that has changed use to residential. Both Kintyre Court and Courtney House have parking areas and courtyards which provide a degree of breathing space. However, this is limited and they are both close to surrounding buildings in parts, for example the three-storey building fronting Brixton Hill for Courtney Place and the appeal site buildings for Kintyre Court. In addition, the relatively bulky warehouse to the north and new block of flats along New Park Road both have footprints that take up most of their plots and are tightly bound by other buildings.

Proposed

41. It is proposed to demolish all the existing buildings and to erect a new building for residential use. The new building would range from two to five-storeys. It would be set around three sides of a courtyard with a further, smaller, courtyard to the north west. It would have an H-shape to its footprint. There would be a number of insets, stepped massing and chamfers, but in general the massing would be lower to the entrance of the site to the east and then rising up to the north west.

Assessment

42. The design is modern, with mostly flat roofs and with brick as the predominant material. The fenestration pattern would be consistent but with some variety to locations and sizes to add interest. The proposed courtyard would be largely hard surfaced although there would be the opportunity for some planting. Green roofs also form part of the proposal, although the detail of these could be reserved to be agreed by condition. It is common ground that the detailed design of the proposal is acceptable, subject to control of the detail by condition, and I agree.
43. The proposed design is dense. The footprint of the buildings would be a relatively large part of the appeal site and would directly abut the boundaries to three sides. However, the footprint would be approximately the same as the existing buildings. In addition, although there are some courtyard areas surrounding buildings in the surrounding area, there are also several examples of buildings that take-up a high proportion of their plots. The overall scale and density of the proposal would also be partially lessened by the proposed step backs, chamfers, insets and other design features that lessen its apparent bulk, both as viewed from neighbouring occupiers and from within the proposed courtyard or proposed flats as would be appreciated by future occupiers.
44. It would be difficult to see the proposed building from public areas because of the intervening existing buildings but it would be appreciable from surrounding neighbours. The proposal would represent a change from a relatively modest development to a significantly taller and denser development. However, the tallest elements of the building would be approximately the same height as the New Park Road block of flats and Kintyre Court, albeit slightly above the parapet of Kintyre Court. Although the site would lose its modest character, this is not a prevailing character in the wider area, and even the Council acknowledge that the appeal site represents the last remnant of light industrial backland development in the area.
45. I acknowledge that the other buildings of similar scale in the area have at least some street presence. However, both Kintyre Court and Courtney House also stretch back into the middle of the triangle of land, still at height. The properties fronting Brixton Hill are relatively low rise, such as the single storey commercial elements, or are set back slightly such as near the 'tip' of the triangle. The prevailing character is a mixture of heights, footprint and density of development, relatively haphazardly located and with little discernible consistency of character or appearance, other than being part of a dense urban block with intermittent taller elements.
46. Therefore, the proposal would not harm the character and appearance of the area, with particular regard to scale, site coverage and the proposed courtyard. It therefore complies with Policy Q5 of the L-LP which requires local distinctiveness to be sustained and reinforced and Policy Q7 of the L-LP which requires high quality design. It also complies with Policy D3 of the LP which requires a design-led approach to optimise site capacity and high quality design.

Heritage

47. The appeal site lies within the Rush Common and Brixton Hill Conservation Area (the CA). The CA is large, running nearly all the way to Brixton to the north and including large areas of residential streets to the east of Brixton Hill. The relevant part of the CA in terms of the proposal is the triangle of land as identified above because the proposal would not be visible further away. Within this area, the boundary of the CA specifically and consciously includes the appeal site as well as the warehouse to the north east, but it excludes Kintyre Court, the buildings fronting New Park Road adjacent to the appeal site, and Courtney House. However, as experienced on the ground, there is no obvious dividing line of character or appearance within the triangle of land. The relatively tall buildings close to the appeal site, whether or not they lie within the CA, have significant influence over its setting and its character and appearance.
48. The appeal site retains some of its character and appearance as a relatively modest former light industrial site, particularly because of its arrangement around a courtyard. Even if it is not particularly visible from public areas there is still some intrinsic heritage value to the site. However, the buildings have been much altered and changed and it is not clear if they were ever functionally linked to the slightly larger buildings towards Brixton Hill. The appeal site therefore makes a positive contribution to the character and appearance of the CA, but only to a limited degree. Consequently, the proposed demolition of the existing two-storey buildings would cause less than substantial harm to the character and appearance of the CA. I place this level of harm at the lower end of the scale.
49. Because of the size and varied character and appearance of the CA and the lack of a clear delineation of character or appearance between the CA and outside it in the vicinity of the appeal site, the effect of the proposal on the historic significance of the CA would be similar to that to the general character and appearance of the area. Therefore, the proposed development would not harm the character and appearance of the CA. Consequently, whilst there would be limited harm from the demolition of some of the existing buildings, the proposal would, overall, preserve the character and appearance of the CA and would comply with Policy Q22 of the L-LP.

Living Conditions for Future Occupiers

Methodology

50. Whether or not adequate outlook is provided to a flat is a matter of professional judgment. There are no specific mutual overlooking distances set out in policy, although a rule of thumb is that an 18m minimum distance should be achieved. Consideration also needs to be given to other factors, including the range of long and short views, aspect and intervening features such as planting. With regard to aspect, Paragraph 5.31 of the L-LP states that a property is not dual-aspect if the second aspect is onto a recessed balcony on the same elevation, whereas Paragraph 2.3.38 of the GLA Housing SPG, dated March 2016, explicitly includes views over an external access deck or courtyard as acceptable secondary aspects. I draw on this as appropriate in my assessment below.

51. The 3rd edition of the BRE Site layout planning for daylight and sunlight – A guide to good practice, dated 2022 (the BRE Guide), provides guidance on daylight levels. The BRE Guide outlines the illuminance method for calculating daylight to the proposed flats, which is more comprehensive than the previous method, the Average Daylight Factor (ADF). In addition, ADF is no longer recommended by the British Standard EN 17037. I have therefore adopted the illuminance method to inform my assessment of daylight. This sets minimum target illuminances of 100 lux in bedrooms, 150 lux in living rooms and 200 lux in kitchens¹². The minimum recommended daylight values in the illuminance method are those expected to be met even in dense urban locations¹³, although greater flexibility is provided to kitchens, particularly where they are linked to a well-lit room or are part of a joint living/kitchen area¹⁴.
52. Assessment of daylight is a two-stage process, firstly establishing whether or not the illuminance method standards are met and secondly considering whether or not any failures to meet the minimum standards are acceptable in the context of the specific proposed development. The appeal site is not within an opportunity area, an area designated for tall buildings, or an historic core, and the Council can demonstrate an adequate supply of housing land. However, it is within a dense urban location which might influence expectations for daylight by future occupiers. My assessment below has been undertaken in this context.

Individual homes

Flat 0.01

53. Flat 0.01 looks out onto the proposed rear courtyard. This is relatively small and narrow and the proposed building would be fairly tall as viewed from the flat. However, the boundary wall would be relatively low, at 2.5m, thereby limiting any 'tunnelling' effect, and the flat would be dual aspect, providing relatively long views across the courtyard. Both outlook from the flat and sense of enclosure would therefore be acceptable. The proposed terrace would directly abut the communal courtyard. However, this is a common relationship and would be self-regulating in such a relatively small space, with occupiers of the flat and users of the communal courtyard likely to moderate their behaviour as appropriate to limit any overlooking or privacy concerns.
54. The living/kitchen room to this flat would only achieve the required lux level over 10% of its floorspace, against the minimum target of 50%. However, the two bedrooms would either meet their lux target over 50% of the floorspace or be very close at 45%. In addition, the part of the living/kitchen room that would be satisfactorily lit is the living part of the room, with the kitchen element being the worst lit, where there is more flexibility in the BRE guidance. Given this context and that outlook and privacy would be acceptable, this flat would provide satisfactory living conditions to future occupiers.

¹² See Paragraph C16 of the BRE Guide

¹³ See Paragraph 2.1.10 of the BRE Guide

¹⁴ See Paragraphs 2.1.15 and C17 of the BRE Guide

Flat 0.02

55. Flat 0.02 looks out onto the same rear courtyard but also has a dual aspect to the main courtyard. The view over the rear courtyard only affords limited views from one secondary window over the longer aspect and its primary outlook is directly towards the boundary wall and the rear of the properties fronting New Park Road beyond. This is a fairly enclosed view, however the boundary wall would be relatively low and the taller elements of the buildings fronting New Park Road are set back from the proposed flat. I acknowledge that the second aspect is to a kitchen independent of the living room and an obscure glazed bathroom but it would still provide an alternative outlook and source of light. Both outlook from the flat and sense of enclosure would therefore be acceptable. The relationship of the proposed terrace and the communal courtyard is the same as with Flat 0.01.

Flat 0.03

56. The outlook from Flat 0.03 and sense of enclosure would be similar to Flat 0.01 only from the other side of the rear courtyard. It would, though, be a single aspect flat and would not have the variety of short and longer views that would be possible from Flat 0.01. However, it would still provide the most important outlook, the longer view across the length of the courtyard with the same relatively low boundary wall to one side. Both outlook from the flat and sense of enclosure would therefore be acceptable. The relationship of the proposed terrace and the communal courtyard is the same as with Flats 0.01 and 0.02.
57. Because of its proximity to the garden of the public house adjacent to the flat, the flat would require mechanical ventilation to allow future occupants to keep the windows and doors closed. However, this would only likely be required when the pub garden is particularly noisy, which would likely be for relatively short periods of time. It was agreed by the Council under cross-examination, and I agree, that this would have an acceptable effect on the living conditions of future occupants.
58. The bedroom to this flat would only achieve the required lux level over 14% of its floorspace. However, the living/kitchen room, despite also falling below the minimum at 34% of floorspace, would be better lit. As with Flat 0.01, it would be the kitchen area of the living/kitchen room that would be poorly lit, where there is more flexibility in the application of the guidance. Given this context and that the outlook and privacy of the flat would be acceptable, this flat would provide satisfactory living conditions to future occupiers.

Flat 0.04

59. The outlook from this duplex flat would be over the proposed main courtyard. Between the inset elements, the distance to the proposed house on the opposite side of the courtyard would be 17.5m¹⁵. The inset areas are bedroom to bedroom at first floor level and living room to living room at ground floor level. There would be intervening landscaping within the courtyard and planters within the terraces which would further aid privacy but these features

¹⁵ As measured by myself from the scaled drawings, following dispute over the distance at the Inquiry

are not necessary to ensure acceptable privacy levels given the 17.5m distance.

60. At its closest, the flat would be just over 12m from the house across the courtyard. This would be between kitchens at ground floor and I view the proposed distance as acceptable for kitchens within the courtyard/mews design of the proposal and in the context of an urban location. At first floor level, this would be between bedrooms and obscure glazing is proposed to the opposing windows in House 0.02, which could be secured by condition and which would prevent any harmful levels of overlooking.
61. It is debatable whether or not the flat would be dual aspect because the secondary windows face onto the terrace, either directly at ground or from first floor levels. Whichever way they are defined, the secondary windows would provide longer and varied aspects from the proposed flat even if only from relatively limited locations, as would the fact it is a duplex unit with views from different levels. In addition, the views directly over the courtyard would be pleasant, because the courtyard would be a landscaped area with planting, the detail of which could be controlled by condition to be of high quality. There might be up to three vehicles parked within the courtyard but this is not guaranteed, because they would be reserved solely for parking for the disabled, and even if occupied, this would be similar outlook to thousands of houses with driveways across the country.
62. The two smallest bedrooms would receive only 26% and 22% respectively of the minimum lux level. However, the main bedroom would meet minimum standards and the large living/kitchen room to the ground floor would only fall slightly below the target, at 46%. Given this context, and that the outlook and privacy of the flat would be acceptable, this flat would provide satisfactory living conditions to future occupiers.

Flat 0.05

63. Flat 0.05 has the same relationships as Flat 0.04 detailed above but would receive greater levels of daylight because it is further away from the main bulk of the proposed building. This would also, therefore, provide satisfactory living conditions to future occupiers.

House 0.01

64. The only differences in the layouts of the proposed houses from Flats 0.04 and 0.05 is that the houses would also have a fourth bedroom on a third floor. House 0.01 would therefore have acceptable outlook and privacy, as with Flats 0.04 and 0.05. It also has better internal daylight levels than Flat 0.05. The rear second floor windows to the existing flats at 254 and 254A Brixton Hill would overlook the second floor bedroom to House 0.01. However, a privacy screen and an obscure glazed window are proposed which could be secured by condition and would prevent any harmful overlooking. Outlook from this part of the house would remain acceptable because two of the three sides of the terrace would not require privacy screens therefore still allowing views out, and only one of four windows to the bedroom would need to be obscure glazed. Overall, this house would provide satisfactory living conditions to future occupiers.

House 0.02

65. House 0.02 has the relationship across the courtyard as described above with regard to Flat 0.01. The house would require obscure glazing to be provided, as could be secured by condition, to the first and second floor bedrooms. Both bedrooms have alternative windows and the outlook from the rooms would be acceptable. The living/kitchen room would only receive 27% daylight. However, part of the poorly lit area would be part of the kitchen, and the unit is a three-storey house and three of the proposed bedrooms would exceed minimum standards and the fourth would only fall marginally below, at 44%. Given this context and that the outlook and privacy of the flat would be acceptable, this house would provide satisfactory living conditions to future occupiers.

Houses 0.03 and 0.04

66. These houses have the same issues as House 0.02 only with better internal daylight levels. They would therefore provide satisfactory living conditions to future occupiers.

Flat 1.01

67. This flat would be the same layout as the flat below it, ie Flat 0.01, only it is at first floor level. It would therefore have better outlook, lesser sense of enclosure and more daylight than Flat 0.01. The flat would therefore provide satisfactory living conditions to future occupiers.

Flats 2.04 or 2.05

68. These flats would have the same layout as the duplexes below them, ie Flats 0.04 and 0.05. They would therefore have better outlook, lesser sense of enclosure and more daylight than the lower flats. At second floor level, the kitchens of the flats would have mutual overlooking with the bedrooms to the houses on the opposite side of the courtyard, but the windows to the bedrooms to the houses could be obscure glazed, as could be controlled by condition. This would successfully mitigate harmful levels of overlooking. They would therefore provide satisfactory living conditions to future occupiers.

Flat 3.01

69. Flat 3.01 would be single aspect, looking out at the 23 to 27 New Park Road block of flats, above the mews property within that development that prevents mutual overlooking at lower levels. A privacy screen is proposed which would successfully mitigate against harmful overlooking. This would reduce outlook from the living/kitchen room of this single aspect flat. However, views would be retained to the south and north, albeit obliquely, because there would not be a privacy screen to those two sides of the proposed private terrace to the flat. Overall, this flat would provide satisfactory living conditions to future occupiers.

Communal gardens

70. The two proposed communal courtyards would fail to meet BRE standards for sunlight, approximately 25% of the smaller courtyard receiving two hours of

sunlight on 21 March, and approximately 85% of the main courtyard¹⁶. They would also be relatively enclosed, with the proposed building surrounding them to three sides. However, this would be partially mitigated by the nature of the proposed design, which includes cut-aways, set backs, and step downs to reduce the bulk and mass of the proposed building. In addition, the courtyards must be considered in the context of the dense urban location and the courtyard/mews design of the proposal. There is also a large common within easy walking distance of the site, the Rush Common that gives its name to the conservation area, providing alternative recreation open space.

71. The courtyards would be landscaped and provide some planting, the details and quality of which could be controlled by condition. Screening between the proposed car parking and the proposed useable part of the courtyard is not necessary because the parking would only be for disabled persons and would likely not be fully used. Even if in use, the small size of the courtyard and the proposed hard surface landscaping could ensure successful integration between the communal space and the car parking. Planting could further reduce overlooking but this is not necessary for privacy reasons, as set out above. There would not, therefore, be unacceptable tension between design of the courtyard and privacy. The smaller courtyard would also provide children's playspace, which would also be overlooked by the surrounding flats, as required by policy.
72. Taking all the above into consideration, the quality and useability of the proposed communal spaces would be acceptable and would provide satisfactory living conditions to future occupiers.

Overall

73. Flat 0.03 is the home that would have the lowest overall quality of accommodation but even this flat would still be acceptable, primarily due to the relatively long view over the courtyard and that the worst lit parts of the flat would be the kitchen part of the combined living/kitchen area. Certain 'pinch points' are also to be expected in a proposal in a dense urban location, as is the case for the appeal site. Relatively few proposed homes, or rooms within proposed homes, would fail to meet the BRE daylight standards. Importantly, I have concluded that each individual home and the communal areas would provide satisfactory living conditions for future occupiers, considered in the round. This is the key conclusion because the living conditions experienced by any individual future occupier are a combination of all the influencing factors.
74. The proposal would, therefore, provide satisfactory living conditions for future occupiers. Consequently, it would comply with Policy Q2 of the L-LP which requires acceptable living conditions to be achieved and does not specify measured targets for daylight. It would also comply with Policy H5 of the L-LP which requires dual aspect units but only unless there are exceptional circumstances, which apply in this case for the reasons set out above. The proposal complies with Policy D3 of the LP which requires appropriate outlook, privacy and amenity, Policy D6 of the LP which allows single-aspect units if necessary to optimise the site and there would be adequate living conditions

¹⁶ I can only be approximate because the assessment provided in support of the planning application split both courtyards into two, which is arguably an inaccurate methodology. However, I have sufficiently robust data to inform my assessment of this factor because the discrepancy is minor.

otherwise, and Policy S4 of the LP which requires good-quality, overlooked children's playspace.

Living Conditions for Neighbouring Occupiers

Methodology

75. Figure 20 of the BRE Guide sets out that, when calculating daylight in surrounding buildings, the vertical sky component (VSC) is the first calculation and the no sky line (NSL) only needs to be calculated if the VSC is passed. Paragraph 2.2.12 of the BRE Guide also states that the guidance needs to be applied sensibly and flexibly. My assessment below is undertaken in this context.

Individual buildings

23 to 27 New Park Road

76. 23 to 27 New Park Road is a relatively new block of flats which lies to the north west of the proposed development. Several of the flats within the block overlook the appeal site, facing south east. The flats at first to third floor level on the southern half of the building and overlooking the site would fail to meet the VSC standard of 0.8, at 0.31 for the living/kitchen room and 0.47 to the bedroom at first floor level, and 0.5 and 0.61 respectively at second floor level, and 0.68 and 0.74 respectively at third floor level.
77. 23 to 27 New Park Road has inset balconies. In accordance with Paragraph 2.2.13 of the BRE Guide, the appellant has provided a daylight assessment 'without balconies' which finds that the affected flats would have far better VSC results. Only the living/kitchen rooms to the first and second floor flats would fail the VSC test and even then would be 0.76 and 0.78 respectively. This means that the relatively poor daylight received by those flats is primarily because of the design of the building and the inset balconies rather than the proposed development.
78. By way of context, the NSL results indicate that the amount of daylight received by the worst affected flat, which is at first floor level, would be comparable to the flat at the same level in the northern half of the building. Therefore, whilst the relative harm to daylight to the flats within the southern half of the building would be high, those flats would still retain daylight levels similar to those to the northern half of the building, which are largely unaffected by the proposal. I acknowledge that a 'race to the bottom' should be avoided. However, that relatively few flats are materially affected and that even those flats are no worse than other flats within the same building is an important material consideration, providing context to the loss of daylight that would be caused.
79. The outlook from the ground floor flats at 23 to 27 New Park Road is already restricted by the mews house within the development. It is common ground, and I agree, that the outlook from third and fourth floor levels would not be materially harmed because the proposal would not rise significantly above this height. Outlook from the south east facing flats at first and second floor level would be materially affected by the proposal. However, the proposed building would be set back from 23 to 27 New Park Road limiting this harm. In addition, the balconies to those units have frosted balustrading up to 1.1m

which already limits outlook from the properties, particularly from inside the flats. The combination of these factors means that the effect on outlook would be limited and would not be unduly harmful.

80. Overall, there would be limited harm to outlook to a limited number of flats. In terms of daylight, even the worst performing flats would still receive similar levels of daylight to other flats within the block and the main reason for the poor results is the intrinsic design of the building with its inset balconies. The occupiers of 23 to 27 New Park Road would therefore retain satisfactory living conditions.

Kintyre Court

81. For the purposes of the daylight assessment, the layout of the flats within Kintyre Court has been assumed based on a leasehold plan for one flat. I visited three flats in the building as part of my site visit and the layout of the flats was the same, or very similar, to the leasehold plan and therefore the layouts assumed for the daylight assessment. It is possible that some of the flats within the building will have different layouts, for example at the ends. However, the flats most affected by the development are along the flat elevation of the building overlooking the appeal site. I am therefore satisfied that the daylight assessment has more than likely made sufficiently accurate assumptions about the layout of the flats to be a robust assessment.
82. As existing, there is a relatively high boundary wall between Kintyre Court and the appeal site. The proposal would be a very similar height to the existing wall because of the chamfered design along this elevation. The taller elements of the scheme are stepped back and away from Kintyre Court. There would therefore be no material effect on daylight or outlook or sense of enclosure to the ground floor flats within Kintyre Court. At higher levels, as I observed on my site visit, the outlook is currently relatively unobstructed. However, in the middle distance is the fairly bulky warehouse behind the appeal site with Courtney House beyond, as well as 23 to 27 New Park Road. The taller elements of the proposal are set away from Kintyre Court. In this context, although there would be some reduction in outlook from the flats at upper levels within Kintyre Court, it would not be to an unacceptable level.
83. The vast majority of the flats within Kintyre Court would not suffer from material reductions in daylight as a result of the proposed development. Only eight windows, and therefore rooms, would fail to meet the VSC standard of 0.8. Of these, five are at ground floor level and have very low existing daylight levels so, although the relative reductions would be high, the absolute change would be low. The other three only suffer from reductions marginally greater than 0.8. There would not, therefore, be unacceptable loss of daylight to any flat in Kintyre Court, in the context of its dense urban location, as a result of the proposed development. Combined with my findings on outlook and sense of enclosure above, the occupiers of Kintyre Court would therefore retain satisfactory living conditions.

31 to 33 New Park Road

84. There is residential accommodation above the ground floor commercial units fronting New Park Road. The internal room layouts of the flats are not known and assumptions have been made to inform the daylight assessment. Based on these assumptions, one of the three affected rooms would fail to meet the

VSC target, at 0.77. However, this room would be relatively well performing in terms of NSL. I acknowledge that assumptions have been made on room layouts but the layouts used in the assessment are based on a reasonable depth of room and layout for the buildings. It is likely that the results are reasonably accurate. Given this, the relatively small failings in comparison to the standards, and that the BRE standards need to be applied sensibly and flexibly, I conclude that these flats would receive sufficient daylight to retain satisfactory living conditions.

254A Brixton Hill

85. To the opposite side of the appeal site lies 254A Brixton Hill, which has rear windows overlooking the proposed development. The proposal steps down towards these buildings and it is common ground, and I agree, that there would be no unacceptable effects with regard to daylight. The privacy screen at second floor level would be relatively close to 254A Brixton Hill and would affect outlook from that property. However, the privacy screen would be offset to the side of 254A Brixton Hill, limiting its effect on outlook. Outlook in that direction is also already slightly compromised by the existing warehouse building behind the appeal site. Therefore, the occupiers of 254A Brixton Hill would retain satisfactory living conditions.

Overall

86. As set out above, the proposal would have an acceptable effect on the living conditions of neighbouring occupiers. It would therefore comply with Policy Q2 of the L-LP which requires acceptable levels of daylight and visual amenity to neighbouring occupiers. It also complies with Policy D3 of the LP which requires adequate living conditions for neighbouring occupiers and Policy D6 of the LP which requires that sufficient daylight be retained to surrounding housing as appropriate to its context.

OTHER MATTERS

87. Two residents spoke at the Inquiry, objecting to the proposal. In addition, several letters of objection have been submitted. The objections raised various concerns in addition to those addressed above, including: disruption during construction including from dust; that the proposed building would deflect noise from the pub garden and worsen noise pollution as experienced by neighbouring occupiers; the lack of nearby amenities for the future residents; loss of views; increase in on-street car parking; increased pressure on local infrastructure; inadequate fire access; insufficient provision of open space; and, that the shops on Brixton Hill might be dilapidated now but might improve in the future.
88. I have taken all of these factors into consideration. Most are not in dispute between the main parties. Most were addressed in the Officer's Report, with the Council concluding that there would be no material harm in these regards. Others are addressed in my reasoning above, can be addressed by conditions or are dealt with by the UU. Specifically: there is no right to a view as protected by the planning system; I must assess the character and appearance of the area as it stands, not what it might become; a Noise Impact Assessment was submitted with the application which considered the proposal comprehensively and raised no concerns regarding deflection of noise from the pub; and, the appellant has submitted a London Plan Fire

Safety Report and Design Note that the Council has reviewed and confirmed is satisfactory. I therefore have no reason to suppose that the development would be unacceptable in any of these regards.

PLANNING BALANCE

Positive

89. 24 homes are proposed on a suitable brownfield and accessible site. As I have set out above, the quality of the accommodation would be at least satisfactory, even for the lowest quality homes within the proposal. The efficient use of suitable brownfield sites for housing is strongly supported by national planning policy, as set out at Paragraphs 69c and 120c of the Framework. I acknowledge that the Council can currently demonstrate a five year supply of housing land. However, the agreed position is 5.09 years and the five year target is a minimum, as set out at Paragraph 74 of the Framework. I therefore place substantial positive weight on the proposed new housing.
90. The proposal would create temporary jobs during construction. It would also result in increased expenditure in the local area from the future occupants of the proposal. However, the potential baseline condition of the site would be a fully occupied office, which would also result in expenditure in the local area by employees. I therefore place moderate positive weight on the economic benefits of the proposal.
91. The existing site provides 10 car parking spaces. They are not used at present because the building is vacant. However, if the building were to be occupied then it is possible that the spaces would be used, generating vehicular trips. The proposal includes three parking spaces for the disabled and would prevent future able-bodied occupiers from applying for a car parking permit. There is therefore a likely reduction in vehicular trips from the proposal compared to the potential baseline, if not the existing situation. Although there is no evidence before me that the potential baseline condition would cause unacceptable harm to the free-flow of traffic on the surrounding highway network, the proposal would result in a betterment on the baseline. I place limited positive weight on this factor.
92. A Sustainable Urban Drainage System could be secured by condition that would reduce surface water run-off from the appeal site compared to the existing situation and therefore also lessen surface water flooding. However, there is no evidence before me that existing surface water run-off is causing any undue harm. Nevertheless, the proposal would result in a betterment on the existing situation and I place limited positive weight on this benefit.
93. The proposal would result in a more energy efficient building than the existing building. However, the proposed energy efficiency ratings would not exceed policy compliance. In addition, I need to take account of the loss of embodied carbon in the current building, which would be demolished. I therefore place limited positive weight on this factor.

Neutral

94. It is common ground, and I agree, that the detailed design of the proposal is acceptable and could be controlled by condition. As I have set out above, I have found the overall design of the proposal would preserve the character

and appearance of the area, including the CA and its setting. This weighs neutrally in the planning balance.

95. Because of the fallback position, the appeal site is an appropriate location for a residential development that would result in the loss of the existing office floorspace. Therefore, the loss of office floorspace weighs neutrally in the planning balance, although I acknowledge that there would be conflict with Policy ED1.
96. The proposal offers car club and cycle hire membership for free for three years. These factors would partially mitigate the effect of the proposal on local public transport infrastructure whilst limiting the reliance on the car by future occupiers. These factors do not go beyond mitigation of the effects of the proposal and therefore weigh neutrally in the planning balance.
97. I have found that the proposal would create satisfactory living conditions for all future occupiers. This weighs neutrally in the planning balance.

Negative

98. Although I have found that the proposal would not harm the character or appearance of the CA, there would be some harm from demolition of the existing building. I place this at the low end of less than substantial harm although I attach great weight to this harm in accordance with Paragraph 199 of the Framework.
99. Although I have found the overall effect of the proposal on the living conditions of neighbours to be acceptable, there would be a worsening in the living conditions to some neighbouring occupiers. The harm would be limited and I place limited negative weight on this factor.

Overall

100. Although I place great weight on it, the harm I have identified to the character and appearance of the CA due to demolition of the existing two-storey buildings would be limited. There would be limited harm from the worsening of the living conditions of some neighbouring occupiers, albeit they would retain satisfactory living conditions. There would also be a conflict with Policy ED1 of the L-LP due to the proposed loss of office floorspace but this carries limited weight because of the fallback position of the prior approval. The benefits of the scheme are weighty, including the provision of 24 homes, economic benefits, theoretical reduction in traffic, improvements to drainage, and the development of a modern, energy-efficient building. These clearly outweigh the limited harms that I have identified and the proposal complies with the Development Plan when considered as a whole. There are no material considerations in this case that would cause me to make a decision otherwise.
101. The proposal would have substantial public benefits, including the provision of housing, economic benefits and improved drainage. These would significantly outweigh the low level of less than substantial harm to the character and appearance of the CA that I have identified. The proposal therefore complies with Paragraph 202 of the Framework.

CONDITIONS

102. An agreed list of conditions was provided ahead of the Inquiry and was discussed at the Inquiry. I have considered these conditions and have made amendments to the conditions in the light of the discussion and of government guidance on the use of conditions in planning permissions.
103. In addition to the standard time limit condition, a condition specifying the relevant drawings provides certainty.
104. The Construction Environment Management Plan (CEMP), Site Waste Management Plan (SWMP), Waste Management Strategy (WMS), Delivery and Servicing Management Plan (DSMP), and non-road mobile machinery (NRMM) conditions are necessary to protect the living conditions of neighbouring occupiers.
105. The CEMP, SWMP, WMS, DSMP, Travel Plan, cycle parking, Parking Design and Management Plan (PDMP), and NRMM conditions are necessary to ensure there would be an acceptable effect on the free-flow of traffic on the highway.
106. The CEMP, SWMP, WMS, DSMP, Travel Plan, PDMP, and NRMM conditions are necessary to protect highway safety.
107. The Written Scheme of Investigation (WSI) condition is necessary because the appeal site lies in an Archaeological Priority Area and therefore an appropriate assessment of archaeological interest on the site needs to be undertaken.
108. The asbestos condition is necessary in accordance with Paragraph 3.14 of The Control of Dust and Emissions During Construction and Demolition SPG, dated July 2014, by the GLA, because the appeal site contains buildings to be demolished that may contain asbestos.
109. The contamination conditions are necessary to ensure any contamination on the appeal site is assessed and appropriate measures are undertaken to ensure it is dealt with appropriately and without harming the health of either the construction workers or neighbouring occupiers.
110. The noise attenuation, Overheating Assessment, children's playspace, Lighting Scheme, WMS, DSMP, and PDMP conditions are necessary to ensure satisfactory living conditions for the future occupiers of the proposal.
111. The landscape, design detail, green roofs and walls, solar panels, Secured by Design, children's playspace, Lighting Scheme, WMS, and PDMP conditions are necessary to ensure that a satisfactory standard of design is achieved so that the proposal would protect the character and appearance of the area including the CA.
112. The landscape, BNG, green roofs and walls, solar panels, and Lighting Scheme conditions are necessary to ensure that the proposal would suitably protect and enhance biodiversity.
113. The Energy Strategy, SWMP, solar panels, cycle parking, electric vehicle parking, carbon emissions, and water efficiency conditions are necessary to ensure that the proposal adequately mitigates and minimises its effect on the environment and meets relevant technical standards.

114. The Secured by Design, Sustainable Urban Drainage System, children's playspace, WMS, DSMP, and Part M4(3) conditions are necessary to ensure that the proposal meets the relevant technical standards in these regards.
115. The CEMP, WSI, asbestos, contamination, noise attenuation, Overheating Assessment, design detail, landscape, BNG, Energy Strategy and SWMP conditions are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.

CONCLUSION

116. For the reasons above, I conclude that the appeal be allowed.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Heather Sargent, of Counsel. She called:

Simon Greenwood	Principal Planning Officer, London Borough of Lambeth (LB Lambeth)
MRTPI	
Nicola Xuareb	Principal Conservation Officer, LB Lambeth

FOR THE APPELLANT:

Andrew Gillick. He called:

Mandip Sahota	Partner, NTA Planning LLP
Rory Harmer RIBA ARB	Founder, Studio Becoming
Christopher Harris	Partner, Delva Patman Redler LLP
Fred Quartermain	Partner, Thrings Solicitors
John Booker	Head of Land & Consultancy Services, Redloft LLP1

INTERESTED PERSONS:

Margaret Chapman	Local resident
Nicholas Hill	Local resident

ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

- 1 Appellant Opening Statement, by Andrew Gillick, dated 4 July 2023
- 2 List of Appearances on behalf of the Local Planning Authority
- 3 Opening Statement on behalf of the Local Planning Authority, by Heather Sargent, dated 4 July 2023
- 4 Living Roofs and Walls Technical Report: Supporting London Plan Policy, dated February 2008
- 5 Statement and Photographs from Nicholas Hill
- 6 Housing Supplementary Planning Guidance, dated March 2016, by the Mayor of London
- 7 The Control of Dust and Emissions During Construction and Demolition SPG, dated July 2014, by the Mayor of London
- 8 Guidance Notes for the Reduction of Obtrusive Light, dated 2005, by The Institute of Lighting Engineers
- 9 Waste and Recycling Storage and Collection Requirements – Technical Specification for Architects & Designers, dated March 2023, by the London Borough of Lambeth
- 10 Infrastructure for the charging of electric vehicles - Approved Document S, 2021 edition
- 11 Obscure Glazing Marked-up Drawings
- 12 Site Visit Walking Route
- 13 Viability Review Mechanisms Procedure Practice Note, dated April 2019, by the Mayor of London
- 14 Homes for Londoners – Affordable Housing and Viability SPG, dated August 2017, by the Mayor of London
- 15 Development Viability SPD, dated October 2017, by the London Borough of Lambeth
- 16 Design Summer Years for London TM49: 2014, by CIBSE
- 17 Design methodology for the assessment of overheating risk in homes TM59: 2017, CIBSE
- 18 Closing Submissions on behalf of the Local Planning Authority, dated 13 July 2023, by Heather Sargent
- 19 Appellant Closing Statement, dated 12 July 2023, by Andrew Gillick
- 20 Decision Notice, dated 13 July 2023, Ref 23/00704/P3MA
- 21 Unilateral Undertaking, dated 17 July 2023

ANNEX C: SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: PL_001_220225, 002, 003 Rev 29/11/2022, 010_220225, 011_220225, 012_220225, 030_220326, 100 Rev 29/11/2022, 101 Rev 29/11/2022, 102 Rev 29/11/2022, 103 Rev 29/11/2022, 104 Rev 29/11/2022, 105 Rev 06/04/2022, 201 Rev 13/04/2022, 301 Rev 06/04/2022, 302 Rev 06/04/2022, 303 Rev 06/04/2022, and BHP_SB_PR_AL_500 Rev P1.

Pre-commencement

- 3) No development shall take place, including any works of demolition, until a Construction Environment Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall provide for:
 - i) an introduction consisting of a demolition and construction phase environmental management plan, definitions and abbreviations and project description location;
 - ii) a description of management responsibilities including complaint recording and management;
 - iii) a description of the demolition and construction programme which identifies activities likely to cause high levels of noise or dust;
 - iv) site working hours and a named person for residents to contact;
 - v) detailed site logistics arrangements;
 - vi) details regarding parking, deliveries and storage;
 - vii) details regarding dust and noise mitigation measures to be deployed including identification of sensitive receptors, and a scheme of ongoing continuous monitoring and reporting for demolition and construction noise and dust impacts. The scheme shall be developed by suitably qualified persons and shall include suitable targets in accordance with BS5228 Code of Practice for Noise and Vibration Control and the Mayor of London's SPG 2014 (dust control) and provision of monitoring results to the local planning authority;
 - viii) details of hours of work, site delivery hours and other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network; and,
 - ix) communication procedures with the local community regarding key construction issues – newsletter, fliers etc.

The approved Plan shall be adhered to throughout the demolition and construction period for the development. All monitoring records, records of complaints received and actions arising as a result shall be kept for the duration of the development and made available to Council officers on request.

- 4) (A) No development shall take place, including any works of demolition, until a Written Scheme of Investigation (WSI) has been submitted to, and approved in writing by, the local planning authority. For land that is included in the WSI, no development shall take place other than in accordance with the agreed WSI, and the programme and methodology

of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works.

(B) If heritage assets of archaeological interest are identified by the WSI, then for those parts of the site which have archaeological interest a Stage 2 WSI shall be submitted to, and approved in writing by, the local planning authority. For land that is included within the Stage 2 WSI, no demolition or development shall take place other than in accordance with the agreed Stage 2 WSI, which shall include:

- i) the statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
- ii) where appropriate, details of a programme for delivering related positive public benefits; and,
- iii) the programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material.

- 5) (A) No development shall take place, including any works of demolition, until an intrusive pre-demolition and refurbishment asbestos survey in accordance with HSG264 has been submitted to, and agreed in writing by, the local planning authority. All confirmed or suspected asbestos containing materials shall be removed before demolition commences.

(B) A Verification Report prepared by a competent person which confirms all asbestos or suspected asbestos containing materials have been removed shall be submitted to, and approved in writing by, the local planning authority prior to first occupation of the development.

- 6) No development shall take place, including any works of demolition, until a Biodiversity Gain Plan (BGP) has been submitted to, and approved in writing by, the local planning authority. The BGP shall set out the intended proposals for achieving a biodiversity net gain, alongside a proposed Implementation Plan. The BGP shall be implemented and thereafter maintained in accordance with the approved details and timetable.

- 7) No development shall take place, including any works of demolition, until a Site Waste Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall include a pre-demolition audit demonstrating that opportunities to re-use material on site have been maximised, targets for recycling of materials on site, a target for construction waste, and a target for diversion of waste from landfill. The development shall be carried out in accordance with the approved Plan.

- 8) No development shall take place until an assessment of the risks posed by any contamination has been submitted to, and approved in writing by, the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with BS10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any

contamination on the site, whether or not it originates on the site. The assessment shall include:

- i) a survey of the extent, scale and nature of contamination; and,
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and,
 - archaeological sites and ancient monuments.
- 9) No development shall take place where (following the Risk Assessment) land affected by contamination is found which poses risks identified as unacceptable in the Assessment, until a detailed Remediation Scheme has been submitted to, and approved in writing by, the local planning authority. The Scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including a Verification Plan. The Scheme shall be sufficiently detailed and thorough to ensure that, upon completion, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved Scheme shall be carried out before the development is occupied.
- 10) (A) No development shall take place, including any works of demolition, until a scheme of noise attenuation has been submitted to, and approved in writing by, the local planning authority. As a minimum the scheme shall implement the recommendations as detailed in the Noise Impact Assessment by Venta Acoustics, dated 14 December 2021.
- (B) Prior to first occupation of the development, a post installation report by a suitably qualified person(s) or organisation confirming compliance with the standards approved shall be submitted to, and approved in writing by, the local planning authority. The approved details and attenuation measures shall be permanently retained and maintained in working order for the duration of the use and their operation.
- 11) No development shall take place until an Overheating Assessment has been submitted to, and approved in writing by, the local planning authority. The Assessment shall show that CIBSE TM59 compliance can be achieved with the proposed design and that CIBSE TM49 has been considered as part of the modelling. The measures indicated in the Assessment shall thereafter be implemented and then maintained for the lifetime of the development.
- 12) No development shall take place until detailed drawings have been submitted to, and approved in writing by, the local planning authority. The drawings shall include details of:
- i) detailed elevations including details of materials;
 - ii) details of windows (including technical details, elevations, reveal depths, plans, cross sections, and obscure glazing to the windows as depicted on drawing Refs PL_100, PL_101 and PL_102 as marked-up for obscure glazing);

- iii) details of terraces and balconies (including soffits), balustrades and privacy screens;
- iv) details of entrances, canopies and doors (including technical details, elevations, surrounds, reveal depths, plans and sections);
- v) details of roof treatments, cills and parapets;
- vi) details of rainwater goods (including locations and fixings); and,
- vii) vents, extracts, flues and ducts.

The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development.

- 13) (A) No development shall take place until details of both hard and soft landscape works have been submitted to, and approved in writing by, the local planning authority. These details shall include:
- i) the treatment of all parts of the site not covered by buildings including walls and boundary features;
 - ii) the quantity, size, species, position and the proposed planting time of all trees and shrubs to be planted including details of appropriate infrastructure to support long-term survival;
 - iii) an indication of how all trees and shrubs will integrate with the proposal in the long term with regard to their mature size and anticipated routine maintenance and protection including irrigation systems;
 - iv) details of infrastructure to maximise rooting capacity and optimize rooting conditions;
 - v) all hard landscaping including all ground surfaces, planters, seating and bollards;
 - vi) details of the ongoing maintenance and management of the landscaping across the site; and,
 - vii) evidence confirming that the development achieves a minimum Urban Greening Factor score of 0.4.

(B) The landscaping works shall be carried out in accordance with the approved details within six months of first occupation of the development. Any trees, hedgerows or shrubs forming part of the approved landscaping scheme which within a period of five years from the occupation or substantial completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

- 14) No development shall take place until an Energy Strategy including full Design Stage calculations under the SAP, has been submitted to, and approved in writing by, the local planning authority. The Strategy shall show that the development will be constructed in accordance with the approved Energy Statement, dated 31 March 2022. The development shall thereafter be implemented in accordance with the approved Strategy.

Pre-specific part of the development

- 15) Any contamination that is found during the course of construction that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a Risk Assessment carried out, submitted to, and

approved in writing by, the local planning authority. Where unacceptable risks are found, Remediation and Verification Scheme(s) shall be submitted to, and approved in writing by, the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

- 16) Prior to the commencement of above ground works, a detailed specification of the green roofs and walls shall be submitted to, and approved in writing by, the local planning authority. The specification shall include details of the quantity, size, species, position and the proposed time of planting of all elements of the green roofs, together with details of their anticipated routine maintenance and protection. The green roofs shall be thereafter maintained in accordance with the approved details for the lifetime of the development.
- 17) Prior to the commencement of the relevant works, a scheme showing that the provision of photovoltaic panels has been optimised, including the siting, size, number and design of the array and cross-sections of the roof(s) showing the panels in-situ shall have been submitted to, and approved in writing by, the local planning authority. The scheme shall be in general accordance with the Energy Statement, dated 31 March 2022, and the Energy Strategy as approved through Condition 14. The development shall thereafter be completed in accordance with the approved details and permanently retained as such for the duration of the development.
- 18) (A) Prior to the commencement of above ground works, details to demonstrate that satisfactory security measures have been incorporated into the design of the development to minimise the risk of crime and to meet the specific security needs of the development in accordance with the principles and objectives of Secured by Design, shall be submitted to, and approved in writing by, the local planning authority. The measures shall thereafter be retained as such for the duration of the development.

(B) Prior to first occupation of the development, a satisfactory Secured by Design inspection must take place and the resulting Secured by Design certificate submitted to the local planning authority.

Pre-occupation

- 19) The development shall not be first occupied until a Sustainable Urban Drainage System (SuDS) has been implemented in accordance with a SuDS Strategy that shall first have been submitted to, and approved in writing by, the local planning authority. The SuDS Strategy shall include a detailed design, maintenance schedule, and confirmation of the management arrangement. The Strategy must also demonstrate the technical feasibility/viability of the drainage system through the use of SuDS to manage the flood risk to the site for the lifetime of the development.
- 20) The development shall not be first occupied until full details of the children's playspace provisions (including layout and equipment specification) has been submitted to, and approved in writing by, the local planning authority and the development has been implemented in accordance with the approved details.

- 21) The development shall not be first occupied until a Lighting Scheme has been submitted to, and approved in writing by, the local planning authority in accordance with the Institute of Lighting Professional's Guidance Notes for the Reduction of Obtrusive Light GN01:2020. The Scheme must be designed by a suitably qualified person in accordance with the recommendations for environmental zone E3. The development shall also not be first occupied until a suitably qualified member of the Institute of Lighting Professionals has validated the Scheme as installed and that it conforms to the agreed details, and confirmed as such in writing to the local planning authority.
- 22) The development shall not be first occupied until a Waste Management Strategy has been submitted to, and approved in writing by, the local planning authority. The Strategy shall align with the Waste & Recycling Storage and Collection Requirements document, dated March 2023, by the Council. The development shall thereafter be built and operated in accordance with the approved Strategy.
- 23) The development shall not be first occupied until a Delivery and Servicing Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall include proposed loading and delivery locations and a strategy to manage vehicles servicing the site. The development shall thereafter be operated in accordance with the approved details.
- 24) The development shall not be first occupied until a Travel Plan has been submitted to, and approved in writing by, the local planning authority. The measures approved in the Plan shall also be implemented prior to first occupation and shall be so maintained for the duration of the use of the development.
- 25) The development shall not be first occupied until the cycle parking shown on drawing Ref PL_100 Rev 29/11/2022 has been implemented in full, including the provision of at least 10% electric long stay spaces with associated electric charging plugs and electrical infrastructure. The cycle parking shall thereafter be retained solely for its designated use.
- 26) The development shall not be first occupied until a Parking Design and Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall demonstrate how parking will be managed and monitored, and how unauthorised use of the spaces will be prevented. The parking spaces shall be laid out in accordance with the approved plans and shall be retained for the duration of the development. No vehicles, other than blue-badge holder vehicles, shall park on the site. Vehicles shall only park within the designated spaces shown on the approved plans and on no other part of the site.
- 27) The development shall not be first occupied until one of the blue-badge car parking spaces has been fitted with an active electrical vehicle charging point and the remaining two spaces have been provided with passive provision for electric vehicle charging points.
- 28) The development shall not be first occupied until As Built SAP calculations and Block Compliance Sheet(s) as an output of the National Calculation Method have been submitted to, and approved in writing by, the local planning authority. These shall demonstrate that the dwellings have achieved the targeted reduction in carbon emissions over that required

by Part L of the Building Regulations 2013, in accordance with the Energy Statement, dated 31 March 2022, and the Energy Strategy as approved through Condition 14.

- 29) The development shall not be first occupied until a water efficiency calculator and manufacturers datasheets have been submitted to, and approved in writing by, the local planning authority to show water consumption rates of less than 105 litres per person per day can be achieved.

For compliance

- 30) No non-road mobile machinery (NRMM) shall be used on the site unless it is compliant with the NRMM Low Emission Zone requirements (or any superseding requirements) and until it has been registered for use on the site on the NRMM register (or any superseding register).
- 31) At least three of the residential units hereby permitted shall be constructed to comply with Part M4(3) of the Building Regulations. Any communal areas and access servicing the M4(3) compliant Wheelchair User Dwellings should also comply with Part M4(3). All other residential units, communal areas and accesses hereby permitted shall be constructed to comply with Part M4(2) of the Building Regulations.

===== END OF SCHEDULE =====