



Appeal Decision

Inquiry held on 4-7, 10-11 and 17 August 2020

Site visit made on 25 August 2020

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th December 2020

Appeal Ref: APP/M9584/W/20/3247968

Marshgate Business Centre, Marshgate Lane, Stratford E15 2NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Anthology Stratford Mill against the London Legacy Development Corporation (the LLDC).
 - The application Ref 19/00250/FUL, is dated 31 May 2019.
 - The development proposed is the erection of 4 buildings ranging from 6 to 18 storeys in height, comprising a total of 342 residential dwellings and 1,024 m² Gross Internal Area of A1, A4, B1 and/or D1 floorspace, together with access, servicing, car parking, cycle parking, cycle storage, plant, open space and landscaping.
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Procedural matters

1. The provisions of a draft planning obligation were discussed at the Inquiry, and a completed version was submitted on 17 September 2020¹. Although this was significantly after the date agreed by the parties at the Inquiry, I have taken it into account and will return to it below.

Decision

2. The appeal is dismissed and planning permission for the erection of 4 buildings ranging from 6 to 18 storeys in height, comprising a total of 342 residential dwellings and 1,024 m² Gross Internal Area of A1, A4, B1 and/or D1 floorspace, together with access, servicing, car parking, cycle parking, cycle storage, plant, open space and landscaping all at Marshgate Business Centre, Marshgate Lane, Stratford E15 2NH is refused.

Main issues

3. The LLDC resolved on three putative reasons for refusal on 28 April 2020. These related to alleged overdevelopment (in a number of respects), affordable housing issues, and flood risk. The Environment Agency subsequently withdrew its previous objection on the basis of the submitted information including a Flood Risk Assessment. It is agreed between the parties that suitable mitigation could be secured by way of a condition and/or a planning obligation². The third reason for refusal was therefore not pursued by the LLDC.

¹ CD 11.12

² CD 10.3 Section 6.19

4. There are four main issues in this case:

- Whether the proposed development would comprise high quality design that would enhance the character and appearance of the surrounding area.
- Whether the proposal would provide acceptable living conditions for future residents in relation to sunlight.
- Whether the proposal would provide acceptable amenity space for future residents in relation to sunlight.
- Whether the proposal would deliver the maximum reasonable amount and type of affordable housing, in accordance with development plan policy.

The site, the surrounding area and the proposal

5. The appeal site is around 0.81 hectares in extent and is a cleared area of land which was apparently part of the former Marshgate Business Centre. It is located on a curve in the Back River, which runs along the southern and eastern boundaries of the site. It is bounded by Marshgate Lane to the west, a cleared site (the 'Bullman site') to the north, and a construction site ('Phase 1') to the south west.
6. Access to the site is from Marshgate Lane. This is a route leading to the Olympic Park to the northwest. As one moves along this route one passes the Pudding Mill DLR station around 250 metres north of the appeal site.
7. Planning permission exists for the redevelopment of the appeal site as part of a larger scheme including the Phase 1 land and the Bullman site³. This permission has been implemented and work is well advanced on Phase 1. There is also a current application for the redevelopment of the appeal site itself by the erection of 276 homes and other uses – this remains with the LLDC for determination.
8. The area generally, collectively known as Pudding Mill, is clearly in the process of rapid transformation. To judge from various photos and documents submitted to me it was previously a high density low rise industrial and residential area. Today many of the sites within the area are being or have been redeveloped, have extant planning permission for redevelopment, or are subject to planning applications.
9. At present the river crossing into the Pudding Mill area is by way of a bridge at Pudding Mill Lane to the west. There is a proposed pedestrian, cycle and bus crossing over the river directly adjacent to the appeal site, which would enable direct transition to the High Street. I will return to the status of this proposal below, but it does not form part of the appeal scheme.
10. The proposal is for the erection of six buildings to provide residential and commercial floorspace. The northern three buildings (known as the A Blocks) would complete an enclosed courtyard with the approved scheme on the adjacent Bullman site. The southern three buildings (the B Blocks) would be a tower and podium development following the curve of the Bow Back river.

³ Details at Planning Statement of Common Ground Section 3

11. The A Blocks would be three separate but linked buildings, with communal entrances from the new street. The buildings would be essentially be a solid perimeter block with breaks at the upper two storeys and entrances at ground level. Residential amenity space for the A blocks would be provided in the ground floor courtyard, by balconies and at roof level.
12. The B Blocks would be three residential towers of varying heights which come to the ground abutting commercial space located between the bases of the towers. The apartments in the B Blocks would be arranged around a central core so the elevations would be residential. Amenity space for the B Blocks would be a shared landscaped podium area at first floor level along with additional space on the roof of Block B3.
13. The proposal would provide 342 new homes of which 198 would be affordable. This compares with the consented scheme which would provide 130 homes of which 34 would be affordable. There would be 457m² of commercial floorspace in the appeal scheme.

The development plan and other documents

14. The statutory development plan comprises the London Plan (2016) and the LLDC Local Plan (2020) (which was adopted shortly before the Inquiry)⁴. The latter plan supersedes the Local Plan which was in force during the period when the application was being considered by the authority and referenced in the putative reasons for refusal⁵.
15. The Pudding Mill area, including the appeal site, is allocated in the Local Plan at site allocation SA 4.3. The intention is that this should be a medium density mixed use area. It should include a significant and diverse element of new and replacement business floorspace, with new homes including a significant amount of family housing, new local open space, play space and public realm. Further detail also refers to the proposed river crossing referenced above. Of particular relevance is the identification of a new Local Centre "adjacent to Pudding Mill DLR station and Pudding Mill Lane". This is shown on a key diagram and is a matter which will be discussed below.
16. The Local Plan, at policy BN.5, identifies the Pudding Mill Local Centre as a location where tall buildings should be located. Tall buildings are defined as being higher than the generally prevailing heights, defined at Table 13 as 21 metres. The policy sets out a series of criteria and provides that tall buildings would be considered acceptable where they exhibit exceptionally good design, demonstrating this through independent design review undertaken by a panel appointed by the local planning authority.
17. The Mayor of London has published a new draft London Plan (the draft London Plan), which has been through Examination and report. The Secretary of State has directed that this plan should only be published if changes are made to identified policies⁶. Amongst other matters these relate to optimising site capacity and expansion of clusters of dense buildings. The Mayor is considering the contents of the Direction. The parties agreed that the policies

⁴ Agreed relevant London Plan policies at Planning Statement of Common Ground paragraph 4.4

⁵ The relevant policies read across from one plan to the other, and the parties agreed a comparative table – Appendix A to Planning Statement of Common Ground.

⁶ These include policies H10 and D3, and supporting text to D1 and H2.

unaffected by the Direction should be afforded significant weight, with less weight given to those affected by the Direction⁷. I agree with that assessment

18. There are a range of relevant Supplementary Planning Documents and Guidance. In particular the Pudding Mill SPD (the SPD) was published in 2017⁸ and this document, discussed in detail in evidence and at the Inquiry, is clearly an important material consideration as it is recent guidance dealing directly with the appeal site and its context. The publication of such a document is in line with national policy in order to create distinctive places with high quality design. The SPD also references the proposed Local Centre which, as a matter of fact, is shown diagrammatically in a slightly different location to that in the Local Plan. I will return to this difference below.
19. The SPD picks up on the Local Plan approach to building heights and refers to heights up to and around 21 meters across the Pudding Mill area. It states that any proposal about the 21 metre threshold will be considered against the tests in Local Plan policy BN.10.

Areas of agreement

20. It is useful to note that there are significant areas of agreement between the parties, as set out in the Statement of Common Ground⁹. The key areas of agreement include:
 - The proposed housing, including the affordable housing, would contribute to meeting housing targets and is supported in principle.
 - The proposed mix of uses is acceptable and the commercial element supports the objective of the Local Plan.
 - The LLDC has a five year housing land supply without relying on the contribution made by the appeal site.
 - There is also considerable agreement on appraisal inputs into viability calculations¹⁰. (Construction costs are not agreed.)

The effect on the character and appearance of the area

21. It is common ground between the parties that there is a strong policy requirement to maximise opportunities to deliver new homes. However it is also agreed that both parts of the development plan, the emerging plan and the SPD require high quality development. It is clear that the design bar is set high and schemes should produce a high quality living environment.
22. This policy approach is most succinctly expressed in the Framework which notes that the achievement of high quality buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any supplementary planning documents¹¹.

⁷ An agreed list of relevant policies is at Planning Statement of Common Ground paragraph 5.8

⁸ A full list of SPD/SPGs is at Planning Statement of Common Ground. Paragraph 5.14

⁹ Section 6

¹⁰ Viability Statement of Common Ground

¹¹ Framework paragraphs 124 and 130

23. The appellant accepts that, bearing in mind the density of the development (to which I return below) and other matters, the test is whether the scheme is of exemplary or exceptional design. It is clear that this should include all elements of the scheme, not only the design of the buildings but also the spaces between them and the public realm.
24. To this background I would add the importance of the site given its visible location on the waterfront and when viewed from the surrounding area. The fact that the scheme is amongst the earliest which has come forward in this part of Pudding Mill adds to the importance of achieving high quality design.
25. There was little debate at the Inquiry as to whether the correct approach to is to seek an exemplary standard of design – rather the debate was whether this proposal meets that standard. That said, it would not be reasonable to expect that a proposal of this scale and complexity would be exemplary in all respects, and an overall judgement will need to be made. With that in mind I will now turn to the individual areas of dispute between the parties, before concluding on the overall design quality of the proposal.

The density of the proposal

26. Density is an important underlying consideration in this case, as it can inform assessment of the balance between optimising housing and providing high standards of accommodation.
27. In this light policy 3.4 of the London Plan seeks to optimise housing output for different types of location within the relevant density ranges. The density range shown in Table 3.2 for this type of location is between 200 and 700 habitable rooms per hectare (hrh).
28. The density of the appeal scheme is 1,143 hrh in comparison with the maximum density of 700 hrh. However it is clear from the supporting text in the London Plan, and was a matter of agreement between the parties at the Inquiry, that densities should not be applied mechanistically.
29. Whilst I entirely accept the need for flexibility it is of note that the proposal exceeds the maximum density by some 63%. The ranges set out in the London Plan have been clearly calculated taking account of a number of factors, such as public transport capacity and design/context implications. In this context optimising housing delivery does not necessarily justify such a significant exceedance. The breach of density policy forms an important backdrop to considering other more specific issues in this case.

The Local Centre

30. The Inquiry returned on numerous occasions to the question of whether the southwestern part of the appeal site was within the Local Centre as shown in the Local Plan and the SPD. This is in the light of the fact that the Local Plan identifies the Local Centre as a location where tall buildings should be located and the key to SPD Map 9 reference is made to the Local Centre having potential for some of the highest elements across the area. Particularly given the height of the B Blocks, well in excess of the 21 metre prevailing height as set out in the Local Plan, the question as to whether some of the site of the B Blocks is in the Local Centre is of some consequence.

31. The Local Plan refers to the new Local Centre as being “adjacent to Pudding Mill DLR station and Pudding Mill Lane”, and shows the area of the centre on a key diagram¹². It is entirely clear, and not contested, that this identified area does not include any part of the appeal site.
32. The SPD reprints the Local Plan policy and diagram¹³ and references the fact that the SPD must be in accordance with the development plan.
33. However the SPD, on a slightly less detailed map base¹⁴, also identifies the westernmost part of the appeal site as being within the proposed Local Centre. In the SPD the Local Centre appears to run almost down to the waterside (allowing for amenity space running along the river frontage) on the eastern side of Marshgate Lane, whereas the Local Plan shows it as being pulled further back. To the extent that one can reasonably place reliance on the SPD diagrams, the Local Centre as shown in the SPD encompasses the southwestern part of the appeal site.
34. The boundaries of the proposed local centre are not precisely defined in the Local Plan or in the SPD. The appellant’s position is that the western part of the appeal site lies within the Local Centre in the SPD, and this should prevail. The LLDC’s position is that the authority places greater reliance on the Local Plan.
35. Neither party was able to explain to my satisfaction why the Local Plan and the SPD differ as to the location of the Local Centre. The current Local Plan (2020), which is clearly up to date, shows the Local Centre in the same location as that shown in the previous Local Plan (2014). However during the emergence of the current Local Plan the SPD was published and showed it in a different location – a small change overall, but an important one in this case.
36. A telling point is the fact that the SPD does not explain its intention to clarify or amend the previous Local Centre area as shown in the 2014 Local Plan. I am left in the dark as to the reasons why the diagrammatic boundary was changed in the SPD, and whether it was a conscious decision on the part of the authority.
37. Given the difference between the documents confusion is inevitable. This was illustrated by the fact that one of the appellant’s witnesses stated that the SPD Local Centre allocation was indicative, whilst another stated that he had taken it at face value. In the absence of further evidence I prefer the extent as shown in the Local Plan given that it is clear that the SPD should be in accordance with the higher tier document and given that the current Local Plan is a more recent document.
38. It should be noted that even if the appeal site were considered to fall in small part within the Local Centre, this does not automatically mean that the height of the B Blocks is necessarily acceptable. Even if the SPD diagram were to be preferred, it appears that only a part of Block B1 would be within the Local Centre and it would not automatically mean that any particular height was acceptable.

¹² SA4.3

¹³ Page 16

¹⁴ Map 8

39. Overall, for the above reasons, I do not consider that the Local Centre argument supports the appeal proposal.

The transition and gateway argument

40. Stratford High Street is a busy area dominated by traffic and by tall existing and consented buildings. As referenced above, the intention of the SPD is that Pudding Mill should be a different environment which one would enter as one crossed Bow Back River. The objective of the SPD¹⁵ is to create a new mixed use neighbourhood at Pudding Mill, which would be distinct from the bustling area along Stratford High Street.
41. As mentioned above, there is a proposal in the Local Plan¹⁶ and the SPD¹⁷ that a new pedestrian, cycle and bus bridge would be constructed adjacent to the appeal site. This would link the Pudding Mill area, including the DLR station, to the area around Stratford High Street.
42. The appellant's position is that the scheme anticipates and is informed by the proposed new bridge. With that background the tallest building would be sited next to the proposed river crossing, and this would act as a focal point and transition from Stratford High Street. The new buildings would act as a gateway into the Pudding Mill area.
43. However I give this argument limited weight for three reasons.
44. Firstly, although there was some reference to the proposed buildings stepping down from Stratford High Street, I am not persuaded that this is an accurate reflection of the position. In general terms the proposed B Blocks would be the same height as the consented Porsche building on the High Street. The B Blocks would also be significantly higher than the existing buildings immediately opposite this part of the appeal site. For these reasons, even if one were persuaded that a gateway was necessary, the scale of the proposed B Blocks would be excessive in their local context.
45. Secondly, it is not clear to me that the entrance into the Pudding Mill area needs a gateway/landmark in order to identify the location. The Porsche building would do this more than adequately on one side of the river crossing and there seems little reason why the new river crossing has to be identified in this manner on both sides.
46. Finally there is the question of the likelihood of the new river crossing actually happening. This proposal has been in the previous Local Plan since 2014, is in the SPD and is in the current Local Plan. However, as explored at the Inquiry, there is no programme or funding for the scheme and it is not even certain who would undertake the work. It is not part of the appeal scheme. There was a reference to Transport for London, but it was confirmed that it is not in the programme for that body. Although I appreciate that it may come about in the future, to argue in favour of the scale of the B Blocks on the basis that the bridge may happen seems tenuous.
47. For all these reasons, I give this argument in favour of the proposal limited weight.

¹⁵ Page 4

¹⁶ Site allocation SA4.3

¹⁷ Section 4

The A Blocks

48. The proposed A Blocks are three linked buildings in the northern part of the site, intended to complete a courtyard with the consented Bullman development beyond. Each block would have a communal entrance from the street. They would form an urban perimeter block on the northern part of the site, and would range from 6-8 storeys in height, in part up to around 27m. This height compares with the prevailing 21m height for the area defined in the Local Plan and the SPD, although the blocks would not exceed the height of the tallest part of the Bullman scheme.
49. The guidance in the SPD seeks plots with multiple and amalgamated buildings, as is proposed here, but with dramatic steps in height between buildings. In this case there would be a long mass above the height intended for the area and limited variation in height. The variations in scale would be insufficient to significantly affect the impression of continuous building mass.
50. Although I accept the design reference to the Bullman development, this is not a complete picture as the consented Bullman scheme steps down from 8 storeys to 6 and 4 storeys towards the river. The proposed A blocks do not follow this approach and the proposal would not sit comfortably with the development which the A Blocks are intended to complete.
51. I appreciate that the scheme employs a range of design features and variations in materials in an attempt to achieve a finer grain and more human scale. This approach would add a limited degree of elevational interest. However it would fall far short of achieving a human scale for the buildings given their height and mass. The A Blocks would contribute to an over-dominant sense of enclosure at street level, contrary to the intentions of the SPD. From ground level, which is where most people would see the completed development, the presence of the mass above street level could not be ignored or overcome by architectural devices.
52. This part of the scheme would read (in the words of the architect) as “essentially that of a solid perimeter block with breaks at the upper two storeys to create a more varied roofscape”. It is this solidity which, combined with the height of the proposal, would fail to achieve exceptionally good design as required by Local Plan policy BN5.

The B Blocks

53. The B Blocks would be a cluster of three tall buildings extending up to 18 storeys in height. They would come to the ground independently but are linked by commercial floorspace at ground floor level. They would be significantly in excess of the 21m figure found in the Local Plan and the SPD, and Local Plan would therefore fall to be considered against, amongst other policies, Local Plan policy BN5.
54. Leaving aside the policy requirement for exceptionally good design for the moment, there is a separate element of guidance in the SPD which took up some Inquiry time. The SPD provides that the built form of new development should reflect the intended fine grain of the area, and states that “large podium developments do not lend themselves to this fine grained approach”. There was a difference as to whether the proposal could be described in this way.

55. I appreciate the appellant's point that the infill building would be set back from the frontages, and that the towers would be separated by significant gaps. That said, the proposal is clearly of substantial scale and would appear as a podium development. I also note the description of the proposal by the scheme architect as a "...podium and three-point tower typology". It would therefore not accord with the SPD in this respect.
56. The wider surrounding area is mixed in terms of heights. The appellant emphasised the presence of some buildings significantly taller than their surroundings and the approval of others of substantial height. However there are also a number of significantly lower buildings, such as Otter Close and part of the consented Bullman development.
57. The scale of the B Blocks would introduce a wholly metropolitan character into an area where the SPD and the Local Plan envisage substantially lower heights. The location of the B Blocks close to the river is especially important, and the SPD advises that development should align and engage with the setting and not dominate the waterscape. The height of the B Blocks would fail to achieve that objective.
58. I appreciate that, as with the A Blocks, the design and materials have been carefully considered in an attempt to mitigate the scale of the development. I have no criticism of the detailing of the proposal, but it is wholly unrealistic to expect the design, especially at ground and first floor levels, to distract attention to any substantial degree from the overall height of the buildings. The scale of the blocks and the podium which links them would be at odds with the fine grained approach sought in policy and guidance. The proposal would not respect the emerging local context as sought by the Local Plan and the SPD, and would appear as a visually intrusive and oppressive development.
59. The harmful effect of the B Blocks due to their height is accentuated by the fact that the proposal is not for a single building but a group of very tall buildings. The SPD states that such groups will need to demonstrate an appropriate relationship with each other and the wider surrounding area. The proposal fails to achieve this objective.
60. The appellant has suggested that there are four reasons, aside from the inherent quality of the design, which justify a group of tall buildings. It is useful to summarise and comment on each:
- The shape of the site and the relationship with the river. I wholly accept that the development needs to relate sympathetically to the river, but do not see how this would be achieved by three blocks of the height proposed.
 - The relationship with the local centre. This argument has been explored above, and I have concluded that the appeal site does not include part of the designated Local Centre and that, even if it did, this would only support the height of a small element of the B Blocks.
 - The planned extension of Marshgate Lane to the proposed new bridge, and the function of taller buildings as reference points. As discussed above, the construction of the new bridge is uncertain, and I am not persuaded that the 'gateway' argument adds significantly to the factors supporting the proposal.

- The need to respond to Stratford High Street, as advised in the SPD. I agree that the proximity of Stratford High Street can be one factor influencing the development. However this does not mean taking the approximate height of the tallest buildings along the High Street and reflecting that in three towers in what is clearly a distinct area.

61. Overall, the B Blocks do not comprise exceptionally good design such that they can be considered acceptable in the light of Local Plan policy BN5.

Public realm

62. The SPD encourages a network of public open spaces, well integrated with the waterways, and bounded by buildings of an appropriate scale¹⁸. (It also discourages excessive shading – a matter to which I will return in a separate section below.) The SPD¹⁹ also shows preferred locations for green open space and children’s play areas – two of which are on the appeal site - and public space wrapping round the river’s edge. Overall, the SPD seeks multiple, small scale provision including opportunities for children’s play and pocket parks.
63. These principles in the SPD were expressed in the original Design and Access Statement (DAS), produced before the scheme was amended in various ways. The main relevant subsequent amendment to the proposal in terms of the public realm was the introduction of a podium linking the three B Blocks. Although the DAS refers to the proposal which is no longer before me, it is informative to summarise the approach taken by the original DAS, as it highlights some of my concerns about the amended proposal.
64. One of the Masterplan Principles in the DAS was the importance of connections through the site, including the new ‘Forum Space’ which was at that stage intended to be created between the B Blocks. The Forum Space was identified as one of the Masterplan Character Areas and was shown as a wide area linking the ‘Residential Street’, the ‘Winding Towpath’ and the ‘Gateway Square’. In combination, these spaces showed a high degree of permeability and the opportunity for the creation of substantial areas of public realm. It is clear to me that a series of potentially useful public spaces could have been created.
65. The amended plans submitted as the design evolved removed the public Forum Space at ground level and formed a raised podium to provide private amenity space for residents. This very significantly reduced the physical permeability of the development by removing routes between the B Blocks, and removed the potential for ground level views through this part of the scheme. This is contrary to the approach of the SPD and the stated intention of the original DAS. The concept of a series of connected public spaces and improved connectivity around and between the B Blocks is no longer realised in an effective manner.
66. It is clear that, from the earlier iterations of the scheme, the public realm has been progressively reduced in extent. I can appreciate why this has occurred, but any benefit which the changes have introduced for residents have been at the expense of the public realm. I should make it clear that I have little if any criticism of the landscape design as such, as it arguably makes the best use of the available space – the concern is the extent and location of the spaces and the consequences of the scale of the surrounding buildings for the public realm.

¹⁸ SPD pages 4, 34, 35, 36, 46

¹⁹ Map 10

67. The appellant's position is that the proposal is in keeping with the approach to the provision of multiple small spaces. However the spaces are, in the main, compromised and of variable benefit. I will deal with the appellant's individual Character Areas (omitting the original Forum Square) in terms of their contribution to the public realm:

- The Gateway Square has been expressly designed with the possible new bridge in mind, and includes a raised table in the 6m wide road. Set behind that is a relatively small area between two of the B Blocks, intended for temporary seating and outdoor café opportunities, along with street vendor pop-ups. It would also be used as a pull in and turning area for refuse vehicles – although this would obviously be an intermittent activity. Overall, it would read as a space between tall buildings rather than as a consciously designed part of the public realm, and its use would be limited by the range of functions it is envisaged as fulfilling. The cramped nature of the space is well illustrated by Fig 2.3 of the Landscape Design and Access Statement.
- The Residential Street is stated to be designed as a space in its own right as well as a key link between Marshgate Lane and the river. As such it has to accommodate access to the front doors and cores, disabled and car club parking, drop off bays and turning areas. However well designed it would read as a street with planting, enclosed by tall buildings and with a shallow setback in front of the podium area. It would make a limited contribution to the public realm.
- The Winding Towpath is one of the potentially more successful areas of public realm, in that the disbenefit of the lack of permeability between the B Blocks is partly offset by the wider views across the river. Unlike the Residential Street, it would not be dominated by very tall buildings on both sides. It is certainly the case that the public space would be more limited than in earlier iterations of the scheme, but the planting and seating area between two of the B Blocks does have the potential to appear as a space which would benefit the public realm – although the remaining area of the towpath would have a function as a through route but less utility as a sitting area.
- The Courtyard Mews would be entirely bounded on all sides by the appeal scheme and the consented Bullman development. Although there would be two entrances off the residential street, this completely contained area would have little impact on the public realm.
- The Podium would provide private amenity space for residents and, aside from whatever tree planting would be visible above and between the facades, it would have limited impact on the public realm.
- The Roof Garden would have no consequences for the appreciation of the public realm.

68. The overall experience of the public realm would obviously be from ground level. Most of illustrations and sections focus at street level, with perhaps 2 or 3 storeys showing above – but the real experience would be very different. The effect of the mass of both the A and B Blocks would be oppressive and canyon like. I accept that a high density urban development, aimed at maximising development potential, will often exhibit some compromises in

terms of the public realm. However this proposal provides spaces which would be largely contained by the tall frontages of the blocks enclosing them and would, to a great extent, read largely as movement routes. For all these reasons the proposed public realm would not achieve the standard of design sought by policy and guidance.

Overall design/townscape conclusion

69. There is no harm in seeking to maximise development potential in principle. Indeed there may be many resulting benefits such as, in this case, the ability to increase general needs and affordable housing delivery.
70. However the proposed density of the scheme is very considerably over the density parameters set in the development plan. Although this is not an inflexible maximum, the amount by which policy is exceeded is an important consideration.
71. In a similar vein, the height of the development is significantly above the prevailing 21m height for the area defined in the Local Plan and the SPD. Although there are some tall buildings in the area there are many lower both within Pudding Mill and the surrounding area.
72. Taken together, the density and height of the development is contrary to policy and guidance, and I have therefore given careful consideration to the various matters put forward by the appellant in support of the proposal.
73. The question as to whether a small part of the site is within the Local Centre (where tall buildings may be allowed) is a difficult issue. On balance, as discussed above, I have concluded that the site falls outside the Local Centre. In any event, even if it were concluded that the defined area is as shown in the SPD, it would only lend support to a small part of the proposal. I give limited weight to the 'transition and gateway' argument for reasons related to the context of the development and the partial reliance on a new river crossing, the delivery of which is uncertain.
74. Set against this background I have explained my view on the solidity and height of the A blocks and the height of the B Blocks. Both parts of the development, and the scheme as a whole would fail to achieve exceptionally good design as required by the development plan.
75. In addition to the above matters I have considered the role and views of independent design review. The approach towards independent design review is widely adopted for major proposals and, in this case, the Council has set up a Quality Review Panel (QRP). The approach is referenced in Local Plan policy BN.5, dealing with proposals for tall buildings, which provides that the required exceptionally good design should be demonstrated by independent design review.
76. The QRP has considered the appeal scheme on two occasions in early 2020²⁰. In summary, the final position of the QRP was that the revised scheme did not satisfactorily address earlier serious reservations. I agree with the appellant's view that the criteria for considering proposals is set out in policy, and that the views of the QRP are not an automatic barrier to a scheme. I also appreciate the independent review undertaken by one of the appellant's witnesses.

²⁰ CD 2.3.1 and 2.3.3

However the views of the QRP (which is a body familiar to the scheme architect who has brought forward successful schemes elsewhere in the LLDC area) are nevertheless significant material considerations.

77. Turning back to the policy matrix, Local Plan policy BN.5 is perhaps the key policy, in that it deals specifically with tall buildings, gives locational guidance and requires tall buildings to exhibit exceptionally good design, judged against the criteria set out in the policy. I have concluded that the proposal fails to provide appropriate form, massing, height and scale in context with the character of its surroundings, or provide a positive contribution to the public realm at ground level or townscape in general. The proposed group of tall buildings fails to demonstrate an appropriate relationship with each other and to the wider surrounding area. The proposal therefore conflicts with policy BN.5²¹.
78. Similarly I find that the proposal conflicts with the adopted London Plan²² and the draft London Plan²³. I appreciate the policy approach is to optimise site capacity, but this is predicated on the need to achieve design quality.
79. Finally the proposal does not comply with the vision and design guidance in the Pudding Mill SPD, particularly in relation to height and the grain of the area. This is an important material consideration.
80. I do not consider that optimising housing delivery justifies the policy and design harms set out above. I conclude that the proposed development would not comprise high quality design, let alone exemplary or exceptional design, that would enhance the character and appearance of the surrounding area.

The living conditions of future residents in relation to sunlight

81. The position of the LLDC is that what is considered to be the excessive density and massing of the proposal has given rise to a number of specific problems. One of these is the issue of sunlight to some of the flats in the A and B Blocks.
82. The policy context for this is Local Plan policy BN4. Amongst other matters this provides that all residential development should achieve the highest possible standards in design. One of the ways in which this should be done relates to a demonstration that schemes will receive acceptable levels of daylight and sunlight (and that existing surrounding development will not experience an unacceptable loss of sunlight and daylight). Specific reference is made to "Site Layout Planning for Daylight and Sunlight (Building Research Establishment, 2011)" (BRE Guidance).
83. The BRE Guidance has been used by both parties in order to assess the proposal, and there is agreement that the BRE Guidance should be applied flexibly. I agree with that joint position, and this is especially relevant in high density areas. Sunlight is heavily influenced by orientation - the Annual Probable Sunlight Hours should be at least 25% of the total available (for those windows within 90 degrees of due south).
84. The parties do not differ as to the relevance of the policy or the BRE Guidance. Nor is there any dispute as to the acceptability of the proposal in terms of

²¹ And Local Plan policies BN.1 and BN.4

²² Policies 3.5; 7.4; 7.5; 7.7

²³ Policies D3; D4; D6 and D8

daylight²⁴. The issue is the percentages of receptors meeting minimum recommendations for sunlight availability.

85. The parties' experts differed slightly as to the method of assessment but the appellant's assessment is that 153 of the 344 living/kitchen/dining rooms receive adequate sunlight – 44.5% of the scheme²⁵. The technical note produced by the appellant²⁶ shows sunlight availability as:
- Living rooms (A Block 79% fail; B Blocks 46% fail).
 - All rooms within windows within 90 degrees of due south (A Blocks 88% fail; B Blocks 71% fail).
 - All rooms (A Blocks 88% fail; B Blocks 71% fail).
86. The reason for these figures is the height and positioning of the B blocks and their effect on natural lighting together with the orientation of some units. From the extensive urban design evidence given by the appellant I understand the reasoning behind the layout and orientation – in particular the desire to maximise views and outlook. However in my view there is a clear issue with the consequential effect on sunlight. An additional part of the background to this issue is the provision of balconies. On the one hand these are a potentially useful amenity for the residents of a particular flat but, on the other hand, they will often restrict sunlight to the neighbouring flat below.
87. The parties agree that there is no hard and fast rule about the number of flats in a dense urban development which might fall below the BRE Guidance in an otherwise successful scheme. It was also accepted that the exercise of professional judgement is necessary. In my opinion the various factors mentioned above has led to unacceptably low levels of sunlight to a very significant proportion of the dwellings in the scheme.
88. In coming to that view I have carefully considered the appellant's position that the internal sunlight available to future occupiers compares favourably with other similar schemes approved by the LLDC, including the existing consented scheme for the appeal site. However conversely the authority referred to other developments where what was described as "medium-high residential densities" were achieved whilst obtaining sunlight levels closer to BRE Guidance. Although the existence of other schemes with similar or better levels of natural sunlight is a consideration, my main focus must be the acceptability of the proposal before me. In this case I find that the extent of the shortfall below what I fully appreciate is only guidance is such that I conclude that the proposal would not provide acceptable living conditions for future residents in relation to sunlight. It would therefore conflict with Local Plan policy BN4.6.
89. Whilst addressing the question of natural light, I am aware that some local residents have raised the question of the effect on light at River Heights, Otter Close and Blaker Road amongst others. However, whilst it is self-evident that the proposal would have an effect on the view from a number of those properties, there is no technical evidence to counter the appellant's evidence

²⁴ Sunlight and Daylight Statement of Common Ground

²⁵ Proof of evidence of R Staig

²⁶ CD.11

that daylight/sunlight and overshadowing meets the recommendations of the BRE Guidance.

Public amenity space for future residents in relation to sunlight.

90. As the scheme evolved through the application and appeal stages, amendments were made in order that a policy compliant amount of playspace and private amenity space would be achieved. This was particularly addressed by the introduction of the raised communal open space on the podium between the B Blocks.
91. Leaving aside private gardens and balconies, there would be a shared multi-use amenity space in the ground floor courtyard at the A Blocks. This courtyard would be an enclosed area between the A Blocks and the consented Bullman scheme to the north. To this would be added multi-use space on the roof of the A Blocks. In the case of the B Blocks, there would be the podium area and further space at the roof level of Block B3.
92. The quantum of communal and play space is agreed between the parties. The issue is the usability/desirability of some elements of the space in relation to the adequacy of sunlight provision. This concern is again set against the provisions of Local Plan policy BN.4, seeking the highest possible standards in design, including the provision of acceptable levels of sunlight.
93. The SPD encourages the use of a range of areas, including rooftops, as alternatives to ground floor outdoor provision, subject to a number of considerations. With that in mind, the benefit of some of the rooftops as amenity space is common ground.
94. The BRE Guidance is accepted as the source of the relevant advice. This provides that sunlight to open space will be adequate if at least 50% of the area receives at least two hours of sunlight on 21 March. I have used this guidance in considering the disputed areas – the A Blocks' courtyard and the B Block's podium area.
95. The courtyard to be formed by the A Blocks and the potential Bullman development would be enclosed on all sides by buildings – and most importantly by the range of the A Blocks running to the south of the courtyard. This multi-function amenity space would be overshadowed to a considerable extent, such that only 36% would receive the recommended sunlight levels on 21 March. The podium area would achieve the recommended sunlight level in March over only 43% of its area.
96. Especially in the case of the courtyard area, these are significant shortfalls below the recommended levels which would, in my view, substantially reduce the amenity value of the areas.
97. As noted above, the BRE Guidance advises consideration of the position as at 21 March. The appellant has emphasised the obviously much better availability of sunlight at 21 June. This should not be ignored and it was stated that the LLDC has considered this as a 'balancing factor' in other cases. However it is not the primary approach of the BRE Guidance and there is a clear logic to the Council's position which is that, if this were considered, it would also be reasonable to consider the worse position on 21 December. This is an exercise which has not been undertaken.

98. However residents of the A blocks and part of the B blocks would also have access to rooftop amenity space – an approach commended by the SPD. This would provide sunlit space for those residents when the ground/podium spaces are shadowed, especially outside the summer months. I appreciate the concern of the authority that these areas would have to accommodate a range of different activities, but with careful design there is no reason why this could not be accommodated.
99. I appreciate that the residents of Blocks B1 and B2, without roof access, would need to rely on the podium space. However although this area falls short of the Guidance in relation to March, the shortfall is limited and the area would be adequately sunlit in the summer months.
100. Overall, I consider that the creation of a high density urban environment may lead to some compromises in relation to outdoor space. In this case, although the scale of the proposal has led to shortcomings in terms of sunlight availability, the provision of alternatives in many cases and the limited extent of the shortfall in other areas results in the provision of acceptable amenity space for future residents in relation to sunlight, in line with Local Plan policy BN.4.

Affordable housing provision

101. National policy provides that, within the context of significantly boosting the supply of homes, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing). This is translated at the London wide level into London Plan policies 3.8 and 3.9 which provide that a range of needs should be identified and that development should offer a range of choice in terms of mix and types, providing mixed and balanced communities by tenure. More specifically, London Plan policies 3.11 and 3.12 deal with tenure mix, with the maximum amount of affordable housing being provided having regard to affordable housing targets.
102. The Local Plan, at policy H1, also seeks to diversify the housing mix to meet identified requirements – including a mix of units and tenure types. Policy SP.2 states that housing provision will be maximised through a minimum 35% affordable housing across the area. The Mayor's threshold levels of 35% and 50% will be applied on a habitable room basis, with affordable housing, based on SP.2 thresholds, broken down as 60% low cost rented and 40% intermediate (Policy H.2).
103. The draft London Plan continues the emphasis on delivering affordable housing and sets out a strategic targets and tenure goals.
104. The source of the disagreement between the parties relates to the viability of the proposal, or more specifically to the construction and the resulting Residual Land Values in comparison with the agreed Benchmark Land Value. As set out in the Viability SOCG this disagreement leads to a significant difference between the parties of a deficit of £489,737 as opposed to a surplus of £6,378,369. The Council's position, showing an appreciable surplus, is that there is the potential for a greater quantum of affordable housing, and a more policy compliant tenure and size mix.

105. The initial point is that the proposal is policy compliant in terms of the quantum, as it provides more than is required by policy. The appellant's position is that this reasonably fulfils the scheme's potential and accords with development plan expectations.
106. However the scheme does not provide a policy compliant mix of tenures against Local Plan policy SP2, a deviation from policy which the appellant describes as only "fractionally short". I would not describe it in this manner as it is clear that there is a need for 1 bed units in the affordable/social rented sector and, although smaller units are included in the scheme, there are none proposed in this sector.
107. However it is clear that negotiations on sites should take account of their individual circumstances including viability. Although the appellant's construction cost position was largely based on an appendix to their evidence, the author of which could not be the subject of cross-examination, it is nevertheless evidence of a directly comparable development. No reason was given why the appellant's build costs should not be accepted, as the proposal is not a speculative scheme but is based on returns as shown in the appendix.
108. Phase 1 of the development is well advanced on site and the appellant's own experience of build costs carries significant weight. There was a considerable amount of evidence and discussion at the Inquiry as to the merits of various comparables, but I prefer the more specific evidence of the first phase of the appeal scheme.
109. I have also considered the appellant's argument that the Council, in requiring high design and materials in line with the development plan, has increased the construction costs. This would presumably have been reflected in the appellant's costs based on Phase 1.
110. I am also mindful that at this stage in the development process the level of uncertainty is inevitably increased and this needs to be reflected in build costs.
111. I am aware that the completed planning obligation provides for Early and Late Stage Viability Reviews. These would enable the LLDC to test that affordable housing provision has been optimised as the development progressed.
112. Overall the proposal is policy compliant with regards to the overall quantum of affordable housing, and there is no policy support for a higher figure. In terms of the range of different tenure types it is clear that the proposal does not accord with development plan policy but, based on the viability evidence. I consider that overall the proposal would deliver the maximum reasonable amount of and a satisfactory affordable housing tenure, in relation to development plan policy.

Other matters and the planning balance

113. The LLDC raised the question of outlook and privacy between Blocks B1 and B2 although this did not form part of a reason for refusal. Although there are a number of single aspect rooms with comparatively limited facing distances, I do not consider that the living conditions of residents would be unacceptable for that reason. Reference was made in this context to Local Plan policy BN.4, but this relates to the effect of new proposals on existing development, rather than any issues within a new scheme.

114. Various appeal decisions were put before me²⁷, made both by the Secretary of State and Inspectors. Some reference to these was made at the Inquiry. I have carefully read these but the judgement in the current case (and in those decisions) focusses on the design of the scheme in its particular context. With that background, although these decisions illustrate certain basic principles (which are largely not contested in the current appeal) they add little to my considerations. To this is added the fundamental principle that each application and appeal must be decided on its own merits.
115. The completed s106 Obligation covers a range of matters, most particularly affordable housing provision including viability review mechanisms. The main other matters ensure that provision is made to ensure the provision of the area necessary for a future bridge link for a period of 15 years. A delivery plan for the public realm area is to be approved and future access provided. Various measures are incorporated in relation to sustainable transport, including those related to on-street parking permits, electric charging points, blue badge parking, a car club, a Travel Plan, and a Construction Transport Management contribution.
116. The justification for these contributions and their policy base was clearly set out in the CIL Compliance Statement submitted by the LLDC. It is clear that all the provisions are directly related to the proposed scheme and are necessary to make the development acceptable in planning terms. Therefore I consider that the Obligation meets the policy in paragraph 56 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore taken it into account. A number of the provisions represent mitigation for the development, but others are positive benefits arising from the proposal, most notably the provision of affordable housing, and I give these substantial weight.
117. There are a number of benefits arising from the appeal scheme, the most important of which are the provision of a mixed use development, with an emphasis on housing provision – especially affordable housing. The parties give this matter significant weight, although the LLDC’s position is that affordable housing should be accorded only moderate weight for reasons related to size and tenure. For the reasons set out above I do not agree with this latter position and give the provision of general needs and affordable housing significant weight.
118. It is clear that the development plan is committed to making the best and most efficient use of land to deliver new homes. There is no doubt that the appeal site is suitable and available for the delivery of a substantial quantity of residential development, including affordable homes, as part of a mixed use development – as has already been approved in the consented scheme. However this is caveated by the need for high quality design as set out in a wide range of development plan policies and guidance. The importance of these policies and the approach to the quality of design was agreed by the parties.
119. For the reasons set out above the proposal fails to comply with a range of development plan policies related to density, design, and living conditions. The policies supporting housing delivery are certainly an important consideration, but they do not outweigh the conflict with a number of other

²⁷ Largely in CD 6.1

policies. (The achievement of adequate sunlight to amenity spaces is neutral in the balance.)

120. The proposal conflicts with the development plan as a whole, and there is no suggestion that the policies which are most important for determining the appeal are out of date. On that basis the proposal does not benefit from the presumption in favour of sustainable development, a key aspect of which is the achievement of good design. In line with national policy, where a proposal conflicts with an up-to-date Local Plan, permission should not usually be granted. In addition, there are two important material considerations – the Framework and the SPD - which add to issues weighing against the proposal.
121. The appellant suggested that even if it was concluded that there was a conflict with design policies the proposal could nonetheless comply with the development plan as a whole. Given the central importance of design policies and other matters arising from the amount of development proposed, I do not agree that this is the case in this instance.
122. Overall the proposal fails to accord with the development plan taken as a whole, and there are no material considerations of sufficient weight to outweigh this conflict.

Conclusion

123. For the reasons given above I conclude that the appeal should be dismissed.

P. J. G. Ware

Inspector

APPEARANCES

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INTERESTED PERSON:	
Mr L O'Donohue	Resident, River Heights

INQUIRY DOCUMENTS

CD 11.1	Email from Counsel for the appellant to Planning Inspectorate dated 31 July 2020
CD 11.2	Appellant's Opening Statement
CD 11.3	Corporation's Opening Statement
CD 11.4	Mr O'Donohue's submission regarding daylight/sunlight
CD 11.5	Mr Staig's further note in on daylight/sunlight
CD 11.6	Mr Antonutto's percentage summary technical note
CD 11.7	LLDC's Closing Submissions

²⁸ Assisting with discussion on s106 Obligation

²⁹ Assisting with discussion on conditions and s106 Obligation

CD 11.8	Appellant's Closing Submissions
CD 11.9	Response from Mr O'Donoghue on daylight/sunlight
CD 11.10	Response from Mr Fernandez on daylight/sunlight
CD 11.11	Updated note (to CD 11.5) from Mr Staig
CD 11.12	Completed s106 Planning Obligation
CD 11.13	Final draft conditions
CD 11.14	Appellant's agreement to pre commencement conditions