

# Elephant and Castle shopping centre and London College of Communication site

in the London Borough of Southwark  
planning application no. 16/AP/4458

## Strategic planning application stage II referral

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008.

## The proposal

Comprehensive mixed-use redevelopment comprising demolition of all buildings on site and erection of buildings ranging from single-storey to 35 storeys to provide 979 residential units; retail; office space; education space; assembly and leisure space; and a new station entrance and station box for the Northern Line at Elephant and Castle London Underground station.

## The applicant

The applicant is **Elephant & Castle Properties** and the architect is **Allies and Morrison**.

## Key dates

**Pre-application meetings:** various from May 2015 up to submission of application.

**Stage I Report:** 30 January 2017

**Committee Meeting:** 3 July 2018

## Strategic issues

**Principle of development:** The mixed-use scheme positively responds to strategic objectives for the regeneration of the Elephant and Castle Opportunity Area.

**Mix of uses:** The mix of proposed residential, retail, leisure and educational uses is strongly supported in this CAZ location.

**Affordable housing:** The proposed affordable housing contribution of 35% (which comprises 38% social rent, 14% London Living Rent and 48% Discount Market Rent) is strongly supported. Early and late stage reviews, along with a clawback mechanism have been secured, in accordance with draft London Plan Policies H6 and H13.

**Equalities:** Reasonable measures are in place to facilitate a successful relocation of displaced traders, and the potential loss of the bingo hall would be outweighed by the wider benefits of the scheme.

**Urban design:** The scheme would significantly increase the permeability and legibility of the area, whilst successfully accommodating a rich mix of uses that would support the vibrancy and sustainability of Elephant and Castle town centre.

**Transport:** The proposed enhancements to transport infrastructure are strongly supported would be key to achieving the aspirations for growth with the Elephant and Castle Opportunity Area.

**The Council's decision**

In this instance, Southwark Council has resolved to grant permission subject to conditions and a Section 106 legal agreement.

**Recommendation**

That Southwark Council be advised that the Mayor is content for it to determine the case itself, subject to any action that the Secretary of State may take and does not therefore wish to direct refusal or direct that he is to be the local planning authority.

## Context

1 On 20 December 2016, the Mayor of London received documents from Southwark Council notifying him of a planning application of strategic importance to develop the above site for the above uses. This was referred to the Mayor under Categories 1A, 1B and 1C of the Schedule to the Order 2008:

- 1A 1. “Development which comprises or includes the provision of more than 150 houses, flats, or houses and flats”;
- 1B 1.(b) “Development... which comprises or includes the erection of a building or buildings in Central London (other than the City of London) and with a total floorspace of more than 20,000 square metres”; and,
- 1C 1.(c) “Development which comprises or includes the erection of a building of... more than 30 metres high and is outside the City of London”.

2 On 30 January 2018, the Mayor considered planning report D&P/3654/01, and subsequently advised Southwark Council that the application did not yet comply with the London Plan, for the reasons set out in paragraph 86 of the planning report.

3 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. Since then, the application has been revised and further information provided in response to the Mayor’s concerns (see below). On 3 July 2018, Southwark Council decided that it was minded to grant permission, subject to conditions and agreement of a section 106 agreement, and on 29 November 2018 it advised the Mayor of this decision. Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008, the Mayor may allow the draft decision to proceed unchanged, direct Southwark Council under Article 6 to refuse the application, or issue a direction to the Council under Article 7 that he is to act as the Local Planning Authority for the purposes of determining the application. The Mayor has until 13 December 2018 to notify the Council of his decision and to issue any direction.

4 The decision on this case will be made available on the City Hall website: [www.london.gov.uk](http://www.london.gov.uk).

## Consultation stage issues summary

5 At consultation stage, Southwark Council was advised that the application did not comply with the London Plan for the reasons set out below;

- **Mix of uses:** The mix of proposed residential, retail, leisure and educational uses is strongly supported for this CAZ location. The applicant, nevertheless, needs to work with Southwark Council and existing occupiers to progress the detail of its business relocation strategy.
- **Housing:** The proposed build to rent housing contribution (35% affordable) is strongly supported pending an independent viability review.
- **Transport:** The proposed enhancements to transport infrastructure are strongly supported. Notwithstanding this there are a number of transport issues to resolve, including delivery of a Northern Line Ticket Hall and the design and operation of service access from New Kent Road.

## **Strategic planning policy and guidance update**

6 In August 2017, the Mayor published his Affordable Housing and Viability Supplementary Planning Guidance (SPG). This must now be read subject to the decision in R(McCarthy & Stone and others) v. Mayor of London.

7 On 24 July 2018, the Government published the revised National Planning Policy Framework.

8 On 13 August 2018, the Mayor published Minor Suggested Changes to his Draft London Plan, which should be taken into account on the basis explained in the NPPF.

## **Application update**

9 Since consultation stage, GLA officers have engaged in discussions with the applicant, the Council, TfL officers and local stakeholders with a view to addressing the above matters. The application has subsequently been amended, and further information provided, as follows:

- The affordable housing offer has been amended as set out below.
- The relocation strategy for existing traders has been amended as set out below.
- Further detail of the delivery of the proposed Northern Line ticket hall has been provided.
- A number of financial contributions amounting to approximately £3,300,000 have been secured

10 Furthermore, as part of Southwark Council's draft decision on the case, various planning conditions and obligations have been proposed to address identified concerns and ensure that the development is acceptable in planning terms.

## **Principle of Development**

11 At consultation stage, it was noted that the scheme responded positively to the strategic objectives for the regeneration of Elephant and Castle town centre, and would deliver the coordinated redevelopment of two key sites at the heart of the Opportunity Area. Furthermore, the proposed mix of residential, commercial and education uses, coupled with significant public transport enhancements, were strongly supported at this highly accessible CAZ location.

12 Notwithstanding this strong in principle support for the proposed mix of uses, further clarification was sought in relation to the implementation strategy for a number of these uses.

### Retail

13 The site currently provides 15,132 sq.m. GIA of commercial space (A1 to A4 uses) which is confined principally to small retail units. The proposed redevelopment includes 18,234 sq.m. GIA of A1 to A4 commercial space, equivalent to an uplift of 3,102 sq.m. There would also be an additional 286 sq.m. of flexible (A1 to A4 and B1) use which could be used as office or retail dependent on uptake by the existing occupiers of the office uses on site.

14 As noted within GLA report D&P/3654/01 report, the proposed redevelopment would necessitate the displacement of a significant number of existing occupiers and small businesses (65 retail tenants and 18 businesses leasing office space within Hannibal House). Consequently, the applicant was advised to continue engaging with existing business occupiers and the Council in order to develop a robust relocation strategy for those business that would be displaced by the proposals.

15 Since Stage 1, and in line with the recommendations of the Council's Equality Analysis, the applicant has prepared and submitted a draft Local Business Support and Relocation Strategy. This strategy would come into effect a minimum of 6 months prior to the closure of the shopping centre, as secured by the draft Section 106 agreement. As part of the preparatory work for this strategy, an independent business advisor, who is funded by the applicant but reports to the Council, has been appointed.

16 The business advisor (Tree Shepherd) have been based within the shopping centre since August 2017 offering a broad range of support measures to all businesses located within the red line boundary of the application site. The terms of the Local Business Support and Relocation Strategy would see continued funding for the role for a further year following the commencement of the proposals. During the redevelopment, the business advisor would establish and manage a panel of specialist professional advisors (including solicitors, surveyors and accountants) whose services would be available to assist in reviewing and assessing potential alternative premises and business models.

17 Furthermore, a relocation fund of some £634,700 has been derived having regard to the number and types of businesses within the red line of the application site. This fund would be available to all existing independent businesses at the site with any allocations overseen by the Council in conjunction with the independent business advisor. Financial support from the relocation fund may be used towards access to professional services, costs of relocation and fit out or any other services or costs deemed appropriate by the Council. The principles and processes involved in allocation have been arrived at through consultation with the Council and existing tenants and are to be secured through the Section 106 agreement.

18 The proposals would also secure 10% on-site affordable retail provision - equating to a minimum of 1,823 sq.m. and up to a maximum of 2,104 sq.m. depending on uptake of 281 sq.m. flexible office/retail space by the existing office tenants. As clarified within the Southwark committee report, the applicant had previously committed to providing the affordable retail space in line with the provisions of the Elephant and Castle SPD. In accordance with this, the discounted rent levels would staircase up over a 5-year period averaging at 40% of the market rate over this period.

19 However, following further discussions with GLA officers, the applicant has agreed to add a further 10-year period to the terms of the affordable retail offer. Consequently, following the initial 5-year period, the rents over years 6 to 15 would be held at 75% of the market rate, or similar terms to be agreed with the affordable retail provider, before returning to the full market rate in year 16. This revised affordable retail offer, over and above the provisions within the Elephant and Castle SPD, is strongly supported.

20 Notwithstanding the above, it is noted that the proposed quantum of affordable retail floorspace at between 1,823 sq.m. and 2,104 sq.m., would be insufficient to replace the 6,512 sq.m. currently occupied by independent retailers at the site. On this basis, it is evident that off-site space will be required to meet the needs of displaced businesses. In this regard it is noted that Southwark's Local Plan policy has helped to create a supply pipeline of affordable workspace within the Elephant and Castle Opportunity Area, and some 1,762 sq.m. of affordable retail has already been consented at other nearby sites - including 411 sq.m. at Elephant One, 1,351 sq.m. at the former Heygate Estate. Furthermore, as part of the Business Support and Relocation Strategy, a database of relocation opportunities within the nearby area would be maintained by the developer and would include details of vacant retail units in the opportunity area, along with details of affordable retail and market units in nearby developments.

21 Further to the above, a planning application for temporary retail space to be located within Castle Square immediately the east of the site fronting Elephant Road is currently under

consideration by Southwark Council. The 517 sq.m. of retail space proposed as part of this application would be for the sole use of displaced traders from the shopping centre and would be available for a minimum 5 year period. The application is expected to be determined by Southwark Committee in December 2018.

22 Having regard to the details above and the previous considerations set out in report D&P/3654/01, the quantum and nature of retail provision within the scheme is strongly supported by GLA officers.

#### Culture space (nightclub/music venue)

23 The London Coronet Theatre (Use Class D2) previously provided a 2,800 person capacity music venue located on the east plot, fronting New Kent Road. The lease for the venue is understood to have ceased in January 2018 and the redevelopment proposals do not include the reprovision of this venue. However, the applicant has proposed a 'medium' size music venue (approximately 500 person capacity) to be located on the west pot (adjacent to the Metropolitan Tabernacle) fronting the new public space at Elephant and Castle peninsula.

24 This proposal has been developed without an end user in place, but has, nevertheless, been informed by market research which indicates that a flexible, mid-scale music and/or performance venue would have the best chance of success in this location. In a response to consultation responses from the Theatres Trust and several other bodies, the committee report notes that the intended phasing for the proposed development is such that the proposed floorspace for the cultural use would not come forward for a minimum of 8 years. The Council therefore concludes that requests for a planning obligation which would involve an operator in the final design and fit out of the venue are not practical given these timescales.

25 Notwithstanding the above, and following further discussions between GLA officers and the Council, an additional provision has been included within the Section 106 agreement so that the marketing and selection process for the operator of the venue is conducted in consultation with the GLA's Culture Team. This amendment would ensure that an appropriate cultural offer for the area is secured within the development.

26 Further concerns in relation to existing cultural uses, in particular Corsica Studios, have also been highlighted during the consultation process. Corsica Studios operates a two room music venue out of the railway arches immediately behind the shopping centre on Elephant Road. Concerns have been expressed that the proximity of the proposed residential units to the existing venue would threaten its future in this location.

27 In response to these concerns and the provision of draft London Plan Policy D12, a contribution of £125,000 from the developer is to be secured through the Section 106 agreement in order to fund mitigation works that would be required by the studios. This figure has been derived based on a costed scheme of attenuation and, along with conditions relating to noise-proofing measures to residential windows on this side of the development, is considered to address the principles of 'agent of change' in line with the draft London Plan.

#### **Affordable housing**

28 At consultation stage, the proposals included an affordable housing provision of 35% (on a habitable room basis). This was to be provided in the form of discount market rent (DMR) units with 40% of the affordable housing provision offered at, or below, London Living Rent (LLR) levels, whilst the remaining 60% was to be provided at a range of levels up to 80% of the market rate.

29 Nevertheless, in response to the emergence of new local and strategic housing policy and guidance, and following the inclusion of the Mayor’s grant funding, the affordable housing offer has been improved.

Table 1: Proposed affordable housing offer by unit and tenure

	<b>Social rent</b>	<b>London Living Rent</b>	<b>Discount Market Rent</b>	<b>Total</b>
<b>East Site</b>				
1 bed	0	18	35	53
2 bed	0	23	89	112
3 bed	0	0	0	0
<b>West Site</b>				
1 bed	22	2	10	34
2 bed	66	10	27	103
3 bed	28	0	0	28
<b>Total units</b>	116	53	161	
<b>% of AH by hab room</b>	<b>38%</b>	<b>14%</b>	<b>48%</b>	<b>100%</b>

30 While the headline figure of 35% affordable housing (on a habitable room basis) remains unchanged, the grant funded offer would comprise 38% (116 units) provided as social rent, 14% (53 units) provided as LLR, and the remaining 48% secured at discounted market levels which would be affordable to households on incomes up to £60,000 p.a. The offer would therefore include a significant proportion of social rented units in line with emerging local policy, with the remaining intermediate rented products all meeting the affordability criteria set out within draft London Plan Policy H7.

31 The affordable housing offer has been subject to the GLA’s Viability Tested Route and has undergone robust independent scrutiny. The extensive testing which, amongst various inputs, has rigorously assessed the proposed Internal Rate of Return (IRR), construction costs and value of the existing uses on the site, has concluded that the affordable housing offer is the maximum level that can be achieved within the proposed scheme at the current time.

32 The proposed 330 units within the affordable housing offer, would be split evenly across both sites (165 units on each of the east and west sites). However, as illustrated in Table 1 above, all 116 of the proposed social rented units would be located on the west site. The phasing strategy for the proposals is such that the proposals on the east site would come forward in advance of those on the west site. Consequently, owing to concerns about the delivery of the social rented units, the Section 106 agreement stipulates that if the development on the west site has not substantially commenced within 10 years of the commencement of works on the east site, both the land and a financial sum sufficient to provide the social rented

units would be transferred to Southwark Council in order that the Council complete delivery of the units. This approach is supported by GLA officers.

33 It is also understood that the applicant wishes retain a fall-back position whereby the housing on the west site could be delivered as traditional build-to-sell units rather than build-to-rent. The 116 social rented units on the west site would be explicitly excluded from this fall-back position and would be delivered regardless of the final tenure of the remaining units on the west site. Such a fall-back position would be subject to local and strategic affordable housing policy requirements (as they relate to build-to-sell) and as such a further review mechanism would be required to assess the viability position of the scheme at that point in time. The inclusion of a such a review mechanism within the Section 106 agreement is therefore supported by GLA officers. The Section 106 agreement also secures early, mid and late stage review mechanisms as required by draft London Plan Policy and the Affordable Housing and Viability SPG, given the grant funding within the scheme. The early review would be triggered in the event that development has not substantially commenced within 36 months of the grant of planning permission. Whilst it is noted that draft Policy H6 states that the period for trigger of such early stage reviews would usually be 24 months, in this instance, it is accepted by the borough and GLA officers that the significant level of preparatory and site clearance works required would justify this extended time period. The mid and late stage reviews would take place prior to the occupation of 75% of market units on the east site and prior to the occupation of 75% of the market units on the west site respectively. The proposal is [for a phased development which is] likely to take several years to build out. In the circumstances, the Affordable Housing SPG indicates early, mid-term and late stage review mechanisms are appropriate. The use of a late stage review is consistent with the London Plan and is required under draft London Plan Policy H6.

34 Finally, the build-to-rent units would be subject to a covenant securing them as rental property for a minimum of 30 years. Were any of the units to be sold within this period, a clawback mechanism would require affordable housing contributions be made to the Council. This would accord with the provisions of draft London Plan Policy H13.

## **Equality**

35 London Plan Policy 3.1 seeks to ensure that development proposals protect and enhance facilities and services that meet the need of particular groups and communities, and resists their loss without adequate justification or re-provision. In addition, draft London Plan Policy CG1 seeks to support and promote the creation of an inclusive city where all Londoners, regardless of their age, disability, gender, gender identity, marital status, religion, sexual orientation, social class, or whether they are pregnant or have children can share in its prosperity, culture and community, minimising the barriers, challenges and inequalities.

36 More generally, the Equality Act 2010 places a duty on public bodies, including the GLA, in the exercise of their functions, to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This requirement includes removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic and taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.

37 The application is supported by an Equalities Statement, along with subsequent addendum of July 2017 and additional equalities information submitted in February 2018. The draft Local Business Support and Relocation Strategy is also of particular relevance with respect to equality implications. In addition, Southwark Council commissioned three separate Equalities Analyses during 2016 and 2017. The results of which were presented to the Council's Cabinet and are available on the Council's website. In line with the protected characteristics defined within the

Equality Act 2010, the available information indicates that the most significant impacts in this case would relate to the characteristics of race and age.

#### Loss of the shopping centre

38 Both within the shopping centre and the railway arches on Elephant Road, there is a high proportion of business owners and employees from Black, Asian and Minority Ethnic (BAME) backgrounds as well as a number of older business owners. Survey work undertaken indicates that the vast majority of businesses, including market traders, would wish to continue operating both during and post the proposed redevelopment. Consequently, the loss of existing premises for these businesses would likely result in temporary adverse impacts during the relocation process as well as the potential temporary and long-term impacts in terms of the loss of clustering opportunities in order to provide a range of services to customer groups. Loss of clustering opportunities has also been identified as potentially undermining a critical mass of community. Adverse impacts on business employees arising from the above could include temporary or permanent loss of income and temporary or permanent loss of employment.

39 Furthermore, the possibility of higher, and potentially unaffordable, retail rents within the redeveloped shopping centre has been continuously highlighted as a concern by various stakeholders throughout the pre- and post-application consultation process. Owing to the likelihood of these higher rents, it is expected that the majority of existing businesses would relocate elsewhere, and that this may potentially result in dislocation from customer groups. It is also noted that older business owners may experience increased difficulties arising from the relocation process set out above.

40 In addition to the impacts on the business owners and employees, the potential loss of the goods and services (often culturally specific) provided by these businesses could result in negative impacts on people from BAME backgrounds.

#### Mitigation with respect to loss of shopping centre

41 In order to mitigate the potential negative impacts on BAME traders, their employees, and older business owners/traders, a draft Business Support and Relocation Strategy has been compiled by the applicant in conjunction with the Council and following consultation with affected traders. Key actions to be enacted from this strategy include;

- the creation of a trader panel to oversee the relocation process - the panel would be formed of ward councillors, representatives of the traders and representatives of the developer;
- the appointment of the independent business adviser as detailed in paragraph 15 and 16 above;
- the provision of a relocation fund as set in paragraph 17;
- the provision of on-site affordable retail as set out in paragraphs 18 and 19;
- the provision of on-site flexible workspace as set out in paragraph 18; and
- the formation of a database of potential relocation opportunities for traders as detailed in paragraph 20.

#### Loss of bingo hall

42 The existing bingo hall in the shopping centre occupies 5,299 sq.m. of floorspace with the capacity to accommodate 2,000 bingo players. The hall is open seven days a week and is understood to be used by approximately 650 customers per day. Whilst the proposed development would include 5,743 sq.m. of D2 leisure floorspace (a reduction of approximately 6,329 sq.m. of total D2 space), there is no specific reprovision of the bingo hall.

43 Survey work undertaken indicates that the bingo hall is predominantly used by older people (91% of users are over 45; 48% of users over 65) and additionally 62% of those surveyed identified as being of Black/African/Caribbean decent. It is also noted that there is only one other bingo hall within the borough (Canada Water) and that 93% of bingo hall users stated that they only visit one bingo facility. The loss of the bingo hall would therefore likely have adverse impacts on these groups which may include experiencing a loss of social inclusion.

#### Mitigation for loss of bingo hall

44 Whilst the loss of the bingo hall would be acceptable in planning policy terms, in light of the potential equality implications, the applicant has agreed to give first right of refusal to a bingo operator to lease approximately 1,850 sq.m of the proposed leisure floorspace - this has been secured through the Section 106 agreement. However, it is noted that this would result in a shortfall compared to the existing situation and would not cover the reprovision of the facility during the demolition and construction phases of the redevelopment process. Owing to concerns over this break in provision, the Section 106 also includes the requirement for an information strategy whereby bingo hall users would be informed of the dates of redevelopment works and of potential alternative bingo locations.

#### Other equality implications

45 Concerns have been raised during the consultation process about the equality implications of several additional elements of the proposed scheme. This includes the impact on users of the following facilities which are to be lost as part of the proposals; the bowling alley; the Coronet Theatre; the passport interview office; the language centre; and the charities located in Hannibal House.

46 The equalities analysis undertaken indicates that the loss of the bowling alley, theatre and language centres would not likely result in any adverse impacts on protected groups. Conversely, the loss of passport office and, in particular, the loss of the two charities which serve victims of crime and young people affected by strokes respectively, may result in adverse equalities impacts on the users of these services. It should however be noted that the charities would be eligible for support and assistance via the draft Business Support and Relocation Strategy.

47 There would also be a number of positive equality impacts arising from the proposed scheme. These would include but are not limited to; new employment and training opportunities in both the construction and operational phase of the redevelopment; the provision of new housing including affordable housing; improved accessibility arising from public realm and transportation improvements; and improved educational facilities at the new London College of Communications (LCC) facility.

#### Equality - conclusion

48 The available evidence strongly suggests that the loss the shopping centre and the loss of the bingo hall would result in adverse equalities impacts with respect to both older age groups and those from BAME backgrounds including the Latin American community. Given these potential adverse implications, it is important to carefully consider how the proposed changes would affect those with protected characteristics as defined in the Equalities Act 2010, and how to ensure that that their interests are protected as far as is possible within the context of the planning application.

49 GLA officers are satisfied that the potential equality implications arising from the proposals have been carefully considered and documented by both the Council – through the equality analysis undertaken and the details within the committee report – and by the applicant – through

the equality analysis, addendum and additional information submitted in support of the planning application.

50 In light of potential adverse impacts arising from the redevelopment proposals, the applicant has proposed a series of measures which would go some way towards mitigating adverse implications on those within protected groups. This includes the details set out within the draft Business Support and Relocation Strategy and the offer of re-provision of a quantum of floorspace to a bingo hall provider.

51 Having regard to the extent of the measures which would be put in place to assist affected traders with the relocation process during the redevelopment process – some of which are already in operation including the on-site presence of the business advisor – GLA officers are satisfied that the applicant has engaged positively and pro-actively with affected groups and that the applicant is taking all reasonable steps to facilitate the timely and successful relocation of existing businesses. On this basis, whilst recognising the potential adverse impacts on existing traders including those within protected groups, officers are satisfied that reasonable measures are in place to reduce adverse equality impacts, and that the impact of the proposed displacement of traders would be outweighed by the wider benefits of the scheme.

52 Nevertheless, given there is a degree of commercial uncertainty as to whether a bingo operator would choose to return to the site, and the fact that there would be a break in provision during demolition and construction, GLA officers must conclude that the application does not comply with the requirement of London Plan Policy 3.1 to provide replacement provision of community facilities. Notwithstanding this, having had regard to phasing requirements and constraints, the possibility of reduced size bingo hall within the proposed leisure floorspace, and the wider planning benefits of the proposed development, GLA officers are satisfied that reasonable measures are in place to reduce adverse equality impacts, and that the impact of the proposals on the users of the bingo hall would be outweighed by the wider benefits of the scheme.

### **Urban design and heritage**

53 At consultation stage, the overall design approach was strongly supported. It was noted that the site layout, the scale, massing and the varying architectural responses, would significantly increase the permeability and legibility of this highly accessible location. Whilst concerns were raised in relation to potential pinch points and areas of blank facade, it is accepted that the applicant, in conjunction with the Council, has sought to address these concerns. More detailed matters, such as facade design and potential lighting strategies, which may further address these concerns, will be assessed by way of a number of planning conditions which have been attached to the Council's draft decision notice. Subject to the ongoing scrutiny of the detailed design process by the Council, the proposals would achieve an exemplary design quality across both east and west sites.

54 London Plan Policy 7.8. and Policy HC1 of the draft London Plan states that development should conserve heritage assets and avoid harm. The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory duties for dealing with heritage assets in planning decisions. In relation to listed buildings, all planning decisions should "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses". The NPPF states that when considering the impact of the proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.

55 Where a proposed development will lead to 'substantial harm' to or total loss of the significance of a designated heritage asset, local planning authorities should refuse consent,

unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Where a development will lead to 'less than substantial harm', the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

56 A number of concerns have been raised both during and following the consultation process in relation to the proposals impacts on a number of nearby heritage assets including the Metropolitan Tabernacle (Grade II), Metro Central Heights (Grade II), Michael Faraday Memorial (Grade II), Elliot's Row Conservation Area and West Square Conservation Area. The impact of the proposals on each of these designated heritage assets is addressed in detail in the Council's committee report and, as stated within GLA report D&P/3654/01, GLA officers are of the view that, having considered the urban design and townscape views, the proposal would provide an appropriate response to context and would not harm the character or setting of surrounding heritage assets.

57 It is also noted that an application was made to Historic England for a Certificate of Immunity from listing under the terms of the Planning (Listed Building and Conservation Areas) Act 1990 in relation to the buildings at: Elephant and Castle Shopping Centre, Hannibal House, the former Butts Public House, the former Charlie Chaplin Public House, the Northern Line Underground Station and Numbers 30 and 32 New Kent Road. A concurrent application to statutorily list these buildings was also made to Historic England under the same act.

58 On 23 October 2018, having had regard to the report and recommendation of Historic England, the Secretary of State for Digital, Culture, Media and Sport notified interested parties that the above buildings would not be added to the List of Buildings of Special Architectural or Historic Interest. Accordingly, the application for a Certificate of Immunity was successful. Under section 6(2) of the 1990 Act, the effect of this certificate is to preclude the Secretary of State from listing the above noted buildings for a period of five years from the date of issue, and to preclude the local planning authority from serving a Building Preservation Notice on the buildings during that period.

## **Transport**

59 Since consultation stage, extensive negotiations with the developer and Council have taken place to resolve the outstanding transport issues. More recently following publication of the BLE consultation response, separate (to this application) discussions have also commenced on the potential for an integrated Bakerloo line station and ticket hall with the proposed new Northern line ticket hall.

60 The construction of the concrete 'box' for the new Northern line ticket hall (NLTH), to be delivered as part of the basement of the development, has been secured in the draft Section 106 agreement. London Underground (LU) will subsequently 'fit out' the box, so that the new NLTH will provide the capacity required, by way of escalators and increased circulation space, to support growth in the OA. This will allow the existing NLTH, with low capacity and unreliable lifts, to close. Delivery of the new NLTH will meet London Plan and local policy requirements.

61 A Development Agreement (DA) between TfL and the developer, required by the draft Section 106 agreement, will address the property and access arrangements, funding, programme and logistics associated with the delivery of the new NLTH and will also deal with LU asset protection. The draft Section 106 agreement places an obligation on the developer not to commence any development until a DA has been entered into with LU and, until a separate supplemental Section 106 agreement for the fit out and opening of the new NLTH is entered into between LU and the Council.

62 An agreed delivery and servicing plan will be secured in the draft Section 106 agreement, and the committee report sets out the strict restrictions on servicing, in order to minimise road safety and traffic impacts on the TLRN. Similarly, a construction management plan has been secured. Required highway works, both during construction and residually, will be controlled via a Section 278 agreement.

63 A car parking management plan has been secured in the draft Section 106, and provision of electric vehicle charging points in accordance with the standards in the London Plan has been secured by way of condition. The draft section 106 agreement also secures improvements to the TLRN (footway and environmental improvement works, tree planting and new bus stops), Legible London sign provision and an additional 60 cycle hire docking points. In addition, free cycle hire membership for each initial household for three years has been secured.

64 The required conditions and legal obligations have been secured. Strategic transport issues have therefore been sufficiently addressed and the scheme broadly accords with the transport policies of the London Plan and the draft London Plan.

### **Response to consultation**

65 Southwark Council publicised the application by site and press notices, and consultation letters were sent to a total of 5056 neighbouring properties. An initial round of consultation was undertaken in December 2016, with a further two rounds of consultation undertaken following amendments to the scheme, the last of which took place in February 2018. Responses to the consultation process are set out below.

66 A total of 394 neighbour responses were received to the first consultation. This comprised 19 comments in support and 375 in objection. The re-consultation in August 2017 received a further 22 comments in support and 516 in objection. The final consultation in February 2018 received 8 comments in support and a further 92 objections to the application. Grounds for objection are summarised below:

#### Land use

- Prioritisation of residential over other uses would fail to meet town centre objectives.
- Proposals exceed prescribed density ranges.
- Proposals would involve a loss of leisure space.
- Lack of space for smaller entertainment venues within the proposals.
- Lack of space for start-up or craft businesses within the proposals
- Lack of affordable retail units within the proposals.
- Loss of market stalls and independent retailers.
- Loss of B Class floorspace.
- Lack of, or inadequate, relocation strategy for existing businesses/traders.
- Existing shopping centre serves as a community facility which would be lost.
- Loss of bowling alley would adversely affect local leisure offer.
- Proposed leisure space would be too small for bingo operator.
- Loss of Coronet Theatre would adversely affect local cultural offer.
- Proposal and policy fail to take into account the area as a focal point for the Latin American community.
- Independent retail impact assessment should be undertaken to assess implications on local economy.
- Existing infrastructure including health facilities and schools not capable of accommodating increase in resident numbers.
- Extending retail on the west site would undermine its use for religious and residential purposes.
- Proposal does not demonstrate that the shopping centre would have sufficient floorspace to offer comparison goods.

- Replacement retail units would be too small.
- Relocation strategy has not been prepared with sufficient consultation with traders.
- Traders should be accommodated on same rental agreements.
- Relocation strategy does not account for desire of businesses to be in the same location.
- Relocation strategy not suitable for operator of bingo hall and bowling alley and they are unlikely to quality for support.
- Trader relocation fund insufficient.

### Housing

- Lack of transparency within affordable housing negotiations.
- Insufficient family housing.
- Insufficient affordable housing within the proposed development.
- Lack of social rented housing within the development.
- Lack of social rented products would disproportionately impact on BAME members of local community.
- Proposal should include homes for sale.
- Rented properties would result in transient local population.
- Already sufficient consented dwellings in Southwark to meet London plan targets, high density therefore not necessary.
- Clawback mechanism should be included in legal agreement in the event that affordable units are used for market rent.
- Should be greater mix within affordable products.
- Insufficient communal and private amenity space for proposed units.
- The covenant for the build to rent products should be 30 years.
- Ownership/management arrangements unclear for mansion blocks.

### Design

- Excessive scale/height of proposals.
- Too many blank facades within the proposals.
- Insufficient green spaces.
- Lack of public square on shopping centre site and insufficient public space generally.
- Streets, particularly on eastern site would be too narrow.
- Proposals lack individual identity, unimaginative design.
- Unacceptable impact on nearby conservation areas.
- Unacceptable impact on nearby listed buildings.
- Harm to the setting of the Metropolitan Tabernacle.
- Existing buildings should be retained.
- Loss of Coronet building would diminish the architectural and cultural heritage of the area.
- Existing shopping centre should be retained.
- Separation distances between proposed buildings are too small.
- The proposals should exceed sustainability and environmental and climate change policies owing to their prominence.
- Height of towers should be reconsidered owing to fire safety concerns.

### Amenity

- Construction impacts including noise, dust and impeded access to surrounding areas
- Light pollution from towers.
- Increased noise and disturbance resulting from servicing locations.
- Increased levels of pollution in area with existing poor air quality.
- Loss of daylight and sunlight to surrounding neighbouring properties.
- Inadequacy of daylight and sunlight report.
- Loss of privacy due to proximity of proposed buildings to existing buildings.

- Impacts on wind across the site and potential tunnelling effects. The wind test should be independently verified.
- New route to Oswin Street would create noise and anti-social behaviour.

#### Transport

- Proposals will have adverse impact on levels of traffic.
- Servicing vehicles will cause congestion on roads.
- Transport network would be less safe for pedestrians and cyclists.
- Adverse impacts on Oswin Street. This street should be made one way.
- Underground Station already at capacity and suffers from overcrowding.
- Increased pressure on parking in local area.
- Loss of parking for existing residents.
- Vehicular access to Tabernacle lost during construction.
- Proposals do not deliver step free access to underground.
- Lack of clarity regarding investment/funding of a new Northern Line Ticket Hall.

#### Equalities

- Consultation did not fulfil the Council's equalities responsibilities.
- Loss of bingo hall would have a disproportionate impact upon older people.
- Proposals would have disproportionate impact on people from BAME backgrounds.
- Lack of consideration for Latin American music venues in the area.
- Loss of bowling alley raises equalities issues and no survey of this has been undertaken.
- Lack of consideration for female traders within findings of equality survey.
- Concerns over consultation process.

67 The consultation responses in support of the application proposals are summarised as follows:

- The proposals would deliver much needed housing and affordable housing.
- Proposals would create unique town centre hub.
- Tall building in central location appropriate.
- The new facility for the London College of Communications would be positive for the area.
- Would improve transport facilities.
- Existing shopping centre outdated and not fit for purpose.
- Improvements to retail and public realm will encourage people to shop locally.
- The listed buildings in the area would be enhanced by the demolition of the shopping centre.

68 Eight ward councillors within the London Borough of Southwark also made representations with respect to the proposals. These are summarised as follows:

- Proposals would provide insufficient affordable housing and would not comply with local policy. Concerns about the policy basis for the proposals and lack of social rented units as well as their management.
- Concerns about the proposed level of affordable retail space.
- Proposed relocation strategy for traders is inadequate and not properly considered. Traders should be involved at every stage and level of the process. Does not provide for clustering of existing traders.
- Concerns about loss of bingo hall on local community, particularly the elderly. Bingo hall should be reprovided.
- Proposals would have a disproportionate impact on people from BAME backgrounds.
- Equalities Impact Assessment does not consider the impacts of a Compulsory Purchase Order.

- The scale and massing of the proposals considered excessive.
- Proposals would lead to significant loss of daylight and sunlight for existing residents.

69 Comments received from statutory and non-statutory bodies in relation to the application are summarised below:

- **London Borough of Lambeth:** No objection subject to further analysis of transport impacts.
- **London Borough of Bromley:** No objection.
- **City of Westminster:** Objection owing to lack of information in the visual assessment in relation to LVMF view 23A.1 from Serpentine Bridge. Further information provided by Southwark Council to which no response was received from the City of Westminster.
- **Historic Royal Parks:** No objection.
- **Historic England:** Application should be determined in accordance with national and local policy guidance and on basis of Southwark's specialist conservation advice.
- **Environment Agency:** No objection subject to informatives which have been applied.
- **Thames Water:** Conditions and informatives requested and applied.
- **Natural England:** Standing advice for protection of species should be referred to.
- **Health and Safety Executive:** No comments.
- **Network Rail:** Network Rail's Asset Protection Team should be contacted for advice regarding construction matters and future maintenance access.
- **Metropolitan Police – Designing out crime:** No objection subject to compliance with Secured by Design accreditation
- **London Fire and Emergency Planning Authority:** Pump appliance access and water supplies for the fire service appear adequate. Proposal should conform to the requirements of part B5 of Approved Document B.
- **Theatres Trust:** Object to demolition and loss of Coronet Theatre. Coronet should be retained as one of few music venues of this scale serving the area. Much of the 1930s Art Deco auditorium remains in situ and restoration works could reveal the Art Deco facade. The replacement facility would not be of an appropriate size. Should permission be granted, future operator of venue should be involved in its design. Further contributions towards construction and fit out of venue should be secured. Concerns about the compatibility of the leisure space as both bingo hall and music venue. Plans should be amended to include a separate bingo hall and arts venue.
- **Cinema Theatre Association:** Object to the loss of the Coronet and support comments made by the Theatres Trust. Value of the Coronet has been understated and ignored to facilitate redevelopment. The Coronet employs over 100 people and attracts 250,000 visitors each year generating significant local revenue. The proposals would contradict the London Music Venue Strategy and set a precedent. In the event of demolition, recording works of the historic Coronet building should be undertaken and secured by planning condition.

- **Twentieth Century Society:** Object to the loss of the Coronet and support the comments of the Theatres Trust and the Cinema Theatre Association. The Coronet is a non-designated heritage asset and should be afforded protection under the provisions of the NPPF.
- **Elephant and Castle Trader's Association:** Proposals are contrary to Southwark Local Plan. The shopping centre is a meeting point for BAME groups who would disproportionately be affected by the proposals. Additional Equalities Impact Assessment required. Relocation strategy must be timely and begin prior to granting of permission owing to complexities of relocation. Recommendations in the report 'The case for London's Latin Quarter: Retention, Growth, Sustainability' should be taken into account.
- **Latin Elephant:** Relocation strategy is inappropriate in a number of ways including; insufficient consideration for desire of traders to cluster during and following the relocation process, lack of certainty regarding tenancies for traders, insufficient retail space would be available for immediate relocation, a number of the off-site locations within the relocation strategy are not appropriate for the existing trader. The Equalities Impact Assessment should be updated to reflect the changes to the application and in addition insufficient consideration is given to the impacts on the Latin American community as well as female traders affected.
- **Elephant Amenity Network and Southwark Law Centre:** Object owing to insufficient/inadequate consideration of the impact on groups with protected characteristics. The equality analysis is outdated and further equalities analysis of the relocation strategy should be undertaken. A number of Southwark Council Cabinet reports related to the proposals contain inaccuracies and fail to appropriately address equalities issues. The loss of amenity space at various locations within the shopping centre and its social role has not been considered. Consideration should be given to the type of film screenings at the cinema facility and how these compensate for the loss of existing leisure uses. The level of proposed housing is not necessary as the minimum for the opportunity area has already been met. Loss of Latin American music venues not properly considered.
- **Southwark Green Party:** Insufficient affordable housing and affordable retail within the proposals. Other options to relocation of traders should be explored. Inadequate leisure space within the proposals which would not cater for existing community. Support the comments of the Theatres Trust in relation to the loss of the Coronet. Amenity impacts of the proposals not properly considered and proposals would result in harm to heritage assets. Further consideration of green spaces required. Cycle parking provision required for the mobility impaired.
- **Walworth Greens:** Proposed massing, scale and density are inappropriate. Proposals would lead to loss of light for existing residents, light pollution, noise pollution, creation of wind tunnels, and loss of privacy. Loss of leisure facilities for existing community, in particular, older citizens. Proposals would have a disproportionate impact on the BAME community. Proposals would result in harm to heritage assets and make insufficient use of renewable energy. Proposals lack green spaces and proposed roof gardens should be publicly accessible.
- **35% campaign:** Object to the developer being able to confirm the tenure of the west site post granting of permission. This should be confirmed prior to decision as this would impact scheme viability and makes it unclear which policy the proposals should be assessed against. No objective assessment of how build-to-rent meets any identified housing need of how the DMR units meet affordable housing need. Concerns about

implementation and possible inequities of means testing tenants. Application should not be determined until level of GLA grant funding is clarified. Proposals do not comply with rental distribution in policy P4 of the draft New Southwark Plan. 50% of the affordable housing should be social housing in accordance with local plan. Concerns about the inputs used in the viability assessment and the transparency of the viability assessment process. Playspace should be provided on-site rather than through an in lieu. Lack of provision for market stalls which is an equalities consideration.

- **Metropolitan Tabernacle:** Support the principle of the redevelopment of the site. However, have a number of concerns including the impact on the setting of the listed tabernacle, with the design of the cultural venue competing for prominence. Events at the cultural venue may also cause disturbance. Height of towers would also be harmful to setting. Concerns about demolition and construction impacts on the listed building. Loss of car parking at the London College of Communications site which is used by members of the congregation. Potential loss of light to the flat at the rear of the tabernacle. Conditions must be used to mitigate the construction impacts.
- **University of the Arts London staff and students:** Concerns about timing of the planning committee. Support the provision of a new building for the London College of Communications but this should not be at the expense of the local community. Concerns over levels and type of affordable housing and the equalities implications of the proposals.
- **University of the Arts London Students' Union:** Concerns over the level of affordable housing and affordable retail. Retention of bingo hall and bowling alley should be sought.
- **Imperial War Museum:** Welcomes inward investment into the area. The area has distinctive character and cultural heritage and the Council should safeguard this. Increase in footfall would necessitate improved wayfinding measures. Transport improvements are welcome but further contribution to public realm improvements and local parks would be supported.
- **Southwark Group of Tenants Organisations:** Lack of affordable housing and affordable retail within the proposals. The area will become unaffordable and unwelcoming for existing community.
- **West Square Residents' Association:** Proposals would result in harm to the setting of the listed Tabernacle building. Proposals on the west side of the site are contrary to Historic England guidance on tall buildings. Lack of views to properly assess proposals. Proposals would result in harm to amenity of existing residents as well a windy street environment. Proposals need more accessible parking and must have regard to the Equality act 2010.
- **Draper House Residents' Association:** Concerns about the quality of the pedestrian environment. Proposals would cause harm to adjacent conservation areas. Prolonged construction period will result in loss of provision for local community.
- **Walworth Society:** Lack of affordable housing and affordable retail within the proposals. Proposals should include more green space. Concerns about width of pedestrian routes. Prolonged construction period will result in loss of provision for local community. Viability assessment should be made available to the public. Further consideration of the impacts on Walworth Road required. Concerns about amenity

impacts on existing residents as well as harm to nearby heritage assets. Blank facades should be active where possible.

- **Balfour Street Housing Co-operative:** Concerns over lack of affordable housing and lack of homes for sale. Assessment of viability information should be transparent. Lack of an Equalities Impact Assessment. Adverse impact on heritage assets including the Coronet and nearby conservation areas.
- **Rodney Road Tenants' and Residents' Association:** Lack of affordable housing and affordable retail space. The loss of the bingo hall should be avoided.
- **Walworth East Area Housing Forum:** Lack of affordable housing and affordable retail space. The bingo hall should be re-provided and the loss of the Coronet is of concern.
- **Hayles Street Tenants' and Residents' Association:** Concerns about impacts of the proposals on nearby heritage assets. Tall buildings would form solid wall and result in overshadowing, light pollution and wind tunnelling effect. Contrary to local and national tall building policy and guidance. Carbon offset contribution should not be accepted. More accessible parking required.
- **Conservation Area Advisory Group:** Number of blank elevations within the proposals require addressing. Limited space in front of the railway station. Poor relationship between the cultural venue and the Metropolitan Tabernacle. Scale of buildings generally too large. Brickwork finish welcome but design of buildings repetitive and dull. Unclear where the market stalls would be located. Existing Elephant & Castle/howdah sculpture should be located in a prominent location within the shopping centre.

70 In addition to the consultation responses outlined above, the Mayor has also received 42 direct representations from members of the public, along with representations from London Assembly Members, Local Ward Councillors and non-statutory bodies. A petition with 2,240 signatories has also been addressed to the Mayor. Representations to the Mayor from members of the public are summarised as follows:

- Loss of bingo hall would have a disproportionate impact upon older people.
- Proposals would have disproportionate impact on people from BAME backgrounds.
- Insufficient affordable housing within the proposed development.
- Lack of social rented housing within the development.
- Insufficient retail floorspace available for displaced traders within the proposed development and the wider area.
- Relocation strategy has not been prepared with sufficient consultation with traders.
- Relocation strategy does not account for desire of businesses to be in the same location.
- Trader relocation fund insufficient.
- The terms of reference, and composition of the trader panel, are different to what was previously discussed with the traders.
- The existing shopping centre should be retained owing to its cultural and social significance.
- Loss of Coronet building would diminish the cultural offer in the area.
- The developer's profits should be taxed in the UK.
- The proposals are poorly considered and excessive in scale
- Lack of clarity regarding delivery of a new Northern Line Ticket Hall.
- Prioritisation of residential over other uses would compromise the social/cultural offer of the area.

71 Representations to the Mayor from Assembly Members, Local Ward Councillors and non-statutory bodies are summarised as follows:

- **Latin Elephant:** Concerns about the relocation strategy and the proposals within the planning application at the related Castle Square site. The Castle Square planning application provides insufficient floorspace for all displaced traders. Relocation strategy must provide clear plans for businesses in the arches on Elephant Road. The London College of Communications must provide a community support programme. There should be additional social rented units and the DMR units provided at 80% of the market rate should be replaced with LLR units.

A report entitled 'Socio-Economic Value at the Elephant and Castle', undertaken by Latin Elephant in conjunction with researchers from Loughborough University and the London School of Economics has also been submitted to the Mayor. This report concludes that the existing business at the Shopping Centre contribute to the local community and wider area owing to their interconnectivity and resulting high social and cultural capital, well as offering wide and varied economic opportunities, particularly for the elderly and women. Furthermore, existing traders have borne the costs of the proposals over a number of years as services provided by the shopping centre management have decreased despite the same rates being paid. The traders are therefore disproportionately impacted by the proposals.

- **Open letter from 21 local bodies:** The 35% affordable housing offer should be half LLR and half social rent with no possibility of reductions at a future stage. Affordable retail units should be available for all traders within the application redline that wish to relocate. Further funds should be made available to all traders that are forced to locate. Application should be refused unless improvements are made.
- **Petition on change.org:** The proposals would displace the local community of Latin American and other BAME traders. The level of floorspace for immediate relocation is insufficient. The proposals contain insufficient social housing and do not accord with the Council's existing policy. Public funds from the GLA should not be used to prop up the developer.
- **Camberwell and Peckham Labour Party:** The proposals should be refused unless they are amended to; reflect the desires of the Latin Elephant with respect to trader relocation; deliver a minimum of 17.5% social housing; and ensure no break in provision of bingo or bowling during the proposals implementation.
- **Elephant and Castle Traders' Association:** The conditions for traders within the shopping centre have deteriorated over time. The independent Business Advisor, Tree Shepherd, offers no real support to traders and the database of relocation opportunities is still not available. Arbitrary barriers to relocation are being created by the applicant and the terms of reference for the Trader Panel have been agreed without concrete input from traders. The relocation fund is insufficient to meet the needs of all traders and the proposed areas for relocation are insufficient. The loss of the cultural venues La Bodeguita and Distriandina has been disregarded. Lack of consideration for the communal/social role that the shopping centre plays.
- **London Assembly Member Florence Eshalomi:** The Mayor should ensure that the applicant provides necessary support for long-standing traders and Latin American Business Community. The Mayor should also push the developer for more affordable housing. Proposals must not come at the cost and fragmentation of the existing community.

- **London Assembly Member Sian Berry:** The application should be taken over by the Mayor owing to its strategic and London-wide significance. Such issues include compliance with affordable housing policies, and the importance of the area for the Latin Community. There would also be strong grounds for refusing the application owing lack of compliance with strategic and local planning policy, the loss of space for small businesses and the loss of affordable cultural and leisure space which provides for a number of protected groups.
- **Cllrs Maria Linforth-Hall and Grahame Neale, St George’s Ward, Southwark:** The proposals lack social rented units, which should constitute 50% of the affordable offer. The proposals should not be based on emerging planning policy. There are significant adverse amenity impacts to existing properties on Oswin Street and the Hayles Buildings. The proposals do not contain satisfactory relocation plan would potentially lead to dispersion of Latin American community in the area. The level of discount and duration of the affordable offer is insufficient.
- **London College of Communications , University of the Arts London (UAL):** The LCC’s current buildings are no longer fit for purpose and limit the educational opportunities that the LCC can provide. The presence of the LCC within its current location brings significant cultural and economic benefits to the borough and local area and the UAL would bring additional jobs to the new buildings, locating its central university services to the site. The new LCC building has also been designed to offer further interaction with the local community, through physical permeability and increased public access. Will allow LCC to build on its existing partnerships with cultural uses in the area and our outreach programme with schools and Colleges in Southwark and Lambeth. The LCC is committed to long-term success of Elephant and Castle

72 Having considered the responses to public consultation, various planning obligations and conditions are necessary in response to the issues raised. Having had regard to Southwark Council’s draft decision along with the draft Section 106 agreement, officers are satisfied that the statutory and non-statutory responses to the public consultation process do not raise any material planning issues of strategic importance that have not already been considered in this report, Southwark Council’s committee report, or the Stage 1 report.

### **Draft Section 106 agreement**

73 The draft section 106 agreements for each site include the following provisions:

#### East Site – financial obligations/contributions

- Archaeology - £5,585.50
- Carbon Offset - £1,213,473
- Tree Shepherd funding £122,825
- Relocation fund £634,700
- Corsica Studios sound proofing £125,000
- Total £2,101,583.50 plus 2% monitoring fee £42,031.67

#### East Site – non-financial obligations

- Demolition and construction environmental management plans;
- Clauses to secure the delivery of the shopping centre and leisure space before a certain proportion of the residential space can be occupied;
- Terms to secure first right of refusal for some of the leisure space to a bingo operator (east or west site);
- Terms to secure the affordable housing units, including review mechanisms and

restricting a proportion of the private units until / unless the affordable units have been completed;

- Clauses to maintain the housing as PRS for a minimum period or to pay a clawback contribution;
- Clauses to secure on-site affordable retail;
- Clauses to require the developer to deliver a temporary retail facility in Castle Square at affordable rents in line with the standard of accommodation provided, and to be offered to existing traders in priority, subject to first obtaining planning permission and a land interest;
- Database of relocation opportunities for affected businesses;
- Clauses to secure a community use agreement including events / activities at the proposed leisure and education building relevant to people from BAME backgrounds and older people;
- Employment in during construction and in the completed development provisions, including measures to ensure that those sharing protected characteristics can fully engage with these opportunities;
- Clauses to secure the delivery of the station box for the Northern Line ticket hall;
- Clauses to secure a new pedestrian route from the Court through to Elephant Road, either as shown on the plans and including environmental improvements to the existing arches which give access to the shopping centre or an alternative route if that cannot be delivered if they are retained;
- Delivery of highway works and public realm, including management;
- Landscaping to communal gardens including management;
- Delivery of way-finding and signage;
- Provisions for public access through and around the site;
- Cycle hire provisions and cycle parking;
- Construction management and delivery and servicing management plans including management of and access restrictions to the servicing access;
- A scheme of environmental improvements around Elephant and Castle Railway Station;
- Tree planting strategy.

#### West Site – financial obligations/contributions

- Archaeology - £5,585.50
- Carbon Offset - £1,021,127
- Childrens' playspace £117,780
- Total: £1,144,492.50 plus 2% monitoring fee: £22,889.85

#### West Site – non-financial obligations

- Demolition and construction environmental management plans;
- Completion of the new LCC building before the existing building can be demolished;
- Provision of the cultural venue before occupation of a certain proportion of the residential, and operational management plan for the cultural venue;
- Terms to secure first right of refusal for some of the leisure space to a bingo operator (east or west site);
- On-site affordable retail;
- Provision of up to 10% affordable B1 space;
- Provision to consult GLA culture team on marketing and selection process for cultural space
- Terms to secure the affordable housing units, including review mechanisms and restricting a proportion of the private units until / unless the affordable units have been completed;

- Clauses to maintain the housing as PRS for a minimum period or to pay a clawback contribution;
- Employment in during construction and in the completed development provisions, including measures to ensure that those sharing protected characteristics can fully engage with these opportunities;
- Delivery of highway works and public realm, including management;
- Landscaping to communal gardens including management;
- Provisions for public access through and around the site;
- Delivery of way-finding and signage;
- Cycle hire provisions and cycle parking;
- Construction management and delivery and servicing management plan;
- Tree planting strategy.

### **Article 7: Direction that the Mayor is to be the local planning authority**

74 Under Article 7 of the Order, the Mayor could take over this application provided the tests set out in that Article are met. In this instance, the Council has resolved to grant permission with conditions and planning obligations, which subject to further clarifications, satisfactorily addresses the matters raised at consultation stage, therefore there is no sound planning reason for the Mayor to take over this application.

#### **Legal considerations**

75 Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008, the Mayor has the power under Article 6 to direct the local planning authority to refuse permission for a planning application referred to him under Article 4 of the Order. He also has the power to issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application. The Mayor may also leave the decision to the local authority. In deciding whether to direct refusal, the Mayor must have regard to the matters set out in Article 6(2) of the Order, including the principal purposes of the Greater London Authority, the effect on health and sustainable development, national policies and international obligations, regional planning guidance, and the use of the River Thames. The Mayor may direct refusal if he considers that to grant permission would be contrary to good strategic planning in Greater London. If he decides to direct refusal, the Mayor must set out his reasons, and the local planning authority must issue these with the refusal notice. In deciding whether to direct that the Mayor is to be the local planning authority, the Mayor must have regard to the matters set out in Article 7(3). If the Mayor issues a direction, he must set out his reasons in the direction.

#### **Financial considerations**

76 Should the Mayor direct refusal, he would be a principal party at any subsequent appeal hearing or public inquiry. National Planning Practice Guidance emphasises that parties usually pay their own expenses arising from an appeal.

77 Following an inquiry caused by a direction to refuse, costs may be awarded against the Mayor if he has either directed refusal unreasonably; handled a referral from a planning authority unreasonably; or behaved unreasonably during the appeal. A major factor in deciding whether the Mayor has acted unreasonably will be the extent to which he has taken account of established planning policy.

78 Should the Mayor take over the application he would be responsible for holding a representation hearing and negotiating any planning obligation. He would also be responsible for determining any reserved matters applications (unless he directs the Council to do so).

## Conclusion

79 The mixed use scheme positively responds to the strategic objectives for the regeneration of Elephant and Castle and the strategic issues raised at consultation stage regarding the proposed mix of uses, affordable housing and transport; have been appropriately addressed, and conditions and section 106 obligations secured, and as such, the application generally complies with the London Plan and the draft London Plan and is acceptable in strategic planning terms. There are therefore no sound reasons for the Mayor to intervene.

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