
Appeal Decision

Inquiry held on 25-27 May, 9-10 June and 5 July 2016

Site visit made on 8 June 2016

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 August 2016

Appeal Ref: APP/C5690/W/15/3132142

Creekside Village East, Thanet Wharf, Copperas Street, Deptford, London, SE8 3DA

- 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 Creekside Village Developments Ltd and Israel Discount Bank Ltd against the Council of the London Borough of Lewisham.
 - The application ref. DC/15/90768, is dated 30 January 2015.
 - The development proposed is: mixed use residential and commercial development including 216 residential units and floorspace for A1, A2, A3, A4, B1 and D1 uses, with new public realm, creekside walk, basement car parking, access, servicing and landscaping following demolition of all existing buildings.
-

Decision

1. The appeal is dismissed and planning permission is refused for a mixed use residential and commercial development including 216 residential units and floorspace for A1, A2, A3, A4, B1 and D1 uses, with new public realm, creekside walk, basement car parking, access, servicing and landscaping following demolition of all existing buildings at Creekside Village East, Thanet Wharf, Copperas Street, Deptford, London.

Application for Costs

2. At the Inquiry an application for costs was made by the Council of the London Borough of Lewisham against Creekside Village Developments Ltd and Israel Discount Bank Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. The main parties disagree as to whether the full list of drawings set out in the Statement of Common Ground (SOCG) was received by the Council at the time of the application's submission¹. However, both parties agree that these should be taken into account in the present appeal, subject to the replacement of D811_B2_P_02_009 A by D811_B2_P_02_009 B². For the avoidance of doubt, I have determined the appeal on this basis.
4. Following submission of the appeal, The Planning Inspectorate informed the appellants that it was considered that there was insufficient information

¹ Inspector's Note: The disputed drawings are coloured red in the list in Appendix 1 to the SOCG (Document 13).

² The latter drawing was tabled as Document 29.

submitted with the application to allow the Secretary of State to screen it. The appellants agreed to prepare an Environmental Statement (ES). This was duly submitted and was publicised in line with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended). The appeal scheme is therefore EIA development in the terms of Regulation 4 of the 2011 Regulations.

5. In reaching my decision I have had regard to the ES and other relevant environmental information. In doing so, I have noted the comments of consultees about the scope of the ES and other environmental evidence. Specifically, I am satisfied that the assessment of baseline noise conditions took place over a realistic time period and that it therefore measured normal events from nearby facilities – including Brewery Wharf – and the construction taking place at the Hilton’s Wharf site. Baseline air quality assessment data account for emissions from freight along the river, while the submitted lighting assessment aims to ensure that there would be no significant effects beyond the site boundary. I therefore agree with the appellants that the potential effects arising from the site’s relationship to Brewery Wharf have been adequately assessed.
6. While the Council refers to a number of potential information requests, it concludes that the ES covers all the points listed in Schedule 4 of the Regulations³. Its further comments appear to be largely issues about the choice of assessment methodology and the adequacy of the proposed mitigation rather than specific points that refer back to the requirements of Schedule 4. As such, there is no need to revise the Secretary of State’s conclusion about the ES⁴, which is that it meets the minimum requirements of Schedule 4 of the EIA regulations.

Main Issues

7. The Council confirms that its concerns about effects on the site’s archaeological value (its 7th notional refusal reason) are capable of being addressed by the imposition of a planning condition in the event of the appeal being allowed. It also confirms that the need to secure the provision of necessary infrastructure and affordable housing, although not the proposed mix of affordable housing, is addressed by the unilateral undertaking submitted by the appellants. I have no reason to depart from these assessments.
8. Bearing the above in mind, the main issues in this appeal are:
 - (a) the effect of the proposed development on the area’s character and appearance;
 - (b) whether the proposal would result in a comprehensive approach to the development of the Thanet Wharf Mixed Use Employment Location (MUEL), bearing in mind its effect on the living conditions of potential neighbouring occupiers;
 - (c) whether the proposal would enable the continued employment functioning of the MUEL;
 - (d) whether satisfactory living conditions would be created for occupiers of the proposed development;

³ Table 2.1 ‘Regulatory Compliance’ of Document 15.

⁴ E-mail from The Planning Inspectorate to Mr Stott of Signet Planning dated 13 May 2016.

- (e) the adequacy of the intended arrangements for access, parking and servicing; and
- (f) whether the mix of affordable housing that is proposed would accord with development plan requirements.

Reasons

Background

9. The appeal site, which is bounded by Copperas Street to the north and Deptford Creek to the south, is occupied by a number of derelict buildings with associated hard-standing. To the west lies the Trinity Laban Conservatoire of Music and Dance (referred to as the Trinity Laban Centre during the inquiry and in this decision), a structure clad with transparent/translucent glass panels with coloured transparent polycarbonate panels. The building, which was designed by Herzog and de Meuron, won the Stirling Prize for Architecture in 2003.
10. To the east of the site lies vacant land owned by the London Borough of Lewisham (LBL). Beyond this is development land (known as the Essential Living site) within the London Borough of Greenwich (LBG), where a scheme involving residential (249 units) and commercial uses in two blocks of 10 storeys and 21 storeys is under construction. Taken together, the appeal site and the LBL land form the Thanet Wharf MUEL: this is identified as site SA12 in the Lewisham Site Allocations Local Plan (SALP) adopted in 2013.
11. Land on the northern side of Copperas Street, also in the LBG, has been developed for residential and commercial uses in four buildings (known as Creekside Village West).
12. The appeal site, along with the Essential Living site, the land owned by the Council and some Trinity Laban land was the subject of planning applications for a comprehensive development scheme submitted in 2006. This included residential and commercial uses, including facilities for Trinity Laban, within four blocks ranging from 9 to 22 storeys in height. Planning permission was granted for the part of the site within LBG: that land is now occupied by the above-noted Essential Living development. In respect of the land within LBL, the Council resolved to grant planning permission subject to a section 106 agreement. However, the agreement was not completed and the permission was not issued. It is however common ground that this 'minded to grant' scheme is a material consideration in the present appeal.

Character and Appearance

13. The Council's concerns in respect of the first main issue relate to the scale, massing, form and layout of the appeal scheme. The Council considers that the proposal would fail to constitute high quality design, to deliver a high quality public realm or to improve the MUEL's overall environmental quality. It states that the scheme would not amount to high quality architecture and that it would have a detrimental impact on the Trinity Laban Centre and the setting of the Creek. In considering these matters, I address first the intended design of the new buildings, second the effect of the scheme on the Trinity Laban Centre and Deptford Creek and, third, the quality of the resulting public realm.
14. The appeal scheme proposes the erection of two blocks. The northern block (block 1), adjoining Copperas Street, would be 10 storeys high, while the

- southern block (block 2), located nearer to Deptford Creek, would contain 25 storeys. The Council raises concerns about the scale, massing and appearance of these buildings.
15. The appeal site, and indeed the wider policy SA12 allocation, does not lie within an area that is specifically identified as being suitable for tall buildings in policy 18 of the Lewisham Local Development Framework Core Strategy (CS). However, it is common ground that in view of its location within an Opportunity Area (as set out in the London Plan), and taking into account its planning history and surroundings, the appeal site is suitable in principle for tall buildings. As already noted, a scheme involving 10 and 21 storey structures is under construction on the Essential Living site nearby. Harm to longer distance views as a result of the height of the new buildings now proposed is not alleged by any party. Furthermore, the Council raised no objections to the scale and massing of the tall buildings in the 'minded to grant scheme'. I have no reason to disagree with any of these assessments.
 16. The Council's objections to the detailed design of the new buildings echo concerns raised by the Lewisham Design Review Panel (LDRP). I have considered these comments, and the comments of the Council's design witness, carefully. However, I prefer the analysis of the appellants' witnesses in respect of this matter. Specifically, I agree with the latter that the trapezoidal plan form and angled tops of the two new buildings would create an interesting and well-proportioned effect. The resulting group would amount to a distinctive local landmark. Given the intended scale and proportion of the two blocks, I do not agree with the LDRP's view that the towers would have 'squat' forms. To my mind they would both have a clear vertical emphasis that would be reinforced by the arrangements of glazed and solid panels on their main elevations. These aspects of the scheme would not appear harmful.
 17. I also disagree with the Council's suggestion that insufficient detail is available about the intended elevational treatments. Drawings have been submitted, together with a Details of Materials document, that enable the likely appearance of the development to be assessed. The exact specifications of materials could be secured through a planning condition were the scheme otherwise acceptable. Furthermore, I do not share the Council's criticisms of the suggested materials. To my mind, the intended palette of glass panels, broken up by vertical bands of metal panels, would be consistent with the distinctive appearance of the Creekside Village West scheme nearby. It would also take reference from the contemporary style of the Trinity Laban Centre, although it is accepted that it would be inappropriate to seek to wholly replicate the particular design of that building which differs significantly in form, scale and function to the scheme that is now proposed. I am therefore satisfied that, in this regard, the area's local distinctiveness would be maintained. It is noted that paragraph 60 of the National Planning Policy Framework (the Framework) states that planning decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles.
 18. It is agreed by both main parties that the scheme's key effects on the wider townscape relate to the Trinity Laban Centre and the setting of Deptford Creek. Taking the second of these first, it seems to me that the intended siting of the taller building (block 2) would respond well to the presence of the Creek. The

broad width of the Creek at this point, along with the degree of separation that is proposed between block 2 and the water's edge, would provide an appropriate degree of spaciousness in the foreground of views across the Creek towards the site. As already noted, the form and appearance of the appeal scheme would broadly accord with the area's emerging character. While I have no reason to doubt the Council's assertion that a similarly large building could be appropriately sited on the adjoining site in the Council's ownership⁵, I see no substantive reason why such a location would be preferable to that now proposed. Although a building on the LBL land – which includes a small projection into the Creek – would appear more prominent in views along the Creek from the east and north-east, the block 2 building in the appeal scheme would create a strong visual marker in views down the Creek from the south and south-west. To my mind, the arrangement that is now proposed would not adversely affect the setting of the Creek.

19. It is not disputed that the height and vertical emphasis of the appeal scheme would differ markedly from the horizontal proportions of the Trinity Laban building. However, as discussed above, the principle of locating tall buildings within the appeal site (and within the SA12 allocation as a whole) is not in dispute. As such, it is clear that redevelopment of the SA12 allocation is very likely to involve the introduction of tall buildings to the east of the Trinity Laban Centre and, moreover, that such buildings would form conspicuous elements in the backdrop to the Centre in views from the west towards its main elevation. A contrast in building scale, height and massing is therefore inevitable. Indeed, the Essential Living scheme will itself, once completed, introduce a tall building into this backdrop.
20. To my mind, it does not follow that such a contrast would necessarily be adverse. While the block 2 building now proposed would be closer to the Trinity Laban Centre, and with a different footprint, than that proposed in the 'minded to grant' scheme it does not seem to me that the overall effect – of a relatively low horizontal building located in front of much larger buildings with a vertical emphasis – would be materially more harmful. This broad effect can be appreciated by comparing photo-montages of the two respective schemes. In both cases, the taller buildings to the east would act to enclose the lower Trinity Laban Centre, broadly continuing the effect of the existing development to the north of Copperas Street which is also materially taller than the Centre. The Centre would therefore be seen as a lower element in the foreground of a higher backdrop. As already described, the intended materials of the appeal development would take reference from the contemporary style of the Centre. This would provide a degree of visual linkage between the two developments. Taken together, these factors would not result in material harm to the setting of the Trinity Laban Centre. It is common ground that the Centre does not amount to a heritage asset in the terms of the Framework.
21. Notwithstanding the above, I share some of the Council's concerns in respect of the quality of the public realm that is proposed within the appeal scheme. I agree with the appellants that an adequate degree of set-back would be provided between block 2 and the Creek wall, allowing the inclusion of a creekside walkway and areas to sit out – for example in association with proposed ground floor commercial uses. Clearly, the Creek itself would also provide a spacious setting to that side of the development. However, such

⁵ See the figure on page 14 of Ms Reynolds' proof of evidence.

spaciousness would contrast markedly with the degree of separation proposed between both blocks and the site's western boundary and between blocks 1 and 2 themselves. In respect of these aspects of the scheme, I agree with the Council that, for the reasons below, the public realm would appear cramped.

22. The Design and Access Statement (DAS) states that an advantage of the intended layout is that it would allow permeability across the site and access to the Creek. As explained to the inquiry, the intended access route along the western edge of the site would align with a gap in the development on the north side of Copperas Street, creating a movement corridor and visual linkage between Creek Road and the Creek itself.
23. In principle, this would be a positive feature. However, the western access route would be markedly narrower than the gap in the development to the north. As was clarified at the inquiry, the western route would have a pinch point some 3.8 metres wide. It would be bordered on one side by the boundary with the Trinity Laban Centre land, much of which would be subject to 'green screening'⁶ and on the other side by the ground floors of the two blocks. This would include a significant section of 'dead frontage' along the side of the above-noted vehicle access ramp. Notwithstanding the presence of landscaping, including a 'green wall' on the side of block 1, I feel that these factors would combine to cause the route to appear cramped and uninviting – adverse effects that would be amplified by the need to share the northern part of the route with some vehicular traffic and the presence at certain times of refuse containers in the 'holding bay' next to block 1 shown in the DAS.
24. While the intended space between the two blocks would be wider than the western access, it is clear from vehicle tracking plans that a significant part of it would need to remain clear to allow vehicles to progress around the loop within the site⁷. Along with the shading effect arising from the scale and proximity of block 2, this would reduce the potential for the space to be used for sitting out as is suggested on the application drawings. The resulting swept path would also pass close to the residential entrance to block 2. To my mind, these arrangements would also appear cramped – an effect that would be at odds with the intended function of this space as the main residential approach to both blocks and the intended location of commercial activities. It would therefore be unlikely to function effectively as a Central Entrance Plaza, as envisaged in the submitted Landscape and Public Realm Strategy (LPRS).
25. The Council also raises concerns about the proposed area of open space which would be located to the east of block 1. Although this could be subject to shading from development on the adjoining LBL land to the south, I agree with the appellants that – as a matter of principle – there would be some townscape merit in locating an open space area on the site's Copperas Street frontage, creating in effect a 'public square'. However, given the resulting difference in levels between the open space and Copperas Street to the north and the LBL land to the south (which would both be lower than the open space)⁸ and the intention to incorporate a retaining wall on at least three sides of the open space, the CGI images in Mr Squire's proof of evidence that show a broadly level arrangement appear to be somewhat unrealistic representations⁹.

⁶ See page 15 of the appellants' Landscape and Public Realm Strategy (LPRS).

⁷ See for example drawing number P971/314 within Mr Gurner's supplemental note (document 13).

⁸ See page 18 of the LPRS.

⁹ For example, figures 6.1 and 6.2 of Mr Squire's proof of evidence.

26. Drawings in the DAS¹⁰ indicate that the open space occupies a key position in the heart of the wider area. I share that analysis. However, this is not reflected in the layout as submitted, which shows no pedestrian routes crossing the open space. Indeed, while a south-west to north-east desire line is shown in the DAS, it is suggested that such movement would be routed to the south of the open space across the LBL land¹¹, with access to the open space itself only being taken from the south-west¹². While such an outcome would be consistent with the relative site levels referred to above, it would be at odds with the central position of the open space within the wider development area. Specifically, its raised nature and the lack of direct access from Copperas Street would act to prevent movement across the open space from Copperas Street to any development on the LBL land.
27. As a result of these factors the function of the open space area would be unclear, causing it to appear as 'left-over land' rather than an integral part of the scheme's design. These factors would be at odds with policy DM35 of the Lewisham Local Development Framework: Development Management Local Plan (DMLP) which, among other matters, requires public spaces to provide new connections as appropriate.
28. A further concern relates to the scheme's Copperas Street frontage, which would comprise an important public façade. However, approximately half of the ground floor of block 1 facing the street would comprise 'dead frontage' – namely the refuse store and entrance to the basement parking – with only a single office/commercial unit on the north-eastern corner providing an active frontage element. Such an arrangement would be at odds with the objective of DM policy 30 that developments should provide activity and visual interest at ground floor level for the public including the pedestrian environment and provide passive surveillance.
29. Drawing these matters together, and notwithstanding my comments about the intended design of the buildings themselves, I conclude that as a result of the above-noted concerns about the scheme's layout and public realm, the overall effect of the development on the area's character and appearance would be unacceptably harmful. In this regard, it would conflict with DM policies 30 and 35, CS policy 15 and London Plan policies 3.5, 7.3, 7.4, 7.5 and 7.6.

Comprehensive Development of MUEL

30. CS policy Strategic Site Allocation 1 (SSA1) states that the preparation of a site masterplan is a requirement for each strategic site allocation. CS policy 4 sets out a similar requirement in respect of MUELS. It is clear from the terms of these policies and the reasoning set out in the supporting text that such a masterplan should refer to the site allocation as a whole. In the present case, this means site SA12, which includes the appeal site and the adjoining LBL land. The aims of this requirement, as set out in policy CS4, are to ensure a comprehensive approach to the development of each MUEL and to provide the highest level of residential amenity for future residents.
31. It was clarified at the inquiry that the relevant masterplan on submission of the appeal application was illustrative drawing no. G200_B0_P_RF_010, which is

¹⁰ Notably DAS figures 3.16-3.18.

¹¹ See for example figure 4.4.4 of Mr Squire's proof of evidence.

¹² See page 7 of the LPRS.

included within the DAS. However, the appellants also refer to the contents of the DAS itself (notably section 3), as well as to later evidence such as that contained within Mr Squire's proof of evidence, as also setting out their approach towards the masterplanning of the wider site.

32. To my mind, this approach falls short of the requirements of policy SSA1 in two main respects. First, the masterplan was not the subject of public consultation prior to the submission of the planning application – although consultation was carried out in respect of the application itself. This is a specific requirement of CS policy SSA1(1). Evidence submitted by the appellants¹³ suggests that the Trinity Laban Centre, or at least its agents, was made aware of the contents of the masterplan – although this was disputed at the inquiry¹⁴. Nevertheless, and in any event, it seems to me that whatever degree of contact did take place it fell short of the level of involvement that is anticipated by CS policy SSA1(1) – as is evidenced, in part, by the concerns that the Council and Trinity Laban Centre have raised. This state of affairs contrasts markedly with the ongoing discussions between all of the relevant parties in respect of the development of an alternative comprehensive proposal for the wider site.
33. Second, the masterplan – either as submitted with the application or as amplified during the appeal process – does not show the full level of detail that is envisaged by CS policy SSA1(3b) in respect of the MUEL *as a whole*, including the adjoining LBL land. This policy requires the masterplan to show, among other matters, the quantum of development and the scale, massing and height of buildings. It is appreciated that there is a limit to how far applicants can reasonably be required to consider the details of a development on a neighbouring piece of land over which they have no control. However, it seems to me that it is implicit from the aims of CS policy 4 that sufficient information should be submitted to ensure that a *comprehensive* approach is taken to the development of the MUEL *as a whole* that provides the highest level of amenity for future residents.
34. In the present case, the masterplan contains some details of an illustrative scheme for the LBL land, the roof plan of which is shown on drawing no. G200_BO_P_RF_010. It was clarified at the inquiry that this refers to a notional 12 storey development with residential uses above a facility for the use of the Trinity Laban Centre. The appellants' daylighting and sunlighting evidence suggests that the living conditions of residents within such a scheme would not be harmfully affected by the appeal development. The Council does not challenge that evidence and I have no reason to take a different view.
35. However, no substantive evidence has been presented to demonstrate that the illustrative 12 storey development represents either a realistic or viable proposal for the LBL land. As was made clear during the inquiry, it is likely that the inclusion of an arts facility on the LBL site would require additional funding or a cross-subsidy from other elements of the development. The potential for this is not explored in the masterplan and it is not clear whether this would amount to a viable scheme in practice. A delivery strategy for the MUEL *as a whole* along the lines required by CS policy SSA1(3c) has not been submitted.
36. The appellants take the view that the appeal scheme would not preclude a substantial development on the Council land and an overall effective and

¹³ E-mail bundle – document 10.

¹⁴ Evidence of Mr Bowne – document 9 and oral submissions.

efficient development on site SA12 as a whole¹⁵. However, I do not feel that this has been adequately demonstrated. While the effect of the appeal development has been tested against the illustrative 12 storey scheme on the LBL land noted above, it has not been shown that such a scheme is either realistic or viable. It is implicit from the requirements of CS policy SSA1 that the submitted masterplan should be capable of being delivered. Furthermore, while the development of a 60-70 unit scheme on the LBL land would, in combination with the appeal proposal (216 units), exceed the indicative site capacity set out in the SALP and, in combination with the Essential Living development now under construction, exceed the number of units proposed in the minded to grant scheme, the evidence before me suggests that in principle there is the potential for a greater number of residential units to come forward from site SA12 as a whole. The figure of 400 units is being discussed by the appellants and LBL in the context of ongoing dialogue about an alternative development proposal: while this can be given only limited weight, as it has yet to even reach the planning application stage, it may be illustrative of the site's overall potential.

37. Indeed, during the inquiry, the appellants' architectural witness suggested that from his perspective a taller building could be acceptable on the LBL land, up to 22 storeys in height¹⁶. However, this is not presented in the masterplan and the implications of such a development, for example with respect to daylight and sunlight, have not been analysed to any substantial degree. Bearing in mind the scale of block 2 of the appeal development (25 storeys), its proximity to the boundary of the LBL land (some 7 metres) and the relatively restricted dimensions of the LBL land, I agree with the Council that there is the potential for harm to result to residents' living conditions arising from the juxtaposition of two large towers. However, this cannot be properly assessed in the present appeal, as the analysis has not been undertaken and a realistic and comprehensive approach to the SA12 site as a whole has not been presented.
38. The mechanism for assessing and resolving such effects is clear – the preparation of a masterplan in the terms required by CS policies 4 and SSA1. For the reasons set out above, I consider that this has not occurred. I therefore conclude that the scheme would not result in a comprehensive approach to the development of the Thanet Wharf Mixed Use Employment Location (MUEL), contrary to these policies.

Employment

39. CS policy 4 requires the comprehensive redevelopment of MUELS to provide employment uses within the B Use Class amounting to at least 20% of the built floorspace of any development as appropriate to the site and its wider context. This requirement is carried forward into DMLP DM policy 9, while the relevant reference for site SA12 in the SALP refers to 20% as an 'indicative' figure. The appeal scheme proposes mixed commercial accommodation amounting to some 11% of the total floor area. Given that this would itself include non-B Class uses, it is common ground that the scheme would conflict with the requirements of CS policy 4 and DM policy 9.
40. Nevertheless, the Council accepts that this requirement can be applied flexibly and evidence has been presented of a number of other developments where

¹⁵ Appellants' closing submissions, paragraph 100.

¹⁶ Mr Squire in cross-examination.

this has occurred – including a nearby scheme at Kent Wharf. In the present case, the Council does not seek to substantively challenge the viability assessment submitted by the appellants that supports their assertion that the amount of commercial floorspace is what is assessed as being viable. I have no reason to doubt that assessment.

41. The Council's main concern in respect of this matter, as expressed to the inquiry, relates to the nature of the commercial floorspace that has been proposed and to its potential for future use. However, it seems to me that the Council's requirement that the employment spaces should be designed with a specific type of end-user in mind is unduly onerous. CS policy 4 merely requires the design of the employment uses and the development as a whole to 'enable the continued employment functioning of the areas'. I share the view of the appellants that there is merit in applying a flexible approach and that, given the likely timescale for a substantial development such as the appeal scheme to be implemented, it may be unrealistic to seek agreement with potential occupiers at an early stage. This is borne out by the experience at Kent and Sun Wharves, where an intended pre-let to a specific occupier did not in the event take place.
42. I have commented above on the absence of a realistic delivery strategy for the SA12 site overall. I agree with the Council that the Commercial Use Marketing Strategy submitted with the appeal documentation¹⁷ is general in nature and lacking in specific detailed actions in respect of the appeal development. The viability assessment has been prepared to fulfil a markedly different purpose. However, while I note the Council's concerns about the slow take-up of units in the Creekside Village West scheme, I have seen no specific evidence that the units that are now proposed would in themselves be unsuitable for a commercial or employment use. It seems to me that these units would allow flexibility in that regard, subject to overall limits on the type of uses which could be imposed by planning condition were matters otherwise acceptable.
43. In that context, I do not agree with the Council's reading of the statement by the appellants' architectural witness that the commercial units would amount to 'almost a by-product' of the residential part of the development¹⁸. I have seen no evidence that the scheme's commercial element would be anything other than an integral part of the development as a whole. Notwithstanding my serious concerns about the resulting proportion of active frontage on Copperas Street and the western access route, the intended location of the commercial units on the ground and first floors would provide some animation and activity at ground level within other parts of the site. Furthermore, in respect of flood risk, the location of more vulnerable uses such as residential at ground level would cause the scheme to fail the Sequential Test set out in the Framework and PPG¹⁹.
44. Furthermore – and importantly – the submitted unilateral undertaking makes provision for a proportion of the scheme's commercial element to comprise affordable business space in perpetuity, representing a change from the earlier (time-limited) proposal. In view of the attractiveness of the wider area for employment within the creative sector that may struggle to meet full market rents, as was explained to the inquiry by representatives of that sector, such

¹⁷ Appendix 1 to Mr Allison's proof of evidence.

¹⁸ See Council's closing submissions paragraph 21, referring to comments by Mr Squire.

¹⁹ See document 23.

provision would be likely to encourage the take-up and occupation of commercial space within the scheme.

45. It is accepted that the appeal development has not been specifically designed to meet the expansion needs of the Trinity Laban Centre. Given the Centre's proximity, and in view of its importance to the creative sector, there would clearly be benefits in accommodating such needs within the development. However, this is not a policy requirement in either the CS or DMLP, and the most that the SALP states is that the SA12 allocation should complement and support the Centre. Although the Council considers that the provision of accommodation for the Centre 'could have been a significant material consideration capable of overriding certain breaches of the development plan'²⁰, this position is not therefore grounded in the development plan. Therefore, while the scheme's failure to provide for the Centre's needs may represent a missed opportunity, it does not amount to a reason for refusing planning permission. Indeed, the absence of provision for the Centre is not referred to in the Council's notional reasons for refusal.
46. For the above reasons, I therefore conclude that the scheme would enable the continued employment functioning of the MUEL. The factors discussed above are sufficient to justify an exception to the above-noted requirements of CS policy 4 and DM policy 9 in this instance.

Living Conditions of Proposed Occupiers

47. The Council's concerns in this regard relate in part to the potential for mutual overlooking between units in blocks 1 and 2 facing each other over the intervening entrance plaza. Objection is not raised in respect of daylight and sunlight and I have no reason to take a different view. The Council clarified at the inquiry that, bearing in mind the intended provision of roof-top open space, it is not pursuing its concerns about the amount of play space in the scheme.
48. While many of the units would have a double aspect, the resulting arrangement on a typical floor level would include bedrooms in both blocks fronting onto the entrance plaza²¹. The degree of mutual separation between the two blocks would be some 10 metres. Although the facing windows would be off-set to a degree, their relationship would be such that views between the units would be easily achieved. Given the mutual proximity of the two blocks, the resulting effect would materially harm the privacy of the occupiers of the units concerned.
49. It is accepted that this adverse effect could be reduced by the use of obscured panels and/or fritted glass, which could be secured by condition were the scheme otherwise acceptable. However, this would act to increase the degree of enclosure within the rooms themselves, creating an unduly oppressive effect to the detriment of the occupiers' living conditions. A similar effect would be experienced in a number of bedrooms which would have no glazed panels.
50. For these reasons, I conclude that in some cases satisfactory living conditions would not be created for occupiers of the proposed development. This would conflict with relevant policies, notably DM policy 32. However, it is accepted that this would apply to a small minority of rooms and units within a large

²⁰ Council's closing statement, paragraph 25.

²¹ See for example figure 5.5.4 of Mr Squire's proof of evidence.

development in which generally acceptable standards would be achieved. This reduces the weight that can be afforded to this policy conflict.

51. The appellants point to other recent developments in London containing broadly similar building-to-building separation distances. However, I am not aware of the full details of those schemes: my conclusion on this matter relates to the particular circumstances described above.

Access, Parking and Servicing

52. The appellants' position with respect to these matters changed following the initial inquiry sessions. Specifically, this resulted from the accurate measurement of the western access route which – it is now agreed by both parties – would include a 'pinch point' some 3.8 metres wide. The appellants had previously proposed that this route would form part of an access loop for large vehicles, including refuse vehicles²². However, they now accept that use of this route for such vehicles would overly restrict the space available for pedestrians and cyclists. I have no reason to disagree with that assessment.
53. The appellants' response to this matter is to suggest that such vehicles would instead undertake a three point turn in Copperas Street, using the eastern access of the development to back into. The Council raises concerns about such a manoeuvre. However, while the appellants' revised arrangements have not been the subject of formal consultation with relevant bodies, I have seen no substantive evidence that material harm to the safety of road users would be likely to result from this arrangement. Although part of a cycle route, Copperas Street is a cul-de-sac to vehicular traffic: it is not (and is not likely to be) subject to significant vehicular flows. The evidence before me indicates that a similar turning manoeuvre will be required in respect of the Essential Living scheme, and that deliveries and servicing to the Creekside Village West development already involve large vehicles turning in Copperas Street.
54. The implication of such an arrangement for the appeal proposal is that medium and large vans and lorries would have to wait on Copperas Street to allow goods to be loaded and unloaded. (Smaller vehicles, depending upon their size, would either use the internal loop or access the basement area.) While the Council raises concern that waiting on Copperas Street would 'inevitably' create congestion, as well as causing hazards for the cycleway, it is clear from the submitted drawings that adequate space exists to enable vehicles to pass stationary vehicles as long as improvements are carried out to the public realm on Copperas Street including the restriction of on-street parking.
55. In that context, the submitted unilateral undertaking makes provision for the payment of contributions towards a public realm enhancement scheme and a controlled parking zone (CPZ). Copperas Street forms the boundary between LBL and LBG and it is clear that both authorities would need to participate in the implementation of the enhancement scheme and CPZ in order for the schemes to take proper effect. However, neither local authority is a party to the undertaking. As such, I cannot be certain that either the enhancement scheme or the CPZ would be secured through this mechanism. I am therefore unable to give these obligations any weight in my decision.

²² See for example drawing no. P971/301A attached to Mr Gurner's main proof of evidence.

56. Nevertheless, this is not to say that there is no prospect at all of these actions being performed within the time limit of any planning permission. I therefore agree with the appellants that notwithstanding my comments about the effectiveness of the relevant planning obligations, I am satisfied that 'Grampian' type planning conditions could appropriately be imposed if the appeal scheme was acceptable in other respects.
57. Concern is also raised about the ability for Environment Agency vehicles to access the Creek in the event of an emergency. Given the agreed position with the western access as already described, the appellants have updated relevant drawings to indicate such an emergency route along the site's eastern access and the eastern side of block 2. Although requiring a significant degree of reversing, I am satisfied that such use would be sufficiently infrequent to avoid it resulting in a material safety risk. The appeal drawings show that this route would be partially blocked by cycle stands. Given that the relevant access would relate to emergency conditions, I do not agree with the appellants that it would be appropriate to install cycle stands that could be dismantled and replaced at a later time. However, I see no reason why the cycle stands could not be located elsewhere within the site – an outcome that could also be secured in principle by imposition of a planning condition.
58. Drawing these matters together, and subject to the imposition of the above-noted conditions, I conclude that the scheme's arrangements for access, parking and servicing would be adequate. In this respect, the scheme would accord with relevant development plan policies, notably CS policy 14. It would also accord with paragraph 32 of the Framework which states, among other matters, that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Affordable Housing Mix

59. The Council's concern in respect of affordable housing relates to the intended mix of units rather than to the overall level of provision. As already noted, the Council does not seek to challenge the appellants' viability evidence. CS policy 1 states that for affordable housing, the Council will seek a mix of 42% as family dwellings (3+ bedrooms). Some 33% of the affordable units in the appeal scheme would accord with that category.
60. The appellants comment that, if measured by floorspace, some 44% of the affordable housing would comprise family units. It is accepted that CS policy 1 does not clarify whether the relevant measure relates to units or floorspace. However, I note that the Council states that it has consistently adopted the former measure in making such assessments and it seems to me that this represents a commonsense reading of the policy that can easily be applied and enforced. It is also consistent with the use of a percentage target for affordable housing elsewhere in CS policy 1. For these reasons, I agree with the Council's assessment. I therefore conclude that the mix of affordable housing that is proposed would not accord with development plan requirements. However, this breach would not be of a significant scale and, moreover, the mix that has been proposed is supported by an undisputed viability assessment. These factors reduce the weight that can be attached to this particular policy conflict.

Planning Balance

61. It is not part of the appellants' case that the development plan is out of date in terms of the Framework. The appeal scheme would result in clear benefits, most notably the redevelopment of part of a vacant site that is allocated for development in the SALP. I have concluded above that the appeal proposal would enable the continued employment functioning of the MUEL and that, subject to the imposition of conditions, its arrangements for access, parking and servicing would be adequate. Affordable housing and commercial space, including affordable business space, would be provided. These factors would support the economic and, in part, the social dimensions of sustainable development, as set out in the Framework. While satisfactory living conditions would not be created for some of occupiers of the proposed development and while the intended mix of affordable housing would not accord with development plan requirements, these are matters that – for the reasons set out above – would not amount to reasons for refusing planning permission if the scheme was acceptable in other respects.
62. However, it is not. I have concluded above that the effect of the development on the area's character and appearance would be unacceptably harmful and that the scheme would not result in a comprehensive approach to the development of the Thanet Wharf Mixed Use Employment Location (MUEL), contrary to relevant policies. These factors, which bear on the environmental and, in part, the social dimensions of sustainable development, amount to significant objections to the development. Bearing in mind that the Framework attaches great importance to good design, including the achievement of high quality and inclusive design for all development, including individual buildings, *public and private spaces* and *wider area development schemes*²³ (my italics), I consider that these matters are sufficient to overcome the advantages described above. The appeal scheme would not therefore amount to sustainable development in the terms of the Framework.

Conclusion

63. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed and that planning permission for the appeal development should be refused.

M J Hetherington

INSPECTOR

²³ Paragraphs 56 and 57 of the Framework.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|------------------------|--|
| Ms Annabel Graham Paul | of Counsel Instructed by Mr Kevin Chadd, Solicitor, London Borough of Lewisham (LBL) |
| She called: | |
| Ms Amanda Reynolds | AR Urbanism |
| BArch MA(UD) RIBA | |
| Ms Catherine Paterson | Highways and Transportation, LBL |
| BSc(Hons) MSc | |
| Mr Neil Goldsmith | Nathaniel Lichfield & Partners |
| BA(Hons) BPI MRTPI | |
| Mr Anthony Bowne | Trinity Laban Centre |
| Ms Kate Hayler | LBL (conditions session only) |
| BArch MA | |

FOR THE APPELLANTS:

| | |
|-------------------------|---|
| Mr Stephen Morgan | of Counsel Instructed by Mr Simon Chadwick, Signet Planning |
| He called: | |
| Dr Christopher Miele | Montagu Evans |
| IHBC MRTPI FRHS | |
| Mr Michael Squire | Squire and Partners |
| MA DipArch(Cantab) RIBA | |
| Mr Patrick Gurner | PSP Consulting |
| BSc(Hons) CEng MICE | |
| Mr Gerald Allison | Cushman and Wakefield |
| RICS | |
| Mr Simon Chadwick | Signet Planning |
| BSc(Hons) MRICS | |
| Ms Bettina Brehler | Squire and Partners (conditions session only) |
| Dipl.Ing ARB | |

INTERESTED PERSON:

| | |
|-----------------|----------------------|
| Mr Matthew Wood | Second Floor Studios |
|-----------------|----------------------|

List of Inquiry Documents

- Document 1: Draft unilateral undertaking
- Document 2: Comments by Mr Squire on Buildings for Life 12 Assessment.
- Document 3: Opening statement on behalf of the appellants.
- Document 4: Opening statement on behalf of the London Borough of Lewisham (LBL).
- Document 5: Drawing no. P971/307.
- Document 6: Comments by Ms Reynolds on Mr Squire's comments.
- Document 7: Extract from Report of Lewisham Design Review Panel (Oct 2015).
- Document 8: Copies of slides from Mr Squire's presentation containing material not previously contained in his evidence.
- Document 9: Further statement of Mr Bowne.
- Document 10: Bundle of e-mails tabled by appellants.
- Document 11: Additional drawing used at site visit: no. C645_B0_P_00_011.
- Document 12: E-mail exchange in respect of Kent Wharf site.
- Document 13: Supplemental Note on Servicing and Access by Mr Gurner.
- Document 14: Mixed use sites summary document.
- Document 15: Review of Environmental Statement (LUC for LBL).
- Document 16: Copy of planning permission dated 30 March 2012 in respect of Block C, Creekside Village West, Creek Road, Deptford.
- Document 17: Agreed Statement of Common Ground.
- Document 18: Draft list of planning conditions.
- Document 19: Further draft of unilateral undertaking.
- Document 20: Interim Delivery and Servicing Plan
- Document 21: Letter from Brecher Solicitors confirming site ownership.
- Document 22: CIL Regulations Justification Statement.
- Document 23: Additional evidence on flood risk and the sequential test.
- Document 24: LBL response to Mr Gurner's Supplemental Note.
- Document 25: Appellants' response to Port of London Authority comments on Environmental Statement.
- Document 26: Appellants' response to LBL comments on Environmental Statement.
- Document 27: Viability Assessment (Montagu Evans).
- Document 28: Amended list of planning conditions.
- Document 29: Drawing no. D811_B2_P_02_009 B.
- Document 30: London Borough of Greenwich Planning Board report in respect of planning permission attached as Document 16 above.
- Document 31: Closing submissions on behalf of LBL.
- Document 32: Transcript of *Horsham District Council v SSCLG and Barratt Southern Counties Limited [2015] EWHC 109 (Admin)*.
- Document 33: Closing submissions on behalf of the appellants.
- Document 34: Costs application by LBL.
- Document 35: Final version of unilateral undertaking, dated 8 July 2016.