



**Ministry of Housing,  
Communities &  
Local Government**

James Harris  
Lichfields  
14 Regents Wharf  
All Saints Street  
London  
N1 9RL

Our ref: APP/C5690/W/18/3205926  
Your ref:

22 January 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MB HOMES LEWISHAM LTD  
LAND AT FORMER CAR PARKS, TESCO STORE, CONINGTON ROAD, LEWISHAM,  
LONDON SE13 7LH  
APPLICATION REF: DC/17/101621**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Jackson BArch (Hons) RIBA, who held a public local inquiry which opened on 14 May 2019 into your client's appeal against the decision of London Borough of Lewisham to refuse your client's application for planning permission for construction of three buildings, measuring 8, 14 and 34 storeys in height, to provide 365 residential dwellings (use class C3) and 554 square metres (sqm) gross of commercial/ community/ office/ leisure space (Use Class A1/A2/A3/B1/D1/D2) with associated access, servicing, energy centre, car and cycle parking, landscaping and public realm works, in accordance with application ref: DC/17/101621, dated 12 May 2017
2. On 2 May 2019, 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 is allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow the appeal and grant planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.
5. An application for a partial award of costs was made by MB Homes Lewisham Ltd against the Greater London Authority (GLA) (IR8). This application is the subject of a separate report and a decision letter is also being issued today.

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## **Procedural matters**

6. The Secretary of State notes at IR2-7 that a second application was submitted with the objective of addressing the reasons for refusal (IR3). To overcome the harm that had been identified by members, the appellant agreed with the Council that the amendments from the second scheme should be imported into the appeal scheme. The Secretary of State also notes that the drawings listed in conditions in Annex A reflect the first application with the agreed alterations from the second scheme. However, the Secretary of State does not consider that the importation of the amendments raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

## **Policy and statutory considerations**

7. 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.
8. In this case the development plan consists of the London Plan (LP) of 2016, the Lewisham Core Strategy (LCS) of 2011, the Lewisham Development Management Local Plan (DMLP) of 2014 and the Lewisham Town Centre Local Plan of 2014.
9. The Secretary of State considers that relevant development plan policies include those set out at IR14-16.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Lewisham Tall Buildings Study (updated in 2012) and Supplementary Planning Guidance (SPG) entitled 'Homes for Londoners: Affordable Housing and Viability' of 2017. 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 2019 Framework.
11. 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.
12. 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*

13. The Examination in Public of the London Plan has concluded and the Panel presented their report to the Mayor in October 2019. On 9 December 2019, the Mayor of London submitted his “Intend to Publish” version of the London Plan to the Secretary of State for his consideration.
14. The Secretary of State considers that the emerging policies of most relevance to this case are those set out in IR17-18. Since the close of the Inquiry, the references / titles of some key policies have changed in the “Intend to Publish” version, for example, policies D1A and D1B (London’s form, character and capacity for growth), D3 (Optimising site capacity through the design-led approach), D9 (Tall buildings) and H5 (Threshold approach to applications).
15. 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. Following recent progress with the emerging London Plan, the Secretary of State concludes that NLoP policies carry moderate weight.

### **Main issues**

16. The Secretary of State agrees with the Inspector that the main considerations are those set out in IR125.

### *Provision of affordable housing*

17. The Secretary of State agrees with the Inspector that the essential differences on viability between the parties lies in a variation of around £11m in construction costs (including fees and profit); and private residential values (IR127).

#### *Construction costs*

18. The Secretary of State notes that CDM (for the GLA) consider build costs to be overstated (IR129). However, the Secretary of State also notes that independent costs estimates produced by 3 firms of costs consultants were within 2 percentage points of each other. He agrees with the Inspector that no evidence has been produced in any later analyses to show that those build costs, or any element of them considered for viability purposes, are unreasonable (IR128-131).

#### *Fees*

19. The Secretary of State notes that the level of fees remained a point of difference at the beginning of the Inquiry. The Secretary of State also notes that while detailed analysis of this issue did identify an overstatement of fees of less than £1m, this is far below the overstatement claimed by the Council and GLA. He further notes that, at the Inquiry no evidence was forthcoming from the GLA’s costs witness, CDM, to support their contention that preliminaries are set too high or that the level of professional fees of around 10% would be excessive for a project of this nature. In addition, the Council’s costs witness accepted that if a reasonable preliminaries figure of 17% or so was adopted then the whole argument in support of the £5.5m fees deduction from the overall level of costs fell away (IR132-133).

### *Profits*

20. For the reasons given in IR134-135, the Secretary of State agrees with the Inspector that the proposed profit levels are reasonable for this scheme.
21. For the reasons given in IR136 the Secretary of State agrees with the Inspector that no evidence was offered by the Council or the GLA to counter the appellant's build costs analysis or the level of fees or profit.

### *Private residential values*

22. The Secretary of State has carefully considered the Inspector's analysis in IR137-146 and agrees that the GLA's suggested values would be unlikely to be achievable in the market (IR144).
23. The Secretary of State also notes that the GLA accepted at the Inquiry that if the £11m alleged surplus on fees and construction costs did not exist, then the claimed remaining £900,000 (IR132) would not have led to a direction to refuse from the Mayor's office (IR146). For the reasons in IR147, the Secretary of State agrees with the Inspector that the 20.2% affordable housing proposed by the appellant is the maximum, if not somewhat more, than what can be reasonably provided, and he accordingly attaches very considerable weight to this benefit of the proposal. He finds no conflict with the requirements of LonP policy 3.12; the Mayor's Affordable Housing and Viability SPG, Lewisham CS policy 1 and DMLP policy DM7.

### *Late stage review*

24. For the reasons given in IR148-149, the Secretary of State agrees with the Inspector that there is no pressing case for a late stage review for a scheme such as this, where development is proposed to be completed in a single phase. He finds no conflict with the requirements of LP policy 3.12, the Mayor's Affordable Housing and Viability SPG, Lewisham CS policy 1 and DMLP policy DM7.

### *Other matters*

#### *Character and appearance*

25. For the reasons given in IR150-151, the Secretary of State considers the public benefits in the form of improvements to the Silk Mills path, the access to the station and the new public space outweigh any additional harm identified in relation to the small scale housing to the south east of the tower (IR152). For the reasons given in IR153 the Secretary of State agrees with the Inspector that there would be no harm caused to any view from locations including Blackheath, Blythe Hill Fields, Hilly Fields and Mountsfield Park. The Secretary of State agrees with the Inspector's conclusions in IR166 that the scheme would contribute positively to the character and appearance of the emerging Lewisham Town Centre and affords this moderate weight in favour of the proposal.

#### *Heritage matters*

26. For the reasons given in IR154-157, the Secretary of State agrees that the effect of the appeal scheme on the range of heritage assets considered would be insignificant. While the Inspector has not identified any specific harm to any heritage asset, on the basis that an insignificant effect might still qualify as less than substantial harm, the Secretary of State has had regard to paragraph 196 of the Framework, and on a precautionary basis,

has carried out the balancing exercise set out there. He has set out his conclusions in paragraph 31 of this letter.

### *Living conditions*

27. For the reasons given in IR158-164, the Secretary of State agrees with the Inspector's conclusion in IR164 that while there would be some impact on the daylighting, outlook and living conditions of some nearby occupiers, these would not amount to unacceptable impacts, and he affords the identified harm limited weight against the proposal.

### **Planning conditions**

28. The Secretary of State has given consideration to the Inspector's analysis at IR121-124, 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 and that the conditions set out at Annex A should form part of his decision.

### **Planning obligations**

29. Having had regard to the Inspector's analysis at IR119, the planning obligation dated 31 May 2019, 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 conclusion for the reasons given in IR120 that the obligation, except with respect to a late review mechanism, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

### **Planning balance and overall conclusion**

30. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with LonP policy 3.12, the Mayor's Affordable Housing and Viability SPG, Lewisham CS policy 1 and DMLP policy DM7, and is 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.
31. Against the proposal, the Secretary of State affords limited weight to any impacts on living conditions. In favour, the Secretary of State affords very considerable weight to the provision of market and affordable housing. He also affords moderate weight to the positive contribution to the character and appearance of the emerging Lewisham Town centre.
32. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the heritage assets identified in IR154-157 is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. The Secretary of State has identified the benefits of the scheme and the weight he has afforded to these in paragraph 29 of this letter.
33. Overall the Secretary of State considers that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the heritage assets identified in IR154-157. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

34. 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.
35. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

### **Formal decision**

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for construction of three buildings, measuring 8, 14 and 34 storeys in height, to provide 365 residential dwellings (use class C3) and 554 square metres (sqm) gross of commercial/ community/ office/ leisure space (Use Class A1/A2/A3/B1/D1/D2) with associated access, servicing, energy centre, car and cycle parking, landscaping and public realm works in accordance with application ref: DC/17/101621 dated 12 May 2017 (as amended see paragraph 6 of this letter).
37. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

38. 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.
39. A copy of this letter has been sent to the Council of the London Borough of Lewisham and the Greater London Authority. Notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Andrew Lynch*

**Andrew Lynch**

Authorised by the Secretary of State to sign in that behalf

## Annex A List of conditions

### 1. Full Planning Permission Time Limit

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

### 2. Develop in Accordance with Approved Drawings and Documents

The development shall be carried out in accordance with the plans and drawings detailed below:

10472-EPR-ZA-ZZ-TP-A-0100	rev 02;	10472-EPR-ZA-ZZ-TP-A-0001	rev 02;
10472-EPR-ZAA-AA-TP-A-002	rev 02;	10472-EPR-ZA-BB-TP-A-003	rev 02;
10472-EPR-ZA-CC-TP-A-004	rev 02;	10472-EPR-ZA-ZZ-TP-A-0101	rev 04;
10472-EPR-ZA-B1-TP-A-0102	rev 02;	10472-EPR-ZA-GF-TP-A-0103	rev 04;
10472-EPR-ZA-01-TP-A-0104	rev 04;	10472-EPR-ZA-T1-TP-A-0105	rev 04;
10472-EPR-ZA-RF-TP-A-0106	rev 05;	10472-EPR-ZA-AA-TP-A-0500	rev 03;
10472-EPR-ZA-BB-TP-A-0501	rev 04;	10472-EPR-ZA-CC-TP-AQ0502	rev 04;
10472-EPR-ZA-DD-TP-A-0503	rev 03;	10472-EPR-ZA-EE-TP-A-0504	rev 02;
10472-EPR-ZA-FF-TP-A-0505	rev 04;	10472-EPR-01-GF-TP-A-0200	rev 04;
10472-EPR-01-01-TP-A-0201	rev 04;	10472-EPR-01-T1-TP-A-0202	rev 05;
10472-EPR-01-GF-TP-A-0203	rev 05;	10472-EPR-01-01-TP-A-0204	rev 04;
10472-EPR-01-T1-TP-A-0205	rev 04;	10472-EPR-01-15-TP-A-0206	rev 04;
10472-EPR-01-30-TP-A-0207	rev 04;	10472-EPR-01-T2-TP-A-0208	rev 04;
10472-EPR-01-33-TP-A-0209	rev 04;	10472-EPR-01-RF-TP-A-0210	rev 05;
10472-EPR-01-RF-TP-A-0211	rev 05;	10472-EPR-01-XX-TP-A-0212	rev 01;
10472-EPR-01-XX-TP-A-0213	rev 01;	10472-EPR-01-NO-TP-A-0400	rev 04;
10472-EPR-01-EA-TP-A-0401	rev 04;	10472-EPR-01-WE-TP-A-0402	rev 04;
10472-EPR-01-SO-TP-A-0403	rev 04;	10472-EPR-01-XX-TP-A-0404	rev 03;
10472-EPR-01-XX-TP-A-0405	rev 03;	10472-EPR-01-XX-TP-A-0406	rev 03;
10472-EPR-01-XX-TP-A-0407	rev 03;	10472-EPR-01-XX-TP-A-0408	rev 03;
10472-EPR-01-XX-TP-A-0409	rev 03;	10472-EPR-01-XX-TP-A-0410	rev 03;
10472-EPR-01-XX-TP-A-0411	rev 03;	10472-EPR-01-XX-TP-A-0412	rev 03;
10472-EPR-01-XX-TP-A-0413	rev 04;	10472-EPR-01-XX-TP-A-0414	rev 04;
10472-EPR-01-AA-TP-A-0500	rev 04;	10472-EPR-01-BB-TP-A-0501	rev 04;
10472-EPR-02-B1-TP-A-0299	rev 04;	10472-EPR-02-GF-TP-A-0200	rev 07;
10472-EPR-02-01-TP-A-0201	rev 06;	10472-EPR-02-02-TP-A-0202	rev 06;
10472-EPR-02-03-TP-A-0203	rev 06;	10472-EPR-02-04-TP-A-0204	rev 06;
10472-EPR-02-05-TP-A-0205	rev 06;	10472-EPR-02-06-TP-A-0206	rev 06;
10472-EPR-02-07-TP-A-0207	rev 06;	10472-EPR-02-08-TP-A-0208	rev 06;
10472-EPR-02-09-TP-A-0209	rev 06;	10472-EPR-02-10-TP-A-0210	rev 06;
10472-EPR-02-11-TP-A-0211	rev 06;	10472-EPR-02-12-TP-A-0212	rev 06;
10472-EPR-02-13-TP-A-0213	rev 06;	10472-EPR-02-RF-TP-A-0214	rev 06;
10472-EPR-02-ZZ-TP-A-0215	rev 02;	10472-EPR-02-ZZ-TP-A-0216	rev 02;
10472-EPR-02-ZZ-TP-A-0217	rev 02;	10472-EPR-02-ZZ-TP-A-0218	rev 02;
10472-EPR-02-ZZ-TP-A-0219	rev 02;	10472-EPR-02-ZZ-TP-A-0220	rev 02;
10472-EPR-03-ZZ-TP-A-0221	rev 02;	10472-EPR-03-ZZ-TP-A-0222	rev 01;
10472-EPR-03-ZZ-TP-A-0223	rev 01;	10472-EPR-03-ZZ-TP-A-0224	rev 01;
10472-EPR-03-ZZ-TP-A-0225	rev 01;	10472-EPR-ZA-ZZ-TP-A-0226	rev 01;
10472-EPR-02-EL-TP-A-0400	rev 04;	10472-EPR-02-EL-TP-A-0401	rev 04;

10472-EPR-02-EL-TP-A-0402 rev 05; 10472-EPR-03-EL-TP-A-0403 rev 03;  
 10472-EPR-03-EL-TP-A-0404 rev 03; 10472-EPR-03-EL-TP-A-0405 rev 04;  
 10472-EPR-03-EL-TP-A-0406 rev 04; 10472-EPR-02-XX-TP-A-0407 rev 04;  
 10472-EPR-02-XX-TP-A-0408 rev 03; 10472-EPR-02-XX-TP-A-0409 rev 03;  
 10472-EPR-02-XX-TP-A-0410 rev 03; 10472-EPR-02-XX-TP-A-0411 rev 02;  
 10472-EPR-02-XX-TP-A-0412 rev 02; 10472-EPR-03-XX-TP-A-0413 rev 05;  
 10472-EPR-03-XX-TP-A-0414 rev 04; 10472-EPR-03-XX-TP-A-0415 rev 02;  
 10472-EPR-02-XX-TP-A-0416 rev 01; 10472-EPR-02-XX-TP-A-0417 rev 01;  
 10472-EPR-02-XX-TP-A-0418 rev 01; 10472-EPR-02-XX-TP-A-0419 rev 01;  
 10472-EPR-02-XX-TP-A-0420 rev 01; 10472-EPR-03-XX-TP-A-0421 rev 01;  
 10472-EPR-03-XX-TP-A-0422 rev 01; 10472-EPR-02-GS-TP-A-0500 rev 04;  
 10472-EPR-02-GS-TP-A-0501 rev 04; 10472-EPR-03-GS-TP-A-0502 rev 04;  
 10472-EPR-02-EL-TP-A-0503 rev 03; 10472-EPR-02-EL-TP-A-0504 rev 04;  
 10472-EPR-02-EL-TP-A-0505 rev 04;  
 BMD.200.DR.P001 rev c; BMD.200.DR.P001 rev c; BMD.200.DR.P101 rev c;  
 BMD.200.DR.P102 rev c; BMD.200.DR.P103 rev a; BMD.200.DR.P104 rev d;  
 BMD.200.DR.P106 rev a; BMD.200.DR.P107 rev B; BMD.200.DR.P108 rev a;  
 BMD.200.DR.P201 rev b; BMD.200.DR.P202 rev a; BMD.200.DR.P300 rev a;  
 BMD.200.DR.P301 rev c; BMD.200.DR.P302 rev b

The development shall also be carried out in general accordance with the documents detailed below:

Environmental Statement May 2017); Planning Statement (May 2017); Design and Access Statement (May 2017); Statement of Community Involvement (May 2017); Fire Strategy Letter (August 2017); Supplementary Design and Access Statement (October 2018); Skydeck Lewisham' Proposal (October 2018); Energy Strategy (October 2018); Sustainability Statement (October 2018); Internal Daylight & Sunlight Report (October 2018); Design Stage Site Waste Management Plan (October 2018); Site Suitability Study (October 2018); Health Impact Assessment (October 2018); Viability Report (October 2018); Planting Palette (October 2018).

### **3. Demolition Management Plan**

No demolition shall take place until a Demolition Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:

- the parking of vehicles of site operatives and visitors;
- details of the site manager, including contact details (phone, facsimile, email, postal address) and the location of a large notice board on the site that clearly sets out this information;
- loading and unloading of plant and materials;
- the times during which demolition shall take place;
- storage of plant and materials used in demolition;
- the erection and maintenance of security hoardings;
- measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of plant and materials and similar demolition activities;
- measures to be adopted to ensure that the access from the emergency exits is safe and not obstructed during the works;
- wheel washing facilities;

- measures to control the emission of dust, dirt, noise and vibration during demolition;
- a scheme for recycling/disposing of waste resulting from demolition;
- all non-road mobile machinery used in connection with the demolition of the development hereby approved must meet 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.
- Thereafter, demolition works shall only be carried out in accordance with the approved details.

#### **4. Construction Management Plan**

No construction works shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- the parking of vehicles of site operatives and visitors;
- details of the site manager, including contact details (phone, facsimile, email, postal address) and the location of a large notice board on the site that clearly identifies these details of the site manager;
- loading and unloading of plant and materials;
- the times during which construction shall take place;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoardings;
- measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of plant and materials and similar construction activities;
- measures to be adopted to ensure that the access from the emergency exits is safe and not obstructed during the works;
- wheel washing facilities;
- measures to control the emission of dust, dirt, noise and vibration during construction;
- a scheme for recycling/disposing of waste resulting from construction works;
- all non-road mobile machinery used in connection with the construction of the development hereby approved (NRMM) must meet 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
- crane lighting and location of cranes.

#### **5. Construction Methodology**

No works of excavation or construction are to be carried out until details of such works have been submitted to and approved in writing by LBL in consultation with TfL/ Network Rail. These details should comprise of:

- a) Geotechnical report for the site;
- b) Superstructure design and construction methodology (including verified

- calculations and any lift pits);
- c) Plans for any proposed scaffolding in proximity of the railway;
- d) An impact assessment setting out predicted ground and structure movements;
- e) Emergency preparedness plan, detailing actions to be implemented if Network Rail advises that it is to stop trains due to an incident at the station, following receipt of the relevant information from Network Rail;
- f) Ground and structure movement monitoring regime; and
- g) Risk assessments and method statements for all structural works, excavation and installation of services in the land.

Thereafter, the works shall not be carried out other than in accordance with the approved details.

## **6. Piling Methodology and Operations**

No piling shall take place 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 adjoining property, subsurface water infrastructure and the safe operation of railway assets, and a programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water and Transport for London (TfL). Any piling must be undertaken in accordance with the terms of the approved *Piling Method Statement*.

## **7. Construction Noise and Vibration Monitoring**

Prior to the commencement of development, details of a noise monitoring methodology shall be submitted to the local planning authority for approval in writing.

This methodology shall include:

- a) permanent monitoring at a location to be agreed with the Council and the owners of 2 Sharsted Villas (either within the garden of 2 Sharsted Villas or on the site boundary opposite) throughout the construction of the development, including the enabling works;
- b) temporary monitoring at any other location as reasonably requested by the local planning authority;
- c) details of the equipment to be used (which shall be of a type that can transmit live monitoring of noise data direct to the Main Constructor (appointed under the Considerate Constructor Scheme) and
- d) details of how and on what the equipment is to be attached, including the height and details of any structure to be used; and
- e) details of the Constructor's monitoring and remedial action procedures, if the results indicate that the noise levels from the site exceed those as agreed with Council.

The approved monitoring methodology and equipment shall be employed and the monitoring data shall be made available to the local planning authority to view live on line at all times, provided this condition shall not be breached in the event of a temporary disruption in the live feed in which case urgent endeavours shall be used to resume the live feed without compromising the integrity of the data record.

## **8. Considerate Constructors Scheme**

Details demonstrating that the developer or constructor has joined the Considerate Constructors Scheme shall be submitted to the local planning authority prior to commencement of works on site and the developer or constructor shall thereafter adhere to the requirements of the Scheme for the period of construction of the development.

## **9. Telecommunications**

Prior to the commencement of superstructure works, a study undertaken by a body or person approved by the Confederation of Aerial Industries or by OFCOM shall be submitted to and approved in writing by the local planning authority which:

- i. identifies the area within which television signal reception might be interfered with by the development and;
- ii. measures the existing television signal reception within the study area and;
- iii. assesses the impact of the permitted development on the television signal reception of those in the study area and proposes appropriate measures to mitigate such effects so that the signal shall be of at least the same quality as that before the development was undertaken, as recorded under (ii) above, and which provides contact details at the developer and at the local planning authority for persons whose reception has been affected by the development to provide notice that their reception has been so affected.

As soon as reasonably practicable and in any event within one month of receiving notice, and subject to those who have notified the developer or the local planning authority that their signal reception has been interfered with, providing that they consent, the developer shall undertake the appropriate mitigation works as identified in the approved study. The developer shall remain responsible for such mitigation works for notifications before the expiry of 12 months from the practical completion of the whole development.

## **10. Vibro-compaction machinery**

No vibro-compaction machinery is to be used in the development unless details of the use of such machinery and a method statement have been submitted to and approved in writing by the Local Planning Authority in consultation with Transport for London. The works shall only be carried out in accordance with the approved method statement.

## **11. External Lighting onto DLR tracks**

No external lights nor those installed during the construction period shall shine directly onto DLR's railway tracks.

## **12. Site Contamination**

The development hereby approved shall not be built otherwise than in accordance with the recommendations of the Phase 1 Environmental Assessment (March 2017), Phase 2 Environmental Assessment Report (March 2017) and Factual and Interpretative Geotechnical Assessment Report (January 2017) located within Appendices 12.1, 12.2 & 12.3 of the Environmental Statement (October 2018) respectively.

If during any works on the site, contamination is encountered which has not previously been identified (“the new contamination”) the Council shall be notified immediately and the terms of paragraph (a), shall apply to the new contamination. No further works shall take place on that part of the site or adjacent areas affected, until the requirements of paragraph (a) have been complied with in relation to the new contamination.

The development shall not be occupied until a closure report has been submitted to and approved in writing by the Council.

This shall include verification of all measures, or treatments as required in (Section (a) i & ii) and relevant correspondence (including other regulating authorities and stakeholders involved with the remediation works) to verify compliance requirements, necessary for the remediation of the site have been implemented in full.

The closure report shall include verification details of both the remediation and post-remediation sampling/works, carried out (including waste materials removed from the site); and before placement of any soil/materials is undertaken on site, all imported or reused soil material must conform to current soil quality requirements as agreed by the authority. Inherent to the above, is the provision of any required documentation, certification and monitoring, to facilitate condition requirements.

## **13. Remediation Strategy**

The development hereby approved shall not be built otherwise than in accordance with the remediation scheme set out at Chapter 12 of the Environmental Statement (October 2018) which shall be implemented in full, unless with the express prior written consent of the Local Planning Authority.

## **14. Verification Report for Land Contamination**

If remediation is required in line with Condition 12 a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a ‘long-term monitoring and maintenance plan’) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

## **15. Drainage Strategy**

The Development shall be implemented in accordance with the Drainage Strategy (September 2018) in the Environmental Statement Appendix 11.2 (October 2018). No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed. The development shall be constructed in accordance with the approved details.

## **16. DLR Radio Communications**

Before any superstructure is constructed, a 'pre' development Radio Communications Survey shall be submitted to and approved in writing by the local planning authority, in consultation with Transport for London. Within 3 months of completion of development, a 'post' completion Radio Communications Survey Report shall be submitted to and approved in writing by the local planning authority, in consultation with Transport for London. The Report shall set out an assessment of the level of any impact the development has on the strength of DLR radio signals and identify any necessary mitigation measures (including signal boosters).

Any identified necessary mitigation measures shall be implemented within 6 months of the Report being approved.

## **17. BREEAM**

The buildings hereby approved shall achieve a BREEAM Rating of at least 'Very Good' at shell and core, in accordance with the BREEAM Pre-Assessment in the Sustainability Statement Appendix 1 (21 September 2018).

No development shall commence until a Design Stage Certificate for each building (prepared by a Building Research Establishment qualified Assessor) has been submitted to and approved in writing by the local planning authority to demonstrate compliance.

Within 6 months of occupation of any of the buildings, evidence shall be submitted in the form of a Post Construction Certificate (prepared by a Building Research Establishment qualified Assessor) to demonstrate full compliance for that specific building.

## **18. Combined Heat and Power Networks**

No development shall commence until details of the proposed heat networks and gas-fired Combined Heat and Power (CHP) system set out in the applicant's *Energy Strategy (21 September 2018) and Sustainability Statement (21 September 2018)* have been submitted to and approved in writing by the local planning authority.

The details shall include the commissioning of the networks and CHP system and details of the catalytic converter if required. Prior to the installation of the plant an Air Quality Neutral Assessment shall be completed and submitted to the local planning authority for their written approval;

The networks and systems shall be provided in accordance with the approved details and maintained thereafter.

## **19. CHP Abatement**

Prior to installation of the relevant part of the development full details of the abatement technology utilised to minimise emissions to air from the CHP system have been submitted to and approved in writing by the local planning authority. The CHP and associated abatement shall be installed in accordance with the approved details prior to occupation of the development and shall thereafter be maintained in accordance with the approved specification.

## **20. External Materials / Detail Design**

No above ground construction of the relevant part of the development (Buildings B1, B2 or B3) shall take place until a detailed schedule and samples have been submitted to and approved in writing by the local planning authority. The submitted details shall include:

- a) Mock-up panels of the external cladding materials and glazing,
- b) Samples of all other external facing materials;
- c) Doors and windows to include details and specification of acoustic glazing and ventilation for the residential accommodation;
- d) Balconies, balustrades and privacy screens to the residential accommodation;
- e) Drawings and details of material finish to the 'Lewisham Skydeck'

The details of the external materials should generally accord with the type and quality of materials indicated within pages 141 and 178 of the *Design and Access Statement (May 2017)*. The development shall be carried out in complete accordance with the approved details.

### **Building B1**

2m x 2m sample panel(s) to be constructed on site to detail the following:

- proposed aluminium feature panels in a range of tones from dark bronze through to pale bronze and silver;
- white off/white GRC panels including textured panel, including details of fixing
- vertical slats in PPC/ anodised aluminium
- metal canopies to commercial unit
- pre-cast concrete vertical ribbed panel
- all metal work to the rear service elevation
- all windows and doors
- access gates
- the underside of the roof of the recessed ground floor

### **Building B2 and B3**

2m x 2m sample panel(s) to be constructed on site to detail the following:

- all brickwork and mortar colour and pointing, with detail of soldier courses and projecting headers
- all metalwork
- all windows and doors

- pre-cast concrete/ GRC

### Other

- Mock-up of all balconies including soffits, balustrades/ screening and decking.
- Materials and doors for the external cycle store adjacent to Building B2.
- All boundary treatments (balustrades).

The development shall not be constructed other than in accordance with the approved details and samples.

## **21. Tall Building Lighting Strategy**

Prior to the occupation of the building a *Tall Building Lighting Strategy* for Building B1 shall be submitted to the local planning authority for its approval in writing.

Lighting in accordance with the approved strategy shall be implemented prior to the use of the "Skydeck"; and the lighting fixtures shall be retained and maintained in perpetuity.

## **22. External Plumbing and Pipes**

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no plumbing or pipes, including rainwater pipes, shall be fixed on the external faces/front elevation of the buildings hereby approved, without the prior written consent from the Local Planning Authority.

## **23. Mobile Telecommunications Equipment**

No mobile telecommunications equipment shall be erected on the external surfaces of any building in the development.

## **24. Satellite Dishes / Antennae**

Notwithstanding the Provisions of Article 4 (1) and part 25 of Schedule 2 of the *Town and Country Planning (General Permitted Development) Order 2015*, no satellite antennae shall be erected or installed on the buildings hereby approved. The proposed development shall have a central dish or aerial system (for each relevant block) for receiving all broadcasts for the residential units created: details of such a scheme shall be submitted to and approved by the local planning authority prior to first occupation of any block, and the approved scheme shall be implemented and permanently retained thereafter.

## **25. Living Roofs**

The development hereby approved shall not be built otherwise than with a 'biodiversity living roof' laid out in accordance with plan nos. BMD.200.DR.P107 rev B. The living roofs shall not be used as an amenity or sitting out space of any kind. Evidence that the roof has been installed in accordance with the approved plan shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development.

## **26. Hard Landscaping Details**

No development above ground level shall take place until details of hard landscaping have been submitted to and approved in writing by the local planning authority. The details shall generally accord with pages 78 and 79 of the *Design and Access Statement (May 2017)* and include services (electricity and water) within Silk Square to enable external activities or events to be accommodated within the space. The development shall be carried out in accordance with the approved details.

## **27. Soft Landscaping**

Prior to first occupation of the development, a scheme for the management and maintenance of the landscaping for a minimum period of five years shall be submitted to and approved in writing by the local planning authority, in general accordance with the landscaping scheme on pages 82 and 83 of the Design and Access Statement.

All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the relevant part of the development. Any trees or plants which within a period of five years from the completion of that part of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

## **28. Protection of Trees During Construction**

No development shall commence on site until a *Tree Protection Plan (TPP)* has been submitted to and approved by the Council for the relevant part of the development (Building B1, B2 and B3) and should reflect the information set out in drawing BMD.200.PR.103 rev A on the trees to be retained. The TPP should follow the recommendations set out in BS 5837:2012 (Trees in relation to design, demolition and construction – Recommendations). The TPP should clearly indicate on a dimensioned plan superimposed on the building layout plan and in a written schedule details of the location and form of protective barriers to form a construction exclusion zone, the extent and type of ground protection measures, and any additional measures needed to protect vulnerable sections of trees and their root protection areas where construction activity cannot be fully or permanently excluded. The development shall be constructed in accordance with the approved details.

## **29. Bird, Bat Boxes and other Ecology Features**

Details of the number and location of the bird/bat boxes and other ecology features and habitat to be provided as part of the development hereby approved shall be submitted to and approved in writing by the local planning authority prior to commencement of above ground works and shall generally accord with the detail shown on drawings BMD.200.DR.P001 rev C and BMW.200.DR.P102 rev C and the Ecological Assessment Report, dated 12 December 2016 (Appendix 14.1 of the Environmental Statement, October 2018). The approved features shall be installed before occupation of the building and maintained for the life of the development.

## **30. Open Space Management and Maintenance Plan**

An Open Space Management & Maintenance Plan shall be submitted within 6 months of commencement of development above ground floor slab level. This shall include full details of the size, location, layout and detailed design of the proposed children's play areas. It shall also include management & maintenance and responsibilities for all communal play spaces/amenity spaces and all publicly accessible open spaces, including the first floor amenity terrace to Building B1 and the fourth floor roof terrace to Building B2.

Once provided, these spaces shall be managed and maintained in accordance with the approved Plan.

## **31. Soundproofing**

No above ground construction of the relevant part of the development (i.e. Building B1, B2 or B3) shall take place until full written details, including relevant drawings and specifications of the proposed works of sounds insulation against airborne noise to meet  $D_{nT,w} + C_{tr}$  dB of not less than 55 for walls and/or ceilings where residential parties non domestic use have been submitted to and approved in writing by the local planning authority.

No part of the development hereby approved shall be occupied until the approved soundproofing works as agreed have been implemented in accordance with the approved details.

The soundproofing shall be retained permanently in accordance with the approved details.

## **32. External Lighting**

Prior to occupation of the relevant part of the development (Building B1, B2 and B3) a scheme for any external lighting that is to be installed at the site shall be submitted to and approved in writing by the local planning authority. The details shall generally accord with page 84 of the Design and Access Statement and the Conington Road Lighting Design Masterplan (Hoare Lee) and include evidence to demonstrate that the proposals minimise pollution from glare and spillage, following the Institute of Lighting Engineer's guidance; and shall not exceed 2 lux at any window of a habitable room.

Any such external lighting shall be installed in accordance with the approved drawings and any directional hoods shall be retained permanently.

### **33. Delivery and Service Plan**

No part of the development (Buildings B1, B2 or B3) shall be occupied until a Delivery and Servicing Plan has been submitted to and approved in writing by the local planning authority.

The plan shall demonstrate the expected number and time of delivery and servicing trips to the site, with the aim of reducing the impact of servicing activity along with details of site management for movement of refuse and storage of moveable refuse containers.

The approved Delivery and Servicing Plan shall be implemented in full accordance with the approved details from the first occupation of the relevant part of the development and shall be adhered to for the life of the development.

### **34. Electric Vehicle Charging Points**

Details of the electric vehicle charging points to be provided in the basement of Building B2 together with a programme for their installation and maintenance shall be submitted to and approved in writing by the local planning authority prior to occupation of that building.

The approved electric vehicle charging points shall be installed prior to first occupation of Building B2 and shall thereafter be retained and maintained in accordance with the approved details.

### **35. Cycle Parking Provision**

Prior to construction of the relevant part of the development (Buildings B1, B2 and B3) full details of the cycle parking facilities for at least 569 cycles must be submitted to and approved in writing by the local planning authority.

All cycle parking spaces shall be provided and made available for use prior to occupation of the relevant part of the development, and retained thereafter.

### **36. Car Club Parking Locations**

Prior to occupation of Building B2 a plan showing the location of two car club spaces shall be submitted to and approved in writing by the local planning authority. The spaces shall be provided in accordance with the details approved and shall be made available for use prior to occupation of Building B2. Thereafter the spaces shall be retained and used only for parking cars associated with the car club.

### **37. Retention of Amenity Spaces**

The whole of the amenity space (including roof terraces and balconies) as shown on drawing no. BMD200.DR.P104 rev D hereby approved shall be retained permanently for the benefit of the occupiers of the residential units hereby permitted.

### **38. Operation of Commercial Use in Building B1**

A Scheme of Operation for the commercial use falling within Use Class A1, A2, A3, D1 and D2 within the ground and first floors of Building B1, including details of proposed hours of operation (including servicing) and the use and extent of the outdoor seating area, is to be submitted to and approved in writing by the local planning authority prior to occupation. The premises shall not be operated otherwise than in accordance with the approved Scheme.

### **39. Restriction of Commercial Uses**

Notwithstanding the *Town and Country Planning (General Permitted Development) Order 2015* (or any Order revoking, re-enacting or modifying that Order), the non-residential spaces in Building B1 (including entirety of the first floor) and B2 shall be used for uses falling within A1, A2, A3, B1, D1 (health, education including nurseries, museum and art galleries) and D2 and for no other purpose of the Schedule to the *Town and Country Planning (Use Classes) Order 1987*, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

### **40. Ventilation Equipment for A3 Uses**

The specification of the ventilation system in respect of any A3 use of a Commercial Unit, which shall include measures to alleviate noise, vibration, fumes and odours (and incorporating active carbon filters, silencers and anti-vibration mountings where necessary) shall be submitted to and approved in writing by the local planning authority prior to first use for A3 purposes.

No non-residential unit shall be first occupied for A3 purposes until the approved ventilation systems have been installed in accordance with the plans and specification approved and such ventilation systems shall thereafter be permanently retained and maintained in accordance with the approved specification.

### **41. Fixed Plant Noise Control**

The rating level of the noise emitted from fixed plant on the site shall be at least 5dB below the existing background level during the day (07:00-19:00), evening (19:00-23:00) and night-time (23:00-07:00) periods, when assessed in accordance with BS4142:2014. The noise levels shall be determined at the façade of the nearest noise sensitive property to the fixed plant.

### **42. Shop Front Design**

The construction of Buildings B1 and B2 above ground floor slab level shall not commence until plans and sectional details at a scale of 1:10 or 1:20 showing the proposed frontages to the commercial units in Building B1 and Building B2 have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details and the shopfront fronts fitted before first occupation of any residential unit within the respective block.

#### **43. Privacy Screens**

The privacy screens to the balconies of Building B3 as detailed on Page 177 of the *Design and Access Statement* shall be implemented before any dwelling in that block is first occupied. The approved screens shall be permanently retained.

#### **44. Surface Water**

The drainage systems for the infiltration of surface water drainage into the ground are to be submitted and approved by the local planning authority, demonstrating that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

#### **45. River Ravensbourne Buffer Zone**

No development beyond works of site clearance and ground excavation shall take place until a scheme for the provision and management of a buffer zone of sufficient size to enable 'river corridor improvement works' (to be secured through a planning obligation) has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme. The scheme shall include:

- (i) plans showing the extent and layout of the buffer zone;
- (ii) details demonstrating that the buffer zone is sufficient to enable 'river corridor improvement works';
- (iii) details of any proposed planting scheme (for example, native species);
- (iv) details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management as well as production of detailed management plan.

#### **46. Travel Plan**

(a) No part of the development hereby approved shall be occupied until such time as a user's *Travel Plan*, in accordance with Transport for London's document 'Travel Planning for New Development in London' has been submitted to and approved in writing by the local planning authority. The development shall operate in full accordance with all measures identified within the *Travel Plan* from first occupation.

(b) The *Travel Plan* shall specify initiatives to be implemented by the development to encourage access to and from the site by a variety of non-car means, shall set targets and shall specify a monitoring and review mechanism to ensure compliance with the *Travel Plan* objectives.

(c) Within the timeframe specified by (a) and (b), evidence shall be submitted to demonstrate compliance with the monitoring and review mechanisms agreed under parts (a) and (b).



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

**by Paul Jackson BArch(Hons) RIBA**

**an Inspector appointed by the Secretary of State**

**Date: 1 August 2019**

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**Town and Country Planning Act 1990**

**The Council of the London Borough of Lewisham**

**Appeal by**

**MB Homes Lewisham Ltd**

Inquiry opened on 14 May 2019

Former Car Parks, Tesco Store, Conington Road, Lewisham, London SE13 7LH

File Ref: APP/C5690/W/18/3205926

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**File Ref: APP/C5690/W/18/3205926**  
**Former Car Parks, Tesco Store, Conington Road, Lewisham, London**  
**SE13 7LH**

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 2 May 2019.
- The appeal is made by MB Homes Lewisham Ltd against the decision of the Council of the London Borough of Lewisham.
- The application DC/17/101621, dated 12 May 2017, was refused by notice dated 21 May 2018.
- The development proposed comprises construction of three buildings, measuring 8, 14 and 34 storeys in height, to provide 365 residential dwellings (use class C3) and 554 square metres (sqm) gross of commercial/ community/ office/ leisure space (Use Class A1/A2/A3/B1/D1/D2) with associated access, servicing, energy centre, car and cycle parking, landscaping and public realm works at the former car parks, Tesco Store, 209 Conington Road, SE13.
- The reason given for recovery of the appeal is that it involves proposals for residential development of over 150 units or on sites of over 5 hectares, 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.

**Summary of Recommendation: That the appeal is allowed, and planning permission granted subject to conditions**

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**Preliminary Matters**

1. The Inquiry opened on 14 May 2019 and sat for 4 days. An accompanied site visit was carried out on Friday 17 May including the surrounding area and more distant viewpoints on Blackheath and elsewhere.
2. The background to the appeal and Inquiry is set out in the most recent Statements of Common Ground (SOCG) of 10 May 2019<sup>1</sup>. To summarise the critical events, the proposed development was refused by the Council for reasons relating to excessive height and insufficient public benefits including affordable housing, a failure to provide an access onto Platform 4 of Lewisham Station and insufficient assurance that naturalisation of the River Ravensbourne would take place. The Greater London Authority (GLA) did not pursue their objections on affordable housing at this point, as the application was being refused partly on that ground.
3. A second application<sup>2</sup> for a very similar scheme was then submitted with the objective of addressing the reasons for refusal. This scheme incorporated a 'skydeck' and brought forward funds for the station access, amongst other things. On receipt of further information, the Council considered that there would be a viability shortfall and the offer of 20.19% by habitable room was more than the maximum reasonable provision. The Council considered this and other changes outweighed any remaining harm and resolved to approve

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<sup>1</sup> Core Documents I4 and I5

<sup>2</sup> Ref DC/18/109184

the second scheme<sup>3</sup>. The GLA however criticised the affordable housing provision.

4. The appellant had meanwhile appealed the first application. The Council, on the advice of external consultants, decided not to maintain the reason relating to affordable housing on appeal. To overcome the harm that had been identified by members, the appellant agreed with the Council that the amendments from the second scheme should be imported into the appeal scheme. For the avoidance of doubt, the drawings listed in the suggested conditions in Annex 2 reflect the first application with the agreed alterations from the second scheme. There is no dispute that anyone is placed at any disadvantage by the Secretary of State considering the appeal proposal accordingly.
5. Following Stage 2 referral the GLA directed on 4 March 2019 that the second application be refused on the basis that the affordable housing contribution had not been adequately justified and was not the maximum that could reasonably be delivered. The GLA also considered that the draft Section 106 (S106) Agreement contained inadequate provision of a late viability review mechanism. As the schemes were identical, it became necessary for the Council to resist the appeal scheme solely on the GLA grounds of insufficient affordable housing and an inadequate late review mechanism.
6. On the second day of the Inquiry, following cross examination of the Council's costs witness, the GLA's advocate advised that she could not then represent the GLA on matters of costs because of a conflict of interest. After later cross-examination of the GLA's viability witness, the Council conceded that the evidence demonstrated that the margin of surplus, on the Council's assessment of viability, fell within an acceptable margin of error. The Council advised that in light of the reduction in surplus, there was no practical purpose in contesting the affordable housing issue further. The Council then formally accepted that the proposed 20.2% affordable housing contribution proposed in the S106 Agreement is the maximum reasonable contribution.
7. The Council took no further part in the Inquiry, except to prepare a brief explanatory statement at the request of the Inspector, for the benefit of the Secretary of State<sup>4</sup>. The GLA however continued with its objections as an unrepresented principal party.
8. At the Inquiry an application for costs was made by MB Homes Lewisham Ltd against the GLA. This application is the subject of a separate Report.

### **The Site and Surroundings**

9. A full description of the site is contained within the SOCG. It is irregularly shaped in 2 main parts: the 'island' bound by the raised railway embankment at Lewisham station, the Docklands Light Railway (DLR) and the Ravensbourne river, which is in a deep concrete culvert at this point; and the 'car park' area consisting of a more or less flat area of concrete between an existing Tesco store and the DLR. The 2 parts are connected by a bridge over

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<sup>3</sup> SOCG paragraph 6.21

<sup>4</sup> Doc 21

the Ravensbourne. As well as the adjacent Tesco store, the site is within easy walking distance of the retail centre of Lewisham.

10. The site lies north of and adjacent to the Lewisham Transport Interchange consisting of the 4-platform Lewisham station and a bus station. Lewisham station provides easy access to central London. The site has a Public Transport Accessibility Level (PTAL) of 6a and 6b, the highest available. On the south side of the railway is an extensive area which has been redeveloped with mainly high density housing in blocks ranging up to 25 storeys with new developments planned of up to 30 storeys. Of particular relevance is the Lewisham Gateway scheme on the other side of the railway. This consists of the first phase, 'Portrait 1' and 'Portrait 2', comprising 193 apartments in two blocks of 25 and 15 storeys with ground floor retail space. Construction of the next phase of, currently, 15 and 22 storey buildings providing 169 new homes with ground floor retail and restaurants, is under way.
11. Surrounding residential development consists of 2 storey Victorian dwellings immediately to the south east and contemporary 8-9 storey apartment blocks to the north west.

### **The Proposal**

12. The 34 storey Block B1 would be located on the island site. The 8 and 14 storey Blocks 2 and 3 would continue the existing theme of flatted development to the north west and also form a 'step up' towards Block B1. In the first instance, landscaping of the river edge would include a railing along the existing sheet piled culvert edge but in future, in collaboration with the landowner on the opposite side, would include partial naturalisation of the banks including tiered landscaped beds with public access<sup>5</sup>. A benefit of the scheme is the re-connection and better definition of a public right of way from Silk Mills Path to the south east with Deptford to the north. This currently crosses the Tesco car park area but is not well signed or laid out.

### **Planning Policy**

13. The development plan consists of the London Plan of March 2016 (LonP), the Lewisham Core Strategy of 2011 (CS), the Lewisham Development Management Local Plan of 2014 (DMLP) and the Lewisham Town Centre Local Plan of 2014 (LTCLP).
14. Lewisham Town Centre falls within an area of identified high growth in the LonP designated as the Lewisham, Catford and New Cross Opportunity Area (OA 20, policy 2.13). Lewisham is designated as one of London's Major Town Centres within which CS spatial policies SP1 and SP2 promote regeneration and growth opportunities, with the aim of achieving Metropolitan Centre status by 2026 (Objective 1 LTCLP). The LTCLP provides the regeneration strategy for the centre.
15. The site itself falls within the Conington Road Policy Area (CRPA) within Lewisham town centre, covered by LTCLP policy LTC5. It is included within an area designated in Figure 6.3 to policy LTC19 as an appropriate location for

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<sup>5</sup> See Doc 12. Secured by means of a financial obligation in the S106 Agreement

tall buildings. The site is identified in the Lewisham Tall Buildings Study (updated in 2012) which formed part of the CS evidence base and informed the LTCLP. The Study notes that tall and bulky buildings forms including Citibank Tower already exist in Lewisham and therefore new tall building developments will not be an unfamiliar urban form in the local context.

16. The provision of affordable housing is the subject of LonP policies 3.11 and 3.12, CS policy SP1 and DMLP policy DM7. LonP policy 3.12 advises that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes having regard to a number of criteria. Paragraph B says that negotiations on sites should take account of their individual circumstances including development viability. Supplementary Planning Guidance (SPG) entitled '*Homes for Londoners: Affordable Housing and Viability*' of 2017 advises that the Mayor's long-term strategic aim is for half of all new homes in London to be affordable. The SPG is intended to help ensure that where development appraisals take place, they are robustly and consistently scrutinised, whilst its approach will also reduce the risk and increase the speed of the planning process for those schemes which deliver more affordable homes. The third part of the SPG provides detailed guidance on viability assessments, aiming to establish a standardised approach. The SPG sets out what information and assumptions should be included in a viability assessment.
17. The draft New London Plan (NLP) is at examination stage. Draft policy H1 increases the 10 year target for Lewisham for the period 2019/20 to 2028/29 to 2117 units per year, and the indicative homes target for the New Cross/Lewisham/Catford OA to 13500 dwellings. The Council's comments in March 2018 on the NLP supported the overall approach applied to town centre development in draft policies SD6-SD9, which provide strategic support to the work being planned and undertaken by the Council in intensifying Lewisham town centre. The Council also welcomes the approach to tall buildings, but noted that further clarification around the design-led approach to optimising housing density (draft policy D6) and the approach to tall buildings (draft policy D8) should recognise that whilst tall buildings have a place in parts of London, it is the quality of place-making that is key.
18. NLP policy H6 advises that viability review mechanisms should be applied to all viability tested applications at early and late stages in the development process (and mid-term reviews in the case of longer phased schemes) to ensure that affordable housing delivery is maximised as a result of any future improvement in viability.

### **The Case for MB Homes Lewisham Ltd**

*The main points are:*

*-The proposed development complies with the up-to-date development plan*

19. The conclusion reached in the SOCG<sup>6</sup> is to the effect that (apart from the affordable housing policies which were still at large as a result of the matters

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<sup>6</sup> Paras 6.21 and 6.22

set out above) the proposal accorded with the relevant policies of all relevant limbs of the plan. This has consistently been the position of the Council officers.

20. The site lies in both an OA and in a Town Centre (TC). The site is an appropriate place for a tall building in principle, subject to more detailed considerations. The appellant, the Council and the GLA all agree that the proposals comply with strategic policy 7.7 of the LonP which is of key importance. The CS positively requires "Central" densities to be achieved within the TC and accepts that radical upgrading of the physical environment is a necessity, which in turn needs to allow for tall buildings to achieve that end. Such tall buildings are required to be of the highest design quality, to add coherence to the skyline and not to cause harm to the surrounding environment including heritage assets. The CS policy on tall buildings shadows policy 7.7 from the LonP in terms of its detailed criteria.
21. The entire application site is unambiguously contained in an area which is identified on Figure 6.3 of the LTCLP as appropriate for tall buildings. The boundary of the area identified as appropriate for tall buildings forms a defined part of the Conington Road Policy Area which has its own policy LTC5 guiding development.
22. Two elements of the policy require special consideration. Part C states that proposals will be required to contribute to the realisation of the following principles: "retain and enhance the scale and grain of the existing fabric at the southern end of this Policy Area, its mix of uses and townscape character". The existing fabric, its grain and its scale is simply not altered by the proposal. The townscape character of the area itself will not alter either.
23. The setting of the area will alter and to that extent there might be a potential impact on the townscape. But none of the relevant buildings has a statutorily protected setting or relies on that setting for any significance. The overall setting of this area of townscape will be immeasurably enhanced compared to the existing position. The existing townscape character of this area already and inevitably now reflects its existence in and close to the heart of the TC. The juxtaposition of height which this scheme brings is already an integral part of its character.
24. The second element of the policy provides that "taller elements of the block should be avoided next to the historic fabric and the river". This cannot be a prohibition of tall buildings. It identifies a principle of potential avoidance in the context of the development of the "taller elements "of a block development of site 6 on Figure 5.3 of the LTCLP. The proposed development is not the taller element of a block of development, but a slim singular freestanding building of a type not specifically contemplated by the policy.
25. The tall building element of the proposal does not cause any harm to the river to which it is adjacent. Rather it significantly enhances it and raises the potential for it to be enhanced.
26. In any case, the development falls to be seen in the context of the development plan as a whole, which seeks to ensure a radical physical change to the centre driven by tall buildings and a coherent skyline. A rational and reasonable element of any coherent skyline policy would suggest

the appropriateness of both marking the Borough's most important transport interchange and consolidating the existing and emerging cluster, itself at present a little amorphous and lacking in coherence, with a clean elegant slender marker. The quality of the building both as a piece of architecture and as a response to context is simply not in doubt. It has not been challenged in any meaningful way by any party to the Inquiry.

27. In more detailed terms the development complies with the general and specific housing policies of the plan in terms of mix of units, tenure of units, affordable housing quantum and mix. In particular it meets a very pressing need for housing and affordable housing in the Borough and the capital as a whole. As a proposal which is consistent with an up-to date development plan, it gains the benefit of the straightforward "presumption in favour of sustainable development" which means that permission should be granted without further delay.

*-Viability Methodology*

28. To be viable in strict policy terms, a development needs at current day values and costs to produce a Development Value which exceeds a Development Cost (which itself includes an appropriate rate of return for a developer). If it does, then such a value (the residual land value) must exceed a benchmark land value which represents what the landowner could otherwise do with his land. This is usually represented by the existing use value of the site plus a premium for the landowner, to represent the trouble and risk of change and, to a degree, of engaging with the planning system. It is also possible to "look at this proposition through the other end of the telescope" by establishing whether at the relevant benchmark land value, the development gives rise to the objectively identified appropriate benchmark level of profit for the developer.
29. Planning policy requires the planning system to operate objectively and not to seek demands on a development by way of affordable housing or other requirements that would push a development beyond viability judged either as a benchmark land value or an appropriate rate of return. There was no challenge to the applicability or accuracy of the approach at the inquiry. Indeed before the Council's withdrawal from the case its viability witness accepted that it was the appropriate methodology to adopt.
30. Planning Practice Guidance (PPG) now requires this approach to be adopted for reasons of transparency and consistency across the sector. Particularly in London, this approach means that developers are often faced with developments which at current day values are not viable by this objective test. Each developer has to consider whether or not to proceed based upon its own particular circumstances. Key considerations for a developer include the actual level of profit received, the nature of the long term holding of the asset, the potential for growth in capital value, the risk appetite of the particular developer and the importance of providing a margin of comfort at determinations to avoid the need for multiple and expensive applications and a range of other matters.
31. The appellant and the Council's independent consultants have used the PPG approach and its attendant methodology. The GLA has stated such in terms.

*-The development brings with it at least the maximum reasonable amount of affordable housing according to policy*

32. Key to the withdrawal of the Council and to a determination of the viability case in the round is a proper understanding of first, the issue of costs and second, private residential values. Once the position in relation to these is understood, there is no reasonable way in which it could be argued that 20.2% affordable housing is insufficient in policy terms. The Council accepted that the issue of costs is capable of being determinative of this appeal on its own, though the issue on values is also very clear.

*-Construction costs*

33. A full and detailed elemental analysis of the costs of the project was constructed in accordance with best practice according to RICS New Rules of Measurement and the RICS Black Book. This was accepted by the Council's costs witness and not challenged by the GLA. The original plan was the subject of careful and critical analysis by the Council's own independent consultant quantity surveyors. Alterations to the plan were negotiated until both parties were satisfied that the construction cost element was accurate and reasonable.
34. Following the GLA's direction to refuse, the Council instructed their costs witness to consider the issue of construction costs. He sought to cross check the elemental analysis by using the BCIS elemental data base. This is one of the specific ways in which decision makers are told to judge and benchmark the reasonableness of costs. He used that part of the database dealing with buildings which were 6+ storeys high. At Inquiry, he agreed that data base would tend to underestimate the overall construction cost. He had however brought judgment to bear when considering the place of the BICS elements in the overall consideration of costs.
35. His conclusion was that, taking all of the 70 or so elements of the proposal and benchmarking them against the equivalent elemental evidence contained in BCIS, the construction costs overall were entirely fair and reasonable. Indeed on the tower- by far the largest element of the costs schedule- the Council's benchmarked costs were in fact higher than the appellants. It was on this clear basis that the Council's costs witness concluded that the appellant's costs were reasonable, fair and accurate.
36. In addition, the Council had been specifically warned that the construction costs would be likely to increase as a result of the post-Grenfell exterior cladding issue. For the express purposes of the inquiry, and in a reasonable effort to take this matter beyond any reasonable doubt, the appellants instructed an entirely new and bespoke analysis of costs by a market leading quantity surveyor. Although the exercise is labelled a review of costs, they were asked to consider the unpopulated cost plan from scratch and without reference to the earlier figures to produce a construction cost estimate.<sup>7</sup>
37. As the Council fairly accepted, that estimate, though marginally higher than the initial estimates, fell with 2% or thereabouts of the Council's costs

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<sup>7</sup> Mr J Brown's Appendix 4

witness. There was therefore complete agreement (in valuation terms) as to the reasonable nature of the construction cost element of the case. In addition, new work is benchmarked against a significant number of other relevant schemes. The costs in this case are actually well below the average costs of the relevant benchmark data set.

38. The GLA's costs witness estimated that the construction costs had been overestimated in the region of £5.5m. This was a surprising assertion in the circumstances of the case. But the position was much worse and much more unreasonable than that on proper examination. The GLA produced none of the type of market-based evidence which the PPG indicates is required to support such assertions. A series of unsubstantiated, unevicenced and unparticularised assertions and opinions were put forward which were incapable of any proper testing or interrogation. In this respect and on this point, the GLA simply failed to call or to substantiate in any evidentially relevant way its assertions that the cost element of the case was deficient at all, much less by £5m. The attempts to refer for the first time in evidence to "cases that I know about" or "other cases involving concrete" was correctly ruled inadmissible.
39. It transpired that the GLA had simply refused to engage with any of the evidence relevant to the inquiry on this issue. Their costs witness indicated that it was no part of his brief to look at or to consider the evidence submitted to the inquiry by others on the issue of costs. He was therefore unable to comment on the appellant's cost checking exercise and its reasonableness or even on the line-by-line rebuttal of his own evidence provided by the appellant's quantity surveyor.
40. In addition the GLA, despite a clear invitation from the Inspector, chose not to challenge any of appellant's costs evidence. There is simply no way in which the Secretary of State can reduce this agreed position by reference to the GLA's unevicenced, unparticularised assertions. There is no reasonable or rational mechanism by which the Inspector or Secretary of State can reduce the costs figure. The GLA's evidence on costs has such little probative value that it fails the test of being "evidence" in the proper sense of the word.
41. Construction costs therefore do not fall to be reduced by £5.5m as alleged by the GLA. That suggestion is unsupported by any evidence and is manifestly unreasonable in substance. The GLA's approach to the matter at inquiry is also manifestly unreasonable.

*Fees -the alleged 'double count'*

42. It is agreed between all parties that if fees have been or are reasonably likely to be incurred as part of a project then they should be taken into account as part of the overall assessment of Gross Development Value (GDV). This is particularly the case in large complex cases involving significant infrastructure and civil engineering works. It was also agreed by the Council's costs witness who has more than 50 years' experience on these matters that where it is possible accurately to identify costs and fees already incurred and to be incurred, then a calculation based on that evidence should be used in preference to a global percentage estimate.

43. In this case, there was a methodological dispute as to whether pre-novation design fees ought to be included within main contractor preliminaries or not. That rather esoteric debate does not alter the acceptance of the fact that all fees properly incurred, pre-novation or otherwise ought to be included in the overall cost figures.
44. Thus, to assess what that overall position ought to be, the appellant undertook two exercises which established beyond doubt that removing a further £5.5M from the costs would result in a wholly inappropriate underestimation of fees. It analysed what fees had already been expended and could reasonably be expected to be spent in addition to the pre-novation fees. This was undertaken by independently contacting all of the relevant professionals and by carefully producing a detailed schedule of costs overall. This had the impact of reducing the assessed costs by around £900,000<sup>8</sup>.
45. Second, a construction cost plan was prepared which avoided the methodological debate referred to above. It removed all fees to "below the line". That exercise utilised a contractor's preliminaries figure based on benchmarking data of circa 17%<sup>9</sup> as opposed to the unreasonably low figure of 12-13% which would result from the deduction of the alleged "double count" on the appellant's original figures.
46. The Council's costs witness accepted that all of the evidence pointed to the acceptability of a preliminaries figure towards this end of the range and that acceptance was also consistent with Carter Jonas' advice to the Council in the email of 11 February 2019<sup>10</sup> where 20% was said to be not unreasonable. The appellant's costs rebuttal also contains a range of 12 similar projects where the range of prelims is significantly in excess of 12-13%.
47. If the removal of the double count from the prelims were to take place in a mechanical way, there is an acceptance that the preliminaries allowed for by the appellant would be unreasonably low. If prelims are restored to the appropriate range, then the costs originally assumed are appropriate and there is no need to remove the £5.5m alleged double count. Or indeed the circa £900,000 removed for caution in the appellant's checking exercise.
48. The Council's costs witness was very clear that if a reasonable prelim figure of 17% or so was adopted then the whole argument in support of the £5.5M deduction from the overall level of costs fell away. And as a result of simply this concession, the entirety of the Council's case against the proposal fell away. There was simply no case to be made.
49. Despite being in the inquiry at all relevant times, the GLA made no challenge to the appellant's analysis. The GLA was not prepared to reconsider its position in the light of the additional evidence and in the light of the position of the council's witness and leading Counsel on the issue.
50. For all of the reasons set out here there should be no deduction of £5.5m. The figure originally adopted should be used.

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<sup>8</sup> £954,737. Mr J Brown's Appendix 3

<sup>9</sup> Mr J Brown's Appendix 4

<sup>10</sup> Mr Jones Annex 9

51. Before turning to the issue of values, the effect of removing the £5.5M reduction in construction costs and the inappropriateness of reducing the costs overall by a further £5.5M ought to be considered. It goes to the heart of why the Council felt unable to support their reason for refusal and explains why the GLA is in a parlous position.
52. The note handed in by the GLA half way through its evidence in chief<sup>11</sup> explained that on its main case, there was a £11.9m surplus that it was alleging meant that more affordable housing could be provided by the proposal. It was then accepted clearly and emphatically that if the surplus were alleged to be just £900,000, then on a project of this scale, bearing in mind margins for error, the Mayor would not have directed refusal of the application.

*-Values*

53. Importantly it was also accepted that now that the actual and complete schedule of actual sales figures for the Portrait 2 block of the Gateway scheme is available, there would be a need to reduce the GDV of the proposal by a sum to represent the actual average delivered up by that proposal. That was £15 per square feet (psf) lower than anticipated by the GLA. There is a dispute between the parties as to exactly how much should be removed from the GDV. The appellant says that because there are homes in the proposal in the first 4 floors, the reduction is in the region of £3m. The GLA assesses that the reduction is in excess of £1m.
54. Either way, the entirety of the GLA's primary case on surplus (Portrait 2 plus 10%) is removed. There is no realistic case left to be put. This was the position adopted by the Council even when its values were higher than any of those taken by the GLA. The GLA is being wholly unreasonable in maintaining a position that flies in the face of the evidence so clearly and so emphatically.
55. The only way in which either the LBL or the GLA were able to begin to argue that the proposal could afford to deliver more affordable housing was to unrealistically inflate the values ascribed to the private residential apartments in the scheme. The level of hike needed was so substantial that it gave rise to unusual valuation anomalies.
56. Neither the Council nor the GLA analyses bore any meaningful relationship to the market evidence. Rather, values were pushed to a stratospherically different level. Before even looking at the methodology in any detail a very simple examination of the relevant comparables in any detail meant that the out of step nature of the claims was very apparent. Claims of average £psf figures well in excess of £700 and 1 bed apartment values breaching the £500,000 mark<sup>12</sup> were a feature of both the GLA and LBL cases.
57. It is little surprise that both parties' methodologies were riddled with errors which gave rise to figures which were strangers to the market.

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<sup>11</sup> Doc 11

<sup>12</sup> Ineligible for Help to Buy

58. The application is high quality and will command higher rates than Portrait 2, but that does not give carte blanche to valuers to simply remove the roof on values in the unsubstantiated way that the objectors did. The appellant's viability witness adopted a level of £657.43 psf across the proposal as a whole (the rate would be higher for the tower). This rate was consistent with the rate agreed following months of negotiation and iteration with consultants. He had had regard to the way in which values had increased with height in P1 and P2 and formed a judgment which he had then tested against the market evidence. However, the actual values from P2 proved to be lower than he anticipated. But he did not alter his figure downwards. He was very clear that he thought his overall figure was both reasonable and optimistic.
59. To set against this evidence, an independent assessment of market value from an agency perspective was independently sought. It was a "blind" exercise with a team used to selling into this very market thousands of units a year. The market was not only tested from the perspective of saleability and comparables but cross checked against affordability, in particular the ability to gain a mortgage in the present market. The analysis was very clear that 1 bed flats at high £400K-£500K values meant that they would simply be unable to achieve mortgage lending in the Lewisham context.
60. Set against that, the Council's viability witness's initial assessment leading to the up to £779 psf figure was based solely on a pseudo mathematical exercise. No weight should be given to it because it forms part of a case that has been withdrawn in its entirety. It therefore hasn't been dealt with in full by the appellant because it doesn't need to be. It simply doesn't work as intended because it contains significant errors<sup>13</sup>. P2 is an up to date comparable. Suggestions that it sits somehow in a quieter less "to be developed" area are simply not true.
61. The GLA produced a range of three figures. It accepted that its lowest figure was its main case with the other two and higher figures only sensitivities. All three of the figures result from a methodology that was only disclosed to the inquiry during evidence in chief. It too is wholly non-transparent and indeed is inconsistent with the description and intention of the GLA. The aim of the GLA was to seek to enhance the Portrait 2 £psf levels by approximately 10%. But the following points arise:
- The average levels of Portrait 2 were £15psf lower than the GLA had taken, so the GLA's starting point on their own case needs to be reduced by this sum. We say £3m odd, the GLA accept £1m plus. Either matter, considering the cost analysis identified above, is sufficient to wipe out the GLA's case based on a 10% difference;
  - The actual increases as added to the GLA spreadsheet are in fact considerably well above the 10% intended in many respects. This results

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<sup>13</sup> Eg the tables on pp 20 and 21 are inconsistent. Also the use of a linear addition to calculate a compound rate massively and exponentially increases the height premium

from the fact that the two upper cases relied upon are as a starting point well above 10%;

- The use of a linear increase as oppose to a cumulative ((n-1)v) approach has significantly overestimated the increase up the tower;
- There is an obvious double count in the figures on the methodology identified in the in chief paper that the GLA is simply unable clearly to explain. That is because any addition of a percentage for height in addition to the height differentials which are already embedded in the Portrait 2 floor by floor figures (by definition up to floor 22) would be a clear duplication.

62. All of these matters are now summarised on the spreadsheet indicating the various different parties positions<sup>14</sup>.

63. For all of these reasons, the value figures used by the appellant should be used. Whether they are or not, for the reasons set out above, there is no sustainable case that the proposal can afford realistically to provide more than the identified level of affordable housing. The Council was right to withdraw.

*-Public benefits*

64. There is little dispute between the parties as the nature and scale of the public benefits of the proposal. They are major, substantial and manifold. These are not exhaustive but identify the most significant benefits.

65. Housing and affordable housing are clearly going to be given substantial weight. That is the very consistent position.

66. Although more subjective in assessment, the creation of a pinnacle to a coherent, legible and regenerated town centre is by itself a significant public benefit. It will be a beacon of regeneration of a new important town centre. So too will the high quality exemplary architecture which will bring to the site.

67. The issue of overlooking has been raised and is understood and of course the nature of the building and the number of windows in the relevant facades is a material condition. The nearest relevant premises are over 46 m away from the relevant windows. These relationships (and much closer) are commonplace now in London and in particular in London Town Centres. If the proximity of nearly 50 m was insufficient, large areas of OAs identified as suitable for tall buildings would of necessity need to shrink. There is no harm here.

68. The same goes for the townscape and any non-designated heritage asset or setting that might be identified. The Council identified 3 potential candidates but found that their heritage significance has been preserved. Any loss of significance can only be right at the lowest end of non-heritage asset harm which itself gives rise to no statutory presumption or significance.

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<sup>14</sup> Doc 17

*-Conclusion*

69. In summary, the inquiry began with LBL calling detailed expert evidence on inter alia costs and values which it said, contrary to the advice it had earlier received from independent consultants, meant that the site could provide more than the 20.2% affordable housing offered. All of that evidence was thoroughly and fully tested. The outcome of that was that following cross examination and with the benefit of clear legal advice from experienced leading Counsel, LBL conceded that on a proper consideration of the evidence, it could no longer legitimately or reasonably maintain an affordable housing objection at the inquiry. The Inspector accepted the Council's decision to withdraw and the Council played no further active part.
70. The GLA which had witnessed the same evidence, and which had been represented by the same Leading Counsel, refused to see the appropriateness of that course and continued to advance, in the face of the clearest evidence, a case against the proposal. The case it advanced lacked any evidential support, and on the main issue of difference between the parties was based on literally no more than unsupported assertion. The appellants evidence was then wholly unchallenged as to values or as to costs either by LBL (who had by that position removed themselves from the inquiry) or inexplicably by GLA who were represented at the inquiry but chose not to take the opportunity to cross examine.
71. Lest it be said that the absence of challenge was related to the departure of the GLA from its Leading Counsel the following is relevant:
- The GLA when presented with the fact that its Counsel would no longer represent it for proper professional reasons indicated formally in her last formal act, that it had considered making an application for an adjournment to secure representation or carrying on at the inquiry as a party without representation and had firmly concluded that it would prefer to carry on playing its part at the inquiry: it made no application for an adjournment or any suggestion that its ability properly to conduct itself at the inquiry would be hindered.
  - It must also be remembered that at all material times until the Friday before the inquiry, the GLA was asking that it be allowed to attend and speak without Counsel or any other form of representation: the characterisation of the joint instruction as a minor change of procedure was maintained in the face of concerns raised by the Appellant and:
  - The GLA as an organisation is very well used to public inquiries and understands the relevant procedures, protocols and their consequences: especially where a refusal has in effect resulted directly and solely as a result of the direction of the exercise of the GLAs powers.
72. The appellant's evidence was not challenged in any material way by the GLA. That extraordinary position is particularly meaningful in a case where it was the GLA's direction to refuse planning permission (and only that direction) which had resulted in the LBL effectively reversing its formal resolution to grant planning permission. Without that direction, there would have been no inquiry.

73. There is no requirement in policy for a late stage review mechanism to be imposed. Whilst it is required in emerging policy, there are significant objections. For all these reasons, applying the provisions of the NPPF, any harm or any breach of the development plan occasioned by such harm is more than outweighed by the public benefits and the material considerations to which such benefits give rise.

### **Statement for the Council of the London Borough of Lewisham**

74. It became necessary as a consequence of the GLA's direction for the Council to resist the appeal on the grounds of affordable housing. It obtained the advice of a further independent viability expert, who confirmed that the appellant's viability appraisal which produced a deficit of £20m was not correct. His own viability appraisal demonstrated a scheme surplus of £4,446,921 based on 2018 Residential Pricing, and £8,706,243 based on 2017 residential pricing.
75. Approximately £5m of the appraisal surplus arose from a review of the appellant's material available before exchange of proofs, which appeared to show a double counting of fees in the order of £5m in relation to the build cost estimate. When the appellant's viability proof was received and reviewed it did not appear that the short reference in paragraph 7.2 to the Gardiner & Theobald review<sup>15</sup> report raised any pertinent issue. This was particularly so as the proof suggested that the appellant's basis for assessment of costs was unaltered.
76. As a consequence the Council's viability witness did not send its costs witness the appellant's viability proof (which dealt with numerous other issues not relevant to costs estimates). On review at the Inquiry, the Council's build cost estimate was revised from £107,179,737 to £111,809,368 representing a difference of £4,629,631. The consequence of this was that it changed appraisal A - 2018 Residential Pricing to negative £1,155,982 and Appraisal B - 2017 residential pricing (less HPI) reduced to £ 3,111,251. This still represents a £20m disparity approximately with the appellant's viability conclusions. It nonetheless reduced the margin of surplus on the Council's assessment to fall within an acceptable margin of error.
77. The Council does not accept the methodology or conclusions of the appellant's appraisal. However in light of the reduction in surplus on the Council's own assessment, there was no practical purpose in contesting the affordable housing issue further and the Council accepted that the affordable housing contribution proposed is the maximum reasonable contribution.

### **Interested parties**

#### ***The GLA***

*The following is based on the position statement submitted by the GLA on day 2 of the Inquiry<sup>16</sup>. No closing remarks were submitted by the GLA.*

*The main points are:*

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<sup>15</sup> James Brown Proof of Evidence Appendix 4

<sup>16</sup> Doc 11

78. The appellant's Financial Viability Assessment (FVA) witness tested six scenarios with a range of affordable housing mixes of between 12.5% to 35%. He concluded that they were all well below the assumed benchmark land value (BLV) with negative residual values in all but one of the scenarios with 12.5% affordable housing. The residual land values ranged from negative £18.2m to positive £2.46m which was still below the BLV and so it was concluded that none of the scenarios were viable.

79. Despite this apparent lack of viability, the initial proposed affordable housing level of 12.5% was increased over subsequent meetings to approximately 20% by unit number. It was not clear which cost and value assumptions could be adjusted to enable his client to increase the proposed level of affordable housing in the scheme. This raises doubts about the reliability of the FVA.

80. The GLA's view is that the assessment of viability did not take into full account the relevant factors affecting some of the cost and value inputs to the appraisals and that the development could viably deliver more affordable housing. The majority of the inputs included in the application FVA are considered typical but the assumptions made in support of the following elements are unjustified:

- i) Market value of residential units;
- ii) Build costs; and
- iii) Profit level for market housing.

81. There were also concerns about the assumptions on finance rates and affordable housing values but these three elements are most significant and together they all have a cumulative overall impact on viability levels.

*Market value of residential units*

82. Analysis of sales evidence needs to make adjustments for a number of factors, such as the overall similarities and differences between the schemes, changes in market conditions and the reliability of information. Although there are no completely comparable schemes, the GLA would agree that the development at Portrait 2 provides a reasonable basis for the assessment of sales values. It is relatively nearby, with similar accessibility to the rail network. However there are three main differences that need to be considered in using the evidence from Portrait 2 to arrive at appropriate values for the appeal scheme.

83. Portrait 2 is on a busy road network and is part of a larger building site with continuous building works planned for at least three years or possibly longer. This general disturbance, noise and impact on views would affect sales values. Place making attractions of the overall development are still some years away. Savills' comment that "Lewisham Gateway could be argued to be in a worse location, being impacted by the heavy road traffic on the A20.." <sup>17</sup> supports this view.

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<sup>17</sup> Mr Vaughan's Proof of Evidence at para 8.3.5

84. By contrast, the appeal site is located in a quiet position immediately adjacent to the railway station, with road access from a mature, quiet and attractive residential neighbourhood. The site is the last developable plot in this area, benefitting from the existing place-making from earlier developments. The GLA therefore considers that the appeal site would achieve values in excess of those achieved at Portrait 2. It is also important to consider that sales at Portrait 2 were all agreed pre-completion of the building works, in other words they were forward sold. This substantially 'de-risks' a development and as a consequence prices below full market may be accepted to facilitate this.
85. The GLA also consider that the appellant and their agents have taken insufficient account of the premium paid for higher floors in residential development and the benefit of clear views. The towers in the Portrait Development are close together meaning that a significant number of flats will have restricted views even on the upper floors. The GLA have carried out an exercise to assess the GDV of the appeal scheme which adjusts the market evidence from the Portrait 2 scheme for location and then the additional height in the appeal scheme. In our view the values achieved in the appeal scheme would be approximately 10% more than those in Portrait 2 for the reasons already discussed. We have therefore tested a blended rate of £700 per square foot (psf), £712.50 psf and £725 psf and applied this to floors 4-22 in the tower, setting out how this would translate into unit prices. Values increase on a floor by floor basis from floors 10-33 of 1.4 by floor (linear) giving an overall average of £744 psf. The GLA has assumed the values in B2 would be a minimum of £689 psf - a slightly lower figure as this is a lower building than Portrait 2. The average values tested are £725, £738 and £750 psf.
86. Taking all these points in to account, it is clear that the assessed market residential sales values are below what is realistically achievable. This is the best residential site in Lewisham which will set a new ceiling for values - this is normal in regeneration scheme where higher quality schemes coming forward where place making has already occurred will attack values beyond those previously achieved.

#### *Build costs*

87. The GLA is also concerned that the build costs for this scheme have been over-estimated. A more detailed explanation, particularly regarding double counting of fees within the preliminaries and excessive elemental costs is provided<sup>18</sup>. The appellant's initial Cost Report notes that the overall efficiency of the proposed scheme is lower than they would expect to see and the team should explore options to increase efficiency to assist with the overall viability. The 'value engineering' usually done at this stage in the design of the development seems to be, at best, incomplete.

#### *Profit*

88. The appellant has adopted the approach of assuming 22.5% on cost which equates to 18.36% on GDV in Scenario 3. If this profit quantum was

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<sup>18</sup> Evidence of Mr S Brown of CDM Project Services

compared with the lower GDV in Scenario 1 with 20% affordable housing this would be a higher percentage - over 20% on the combined GDV. The GLA's view is that an appropriate assumption in respect of the profit on the market housing should be 17.5%. GL Hearn for the Council proposed 6% profit on the affordable housing and 15% on the commercial element, figures which are considered reasonable and are now standard assumptions in FVAs.

89. This scheme consists of two distinct elements – the tower on the Island Site and the lower rise development on the Car Park Site. A blended rate of 17.5% is considered appropriate. This rate is further supported by the potential to sell a large percentage of units off plan in this location.
90. The GLA's statement sets out the details of two cases<sup>19</sup> where sites sold with planning for sums significantly in excess of the residual land values accepted as part of the planning process. The conclusion of this is that profit levels agreed as part of the planning process are often higher than the developer is prepared to accept although it is acknowledged that sales value may also be underestimated or costs over-estimated.
91. There is a further example now in the Carpetright site where the scheme appraisal submitted by the applicant as part of the process of agreeing the S106 Agreement showed a profit of only 12.34% with a Benchmark Land Value (BLV) of £6.9m as a fixed input and 22.5% affordable housing. Sales values were £725 psf. This site then sold for £18.75m with that consent.

*Sense check*

92. This is lacking in the appellant's evidence. The recent Carpetright site land transaction shows that the residential development market in its various guises is active and buoyant in this location. The fact that the Portrait 2 units were forward sold contradicts comments about poor market activity. Internal GLA monitoring has shown that in 2018, the average level of affordable housing secured in schemes that were referred to the Mayor and were subsequently approved by the local authority was 34% (by unit). There are no justifiable reasons for this scheme not to provide substantially more affordable housing than has been proposed. The BLV is in the lower range for London and reflects about 3% of GDV and so should enable higher levels of affordable housing to be delivered.
93. The logical conclusion is that other aspects such as the overall design and building efficiency, overestimated build costs and an underestimate of values are all contributory. The GLA's appraisals are updated to incorporate the inputs now agreed between the parties in terms of the BLV, the Net Internal Area (NIA) of the market housing, the River Culvert costs and Community Infrastructure Level (CIL) charges provided by the Council. The overall conclusion in terms of the surplus generated is slightly lower than those produced in the appraisals in the GLA statement with the surplus generated by the minimum values appraisal showing a surplus of £11.9m. We have also looked at what the scheme could provide based on the tenure mix proposed by the applicant - with 30% affordable housing the scheme would still produce a surplus of £3.7m. Further adjustments would be required to

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<sup>19</sup> page 25

address changes in build costs to arrive at an accurate figure, but this shows that the maximum level of affordable housing is in fact in excess of this figure.

*The S106 Late Review mechanism*

94. National guidance in PPG supports the use of viability review mechanisms to ensure policy compliance and optimal public benefits through economic cycles. This states that review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.
95. PPG does not place any limitation on the use of late viability reviews according to the scale or time taken to deliver a development. Rather it explicitly refers to reassessing viability to seek compliance with relevant policies over the lifetime of the project. This can only be done through a late review.
96. The requirement for a late review in the Draft London Plan is a material consideration in determination of the application and is consistent with and achieves the objectives for review mechanisms set out in PPG. Now well advanced entering into the final stages of examination.
97. The High Court judgment<sup>20</sup> on the Affordable Housing & Viability SPG in respect of late reviews was clear that the draft London Plan was unaffected by the judgment and has 'no lesser weight than the SPG'. The judgment confirmed that 'The status of SPG matters little now that the draft London Plan has been published and consulted upon, containing H6' and 'The issue about the status and consistency of the SPG is not one of continuing importance.'
98. There is obviously uncertainty regarding development costs and values as set out in the different opinions expressed by viability advisors and cost consultants acting for the parties. Evidence presented by the Council's and GLA's viability experts and cost consultants indicates that the residential values adopted by the appellant's assessor have been understated and construction costs overstated. Residual valuation models are highly sensitive to small changes in value and cost inputs. A series of more pessimistic / downside assumptions has the potential to significantly understate the residual value of a proposed development. The late review provides the opportunity to assess the accuracy of the cost and value assumptions that underpin the level of proposed affordable housing through assessing actual costs and values that are incurred.
99. There is potential for significant changes in values and costs between the grant of planning permission and completion of the development. In the last four years average new build house prices in Lewisham have increased by 18% (Feb '15 to Feb '19). In the four preceding years values increased by 51% (Feb '11 to Feb '15) This indicates that significant increases in

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<sup>20</sup> McCarthy and Stone Retirement lifestyles Ltd & Others, R (on the application of) v Greater London Authority [2018] EWHC 1202 (Admin) (23 May 2018) and Declaration 4 June 2018

residential values could arise during the lifetime of the development which would fundamentally change the viability of the proposal.

100. The following factors should be noted:

- A low level of affordable housing proposed by the appellant despite significant identified housing need.
- The appellant agreed to provide early and late reviews on the second (2018) scheme.
- The proposed level of affordable housing has not been verified as being the maximum reasonable level of affordable housing by the Council's expert witness and the GLA's expert viability team as demonstrated by the evidence presented to the inquiry.
- The appellant's conclusion that the scheme generates a significant deficit (even without the provision of affordable housing) is not credible.
- The appellant's stated deficit position which they wish to allow for in the proposed early review mechanism has not been verified and is not supported by the evidence presented by the GLA and the Council.
- The argument that there should not be a late viability review because the appellant needs to make up some of the identified deficit during the course of delivery of the development and residential sale is not credible and is not sufficient justification for the absence of a late review in this case.

### ***The Blackheath and Ladywell Societies***

*The main points are:*

101. The Societies welcome development of this site to provide new homes, including affordable ones. The deal offers Lewisham 365 homes on an underused brownfield site, in return for several claimed public benefits. 43 social/affordable rent homes (11.8%) and 30 Discounted Market Sale homes (8.2%) is way below targets and is costing the appellant much less than would 20 genuinely affordable rentals. Like other Lewisham town centre schemes, this one claims to be unviable, which seems implausible for such a tall and straightforward scheme, but the developer is generously offering a modest amount of affordable housing to help gain approval. In some cases, later appraisal has shown that more affordable housing would have been possible'.

102. A very tall tower - which Council officers claim is "of exemplary appearance and quality for this prominent section of Lewisham town centre' and also that "it would make a noticeable impact upon the local skyline but is considered (a phrase often used when making subjective judgement) to be a positive addition, which marks the central transport district in the borough, identifying Lewisham railway station and DLR station." There are already approved marker towers at Gateway Block D2 at 97m and Carpetright Block B1 at 105m, both much better located to mark the transport interchange. Another even taller one the other side of the station is not needed, and is rejected by over 1,200 local people who signed an online petition against the tower and

will live within sight of a tower they consider too tall for this edge-of-town-centre residential location.

103. The second application overturned the height versus public benefit objection with the help of an enhanced 'Skydeck' offering, for which we think there is little demand, offers limited views to the north west and south west, and may well be unviable and unsustainable. This is costing Meyer Homes very little as its operation is to be managed and largely funded by the ground-floor cafe. We struggle to see how this will add up and thrive commercially, with little passing trade.
104. The £1.6m on offer for river naturalisation is only payable when matched by a developer of the nearby Tesco store (name and time as yet unknown), otherwise this money simply becomes available in 15 years for affordable homes.
105. While the £120k for Docklands Light railway (DLR) is for new, bigger capacity trains, the £470,000 for 'station capacity and improvements' will do nothing immediate for poor access and little for capacity.
106. There are other public benefits, but only what one would expect - landscaping, play area, etc. Overall, this is a poor deal for Lewisham residents, based on conservative assumptions, in order to minimize an already fairly low-risk for the scheme. This scheme, taken overall, does not give Lewisham enough public benefit. Despite being mainly residential, as currently proposed it does not make best use of this edge-of-town-centre site with poor access to transport hub, shops and market. It will also put pressure on already stretched local services and has the potential to cause long-term damage to the skyline, near and far, and to the streetscape of nearby low-rise mainly traditional residential homes.
107. The Societies think that the council is right to defend this appeal, but it should have done so on the full range of elements making up the offered deal, not just the very poor affordable housing element. All of these contribute to the scheme's viability or lack of it. It needs a major re-think, with suitable pointers from councillors, not just officers, to what they see as priorities. This would also give an opportunity for them to make a strategic policy statement about extra tall 'landmark' or 'marker' buildings before the town centre becomes overwhelmed by a rash of tightly-packed, excessively tall towers and loses all its remaining variety and character.

### **Mr & Mrs Walsh**

*The main points are:*

108. Mr & Mrs Walsh point out that their 200 year old house is adjacent to the site, 13 metres (m) from the boundary of the site of the proposed 34 storey tower block. The river is the only thing that separates the properties. They claim that their house and garden will be completely overlooked and overshadowed by the tower. They suggest that there will be a complete lack of privacy as 2 bedrooms and the kitchen/diner/family room & garden will be on view to several hundred people.
109. The public viewing platform will invite even more strangers to look in the garden and in bedroom windows. The tower is out of keeping with the old

traditional Victorian street (Silkmills path) of 8 houses and it will be looming behind the house and appear overbearing. It will provide a depressive outlook. The house will be surrounded by towers. The increase of towers is overdeveloping the area. The density of people will be increased dramatically, with several thousand people living within a very small area.

110. According to the plans submitted to the council, the Vertical Sky Component (VSC) will be dramatically reduced, to below recommended standards from the main family living /kitchen diner and from the rear bedroom. The tower will also block the last remaining sunlight from those same rooms. The rest has previously been blocked out by the Gateway development. A right to light has been acquired in these rooms as the house is approximately 200 years old. The Environmental Statement<sup>21</sup> shows the transient overshadowing that the existing Gateway building makes on our house on the 21st March at 9 am to 5pm. We have very little light left since that development was built. The remaining light will be taken if this new development goes ahead.
111. They object to a public square being proposed 13 m from their property. The noise and smells will negatively impact their ability to peacefully enjoy their home. The plans propose a café with outside seating and promote pop up markets and street entertainers. It is being marketed as a meeting point and a children's play area. Although nice additions, they will be approximately 15 m from their bedrooms and the ongoing noise and smells will negatively impact on peaceful enjoyment.
112. Air pollution is also a concern. There are 7 children that live on the street, 2 of which have severe medical problems. There are also several older people that have health problems. All of them will be negatively impacted by an increase in pollution from the construction of the tower, as well as the ongoing increase in pollution from the tower being in existence.
113. The Lewisham Gateway development caused cracks in the walls<sup>22</sup>. Complaints to the developer and the Council were not listened to. The proposed tower will be closer and taller. A surveyor's report states that another development such as the proposed tower could cause our house further damage. It is likely to be too noisy and disruptive to still live in the house during construction. Their house is the closest, oldest house to the tower block B1, yet there are no proposals to have a noise sensitive receptor, air quality monitor nor vibration monitoring.
114. Article 8 of the Human Rights Act states that a person has the substantive right to respect for their private and family life. They feel that if this tower is built so close to their home, this human right will be violated, as well as negatively impacting on amenities.

### **Written Representations**

115. 174 comments were made in response to the original application, the great majority objecting to the proposal on grounds of loss of light and privacy,

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<sup>21</sup> Appendix 574676 Page 1423

<sup>22</sup> Video evidence of this was shown to the Inquiry

increased pressure on local services, the height of block B1 and the cumulative impact with other schemes, increased noise, traffic, pollution and pressure on parking, the unaffordability of the proposed units for local people, excessive density, pressure on open space and construction impacts. Other objections relate to the level of affordable housing, the need for a more strategic improvement of the transport interchange, the potentially undeliverable nature of the river naturalisation and inadequate public benefit overall.

116. Those supporting the project draw attention to the high quality of design of the scheme and the need for Lewisham to have a high density of housing if it is to be a proper metropolitan centre.
117. Of those objecting at appeal stage, **Minaxi Desai** is a local resident of the Baquba building to the north west. Amongst other concerns repeated by others, she points out that the space between the proposed buildings leads to an oppressive outlook and reduced light levels.
118. **Christine Jolley** lives in Armoury Road and objects to the change in the skyline and the removal of trees. She suggests that more development will harm the wildlife and affect pollution in the river. Three new blocks is too much and far too tall. The properties that have been built up in this vicinity have had very small and insufficient green space for the amount of residents. She points out that human beings need green space which benefits mental health and even crime rates. The nearby Brookmill Park over the last few years has become extremely busy and some days overcrowded because of the lack of green space in the local area. One has to travel to Greenwich Park just to escape the view of concrete. The other properties that have been added in recent years are all locked communities and gyms and other services that only benefit the residents. Lewisham is rapidly turning into concrete.

### **Section 106 Agreement**

119. A signed and dated Section 106 Agreement has been provided which facilitates the provision of affordable housing, the Lewisham station access; public realm works in the form of the Silk Mills Path, open spaces, pedestrian and cycle routes, works to naturalise the River Ravensbourne and arrangements for public access to the 'Skydeck'. Amongst other things, it also facilitates contributions to the DLR for additional rolling stock, the setting up of a car club; and prevents the award of parking permits except in certain circumstances. It facilitates coordination with the Lewisham Construction Forum to minimise construction impacts within the town centre and provides the means of providing local employment, in accordance with local plan policy.
120. Except where indicated elsewhere in this decision with respect to a late review mechanism, I consider that the provisions of the Agreement are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 56 of the 2019 NPPF and Regulation 122 of the CIL Regulations. As such I give the S106 Agreement significant weight.

## Conditions

121. Where appropriate, the preparation of draft pre-commencement conditions (or conditions which need to be discharged before starting a particular section of work) by the Council and the appellant indicates the written agreement of the appellant. All conditions were the subject of detailed discussion at the Inquiry. The following conditions attached to this recommendation are considered necessary in order to protect the amenities of future occupiers and users of the proposed development and encompasses ecological benefits, and to ensure that the proposed development results in a sustainable and well-designed scheme:

Condition 3 – Demolition Management Plan

Condition 4 – Construction Management Plan

Condition 5 – Construction Methodology

Condition 6 – Piling Methodology

Condition 7 – Construction Noise and Vibration Monitoring

Condition 9 – Telecommunications interference

Condition 8 – Considerate Constructors Scheme

Condition 19 – Combined Heat and Power Networks

Condition 29 – Protection of Trees During Construction

Condition 46 – River Ravensbourne Buffer Zone

122. Where necessary, the wording of conditions has been adjusted in the interests of precision, reasonableness, necessity and enforceability. A requirement to use radio frequencies that do not interfere with the DLR is not a planning matter but a matter for the contractor's CDM procedures. However other conditions restricting use of vibro-compacting machinery and external lighting to avoid harm to the railway, and identifying the level of any impact post-construction on radio communications, are relevant to planning. Site contamination is likely and a suite of conditions seeks to control the necessary procedures.

123. Foul and surface water drainage works need to be installed in accordance with an approved strategy. A BREEAM certification process leading to a rating of at least 'very good' is necessary in the interests of sustainable construction and energy efficiency. Details of the external materials and details, external lighting, the living 'green' roofs, hard and soft landscaping, bird and bat boxes, soundproofing, electric vehicle charging points, cycle parking and car club parking spaces are required in the interests of the character of the area and for sustainable transport and amenity purposes. A delivery and servicing strategy is needed in the interests of efficient disposal of waste and commercial deliveries. In the interests of the character of the area and good design, the installation of mobile telecommunications equipment and satellite dishes is restricted. The means by which management and maintenance of the public areas is achieved is subject to a condition. Commercial uses in the

non-residential parts of the development are defined in order to avoid activities that would conflict with the aims of policy.

124. Finally, a condition ensures that occupation does not take place until the Travel Plan is in place, in the interests of sustainable means of travel.

### **Inspectors Conclusions**

*In this section, numbers in brackets [] refer to the main paragraphs in this report of relevance to my conclusions*

125. Following from the Mayor's Direction, the only reason for refusal concerns affordable housing and viability issues relating to the application scheme on the basis of LonP policy 3.12, NLonP policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham CS policy 1 and DMLP policy 7. The main considerations therefore that will be of interest to the Secretary of State are whether or not the proposed development would make adequate provision for affordable housing; and whether a late stage review mechanism is desirable or necessary.

#### *The provision of affordable housing*

126. There is no dispute between the GLA, the Council and the appellant that the approach suggested in PPG and its attendant methodology has been appropriately employed. [31]
127. The essential differences on viability between the parties lie in two areas: a variation of around £11m in construction costs (including fees and profit); and private residential values.

#### *Construction costs*

128. The Statement of Matters in Dispute on Viability (SMDV)<sup>23</sup> indicates a build cost of between £107,179,737 (appellant) and £108,251,534 (Council), a difference of £1,071,797 or 1%, this being an estimate of build cost inflation since August 2018. The parties agreed at the Inquiry that the methodology used by the respective firms of quantity surveyors met the appropriate standards. I consider that it is reasonable to assume a level of build cost inflation at this level, as do CDM Project Services acting for the GLA.
129. However CDM for the GLA consider build costs to be overstated because of the over-estimation in their view of a range of elements including amongst other things scaffold, substructure, frame, external envelope in general, partitions, doors, internal fittings and external works, concluding that build costs amount to £100,406,730 at the third quarter of 2018. In common with the other parties, an allowance for 1% for inflation brings this up to £101,410,790 in 2019.
130. Stace, the consultants that produced the original costs estimate for the appellants, provided a detailed draft rebuttal<sup>24</sup> dated 8 May 2019 to this and the evidence provided by the Council. The rebuttal points out that unlike the appellants, the GLA had not benchmarked their alternative elemental costs or

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<sup>23</sup> Doc 2

<sup>24</sup> James Brown rebuttal Appendix 4

provided any detailed explanation for their view that costs were overstated. At the Inquiry, the GLA costs witness was unable to provide any further information to back up the GLA position. Moreover he stated that he had no reason to question the independent Gardiner & Theobald review of 11 April 2019<sup>25</sup> which indicated a build cost of £109,800,000 excluding all fees. The costs witness for the Council acknowledged that build costs were properly derived and benchmarked, if not actually underestimated because the Building Cost Information Service (BCIS)<sup>26</sup> uses an average psf figure for flats of up to only 6 storeys, not the height proposed. Also relevant is the potential for increased costs following the conclusions of the ongoing Grenfell Tower Inquiry, included in Gardiner and Theobald's assessment. [40,76,87]

131. The independent costs estimates produced by 3 firms of costs consultants, Stace, G L Hearn (later Carter Jonas, assisted by Johnson Associates for the Council) and the review by Gardiner and Theobald, as well as Mr Powling at the Inquiry, are within two percentage points of each other. No evidence has been produced in any later analyses to show that those build costs, or any element of them considered for viability purposes, are unreasonable.

#### *Fees*

132. The professional fees element of costs remained a point of difference at the opening of the Inquiry. Such fees need to be included in costs estimates but procurement routes vary between projects, some pre-novation fees being incurred at early stages for specialist design work for site preparation, river works and substructure, for instance. These would be accounted for in the main contractor's preliminaries rather than as 'professional fees'. In light of criticisms by Carter Jonas on behalf of the Council, and the GLA, that there was a potential for £5.4m of fees to have been 'double counted' in this way, fees were specifically considered by the appellant's viability witness<sup>27</sup> for each stage of the work, based on actual costs incurred. This did identify an overstatement of fees of around £954,737, which was reflected in subsequent up to date appraisals for the Inquiry.
133. After a short adjournment to allow further common ground to be agreed on fees, the Council's costs witness did not challenge this detailed analysis and offered no further evidence. Importantly, Carter Jonas had advised the Council and the GLA in an email of February 2019 that preliminaries typically towards the upper level of the range to 20% would not be unreasonable<sup>28</sup> and would be comparable with similar projects elsewhere<sup>29</sup>. There would be significant preliminary costs associated with a 34 storey tower on a constrained site adjacent to a river and the DLR. At the Inquiry, no evidence was forthcoming from the GLA's costs witness CDM to support their contention that preliminaries are set too high or that the level of professional fees of around 10% would be excessive for a project of this nature. The Council's costs witness accepted that if a reasonable preliminaries figure of 17% or so was adopted then the whole argument in support of the £5.5m fees deduction from the overall level of costs fell away. [46-49,76,87]

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<sup>25</sup> James Brown Proof of Evidence Appendix 4 (undertaken from scratch)

<sup>26</sup> Provided by the RICS and recommended in PPG for viability assessment

<sup>27</sup> Mr J Brown Appendix 3

<sup>28</sup> Copied in J Brown Appendix 4 and in Mr Jones's Appendix 9

<sup>29</sup> See J Brown Rebuttal Appendix 4 (Stace) Appendix B

*Profit*

134. PPG advises that 'for the purpose of plan making, an assumption of 15-20% of GDV may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development'. The appellant is aiming for a 'blended' profit margin of 18.36%, which the GLA allege represents an excessive level of profit of 20% on the market units; a figure of 17.5% is considered acceptable, however.
135. PPG also states that 'Potential risk is accounted for in the assumed return for developers at the plan-making stage. It is the role of developers, not plan makers or decision makers, to mitigate these risks.' There would be additional risks in constructing a 34 storey tower because it involves a longer construction period before occupation. Whilst off-plan sales are a possibility, that might involve lower sales values especially if the market is uncertain. The appellant has provided a range of examples of similar developments<sup>30</sup> with comparable profit levels which were not questioned by the GLA at the time. In particular, the S106 for the nearby Carpetright site recognises a reasonable profit requirement of over 19% on GDV. That evidence points to a a region of 20-25% on cost or around 18.5% on GDV for residential mixed use schemes. This indicates that the proposed profit levels are reasonable for this scheme. [88-91]
136. To conclude on costs, no evidence was offered by the Council or the GLA to counter the appellant's build costs analysis or the level of fees or profit. The GLA do not point out any areas where 'value engineering' might increase the efficiency of the scheme. Despite being given a positive opportunity, the GLA declined to ask any questions of the appellant's witnesses on costs. Accordingly I am unable to attribute any significant weight to the contention that construction costs including fees are overstated to the extent of £11m. [28-30,88-91]

*Private residential values*

137. The PPG requires that viability information is proportionate, simple, and transparent. The Council and the GLA suggest that residential values greatly exceed the average of £657.43 psf, the figure most recently adopted by the appellant, and should be in the order of £754 to £759 psf. There is no disagreement that the Gross Development Value (GDV) which indicates headroom within which affordable housing can be accommodated, is sensitive to even small movements in the £psf figure. Much of the evidence concerned the difference in value between flats at different floor levels, the compounding of that with differences in levels of quality and floor area; and the appeal of the location of the proposed scheme relative to comparative developments nearby, but on the other side of the railway.

A large part of the Council's uplift in the average £psf figure derives from the uplift in values with height, in part supported by evidence from the recently sold Portrait 1 scheme. There are no hard and fast rules to determine such

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<sup>30</sup> J Brown proof of evidence, section 10. See also section 16.5

values, as each scheme is different. However the actual sales at Portrait 1 and 2 nearby provide a helpful indicator. The Council's evidence on values<sup>31</sup> was reinforced by a rebuttal proof of evidence which refers to the tendency of values to increase with height at Portrait 1. However this does not clearly demonstrate how an average value of £779 psf could be achievable. The way that percentage increases per floor were worked out was acknowledged at the Inquiry to be incorrect and this reduces the weight that can be attached to the calculations in the rebuttal. For comparison purposes, the percentage increase per floor actually achieved on actual and recent Portrait 2 sales in psf terms ranges from compound 0.63% to 0.81%<sup>32</sup>. In Portrait 1 (concluded in 2015), compound growth rates vary from 0.354% to 0.78% per floor<sup>33</sup>. These figures need to be seen in the context of the Council's suggested figures of 1.33-1.69%<sup>34</sup>. There is no reason to conclude that the increase in values by height would be reflected very differently in the appeal scheme. In failing to properly explain this, no other conclusion can be drawn but that the methodology falls short of the transparency required. In drawing the Secretary of State's attention to this matter, I refer to section 4.2 of Mr J Brown's rebuttal, which was not queried at the Inquiry.

138. The result of applying such percentage increases on floor by floor values, combined with a starting point at the lower floors which was in itself challenged, is that figures ascend rapidly up the tower of the proposed scheme. The BPS pricing schedule<sup>35</sup> prepared for the Council, indicates values for the appeal scheme in 2017 and 2018. This demonstrates other significant inconsistencies in approach, characterised by, for instance, values for the 4<sup>th</sup> floor 1B apartments in Block 1, which are significantly higher at £423,432 than for actual sales for similar accommodation in Portrait 2 (£395,000) despite here being on the 19<sup>th</sup> floor<sup>36</sup>. Whilst there is a difference in floor area, no plausible explanation was provided for the discrepancy. Also, Mr Jones' values continue to increase substantially at levels above 14<sup>th</sup> floor, at which point the additional advantages of natural light, achieving a view and being above the traffic normally contribute less per floor, as a proportion of value. [85-6,138-9]

139. Moreover, the ceiling of £500,000 placed on assistance from the 'Help to Buy' Government scheme is a significant factor affecting value especially in Lewisham which is not a 'premium' area for property purchase. The Council recognises the importance of this scheme in achieving sales. However the Council's pricing schedule indicates that between 27% and 39% of units would fail to qualify for Help to Buy. This would place a brake on values, not least because the uncontested evidence of Savills is that very few other apartments have sold at this price point in Lewisham and that the market is currently static, if not falling. The evidence indicates that higher priced units in nearby schemes are selling slowly or are being reduced in price, even where there are additional benefits on site such as a residents roof terrace and a leisure centre.

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<sup>31</sup> Mr Jones' proof and appendices

<sup>32</sup> Doc 7

<sup>33</sup> Mr J Brown rebuttal Appendix 1 and section 4.62(b)

<sup>34</sup> Mr Jones rebuttal p21

<sup>35</sup> Prepared on behalf of the Council by Mr Jones at Appendix 12 of Mr Jones proof of evidence

<sup>36</sup> Mr J Browns's rebuttal 4.1.4 and 4.4.4

140. Turning to the suggested values put forward by the GLA (in a low, mid and high range), based on Portrait 2, I saw at the site visit that although one side of Portrait 2 is heavily affected by a building site, others are not. It is closer to the busiest part of the road network than the appeal scheme, but not directly adjacent. It benefits from the same proximity to the station and river. It is not obvious that overall values would be seriously negatively affected by locational factors to the extent claimed. [58-60,83-4]
141. The GLA indicate that an approximate 10% increase in psf values would be appropriate for this reason and the fact that some views would be more obscured. No explanation was provided as to how the 10% premium was arrived at and it can only attract limited weight. At the Inquiry, the GLA accepted that the 'low' range of values would be most appropriate, indicating a blended rate of £700 psf. However the figures in the GLA's schedule of values<sup>37</sup> reflect an average 15% rise on floors 4-22. The origin of the 15% increase could not be explained by the GLA except as a matter of experience and judgement: it also attracts only limited weight. In any event it leads to values well in excess (well over 10% more) of those at Portrait 2. [61-62,85]
142. The GLA had the benefit of some sales and marketing information from G L Hearn at Portrait 2 when preparing their documentation for the appeal, but agreed that recent achieved sales provide the best comparable evidence. Since then, the actual achieved sales figures have become available from the Land Registry and are set out on a comparative schedule along with the figures provided by the Council<sup>38</sup>. The GLA helpfully updated their appraisals on day 3<sup>39</sup>. The actual value at Portrait 2, £635.68 psf across all unit types, is lower than the appellant had assumed at £641 psf. On the minimum range basis, the GLA suggests that this would lead to a surplus of £10,768,940 (£11,906,992 including profit) (assuming a construction cost of £108,250,790). [93]
143. However, even on this lower basis, the GLA's revised schedule<sup>40</sup> indicates that the majority of the apartments in the tower Block 1 would be valued at well above £500,000, beyond the reach of anyone hoping to be assisted by Help to Buy. The figures show that an additional premium for height has been added over and above the premium already embedded in the actual sales figures at Portrait 2. As an example, the GLA suggest that a flat on the 29<sup>th</sup> floor in B1 would achieve £73500 more than an identical flat on 19<sup>th</sup> floor. The difference is in the view, but there would be little difference in views at these levels. This was not adequately explained and amounts to 'double counting'.
144. To summarise, the comparative schedule indicates that the appellants have already placed a premium on the value of apartments in the appeal scheme compared with Portrait 2 that has not been shown to be inappropriate. The majority of all the flats in the appellant's valuation would fall within the scope of Help to Buy. The GLA's suggested values would be unlikely to be achievable in the market. The GLA's assessment includes

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<sup>37</sup> Appendix 2 to statement of Charles Solomon

<sup>38</sup> Doc 17

<sup>39</sup> Doc 16

differences between values on floors at higher levels with similar views that are not explained. The Council's suggested average values at £759-779 psf (a maximum of £1000 psf for a 1 bedroom flat and £875 for 2 bedroom flats) are not benchmarked and are out of proportion to anything else in Lewisham. Only 1 unit in Portrait 2 actually achieved over £700 psf in June 2018 at £395,000 (£723 psf) and this a 1 bed flat on 19<sup>th</sup> floor.

145. The £725 psf figure claimed by the GLA for the Carpetright site derives from a GL Hearn report of January 2018 based on buoyant market conditions in 2017. It compares with average values of £669 psf provided by the same company for the appeal scheme in November 2018, for what would be much larger units. Moreover, the Carpetright development is now the subject of an application for student accommodation which casts doubt on the prospects for private residential on this site. [91]
146. The GLA declined to cross-examine the appellants' witnesses on costs, viability or marketing. The GLA accepted that the actual Portrait 2 figures meant that their schedule of units and values needed to be reissued. That document, issued the next day, indicated that the suggested surplus projected at the start of the Inquiry had been very substantially reduced. Whilst the GLA maintained its overall position, substantial weight must be attached to the failure to question the appellant's analysis and assumptions, given that the appeal would not have been necessary had the GLA not issued a direction to Lewisham to refuse planning permission. The GLA accepted at the Inquiry that if the £11m alleged surplus on fees and construction costs did not exist, then the claimed remaining £900,000 would not have led to a direction to refuse from the Mayor's office. The arguments against excessive construction costs and fees were not seriously contested at the Inquiry. [60-1,85-6]
147. To conclude on viability, the evidence on construction costs alone is that a relatively small figure remains between the parties that is insignificant in the overall picture of development viability. There is insufficient evidence to justify the residential values put forward by the Council and the GLA, based on actual sales on a comparative scheme. No evidence was provided to show that the 4 year trend identified by the GLA in Lewisham would continue or that it took account of the particular considerations that apply to the appeal site. This indicates that the 20.2% affordable housing proposed by the appellant is the maximum, if not somewhat more, than what can be reasonably provided. The proposed development would not conflict with the requirements of LonP policy 3.12, the Mayor's Affordable Housing and Viability SPG, Lewisham CS policy 1 and DMLP policy DM7. [56,99,101]

#### *Late stage review*

148. Policy 3.12 of the LonP advises that the maximum reasonable amount of affordable housing should be sought when negotiating on schemes having regard to factors including the specific circumstances of individual sites and development viability. There is no development plan requirement for a late stage review in Lewisham. The NLonP seeks to make late stage reviews a requirement of the development plan, but objections remain to this aim and it is not yet adopted policy. The Mayor's Affordable Housing and Viability SPG

seeks advanced stage reviews, but this has since been clarified<sup>41</sup> as referring to developments which, having failed to meet development plan targets for affordable housing, then take 'many years' to implement or build out. The requirement that ...'early and late viability reviews will be applied to all schemes that do not meet the threshold in order to ensure that affordable housing contributions are increased if viability improves over time' has been declared inconsistent with the LonP.

149. It is understandable that the GLA would seek a late stage review in the circumstances where varied amounts of affordable housing have been proposed by the appellant at different times<sup>42</sup>. However the circumstances in which developers find themselves when going through the approval process may lead to different offers of affordable housing depending on a combination of factors including market trends, the need to obtain a planning permission and to avoid an appeal. It is probable that the inconsistency with the LonP will be resolved with adoption of the NLonP, but at the present time, there is no pressing case for a late stage review for a scheme such as this, where development is proposed to be completed in a single phase. The lack of a late stage review would not conflict with the requirements of LonP policy 3.12, the Mayor's Affordable Housing and Viability SPG, Lewisham CS policy 1 and DMLP policy DM7. This element of the S106 Agreement is unnecessary to make the development acceptable in planning terms and does not meet the relevant criteria set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. [73,94-100]

### **Other matters**

#### *Character and appearance*

150. The development would be seen as part of the planned renewal of the part of the town centre of Lewisham around the station and the Ravensbourne river where there is an existing group of tall buildings, with more proposed<sup>43</sup>. The additional height of the appeal scheme over nearby existing and proposed buildings would be a landmark and would add a sense of variety and proportion to the group as a whole, illustrated by the visualisations<sup>44</sup>. That objective is encouraged by Policy LTC19 3(c & d). In considering this matter the visual impact of a proposed new 30 storey building on the 'Carpetright' site, a 24 storey tower on the 'Lewisham Retail Park' site and the completion of the Lewisham Gateway development, amongst others, will further intensify the existing character of this part of the town centre which is defined by intensive contemporary development.

151. The existing site is used only for surface car parking and is neglected. The proposal would bring forward important pedestrian links to the station and along the Silk Mills Path, as well as provide a community resource alongside the river in the form of a public landscaped area. The scheme would ultimately facilitate access to the Ravensbourne itself, with the co-operation

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<sup>41</sup> Having regard to McCarthy and Stone Retirement lifestyles Ltd & Ors, R (on the application of) v Greater London Authority [2018] EWHC 1202 (Admin) (23 May 2018) and Declaration 4 June 2018

<sup>42</sup> See chronology, Mr J Brown's proof section 4.0

<sup>43</sup> See Fig 7.27 of Vol 1 of Mr Everitt's proof

<sup>44</sup> In Dr Miele's evidence

of the landowner on the opposite bank<sup>45</sup>. These would represent important improvements to the character and appearance of the area. Whilst the tower would be adjacent to the river, the surrounding enhancements would provide an appropriate setting and a new opportunity to appreciate the Ravensbourne as a townscape feature. Ecological enhancements would reinforce its purpose and visual attractiveness, helping to change perception of the river as a somewhat hidden culvert.

152. The tower would be in close juxtaposition with small scale housing to the south east along Silk Mills Path. These dwellings form a close-knit group with their own identifiable character on the north side of the railway. The tower would loom over them and appear out of keeping in views from the south east<sup>46</sup>. The intimate scale and grain of existing Victorian residential development here would be detrimentally affected to that extent. However the impact would be less than that already experienced because of the Lewisham Gateway towers directly to the south which occupy a much wider angle of view. Together with Lewisham Gateway, the busy railway station and embankment already gives this area a strong feeling of being on an urban edge. In conclusion on this matter, the scale and urban grain of the older residential fabric at the southern end of the Conington Road Policy Area designated in LTC5 is already affected by nearby high-rise development. The proposed tower would be relatively slim in form and would add to the detrimental effect on the character of the area in certain views. On balance, however, the public benefits in the form of improvements to the Silk Mills Path, the access to the station and the new public space outweigh any additional harm.

153. Further afield, the development would add height to the existing group of tall buildings in Lewisham and would make the town centre more visible from locations including Blackheath, Blythe Hill Fields, Hilly Fields and Mountsfield Park<sup>47</sup>. However there would be no harm caused to any view from these places because of distance, the general sense of openness in all directions and/or intervening vegetation. The enhanced cluster of taller buildings in Lewisham would form only a small proportion of the overall visual experience. Moreover, other clusters of tall buildings are already part of the view from high points in south London, such as Kidbrooke, Canary Wharf and the City of London.[102-3,109,115,118]

#### *Heritage matters*

154. The appeal scheme would complement the existing group of tall buildings in Lewisham, which is the subject of ongoing development. The overall height of the group would increase but there would be no noticeable effect on the views from or the experience of the Maritime Greenwich World Heritage Site (WHS), which at its closest follows the A2 across Blackheath about 1 kilometre away from the site. The heritage significance of the WHS stems mainly from the area visible from the General Wolfe statue adjacent to the Thames including the Queen's House, the Royal Naval College and the Old Royal Observatory, set in the Greenwich Registered Historic Park and Garden

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<sup>45</sup> Covered in the S106 Agreement

<sup>46</sup> See Doc 14 and 15 (showing only part of the tower), Viewpoint 24 and the evidence of Mr & Mrs Walsh

<sup>47</sup> See ZTV and viewpoints in ES Vol III

(RPG). The development would only be visible from the southern edge of the RPG on the A2 and the overall impact would be insignificant.

155. The tower would be visible from parts of nine conservation areas, often in views in which other tall buildings are already seen. In the main, their heritage significance stems mainly from the historical and architectural interest of residential streets. Usually, the built up centre of Lewisham forms no more than an occasional backdrop. Occasionally, more direct and closer views occur, such as at St Johns Conservation Area looking along the railway line. In all cases, views of the appeal buildings would be fleeting or seen in the context of the much larger group of tall buildings. Where views contribute to heritage significance such as on Blackheath or from Hilly Fields in Brockley, the tower would add interest and form to an already established cluster, aided by the proposed banded façade treatment. The effect would be neutral or slightly positive. Blocks 2 and 3 would assist in assimilating the tower into the whole town centre area, and would link with the massing of existing development along the DLR.
156. Groups of listed buildings lie between about 300 metres and over 1 kilometre from the site, in Blackheath south and north and around St Johns. In all cases, for reasons of distance, line of sight, orientation or association with existing tall buildings, the appeal development would have an insignificant effect on their heritage significance. Where streets do provide vistas towards the site there would be a greater magnitude of effect but the tower would serve to mark the town centre and would not prevent appreciation of the architectural qualities of the conservation area in which they lie.
157. Eagle House is the Victorian former office of H & V Nicholl's Anchor Brewery. It is an undesignated heritage asset and the closest asset to the site, situated on Lewisham Road behind the Tesco store and surrounded by the Tesco car park. The setting includes the unremarkable Tesco store and the towers of Lewisham Gateway and other tall buildings. The effect of the appeal development on its significance would be negligible. I conclude on heritage matters that the effect of the appeal scheme would be insignificant.[68,106]

*Living conditions*

158. Rear windows of 2 dwellings in Sharsted Villas at the end of Silk Mills Path would face the south eastern elevation of the tower across a short rear garden, the river and the proposed public area, at a distance of around 46 metres. The height and bulk of the tower is likely to dominate the view out from bedrooms and kitchen/dining areas and their private rear gardens<sup>48</sup>. These occupiers are already affected by the proximity of the lower Lewisham Gateway scheme at a similar distance to the south. However, whilst the number of dwellings in the tower and their height above the ground would represent a significant change in the occupants' outlook, it would not be unusual compared with other town centre situations where new development occurs, including elsewhere in Lewisham. There would remain unobstructed

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<sup>48</sup> Most easily appreciated in photographs of the model at p130 of Vol 1 of Mr Everitt's proof and by reference to Doc 14

views out across Silk Mills Path to the south east from all the accommodation at the front of the house including the main living room. In considering this matter, the less frequent use of bedrooms during the day is a factor, as is existing vegetation and fencing along the river behind Sharsted Villas and new tree planting on the application site, which would provide screening. The overall improvement in the general environment at the rear would be a distinct benefit.[109]

159. The distance between living accommodation in these dwellings and apartments in the tower would be well beyond that normally considered to compromise privacy. Any perception of overlooking due to height and the number of new apartments in B1 would be mitigated in time by new planting<sup>49</sup>. It is recognised that the replacement of a car park by a public space and a café gives rise to concerns that there could be issues with noise and disturbance, but suitable conditions controlling the opening hours of the proposed ground floor café would be sufficient to ensure acceptable living conditions in this respect. [67,108-9,111-3]
160. The studies carried out to establish the effect on daylight and sunlight indicate that the occupants of 2 Sharsted Villas in Silk Mills Path would experience a maximum diminution of daylight in the rear ground floor rooms of up to about one third of existing levels, in the cumulative development scenario. The BRE guidelines<sup>50</sup> indicate that target values may be altered in areas such as where modern high-rise buildings create a situation where a high degree of obstruction is unavoidable. Even so, levels of daylight at the most affected primary rear windows of 2 Sharsted Villas would retain a Vertical Sky Component not far short of the BRE suggested minimum of 27%<sup>51</sup> and slightly less if all other anticipated developments are constructed. The front of the house would be unaffected. The overall effect on 2 Sharsted Villas would be adverse and noticeable but would be acceptable in a town centre environment<sup>52</sup>. [110]
161. With regard to sunlight levels at this property, none of the affected windows lie with 90 degrees of due south. There would be a noticeable effect on evening sunlight on occasions in high summer but that would not lead to unacceptable living conditions. [110]
162. Other objections have been raised by the occupants of Baquba House, Silkworks and Hester House, west of blocks B2 and B3. The existing buildings here currently benefit from an unusually open outlook across the car park but have been built close to the site boundary. Having regard to the recommendations of the BRE using the 'mirroring' assessment technique, and the fact that blocks B2 and B3 would be set back further than strictly required if they did 'mirror' neighbouring development, there would no unacceptable effects on daylight or sunlight. Concerns have also been expressed in these blocks by occupiers on matters of privacy and overlooking, but the

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<sup>49</sup> See drawing BMD.200.DR.P300 rev A and BMD.200.DR.P202 rev A section G-GG

<sup>50</sup> Building Research Establishment Guidance Note 209: Site Layout Planning for Daylight and Sunlight-A Guide to Good Practice (2011)

<sup>51</sup> Daylight studies do not take into account the extension to this property containing a bedroom and an additional window. I have taken this into account

<sup>52</sup> ES Vol 1 (CD A7) Chapter 16 and Appendix 16 and Appendix 3 to Mr Butterworth's evidence

combination of angled windows, privacy screens and not placing living areas opposite each other would avoid an unacceptable impact.

163. The occupiers of 2 Sharsted Villas draw attention to the noise and vibration experienced during the Lewisham Gateway development, leading to cracks and disturbance. Conditions are suggested to require piling method statements and controlling hours of operation, with an automatic monitoring device on their property to alert the Council in the event of a breach. This would provide a more effective means of monitoring. [113]

164. Turning to Article 8 of the Human Rights Act 1998, referred to by Mr & Mrs Walsh, the important consideration is the public interest test, in effect the balancing exercise required when considering if interference with human rights under Article 8 and/or Article 1 of the First Protocol is lawful and constitutes a breach of the Convention. In this case, the effect on Mr & Mrs Walsh's daylighting, outlook and living conditions, whilst noticeable, would not give rise to an unacceptable effect and there would be significant benefits to the area surrounding their property. I conclude that it has not been shown that the development would be a disproportionate interference with the Human Rights of those affected. [114]

## **Conclusion**

165. The existing car park site does not contribute positively to the quality of the environment and is recognised in development plan policy as an appropriate location for redevelopment, being under-utilised brownfield land adjacent to a transport interchange and close to the town centre. It is identified as being suitable for tall buildings. The proposed development has been designed as part of a wider masterplan for the area. The 365 homes it would provide would contribute to meeting the demand for market and affordable housing in the Borough. The amount of affordable housing proposed at 20.2% is the maximum reasonable amount and no evidence whatsoever has been provided to show that there is any more surplus in the viability of the scheme that would facilitate more. Very considerable weight attaches to this element of the scheme. An early stage review will be carried out but the single phase nature of the development, driven by the 34 storey tower, indicates that a late stage review is not required.

166. The scheme would be constructed of high quality materials and would contribute positively to the character and appearance of the emerging Lewisham Town centre. There would be no significant harm caused to any heritage asset. There would be no unacceptable impacts on the living conditions of any nearby occupiers. The new access to the station is an important benefit of the scheme and the S106 Agreement provides the framework for naturalisation of the river as and when the adjacent landowner (Tesco) is willing. The improvement in the accessibility of the Silk Mills Path is a valuable feature of the scheme, as is the creation of landscaped public open space adjacent to the river. The tower would be a conspicuous tall element contrasting markedly with adjacent small scale development in some views, but the public benefits would firmly outweigh any harm caused.

167. I conclude that the proposed development complies with the development plan.

**Formal Recommendation**

168. I recommend that the appeal be allowed, and planning permission granted subject to the conditions in Annex 2.

*Paul Jackson*

INSPECTOR

## Annex 1

### APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY (and the GLA for days 1 and 2):

Saira Kabir Sheikh	Queen's Counsel, instructed by the Legal Services Division of the London Borough of Lewisham
She called	
Andrew Jones BSc MRICS	BPS Chartered Surveyors
Neil Powling Dip BE FRICS DipProjMan(RICS)	Chartered Surveyor

FOR THE APPELLANT:

Russell Harris	Queen's Counsel, instructed by Stuart Andrews of Eversheds LLP
He called	
James Everitt BA Dip Arch RIBA	EPR Architects
Dr Chris Miele IHBC MRTPI	Montagu Evans
James Brown BSc MRICS	James R Brown & Company Ltd
Nick Vaughan	Director, Savills
Steven Butterworth MRTPI BPS PGD	Lichfields

FOR THE GREATER LONDON AUTHORITY:

Stephen Brown MRICS	CDM Project Services
Jane Seymour	Chartered Surveyor, Development Viability Expert and advisor to the GLA

INTERESTED PERSONS:

Nicholas Patton	Local resident, also representing the Blackheath Society and the Ladywell Society
Cllr Kevin Bonavia	Lewisham Council member for Blackheath
Paul and Katy Walsh	Local residents

### DOCUMENTS

- 1 Inquiry Notice and list of addresses
- 2 Statement of matters in dispute on viability dated 13 May 2019
- 3 Appeal ref APP/U5930/W/18/3204281 supplied by the appellant (paras 35 & 41)

- 4 Development appraisal for Carpetright site, supplied by the Council (see doc 10)
- 5 Title document for Carpetright site, provided by the Council
- 6 Statement from Nick Patton
- 7 Schedule of actual completion prices and £/sq ft for Portrait 2 scheme with percentage increase per floor indicated, supplied by the appellant
- 8 RICS New Rules of Measurement extract listing main contractors preliminaries and project/design team fees, supplied by the appellant
- 9 RICS New Rules of Measurement extract with highlighted sections indicating scope of fees, supplied by the Council
- 10 Email from James Brown of 20 March 2019 to Tide Construction enclosing development appraisals of Carpetright at £645 /sq ft and 725 /sq ft (see doc 4)
- 11 Statement from Jane Seymour for the GLA
- 12 Visualisation of existing culverted river as proposed and naturalised scheme envisaged in Masterplan, supplied by the appellant
- 13 Schedule of nearby town centre schemes indicating affordable housing and tenure mix, requested by Inspector
- 14 Existing and proposed view along Silk Mills Path, requested by Inspector
- 15 Plan and visualisations of relationship between proposed tower block B1 and Sharsted Villas, supplied by the appellant
- 16 Updated Appendix 2 taking into account updated values from Land Registry in Portrait 2 scheme, supplied by the GLA
- 17 Comparison between actual Portrait 2 values and appellants, GLA and Council witness value assessments of appeal scheme, supplied by the appellant
- 18 Copy of Lewisham Planning Obligations: Supplementary Planning Documents adopted 2015, provided by the appellant
- 19 Plan of noise and vibration monitoring locations with street and building outlines, provided by the appellant
- 20 Bundle of written evidence from Paul and Katy Walsh
- 21 London Borough of Lewisham Council Statement

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## Annex 2

### Schedule of suggested conditions

#### 1. Full Planning Permission Time Limit

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

#### 2. Develop in Accordance with Approved Drawings and Documents

The development shall be carried out in accordance with the plans and drawings detailed below:

10472-EPR-ZA-ZZ-TP-A-0100 rev 02; 10472-EPR-ZA-ZZ-TP-A-0001 rev 02;  
10472-EPR-ZAA-AA-TP-A-002 rev 02; 10472-EPR-ZA-BB-TP-A-003 rev 02;  
10472-EPR-ZA-CC-TP-A-004 rev 02; 10472-EPR-ZA-ZZ-TP-A-0101 rev 04;  
10472-EPR-ZA-B1-TP-A-0102 rev 02; 10472-EPR-ZA-GF-TP-A-0103 rev 04;  
10472-EPR-ZA-01-TP-A-0104 rev 04; 10472-EPR-ZA-T1-TP-A-0105 rev 04;  
10472-EPR-ZA-RF-TP-A-0106 rev 05; 10472-EPR-ZA-AA-TP-A-0500 rev 03;  
10472-EPR-ZA-BB-TP-A-0501 rev 04; 10472-EPR-ZA-CC-TP-AQ0502 rev 04;  
10472-EPR-ZA-DD-TP-A-0503 rev 03; 10472-EPR-ZA-EE-TP-A-0504 rev 02;  
10472-EPR-ZA-FF-TP-A-0505 rev 04; 10472-EPR-01-GF-TP-A-0200 rev 04;  
10472-EPR-01-01-TP-A-0201 rev 04; 10472-EPR-01-T1-TP-A-0202 rev 05;  
10472-EPR-01-GF-TP-A-0203 rev 05; 10472-EPR-01-01-TP-A-0204 rev 04;  
10472-EPR-01-T1-TP-A-0205 rev 04; 10472-EPR-01-15-TP-A-0206 rev 04;  
10472-EPR-01-30-TP-A-0207 rev 04; 10472-EPR-01-T2-TP-A-0208 rev 04;  
10472-EPR-01-33-TP-A-0209 rev 04; 10472-EPR-01-RF-TP-A-0210 rev 05;  
10472-EPR-01-RF-TP-A-0211 rev 05; 10472-EPR-01-XX-TP-A-0212 rev 01;  
10472-EPR-01-XX-TP-A-0213 rev 01; 10472-EPR-01-NO-TP-A-0400 rev 04;  
10472-EPR-01-EA-TP-A-0401 rev 04; 10472-EPR-01-WE-TP-A-0402 rev 04;  
10472-EPR-01-SO-TP-A-0403 rev 04; 10472-EPR-01-XX-TP-A-0404 rev 03;  
10472-EPR-01-XX-TP-A-0405 rev 03; 10472-EPR-01-XX-TP-A-0406 rev 03;  
10472-EPR-01-XX-TP-A-0407 rev 03; 10472-EPR-01-XX-TP-A-0408 rev 03;  
10472-EPR-01-XX-TP-A-0409 rev 03; 10472-EPR-01-XX-TP-A-0410 rev 03;  
10472-EPR-01-XX-TP-A-0411 rev 03; 10472-EPR-01-XX-TP-A-0412 rev 03;  
10472-EPR-01-XX-TP-A-0413 rev 04; 10472-EPR-01-XX-TP-A-0414 rev 04;  
10472-EPR-01-AA-TP-A-0500 rev 04; 10472-EPR-01-BB-TP-A-0501 rev 04;  
10472-EPR-02-B1-TP-A-0299 rev 04; 10472-EPR-02-GF-TP-A-0200 rev 07;  
10472-EPR-02-01-TP-A-0201 rev 06; 10472-EPR-02-02-TP-A-0202 rev 06;  
10472-EPR-02-03-TP-A-0203 rev 06; 10472-EPR-02-04-TP-A-0204 rev 06;  
10472-EPR-02-05-TP-A-0205 rev 06; 10472-EPR-02-06-TP-A-0206 rev 06;  
10472-EPR-02-07-TP-A-0207 rev 06; 10472-EPR-02-08-TP-A-0208 rev 06;  
10472-EPR-02-09-TP-A-0209 rev 06; 10472-EPR-02-10-TP-A-0210 rev 06;  
10472-EPR-02-11-TP-A-0211 rev 06; 10472-EPR-02-12-TP-A-0212 rev 06;  
10472-EPR-02-13-TP-A-0213 rev 06; 10472-EPR-02-RF-TP-A-0214 rev 06;  
10472-EPR-02-ZZ-TP-A-0215 rev 02; 10472-EPR-02-ZZ-TP-A-0216 rev 02;  
10472-EPR-02-ZZ-TP-A-0217 rev 02; 10472-EPR-02-ZZ-TP-A-0218 rev 02;  
10472-EPR-02-ZZ-TP-A-0219 rev 02; 10472-EPR-02-ZZ-TP-A-0220 rev 02;  
10472-EPR-03-ZZ-TP-A-0221 rev 02; 10472-EPR-03-ZZ-TP-A-0222 rev 01;  
10472-EPR-03-ZZ-TP-A-0223 rev 01; 10472-EPR-03-ZZ-TP-A-0224 rev 01;  
10472-EPR-03-ZZ-TP-A-0225 rev 01; 10472-EPR-ZA-ZZ-TP-A-0226 rev 01;  
10472-EPR-02-EL-TP-A-0400 rev 04; 10472-EPR-02-EL-TP-A-0401 rev 04;

10472-EPR-02-EL-TP-A-0402 rev 05; 10472-EPR-03-EL-TP-A-0403 rev 03;  
10472-EPR-03-EL-TP-A-0404 rev 03; 10472-EPR-03-EL-TP-A-0405 rev 04;  
10472-EPR-03-EL-TP-A-0406 rev 04; 10472-EPR-02-XX-TP-A-0407 rev 04;  
10472-EPR-02-XX-TP-A-0408 rev 03; 10472-EPR-02-XX-TP-A-0409 rev 03;  
10472-EPR-02-XX-TP-A-0410 rev 03; 10472-EPR-02-XX-TP-A-0411 rev 02;  
10472-EPR-02-XX-TP-A-0412 rev 02; 10472-EPR-03-XX-TP-A-0413 rev 05;  
10472-EPR-03-XX-TP-A-0414 rev 04; 10472-EPR-03-XX-TP-A-0415 rev 02;  
10472-EPR-02-XX-TP-A-0416 rev 01; 10472-EPR-02-XX-TP-A-0417 rev 01;  
10472-EPR-02-XX-TP-A-0418 rev 01; 10472-EPR-02-XX-TP-A-0419 rev 01;  
10472-EPR-02-XX-TP-A-0420 rev 01; 10472-EPR-03-XX-TP-A-0421 rev 01;  
10472-EPR-03-XX-TP-A-0422 rev 01; 10472-EPR-02-GS-TP-A-0500 rev 04;  
10472-EPR-02-GS-TP-A-0501 rev 04; 10472-EPR-03-GS-TP-A-0502 rev 04;  
10472-EPR-02-EL-TP-A-0503 rev 03; 10472-EPR-02-EL-TP-A-0504 rev 04;  
10472-EPR-02-EL-TP-A-0505 rev 04;  
BMD.200.DR.P001 rev c;; BMD.200.DR.P001 rev c; BMD.200.DR.P101 rev c;  
BMD.200.DR.P102 rev c; BMD.200.DR.P103 rev a; BMD.200.DR.P104 rev d;  
BMD.200.DR.P106 rev a; BMD.200.DR.P107 rev B; BMD.200.DR.P108 rev a;  
BMD.200.DR.P201 rev b; BMD.200.DR.P202 rev a; BMD.200.DR.P300 rev a;  
BMD.200.DR.P301 rev c; BMD.200.DR.P302 rev b

The development shall also be carried out in general accordance with the documents detailed below:

Environmental Statement May 2017); Planning Statement (May 2017); Design and Access Statement (May 2017); Statement of Community Involvement (May 2017); Fire Strategy Letter (August 2017); Supplementary Design and Access Statement (October 2018); Skydeck Lewisham' Proposal (October 2018); Energy Strategy (October 2018); Sustainability Statement (October 2018); Internal Daylight & Sunlight Report (October 2018); Design Stage Site Waste Management Plan (October 2018); Site Suitability Study (October 2018); Health Impact Assessment (October 2018); Viability Report (October 2018); Planting Palette (October 2018).

### **3. Demolition Management Plan**

No demolition shall take place until a Demolition Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:

- the parking of vehicles of site operatives and visitors;
- details of the site manager, including contact details (phone, facsimile, email, postal address) and the location of a large notice board on the site that clearly sets out this information;
- loading and unloading of plant and materials;
- the times during which demolition shall take place;
- storage of plant and materials used in demolition;
- the erection and maintenance of security hoardings;
- measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of plant and materials and similar demolition activities;
- measures to be adopted to ensure that the access from the emergency exits is safe and not obstructed during the works;
- wheel washing facilities;
- measures to control the emission of dust, dirt, noise and vibration during demolition;
- a scheme for recycling/disposing of waste resulting from demolition;
- all non-road mobile machinery used in connection with the demolition of the

development hereby approved must meet 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.

- Thereafter, demolition works shall only be carried out in accordance with the approved details.

#### **4. Construction Management Plan**

No construction works shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- the parking of vehicles of site operatives and visitors;
- details of the site manager, including contact details (phone, facsimile, email, postal address) and the location of a large notice board on the site that clearly identifies these details of the site manager;
- loading and unloading of plant and materials;
- the times during which construction shall take place;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoardings;
- measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of plant and materials and similar construction activities;
- measures to be adopted to ensure that the access from the emergency exits is safe and not obstructed during the works;
- wheel washing facilities;
- measures to control the emission of dust, dirt, noise and vibration during construction;
- a scheme for recycling/disposing of waste resulting from construction works;
- all non-road mobile machinery used in connection with the construction of the development hereby approved (NRMM) must meet 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
- crane lighting and location of cranes.

#### **5. Construction Methodology**

No works of excavation or construction are to be carried out until details of such works have been submitted to and approved in writing by LBL in consultation with TfL/ Network Rail. These details should comprise of:

- a) Geotechnical report for the site;
- b) Superstructure design and construction methodology (including verified calculations and any lift pits);
- c) Plans for any proposed scaffolding in proximity of the railway;
- d) An impact assessment setting out predicted ground and structure movements;
- e) Emergency preparedness plan, detailing actions to be implemented if Network Rail advises that it is to stop trains due to an incident at the station, following receipt of the relevant information from Network Rail;
- f) Ground and structure movement monitoring regime; and
- g) Risk assessments and method statements for all structural works, excavation and installation of services in the land.

Thereafter, the works shall not be carried out other than in accordance with the approved details.

## **6. Piling Methodology and Operations**

No piling shall take place 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 adjoining property, subsurface water infrastructure and the safe operation of railway assets, and a programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water and Transport for London (TfL). Any piling must be undertaken in accordance with the terms of the approved *Piling Method Statement*.

## **7. Construction Noise and Vibration Monitoring**

Prior to the commencement of development, details of a noise monitoring methodology shall be submitted to the local planning authority for approval in writing.

This methodology shall include:

- a) permanent monitoring at a location to be agreed with the Council and the owners of 2 Sharsted Villas (either within the garden of 2 Sharsted Villas or on the site boundary opposite) throughout the construction of the development, including the enabling works;
- b) temporary monitoring at any other location as reasonably requested by the local planning authority;
- c) details of the equipment to be used (which shall be of a type that can transmit live monitoring of noise data direct to the Main Constructor (appointed under the Considerate Constructor Scheme) and
- d) details of how and on what the equipment is to be attached, including the height and details of any structure to be used; and
- e) details of the Constructor's monitoring and remedial action procedures, if the results indicate that the noise levels from the site exceed those as agreed with Council.

The approved monitoring methodology and equipment shall be employed and the monitoring data shall be made available to the local planning authority to view live on line at all times, provided this condition shall not be breached in the event of a temporary disruption in the live feed in which case urgent endeavours shall be used to resume the live feed without compromising the integrity of the data record.

## **8. Considerate Constructors Scheme**

Details demonstrating that the developer or constructor has joined the Considerate Constructors Scheme shall be submitted to the local planning authority prior to commencement of works on site and the developer or constructor shall thereafter adhere to the requirements of the Scheme for the period of construction of the development.

## **9. Telecommunications**

Prior to the commencement of superstructure works, a study undertaken by a body or person approved by the Confederation of Aerial Industries or by OFCOM shall be submitted to and approved in writing by the local planning authority which:

- i. identifies the area within which television signal reception might be interfered with by the development and;
- ii. measures the existing television signal reception within the study area and;
- iii. assesses the impact of the permitted development on the television signal reception of those in the study area and proposes appropriate measures to mitigate such effects so that the signal shall be of at least the same quality as that before the development was undertaken, as recorded under (ii) above, and which provides contact details at the developer and at the local planning authority for persons whose reception has been affected by the development to provide notice that their reception has been so affected.

As soon as reasonably practicable and in any event within one month of receiving notice, and subject to those who have notified the developer or the local planning authority that their signal reception has been interfered with, providing that they consent, the developer shall undertake the appropriate mitigation works as identified in the approved study. The developer shall remain responsible for such mitigation works for notification before the expiry of 12 months from the practical completion of the whole development.

## **10. Vibro-compaction machinery**

No vibro-compaction machinery is to be used in the development unless details of the use of such machinery and a method statement have been submitted to and approved in writing by the Local Planning Authority in consultation with Transport for London. The works shall only be carried out in accordance with the approved method statement.

## **11. External Lighting onto DLR tracks**

No external lights nor those installed during the construction period shall shine directly onto DLR's railway tracks.

## **12. Site Contamination**

The development hereby approved shall not be built otherwise than in accordance with the recommendations of the Phase 1 Environmental Assessment (March 2017), Phase 2 Environmental Assessment Report (March 2017) and Factual and Interpretative Geotechnical Assessment Report (January 2017) located within Appendices 12.1, 12.2 & 12.3 of the Environmental Statement (October 2018) respectively.

If during any works on the site, contamination is encountered which has not previously been identified ("the new contamination") the Council shall be notified immediately and the terms of paragraph (a), shall apply to the new contamination. No further

works shall take place on that part of the site or adjacent areas affected, until the requirements of paragraph (a) have been complied with in relation to the new contamination.

The development shall not be occupied until a closure report has been submitted to and approved in writing by the Council.

This shall include verification of all measures, or treatments as required in (Section (a) i & ii) and relevant correspondence (including other regulating authorities and stakeholders involved with the remediation works) to verify compliance requirements, necessary for the remediation of the site have been implemented in full.

The closure report shall include verification details of both the remediation and post-remediation sampling/works, carried out (including waste materials removed from the site); and before placement of any soil/materials is undertaken on site, all imported or reused soil material must conform to current soil quality requirements as agreed by the authority. Inherent to the above, is the provision of any required documentation, certification and monitoring, to facilitate condition requirements.

### **13. Remediation Strategy**

The development hereby approved shall not be built otherwise than in accordance with the remediation scheme set out at Chapter 12 of the Environmental Statement (October 2018) which shall be implemented in full, unless with the express prior written consent of the Local Planning Authority.

### **14. Verification Report for Land Contamination**

If remediation is required in line with Condition 12 a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a 'long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

### **15. Drainage Strategy**

The Development shall be implemented in accordance with the Drainage Strategy (September 2018) in the Environmental Statement Appendix 11.2 (October 2018). No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed. The development shall be constructed in accordance with the approved details.

### **16. DLR Radio Communications**

Before any superstructure is constructed, a 'pre' development Radio Communications Survey shall be submitted to and approved in writing by the local planning authority, in consultation with Transport for London. Within 3 months of completion of development, a 'post' completion Radio Communications Survey Report shall be submitted to and approved in writing by the local planning authority, in consultation

with Transport for London. The Report shall set out an assessment of the level of any impact the development has on the strength of DLR radio signals and identify any necessary mitigation measures (including signal boosters).

Any identified necessary mitigation measures shall be implemented within 6 months of the Report being approved.

## **17. BREEAM**

The buildings hereby approved shall achieve a BREEAM Rating of at least 'Very Good' at shell and core, in accordance with the BREEAM Pre-Assessment in the Sustainability Statement Appendix 1 (21 September 2018).

No development shall commence until a Design Stage Certificate for each building (prepared by a Building Research Establishment qualified Assessor) has been submitted to and approved in writing by the local planning authority to demonstrate compliance.

Within 6 months of occupation of any of the buildings, evidence shall be submitted in the form of a Post Construction Certificate (prepared by a Building Research Establishment qualified Assessor) to demonstrate full compliance for that specific building.

## **18. Combined Heat and Power Networks**

No development shall commence until details of the proposed heat networks and gas-fired Combined Heat and Power (CHP) system set out in the applicant's *Energy Strategy (21 September 2018) and Sustainability Statement (21 September 2018)* have been submitted to and approved in writing by the local planning authority.

The details shall include the commissioning of the networks and CHP system and details of the catalytic converter if required. Prior to the installation of the plant an Air Quality Neutral Assessment shall be completed and submitted to the local planning authority for their written approval;

The networks and systems shall be provided in accordance with the approved details and maintained thereafter.

## **19. CHP Abatement**

Prior to installation of the relevant part of the development full details of the abatement technology utilised to minimise emissions to air from the CHP system have been submitted to and approved in writing by the local planning authority. The CHP and associated abatement shall be installed in accordance with the approved details prior to occupation of the development and shall thereafter be maintained in accordance with the approved specification.

## **20. External Materials / Detail Design**

No above ground construction of the relevant part of the development (Buildings B1, B2 or B3) shall take place until a detailed schedule and samples have been submitted to and approved in writing by the local planning authority. The submitted details shall include:

- a) Mock-up panels of the external cladding materials and glazing,
- b) Samples of all other external facing materials;

- c) Doors and windows to include details and specification of acoustic glazing and ventilation for the residential accommodation;
- d) Balconies, balustrades and privacy screens to the residential accommodation;
- e) Drawings and details of material finish to the 'Lewisham Skydeck'

The details of the external materials should generally accord with the type and quality of materials indicated within pages 141 and 178 of the *Design and Access Statement (May 2017)*. The development shall be carried out in complete accordance with the approved details.

### Building B1

2m x 2m sample panel(s) to be constructed on site to detail the following:

- proposed aluminium feature panels in a range of tones from dark bronze through to pale bronze and silver;
- white off/white GRC panels including textured panel, including details of fixing
- vertical slats in PPC/ anodised aluminium
- metal canopies to commercial unit
- pre-cast concrete vertical ribbed panel
- all metal work to the rear service elevation
- all windows and doors
- access gates
- the underside of the roof of the recessed ground floor

### Building B2 and B3

2m x 2m sample panel(s) to be constructed on site to detail the following:

- all brickwork and mortar colour and pointing, with detail of soldier courses and projecting headers
- all metalwork
- all windows and doors
- pre-cast concrete/ GRC

### Other

- Mock-up of all balconies including soffits, balustrades/ screening and decking.
- Materials and doors for the external cycle store adjacent to Building B2.
- All boundary treatments (balustrades).

The development shall not be constructed other than in accordance with the approved details and samples.

## **21. Tall Building Lighting Strategy**

Prior to the occupation of the building a *Tall Building Lighting Strategy* for Building B1 shall be submitted to the local planning authority for its approval in writing.

Lighting in accordance with the approved strategy shall be implemented prior to the use of the "Skydeck"; and the lighting fixtures shall be retained and maintained in perpetuity.

## **22. External Plumbing and Pipes**

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no plumbing or pipes, including rainwater pipes, shall be fixed on the external

faces/front elevation of the buildings hereby approved, without the prior written consent from the Local Planning Authority.

### **23. Mobile Telecommunications Equipment**

No mobile telecommunications equipment shall be erected on the external surfaces of any building in the development.

### **24. Satellite Dishes / Antennae**

Notwithstanding the Provisions of Article 4 (1) and part 25 of Schedule 2 of the *Town and Country Planning (General Permitted Development) Order 2015*, no satellite antennae shall be erected or installed on the buildings hereby approved. The proposed development shall have a central dish or aerial system (for each relevant block) for receiving all broadcasts for the residential units created: details of such a scheme shall be submitted to and approved by the local planning authority prior to first occupation of any block, and the approved scheme shall be implemented and permanently retained thereafter.

### **25. Living Roofs**

The development hereby approved shall not be built otherwise than with a 'biodiversity living roof' laid out in accordance with plan nos. BMD.200.DR.P107 rev B. The living roofs shall not be used as an amenity or sitting out space of any kind. Evidence that the roof has been installed in accordance with the approved plan shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development.

### **26. Hard Landscaping Details**

No development above ground level shall take place until details of hard landscaping have been submitted to and approved in writing by the local planning authority. The details shall generally accord with pages 78 and 79 of the *Design and Access Statement (May 2017)* and include services (electricity and water) within Silk Square to enable external activities or events to be accommodated within the space. The development shall be carried out in accordance with the approved details.

### **27. Soft Landscaping**

Prior to first occupation of the development, a scheme for the management and maintenance of the landscaping for a minimum period of five years shall be submitted to and approved in writing by the local planning authority, in general accordance with the landscaping scheme on pages 82 and 83 of the Design and Access Statement.

All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the relevant part of the development. Any trees or plants which within a period of five years from the completion of that part of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

## **28. Protection of Trees During Construction**

No development shall commence on site until a *Tree Protection Plan* (TPP) has been submitted to and approved by the Council for the relevant part of the development (Building B1, B2 and B3) and should reflect the information set out in drawing BMD.200.PR.103 rev A on the trees to be retained. The TPP should follow the recommendations set out in BS 5837:2012 (Trees in relation to design, demolition and construction – Recommendations). The TPP should clearly indicate on a dimensioned plan superimposed on the building layout plan and in a written schedule details of the location and form of protective barriers to form a construction exclusion zone, the extent and type of ground protection measures, and any additional measures needed to protect vulnerable sections of trees and their root protection areas where construction activity cannot be fully or permanently excluded. The development shall be constructed in accordance with the approved details.

## **29. Bird, Bat Boxes and other Ecology Features**

Details of the number and location of the bird/bat boxes and other ecology features and habitat to be provided as part of the development hereby approved shall be submitted to and approved in writing by the local planning authority prior to commencement of above ground works and shall generally accord with the detail shown on drawings BMD.200.DR.P001 rev C and BMW.200.DR.P102 rev C and the Ecological Assessment Report, dated 12 December 2016 (Appendix 14.1 of the Environmental Statement, October 2018). The approved features shall be installed before occupation of the building and maintained for the life of the development.

## **30. Open Space Management and Maintenance Plan**

An Open Space Management & Maintenance Plan shall be submitted within 6 months of commencement of development above ground floor slab level. This shall include full details of the size, location, layout and detailed design of the proposed children's play areas. It shall also include management & maintenance and responsibilities for all communal play spaces/amenity spaces and all publicly accessible open spaces, including the first floor amenity terrace to Building B1 and the fourth floor roof terrace to Building B2.

Once provided, these spaces shall be managed and maintained in accordance with the approved Plan.

## **31. Soundproofing**

No above ground construction of the relevant part of the development (i.e. Building B1, B2 or B3) shall take place until full written details, including relevant drawings and specifications of the proposed works of sounds insulation against airborne noise to meet  $DnT,w + Ctr$  dB of not less than 55 for walls and/or ceilings where residential parties non domestic use have been submitted to and approved in writing by the local planning authority.

No part of the development hereby approved shall be occupied until the approved soundproofing works as agreed have been implemented in accordance with the approved details.

The soundproofing shall be retained permanently in accordance with the approved details.

### **32. External Lighting**

Prior to occupation of the relevant part of the development (Building B1, B2 and B3) a scheme for any external lighting that is to be installed at the site shall be submitted to and approved in writing by the local planning authority. The details shall generally accord with page 84 of the Design and Access Statement and the Conington Road Lighting Design Masterplan (Hoare Lee) and include evidence to demonstrate that the proposals minimise pollution from glare and spillage, following the Institute of Lighting Engineer's guidance; and shall not exceed 2 lux at any window of a habitable room.

Any such external lighting shall be installed in accordance with the approved drawings and any directional hoods shall be retained permanently.

### **33. Delivery and Service Plan**

No part of the development (Buildings B1, B2 or B3) shall be occupied until a Delivery and Servicing Plan has been submitted to and approved in writing by the local planning authority.

The plan shall demonstrate the expected number and time of delivery and servicing trips to the site, with the aim of reducing the impact of servicing activity along with details of site management for movement of refuse and storage of moveable refuse containers.

The approved Delivery and Servicing Plan shall be implemented in full accordance with the approved details from the first occupation of the relevant part of the development and shall be adhered to for the life of the development.

### **34. Electric Vehicle Charging Points**

Details of the electric vehicle charging points to be provided in the basement of Building B2 together with a programme for their installation and maintenance shall be submitted to and approved in writing by the local planning authority prior to occupation of that building.

The approved electric vehicle charging points shall be installed prior to first occupation of Building B2 and shall thereafter be retained and maintained in accordance with the approved details.

### **35. Cycle Parking Provision**

Prior to construction of the relevant part of the development (Buildings B1, B2 and B3) full details of the cycle parking facilities for at least 569 cycles must be submitted to and approved in writing by the local planning authority.

All cycle parking spaces shall be provided and made available for use prior to occupation of the relevant part of the development, and retained thereafter.

### **36. Car Club Parking Locations**

Prior to occupation of Building B2 a plan showing the location of two car club spaces shall be submitted to and approved in writing by the local planning authority. The spaces shall be provided in accordance with the details approved and shall be made available for use prior to occupation of Building B2. Thereafter the spaces shall be retained and used only for parking cars associated with the car club.

### **37. Retention of Amenity Spaces**

The whole of the amenity space (including roof terraces and balconies) as shown on drawing no. BMD200.DR.P104 rev D hereby approved shall be retained permanently for the benefit of the occupiers of the residential units hereby permitted.

### **38. Operation of Commercial Use in Building B1**

A Scheme of Operation for the commercial use falling within Use Class A1, A2, A3, D1 and D2 within the ground and first floors of Building B1, including details of proposed hours of operation (including servicing) and the use and extent of the outdoor seating area, is to be submitted to and approved in writing by the local planning authority prior to occupation. The premises shall not be operated otherwise than in accordance with the approved Scheme.

### **39. Restriction of Commercial Uses**

Notwithstanding the *Town and Country Planning (General Permitted Development) Order 2015* (or any Order revoking, re-enacting or modifying that Order), the non-residential spaces in Building B1 (including entirety of the first floor) and B2 shall be used for uses falling within A1, A2, A3, B1, D1 (health, education including nurseries, museum and art galleries) and D2 and for no other purpose of the Schedule to the *Town and Country Planning (Use Classes) Order 1987*, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

### **40. Ventilation Equipment for A3 Uses**

The specification of the ventilation system in respect of any A3 use of a Commercial Unit, which shall include measures to alleviate noise, vibration, fumes and odours (and incorporating active carbon filters, silencers and anti-vibration mountings where necessary) shall be submitted to and approved in writing by the local planning authority prior to first use for A3 purposes.

No non-residential unit shall be first occupied for A3 purposes until the approved ventilation systems have been installed in accordance with the plans and specification approved and such ventilation systems shall thereafter be permanently retained and maintained in accordance with the approved specification.

#### **41. Fixed Plant Noise Control**

The rating level of the noise emitted from fixed plant on the site shall be at least 5dB below the existing background level during the day (07:00-19:00), evening (19:00-23:00) and night-time (23:00-07:00) periods, when assessed in accordance with BS4142:2014. The noise levels shall be determined at the façade of the nearest noise sensitive property to the fixed plant.

#### **42. Shop Front Design**

The construction of Buildings B1 and B2 above ground floor slab level shall not commence until plans and sectional details at a scale of 1:10 or 1:20 showing the proposed frontages to the commercial units in Building B1 and Building B2 have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details and the shopfront fronts fitted before first occupation of any residential unit within the respective block.

#### **43. Privacy Screens**

The privacy screens to the balconies of Building B3 as detailed on Page 177 of the *Design and Access Statement* shall be implemented before any dwelling in that block is first occupied. The approved screens shall be permanently retained.

#### **44. Surface Water**

The drainage systems for the infiltration of surface water drainage into the ground are to be submitted and approved by the local planning authority, demonstrating that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

#### **45. River Ravensbourne Buffer Zone**

No development beyond works of site clearance and ground excavation shall take place until a scheme for the provision and management of a buffer zone of sufficient size to enable 'river corridor improvement works' (to be secured through a planning obligation) has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme. The scheme shall include:

- (i) plans showing the extent and layout of the buffer zone;
- (ii) details demonstrating that the buffer zone is sufficient to enable 'river corridor improvement works';
- (iii) details of any proposed planting scheme (for example, native species);
- (iv) details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management as well as production of detailed management plan.

#### **46. Travel Plan**

No part of the development hereby approved shall be occupied until such time as a user's *Travel Plan*, in accordance with Transport for London's document 'Travel

Panning for New Development in London' has been submitted to and approved in writing by the local planning authority. The development shall operate in full accordance with all measures identified within the *Travel Plan* from first occupation.

The *Travel Plan* shall specify initiatives to be implemented by the development to encourage access to and from the site by a variety of non-car means, shall set targets and shall specify a monitoring and review mechanism to ensure compliance with the *Travel Plan* objectives.

Within the timeframe specified by (a) and (b), evidence shall be submitted to demonstrate compliance with the monitoring and review mechanisms agreed under parts (a) and (b).



# Ministry of Housing, Communities & Local Government

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## 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.