



Appeal Decision

Inquiry held on 14 - 22 December 2022

Site visit made on 21 December 2022

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2023

Appeal Ref: APP/A5840/W/22/3303205

Avonmouth House, 6 Avonmouth Street, London SE1 6NX.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Tribe Avonmouth House Limited against the London Borough of Southwark.
 - The application Ref 21/AP/4297, is dated 18 November 2021.
 - The development proposed is demolition of existing building and structures and erection of a part 2, part 7, part 14, part 16 storey plus basement mixed-use development comprising 1733sqm (GIA) of space for Class E employment use and/or community health hub and/or Class F1(a) education use and 233 purpose-built student residential rooms with associated amenity space and public realm works, car and cycle parking, and ancillary infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and structures and erection of a part 2, part 7, part 14, part 16 storey plus basement mixed-use development comprising 1733sqm (GIA) of space for Class E employment use and/or community health hub and/or Class F1(a) education use and 233 purpose-built student residential rooms with associated amenity space and public realm works, car and cycle parking, and ancillary infrastructure at Avonmouth House, 6 Avonmouth Street, London SE1 6NX in accordance with the terms of the application, Ref 21/AP/4297, dated 18 November 2021, subject to the attached schedule of 36 conditions.

Preliminary Matters

2. Following the appeal's submission, the Council outlined putative reasons for refusal. It then revised its reasons for refusal shortly after and omitted reference to any harmful effect on the setting of the Grade II listed Inner London Sessions Court Building (the courts). Later, a further reason for refusal was introduced in relation to fire safety in an Addendum to the Council's Statement of Case dated 21 October 2022.
3. The Council presented the putative reasons for refusal at Planning Committee on 2 November 2022. The remaining three putative reasons for refusal were endorsed in respect of character and appearance, fire safety, and the lack of a legal agreement to ensure provision towards local infrastructure requirements.
4. Further work was undertaken by the appellant and amended plans were produced. These plans affect the internal layout of the building and were amended solely to address the Health and Safety Executive's (HSE) concerns

about fire safety. The HSE confirmed on 17 November 2022 that it was satisfied with the revised information. The Council withdrew its reason for refusal on fire safety on 17 November 2022. While clearly important in respect of fire safety, I consider that no prejudice would be caused to any parties by my consideration of these amended plans, given the limited changes.

5. I have had regard to a signed and executed unilateral undertaking submitted and dated 3 January 2023.

Main Issues

6. As the reason for refusal on the setting of the courts and fire safety have been withdrawn, the main issues in this appeal are:
 - a) the effect of the proposed development on the character and appearance of the area;
 - b) whether the proposed development would make adequate provision towards local infrastructure requirements; and
 - c) whether or not any conflict with the development plan and harm arising is outweighed by other considerations.

Reasons

Background

7. The Southwark Plan 2019 – 2036 (SP) was adopted on 23 February 2022 and replaces the Council's Core Strategy 2011 and saved policies of the Southwark Plan 2007. The site forms part of SP allocation NSP46 63 – 85 Newington Causeway.
8. Allocation NSP46 has an indicative residential capacity of 93 homes and requires provision of the amount of employment floorspace (E(g), B class) currently on the site or at least 50% of the development as employment floorspace, whichever is greater; and; retention of the existing theatre use or provision of an alternative cultural use (D2); and provision of active frontages including ground floor retail, community or leisure uses on Newington Causeway. Redevelopment of the site may provide a new community health hub (E(e)).
9. The allocation recognises that the site's comprehensive mixed-use redevelopment could include taller buildings subject to consideration of impacts on existing character, heritage and townscape. It also identifies that the site is within the setting of the courts and the Trinity Church Square Conservation Area, the undesignated heritage asset Newington Gardens, and undesignated heritage assets on Newington Causeway.
10. Despite the absence of reference to student accommodation within the allocation for NSP46, no in principle objection is put forward by the Council in respect of student accommodation coming forward on this site.
11. In addition to the allocation NSP46 and amongst other designations, the site lies within the Elephant and Castle Major Town Centre and Opportunity Area, as well as the Central Activities Zone. Situated close to Elephant and Castle rail and underground stations and bus routes, the site has a PTAL of 6b, which indicates that it is exceptionally well-connected for public transport.

12. In June 2021, a formal request for pre-application advice was submitted to the Council for a mixed use building comprising E class or F1(a) class floorspace at basement, ground and first floor levels with 14 floors of student accommodation above. The pre-application scheme was similar to the proposed development, although there was an increase in 10 student bedspaces in the proposed development.
13. In early July 2021, a pre-application meeting was held with Greater London Authority (GLA) officers, where it was confirmed that further work was necessary on urban design, fire safety, inclusive access, heritage, transport, and sustainable development.
14. A pre-application meeting was held with the Council on 17 August 2021, but no pre-application advice was issued in writing. The pre-application meeting provided the Council with the opportunity to raise concerns about matters including the proposed land use relative to the then emerging allocation NSP46, the proposal's height, and the relationship of the proposal with other sites around Newington Causeway for which Tibbalds was producing an urban design framework for the Council's regeneration team.
15. In October 2021, the appellant met with Tibbalds. While the appellant refers to the Tibbalds framework, the Council consider it would not be a material consideration as it has not been subject to public consultation and is not a formal planning document. I am inclined to agree with the Council as I have not seen the Tibbalds framework as a complete document, with reference being made to a presentation by Tibbalds during the evolution of the framework.
16. In November 2021, the application was submitted. There was only very limited correspondence between the main parties during the application's lifetime. The application was referred to the GLA in March 2022 and the GLA Stage 1 report was received in May 2022. The appeal resulting from the failure of the Council to determine the application was submitted on 15 July 2022.
17. On 31 May 2022, a second application 22/AP/2227 was submitted for a very similar form of development on the same site as the proposed development. I address the second application in other matters.

a) Character and appearance

18. Located south of Newington Causeway, the site is bounded by Avonmouth Street to the north and east. Avonmouth Street becomes Tiverton Street beyond the site. The site contains a warehouse building and ancillary service yard presently used as a conference venue. Adjoining the site to the west and north-west, a number of buildings¹ of four to five storeys bound Avonmouth Street and Newington Causeway. To the north, the annexes of the courts lie on the opposite side of Avonmouth Street. The local open space at Newington Gardens, a non-designated heritage asset, is to the east. Interwar blocks of flats are sited to the south, forming the Rockingham Estate (the estate). The nearest five storey blocks within the estate are at Telford House and Stephenson House.

¹ 2 Avonmouth Street, Balppa House and Coburg House on Newington Causeway, 69 – 71 and 73 – 75 Newington Causeway.

19. To the south-west, the two storey building at 49 – 51 Tiverton Street adjoins the site and sits between it and the Ceramic Building at 87 Newington Causeway (also known as the Kite Building), a 24 storey mixed-use building. Further south-west along Newington Causeway close to the railway line, there is a building of over 20 storeys at the Signal Building (also known as the Pioneer Building) and the tallest building in the vicinity of the site is Eileen House or Two Fifty One London, a 41 storey building on the opposite side of Newington Causeway.
20. In addition to the tall buildings above, other tall building schemes have been approved or are the subject of planning applications nearby, including at Borough Triangle (also known as Newington Triangle). Permission has been granted at Kings Place close to the junction of Borough Road, Newington Causeway and Harper Road for a 13 storey scheme. This has not yet been built and is subject to a non-material amendment application on phasing. Planning permission has also been granted (19/AP/0750) at 5-9 Rockingham Street for a 21 storey building adjacent to and beneath the railway line.

Policy Context

21. The National Planning Policy Framework (the Framework) looks to the planning system to contribute to the achievement of sustainable development. Chapter 11 of the Framework seeks to make effective use of land and highlights that area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. Chapter 12 of the Framework deals with achieving well-designed places.
22. London Plan (2021) (LP) Policy D1 addresses London's form, character and capacity for growth. Part A sets out the requirements for assessing the characteristics of areas, while Part B looks to use area assessments to establish the capacity for growth and optimise site capacity, while considering contextual factors and supporting infrastructure. LP Policy D3 deals with optimising site capacity and making the best use of land through the design-led approach. Developments should positively respond to local distinctiveness, taking account of local form, scale, and layout. Existing character should be taken into account, as well as ensuring high architectural quality. Higher density development should be promoted in well-connected locations.
23. LP Policy D4 expects masterplanning, design codes and appropriate modelling and digital tools to be used to develop and scrutinise designs and states that major developments referable to the Mayor should undergo at least one round of design review. This includes tall buildings over 30 metres in height. LP Policy D9 on tall buildings sets out a framework for the consideration of planning applications. It includes criteria on visual, functional, environmental, and cumulative impacts of tall buildings. It expects that architectural quality and materials should be of an exemplary standard to ensure that the building's appearance and architectural integrity is maintained through its lifespan.
24. Amongst other things, LP Policy HC1 asserts that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance. LP Policy HC3 deals with the identification and protection of strategic and local views. Additionally, LP Policy SD1 requires amongst other things that development in Opportunity Areas

delivers the area's growth potential and supports wider regeneration objectives.

25. SP Policy AV.09 sets out the Elephant and Castle Area Vision. This states that development should support the area's role as a major town centre and central London location that attracts businesses, research, teaching, shopping, flexible business spaces and cultural activities. Furthermore, it supports a mix of innovative and enduring new architecture.
26. SP Policy P13 deals with the design of places and states that development's height, scale, massing and arrangement must respond positively to existing townscape, character and context. Development should incorporate routes, spaces, landscaping, public realm, green infrastructure and spaces, which are accessible and inclusive. SP Policy P14 requires, amongst other things, development to provide high standards of design including building fabric, function and composition and innovative design solutions that are specific to historic context, topography and constraints. Furthermore, it expects active frontages and entrances that promote activity and successfully engage with the public realm in appropriate locations.
27. SP Policy P17 states that areas where tall buildings are expected are shown on the adopted policies map and within the SP itself. It sets out detailed criteria for tall buildings, including requiring exemplary architecture. SP Policy P19 addresses listed buildings and structures and seeks to conserve or enhance their special significance.
28. Elephant and Castle Supplementary Planning Document and Opportunity Area Planning Framework (2012) (SPD/OAPF) provides a vision to harness the area's potential for redevelopment into an attractive central London destination and a more desirable place for existing and new residents, with excellent shopping, leisure facilities and cultural activities. It envisages further development of London South Bank University (LSBU) and London University of the Arts.
29. The SPD/OAPF sets out area-wide strategies and guides building heights in the Opportunity Area. It highlights that the tallest buildings should act as focal points towards Elephant and Castle along main roads and strengthen gateways into the central area. Moving away from the tallest points, they should diminish in height to manage the transition down to the existing context.
30. The Opportunity Area has nine character areas, including the Enterprise Quarter and Rockingham. The site lies within the Enterprise Quarter, but is close to the Rockingham area. The Enterprise Quarter is identified as having a concentration of education and employment uses, with scope for taller buildings on Newington Causeway. The Rockingham area is seen as a predominantly residential area characterised by large blocks of housing with mature landscaping. In essence, the site lies at the transition of these areas.

Effect on views

31. The appellant produced a Heritage, Townscape and Visual Assessment dated November 2021 (HTVIA). Within this HTVIA, 13 views were assessed. Reference was made by Mr Craig in his evidence for the Council to the provision of further views, including Winter views, views at dusk and long views. However, no such requests were made by the Council during the application process or even early in the appeal process, although the GLA

Stage 1 Report does refer to scope for longer views to be provided. In the absence of any further detail on these potential views from either main party, I shall address the views referred to in the HTVIA.

32. I shall touch on the matters of the height and transition of the scheme in its context and the design of the proposed development on a view by view basis initially. For the avoidance of doubt, I shall refer to the top two floors of the proposed development as the crown from some viewpoints.
33. HTVIA View 1 offers a linear view down Tiverton Street with the Ceramic Building and Telford House in the foreground. Despite the effect of the proposed development in reducing a long view of The Shard from this viewpoint, the Council takes no issue with the seven storey and 14 storey elements of the proposed development and I see no reason to disagree.
34. The Council's concerns in respect of View 1 are focussed on the effect of the crown of the proposed development from this vantage point. To my mind, the juxtaposition of the crown in darker brick with the paler 14 storey element is acceptable. There is undoubtedly a greater solidity to this elevation of the crown than lower storeys of the proposed development and other elevations of the 16 storey element. This is due to a different solid to void ratio as this elevation of the crown lacks windows and has a more strongly vertical emphasis with brick piers at intervals. However, taking into account the existing built environment context and the rest of the proposed development, it would not be intrusive or out of keeping. Furthermore, it would be set back behind the 14 storey element and would only be visible at some points along Tiverton Street.
35. Looking northwards, HTVIA View 2 is close to Stephenson House and to the east of the railway viaduct. Although the seven storey element would be unobtrusive given its height and colour relative to adjoining Telford House, the upper floors across the 14 storey and 16 storey elements would be more visible. There would be some sense of transition downwards between the 14 storey and 16 storey elements. I consider that the taller elements of the proposed development would be no more obtrusive than nearby tall buildings such as the Ceramic Building. This would not be harmful in this context and would neither intrude on the estate nor diminish the surrounding townscape.
36. Taken from within the estate and across the green space in front of Stephenson House, HTVIA View 3 introduces the 14 storey and 16 storey elements of the proposed development behind the roof of Stephenson House. While the 14 storey element of the proposed development would be lighter in colour than the 16 storey element and its crown, I disagree with the Council's assertion that the 16 storey element would be intrusive and erode the sense of place. Although it would undoubtedly be visible from the amenity green space and would be unlikely to be lost in the clouds, it would not be prominent and would not be likely to have an overbearing impact on the estate or its green space.
37. Located at Stephenson House and west of Newington Gardens, HTVIA View 4 shows the proposed development on Avonmouth Street facing Newington Gardens. It would be stepped from seven storeys up to 16 storeys, providing a transition in heights, with the 16 storey element furthest from Stephenson House. Though the 16 storey element, including the crown, would be screened somewhat by trees in the Summer months, it would be highly visible in the Winter months as the trees in Newington Gardens are deciduous. However,

despite the site providing something of a transitional zone between the estate, Newington Gardens and Newington Causeway, I find that this would not be out of place as one would see the different elements of the proposed development together in this view.

38. HTVIA View 5 is located within Newington Gardens at its southern corner. The corner of Stephenson House is visible to one side, along with the Ceramic Building and the existing building, though they are obscured by trees and their foliage in the Summer months. Much of the proposed development would be likely to remain obscured by trees in the Summer. HTVIA View 6 is not dissimilar to View 5 in terms of the tree cover, but is located on the south-east side of Newington Gardens close to Bath Terrace.
39. Winter views would be very different, with very little screening the proposed development from view for both Views 5 and 6. I saw on my site visit in December 2022 that the Ceramic Building was fully visible and that the proposed development would not be concealed by trees in the Winter. While screening would increase in the Summer, lights would be likely to be visible through the trees. Despite this absence of screening, the proposed development would not be unpleasing from this view. Rather than focussing on the crown, an observer would see the staggered seven, 14, and 16 storeys with different materials and generally consistent fenestration from both Views 5 and 6. It would not be overwhelming in this urban context and would not harm Newington Gardens.
40. HTVIA View 7 at the junction of Harper Road and Brockham Street allows for a view across Newington Gardens with the Ceramic Building behind a group of trees in the Summer. Eileen House is visible behind the Ceramic Building. When the trees are in leaf, the proposed development would only be glimpsed if some tree canopy reduction took place. During the Winter and if rooms are lit, it is likely that more of the proposed development would be visible across the gardens. Even though this would be the case, it would be noticeably lower than the Ceramic Building and Eileen House from this perspective and would not diminish the open nature of its surroundings.
41. Viewed from the junction of Harper Road and Swan Street, HTVIA View 8 takes in part of the courts, trees in Newington Gardens and tall buildings at Metro Central Heights, the Ceramic Building, and Eileen House. Given the perspective from this location, the proposed development would be seen as being almost the same height as the Ceramic Building, which it partially obscures. This would be a fleeting impression or a snapshot if one was moving around the area as the observer's perspective would change with movement. The proposed development would though be seen with the taller Eileen House as part of the cluster of taller buildings leading up towards Elephant and Castle. Although more proximate to the courts than the other tall buildings, it would not be harmful to their significance.
42. At the north-western end of Harper Road, HTVIA View 9 looks towards the side and front elevation of the courts and across the frontage car park. Existing tall buildings at the Ceramic Building and Eileen House are partially obscured by deciduous trees. The proposed development would introduce a further tall building which would appear to be of a similar height to the Ceramic Building, but would have very different façade treatments from its neighbour. This would

assist its visual separation from the Ceramic Building and would not harm the local townscape or alter the strategic importance of the courts.

43. The courts and existing tall buildings can be seen from HTVIA View 10, an expansive view from outside The Ship public house at the junction of Borough High Street and Newington Causeway. The planning permission for the 13 storey development at Kings Place is not shown in View 10 as it is not yet underway. As with many of the HTVIA views, the proposed development would increase in visibility in Winter due to diminished tree cover, but this would serve to highlight the staggered reduction in heights from Eileen House to the proposed development. While the Council considers it important that the proposed development continues along a gradient from the Ceramic Building downwards, I find that the stepped arrangement would not be unattractive.
44. On Newington Causeway close to the junction with Avonmouth Street, HTVIA View 11 shows an unashamedly large 14 storey and 16 storey building. The effect of its size and solidity would be reduced somewhat by its set back from Newington Causeway behind Balppa House and its neighbours, and by the range of façade treatments. While the crown would be more prominent from this view, given its siting atop the lighter 14 storey element, its prominence would be reduced by the set back, its vertical emphasis and its fenestration.
45. HTVIA View 12 on Newington Causeway's north-western side shows the proposed development emerging above the existing four and five storey buildings on Newington Causeway's frontage. It would not overwhelm the lower buildings, but would sit comfortably behind them. The crown would be visible from this view, but would appear as another layer of built development behind the frontage buildings and the proposed development's 14 storey element.
46. Within the Trinity Church Square Conservation Area, HTVIA View 13 shows the view along Trinity Church Square from the junction with Trinity Street. Tall buildings (The Strata Tower and One the Elephant) are visible in the distance. However, the proposed development would not be seen from this view. The Council has disputed this, but has not provided evidence to this effect.
47. In summary, I have not found the proposed development to be harmful in respect of any of the specific views identified in the HTVIA.

Location, height, architecture and materials

48. It is agreed by the main parties that the existing townscape is not of a high quality, with the Council describing it as fragmented. Notwithstanding this, it is clear that planning policy, both nationally and locally, views the creation of high quality, beautiful and sustainable buildings and places as being fundamental to what the planning and development process should achieve.
49. In terms of location, I find it difficult to read the site as the backland site that the Council perceives. It is acknowledged by both main parties that the site is allocated for development, lies in an Opportunity Area, and is subject to other designations in Elephant and Castle. Given its location within a wider allocation fronting Newington Causeway and its proximity to Avonmouth Street and Newington Gardens, it is simply part of an urban block.
50. Furthermore, as is common in an urban context, the proposed development would partially enclose the nearest corner of the adjacent open space at Newington Gardens. It would present a strong corner in Avonmouth Street and

would be visible from Newington Causeway, but would not dominate Newington Gardens. While there is disagreement between the main parties on the need to signpost the entrance to and existence of Newington Gardens, a local park rather than a destination from further afield, I consider it would not be problematic to do so in urban design terms. It would not encroach on Newington Gardens, but would offer a more active frontage to the open space than is presently the case. This is positive in terms of place-making.

51. With regard to height, the site falls within a wider area where tall buildings are considered appropriate. While the Council sees the railway bridge as the gateway to the town centre, this seems at odds with the SP allocation of land at NSP46 and nearby NSP44 Newington Triangle (also known as Borough Triangle) within the Elephant and Castle Area Vision set out in Policy AV.09. Both allocations identify the possibility of taller buildings subject to consideration of character, heritage and townscape.
52. There is a plethora of building heights and types locally with the closest tall buildings being the Ceramic Building, Signal Building, and Eileen House. Both Ms Lewis and Mr Coleman for the appellant were actively involved in the design process, considering development of between seven and 20 storeys for the site in the context of the aforementioned tall buildings and the neighbouring estate. The Design and Access Statement provides a summary of that process.
53. Structures taller than 16 storeys were ruled out by the appellant's team for a variety of reasons, including the setting of the courts and Newington Gardens and the proximity of the Ceramic Building at 24 storeys. It was confirmed by Mr Coleman that 16 storeys matched the height of trees in Newington Gardens when crossing the gardens diagonally. Providing a transition between the nearby tall buildings and the neighbouring estate, the proposed development would step down towards the estate and step upwards toward the corner of Avonmouth Street, reaching 16 storeys. I find that the maximum height of 16 storeys would respond positively to existing townscape, be subservient to the Ceramic Building, and make an appropriate transition between the taller buildings and the estate, notwithstanding the slight difference in gradient of buildings when viewed in respect of other taller buildings and as noted in the Design and Access Statement. In making this transition, it would not harm the gravitas of the adjoining courts, as addressed previously in terms of views.
54. The proposed development would be well articulated with different planes having differing prominence depending on the angle of view and the 14 storey element wrapping partially around the 16 storey element. All elements of the proposed development would be articulated further by the juxtaposition of windows, spandrels, lintels and string courses across façades reflecting the necessarily repetitive grid of student rooms.
55. In seeking to address the Council's concerns, the appellant proposed a change in the materials palette, with scope to use a palette of greys rather than the red and aubergine brick initially proposed. Both materials palettes are before me. However, it would not be necessary to use the palette of greys as I find no fault with the strength and confidence of the red/aubergine palette. Accordingly, I have not referred to the palette of greys in the conditions attached to my decision. Though reference has been made to scope for public art to be included within the proposed development, no detailed public art proposal is before me as part of this appeal.

56. Turning to the matter of the crown, it would not be a contrived addition, but would instead be the termination of the 16 storey element of the proposed development which has been designed as an integrated piece. Its crenellations at parapet level, glazed brick panels, brick piers, and fenestration would articulate this part of the proposed development appropriately.
57. Although I have found the proposed development and its architecture to be suitable for its location, and to be positive and appropriate in a number of respects, I agree with the Council's contention that there are more exemplary examples of tall building architecture with particular regard to the topmost storeys. My attention has been drawn for example to a scheme by Stitch Architects at 313-349 Ilderton Road where a much lighter and more porous approach was taken to completing the structure. Whether the approach taken for the proposed development has only been pursued to accommodate a greater number of PBSA units or otherwise, the resulting architecture of the proposed development is good and of high quality, but not exemplary. As such, the proposed development would not meet the expectations of LP Policy D9 and SP Policy P17 as set out above.

Design review

58. The proposed development has been subject to an unusually low level of scrutiny on design matters, amongst other things. The proposed development was not presented at the Southwark Design Review Panel (DRP) during the lifetime of the application. It is regrettable that the proposed development was not presented at DRP, particularly as the design review process is recognised as being an important part of design development as noted by LP Policy D4.
59. The only substantive design feedback provided during the lifetime of the application was the GLA Stage 1 Report which considers that the principle of the proposed tall buildings at this site complies with the strategic locational requirement of LP Policy D9 part B. However, it also confirmed that the application has not been through a design review process and therefore the scheme has not been subject to an appropriate level of design scrutiny prior to application submission, contrary to the objectives of LP Policy D4.
60. I understand that Stitch Architects is on an approved panel for Southwark in respect of its masterplanning services. While the process to become approved for this panel is thorough, this does not alter the need for the proposed development to be subject to external design review.
61. However, the appellant was not careless in not seeking to remedy this or to attend another DRP outside Southwark. After all, the appellant made repeated attempts to engage with the Council and seek progress on the proposed development. The appellant also provided a digital model to the Council for use in November 2021, but this was not used by the Council until the appeal had been submitted. It would normally be expected for the Council to put a case forward for review at DRP and for the applicant (as they then were) to attend the DRP and address any points emerging from that DRP meeting. While the Council suggests that this is even more important in circumstances where architects have limited experience of designing tall buildings, I consider that design review is applicable and useful to all.
62. Despite the appellant's understandable frustration at the absence of communication during the application process and the internal review

processes carried out by Mr Coleman and the planning consultants as critical friends, it is apparent that the proposed development does not meet the requirements of LP Policy D4 with regard to design reviews.

Conclusion on character and appearance

63. In conclusion, I find that the proposed development would not have a harmful effect on the character and appearance of the area. It would not therefore conflict with LP policies D1, D3, HC1, HC3 and SD1 and SP policies AV.09, P13, P14, and P19. However, it would not adhere to LP policies D4 and D9 and SP Policy P17 with regard to exemplary architectural design and quality of tall buildings and the need for external design review processes to have taken place. The aforementioned policies are summarised earlier in my decision.

b) Infrastructure

64. The relevant parties have entered into a unilateral undertaking under section 106 of the Town and Country Planning Act 1990, which includes obligations which would come into effect if planning permission were to be granted.
65. I have considered the obligations in light of the three statutory tests at Regulation 122(2) of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 57 of the Framework. These are that the obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

Nominations agreement

66. Given the extent of discussion at the Inquiry about the nominations agreement, I shall focus first on that matter. Although there is no standard legal definition of a nominations agreement, a nominations agreement is entered into between a student housing provider and one or more Higher Education Institutions (HEI) to allow rooms within purpose-built student accommodation (PBSA) to be secured for and occupied by students of the relevant HEI.

Policy context for PBSA

67. LP Policy H15 deals with PBSA. It notes that boroughs should seek to ensure that local and strategic need for PBSA is addressed, provided criteria are met. These include the development contributing to a mixed and inclusive neighbourhood and the use of the accommodation being secured for students.
68. Furthermore, LP Policy H15 confirms that the majority of the bedrooms in the development including all of the affordable student accommodation bedrooms should be secured through a nomination agreement for occupation by students of one or more higher education provider. Additionally, the maximum level of accommodation should be secured as affordable student accommodation as defined through the LP and associated guidance. The policy sets out alternative routes, comprising a Fast Track Route of at least 35% accommodation being secured as affordable student accommodation or 50% where the development is on public land or industrial land appropriate for residential use in accordance with LP Policy E7. It goes on to say that where those percentages are not met, applications must follow a Viability Tested Route set out in LP Policy H5.

69. LP Policy H15 also states that accommodation should provide adequate functional living space and layout and that boroughs, student accommodation providers and higher education providers are encouraged to develop student accommodation in locations well-connected to local services by walking, cycling and public transport, as part of mixed-use regeneration and redevelopment.
70. The supporting text to LP Policy H15 identifies an overall strategic requirement for 3,500 PBSA bedspaces annually over the Plan period. It also confirms that the strategic need for PBSA is not broken down to a borough level for a number of reasons, including the location of need, site availability, changes in HEI estate and expansion planning, and Government policy change.
71. SP Policy P5 sets out three criteria for PBSA. It is strongly worded, making use of the verb 'must' in the initial text. All PBSA must meet SP Policy P5(1) to provide 5% of student rooms as easily adaptable for occupation by wheelchair users. Once SP Policy P5(1) is addressed, SP Policy P5(2) and (3) offer two alternatives, one of which must be met.
72. SP Policy P5(2) requires that when providing direct lets at market rent, development must provide the maximum amount, with a minimum of 35% as conventional affordable housing by habitable room subject to viability, as per SP Policy P4, as a first priority. In addition to this, 27% of student rooms must be let at a rent that is affordable to students as defined by the Mayor of London.
73. SP Policy P5(3) requires that when providing all of the student rooms for nominated further and higher education institutions, development must provide the maximum amount of affordable student rooms with a minimum of 35% subject to viability. It also confirms that the affordable student rent should be set as defined by the Mayor of London.
74. The supporting text to SP Policy P5 recognises the London-wide need for more student accommodation. However, it looks to balance this with having enough sites for other types of homes, including affordable and family homes. It highlights that there is an acute need for more family and affordable housing and that allowing too much student accommodation will restrict the ability to deliver family and affordable homes. The requirement for an element of affordable housing or a contribution towards affordable housing from student housing development providing direct lets assists in working towards meeting the strategic need for student accommodation and the local need for affordable homes including affordable family homes.

Background on the nominations agreement

75. Shortly after the application was submitted, the main parties corresponded about the nominations agreement. The Council sought clarity from the appellant as to whether the PBSA should be assessed against SP Policy P5(2) or (3). The Council confirmed in December 2021 that to be accepted as a nominations scheme, all PBSA rooms would have to be used exclusively by students of the partner HEI, and this would be secured within a legal agreement and would be consistent with SP Policy P5(3). In the absence of a firm commitment to nominations being demonstrated within the application for all units, the Council considered that the application would need to be assessed on the basis of it being a direct-let scheme, including compliance with the requirement for 35% conventional affordable housing as well as affordable

student housing. This would then be assessed under SP Policy P5(2). This approach remains consistent with the Council's position during the Inquiry and contradicts the appellant's view that there is a gap between SP Policy P5(2) and (3), within which the appeal scheme falls.

76. The appellant's email in response on 23 December 2021 questions the timing of requiring a nominations agreement, but accepts that it is reasonable for the Council to progress the application on the basis of a nominations scheme. The Council wrote again to the appellant on 4 January 2022 to seek greater certainty that the identified HEI would commit. In the absence of certainty, the Council suggested proceeding on a twin track approach to value the development for direct letting as well as a nominations scheme.
77. The only viability report in respect of the proposed development is the appellant's James R Brown and Co Ltd Viability Report dated October 2021, produced just before the Inspectors' Report on the Southwark Plan was issued. The James R Brown report assumes that the University of London would have nomination rights over the whole scheme. It also confirms that the residual land value of £4.84 million is beneath the assumed benchmark land value of £7 million and no conventional affordable housing contribution or provision can be made, beyond the 35% affordable student units. Notwithstanding this gap in value, the appellant went on to submit a planning application for the proposed development. It was acknowledged by Mr Hephher for the appellant that this report has not been the subject of close scrutiny by the main parties.
78. Despite emails from the appellant, including reference to other schemes at 313-349 Ilderton Road and 671-679 Old Kent Road, and letters of support from LSBU and the University of London, no further progress was made in addressing any differences on the nominations agreement and no independent viability audit was completed.
79. While the appellant made their best endeavours to contact the case officer and more senior officers of the Council to move matters forward during the application process, this lack of progress was unfortunate and has played a part in how the situation unfolded prior to and during the Inquiry, both in terms of the timing of provision of documents and the extent of discussion on the nominations agreement.

Options for the nominations agreement

80. During the Inquiry, four options A – D emerged for the nominations agreement and they all form part of the completed unilateral undertaking. Option A involves a nominations agreement between the appellant and the University of London or LSBU (or other relevant HEI). This would involve nomination rights for all affordable student units and a right of first refusal for the HEI to nominate students to occupy the remaining units. This would potentially result in the nomination rights being used for all units in some year, but not in others.
81. Option A would allow any unlet units to be let at an open market rent to other students directly once the HEI pre-emption period had ended annually. While this would mean that the PBSA provider could ensure that the PBSA bedspaces were as close to fully occupied as possible, it would serve to circumvent SP Policy P5. It would not meet SP Policy P5(2) because it has not been independently viability tested and would fail to provide any conventional affordable housing. Furthermore, it would not meet SP Policy P5(3) as not all of

the units would be let to students of the HEI within the nominations agreement.

82. Option B again involves a nominations agreement between the appellant and the University of London or LSBU (or other relevant HEI) for nomination rights for all of the affordable student units, but also for the majority of the PBSA units. The appellant considers this to be consistent with LP Policy H15.
83. Despite the appellant's view that the LP is the senior plan and the source from which the SP is derived, it is necessary for me to have regard to section 38(5) of the Planning and Compulsory Purchase Act 2004 (as amended). This confirms that if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.
84. As the SP underwent examination and was adopted more recently than the LP, SP Policy P5 takes precedence in this instance. Notwithstanding the consistency of Option B with LP Policy H15, Option B would conflict directly with SP Policy P5(3) as not all PBSA units would be subject to a nominations agreement.
85. Furthermore, SP Policy P5(2) would not be met as no contribution towards conventional affordable housing would be provided unless the viability review trigger in the unilateral undertaking was enacted. This would only occur if the development had not been substantially implemented within the 24 month period set out in the unilateral undertaking. It is therefore not certain that any conventional affordable housing would be provided as a result of this development under Option B. While it may be the case that the development's viability may not support contributions towards conventional affordable housing, this has not been sufficiently tested by independent viability specialists working on the basis of direct lets for the proposed development.
86. There was some discussion during the Inquiry regarding main modification MM30 to SP Policy P5 occurring at a late stage in the SP examination process. It was posited by the appellant that the amended wording of SP Policy P5 and its implications had not been fully thought through or evidenced and that this had resulted in inconsistency between LP Policy H15 and SP Policy P5.
87. It is not clear why main modifications occurred in the way they did, but it is evident that the Council faces a complex situation locally with regard to the provision of affordable housing and that the examining Inspectors recognised this challenge as presenting specific local circumstances in Southwark with regard to PBSA. It will be seen from the paragraphs above that I consider that Option B would fail to meet SP Policy P5.
88. Option C deals with the same HEI and takes the same approach as Options A and B to the affordable student units, but diverges from the earlier options in respect of all of the units being part of the nominations agreement provided that the units that are not affordable student units shall be let at an open market rent. Such rent is to be determined in the absence of an agreement with the HEI as if the nominations agreement were not in place.
89. SP Policy P5(2) would not be applicable under Option C as the nominations agreement would cover all student units, whether affordable or open market. However, it is not certain that SP Policy P5(3) would be met as the open

market rent could be set at a higher level than the relevant HEI would be willing to commit to, thereby circumventing the objectives of SP Policy P5. I discount Option C.

90. Option D consists of an agreement entered into between the appellant and the HEI for nomination rights for all PBSA units. SP Policy P5(2) would not be relevant in this instance as there would be no direct lets, but SP Policy P5(3) would apply. In my view, Option D is the only option which would meet the requirements of both SP Policy P5 and LP Policy H15.
91. In their letters, the University of London refers to having a shortfall of units priced appropriately for first year home students, while LSBU refers to the need for good quality affordable student accommodation. However, an open market rent may not be seen by the HEI as being either appropriate or affordable. I appreciate that funders of PBSA development may have concerns about rental levels being suppressed by an HEI monopoly to create a form of intermediate rent, between affordable student rent and market rent. This intermediate rent would then affect the value of the development through Option D.
92. However, I agree with the Council's stance that one of the two key criteria of SP Policy P5 should not be more or less advantageous than the other. Although it is likely that a nominations agreement would not provide the same level of rent as an open market rental PBSA scheme, the nominations agreement process would provide more certainty for the PBSA provider about the level of occupation by one or more HEI, while ensuring that they are not required to contribute towards conventional affordable housing. It would also allow students of relevant HEI access to accommodation at a rental level which HEI consider to be appropriate. Even if an HEI does not wish to take up all of the rooms within a particular PBSA scheme, there is nothing preventing more than one HEI being involved at the same location.
93. Mr Hepher suggested during the Inquiry that the appellant's 671 - 679 Old Kent Road scheme was facing financial difficulties as a result of a nominations agreement consistent with Option D. However, this was not evidenced.
94. I note that the housing market in London is not as buoyant as it has been and the recent mini-budget gave rise to some economic turmoil. Delivery of development is undoubtedly important to make effective use of land, further the interests of HEI, and to relieve pressure on students' use of conventional low cost housing within the wider housing market. Notwithstanding conjecture about matters such as further pandemics, alternative development of this part of the allocation NSP46, and the proportion of conventional affordable housing that a housing scheme would deliver, there is insufficient evidence before me to indicate that the development would not be delivered if Option D was the selected option for the nominations agreement.
95. In the event that the proposed development could not be delivered using Option D due to development viability at the time of intended implementation, the appellant could seek a deed of variation, which could involve the Council considering the scope for provision of affordable student units within the proposed development or a direct let alternative, subject to viability appraisal.

Other planning obligations

96. In addition to the aforementioned requirements for PBSA, the other planning obligations included within the unilateral undertaking relate to administration and monitoring charges; an early stage viability review if development has not taken place within a defined period of time; provision of affordable workspace; archaeological monitoring and advice; jobs and training during the construction phase; local procurement; cycle hire docking station; monitoring of energy usage and compliance with the energy statement; a carbon green fund contribution; connection to a future district heating network; a range of highways works and a highways improvements contribution; servicing, deliveries and parking restrictions, including disabled parking; and community use within the flexible Class E/F1(a) floorspace. Having had regard to the Council's CIL Compliance Statement and the relevant LP and SP policies, I find that these obligations meet the tests set out in paragraph 57 of the Framework and Regulation 122 of the CIL Regulations.

Conclusion on provision for infrastructure needs arising from the development

97. I have taken into account the obligations for administration and monitoring charges; an early stage viability review; provision of affordable workspace; archaeological monitoring and advice; jobs and training during the construction phase; local procurement; cycle hire docking station; monitoring of energy usage and compliance with the energy statement; a carbon green fund contribution; connection to a future district heating network; a range of highways works and a highways improvements contribution; servicing, deliveries and parking restrictions, including disabled parking; and community use within the flexible Class E/F1(a) floorspace; and Option D in respect of the nominations agreement for PBSA as they meet the required tests in the CIL Regulations and the Framework as outlined above. I have not taken into account Options A, B or C in respect of the nominations agreement and have not afforded these provisions any weight. Options A, B and C in respect of the nominations agreement would therefore not constitute a reason for granting planning permission.
98. Concluding on this main issue, the proposed development would make adequate provision towards local infrastructure requirements. Accordingly, it would be compliant with LP Policies DF1, E3, E11, H15, SI2, SI3, T5, T7, and T9, SP Policies IP3, P5, P14, P23, P28, P31, P46, P49, P50, P51, P53, P54, P55, P70, and SP4, the Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document (2015 and 2020 Addendum) (SPD), paragraph 57 of the Framework, and Regulation 122 of the CIL Regulations.
99. LP Policy H15 and SP Policy P5 are set out above. LP Policy DF1 and SP Policy IP3 seek provision of infrastructure to support development. LP Policy E3 and SP Policy P31 set out requirements for affordable workspace. SP Policy P23 requires the conservation of archaeological resources commensurate with their significance. SP Policy P28 and LP Policy E11 requires provision for training and jobs for local people and procurement of goods and services locally. SP Policy P46 seeks to provide accessible community facilities.
100. SP Policy SP4 addresses the need for a green and inclusive economy. LP Policy SI2 looks to minimise greenhouse gas emissions and requires detailed energy strategies and monitoring and SP Policy P70 requires all major

development to be net zero-carbon. LP Policy SI3 requires development to make the fullest contribution to minimising carbon dioxide emissions, including connecting to heat networks.

101. SP Policy P49 looks to improve accessibility to public transport, cycling and walking. SP Policy P50 seeks to minimise demand for private car journeys, ensure safe and efficient operation of the road and bus network, and provide appropriate servicing. SP Policy P51 addresses walking and seeks enhancement of walking routes, while SP Policy P53 expects development to contribute towards cycle hire schemes and docking stations. SP Policy P54 requires the removal of eligibility for parking permits for future occupiers within Controlled Parking Zones. SP Policy P55 states that car parking for those with accessibility needs should be located within the development site. LP Policy T5 looks to remove barriers to cycling, while LP Policy T7 requires safe servicing. SP Policy P14 covers design quality and requires adequate servicing within a site. LP Policy T9 seeks to mitigate the transport impacts of development. The SPD covers a range of obligations, including transport, and providing local jobs and training.

c) Other considerations

102. It is necessary to address the other considerations put forward. I have had regard to relevant case law² about planning balances not being approached in a manner which is too mathematical or mechanistic. I have not apportioned numerical scores in weighting.
103. With regard to the fallback position of the second application, the main difference between the proposed development and the second application is the removal of the 15th and 16th floors and the number of PBSA units being reduced by 14. The second application would still constitute a tall building in Southwark as it would exceed 30 metres in height.
104. This second application was presented at Planning Committee on 29 November 2022. The members of Planning Committee agreed with officer recommendation that planning permission be granted, subject to conditions, referral to the Mayor of London, and the applicant entering into an appropriate legal agreement by no later than 31 March 2023. The decision notice has not yet been issued for the second application. As for the proposed development, the second application was not presented at DRP.
105. The GLA Stage 1 Report dated 28 November 2022 for the second application confirms that the HTVIA does not include any long-range views and therefore officers cannot conclude whether the development would make a positive contribution to the existing and emerging skyline. However, given the character of the area which includes tall buildings, GLA officers do not consider that the second application would detrimentally impact upon long-range views.
106. The second application was put to Planning Committee as being subject to a nominations agreement for all the PBSA and was granted subject to satisfactory completion of a legal agreement to ensure this. My understanding is that the issues affecting the nominations agreement for the proposed development also pertain to the legal agreement for the second application.

² Dignity Funerals Limited v Breckland District Council [2017] EWHC 1492 (Admin)

107. The Avison Young Financial Viability Review dated September 2022 relates to the second application and was produced to provide an independent viability review of the viability report by James R Brown and Co Ltd in relation to the second application. The Avison Young document demonstrates that the second application could viably support 35% affordable student housing while generating a surplus of £1.86 million, but that this surplus could be depleted due to changing economic circumstances. Despite assuming a direct let approach as no detail was available on the nominations agreement, Avison Young found the offer of 35% affordable student units to be reasonable. Avison Young also noted that a nominations agreement would likely reflect lower rents.
108. The Council sees the resolution to grant permission for the second application as representing an alternative viable and deliverable scheme which is acceptable in townscape terms. The Council affords this significant weight. However, the decision on the second application has not been issued and will not be issued until the legal agreement is resolved. Any progress on finalising this legal agreement is only likely to take place following my decision. I afford this fallback position limited weight and have assessed the proposed development on its own merits.
109. With regard to the provision of 233 PBSA units, this would make a valuable contribution to student housing provision close to a number of HEI, in an area where demand outstrips supply for specialist housing provision and there is a recognised London-wide need for such accommodation. The proposed development would provide a policy-compliant 35% affordable student units and 5% accessible student units. Furthermore, the provision of 233 PBSA units would, if using the LP ratio of 2:5:1, free up the equivalent of 93 conventional homes. The challenges faced by the Council in delivering housing, particularly affordable housing are recognised. Taken in the round, I afford the provision of this quantum of PBSA very significant weight.
110. The proposed development would by necessity involve the redevelopment of a brownfield site within the Elephant and Castle Opportunity Area, an area that is amongst the most well-connected in London in terms of public transport. It would contribute positively to the ongoing regeneration of the wider area and would provide 1,733 square metres of flexible floorspace for employment, education or a community health hub. It would be consistent with allocation NSP46 and with the vision for the Elephant and Castle Opportunity Area within the SPD/OAPF. I afford this moderate weight.
111. In terms of employment creation, there would be an increase of some 426 square metres in the provision of flexible employment floorspace on site and some 10% of the overall employment floorspace provision would be affordable. This affordable workspace would be compliant with the requirements of SP Policy P31 as outlined above. The appellant considers that up to 158 office jobs could be created, while the Council considers the net increase in jobs might be as low as 33 additional jobs. Given the uncertainty as to the quantum of jobs and the aforementioned flexibility of use of the workspace with the PBSA, I afford this moderate weight.
112. The proposed development would include public realm improvements, comprising enhancement to the public realm along the proposed development's frontage and a pocket park to the south. This is consistent with policy

requirements outlined in LP Policy D9 and SP Policy P17 on tall buildings. As the public realm improvements are outside the site itself, they are secured by the unilateral undertaking. The public realm improvements would support place-making for future occupiers of the proposed development and for neighbouring occupiers. I attach moderate weight to the public realm improvements as a public benefit.

113. With regard to financial benefits in terms of business rates, CIL and Section 106 monies, these monies would be commensurate to a similar scheme with a similar floorspace here or elsewhere in the borough. I afford this limited weight. Similarly, economic benefits from construction, while considerable in terms of turnover in the construction supply chain, monies to the public purse, and in construction jobs, could be realised through another development scenario for this site. I afford this limited weight.
114. The ongoing expenditure of the future occupiers of the proposed development would enhance local expenditure, though I consider that the wider social and economic benefits of students attending university, achieving qualifications and improved employment prospects, and carrying out voluntary work, could be achieved elsewhere and would have a more dispersed effect. As such, I afford the ongoing expenditure of future occupiers limited weight.
115. The proposed development would be in a highly accessible location and would meet high standards of sustainability. However, this would be likely for any development scenario on this site and would be required for compliance with the LP and the SP. This is neutral.

Other Matters

116. With regard to daylight and sunlight concerns, the appellant has carried out a detailed assessment of the potential effect on neighbouring residential properties. Having had regard to the site's urban context and the existing restrictions to light for Telford House and Stephenson House in particular due to the presence of access decks, I find that the retained levels of daylight and sunlight to the neighbouring properties will remain satisfactory after development. Given the distance between buildings, outlook would also be satisfactory.
117. The proposed development would improve the site's ecological quality through landscaping and public realm improvements. In terms of parking, public transport, deliveries and servicing, no concern has been raised by the Council in this regard. The site is very well-located for public transport use, parking on site would be restricted to disabled parking and deliveries and servicing layout would be dealt with by condition.
118. Pollution and noise during and after construction would be addressed by condition. Subject to the take up of the space, a community health hub would be provided within the proposed development. In terms of noise and disturbance from more students using the site and neighbouring Newington Gardens, any noise from the proposed development itself would need to be addressed by the management company, while issues relating to the use of Newington Gardens would potentially be a matter for Environmental Health. The effect on property values is not normally a planning issue.

119. Concerns have also been raised by adjoining landowners whose land lies within allocation NSP46. These concerns were raised in writing on 31 October 2022 and 28 November 2022 in relation to the proposed development and the second application. I have had regard to these letters and to the case law referred to therein. The letters included a masterplan provided by Patel Taylor dated October 2022. The landowners did not appear at the Inquiry.
120. The adjoining landowners referred to SP Policy P18 on efficient use of land. In addition to looking to development to optimise land use, it also seeks to ensure that development does not unreasonably compromise development potential or legitimate activities on neighbouring sites. The Council's Residential Design Standards Supplementary Planning Document (2011 and updated in 2015) is also referred to. This includes guidance on distances between buildings to avoid overlooking, loss of privacy, and disturbance.
121. The adjoining landowners' objections to the proposed development and to the second application relate to their scope to affect the development potential of other sites within the allocation. It is agreed between the main parties that the proposed development would not prejudice the future development of the remainder of allocation NSP46, despite the reference to bringing forward comprehensive mixed-use redevelopment.
122. It is my understanding that the appellant's masterplan within their Design and Access Statement was intended to be illustrative only. The Patel Taylor masterplan is also of an illustrative nature. Furthermore, in respect of separation distances, these are recommendations set out in guidance. The Council has confirmed that in some instances, mitigation might be used, such as offsetting of windows to avoid directly facing windows or design solutions such as angled windows or screening. This chimes with my experience of such guidance.
123. It is possible that the remaining land within the allocation may not come forward together, given its individual ownerships. However, having considered the Patel Taylor masterplan as well as the appellant's masterplan, I consider that there remains developable area on the adjoining sites and that the evidence before me does not indicate that the development potential of those sites and the wider NSP46 allocation has been unreasonably compromised.

Planning balance

124. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. I have had regard to case law³ on development plan policies pulling in different directions.
125. In summary, the benefits are provision of 233 PBSA units, redevelopment of a brownfield site, employment creation, public realm improvements, financial benefits, increased local expenditure, and provision of development in a highly accessible location to a high level of sustainable design. Together, these benefits have very significant weight.

³ R v Rochdale Metropolitan Borough Council ex parte Milne (No 2) [2001] Env LR 22

126. There would be no harm in respect of infrastructure, including the nominations agreement based on Option D. However, unless mentioned explicitly as having weight in this balance, the remaining obligations in the legal agreement are intended to mitigate the effect of the development on local infrastructure. Therefore the remaining obligations are neutral in weight.
127. Turning to adverse impacts, the proposed development would not represent exemplary architectural design and quality for tall buildings and external design review processes were not followed. It would consequently conflict with some policies in the development plan. While I acknowledge that a building's effect on townscape reaches beyond its own site and would be long-standing once built, I have found that the proposed development would be suitable for its location and would be positive and appropriate. It would not have a harmful effect on character and appearance and would avoid conflict with a number of LP and SP design policies. Therefore, the conflict with LP Policies D4 and D9 and SP Policy P17 in terms of exemplary architecture and design review processes carries no more than moderate weight.
128. I have given the fallback position of the second application limited weight. In this instance, I find that the adverse impacts would be insufficient to outweigh the benefits and that the proposed development would comply with the development plan when taken as a whole. There are no material considerations to indicate otherwise.

Conditions

129. The schedule of conditions was discussed during the Inquiry and the appellant gave their agreement to pre-commencement conditions before the Inquiry closed. Conditions have been amended to reflect changes in plan and condition numbers, to remove repetition and unnecessary text, and to improve clarity. Numbers in brackets refer to numbers in the schedule of conditions.
130. It is necessary to specify conditions confirming the time limit for development (1) and approved plans (2) to ensure certainty. Five pre-commencement conditions (3 - 7) are necessary as they should be addressed before construction works begin. The condition for a Construction Environmental Management Plan (3) would safeguard the living conditions of local residents, guard against pollution or nuisance, and ensure highway safety. The remediation condition (4) is necessary to ensure that risks of contamination are minimised. The condition on piling (5) is needed to guard against detrimental effects on underground sewerage utility infrastructure. A condition on fire safety (6) would minimise risk to life and damage to buildings.
131. The condition on the Planning Stage Circular Economy Statement (7) has been amended to remove repetition of the requirement for a post-completion report as this is addressed by another condition (24) and to clarify the requirement to comply with the Circular Economy Statement. Both conditions (7 and 24) are necessary to reduce waste and carbon emissions.
132. A drainage condition (8) is necessary to minimise potential for surface water flooding. Conditions on archaeology (9 - 12) are necessary for evaluation, mitigation, interpretation and understanding of the special archaeological interest of the site within the wider North Southwark and Roman Roads Archaeological Priority Zone. A condition on ducting for full fibre infrastructure (13) is necessary for consistency with LP Policy SI6 on global competitiveness.

133. Conditions on provision of bird and bat boxes (14) and green roofs (15) are necessary in the interests of biodiversity and habitat creation. In order to ensure high quality design, it is necessary to apply conditions requiring detailed drawings of architectural treatments (16) and samples of external facing materials and mocked-up façades (17). For the security and safety of future occupiers, a condition (18) is necessary to meet Secured by Design principles.
134. To ensure adequate provision for cycling and servicing, a condition (19) is necessary to allow for approval of details. To ensure provision of accessible student accommodation, a condition (20) is required to ensure compliance with Part M of Building Regulations. In the interests of fire safety, I have applied a condition (21) on sprinkler systems. A condition (22) is also necessary to ensure that the development meets LP Policy SI5 in respect of water efficiency.
135. A condition on hard and soft landscaping (23) is necessary to ensure high quality design and to support biodiversity. This has been amended to require information earlier in the discharge of condition process for clarity. A condition on provision of a whole life cycle carbon assessment (25) is needed for consistency with LP Policy SI2 to minimise greenhouse gas emissions.
136. Two conditions (26 and 27) are necessary to ensure adequate provision of domestic and commercial refuse and the provision of a disabled parking space. These conditions would protect the amenity of future occupiers. A condition (28) on extract ducting and ventilation for any use within Class E for the cooking of food is required in the interests of amenity.
137. Three conditions (29 - 31) are necessary to ensure that future occupiers of the development and neighbouring occupiers do not experience noise and disturbance. The condition on pre-occupation testing (31) has been amended to require submission of the test results to the Local Planning Authority. Further conditions (32 - 34) are required to ensure that hours of use of the roof terrace and deliveries to and use of the commercial units do not detrimentally affect the living conditions of neighbouring occupiers.
138. A condition (35) is necessary to ensure adherence to the energy efficiency measures set out in the appellant's Energy Strategy. Furthermore, in order to protect trees, an arboricultural condition (36) is required.

Conclusion

139. For the reasons set out above, the appeal should be allowed and planning permission granted.

Joanna Gilbert

INSPECTOR

Appearances

For the Local Planning Authority:

Annabel Graham Paul, Counsel	Instructed by Dougal Ainsley, Senior Planning Lawyer, London Borough of Southwark
She called:	
Dougal Ainsley	Senior Planning Lawyer, London Borough of Southwark
Zoe Brown MRTPI	Team Leader, Major Development and New Homes, London Borough of Southwark
Richard Craig MPhil	Team Leader, Design and Conservation, London Borough of Southwark
Sara Dilmamode	Planning Policy Team, London Borough of Southwark
Alex Godinet	Planning Lawyer, London Borough of Southwark
Colin Wilson	Head of Strategic Development, London Borough of Southwark

For the Appellant:

Thomas Hill KC	Instructed by Roger Hepher, Chairman, hgh Consulting
He called:	
Richard Coleman Dip Arch (Cant) ARB RIBA RIAI	Independent Architectural, Townscape and Heritage Consultant at Citydesigner
Liam J Dunford BSc (Hons) MScSurv FRGS	Senior Director, Point 2 Surveyors
Matthew Evans	Counsel, Forsters LLP
Roger Hepher BA (Hons) MTP FRICS MRTPI FRSA AAoU	Chairman, hgh Consulting
Sally Lewis B.Arch MA-UD RIBA ARB	Director, Stitch Architects
Elizabeth Woodall	Associate Director, hgh Consulting

Documents received during the Inquiry

INQ-01	Appellant's Opening Statement
INQ-02	Council's Opening Statement
INQ-03	Note of clarification re landscape drawing
INQ-04	Erratum to paragraph 10.10 of Mr Dunford's Proof of Evidence
INQ-05	GLA Strategic planning application stage 1 referral for planning application 22/AP/2227
INQ-06-0	Agreed list of conditions 20221214 - Tracked
INQ-06-1	Agreed list of conditions 20221214 - Clean
INQ-07	Inspector's Note on Nominations Agreement 15 December 2022
INQ-08	Council's Note on Nominations Agreement 19 December 2022
INQ-09	Inspectors' Report on the Examination of the New Southwark Plan
INQ-10	Avison Young Financial Viability Review prepared for London Borough of Southwark
INQ-11	Appendix 1 New Southwark Plan Schedule of Main Modifications
INQ-12	James R Brown and Co Ltd Viability Report: Avonmouth House, 6 Avonmouth Street, SE1 6NX, October 2021
INQ-13	Avonmouth House: Student Accommodation Nominations Agreement – Options 19 December 2022
INQ-14	Appellant's Note on Key Points on the Nominations Agreement Issue 20 December 2022
INQ-15-0	Unilateral Undertaking dated 21 December 2022
INQ-15-1	Unilateral Undertaking Annexure 1
INQ-15-2	Unilateral Undertaking Annexure 2
INQ-15-3	Unilateral Undertaking showing changes between 12 December 2022 draft and 22 December 2022 draft
INQ-15-4	Updated Unilateral Undertaking – clean version dated 22 December 2022
INQ-16-0	Inspector's Note on Pre-Commencement Conditions
INQ-16-1	Appellant's Response on Pre-Commencement Conditions
INQ-17	Council's Closing Statement
INQ-18	Appellant's Closing Statement

Documents received after the Inquiry

INQ-15-5	Signed and executed unilateral undertaking dated 3 January 2023
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Schedule of 36 conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: Existing Site Location Plan 2135-STCH-XX-ZZ-A-1001; Existing Site Plan 2135-STCH-XX-ZZ-A-1002; Existing Site Elevation North East 2135-STCH-XX-ZZ-A-1003; Existing Site Elevations 2135-STCH-XX-ZZ-A-1004; Existing Site Section 2135-STCH-XX-ZZ-A-1005; Proposed Site Plan 21235-STCH-XX-ZZ-DR-A-1050; Proposed Block Plan 21235-STCH-XX-ZZ-DR-A-1051; Proposed building Basement 2 Plan 21235-STCH-XX-B2-DR-A-1100 Rev D; Proposed building Basement Plan 21235-STCH-XX-B1-DR-A-1101 Rev B; Proposed building Ground floor plan 21235-STCH-XX-00-DR-A-1102 Rev F; Proposed building 1st floor plan 21235-STCH-XX-01-DR-A-1103; Proposed building 2nd floor plan 21235-STCH-XX-02-DR-A-1104 Rev B; Proposed building 3rd-6th floor plan 21235-STCH-XX-ZZ-DR-A-1105 Rev B; Proposed building 7th floor plan 21235-STCH-XX-07-DR-A-1106 Rev B; Proposed building 8th-13th floor plan 21235-STCH-XX-ZZ-DR-A-1107 Rev B; Proposed building 14th-15th floor plan 21235-STCH-XX-ZZ-DR-A-1108 Rev B; Proposed building Roof plan 21235-STCH-XX-RF-DR-A-1109 Rev A; Proposed building - North West elevation 21235-STCH-XX-ZZ DR-A-1200 Rev B; Proposed building - North East elevation 21235-STCH-XX-ZZ-DR-A-1201 Rev B; Proposed building - South East elevation 21235-STCH-XX-ZZ-DR-A-1202; Proposed building - South West elevation 21235-STCH-XX-ZZ-DR-A-1203; Proposed building - North East site elevation 21235-STCH-XX-ZZ-DR-A-1204 Rev B; Proposed building - South East site elevation 21235-STCH-XX-ZZ-DR-A-1205; Proposed building - Section AA 21235-STCH-XX-ZZ-DR-A-1300; Proposed building - Section BB 21235-STCH-XX-XX-DR-A-1301; Proposed layouts Typical Ensuite 01 21235-STCH-XX-ZZ-DR-A-1400 Rev A; Proposed layouts Typical Ensuite 02 21235-STCH-XX-ZZ-DR-A-1401 Rev A; Proposed layouts Typical studio 21235-STCH-XX-ZZ-DR-A-1402; Proposed layouts WCH accessible studio 21235-STCH-XX-ZZ-DR-A-1403; Detail elevation study 01 21235-STCH-XX-ZZ-DR-A-1500; Detail elevation study 02 21235-STCH-XX-ZZ-DR-A-1501; Detail elevation study 03 21235-STCH-XX-ZZ-DR-A-1502; Detail elevation study 04 21235-STCH-XX-ZZ-DR-A-1503; Detail elevation study 05 21235-STCH-XX-ZZ-DR-A-1504; 3D Massing Model 21235-STCH-XX-ZZ-M1-A-1700; Landscape GA Revised TM-502-LA-101 Rev A; Landscape Terrace TM-502-LA-102.
- 3) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall ensure commitment to current best practice with regard to construction site management and the use of all best endeavours to minimise off-site impacts, and will include the following information:

- a) A detailed specification of demolition and construction works at each phase of development including consideration of all environmental impacts and the identified remedial measures;
- b) Site perimeter continuous automated noise, dust and vibration monitoring;
- c) Engineering measures to eliminate or mitigate identified environmental impacts e.g. hoarding height and density, acoustic screening, sound insulation, dust control measures, emission reduction measures, location of specific activities on site;
- d) Arrangements for a direct and responsive site management contact for nearby occupiers during demolition and/or construction e.g. signage on hoardings, newsletters, residents' liaison meetings;
- e) A commitment to adopt and implement the ICE Demolition Protocol and Considerate Contractor Scheme;
- f) Site traffic - Routing of inbound and outbound site traffic, one-way site traffic arrangements on site, location of lay off areas;
- g) Site waste management - Accurate waste stream identification, separation, storage, registered waste carriers for transportation and disposal at appropriate destinations;
- h) A commitment that all NRMM equipment (37kW and 560kW) shall be registered on the NRMM register and meets the standard as stipulated by the Mayor of London.

All demolition and construction work shall be undertaken in strict accordance with the approved CEMP and other relevant codes of practice, unless otherwise agreed in writing by the Local Planning Authority.

- 4)
 - a) No development shall take place until a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Following the completion of the works and measures identified in the approved remediation strategy, a verification report providing evidence that all works required by the remediation strategy have been completed, together with any future monitoring or maintenance requirements shall be submitted to and approved in writing by the Local Planning Authority.
 - b) In the event that potential contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority, and a scheme of investigation and risk assessment, a remediation strategy and verification report (if required) shall be submitted to and approved in writing by the Local Planning Authority.
- 5) No development 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 subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved Piling Method Statement.

- 6) No development shall take place until details of access for fire appliances as required by Approved Document B of the Building Regulations and details of adequate water supplies for fire fighting purposes have been submitted to and approved in writing by the Local Planning Authority. The development approved shall be completed in accordance with any details approved which shall be retained thereafter.
- 7) Prior to works commencing, including any demolition and no later than RIBA Stage 4, a Planning Stage Circular Economy Statement (CES) shall be submitted to and approved in writing by the Local Planning Authority. The CES shall include:
- a) A Bill of Materials including kg/m² and recycled content (target for a minimum 20%) for the development;
 - b) A Recycling and Waste Reporting table, evidencing that the proposal would reuse/recycle/recover 95% of construction and demolition waste, and put 95% of excavation waste to beneficial use;
 - c) A Pre-demolition/Refurbishment Audit;
 - d) A Building End-of-Life Strategy;
 - e) A Final Destination Facilities List; and
 - f) Evidence of any destination landfill sites' capacity to receive waste.

The development shall be implemented in accordance with the CES. Unless otherwise agreed by the Local Planning Authority, the CES should be complied with for the full life cycle of the development.

- 8) No works (excluding demolition and site clearance) shall commence until full details of the proposed surface water drainage system incorporating the Sustainable Drainage Systems (SuDS) have been submitted to and approved in writing by the Local Planning Authority, including detailed design, dimensions, depth and location of attenuation units and flow control devices. The specific SuDS type, arrangement and material should be consistent with the Ardent Flood Risk Assessment and Drainage Strategy Report Ref 2102760-04 October 2021 and subject to any necessary site investigations. The drainage system should achieve a reduction in surface water runoff rates as detailed in the Ardent Flood Risk Assessment and Drainage Strategy Report Ref 2102760-04 October 2021. The submitted information must confirm that the site is safe in the event of blockage/failure of the system, including consideration of exceedance flows. The site drainage must be constructed and retained in accordance with the approved details.
- 9) Before any work hereby authorised begins, excluding demolition to ground slab level and site investigation works, the implementation of a programme of archaeological evaluation works shall be secured in accordance with a written scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority. In the event archaeology of national significance is found on the site, a scheme shall be submitted to and approved in writing by the Local Planning Authority to ensure the

archaeology will be preserved in-situ. The scheme shall be implemented during the construction period and within the completed development as approved.

- 10) Before any work hereby authorised begins, excluding demolition to ground slab level and archaeological evaluation, the implementation of a programme of archaeological mitigation works shall be secured in accordance with a written scheme of investigation, which shall be submitted to and approved in writing by the Local Planning Authority.
- 11) a) Before any work hereby authorised begins, excluding demolition to ground slab level and site investigation works, a Public Engagement Programme shall be submitted to and approved in writing by the Local Planning Authority. The Public Engagement Programme shall set out:
 - 1) How the fieldwork areas will be hoarded to provide opportunities for passers-by to safely view the excavations;
 - 2) Detailed drawings (artwork, design, text and materials, including their location and a full specification of the construction and materials) for the public interpretation and presentation display materials celebrating the historic setting of the site, which will be located on suitably visible public parts of the temporary site hoarding;
 - 3) Details of at least one event, such as a heritage trail, that will be held during the fieldwork phase (as a minimum this should state the date/time, duration, individuals involved and advance promotional measures for the event, and provide an outline of the content of the event);b) Prior to the commencement of the fieldwork phase, the hoarding shall be installed in full accordance with the approved details referred to in parts a)1) and a)2) of this condition, and the hoarding shall remain as such and in place throughout the fieldwork phase.
c) During the fieldwork phase, the event referred to in part a)3) of this condition shall be carried out.
d) Before first occupation of any part of the development, detailed drawings (artwork, design, text and materials, including their location and a full specification of the construction and materials) for the public interpretation and presentation display materials celebrating the historic setting of the site, in some form of permanent display case or signage to be installed within a publicly-accessible part of the development hereby approved. The approved display case or signage shall be installed in accordance with the approval and shall not be replaced other than with a display case or signage of similar specification and bearing the same information.
- 12) Within one year of the completion of the archaeological work on site, an assessment report detailing the proposals for the off-site analyses and post-excavation works, including publication of the site and preparation for deposition of the archive, shall be submitted to and approved in writing by the Local Planning Authority, and the works detailed in the assessment report shall not be carried out otherwise than in accordance with any such

approval given. The assessment report shall provide evidence of the financing and resourcing of these works to their completion.

- 13) Prior to commencement of any works (with the exception of demolition to ground level and archaeology), detailed plans shall be submitted to and approved in writing by the Local Planning Authority demonstrating the provision of sufficient ducting space for full fibre connectivity infrastructure within the development. The development shall be carried out in accordance with the approved plans and maintained as such in perpetuity.
- 14) Prior to the commencement of any above grade works (excluding demolition), details of bird and bat boxes shall be submitted to and approved in writing by the Local Planning Authority. The bird and bat boxes shall be installed within the development prior to the first occupation of the building of which they form a part or the first use of the space in which they are contained. The bird and bat boxes shall be installed strictly in accordance with the details so approved and shall be maintained as such thereafter.
- 15) Prior to the commencement of any above grade works (excluding demolition), details of the biodiversity green roof shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity green roof shall be:
 - a) biodiversity based with extensive substrate base (depth 80-150mm);
 - b) laid out in accordance with agreed plans; and
 - c) planted/seeded with an agreed mix of species within the first planting season following the practical completion of the building works (focused on wildflower planting, and no more than a maximum of 25% sedum coverage).

The biodiversity green roof shall not be used as an amenity or sitting out space of any kind and shall only be used in the case of essential maintenance or repair or escape in case of emergency. The biodiversity green roof shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter. A post completion assessment will be required to confirm the roof has been constructed to the agreed specification.

- 16) Prior to commencement of any works above grade (excluding demolition), detailed drawings at a scale of 1:5 or 1:10 through:
 - i) all façade variations;
 - ii) commercial fronts and residential entrances;
 - iii) all parapets and roof edges;
 - iv) all balcony details; and
 - v) heads, cills and jambs of all openings

to be used in the carrying out of this permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall

not be carried out otherwise than in accordance with any such approval given.

- 17) Prior to the commencement of any above grade works (excluding demolition), samples of all external facing materials and full-scale (1:1) mock-ups of the façades to be used in the carrying out of this permission shall be presented on site to the Local Planning Authority and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with any such approval given. The façades to be mocked up should be agreed with the Local Planning Authority.
- 18) Prior to the commencement of any above grade works (excluding demolition), details of security measures shall be submitted and approved in writing by the Local Planning Authority and any such security measures shall be implemented prior to occupation in accordance with the approved details which shall achieve the Secured by Design accreditation award from the Metropolitan Police.
- 19) Prior to the commencement of any above grade works (excluding demolition):
 - a) Details and 1:50 scale drawings of the secure cycle parking facilities to Southwark Plan 2022 standards shall be submitted to and approved in writing by the Local Planning Authority. This shall include 302 spaces, including 30 Sheffield racks providing for 60 spaces, including 3 disabled and 3 cargo bicycle spaces;
 - b) Details relating to the servicing layout and its relationship with the public highway shall be submitted to and approved in writing by the Local Planning Authority.

The cycle parking facilities shall be provided prior to the occupation of the development and thereafter shall be retained and the space used for no other purpose and the development shall not be carried out otherwise than in accordance with any such approval given.

- 20) Prior to the commencement of any above grade works (excluding demolition), written confirmation from the appointed building control body shall be submitted to the Local Planning Authority to confirm that the specifications for each student bedspace identified in the detailed construction plans meet the standard of the Approved Document M of the Building Regulations (2015). The development shall be carried out in accordance with the details thereby approved by the appointed building control body and shall provide the following split of accommodation:

M4 (Category 3) 'wheelchair user dwellings':- at least 5%
M4 (Category 2) 'accessible and adaptable':- remaining units
- 21) Prior to the commencement of any above grade works (excluding demolition), full particulars of the sprinkler system to be used within the

building shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with any approval given.

- 22) Prior to the commencement of any above grade works, a revised sustainability strategy shall be submitted to and approved in writing by the Local Planning Authority detailing water efficiency measures to be implemented in the development. The development shall be completed in accordance with any details approved which shall be retained thereafter.
- 23) Prior to the commencement of any above grade works, detailed drawings of a hard and soft landscaping scheme showing the treatment of all parts of the site not covered by buildings (including cross sections, surfacing materials of any access, terraces, or pathway layouts, materials and edge details), shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall not be carried out otherwise than in accordance with any such approval given and shall be retained for the duration of the use. The planting, seeding and/or turfing shall be carried out in the first planting season following completion of building works and any trees or shrubs that are found to be dead, dying, severely damaged or diseased within five years of the completion of the building works OR five years of the carrying out of the landscaping scheme (whichever is later), shall be replaced in the next planting season by specimens of the same size and species in the first suitable planting season. Planting shall comply to BS:4428 Code of practice for general landscaping operations, BS:5837 (2012) Trees in relation to demolition, design and construction and BS7370-4:1993 Grounds maintenance Recommendations for maintenance of soft landscape (other than amenity turf).
- 24) No later than three months following substantial completion of the final student accommodation unit within the development hereby consented, a Post Completion Circular Economy Report setting out the predicted and actual performance against all numerical targets in the relevant Planning Stage Circular Economy Statement shall be submitted to and approved in writing by the Local Planning Authority.
- 25) Within three months of the completion of the development or commencement of RIBA Stage 6 (whichever occurs earlier) and in any event prior to the building being occupied (or handed over to a new owner (if applicable)), to submit the Post-Construction Whole Life-Cycle Carbon (WLC) Assessment to the Local Planning Authority for written approval in consultation with the GLA. The developer shall use the post construction tab of the GLA's WLC assessment template and the relevant forms must be completed accurately and in their entirety in line with the criteria set out in the GLA's WLC assessment guidance. The Post Construction Assessment should provide an update of the information submitted at planning submission stage (RIBA Stage 2/3), including the WLC carbon emission figures for all life-cycle modules based on the actual materials, products and systems used. The assessment must be submitted along with supporting

evidence as required by the GLA's WLC assessment guidance and, unless otherwise agreed by the Local Planning Authority, within three months of the completion of the development or commencement of RIBA Stage 6 (whichever occurs earlier).

- 26) Before the first occupation of the building hereby permitted, details of the arrangements for the storing of domestic and commercial refuse shall be submitted to and approved in writing by the Local Planning Authority and the facilities approved shall be provided and made available for use by the occupiers. The facilities shall thereafter be retained and shall not be used or the space used for any other purpose.
- 27) Before the first occupation of the building hereby permitted, the 1 no. disabled parking space as shown on Proposed building Ground floor plan 21235-STCH-XX-00-DR-A-1102 Rev F shall be provided and made available for the users of the development. The space provided shall thereafter be retained and shall not be used for any other purpose.
- 28) Prior to the commencement of any use within use class E involving the cooking of food, full particulars and details of a scheme for the extraction and ventilation of the commercial kitchen shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the use of the site under class E for the cooking of food and shall be retained thereafter. The details submitted shall include:
- a) Details of extraction rate and efflux velocity of extracted air;
 - b) Full details of grease, particle and odour abatement plant;
 - c) The location and orientation of the extraction ductwork and discharge terminal;
 - d) A management servicing plan for maintenance of the extraction system to ensure that fumes and odours from the kitchen do not affect public health or residential amenity.
- 29) The student accommodation hereby permitted shall be designed to ensure that the following internal noise levels are not exceeded due to environmental noise:
- Bedrooms - 35dB LAeq T†, 30 dB LAeq T*, 45dB LAFmax T *
- Living and Dining rooms- 35dB LAeq T †
- * - Night-time - 8 hours between 23:00-07:00
- † - Daytime - 16 hours between 07:00-23:00
- 30) The Rated sound level from any plant, together with any associated ducting, shall not exceed the Background sound level (LA90 15min) at the nearest noise sensitive premises. Furthermore, the Specific plant sound level shall be 10dB(A) or more below the background sound level in this location. For the purposes of this condition, the Background, Rating and Specific Sound levels shall be calculated fully in accordance with the methodology of BS4142:2014+A1:2019.

- 31) Party walls, floors and ceilings between the commercial premises and student accommodation shall be designed to achieve a minimum weighted standardized level difference of 60 dB DnTw+Ctr. Pre-occupation testing of the separating partition shall be undertaken for airborne sound insulation in accordance with the methodology of ISO 16283-1:2014 and should be reported to the Local Planning Authority in writing within three months of the completion of the development.
- 32) The rooftop terrace at Level 07 which is located on the south-western elevation of the development and is shown on Proposed building 7th floor plan 21235-STCH-XX-07-DR-A-1106 Rev B shall be open for use only between 0700 and 2200 on Mondays to Fridays and 0800 to 2200 on Saturdays and Sundays.
- 33) Any deliveries, unloading and loading to the commercial units shall only be between the following hours: 0800 to 2000 on Mondays to Saturdays and 1000 to 1600 on Sundays and Bank Holidays.
- 34) The Class E/F1(a) floorspace shall not be used except during the hours of 0700 - 2300 on any day.
- 35) The development hereby permitted shall be constructed to include the energy efficiency measures stated in the Energy Strategy dated 1 July 2022 and prepared by JAW and submitted in support of the application. All measures and technologies shall remain for as long as the development is occupied, unless otherwise agreed in writing with the Local Planning Authority.
- 36) The existing trees on or adjoining the site which are to be retained shall be protected and both the site and trees managed in accordance with the recommendations contained in the Arboricultural Method Statement PJC ref: 5810/21-02 Rev 1. All tree protection measures shall be installed, carried out and retained throughout the period of the works, unless otherwise agreed in writing by the Local Planning Authority. In any case, all works must adhere to BS5837: (2012) Trees in relation to demolition, design and construction and BS3998: (2010) Tree work - recommendations. If within the expiration of 5 years from the date of the occupation of the building for its permitted use any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.