

# MAYOR OF LONDON

**Jeremy Ward**

Principal Planning Officer  
Planning, Resources and Regeneration Directorate  
Lewisham Council  
2nd Floor Civic Suite,  
Catford Road,  
London, SE6 4RU

**Our ref:** GLA/3409b/02  
**Your ref:** DC/18/109184  
**Date:** 4 March 2019

Dear Mr Ward,

**Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008**  
**Former Tesco Car Park, 209 Conington Road**  
**Local planning authority reference: DC/18/109184**

I refer to your letter of 26 February informing me that Lewisham Council is minded to grant planning permission for the above application. I refer you also to the notice that was dated 26 February under the provisions of article 5(1)(b)(i) of the above Order.

The Mayor has delegated his planning powers to me. Having now considered a report on this case, reference GLA/3409b/02 (copy enclosed), I consider that the level of affordable housing has not been adequately justified and, as such, it has not been demonstrated that the scheme will deliver the maximum reasonable amount of affordable housing in accordance with extant development plan and other policy. I therefore direct you to refuse planning permission, under the powers conferred on me by Article 6 of the above Order. My reasons are as follows:

- **Affordable housing provision:** The proposed affordable housing contribution of 88 units (24% by unit and habitable room) has not been adequately justified and is time-limited, with the affordable housing offer reverting to 73 units (20% by unit and habitable room) should the Council not issue a planning permission before 30 March 2019. The applicant's methodology as well as inputs within the appraisal to assess the viability of the scheme is not in compliance with the Mayor's Affordable Housing and Viability SPG and leads the GLA to conclude that more affordable housing could be supported within the scheme. On the basis of the evidence presented, the applicant has not demonstrated that the scheme will deliver the maximum reasonable amount of affordable housing, and the proposals are therefore contrary to London Plan Policy 3.12, draft London Plan Policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 1 and Development Management Policy 7.
- **Viability review mechanism:** Inadequate provision has been made in the draft s106 agreement for viability review mechanisms, in terms of the applicant's position that the reviews should reflect a deficit position, which is not accepted. Given the low level of

affordable housing proposed and the significant length of the development programme, the use of robust review mechanisms is essential in order to reassess the viability of the scheme and determine whether additional affordable housing could be supported. The absence of adequate and robust viability review mechanisms does not therefore support the delivery of the maximum reasonable amount of affordable housing on the site, and is contrary to London Plan Policy 3.12 draft London Plan Policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 1 and Development Management Policy 7.

I would be grateful if you would issue the appropriate notices, giving the above reasons for refusal and I urge you to work with the applicant on a new scheme that optimises affordable housing delivery across the site.

Yours sincerely



**Jules Pipe**

Deputy Mayor for Planning, Regeneration and Skills

cc Len Duvall, London Assembly Constituency Member  
Nicky Gavron, Chair of London Assembly Planning Committee  
National Planning Casework Unit, DCLG  
Lucinda Turner, TfL  
Steven Butterworth, Lichfields, 14 Regent's Wharf, All Saints Street, London, N1 9RL

4 March 2019

**Former Tesco Car Park, 209 Conington Road**

in the London Borough of Lewisham

planning application no. DC/18/109184

**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**

Construction of three buildings, up to 34 storeys, to provide 365 residential units and 554 sq.m. of commercial/ community/ office/ leisure space with landscaping and public realm works.

**The applicant**

The applicant is **MB Homes Lewisham Limited** and the architect is **EPR Architects**.

**Key dates**

**Stage 1 reporting:** 26 November 2018

**Planning committee:** 18 December 2018

**Strategic issues**

The affordable housing offer is wholly unacceptable and has not been demonstrated to be the maximum reasonable amount, contrary to London Plan Policy 3.12, draft London Plan Policy H6 and the Mayor's Affordable Housing and Viability SPG as well as Lewisham Core Strategy Policy 1 and Development Management Policy 7.

Issues relating to **energy** remain outstanding.

Comments with respect to **design** and **transport** have been appropriately addressed.

**The Council's decision**

In this instance Lewisham Council has resolved to grant permission subject to planning conditions and conclusion of a Section 106 legal agreement.

**Recommendation**

That Lewisham Council is directed to refuse planning permission under Article 6 of the Mayor of London Order 2008, for the reason set out in paragraph 77 of this report.

## Context

1 On 24 October 2018 the Mayor of London received documents from Lewisham Council notifying him of a planning application of potential strategic importance to develop the above site for the above uses. Under the provisions of The Town & Country Planning (Mayor of London) Order 2008 the Mayor had until 28 November 2018 to provide the Council with a statement setting out whether he considers that the application complies with the London Plan, and his reasons for taking that view. This report sets out information for the Mayor's use in deciding what decision to make.

2 The application is referable under Categories 1A, 1B and 1C of the Schedule to the Order 2008:

- 1A: *“Development which comprises or includes the provision of more than 150 houses, flats, or houses and flats.”;*
- 1B c): *“Development (other than development which comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings outside Central London and with a total floorspace of more than 15,000 sq.m.”;* and
- 1C: *“Development which comprises or includes the erection of a building where the building is more than 30 metres high and is outside the City of London.”*

3 On 26 November 2018 the Mayor considered planning report GLA/3409b/01, and subsequently advised Lewisham Council that the application does not comply with the London Plan, for the reasons set out in paragraph 51 of the above-mentioned report. The resolution of those issues could lead to the application becoming compliant with the London Plan. 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.

4 Following consideration at planning committee on 18 December 2018, Lewisham Council resolved to grant planning permission. The Council advised the Mayor of this decision on 26 February 2019. 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 refusal under Article 6, 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 11 March 2019 to notify the Council of his decision and to issue any direction.

5 The Mayor can direct refusal where he considers that to grant permission would be contrary to the London Plan, prejudicial to its implementation or otherwise contrary to good strategic planning in Greater London.

6 The matters specified in article 6(2) of the 2008 Order have been taken into account in the consideration of the exercise of the Mayors powers.

7 The environmental information for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 has been taken into account in the consideration of this case.

8 The Mayor's decision on this case, and the reasons, will be made available on the GLA's website [www.london.gov.uk](http://www.london.gov.uk).

## Consultation stage issues summary

9 At the consultation stage Lewisham Council was advised that the application did not comply with the London Plan and draft London Plan for the following reasons:

- **Principle of development:** The Lewisham and Catford Opportunity Area has the capacity to support a mixed use residential led development.
- **Affordable housing:** 20% (by habitable room) split 38% intermediate discount market sale and 62% affordable/social rent. This offer, on a site within an Opportunity Area is wholly unacceptable and should be significantly increased. GLA officers will robustly scrutinise the viability assessment to maximise affordable housing provision. Early and late stage reviews must be secured.
- **Urban design:** Height, scale and massing supported. Public access to the 'sky deck' must be secured.
- **Energy:** The applicant must explore the potential for additional measures to deliver further carbon dioxide reductions. Once all opportunities for securing further feasible on-site savings have been exhausted, a carbon offset contribution should be secured to mitigate any residual shortfall.
- **Transport:** The occupation of the scheme alongside proposed enhancements to the DLR network will need to be mitigated and other conditions and measures secured, including a revised transport assessment, parking restrictions for occupiers CPZ, provision of EVCPs, increased cycle parking and alterations to servicing arrangements to make the proposal policy compliant.

## Officer recommendation – refuse planning permission

10 This report sets out the matters that the Mayor must consider when deciding whether to allow Lewisham Council's draft decision to proceed unchanged; direct the 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 and any connected application.

11 Further to the consideration within this report, GLA officers have concluded that the issue raised at consultation stage regarding the unacceptable provision of affordable housing is still outstanding, and that the application does not comply with the London Plan and draft London Plan. It is therefore recommended that the Mayor refuses the application for the following reasons:

- **Affordable housing provision:** The proposed affordable housing contribution of 88 units (24% by unit and habitable room) has not been adequately justified and is time-limited, with the affordable housing offer reverting to 73 units (20% by unit and habitable room) should the Council not issue a planning permission before 30 March 2019. The applicant's methodology as well as inputs within the appraisal to assess the viability of the scheme is not in compliance with the Mayor's Affordable Housing and Viability SPG and leads the GLA to conclude that more affordable housing could be supported within the scheme. On the basis of the evidence presented, the applicant has not demonstrated that the scheme will deliver the maximum reasonable amount of

affordable housing, and the proposals are therefore contrary to London Plan Policy 3.12, draft London Plan Policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 1 and Development Management Policy 7.

- **Viability review mechanism:** Inadequate provision has been made in the draft s.106 agreement for viability review mechanisms, in terms of the applicant's position that the reviews should reflect a deficit position, which is not accepted. Given the low level of affordable housing proposed and the significant length of the development programme, the use of robust review mechanisms is essential in order to reassess the viability of the scheme and determine whether additional affordable housing could be supported. The absence of adequate and robust viability review mechanisms does not therefore support the delivery of the maximum reasonable amount of affordable housing on the site, and is contrary to London Plan Policy 3.12 draft London Plan Policy H6 and the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 1 and Development Management Policy 7.

12 In addition to the provision of affordable housing, items relating to energy also remain outstanding. Should a revised application be submitted the applicant should address this issue, as discussed below, as well as the comments set out within the GLA consultation stage planning report (ref: GLA/3409b/01).

## **Outstanding issues**

13 Further to the above reason for refusal, an assessment of the outstanding strategic planning issues on this case is set out below. The applicant is strongly advised to have regard to the issues discussed below if a revised application is to be submitted.

## **Affordable housing**

### Policy context

14 London Plan Policy 3.9 seeks to promote mixed and balanced communities by tenure and household income and Policy 3.12 seeks to secure the maximum reasonable amount of affordable housing. Policy H5 of the draft London Plan and the Mayor's Affordable Housing and Viability SPG set a strategic target of 50% affordable housing. Policy H6 of the draft London Plan and the Mayor's Affordable Housing and Viability SPG set out a 'threshold approach' whereby schemes meeting or exceeding a specific threshold of affordable housing (35% or 50% on public land) by habitable room without public subsidy and which meets other criteria are not required to submit viability information to the GLA, nor would the application be subject to a late stage review mechanism.

15 Policy 1 of Lewisham Council's Core Strategy sets a strategic target of 50% affordable housing from all sources, with part 4 of the policy states that the starting point for negotiations on sites providing over 10 homes will be 50% affordable housing. Furthermore, Development Management Policy 7 states that the Council will seek to maximise affordable housing output on a case-by-case basis, by making the best use of resources and taking account of other relevant factors, including viability.

### Previous application

16 A previous planning application for the redevelopment of the site was submitted by the applicant in June 2017 (GLA ref: 3409a and LPA ref: DC/17/101621). The Mayor issued his Stage 1 consultation response in September 2017, which stated that 12.5% affordable housing was wholly unacceptable and fundamental concerns with the applicant's approach to viability had been identified. Lewisham's planning committee resolved to refuse the application on 3 April 2018. The Council's draft decision notice cites two reasons for refusal: excessive height; and failure to provide access onto Platform 4 of Lewisham Station and failure to secure a commitment to its opening. The Mayor issued his Stage 2 report on 14 May 2018, which considered that there were no sound planning reasons to intervene and that the Mayor was content to allow Lewisham to refuse the application.

17 Notwithstanding the Mayor's overall Stage 2 decision, the Stage 2 report for the previous scheme stated that should the scheme be considered at appeal, or a revised application submitted, a number of items should be addressed, including affordable housing. Given the Council's resolution to refuse the application, and the lack of sound planning reasons for a Mayoral intervention, it was not necessary or appropriate at that point for GLA officers to further scrutinise the Council's independent review of the applicant's FVA (i.e. so as to establish whether or not the offer constituted the maximum reasonable level).

18 The previous application is now subject to an appeal (ref: DC/17/101621). The issues raised within this report as well as the Stage 2 report for the previous application with regard to affordable housing should be considered in any future appeal.

### Present application

19 At consultation stage, the affordable housing offer of 20% by habitable room, with a 62% affordable/social rent and 38% Discount Market Sale (DMS) split, was considered to be wholly unacceptable by the Mayor. The applicant was advised that this must be significantly increased, given the site's low existing use value and location within an Opportunity Area. Furthermore, the applicant was advised that DMS is not a preferred intermediate affordable tenure and that any DMS provision should be affordable to a range of eligible purchasers, below the income thresholds within the London Plan Annual Monitoring Report (AMR). Information on the affordable rent and social rent levels was required, which should comply with the Mayor's affordability criteria, in accordance with Policy H7 of the draft London Plan, the Mayor's Affordable Housing and Viability SPG, and the London Plan Annual Monitoring Report. The applicant was also advised that GLA officers would rigorously test the applicant's Financial Viability Assessment (FVA).

20 The applicant's proposal has been supported by a viability assessment with a number of further amendments, prepared by James R Brown & Co Ltd. That advice, dated October 2018, concludes that the AH offer resulted in a deficit of £22,865,000.

21 The applicant's viability report has been subject to independent review on behalf of the Council by GL Hearn and then by Carter Jonas (as viability assessors subsequently moved companies). Despite adopting different assumptions to the applicant's FVA in terms of site value, gross development value and construction costs, the Council's consultants concluded that the revised AH offer resulted in a deficit of £5,704,000 and recommended acceptance of this proposal.

22 GLA officers have carried out their own review of the applicant's viability assessment undertaken by James Brown and the Council's consultant's review undertaken by Carter Jonas.

23 On 13 February 2019, the applicant presented two further options (where option 1 was the affordable housing offer assessed by the Mayor at consultation stage in November 2018) to the GLA in a letter from James Brown: option 2 proposed 20% affordable housing as per the existing offer but converted the proposed DMS to shared ownership, resulting in a tenure split of 58% shared ownership and 42% social/affordable rent; and option 3 increased the affordable housing offer to 24%, comprised of 80% shared ownership and 20% social rent. Lewisham Council subsequently provided GLA officers with the review of these two further options, undertaken on their behalf by Carter Jonas, dated 8 February 2019, which stated that, whilst it was considered that the applicant's consultant had overstated the extent to which the options were unviable, all options were still in deficit.

24 A further proposed offer was then presented on 19 February 2018 by email from the applicant, which superseded the previous two options discussed above, of 24% affordable housing (by unit and habitable room), with a 48% shared ownership and 52% affordable/social rent tenure split. The applicant states that this offer was conditional on planning permission being issued and a s106 agreement signed by the end of March 2019, with the affordable offer reverting back to the original offer of 20% (which was considered by the Mayor at consultation stage). It must be noted here, and as discussed below in paragraph 45 and 46, the Mayor has no influence over the signing of any s106 agreement to which he is not a party; this, and the issue of planning permission, is a matter for the local planning authority and the other signatories to the agreement.

25 Carter Jonas have reviewed this offer on the Council's behalf, which again identified a number of points of disagreement with the James Brown appraisal, including relating to residential values, build costs and profits, but considered that the scheme remained in deficit. The draft s106 included within the Stage 2 referral documents did not specify Application Stage Build Costs or Application Stage GDV, both of which are to be used in the review mechanisms. On receipt of these figures, the Council issued a revised draft s106 with build costs of £106,941,379 and a GDV of £170,517,228. The applicant then issued a further draft of the s106 with build costs of £112,333,300 and a GDV of £182,980,497. It is clear that there is not yet an agreed position on these figures as between the Council and the applicant. In any event, GLA officers do not consider that either version of the draft s106 agreement addresses the outstanding concerns with regard to methodology and inputs.

26 Despite the applicant's provision of revised affordable housing offers, there remain significant concerns with the applicant's approach to the assessment of the viability of the scheme, which does not comply with the Mayor's Affordable Housing and Viability SPG or draft London Plan Policy H6. These include the applicant's approach to sales values, build costs and profit, details of which are considered below.

#### Viability assessment methodology

27 Paragraph 57 of the National Planning Policy Framework states that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. National guidance on viability is set out in Planning Practice Guidance.

28 The Mayor's Affordable Housing and Viability SPG states that schemes which do not meet the Mayor's 35% affordable housing threshold will be assessed under the Viability Tested Route, in order to determine whether additional affordable housing can be provided. The SPG also provides clear guidance on the Mayor's approach to assessing the viability of a development.



## Sale values

29 The applicant provided market evidence for the component elements of development value, these being market units for sale, discounted market sales at 80% of market value (noting the tenure split of the 20% affordable housing offer), and commercial values. Subsequently, values have been proposed for affordable rent/ social rent and shared ownership units.

30 The main element of GDV is the market housing prices, which have been assessed at average rates of between £665 per square foot (Block 1) and £675 per square foot (Blocks 2 & 3) by the applicant. The council reviewed the evidence and considered it to be reasonable. This needs to be compared to the conclusions reached by the consultant for the Council (GL Hearn) on the nearby Carpetright site, Loampit Vale, Lewisham in September 2017 (GLA ref: 3778 and LPA ref: DC/17/102049), valuing the market units at £725 per square foot; this assessment recognised the more attractive location of the Carpetright scheme compared to comparable sites. The present site could be considered better than Carpetright as it is not directly adjacent to the south circular gyratory and is closer to Blackheath, where sales values are typically higher. House price indices have shown residential prices in this area are marginally higher now compared with 12 months ago when the Carpetright scheme was assessed.

31 Overall, GLA officers conclude that residential values have been underestimated and consider that current market values are likely to be in the region of £700 - £750 per square foot with average values at the higher end applicable to higher floors in the tower. The Council considers that the applicant's assessment of values for social/affordable rented units and commercial units are slightly low. GLA officers agree with these conclusions.

## Build costs

32 The development is comprised of 3 buildings: 34 storeys, 14 storeys and 8 storeys. A tower of 34 storeys has a higher build cost per square metre than the smaller blocks. Paragraph 3.21 of the Mayor's Affordable Housing & Viability SPG, states that build costs should be consistent with comparable schemes and should be benchmarked against other similar projects.

33 The applicant received advice on build costs from cost consultant, Stace. Build costs were assessed overall at £112,333,300 with further costs for abnormal costs, such as works to the river culvert. The build costs average £309 per square foot (psf). Stace commented on a number of design elements that made the build costs relatively high, including: poor building efficiency (gross: net); fifty-eight different unit types throughout the scheme, which is much higher than the norm and results in less repetition of unit types, thereby reducing efficiency overall; and wall- to- floor ratios of the buildings that are lower than the norm for other similar residential schemes.

34 The costs include a viewing platform (known as Skydeck Lewisham) on the top Building 1. The cost of this facility is unclear and, as a result, it is also unclear whether housing has been foregone in providing this. The removal of this facility from the design is likely to deliver additional affordable housing and the public benefits of the viewing platform, relative to affordable housing, are questioned.

35 Lewisham Council's cost consultant, Johnson Associates (JA) responded to the build costs provided by Stace, within a Carter Jonas report dated 8 February 2019 JA took into account the nature of the contractor (in this instance that the developer is not a volume-house-builder) when considering build costs. This is not considered to be a relevant consideration, as any assessment of build costs should be objective, rather than contingent on the business model of the developer.

36 Build costs include various components. One such element is the preliminaries, overheads and contractor's profit (POH&P). It is noted that JA disagreed with Stace regarding the inclusion of design fees within the build costs, as it was considered that these should be included within the professional fees and otherwise result in double counting; as such, in their latest assessment, dated 8 February 2019, CJ removed design fees from costs, which reduces the preliminary figure from 19.27% to 17.99%, which results in a slight reduction in the overall build cost figure to £106,941,379. In response, via a letter from James Brown on 26 February 2019, the applicant refuted this double-count, stating design fees should be included within build costs due to the need to develop packages with subcontractors and professionals. With the exception of this, the applicant has not provided any justification for the higher level of POH&P in this development and, in absence of this and agreeing with JA, it is considered that there is an element of double counting within the different components of the build costs.

37 GLA officers consider that the applicant's build costs are significantly overstated due to the over-estimation of the costs of a range of elements and the inclusion of design fees that are duplicated elsewhere in the applicant's appraisals.

38 In coming to the view that the applicant's build costs are overstated, GLA officers have been informed by advice from cost consultant CDM Project Services and have had regard to comparable schemes in the area, as per the requirements of the Mayor's SPG, with appropriate adjustments for the site's specific circumstances.

#### Land Value

39 The applicant considered benchmark land value based on its existing use value (EUV) as a car parking and alternative use value as storage. A premium of 20% over EUV was applied but a higher premium was also considered based on land transactions to arrive at a benchmark land value of £4,200,000. Carter Jonas assessed the BLV of the site at £2,975,000.

#### Developer Return

40 The assessments undertaken for the applicant and the Council adopt developer return assumptions based on a percentage of Gross Development Value (GDV). In the latest appraisal the applicant has assumed a blended profit of 22.5% on Gross Development Cost (GDC) and 18.36% on GDV. The Council's consultants consider the rates adopted should be 20% for market housing, 6% for affordable housing and 15% for commercial units.

41 Any assessment of suitable profit levels should take in to account the specific nature of the development. Building 1, being high rise, has a relatively higher risk because of the greater time exposure to market change; however, for the present scheme, there are effectively two sites (car park site and island site) which allow for a phased development approach, which helps to mitigate risk. The site is also considered to be in a good development location, in a 'mature' development area, where market volatility is considered to be limited.

42 Developer return should also be based on analysis of market transactions to identify assumptions developers make in their appraisals. No evidence has been provided to underpin the assumption of profit, particularly market housing. The proposed level of profit is higher than the returns adopted on market housing for schemes recently assessed by the GLA. GLA officers have also had regard to development sites sold following grant of planning consent at prices significantly in excess of the benchmark value adopted for viability review. Assuming assessment on a current day basis, this indicates market return assumption at significantly lower than 20 per cent for market housing, which is considered to be excessive.

### Overall viability position

43 As noted above, the applicant's viability assessor considers that the scheme generates a significant financial deficit. On this basis the scheme would not be deliverable and it is not clear why the applicant would bring forward the scheme or how this could be financed. Despite this the applicant has made a number of affordable housing offers which, on the face of it, would reduce viability further. It is however widely recognised that residual valuation models are sensitive to small changes in values and costs.

44 Development assessments should include sensitivity testing and analysis, which is helpful in explaining how changes in key inputs (such as market sales values and build costs) can affect the viability of a scheme. This is particularly appropriate in this development assessment where there is a strong likelihood of improved sales values and reduced build costs compared to the applicant's FVA. No sensitivity testing has been provided either by the applicant or the Council's consultant. The GLA's review of viability indicates a range of areas where it is considered that the applicant's viability inputs have the effect of understating viability.

### Time limit on affordable housing offer

45 The applicant has stated that the present offer of 24% affordable housing is conditional on planning permission being issued and a s106 being signed by the end of March 2019 with the offer reverting to the 20% affordable housing, as considered at consultation stage, should this date pass. The s106 that accompanied the referral was for 24% affordable housing, in line with the requirement for a Stage 2 referral to be accompanied by a full draft of any planning obligation, as set out in the Mayor of London Order (2008) and Annex C of the London Planning Statement SPG (2014).

46 The principle of a time-limited affordable housing offer is unacceptable, as the affordable housing offer and the s106 agreement would alter should Lewisham Council and the applicant fail to meet the March 2019 deadline and, as noted above, the Mayor has no influence over the signing of any s106 to which he is not a party. In that scenario, it is possible that Lewisham Council could issue a decision on the basis of a s106 agreement relating to a scheme and an affordable housing offer that the Mayor has not considered or reached a decision on. Notwithstanding the GLA officer recommendation, should the Mayor allow the Council's decision to stand, an updated Stage 2 referral, complete with a revised and agreed draft s106 agreement, would be required if the present 24% affordable housing offer lapsed and reverted to 20%.

### Review mechanisms

47 The proposal falls short of the 35% threshold set out in the Affordable Housing and Viability SPG and the Draft London Plan. An early viability review is required to determine whether additional affordable housing can be delivered in the event that substantial implementation is not achieved within two years of the grant of permission.

48 For developments that are likely to be completed in the short term, a late stage review would not be consistent with the London Plan; however, a late stage review is required under Policy H6 of the draft London Plan. This is a material consideration, which is considered to outweigh any conflict with the London Plan in this respect. A late stage review is essential in this case given the level of affordable housing proposed by the applicant as well as the applicant's proposed development programme of nearly four years, where there is potential for significant changes in costs and values.

49 The Council has secured both an early stage and a late stage review (at disposal of 75% of residential units) within the s106 agreement; however, the applicant considers that the scheme generates a financial deficit and that the reviews should allow for this to be overcome prior to any surplus profit being identified that would result in additional affordable housing. This position is not accepted, for the reasons set out above. As such, it is not considered that the review mechanisms proposed by the applicant would be effective in securing additional affordable housing provision and in ensuring delivery of the maximum affordable housing that can viably be supported.

### Conclusion

50 The site is in the Lewisham Opportunity Area and on an existing car park, with a low benchmark land value. The site is a mature development location, close to rail connections and should be capable of making a significant contribution to affordable housing provision. GLA officers have assessed the viability of the scheme and consider that additional affordable housing could be provided and that the scheme fails to optimise affordable housing delivery on this site or provide the maximum reasonable level of affordable housing, in accordance with London Plan Policy 3.12, draft London Plan Policy H6, the Mayor's Affordable Housing & Viability SPG as well as Lewisham Core Strategy Policy 1 and Development Management Policy 7.

### **Energy**

51 Limited additional information has been provided since consultation stage and the following items remain outstanding: the applicant has not assessed the scheme against the latest GLA guidance; the design is not anticipated to meet CIBSE recommendations for comfort and further work is required to adopt passive measures to avoid overheating; mechanical cooling is proposed which is not supported as it has not been demonstrated that the cooling demands have been minimised by passive design; alternatives to the proposed Combined Heat and Power system must be explored; further carbon reduction measures must be considered, including additional PV panels, fabric performance as well as consideration of tenant lease agreements to uphold high efficiency surfaces performance; and the proposed contribution to the Lewisham carbon offset fund is outdated. As such, the proposals do not comply with London Plan 5.2 and draft London Plan Policy S12, although on balance GLA officers do not recommend refusal of the application on these grounds. The applicant should have regard to these comments in any appeal or subsequent application.

### **Update on other strategic issues**

52 An update on the other strategic issues raised at consultation stage is set out below.

## **Principle of development**

53 At consultation stage it was considered that the principle of the residential-led mixed-use redevelopment of the underutilised brownfield, town centre site accorded with the strategic aspirations for the Lewisham Opportunity Area. London Plan Policy 2.13 and Policy SD1 of the draft London Plan identify the Lewisham, Catford and New Cross Opportunity Area as having capacity to support between 8,000 and 13,500 new homes and 4,000 to 6,000 jobs and acknowledge that strategically important regeneration is already well underway in central Lewisham. Lewisham itself is recognised by London Plan Policy 2.15 as a ‘major’ town centre with high growth potential. Policy SD6 of the draft London Plan maintains this classification, but also acknowledges the potential of this centre to achieve ‘metropolitan’ status over the new plan period. Furthermore, it was noted at consultation stage that the Council’s allocation for the site requires any developer to delivery ecological improvements to the River Ravensbourne as part of their proposals and the applicant’s willingness to engage with this was supported. It is noted that obligations within the s106 are secured which require the applicant to use ‘reasonable endeavours’ with the neighbouring landowner to deliver the works to the river and pay a financial contribution of £1,590,800 to the Council.

## **Urban design**

54 The design of the scheme was broadly supported at consultation stage and the Council have ensured that approval of materials, samples and key details have been reserved by condition.

55 As required by London Plan Policy 7.7 and draft London Plan Policy D8, the Skydeck has been secured within the s106; however, it is noted that full details of the public access is reserved by an obligation to provide a programme, with the parameters of this requiring only a minimum of 3 hours public access per day, with this subject to pre-booking. Furthermore, it is understood that the cafe on the ground floor of Building B1 will cross-subsidise the Skydeck and there has been no operator secured for this space. On this basis, GLA officers question the Skydeck’s genuine contribution to public benefits, particularly as this appears to be at the expense of affordable housing. In any appeal or future application (and notwithstanding the recommended reasons for refusal), the applicant should seek to enhance the public benefits associated with the Skydeck without impacting on the delivery of the maximum level of affordable housing.

## **Inclusive design**

56 A condition has been recommended by the Council to secure building regulation requirements M4(2) and M4(3) and the application therefore accords with London Plan and draft London Plan inclusive design policies.

## **Transport**

57 A number of financial contributions have been secured by Lewisham Council with regard to transport in the s106 agreement. In line with other recent Lewisham town centre consents, a contribution of £120,000 for additional DLR capacity to be paid to TfL prior to first occupation is agreed along with £469,600 for Network Rail towards improvements at Lewisham station. The scheme has also been designed so as not to prejudice future station enhancements and allows for 24 hour public access across the site and safeguarding of a direct connection to the station.

58 The provision of only nine blue badge car parking spaces is accepted given the site’s constraints and accessibility to existing and proposed step free public transport. Compared to the previous application, 48 additional long stay cycle spaces in the public realm have been identified,

to be delivered subject to monitoring and review. This, along with the proposed provision of folding bicycles in Building B1 (as agreed in the previous application), results in overall cycle parking being above adopted London Plan standards but slightly below those in the draft. On balance this is accepted given the constrained nature of the site (with requirements for river wall access and pedestrian and cyclist permeability) and the constraints of buildings; however, in any future application or appeal the applicant should explore opportunities to increase in line with the draft London Plan standards.

59 The S106 agreement secures Car Club membership for three years, funding to extend the CPZ and permit free provisions to support this car free development. The folding bicycles, a Travel Plan, Pedestrian and Cycle Access routes, a Public Realm Strategy and a Site Servicing Management Strategy are also in this agreement. Conditions relating to DLR infrastructure protection, noise insulation, electric vehicle charging points, cycle parking, and a construction logistics plan have been agreed.

60 Overall, most of the matters identified at Stage 1 have been satisfied. With the financial contributions agreed to DLR capacity and Lewisham station, along with the resolved conditions and obligations, the application is considered sufficiently compliant with the transport policies of the London Plan and draft London Plan. Should the application be considered at appeal or a future application submitted, the above items should be secured.

## **Response to consultation**

### Responses to neighbourhood consultation

61 The Council advertised the application locally with site notices, in the local press and issued letters to 1,039 local residents and businesses and placed site notices around the site. The Council received 5 letters of support (although it is noted that these were all identical) and 43 representations in objection to the proposals, with the principle reasons for objections summarised as follows:

- Similarity to the refused scheme;
- Public benefit of the Skydeck is limited in nature and concern regarding its viability;
- Public transport capacity is not sufficient;
- Increased pressure on local services and the need for new facilities to support the community;
- Concern regarding the scheme's height, loss of light, overlooking and local visual impact;
- Loss of light and privacy;
- Concern regarding vacancy of retail units;
- Negative impact on quality of life;
- Increased road traffic;
- Concerns regarding affordability of residential units;
- Density, wind, noise, air quality and disturbance concerns;
- Cumulative negative impacts;
- Inadequate consultation process;
- Loss of trees, lack of greenspace provided within proposals and impact upon greenspace; and
- Loss of views, impact upon property prices and concerns that homes will be sold to investors; and
- Lack of family sized units.

62 In recognition of the local interest in the proposals, a meeting was held on 6 December 2018 at Lewisham Methodist Church, which was attended by 23 residents. It is understood that the following principle issues were discussed: scale of the development; impact on local public transport and other services; car parking levels; scheme viability and affordable housing; public benefit; and construction impacts.

#### Responses from statutory bodies and other organisations

63 A number of responses were received from statutory consultees and other organisations:

- **Environment Agency:** No response received to the present application, though it is noted that there was no objection to the previous proposals. Conditions previously suggested by the Environment Agency relating to the River Ravensbourne and construction have been proposed within the recommendation.
- **Historic England (GLAAS):** No objection to the proposals. Further assessment or conditions are not considered to be necessary as the proposals are unlikely to have a significant effect on heritage assets of archaeological interest.
- **Metropolitan Police:** No comments received.
- **Network Rail:** No comments received to the proposed application, though it is noted that Network Rail did not object to the previous proposal, subject to a s106.
- **Thames Water:** No objection in principle, subject to planning conditions relating to a piling method statement and water supply impact studies. These conditions have been appended to the draft decision notice.

#### Responses from other bodies

64 The Council also received responses from the following non-statutory bodies and local amenity groups:

- **Blackheath Society:** Objected to the proposal on the following grounds: excessive height, which would detract from the emerging Lewisham Town Centre skyline; the proposed height and massing would result in overbearance at ground floor level; insufficient public benefit has been provided in terms of the roof top access, affordable housing and river naturalisation; scheme fails to provide access to platform 4 of Lewisham station or commit to its opening; and the submission may reduce options for the station's future redevelopment.
- **Ladywell Society:** Objected to the proposals due to the following: lack of affordable housing; the proposed dwelling mix; the height of the island site building; the tallest building on the Lewisham Gateway site is also considered to be too tall, but should be the tallest element of the scheme; concern with the disabled access and the deliverability of the River Ravensbourne works; and lack of meaningful public benefits in proposed Skydeck.
- **Westcombe Society:** Objected to the proposals as it will have an adverse impact on the setting of Blackheath and it is considered that the heights should not exceed the height of the existing / proposed tall buildings within Lewisham Town Centre, due to the greater impact on the qualities of the Heath. The Society has also made comments regarding the quantity of affordable housing, the Sky Deck business model, impact on the immediate vicinity and the ability of Lewisham to cope with the increased traffic.
- **Greenwich Society:** Objected to the proposals as it is considered that the scheme will have an adverse impact on the Greenwich World Heritage Site due to the visual impact on the proposed tower on views from Blackheath and parts of the World Heritage Site. The Greenwich Society also support the letter of objection from the Westcombe Society.

- **Lewisham Cyclists:** Raised some concerns over the scale and proposed massing but it is welcomed that the development does not include any residential car parking. The principle of the new public space and the provision of play facilities is welcomed. The group considers that the Silk Mills Path would need to be secured during the construction works and a new cycle and pedestrian bridge should be provided over the Silk Mills Path towards Thurston Road and via a tunnel under the railway line. It was also noted that the 545 spaces do not meet the Mayor's cycle parking standards.

### Representations to the Mayor of London

65 The Mayor directly received 11 consultation responses, including one from the Westcombe Society and one from the Ladywell Society, all of which objected to the proposals. The issues raised by objectors reflect those listed above.

### Consultation conclusion

66 Having considered the responses to public consultation, and representations submitted to the Mayor of London, GLA officers are satisfied that the statutory and non-statutory responses to the public consultation process do not raise any further material planning issues of strategic importance that have not already been considered in this report, or consultation stage report GLA/3409b/01.

## **Draft section 106 legal agreement**

67 As part of Lewisham Council's draft decision to approve the application, the following draft items are included within the draft Section 106:

- Provision of 24% of the scheme as affordable housing (by unit and habitable room), comprising 14 affordable rented units, 29 social rent units and 45 shared ownership units, with affordable housing rents capped at 45-50% of market rent and social rent units capped at 35-45% of market rent.
- Financial contribution of £1,590,800 towards the partial naturalisation of the River Ravensbourne and submission of a delivery strategy to include, but not limited to, a construction logistics plan, structural surveys and indicative scheme for partial naturalisation;
- Financial contribution of £496,600 (index linked) towards improvements at Lewisham station, including a new station northern entrance structure onto the Island Site public square;
- Public access to Skydeck daily (excluding Christmas day), with an access programme providing further details secured by obligation;
- Carbon offset payment of £41,844 (index linked) to be paid into the borough's carbon offset fund;
- Securing of all non-residential floorspace in the building as affordable with rents capped at 70% of market rent;
- Priority marketing of the commercial units as Class A1 / A3 for 12 months before the unit is permitted for other uses;
- Car club membership for 3 years for all residential units and restriction on eligibility for residents to apply for parking permits;
- Financial contribution of £30,000 towards the extension of the Conington Road Controlled Parking Zone (CPZ);
- Retention of project architect in a minimum of a design champion / guardian role; and
- Withdrawal of the pending planning appeal (ref: DC/17/101621).



68 The scheme considered by Lewisham's planning committee in December 2018 was based on the 20% affordable housing offer. As such, there is a discrepancy between the planning obligations stated within the committee report and the s106, both provided by the Council in the Stage 2 referral. The reason for the discrepancy is understood; however, with regard to affordable housing obligations, it is relevant to note that the committee report states that a minimum of 20.19% affordable housing (by habitable room), comprised of 16 social rent units, 50% affordable rent units and 30 Discount Market Sale, would be secured within the s106 agreement. The affordable housing obligations that the committee considered is not secured within the final s106 agreement and, as noted above, should the Mayor disagree with officer recommendation and allow the committee's decision to stand and should the affordable housing offer revert to this 20% offer, a further Stage 2 referral would be required to enable an assessment of this.

## **Legal considerations**

69 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. The Mayor may also leave the decision to the local authority. In directing 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 the London Plan, would prejudice the implementation of the policies within the London Plan or 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.

### **Article 6: Direction that the Mayor refuse planning permission – officer recommendation**

70 Article 6 of the Mayor of London Order (2008) states that where the Mayor considers that to grant planning permission would be contrary to the spatial development strategy or prejudicial to its implementation, or would otherwise be contrary to good strategic planning in Greater London, he may, within the period specific in article 5(1)(b)(i), direct the local planning authority to refuse the application.

71 As set out above, GLA officers have concluded that to grant permission would be contrary to the London Plan, would prejudice the implementation of the policies within the London Plan to deliver ensure that development provides the maximum reasonable affordable housing as well as to deliver good growth within the Lewisham Opportunity Area and would be contrary to good strategic planning in Greater London.

72 The Mayor is therefore recommended to direct refusal under Article 6 of the Order for the reasons set out below:

- Affordable housing provision: The proposed affordable housing contribution of 88 units (24% by unit and habitable room) has not been adequately justified and is time-limited, with the affordable housing offer reverting to 73 units (20% by unit and habitable room) should the Council not issue a planning permission before 30 March 2019. The methodology undertaken by the applicant to assess the viability of the scheme is not in compliance with the Mayor's Affordable Housing and Viability SPG and leads the GLA to conclude that more affordable housing could be supported within the scheme. On the

basis of the evidence presented, the applicant has not demonstrated that the scheme will deliver the maximum reasonable amount of affordable housing, and the proposals are therefore contrary to London Plan Policy 3.12, draft London Plan Policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 2 and Development Management Policy 7.

- **Viability review mechanism:** Inadequate provision has been made in the draft s.106 agreement for viability review mechanisms, in terms of the applicant's position that the reviews should reflect a deficit position, which is not accepted. Given the low level of affordable housing proposed and the length of the development programme, the use of robust review mechanisms is essential in order to reassess the viability of the scheme and determine whether additional affordable housing could be supported. The absence of adequate and robust viability review mechanisms does not therefore support the delivery of the maximum reasonable amount of affordable housing on the site, and is contrary to London Plan Policy 3.12, draft London Plan Policy H6 and the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 2 and Development Management Policy 7.

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

73 Under Article 7(1) of the 2008 Order the Mayor could take over this application provided the policy tests set out in that Article are met. In this instance, for the reasons detailed above, GLA officers are recommending that the Mayor directs that Lewisham Council refuse the application.

### **Financial considerations**

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

75 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.

76 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) and determining any approval of details (unless the council agrees to do so).

### **Conclusion**

77 Further to the consideration within this report GLA officers have concluded that the proposal fails to demonstrate that the scheme has provided the maximum reasonable amount of affordable housing and does not optimise affordable housing delivery in an Opportunity Area. The Mayor is therefore recommended to direct refusal under Article 6(1)(a) of the Order for the reasons set out below:

- **Affordable housing provision:** The proposed affordable housing contribution of 88 units (24% by unit and habitable room) has not been adequately justified and is time-limited, with the affordable housing offer reverting to 73 units (20% by unit and habitable room)

should the Council not issue a planning permission before 30 March 2019. The applicant's methodology as well as inputs within the appraisal to assess the viability of the scheme is not in compliance with the Mayor's Affordable Housing and Viability SPG and leads the GLA to conclude that more affordable housing could be supported within the scheme. On the basis of the evidence presented, the applicant has not demonstrated that the scheme will deliver the maximum reasonable amount of affordable housing, and the proposals are therefore contrary to London Plan Policy 3.12, draft London Plan Policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 1 and Development Management Policy 7

- **Viability review mechanism:** Inadequate provision has been made in the draft s106 agreement for viability review mechanisms, in terms of the applicant's position that the reviews should reflect a deficit position, which is not accepted. Given the low level of affordable housing proposed and the significant length of the development programme, the use of robust review mechanisms is essential in order to reassess the viability of the scheme and determine whether additional affordable housing could be supported. The absence of adequate and robust viability review mechanisms does not therefore support the delivery of the maximum reasonable amount of affordable housing on the site, and is contrary to London Plan Policy 3.12 draft London Plan Policy H6, the Mayor's Affordable Housing and Viability SPG and Lewisham Core Strategy Policy 1 and Development Management Policy 7.

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**Former Tesco Car Park, 209 Conington Road**

26 November 2018

in the London Borough of Lewisham

planning application no. DC/18/109184

**Strategic planning application stage 1 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**

Construction of three buildings, up to 34 storeys, to provide 365 residential units and 554 sq.m. of commercial/ community/ office/ leisure space with landscaping and public realm works.

**The applicant**

The applicant is **MB Homes Lewisham Limited** and the architect is **EPR Architects**.

**Strategic issues**

**Principle of development:** The Lewisham and Catford Opportunity Area has the capacity to support a residential-led mixed use development. (Paragraphs 16-18).

**Affordable housing:** 20% (by habitable room) split 38% intermediate discount market sale and 62% affordable/social rent. This offer, on a site within an Opportunity Area is wholly unacceptable and should be significantly increased. GLA officers will robustly scrutinise the viability assessment to maximise affordable housing provision. Early and late stage reviews must be secured in accordance with the SPG. (Paragraphs 20-25).

**Urban design:** Height, scale and massing supported. Public access to the 'sky deck' must be secured. (Paragraphs 26-35).

**Energy:** The applicant must explore the potential for additional measures to deliver further carbon dioxide reductions. Once all opportunities for securing further feasible on-site savings have been exhausted, a carbon offset contribution should be secured to mitigate any residual shortfall. (Paragraphs 37-39).

**Transport:** The occupation of the scheme alongside proposed enhancements to the DLR network will need to be mitigated and other conditions and measures secured, including a revised transport assessment, parking restrictions for occupiers CPZ, provision of EVCPs, increased cycle parking and alterations to servicing arrangements to make the proposal policy compliant. (Paragraphs 30-47).

**Recommendation**

That Lewisham Council be advised that the application does not comply with the London Plan, for the reasons set out in paragraph 51 of this report.

## Context

1 On 24 October 2018 the Mayor of London received documents from Lewisham Council notifying him of a planning application of potential strategic importance to develop the above site for the above uses. Under the provisions of The Town & Country Planning (Mayor of London) Order 2008 the Mayor had until 28 November 2018 to provide the Council with a statement setting out whether he considers that the application complies with the London Plan, and his reasons for taking that view. This report sets out information for the Mayor's use in deciding what decision to make.

2 The application is referable under Categories 1A, 1B and 1C of the Schedule to the Order 2008:

- 1A: *"Development which comprises or includes the provision of more than 150 houses, flats, or houses and flats."*;
- 1B c): *"Development (other than development which comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings outside Central London and with a total floorspace of more than 15,000 sq.m.;"* and
- 1C: *"Development which comprises or includes the erection of a building where the building is more than 30 metres high and is outside the City of London."*

3 Once Lewisham Council has resolved to determine the application, it is required to refer it back to the Mayor for his decision as to whether to direct refusal; take it over for his own determination; or allow the Council to determine it itself.

4 The environmental information for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 has been taken into account in the consideration of this case.

5 The Mayor of London's statement on this case will be made available on the GLA website [www.london.gov.uk](http://www.london.gov.uk).

## Site description

6 The site is located within the Lewisham Opportunity Area. The site is 0.94 hectares and located within the Conington Road Policy Area, Allocation S6 in the Lewisham Town Centre Local Plan. The site comprises two of four car parking areas and internal circulation space within the Tesco store, located off Conington Road. The whole of the Tesco site forms 2.5 hectares, which is known as the Masterplan site, within the wider Conington Road and town centre area.

7 The island site has a concrete culvert to the River Ravensbourne, which runs along the car park site adjacent to the DLR line and adjoining residential development. A separate pedestrian/cycle access is also achieved to the site via Silk Mills path. There are also links across the other side of the river.

8 Conington Road connects with Lewisham Road, both borough highways, which in turn connects with the A20 approximately 200 metres south of the junction with Conington Road. The A20 is a red route which forms part of the Transport for London Road Network (TLRN). The site is located adjacent to the Lewisham DLR and National Rail (NR) stations. The Thurston Road bus stand has also been identified as the preferred location for a Lewisham Station as part of the

Bakerloo Line Extension (BLE) from Elephant & Castle via Old Kent Road. Although forming the southern boundary of the site, the entrance to Lewisham station is located between 300 metres and 600 metres from the site. There are 22 bus routes within 300 metres of the site. Overall, the application site records an excellent public transport accessibility level (PTAL) of 6a and 6b on a scale of 1-6, where 6b is the highest.

## Details of the proposal

9 The proposal seeks to redevelop the two car park areas to provide 365 residential units and 554 sq.m. of commercial space within three new buildings ranging from 8-34 storeys in height, together with communal space at the ground floor level, public realm and landscape works.

10 The proposal is a resubmission of a refused scheme (discussed further in the case history section below). The scheme has been amended by the applicant to incorporate the delivery of a publicly accessible viewing gallery (referred to as Sky Deck Lewisham). In addition, the applicant has sought agreement with Network Rail to bring forward 50% of the Section 106 Lewisham station improvement contributions. Both amendments have been made to address reasons for refusal on the original scheme as set out below.

## Case history

11 On 28 September 2017, the Mayor considered planning report D&P/3409a/01, and subsequently advised Lewisham Council that the application did not comply with the London Plan, for the reasons set out in the above-mentioned report; but that the possible remedies set out in that paragraph could address these deficiencies. On 3 April 2018, Lewisham Council On 3 April 2018, Lewisham Council resolved to refuse planning permission against officer's recommendation for the following reasons:

- *“The proposed 34 storey building, by reason of its excessive height would detract from the established and emerging Lewisham Town Centre skyline and would appear overbearing at ground floor level, contrary to Policy 18 Location and design of tall buildings in the Core Strategy (2011) and LTC 19 Tall buildings in the Lewisham Town Centre Local Plan (2014). Furthermore, the proposals do not provide sufficient public benefit in terms of providing truly publicly accessible rooftop access, affordable housing or undertaking naturalisation of the River Ravensbourne to justify this height in this location.*
- *The proposal fails to provide an access into Platform 4 of Lewisham Station, and fails to provide a secure commitment to its opening, to the detriment of access into Lewisham Station and its overcrowding issues, contrary to Policy LTC 5 Conington Road Policy Area of the Lewisham Town Centre Local Plan (2014).”.*

12 On 14 May 2018, the Mayor resolved to allow Lewisham to determine the case itself, subject to any action that the Secretary of State might take. The applicant has lodged an appeal against this decision.

## Strategic planning issues and relevant policies and guidance

13 For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the development plan in force for the area is the Lewisham Council Core Strategy (June 2011); the Lewisham Council Development Management Local Plan (November 2014); the Lewisham Council Site Specific Allocations Development Plan Document (June 2013); the Lewisham Council Policies Map (December 2015); Lewisham Town Centre Local Plan (February 2014); and the London Plan 2016.

14 The relevant issues and corresponding policies are as follows:

- Opportunity Areas London Plan
- Housing/affordable housing London Plan; Affordable Housing and Viability SPG; Housing Strategy; Providing for Children and Young People's Play and Informal Recreation SPG;
- Urban design London Plan;
- Inclusive access London Plan; Accessible London: achieving an inclusive environment SPG;
- Sustainable development London Plan; Sustainable Design and Construction SPG; Mayor's Environment Strategy; and
- Transport London Plan; the Mayor's Transport Strategy.

15 The following are relevant material considerations:

- The National Planning Policy Framework and National Planning Practice Guidance.
- Draft London Plan (consultation draft December 2017 and minor suggested changes August 2018), which should be taken into account on the basis explained in the NPPF.

## Principle of use

16 London Plan Policy 2.13 and Policy SD1 of the draft London Plan identify the Lewisham, Catford and New Cross Opportunity Area as having capacity to support between 8,000 and 13,500 new homes and 4,000 to 6,000 jobs and acknowledge that strategically important regeneration is already well underway in central Lewisham. Lewisham itself is recognised by London Plan Policy 2.15 as a 'major' town centre with high growth potential. Policy SD6 of the draft London Plan maintains this classification, but also acknowledges the potential of this centre to achieve 'metropolitan' status over the new plan period.

17 The Lewisham Town Centre Local Plan is the local policy vehicle for shaping the continued growth of this area and specifically identifies this site as suitable for mixed use development. The associated site allocation requires developers to deliver ecological improvements to the River Ravensbourne as well as securing physical and visual connections to the river from Conington Road as part of the development. In addition, the site allocation also includes a new station entrance and a financial contribution toward Network Rail to develop the design of the new Silk Square is required. Following comments received on the previous application, the applicant progressed discussions with Network Rail and Transport for London in relation to Lewisham Station, and conditions and Section 106 obligations were agreed to deliver improvements to the station and DLR, as well as safeguarding for a future access through the site to platform four. The applicant also reached agreement with the Environment Agency in relation to the flood risk issues on the site, as well as a financial contribution and a delivery strategy for the partial naturalisation of the River Ravensbourne, which was to be secured within the Section 106. None of these key stakeholder's object to the proposed development, subject to securing appropriate planning conditions and Section 106 obligations. The efforts made by the applicant to reach agreement on these issues with the stakeholders is noted and welcomed. The conditions and Section 106 obligations, as agreed in principle, must be secured by the Council.

18 Therefore, the principle of the residential led mixed use re-development of this underutilised brownfield town centre site accords with the strategic aspirations for the Lewisham Opportunity Area.

## Housing

19 The scheme would deliver 365 residential units in the following mix and tenure:

Unit size	Market	Discount Market Sale	Affordable Rent	Social Rented levels	Total
1 bed	137	19	10	6	172
2 bed	147	11	15	8	181
3 bed	8	0	2	2	
<b>Total</b>	<b>292</b>	<b>30</b>	<b>27</b>	<b>16</b>	<b>365</b>
		<b>73 (20% by hab room)</b>			

## Affordable housing

20 London Plan Policy 3.9 seeks to promote mixed and balanced communities by tenure and household income and Policy 3.12 seeks to secure the maximum reasonable amount of affordable housing. Policy H5 of the draft London Plan and the Mayor's Affordable Housing and Viability SPG set a strategic target of 50% affordable housing. Policy H6 of the draft London Plan and the Mayor's Affordable Housing and Viability SPG set out a 'threshold approach' whereby schemes meeting or exceeding a specific threshold of affordable housing (35% or 50% on public land) by habitable room without public subsidy and which meets other criteria are not required to submit viability information to the GLA, nor would the application be subject to a late stage review mechanism. Draft London Plan Policy H7 and the Mayor's SPG sets out a preferred tenure split of at least 30% low cost rent (social or affordable rent, significantly less than 80% of market rent), at least 30% intermediate (with London Living Rent and shared ownership being the default tenures), and the remaining 40% to be determined by the local planning authority.

21 The applicant has currently offered 20% affordable housing by habitable room with a 62/38 tenure split in favour of affordable/social rent. This offer on a site within an Opportunity Area is unacceptably low and must be significantly increased. GLA officers are currently working with Lewisham Council to rigorously test the scheme's Financial Viability Assessment including scrutiny of the proposed S106 obligations. GLA officers will continue to work with both the Council and the applicant to ensure the maximum amount of affordable housing is delivered.

22 The applicant is advised that Discounted Market Sale is not a preferred intermediate affordable tenure of the Mayor and any Discount Market Sale provision should be affordable to a range of eligible purchasers, below the income thresholds within the London Plan Annual Monitoring Report. The applicant should also set out the details as to how these units will be secured as affordable to eligible households, in perpetuity.

23 In addition, further information must be provided regarding the affordability of the affordable rent. The affordability of the units must comply with the requirements of Policy H7 of the draft London Plan, the Mayor's Affordable Housing and Viability SPG, and the London Plan Annual Monitoring Report. This means that the affordable rented units must be offered at significantly lower than 80% discount market rent with a preference for the Council to secure these units at London Affordable Rent. Rent level assumptions and income thresholds must be secured accordingly by the Council in the Section 106 agreement.

24 In line with the draft London Plan, an early implementation review mechanism and a late stage review mechanism must be secured.

25 In the interests of transparency, the Council should note that draft London Plan Policy H6 and the Mayor's Affordable Housing and Viability SPG strongly encourage local planning authorities (LPAs) to publish any submitted financial viability assessment, and any associated



independent viability review. The supporting text in the draft London Plan and SPG makes clear that, where this information is not published by an LPA, the Mayor reserves the right to publish it himself.

### Residential Quality

26 London Plan Policy 3.5 and Policy D4 of the draft London Plan promotes quality in new housing provision, with further guidance provided in the Housing SPG. The applicant has submitted plans that demonstrate that all dwellings meet or exceed minimum space standards, will be designed to ensure that none of the units are single aspect north facing, all units would have compliant levels of private amenity space and will be tenure blind.

27 London Plan Policy 3.8 and draft London Plan Policy H12 encourage a full range of housing choice. Draft London Plan Policy H12 recognises that central or urban sites may be most appropriate for schemes with a significant number of one and two beds, whilst draft London Plan Policy H12 recognises that the number of family sized affordable homes provided should be driven by local and strategic need and that some families live in units smaller than three bedrooms. The proposal includes a range of one to three bed units, with 10% of the affordable rented units as family sized units as set out in the indicative mix. The proposed housing mix is supported.

### Children's Playspace

28 Policy 3.6 of the London Plan and Policy S4 of the draft London Plan, seeks to ensure that development proposals include suitable provision for play and recreation. Further detail is provided in the Mayor's Supplementary Planning Guidance (SPG) 'Shaping Neighbourhoods: Play and Informal Recreation' which sets a benchmark of 10 sq.m. of useable child play space to be provided per child, with under 5's play space provided onsite as a minimum.

29 The total play space required based on the guidance set out in the SPG is 465 sq.m.. The scheme would deliver 466 sq.m. of onsite play which caters for 0-11-year olds. In addition, 137 sq.m. of on-site informal playable land will be provided for children aged 12+. The Council should secure the detailed design and provision of the play space via appropriate conditions.

## **Urban design**

30 The design principles in Chapter Seven of the London Plan and Chapter 3 of the draft London Plan place expectations on all developments to achieve a high standard of design which responds to local character, enhances the public realm and includes architecture of the highest quality that defines the area and makes a positive contribution to the streetscape and cityscape.

31 As noted, the scheme is a resubmission of a previously refused scheme (GLA ref: GLA/3409/02) and is virtually identical to the refused scheme but for the amendments summarised in paragraph 10 above.

32 London Plan Policy 3.4 and draft London Plan Policy D6 seek to optimise the potential of sites, having regard to local context, design principles, public transport accessibility, and capacity of existing and future transport services. The higher the density of a development, the greater the level of design scrutiny that is required, particularly qualitative aspects of the development design, as described in draft London Plan policies D2 and D4. The proposal would deliver good design and residential standards. the proposals appropriately optimise the potential of this underutilised brownfield site located within a town centre. The density of the proposal is also appropriate considering local transport facilities and connectivity.

33 As set out in the Stage two report for the refused scheme, the proposed height of Block B1 at 34 storeys is considered to be appropriate, given the opportunity for a marker building adjacent to Lewisham station and when assessed against recently permitted schemes of 25 and 30 storeys at Lewisham Retail Park (GLA Ref/3775) and Carpetright (GLA Ref/3778). The approach to the termination of the tower at the lower floors is considered to be entirely appropriate, given the clear objectives to deliver accessible and high quality public realm, as well as legible pedestrian sight lines for the safeguarded station access route.

34 The use of high quality brickwork is strongly supported and gives potential to create subtle detailing and tonal variation between massing elements. The Council is encouraged to secure key details including balconies and window reveals to ensure the highest quality of architecture is built through.

35 In order to address one of Lewisham's reasons for refusal on the original scheme, the proposal has been amended to incorporate a 'sky deck' at level 34 which consists of a publicly accessible, 74 sq.m. open plan area surrounding by wall to ceiling glass offering 360 views over Lewisham. The use of the viewing platform as a free public space must be secured in the Section 106 in accordance with London Plan Policy 7.7 and draft London Plan Policy D8.

36 In accordance with Policy D11 of the draft London Plan, the Council should secure an informative requiring the submission of a fire statement, produced by a third party suitable qualified assessor

## **Inclusive design**

37 Policy 3.8 'Housing Choice' requires that 90% of new housing meets Building Regulation requirement M4(2) 'accessible and adaptable dwellings' and 10% meets Building Regulation requirement M4(3) 'wheelchair user dwellings', that is, designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users. The application has demonstrated that these requirements will be met and the plans identify the location of the wheelchair accessible homes. The Council should secure M4(2) and M4(3) requirements by condition.

## **Energy**

38 In accordance with the principles of London Plan Policy 5.2 and Policy SI2 of the draft London Plan, the applicant has submitted an energy statement, setting out how the development proposes to reduce carbon dioxide emissions. In summary, the proposed strategy comprises: energy efficiency measures (including a range of passive design features and demand reduction measures); a CHP site heat network; and renewable technologies (comprising photovoltaic panels). The approach proposed would achieve a 34% carbon dioxide reduction on the residential elements and a 19% carbon dioxide reduction on the commercial elements.

39 The applicant has cross referenced the Air Quality Assessment and confirmed that the NOx emission standards set out in the Sustainable Design and Construction Supplementary Planning Guidance will be met through mitigation measures. The applicant should also include a commitment that the CHP operator will be required to monitor and provide evidence on a yearly basis, in the form of an annual maintenance report, to demonstrate continued compliance with the air quality emission limits. Given the scale of the development and the gird decarbonisation the applicant should consider alternative low carbon heating methods to the proposed CHP.

40 The carbon dioxide savings for both the domestic and non-domestic elements of the scheme fall short of London Plan and draft London Plan targets. The applicant must explore the potential for additional measures to deliver further carbon dioxide reductions. Once all

opportunities for securing further feasible on-site savings on the domestic elements have been exhausted, a carbon offset contribution should be secured to mitigate any residual shortfall.

## **Transport**

41 TfL has undertaken a review of the current and planned capacity of the DLR network. This indicates that the Lewisham branch between Bank & Stratford is now operating over capacity meaning that users at Crossharbour and South Quay are sometimes unable to board trains, additionally there is evidence that boarding from Cutty Sark onwards is increasingly difficult. Additional demand generated from this development would increase demand on the DLR network and likely extend capacity constraints further south along the network during the AM peak. To address this DLR will be increasing frequencies through the purchase of additional trains which will come into service in May-2022. In terms of mitigating the impact of this scheme the draft Heads of Terms set out a contribution of £120,000 towards DLR capacity which must be secured by the Council in the Section 106.

42 TfL, in partnership with the Council, Network Rail and the GLA, has commissioned an Interchange Study to develop a range of enhancement options to address existing capacity issues as well as respond to the opportunity provided by the Bakerloo line extension and its role as one of four strategic interchanges across London orbital rail network in the Mayor's Transport Strategy. It is therefore critical that the redevelopment of the site does not compromise the ability for TfL, Network Rail and the Borough to deliver necessary improvements to the station.

43 The submitted draft Heads of Terms sets out that a contribution of £469,000 (index linked) has been agreed with Network Rail to deliver physical station improvements to improve flow and passenger safety. It has also been agreed to bring forward up to 50% of this contribution to facilitate the design feasibility study necessary to ensure station improvements are secured for the 2019-2024 NR Control Period, on the basis that an implementable planning permission is in place by April 2019. This provision should be confirmed with Network Rail as part of the determination process and secured by an appropriate legal mechanism.

44 On-site car parking is limited to nine blue-badge spaces for the residential units which is acceptable considering the proximity to step-free public transport options. An appropriate means of excluding future occupiers from obtaining parking permits in accordance must be secured to ensure the car-free nature of the application. The provision of Electric Vehicle Charging Points (EVCP) should also be secured by condition.

45 The arrangement and provision of cycle parking and associated infrastructure does not conform to London Plan standards and would be unlikely to support increased mode share via cycling. The applicant has provided some further information relating to provision of folding bicycles, but the provision of folding bicycles compared to conventional bicycles for such a relatively unconstrained site is not acceptable, and a number of substantial changes to the scheme are required to meet both the quantitative and qualitative requirements for cycle parking set out within the London Plan and the London Cycle Design Standards.

46 Servicing vehicles will undertake a series of manoeuvres within 'Silk Square' to enable them to leave the site in a forward gear. The applicant has provided further information that suggests access would be for weekly refuse vehicles and occasional deliveries for moving in and out, which would be controlled by the site concierge. These proposed servicing arrangements may conflict with required counter-terrorism/ hostile vehicle mitigation that would need to be satisfied in the event a northern entrance to the station is opened and an investigation and/or contribution to developing a new link adjacent to the Ravensbourne River through to Station Road from the site should be explored. Opportunities for servicing vehicle movements away from 'Silk Square' towards the north of the Island Site will need to be explored to ensure compliance with London Plan

policies.

47 Due to the proximity of the application site to DLR infrastructure there is the potential for construction works to adversely impact on DLR operations if not appropriately managed. A number of construction related conditions have been sought and will need to be agreed with the Council and applicant to ensure compliance with London Plan policy.

48 The Framework Travel Plan submitted with the application contains a number of deficiencies and must be amended in line with the revised transport assessment to ensure the scheme supports a strong shift away from private vehicle use to more sustainable modes of transport.

## **Local planning authority's position**

49 Council planning officers are currently undertaking an independent review of the applicant's viability assessment. This must be shared with GLA officers as soon as possible. It is understood the application is likely to be taken to committee in December.

## **Legal considerations**

50 Under the arrangements set out in Article 4 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor is required to provide the local planning authority with a statement setting out whether he considers that the application complies with the London Plan, and his reasons for taking that view. Unless notified otherwise by the Mayor, the Council must consult the Mayor again under Article 5 of the Order if it subsequently resolves to make a draft decision on the application, in order that the Mayor may decide whether to allow the draft decision to proceed unchanged, or direct the Council under Article 6 of the Order to refuse the application, or issue a direction under Article 7 of the Order that he is to act as the local planning authority for the purpose of determining the application (the next bit is optional) and any connected application. There is no obligation at this present stage for the Mayor to indicate his intentions regarding a possible direction, and no such decision should be inferred from the Mayor's statement and comments.

## **Financial considerations**

51 There are no financial considerations at this stage.

## **Conclusion**

52 London Plan and draft London Plan policies on Opportunity Areas; housing; design; inclusive design; transport; and climate change are relevant to this application. The application does not yet fully comply with the London Plan and draft London Plan. The following strategic issues must be addressed for the application to fully accord with the London Plan and draft London Plan:

- **Principle of development:** The Lewisham and Catford Opportunity Area has the capacity to support a mixed use residential led development.
- **Affordable housing:** 20% (by habitable room) split 38% intermediate discount market sale and 62% affordable/social rent. This offer, on a site within an Opportunity Area is wholly unacceptable and should be significantly increased. GLA officers will robustly scrutinise the viability assessment to maximise affordable housing provision. Early and late stage reviews must be secured in accordance with the SPG.

- **Urban design:** Height, scale and massing supported. Public access to the 'sky deck' must be secured.
- **Energy:** The applicant must explore the potential for additional measures to deliver further carbon dioxide reductions. Once all opportunities for securing further feasible on-site savings have been exhausted, a carbon offset contribution should be secured to mitigate any residual shortfall.
- **Transport:** The occupation of the scheme alongside proposed enhancements to the DLR network will need to be mitigated and other conditions and measures secured, including a revised transport assessment, parking restrictions for occupiers CPZ, provision of EVCPs, increased cycle parking and alterations to servicing arrangements to make the proposal policy compliant.

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