



Neutral Citation Number: [2024] UKUT 146 (LC)

Case No: LC-2023-148

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)  
IN THE MATTER OF AN APPEAL UNDER  
SECTION 18 OF THE LAND COMPENSATION ACT 1961**

Royal Courts of Justice

5 June 2024

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*COMPENSATION – PLANNING PERMISSION – certificate of appropriate alternative development – competing planning policies – residential use in contravention of development plan - effect on Conservation Area – appeal allowed*

**BETWEEN:**

**MR MOHAMMED BASHIR**

**Appellant**

**-and-**

**THE LONDON BOROUGH OF NEWHAM**

**Respondent**

**117, 119-121 High Street  
Stratford  
London  
E15 2QQ**

**Her Honour Judge Alice Robinson and Mr Peter D McCrea FRICS FCIArb**

**6 – 9 and 12 February 2024**

*James Pereira KC and Mark O'Brien O'Reilly, instructed by Holmes & Hills LLP for the appellant*

*Neil Cameron KC and Nick Grant, instructed by DLA Piper LLP for the respondent*

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The following cases are referred to in this decision:

*Secretary of State for Transport v Bleep UK PLC* [2022] UKUT 331 (LC)

*Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983

*R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452

*R Rochdale MBC ex p Milne (no 2)* [2001] Env LR 22

*Urban Edge Group Ltd v London Underground Ltd* [2009] UKUT 103 (LC)

*Pro-Investments v LB Hounslow* [2019] UKUT 0319 (LC)

## **Introduction**

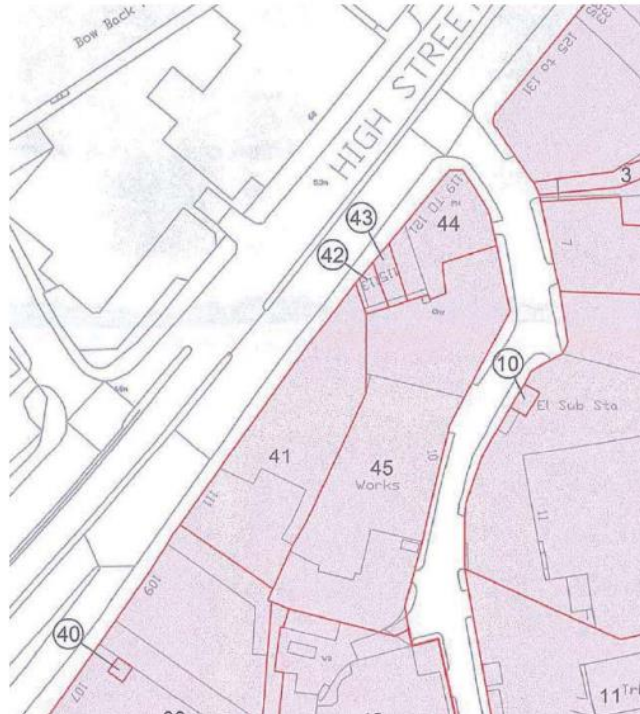
1. This appeal concerns the site that was formerly 117 and 119-121 High Street, Stratford, London, E15 2QQ ('the reference land'). It was owned by the appellant, Mr Mohammed Bashir, until it was compulsorily acquired by the acquiring authority and respondent to this appeal, the London Borough of Newham ('Newham'), under the London Borough of Newham (Sugar House Lane, Stratford) Compulsory Purchase Order 2014 ('the CPO'). The CPO formed part of a wider acquisition of properties in the Sugar House Lane area to facilitate a significant mixed-use development known as Strand East.
2. Newham published the relevant notification of the CPO on 19 November 2014 ('the Launch Date'). A General Vesting Declaration was made on 10 October 2016. The vesting date, and therefore the valuation date for the purposes of assessing compensation, was 14 November 2016.
3. A separate reference to the Tribunal (LC-2022-517) concerning the compensation to be paid to Mr Bashir has been stayed, in part pending the outcome of this appeal. To help inform the level of that compensation, on 11 October 2022 Mr Bashir made an application to Newham for a Certificate of Appropriate Alternative Development ('CAAD') under s.17 of the Land Compensation Act 1961. The Local Planning Authority is, now, the London Legacy Development Corporation ('LLDC'), but the statutory instrument under which LLDC was formed did not give it the power under s.17 to issue CAADs - that remained with Newham.
4. Newham determined the application by way of a 'nil' certificate dated 20 February 2023 ('Newham's certificate'). This decision concerns Mr Bashir's appeal against that certificate.
5. We heard the appeal at the Royal Courts of Justice on 6 - 9 and 12 February 2024. The appellant was represented by James Pereira KC and Mark O'Brien O'Reilly, the respondent by Neil Cameron KC and Nick Grant. Expert evidence was given on behalf of the appellant and respondent respectively by Mr Nick Bridgland and Dr Chris Miele on heritage and townscape, by Mr Ben Kelway and Mr Martin Robeson on town planning, and by Mr Wayne Head and Mr Neil Deely on design. We are grateful to them all.
6. On the afternoon of 9 February 2024, we carried out an unaccompanied site visit of the reference land and the surrounding area.

## **The reference land**

7. The reference land had frontage to the A11, High Street, with a rear return frontage to Sugar House Lane in Stratford, East London. The Queen Elizabeth Olympic Park is a short distance to the north, and Stratford town centre is to the north-east. The reference land formed part of the wider Sugar House Lane area, comprising a large triangle of land to the south of High Street Stratford, east/north of the River Lea Navigation (Stanstead Mill Stream) and west of the Three Mills Wall River. It is within the Sugar House Lane Conservation Area.
8. The reference land has since been cleared and developed, but at the valuation date 117 High Street comprised a three-storey 1930's building, with a café on the ground floor and residential accommodation above. 119-121 High Street was a 2-3 storey building, with a

single storey rear element. It was most recently used as a nightclub with ancillary staff accommodation on the upper floors.

9. While both buildings lay within the Conservation Area, neither was listed. A large brick chimney to the rear of 117 High Street was referred to as a 'chimney of note'.
10. An extract from the CPO Order Plan is shown below, with the reference land noted as plot 44. Sugar House Lane runs down the eastern side of plots 44 and 45.



11. It is the appellant's case that, but for the CPO, he would have developed the reference land in conjunction with the owners of plot 45, to the south. Plot 45 comprised a large industrial building and outbuildings surrounded by areas of hardstanding. It was used as part of a tool hire storage facility.
12. The application for a CAAD encompassed both sites, and we refer them together as 'the appeal site', which has an agreed site area of 2,656 sqm, on which the buildings comprised a gross internal area of 1,140 sqm.

### Legal framework

13. In assessing the amount of compensation payable in accordance with rule 2 of section 5 of the 1961 Act, section 14(2)(a) provides that account may be taken of any planning permission in force on the valuation date for development on the reference land or other land. Section 14(3) provides that it may also be assumed that planning permission was in force on the valuation date for 'appropriate alternative development', as defined in section 14(4) which can constitute development on the relevant land alone, or with other land. This means development for which, on the assumptions in section 14(5) but otherwise in the circumstances known to the market on the valuation date, planning permission could reasonably have been expected to be granted on an application determined on or after the valuation date.

14. As far as relevant to this appeal, the assumptions required to be made by section 14(5) are that the scheme underlying the acquisition had been cancelled on the launch date, that no action has been taken by the acquiring authority wholly or mainly for the purposes of the scheme, and that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function, or by the exercise of compulsory purchase powers.
15. Section 17 of the 1961 Act enables the acquiring authority or the landowner to apply to the local planning authority (or, in this case, the body with power to issue the certificate) for a CAAD stating that there is, or is not, development that is appropriate alternative development in relation to the land acquired, and describing such development, if any.
16. Section 18(1) provides the appellant with a right of appeal to the Tribunal. In such an appeal, section 18(2) provides that we must consider the matters to which the certificate relates as if the application under s.17 had been made to the Tribunal in the first place, and secondly, we must confirm the certificate, or vary it, or cancel it and issue a different certificate in its place as we consider appropriate.
17. The Tribunal, in *Secretary of State for Transport v Bleep UK PLC* [2022] UKUT 331 (LC), held that it was required “to consider the matter afresh, rather than reviewing [the local planning authority’s] certificate” and that the appeal must be decided “in accordance with ordinary planning principles” (paragraphs 14 to 15).
18. When dealing with an application for planning permission, the authority shall have regard to the development plan, so far as material, and local finance considerations, so far as material, and any other material considerations, (section 70(2) Town and Country Planning Act 1990 as amended). By virtue of section 38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan for this purpose, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Further, when considering any application for planning permission for development in a conservation area, the authority shall pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
19. Policies in the development plan should be interpreted objectively in accordance with the language used, read in their proper context; they are not analogous in nature or purpose to statute or contract. Many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of planning judgment for the authority: *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983 at [18] and [19]. Even though the interpretation of planning policy is a matter of law, planning policies do not normally require intricate discussion of their meaning, and there is an expectation that the interpretation will be straightforward, without the need for undue or elaborate exposition: *R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452 at [41].
20. It is not unusual for development plan policies to pull in different directions; in such cases the planning authority must make a judgement bearing in mind such factors as the importance of the policies which are complied with or infringed and the extent of the compliance or breach, and reach a judgment on whether the proposal accords with the development plan as a whole: *R Rochdale MBC ex p Milne (no 2)* [2001] Env LR 22 at [48]-[49].
21. In determining a section 18 appeal, “the proper approach” for the Tribunal is “to determine what a reasonable planning authority, correctly addressing both law and policy, could have

been expected to decide at the valuation date”. This is taken to be a notional reasonable planning authority rather than any particular planning authority; and “evidence of actual decisions made by the planning authority will be relevant and no doubt persuasive” (paragraphs 49 to 50 of *Urban Edge Group Ltd v London Underground Ltd* [2009] UKUT 103 LC).

22. By virtue of section 17(5)(b), when granting a certificate, the Tribunal must give a general indication of any conditions to which any planning permission could reasonably have been expected to be subject and of any pre-condition, such as a planning obligation, that could reasonably have been expected to be met.

### **The CAAD application and Newham’s certificate**

23. While it is not the Tribunal’s role to review Newham’s certificate but to consider the application afresh, it is nevertheless helpful for context to outline the appellant’s application and Newham’s response.

24. The appellant’s CAAD application dated 11 October 2022 was registered by Newham as:

“Section 17 Application for Certificate of Appropriate Alternative Development for a mixed-use development based on the notional development proposal and other alternative options (Application site is located within Sugar House Lane Conservation Area) (LPA ref. 22/02438/CAAD)”.

25. On 20 February 2023, Newham issued its ‘Nil’ Certificate against the CAAD application. The Decision Notice First Schedule reads

“Section 17 application for Certificate of Appropriate Alternative Development for a mixed-use development based on the national [sic] development proposals and other alternative options (Application site is located within Sugar House Lane Conservation Area)”.

26. Newham certified that in its opinion if the land were not proposed to be acquired:

“...planning permission would NOT have been granted by the Council for the development specified in the First Schedule to this certificate as an alternative development for which the land been compulsory acquired for.”

27. Newham’s reasons were fourfold:

“1. The proposed use of the component plots in question would not be acceptable in principle based on the predominantly residential use and the low provision of commercial floor space. This would be contrary to the requirements of policy B.1 of the LLDC Local Plan. The proposed use would also have the potential to prejudice the comprehensive development sought by LLDC site designation SA4.2.

2. Officers have identified inconsistencies in the housing mix quoted within the Planning Statement submitted in support of the application and the mix shown on the submitted floor plans. The indicative floor plans suggest that only 15% family housing would be delivered, which would constitute a significant shortfall against the 40% family housing target, contrary to Policy

3.3 of the London Plan, Policy H.1 of the LLDC Local Plan, the objectives of LLDC site allocation SA4.2 and the guidance within the NPPF.

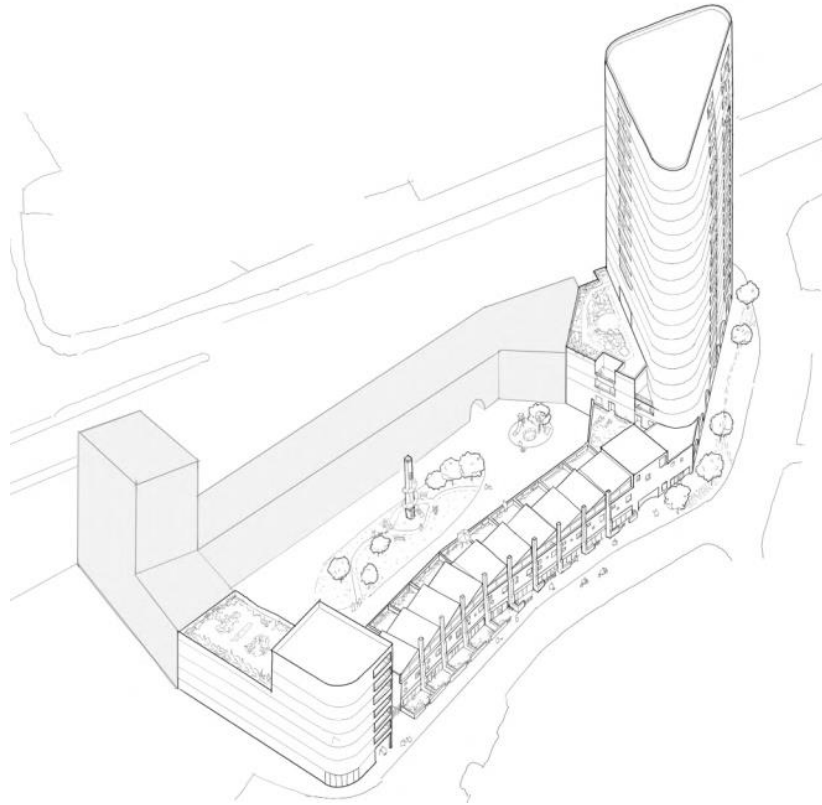
3. The form and scale of the notional development would fail to accord with the prevailing building heights within the defined areas of Stratford High Street and Sugar House Lane. Insufficient justification has been provided to demonstrate how the proposal would meet the requirements of policy BN.10 of the LLDC Local Plan.

4 The notional scheme by way of its form, scale and location would constitute an incongruous addition to the Sugar House Lane Conservation Area which would result in less than substantial harm to designated heritage assets and their setting. The development would fail to preserve or enhance the character or appearance of the Sugar House Lane Conservation Area nor the setting of the Three Mills Conservation Area. The public benefits of the scheme would not outweigh the harm identified and therefore the notional development would be contrary to the requirements of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), policy 7.8 of the London Plan, policies BN.10 and BN.16 of the LLDC Local Plan and the guidance within the NPPF.”

#### **The alternatives now before the Tribunal**

28. In support of its application to Newham, the appellant designed a notional development indicating one way in which the appeal site could be redeveloped at the valuation date.
29. As originally submitted to Newham, the notional development comprised a 58-metre tall, 18-storey tower on the corner of High Street and Sugar House Lane, a 3-storey terrace of housing extending along Sugar House Lane, and a stepped 5 to 8-storey building toward the south of the appeal site. During the exchange of evidence before the Tribunal, the notional scheme was modified to nullify any effect on the wider heritage assets beyond the Sugar House Lane Conservation Area by reducing the height of the taller building, increasing the 3-storey terrace to four storeys, with ground floor commercial space, and moving the residential three storeys out of flood risk. The development now comprises three elements:
  - A 16-storey building, extending 52m above ground level, on the corner of Stratford High Street and Sugar House Lane
  - A four-storey terraced building extending along Sugar House Lane; and
  - A stepped building at the south of the site rising from five storeys adjacent to the site’s western boundary to eight storeys fronting Sugar House Lane.
30. The development would encompass 1,613 sqm of commercial floorspace within a flexible range of use classes on the ground and part first floors, and 82 residential units, of which 10% would be accessible and 35% would be affordable housing. There would be a residents’ communal open area. The total gross internal floor area is said to be 9,670 sqm. The respondent calculates 9,375 sqm but given our overall decision nothing turns on this.
31. As originally configured (with 18 storeys and only three storeys of residential in the middle block), the notional development would look something like this (with High Street along

the top of the graphic and Sugar House Lane to the bottom right). The chimney of note has been relocated to the open area:

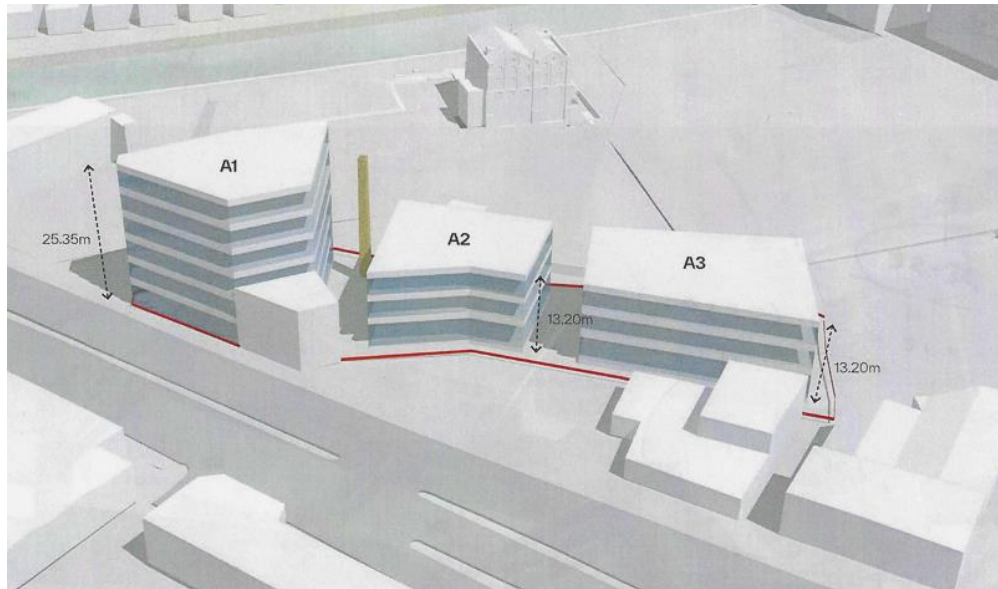


32. Before the Tribunal, the appellant also prepared five alternative options which can be summarised as:
  - a) Option 2 – mid-rise development (13 storeys – 42.6m above ground)
  - b) Option 3 – lower-rise development (8 storeys – 26.8m above ground)
  - c) Option 4 – commercial uplift (16 storeys – 52m above ground increase to 2,692 sqm employment floorspace)
  - d) Option 5 – mid-rise/commercial uplift (13 storeys – 42.6m above ground/2,692 sqm employment floorspace)
  - e) Option 6 – lower-rise/commercial Uplift (8 storeys 26.8m above ground/2,692 sqm employment floorspace)
33. The essential differences are that the ‘mid-rise’ and ‘lower-rise’ options have reduced the height of the tall tower at the northern end of the development to 13 and eight storeys respectively, whilst the ‘commercial uplift’ converts all of the southern five/eight-storey block to commercial use.
34. Despite issuing its “Nil” certificate, Newham now accepts there is a scheme of development which would be acceptable as Appropriate Alternative Development (“Newham’s version”)



encompassing employment uses within three blocks, at a maximum height of six storeys (at 25.35m) on the part of the appeal site fronting Stratford High Street, and at no higher than three storeys (at a maximum of 13.20m) on the remainder of the site, encompassing in total 6,199 sqm gross internal area, and retaining the chimney of note in a relocated position.

35. Newham's version looks like this (with High Street in the foreground and Sugar House Lane to the rear of the blocks):



36. Other than height, the essential differences are that the notional scheme and its variations are primarily residential in use, with an enclosed residents' courtyard, surrounded by buildings, while Newham's alternative is for wholly employment uses, in three separate blocks (one being six-storey and the other two being three-storey) with open areas between them.

### **The planning policy position at the valuation date**

37. As far as relevant to the appeal the statutory development plan for the appeal site at the valuation date was the London Plan (March 2016), and the London Legacy Development Corporation Local Plan (July 2015) ('the LLDC Local Plan').

38. The parties agreed that the most relevant London Plan policies are as follows:

- Policy 1.1 (Delivering the Strategic Vision and Objectives for London)
- Policy 2.4 (The 2012 Games and their Legacy)
- Policy 3.3 (Increasing Housing Supply)
- Policy 3.5 (Quality and Design of Housing Developments)
- Policy 3.8 (Housing Choice)
- Policy 3.9 (Mixed and Balanced Communities)
- Policies 3.10, 3.11 3.12, 3.13 (Affordable Housing)
- Policy 4.3 (Mixed Use Development and Offices)
- Policy 4.4 (Managing Industrial Land and Premises)

- Policy 7.4 (Local Character)
  - Policy 7.7 (Location and Design of Tall and Large Buildings)
  - Policy 7.8 (Heritage Assets and Archaeology).
39. The parties agreed that the most relevant LLDC Local Plan policies are as follows:
- Policy SP.1: Building a strong and diverse economy
  - Policy B1: Location and maintenance of employment uses
  - Site Allocation – SA4.2 – Sugar House Lane
  - Policy H1: Providing a mix of housing types
  - Policy H2: Delivering affordable housing
  - Policy BN.1: Responding to place
  - Policy BN.4: Designing residential schemes
  - Policy BN.5: Requiring Inclusive Design
  - Policy BN.10: Proposals for tall buildings
  - Policy BN.16: Preserving or enhancing heritage assets
  - Policy S.8: Flood risk and sustainable drainage measures
  - Policy 3.1: Stratford High Street Policy Area
  - Policy 4.2: Bringing forward new connections to serve new development.
40. A range of other planning policies and guidance were also identified as material considerations including the 2012 National Planning Policy Framework (‘NPPF’) and the Sugar House Lane Conservation Area Appraisal and Management Policy (2010).
41. As regards the 2015 LLDC Local Plan, at the valuation date, the appeal site was within site allocation SA4.2 – Sugar House Lane. It was also within an Employment Cluster as a Locally Significant Industrial Site (B.1b7 under Policy B1), and as we have said was in the Sugar House Lane Conservation Area.

### **Issues for the Tribunal to determine**

42. The parties identified the following issues as requiring determination:
- (1) What land use on the Appeal Site would have been acceptable in the context of Policy B.1, Site Allocation SA4.2 and the development plan as a whole.
  - (2) Whether and to what extent development on the Appeal Site in isolation would have impacted the prospects of a comprehensive development under Site Allocation SA4.2 and otherwise been acceptable in the context of Policy SA4.2.
  - (3) Whether the Notional Scheme or the Options would have been defined as a ‘tall building’ under Policy BN.10.

- (4) Whether and to what extent the Notional Scheme or the Options would have complied with Policy BN.10 and other relevant design policies in terms of height and scale.
- (5) Whether and to what extent the Notional Scheme or the Options would have harmed heritage assets, and the level of any harm.
- (6) If any residential development was acceptable on the Appeal Site, what would have constituted a compliant housing size mix on the Appeal Site.
- (7) Whether and to what extent the Notional Scheme or the Options would have enhanced the local environment and townscape.
- (8) Whether and to what extent either the Notional Scheme or the Options would have made a sustainable and appropriate use of a brownfield site in an accessible and prominent urban location.
- (9) Whether and to what extent either the Notional Scheme or the Options would have benefitted the local economy and generated employment benefits.
- (10) The weight to be attributed to each of the planning benefits and disbenefits (which we have taken to mean the planning balance).
- (11) The section 106 contributions applicable to the notional development.

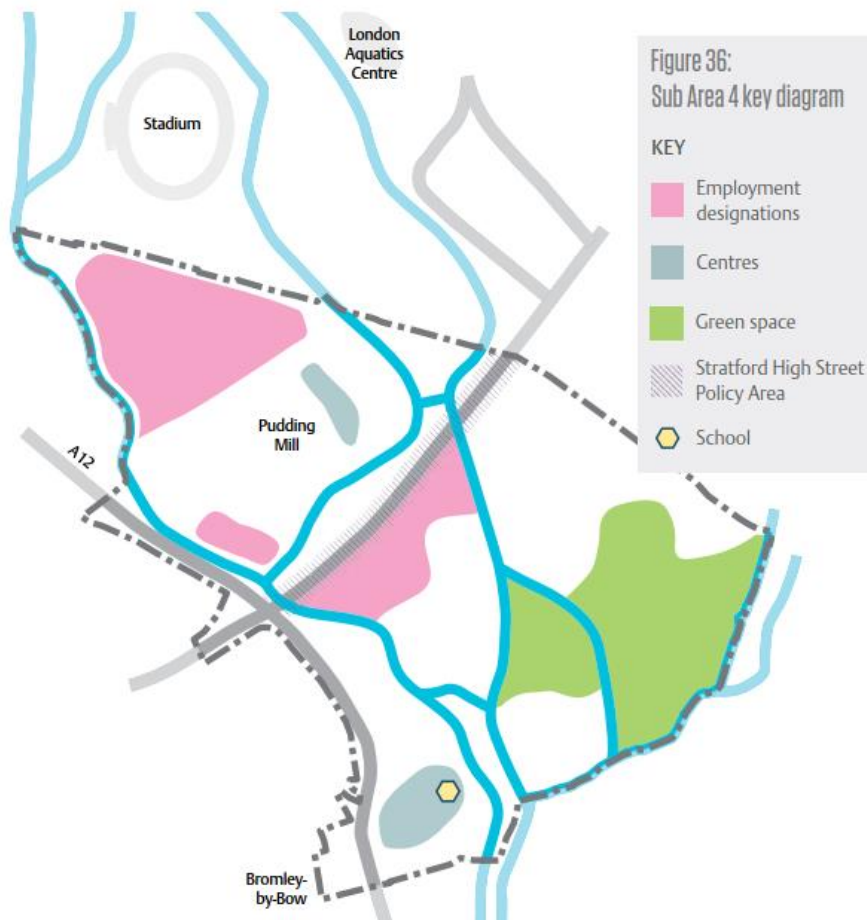
**(1) Land use**

- 43. The key issue between the parties in respect of land use is whether the inclusion of housing in the notional development would have been in accordance with various policies of the development plan. In this respect there was a divergence of opinion as to the proper construction of some of the policies as well as the extent to which the notional development and its alternatives complied with them.
- 44. The London Plan's vision includes developing east London as a particular priority to address existing need for development, regeneration and promotion of social and economic convergence with other parts of London and as the location of the largest opportunities for new homes and jobs (policy 1.1). The plan describes the regeneration of the Olympic Park and its surrounding area by maximising the legacy of the 2012 Olympic Games as London's single most important regeneration project for the next 25 years (policy 2.4).
- 45. Policy 3.3 refers to a 'pressing need' for more homes in London and sets housing delivery targets. It goes on to say that "Boroughs should identify and seek to enable additional development capacity to be brought forward to supplement these targets having regard to the other policies of this Plan and in particular the potential to realise brownfield housing capacity." Policy 3.14 states that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace.
- 46. Policy 4.4 states that the Mayor will adopt a rigorous approach to industrial land management to ensure a sufficient stock of land and premises to meet the future needs of different types of industrial and related uses but also will plan, monitor and manage release of surplus industrial land where compatible with that approach so that it can contribute to strategic and local planning objectives, especially those to provide more housing. The policy envisages that local planning authorities will manage the stock of industrial land in

accordance with those objectives including by identifying strategic industrial locations, locally significant industrial sites and other industrial sites. Map 4.1 shows that Newham is identified as one of 3 boroughs where there will be a managed transfer of industrial land to other uses.

47. The Olympic Legacy Supplementary Planning Guidance (SPG)(2012) set out the Mayor's strategic priorities and long term vision for the Olympic Park and its surrounding areas. Amongst other matters it identified the southern part of the Sugar House Lane area as a suitable location for family housing and the northern part (south of Stratford High Street) as suitable for mixed use development. Development principle B4 states development proposals and plans in the OLSPG area should promote the managed release of industrial land. The SPG also looks to improve connectivity across the A12 and across the Sugar House Lane area towards Bromley-By-Bow station where a new district centre is proposed.
48. We have already noted that the appeal site was designated on the LLDC Local Plan proposals map as site allocation SA4.2 and a Locally Significant Industrial Site (LSIS) B.1b7 under policy B1.
49. Policy SA4.2 is contained within the Sub-Area 4 chapter of the plan covering Bromley-by-Bow, Pudding Mill, Sugar House Lane and Mill Meads. The Vision for the sub-area is expressed thus:

“This will become an area of new business and residential communities that find a focus at a new District Centre at Bromley-by-Bow and a new Local Centre at Pudding Mill, with a secondary hub of employment and leisure uses in the north part of Sugar House Lane. The District Centre at Bromley-by-Bow will provide a new primary school, community facilities and public open spaces. A new DLR station at Pudding Mill and an enhanced Bromley-by-Bow Station will provide excellent public transport links to nearby work and leisure opportunities and good access to the rest of London. New and improved local foot and cycle paths will provide accessible and safe routes to the stations and local shops and services. The many new homes in Bromley-by-Bow, Sugar House Lane and Pudding Mill will meet a wide range of housing needs, while the new homes, business and other premises will have been sensitively and excellently designed, taking account of the historic waterside settings and the heritage assets within and around the Conservation Areas. By 2031, the Sub Area will have become a distinct series of new urban communities, well connected to their surroundings.”
50. The sub-area key diagram is reproduced below (the appeal site is located within the employment designation to the south of Stratford High Street):



51. Under the heading ‘Prevailing building heights and generally expected building heights’, the plan continues:

“13.3 The Site Allocations within this Sub Area set out the generally expected height of new development in each allocation. If development is proposed in the Site Allocations above those heights, the Proposals for Tall Buildings Policy (BN.10) will apply. The Stratford High Street Policy (Sub Area 3 Policy 3.1) is applicable to new development along Stratford High Street within Sub Area 4. Outside the Site Allocations and Stratford High Street, the prevailing height in the Sub Area is very low, with heritage assets at Three Mills, the Grade II\* listed pumping station at Abbey Lane/Mill Meads and two-storey housing in the area around Leggatt and Streimer Road.

13.4 If development is proposed above 10 metres in Sub Area 4 outside a Site Allocation and the Stratford High Street Policy Area, the Proposals for Tall Buildings Policy (BN.10) will apply. Table 10 below sets out the prevailing heights that exist within the sub area outside the site allocations and the generally expected heights of development within the site allocations and Stratford High Street policy area”.

52. There follows table 10 which sets out the “Prevailing and generally expected heights in Sub Area 4” for “Sugar House Lane (site allocation SA4.2)” of 15m and “Stratford High Street Policy Area (policy 3.1)” of 27m.
53. Policy SA4.2 itself states:

## Site Allocation SA4.2: Sugar House Lane

### SITE ALLOCATION

A new medium-density, mixed-use area of business (including cultural and creative) and local retail space focused in the northern and southern part of the site; new homes with a significant number of family homes, Local Open Space, playspace and public realm. A new all-movements junction to enable access to the area and new and enhanced bridges to link the area to surrounding communities will be required alongside development. Proposals for development above 15 metres above ground level will only be acceptable subject to the provisions of Policy BN.10.



54. The supporting text to the policy provides:

#### “Supporting development principles

- The area should adopt a genuinely mixed-use character retaining a strong employment focus that includes a base for creative industries and introduces a new residential community served by a range of local amenities and high-quality public transport, pedestrian and cycle connections. The area will be defined by its unique natural environment and historic industrial legacy that includes extensive canal and river frontage, robust yet adaptable buildings and intricate yards and passages. The historic character of the area should be celebrated by weaving high-quality new buildings into the historic fabric.
- Open space – high-quality public, communal and private amenity spaces that create a sense of place and meet the needs of residents, workers and visitors will need to be provided.
- A high proportion of family housing – at least 40 per cent (three-bedroom and larger) – will need to be provided.
- Improve the waterside environment of the River Lea, Waterworks River and Bow Back River.
- Any proposals will need to preserve or enhance the Conservation Area designations, both of the Sugar House Lane Conservation Area, which is wholly within the site, and the Three Mills Conservation Area, part of which falls within the Site Allocation area. Three Mills Conservation Area includes the Grade I listed House

Mill, Grade II\* listed Clock Mill, Grade II listed Custom House and Grade II listed Three Mills Lane roadway. The settings of the Grade I, II\* and II buildings at Three Mills will also need to be protected.

### Phasing and implementation

Comprehensive delivery of the site allocation development beginning in 2015. As part of this, new pedestrian and vehicular access to the site will need to be provided. In particular, bridges linking the peninsula to Bromley-by-Bow and to Three Mills will need to be provided/enhanced. These have been secured through an existing planning permission. Equivalent provision would need to be made if any other new application comes forward, or the permitted scheme is amended as it is developed.

### Relevant planning history

The site contains the Sugar House Lane Conservation Area and a strip of land along the south-east boundary of the site is within the Three Mills Conservation Area. The southern end of the site is within the setting of a group of Grade I, II and II\* listed buildings, across the City Mill River at Three Mills and the listed gas-holders at Bromley-by-Bow Gasworks. Permission was granted in 2012 for part-full and part-outline planning permission for a significant mixed-use development, which includes:

- 1,200 residential units
- 12,500 sqm of flexible non-residential floorspace
- 34,000 sqm of offices and workshops
- 350-bedroom hotel
- pedestrian river bridge
- riverside park

It is understood that this scheme will be implemented. The scheme as permitted is considered to meet the requirements of this Site Allocation (SA4.2)."

(underlining added)

55. The planning permission to which the text refers was granted on 27 September 2012 for the wider Sugar House Lane area and is known as the Strand East permission. It comprised two elements:

(1) detailed permission for an area in the north east corner of the whole area including 8 residential units, 300 sqm financial and professional services, 500 sqm public house/bar, 2,620 sqm office and workshops/non-residential institution, 8,170 sqm offices, a public square, access, parking and landscaping;

(2) outline permission for the rest of the site with all matters reserved except access for 1,192 residential units, 12,593 sqm flexible uses including retail, financial and professional services, restaurants, cafes and bars, offices and workshops, non-residential institution and assembly and leisure, 33,950 sqm offices and workshops, 350 bed hotel, pedestrian bridge across Three Mills River, a riverside park, parking, servicing and ancillary works.

56. The parties agreed that the Strand East permission is a material consideration for the purposes of determining the CAAD appeal, although the weight each attached to it differed markedly.
57. Policy 3.1, the Stratford High Street Policy Area which is referenced in the Sub Area 4 key diagram, appears in the previous chapter relating to Sub Area 3 Central Stratford and Queen Elizabeth Olympic Park. It provides so far as relevant:

“Proposals for mixed-use development along Stratford High Street will be required to demonstrate that it will enhance the character, townscape and function as a lively main street, by ensuring that non-residential elements of mixed-use schemes maximise flexibility of function and are vertically and horizontally integrated with residential.

Introduction of new, medium-scale retail, leisure and community uses may be appropriate, subject to a positive retail impacts assessment on planned public and private investment and vitality and viability of the Centres (see Policy B.2).

Proposals for development greater than 27 metres above ground level will be subject to Policy BN.10.”

58. Policy B1 provides, so far as relevant:

**“Policy B.1: Location and maintenance of employment uses**

B Use Classes shall be focussed according to type within the Employment Clusters shown in Table 2.... The employment function for each cluster and employment land outside the clusters shall be protected and developed through:

...

3. Safeguarding land and buildings within Strategic Industrial Locations (SIL) for the balance of B Use Classes identified within Table 2 in density and floorspace

4. Only allowing proposals providing equivalent use, in density and floorspace, which maintain the existing balance of uses identified within Table 2 and meeting needs of small- and medium-sized businesses within the Locally Significant Industrial Sites (LSIS) and Other Industrial Locations (OIL)”

59. Under the heading ‘clusters’, paragraph 4.13 of the reasoned justification states:

“The boundaries of each of the employment cluster designations are shown on the Policies Map. Table 2 makes clear what balance of uses and form of development will be suitable within each location. The existing balance of floorspace and density will be maintained. Distinctions between the LSIS and OILs follow the London Plan Land for Industry and Transport SPG terminology whereby the Other Industrial Locations are most susceptible to change. Where acceptable change identified within the OILs is proposed, Bullet points 5 (c) and (d) will be applied. The Legacy Corporation will support and promote measures to improve employment clusters through Section 106 Agreements. Where identified within Table 2, residential will be appropriate when the employment-generating potential and industrial capacity are not compromised and amenity and servicing issues have been addressed.”



60. The relevant part of Table 2 states:

Table 2: Employment clusters

REFERENCE	EMPLOYMENT CLUSTERS	CLUSTER FUNCTION
B.1b7	<b>Sugar House Lane/ Stratford High Street</b> Locally Significant Industrial Site	Land within B2/B8 Use Classes. Area at the northern end of the Strand East site, partly fronting Stratford High Street, with an existing planning permission for a cluster of development for a mix of predominantly office, workshop, retail, hotel and associated business and employment-generating uses.

- 61. Residential uses are specifically mentioned in B.1b5 and B.1b6, both of which are OILs but not in B.1b7 or any other LSIS.
- 62. Policy B1 is underpinned by policy SP1 (Building a strong and diverse economy) which states that “The Legacy Corporation will work with its partners to develop a strong local economy, driving the transformation of east London through”, amongst other matters, “expansion of opportunities for local, national and international business and promotion of cultural, tourist and leisure expansion” and “strengthening the local economic profile of the area, including support of flourishing business sectors and providing additional floorspace in a range of sizes, types and forms”. Figure 4, Economic Strategy, reflects the proposals map in that it shows an employment cluster to the south of Stratford High Street and in the northern part of the Sugar House Lane SA4.2 area:



- 63. Policy SP2 Maximising housing and infrastructure provision within new neighbourhoods states that “The Legacy Corporation will work with its partners to maximise opportunities for delivering high-quality, sustainable and affordable homes and provision of supporting infrastructure through”, amongst other matters “Delivering in excess of the London Plan target of 1,471 housing units per annum, of which a minimum of 455 will be affordable”, “Providing for identified size and tenure requirements, particularly family housing in all tenures” and “Safeguarding existing residential units and land.”

64. Figure 8 shows in indicative form housing in the southern part of the Sugar Lane SA4.2 allocation area.
65. On behalf of the appellant, Mr Kelway interpreted site allocation SA4.2 as supporting the principle of mixed-use development across the allocation, encouraging a mixed use area of business within the northern part, and including housing across the mixed-use neighbourhood as a whole. His evidence is that the intention of policy B1 is to ‘protect and develop’ the employment function of the identified clusters and it did not go as far as safeguarding land for employment use only. Table 2 of cluster B.17b referred to “predominantly office, workshop, retail, hotel and associated business and employment generating uses” which allowed the introduction of housing. Policy S1, which covered most of the appeal site, endorsed mixed use development along the High Street frontage. Alongside this policy SP2 sought to maximise opportunities for housing.
66. His evidence is that, set against the very low level of existing jobs on the site, the notional scheme was an opportunity for a material uplift in employment generating floorspace. It would provide a 33% increase in floorspace and a very significant increase in jobs. He considered that met the terms of policy B1. Further, the notional development provided active ground floor uses and inbuilt flexibility to accommodate a range of employment uses together with integrated residential development. He considered that it was therefore closely aligned with the land use objectives of policy 3.1. The mixed-use scheme also complied with the site allocation SA4.2 which he described as the starting point for a local planning authority’s consideration of the notional development. The inclusion of housing also complied with policy SP2 not only by maximising opportunities for housing but also by safeguarding the existing residential use of the appeal site.
67. Mr Kelway considered that the principle that housing could be included within the B.1b7 area was supported by the Strand East permission which had residential development within the employment area. He also referred to the grant of planning permission for housing within other employment clusters as supporting the approach that policy B1 does not prevent residential development within them.
68. On behalf of Newham, Mr Robeson considered that policy B1 seeks not only to protect but to develop the employment function of allocated sites and the description of the ‘cluster function’ of area B.1b7 is in order to direct future uses. Residential development is not identified within that description as an appropriate use, in contrast to other sites where it is expressly mentioned in table 2.
69. Mr Robeson considered that allocation policy SA4.2 had to be read alongside policy B1 and that the allocation separated employment uses from housing with the use of a semi-colon. Further, the description “mixed-use area of business... and local retail space” was not ‘mixed use development’ which has a specific definition in the glossary of the plan as “A well-integrated mix of different land uses which may include retail, employment, leisure and other service uses with decent homes of different types and tenures to support a range of household sizes, ages and incomes.” Read together, the area of the allocation that included the appeal site was allocated for employment development not housing.
70. As to policy 3.1, Mr Robeson drew attention to the fact that this designation is not on the proposals map and covers the whole length of Stratford High Street much of which is not covered by the same designations as apply to the appeal site.

71. Mr Robeson stated that the Strand East planning permission was granted based on the previous development plan which envisaged the release of employment land, and this was overtaken by the clear protection to employment land in policy B1 of the LLDC Local Plan. Further, insofar as it included housing on land within the LSIS, none was permitted on the appeal site.
72. We consider that the evidence of both Mr Kelway and Mr Robeson fails properly to interpret the Local Plan policies and adopts an unrealistic approach to the way in which a reasonable planning authority would approach the question of whether the notional development complies with them.
73. In his closing submissions Mr Pereira set out what the appellant argues is the reasonable local planning authority's approach to policy at the valuation date as follows (paragraph 39):
- a. The [local] plan is recently adopted and carries substantial weight.
  - b. It states that the Strand East permission complies with the allocation policy.
  - c. The LPA will stand by this statement and give substantial weight to it.
  - d. This statement would be read as meaning what it says.
  - e. It means that the land use parameters, height parameters and block layout parameters are all SA4.2 policy compliant.
  - f. Hence, residential uses in the mixed-use business areas north and south are policy compliant.
  - g. The Strand East permission is obviously SA4.2 policy compliant because it provides "A new medium-density, mixed-use area of business......and local retail space focused in the northern and southern part of the site; [of] new homes with a significant number of family homes, [of] Local Open Space, playspace and public realm." The supporting development principles require that "The area should adopt a genuine mixed-use character retaining a strong employment focus...".  
(underlining added).
  - h. Unlike the business areas, the policy words place no express restriction on where residential development goes.
  - i. Irrespective of grammar and punctuation, provided there is a mixed-use area of business focussed north and south, the fact that there is also some residential development in those same areas does not breach the policy, rather, it complies with it. It creates a genuine mixed-use character with an employment focus.
  - j. Policies are expected to be interpreted in a straight-forward way without the need for undue or elaborate exposition: Lindblom LJ in *Mansell*.
74. For the reasons which follow, we do not agree with the interpretation and/or emphasis placed in paragraphs e. to i. of this exposition on policy SA4.2 nor do we consider that it takes proper account of the relationship between policies SA4.2 and B.1
75. As the parties have agreed, the appeal site is the subject of three designations on the LLDC Local Plan proposals map: SA4.2, B1 and the Sugar House Lane Conservation Area.

76. Whether the phrase ‘mixed-use’ refers to a mix of employment uses or all of the proposed uses, in our judgment site allocation SA4.2 clearly envisages that the business and retail development described will be focussed in the northern and southern part of the allocation site. That is consistent with the requirement in policy B1 as shown on figure 4 which shows the employment cluster lying in a swathe across the whole of the Sugar House Lane area between the rivers and immediately south of the High Steet.
77. Policy B1.4 is clear that only proposals which comply with table 2 will be allowed. That is expressed in the words “proposals providing equivalent use, in density and floorspace, which maintain the existing balance of uses in table 2”. Table 2 B.1b7 refers not only to ‘Land within B2/B8 uses classes’, which might be thought to describe existing land uses, but also to the Strand East permission in the following terms: ‘Area at the northern end of the Strand East site, partly fronting Stratford High Street, with an existing planning permission for a cluster of development for a mix of predominantly office, workshop, retail, hotel and associated business and employment-generating uses.’
78. Despite being in outline so far as affects the appeal site, the Strand East permission is quite specific as to the permitted land uses in a series of plans which are listed in condition A6 of the planning permission. That condition states “The development within the Outline Planning Application Area shall not be constructed unless in accordance with the following drawings...”. The plans show a limited amount of housing on the margins of the employment cluster site and only employment generating development on the appeal site with no housing in that location. The inclusion of some housing is consistent with the reference in table 2 to ‘predominantly’ office etc uses. In our judgment there would be no point in referring to the Strand East planning permission permitted uses in table 2 if that were not intended to represent ‘equivalent use, in density and floorspace, which maintain the existing balance of uses’ for the purpose of policy B1. Were it otherwise, the only uses policy B1 would permit in the Sugar House Lane employment cluster are B2 and B8. We do not consider that is an appropriate interpretation of the policy and moreover it would be inconsistent with SA4.2 which refers to “business (including cultural and creative) and local retail space”.
79. Thus, in our judgment, the protection afforded to employment generating development in B.1b7 is aligned in broad terms with the proposals in the Strand East planning permission. That does not mean that all employment generating development must be located in accordance with the precise land uses set out on the Strand East permission plans. The key requirement is that any development coming forward in the LSIS must provide “equivalent use, in density and floorspace, which maintain the existing balance of uses” listed in B.1b7.
80. The identification of the LSIS and the policy protection that goes with it was made by the Local Plan taking into account that the LSIS area was shown in the Olympic Legacy SPG as for mixed use development. Policy B1 was also adopted in accordance with London Plan policy 4.4 requirement that boroughs manage industrial land through, amongst other measures, the identification of Strategic Industrial Locations and the fact that Newham was categorised for release of employment land in the London Plan (as it had been in the 2011 London Plan). It was also adopted in the knowledge that planning permission had been granted for Strand East. There is no dispute that as a recently adopted Local Plan, it would carry substantial weight.
81. The proposals map and the site allocation map show the area of employment designation in an indicative way on a very small scale, even more so figure 4. We see no inconsistency

between these designations and a development which, like the Strand East permission, has an overlap of land uses along the boundary of the employment land designation where it meets the proposed housing, such as shown on Mr Kelway's Appendix 7, rather than a hard edge. That is consistent with the supporting development principle to SA4.2 that the area "should adopt a genuinely mixed-use character".

82. The designation of the LSIS and its boundary post-dates the Strand East planning permission. With the exception of the northern edge of two residential blocks between Hunts Lane and Sugar House Lane, all the buildings in the LSIS are identified for employment generating uses at ground floor level in the planning permission. If the boundary of the LSIS had been pulled back so all the buildings with residential uses permitted above ground floor lay outside it, there would no doubt be strong pressure in future for residential development to replace those ground floor employment generating uses on the grounds they no longer had any policy protection. We conclude that the delineation of the boundary of the LSIS on the proposals map and the SA4.2 allocation map was a deliberate choice made in the knowledge of the Strand East permission and in order to 'protect and develop' the LSIS for 'predominantly' employment generating uses.
83. However, we do not consider that this flexibility extends to the provision of large quantities of housing at or close to the northern edge of the SA4.2 allocation area, as proposed in the notional development. The appeal site lies in the heart of the employment designation in policy B1 with which SA4.2 is plainly intended to be consistent. The wording of SA4.2 has to be read together with the proposals map and the site allocation map. These show the employment land designated by policy B1 covering the appeal site.
84. The wording of SA4.2 states that the business and retail uses must be focussed on the northern and southern part of the site. A development in the heart of the northern part of the site which comprises 1,613sqm of employment floorspace and 82 residential units cannot in our judgment be said to be 'focusing' the business and retail element in the northern part of the site. If that were a proper approach to the policy, there is no reason why it could not be repeated on other sites well within the employment cluster area.
85. We do not agree with Mr Pereira's suggestion that the notional development would maintain the balance of uses across the LSIS "because the adjustment to ensure the balance of uses is maintained can be made elsewhere". How is the developer of another site or the reasonable planning authority to determine what the appropriate balance of uses is in this scenario? All the arguments deployed by the appellant in this case would apply to other land in the LSIS. In our view that would defeat the object of policy B1.
86. Mr Kelway accepted in cross examination that part of the purpose of policy B1 is to protect employment land from other higher value uses like residential. The proper balance is struck in policy terms by B.1b7 and the designation on a plan of an area that will be 'protected and developed', not by allowing mixed use development throughout the LSIS.
87. As to the alternative proposals, option 6 contains the least residential and the most employment generating development. This comprises 50 residential units and 2,692sqm employment floorspace. Again, in our judgment the balance of uses plainly favours residential to a substantial degree and again cannot be described as 'focusing' the business and retail element on the northern part of the site nor is it consistent with policy B1's requirement that land within this employment cluster be 'predominantly' employment generating.

88. We also note that this up-to-date policy post-dates all of the planning permissions granted for new residential development within LSIS areas listed in Mr Kelway's Appendix 8 (which were granted against the previous policy background) apart from two roof extensions. We do not regard this as a fair indication of the reasonable local planning authority's likely attitude towards a proposal for the scale of housing in any of the appellant's schemes in the Sugar House Lane LSIS.
89. For all these reasons we consider that the notional development is contrary to policy 4.4 of the London Plan and policies B1 and site allocation policy SA4.2 of the Local Plan.
90. While the Conservation Area's special interest so far as land use is concerned relates to its link to various industries, no one has suggested this would prevent its development for some housing. Further, the allocation in policy SA4.2 envisages housing being located in the Conservation Area to the east of Sugar House Lane (albeit outside the appeal site). We do not consider the conservation area designation assists one way or the other as to the acceptability of housing on the appeal site.
91. We turn to policy 3.1. The policy area covers a long stretch of the A12 within Sub Areas 3 and 4. Apart from a small area which overlaps with the Metropolitan Centre, none of policy 3.1 overlaps with any other designation in Sub Area 3. Many of the paragraphs of the supporting text relied upon on behalf of the appellant fall within the Sub Area 3 chapter of the plan. In Sub Area 4, policy 3.1 does not overlap with any other designations apart from along the Sugar House Lane area frontage.
92. The wording of the policy contains four elements. The first does not require any particular land uses, rather it contains criteria that any uses must satisfy, including proposed residential development. The second element identifies specific uses that may be appropriate (new medium-scale retail, leisure and community uses). The third element contains a building height limit. The fourth element contains further criteria that development must satisfy.
93. In our judgment, this policy does not designate or allocate land for development. Further, any encouragement for a particular land use is limited to 'new medium-scale retail, leisure and community uses'. It does not encourage residential development or identify it as an appropriate land-use, rather it requires that in mixed use schemes, non-residential development maximises flexibility and is integrated with residential development. Read in this way, the policy is consistent with policies SA4.2 and B1. Mr Kelway's approach to policy 3.1 (in that it encourages mixed use development) would be inconsistent with policies B1 and SA4.2 which seek to focus employment generating development on the land fronting Stratford High Street. In our judgment, policy 3.1 would not justify a departure from the site allocation policy or employment land designation.
94. Although we are considering land use matters in this part of our decision, paragraph 13.3 and table 10 which relate to building heights demonstrate that within the Sugar House Lane allocation area, policy 3.1 gives way to policy SA4.2 as far as building heights are concerned. Although not definitive, as policy 3.1 also considers land uses, this supports our view that policy 3.1 is not intended to override the policies which apply to the Sugar House Lane area.
95. Finally, we turn to housing policies. The notional development would contribute to the supply of housing and is therefore consistent with policies 3.3 of the London Plan and SP2

of the Local Plan. It would also contribute to the supply of affordable and family housing in accordance with Local Plan policies H1 and H2. However, under SP2 ‘policy application’, paragraph 5.3 states that “[the housing] target will be achieved through a range of sources, including large identified sites, non-self-contained accommodation (including hostels and student accommodation), an annualised small site potential of 33 units and reuse of long-term vacant properties.” One such large identified site is SA4.2 but only the southern part of it. This is consistent with the identification of the southern part of the Sugar House Lane area as a ‘key neighbourhood for change’ on figure 8. Thus, the northern part of the site is not identified for housing and a large site is identified immediately to the south of it which at the valuation date had planning permission for 1,200 residential units.

96. In these circumstances, and having regard to the conflict with policies 4.4, B1 and SA4.2, we consider that the weight which would be given to compliance with the objective of maximising housing would be heavily outweighed by conflict with other land use policies. The purpose of the Local Plan is to balance competing land use needs and identify sites for development to meet them. In our view, a need for housing which is proposed to be met by other plan policies would not outweigh the protection afforded to this LSIS by policy B1. As Mr Pereira put it in his closing submissions, “if a policy compliant way of delivering housing could be found for this site, the planning authority would permit housing.” The corollary is that, if housing on the appeal site is not policy compliant because it conflicts with a site allocation and policy which seeks to protect it for employment generating development, the planning authority would not permit it.
97. As to the requirement that existing residential units be safeguarded, we consider that the loss is de minimis and, coupled with the large housing allocation in SA4.2, means there would be no conflict with this element of London Plan policy 3.3 or LLDC Local Plan policy SP2.
98. In conclusion, the Tribunal finds that the notional development is in conflict with specific policies of the London Plan and LLDC Local Plan and that, overall in land use terms, it conflicts with the development plan.

## **(2) Comprehensive redevelopment**

99. Given that Newham now accepts that planning permission for some development would have been granted on the appeal site, it follows that in principle development of the appeal site would not prejudice more comprehensive development of the SA4.2 area. Some concerns were expressed as to the implications for future development of the site between the appeal site and Stratford High Street, for servicing in particular. However, in our view this can be dealt with by the inclusion of a condition requiring, before the commencement of development, submission of a scheme showing how servicing and access could be provided to the land to the north.
100. More generally, we accept that a positive factor in development of the appeal site would have been its contribution to the regeneration objectives of policy SA4.2 and development plan as a whole. It would also be in accordance with the LLDC’s statutory object to secure regeneration, section 201(1) Localism Act 2011, as set out in paragraph 1.1 of the Local Plan. Whether the notional development of the appeal site could properly be described as a ‘catalyst’ for future development in the allocation site and elsewhere, it would certainly have encouraged it.

101. However, in our view the weight to be attached to this consideration would be modest. As was pointed out on behalf of the appellant at the hearing, Vastint, the developer in the scheme world, already owned the vast majority of the SA4.2 site. Although we are to assume that the scheme is cancelled, policy SA4.2 would encourage large scale development for employment and housing on the balance of the allocation site. In our judgment, such development could reasonably be expected to come forward in the no scheme world irrespective of development of the appeal site.

### **(3) Tall buildings**

102. Policy BN.10. “Proposals for tall buildings” defines tall buildings as those that are higher than a Sub Area’s prevailing or generally expected height. As we indicated above, as regards building heights policy SA4.2 takes priority over policy 3.1, the effect of which is that BN.10 is engaged where proposals for development exceed 15 metres in the conservation area.

103. Accordingly, all the options before us – the six appellant’s options, the lowest of which has a height of 26.8 metres, and Newham’s at 25.35 metres - would constitute ‘tall buildings’ because they each, at least in part, exceed 15 metres. In all cases before us, therefore, policy BN.10 is engaged.

104. The policy indicates that tall buildings *should be located within the Centre boundaries* outlined in the local plan, which “in order of hierarchy are:

- Stratford Metropolitan Centre (parts within the Legacy Corporation Area)
- Bromley-by-Bow District Centre
- Hackney Wick Neighbourhood Centre
- Pudding Mill Local Centre
- East Village Local Centre.”

105. The appeal site falls outside those Centre boundaries, but the application of the policy explains that proposals for tall buildings will nevertheless be assessed against BN.10.

106. The policy provides that tall buildings will be considered acceptable where they:

- “1. Exhibit outstanding architecture and incorporate high-quality materials, finishes and details
2. Respect the scale and grain of their context
3. Relate well to street widths and make a positive contribution to the streetscape
4. Generate an active street frontage
5. Provide accessible public space within their curtilage
6. Incorporate sufficient communal space
7. Contribute to defining public routes and spaces
8. Promote legibility
9. Create new or enhance existing views, vistas and sightlines
10. Preserve or enhance heritage assets and the views to/from these, and contribute positively to the setting of heritage assets, including conservation areas.”



107. The policy then says that:

“Proposals for tall buildings that are likely to have a significant adverse impact on one or more of the following will be considered unacceptable:

11. Micro-climatic conditions (specifically down-draughts and lateral winds over public spaces)

12. Impacts to the surrounding area (including open spaces and other buildings and waterways) that relate to:

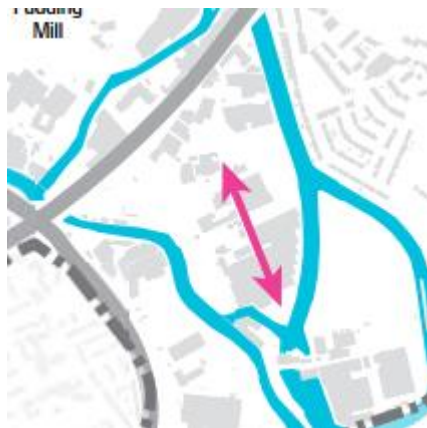
- Overlooking
- Daylight
- Overshadowing
- Light spill/reflection
- Wider amenity

13. Existing views of landmarks, parkland, heritage assets, waterways, and views along street corridors (in accordance with the policy on Protecting Key Views).”

108. The “policy on Protecting Key Views” is BN.9, which says:

“Proposals for development that impact a key view will only be considered acceptable when the development makes a positive contribution to the characteristics and composition of that view.”

109. Key views are indicated on a plan, one of which is within the SHLCA:



110. Accordingly, there are two sets of criteria in policy BN.10 against which proposals are assessed, some positive, some negative.

#### **(4) Design**

*The level of detail required in a CAAD application*

111. In *Pro-Investments v LB Hounslow* [2019] UKUT 0319 (LC) the Tribunal indicated [112] that for the purpose of a CAAD application, a detailed design was not a prerequisite, and

that detail would be to a level comparable to the information a planning authority would expect to see at a pre-application stage. The Tribunal went on:

“117. We agree that a CAAD does not require the same degree of detail as an application for a full planning permission, but it is for the claimant to establish that the scheme which it proposes would be likely to receive permission. If the proposed scheme contravenes normal design standards it is for the claimant to demonstrate that it would nevertheless be likely to obtain permission. It may readily be assumed that certain design issues would be capable of satisfactory resolution including, for example, issues concerning materials and aesthetic features. But where design standards impose real constraints on the scale of development which is likely to be permissible, the Tribunal has to be satisfied on the balance of probability that the claimant’s proposal would not be rejected because it fell short of those standards.

118. We also appreciate that design standards must be seen in the context of other strategic planning objectives and that they are applied by local planning authorities with some flexibility, as is apparent from the planning permission granted for the stadium enabling development. No doubt such flexibility as is available will depend in part on an assessment of the proposal as a whole, including public benefits it is likely to produce and which may be sufficient to justify a departure from some aspects of policy. But an authority’s ability to depart from standards reflected in the statutory development plan... is not unrestricted – the determination of a planning application is required to be made in accordance with the statutory development plan unless material considerations indicate otherwise.”

112. As Mr Pereira submitted, the CPO guidance issued by the Department of Levelling Up, Housing and Communities takes a similar position:

“An application under section 17 is not a planning application and applicants do not need to provide the kind of detailed information which would normally be submitted with a planning application. However, it is in applicants’ interests to give as specific a description as possible in the circumstances, in order to ensure that any certificate granted is of practical assistance in the valuation exercise.”

113. The guidance goes on:

“Detailed plans are not required.... but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the local planning authority in considering whether planning permission would have been granted at the relevant date.”

(emphasis added)

114. We do not entirely disregard design, because a factor in favour of a proposal under policy BN.10 might be that it “exhibit[s] outstanding architecture”, but the determination of a CAAD will not turn for instance on whether the proposals “incorporate high-quality materials, finishes and details” as required by the policy.

115. Had we been persuaded to take design at a more granular level, we would have found it difficult to do so for anything other than the notional development. As Mr Head accepted, the other variations have not been subject to design work and so can only be assessed on

height (and land use, which we have dealt with above). We have some evidence of the design of the notional development, but in many respects the appellant says that further detail could be dealt with at a later stage. In a CAAD context that is probably acceptable. However, there is scant evidence in respect of the appellant's other options, nor indeed as regards Newham's alternative, which is limited to some indicative images and heights.

116. But the key considerations are the height and basic formation of the competing alternatives, considered in the light of the development plan and any other material considerations. We deal next with height, while turning to formation and layout as part of the consideration of townscape, later.

### *Height*

117. The evidence on the height of buildings includes reference to both actual heights in metres, and in numbers of storeys, so we first must decide the dispute between the parties as to the internal height of each storey. Given our findings above it is necessary only to deal with those applicable to commercial uses. It was common ground that the floor height of the ground floor space would be 5.1 metres.
118. The original design of the notional development had the floor height of upper commercial floors at 4 metres, a height which Mr Head said he had used in the past. At the top of the building was a 1.5m high parapet; the Design and Access Statement included in the original CAAD application made much of the external appearance of the tower 'reaching the sky' by extending the brick up to a full parapet, 'offering a strong response to the site and the skyline'.
119. The appellant's team changed their position as a result of the total height of the tower being reduced to 52 metres. The internal height of the upper commercial floors was reduced to 3.15 metres - Mr Head said that there would be a mix of users in the commercial space and that architects, for instance, would be happy to work in space with an internal ceiling height of 2.75m.
120. Newham's version showed a typical upper commercial floor height of 4.05 metres, including structural slab, ceiling void etc. Its six-storey block A1 had a height of 25.35 metres, with the three-storey blocks A2 and A3 each at 13.2 metres. The average height of 4.05 metres included any parapet at the top of the block. Newham's scheme was at odds with Mr Deely's calculations for upper floors, which showed a total floor height of 4.5 metres, comprising a 3.5 metre internal floor to ceiling height, a 0.65 metre ceiling void for services, and 0.35 metres for structural slab and floor finishes.
121. In the explanatory text to BN.10, the policy illustrates the differing storey heights as 4 metres for commercial, and 3 metres for residential.
122. For the purposes of what we must decide, we accept Mr Head's height of 4 metres, slab to slab, which is consistent with policy BN.10, and, largely, with Newham's own scheme. It is also consistent with the building constructed as part of the scheme underlying the CPO, which was described in the officer's report when dealing with the CAAD application as being a seven-storey building of 'approximately 29 metres'.
123. Accordingly, in deciding what development would be appropriate, we will adopt the agreed 5.1 metres as the ground floor height, and 4 metres as the appropriate slab to slab height for the upper floors.

124. Turning back to the evidence, Mr Kelway (with some reluctance - we gained the impression that his evidence often sought to promote the appellant's case rather than comply with his duty to provide objective evidence to assist the Tribunal) accepted that the appellant's notional design did cause harm to the conservation area, and that there was an impact on existing views both within the conservation area and along street corridors. He agreed that, should we conclude that such an impact was significantly adverse, that would be an indication that a proposal was unacceptable. He also accepted that, in broad terms, a breach of policy BN.10 would constitute a failure to comply with the development plan as a whole.
125. As regards building heights, Mr Kelway's evidence was that at the valuation date a linear cluster of tall buildings was emerging along the High Street, many of which were constructed and occupied. He produced a helpful map and table showing the number of high-rise buildings along Stratford High Street and beyond to the north. But to us this simply reinforced the distinct difference between the north of the High Street, where there were many tall buildings, and the south, where there were only two. These were 206-214 High Street – a 26 storey tower, and Burford Wharf – which ranged from 6-22 storeys. Both were quite distant from the appeal site, and neither were in the Sugar House Lane Conservation Area.
126. Additionally, many were in policy area 3.1, where the generally permitted height was 27m. While this had been exceeded in some instances, the policy sought to limit the height of development 'despite the existence of tall buildings in this location'. As we have already determined, the appeal site lies within policy SA4.2, where the generally expected height was 15m, and we place little weight on these aspects of Mr Kelway's evidence.
127. Mr Kelway also produced a table of sites where planning permission had been granted in the LLDC area in the context of policy BN.10. Of the ten, only one – 24-26 White Post Lane – was in a conservation area, and in that instance, there was minor exceedance of the height threshold (21.3 metres tall in a 20-metre threshold). In one other instance, Duncan House, which was adjacent to the Stratford St John Conservation Area, the height limit had been considerably surpassed. Again, we find these of limited utility when considering the appeal site in the context of policy SA4.2.
128. The parties agree that the Strand East permission is a material consideration to which we should have regard. It included a series of parameter plans showing *maximum* storey heights. The blocks on the parameter plans do not entirely match the boundaries of the appeal site. The plans showed on the High Street frontage a block of four storeys to the southwest and seven storeys to the northwest adjoining the Sugar House Lane junction. Behind the four-storey block, set back from Sugar House Lane was a six-storey block, and behind the seven-storey block was a two-storey element.
129. It is important to note that there was an open gap between the southern four/six storey block and the northern seven/two storey block, to which we return later under townscape.
130. Turning back to the competing designs before us, and dealing first with the southern element of the appeal site, the notional scheme shows an eight-storey block, stepping down to five storeys. Newham's version has a three-storey block, and as we note above the Strand East permission has a four/six storey block. Mr Deely accepted in cross-examination that a reasonable planning authority would be open to a frontage building having a height of '29 metres or thereabouts' considering what had been consented. He accepted that since six storeys had been approved on part of the footprint of A3, it was 'credible' to say there could be a five or six storey building, as part of the wider Strand East development, which is

slightly different from considering the appeal site in isolation in the context of appropriate alternative development.

131. As regards the middle section, there is little between the parties as regards height - the appellant's 12.7m is lower than Newham's block A2, at 13.2 m, and as Mr Pereira submitted, both are below the prevailing 15m height in the conservation area.
132. The real battleground as regards height is the tall tower on the Sugar House Lane corner, the acceptability of which turns on the harm to the conservation area, and street/townscape issues.
133. As a result of the notional scheme being reduced in height, it was common ground that none of the appellant's six variations would cause harm to the significance of the Grade-1 listed Tide Mill, nor to the Three Mills Conservation Area. The substantive issue that remained was the degree of impact of the notional development or options on the Sugar House Lane Conservation Area ('SHLCA'), to which we now turn.

#### **(5) Impact on heritage assets**

134. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires planning authorities, when considering development in a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
135. The 2012 NPPF responded to section 72 by setting out a series of steps which planning authorities should consider when assessing proposals likely to affect heritage assets, including identifying the asset affected, and assessing the significance of those assets, including the contribution made by their setting. Great weight should be given to the heritage asset's conservation, proportionate to the importance of the asset. Where a proposed development would lead to less than substantial harm ('LTSH') to a heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
136. In January 2010 Newham published its Sugar House Lane Conservation Area Appraisal and Management Proposals document ('the CAA'). The heritage experts agreed that the CAA set out the list of attributes that demonstrated the Conservation Area's special interest. The document described the ten buildings of note, yards of note, and three chimneys of note, one of which, dating from 1893 to serve an adjacent colour works, was on the appeal site.
137. It was common ground that demolition work had been carried out within the conservation area as part of the Strand East development, which in Mr Bridgland's view had caused the CAA to become out of date. He pointed to the demolition of various buildings under the Strand East permission, including three of ten buildings of note. In his view, the character of the conservation area had been significantly eroded, but he accepted in cross examination that for those elements that do remain, including the buildings, chimneys and yards of note, the CAA presents an appropriate characterisation and is appropriate at the valuation date.
138. Policy BN.16 of the LLDC Local Plan indicated that proposals "would be considered acceptable where they conserve or enhance heritage assets and their settings...". Mr Kelway accepted that, as Mr Bridgland had conceded, since the notional development caused harm to the conservation area, it would conflict with the Local Plan (but felt that this and other breaches were outweighed in the planning balance).

139. However, we accept Mr Cameron's submissions that the LLDC local plan was adopted *after* much of the demolition work had been carried out, yet still refers to the significance outlined in the CAA and indicates that proposals should be judged by reference to their general conformity with the CAA and other relevant guidelines. Had the policymakers – cognisant of changes in their area – considered that the CAA was of diminished utility in assessing harm to the Sugar House Lane Conservation Area, that would not have been the case.
140. We also accept Mr Cameron's submissions that seven of the original ten buildings of note remain. Of the three which have been demolished, Mr Bridgland had accepted that two are remote and while the third is not, Sugar House Yard remains an identifiable yard and an area of interest. Mr Bridgland accepted that cumulative impact is relevant, as Historic England's guidance document – 'Managing Significance in Decision-Taking in the Historic Environment' noted at 28. He agreed that the question is whether the CAAD development *further* detracts from or enhances the significance of the heritage asset in question, notwithstanding there had been previous development which might have been unsympathetic to the conservation area. It must also be considered against other consented development.
141. It was common ground between the heritage experts that the notional development would result in LTSH to the SHLCA. That is unsurprising, given the concession very fairly made by Mr Head - that the development was designed knowing it would cause harm to the heritage assets, or as Mr Cameron put in, harm was "baked in" from the start. However, that is not determinative as we need to consider whether there are material benefits as part of the planning balance exercise which may outweigh harm.
142. The dispute between the heritage experts was the level of that LTSH. Mr Bridgland considered that the notional development would cause a minor level of LTSH, as expressed in his Heritage, Townscape and Visual Impact Assessment ('HTVIA'). Dr Miele considered that options 1 and 4 (which included the 52m high tower) would result in a moderate to high level of LTSH, with the other options causing low to medium harm. In reality, in respect of the lower options, there was little between the heritage expert's views. The main issue was the proposed 52-metre tower.
143. We accept Dr Miele's evidence that the appeal site has a close relationship with an important cluster of historic industrial features and spaces, and the built features comprise non-designated heritage assets, making a particular contribution to the significance including character and appearance of the north-eastern part of the Conservation Area. The appeal site has a particular role to play in drawing together several heritage features and in reinforcing the character of the conservation area.
144. Mr Bridgland's opinion of a minor level of LTSH was formed by netting off from the assessment of harm suffered as a result of the notional development his view of heritage benefits. He accepted that the main source of harm to the heritage assets was the scale and height of the proposed built form of the notional development. He accepted that the 52m tower would be seen from the vast majority of the conservation area, being the tallest building within it by some way, which would point to a greater rather than lesser degree of harm.
145. Mr Bridgland outlined six heritage benefits which he weighed in the balance. These were first the knitting together of two remaining areas of interest in the north eastern and western areas of the conservation area; secondly the active commercial frontages at ground floor

level; thirdly the new building fronting High Street would have provided a gateway to the conservation area and assisting in wayfinding; fourthly the material palette would have been similar to the industrial context and would have differentiated the building from the other more modern residential buildings on High Street; fifthly the breaking up of massing by further populating the existing silhouette and skyline; and finally the frontage to Sugar House Lane reinforcing the boundary of the road as a key route into the Conservation Area.

146. In cross-examination, Mr Bridgland accepted that if any of his six ‘plusses’ were removed, the level of harm increased, or ‘the dial went up’.
147. As for his first benefit, ‘knitting together’ Mr Bridgland accepted that the mere fact that there was a building in a gap site did not in itself mean that two elements of the conservation area would be sympathetically knitted together – it was the type of building which was important. He accepted that the notional development would cause harm by dint of its height and scale, and while he said that the development responded to the conservation area, creating a new yard centred around the repositioned chimney of note, he accepted that the yard couldn’t be seen from Sugar House Lane, and only the top of the chimney could be seen.
148. As for his third, wayfinding, he accepted that the principle of wayfinding was not in issue, but there was a difference between a townscape benefit and a heritage benefit, the latter being confined to a proposal which reinforced or enhanced the significance of the heritage asset. He said that the building was a gateway point into the conservation area, and the building had been designed to mimic some of the buildings within it. The tall tower’s role as a marker was beneficial, but he accepted that its height was problematic.
149. As regards his fifth benefit, breaking up massing, Mr Bridgland took from the CAA a punctuated skyline, which he said was replicated by the design of the notional development. He accepted that two residential towers with residential/commercial in between was unprecedented in the conservation area, but considered that the design ‘responded to that characteristic in the conservation area’. He accepted that should a different view be taken on that point, the dial would move towards harm.
150. Towards the end of his cross-examination, Mr Bridgland very fairly accepted a series of propositions advanced by Mr Cameron: that harm arises from the height and scale of the tall tower, which is in a prominent location, the height of which is problematic, and which can be seen from much of the conservation area, including from Sugar House Lane and the two yards of note to the east of it, and from outside the conservation area.
151. Having spent some time walking around the conservation area and the surrounding area, armed with the plans and visual images from the evidence, we have no doubt that the 52m tower proposed in the notional development and in option 4 would have a significant adverse impact on much of the conservation area, including from a Key View identified in Policy BN.9.
152. In our judgment, the evidence of Mr Bridgland that the impact of the tall tower is at a minor level of LTSH is not credible. Mr Cameron made sufficient inroads into Mr Bridgland’s ‘plusses’ to ‘move the dial’ as it was put, towards greater harm. We accept that there would be some benefits from creating an active street frontage and from the proposed material palette, but these are far from unique to the appellant’s proposals, and could be achieved from a less harmful development.

153. We accept Dr Miele’s evidence that both the notional development and option 4, which included the 52m high tower, would result in a moderate to high level of LTSH.
154. We find that the tall tower element of the appellant’s notional development, and option 4 would breach policy BN.10, in that it does not preserve or enhance the conservation area and the views to and from it, and would have a significant adverse effect on the key view from within the SHLCA identified in policy BN.9. For the same reasons we consider that the notional development would conflict with policy BN.16.
155. As we say above, the evidence on options 2-6 was limited. Doing the best we can, we find it more likely than not that the mid-rise options 2 and 4, which included a 42.6-metre-high tower would also cause a moderate to high level of LTSH and would also breach policy BN.10. It would neither preserve or enhance the conservation area and the views to and from it and would have a significant adverse effect on the key view from within the SHLCA identified in policy BN.9.
156. We return to the subject of heights in ‘Townscape’ below.

**(6) Housing mix**

157. Given the conclusions we have reached on land use, this issue does not arise.

**(7) Townscape**

158. Policy BN.1 of the LLDC Local Plan required proposals to respond to ‘place’ in accordance with a series of principles, including that, in respect of urban fabric, they should: respect existing typologies, including those of heritage value, and draw design cues from the form of the area in terms of its layout (urban structure and grain) and scale (height and massing).

*Layout*

159. As regards the middle terrace in all of the appellant’s options, Mr Bridgland accepted that this form of development was not found within the SHLCA, and in that respect did not comply with Policy BN.1. Dr Miele considered the extent of the terrace to be a quite considerable single long building frontage for which, he said, there was no real precedent in the conservation area (although he later accepted that there would have previously been long buildings, or sheds, in the conservation area as shown on historic plans).
160. Mr Bridgland accepted that the existing building types identified in the Conservation Area Appraisal were plain, simple rectangular buildings, having simple rectangular footprints, having a scale of 1-5 storeys. He also accepted that, at least within the conservation area, the notional development did not respect the existing building types, because 16-storey towers are not found within the conservation area, and that in that respect the proposals did not comply with policy BN.1(2). But, he said, the notional development did comply with the existing types on the High Street.
161. We note that English Heritage, in its consultation response to the Strand East application, considered that the middle block reinforced the Sugar House Lane frontage. However, the outline element of the Strand East permission was conditional, among other things, on development being in accordance with a series of submitted plans, one of which indicated building line requirements. As regards the location of the land upon which the appellant has the middle terrace, the various plans show distinct detached blocks, separated by an open



area which is bounded by an indicative building line. While the exact building line is said to be determinable through a future detailed planning application, a minimum street width (i.e. between the two blocks) may apply.

162. One of the ways in which Policy BN.10 provides that proposals for tall buildings would be considered acceptable is in the provision of “accessible public space within [the development’s] curtilage”.
163. In our judgment Mr Deely’s criticism of the notional scheme (and therefore all of the appellant’s options) that the provision of public space was neither visible nor accessible to other users in the area, has force.
164. Accordingly in townscape terms, we find that of the appellant’s six options, all but the low-rise options are in breach of the development plan in terms of policies BN.1 and BN.10, and in all options put forward, the middle terrace would be in breach of both policies in failing to respect the scale and grain of its context.
165. We prefer Newham’s version, with detached blocks having open views between them, and which afford access to public space around them and with views of the relocated chimney of note. Rather than providing a boundary to the road with a single long building frontage, these better mirror the historic pattern in the conservation area, and more closely follow the Strand East permission in terms of detached blocks with streets between them.

### *Height*

166. We turn first to the most controversial element – the tall tower on the High Street/Sugar House Lane corner. As Mr Pereira submitted, the CPO Statement of Reasons recorded that the treatment of the entrance into the Sugar House Lane/Strand East site was said to be “of particular importance”, and that “the buildings on both sides of this gateway need to be of high quality, marking the entrance to the rest of the redevelopment, which will set the tone and be inviting” and bring about a “gateway access into the redeveloped site”.
167. We accept Mr Pereira’s submission that the reasonable planning authority would embrace the need for the appeal site frontage to be a suitable gateway and way-marker for the entrance to the new mixed use urban quarter envisaged by the allocation policy, within reason, and balanced against the other factors at play, most importantly the effect on the conservation area. We also accept that, in this regard, some weight should be placed on the pattern of development along the High Street. As we noted above, Mr Deely made the sensible concession that the notional planning authority, might well be likely to look favourably on a building that is somewhat taller than that proposed by Newham. We have also taken into account the permitted heights in the Strand East permission.
168. We are persuaded on the evidence that, on the corner of High Street and Sugar House Lane, a building taller than that advocated by Newham would be appropriate. We consider this would be acceptable in planning policy terms as regards the High Street but also having regard to the need to protect the conservation area. We return below to the specifics of the appropriate height.

### **(8) Brownfield site**

169. It is not in dispute that the appellant’s schemes would, in principle, make use of a brownfield site in an urban location, which would be a benefit to be weighed in the balance.

**(9) Employment benefits**

170. Although the notional development would provide an uplift in floorspace and job numbers compared to what was on the appeal site, in our judgment that benefit would be tempered by the failure to comply with policies B1 and SA4.2 which envisage greater provision of employment-generating development on the appeal site and surrounding parts of the LSIS protected by designation B.1b7.

**(10) The planning balance**

171. In land use terms, for the reasons we have given above, residential use would conflict with policy 4.4 of the London Plan, and policy B1 and site allocation SA4.2 of the local plan. We have no purely commercial alternatives from the appellant, consequently both the notional development, and all of options 2-6 would conflict with the development plan in this respect.
172. In terms of scale, height, and the effect on the conservation area, in our judgment both the notional development and the tall option 4, each having a 52-metre-high tower, would cause a moderate to high level of LTSH to the SHLCA in breach of policies BN10 and BN.16. They would also create a significantly adverse impact on Key Views, in breach of policies BN.10 and BN9. For the same reasons, on the evidence available to us, we are satisfied that the 42.6 metre tower that features in the appellant's options 2 and 5, would also be in breach of these policies.
173. In terms of townscape, in our judgment the middle terrace would fail to respect the scale and grain of the existing typologies, in breach of policy BN.1 and BN.10. The lack of accessible public space would also breach policy BN.10.
174. In summary, the notional development and all of options 2 to 6 would be in breach of the development plan.
175. We must therefore consider whether there are any material considerations which would cause the notional development or any of the options to constitute appropriate alternative development.
176. Mr Kelway outlined six material benefits which he considered would have offset the development's 'very minor' degree of heritage harm, comprising employment generation, market and affordable housing delivery, regeneration benefits, townscape improvements and sustainability. As we have said, we do not consider the harm to be at a very minor level, and such the hurdle for benefits to outweigh policy becomes higher. We accept, as does Newham, that there are some benefits which, if permitted, the notional scheme and its variants would produce, but in our judgment these are insufficient to outweigh the many and significant ways in which the notional scheme constitutes breaches of the development plan in terms of employment policy, heritage impacts, townscape impact and the effect on a key view.

**What would constitute alternative appropriate development?**

177. In our judgment, a Certificate would be based on a variation of Newham's version. We have adopted Newham's footplate and floor areas per floor.

178. Newham’s version has block A1, on the corner of the High Street, having six storeys (of which the upper floors would have an individual height of 4.05 metres), at a maximum height of 25.25 metres. In our judgment it would be appropriate to have one further storey. A 5.1-metre-high ground floor, and six further storeys each of 4 metres would amount to a total height of 29.1 metres which we consider appropriate for the reasons given above.
179. There is little between the parties as to the height of a middle block, and we have adopted Newham’s block A2, both in terms of height and floor space.
180. As regards the southernmost block we have adopted Newham's block A3, but having regard to the Strand East permission and Mr Deely’s evidence, we consider a planning authority would grant permission for a ground floor of 5.1m high, with five further commercial storeys, each at 4m, totalling 25.1 metres.
181. Accordingly in our judgment the appropriate alternative development for the appeal site at the valuation date would comprise solely non-residential uses in three blocks as follows (adopting the parties’ agreed ratio of 0.93 gross internal area to gross external area):

Level		A1		A2		A3	
		GEA	GIA	GEA	GIA	GEA	GIA
0		556	517	483	449	701	541
1		556	517	483	449	701	541
2		556	517	483	449	701	541
3		556	517			701	541
4		556	517			701	541
5		556	517			701	541
6		556	517				
<b>Total GEA (sqm)</b>	<b>9,547</b>	3,892		1,449		4206	
<b>Total GIA (sqm)</b>	<b>8,214</b>		3,620		1,348		3,246

#### (11) Planning contributions

182. The planning contributions are largely agreed but there is a dispute about two of them: (1) whether the appellant should be responsible for the full cost of construction of an all-movements junction at Sugar House Lane/Stratford High Street or only make a partial contribution and (2) whether the appellant should make any contribution at all to the construction of a number of bridges. In addition, as we are proposing to grant a certificate amounting to an amended version of Newham’s version, the agreed contributions will require a pro rata adjustment. It is convenient to deal with those first.
183. A Community Infrastructure Levy (CIL) for the Notional development was agreed in the sum of £386,820. That is comprised of a Mayoral CIL of £20 per sqm of all floorspace (gross internal area) and a Newham CIL of £60 per sqm on the residential development only. Therefore, under our preferred AAD above, the CIL payable is £20 per sqm on the revised employment floorspace of 8,214 sqm, viz £164,280.

184. A carbon offset payment and CPZ contribution had been agreed in the sums of £112,832 and £500 respectively. Based on our findings above, the parties agree that no carbon offset payment is now payable.
185. Turning to the junction, the total construction cost is agreed in the sum of £2,775,000 which is the figure sought by Newham. The appellant's case is that he should make a contribution based on the proportion of floorspace (gia) which the notional development bears (9,670 sqm) to the total floorspace permitted in the Strand East planning permission (200,633 sqm). The appellant calculates this as £133,747.
186. Mr Robeson came in for sustained criticism for elaborating orally on the reasons why Newham believe the appellant should pay the full cost of the junction rather than dealing with it in his report. Mr Kelway's first report simply notes that an appropriate package of contributions would be negotiated and agreed and then lists the heads of terms he considers would have been covered but that does not include the junction.
187. Mr Robeson's first report refers to policy 4.2 which states:
- “Development proposals within Sub Area 4 should not prejudice and, where relevant, should contribute towards the improvement of existing and the delivery of new connections necessary to serve the anticipated needs of development within the Sub Area. The improvements to existing and new connections considered necessary for the delivery of the development anticipated within [Sub Area 4] are:...
- 3.New and improved vehicle, pedestrian and cycle bridges across the River Lea; a new all-movements junction on the A118 to improve access to and from Sugar House Lane for pedestrians, cyclists, buses and general traffic.”
188. He goes on to say “Owing to its proximity and the clear synergies between development on the Site and such a junction. I see that a reasonable authority would have required contribution towards this junction improvement, if not its full provision, as part of a scheme permitted on this Site.”
189. Mr Kelway's second report agrees that a reasonable and proportionate contribution to the junction would have been secured as a planning obligation. It is clear from the revised planning Statement of Agreed Facts and Issues that the parties recognised they were not in agreement on this issue. It is disappointing that neither planning witness saw fit to elaborate on the evidence supporting their respective positions in supplementary reports. The Tribunal required some assistance to enable it to determine this issue.
190. In support of Newham's position, Mr Robeson referred to the fact that in the no scheme world the junction was left turn only and traffic approaching from the west seeking to access Sugar House Lane would have to continue into Stratford and find somewhere to turn round there. In addition, there was a barrier across the centre of the A12 so neither cyclists or pedestrians could access the site from the north. The new access was seen in the Local Plan as fundamental to regeneration of the SA4.2 allocation site and a reasonable local planning authority would insist that whichever developer came along first should either pay for the new junction or the planning permission should be subject to a negative condition which ensure the junction was provided.

191. We consider that policy 4.3 of the Local Plan makes it clear that a new junction would be necessary “for the delivery of the development anticipated within” Sub Area 4. Figure 3.7 shows this junction as a key connection to be enhanced. Policy SA4.2 states the new junction will be required “alongside development.” Neither policy provides any detail as to phasing. However, we note that under the heading ‘Phasing and implementation’ of policy SA4.2, after referring to the fact that the junction and bridges “have been secured” through the Strand East planning permission, the plan goes on to state “Equivalent provision would need to be made if any other new application comes forward, or the permitted scheme is amended as it is developed.”
192. Paragraph 9 of the planning contributions recommended for approval for the Strand East planning permission required the developer to fund and deliver the junction prior to final occupation of the part of the development for which detailed planning permission was given (the ‘North East Quarter’) or, if not constructed by then, to pay the total cost of the junction to the local planning authority. In our judgment this demonstrates that the new junction would have been required at an early stage in the development of the overall allocation site.
193. Although there is no highway evidence to substantiate the need for the junction to accommodate traffic generated by development of the appeal site, we consider that the policy and planning context, including the aim of regeneration, strongly supports provision of the junction at an early stage in the development of the SA4.2 area. All the more so because the appeal site lies on one side of the junction. In those circumstances, we consider that a contribution proportionate to floorspace permitted over the whole SA4.2 site would be insufficient.
194. On the other hand, in our judgment a requirement to provide or pay for the whole junction would not fairly and reasonably relate in scale and kind to the development of the appeal site alone. It would therefore fail one of the tests required for a planning obligation in paragraph 204 of the NPPF. The parties have not provided any fall back positions in relation to this argument so the calculation of any contribution is inevitably going to be on a rough and ready basis. Doing the best that we can and taking into account that the North East Quarter will contain some residential development which is a higher value land use, we consider that a contribution of 20% of the total cost would be required from the developer of the appeal site. 20% of £2,775,000 is £555,000.
195. With the benefit of such a contribution and against the policy and planning context we have outlined, we consider that the local planning authority would be able to require further contributions from other developers of land at the northern end of the SA4.2 area to enable the junction to be built. The Strand East planning permission would also provide a template for the location of the junction so the necessary land could be required in conjunction with a further planning permission for development of the North East Quarter. As we have already said, development could reasonably be expected to come forward on the SA4.2 area in the no scheme world irrespective of development of the appeal site.
196. Finally, we turn to the issue of a contribution to the bridges, which we are told have a combined cost of £2,242,200. They are referred to in policy 4.2.3 and shown as key connections on figure 37 of the Local Plan as well as on the Site allocation SA4.2 plan. They will provide enhanced connections to the west, south west, south east and east parts of the SA4.2 area. Paragraph 13.2 of the Local Plan describes the priorities for Sub Area 4, these include “Better connectivity, especially for walking and cycling across the area”. Another

priority is a new district centre at Bromley-By-Bow and the provision of improved connections to Bromley-By-Bow station is a theme running through the Sub Area chapter.

197. We consider that, unlike the Sugar House Lane junction which has a specific function not only for access but also to assist regeneration and to mark the main vehicular access to the SA4.2 area, the bridges will provide a more general benefit to all the development in the allocation area by way of improved connectivity to transport, shops and open space. As such we consider that a reasonable local planning authority would seek a proportionate contribution from all development of the site. If a contribution is to be made, the appellant did not dispute Newham's approach to calculating it. This is by a contribution based on the proportion of floorspace (gia) which the notional development bears to the total floorspace permitted in the Strand East planning permission.
198. Based on our revisions to Newham's version as outlined above, which has a total floorspace of 8,214 sqm, compared with the total floorspace in Strand East of 200,633 sqm, we calculate a contribution of £91,797.
199. For the above reasons we consider that planning contributions in the sum of £811,577 would be as follows, subject to any required indexation.

CIL & CPZ contribution	£164,780
Junction contribution	£555,000
Bridges contribution	£91,797
<b>Total</b>	<b>£811,577</b>

## Conclusions

200. We allow the appeal and cancel the 'Nil' section 17 certificate issued by Newham on 20 February 2023. We will substitute an alternative certificate reflecting the conclusions we have reached above. We invite the parties to provide a draft of the appropriate certificate including such conditions as are agreed between them. If the material terms or conditions cannot be agreed the Tribunal will resolve any issues without a further hearing. The parties are also invited to agree a short timetable for the exchange of submissions on the costs.

Her Honour Judge Alice Robinson

Mr Peter D McCrea FRICS FCI Arb

5 June 2024

**Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.