Ministry of Housing, Communities & Local Government

Our ref: APP/E5900/W/17/3190685
Your ref: PA/17/01920

Paul Newton
Barton Willmore LLP

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10 June 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY SAINSBURYS SUPERMARKETS LTD
LAND AT 1 CAMBRIDGE HEATH ROAD, LONDON, E1 5SD
APPLICATION REF: PA/17/01920

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBA who held a public local inquiry on 9 to 19 October 2018 into your client's appeal against the failure of the Council for the London Borough of Tower Hamlets to determine your application for planning permission for demolition of the existing store and decked car park to allow for a replacement Sainsbury's store, an 'explore learning' facility, flexible retail/office/community floorspace, 471 residential units arranged in 8 blocks, an energy centre and plant at basement level, 240 'retail' car parking spaces and 40 disabled car parking spaces for use by the proposed residential units, two additional disabled units proposed at Merceron Street, creation of an east-west public realm route from Cambridge Heath Road to Brady Street and public realm provision and enhancements, associated highway works to Brady Street, Merceron Street, Darling Row and Collingwood Street and Cambridge Heath Road, in accordance with application ref: PA/17/01920, dated 14 July 2017.

2. On 14 December 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted.

4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Maria Stasiak, Decision Officer
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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR1.5 the Secretary of State is satisfied that taken with the other evidence at the inquiry, the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7. In this case the development plan consists of the London Plan – consolidated with alterations between 2011 and March 2016 (CLP), the Tower Hamlets Core Strategy (2010) (CS) and the Tower Hamlets Managing Development Document (MDD) adopted April 2013. The Secretary of State considers that relevant development plan policies in this case include those set out at IR3.2-3.5.

8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework'), associated planning guidance ('the Guidance'), and the documents referred to in IR3.6-3.10. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the February 2019 Framework.

9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

10. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

11. The emerging plan comprises the Draft London Plan, the examination of which ran until March 2019. It also comprises the Tower Hamlets emerging Local Plan, where consultation on main modifications has concluded.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Draft London Plan is still at a relatively early stage, any objections are not yet fully resolved and the policies may be subject to change, the Secretary of

State considers that it carries limited weight. He considers that in the light of the more advanced stage of the Tower Hamlets emerging Local Plan, it carries moderate weight.

Main issues

Impact of the setting and significance of designated heritage assets

13. The Secretary of State has carefully considered the Inspector's assessment of the impact of the proposals on the setting and significance of designated heritage assets (IR11.2-11.14). For the reasons given at IR11.3-11.4, he agrees with the Inspector that although there would be harm to the Conservation Area, which should be given considerable importance and weight, the impact on both its character and appearance should only be given slight to moderate weight. He further agrees, for the reasons given at IR11.5-11.9, that Block 3 would result in substantial interference with the context of the Albion Brewery Entrance, and would have a marked detrimental impact on the contribution the setting makes to the significance of the building's façade and to its special interest (IR11.7). He further agrees that to put the degree of harm at the lower end of the scale is to slightly underestimate the weight that should be given to the harm to the significance of the building as a result of the development in its immediate setting. Like the Inspector he gives the harm to this listed building great importance and weight. For the reasons given at IR11.10-11.11, he further agrees with the Inspector that while it would be wrong to ascribe no harm to the significance of the non-designated Former Working Lads Institute, it should not be a major consideration in this appeal.

14. Overall, the Secretary of State agrees with the Inspector at IR11.12-11.14 that taken together, the weight to the harm to all three heritage assets should not be significantly greater than that to the Brewery Entrance alone. He further agrees with the Inspector that the proposal conflicts with CLP Policy 7.8, CS Policy SP10 and MDD policies DM26 and DM27. He has gone on to carry out the heritage tests set out in paragraphs 196 and 197 of the Framework in paragraph 32 below.

Amenity (including daylight and sunlight)

15. The Secretary of State has very carefully considered the matter of daylight and sunlight, as set out in IR11.15-11.28. He agrees that it is a matter which needs to be considered in the overall amenity balance (IR11.16). He further agrees that criticism of the appellant for not providing more than a sample of ADF figures should be given limited weight (IR11.19), and that the parallels with recent schemes at Whitechapel Central and Whitechapel Estate are not so precise that the balance struck in this decision should be determined by the previous findings (IR11.23).

16. The Secretary of State notes that the BRE guidelines recommend a vertical sky component (VSC) of 27%. However, the guidelines, the Mayor's Housing SPG and paragraph 123(c) of the Framework all expect a flexible approach. The Secretary of State notes that the appellant aimed for retained levels of VSC of at least 15%, while achieving a high density (IR5.3). It is a matter of common ground that 19% of windows in the surrounding blocks (243 windows) would suffer a significant loss of VSC (being left with a VSC of less than 15%), while the majority of those (175 windows) would be left with a VSC of less than 10% (IR5.3 and ID7). The Secretary of State agrees with the Inspector's assessment that very many existing neighbours would experience a gloomier outlook than they do at present, and that a large number of windows would be affected, many quite significantly (IR11.17). He considers that this harmful impact on neighbouring

properties carries substantial weight against the proposal, and is in conflict with CS policy SP10(4)(a), which seeks to prevent loss of access to daylight and sunlight.

17. The Secretary of State further agrees with the Inspector that concerns raised in respect of the impact on Swanlea School should be given limited weight (IR11.24). He also agrees that it is likely that a number of future residents would experience less than ideal, if not poor levels of sunlight and daylight (IR11.25).

18. The Secretary of State has gone on to consider the overall amenity balance. He agrees with the Inspector at IR11.18 that occupiers should not feel overlooked or have the sense of an overbearing outlook. He further agrees that there would be marked improvements to the appearance of the street scene, and a greatly improved public realm (IR11.18 and IR11.21). He considers that these significant improvements in the living conditions of neighbouring residents weigh in the amenity balance and agrees with the Inspector at IR11.28 that, overall, the scheme would comply with paragraph 123(c) of the Framework. The Secretary of State considers, in line with the Inspector at IR11.51, that there is conflict with aspects of CLP Policies 3.5A, 7.6B(d) and 7.7(D)(a), CS Policy SP02(6) and MDD Policy DM25(1)(c) and (d), but in the light of his conclusions on amenity and the evidence before him in this case, concludes that there is no overall conflict with these policies.

Housing

19. The Secretary of State notes that parties are agreed that the Council can demonstrate a 5 year housing land supply and that relevant policies are not out of date (IR11.29). No evidence has subsequently been put before him to indicate that there have been material changes to the housing land supply position which would affect his decision in this case, and he has therefore proceeded on that basis. He has gone on to consider whether there are any other reasons why the presumption in favour of sustainable development would apply. He considers that there are relevant development plan policies, and given parties' agreement that no relevant policies are out of date, he further considers that the policies which are most important for determining the application are not out-of-date. He further considers that the triggers set out in footnote 7 to paragraph 11(d) of the Framework do not apply. Overall he therefore considers that the presumption in favour of sustainable development set out in paragraph 11(d) does not apply. However, for the avoidance of doubt, and for the reasons given elsewhere in this letter, he considers that if the presumption did apply, the adverse impacts of granting permission in this case would significantly and demonstrably outweigh the benefits. This would lead him to the same conclusion as he has reached under the normal planning balance, that the appeal should be dismissed and planning permission refused.

20. The Secretary of State agrees with the Inspector the proposed affordable housing offer would make a significant contribution to the Borough's needs (IR11.43), and that it represented the maximum reasonable amount that could be delivered by the scheme (IR11.32), and notes that a two-stage review mechanism is included in the s.106 agreement. He therefore agrees with the Inspector at IR11.43 that the scheme would comply with policy on affordable housing and viability. He further agrees that as there would remain a significant shortfall against policy expectation at one of the most accessible locations in London, the weight to be given to the affordable housing

contribution as a benefit should be reduced (IR11.43). His view on this is reinforced by the concerns raised by the Council regarding the mix of affordable unit sizes (IR11.33).

21. In the light of the Government's objective of significantly boosting the supply of housing (paragraph 59 of the Framework), the Secretary of State considers that the provision of 471 housing units carries substantial weight in favour of the proposal. However, for the reasons given above, he considers that in this case the affordable housing element carries only moderate weight.

22. The Secretary of State has further considered the fact that the social rented housing is positioned at the north end of the scheme, at the greatest walking distance from public transport, shops and services, and that the podium barrier would not only divide the types of tenure, but also separate the amenity and play space areas. He notes the Inspector's comment that no persuasive explanation was given as to why the units were separated in this way (IR11.33). He agrees with the Inspector that to a very small extent this would be addressed by the inclusion of a few shared ownership units on the other side of the proposed barrier, and has taken into account that condition 43 requires the measures for providing access to be approved. Nonetheless the location of the vast majority of the affordable housing, including all the rented housing, would be both at the far end of the site, and all together rather than integrated (IR11.34).

23. In assessing the implications of this, the Secretary of State has taken into account that the Framework aims not just to deliver raw housing numbers, but to achieve healthy, inclusive and safe places (paragraph 91). He considers that the separation of the affordable housing, amenity and place space areas is not in keeping with the aims of paragraph 91(a) to achieve inclusive places that promote social interaction, including opportunities for meetings between people who would not otherwise come into contact with each other. The Secretary of State considers that this carries substantial weight against the proposal.

24. The Secretary of State has considered the Inspector's comment at IR11.33 that if the Secretary of State shares his concerns, then he should seek an alternative arrangement through a further s.106 agreement. However, the Secretary of State notes that previous concerns about this matter which were addressed by a revised s.106 agreement only resulted in the inclusion of a few shared ownership units on the other side of the proposed barrier (IR11.34). He therefore considers that a seeking more fundamental changes via further revisions to the s.106 agreement is unlikely to be successful. He has also taken into account that other matters also weigh against a grant of permission. Overall he does not consider that a 'minded to allow' letter would be an appropriate approach in this case.

Design and other benefits

25. The Secretary of State considers that the design and the public realm improvements together carry substantial weight in favour of the proposal. He agrees with the Inspector

that the retail benefits carry limited weight in favour of the proposal, and that the provision of a new learning facility carries a little weight (IR11.45-46 and IR11.24).

Other matters

26. The Secretary of State agrees with the Inspector's conclusions in IR11.30-11.31, and IR11.35-11.38.

Planning conditions

27. The Secretary of State has given consideration to the Inspector's analysis at IR11.39-11.41, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

28. Having had regard to the Inspector's analysis at IR11.39-11.41, the planning obligation dated 24 October 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusions and considers that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

29. For the reasons given above, the Secretary of State considers that the appeal scheme is in conflict with CLP Policy 7.8, CS Policy SP10 and MDD Policies DM26 and DM27 regrading heritage and is also in conflict with CS Policy SP10(4)(a) regarding daylight and sunlight. He further considers that there are clear conflicts with these policies, which are of central importance to the proposal. Given the great weight attaching to harm to heritage assets, and the substantial weight attaching to the harm from loss of daylight and sunlight, he disagrees with the Inspector that there is 'limited tension' with these policies (IR11.52), and considers that the proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

30. The Secretary of State considers that the proposal fails to meet the Framework's aims of creating an inclusive place, and that this attracts substantial weight against the proposal. The harm from loss of daylight and sunlight attracts substantial weight against the proposal. The harm to heritage assets attracts great weight against the proposal, while the impact on the character and appearance of the Conservation Area carries slight to moderate weight against the proposal.

31. The Secretary of State considers that the housing benefits attract substantial weight in favour of the proposal, while the affordable housing element attracts moderate weight in favour. The quality of design and the public realm improvement attracts substantial weight in favour of the proposal, while the increased retail provision attracts limited

weight and the provision of a new learning facility carries a little weight in favour of the proposal.

32. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the designated heritage assets are outweighed by the public benefits of the proposal. He agrees with the Inspector at IR11.47 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the above heritage assets and considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal. He further considers that with respect to the non-designated Former Working Lads Institute, paragraph 197 is also favourable to the proposal.

33. The Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

34. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for demolition of the existing store and decked car park to allow for a replacement Sainsbury's store, an 'explore learning' facility, flexible retail/office/community floorspace, 471 residential units arranged in 8 blocks, an energy centre and plant at basement level, 240 'retail' car parking spaces and 40 disabled car parking spaces for use by the proposed residential units, two additional disabled units proposed at Merceron Street, creation of an east-west public realm route from Cambridge Heath Road to Brady Street and public realm provision and enhancements, associated highway works to Brady Street, Merceron Street, Darling Row and Collingwood Street and Cambridge Heath Road.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

36. A copy of this letter has been sent to Tower Hamlets Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by David Nicholson **RIBA IHBC**

an Inspector appointed by the Secretary of State

Date: 18 February 2019

TOWN AND COUNTRY PLANNING ACT 1990

LONDON BOROUGH OF TOWER HAMLETS

APPEAL BY

SAINSBURY'S SUPERMARKETS LTD.

Inquiry Held on 9-19 October 2018

Sainsbury's Supermarket, 1 Cambridge Heath Road, London E1 5SD

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List of abbreviations used in this Report

AH	Affordable housing
CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
CS	Core Strategy
EIA	Environmental Impact Assessment
ES	Environmental Statement
GLA	Greater London Authority
ha	hectare(s)
HE	Historic England
LPA	Local Planning Authority
MDD	Managing Development Document
NPPF	National Planning Policy Framework – revised July 2018
OAPF	Opportunity Area Planning Framework
PPG	Planning Practice Guidance
s106	Section 106 of the T&CPA
SoCG	Statement of Common Ground
SoS	Secretary of State (for Housing, Communities and Local Government)
SPD	Supplementary Planning Document
T&CPA	Town and Country Planning Act 1990
TA	Transport assessment
TBS	Tall Buildings Study
TfL	Transport for London
LBTH	London Borough Tower Hamlets
VSC	vertical sky component

File Ref: APP/E5900/W/17/3190685
Sainsbury's Supermarket, 1 Cambridge Heath Road, London E1 5SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (T&CPA) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Sainsbury's Supermarkets Ltd. against the Council for the London Borough of Tower Hamlets (the Council).
- The application Ref: PA/17/01920 is dated 14 July 2017.
- The development proposed is: demolition of the existing store and decked car park to allow for a replacement Sainsbury's store; an 'explore learning' facility; flexible retail/office/community floorspace; 471 residential units arranged in 8 blocks; an energy centre and plant at basement level; 240 'retail' car parking spaces and 40 disabled car parking spaces for use by the proposed residential units; two additional disabled units proposed at Merceron street; creation of an east-west public realm route from Cambridge Heath Road to Brady Street and public realm provision and enhancements; associated highway works to Brady Street, Merceron Street, Darling Row and Collingwood Street, and Cambridge Heath Road.

Summary of Recommendation: The appeal should be allowed, and planning permission granted subject to conditions.

1. Procedural Matters

1.1 The appeal was submitted on 1 December 2017. On 15 February 2018, the application was reported to the Council's Strategic Development Committee. This committee resolved to inform the Inspectorate that it would have refused the application on four grounds relating to:
   a. affordable housing (AH) and viability;
   b. harm to the setting of the listed Albion Yard Brewery and the Whitechapel Market Conservation Area in views from Whitechapel Road;
   c. unacceptable impact on daylight and sunlight to surrounding properties;
   d. the absence of a legal agreement.

1.2 An earlier appeal[1] for the same site was withdrawn. It included a taller element which would have been visible from the nearby Grade I listed Trinity Green Almshouses.

1.3 The appeal was recovered by the Secretary of State for Housing, Communities and Local Government (SoS) for his own determination by letter dated 14 December 2017. The reason for this direction was that the proposal raises policy issues relating to residential development of 150 or more dwellings which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

1.4 Statements of common ground (SoCG) were submitted with regard to general planning matters[2], highways[3] and further viability[4]. Tables of agreement and

[1] For 608 residential units, including a 33 storey tower, ref. APP/E5900/W/17/3188581
[2] ID1 with LBTH signed and dated 8 October 2018
[3] With TfL dated 18 September 2018
[4] ID10 dated 16 October 2018

disagreement were submitted for heritage[5] and vertical sky component (VSC) values[6]. A Crossrail Position statement was also submitted[7]. Transport for London (TfL) signed a SoCG with the Appellant[8]. TfL did not agree the level of car parking for the store, arguing that it should reflect the fact that the new Draft London Plan would require this development to be car free[9]. TfL did not attend the Inquiry and the Appellant's transport evidence was taken as read.

1.5 The proposals are 'EIA development' under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regs). The application was supported by reports and included an Environmental Statement (ES). Lengthy correspondence ensued[10]. While there were criticisms of some of its findings, there was no suggestion that the ES was too poor to be considered as such. Taken with the other evidence at the Inquiry I am satisfied that the EIA requirements have been met.

1.6 On 11 October 2018, the Inquiry was informed that agreement had been reached with regard to AH. The two viability witnesses elected not to give evidence and submitted a brief Joint Statement in relation to Financial Viability Matters[11]. This refers to a revised legal Agreement which was then submitted under section 106 of the T&CPA 1990 (s106)[12]. This increases the proportion of affordable housing on offer[13]. Interested parties were advised of this change and the Greater London Authority (GLA) was pursued for its comments on AH[14]. I deal with the contents and the justification for the Agreement below.

1.7 The Inquiry sat between 9 and 19 October 2018 with an accompanied site visit on 18 October 2018. I also undertook unaccompanied visits before the Inquiry.

2. The Site and Surroundings

2.1 The appeal site and its surroundings are described in some detail in the ES[15] and more briefly in the Planning SoCG[16] and the Committee Report[17]. There are further descriptions in the parties' proofs of evidence[18].

2.2 The application site covers approximately 3.1 hectares (ha) of land bounded by Merceron Street, Collingwood Street and Darling Row to the north and north-east, by Cambridge Heath Road to the east and Brady Street to the west. To the south there is a mix of uses including the Crossrail temporary construction site and a permanent Crossrail ventilation shaft, and a set of significant buildings, including the Whitechapel Idea Store, the Grade II listed

[5] Agreed on 8 October 2018
[6] ID7
[7] ID14
[8] CD G3
[9] At §4.33
[10] See ID1: SoCG s5
[11] ID6, dated 15 October 2018 between Fourt and Jones
[12] Inquiry Document (ID) 8
[13] From 13.8% by unit or 17.5% by habitable room to 20.2% and 24.17% respectively
[14] at the request of the Inspector: ID12
[15] CD D11 ES chapter 3
[16] on p5 to the SoCG ID1
[17] CD D35 §§4.9-4.17
[18] Newton s2 and Smith s4

Albion Yard Brewery Entrance building, and the Blind Beggar Public House, that front onto Whitechapel Road. The latter buildings lie within the Whitechapel Market Conservation Area (CA) as does a very small part of the site.

2.3 The local authority housing at Collingwood Estate lies to the northeast of the site with Harvey House and Blackwood House immediately to the north. To the east are Grindall House and Collingwood House. Swanlea Secondary School, which was designed specifically to maximise daylight and sunlight[19], stands immediately to the west. The site contains the Sainsbury's supermarket and a temporary decked car park containing 258 car parking spaces. This was built to replace the original car park occupied by temporary development in connection with the construction of Crossrail.

2.4 The appeal site is subject to three planning designations: the defined boundary of Whitechapel District Centre[20]; the City Fringe/Tech City Opportunity Area, and an Archaeological Priority Area. The Public Transport Accessibility Level (PTAL) rating for the site was agreed at 6a/6b as it is a mixture of both levels for different parts of the site. 6b is the highest available.

2.5 The CA is a long thin area focused on the market stalls to the north side of the road opposite the former hospital. It encompasses the historic street market which remains vibrant and busy. The stalls stand in front of mostly commercial buildings with relatively narrow frontages. The CA Character Appraisal and Management Guidelines (adopted in 2009)[21] note that the frontage is significant because it is a sustained stretch of fine-grain historic buildings, with a variety of architectural design approaches. The appeal site lies behind the Brewery, away from Whitechapel Road, and generally beyond the CA although it does just clip the boundary at one point.

2.6 The surviving Entrance Block is a tiny fraction of the former brewery. Unlike the majority of the original development, which would have been industrial and utilitarian, the Entrance is a grand early 19th century extravagance with fluted ionic pilasters and a carved figure of St George slaying the dragon (the brewery's trademark), above it a large clock face, and a delicately carved pediment surmounted by scrolling console brackets. Historic England (HE) found the whole effect impressive, lending a high aesthetic value to the significance of the listed building and its important contribution to the CA[22]. It is significant both as the only surviving part of a brewery of considerable size and aspiration and as an exuberant statement of the entrance to that ambition. There was little evidence that the rear of this building was intended to be more than functional or that historically there were even unobstructed views of it[23].

2.7 The site is near the locally listed Nos. 279-281 Whitechapel Road, the former Working Lads Institute (WLI); this stands roughly in the middle of the CA. The five-storey façade to the WLI was built in 1884-5 and marks a high point in views along the street front. Of red brick, with Portland stone dressings, it was funded by the Corporation of London, livery companies and wealthy individuals,

[19] ID5: Designing with Innovative Daylighting
[20] ID1: SoCG §6.2.3
[21] CD B1
[22] As described by HE in Pre-application letter dated 23 June 2017, Mascall appendix 2
[23] See photographs in CD D4: Design and Access Statement, photos 02 p9, 01 p21 and 02 p31

to promote the education and welfare of working boys within the East End. It was assessed for statutory listing[24] but rejected in part due to the loss of original fabric within and to the rear of the building. The Advice Report includes that: *The tall, eye catching façade makes a strong contribution to the character of the conservation area*. It also states that the WLI *has strong local historic and architectural interest*.

2.8 It was common ground that, other than these 3 heritage assets, the effects of the proposals on other assets in the area would be neutral[25].

3. Planning Policy

Development Plan

3.1 The Development Plan consists of the London Plan – consolidated with alterations between 2011 and March 2016 (CLP), the Tower Hamlets Core Strategy (CS) adopted September 2010, and the Tower Hamlets Managing Development Document (MDD) adopted April 2013. Relevant policies are set out in the SoCG Appendix 2.

3.2 CLP Policy 3.4 states that: *Taking into account local context and character, the design principles in Chapter 7 and public transport capacity, development should optimise housing output for different types of location within the relevant density range shown in Table 3.2. Development proposals which compromise this policy should be resisted*. Table 3.2 gives a Sustainable residential quality density matrix (habitable rooms and dwellings per hectare) for different PTAL levels with the greatest densities where the PTAL is highest. It differentiates between Central (located within 800 metres walking distance of an International, Metropolitan or Major town centre) and Urban (within 800 metres walking distance of a District centre or, along main arterial routes). Policy 3.5A requires new housing to be of the highest quality internally and externally. Policies 3.8, 3.11 and 3.12 deal with housing choice, AH targets and negotiations to achieve the maximum reasonable amount of AH. Although not policy, the explanatory text[26] stresses the need for AH to be integrated with the rest of the development.

3.3 CLP Policy 7.4 expects development to have regard to the form, function and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. It sets criteria for planning decisions so that buildings, streets and open spaces should provide a high quality design response that is informed by the surrounding historic environment. Policy 7.5 aims for comprehensible public realm of the highest quality design. Policy 7.6 expects architecture to make a positive contribution to a coherent public realm, streetscape and wider cityscape, incorporating the highest quality materials and design appropriate to its context. Its criterion B(d), for tall buildings in particular, expects that buildings should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate. Policy 7.7 sets

[24] In May 2018, Hargreaves 9.1 and appendix 4
[25] Agreed Table of heritage assets and impacts confirmed in ID1 §9.15-9.20
[26] CD B9 §3.76

criteria for tall and large buildings which it expects to be part of a plan-led approach. 7.7E expects particular consideration to be given to the impact of tall buildings proposed in sensitive locations, such as CAs and listed buildings, and their settings. Policy 7.8 expects development affecting heritage assets and their settings to conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.

3.4 The CS shows the site as being within the Whitechapel District Centre and, in its vision for Whitechapel[27], calls for the *expansion and intensification of Whitechapel town centre.* Also, the *Regeneration of site on the eastern edge of the Town Centre to make better use of land*, and a principle that *Medium-rise development will be focused in and around the Whitechapel transport interchange*. Policy SP02(6) requires all housing to be high quality, well-designed and sustainable. Regarding heritage, CS policy SP10 requires protection and enhancement of, amongst other things, statutory and locally listed buildings and conservation areas. CS policy SP10 also requires (at 4a) amenity to be protected and well-being promoted (including preventing loss of privacy and access to daylight and sunlight). Policy SP12 aims for well-designed places which (b) retain and respect the features that contribute to each places' (sic) heritage, character and local distinctiveness.

3.5 MDD policy DM3 requires development to maximise AH as the CS tenure split, be built to the same standards and to share the same level of amenities as private housing, and provide a balance of housing types, including family homes. MDD policies DM24, DM26 and DM27 require design of the highest quality which would be sensitive to, and enhance, the local character and setting of the development; set criteria for tall buildings including with regard to heritage assets; and set general criteria requiring development to protect and enhance the borough's heritage assets, their setting and their significance. Policy DM25(1)(c) and (d), for amenity, seeks development that would ensure adequate daylight and sunlight for the future occupants of new developments; and not result in an unacceptable material deterioration of the sunlighting and daylighting conditions of surrounding development including habitable rooms of residential dwellings, and schools.

3.6 The Whitechapel Vision Masterplan Supplementary Planning Document (WVM)[28] makes clear that *Whitechapel's rich heritage is one of its unique features and defines its urban character.* It emphasises that *the Masterplan will protect and enhance the existing historic environment and heritage assets through delivering high quality architecture and new public spaces*[29]*.* It continues: *new development will be required to sensitively plan to an appropriate scale, mass and appearance which promotes high quality design, and responds to Whitechapel's context.* In relation to landmark buildings, whilst these may be expressed as tall buildings, the WVM explains that *any taller buildings should be sensitive to existing heritage assets*[30]*.* The WVM includes a number of illustrative diagrams indicating ways in which development might proceed[31].

[27] CD B3 p106, fig 49
[28] CD B5 - adopted by the Council in December 2013 for Development Management purposes
[29] CD B5 p11
[30] CD B5 p14, blue box on left side of page
[31] Including figures 5 (from the CS) 8, 10, 12, 13 and 32

3.7 The Council's Tall Buildings Study (TBS) February 2018[32] aims to strengthen and support the tall buildings policy in the emerging LP[33] (Policy D.DH6) for Tall Buildings. The TBS identifies the rear of the Whitechapel High Street northern frontage as fragmented and providing a poor pedestrian experience. It considers that the northern approach to the new Crossrail station could be enhanced through development in the air space above the station and a reconfiguration of the Sainsbury's site.

3.8 The CA Character Appraisal and Management Guidelines identifies the area and sets out its history and character followed by references to law and policy at that time which remain broadly similar today. The GLA's City Fringe Opportunity Area Planning Framework (OAPF)[34], adopted in 2015, explains the vision and objectives for this area, which includes Whitechapel, together with strategies and implementation. It provides guidance that supplements the CLP and the relevant Borough policies for the City Fringe.

3.9 The Mayor's Housing SPG *requires new development to avoid causing 'unacceptable harm' to the amenity of surrounding land and buildings*, but adds that *an appropriate degree of flexibility needs to be applied when using BRE guidelines*[35]. These *should be applied sensitively to higher density development, especially in opportunity areas, town centres, large sites and accessible locations*[36]. It expects that: *decision makers should recognise that fully optimising housing potential on large sites may necessitate standards which depart from those presently experienced but which still achieve satisfactory levels of residential amenity and avoid unacceptable harm*[37].

3.10 The BRE guide provides advice on site layout planning to achieve good daylight and sunlight[38]. It does not deal with the design of the interior environment which is the second important factor[39]. The document itself states that it is *purely advisory and the numerical target values within it may be varied to meet the needs of the development and its location*[40]. It uses the term VSC for the amount of skylight falling on a vertical wall or window[41] and average daylight factor (ADF) as a measure of the overall amount of daylight in a space[42]. Its author was also the Council's daylight and sunlight witness.

3.11 The 4th putative reason for refusal, regarding the lack of a legal agreement, refers to CS policies SP01, SP02, SP09, SP12 and SP13; and MDD policies DM1, DM3, DM20 and DM21; CLP policies 2.15, 3.11, 3.12, 4.7, 6.3 and 8.2; and the LBTH planning obligations supplementary planning guidance (SPD) 2016[43].

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[32] CD B13 –especially pp124-129
[33] CD B15
[34] CD B8. See also 6 Strategic Design Principles for Whitechapel High Street CD E11 LBTH SoC §5.12
[35] CD A8 The British Research Establishment (BRE) Site Layout Planning for Daylight and Sunlight – a guide to good practice (2011)
[36] CD B10 §1.3.45
[37] Ibid §1.3.46
[38] CD A8 §1.3
[39] Ibid §1.2
[40] Ibid summary page
[41] Ibid §2.1.4
[42] Ibid §2.1.8
[43] CD B11

Other SPD includes LBTH's Development Viability SPD (October 2017) and the Mayor of London's AH and Viability SPG (August 2017).

Emerging Development Plan

3.12 The Draft London Plan[44] was published on 29 November 2017. Consultation ran from 1 December 2017 until 2 March 2018. On 13 August 2018 the Mayor published his minor suggested changes. The public examination is expected to take place between January and March 2019 with the final London Plan due to be published in autumn 2019. The Draft Plan has yet to be considered by an Inspector[45].

3.13 Statutory public consultation on the 'Regulation 19' version of the Tower Hamlets emerging Local Plan (LP) ran from 2 October 2017 to 13 November 2017. The Examination in Public began on 6 September 2018 but the Regulation 19 version has not been considered by an Inspector and there remain outstanding objections[46].

4. Planning History

4.1 The existing supermarket was granted planning permission in 1996. Additional works to this were permitted in 2003 and 2008. The temporary car park for Crossrail was granted permission in February 2010. The application to which the withdrawn appeal relates was refused on 11 May 2017.

4.2 Of particular relevance to this appeal, planning permission has recently been granted for 564 residential units in blocks ranging from 4 to 25 storeys at the Whitechapel Central site[47] and, at appeal, for 343 residential dwellings and 168 specialist accommodation units in buildings ranging from 2 to 23 storeys at Whitechapel Estate[48].

5. The Proposals

5.1 An overview of the scheme was presented at the Inquiry[49]. The plans for which approval was sought are as agreed in Appendix 1 to the SoCG and set out in suggested condition 2 (below). Key elements include the east-west pedestrian link parallel with Whitechapel Road (Albion Walk) and amenity areas at podium level at right angles to this (Pereira Gardens).

5.2 It was common ground[50] that the proposed use would be consistent with the relevant CLP and LP policy objectives in the WVM and the key objectives in the GLA's City Fringe OAPF. It was also agreed that: the scheme would meet the relevant retail policy objectives; the quantum of housing would assist in

[44] CD B16
[45] SoCG §8.4.1
[46] Ibid §8.3.1
[47] CD F1 ref. PA/15/01789 Safestore Site bounded by Raven Row, Stepney Way Sidney Street PA/15/01789, further application PA/18/00917 pending
[48] CD F2 Site between Varden Street and Ashfield Street ref. PA/15/02959 and subsequently APP/E5900/W/17/3171437
[49] ID G4
[50] SoCG §9.2

increasing London's supply of housing; the residential density would be within the CLP range; the layout would be similar in some respects to the illustrative building block plan set out in the WVM; and that the proposed public realm improvements would be a public benefit, particularly the creation of the Albion Walk. Public access to Albion Walk could be secured by condition 18.

5.3 Acknowledging that the development would affect daylight to surrounding properties, the Appellant claimed that the design was informed by the effects on daylight from an early stage, and that steps were taken during the design process to minimise the impact, aiming for retained levels of VSC of at least 15% while achieving a high density[51]. This would not apply to balconies which affect around half the relevant windows[52]. The taller buildings would be set back from the surrounding streets with the aim of reducing impact on daylight[53]. The assessment for Swanlea School[54] indicates that many classrooms already use electric lighting and that the scheme would not alter this practice. On the Appellant's figures, it was common ground that some 243 windows would suffer a significant loss of VSC and that 175 of those windows would retain less than 10% of their VSC[55]. It found that the worst affected building would be Grindall House but that there would be adverse impacts on daylight to many other properties, in particular to Flat 4 of Blackwood House; the flats at ground, first and second floor of Kempton Court, the rear lower floors of Albion Yard, Collingwood House, Key Close, Berry House, 18-28 Cambridge Heath Road, and Swanlea School.

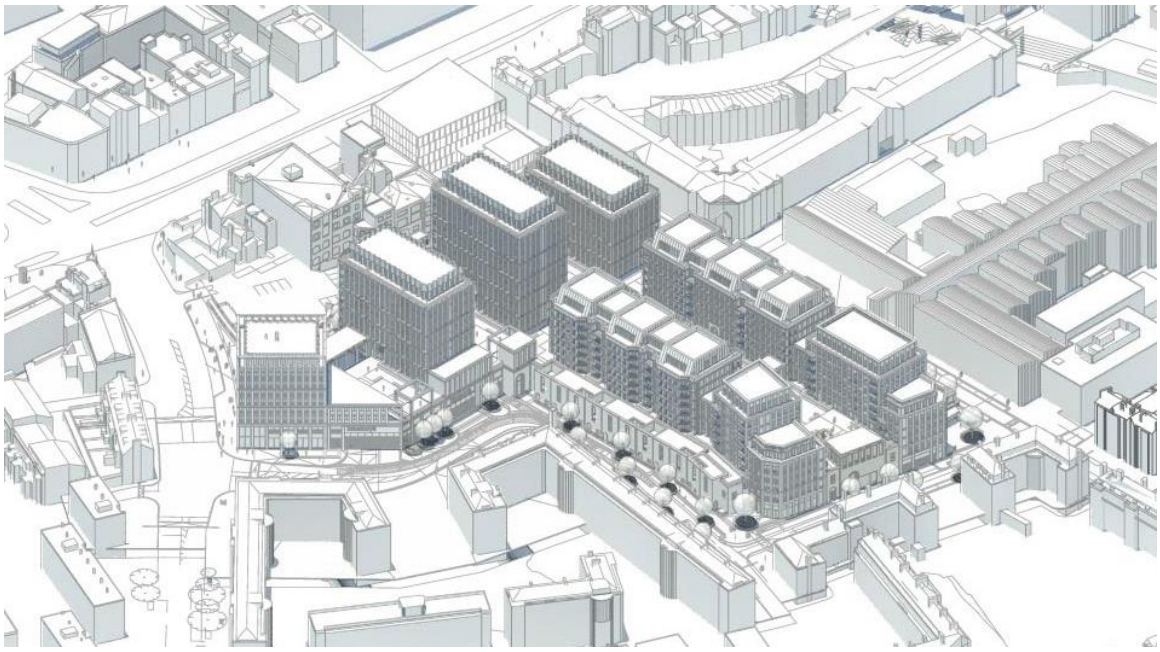

Illustration 1: Diagram showing Distribution of Accommodation[56]

[51] Cartmell's evidence
[52] Cartmell in evidence, Notes to ID7
[53] Scheme overview p07 shows this as do the more detailed drawings
[54] Cartmell appendix J
[55] ID7 second column
[56] Hutchinson diagram 1 p79

5.4 Generally, access to the proposed flats would be from Albion Walk and the central podium. However, the majority of the AH units would be at the north end of the scheme within buildings 6 and 7, with their own entrance, and separated from the rest of the scheme at podium level by 2 additional 2 storey units (the duplex building across Pereira Gardens). Proposed longitudinal sections through the centre of the site[57] illustrate this. With the revised AH contribution[58], the AH units would be slightly more widely spread than originally put forward with some shared ownership units to the south of the podium division[59]. The mix of size of units was not as sought by the Council[60] but was acceptable to the GLA[61]. The average marginal cost for each additional AH unit was put at around £750,000[62].

5.5 A number of trees around the site would be removed during construction. A larger number of less mature trees would be planted.

5.6 Listed as *Whitechapel Square by Hutchinson & Partners*, the scheme was shortlisted in October 2018 as a finalist for the Architects' Journal (AJ) Masterplan of the Year[63].

6. The Case for Sainsbury's Supermarket Ltd.

6.1 Its case was set out in its proofs of evidence and summarised in its closing submissions with references to key points of evidence[64]. This should be read in full to understand the Appellant's case. The closings identified 8 issues raised by the Council as: the principle of the development, benefits, optimisation, AH, heritage, daylight and sunlight, amenity of future residents of the appeal scheme, other matters.

A number of additional points arose in spoken evidence[65] as follows.

Heritage

6.2 It is significant that, in the 2015 scheme, officers did not consider the impact on the brewery or the Conservation area warranted refusal *in isolation*[66]. In accepting that all the harm he identified, whether to the Brewery, the CA or the WLI, was at the *bottom end* of less than substantial harm, the Council's heritage witness confirmed that his assertion that there would be *great harm* was not to be read inconsistently with that acknowledgement[67].

[57] Drawings 17014 01 AP 0030 103 P01 02 and 03
[58] In the final s106 Agreement
[59] See s106 Agreement plans 3A-3C
[60] CD C52 §13.20-13.21 and Smith §7.32 and 11.16-11.19
[61] Ibid Schedule 5 cf Table 1 §36 of GLA stage I report CD D34 and stage II referral CD C53
[62] Corner on instruction at the very end of the Inquiry
[63] ID21
[64] ID17
[65] during examination in chief (IC), cross-examination (XX), re-examination (ReX) and Inspector's questions (IQ)
[66] Mascall in XX
[67] Hargreaves in XX

Living conditions with regard to daylight and sunlight

6.3 The Council's daylight and sunlight expert was the second to be consulted[68], the first having found the scheme acceptable[69]. He accepted[70] that: the BRE guide states that it is *purely advisory and the numerical target values within it may be varied to meet the needs of the development and its location*; the need for a flexible approach is underlined later in the guidance; and in London this is emphasised by the Mayor's Housing SPG. The latter states that the BRE guide needs to be applied sensitively to higher density developments, especially in opportunity areas, town centres, larger sites and accessible locations.

6.4 It was wrong of the Council to suggest[71] that the NPPF requirement to apply a flexible approach in applying daylight and sunlight guidelines has reduced, rather than increased, the need for flexibility. It was equally wrong to suggest that daylight targets need survey evidence when the Mayor's Housing SPG, does not seek, let alone require, this[72].

6.5 The only query regarding the modelling results concerned the windows to 23 Mile End Road but further modelling showed that these were all within the BRE guidelines for VSC[73]. With regard to balconies, most of the windows affected are onto bedrooms which is good design practice as these are considered less significant in daylight terms[74].

The following additions to the closing submissions were made orally.

6.6 With regard to the viability of AH, there was no contrary evidence.

6.7 The reference to *poor doors* for the AH was unnecessarily emotive language for what was a carefully considered approach.

6.8 The concept of optimisation is recognised throughout the planning evidence[75]. It is wrong to pick on the word *maximum* when this means the maximum consistent with good planning.

6.9 With regard to alternatives, the principle is that applications are to be determined on their own merits even if there is a *better* alternative[76].

6.10 It is wrong[77] to say that the central density range for the site is on an exceptional basis. It lies squarely within that range.

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[68] Confirmed by Dr Littlefair in XX
[69] CD D9 for the withdrawn appeal concluded, at §5.9, that: the design of the proposed apartments has appropriately balanced the potential functionality and versatility of each flat against the levels of daylight that will be enjoyed within each room. Whilst achieving this balance the results are considered to show a very good level of compliance for an urban area when assessed against the BRE guidelines.
[70] Ibid in XX
[71] Smith in ReX
[72] Cartmell in XX and ReX
[73] As Littlefair agreed in XX
[74] Ibid
[75] Of Newton
[76] The *Mount Cook* reference is to §30(6)
[77] ID16 Council closing §16

6.11 Both consultants agreed that the revised affordable housing offer is the maximum reasonable. That does not make the inputs agreed[78]. It means that matters would need to change to achieve viability with any more AH.

6.12 The WVM contemplates major development to the north of Whitechapel Road that would be very visible behind the CA buildings on the frontage to Whitechapel Road[79]. So does the TBS[80].

6.13 With regards to options for altering a high density scheme to try and improve daylight/sunlight for surrounding residents, that of including tall slender towers with gaps in between would fall foul of heritage objections as with the withdrawn scheme. There was no evidence that a smaller scheme would be viable.

6.14 It was wrong to suggest that the design was a race to the bottom concerning daylight. It was a fair assessment and the effects were analysed in detail. It was not right to say that residents could expect no material change. The Council considers this an area of transformational change. Concerning ADF data, this was not requested. With regard to balconies, these generally affect 3 windows each.

7. The Case for Tower Hamlets Borough Council

7.1 Its case was set out in its proofs of evidence and summarised in its closing submissions with references to key points[81]. This should be read in full to understand the Appellant's case. Here it identified 3 issues regarding living standards, harm to heritage assets, and the balance between this and the benefits. It emphasised the need for the scheme to optimise the site consistent with all planning objections.

7.2 A number of points arose in spoken evidence as follows.

Living conditions with regard to daylight and sunlight

7.3 The Appellant's architect and design witness[82] emphasised that the scheme would need to be an exemplar project, which would respond to the historic, environmental and urban context, integrate into the local community and the area as a whole, and *very much fulfil* the objectives of the WVM and be a *good neighbour* to surrounding development. The Council argued that it failed to reach this standard, preferring to maximise density. The Appellant acknowledged[83] that the appeal site is not within 800m walking distance of an International, Metropolitan or Major town centre under CLP Table 3.2 when considering the appropriate density.

[78] ID17 §60
[79] CD B5. See illustration at Figure 12 on p15
[80] CD B13 p129
[81] ID16
[82] Ross Hutchinson
[83] Newton in XX

7.4 It was wrong[84] to say that NPPF§123(c) is simply a welcome clarification that flexibility must be applied to the BRE Guidelines, when considering the impacts of a high-density development on daylight and sunlight. Whereas the previous NPPF was silent on this, NPPF§123(c) now elevates daylight/sunlight to a material consideration for amenity. Moreover, NPPF§123 ensures that high density development does not come forward at the expense of acceptable living standards for surrounding residents.

7.5 The Council's daylight witness[85] explained the important factual distinctions between the appeal scheme and those at Whitechapel Estate and Whitechapel Central. The latter are not equivalent as they consist of a number of towers and blocks, whereas the appeal scheme's more consistent massing creates a block-like effect. More importantly, while these schemes also mainly affected local authority blocks, the impacts were on kitchens or secondary rooms facing onto access decks at the side of the buildings, whereas the rooms most greatly affected by the appeal scheme would be main windows, such as bedrooms and living rooms. This would lead to a more serious impact on the residual amenity for residents of the surrounding buildings. The other comparator sites chosen were not genuinely *comparable residential typologies*[86].

7.6 Crucially, the Appellant's daylight witness[87] accepted that he had not conducted any research himself to demonstrate that retained VSC levels in the mid-teens actually correspond to a level which human beings consider to be acceptable. By contrast, the Council's witness explained that, although VSC was appropriate to calculate the loss of light, the most appropriate method for assessing an acceptable living standard was the ADF. The only risk with ADF is that it would under-predict[88]. This is because VSC tells you about the extent to which light would be obstructed while ADF is a measure of daylight in the proposed room. This is much more useful in determining residual acceptability as it relates to the level of daylight actually *experienced* by an occupant within their property[89]. The Appellant's daylight witness also agreed that his 19 ADF results[90] were insufficient to assess acceptability[91].

7.7 The worst affected building would be Grindall House where 165 windows, which are the main light sources, would have daylight losses outside the BRE guidelines and this would be exacerbated by losses in sunlight[92]. While the form and density of the Appeal Scheme was designed to maximise housing output consistent with retained levels of VSC of 15% and upwards[93], there were various options for altering a high density scheme to try and improve daylight/sunlight for surrounding residents. The first was to include tall slender towers with gaps in between them, the second was to reduce the overall height

[84] of Cartmell, the Appellant's Daylight/Sunlight witness
[85] Littlefair
[86] Ibid IC
[87] Cartmell
[88] Ibid in XX
[89] as accepted by Cartmell
[90] In the ES
[91] Ibid
[92] Littlefair in evidence
[93] Cartmell in XX

of the new development, and the third was to set back the top storeys yet further[94].

Heritage assets

7.8 A designer's approach must be to avoid causing any harm to the significance of a heritage asset. It is not the case that a designer should start with the objective of only causing as much harm to significance as is outweighed by the public interest benefits that a scheme can deliver[95].

7.9 The appearance of Building 3 behind the Brewery, with its grand silhouette and richly gabled clock, would cause less than substantial harm to the significance of the listed building. The ability to see Building 3 behind the northern frontage of the buildings along Whitechapel Road would cause less than substantial harm to the character and appearance of the CA[96]. The WLI has *clear local significance*[97] and its setting would be harmed by the presence of Building 3 above the roofline adjoining the WLI[98].

7.10 The NPPF gives rise to a two-stage process: firstly, the decision maker must consider whether there is a clear and convincing justification for the harm to the significance of the heritage asset and only if there is does the decision maker then apply NPPF§196[99].

Other matters

7.11 There would be a significant loss of trees in surrounding roads[100]. Although there would be replanting, new trees would take many years to grow.

8. Written Representations

8.1 There were 29 objections and 4 letters of support in response to the original application[101]. The grounds of objection are summarised in the Committee Report[102] and were generally raised by the Council. Other issues, such as concerns with regard to traffic, parking, noise, construction, air quality, and open space would be controlled by conditions or mitigated by the s106 Agreement and these concerns were not repeated at the Inquiry. Those in favour highlighted improvements to the public realm, reduced heritage concerns compared with the withdrawn scheme, and the new retail units.

8.2 The GLA considered that the AH provision of 17.5% by habitable room (at that time) was wholly unacceptable within this high density scheme within an opportunity area. While it thought the residential quality of the scheme would be high[103], it noted that the podium level amenity spaces for private residents

[94] Littlefair in evidence
[95] Mascall in XX
[96] Accepted by Mascall
[97] Hargreaves noted that this was Historic England's description
[98] Ibid in evidence
[99] Mascall XX Day 3
[100] Smith IC
[101] See Smith §9.2-9.3
[102] CD D35
[103] and meet space standards with private amenity space and private communal open space

would be separate from that for AH. It found this unjustified and that the design should be amended to ensure that there is no physical segregation of amenity spaces purely on the basis of tenure[104]. The GLA did not attend the Inquiry to defend these objections.

8.3 The GLA assessed that although some of the upper elements of the development would be visible in the backdrop of Albion Yard, and within the setting of the CA, that this would not be substantially harmful because of the slender form of the building and the general high quality of the architecture. There would be substantial public benefits including improvements to the District Centre, maximising the benefit to London of Crossrail and the delivery of AH that would considerably outweigh the less than substantial harm[105].

8.4 HE objected strongly to the original scheme, which has now been withdrawn, on account of its potential effect on the setting of the Grade I Trinity Green Almshouses. While noting some harm to the setting of the Albion Yard Brewery, it anticipated that this would be outweighed by public benefits[106]. In its latest letter[107], HE confirmed that it had no objection on heritage grounds.

8.5 The Collingwood Tenants' and Residents' Association noted that the AH offer was significantly below the Borough target adding that the developers argue that to provide more AH would unduly cut into their profits. However, Sainsbury plc has owned this site for many years and the use of a current land value as the basis for assessing profitability will hugely understate the profit margin. The proposed height of buildings would still unduly impact on daylight and sunlight to existing properties. The proposed routing to the car park, and increased intensity of use of Darling Row, was also of concern.

8.6 There were additional objections made directly to the Inspectorate. In particular, Mr Ali of Collingwood House objected to the potential loss of outlook for his disabled father, increased shading, and the lack sunlight. Dr Hussain of Grindall House expressed similar worries regarding overshadowing and added further concerns about road safety and health services. Other representations generally repeated objections already raised by other parties.

8.7 The SoCG with TfL agreed all matters other than that the level of car parking for the store should reflect the Draft London Plan requirement for the development to be car free[108]. As above, the Appellant's transport witness[109] was not called and the evidence was accepted in writing.

9. Conditions

9.1 The suggested conditions were discussed at the Inquiry. These must be necessary, relevant to planning and to the development to be permitted,

– GLA Stage I report 8 January 2018, CD D34 §43
[104] Ibid §44
[105] CD D35 §7.16
[106] Letter dated 1 August 2017
[107] Dated 16 April 2018, Mascall appendix 4
[108] CD B16 §4.33
[109] Eyton

enforceable, precise and reasonable in all other respects[110]. These were agreed between the Council and the Appellant together with the reasons given. Other than a few very minor changes by me, these are set out in the attached Schedule.

9.2 In accordance with recent regulations[111], if the SoS is minded to grant planning permission subject to pre-commencement conditions he may only do so with the written agreement of the appellant to the terms of the conditions. The appellant confirmed[112] that it was content to accept the pre-commencement conditions, as drafted in Annex B to the SoCG, should the appeal be allowed.

9.3 Although not raised at the Inquiry, it is relevant that the colour of the external materials, which would be controlled by condition 14, can play a significant part in the amount of reflected daylight received by adjoining properties.

10. Obligation

10.1 The Community Infrastructure Levy (CIL) Regulations 2010, and NPPF§204, set 3 tests for planning obligations[113]. This also restricts the use of pooled contributions under CIL Regulation 123(3).

10.2 The s106 Agreement[114] sets out covenants that would be imposed on the owners in favour of LBTH in the event that planning permission is granted. It would make provisions for 95 of the dwellings[115] to be constructed as AH. It stipulates the details of the AH units, phasing and occupancy, including the mix and location.

10.3 The s106 Agreement binds the owners to AH Reviews[116] with regard to viability. There would be a series of financial contributions and monitoring fees[117]. It also binds the owners with regard to: car free development; employment initiatives; cycle docking safeguarding; apprenticeships; code of construction; and highway works. The Council would be obliged to repay any part of the contributions which are not spent or committed after eight years.

10.4 Following a conversation with the Council on 19 October 2018, the GLA confirmed that it did not intend to make any further written representations to the inquiry following the receipt of the financial viability response[118] and the Crossrail provision note[119].

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[110] NPPF§206
[111] The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 with reference to section 100ZA(5) of the Town and Country Planning Act 1990
[112] ID20 Letter dated 10 October 2018
[113] CIL Regulation 122:(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is —
(a) necessary to make the development acceptable in planning terms;
(b) directly related to the development; and
(c) fairly and reasonably related in scale and kind to the development.
[114] ID8 The final version is signed and dated 24 October 2018. There is also a plain English summary
[115] S106 Schedule 2 part 1(3): 20.2% by unit or 24.17% by habitable room
[116] Ibid Schedule 4
[117] Ibid Schedule 6
[118] by Fourt ID13
[119] ID14

10.5 Justification for the contributions, in the form of a Statement of compliance, was submitted during the Inquiry[120]. The justifications submitted show that there would be no breach of Regulations by enforcing all the obligations in full and the Council confirmed that none of the pooled contributions would exceed the limit of five.

10.6 As completed, the s106 Agreement would address the 4th putative reason for refusal and the need to comply with CS policies SP01, SP02, SP09, SP12 and SP13; MDD policies DM1, DM3, DM20 and DM21; CLP policies 2.15, 3.11, 3.12, 4.7, 6.3 and 8.2; and the LBTH Planning Obligations SPD.

[120] ID 9

11. Inspector's Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

11.1 The main considerations in this appeal are:

(a) whether the proposals would preserve or enhance the character or appearance of the Whitechapel Market Conservation Area (CA);

(b) the effects of the proposals on the significance of the Grade II listed Albion Yard Brewery Entrance provided by its setting;

(c) the effect of the proposals on the setting of the non-designated heritage asset of the former Working Lads Institute (WLI);

(d) the effect of the proposals on the living conditions of adjacent residents with particular regard to the daylight and sunlight received by the surrounding properties;

(e) whether the public benefits of the proposals would outweigh the harm identified and the overall planning balances.

Heritage

11.2 It was common ground that only three heritage assets might be affected by the proposals: the Grade II Albion Brewery Entrance, the CA, and the WLI. There would be no direct physical effect on the fabric of any heritage assets. In each case, concern was with regard to their settings. Of these, it was agreed that, under NPPF§196, there would be *less than substantial harm*, at the lower end of the scale, to the significance of the CA and to the Brewery on account of development within their settings. Concerning the WLI, for which NPPF§197 applies, the Council considered that there would be impact, but even here it considered that the degree of harm to the significance of the building would be low and towards the bottom of the scale of *less than substantial*. While it would be wrong to dismiss concerns for this reason, it should be noted that the NPPF test of *less than substantial* only applies to designated heritage assets and not to buildings of local heritage interest. The WLI is also within the CA and so any harm to its setting could also affect the latter's character or appearance. [2.2 2.5-2.8 3.8 6.2 7.9]

Conservation Area (CA)

11.3 For the CA, its historical and communal values would be largely unaffected but the aesthetic appreciation would be altered by the appearance of large blocks of flats, particularly Building 3. From the submitted views, and the site visit, it was apparent that the greatest impact would be in key views which also include the WLI and the Brewery. In the case of the Brewery Entrance, the character of the CA at this point has become diluted by the change in the scale and arrangement of buildings. This is in contrast to the greater survival of historic buildings on either side of the WLI. For this reason, the impact on the significance of the CA from development behind the Brewery would be modest. [2.5 2.7 6.2 7.9]

Illustration 2: Looking east along Whitechapel Road with proposed development[121].

11.4 Turning to the street scene including the WLI, this is more sensitive to impact from taller buildings behind the street frontage. However, from opposite the fine-grained historic buildings noted in the CA Appraisal, Building 3 would be further away, and would mostly appear in oblique angles in views along the road. It would generally be out of site when standing on the same side of the road near the market stalls. The latter also impose their own fascinating character which leads the eye away from the wider context. For these reasons, although there would be harm to the CA, which should be given considerable importance and weight, the impact on both its character and appearance should be given only slight to moderate weight. [2.6 2.7 3.8]

Albion Brewery

11.5 The proposed building 3 would stand almost directly behind the Entrance and face its rear elevation which would be exposed to the new public thoroughfare along Albion Walk. There would be no physical harm to the listed building. The impact on views would be from both sides, that is, from Whitechapel Road and from Albion Walk to the rear. The appearance of the façade onto the street makes a considerable contribution to the significance of the listed building and to its special interest. The context for the façade is also highly important. This has already been compromised by the buildings either side but, regardless of the effect of this, the gable with its raised pediment, clock face, scrolls and elaborate carving are currently seen against the sky when viewed from Whitechapel Road. This backdrop would be substantially different when seen from directly across the road. [2.6 6.2 7.9]

[121] ES Vol.2 p144 – compare with existing view on p133

Illustration 3: Photomontage of the Brewery Entrance with Block 3 behind[122]

11.6 Historic evidence provides some indication of the extent, if any, to which the now demolished Brewery buildings would have been seen behind the façade. It is unlikely that they would have been visible from close to the Entrance but might have been seen from across the road. However, none of this is conclusive. What is evident is that the Entrance was surrounded by other buildings and intended to be associated with the rest of the Brewery not as a stand-alone feature in the way that one might view a ceremonial arch. [2.6]

11.7 Nevertheless, the site visit confirmed the importance of uninterrupted views of the sky as the context to the detailing of the Entrance. Block 3 would result in substantial interference with that context and have a marked, detrimental impact on the contribution that the setting makes to the significance of the building's façade and to its special interest. To put this degree of harm at the lower end of the scale is to slightly underestimate the weight that should be given to the harm to the significance of the building as a designated heritage asset as a result of development in its immediate setting. Either way, it does not negate the great importance and weight to be given to this harm as it is a listed building[123]. [2.6 6.2 7.9]

11.8 Ongoing work to Crossrail meant that the rear elevation to the Brewery Entrance was partly obscured on the site visit and evidence relied on photographs. While there might be a number of design advantages to opening up the rear of the listed building onto Albion Walk, there was little to substantiate the claim that the design of the rear was important or that this would greatly enhance the contribution that this part of its setting could make to the significance of the Brewery. [1.7 2.6]

11.9 In the case of both the listed building and the CA, the harm to the contribution made by the settings to these designated heritage assets should, under NPPF§196, be balanced against the public benefits of the scheme, including

[122] Ibid pp121-122
[123] *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council & Others* [2014], Case No: C1/2013/0843, 18 February 2014 at paragraph 23. See Hargreaves §3.5 and Mascall §4.4

any positive contributions to the assets. This balancing exercise should be carried out for each heritage asset. It also makes sense if the exercise is then performed for all of the assets cumulatively.

Former Working Lads Institute (WLI)

11.10 The WLI was referred to HE for consideration for listing. Although rejected, the assessment provides useful information on which to gauge its importance as a non-designated heritage asset of local interest. While the weight to the harm to the WLI should be less than if it had been listed, as it does not have the required special architectural or historic interest, it is symptomatic of the harm to the CA. The site visit confirmed the photographic evidence that the scheme would have some impact on some views along Whitechapel Road but that, as above for the CA, the extent of impact would not be great and the number of views affected would be limited. [1.7 2.7 3.8]

11.11 For this non-designated heritage asset, NPPF§197 requires a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset. While it would be wrong to ascribe no harm to the significance of the WLI, for the above reasons, it should not be a major consideration in this appeal.

Cumulative impact

11.12 The most substantial harm to heritage assets arising out of the scheme would be to the special interest and significance of the surviving Brewery Entrance on account of development within its setting. Whether taken in its own right or as representative of the harm to the CA, the harm to the WLI is of a much lower order. Taken together, the weight to the harm to all 3 heritage assets should not be significantly greater than that to the Brewery Entrance alone. The benefits to the assets, whether to the rear of the Brewery Entrance or to the edge of the CA at this point, do not merit significant weight. [2.5-2.8]

11.13 Policy in NPPF§193-194 sets out that: *When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Any harm to, or loss of, the significance of a designated heritage asset (from … development within its setting), should require clear and convincing justification*. For *less than substantial harm*, compliance or otherwise with NPPF§196 is subject to an assessment of the public benefits of the scheme (see below). This was also the approach of HE when it anticipated that the harm would be outweighed by public benefits. [8.3]

11.14 While the proposals have certainly been informed by the surrounding historic environment, and consideration has been given to the impact (CLP Policies 7.4 and 7.7), they would, in any event, conflict with CLP Policy 7.8 and CS Policy SP10; and with MDD policies DM26 and DM27. Again, this conflict would need to be considered against other relevant policies in order to determine compliance or otherwise with the development plan as a whole. [3.3-3.5]

Daylight and sunlight

11.15 It was a joint matter in dispute as to whether the proposals would result in unacceptable harm to the amenity of surrounding residents in terms of

adverse impacts on the levels of daylight and sunlight. This acknowledges that the disagreement was about more than just a reduction in natural light levels. Indeed, there was no dispute that there would be adverse impacts on daylight and sunlight as the Appellant's own figures demonstrate this. [5.2]

11.16 Planning policy with regard to daylight and sunlight falls under CLP Policy 7.6B(d) and MDD Policy DM25, both for amenity. As these suggest, daylight and sunlight should not be considered in isolation from other factors affecting living conditions. The Mayor's Housing SPG also refers to amenity and expects flexibility when using BRE guidelines. NPPF§123(c) expects *a flexible approach … (as long as the resulting scheme would provide acceptable living standards)*. For all these policies, it is not just a simple question of whether or not daylight would be acceptable but a matter which needs to be considered in the overall amenity balance. [3.3 3.5 3.9 3.10 6.4 7.4]

11.17 As above, very many existing neighbours would experience a gloomier outlook than they do at present. On the other hand, while a large number of windows would be affected, and many quite significantly, 471 new homes would be built. The design has been informed by the effects on daylight from an early stage and, based on around 15% retained VSC, steps taken to minimise the impact while retaining a high density for the development. Of the worst affected windows, many of these are on the ground floor and, on the day of the site visit, were covered by blinds or curtains suggesting that privacy was a greater concern than loss of daylight. A substantial proportion of the worst affected windows are below balconies. These are already shadowed to well below the recommended ADF light levels and this would be reduced further. However, in many cases these have been designed as bedrooms rather than living rooms for this very reason and most are likely to require electric lighting already. [5.2 6.5 7.6 7.7]

11.18 There would remain significant distances between windows to adjacent buildings and those proposed for the upper levels so that occupiers should not feel overlooked or have the sense of an overbearing outlook. The designers have also taken considerable steps to improve the appearance of the supermarket at ground level with better façades and improved public realm. For Grindall House, generally the worst affected for daylight, the outlook would be onto a row of townhouses rather than the existing wall surrounding the delivery yard. Students at Swanlea School would look across to retail units or the new explore learning facility. Other than with regard to trees, which would have to be replaced, the improvements to the quality of the external design and active frontages were not challenged and it should be noted that none of the significant number of local residents who would be affected by the reduction in daylight attended the Inquiry. [5.1-5.5 8.5]

11.19 The Appellant was criticised for not using an alternative measure, the ADF, other than in a small, and so unrepresentative, number of examples. It is true that the ADF gives a better indication of residual light levels and takes account of window design and room layout. However, given that this measure is not recommended by the BRE Guide and that the Council provided no data of its own, it would be wrong to criticise the Appellant for not providing more than a sample of ADF figures. This argument should be given limited weight. [3.10 6.3 6.4 6.14 7.4 7.6]

11.20 Considerable efforts have been made by the designers when modelling the proposed blocks to avoid the worst effects of overshadowing while making the most of the site to provide housing. There was some debate at the Inquiry as to whether this would optimise or maximise the density but this was a largely semantic debate and added little to the evidence. [3.9 5.2 6.3 7.4]

11.21 As set out in policy, the effects of the proposed development on daylight to surrounding buildings are not the only factors affecting residential amenity. They should be balanced against other impacts on living conditions. Consequently, while it should be accepted that there would be a widespread reduction in daylight levels, the gloomier outlook would be offset to some extent by marked improvements to the appearance of the street scene and of the buildings opposite in particular. Added to this would be the benefits of greatly improved public realm. Consequently, as well as harm, there would be significant improvements in the living conditions of neighbouring residents as a result of the quality of the design which would go a long way to offset the reductions in daylight levels. [3.3 3.5 3.9 5.1 5.5]

11.22 The Council also expressed concern at the loss of sunlight to some windows. Again, Grindall House would be the worst affected and there were specific written objections from the residents there as well as those in the adjacent Collingwood House. In both cases these were from residents on Darling Row which would be overshadowed by Buildings 2 and 3 in particular. On the other hand, the proposed buildings would be set back from Darling Row, as are Grindall House and Collingwood House, so that there would be a sense of spaciousness between the buildings albeit with a loss of sunlight. Again, these concerns should not be taken lightly but are matters to be weighed in the balance. [5.3 7.7 8.5]

11.23 The Appellant also studied the recent schemes at Whitechapel Central and Whitechapel Estate. In both cases the proposals will result in a loss of daylight to adjacent buildings but were granted permission on balance. However, while these confirm the principle that daylight is but one factor in assessing amenity, there are many differences between the schemes and in neither case are the parallels so precise that the balance to be struck in this Decision should be determined by the previous findings. [7.5]

11.24 Swanlea School, designed to maximise daylight and sunlight, stands opposite the site and would be affected by the development. The Council raised concerns with regard to loss of daylight to several of the classrooms. From the evidence, the problem for much of the school is of over-heating as a result of too much sunlight, but where the daylight levels are low, and where there are blinds or security shutters, there is already likely to be electric lighting on for most classes. There was no objection to the scheme from the school. For all these reasons, this concern should be given limited weight. Part of the proposals includes a new facility which should improve education for children in the area, including those at the school. The latter adds a little weight in favour of the scheme. [5.2]

11.25 There was some concern expressed over the standards for new occupants of the development but this was not a reason for refusal and no empirical evidence was produced to support this objection. Nevertheless, it is likely that a number of future residents would experience less than ideal, if not poor,

levels of sunlight and daylight. Many of these properties would also be effectively single aspect with only small side windows akin to a bay window with a limited second aspect. On the other hand, these would be flats in an extremely accessible part of London with good amenity areas and new public realm. [1.1 5.1]

11.26 It follows that a balance is to be struck in determining what might or might not be unacceptable before concluding whether or not a scheme would be policy compliant. This applies to CLP Policies 3.5A and 7.6B(d); CS Policy SP02(6); and MDD Policy DM25(1) parts (c) and (d). In each case the balance should tip in favour of the proposals. Given compliance with the other criteria in CLP Policy 7.7, including with the plan-led approach in 7.7A, the degree of overshadowing with regard to 7.7(D)(a) would not be such as to breach this policy as a whole. [3.2 3.3]

11.27 With regard to CS SP10(4)(a), in the context of a development which would need to satisfy the CS vision for Whitechapel, the proposed development would protect amenity and promote well-being in terms of preventing loss of privacy although there would be a loss of daylight and sunlight. [3.4]

11.28 NPPF§123 falls under the chapter: Achieving appropriate densities. Where land for housing is limited, it seeks optimal use of each site's potential. For housing applications, NPPF§123(c) expects a flexible approach to applying daylight and sunlight policies or guidance where they would otherwise inhibit efficient use of a site (as long as the resulting scheme would provide acceptable living standards). Given the quality of design, and so the overall balance with regard to living conditions, the scheme would comply with NPPF§123.

Other matters

11.29 There was no dispute that the Council has a 5 year housing land supply and that relevant policies are not out of date. Nevertheless, London as a whole has a pressing need for additional housing, and AH, albeit under the normal planning balance. [1.4 1.6]

11.30 CLP Policy 3.4 aims to optimise housing development for different types of location and, in Table 3.2, sets out relevant density ranges. It differentiates between Central and Urban locations. The appeal site has characteristics which apply to both. However, the key point is that the site is particularly accessible, with a PTAL of 6a/6b, and so is a suitable site for higher density development regardless of precise definitions. [2.4 3.2]

11.31 The Council claimed that the potential for an alternative form of development to come forward, which might avoid harm to the significance of the heritage assets but achieve the other planning objectives, must be a highly relevant material consideration. It argued that the harm caused by Building 3 to the significance of the listed Brewery and the CA could be avoided by reducing its height. However, if a development is found to be acceptable on its own merits it doesn't matter that a different design might be found that would render the development even more acceptable. The correct approach is to assess the scheme on its own merits and only consider alternatives if it would be unacceptable. Moreover, there was no other scheme before the Inquiry and

reducing the height of Building 3 alone would alter the viability of the scheme and so other benefits. [1.6 6.8 6.9 6.13 7.8]

11.32 Following the revised s106 Agreement, and the SoCG on viability, the Council withdrew its objections with regard to AH. The GLA maintained its concerns albeit that it did not attend the Inquiry or produce additional evidence. Although listed in the last iteration of the SoCG as a matter of dispute, the Council accepted that the proposed AH offer represented the maximum reasonable amount that could be delivered by the scheme. [6.11 8.2]

11.33 Nonetheless, with regard to the weight to the benefits of AH, the Council argued that the mix of affordable unit sizes would be sub-optimal, with insufficient larger units. In describing the main entrance to the AH as *poor doors*, it drew attention not only to the simple design but also to the position of these at the north end of the scheme. Unlike the private units, this would put them at the greatest walking distances from public transport, shops and services. The podium barrier would not only divide the types of tenure, but also separate the amenity and play space areas as well as extend the walking distances (although access to these could be addressed through condition 43). Although more than one witness was questioned on this, no persuasive explanation was given as to why the units were separated in this way. If the SoS shares these concerns then he should seek an alternative arrangement through a further s106 Agreement. [1.6 3.11 5.3 6.7 8.2]

11.34 To a very small extent this concern was addressed by the revised s106 Agreement which would include a few shared ownership units on the other side of the proposed barrier. Nevertheless, the location of vast majority of the AH, including all the rented housing, would be both at the far end of the site and altogether rather than integrated, and this counts heavily against the benefits of the AH. The weight to be given to these shortcomings should be increased significantly in the event that the more explicit requirements in the relevant policies in the emerging development plan are likely to be adopted rather than the more general expectations of MDD policy DM3. [1.6 3.5 3.12 3.13]

11.35 The SoCG with TfL agrees all matters other than the level of car parking for the store. On this point, TfL suggested that it should be a car free development based on the draft of the emerging new London Plan. Again at the time of the Inquiry, this policy merited limited weight (see below). [3.12 3.13 8.6]

11.36 As above, many trees would be lost while many more would be planted. This concern is best assessed with regard to the overall balance for living conditions and the benefits to be given to improvements to the public realm. [5.4 7.11]

11.37 I have noted the other appeal decisions in the near vicinity, including those referred to above, but also that, while the principles there were very similar, the judgements and balances, in terms of daylight and design, are very site specific. [4.2 7.5]

11.38 Subject to suggested conditions and the s106 Agreement, concerns regarding the traffic network, noise and pollution, impact on local services and retail units, privacy, air quality and parking would be adequately dealt with. [9.1 9.2 10.1]

Conditions and s106 Agreement

11.39 For the reasons attached to the suggested conditions, they would meet the relevant tests in the CIL Regulations and NPPF§204. In the event that the appeal is allowed, and planning permission is granted for the proposals, for those reasons they should be imposed. [9.1 9.2]

11.40 In the event that the SoS's Decision is delayed for any reason, the number of pooled contributions should be checked. [10.3]

11.41 With regard to clause 4.3 on conditionality, the evidence indicated that all of the provisions would satisfy the various tests and that this clause should not be applied. [9.3]

Benefits

11.42 The Council acknowledged that the public benefits of the proposed development include additional housing, delivery of AH, increased retail provision and enhancement to the local public realm, although it disagreed on the weight to be attached. It accepted that, in principle, the proposals would be consistent with the relevant development plan policy objectives for the site and the key objectives for it in the City Fringe OAPF. The scheme would be consistent with many aspects of the WVM, including buildings contemplated by Fig. 12, the creation of Albion Walk and more convenient access to Durward Street and the potential Crossrail entrance. [3.4 3.6 3.8 5.1 6.12]

11.43 Most of the contributions from the s106 Agreement would be mitigation for harm and should not count as benefits. The exception to this is the AH which would make a significant contribution to the Borough's needs. The agreement on viability, and the two-stage review mechanism, all mean that the scheme would comply with policy on AH and viability. Nevertheless, there would remain a significant shortfall against policy expectation at one of the most accessible locations in London. This means that the weight to be given to the AH contribution as a benefit should be reduced. [1.6 3.11 5.3 6.11 8.2 8.4]

11.44 Moreover, as above, the less than ideal mix of AH unit sizes, the segregation, the division of the podium spaces and the longer routes through less attractively positioned entrances would reduce the quality of the AH. Consequently, the weight to be given to the benefits of AH should be no more than moderate. [3.5 5.3 6.7 8.2 8.4]

11.45 With regard to other retail units, there would be some diversion from the market stalls necessitating mitigation through the s106 Agreement. Consequently, the benefits from the new retail units in themselves would be limited although they would also play a significant part in the design and success of Albion Walk. [1.6 2.5 10.1 10.3]

11.46 The quality of the design, as generally acknowledged by the Council and recognised by the AJ, should be given substantial weight. [5.5]

Planning balances

Heritage

11.47 For the reasons set out above, market housing and AH, together with other improvements and the quality of the design, should be given considerable weight on the plus side of the NPPF§196 balance. Taken as a whole, the public benefits would outweigh the harm to heritage assets. For similar reasons, following the duties in s66 and s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and giving considerable importance and weight to the effect on the settings of the Brewery Entrance and the CA, the conclusion should be that development should not be prevented simply as a result of harm to the settings of these heritage assets. With regard to weight, the effects on the setting of the WLI, which is not a designated asset, should be largely incorporated in that for the CA. [11.2-11.15 11.44-11.48]

Living conditions - daylight and sunlight

11.48 The closing statements summarise the position for the surrounding properties. In very many cases, there would be an appreciable reduction in daylight and some significant loss of sunlight. However, in very few cases would this amount to a considerable loss and, for these, many are ground floor rooms which are covered by blinds or curtains for reasons of privacy. Many other windows which would suffer a loss are already under balconies and electric lighting is likely to be in use during the day in any event. Daylight is one of many factors when considering living conditions and should not be looked at in isolation. Of comparable importance is outlook. The distances between neighbouring buildings and the taller buildings proposed would be significant. At the moment, many surrounding windows look out on the generally blank façades to the superstore or its delivery yard. The proposals would provide a more interesting and attractive outlook with good separating distances to the taller elements. The public realm improvements should also lift the quality of the environment as a whole and so indirectly improve living standards for the residents of surrounding buildings. [11.15-11.29 11.44-11.48]

Development plan and overall planning balance

11.49 For the above reasons, the public benefits would outweigh the harm to the designated heritage assets such that it would be acceptable under NPPF§196. It follows that NPPF§11(c) applies and the starting point[124] is whether or not the scheme would comply with the development plan, taken as a whole. [11.14]

11.50 For all the reasons set out above, on balance, the scheme would comply with CLP Policies 3.4, 3.5, 3.8, 3.11, 3.12, 7.4, 7.5, 7.6, and 7.7. It would accord with CS Policies SP02(6), SP10 and SP12; and with MDD Policies DM24, DM26 and DM27. The proposals would take account of the BRE Guide, the WVM, the OAPF, the SPG and the TBS. [3.1-3.10]

11.51 There would remain conflict with CLP Policy 7.8, CS policy SP10 and MDD policies DM26 and DM27 regarding heritage, and CS SP10(4)(a) for daylight and sunlight. There would be conflict with aspects of CLP Policies 3.5A, 7.6B(d)

[124] in s38(6) of the Planning and Compulsory Purchase Act 2004

and 7.7(D)(a); CS Policy SP02(6); and MDD Policy DM25(1) parts (c) and (d) although in each case there is a balance to be struck. [3.3-3.5]

11.52 Overall, the limited tension with the policies identified above would be significantly outweighed by the extent to which the benefits would accord with policies. Consequently, on balance, the proposals would comply with the development plan as a whole and should be allowed unless material considerations indicate otherwise. [11.49]

11.53 NPPF§48 sets criteria for attributing weight to emerging development plan policies. At the time of the Inquiry, both the emerging London Plan and LP were at early stages with unresolved objections to relevant policies. The weight to be afforded to them should therefore be limited and should not alter the conclusion above. However, this will need to be checked at the time of the SoS's final Decision and could potentially affect the conclusions on the details and design of the AH provision and on parking spaces. [3.12 3.13 11.34 11.37]

11.54 The balance from the NPPF is also a material consideration. Overall, this also indicates that planning permission should be granted. Even if the above conflict with the development plan were assessed as non-compliant, as above, there would be benefits from additional housing, AH, increased retail provision, public realm enhancement and design quality in particular which together warrant substantial weight. These benefits, and the broad support from policies in the NPPF, would outweigh any conflict with the development plan in any event. [11.44-11.48]

11.55 For the reasons set out above, and having regard to all other matters raised, the development should be allowed.

12. Inspector's Recommendation

12.1 I recommend that the appeal should be allowed and that planning permission should be granted subject to the attached Schedule of conditions.

David Nicholson

INSPECTOR

Schedule of suggested conditions

1. **Time Limit**
The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.

Reason: In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. **Approved Drawings**
The development hereby permitted shall be carried out in accordance with the following plans and documents:

17014 01 AP 0000 100 - Proposed Site Location Plan;
17014 01 AP 0010 100 - GA Basement Level 01;
17014 01 AP 0010 101 - GA Level 00;
17014 01 AP 0010 102 - GA Level 01;
17014 01 AP 0010 103 - GA Level 02 (Podium);
17014 01 AP 0010 104 - GA Level 03;
17014 01 AP 0010 105 - GA Level 04;
17014 01 AP 0010 106 - GA Level 05;
17014 01 AP 0010 107 - GA Level 06-07;
17014 01 AP 0010 108 - GA Level 08;
17014 01 AP 0010 109 - GA Level 09;
17014 01 AP 0010 110 - GA Level 10;
17014 01 AP 0010 111 - GA Level 11;
17014 01 AP 0010 112 - GA Level 12;
17014 01 AP 0010 113 - GA Level 13;
17014 01 AP 0010 114 - GA Roof Level;
17014 01 AP 0010 200 - Block 01 Typical Floor Plans Sheet 1;
17014 01 AP 0010 201 - Block 01 Typical Floor Plans Sheet 2;
17014 01 AP 0010 202 - Blocks 02 to 03 - Typical Floor Plans;
17014 01 AP 0010 203 - Block 04 Typical Floor Plans;
17014 01 AP 0010 204 - Block 05 Typical Floor Plans Sheet 1;
17014 01 AP 0010 205 - Block 05 Typical Floor Plans Sheet 2;
17014 01 AP 0010 206 - Block 06 Typical Floor Plans;
17014 01 AP 0010 207 - Block 07 Typical Floor Plans;
17014 01 AP 0010 208 - Block 08 Typical Floor Plans Sheet 1;
17014 01 AP 0010 209 - Block 08 Typical Floor Plans Sheet 2;
17014 01 AP 0010 210 -Townhouses and Duplexes Typical Floor Plans;
17014 01 AP 0020 100 - Proposed Elevations South;
17014 01 AP 0020 101 - Proposed Elevation West;
17014 01 AP 0020 102 - Proposed Elevations North;
17014 01 AP 0020 103 - Proposed Elevations East;
17014 01 AP 0020 104 - Proposed Block 1 Elevation;
17014 01 AP 0030 101 - Proposed Section 01;
17014 01 AP 0030 102 - Proposed Section 02;
17014 01 AP 0030 103 - Proposed Section 03;
17014 01 AP 0030 104 - Proposed Section 04;
17014 01 AP 0030 105 - Proposed Section 05;
17014 01 AP 0030 106 - Proposed Section 06;
17014 01 AP 0030 107 - Proposed Section 07;
17014 01 AP 0030 108 - Proposed Section 08;
17014 01 AP 0030 109 - Proposed Section 09;
17014 01 AP 0030 110 - Proposed Section 10;
17014 01 AP 0030 111 - Proposed Section 11;
17014 01 AP 0030 112 - Proposed Section 12;
17014 01 AP 0100 100 - Existing Site Location Plan;
17014 01 AP 0110 100 - Existing Site Plan;
17014 01 AP 0120 100 - Existing Site Elevations;

17014 01 AP 0130 100 - Existing Site Sections;
17014 01 AP 0300 100 - Residential Tenure Plans;
17014 01 AP 0300 101 - Private Amenity Area Plans;
17014 01 AP 0300 102 P01 - Communal Amenity Area Plans;
17014 01 AP 0410 100 - Private Wheelchair Adapted Unit;
17014 01 AP 0410 101 - Block 06 Typical Unit;
17014 01 AP 0410 102 - Typical Duplex Units;
17014 01 AP 0410 103 - Typical Townhouse Unit;
17014 01 AP 0410 104 - Affordable Rent Wheelchair Adapted Units;
17014 01 AP 0410 105 - Social Rent Wheelchair Adapted Unit;
17014 01 AP 0410 106 - Shared Ownership Wheelchair Adapted Unit;
17014 01 AP 1211 100 - Demolition Site Plan;
17014 01 AP 2000 001 - Block 01 Facade Design Study - Sheet 01;
17014 01 AP 2000 002 - Block 01 Facade Design Study - Sheet 02;
17014 01 AP 2000 003 - Block 01 Facade Design Study - Sheet 03;
17014 01 AP 2000 004 - Block 01 Facade Design Study - Sheet 04;
17014 01 AP 2000 005 - Block 02 Facade Design Study - Sheet 01;
17014 01 AP 2000 006 - Block 02 Facade Design Study - Sheet 02;
17014 01 AP 2000 007 - Block 03 Facade Design Study - Sheet 01;
17014 01 AP 2000 008 - Block 03 Facade Design Study - Sheet 02;
17014 01 AP 2000 009 - Block 03 Facade Design Study - Sheet 03;
17014 01 AP 2000 010 - Block 04 Facade Design Study - Sheet 01;
17014 01 AP 2000 011 - Block 04 Facade Design Study - Sheet 02;
17014 01 AP 2000 012 - Albion Walk Typical Pavilion Facade Design Study;
17014 01 AP 2000 013 - Retail Atrium Facade Design Study;
17014 01 AP 2000 014 - Block 05 Facade Design Study - Sheet 01;
17014 01 AP 2000 015 - Block 05 Facade Design Study - Sheet 02;
17014 01 AP 2000 016 - Block 05 Façade Design Study - Sheet 03;
17014 01 AP 2000 017 - Block 06 Facade Design Study - Sheet 01;
17014 01 AP 2000 018 - Block 06 Facade Design Study - Sheet 02;
17014 01 AP 2000 019 - Merceron Street Residential Entrance Façade Design Study;
17014 01 AP 2000 020 - Block 07 Facade Design Study - Sheet 01;
17014 01 AP 2000 021 - Block 07 Facade Design Study - Sheet 02;
17014 01 AP 2000 022 - Townhouse Facade Design Study - Sheet 01;
17014 01 AP 2000 023 - Townhouse Facade Design Study - Sheet 02;
17014 01 AP 2000 024 – Collingwood Street Residential Entrance Facade Design Study;
17014 01 AP 2000 025 - Darling Row Loading Bay Facade Design Study;
17014 01 AP 2000 026 - Darling Row Car Park Façade Design Study;
17014 01 AP 2000 027 - Retail Bicycle Parking Facade Design Study;
17014 01 AP 9000 100 P01- Proposed Cycle Parking Strategy;
17014 01 AP 9030 001 - Proposed Public Realm Sections;
17014 01 AP 9030 002 - Proposed Public Realm Sections;
17014 01 AP 9030 003 - Proposed Public Realm Sections;
17014 01 AP 9030 004 - Proposed Podium Gardens Sections;
17014 01 AP 9040 100 - Proposed Public Realm Hard Surface Treatment;
17014 01 AP 9040 101 - Proposed Podium Level Hard Surface Treatment;
17014 01 AP 9040 102 - Proposed Rooftop Amenity Hard Surface Treatment;
17014 01 AP 9040 103 - Proposed Public Realm Soft Surface Treatment;
17014 01 AP 9040 104 - Proposed Podium Level Soft Surface Treatment;
17014 01 AP 9040 105 - Proposed Rooftop Amenity Soft Surface Treatment;
17014 01 AP 9040 200 - Proposed Public Realm Tree Planting Plan;
17014 01 AP 9040 201 - Proposed Podium Level Tree Planting Plan;
17014 01 AP 9070 100 - Proposed Public Realm Street Furniture Layout;
17014 01 AP 9070 101 - Proposed Podium Level Furniture Layout;
17014 SCH004 - Whitechapel Square Residential Summary Accommodation Schedule.

Reason: For the avoidance of doubt and in the interests of proper planning.

Pre-Commencement

3. Phasing Plan
Prior to implementation of the development hereby permitted, a construction and demolition Phasing Plan for the development shall be submitted to and approved in writing by the local planning authority (LPA). The Phasing Plan shall set out the timescale for the commencement and practical completion of each phase of the development, including both demolition and construction. The Phasing Plan shall be accompanied by a statement detailing how the phasing aligns with that assessed in the Environmental Statement (ES). Should the phasing plan not accord with that assessed within the ES, the statement must demonstrate that this change will not alter the effects (on internal and external receptors to the site) identified within the ES. The development shall be carried out in accordance with the approved details.

Reason: To safeguard the amenity of local residents and the area generally in accordance with policies SP10 of the Core Strategy 2010 (CS), and DM25 of the Managing Development Document 2013 (MDD).

4. Dust Management
No development shall commence within each phase of development approved pursuant to condition 3 until a dust management plan for that phase has been submitted to and approved in writing by the LPA. The dust management plan shall include the following details:
a. Demonstration of compliance with the guidance found in the control of dust and emissions from construction and demolition Best Practice produced by the Greater London Authority;
b. A risk assessment of dust generation shall be prepared for each phase of the development. The assessment and identified controls must include the principles of prevention, suppression and containment including relevant dust trigger levels and follow the format detailed in the guidance above. The outcome of the assessment shall be fully implemented for the duration of the construction and demolition phases and include dust monitoring where appropriate;
c. Where the outcome of the risk assessment indicates that monitoring is necessary, a monitoring protocol including information on monitoring locations, frequency of data collection and how the data will be reported to the LPA;
d. Details of dust generating operations and the subsequent management and mitigation of dust demonstrating full best practicable means compliance and covering construction activities, materials storage, on and off site haul routes, operational control, demolition, and exhaust emissions; and
e. where a breach of the dust trigger level may occur a response procedure shall be detailed including measures to prevent repeat incidence.
The development shall be carried out in accordance with the approved details.

Reason: To safeguard the amenity and air quality of local residents and the area generally in accordance with policies SP10 of the CS and DM25 of the MDD.

5. Demolition and Construction Environmental Management Plan
a) No demolition works shall take place until an overarching Demolition Environmental Management and Logistics Plan for the site has been submitted to and approved in writing by the LPA.
b) No construction works shall take place until an overarching Construction Environmental Management and Logistics Plan for the site has been submitted to and approved in writing by the LPA.
c) No demolition works within each phase of development approved pursuant to condition 3 shall take place until a Demolition Environmental Management and Logistics Plan, for that phase, has been submitted to and approved in writing by the LPA.
d) No construction works within each phase of development approved pursuant to condition 3 (excluding demolition) shall take place until a Construction Environmental Management and Logistics Plan for that phase has been submitted to and approved in writing by the LPA.

Each demolition and construction environmental management plan identified in parts a), b), c) and d) above shall provide details of site wide measures or works consistent with the relevant phase of development approved pursuant to condition 3. The plans shall include details of:
i. the site manager, including contact details (phone, email, postal address) and the location of a large notice board on the site that clearly identifies these details of the site manager and a "Considerate Constructors" contact telephone number;
ii. the parking of vehicles of site operatives and visitors;
iii. the erection and maintenance of security and acoustic mitigation hoardings;
iv. wheel washing facilities;
v. a scheme for recycling/disposing of waste resulting from demolition and construction works;
vi. any means, such as a restriction on the size of construction vehicles and machinery accessing the site, required to ensure that no damage occurs to adjacent highways throughout the construction period;
vii. any means of protection of services such as pipes and water mains within the adjacent highways;
viii. measures to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of building plant and materials and similar demolition or construction activities;
ix. handling and storage of fuel and chemicals in designated areas containing spill kits and procedures for the handling and storage of potential contaminants and associated clean-up procedures;
x. measures to ensure that pedestrian access past the site is safe and not obstructed during construction works;
xi. location of workers' toilet facilities;
xii. ingress and egress to and from the site for vehicles during site works period;
xiii. proposed numbers and timing of truck movements throughout the day and the proposed routes;
xiv. monitoring and managing construction traffic to ensure that vehicles do not block the public highway on entry and exiting the site;
xv. measures to protect soils and controlled waters from contamination during demolition and construction including consideration will be given to the appropriate use of bunding and temporary settlement ponds to ensure the protection of water quality in the surrounding water courses;
xvi. detail removal of soil, dust, debris and demolition and construction materials from public roads or places;
xvii. measures to safeguard subsurface utilities infrastructure;
xviii. measures to ensure that all non-road mobile machinery meets the minimum emission requirements set out in the Mayor of London's 'Control of Dust and Emissions during Construction and Demolition' Supplementary Planning Guidance 2014; and
xx. Information on how the demolition/construction mitigation measures relied upon in the Environmental Statement as being included in the DEMP/CEMP, have been incorporated.
The development shall be carried out in accordance with the approved details.

Reason: To safeguard the amenity of local residents and the area generally in accordance with policies SP10 of the CS and DM25 of the MDD.

6. **Design and Construction Method Statement**
No development shall take place within each phase of development approved pursuant to condition 3, until detailed design and construction method statements for all of the ground floor structures, foundations and basements and for any other structures below ground level, including piling (temporary and permanent), have been submitted to and approved in writing by the LPA which:-
(i) Accommodate the existing station tunnels and station infrastructure;
(ii) Mitigate the effects on Crossrail of ground movement arising from development;

(iii) Accommodate the location, construction and operation of the Crossrail infrastructure including a proposed second station entrance, ticket hall, escalator shaft and temporary works (which does not form part of the development hereby approved);
(iv) Accommodate ground movement arising from the construction thereof;
(v) Accommodate the operational and maintenance requirements of the ventilation shaft at Cambridge Heath Road; and
(vi) Mitigate the effects of noise and vibration arising from the operation of the Crossrail railway within the tunnels and other structures.
The development shall be carried out in all respects in accordance with the approved design and method statements. All structures and works comprised within the development hereby permitted which are required by paragraphs (i), (ii), (iii), (iv), (v) and (vi) of this condition shall be completed, in their entirety, before any part of the building[s] hereby permitted is/are occupied.

Reason: To ensure that the development does not impact on existing and proposed subterranean transport infrastructure, in accordance with London Plan 2016 and 'Land for Industry and Transport' Supplementary Planning Guidance 2012 and protects the safe operation of the railway.

7. Crossrail
None of the development hereby permitted shall be commenced until a method statement has been submitted to, and approved in writing, by the LPA to include arrangements to secure that, during any period when concurrent construction is taking place of both the permitted development and of the Crossrail works in or adjacent to the site of the approved development, the construction and operation of Crossrail is not impeded.
The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not impede the delivery of infrastructure of national importance, in accordance with London Plan 2016 and 'Land for Industry and Transport' Supplementary Planning Guidance 2012.

8. **Water Supply Impact Studies**
No works, except for works of demolition, archaeological and ground investigations shall take place within each phase of development approved pursuant to condition 3, until impact studies of the existing water supply infrastructure have been submitted to, and approved in writing by, the LPA. The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point.
The development shall be carried out in accordance with the approved water supply impact study.

Reason: To ensure that the water supply infrastructure has sufficient capacity to cope with the additional demand, in accordance with Policy SP04 of the CS and Policy DM13 of the MDD.

9. **Piling Method Statement**
No piling shall take place within any phase of development approved pursuant to condition 3, until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the LPA. Any piling must be undertaken in accordance with the approved piling method statement.

Reason: To safeguard the existing underground water utility infrastructure , in accordance with Policy SP04 of the CS and Policy DM13 of the MDD.

10. **Land Contamination**
No development within each phase of development approved pursuant to condition 3 shall commence until a ground contamination and remediation study for that phase has been submitted to and approved in writing by the LPA.
The study shall identify the extent of the contamination and the measures to be taken to avoid risk to the public, buildings and environment when the site is developed and shall include the following details:
i. A phasing plan identifying all areas of investigation and remediation to be undertaken in each phase of the development;
ii. A 'desk study report' documenting the history of the relevant phase of the site;
ii. A proposal to undertake an intrusive investigation at the site if recommended by the findings of the desk study;
iv. A 'site investigation report' to investigate and identify potential contamination in each phase if intrusive investigation is carried out;
v. A risk assessment for each phase;
vi. Proposals for any necessary remedial works to contain the threat or remove any contamination in each phase; and
vii. A verification report confirming that all necessary remediation works for each phase have been satisfactorily completed.
The development must be carried out in accordance with the remediation works approved by the LPA as part of the scheme for that phase.

Reason: To make sure that contaminated land is properly treated and made safe before development, to protect public health and to meet the requirements of the NPPF, Policies 5.21 and 5.22 in the London Plan 2016 and Policy DM30 in the MDD, which provides guidance around protecting residents health and the environment from contaminants and hazardous substances.

Archaeology
11. No demolition or development within each phase of development approved pursuant to condition 3 shall commence until a written scheme of investigation (WSI) for that phase has been submitted to and approved in writing by the LPA. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the approved WSI, which shall include:
a) relevant historical documentary research, a statement of significance and research objectives;
b) the programme and methodology of site investigation, excavation, recording and the nomination of a competent person(s) or organisation to undertake the approved works;
c) the programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material (this part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI).

Reason: Heritage assets of archaeological interest may survive on the site. The planning authority wishes to secure the provision of archaeological investigation and the subsequent recording of the remains prior to development, in accordance with Policy SP10(2) of the Council's adopted CS, Policy DM27 of the MDD and government guidance set out in the National Planning Policy Framework (2012).

Pre-Commencement (excluding site clearance, demolition and preparatory construction works)
12. **Drainage Strategy**
Prior to the commencement of development (excluding site clearance, demolition and preparatory construction works) within each phase of development approved pursuant to condition 3, a drainage strategy for that phase detailing on and/or off-site drainage works shall be submitted to, and approved in writing by the LPA.

The development shall only be carried out in accordance with the approved details.

Reason: To prevent increased risk of flooding, to improve and protect water quality, and improve habitat and amenity in accordance with policy SP04 of the CS and policy DM13 of the MDD.

13. **Energy Efficiency**
Prior to the commencement of development (excluding site clearance, demolition and preparatory construction works) within each phase of development approved pursuant to condition 3, design stage assessment(s) for each phase, supported by relevant BRE interim certificate(s), shall be submitted to and approved in writing by the LPA.
The assessment and certificates will demonstrate that the commercial elements of the development will achieve a BREEAM rating of no less than 'Very Good'.
The development shall be constructed and maintained in accordance with the details approved in the design stage assessment for each phase, so as to achieve a final certification rating of no less than 'Very Good'.
The final BRE accreditation certificate(s) shall be submitted to the LPA within six months of first occupation of any part of the commercial elements of the development, confirming that the development has achieved a BREEAM rating(s) of no less than 'Very Good'.

Reason: To ensure the highest levels of sustainable design and construction in accordance with policies 5.3 of the London Plan 2016, and SP11 of the CS which seek the highest standards of sustainable design and construction principles to be integrated into all future developments and achievement of BREEAM Very Good.

14. Materials Samples
No development shall commence, other than demolition, archaeological and ground investigations, within a phase of development, until details (samples/plans as appropriate) of all facing materials for that phase of development, have been submitted to (on site or otherwise as agreed in writing with the LPA) and approved in writing by the LPA and shall be substantially in accordance with the approved plans. The details shall include:
a) Brickwork;
b) Cladding;
c) Windows and doors (including reveals and frames);
d) Soffits;
e) Balconies and privacy screens;
f) Canopies;
g) External guttering;
h) Details of all rooftop structures including flues, satellite dishes, plant, lift overruns, cleaning cradles; and
i) Plant enclosures.
The development shall be carried out in accordance with the approved details.

Reason: In the interests of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard in accordance with policies SP10 and SP12 of the adopted CS and policy DM24 of the MDD.

15. Sustainable Urban Drainage
No development shall commence, other than demolition, archaeological and ground investigations, within a phase of development, until a scheme for a Sustainable Urban Drainage System for that phase has been submitted to and approved in writing by the LPA. The submitted scheme shall include details of:
a) Tanking of basement level and dewatering of excavated areas;
b) How reduction in surface water runoff to three times the greenfield runoff rate (i.e. 9.1

Litres/second) through the implementation of attenuation storage units at podium level will be achieved;
c) Installation of petrol/oil interceptors;
d) Distribution of foul water flows into the surrounding sewer network;
e) Installation of rainfall attenuation units for capturing and reusing water;
f) Information about the design storm period and intensity, the method employed to delay and control surface water discharged from the site and measures taken to prevent pollution of the receiving groundwater and/or surface waters;
g) A timetable for its implementation; and
h) A management and maintenance plan for the lifetime of the development.
The development shall only be carried out in accordance with the approved details.

Reason: To prevent increased risk of flooding, to improve and protect water quality, and improve habitat and amenity in accordance with policy SP04 of the CS and policy DM13 of the MDD.

16. Biodiversity enhancements
No development shall commence, other than demolition, archaeological and ground investigations, within a phase of development, until full details of biodiversity enhancements for that phase have been submitted to and approved in writing by the LPA.
The biodiversity enhancements shall include but not be limited to the following: meadows, which can be created using pre-sown wildflower turf – details to include location and total area of meadow planting and species composition; biodiverse roofs following the best practice guidance published by Buglife – details provided should include the location and total area of biodiverse roofs, substrate depth and type, planting including any vegetated mat or blanket (though pure sedum mats should be avoided) and any additional habitats to be provided such as piles of stones or logs; landscaping to include a good diversity of nectar rich plants to provide food for bumblebees and other pollinators for as much of the year as possible – details should include species list and planting plans; nest boxes for appropriate bird species, including swift, house martin, house sparrow and peregrine – details should include number, locations and type of boxes. The scheme shall be implemented in full prior to the occupation of the development hereby approved.

Reason: To increase the biodiversity of the site and to comply with Policy SP04 of the Tower Hamlets CS and Policy DM11 of the Tower Hamlets MDD.

17. Landscaping Management Scheme
No development shall commence, other than demolition, archaeological and ground investigations, within a phase of development, until a Landscaping Management Scheme for that phase has been submitted to and approved in writing by the LPA.
The scheme shall provide details of the treatment of all open spaces associated with the development, including but not limited to public open space, communal amenity space and private amenity space. The scheme shall also provide the following details:
i. Landscape Phasing Plan, to identify all areas of landscaping, public realm and play space to be delivered, including delivery timescales.
ii. Enclosures: including but not limited to types, dimensions and treatments of walls, fences, screens barriers, rails, retaining walls and hedges;
iii. Hard landscaping: including but not limited to types, dimensions and treatments of walls, fences, screens, barriers, rails, retaining walls and hedges;
iv. Soft landscaping: numbers and types of species to be planted and how the type of planting will enhance biodiversity;
v. Details of the wayfinding signage for all associated Plots and details of the maintenance of any such signs proposed and approved;
vi. Any other landscaping feature(s) forming part of the scheme.
All landscaping in accordance with the approved scheme shall be completed/ planted during the first planting season following practical completion of each Phase. The landscaping and

tree planting shall have a two year maintenance/watering provision following practical completion of the Phase hereby approved. Any trees or shrubs which die within five years of completion of the development shall be replaced with the same species, other than minor amendments approved in writing by the LPA.

Reason: In the interests of securing sustainable development and to ensure that the resulting appearance of the development is of a high standard and provides an acceptable standard of amenity and child play space in accordance with policies SP10 and SP12 of the CS.

18. Public access
No development shall commence, other than demolition, archaeological and ground investigations until a scheme for public access to the new pedestrian east-west link, and the management, and maintenance of that space (as identified on Plan 01 AP 0010 101 and p108 of the Design and Access Statement July 2017) has been submitted to and approved in writing by the LPA, and that space shall be provided, managed and maintained in accordance with the approved scheme thereafter.

Reason: To improve pedestrian connectivity and to provide a car free route in accordance with the objectives of the Whitechapel Vision Masterplan Supplementary Planning Document (2013), Policy SP09 of the adopted CS and Policy DM23 of the MDD.

19. Noise to residential units
Prior to the carrying out of above grade works within each phase of development, details of measures to be taken to insulate and/or screen from external noise the residential units, balconies and amenity areas hereby approved within that phase of development, shall be submitted to and approved in writing by the LPA.
The approved measures shall be provided prior to first residential occupation of the site and shall be retained thereafter.

Reason: To protect the amenity of occupiers of nearby properties from noise or vibration disturbance in accordance with the requirements of Tower Hamlets CS policy SP03(2) and SP10(4a)

20. Pre-Occupation Air extraction and Filtration for Commercial uses
Before first occupation of each of the commercial units, the following details shall be submitted to and approved in writing by the LPA for the relevant commercial unit.
Details of any associated extraction/flue/filtration/ventilations systems to be installed, including details of any other external plant or machinery (including ventilation units and air intake louvres), together with details of its method of construction, appearance, finish and acoustic performance. The measures shall be in accordance with the relevant DEFRA (2005) guidance on the control of odour and noise from commercial kitchen exhaust systems.
The commercial uses shall only be occupied in accordance with the approved details.

Reason: To protect the amenity of occupiers of nearby properties from noise disturbance in accordance with the requirements of Tower Hamlets CS policy SP03(2) and SP10(4a).

21. Hours of operation for Commercial Uses
Before the first occupation of each of the commercial units (including the superstore) details of intended hours of operation shall be submitted to and approved in writing by the LPA for the relevant commercial unit. The commercial uses shall only be operated in accordance with the approved details.

Reason: To protect the amenity of occupiers of nearby properties from noise disturbance in accordance with the requirements of Tower Hamlets CS policy SP03(2) and SP10(4a).

22. Car Park Management Plan – Commercial
Prior to the occupation of the supermarket hereby approved, a Car Parking Management Strategy (CPMS) shall be submitted to and be approved in writing by the LPA.
a) The CPMS shall govern the allocation of car parking spaces for the supermarket, including the wheelchair accessible and parent and toddler spaces.
b) Details of provision of active electric vehicle charging points for 10% of the commercial car parking spaces and a further 12% passive provision.
The development shall be carried out in accordance with the approved details.

Reason: To ensure there is adequate car parking and associated facilities for residents and staff of the development in accordance with CLP policy 6.13 and MDD policy DM20.

23. Car Park Management Plan – Residential
Prior to the occupation of the residential development hereby approved, a Car Parking Management Strategy (CPMS) shall be submitted to and be approved in writing by the LPA.
a) The CPMS shall govern the allocation of the wheelchair
accessible spaces for the lifetime of the development including the option to provide for car parking provision for Council Parking Permit Transfer Scheme to future occupants of the rented affordable housing.
b) The CPMS shall provide full details of 42 wheelchair accessible car parking spaces including a detailed annotated plan of the car parking basement area.
Details of provision of active electric vehicle charging points for 20% of the residential car parking spaces and a further 20% passive provision.
c) All car parking spaces shall remain exclusively for use by Blue Badge Bay occupiers of the development and for Council Parking Permit Transfer Scheme for the duration of the lifetime of the development
d) The CPMS submitted and approved for the final phase shall cover all phases of the development and thereby supersede any CPMS previously agreed for earlier phase/s.
The development shall be carried out in accordance with the approved details.

Reason: To ensure there is adequate car parking and associated facilities for residents and staff of the development in accordance with CLP policy 6.13 and MDD policy DM20.

24. Details of Cycle Parking
Prior to the occupation of the development hereby approved, details of the cycle parking facilities for that phase shall be submitted to and be approved in writing by the LPA. Details to be submitted shall include a detailed layout plan (no less than 1:50) for the cycle parking facilities and details of secure cycle stands in compliance with London Plan (2016) minimum standards (located at basement level and on-surface), including provision of 'Sheffield' type cycle stands. The cycle parking facilities shall be in place and fully operational prior to the occupation of that phase and all stands and other cycle parking facilities shall be retained and regularly maintained to function fully for the life of the development.

Reason: To ensure there is adequate cycle parking and associated facilities for residents and staff of the development in accordance with CLP policy 6.9 and MDD policy DM22.

25. Decentralised Energy Network
Before first occupation of any part of the development, details of measures to be implemented to ensure the development is safeguarded to allow future connection to a decentralised energy network, should one become available, shall be submitted to and approved in writing by the LPA. The details shall include:
a) Confirmation that a communal heating system will be used and not individual gas boilers;
b) Internal heating systems designed so they can be connected to a heat network with minimal retrofit; and
c) Pipe work routes to be safeguarded to the boundary of the plot where connection

to the heat network is likely to be made. The energy safeguarding measures as approved shall be implemented prior to first occupation of the development and retained and maintained as such thereafter.

Reason: To ensure a reduction of carbon dioxide emissions, through the cumulative steps of the Energy Hierarchy, in accordance with CLP Policy 5.2 and delivery of decentralised energy in accordance with CLP Policy 5.6 and MDD Policy DM29 which seeks for the proposals to link to existing decentralised energy systems where feasible.

26. External Lighting
Before first occupation of any part of the development and prior to the installation of any external lighting (whichever is sooner), details of all external lighting, including the location, specification, fixtures and fittings, measures to reduce light spillage, and the maintenance of such external lighting, shall be submitted to and approved in writing by the LPA.
The approved external lighting shall be installed and operational prior to first occupation and shall be retained and maintained thereafter.

Reason: In the interests of securing sustainable development and to ensure that the resulting appearance of the development is of a high standard and provides an acceptable standard of amenity in accordance with policies SP10 and SP12 of the adopted CS.

27. Screening of residential units
Before first occupation of the podium level residential element of the development, details of measures for screening views from the communal gardens and walkways into habitable rooms of the residential units located at podium level shall be submitted to and approved in writing by the LPA.
The residential units shown on drawing no. 01 AP 0010 103 shall not be occupied until the approved measures have been completed. The approved measures shall be retained and maintained thereafter.

Reason: In order to protect the privacy and amenities enjoyed by occupants of residential properties in accordance with the requirements of Tower Hamlets CS policy SP03(2) and SP10(4a).

28. Combined heat and power (CHP) Plant – Whole scheme
Prior to occupation of each phase of development approved pursuant to condition 3, details of the following shall be submitted to and approved in writing by the LPA:
a) All CHP Plant in the Thermal input range 50kWh – 20MWh shall be evaluated against CHP emission standards prescribed in Appendix 7 of the Greater London Authority (GLA) Sustainable Design and Construction Supplementary Planning Guidance (SPG); and
b) Evidence to demonstrate that the proposed CHP meets the prescribed emission standard shall be provided. If the proposed CHP plant does not meet the prescribed emission standard, evidence must be submitted regarding mitigation technique/s applied for the CHP combustion appliance to meet the required standard.
The CHP emission standard hereby agreed shall be retained and maintained thereafter.

Reason: To ensure a reduction of carbon dioxide emissions, through the cumulative steps of the Energy Hierarchy, in accordance with Policy 5.2 of the London Plan 2016 and delivery of decentralised energy in accordance with Policy 5.6 of the London Plan 2016 and Policy DM29 of the MDD.

29. CHP Plant - Residential
Prior to the occupation of any of the residential units the following details shall be submitted to and approved in writing by the LPA:
• Evidence to demonstrate that all non-CHP gas fired boilers to be installed must achieve dry NOx emission levels equivalent to or less than 40 mg/kWh.

Each dwelling shall only be first occupied in accordance with the approved details. The details hereby agreed shall be retained and maintained thereafter.

Reason: To ensure a reduction of carbon dioxide emissions, through the cumulative steps of the Energy Hierarchy, in accordance with CLP Policy 5.2 and delivery of decentralised energy in accordance with CLP Policy 5.6 and MDD Policy DM29.

30. Commercial Delivery and Service Management Plan
Before first occupation of the superstore and commercial units, a commercial Delivery and Service Management Plan (DSMP) in accordance with Transport for London best practice guidance shall be submitted to and approved in writing by the LPA.
The DSMP shall show the location of an on-site vehicular service bay along with its associated lighting and shall describe the means by which servicing of the commercial units are to be provided. The DSMP shall identify how and what types of vehicles are anticipated to service the buildings. The number of spaces available for servicing vehicles shall also be detailed to demonstrate that the proposed system would work within the available space.
Any measures described in the DSMP shall be implemented and retained thereafter in accordance with the approved details.

Reason: To safeguard the amenity of adjacent residents and the area generally in accordance with policy SP10 of the CS and policy DM25 of the MDD. To ensure efficient and sustainable operation of the borough's highway system and to safeguard pedestrian and highway safety in accordance with policies SP08 and SP09 of the CS and policies DM20 and DM21 of the MDD.

31. Residential Delivery and Service Management Plan
Before first occupation of the residential units, a residential Delivery and Service Management Plan (DSMP) in accordance with Transport for London best practice guidance shall be submitted to and approved in writing by the LPA.
The DSMP shall describe the means by which servicing of the residential buildings are to be provided including means of provision for servicing and delivery vehicles. The DSMP shall identify how and what types of vehicles are anticipated to service the buildings. The number of spaces available for servicing vehicles shall also be detailed to demonstrate that the proposed system would work within the available space.
Any measures described in the DSMP shall be implemented and retained thereafter in accordance with the approved details.

Reason: To safeguard the amenity of adjacent residents and the area generally in accordance with policy SP10 of the CS and policy DM25 of the MDD. To ensure efficient and sustainable operation of the borough's highway system and to safeguard pedestrian and highway safety in accordance with policies SP08 and SP09 of the CS and policies DM20 and DM21 of the.

32. Waste Management Plan - commercial
Before first occupation of the superstore and any of the commercial units, a commercial Waste Management Plan (WMP) for the operational phase of the development shall be submitted to and approved in writing by the LPA.
The WMP shall provide details of the design and materials of the refuse and recycling enclosure/s, access (including access and usability by persons with mobility impairment), separation (including separated storage of recyclable materials), monitoring to deter contamination of bins, and details of collection and removal.
The development shall be carried out and maintained in accordance with the WMP as approved, to be retained thereafter.

Reason: To ensure that waste is minimised and adequately controlled, in accordance with policy SP05 of the adopted CS and Policy DM14 of the MDD.

33. Waste Management Plan - residential
Before first occupation of the residential development, a residential Waste Management Plan (WMP) for the operational phase of the development shall be submitted to and approved in writing by the LPA.
The WMP shall provide details of the design and materials of the refuse and recycling enclosure/s, access (including access and usability by persons with mobility impairment), separation (including separated storage of recyclable materials), monitoring to deter contamination of bins, and details of collection and removal.
The development shall be carried out and maintained in accordance with the WMP as approved, to be retained thereafter.

Reason: To ensure that waste is minimised and adequately controlled, in accordance with policy SP05 of the adopted CS and Policy DM14 of the MDD.

34. Photovoltaic (PV) array details
Before first occupation of the residential development, details shall be submitted to and approved in writing by the LPA to demonstrate how the PV array will be maximised to assist output and electricity generation to the development. The details shall include the location of the PV array and provide confirmation of the estimated area, output and electricity generation. The approved details shall be installed and be operational before first occupation, and retained thereafter.

Reason: In order to ensure the development complies with the terms of the application and in the interests of reducing carbon emissions in accordance with London Plan Policy 5.2.

35. Travel Plan (Commercial)
Prior to first occupation of the supermarket or the first commercial unit (whichever is the first to be occupied), a Travel Plan regarding the commercial and supermarket development in accordance with the targets in the Framework Store Travel Plan (July 2017) included within the Environmental Statement shall be submitted to and approved in writing by the LPA. The Plan shall describe the means by which users of that part of the development shall be encouraged to travel to the site by means other than the private car.
The Plan as approved shall be implemented, monitored and reviewed on an annual basis and a copy of that annual review and action plan arising shall be submitted in writing to the Local Planning Authority, and retained thereafter.

Reason: In order to ensure all future users of the commercial and supermarket development are aware of all means of travel in the vicinity of the application site and to minimize unnecessary vehicular movements to and from the site in accordance with MDD Policy DM20.

36. **Travel Plan (residential)**
Prior to first occupation of any of the residential units, a Travel Plan regarding the residential development in accordance with the targets in the Framework Residential Travel Plan (July 2017) included within the Environmental Statement shall be submitted to and approved in writing by the LPA. The Plan shall describe the means by which
residents, visitors and users of residential elements of the development shall be encouraged to travel to the site by means other than the private car. The Plan as approved shall be implemented, monitored and reviewed on an annual basis and a copy of that annual review and action plan arising shall be submitted in writing to the LPA, and retained thereafter.

Reason: In order to ensure all future users of the commercial and supermarket development are aware of all means of travel in the vicinity of the application site and to minimize unnecessary vehicular movements to and from the site in accordance with Policy DM20 of the MDD.

Contingent conditions

37. Permitted Development – Closed-circuit Television (CCTV)
Notwithstanding Article 3, Schedule 2, Part 2, Class F of the Town and Country Planning (General Permitted Development) Order 2015 (or any Statutory Instrument revoking, re-enacting or amending that Order), details of any permanent CCTV system shall be submitted to and approved in writing by the LPA prior to any installation of such CCTV. The CCTV system/s shall only be installed in accordance with the approved details and shall be retained and maintained as such thereafter.

Reason: In the interests of securing sustainable development and to ensure that the resulting appearance of the development is of a high standard and provides an acceptable standard of amenity in accordance with CS policies SP10 and SP12.

38. Water Efficiency - residential
Before occupation of each dwelling, that dwelling shall comply with Building Regulations Optional Requirement Approved Document G2 – Water efficiency (2015 edition).

Reason: To ensure that the development minimises the use of water and in the interest of sustainability, in accordance with policy 5.15 of the London Plan (2016, consolidated with alterations since 2011).

39. Permitted Development – residential alterations
Notwithstanding Article 3, Schedule 2, Part 1, Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) Order 2015 (or any Statutory Instrument revoking, re-enacting or amending that Order), no extensions, alterations or outbuildings shall be carried out to the single dwelling houses hereby approved without the grant of further specific permission from the LPA.

Reason: To control future development in the interest of the character, permeability, appearance and legibility of the development as a whole, in accordance with Policy SP10 of the CS.

40. Permitted Development – fences/gates
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification), no fences or gates other than those required in the course of construction of the development shall be erected within Development Site unless planning permission has been obtained for them.

Reason: To control future development in the interest of the character, permeability, appearance and legibility of the development as a whole, in accordance with Policy SP10 of the CS.

41. Noise Standards for New Residential Units
a) All of the approved residential units shall be constructed and fitted out to ensure that:
i. They accord with BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings';
ii. Structure-borne noise does not exceed LAmax 35 dB;
iii. Exposure to vibration is no higher than of "low probability of adverse comment" in accordance with BS 6472 'Evaluation of Human Exposure to Vibration in Buildings';
iv. At any junction between residential and non-residential uses, the internal noise insulation level is no less than 55 DnTw+Ctr dB; and
v. Internal Ambient Noise Levels for new residential dwellings meets 35 dB LAeq, 16 hour, between hours 07:00 - 23:00 and within bedrooms meets 30 dB LAeq, 8 hour between hours 23:00 - 07:00.

b) None of the residential units within each phase of development approved pursuant to condition 3 shall be occupied until a post completion verification report, including acoustic test results, for that phase has first been submitted to and approved in writing by the Local planning authority to confirm that the above minimum standards have been achieved. The approved details shall be retained thereafter.

Reason: To safeguard the amenity of future residential occupiers in accordance with Policy DM25 of the MDD.

42. Construction working hours
Building, engineering or other operations such as demolition, works preparatory to or ancillary to the construction of the development hereby approved shall take place only between the hours of 8:00am and 6:00pm Mondays to Fridays and between the hours of 8.00am and 1.00pm Saturdays only and no works shall be carried out at any times on Sundays or Public Holidays.

Reason: To safeguard the amenity of surrounding residents in accordance with Policy DM25 of the MDD.

43. Amenity Space
Notwithstanding condition 2 of this permission and the details shown on drawing no. 01 AP 0300 102 Rev P01 submitted with the application, prior to the carrying out of above grade works, details of the child play space and communal areas, which shall cover an area of no less than 3754.2 square metres, shall be submitted to and approved in writing by the LPA. The details shall include:
a) Detailed design of the play spaces and play equipment; and,
b) A maintenance plan to demonstrate how the play spaces and play equipment will be repaired and/or replaced (as appropriate) over time.
The child play space and communal areas shall be completed in accordance with the approved details for any residential phase before occupation of that phase of the development and retained thereafter.
The measures for providing access to the approved child play space and podium level communal space to all those occupying the development under any phase shall be submitted to and approved in writing by the LPA before first occupation of that phase and shall be implemented prior to first occupation of that phase and shall be complied with thereafter.

Reason: In the interests of securing sustainable development, to contribute towards achieving mixed and balanced communities and to ensure that the resulting appearance of the development is of a high standard and provides an acceptable standard of amenity and child play space in accordance with CS policies SP10 and SP12.

44. Accessible and adaptable units
Prior to occupation of the relevant residential units, details shall be submitted to and approved in writing by the LPA demonstrating that:
a) (i) 90% of the Class C3 residential units hereby permitted have been designed and constructed in accordance with Optional Requirement M4 (2) of Part M of the Building Regulations;
(ii) 10% of the Class C3 residential units within the market sales have been designed and constructed to meet the requirements of M4(3)(2)(a) (adaptable) of the Building Regulations;
b) 10% of the Class C3 rented affordable housing units have been designed and constructed to meet the optional requirement of M4(3)(2)(b) (wheelchair accessible), of the Building Regulations.

Reason: To ensure adequate provision of accessible and adaptable dwellings & wheelchair accessible and wheelchair adaptable dwellings in accordance with CLP policy 3.8, CS policy SP02, and MDD policy DM4.

45. Commercial Shop Fronts
Prior to the first occupation of any the commercial units hereby approved, full details of the proposed shop fronts for the applicable non-residential unit within that phase shall be submitted to and approved in writing by the LPA, including details of the following:
i. Detailed drawings at scale 1:20 (including sections) of the proposed shop fronts;
ii. Detailed drawings at scale 1:20 of the proposed area for signage;
iii. Details of the proposed materials for the shop front; and
iv. Details of any security measures.
The development shall be carried out in accordance with the approved details, to be retained thereafter.

Reason: to ensure that the resulting appearance and construction of the development is of a high standard in accordance with policies SP10 and SP12 of the adopted CS and policy DM24 of the MDD.

46. Operation of Lifts
Before first residential occupation of such building/s or part of a building, all lifts shown on the approved plans shall be installed and be operational.
The lifts shall be appropriately maintained and permanently retained as approved.

Reason: To ensure that adequate step-free access is provided to all accessible floors, in accordance with Policy 7.2 of the London Plan 2016.

47. Mechanical ventilation to car park
Prior to the occupation of the supermarket, details of the mechanical ventilation system to be provided within the basement car park shall be submitted to and approved in writing by the LPA.
The supermarket shall only be occupied in accordance with the approved details.

Reason: In order to ensure the development meets local, regional and national air quality objectives; and in accordance with Policy DM29 of the MDD.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Reuben Taylor QC	instructed by Solomon Agutu of the
Hannah Gibbs of Counsel	London Borough of Tower Hamlets
He called	
Paul Littlefair MA PhD CEng MCIBSE FSLL MILP	Building Research Establishment
Andrew Hargreaves BA (Hons), Dip Arch, MSc, Reg.Arch, IHBC	London Borough of Tower Hamlets
Max Smith BSc MSc MRTPI	London Borough of Tower Hamlets
Andrew Jones BSc MRICS	BPS Chartered Surveyors (not called)

FOR THE APPELLANTS:

Timothy Corner QC	instructed by Dentons, One Fleet Place, London
He called	
Mr Roger Mascall BSc (Hons) Dip.Bldg.Cons (RICS) MRTPI IHBC	Turley planning consultants
Andrew Cartmell MRICS	Point 2 Surveyors Ltd
Ross Hutchison BA (Hons) Dip Arch RIBA	Hutchinson & Partners Ltd
Paul Newton BA (Hons) Dip TP MRTPI	Barton Willmore LLP
Stephen Eyton BE (Civil) CEng MICE MCIHT MCMI	Vectos (not called)
Robert Fourt BSc (Hons) MSc FRICS	Wardell Armstrong LLP Gerald Eve LLP (not called)

INQUIRY DOCUMENTS (ID)

ID 1	Statement of Common Ground (SoCG) agreed between Appellant and LBTH on general matters (submitted to Inquiry, 8 October 2018)
ID 2	Gerald Eve letter to PINS enclosing Henry Riley response to Neil Powling figures (submitted to Inquiry, 8 October 2018)
ID 3	Opening Submissions on behalf of the Appellant (8 October 2018)
ID 4	Opening Submissions on behalf of LBTH (8 October 2018)
ID 5	Extracts from Dr Littlefair book – Designing with Innovative Daylighting (submitted to Inquiry, 8 October 2018)
ID 6	Joint statement on viability (submitted to Inquiry, 16 October 2018)
ID 7	Updated Agreed Statement retained VSC levels (submitted to Inquiry, 16 October 2018/ updated version submitted to Inquiry, 19 October 2018)
ID 8	Section 106 agreement agreed between Appellant and LBTH with plain English summary sheet (submitted to Inquiry, 17 October 2018)
ID 9	Updated CIL Compliance Statement agreed between Appellant and LBTH (submitted to Inquiry, 17 October 2018/ updated version, 19 October 2018)
ID 10	Amended SoCG on Financial Viability (submitted to Inquiry, 17 October 2018)
ID 11	LBTH letter to PINs to confirm acceptance of position reached with ES and no further issues (submitted to Inquiry, 17 October 2018)

ID 12	GLA Email to LBTH (dated 18 October 2018) commenting on viability position
ID 13	Gerald Eve letter to PINs responding to GLA comments on viability position (19 October 2018)
ID 14	Crossrail position statement (19 October 2018)
ID 15	(a) Whitechapel Design Review Panel minutes – 7 August 2014 (b) Whitechapel Design Review Panel minutes – 24 November 2014
ID 16	(a) LBTH closing submissions (b) Phillips v First Secretary of State [2003] EWHC 2415 (Admin) (c) First Secretary of State v West End Green Properties [2007] EWCA Civ 1083
ID 17	(a) Appellant closing submissions (b) R (Mount Cook Land Ltd) v Westminster City Council [2003] EWCA Civ 1346 (c) North Wiltshire District Council v Secretary of State for the Environment [1993] 65 P&CR 137
ID 18	LBTH email to GLA to confirm conversation GLA raising no further viability queries
ID 19	Tracked change agreed conditions (19 October 2018)
ID 20	Barton Willmore letter to PINS to confirm Appellant acceptance of pre-commencement conditions (19 October 2018)
ID 21	Architects' Journal Architecture Awards 2018 finalists dated 5 October 2018

CORE DOCUMENT LIST

A	**Government policy and guidance**
1.	NPPF (March 2012)
2.	Not used
3.	Housing White Paper (February 2017)
4.	DCMS Principles of Selection for Listed Buildings (March 2010)
5.	RICS – Financial viability in Planning (August 2012)
6.	NPPF (July 2018)
7.	SoS MHCLG letter to Mayor of London on the London Plan (27 July 2018) with 2 March 2018 letter to Mayor of London
8.	BRE Site Layout Planning for Daylight and Sunlight – a guide to good practice (2011)

B	**Development Plan documents and LPA guidance**
1.	LBTH Whitechapel Market Conservation Area: Character Appraisal and Management Guidelines (adopted 4 November 2009)
2.	LBTH Stepney Green Conservation Area: Character Appraisal and Management Guidelines (adopted 4 November 2009)
3.	LBTH Core Strategy (September 2010)
4.	LBTH Managing Development Document Development Plan Document with adopted policies map (April 2013)
5.	LBTH Whitechapel Vision Masterplan (WVM) supplementary planning document (SPD) (2013)
6.	LBTH WVM Supplementary Planning Document - Consultation and Engagement Report (December 2013)
7.	English Heritage representation to the LBTH Whitechapel Masterplan SPD (4 November 2013)

B	**Development Plan documents and LPA guidance**
8.	London Plan – City Fringe Opportunity Area Planning Framework (adopted December 2015)
9.	London Plan (consolidated March 2016)
10.	Mayoral Housing Supplementary Planning Guidance (March 2016)
11.	LBTH Planning Obligations SPD (adopted September 2016)
12.	Mayoral Homes for Londoners Affordable Housing & Viability SPG (August 2017)
13.	LBTH Tall Buildings Study (February 2018)
14.	LBTH Development Viability Supplementary Planning Document (adopted 2 October 2017)
15.	LBTH Local Plan 2031 (Regulation 19 Consultation) (October 2017)
16.	[not used]
17.	LBTH Town Centre Retail Capacity Study 2016 (October 2016) [extracts: executive summary and main report only, no appendices]
18.	LBTH Town Centre Strategy 2017 to 2022 (March 2017)
19.	LBTH Five Year Housing Land Supply and Housing Trajectory Statement (June 2018)
20.	LBTH Housing Delivery Strategy (September 2017)
21.	LBTH Strategic Housing Market Assessment (SHMA) Update Reports of Findings (May 2017)
22.	Mayoral Town Centres SPG (July 2014)
23.	LBTH Local Plan 2031 Post Submission Major Modifications (undated)
24.	LBTH Local Plan 2031 Post Submission Minor Modifications (undated)
25.	Draft New London Plan showing Minor Suggested Changes (13 August 2018)

C	**Whitechapel Square ORIGINAL planning application documents (ref: PA/15/00837/A1)**
1-51	Not used
52	LB Tower Hamlets Planning Committee Report (21 December 2016) with minutes and Committee Update Report
53	GLA Stage II Planning Report (2 May 2017)
54	Refusal notice (11 May 2017)

D	**Whitechapel Square REVISED planning application documents (ref: PA/17/01920/A1)**
1.	Covering letter, application form and drawings schedule (14 July 2017)
2.	A3 pack of application plans
3.	Community Infrastructure Levy Form (14 July 2017)
4.	Design and Access Statement (July 2017)
5.	Planning Statement (July 2017)
6.	Retail Assessment (July 2017)
7.	Affordable Housing Statement (July 2017)
8.	Financial Viability Assessment (July 2017)
9.	Internal daylight and Sunlight Assessment (prepared by Point 2 Surveyors) (November 2015)

D	**Whitechapel Square REVISED planning application documents (ref: PA/17/01920/A1)**
10.	Environmental Statement: Non-Technical Summary (July 2017)
11.	Environmental Statement Vol 1: main text and figures (July 2017)
12.	Environmental Statement Vol 2: Townscape & Visual Assessment (July 2017)
13.	Environmental Statement Vol 3: Technical Appendices (July 2017)
14.	Sustainability Statement (July 2017)
15.	Energy Strategy Report (November 2017)
16.	Operational Waste Strategy (July 2017)
17.	Statement of Community Involvement (July 2017)
18.	Fire Strategy Report (July 2017)
19.	Economic Benefits Statement (July 2017)
20.	Lighting Design Report (March 2015)
21.	Photomontage 1 and 2
22.	Plot by Plot accommodation schedule
23.	Residential summary accommodation schedule
24.	Heads of Terms schedule (prepared by Dentons) (July 2017)
25.	Statutory representations: a) NATS (1 August 2017) b) Metropolitan Police (11 August 2017) c) Network Rail (11 August 2017) d) Historic England (1 August 2017) e) London Underground (16 August 2017) f) Transport for London (22 August 2017) g) London Fire Authority (25 August 2017) h) Crossrail (20 September 2017) i) City of London (8 August 2017) j) LB Hackney (5 October 2017) k) Greater London Archaeological Advisory Service (29 August 2017)
26.	LBTH Daylight & Sunlight Review (prepared by Delva Patman Redler) (5 Sept 2017)
27.	Point 2 Surveyors response to DPR Review (28 September 2017)
28.	LBTH ES Interim Review Report (prepared by Temple Group Ltd) (14 Sept 2017)
29.	LBTH Viability Review (prepared by BNP Paribas) (September 2017)
30.	LBTH Viability Review Updated (prepared by BNP Paribas) (October 2017)
31.	Barton Willmore Environmental Statement Review Response Document (Oct 2017)
32.	LBTH ES Final Review (prepared by Temple Group Ltd) (31 October 2017)
33.	Response from BNP Paribas on behalf of LBTH in relation to the Knight Frank viability assessment report (21 November 2017)
34.	GLA Stage 1 Report (8 January 2018)
35.	LBTH Strategic Development Committee report and update report with presentation, and minutes (15 February 2018)

E	**Whitechapel Square appeal documents (APP/E5900/W/17/3190685)**
1.	Not used
2.	Not used
3.	Not used
4.	Statement of Case (as submitted with appeal) (November 2017)

E	**Whitechapel Square appeal documents (APP/E5900/W/17/3190685)**
5.	Draft Statement of Common Ground (as submitted with appeal)
6.	Appeal form (1 December 2017)
7.	Not used
8.	LBTH Questionnaire with list of all drawings and documents [without other supporting documents]
9.	Historic England letter to PINs to request Rule 6 party status (5 January 2018)
10.	Not used
11.	Revised scheme LBTH Statement of Case (1 March 2018)
12.	Historic England Rule 6 Party Statement of Case (1 March 2018)
13.	Third Party representations from PINs (28 February 2018)
14.	PINS letter to Barton Willmore confirming withdrawal of original scheme appeal (10 April 2018)
15.	Historic England letter to PINs confirming withdrawal of Rule 6 status and non-attendance at inquiry (16 April 2018)
16.	17. GLA letter to PINs setting out current position (18 April 2018)
18.	LBTH letter to PINs setting out Environmental Statement concerns (19 April 2018)
19.	Barton Willmore letter to PINs responding to LBTH 19 April letter (20 April 2018)
20.	Temple letter (on behalf of LBTH) responding to Barton Willmore 20 April 2018 letter (25 April 2018)
21.	Environmental Statement Addendum (July 2018)
22.	Dentons letter to PINs regarding Environmental Statement (8 August 2018)
23.	Dentons letter to LBTH regarding ES and SoCG (10 August 2018)
24.	LBTH letter to PINs enclosing ES Addendum Review (3 September 2018)
25.	Point2 Surveyors letter to BRE confirming sunlight (APSH) results (3 Sept 2018)
26.	Barton Willmore letter to PINs clarifying position on LBTH ES Addendum Review (21 September 2018)

F	**Adjacent Whitechapel schemes**
1.	PA/15/01789 - L&Q: Site Bound by Raven Row, Stepney Way Sidney Street, London E1– a) committee report (24 August 2016) b) minutes c) Mayor's Stage II report d) planning permission e) section 106 agreement (6 January 2017)
2.	APP/E5900/W/17/3171437 - The Whitechapel Estate, Site between Varden Street and Ashfield Street, London E1 2JH – appeal decision (21 February 2018)
3.	PA/17/02825 (pp) & PA/17/02828 (LBC) - former Royal London Hospital, Whitechapel Road – redevelopment application a) committee report (for Strategic Development Committee, 28 February 2018) b) minutes c) planning permission (8 May 2018)

G	**Pre-Inquiry documents**
1.	Pre-Inquiry meeting 23 April 2018 note (27 April 2018)
2.	Third Party representation from Crossrail Limited (24 August 2018)

G	Pre-Inquiry documents
3.	Statement of Common Ground agreed between Appellant and Transport for London (18 September 2018)
4.	Appeal Scheme Overview Presentation (prepared and to be presented by Ross Hutchinson of Hutchinson & Partners)
5.	Crossrail email to Paul Newton at Barton Willmore confirming conditions satisfactorily protect Crossrail position (5 October 2018)
6.	Agreed between LBTH and SSL table of heritage assets and impacts (8 Oct 2018)
7.	Statement of Common Ground on Financial Viability (1 October 2018)

LBTH evidence submitted	
TH1	Proof of Evidence with Appendices of Max Smith for LBTH (Planning)
TH2	Summary Proof of Evidence of Max Smith for LBTH (Planning)
TH3	Proof of Evidence with Appendices of Andrew Jones of BPS for LBTH (Viability)
TH4	Summary Proof of Evidence of Andrew Jones of BPS for LBTH (Viability)
TH5	Proof of Evidence with Appendices of Andrew Hargreaves for LBTH (Heritage)
TH6	Summary Proof of Evidence of Andrew Hargreaves for LBTH (Heritage)
TH7	Proof of Evidence of Paul Littlefair of BRE for LBTH (Daylight/ Sunlight)
TH8	Summary Proof of Evidence of Paul Littlefair of BRE for LBTH (Daylight/ Sunlight)

Sainsbury's/ Appellant evidence submitted	
SSL1	Proof of Evidence of Paul Newton of Barton Willmore (Planning)
SSL2	Appendices Proof of Evidence of Paul Newton of Barton Willmore (Planning)
SSL3	Summary Proof of Evidence of Paul Newton of Barton Willmore (Planning)
SSL4	Proof of Evidence of Roger Mascall of Turley Heritage (Heritage)
SSL5	Appendices Proof of Evidence of Roger Mascall of Turley Heritage (Heritage)
SSL6	Summary Proof of Evidence of Roger Mascall of Turley Heritage (Heritage)
SSL7	Proof of Evidence of Stephen Eyton of Vectos (Transport)
SSL8	Appendices Proof of Evidence of Stephen Eyton of Vectos (Transport)
SSL9	Summary Proof of Evidence of Stephen Eyton of Vectos (Transport)
SSL10	Proof of Evidence of Ross Hutchinson of Hutchinson & Partners (Design)
SSL11	Appendices Proof of Evidence of Ross Hutchinson of Hutchinson & Partners for SSL/ Appellant (Design)
SSL12	Summary Proof of Evidence of Ross Hutchinson (Design)
SSL13	REBUTTAL Proof of Evidence of Ross Hutchinson (Design)
SSL14	Proof of Evidence of Andrew Cartmell of Point2 Surveyors for SSL/ Appellant (Daylight/ Sunlight)
SSL15	Appendices of Andrew Cartmell of Point2 Surveyors (Daylight/ Sunlight)
SSL16	Summary Proof of Evidence of Andrew Cartmell (Daylight/ Sunlight)
SSL17	REBUTTAL Proof of Evidence of Andrew Cartmell (Daylight/ Sunlight)
SSL18	Proof of Evidence of Robert Fourt of Gerald Eve for SSL/ Appellant (Viability)
SSL19	Appendices Proof of Evidence of Robert Fourt of Gerald Eve (Viability)
SSL20	Summary Proof of Evidence of Robert Fourt of Gerald Eve (Viability)
SSL21	REBUTTAL Proof of Evidence of Robert Fourt of Gerald Eve (Viability)

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.