



Appeal Decision

Inquiry opened on 7 January 2020

Site visit carried out on the same day

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th February 2020

Appeal Ref: APP/E5900/W/19/3236184

Former LEB Building, 255-279 Cambridge Heath Road, Bethnal Green, London E2 0EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Telford Homes plc against the decision of the Council of the London Borough of Tower Hamlets.
 - The application No PA/18/01926, dated 14 August 2018, was refused by a notice dated 27 June 2019.
 - The development proposed comprises demolition of existing buildings on site and redevelopment to provide 189 residential units and 1,676 sqm of flexible commercial floorspace (use classes A1, A2, A3, B1 and/or D1) in two buildings ranging from 5 to 15 storeys, along with disabled parking, servicing, cycle parking, public realm and amenity space.
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Decision

1. For the reasons that follow, the appeal is dismissed.

Preliminary Matters

2. The Inquiry sat for a total of six days between 7–15 January 2020. An evening session of the Inquiry was held on the first day.
3. The Council's Decision Notice set out a total of six reasons for refusal (RfRs). As a result of ongoing discussion between the parties, the submission of further information, and subject to appropriate conditions and obligations, the Council did not pursue those reasons relating to affordable housing provision, tenure and housing mix (RfRs1 and 2) and wind/microclimate effects (RfR3).
4. The appeal was accompanied by a draft planning obligation in the form of a deed of agreement between the parties. It sets out a range of obligations, covenants and undertakings subject to the usual contingencies. The provisions secured are a material consideration in this case and address RfR6. A completed version of the document was submitted shortly after the close of the Inquiry with the agreement of the parties.¹
5. On the evening of the day the appeal closed (15 January 2020) the Council adopted its Local Plan 2031. Its adoption was anticipated and the relevant policies had been discussed in full at the Inquiry. There was no need therefore, to refer back to the parties on this matter. The adopted plan supersedes the Core Strategy Development Plan Document (September 2010) and the

¹ Inquiry Document 22 (ID22)

Managing Development Document Development Plan Document (April 2013) which policies were referred to in the reasons for refusal.

6. On 13 February 2020, subsequent to the close of the Inquiry, the Government published the 2019 Housing Delivery Test Results, which identify Tower Hamlets as an authority where a change is required to the buffer to improve the delivery of housing. Since it was a matter of agreement at the Inquiry that the Council could not demonstrate a five year supply of housing land, paragraph 11d) of the National Planning Policy Framework was engaged in any event. Accordingly, it was not necessary for me to seek further comments on this.

Main Issues

7. The Council takes no issue with the overall principle of mixed use development on the site, or the loss of employment floorspace. On conclusion of the Inquiry, the outstanding main issues related to:
 - the effect of the development proposed on the special interest/significance of heritage assets, including the Bethnal Green Gardens Conservation Area, Bethnal Green Gardens Registered Park and Garden, listed buildings and non-designated assets;
 - effect on the character and appearance of the surrounding area, including the Conservation Area;
 - the effect on highway safety on Birkbeck Street;
 - effect on the free-flow of traffic and on pedestrian safety on Cambridge Heath Road; and,
 - whether the scheme makes adequate provision for accessible parking.

Reasons for the Decision

8. At the time of this Decision, the development plan for the area includes the London Plan (March 2016) and the recently adopted Tower Hamlets Local Plan (January 2020).
9. The Examination in Public of the emerging London Plan (eLonP) has concluded, with the Panel presenting its report to the Mayor in October 2019. On 9 December 2019, the Mayor of London submitted his 'Intend to Publish' version of the Plan to the Secretary of State for consideration. In light of the Mayor's opposition to some of the key recommendations, the policies of the eLonP could change. However, it was a matter of agreement between the parties at the Inquiry that the policies relevant to the outcome of this appeal could be given substantial, albeit not quite very substantial weight, on the basis that they do not go to the heart of the Mayor's concerns and thus are unlikely to change. I have no reason to take a different view.

The Proposal

10. The 0.38 hectare appeal site is bounded by Cambridge Heath Road (A107) to the east, two/three storey buildings fronting Cambridge Heath Road to the north (some with additional accommodation within the roof space) an elevated section of the London Overground railway line to the rear (west) beneath which are commercial arches, and by Birkbeck Street, a narrow cul-de-sac to the south. On the opposite side of Birkbeck Street is a part seven, part 11 storey

Unite student accommodation building (Blithehale Court) that fronts onto Cambridge Heath Road.

11. The appeal site is currently occupied by the LEB Building, constructed in the 1950s as the headquarters for the London Electricity Board. Buildings on the site include a large substation and storerooms, with the main building comprising a distinctive six storey office block with a public showroom on the ground floor, designed as a modernist monument to electricity allowing the site to act as the infrastructural 'neighbourhood centre', distributing utilities to the surrounding area. The site includes a large surface car park to the rear and a loading area, both accessed off Birkbeck Street.
12. Following vacation of the premises by the LEB, the building was occupied by various office users from 2005 until 2011, since when it has been largely unoccupied except for 'meanwhile' *ad-hoc* events and TV use. The parking area and courtyard are currently utilised for parking as part of the JustPark technology platform.
13. It is proposed to clear the site, with the redevelopment scheme comprising two separate buildings ranging in height from five to 15 storeys above ground level. Each building would comprise two blocks: the northern building comprising Blocks A and B, the southern building Blocks C and D. Block A (adjacent to the neighbouring two/three storey buildings to the north of the site) is designed at five storeys above ground level at its northern end, with a recessed sixth floor. The adjoining Block B is designed at seven storeys above ground level, with a recessed eighth floor.
14. In the southern building, Block C (on the corner of Cambridge Heath Road and Birkbeck Street) is designed at seven storeys above ground level, with an eighth floor set back. Block D, within the southwestern corner of the site, is designed at 15 stories above ground level. The maximum parapet height of Block D would be 52 metres above ground level, with the lift overrun reaching a height of some 53.45 metres.
15. In total, the scheme would deliver 189 residential units on the upper floors and some 1,676 square metres of flexible commercial floorspace (use classes A1/A2/A3, B1 and/or D1) as four separate units on the ground floor – three would be located on the ground floor of the northern block, ranging in size between 228-262 square metres, with the fourth (extending to some 624 square metres) located on the ground floor of the southern block, plus 227 square metres basement. Three of the four commercial units would have a frontage onto Cambridge Heath Road.
16. The east/west area between the two blocks would be provided as hard surfaced public open space including a café spill-out area, raised concrete planters and street trees. Three of the commercial units include an active frontage to this space. The linear hard surfaced area to the rear of the site, between the buildings and the railway arches/boundary walling, is described in the landscape strategy as semi-private public realm but is shown as having gated access.²

Heritage Assets

² Eg Plan No JSL2784_100

17. It was common ground that the appeal site lies within the setting of a number of heritage assets, with a small yard at the northern end of the site also lying within the Bethnal Green Gardens Conservation Area – the Conservation Area boundary runs along the northern flank wall of the LEB Building, the building itself lying adjacent to but outwith the Conservation Area.
18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be paid to the desirability of preserving, among other things, the setting of listed buildings. Whilst no statutory protection is afforded to the setting of Conservation Areas, paragraphs 189 and 190 of the National Planning Policy Framework (the Framework) require an assessment of the particular significance of *any* heritage asset that may be affected by a proposal, including by development affecting its setting.
19. Framework paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. Significance can be harmed or lost through the alteration or destruction of a heritage asset, or by development within its setting. The Framework defines setting as the surroundings in which the asset is experienced, recognising that elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
20. The Heritage Statement of Common Ground handed up at the start of the Inquiry sets out an agreed list of the only assets (and their settings) considered as having the potential to be affected by the development proposed.³ These are:
 - the Church of St John (grade I)
 - Nos 2-11 Paradise Row (each individually grade II listed)
 - Nos 301-303 Cambridge Heath Road (grade II)
 - Nos 295-299 Cambridge Heath Road (grade II)
 - No 287 Cambridge Heath Road (non-designated heritage asset)
 - Salmon and Ball public house (grade II)
 - Bethnal Green Library (grade II)
 - Bethnal Green Gardens Registered Park and Garden (grade II)
 - Bethnal Green Gardens Conservation Area
21. Following the related discussion at the Inquiry, and in answer to my questions, an addendum statement was submitted in relation to the status of the Gardens in front of the Library (referred to in the evidence as Bethnal Green Gardens) which area does not form part of the Bethnal Green Gardens Registered Park and Garden (RPG).⁴ Whilst the position for the Council, as set out in that

³ ID1

⁴ ID15

- document, is that Bethnal Green Gardens are of sufficient significance to be considered as a non-designated heritage asset, that was not addressed in Mr Froneman's proof or his oral evidence to the Inquiry on behalf of the Council. Rather, the evidence focused on the role of the Gardens as part of the character and appearance of the Conservation Area and the setting of the listed Library. I confirm that, for the purposes of this appeal, I have assessed them on that basis, ie not as a non-designated heritage asset itself, but as part of the setting to a designated asset (the Library) and as part of the Conservation Area.
22. Notwithstanding that it was no part of the Council's case prior to the appeal that there was any objection to demolition of the existing building, the evidence of Mr Froneman for the Council suggests that the existing LEB building is listable. It was constructed in the 1950s following the success of the Festival of Britain and is described by the Council's witness as a civic scaled public building. It also has an entry in the Pevsner Guide. However, it is not listed and no application has been made to have it listed. It was not included within the Conservation Area when the boundaries were extended in 2008 and neither is it identified as a non-designated heritage asset on any local list or through the recent plan making process. For the purposes of this appeal therefore, I have not treated the building as a heritage asset.
23. Church of St John on Bethnal Green: the church is located to the north/northeast of the appeal site, within the north-eastern quadrant of the staggered junction of Roman Road and Bethnal Green Road with Cambridge Heath Road. Its heritage significance derives largely from its architectural and historic interest. It dates from 1824-25 and was constructed on land that was relinquished by the Poor's Land trustees. It is a relatively good example of Neoclassical English ecclesiastical architecture by the renowned church architect Sir John Soane and is a landmark building that occupies a prominent corner location opposite the Paradise Row properties referred to below.
24. The church is described in the Conservation Area Appraisal (November 2009) as forming the centrepiece of the Area, with the associated management guidelines setting out that views of it from publicly accessible places will be protected. Its immediate setting along the southern and western sides comprises the adjoining main roads, whilst to the north is the Museum Gardens part of the RPG. These public Gardens pre-date and are part of the original setting of the church, with the church being seen across the Gardens in views from the north. In those views, even allowing for the trees in the foreground, the primacy of the church tower, surmounted by a circular cupola, is appreciated, seen against the sky. I am mindful in this regard that the Conservation Area Appraisal notes that views towards significant landmarks include views to the church spire.
25. I saw that whilst the existing LEB building is glimpsed beyond the church when seen across the Gardens, it is a peripheral background element, sitting well below the height of the church tower. Its scale is recessive and its contribution in terms of heritage significance is neutral. In contrast, the height, scale and mass of the appeal scheme would bring built development on the site into much greater prominence in those views. I consider that it would create a distracting and competing backdrop to the tower, undermining its primacy. As a consequence, it would detract from an appreciation of the heritage

significance of the church when experienced from the public Gardens. Taking account of the distance involved, I consider that that harm would be at the lower end of the spectrum of less than substantial harm as referenced in the Framework.

26. Nos 2-11 Paradise Row: this terrace of listed buildings dates variously from the late 18th-early 19th Century and forms a group set behind a wedge of open land comprising the Paradise Gardens part of the RPG. Although listed separately their significance, and the contribution of setting to that, overlap and are similar in each case. They also have a strong group value.
27. Their significance derives mainly from their architectural and illustrative historic interest. Despite the similar dates of construction, there is significant variety of materials and appearance across the terraced group, which comprises a residual part of wider townscape associated with the early history of Bethnal Green. The Row provides a unique character and sense of place, separated from the adjacent Gardens by a narrow 'cobbled' thoroughfare. As recognised in the Conservation Area Appraisal, whilst the terrace has a strong visual and historic relationship with the RPG as a whole, and with the church of St John on the opposite side of Cambridge Heath Road, the group value also extends to the buildings to the south of Bethnal Green Road (ie the Cambridge Heath Road buildings to the north of the appeal site referred to below).
28. In southward views for instance from Paradise Gardens, the Paradise Row properties are seen together with the Cambridge Heath Road buildings as part of an historic townscape. That is recognised not only in the list descriptions but also in the Conservation Area Appraisal, which identifies both elements as a significant 'street' of residential buildings in a Conservation Area that is predominantly civic and green in character. They comprise a coherent piece of townscape of a domestic scale, providing character and a sense of place.
29. In views south along Paradise Row, the existing LEB building is not seen, due to its modest height and the fact that it is set back from the street frontage, with the historic 'street' receding into the distance. Currently therefore, the LEB building has no effect on the listed buildings or their significance. In contrast, the proposed development would, as a consequence of its significantly greater massing, scale and height, and the bringing forward of the building frontage, intrude into what I agree with the Council is an evocative historic view that is sensitive to change. I fully recognise that visibility does not necessarily equate to harm in terms of heritage significance. In this instance however, the development would have an adverse effect on one's appreciation of the heritage significance of the terrace, including its significance as part of the wider grouping of buildings here. Given the distances involved and the narrow angle of view from Paradise Row, that harm would be at the lower end of the spectrum of less than substantial.
30. A group of heritage assets fronts onto Cambridge Heath Road, between the appeal site and the junction of Bethnal Green Road with Cambridge Heath Road. The Salmon and Ball public house and Nos 295-299 and 301-303 Cambridge Heath Road are grade II listed. No 287 Cambridge Heath Road is also identified by the Council as a non-designated heritage asset. The buildings date from the late 18th- early/mid 19th Century. The exuberant four storey Salmon and Ball building, a good example of a Victorian corner pub, is a

local landmark with the earlier, smaller scale, fine grained former houses to the south varying between 2-4 storeys in height. I agree with the Council that the buildings also have an interesting stepped profile, clearly framed against the sky in views looking south.

31. The significance of these buildings derives from their architectural and illustrative historical interest, which is enhanced by their group value forming, as they do, a continuation of the historic townscape from Paradise Row. That is recognised not only in the list descriptions but also in the Conservation Area Appraisal which, as referred to above, identifies this residual terrace of buildings here, together with the Paradise Row properties, as a street that represents a significant group of residential buildings in the Conservation Area. They are intimately associated with the history of Bethnal Green and comprise a coherent piece of townscape of a domestic scale around a busy junction, providing character and a sense of place. I am mindful, in this regard, that the Appraisal highlights the importance of long views along street axes, including views down Cambridge Heath Road.
32. At six storeys in height, the existing LEB building is taller than the adjacent buildings to the north. However, not only is there a notable gap between it and the adjacent properties, but it is set back from the main building line, with a slender side profile and a recessed roof element. As a consequence, it does not overpower its smaller neighbours. I consider its contribution in terms of their heritage significance to be neutral, allowing the buildings to be appreciated.
33. In contrast, whilst the nearest part of the development proposed would be of similar height to the tallest part of the LEB building, the blocks represent a considerable increase in bulk and mass not only because of the stepping up of the heights, but also the depth of development which would be more than twice that of the existing building, with the building also set closer to Cambridge Heath Road and with less of a gap between it and the adjacent buildings. It would dwarf the adjacent buildings, breaking the skyline in views from the north. Moreover, in becoming the focus in views along Cambridge Heath Road, it would also diminish the landmark role of the Salmon and Ball building, dominating the characterful smaller scale buildings here, harming their heritage significance and the appreciation thereof. In relation to the listed buildings, that harm would be towards the middle of the spectrum of less than substantial harm as referenced in the Framework.
34. The Framework test of 'less than substantial' only applies to designated heritage assets. In relation to No 287 Cambridge Heath Road, a non-designated asset, Framework paragraph 197 requires a balanced judgement having regard to the scale of any harm and the significance of the heritage asset. While the weight to the harm I have identified is less than if it had been listed, it is symptomatic of the harm to the listed buildings and, as set out later, to the Conservation Area generally.
35. Bethnal Green Gardens Registered Park and Garden (RPG): as noted earlier, the RPG comprises what are referred to locally as Paradise Gardens and the Museum Gardens (separated by Cambridge Heath Road) located north of the appeal site, on the far side of the traffic light junction. The RPG does not include what are referred to as Bethnal Green Gardens in front of the Library, opposite the appeal site.

36. The land was purchased in 1678 by a group of neighbouring property owners to prevent it from being developed, with provision made for it to be maintained for ever as an ornamental garden for the enjoyment of parishioners. It pre-dates everything else in the Conservation Area. The significance of the RPG as a heritage asset derives from its history and its strong associative relationship with the adjacent listed buildings, including the church of St John and Nos 2-11 Paradise Row, as well as the grade II* listed Museum building to the north.⁵ The run of Cambridge Street buildings to the north of the appeal site are also a part of its setting and inform its heritage significance. Not only is the RPG an integral part of the setting to all those buildings, but those buildings are an integral part of the setting of the RPG, contributing to its heritage significance.
37. The harm I have identified to the heritage significance of St John's Church, would also cause some, albeit limited harm to the significance of the Museum Gardens element of the RPG.
38. The Paradise Gardens part of the RPG has a quite different, more intimate character, comprising a small wedge of treed garden land enclosed by railings, located directly in front of the listed Paradise Row properties. Views towards the appeal site from this part of the Gardens encompass a wider angle than from Paradise Row itself, and include the Cambridge Heath Road buildings. In those views, whilst the existing LEB building which is taller than the adjacent buildings can be seen, it is set back from the main building line, with a slender side profile and a recessed roof element. The landmark Salmon and Ball building is seen framed against the sky, with the lower buildings beyond. Together with the RPG they are a remnant of an historic townscape. As noted above, a consequence of the height, scale and massing of the development proposed is that the Salmon and Ball building would lose its prominence in the townscape and the buildings beyond would be visually subsumed by the building mass behind, compromising the sense of congruity of the historic townscape here and the significance of the RPG. The harm that I have identified would be at the lower end of the spectrum of less than substantial harm as referenced in the Framework.
39. Bethnal Green Library: this two-storey Queen Anne style red brick building, which dates from 1896, was originally constructed as a wing of the Bethnal House Lunatic Asylum and was separated from the adjacent Bethnal Green Gardens (which are not part of the RPG) by a wall. In 1922 the building was adapted for use as a library, with the conversion designed by A E Derby, at which time the wall was removed. The historic and architectural interest of the building derives largely from its original construction as an asylum and subsequent re-purposing, which completely reinvented and extended the interior.
40. The Library sits on the eastern side of the adjacent Gardens, with a tree lined footpath providing a direct axial view towards the central projecting pediment when seen on the approach from Cambridge Heath Road. The Conservation Area Appraisal notes that views towards significant landmarks include the approach to the Library. I am mindful in this regard that the Gardens, which were reshaped to respond to the repurposed building, with paths leading to the building which is now something of a focus to the Gardens, comprise the

⁵ It was no part of anyone's case that the appeal scheme would impact on the significance of the Museum building.

immediate setting to the Library and are an integral part of its significance, reinforcing its civic character. However the Gardens are not, of themselves, a heritage asset, and so do not have a setting in heritage terms. Moreover, unlike the other assets referred to above, the appeal site is behind the viewer in views from Cambridge Heath Road across the Gardens to the heritage asset that is the Library. As such, the development proposed would not impact upon those views or the experience of the viewer in terms of appreciating the asset and its setting.

41. In views from the Library, looking west along the axial footpath towards the appeal site, the existing urban nature of Cambridge Heath Road beyond the Gardens is apparent to varying degrees at different times of the year. That wider setting does not, however, affect the ability to appreciate the heritage significance of the listed Library building including its relationship with the Gardens. Whilst the appeal scheme would, particularly at times when there is little foliage on the trees, be clearly visible, with much more of a physical presence than the existing LEB building, there would be no material harm in terms of the heritage significance of the Library.
42. The appellant suggested that the creation of the public space on the appeal site, between the two buildings proposed, which would align with the axial footpath, would be an enhancement in terms of heritage significance. I do not agree: the historic maps and photographs in the evidence before me show that there have, at least from 1896, always been buildings along the frontage of the appeal site, with no link or vista through the site, designed or otherwise, that might be re-instated.
43. Bethnal Green Gardens Conservation Area: the Conservation Area encompasses a series of significant statutorily listed civic buildings set amongst the public gardens and open space of Bethnal Green Gardens (used in the Appraisal to denote collectively the whole of the gardens, encompassing all three components, including the Gardens in front of the Library).⁶ The Conservation Area also includes the remnant late 18th/early 19th century terraced housing along Paradise Row, which continues on the far side of Bethnal Green Road, which properties lie just to the north of the appeal site facing onto Cambridge Heath Road. As noted in the Appraisal, this 'street' represents a significant group of residential buildings in a Conservation Area which is predominantly civic and green in character.
44. The heritage significance of the Conservation Area largely derives from its history and the architecture of the buildings, together with the space they encompass. All the heritage assets referred to above lie within the Conservation Area. I have found harm to the heritage significance of all but one of those assets as a consequence of the development proposed. Since they are an integral part of the Conservation Area, there would be corresponding harm to its heritage significance in this regard.
45. Whilst the Conservation Area is generally inward facing there are, as noted above, views out towards the appeal site from Bethnal Green Gardens in front of the listed Library. In those views looking west from the sports ground within the Gardens, and along the axial footpath, the existing urban nature of

⁶ As shown on the plan at Appendix 1 to the evidence of Mr Froneman

Cambridge Heath Road beyond is apparent to varying degrees at different times of the year, depending on foliage cover within the Gardens. That wider Conservation Area setting does not, however, currently affect one's appreciation of its heritage significance. In contrast, the appeal scheme would, particularly at times when there is little foliage on the trees, have a significantly greater physical presence, extending well above the tree canopy along the road frontage of the Gardens. The conspicuous height and form of the development proposed would be visually arresting, disrupting the generally low scale of the skyline (even allowing for Blithehale Court) hemming in the historic open character of the space here.

46. Whilst the general building scale of the Conservation Area is varied, it is predominantly low-rise. In particular, the listed terraces along Paradise Row are a uniform 3 storeys, the Cambridge Heath Road buildings to the north of the appeal site range from 2-4 storeys, with independent landmark buildings generally ranging between 2-5 storeys. Even the existing LEB building on the appeal site adjacent to the Conservation Area, which is set back from the road frontage, with a slender end elevation, is only six storeys. As a consequence, it does not impose itself on the adjacent Conservation Area. In essence, its contribution in terms of the heritage significance of the Conservation Area is neutral. The appeal scheme however, would introduce development of significantly larger massing, scale and height immediately adjacent to and in part extending into the Conservation Area, coming closer to the adjacent buildings. It would compete with and be at complete odds with the open spaces and more domestic scale development within the Conservation Area. The scheme would dominate and overpower the adjacent buildings and Gardens, causing significant harm to one's appreciation of the heritage significance of the Area. Since the development would affect only a part of the Conservation Area, I consider the impact in this regard to be less than substantial, but towards at least the middle of that range, if not higher.

Conclusion on Heritage Assets

47. To conclude on this issue, I have found harm to the heritage significance of all but one of the identified heritage assets (the Library) as a consequence of the extent and location of the development proposed within their setting, the greatest harm being to the assets to the north of the appeal site and to the Conservation Area itself.
48. This harm would conflict with policy 7.8D of the London Plan and policy HC1C of the eLonP, which expect development affecting heritage assets and their settings to conserve their significance. There would be conflict too with Local Plan policy S.DH3 which requires that proposals must preserve or enhance heritage assets, whether designated or not. The vision for the City Fringe sub area, as referred to in the Local Plan, also includes a requirement to protect and enhance the area's heritage assets.

Character and Appearance

49. The Mayor's stage 1 response to the planning application sets out his view that the scheme achieves an appropriate built form and scale having regard to the heights of neighbouring blocks, the proximity of the Conservation Area, the

location of the site in an Opportunity Area,⁷ the recent precedent in the immediate vicinity for buildings up to 11 storeys in height (Blithehale Court) and the quality of the residential accommodation. The Mayor's Stage 2 response however, which was written having been made aware of the Council's draft committee report (which included detailed criticism in terms of urban design and effect on the heritage assets) set out that he found no sound planning reason to intervene and was content to leave the decision to the Council as the local planning authority. The Council interprets that as the Mayor agreeing with the views set out in the report, with the appellant being of the view that the Mayor's Stage 1 views still stand.

50. Whilst there was considerable discussion at the Inquiry, including in closings on this point, the statutory test, as set out at Article 7 of the Town and Country Planning (Mayor of London) Order 2008 Order which was specifically drawn to my attention, relates to the Mayor's powers in terms of who should have jurisdiction over the application, rather than whether planning permission should be granted or not. Following the Mayor's decision not to intervene, the Council was the determining authority in this case. Whether the Mayor was supportive of the design or not, I have come to my own view informed by the evidence before me and what I saw during the accompanied site visit.
51. The recently adopted Local Plan⁸ defines tall buildings as any building that is significantly taller than its local context and/or has a significant impact on the skyline. Within the Borough, buildings of more than 30 metres, or those that are more than twice the height of surrounding buildings (whichever is less) are considered to be a tall building. The appeal scheme includes two tall buildings in the terms of the development plan policy. At some 52 metres above ground level, Block D proposed is well over both the 30 metres and the double height criteria. Block C is also a tall building, being more than 30 metres in height, almost as tall as the 11-storey (32 metres high) element within the nearby Blithehale Court.
52. Policy 7.7 of the London Plan relates to the location and design of tall buildings, setting out criteria to be met by proposals, with part E emphasising the sensitivity of particular locations such as conservation areas, listed buildings and registered parks and gardens. Policy D9 of the eLonP includes similar criteria, with part B setting out that Boroughs should determine if there are locations where tall buildings may be appropriate. To that end, part 2 of Local Plan policy D.DH6 directs tall buildings (which are required to meet the 12 criteria set out in part 1 of the policy) to five designated Tall Building Zones, each of which has its own particular design principles. The appeal site does not lie within or close to any of the Zones. Outside of the Tall Building Zones, part 3 of the policy is supportive of tall buildings provided they meet the part 1 criteria plus four additional criteria,⁹ intended to make sure that they are focussed in appropriate locations and contribute positively to the character of the site and the surrounding area. There is no dispute in this regard, that with a PTAL rating of at least 6a, and being located in the City Fringe Opportunity Area, the first of the part 3 criteria is met.

⁷ The appeal site lies within the City Fringe Opportunity Area as defined in the London Plan and the eLonP.

⁸ Paragraph 8.64

⁹ Part 3 requires that development demonstrates how it will a) be located in an area with high levels of public transport accessibility, within a town centre or opportunity area; b) address deficiencies in the provision of strategic infrastructure; c) significantly strengthen the legibility of a Major, District or Neighbourhood centre or mark the location of a transport interchange or other location of visual significance in the area; and d) would not undermine the prominence and /or integrity of existing landmark buildings and tall building zones.

53. Paragraph 8.71 of the supporting text to the policy confirms that the Tall Buildings Study (February 2018) which provides detailed guidance on the potential location, design and height of tall buildings in the Borough, is to be read alongside the policy. In relation to Bethnal Green, the Study notes the predominant heights of existing buildings in the area as 3-5 storeys, confirming that the current character of Bethnal Green is not one of a tall building 'Place'. Whilst it recognises that a number of sites have been developed on Cambridge Heath Road to the south of the station, typically to a height of around 6-8 storeys and that there are more opportunities for tall buildings within this area, that is for development of a similar scale. Blocks C and D proposed cannot be considered to be of a similar scale, not least in terms of height. Although there are examples of taller buildings, such as the 11-storey element of the adjacent Unite (Blithehale Court) development, it is not reflective of the prevailing building heights within the local area.
54. In relation to tall buildings outside the defined Zones, paragraph 8.75 of the supporting text to policy D.DH6 confirms, among other things, that such buildings are expected to serve as landmarks. Whilst the Study indicates that there may be an opportunity for a local landmark in Bethnal Green, it makes clear that that is in a central location where it could help with legibility, for instance close to the underground station in the District Centre. The appeal site does not occupy such a location, the underground station lying to the north of the appeal site at the junction of Roman Road/Bethnal Green Road with Cambridge Heath Road, adjacent to St John's Church and opposite the Salmon and Ball public house, both of which are already landmark buildings in the local context
55. Moreover, the site lies adjacent to, but outwith the defined Bethnal Green Road District Centre. Whilst the appellant suggested that the appeal scheme would be a natural extension to that, I note that the opportunity was not taken to include the site in the District Centre as part of the recent Local Plan process as a means, for instance, of encouraging its redevelopment. In any event, the focus of the District Centre runs east-west along Bethnal Green Road on the far side of the railway, not on Cambridge Heath Road.
56. The site does not occupy any sort of a gateway location; it would not mark a nodal point where important movement corridors come together; it is not at an arrival/departure point in the urban fabric such as a transport interchange or station; it is not a gateway location; there is no need for a building to act as a wayfinder here and the site is not a prominent focal point at the end of a vista or important street that might emphasise the importance of a route or mark an important destination. Furthermore, whilst the site is within the City Fringe Opportunity Area, it is not located in the Core Growth Area within that, close to the hub of the City of London. Rather it is within the defined hinterland, right at the eastern extent, an area described in the related Planning Framework¹⁰ as mixed use in many places but more residential in nature.
57. Having regard to the third of the D.DH6 part 3 criteria I am of the view, in light of the foregoing, that the appeal scheme could not be said as strengthening the legibility of the District Centre, or marking the location of a transport interchange or other location of civic or visual significance within the area. Whilst there are some isolated tower blocks in the wider area, they are dated social

¹⁰ Mayor of London's City Fringe Opportunity Area Planning Framework (December 2015)

housing blocks which appear very much at odds with their setting. All in all, I find no convincing rationale for any sort of a landmark building on this site. On the contrary, having regard to criterion 2 of the policy, I consider that the development proposed would in fact undermine the prominence and/or integrity of existing landmark buildings.

58. Moving on then to character and appearance generally. As noted previously, the main part of the existing LEB building on the appeal site is set back from the building line of the adjacent properties to the north. It has a slender end elevation, is only six storeys in height with a recessed roof element and covers only a modest proportion of the site as a whole. The rest of the site contains a single storey substation and storerooms and a large area of surface parking. To the north of the appeal site (within the Conservation Area) are the small scale, 'fine-grained' buildings of 2-4 storeys in height referred to in the previous section. To the south is Blitthale Court, which is of six storeys with a recessed seventh storey and an 11 storey element in the southwestern corner, on Witan Street. Beyond that on the Cambridge Heath Road frontage is a Travelodge, which is of six storeys with a recessed seventh storey. Opposite are the open Bethnal Green Gardens backed by the listed Library, which also lie within the Conservation Area. None of the buildings referred to, either alone or cumulatively create an imposing or overly dominant built form in their context.
59. The development proposed brings the building line forward in relation to the existing main block. The development would also extend further back into the site and there would be much greater site coverage. The gap between the northern elevation of the proposed building and No 283 Cambridge Heath Road would be reduced, with the gap reduced further still above ground floor level, with projecting oriel windows coming to within roughly 0.5 metres of the adjacent building. The building form then quickly steps up to six storeys, on top of which is a communal roof terrace, plus the lift/stairwell overrun. That in turns steps up to seven storeys plus a roof terrace on top, and then to eight storeys. The southern building is seven storeys, stepping up to eight storeys with a roof terrace on top, with the southwestern corner rising to 15 storeys plus a roof terrace.
60. In itself, I consider the appeal scheme to have been conceived as a coherent composition and I recognise that careful thought has gone into the detailing of the gridded façades, drawing on local examples and an industrial/warehouse aesthetic. I take no issue with that approach which, together with the materials chosen works well in its context. I also recognise that the scheme includes a welcome area of open space between the two building blocks.
61. However, the prevailing heights of the existing buildings and the open space opposite, make the surrounding area more sensitive in my view to taller buildings, which thus have a greater impact than might otherwise be the case. In its context, I consider that the bulk, mass and sheer scale of the buildings proposed would have an overbearing, almost aggressive presence, poorly related to the prevailing scale of development on this part of Cambridge Heath Road. When viewed in the context of its immediate surroundings, the significant difference in bulk, mass and heights would not represent a sensitive or sympathetic transition between the small Conservation Area buildings and the adjacent Blitthale Court as asserted by the appellant's architect. Rather, I agree with the Council that it would create an incongruous form of development that fails to adequately reflect its location on the edge of the

District Centre, contrasting abruptly with its surroundings and failing to manage successfully the transition between the District Centre and its surroundings.

62. A further concern of the Council related to connectivity and permeability. Local Plan policy D.DH2 requires that development contributes to improving and enhancing connectivity and legibility, ensuring a well-connected, joined-up and easily accessible street network and wider network of public spaces. The appeal scheme includes an area of public realm that is largely contained between the two buildings proposed. The appellant considers that the space would provide the opportunity to create a new east/west route through the adjacent railway arches, which would provide pedestrian access from Cambridge Heath Road, through the site and viaduct, to Gales Gardens to the west. However such an arrangement would require the consent of Network Rail, including their consent for removal of a high brick wall along much of the rear boundary of the site. There is nothing in the evidence before me to indicate that such consent has been sought, or is likely to be given, and those works form no part of the appeal scheme. At the present time, therefore, that is no more than an aspiration or vision. In failing to improve or enhance connectivity in the area there would be conflict with policy D.DH2.
63. The Framework sets out that achieving high quality places and buildings is fundamental to what the planning and development process should achieve, and that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.¹¹ I recognise, in this regard, that tall buildings can contribute positively to the local environment and help deliver economic growth or much needed new homes. However, they can, as I have found here, also have a detrimental visual, functional and environmental impact, causing harm to the character and identity of an area.
64. I recognise that there is scope for an increase in building height as part of any redevelopment of this site. Indeed, it was accepted for the Council in pre-application discussions, in the Statement of Common Ground relating to character and appearance,¹² and in cross-examination, that a tall building element on the site of similar height to the 11 storey Unite building (Blithehale Court) would not be unacceptable here in principle. However, the appeal scheme goes well beyond that. Whilst policy D.DH6 does not preclude tall buildings in this part of the Borough, in this case, I consider that the combined height, mass and scale of the proposal relative to its context would cause significant and demonstrable harm to the character and appearance of the area. There would be conflict therefore, with London Plan policies 3.5, 7.4, 7.5, 7.6, 7.7 and 7.8, and Local Plan policies S.DH1, D.DH2, S.DH3, D.DH4, and D.DH6, which together and among other things seek to create buildings, spaces and places that are attractive and well-integrated into their surroundings, that enhance the quality of local places and are sensitive to the character of the area.

Highways

65. The appeal site benefits from excellent access to public transport. In addition, there is a 24 stand London Cycle Hire docking station some 15 metres to the

¹¹ Paragraphs 12 and 130

¹² ID2

south of the site. As a result, the site has a Public Transport Accessibility Level of at least 6a.

66. Among other things, part 2 of policy D.TR3 of the Local Plan requires that new residential development in the area is secured as permit-free in terms of on-street car parking. Pursuant to that, the scheme has been designed to be car-free, with no on-site parking other than two blue badge spaces. The car-free nature of the development is secured by the submitted planning obligation, which includes the required reference to Section 16 of the Greater London Council (General Powers) Act 1974 to ensure enforceability.
67. It was a matter of agreement that the slight shortfall in on site cycle parking provision is a matter that could be addressed by condition, were the appeal to succeed. I have no reason to disagree.

Birkbeck Street

68. It is intended that the development proposed would be serviced mainly off Birkbeck Street, a short cul-de-sac running from Cambridge Heath Road along the southern boundary of the appeal site, terminating at the entrance to Sunlight Square, a residential apartment complex on the far side of the railway bridge beneath which it passes.
69. Cessation of the existing car park use on the appeal site would result in a reduction of some 67 two-way traffic movements on Birkbeck Street on a weekday. I recognise that the car park operation is a 'meanwhile' use that operates without the benefit of planning permission, but the Council confirmed that there was currently no intention to pursue enforcement action to secure its cessation. Its presence and operation is therefore a material consideration, although associated traffic movements would occur only at the eastern end of the street between the car park entrance and Cambridge Heath Road.
70. On the evidence of the Council, the development proposed would generate approximately 50 two-way daily (07.00-21.00 hours) traffic movements on Birkbeck Street, associated with the servicing needs of the development.¹³ Overall, therefore, there would be a reduction in vehicle movements on the street following redevelopment of the appeal site as proposed. The appeal scheme would, however, increase pedestrian and cycle movements along the street.
71. Birkbeck Street is a relatively narrow (5.1 metres wide) two-way single carriageway road with double yellow line markings in operation along its length, imposing waiting restrictions at all times. Additionally, double kerb 'blips' are marked along the entire northern side of the carriageway and on most of the southern side, prohibiting loading at any time. Loading prohibition is not in place however, for a length of approximately 45 metres along the southern carriageway, alongside the Unite student accommodation building opposite the appeal site boundary.
72. Based on the original plans, servicing/delivery vehicles would need to either reverse into or out of the proposed loading bay on the site across a narrower part of the footway. I agree with the Council that notwithstanding the

¹³ Table 4.2 of the evidence of Mr Wisher indicates four daily movements associated with the two on-site blue badge spaces proposed, and some 46 servicing related movements. The evidence for the appellant was based on slightly lower figures.

anticipated reduction in the overall number of vehicle movements on the street (mainly as a consequence of the cessation of the current on-site parking use) the nature of the vehicles using the site (which will include LGVs and smaller OGVs¹⁴ which may have more restricted all round visibility for drivers than cars) and the fact that they would have to reverse across the footway, combined with the anticipated increase in pedestrian and cycle movements associated with the development proposed, gives rise to significant safety concerns.

73. Seeking to address those concerns, the appellant's highways evidence proposed the use of a turntable within the servicing/delivery area, which would allow for vehicles up to 8 metres in length (equating generally to a 7.5 tonne goods vehicle) to enter and leave the site in a forward gear - the vast majority of vehicles involved with servicing and deliveries for the development proposed are anticipated as being within that range. Putting to one side for the moment the potential for larger vehicles servicing the development, the Council was content that the arrangement would accommodate most vehicles and sufficiently reduces the risk to other road users coming into conflict with reversing goods vehicles up to 8 metres in length, although a robust Delivery and Servicing Plan would need to be in place to ensure that it was available for vehicles on their arrival at the site. On the basis that these matters could be secured by suggested conditions were the appeal to succeed, I have no reason to take a different view.
74. However, even with a turntable facilitating entry and egress at the appeal site in a forward gear, the appellant's swept path analysis¹⁵ demonstrates that vehicle manoeuvres would encroach into the southern (westbound) carriageway, within that length where there is no loading prohibition. As a consequence, vehicles lawfully present on the highway opposite the site entrance for the purposes of loading could, on occasion, interfere with efficient and safe servicing of the appeal site. To overcome that, a Grampian type condition was suggested, preventing development until a Traffic Management Order was in place reducing the length of the highway within which loading can take place by some 15 metres. That would leave some 27 metres along the southern kerbside where loading could take place lawfully.
75. It is clear from the appellant's surveys that existing businesses, including those on Birkbeck Street within the Unite building, businesses operating within the railway arches, and nearby businesses on Cambridge Heath Road rely on the current on-street loading provision for servicing their premises. In light of its existing use, there was some discussion as to the likely success of any application for such an Order, given that current users may object to the required reduction in the space available.
76. Caselaw has established that Grampian type conditions should not be used where there is no prospect at all of the action in question being performed within the time-limit imposed by the permission. I am mindful in this regard, that the survey data collected for the appellant shows that at present, during times of maximum kerbside accumulation on a weekday (where five vehicles were present) only two vehicles were attributed to servicing - other vehicles were identified to be picking up/dropping off, or either parked /waiting, neither of which actions are permitted by the current traffic restrictions. Moreover, the

¹⁴ Other Goods Vehicles

¹⁵ Drawings at Appendix E to the proof of Mr Prince

maximum weekday accumulation extended to a total of just 10 minutes across the 24 hour period. On that basis, even allowing for those unlawfully parked vehicles there appears, on the evidence before me, to be 'spare' loading capacity here. So, whilst objections may be made to any such Order in the future, I have no reason to suppose that there is 'no prospect at all' of it not being confirmed. On that basis, the suggested Grampian type condition would meet the relevant tests and could remove the potential for conflict.

77. The Council was concerned at the potential for conflict between footway users on Birkbeck Street (existing plus future) and the vehicles entering and leaving the on-site loading area. Although Birkbeck Street is a cul-de-sac, that is only in terms of motor traffic. From the end of the cul-de-sac, to the west of the railway bridge, pedestrians (and cyclists) can link through to Gales Gardens and/or Pott Street, both of which link in turn to Bethnal Green Road.
78. On the Council's figures, if all future residents of Block D used the Birkbeck Street access (depending on intended direction of travel, they can also exit the building onto the corner of Birkbeck Street with Cambridge Heath Road to head out along the main road) the development proposed could generate some 100 daily two way cycle trips on Birkbeck Street (associated with Blocks C and D) and some 323 daily two-way pedestrian trips on Birkbeck Street if all future residents of Block D used the Birkbeck Street access. There was no information as to the likely split of pedestrian and cyclist numbers associated with Blocks C and D that would seek to head west from the site, under the railway bridge. In my view, whilst the majority would be more likely to head onto Cambridge Heath Road and thus would not come into conflict with servicing vehicles crossing the footway, I recognise that some may head west and, as a consequence, would have to cross the service entrance. In addition, there are existing pedestrian and cycle users to take into account.
79. Over a whole day, only some 46 associated two-way service vehicle movements on Birkbeck Street are anticipated in relation to the development proposed, with the evidence of the Council¹⁶ confirming that the highest number of movements (around eight two-way movements) would take place around 13.00-14.00 at a time when pedestrian activity on the street appears to be relatively low. In fact the vast majority of the anticipated vehicle movements are anticipated between 09.00-16.00, a period where pedestrian movements would generally be at their lowest – peak pedestrian movements are anticipated as occurring around 07.00-09.00 and 17.00-19.00.
80. In coming to a view on this, I am mindful that the turntable arrangement proposed would ensure that most vehicles enter and leave the site in a forward gear, facilitating visibility. In addition, the submitted plans include planters within the footway adjacent to the proposed delivery entrance, which would move footway users out towards the kerb, further away from the delivery area doors, with a consequent increase in inter-visibility. On balance, given the number of service vehicle movements and the relatively low numbers of pedestrian and cycle movements, combined with the enhanced intervisibility referred to, I am satisfied that overall the arrangement would not pose an unacceptable risk in terms of safety.
81. In relation to the two on-site blue badge spaces proposed, also accessed off Birkbeck Street, drivers would need to reverse across the footway on Birkbeck

¹⁶ Figures 4.3 and 5.4 of the evidence of Mr Wisher

Street when manoeuvring either onto or off the site. However, a total of just four vehicle movements per day are anticipated in relation to those spaces, with the manoeuvres taking place across a section of the footway almost 5 metres in width, affording good visibility for drivers and footway users alike. I am content therefore, that the related vehicle movements would not necessarily result in unacceptable safety implications, even allowing for the predicted increase in numbers of pedestrians and cyclists using Birkbeck Street following redevelopment of the site.

82. Other concerns related to refuse collection. It was proposed originally that on collection days, the bins for each block would be moved to a temporary holding area within the loading area. However, that would be affected by the proposed turntable arrangement. At the Inquiry, it was confirmed that, on collection days, bins could be stored temporarily to the rear of the loading bay within the site boundary. When the collection vehicle was due, the bins would be transferred by site management to within 10 metres of the collection vehicle for collection by operatives. I am content that this is a matter that could be secured by condition were the appeal to succeed.

Cambridge Heath Road

83. The turntable arrangement referred to above would only be able to accommodate vehicles up to 8 metres in length. Larger vehicles may be required to service the residential apartments proposed (eg removals vehicles, furniture deliveries etc). In addition, the largest of the proposed commercial units, with a floorspace of some 624 square metres (plus 227 square metres basement) would potentially be attractive to a supermarket operation. I was advised, in this regard, that some delivery vehicles associated with such use would be greater than 8 metres in length.
84. Such vehicles could still use the on-site loading bay but would need to reverse into or out of the space, with a corresponding increase in danger to footway users, but those movements are likely to be low in number. In any event, as discussed earlier, the current traffic regulations relating to Birkbeck Street allow for on-street loading/unloading along the southern carriageway. I recognise that the available space would be reduced were the appeal scheme to go ahead, to allow for vehicles to manoeuvre into and out of the site but, as noted earlier, even allowing for unlawfully parked vehicles, there appears to be 'spare' loading capacity here. Nevertheless, there was concern that larger vehicles may seek to load/unload on Cambridge Heath Road.
85. Adjacent to the appeal site, Cambridge Heath Road accommodates four traffic lanes, two in each direction: the northbound kerbside lane has been converted to a bus lane which is in operation Monday to Saturday 07.00-10.00 and 16.00-19.00, with use restricted to buses, taxis and cycles. The prevailing kerbside restrictions on Cambridge Heath Road to the northern extent of the site, permit loading outside the operational hours of the bus lane. The southbound kerbside lane accommodates on-street parking bays.
86. I recognise that a material increase in the number of vehicles needing to load/unload within the highway would be undesirable in what is clearly a very busy thoroughfare. The evidence of the Council suggests, based on the TRICS database, that up to eight larger vehicles (OGV1) could be expected to access the site daily. The Council took those to be HGVs larger than 8 metres in length. However, the OGV1 definition also includes a proportion of smaller,

two-axle lorries between 5.5-7.5 tonnes in weight and less than 8 metres in length, together with 7.5 tonne box vans, which again are less than 8 metres in length, all of which could be accommodated on site through use of the proposed turntable arrangement. When combined with a robust Service and Delivery Plan which can be secured by condition, I am satisfied that any increase in the number of vehicles needing to service the site from Cambridge Heath Road would be minimal and would not be sufficient to result in any material impact on the safety or free flow of traffic on that road.

87. Whilst the Council spoke eloquently about the difficulties it had faced in the past in being able to monitor and enforce conditions that sought to control servicing arrangements through Service and Delivery Plans, they are used successfully in other authorities and to my mind can provide appropriate controls.

Accessible Parking

88. Pursuant to part G of policy T6.1 of the eLonP, it was a matter of agreement between the parties that to be policy compliant, the residential element of the appeal scheme should make provision for six blue badge parking spaces at the outset, with up to a further 13 spaces to be provided upon request. The commercial floorspace increases that requirement by a further four spaces.
89. Part 2 of policy D.TR3 of the Local Plan requires that all parking associated with a new development is located off-street. However, that creates an apparent tension within the Plan itself in this regard, and also with the current London Plan/eLonP. In the Local Plan, paragraph 16.28 of the explanatory text to the policy sets out that any development seeking to make alterations to on-street parking must be fully justified and will only be permitted where there is proven on-street capacity. To my mind, that clearly anticipates that there will be instances where provision cannot be met on site. In addition, whilst Appendix 3 to the Local Plan (parking standards) sets out that parking for disabled people *should* comply with the standards in the London Plan, with necessary provision made on-site, it goes on to state that where site constraints mean that provision is unfeasible or not safe, development will be required to demonstrate how a disabled person could park to use the development with ease. Again, that seems to me to allow for some flexibility in terms of on-street provision.
90. The Notes to Table 6.2 (Car parking standards) on page 274 of the current London Plan, simply *prefer* the provision to be on-site, with policy T6.1 of the eLonP requiring only that the necessary spaces are *available* for future occupiers – there is no policy requirement for the provision to be made on-site. Indeed, part H3 of policy T6.1 specifically allows for the payment of a commuted sum if parking is to be provided on-street.
91. Inasmuch as the required blue badge parking would not all be provided on site, there would be conflict with policy D.TR3 of the Local Plan when considered on its face. However, that is not the end of the matter. In addition to the tensions identified above, there are other material considerations.
92. With regard to site constraints, providing on-site space at grade for up to 23 wheelchair accessible parking spaces would have significant implications for the provision of commercial floorspace. That is a material consideration of some weight, given the location of the site adjacent to a District Centre, on a main

street where there is a need to provide maximum active frontages on the ground floor. On site provision would also have viability implications, which would be exacerbated if the provision was provided at basement level, with a knock-on effect in terms of affordable housing provision. As set out below, it is a matter of agreement that the 35% provision currently secured is the maximum reasonable provision that can be provided by the development at this time.

93. Moreover, in support of the proposal, Mr Prince produced evidence in relation to comparable schemes developed by the appellant,¹⁷ demonstrating 0% take up of the accessible bays provided in those cases. I am mindful, in this regard that the appeal site has a PTAL rating of 6a, reflecting the proximity of bus stops and Bethnal Green underground station. Whilst the station is not step free at present, I was advised that the buses are, as is the nearby Whitechapel Crossrail station.
94. The two onsite blue badge parking spaces proposed would be convenient for use by occupiers of blocks C and D and commercial unit 4. Were the appeal to succeed, one of the suggested planning conditions (as amended)¹⁸ would also ensure the submission and approval of a Car Park Management Strategy containing, among other things, details of six wheelchair accessible parking spaces (the two on-site plus four on-street) with provision for up to a further 17 wheelchair accessible spaces, including a mechanism for providing them on-street, subject to future demand. The planning obligation secures contributions for that on-street provision should it be required.
95. Nine 'pay and display' and 16 'shared use'¹⁹ on-street parking bays are currently located on the eastern side of Cambridge Heath Road in the immediate vicinity of the appeal site. At present, all are controlled Monday-Friday between the hours of 08.30-17.30. A parking beat survey undertaken for the appellant demonstrates spare capacity to varying degrees across each period between 04.00-20.30 on a weekday for each type of bay.
96. Concerns were raised about the potential distances between the spaces and the residential units proposed were the spaces to be relied on in relation to the appeal scheme. Mr Wisner referred to a 'recommended' 50 metres maximum distance, noting that for the most part, the on-street spaces would be between 50-90 metres from the entrances to the residential accommodation and some of the commercial units. I am mindful, in this regard, of the provisions of criteria 3 and 4 of part B to policy D5 (Inclusive Design) of the eLonP, which seek to ensure, among other things, that new development is convenient with no disabling barriers, provides independent access without additional undue effort, and is able to be entered safely and easily. In addition, part H6 of eLonP policy T6.1 seeks to minimise distances between disabled persons' parking bays and the relevant block or entrance, with routes preferably being level.
97. It would seem that the 50 metres distance referred to by the Council is not referenced in any development plan policy. During the related discussion at the Inquiry, the appellant referred me to the Government's Inclusive Mobility

¹⁷ At Manhattan Plaza, Tower Hamlets – 120 units, 5 accessible bays provided; Bermondsey Works, LB Southwark – 148 units, 2 accessible bays provided; Stratosphere, LB Newham – 307 units, 2 accessible bays provided.

¹⁸ ID13 and ID17

¹⁹ Pay and display/permit holders

document, which recommends a distance limit of some 150 metres without a rest for wheelchair users, reducing to 50 metres for those who are mobility impaired using a stick, again without a rest. I have no reason to suppose that the four on-street blue badge parking spaces that would be secured at the outset by the planning condition and the planning obligation could not be provided close to the pelican crossing by the appeal site. I do not see the road or the pelican crossing as a barrier: not only would the crossing facilitate safe crossing of the road, but it would also provide an appropriate resting point should such be necessary. Moreover, the route between the spaces and the site is level.

98. No evidence was produced by the Council to undermine that produced by the appellant in relation to the level of uptake on other similar schemes. On that basis, it would seem that demand for any additional provision is extremely unlikely. Even if there were a demand, I am certainly not persuaded on the evidence that it would be to the extent that the Council requires be provided. As such, I am content that sufficient on street parking spaces would remain available for existing users were the appeal scheme to go ahead as proposed. Moreover, the travel distances involved would not be unduly prohibitive in light of the Government's own guidance.
99. When a holistic approach is taken I consider, on balance, that the blue badge parking provision secured would be acceptable in the circumstances that prevail here. As such, I find no conflict with the provisions of the current London Plan, or with policy T6.1 of the eLonP. Whilst there would be conflict with policy D.TR3, inasmuch as the provision would in part be on-street, there would be no conflict with those elements of the explanatory/supporting text, which in my view allow for some flexibility in this regard.

Conclusion on Highways Matters

100. Subject to the use of necessary conditions, I have found no harm in terms of any adverse impact on highway safety on Birkbeck Street or the free flow of traffic and pedestrian safety on Cambridge Heath Road. I also consider that, in the circumstances that prevail here, the proposed accessible parking provision is acceptable. I find no conflict therefore, with policies 6.3 and 6.13 of the London Plan, policies T1, T4, T6, T6.1, T6.5 of the eLonP, or policies S.TR1, D.TR3 and D.TR4 of the Local Plan which, together and among other things seek to ensure that new development does not place an unacceptable burden on the highway network in terms of safety, that an appropriate level of accessible parking is secured in order to ensure that London is a city where it is easy for all disabled people to live and travel, and to promote sustainable travel patterns and sustainable delivery and servicing.

Other Matters

101. As mentioned at the outset, one of the reasons for refusal related to affordable housing tenure split and whether the scheme delivers the maximum reasonable amount of affordable housing. These matters were also of considerable concern to those local residents and their Councillors who spoke at the evening session.
102. Following submission of the appeal, updated financial viability evidence was submitted and the matter was the subject of continuing discussion and negotiation, which was still ongoing whilst the Inquiry was sitting. Shortly

before the close of the Inquiry, matters were agreed between the main parties,²⁰ on which basis the related reason for refusal was not pursued.

103. In essence, a total of 50 affordable housing units would be provided (equating to 35% by habitable room and 26.4% by number of units) with a ratio split in terms of tenure of 48/52 affordable rented/intermediate homes.
104. The 26 intermediate homes proposed would comprise 12 x one bedroom, 8 x two bedroom and 6 x three bedroom dwellings. The 24 affordable rented housing would be provided as 4 x one bedroom, 5 x two bedroom and 15 x three bedroom homes. The planning obligation secures the agreed provision, the rents and early and late stage review triggers, together with letting arrangements.
105. In light of the most recent viability evidence, the appellant and the Council are agreed that the scheme does not show a surplus above an agreed benchmark return and that the provision now secured is the maximum reasonable provision that can be provided by the development at this time. However, the early stage review secured by the planning obligation is triggered if an agreed level of progress towards construction is not reached. If the review shows a surplus above an agreed benchmark return, a scheme is to be submitted for the provision of additional affordable housing on site. The late stage review is triggered by the disposal of 75% of the residential units. If a surplus is shown at that point, the obligation secures the payment of a commuted sum. There is no conflict with London Plan policies 3.12 and policies S.H1 and D.H2 of the Local Plan which together and among other things seek to secure the maximum reasonable amount of affordable housing having regard to current and future requirements.

Benefits of the Scheme

106. As noted above, the appeal site lies within the City Fringe Opportunity Area. Among other things, Section 4 of the Local Plan (paragraph 18.4) sets out that the Opportunity Area is required to accommodate at least 10,334 additional homes by 2031. Moreover, the Council cannot demonstrate a five year housing land supply at a time when, as acknowledged in the eLonP, the city is facing a housing crisis. Against that background, the supply of 189 new homes is a consideration of considerable weight. However, that is tempered given that the scheme does not provide the balance of housing types sought by Local Plan policy D.H2, which is a disadvantage of the scheme.
107. Some 50 of the dwellings proposed would be affordable. Their provision is secured by the planning obligation and they would make a significant contribution to the Borough's needs. The agreement on viability, and the two-stage review mechanism secured, all mean that the scheme would comply with policy on affordable housing and viability. Nevertheless, there would remain a shortfall against policy expectation of 50% at one of the most accessible locations in London on what equates to public land. Moreover, tenure mix is not policy compliant. This reduces the weight I give to the affordable housing contribution to moderate.
108. The City Fringe Area is also required to accommodate 44,170 sqm employment floorspace and some 3,908 jobs. In providing some 1,676 sqm of

²⁰ ID10 and ID16

- flexible commercial floorspace (use classes A1, A2, A3, B1 and/or D1) plus associated employment opportunities, the appeal scheme would contribute to that and again is a consideration to which I afford significant weight.
109. The scheme would make efficient use of a brownfield site in a location with a PTAL of at least 6a, although I do not agree with the appellant that the existing block is necessarily unattractive. I therefore attach appreciable weight to this consideration.
110. Whilst the scheme does include an area of public realm, that is largely contained between the two buildings and in essence, provides access to the four Blocks, including access to the ground floor commercial units and spill out space for potential café uses etc. It is not a space that leads anywhere or assists with permeability. I am not persuaded therefore, that provision of the space, particularly in an area that is noted for its public gardens etc, carries any more than little weight.
111. I referred earlier to the appellant's aspirations for the creation of a new east/west route through the adjacent railway arches, which would provide pedestrian access from Cambridge Heath Road, through the site and viaduct, to Gales Gardens to the west. However, those works, which in any event require the agreement of other parties, form no part of the appeal scheme. At the present time, therefore, that is no more than an aspiration or vision, rather than a public benefit of the appeal scheme to which any positive weight can be afforded.
112. In relation to the residential element, construction employment is estimated at some 378 FTE construction jobs, with an additional 756 jobs in the wider economy outside of construction. In addition, the appellant assumes that in generating 189 additional households, the scheme could increase gross additional household expenditure of approximately £4.17 million per annum, some £3.13 million net (at 2016 prices). These are matters that attract considerable weight.

Overall Conclusions

113. The Framework describes heritage assets as an irreplaceable resource that should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations. I have found harm to all the identified heritage assets, other than the Library. In relation to the designated assets it is necessary, under the provisions of Framework paragraph 196, to balance that harm against the public benefits of the proposal.
114. The wording of the Framework indicates that a separate balancing exercise is required for each designated heritage asset. When considered individually, the harm that I have identified to St John's Church, the RPG, Paradise Row and, on balance, the Cambridge Street buildings is, in each case, outweighed by the public benefits. However, the harm to the Conservation Area lies, at the very least, towards the middle of the less than substantial range. I am mindful, in this regard, that less than substantial harm does not equate to a less than substantial planning objection. This is a small Conservation Area. The sheer scale of the appeal scheme would be at complete odds with the open spaces and more domestic scale development, imposing itself on the southern part of the Conservation Area, causing material harm to its heritage significance and

to one's appreciation of the heritage significance of the Area as a whole. Having regard to the advice in Framework paragraph 193, this is a consideration to which I attach great weight.

115. I have considered carefully the weight to the public benefits. On balance, however, that weight does not outweigh the harm to the heritage significance of the Conservation Area. As a result, following footnote 6 of the Framework regarding designated heritage assets, the presumption in favour of sustainable development in paragraph 11 of the Framework does not apply: in this instance, harm to a designated heritage asset provides a clear reason for refusing the development proposed. The planning balance is, therefore, that the application should be determined in accordance with the development plan, unless material considerations indicate otherwise.
116. Whilst I have found no material harm in relation to any of the highways related matters raised, I have found substantial harm in terms of the effect on the character and appearance of the area generally and conflict with the relevant development plan policies. To be added to that is the harm that I have found to multiple heritage assets, including the non-designated asset, and the corresponding conflict with relevant policies. When considering a proposal involving a number of heritage assets, if less than substantial harm is found to each, more weight can reasonably be attached in the overall planning balance to a number of 'less than substantial' harms than would be the case if only one asset would be harmed.
117. Having weighed carefully all the above benefits they do not, in my view, outweigh the harm that I have identified. I have taken all other matters into consideration, including the fact that the appeal site has effectively been vacant for a number of years and, were the appeal to be unsuccessful, is likely to remain vacant for some time to come, and also that any smaller scheme might be less viable and would thus deliver less affordable housing. On balance however, I conclude that the proposal would conflict with the development plan taken as a whole and that the appeal should not succeed.
118. Even had I found that the public benefits did outweigh the heritage harm, engaging the so-called tilted balance, the harm in terms of character and appearance is such that it would significantly and demonstrably outweigh the identified benefits and the outcome of the appeal would be the same in any event.

Jennifer A Vyse
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

James Burton, of Counsel	Instructed by the solicitor to the Council
He called	
Ignus Froneman BArchStud, ACIfA, IHBC	Founder, Cogent Heritage
Rikki Weir BA(Hons) MSC, MRTPI	Senior Planning Officer with the Council
Neil Wisher BSc(Hons)CEng, MICE, MCIHT	Director (Transport Group) WYG Environment, Planning and Transport Limited

FOR THE APPELLANT:

Russell Harris, of Queen's Counsel	Instructed by Ricardo Gama of Town Legal
He called	
Christian Coop BA (Hons) Dip. Arch. ARB. MSAI	Senior Associate/Design Director, HTA Design LLP
Paul Crisp MA, BSc(Hons) DipTP, MRTPI, IHBC	Head of Heritage, Jones Lang LaSalle
Tim Gaskell BSc(Hons) MRTPI	Director CMA Planning Limited
Alec Prince BEng, MEng MCIHT, MCILT	Technical Director of WSP UK Limited

Other witnesses for both parties also produced proofs for the Inquiry but, given the eventually agreed position in relation to matters pertaining to financial viability and affordable housing tenure/mix (ID3, ID10 and ID16) they were not called.

INTERESTED PERSONS:

Philip Wharburton	Community Organiser for Tower Hamlets Citizens (Citizens UK)
Cllr Gabriela Salva Macallan	
Cllr Tarik Ahmed Khan	
Miriam Brittenden	Tower Hamlets Citizens
Rashid Ahmed	Tower Hamlets Citizens
Razna Al-Faradhi	Tower Hamlets Citizens

INQUIRY DOCUMENTS

HANDED UP DURING THE INQUIRY

- ID1 Statement of common ground: heritage (see also ID15)
- ID2 Statement of common ground: character and appearance
- ID3 Statement of common ground: housing mix
- ID4 List of evening speakers for Tower Hamlets Citizens (Citizens UK)
- ID5 Opening submissions for the appellant
- ID6 Opening submissions for the Council
- ID7 Intend to publish version of the new London Plan (December 2019)
- ID8 Tower Hamlets Local Plan 2031 (January 2020)
- ID9 Statement of common ground: highways
- ID10 Statement of common ground: financial viability (see also ID16)
- ID11 Email correspondence between TfL and the Council dated 5 February 2019
- ID12 Email confirmation from the original case officer dated 14 January 2020, confirming that the TfL responses in ID11 above were all that was received in relation to the re-consultation undertaken.
- ID13 Schedule of suggested conditions (see also ID17)
- ID14 Policy tracker confirming updated policy references
- ID15 Addendum to the heritage statement of common ground
- ID16 Inquiry Note from the parties confirming the agreed affordable housing position
- ID17 Revised wording for suggested condition 28 (blue badge spaces)
- ID18 S106 Planning Obligation (unsigned), S106 tracked changes version and S106 version with plans (see ID 21)
- ID19 Council's closing submissions, including Appendix comprising The Town and Country (Mayor of London) Order 2008
- ID20 Appellant's closing submissions

SUBMITTED AFTER CLOSING

- ID21 Email dated 21 January 2020 from the Council confirming a minor amendment to the planning obligation, which removes any marginal deficit to the agreed viability position.
- ID22 Signed S106