

<b>Item No.</b> 5.1	<b>Classification:</b> Open	<b>Date:</b> 1 November 2011	<b>Meeting Name:</b> Planning Committee
<b>Report title:</b>	<b>Development Management planning application:</b> Application 09-AP-1940 for: Full Planning Permission  <b>Address:</b> 89-93 NEWINGTON CAUSEWAY, LONDON, SE1 6BN  <b>Proposal:</b> Demolition of existing building and erection of a 22 storey mixed use building (max. building height 69.82m AOD) incorporating a 65sq.m cafe/kiosk (Use Class A3) over ground and mezzanine floors, 366sq.m of commercial floorspace (Use Class B1) from ground to second floor level, with 38 residential units above (10x 1 bed, 24x 2 bed and 4x 3 bed), 50 cycle spaces over ground/ mezzanine floors with 6 visitor cycle spaces external to the building, in addition to a basement area containing plant and an energy centre, and two wind turbines sited at rooftop level.		
<b>Ward(s) or groups affected:</b>	Chaucer		
<b>From:</b>	HEAD OF DEVELOPMENT MANAGEMENT		
<b>Application Start Date</b> 10/09/2009		<b>Application Expiry Date</b> 10/12/2009	

## RECOMMENDATION

- 1 Grant Planning Permission subject to the conditions set out in the report and the applicant first entering into an appropriate legal agreement on or before the 30 November 2011, and subject to the referral to the Greater London Authority.
- 2 In the event that the legal agreement is not entered into by 30 November 2011, the Head of Development Management be authorised to refuse planning permission for the reasons set out in paragraph 193 below.

## RECENT EVENTS

- 3 Members will recall considering this application at the Planning Committee meeting at the beginning of June when they resolved to grant planning permission subject to a legal agreement and the Mayor's direction. The legal agreement is almost completed and the Mayor previously confirmed that the Council can determine the application, although following this reconsideration the application will have to be referred to him again
- 4 In July, pending the Mayor's stage 2 report, the Ministry of Sound, a nearby neighbour who had objected to the proposal, submitted a request for re-determination of the planning application relating to concerns regarding noise surveys that had been undertaken. In particular the Ministry of Sound contended that noise surveys undertaken in January and April 2011 were unreliable. The Ministry of Sound carried out a further survey over the period 10-12 June (the weekend following the committee meeting) which they suggest "provided unequivocal evidence that noise levels have not changed within the club since 2009" (when an earlier survey by the applicant at Eileen House was carried out). They therefore suggested that this new survey of June 2011 was a new material planning consideration in respect of this application

which the Council was required to take into account before determining the application for planning permission. Ministry of Sound also suggested that a further agreed noise survey should be undertaken.

- 5 A further survey was undertaken on the night of 23/24 July 2011 with representatives of the Ministry of Sound present. The details of this are referred to below.

In the light of the new noise surveys, Officers consider that it is appropriate for the application to be re-determined as a whole.

Further, since the Committee's last decision the draft National Planning Policy Framework has been published and the London Plan 2008 has been replaced with the London Plan 2011.

The application was scheduled to be considered at the meeting on 11 October 2011. The applicant sought a deferral in order to consider a late change to recommended condition 10 in respect of the glazing specification. The item was deferred. The issue of the condition is dealt with in para 163 of this report.

## **BACKGROUND INFORMATION**

### **Site location and description**

- 6 The 0.026ha triangular application site is located on the east side of Newington Causeway, between the Elephant and Castle northern roundabout and the Newington Causeway railway viaduct. It is located within the Elephant and Castle Opportunity Area (as designated within the London Plan and Southwark Plan). The site is currently occupied by a 4 storey building, originally built for banking purposes, though more recently converted to a residential use. It dates to the early twentieth century, is not listed, nor is it of significant value given it does not form part of a historical grouping of buildings. The site is not located within a Conservation Area, though it is close to the Trinity Church Conservation Area to the northeast. It is not adjacent any listed buildings. Whilst not within any Strategic Viewing Corridors, the site is located in the background of the Townscape View of Westminster from the Serpentine Bridge.
- 7 The site fronts onto the A3 Newington Causeway, a Transport for London Road Network (TLRN), which leads into the northern (Elephant and Castle) roundabout. The site is contained within the Congestion Charging Zone, and is highly accessible with a public transport accessibility level (PTAL) of 6b. The site is within 200m walking distance of the Elephant and Castle Underground station providing access to the Bakerloo and Northern lines, as well as access to overland rail services. The Borough underground station is also within 600m north of the site. A number of bus routes serve the site and the local vicinity, with a bus stop located directly outside the site on Newington Causeway.
- 8 The townscape character and local context is extremely mixed, with a general increase in scale and density as one approaches the Elephant and Castle. Significant within this context is the raised mainline railway (Thames Link) viaduct which runs alongside the site's northern and eastern boundaries. The immediate context is one of medium to high rise development to the south and west of the railway viaduct. There is however a significant change in character and context beyond the railway viaduct to the north and east, which has a much lower scale and density. This contextual contrast presents challenges for the proposal as it stands isolated against the railway viaduct, adjacent to the much lower Rockingham Estate beyond the viaduct to the eastern side.
- 9 Immediately to the north a tiny but vacant triangular plot lies between the site and the

railway viaduct, with a taxi supplies store sited within an arch at this point which links through to the northern side of the viaduct. The site is bordered to the west by Newington Causeway, beyond which are a mixture of un-modernised commercial buildings, including the existing Eileen House building, which is also being considered for redevelopment to a 41 storey mixed use tower, and the Ministry of Sound Nightclub. Immediately south the site shares a party wall with a 2 storey commercial development, currently occupied by the Salvation Army, which rises to 11/12 storeys. Further south is Metro Central Heights and the recently completed Metro Central Vantage residential developments of up to 18/19 storeys at the uppermost point.

### **Details of proposal**

- 10 Full planning permission is sought to demolish the existing building for the redevelopment of the site for a mixed use though predominantly residential scheme. The proposal would create 65sq.m of A3 retail space in the form of a café over the ground and mezzanine (first) floors, with 366sq.m B1 office space located over the ground, second and third floors. The residential component comprises 38 residential units, 10 one-bed, 24 two-bed and 4 three-bed units. Of these, 11 will be intermediate rental affordable units. All units are designed to Lifetime Homes standards, with 8 two-bed wheelchair accessible/adaptable units provided.
- 11 Whilst proposed as a single tower of 22 storeys (incorporating a mezzanine at first floor level), the design of the tower is such that the building reads as 3 elements (or vertical columns) of varying heights, having the effect of changing the look of the top of the building depending upon the viewpoint. This has allowed the building to step down towards Newington Causeway and to the south, thereby relating better to the immediate context and building heights to the south. The south column is the lowest, which rises to 16 storeys (52.48m AOD) the next steps up along the Newington Causeway frontage to 19 storeys (61.15m AOD) with the tallest column reaching 22 storeys (69.82m) where it follows the railway viaduct along the eastern boundary. The two lower columns are topped by terraces for resident amenity space with the rooftop holding the 2 proposed wind turbines and a green roof. All units include a private balcony. In terms of the cladding the building features a light pre-cast concrete frame with textured concrete infill panels of varying hue, combined with metallic finishes to windows/shopfronts and balconies, and elements of coloured/ opaque glass
- 12 Due to the limited size of the site, the building will over-sail the pavement (which is very wide in this location) from the double height ground/mezzanine floor upwards which would require a license for overhanging the highway under S177 of the Highways Act. Similarly, the limitations of a small site combined with a location adjacent to a major road has resulted in an entirely car free scheme including no provision for disabled parking. A basement includes space for ESCO facilities and ancillary servicing requirements. Cycle parking is located at ground and first (mezzanine) floors totalling 46 residential spaces and 4 commercial spaces with a further 6 spaces located outside the café for visitors.

### **Planning history**

- 13 There is no relevant formal planning history for the site. The site was bought by the current owner in March 2006 who advises that at the point of sale the property appeared to have been unlawfully occupied for some time as a dwelling or dwellings, though the use was never regularised and the site is now vacant. Therefore, historically the site had a lawful A2 (Bank) use. The existing floorspace is 490sq.m over 4 floors (or 122.5sq.m per floor) with upper floors as ancillary B1 office space (367.5sq.m).
- 14 **Planning History of Adjoining Sites**

On the 11 October 2011, the Planning Committee resolved to refuse planning permission (subject to referral to the Mayor) for the redevelopment of Eileen House, on the opposite side of Newington Causeway, for a 41 storey building providing commercial and residential space.

## **KEY ISSUES FOR CONSIDERATION**

### **Main issues**

- 14 The main issues in this case are:
- Principle of the Proposed Use;
  - Density, Mix and Tenure;
  - Design (including Height and Quality of Accommodation)
  - Impact on Strategic and Local Views and on the Character and Setting of a Listed Building or Conservation Area;
  - Impact on the Amenities of Neighbouring Residents and Future Occupiers;
  - Impact upon the Ministry of Sound;
  - Transport Issues;
  - Flood Risk Assessment;
  - Planning Obligations; and
  - Sustainability.

### **Environmental impact assessment**

- 15 An Environmental Statement is not required with this application as the development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999.
- 16 A Screening Opinion was not requested prior to the submission of the application as the site falls well below the 0.5ha threshold (being 0.026ha) for classification as a Schedule 2 'Urban Development Project'. Even if the proposed development was of a size to be considered as an 'Urban Development Project', the development is highly unlikely to have a significant effect upon the environment by virtue of its nature, size, and location based upon a review of the selection criteria set out in Schedule 3 of the Regulations which are used to screen Schedule 2 Development. Furthermore, the site is outside a designated 'sensitive area' as per Regulation 2(1). On this basis it is considered an Environmental Impact Assessment is not required.

### **Planning policy**

- 17 The Southwark Plan (UDP) July 2007: The site is designated under The Southwark Plan as being located within a Major Town Centre within the Central Activities Zone (CAZ), the Elephant and Castle Opportunity Area, an Air Quality Management Zone, and an Archaeological Priority Zone. The site is also within a Transport Development Area. It is within proposals site 39P- the Elephant and Castle Opportunity Area, but is not located within the area covered by the Elephant and Castle SPG; and as such lies outside the Core and Secondary tall building clusters designated within this plan. It is, however, identified within the 'Enterprise Quarter' SPD as site 7c 'Newington Causeway', an 'other opportunity site'. Key Policies:
- Policy 1.1: Access to Employment Opportunities  
Policy 1.4: Employment Sites  
Policy 1.7: Development within Town and Local Centres  
Policy 1.8: Location of Developments for Retail and other Town Centre Uses  
Policy 2.2: Provision of new Community Facilities  
Policy 2.5: Planning Obligations  
Policy 3.1: Environmental Effects

- Policy 3.2: Protection of Amenity
- Policy 3.3: Sustainability Assessment
- Policy 3.4: Energy Efficiency
- Policy 3.6: Air Quality
- Policy 3.7: Waste Reduction
- Policy 3.9: Water
- Policy 3.11: Efficient use of Land
- Policy 3.12: Quality in Design
- Policy 3.13: Urban Design
- Policy 3.14: Designing out Crime
- Policy 3.15: Conservation of the Historic Environment
- Policy 3.18: Setting of listed buildings, conservation areas and world heritage sites
- Policy 3.19: Archaeology
- Policy 3.28: Biodiversity
- Policy 3.31: Flood Defences
- Policy 4.2: Quality of Residential Development
- Policy 4.3: Mix of Dwellings
- Policy 4.4: Affordable Housing
- Policy 4.5: Wheelchair Affordable Housing
- Policy 5.1: Locating Developments
- Policy 5.2: Transport Impacts
- Policy 5.3: Walking and Cycling
- Policy 5.4: Public transport improvements
- Policy 5.6: Car Parking
- Policy 5.7: Parking Standards for Disabled People and the mobility impaired

18 Southwark Core Strategy (2011)

On 6 April 2011 the Core Strategy was adopted and its strategic policies, together with the 'saved' policies of the Southwark Plan (2007) are now the development Plan policies.

19 Strategic Policies of the Core Strategy:

- Strategic Policy 1 Sustainable Development.
- Strategic Policy 2 Sustainable Transport.
- Strategic Policy 5 Providing new homes.
- Strategic Policy 6 Homes for people on different incomes.
- Strategic Policy 7 Family homes.
- Strategic Policy 10 Jobs and Businesses.
- Strategic Policy 12 Design and Conservation.
- Strategic Policy 13 High Environmental Standards.
- Strategic Policy 14 Implementation and delivery.

20 The London Plan 2011: The site is located within the Central London Sub-Region, within Opportunity Area 8- Elephant and Castle and an Area for Regeneration. Key Policies:

**Context and strategy**

- Policy 1.1 Delivering the strategic vision and objectives for London

**London's Places**

- Policy 2.3 Growth Areas and Co-ordination Corridors
- Policy 2.9 Inner London
- Policy 2.10 Central Activities Zone – strategic priorities
- Policy 2.11 Central Activities Zone – strategic functions
- Policy 2.12 Central Activities Zone – predominantly local activities
- Policy 2.13 Opportunity Areas and Intensification Areas
- Policy 2.14 Areas for regeneration
- Policy 2.17 Strategic industrial locations

## **People**

- Policy 3.1 Ensuring equal life chances for all
- Policy 3.3 Increasing housing supply
- Policy 3.4 Optimising housing potential
- Policy 3.5 Quality and design of housing developments
- Policy 3.6 Children and young people's play and informal recreation facilities
- Policy 3.7 Large residential developments
- Policy 3.8 Housing choice
- Policy 3.10 Mixed and balanced communities
- Policy 3.11 Definition of affordable housing
- Policy 3.12 Affordable housing targets
- Policy 3.13 Negotiating affordable housing on individual private residential and mixed use schemes
- Policy 3.14 Affordable housing thresholds
- Policy 3.16 Coordination of housing development and investment

## **Economy**

- Policy 4.1 Developing London's Economy
- Policy 4.2 Offices
- Policy 4.3 Mixed use development and offices
- Policy 4.12 Improving opportunities for all

## **Climate change**

- Policy 5.1 Climate change mitigation
- Policy 5.2 Minimising carbon dioxide emissions
- Policy 5.3 Sustainable design and construction
- Policy 5.5 Decentralised energy networks
- Policy 5.6 Decentralised energy in development proposals
- Policy 5.7 Renewable energy
- Policy 5.8 Innovative energy technologies
- Policy 5.9 Overheating and cooling
- Policy 5.10 Urban greening
- Policy 5.11 Green roofs and development site environs
- Policy 5.12 Flood risk management
- Policy 5.13 Sustainable drainage
- Policy 5.14 Water quality and sewerage infrastructure
- Policy 5.15 Water use and supplies
- Policy 5.18 Construction, excavation and demolition waste
- Policy 5.21 Contaminated land

## **Transport**

- Policy 6.3 Assessing transport capacity
- Policy 6.5 Funding Crossrail and other strategically important transport infrastructure
- Policy 6.9 Cycling
- Policy 6.10 Walking
- Policy 6.13 Parking

## **Living Places and Spaces**

- Policy 7.1 Building London's neighbourhoods and communities
- Policy 7.2 An inclusive environment
- Policy 7.3 Secured by design
- Policy 7.4 Local character
- Policy 7.5 Public realm
- Policy 7.6 Architecture

Policy 7.7	Location and design of tall and large buildings
Policy 7.8	Heritage assets and archaeology
Policy 7.11	London View Management Framework
Policy 7.12	Implementing the London View Management Framework
Policy 7.13	Safety, security and resilience to emergency
Policy 7.14	Improving air quality
Policy 7.15	Reducing noise and enhancing soundscapes

#### **Monitor and review**

Policy 8.2	Planning obligations
Policy 8.3	Community infrastructure levy

#### 21 Supplementary Planning Documents, Planning Policy Guidance [PPG] and Planning Policy Statements [PPS]

PPS 1:	Planning for Sustainable Communities
PPS 3:	Housing
PPS 5:	Planning for the Historic Environment
PPG 13:	Transport
PPS 22:	Renewable Energy
PPS 23:	Planning and Pollution Control
PPG 24:	Planning and Noise
PPS 25:	Development and Flood Risk

#### 22 Draft National Planning Policy Framework

The draft NPPF was published at the end of July 2011 for consultation until 17 October 2011 and is capable of being a material consideration. The draft could be subject to change in the light of that consultation. As a result, whilst it carries some weight, it should not be given substantial weight. The Government has set out its commitment to a planning system that does everything it can do to support sustainable economic growth. Local planning authorities are expected to plan positively for new development. All plans should be based on the presumption in favour of sustainable development and contain clear policies that will guide how the presumption will be applied locally.

The presumption in favour of sustainable development is a new policy designed to ensure that the planning system as a whole focuses on opportunities. The presumption, in practice, means that significant weight should be placed on the need to support economic growth through the planning system and local planning authorities should plan positively for new development and approve all individual proposals wherever possible. But development should not be allowed if it would undermine the key principles for sustainability in the Framework. The draft NPPF makes clear that the policies should apply 'unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits'.

The draft NPPF also states that 'The primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent development' and that local authorities should look for solutions to problematic applications, so they 'can be approved wherever practical to do so'.

The draft NPPF also sets out core principles that should underpin both plan-making and development management. It states that 'every effort should be made to identify and meet the housing, business, and other development needs of an area, and respond positively to wider opportunities for growth'.

The NPPF builds upon the Government's 'Plan for Growth' which was published in March 2011. The overall theme of this document is to support long term sustainable economic growth and job creation in the UK. This is set out as a clear and current

Government objective.

In relation to the vitality and viability of the town centre, the draft NPPF requires planning policies to be positive and promote competitive town centre environments. This includes recognising town centres as the heart of the community, defining a network of centres and setting policies to be clear on which uses will be permitted. It also includes recognising that residential development can play an important role, allowing a range of suitable uses, and setting policies for the consideration of retail and leisure proposals which cannot be accommodated on or adjacent to town centres. The draft NPPF sets out that to boost the supply of housing, local planning authorities should: use an evidence base to meet full requirements for market and affordable housing, identify key sites, identify and maintain a rolling supply of specific deliverable sites for 5 years, including at least a 20% additional allowance, identify developable sites for year 6-10 and if possible 11-15 and not make allowances for windfall sites in the first 10 years. If the local council does not find enough sites for the first five years of the plan, the council should grant permission for developments in line with the 'Presumption in Favour of Sustainable Development'.

SPG: London View Management Framework

SPG: Sustainable Design and Construction

SPG: Providing for Children and Young People's Play and Informal Recreation

SPG: Planning for Equality and Diversity

SPG: Accessible London: Achieving an Inclusive Environment

Section 106 Planning Obligations SPD (2007)

Residential Design Standards SPD 2011

Sustainable Transport SPD (2008)

Sustainable Design and Construction SPD (2009)

Affordable Housing SPD and consultation draft 2011

Ministerial Statement "Planning for Growth"

Community Infrastructure Levy Regulation 122

Circular 05/2005

### **Consultation**

23 Site notice date: 17/09/09 Press notice date: 19/09/09

Neighbour consultation letters sent: 14/09/09

Case officer site visit date: Various site visits over period prior to submission and several site visits since submission most recently 20/07/11.

24 Internal Consultees: Access Officer; Archaeology Officer, Design and Conservation; Waste Management; Planning Policy; Environmental Protection, Transport Group; Highways Infrastructure, Environment and Housing, Elephant and Castle Major Projects.

25 Statutory and Non-statutory Consultees: Greater London Authority (GLA), Transport for London (TfL); Southwark Design Review Panel; London Fire and Emergency Planning Authority (LFEPA); Environment Agency (EA), Network Rail, Metropolitan Police, English Heritage, Royal Parks, Southwark Cyclists

26 Neighbour Consultees: Properties at/ within the following addresses were consulted:  
Albert Barnes House, New Kent Road  
Balppa House, Newington Causeway  
Banks House, Rockingham Estate, Rockingham Street  
Bath House, Bath Terrace  
Binnie House, Rockingham Estate, Bath Terrace



Brunlees House, Rockingham Estate, Bath Terrace  
 Coburg House, 63-67 Newington Causeway  
 TRA Rockingham Estate, 6 Cartwright House  
 Devonshire House, Bath Terrace  
 Eileen House, Newington Causeway  
 Elephant and Castle Underground Station  
 77, 82, 83, 86, 86a,69, 77-81 Borough Road  
 10 Keyworth Street  
 72,74, 80 (Skipton House) London Road  
 9 Rockingham Street  
 2-4,6-8, 49-51 Tiverton Street  
 18, 20-22, 24,26,38, 40-42, 44-46, 48-54, 57-61,58-62,63-67, 64-66, 69-71, 73-75, 77-  
 85,82, 87-87A Newington Causeway  
 Lancaster House- 70 Newington Causeway  
 2,6 Avonmouth St  
 229,231,231-233, 235-237, 233,235,237 Southwark Bridge Road  
 5,103 Gaunt St  
 29 Bath Terrace  
 42a Tarn Street  
 34 New Kent Road  
 28 Gladstone Street  
 Elephant Kiosk  
 Hand in Hand- 37 Arch Street/ Meadow Row  
 Metro Central Heights-119 Newington Causeway  
 Metro Central Heights Residents Association  
 Wetherspoons- Metro Central Heights  
 Railway Arch E Newington Causeway  
 Railway Arches- Newington Court  
 Railway Arches- Rockingham Street  
 Rankine House, Rennie House, Rumford House-Rockingham Estate, Bath Terrace  
 Crown Court, Sessions House, Newington Causeway  
 Newington Court Business Centre  
 27 and Smeaton Court, Arch Street  
 Railway Arch, Southwark Bridge Road  
 Stephenson House, Rockingham Estate, Bath Terrace  
 Telford House, Rockingham Estate, Tiverton Street  
 Trinity House, Bath Terrace  
 10 Keyworth Street  
 2 Avonmouth Street  
 Southwark Cyclists- 3 Dunnage Crescent  
 5-9 Rockingham Street

- 27 Pre-application Consultation: A Statement of Community Involvement was submitted, which set out the pre-application consultations that were carried out in relation to the application. No consultation was held with the community prior to submission. The scheme was presented to the Southwark Design Review Panel and to Council officers before submission (details below). Following submission of the application, the applicant confirmed that a community consultation exhibition was held over 24 and 26 September at the Fusion Leisure Centre. 16 residents attended, and the applicant advised that the response was generally positive about the redevelopment of the site.

#### **Internal Consultation Replies**

- 28 Access Officer: The proposals meet the requirements of Part M (Access to and within buildings) of the Building Regulations, the Lifetime Homes Standard and the required wheelchair housing standard. However the Design and Access statement advises that for the disabled persons WC provision in the office element of the development

"tenants will need to provide suitable welfare services for disabled persons". WCs are essential services which must be provided as a requirement of the relevant building regulations. An accessible WC is provided in the kiosk on the ground floor. Revised plans have been submitted indicating the inclusion of a disabled office WC, although the arrangement may change due to tenant fit out requirements.

29 Archaeology Officer: The site is located within the Borough, Bermondsey and River Archaeological Priority Zone, to the south of known areas of post-medieval settlement, as shown in the mid 18th century maps of London. Remains later than this date are likely to be present on site. There is also the possibility of archaeological remains from the Roman period to be present. The applicant's archaeologists have presented the material adequately. Following the demolition of buildings currently occupying the site an archaeological evaluation is to be undertaken. Depending upon the results of such an evaluation further archaeological recording may be necessary. These works can be secured by condition, which are both reasonable and necessary to provide properly for the likely archaeological implications in line with Southwark Plan policies 3.15 and 3.19 and the recommendations of PPS5.

30 Waste Management: No issues were raised.

31 Planning Policy: Proposal looks acceptable. If the principle of employment use on the site has been lost/ abandoned then it appears to be compliant with policy. The Sustainable Design and Construction SPD, including Flood Risk Assessment, contribution to biodiversity, water conservation etc. should be considered and the energy hierarchy must be followed. Core Strategy Policy 13 'High Environmental Standards' sets out targets that developments are expected to meet. The residential developments should meet at least Code for Sustainable Homes Level 4 and non-residential developments should achieve a minimum BREEAM rating of Excellent. Car-free is supported on the site and a Travel Plan will be required.

32 Environmental Protection Team:

*Noise (a) General*: Satisfied that appropriate internal sound levels may be achieved and a condition is recommended to ensure that suitable sound insulation is installed. A vibration assessment was undertaken which concluded that there will be a low probability of adverse comment from the occupiers of the premises regarding vibration. A condition is recommended to which will minimise vibration levels in order to protect future occupiers from adverse vibration levels from transportation sources. Wind turbines have the potential to cause adverse impacts on amenity for occupiers of the development and other noise sensitive premises nearby. An assessment was undertaken which concludes that noise from the turbines will be below the background level for the nearest noise sensitive receptor. The assessment is not based upon sound data provided by the manufacturer and wind speeds greater than this are likely and might affect residential amenity although this would be tempered by the fact that high wind speeds themselves create noise which may mask the turbine noise. Smoke vents at ground floor level are emergency 'knock out' vents for the fire brigade to use in the event of a serious fire in the basement, and will not cause noise or pollution issues since plant is located in the basement but will not expel any air through these vents. A condition is recommended to ensure that any impacts from proposed plant will be controlled in order to protect the occupiers of neighbouring premises.

*Noise (b) Ministry of Sound*: Concern has been raised regarding the impact that break out sound from the MoS would have upon the proposed development. A robust assessment was undertaken in relation to the impact that entertainment noise 'break out' from the Ministry of Sound would have upon the amenity of the proposed development in addition to an assessment of noise from vehicular and pedestrian movement associated with the operation of the Ministry of Sound nightclub. The

assessments confirmed that only the impact of break out sound was considered to be significant, a conclusion that is supported by the Environmental Protection Team. A condition requiring suitable internal sound levels to be achieved is recommended in conjunction with a condition requiring that all bedroom windows are to be non-openable in order to protect against entertainment noise 'break out' from MoS with provision to be 'unsealed' should the sound insulation to MoS be improved to an acceptable level in the future. The Environmental Protection Team are satisfied that ensuring all bedroom windows are not openable will suitably mitigate any adverse impact from MoS entertainment noise.

*Officer comment: Since this consultation response was received there has been considerable further discussion with both the applicant's advisers and Ministry of Sound. These matters are set out later in the report.*

*Air Quality:* The assessment was undertaken using a screening tool and as it has identified NO<sub>2</sub> very near the objective level. Of particular concern is the amenity area/child play space on level 15 which fronts Newington Causeway, which might be exposed to unacceptable pollution levels. A comparison was made to the air quality assessment undertaken for the Eileen House site at 80-94 Newington Causeway. The assessment for the application site is not as robust and as such, the mitigation proposed to date is unacceptable and a condition is recommended to ensure that an adequate level of protection is provided to residential premises. The extract system for the A3 kitchen will be expelled via a flue which will terminate at high level which alleviates any concern about odour nuisance should the A3 use require cooking facilities. A condition will be required to ensure that a suitable means of odour control is used for any future A3 use.

*Energy/ Wind Turbines:* Data from 'RenewableUK' wind speed database in urban areas was used but recent studies have shown this database overestimates the annual wind speed in urban environments. An assessment of the potential energy that the proposed turbines will produce has been undertaken using revised wind data, but it is still uncertain whether they will deliver even the revised level of energy. The applicant has agreed to undertake a detailed wind modelling exercise before installing the turbines. Should this show that a sufficient level of energy will not be delivered; a commitment to invest the money that would otherwise have been spent on the turbines on off-site renewable energy has been given. Officers commend the application for this flexible and pragmatic approach.

33 Traffic Group:

Parking standard for cycles is 1 per 250m<sup>2</sup> of commercial (A & B1) floor space (minimum of 2) and 1.1 per residential unit. The cycle design and layout, as demonstrated in drawings P/011 and P/012, is acceptable and policy compliant.

The proposal is in a high PTAL area (level 6) where developments are required to be car free. This application is proposed as car free and, as such, is in accordance with Southwark Plan Policy 5.6. The site is situated in a Controlled Parking Zone (CPZ). Future occupiers (other than disabled) should be prevented from being eligible for on-street parking permits with a sum of £2,750 to be secured for the costs associated with amending the Traffic Management Order. Policy 5.7 requires this development to provide a minimum of 1 disability parking bay, however due to the constrained nature of the site, a bay could not be provided, mainly due to the bus stop situated in front of the building. In this instance there is cause to depart from Southwark Policy as there is not a suitable position for it.

Servicing is required to take place off street. Given the site constraints, servicing from the on-street loading bay to the north of the site has been agreed. It is requested that an informative be added to the decision notice making the Applicant aware that any servicing which takes place on street is subject to local restrictions (no servicing is to

take place on-street, from the bus lane, at any hour).

Policy 5.2 requires developments likely to have significant transport implications to submit a transport assessment (TA). As this is a car free development, the submitted transport statement is considered acceptable. It is noted that the principle of a Travel Plan has been agreed to; however, an outline plan must be submitted, for both the commercial and residential elements. The applicant has confirmed that Travel Plan requirements are covered in the Transport Statement, which outlines what is proposed to be included within the Travel Plan for the development.

S106 contribution should be sought using the S106 SPD standard charge formula and should be secured for public realm improvements in the area.

- 34 Environment and Housing: We would prefer a Registered Social Landlord (RSL) to manage the affordable dwellings. The best way of achieving this would be for the management organisation to be accredited by the Tenant Services Authority. It is therefore agreed that whilst a provision will be included within the s106 agreement requiring the developer to enter into a management agreement with an RSL, if the developer is able to subsequently achieve status as a landlord accredited by the Tenants Services Authority, they shall be permitted to rescind the management agreement with the RSL and carry out direct management of the intermediate units, observing at all times the perpetuity clauses contained within the S106 agreement. The Council support this position as long as the developer is able to maintain the same standards of management as had been provided by the RSL.

- 35 Elephant and Castle Special Projects Team:  
The Enterprise Quarter SPD: The scheme introduces an active frontage and improved public realm on Newington Causeway which is a key aim of the SPD. The commercial space will provide a new offer enlivening the streetscape. The existing building is empty and does not provide any commercial or office space. The introduction of replacement B1 office space is strongly supported creating new opportunities within the Enterprise Quarter which is also in line with the SPD. Whilst the height is above that recommended in the SPD, the quality of architecture and relationship to existing (Salvation Army and Metro Central Heights) and proposed buildings (Eileen House and Triangle Site tower) provides a townscape context within which this 22 storey development will be well suited. Its location adjacent to the railway acts as a 'gateway' for which a tall and distinct building is well suited.

Tenure Split: The scheme does not meet Southwark's planning policy for affordable housing social rented provision within the Elephant & Castle. We would seek for social rented housing to be provided for local residents however appreciate that due to financial constraints this may be unachievable. Given the above benefits that this development will offer we believe the lack of such tenure type is acceptable in this instance. We would request further details about the management of the affordable housing element and would seek that local residents have priority.

S106 Contributions: Recent S106 prioritisation identified investment into Elephant & Castle's network of green spaces as a key priority. We therefore request input into the expenditure of public realm and open space contributions to ensure it is in line with this priority. We also request that the use of the strategic transport contribution is towards wider strategic costs associated with the Elephant & Castle regeneration.

### **Statutory and Non-statutory Consultation Replies**

- 36 Greater London Authority (GLA):  
The proposal would support the ongoing regeneration of the Elephant and Castle area. The housing mix and tenure split are acceptable, and the density is acceptable

subject to urban design, transport, and adequate mitigating planning obligations. The principle of a tall building is supported and the scheme would sit comfortably within the existing context and would be modest in comparison to consented and emerging tall buildings in the area. Residential design quality is in accordance with Southwark design standards and broadly with the Replacement London Plan and draft Housing Design Guidance. There is no impact on townscape views. Where the scheme does not fully comply remedies are proposed which may lead to full compliance with the London Plan as set out below:

- Housing- proposal is consistent with London Plan policies however supporting information in relation to viability is required, and the GLA cannot confirm if the maximum amount of affordable housing is provided or whether planning obligations are being made without the additional information;
- Transport- does not fully comply as applicant should commit to a construction management plan and servicing management strategy, payment of a transport contribution and a Crossrail contribution; and
- Climate Change- further information required on decentralised energy but generally compliant with London Plan Policies.

37 Transport for London (TfL):

The impact on the public transport and highways networks from this development is deemed to be minimal, however when considered cumulatively with other proposed developments within the Opportunity Area, the impacts on transport infrastructure are material. Therefore, in line with London Plan policy 3C.2 and other developments in the area the applicant is expected to make a reasonable contribution towards 'wider transport improvements' in and around Elephant and Castle.

The costs of delivering both the underground and surface transport enhancements deemed necessary to support the on-going and longer term growth of the Opportunity Area are significant, current are in the region of about £160 million for improvements to the Northern Line Ticket Hall and c£40million for the surface works which include replacement of pedestrian subways with at-grade pedestrian crossings at northern roundabout, and highway and public realm improvements. A contribution of £55,000 is therefore sought which includes £35,000 towards pedestrian and public realm works and £20,000 towards improvements to bus stops directly outside the site, or if this contribution does not go towards bus stops then it should be re-allocated towards wider transport improvements in the Elephant and Castle area.

A contribution towards Crossrail will be required because the proposals would result in uplift in office floorspace on the site of over 500sq.m. (GEA). Such contributions will be in accordance with the proposed alteration to the London Plan and the draft *SPG: Use of planning obligations in the funding of Crossrail*. Using the SPG methodology, the development proposes an office floorspace uplift of 533sq.m. GEA, generating a Crossrail contribution of £85,280. Following discussion with the applicant, and on the basis that this development just tipped the balance for a contribution, being 33sqm above the 500sq.m. threshold, TfL would accept the application of a 45% contribution (i.e. £38,376) in line with other cases within the Central Activity Zone.

TfL welcomes the car-free nature of the development, particularly given the excellent PTAL level. Given the constrained nature of the site, no disabled car parking can be provided within the vicinity of the site- as a minimum TfL expects that parking, pick-up and drop-off options for disabled users are fully set out as part of the travel plan. Further to this TfL expects a planning condition to exclude future occupiers from eligibility for on-street car parking permits. 42 cycle spaces are proposed, with a further 6 spaces outside the building for staff and visitors to the development, which is in line with the relevant standards and therefore in accordance with London Plan Policy 3C.22.

TfL expects the applicant to prepare and agree a servicing management strategy and a construction management plan; these will need to be secured by planning condition or S106 agreement. All construction access routes and access details need to be approved by TfL prior to the commencement of any works. The developer's intention to provide a travel plan is welcomed. TfL expects this to be secured, monitored and reviewed as part of the Section 106 agreement. In summary, TfL sees no reason why this application could not be supported in principle.

- 38 Southwark Design Review Panel (pre-application, October 2008): The Panel acknowledged that the proposal exceeds the height stipulated for this site in the SPD. The Panel reacted positively to the image of three contrasting forms; however were not convinced this had been explored far enough. The Panel encouraged the architect to consider making the contrast stronger through greater changes in form, colour and materials and suggested that the three forms would have a stronger rationale if they were to display a closer link to the internal workings of the accommodation and the urban context. As the development forms a visual 'bookend' to this stretch of the Newington Causeway, the Panel felt that it would be appropriate to establish a stronger visual link between it and the Metro Central Heights end of the street, perhaps by dropping the height of one third to be of similar height, so it may set up a dialogue between this building and its context. The Panel commented on the thoughtful composition of the elevation and the use of visual gradation but felt that this may not be legible from all approaches due to the narrowness of the views that can be gained from Newington Causeway. The current 18 storey proposals lacked the visual clarity and confidence of the original 25-storey design. The design has to manage the contradictory requirements of a height established by its varied context in urban terms and one set by its composition. Serious concerns with the quality of the ground floor, in particular, the congested footprint of the building, the quality of the pedestrian walkway created along the railway line, and its use as the primary servicing access for the development and the extent of unadorned flank wall presented to this side. In conclusion, the panel felt this was a bold idea that deserved encouragement and that it was an idea that was very capable of positive development.

Officer Comment: *It is considered that the application as submitted addresses the majority of points raised by the Panel.*

- 39 London Fire and Emergency Planning Authority: No response received
- 40 Environment Agency: No objection to the development as submitted. In correspondence received 26 October 2009, the Local Planning Authority demonstrated that the Sequential Test has been passed for this proposal, in accordance with PPS25. The submitted flood risk assessment (Ref. FRA1175/FA001 Final v1.0) by Ambiental Technical Solutions is acceptable subject to conditions.
- 41 Metropolitan Police: No issues at present, though no mention of Secured by Design materials being used. Lighting details should sought by condition.
- 42 Southwark Cyclists: Add a condition to ensure secure, covered bike parking spaces are provided for 130% of residents and 30% of employees, with 30 visitor racks provided within 30m of the site. Only disabled car parking should be provided.
- 43 English Heritage: No response received.
- 44 Royal Parks: No response received.

### **Neighbour Consultation Replies**

- 45 Letters of objection:

89 Albert Barnes House- object as area is already congested and overcrowded. Area needs more green space such as parks. Need to be reducing the population not expanding it. Public services are already overstretched which has resulted in idiotic policies such as Brixton Pound Note and high crime.

- 46 Flat 126 Metro Central Heights- object purely in terms of the height of the structure and impact on the unique view currently enjoyed from my flat, which will impact on market value. Understand Council does not take account of residential views when making a decision. Would like to emphasise that due diligence carried out prior to purchase gave no indication that current policy or planning applications suggested that extraordinary tall plots would be developed and obstruct my view. Previous Eileen House application was rejected on height. Proposed height for this scheme does not comply with policy. Visited consultation event and am still unconvinced that the height is nothing more than maximising developer profit, reconfiguration to more acceptable height would still prove viable. Don't accept it would form tall building gateway as there is a suitable gateway building north of the regeneration zone- Metro Central Heights. Developer should show impact of reduced building height in terms of affordability. Member of Council or developer should visit to see impact on my views and potential to impact on property price.
- 47 Flat 95 Metro Central Heights- objects on 3 grounds. Loss of pre-war building, whilst not exceptional or listed, is pleasant and would be a loss to the area. Incorporate the existing building in some way. Already tall buildings on the road, Metro Central Heights and Salvation Army. If this development plus Eileen House go ahead, street at risk of becoming a canyon, overshadowing the road, with effects on air-flow, wind, sunlight. Loss of morning sunlight and overlooking of Metro Central Heights. Salvation Army building has less effect as it is an office building, not occupied on weekends. Wind Turbines of concern- a good idea but can be noisy. Development would have significant disadvantages for area- but some beneficial, particularly the cafe and commercial elements, which would bring life to the street.
- 48 Flat unknown, Metro Central Heights- Need to be assured that toxic dust and debris from demolition and construction will be minimised. We have a right to know exactly what measures will be taken to ensure dust/ toxicity in the air are normal. Many asthmatics/elderly/children in area who will be affected by change in already polluted/ dusty area near E & C roundabout. Applies to both demolition and construction phases, appreciate green features of construction planned, but must ensure the health of nearby residents.
- 49 21 Devonshire House, Bath Terrace- I am concerned the building may overshadow Newington Gardens and effect light and views from my property. Have not been able from the plans to get a clear sense of how bad the problem would be but would object if there was significant overshadowing of the park.
- 50 Ministry of Sound, Gaunt Street: In the course of consideration of this application several submissions have been made objecting to the development.

Objection October 2009 correspondence received from Planning Perspectives on behalf of MoS dated 7 October 2009 and 12 October 2009 from Planning Perspectives, and correspondence dated 8 October 2009 from Sharpe Redmore Partnership.

The development would have facades looking directly along Gaunt Street to the club entrance, and at higher levels, across the roof structure of the club. The main club entrance is off Gaunt Street, and there is a courtyard off Gaunt Street, through part of which patrons queue for entrance to the club; the other part serves as a smoking area. Amplified music is played in this area through external speakers. The club has a licensed capacity of 1280 patrons and is unrestricted in both planning and licensing

terms. In reality, it operates 3 or 4 nights a week, usually from evening until 0700 hours the following morning (i.e. all night). *Officer Comment: The Ministry of Sound is not licensed to play amplified music externally except on a temporary basis on a limited number of nights per year for which they must serve specific notice.* There is concern that the issue of noise breakout from the Ministry of Sound and the effect of this all-night facility on the surrounding noise environment has not been addressed in the noise assessment. The noise survey that accompanied the application was undertaken on a Tuesday/Wednesday night in 2007, with no mention of Ministry of Sound as a potential noise source, and Ministry of Sound have confirmed that on the night of the survey the club was not open. Noise from Ministry of Sound causes a marked increase in the night-time noise climate (by up to 8dB) when operating, especially late at night when noise from traffic and other urban activity is at its lowest. Noise break-out from the roof is a principal source. The mitigation measures proposed are not detailed enough to establish whether they would be effective. The specification arrived at for glazing is based on a simple overall noise level (dBA) and no account has been taken of the frequency content of the noise. Given that the noise climate at night may be dominated by a night club, the very heavy bass content has been ignored and it is unlikely that the glazing specifications will achieve the proposed internal target noise levels. In relation to internal target noise levels, there is an assumption that achievement of BS8233 standards will be acceptable, however achievement of even "good" standards internally is unlikely to protect residents to a sufficient degree and at 30dBA internally, music noise from the Ministry of Sound will be clearly audible and is likely to lead to complaints. There are currently no residential premises in close proximity to Ministry of Sound, and the club could increase the intensity of operations without need for further licenses. There is a serious risk that allowing such a development will lead to an undesirable noise climate for future residents, ultimately leading to complaints and pressure to curtail or control the Ministry of Sound's legitimate and currently unrestricted business activities.

- 51 Further Comments/Objection November/December 2009 - Re-affirm the objections to the application. It is questionable whether a condition requiring a survey to establish noise levels from the Ministry of Sound and mitigation measures after planning permission is granted is valid. No evidence as to whether mitigation measures would actually be adequate and deliverable and mitigation measures may change aspects of the scheme (i.e. design, layout, height, appearance etc.). There is no assessment of noise from MoS with the planning application and it is deficient in that respect. The licensing position regarding the external speakers is largely irrelevant, the applicant's noise assessment does not address noise from outside the building and ignores the effects of over 1,300 people arriving and departing the area over the course of a night. The impact of the Ministry of Sound, especially at higher levels up the building, could be significant with noise breakout from the Ministry of Sound roof and there could be factors which enhance this impact (for example the heavy bass element to the noise). No measurements have been undertaken and no conclusions can be drawn as to the likely impact of the Ministry of Sound on the development. There can be no definitive decision that mitigation is available or deliverable in the absence of any noise data and the application is deficient in this regard despite our raising this issue in our objection. In summary the key issues raised in that letter were:- members should be made aware of the importance of the Ministry of Sound before determining the application. The impact of granting planning permission on Ministry of Sound is a highly important material consideration which members must take into account. Proposals for noise mitigation works to be carried out at Ministry of Sound were not agreed and should be dealt with in the S106 agreement. The impact of external noise and activity should be addressed in full and a condition requiring acoustic glazing and fully sealed windows should be imposed. The proposed conditions and S106 agreement are not sufficiently comprehensive or precise.

*Officer Comment- A full assessment of the impact of noise from the Ministry of Sound*



*has since been undertaken and mitigation measures are proposed as detailed elsewhere within this report.*

52 Letter dated 10 September 2010 from Planning Perspectives

The key issues raised in this letter are as summarised below:-

- Noise - The noise surveys are inadequate. The proposed mitigation scheme is flawed. Anxiousness about vulnerability to potential nuisance claims.
- Cost of the mitigation enhancement scheme cost – no agreement between Oakmayne and Ministry on the cost of the mitigation works.
- Impact on Ministry of Sound Business – Failure to assess impact of granting planning permission on MoS business.
- Planning Policy – Both schemes breach major areas of established and adopted planning policy. Protection of amenity interests of existing occupiers. Importance of understanding impact on MoS. Regard to be had to possible outcome for MoS business.
- Housing Need – No demonstrable planning imperative for housing development. SPD does not acknowledge the proximity of MoS premises to Eileen House. The Council's own figures show that the housing targets can be met without the Eileen House or this site. Grounds for Council to reconsider regeneration strategy for the Enterprise Quarter. Area needs good quality office accommodation and not further housing.
- Planning Balance and Human Rights – Council must assess whether the public benefits of the two applications are such that they justify interference with the MoS business.

53 Further comments received 9 November 2010 and emails of February 2011

Maintain that there is a material difference between the use of the site as a "singular" dwelling-house and the introduction of 38 new housing units in a context where the noise impact of a night-club cannot be satisfactorily mitigated. There remains a concern that proposed noise mitigation is based on assumptions that (i) residents would keep windows closed to block out noise, (ii) would be aware of the presence of the Ministry of Sound prior to purchasing a flat such that they would have no valid grounds to object to the Council and (iii) that the proposed balconies could be restricted and controlled by an access control system between 10pm and 7am. Essentially the Ministry of Sound contend that the proposed mitigation strategy is deficient.

54 In an email of 28 January 2011 MoS maintain that the Jan survey was not robust. In particular it contends that the survey:

- a. Did not capture the peak noise levels associated with the movement of crowd barriers at the beginning and end of the club's activities nor the noise at peak entry
- b. Was not reliable due to high wind levels;
- c. Is not corroborated by other surveys; and
- d. Failed to take measurements inside the club.

*Officer Comment- An additional noise survey undertaken in January 2011 demonstrated that the noise generated by the nightclub, particularly with reference to low frequencies, would not adversely impact on future residents to the extent that sealed windows would be required. The proposal to have restricted access to balconies is therefore withdrawn. The Ministry of Sound had a representative present at the noise survey in January and is aware of the outcome of the survey. The Council undertook a further survey in April 2011 with Council officers and the Council's noise expert which corroborated the findings of the January survey. The Council undertook a final survey in July which spanned the full operational hours*

*of the club. Weather conditions were good; internal and external measurements were taken. Officers consider that the noise data collected is sufficient to make a proper analysis of the potential impacts on both future residents and any potential consequences for MoS itself.*

55 Letter dated 3 June 2011 from Planning Perspectives

The key issues are summarised below:-

- Regeneration – report fails to acknowledge positive regenerative role of MoS. Regeneration can be delivered in another way without recourse to high density residential led developments. MoS does not accept the housing need on the site. Planning balance must be struck between the perceived merits of the scheme in regeneration terms and the probable impact a grant of planning permission would have on a major business.
- Noise – concern at reliance on January and April 2011 fundamentally flawed reports. Conclusion not to have sealed windows is based on imprecise findings of recent noise surveys and belief that noise limiters introduced by MoS. Council should undertake further more comprehensive assessments to reach an informed view. Little weight should be attributed to results of January survey because of insufficient duration, wind speed too great, noise from external speakers masking noise from main building, no noise measurements carried out within the club and no account taken of external activity. April survey does not go far enough in addressing deficiencies in Jan survey. Reliance on incorrect assumptions re noise limiters.

56 Officer Response

*The September 2010 and June 2011 letters raise similar issues and to the extent that the points have not been covered elsewhere in the report the officer response is set out below.*

57 Letter dated 1 July 2011 from PP on behalf of MoS attaching new Supplementary Noise Break-Out Testing report prepared by Sharps Redmore Partnership. This letter made various comments about comments made by Rupert Thornely- Taylor at planning committee in relation to the surveys of Jan and April 2011. Its states that noise levels in the club increase from 12 am to a peak between 2-4am as the number of patrons reaches capacity. The Jan and April reports cannot be a sound basis to arrive at a properly informed decision. Officers and Planning Committee erred in their respective decision making on the application previously. MOS have commissioned further noise survey in crucial 1-4 am period. Principle conclusions of the report that there is significant music break out from MoS roof. Sound insulation performance of roof is poor especially at low frequencies. This confirms the findings of SBA in 2009 and the Southwark's findings in Jan and April 2011 should be dismissed. Suggest further noise survey. Noise issue not a "red herring" and no defence of coming to the nuisance. Legal opinion to be provided. MOS in E&C for 20 years and provides 200 jobs.

58 *Officer comment: A further noise survey has since been undertaken and officer's response to the points raised are dealt with in the noise section below.*

59 Letter dated 11 July 2011 from PP on behalf of MoS in which, as stated at the beginning of the report, they seek a reconsideration of the application in the light of their own noise survey undertaken in June.

60 Email dated 27 July 2011 from PP included responses to specific issues raised by officers at a meeting on 6 July. These questions related to the operation of the nightclub in the early hours and the different character of noise and activity at those

times. In response to queries regarding noise limiters within the club MoS confirm that the club operates in compliance with the Noise at Work Regulations. They also state in this response that the noise level is increased due to the club being at full capacity during these hours. This issue is dealt with in paragraph 117 of the report.

61 Email dated 5 August 2011 from Planning Perspectives to Councillors and Planning Officer

Planning Perspectives email attached a legal opinion from David Elvin QC in relation to the law of nuisance and the impact of a potential noise nuisance complaint on the Ministry of Sound.

- It is likely that amplified music from MoS played constantly during the nightclub's normal operating hours would constitute an actionable nuisance.
- Noise from outside the MoS which is a consequence of the operation of the MoS may also constitute an actionable nuisance against MoS. This would include people congregating/queuing to get into MoS and people leaving.
- A successful claim in nuisance would result in a court order that the noise nuisance be abated. This would happen irrespective of the Council's view about MoS's licence or the desirability of MoS and its noisy activities. The law is clear and it is not a defence to a nuisance claim to show that the claimant "came to the nuisance".
- The Council cannot control whether proceedings are taken to abate the nuisance. This is because the residents of the proposed developments could themselves bring claims in nuisance and seek injunctions. Also, if a statutory nuisance exists the Council has a duty to issue an abatement notice – it does not have discretion to do so (e.g. if it might harm economic activity in the Borough) and it would be unlawful for the Council not to act if a statutory nuisance were found to exist.
- The risk of nuisance claims being brought to abate what is currently a lawful activity is a material planning consideration to which weight ought to be given when determining the planning application.
- Regard must be had to the risk in terms of an established business, the local economy and the fact that the Government seeks to protect economic development in "Planning for Growth" and the draft NPPF. Planning for Growth states that the Government's top priority for the planning system is to "promote, sustainable economic growth and jobs" a consideration to which the Secretary of State will attach significant weight in considering appeals and applications that come before him.

62 *Officer's comment: The section headed "Noise" below covers the points raised in the legal opinion*

63 Online petition: MoS wishes to direct members attention to the online petition running on Ministry of Sound's website, currently has a total of 26,500, entries.

[www.ministryofsound.com/saveourclub](http://www.ministryofsound.com/saveourclub)

Although the focus of attention is in respect of the Eileen House application, MoS is of the view that the concern raised in the online petition applies equally to the Newington Causeway scheme given the looming threat to the club.

Officer comment: *The primary focus of the petition is to the Eileen House planning application and raises no new issues in respect to the agenda item being considered.*

A number of similar emails have been received from various employees of MoS (and residents of Southwark) setting out a number of benefits that the MoS generates for the area and raising concerns over 'potential noise complaints in the future from residents which may result in there being a problem with the club licence' and endangering their jobs.

- 64 Ministry of Sound (MoS) made a further submission in September, following publication of this report (when it was intended to be considered on 13th September) maintaining their objection. It has made a number of criticisms of the numerous noise surveys that have been undertaken by the Council and the applicant. For the most part these criticisms are already addressed in the report. In particular it criticises what it states to be inconsistent advice from the Council's noise consultant Rupert Thornely Taylor. It refers to the fact that his initial advice in May 2010 was that future residents would find internal noise levels from the MoS acceptable only with sealed glazing of a very high specification and that this was impractical owing to the need to provide openable windows to the balconies. His advice now is that with windows closed there would be an acceptable internal environment and the required levels would be achieved even if the windows were of a type that were openable. (see officer comment below) .

MoS contends that there has been no material change in the outcome or findings of the 2009 and July 2011 surveys to justify a change in the noise consultant's advice.

MoS again raises the concern that it would be vulnerable to nuisance claims from future residents of the proposed development and that the outcome of such claims would be devastating for their business. It relies on the original advice regarding sealed windows to suggest that this would be the only way avoid complaints. Even this would be unacceptable due to the need to access the balconies which would preclude sealed windows for this purpose. It states that turning down the volume to address any complaints would be unacceptable and inconsistent with its "business model".

It is critical of any suggestion that it could undertake noise insulation works at its premises in order to abate any nuisance found to exist in the future due to cost and the need to close the club for a period of at least a year during such building works. Hence it states that the report is misleading to suggest that the MoS could be expected to provide noise insulation to the club without suffering a devastating financial impact and that this is unacceptable.

It considers that substantial weight should be given to this consideration in the planning balance.

MoS considers the planning balance as suggested in the report to be incorrect. It suggests that if members do not believe that music noise breakout from the club can be abated with closed windows this would be sufficient reason to refuse planning permission. The planning balance to be applied could not rely on other policies in the plan to outweigh this consideration. It identifies what it considers to be other policy breaches within this proposal in terms of affordable housing and the Elephant and Castle Enterprise Quarter SPD which it argues does not contemplate a building of this height.

MoS raises a further concern in relation to condition 10 on the recommendation. MoS considers that the maximum level of noise also needs to be controlled in order to address the regular low-frequency peaks of music noise from the club. (*officer comment – It is appropriate to qualify the terms of this condition by including a noise*

*index of LSMax and it is accordingly recommended that the condition be amended in this way)*

*Officer comment:* In answer to the challenges made to the validity of surveys and further advice provided by the Council's noise consultant Rupert Taylor the following is a summary of most of the surveys carried out: dates, noise consultants, outcomes, conclusions.

65 MoS submitted a further letter of objection in October when the item was deferred. The objection is on the basis that the proposal:

- Is of excessive height and outside the identified primary and secondary clusters for tall buildings;
- Provides no social housing (meaning social rented); and
- Provides a fraction of the amenity space required by the Council's own Residential design SPD.

On this basis it is suggested the scheme should be refused.

*Officer Comment:* The issue of height is fully addressed in this report at paras 95-105. The conclusion is that the proposed building is considered to fit well within both the existing and emerging context and would not over-dominate its surroundings and would remain subservient in height to the buildings with the core and secondary clusters of the Elephant and Castle.

The issue of the lack of social (rented) housing is also addressed in the report (para 90). A key consideration in this regard is the restricted nature of the site which can only accommodate a single core.

In respect of the shortfall in amenity space the issue is addressed at paras 109 -112. Given the restricted nature of the site in this central urban area the level of amenity space is considered acceptable. Taking into account the merits of the scheme in terms of the provision of housing, the contribution to regeneration within the Elephant and Castle opportunity area the balance is considered to lie in favour of granting planning permission.

In relation to the issue of noise the Ministry of Sound raise further objections in relation to the scheme on the grounds that:

- the noise mitigation strategy is unenforceable;
- the glazing specification will not achieve the Council's required noise levels
- the proposed development would lead to successful noise nuisance claims against MOS. As a result MOS would close.

*Officer comment:*

The noise mitigation strategy requires the provision of high glazing specification windows and mechanical ventilation. To that extent it is enforceable. Whether future occupiers choose have their windows closed at night is a matter for them. The potential consequences of them not closing the windows and commencing claims in nuisance are addressed further in this report.

Rupert Taylor has advised that the glazing specification will be effective at achieving the Council's required internal sound levels including those relating to the maximum

levels of noise emanating from MoS. A condition is proposed to require a glazing specification that would result in the levels being met.

Officers have advised further on in this report that they do not consider that it is likely that a noise nuisance would be likely to be successful as any potential claimant would have to establish that it is reasonable to expect to be able to sleep undisturbed in an inner London location with windows open. Even without the presence of MoS the noise levels of the location are such that a future occupier would be likely to be disturbed if they tried to sleep with their windows open. Even so a successful claim in nuisance cannot be ruled out.

Officers have also advised as to the likely level of financial impact upon the MoS if a claim were successful. In the most recent letter MoS identifies a cost of £900,000 for mitigation works not including further costs for further structural works.

MoS also states that the club would have to shut for 20 weeks resulting in a loss of turnover (note this is not a loss of profit) of over £2.5m. MoS contends that this period of closure would harm MoS's international brand. It contends that such financial impact upon the business would be devastating and the MoS club would have to close permanently.

Members will need to have regard to these matters and give them weight in the planning balance.

Officers remain of the view that on balance the benefits of the proposed development outweigh the potential consequences of the grant of planning permission for MoS.

MoS also objects to the advice given in the main report to the effect that the overall planning balance weighs in favour of granting planning permission. MoS contends that if it is the case that noise levels cannot be met with windows shut this would be reason enough to refuse planning permission. As set out above, the advice from Rupert Taylor is that a glazing specification can be found that will result in the required noise levels being met. If members disagree then a conflict with policy would arise which would have to be given weight in favour of refusal and placed in the planning balance alongside all of the other relevant considerations which weigh both in favour of grant and in favour of refusal.

MoS contends that the provision of sealed windows should be considered by Members. It contends that "natural ventilation" can be achieved in accordance with the Sustainable Design and Construction SPD through the use of passive whole-building ventilation systems or heat recovery systems.

The Council's Sustainable Design and Construction SPD specifies that mechanical systems should only be used alongside natural ventilation. Passive whole-building ventilation systems or heat recovery systems are no substitute for the ability to achieve natural ventilation through window openings. The Residential design standards similarly seek dual aspect in order to allow for cross ventilation which would not be achieved through mechanical systems.

Officers have reconsidered the planning balance in the light of the above but remain of the view that on balance planning permission should be granted.

**66 Proposed Developments at Eileen House and Newington Causeway and noise from the Ministry of Sound - Summary of noise surveys carried out**

Note by Rupert Thornely-Taylor  
8 September 2011

This note summarises the noise surveys and reports, together with the conclusions drawn from them and the advice given, that have been completed since the Eileen House and Newington Causeway Planning Applications were lodged.

67 Surveys on behalf of the Eileen House Applicants

The applicants for the Eileen House development first carried out a noise survey in November 2007 in line with the requirements of PPG24. This did not address noise from the Ministry of Sound (MoS). Southwark subsequently requested a night time noise survey which was carried out between Wednesday 27 May and Monday 1 June 2009.

My original advice to Southwark, given on 20 April 2010, was based on the results of this survey and associated data contained in the report of Sandy Brown Associates (SBA), acoustical consultants to the developers, dated 29 June 2009 and the associated raw data, together with a letter from SBA dated 11 January 2010. This report, under the heading "3.6 External noise levels during event" and the sub-heading "3.6.2 Maximum  $L_{AFmax}$  noise levels" stated maximum night-time  $L_{AFmax}$  noise levels of 86 dB  $L_{AFmax}$ , peaking in the 63Hz octave band with an unweighted level of 87 dB. The 11 January letter repeats the reference to Music (max)  $L_{AFmax}$  86 dB predicted at 1m from Eileen House.

- 68 SBA then carried out measurements on Thursday 14 May 2009 to assess noise break-out from the Main Bar and Loft areas of the MoS Club. This was done during the day using pink noise (synthetically generated noise with equal sound level in all octave bands) and music as the source. The external microphone locations were at a position close to and overlooking the Main Bar roof (microphone on a mast at a height of approximately 3 metres above roof level), at an external position close to and overlooking the Loft roof (microphone on a mast at a height of approximately 3 metres above roof level) and on the roof of Lancaster House. No measurements were made at Eileen House or elsewhere during this survey. The report stated that there was significant breakout of music and pink noise from the Main Bar, primarily at low frequencies.

Data provided to Southwark by SBA in an email to Dipesh Patel dated 24 November 2009 included spectrum information down to the 31.5Hz octave band, in which levels were frequently over 4 dB greater than those in the 63Hz octave band.

Based on the measurements carried out by SBA, the sound insulation of the roof on the main bar at the MoS was considered by them to be weak, and that as part of the process of achieving acceptable conclusions for the grant of planning permission negotiations had taken place regarding the installation of an enhanced roof to the main bar. A specification was prepared by Sharps Redmore Partnership (SRP), acoustical consultants to MoS, and the SBA letter of 11 January contained an assessment of external noise levels from MoS, including a theoretical assessment of the proposed new roof construction.

69 Surveys on behalf of the Ministry of Sound

A report dated 14 June 2010 was made available to Southwark in July 2011 containing a Noise Exposure Assessment in the context of the Noise at Work Regulations 2005, carried out by SRP. It found  $L_{Aeq}$  levels of 106 dB in the centre of the main bar and made recommendations for controlling the noise exposure of employees, including noise level reduction and hearing protection. Additional results from this survey were provided to Dipesh including five-minute  $L_{eq}$  and  $L_1$  levels in octave bands from 31.5Hz upwards. The highest unweighted level was 127 dB in the 63Hz octave band (octave band levels are always higher than 1/3 octave band levels).

The 63Hz level after 2.30am was about 5 dB higher than before 2.30am, but did not go on growing and declined slightly after 3.00am.

SRP prepared a further report dated 30 June 2011 entitled "Supplementary Noise Break-Out Testing and Response to Regulation 19 Submission" which gave the results of a repeat of the SBA tests in 2009 using some of the same measurement positions used by SBA, namely within the main bar and at an external position close to and overlooking the Main Bar roof (microphone on a mast at a height of approximately 3 metres above roof level). No measurements were made at Lancaster House (and none were made at Eileen House or Newington Causeway either in the SBA 2009 survey or the SRP 2011 survey). The results confirmed the findings of the SBA 2009 report regarding breakout of music noise through the roof structure of the Main Bar. For no explained reason, this was used to support a statement that "The findings of Southwark Council in January and April 2011 can be dismissed as unrepresentative of the normal, typical, worst-case operating conditions" although no measurements were made in the locations assessed by Southwark (see below).

70 *Noise Surveys by Southwark and Rupert Thornely-Taylor*

My initial advice to Southwark, based on these sets of data, was that consideration should be given to the 31.5Hz octave band, since sound at low frequencies is particularly difficult to attenuate in building design. Advice given in my letter dated 11 May 2010 concluded:

"A review of the proposed development leads to the conclusion that future residents would find internal noise levels from the Ministry of Sound unacceptable even with sealed glazing. The nature of the development precludes the use of a planning condition to require sufficient sound insulation to overcome the unacceptability, because of the necessity for access to balconies and the consequent impracticability of fixed, unopenable glazing. The assessment criteria considered by the applicants' consultants would be considered in the trial of any nuisance action, and would support a conclusion that complaints made were reasonable."

This paragraph has been quoted by MoS as recently as July 2011, although, as explained below, subsequent noise surveys have found that the underlying predictions of external noise levels on which the advice in the letter was based do not occur. Having seen my advice, SBA considered that there was not an issue in the 31.5Hz Octave Band at least with regard to sound from the MoS. I therefore considered it would be desirable for me to attend a noise survey in order to be able to discover at first hand the relationship between measured sound levels at Eileen House and music from the Ministry of Sound.

That survey took place on 22/23 January 2011 between 12.30am and 2.00am. The noise measurements were made by SBA. SRP were also present. I was present as an observer and I reported on it in an email dated 24 January. While there were wind speeds on the night which could have caused increased measured noise levels on occasions due to turbulence at the microphone, the outstanding observation on the night was that measured noise levels of music from the Ministry of Sound were much less than 86 dB  $L_{AFmax}$ , and much less than 87 dB in the 63Hz octave band. If there had been no wind the measured levels may, if anything, have been lower (although the wind was not continuous and valid measurements were possible).

The MoS subsequently observed that the January survey did not begin early enough to include noise from the setting up of crowd barriers in the street at the start of the evening. A further noise survey was carried out on 16 April 2011 with an earlier start time of 9.30pm, ending just after midnight.

The MoS then observed that the January and April surveys did not extend late enough



into the night to take account of an increase in amplifier gain settings that are made as the club fills up to compensate for the sound absorption of the bodies of patrons. A further noise survey was carried out on the night of 23/24 July 2011, extending until 6.15am. The July survey included measurements inside the main bar as well as at Eileen House. Including four sets of equipment deployed by Southwark, logging measurements were also made at Eileen House by SBA and at Newington Causeway by the Equus partnership.

The conclusions on the three surveys were:

#### 71 **January**

There was much less noise from music at the MoS than expected according to the SBA report. The music that was evident was predominantly due to the courtyard speakers. When they were switched off, the music that could just be heard was perceived as being emitted through the entrance doors.

The conclusions of the January Survey were

1. Noise from within the MoS was not observable, except at podium level where it appeared to be coming out of the doorways.
2. Noise from customers queuing in the street was minor.
3. Noise from customers within the courtyard, underneath the awnings was significant.
4. Noise from the courtyard speakers was significant.
5. Music noise coming from the MoS entrance doorways was significant.
6. There was no indication that music noise escaping from the interior of the MoS through the fabric of the buildings was significant, or even audible.
7. Because of (6) we could not know the relative contribution of sound in the 31.5 Hz octave band to the spectrum of sound coming from the main building.
8. The spectrum of the courtyard speaker sound was not particularly low frequency.

#### 72 **April**

Without the courtyard speakers, as in January, sound levels due to MoS music were much lower than had been expected based on the SBA 2009 report, up until the survey ceased just after midnight. There was significant noise between 10.30pm and 11.00pm caused by dragging metal crowd barriers into position in the street.

The conclusions of the April Survey regarding music noise from the Ministry of Sound were the same as those of the January Survey.

#### 73 **July**

Whereas MoS sound did not influence the overall ambient levels in terms of the dBA scale usually used for environmental noise assessment, the opportunity was taken to observe sound at Eileen House in a single 1/3 Octave Band, in order to provide some numerical quantification of the MoS sound. At Eileen House, the level in the 50Hz 1/3 Octave Band was found to be most sensitive to the music sound that was just audible in the absence of local traffic. Internal noise measurements showed a rise in low frequency noise as the night progressed, although noise levels reached at around 1.00am (i.e. within the time period of the January survey) were similar in level to the highest levels reached between 3.00am and 4.00am. When the sound levels due to music from the MoS were at their highest, the A-weighted sound level was in the 60s, very substantially lower than the supplied figure of 86 dB  $L_{AFmax}$  on which my original advice was based.

*The conclusion of the July survey were, for Eileen House:*

“With open windows, music noise would be audible inside a dwelling, and may cause annoyance.

Noise from the courtyard and other activities in the street would significantly exceed the internal noise spectrum with windows open, but the spectrum would be achievable with dual glazing and closed windows.”

*And for Newington Causeway:*

“Music would be audible inside the building with windows open, but the required spectrum could be achieved with closed dual glazing. There was no significant noise from the courtyard or the street at Newington Causeway.”

#### 74 **Conclusion**

The core feature of the outcomes from the above sequence of noise surveys and reports is that SBA extrapolated noise levels measured close to the roof of the Main Bar (by both SBA and later confirmed by SRP) to predict noise levels at Eileen House which significantly overestimated music noise levels from the MoS as received at the façade of Eileen House. My original advice was based on those overpredictions, and was changed once it was discovered that music noise levels from the Main Bar as measured at Eileen House are much lower than the SBA predictions.

The conclusion above answers the criticism MoS have in relation to the alleged inconsistent advice provided by the Council’s noise consultant. The advice is that with windows open music from within MoS will be audible inside the propose development but glazing can be required which would mean that noise levels would be acceptable with windows closed. Noise from the courtyard or street is not likely to have a significant effect upon occupants of the proposed development.

Accordingly, the advice and approach to the implications of MoS for future occupiers and of the proposed development for MoS as set out in this report remain appropriate and Members are asked to have careful regard to these matters.

The report identifies that the potential for a successful claim in nuisance cannot be ruled out and examines the potential means of abatement. Once such means relates to potential noise insulation works at the MoS club itself. With regard to the potential costs of insulating the building occupied by the club there have been costings submitted in relation to the application at Eileen House. These related to the entire roof and were in the order of £1.65m. MoS considered such works would require an unacceptable period of closure. No costings have been provided or requested in relation to more limited work focussing just on the main bar and loft. There has been no financial evidence submitted demonstrating that this level of cost would render the MoS business financially unviable.

#### 75 Letter of support:

72 Metro Central Heights- support the development as part of the regeneration of the area.

57-67 Newington Causeway (dated 27 April 2010) – welcomes the addition of the building and ground floor retail which would improve the area and security.

### **PLANNING CONSIDERATIONS**

#### 76 **Principle of the Proposed Use**

The application site is located within the Central Activities Zone, a Major Town Centre, Central London Sub-region, the Elephant and Castle Opportunity Area, a Transport Development Area, and it is located within the boundary of Proposals Site 39P in the Southwark Plan. Both the London Plan and Council strategy is for a high density, high quality, mixed use town centre at the Elephant and Castle that will address local, sub- regional and London wide needs for new homes, provide an enhanced public

transport interchange, employment and retail floor space, and other social benefits. The London Plan establishes the need for regional growth in new homes and employment and identifies further development in the Central Activities and associated Opportunity Areas as a means by which this requirement for homes and employment can be accommodated. London Plan policy 2.13 requires development in Opportunity Areas to optimise residential and non-residential outputs and support wider regeneration. The London Plan 2011 requires that 4200 jobs are identified and 6000 homes are provided within the Opportunity Area between 2001 and 2026, and that opportunities within the Central Activities Zone for local communities/businesses/ London as a whole to be identified as a strategic priority.

- 77 Stemming from its designation as an Opportunity Area in both the Southwark Plan and the London Plan, the Enterprise Quarter SPD (September 2008) was formulated to provide detail of acceptable types of development within the area, including land-use and other aspects of urban form within the area to the north-west of the core Elephant and Castle Opportunity Area. The application site is identified as site 7c 'Newington Causeway', an 'other opportunity site' within the SPD.
- 78 The SPD sets out how the area will contribute towards the regeneration of the wider Elephant and Castle Opportunity Area. The vision for the area is to create 'a distinctive university quarter, part of a thriving and sustainable town centre, that supports a range of university related and other businesses, including recreation, entertainment and cultural uses, and also accommodates a variety of residents and local facilities and services. A place that is safe and convenient on foot, with attractive public streets and spaces and memorable buildings to enjoy'. The SPD identifies the potential for significant levels of new development over the next ten to fifteen years, which will contribute towards meeting London Plan targets for new homes at the Elephant and Castle, whilst having the potential to support employment and economic function, and deliver a substantial amount of mixed-use floorspace and transform the quality of the environment.
- 79 The SPD identifies a number of development objectives which will apply to any application for development within the Enterprise Quarter, which includes:
  - Supporting the economic and business function of the Enterprise Quarter (existing business and employment generating floorspace should generally be retained or replaced by new employment generating uses or town centre uses);
  - Diversifying/ increasing the mix of uses within the area (mixed use residential development will generally be encouraged and is particularly appropriate towards the edges of the area);
  - Bringing vacant or underused land and buildings into productive use through refurbishment or redevelopment;
  - Extending the concentration of town centre activity proposed for the core area northwards to help revitalise the Enterprise Quarter;
  - Introducing a variety of public open spaces, green links, roof gardens, public squares and promote/ support biodiversity
  - Creating a high quality urban place with an attractive and distinctive character and a more coherent townscape through the form and height of new development
  - Ensuring street frontages are active and supervise the public realm with active town centre ground floor uses along the main arterial routes of Newington Causeway and London Road. Where tall landmark buildings are proposed, town centre ground floor uses, accessible to the public, should be incorporated to create a focus of activity, with a preference for social, community, cultural or leisure uses;
  - Securing developments of high quality architecture and urban design.

- 80 Core Strategy policy 10 'Jobs and Business' and Southwark Plan Saved Policy 1.4 requires that on sites within the Central Activities Zone there should be no net loss of Class B floorspace. The policy allows for the replacement of Class B uses with suitable town centre uses. Southwark Plan Policy 1.7 states that within town centres, developments will be permitted where they provide a range of uses, including retail, leisure, entertainment, community, civic, cultural and tourism, residential and employment. Therefore the inclusion of Class A and other town centre uses is considered to be acceptable, and in compliance with criterion iii) of Policy 1.4. In the context of a new build development, adequate evidence is therefore required to justify any loss of employment floorspace given the desire to maintain a broad range of uses in the opportunity area and Enterprise Quarter in line with policy 1.4.
- 81 Historically the site had a lawful A2 (Bank) use with upper floors used as ancillary B1 office space totalling 367.5sq.m. The application proposes 65sq.m of A3 cafe use and 366sq.m of B1 floorspace across the three floors above. This is a reduction of 51sq.m of B1 floorspace from the 417sq.m proposed within the submitted application in order to remove the need for a Crossrail levy and enable the provision of a residential 'bulk' storage area. This reduced provision is considered to accord with saved policy 1.4 of the Southwark Plan which allows for Class A or other town centre uses to be permitted in place of B Class uses, meaning no overall reduction in B1 floorspace has resulted. The B1 floorspace combines with the retail element at ground floor to enliven the street frontage, consistent with the requirements of Southwark and London Plan policies including the Enterprise Quarter SPD and Core Strategy policy 11.
- 82 The scheme will provide 38 new homes in a high density, quality mixed-use scheme making a significant contribution to the provision of housing including affordable housing, whilst maximising the somewhat limited opportunities to enhance the public realm on the site through the provision of a café. The demolition of the existing building is considered acceptable as there is no requirement for its retention (it is not listed), and its replacement will be of superior quality and offer improved office accommodation. There is a consistent and established planning policy objective of regenerating the area within which the application site is located and as such the principle of the proposed use is considered acceptable.
- 83 The vision for the Elephant and Castle Opportunity Area in the Core Strategy (2011) sets out that we will use land at the heart of the area to stimulate 440,000 sqm of new development with of up to 45,000 sqm new shopping and leisure floor space and 25,000-30,000 sqm of business floorspace. We will meet our target of 4000 new homes and a minimum of 1,400 affordable housing units by working with the local community, registered providers and private developers to deliver new homes. We will also meet the London plan target of 5,000 new jobs by encouraging more offices, hotels, small businesses and developing the evening economy and cultural activities. The application proposals will play an important role in promoting a wider mix of uses and consolidating the role and function of the Elephant and Castle town centre.
- 84 The Core Strategy (2011) policies are based on a number of evidence studies including the Strategic Housing Market Assessment 2010, the Housing Requirements Study 2009 and the Affordable Housing Viability Study 2010. The council also has a Development Capacity Assessment (DCA) which estimates potential future housing capacity that may come forward across a number of sites in the borough. The Core Strategy (2011) sets out a 15 year housing target from 2011-2026 which is in general conformity with the London Plan. The DCA has identified potential housing sites for the future and the timescale in which they realistically may come forward. The application site has been identified in the DCA as a key site to contribute towards meeting the housing target in the Elephant and Castle Opportunity Area.

- 85 The draft NPPF requires local planning authorities to deliver a wide choice of homes and widen opportunities for home ownership. This includes planning for a mix of housing, identifying the size, type and tenure of housing, and setting policies for meeting this need on sites unless off-site provision or a financial contribution can be robustly justified. The application proposal includes a range of housing choice which is also in compliance with the Core Strategy (2011)

### **Density, Mix and Tenure**

- 86 London Plan policy 3.4, Core Strategy Policy SP5 and Southwark Plan saved policy 3.11 seek to maximise the potential of sites and the efficient use of land where a positive impact on local character and good design are achieved. There is no in-principle objection to higher density developments within the Central Activities Zone, particularly in areas that have high public transport accessibility levels and where a development exhibits an exemplary standard of design with an excellent standard of living accommodation and the scheme respects local context, character and communities, including contributing to the skyline and the streetscape. Very high density is not in itself an impediment and it is the resulting built form that is of most relevance.
- 87 The site is located within the Central Activities Zone which attracts a density range of 650-1,100 habitable rooms per hectare (Core Strategy policy 5). The area also has excellent public transport links with a PTAL of 6. The proposal consists of 4 three bed (3 with separate kitchen/diners), 24 two bed and 10 one bed flats, equating to 111 habitable rooms. The density calculation set out under Appendix 2 of the Southwark Plan requires that a percentage of the non-residential area be included in the calculation, which in this instance is 18, so therefore the total number of habitable rooms within the scheme is 126 which, with a site area of 0.026ha, results in a density calculation of 4,962 habitable rooms per hectare. On this basis it is clear that the scheme represents an exceptionally high density proposal well in excess of the 1,100 habitable room guidance figure. However, due consideration must be given to the extremely compact nature of the site meaning density levels will inevitably be high, so the emphasis will be on whether there are any identified adverse impacts resulting from the higher density level and whether there is justification for the density though provision of an exemplary standard of design and accommodation across the entire scheme.
- 88 Core Strategy policy 7 'Family Homes' and Southwark Plan Policy 4.3 requires a mix of housing flats, particularly flats of two or more bedrooms, to reflect the changing housing demands of the borough. At least 60% of flats should have two or more bedrooms and at least 10% three or more bedrooms with direct access to private outdoor space. At least 10% should be suitable for wheelchair users. The scheme is fully compliant with these requirements providing 10 one bed (26.3%), 24 two bed (63.2%) and 4 three bed (10.5%) units. In terms of wheelchair accessible units, 2 affordable and 2 private units (or 10.5%) are included, with a further 4 adaptable units also available, which amounts to a 21% provision overall. Dual lift access is available to all the accessible flats and all flats incorporate design features to meet Lifetime Homes standards. The scheme represents a balanced and sustainable mix of accommodation in compliance with policy 4.3.
- 89 PPS1 and PPS3 emphasise the benefits of creating mixed communities. London Plan policies 3.10, 3.11 & 3.12 set out affordable housing targets and state that boroughs should take account of the London wide objective of 60% social housing and 40% intermediate provision, and the promotion of mixed and balanced communities. Core Strategy policy 6 and Southwark Plan saved policy 4.4 outlines the requirements for affordable housing provision in the Elephant and Castle Opportunity Area, requiring the provision of 35% affordable housing on a 50:50 social rented: intermediate split in

this location.

- 90 The scheme provides 27 private flats (8 one bed, 17 two bed, 1 three bed or 74 habitable rooms) and 11 affordable flats (2 one bed, 6 two bed, 3 three bed or 37 habitable rooms). The Residential Design SPD advises that for the purposes of affordable housing calculations, habitable rooms over 27.5sq.m should be counted as two rooms. The existence of some larger flats, including duplexes at the top of the tower, must be taken into account. There are an additional 5 affordable habitable rooms and 8 private habitable rooms over 27.5sq.m, resulting in a total of 124 habitable rooms across the scheme (82 private and 42 affordable). A 35% affordable housing provision would equate to 44 affordable habitable rooms. Policy 4.5 allows for a "discount" of 1 affordable habitable room for every affordable wheelchair unit provided (in this case a reduction of 2 affordable habitable rooms). Therefore, a policy compliant scheme would comprise 42 affordable habitable rooms. The scheme provides 42 affordable habitable rooms equating to 34%, the scheme is therefore considered to be compliant with London Plan policies in relation to the quantum of affordable housing provision.
- 91 No social rented accommodation is provided within the scheme. Due to the size limitations of the site, only a single residential core was possible (a separate core already being provided for the office use). Housing Associations have indicated that they require a separate core for social rented accommodation (to maintain separate control) and as such it was unlikely a Housing Association would take on any social rented accommodation in the scheme. Provision of a separate core and entrance for social rented accommodation was not physically or financially viable. Whilst this does not strictly conform to the Core Strategy and Southwark Plan requirements, there is some precedent from an appeal on a nearby site at 44-46 Borough Road, in which the Inspector supported the inability to provide social rented housing where a separate core wasn't possible.
- 92 The affordable housing is provided as intermediate rental, an alternative form of affordable housing that is usually RSL managed, and is let to households who cannot afford to buy or rent market housing in the borough. It is let at rents that meet the Council's affordability criteria for intermediate housing which is typically 20-30% below the cost of market housing. In this case, the developer aims to maintain ownership and management of the units in perpetuity, and the s106 agreement will require that they enter into a management agreement with an RSL unless they can achieve status as a landlord (accredited by the Tenants Services Authority).
- 93 PPS3 and Southwark's SPG on Affordable Housing suggest that developers should not benefit by not providing social rented housing, requiring that a Sequential Approach be applied to developments, meaning that where on site provision is not possible, off site provision is the next consideration, followed by an in-lieu payment. A Three Dragons Financial appraisal was submitted, (updated in April 2011) which has been considered by the Southwark Valuer. On balance the appraisal demonstrates that the scheme cannot support an additional in lieu payment to compensate for the lack of social rented accommodation. However, the appraisal did include an estimated £230,000 for s106 contributions and provided the toolkit requirement is not significantly greater than this, the scheme should be able to meet these S106 requirements in full. The applicant does not propose to seek grant support. On this basis, the affordable housing provision is considered acceptable and will provide an affordable means for first time buyers and key workers to purchase properties in accordance with London Plan policies 3.10, 3.11, 3.12, 3.13, & 3.14 and Southwark Plan policy 4.4.

The Core Strategy requires a minimum provision of 35% private housing and the scheme is in compliance with this requirement which will be secured within the S106

legal agreement.

## **Design and Layout**

- 94 London Plan policies 3.5, 7.1, 7.2, 7.3 and 7.4 set out design principles and requirements for quality of new housing provision. Policy 3.11 of the Southwark Plan seeks to maximise the efficient use of land where a positive impact on local character and good design are achieved. Core Strategy policy 12 and Southwark Plan policy 3.12 seek to ensure that a high standard of architecture and design are achieved in order to create high amenity environments. Policy 3.13 requires that the principles of good urban design are considered, in terms of context, height, scale, massing, layout, streetscape, landscaping and inclusive design and policy 4.2 requires that residential development achieve good quality living conditions within the development. The proposal has benefited from pre-application discussions with officers and a presentation to the Design Review Panel, whose views are presented earlier within the report.

## Context

- 95 The townscape character and local context is extremely mixed, with a general increase in scale and density as one approaches the Elephant and Castle. This site is unusual, being predominantly bounded by a raised railway viaduct and major road. The immediate context is one of medium to high rise development to the south and west of the railway viaduct, with buildings ranging in height from 3 to 7 storeys opposite, and 2 rising to 11 and up to 19 storeys to the south. There is, however, a significant change in character and context to the east/northeast of the railway viaduct which has a much lower scale and density. In terms of urban grain, development patterns and density, this proposal is unusual in that it is developing a significantly tall building on a very small site which allows for very little flexibility and 'breathing-space' for the building, and a limited contribution to the public realm.

## Height and Tall Buildings Policy

- 96 Core Strategy policy 12, together with saved policies in the Southwark Plan and the Replacement London Plan, set out criteria to guide decision making on applications for tall buildings. It is clear that the main impetus of the Replacement London Plan policy is for maximising the potential for redevelopment in the Opportunity Area and ensuring that careful consideration is given to all the various criteria relating to the impacts of a tall building. Southwark Plan saved policy 3.20 states that tall buildings (defined as one that exceeds 30m in height) may be suitable on sites which have excellent accessibility to public transport and are located in the Central Activities Zone (particularly in Opportunity Areas) outside landmark viewing corridors, where the building should:
- make a positive contribution to the landscape; and
  - be located at a point of landmark significance; and
  - be of the highest architectural standard; and
  - relate well to its surroundings, particularly at street level; and
  - contribute positively to the London skyline as a whole, consolidating a cluster within that skyline or providing key focus within views.
- 97 The 'Guidance on Tall Buildings' by CABI/ English Heritage, in addition to the criteria set out above, requires that a tall building should:
- meet the requirements of the View Management Framework;
  - illustrate exemplary standards of sustainable construction, resource management and renewable energy generation and recycling;

- be sensitive to their impact on micro-climates in terms of wind, sun, reflection and overshadowing and consider privacy, amenity and overshadowing;
- be safe in terms of their own integrity and the safety of occupiers and have an acceptable relationship to aircraft/ telecommunication networks;
- be appropriate to the transport capacity of the area ensuring adequate, attractive, inclusive and safe pedestrian and public transport access;
- provide high quality spaces, integrate green spaces/ planting and support vibrant communities both around and within the building; and
- contain a mix of uses with public access, such as ground floor retail or cafes, interact with streetscape at ground floor level.

98 London Plan policy 7.7 provides specific policy guidance on suitable locations and design of tall buildings. London Plan policy 7.7 generally encourages tall buildings where they create attractive landmarks enhancing London's character; help provide a coherent location for economic clusters of related activities and/ or act as a catalyst for regeneration and where they are acceptable in terms of design and impact on their surroundings. Policy 7.7 relates to the design and impact of large-scale buildings requiring that they be of the highest quality design, be suited to their wider context, be attractive city elements and where appropriate contribute to an interesting skyline, consolidating clusters within that skyline or providing key foci within views, and paying particular attention, in residential environments, to privacy, amenity and overshadowing, providing high quality spaces, capitalising on opportunities to integrate green spaces and planting and support vibrant communities both around and within the building. The Replacement London Plan also sets general policy directions to be followed in the Elephant and Castle Opportunity Area and states: 'The planning framework for the area around the Elephant and Castle should draw on its good public transport accessibility, closeness to the Central Activities Zone and relatively affordable land. This could be a suitable location to meet some of London's longer-term needs for extra office space and is generally suitable for tall buildings.'

99 The Elephant and Castle Opportunity Area is identified as one where tall buildings may be appropriate. The Elephant and Castle Development Framework (2004) defined appropriate locations for tall landmark buildings in terms of a Core Cluster – the area suitable for the tallest 'city' scale buildings, and a Secondary Cluster – an area suitable for tall/landmark buildings, lower in height and scale than the Core Cluster, which will complement and reinforce the central area and hence Core Cluster. The application site is located to the north of the area covered by the Elephant and Castle SPG, and as such lies outside of these core and secondary tall building clusters, in the area covered by the Enterprise Quarter SPD. The Enterprise Quarter SPD extends the secondary cluster northwards, with the aim of creating a concentration of activity and define a zone for city scale tall buildings.

100 Suitable locations for landmark tall buildings have been identified within the SPD subject to visual impact, micro climate, and other environmental assessments which will help to determine their appropriate height. In the vicinity of the application site, the policy identifies a 'landmark tall building' for the Eileen House site opposite and a 'gateway tall building' is identified for the Newington Triangle site to the north. These landmark tall buildings will create a new cluster to the north of the core Elephant and Castle cluster and will potentially balance the cluster of towers already approved to the south in terms of form, scale and activity (Strata Tower and the former London Park Hotel). Whilst not identified as a landmark site within the SPD, the application site can potentially contribute positively towards this emerging cluster. However, the proposal would need to meet the various criteria for tall buildings as set out above, and those more specific to the area as identified within the Enterprise Quarter SPD which requires tall buildings to:

- contribute to a coherent and dynamic skyline for the Elephant and Castle;



- form attractive elements within the city, particularly in terms of the profile of the building from all angles;
- be of the highest architectural and urban design quality and to be exemplars of sustainable construction;
- relate well to their surroundings, particularly at street level,
- contain active uses and frontages at lower levels;
- create a high quality public realm; and
- be appropriate in terms of impact on managed views/the historic environment.

101 The 'Enterprise Quarter SPD' sets out parameters to guide development under Figure 3.16. The application site is located marginally outside of the extended tall buildings secondary cluster, for which an indicative building height of up to 31m, equating to 8-10 commercial or 10-13 residential storeys, is provided. The SPD expands on this guidance for building heights, advising that:

- residential or commercial storey heights provide a general indication of how to interpret maximum heights within defined areas. The building heights...relate to street frontages, behind which greater heights may be acceptable provided there is no adverse impact on the street, on neighbours or the public realm, and the creation of more coherence in terms of building heights is not compromised;
- appropriate heights are not necessarily the maximum identified but will depend upon site specific considerations and the design approach/ quality of design;
- building heights must not prejudice the environmental quality of the public realm, for instance by completely overshadowing a street or pedestrian route; and
- other visually prominent locations are suitable for landmark elements, where buildings may be locally taller than those in the immediate context but will not be significantly taller than their surroundings. It may be appropriate for buildings in these locations to be landmarks.

102 Therefore, this guidance stipulates that a tall building may be acceptable on the application site subject to the various tall buildings criteria, environmental impacts, and design.

103 The maximum overall height of the building is 69.82m above ordinance datum (wind turbines above) and therefore it must be considered against the tall buildings policy criteria. In considering the acceptability of the proposed height due consideration should be given to the changes that are occurring within the wider Elephant and Castle regeneration area and the developing Enterprise Quarter which will alter the scale and character of the area.

104 Within this changing context, the proposed development can potentially make a significant contribution. Much of the success of the scheme will depend on the way in which the Elephant and Castle Enterprise Quarter develops, in particular those sites in close proximity to this proposal. There would be the opportunity for a positive relationship between this scheme, any landmark tall building proposed on Eileen House opposite the site, and a possible tall building proposed on the Newington Triangle site to the northwest. When combined, these sites start to establish a gateway from the north of the Borough into the Elephant and Castle, forming part of a newly emerging regeneration cluster, a "local cluster" where tall buildings may be appropriate subject to further testing. The 'gateway-significance' could address the fact that the site cannot reasonably be established as a singular point of landmark significance, a requirement for tall buildings under policy 3.20. Whilst not considered a point of landmark significance, the site will have local prominence as part of this gateway, and as the proposed building is of a high architectural standard, relates well to the surrounding context and makes a contribution to the townscape, it is considered

to comply with the intent of policy 3.20.

- 105 The site has the potential to support a prominent building that will signify and reinforce the transition between existing and new development and will provide a statement at this gateway location. As described above, the building will be sited in an area of diverse character with a range of building heights and forms. Although currently the tallest column of the building's three volumes will be higher than any surrounding buildings the visual impact of its height is reduced, partly because the base of the tallest element is hidden by the raised railway viaduct, and partly due to the reduction in height as the building steps down along the Newington Causeway frontage. This was a key recommendation of the Design Review Panel, the building now sitting comfortably within its immediate townscape context. In particular the relationship to the Salvation Army building (predominantly 42.9m AOD, 45.85 at highest point) is improved by being closer in height to the lowest element (52.48m AOD), and the Metro Central Heights building (up to about 61m) at the Elephant and Castle end of the street is of similar height to the median element (61.15m AOD). The tri-partite nature of the massing is therefore setting up a clear dialogue between the existing contextually taller buildings and the proposal.
- 106 The tower is considered to fit well within both the existing and emerging context described above, would not over-dominate its surroundings and would remain subservient in height to the buildings within the core and secondary clusters of the Elephant and Castle. In this way the development can be considered to make a positive contribution to the landscape and to the London skyline as a whole, consolidating (an emerging) cluster within that skyline and providing key focus within views, in line with policy 3.20. These points will be addressed in more detail below. The remaining emphasis in terms of tall buildings policy relates to architectural and urban design quality, impacts on surroundings including skyline and views and sustainability, all of which are addressed elsewhere within this report.

#### Quality of Accommodation

- 107 There are a maximum of 3 flats per floor, though depending on unit mix, some floors have only 1 or 2 units, including duplex units on the upper 7 floors. As the future development potential of the adjoining site (Salvation Army building) cannot be prejudiced, no window openings have been included in the southern façade of the scheme. Due to the triangular shape of the site, and the siting of balconies on each angled corner, a majority (76%) of the units may be considered as dual aspect. The only single aspect units are the one bedroom units located on the southwest corner, though these include inset balconies that allow for an element of dual aspect with an outlook/opening both west and south (where the building over-sails the pavement beyond the building line of the adjoining Salvation Army building). It is considered that there will be an acceptable standard of accommodation within these single aspect flats.
- 108 The Residential Design SPD 2011 sets out minimum space standards for dwellings: 1 bed flats should, on average, be a minimum of 50sq.m, 2 beds 66sq.m. and 3 beds 85sq.m. and it is expected that an exemplary scheme would exceed the space standards, particularly where a high density is being proposed. A range of units sizes are provided:
- 1 bed- 9 units 47sq.m. with 3.0sq.m balcony, 1 unit 50sq.m with 4.5sq.m. balcony;
  - 2 bed affordable- 60.5sq.m. with 3.5sq.m. balcony, 83sq.m with 10sq.m. balcony;
  - 2 bed private 104/132/137sq.m. with 10-11.5sq.m. balconies;
  - 2 bed wheelchair accessible units 78sq.m with 10sq.m. balcony;
  - 3 bed affordable 97.5sq.m. with 13sq.m balcony

- 3 bed private 114sq.m. with 10sq.m. balcony.

109 The internal layouts of the flats achieve a high level of residential amenity across all tenures, with most units exceeding minimum standards in terms of unit and room sizes. 9 of the 10 one bedroom flats fall marginally below the new standard being 47sqm rather than 50sqm. Other units exceed the standard by a considerable amount. All flats contain in built storage and private balconies and the 2 and 3 bed units have dual bathrooms and/or ensuites. There is also an additional 'bulk' storage area provided at second floor.

#### Amenity Space

- 110 The Residential Design SPD sets out amenity space standards and advises it is particularly important for family housing in order to provide a safe outdoor area for children to play in. It can take the form of private gardens, balconies, terraces and roof gardens. There should be 50sq.m of communal amenity space per development, plus 10sq.m per unit, though for smaller flats a reduced amount (minimum 3sq.m. balconies) is acceptable where the shortfall is added to the overall communal provision. London Plan policy 3.6 also sets out that “the Mayor will and the boroughs should ensure developments...make provision for play and informal recreation, based on the expected child population generated by the scheme”. Children's play areas should be provided at a rate of 10sq.m per child bedspace (covering a range of age groups), in this case up to 5 child bed spaces are likely, equating to 50sq.m. of playspace. On this basis the scheme should provide up to 430sq.m. of amenity space, of which around 50sq.m. should be dedicated to children’s play.
- 111 The site is only 0.026 hectares (260sq.m.) so there is no opportunity to provide amenity space at ground level, though improvements to the pavement area fronting the site are proposed, such as tree planting, lighting, paving and bicycle stands. Communal amenity space has been provided in the form of roof terraces on the 15th (a 31sq.m. children’s playspace) and 18th (44sq.m) floors. As outlined above, all units contain balconies, the smallest being 3.0sq.m. for the 1 bed units, while the 3 bedroom units each have a minimum balcony of 10sq.m, and 18 of the 38 units have balconies of 10sq.m. or greater. The overall amenity space provision is therefore 75sq.m. communal amenity space and 258.5sq.m. private amenity space. Newington Gardens, with open space and children’s play area, is located a short walk (around 200m) from the site, and s106 moneys towards open space and children’s play have been secured.
- 112 In addition, significant upgrade works have been proposed to the adjacent railway viaduct and the immediate site surrounds. Currently, a wide footpath runs along the main site frontage along Newington Causeway. Small Yorkstone paving is proposed for the floor of the cafe which extends out beyond the building line between the railway viaduct and along Newington Causeway, in order to delineate an area where the cafe can ‘spill out’ onto the pavement. The entrance hallway and remainder of the pavement fronting the site will be resurfaced in large Yorkstone paving and is interspersed with natural stone paving aligned with the buildings piers. The improvements to the pavement area fronting the site will include provision of three new street trees, upgraded crossover, bike stands and new street furniture (stone clad seating with timber seat).
- 113 In the context of a central urban site, the works being undertaken, and the proximity of Newington Park, and given the limitations of the site area, the amenity space provision is considered sufficient for the scheme, in accordance with London Plan policies 7.1 and 7.18 and Southwark Plan policies 3.2, 3.11, 3.12, 3.13 and 4.2 and the Residential Design SPD.

## Appearance and Materials

- 114 The height, scale and massing work successfully in the overall design, resulting in an elegant and dynamic triangular-structure that is well modulated into three vertical volumes. These three volumes are of varying height and give the triangular building a differing profile to each side which adds interest and variety to its townscape contribution. The architectural modulation of the proposal is successful on a number of levels. Vertically the form is expressed as three volumes, all of which have a different architectural treatment, and work to reduce the perceived mass and bulk of the building. Horizontally, the building is split into sections which get taller as the building rises, but in terms of perspective and proportions they are read as being similar and serve to reduce the perceived height of the tower.
- 115 The design of the top of the building is of particular importance when considering the effect on the skyline, and it is considered that the creation of 3 separate volumes of varying height, allowing for a stepping down towards Elephant and Castle to the south, creates an interesting and varied termination to the top of the tower.
- 116 The facade treatment is a variable hit-and-miss system of vertical solid panels and fins (corresponding to the horizontal sections) within which there is a varying pattern of fenestration. On each corner there is a balcony or terrace which cuts-out solidity from the overall volume and makes a significant reduction to the perceived bulk, making a significant contribution to 'lightening' the structure. The predominantly blank facade facing the Salvation Army building has been improved through inclusion of surface-modulation, with additional panels and non-openable windows incorporated on the upper levels where it is unlikely a redevelopment of the adjoining (currently 2 storey) Salvation Army building would block it. On this basis the windows are not considered to prejudice the future development of the adjoining site.
- 117 The base of the building has been strengthened by a 2 and 3-storey cut-back, giving it prominence and a level of activity and interest to the streetscape, as well as a sense of drama from the over-hang. The ground floor includes a large cafe space extending out into the street/ pavement and with a clear recognition of the area to the north between the site and the railway viaduct. As the site falls within the Elephant and Castle Opportunity Area, there is an expectation that the development will contribute to the creation of a lively, safe and attractive public realm with active frontages, and the ground floor, containing the cafe, office and residential entrances will provide an active frontage. Thick masonry columns give the base of the building a strong and secure grounding.
- 118 In terms of materials, the building's structure is an expressed pre-cast concrete frame, with an emphasis on the vertical columns but also strongly balanced by the horizontal sections. Within this framing the building is clad with pre-cast concrete panels, which vary in surface-texture and colour to give contrast to the frame and richness in visual quality. Within this predominantly masonry structure the fenestration, balconies and shopfront are expressed in a much lighter fashion with aluminium framed units and extensive areas of both translucent and opaque glass. The intention to treat the three vertical volumes differently in terms of material texture and hue is an interesting concept that should serve to further articulate their massing within the overall bulk.

## Impact on Strategic and Local Views and on the Character and Setting of Listed Buildings or Conservation Areas

- 119 London Plan policies 7.11 and 7.12 establish the principles under which London's views should be managed, considered in greater detail within the London View Management Framework, which relates to the management of strategically important views (designated views). Core Strategy policy 12 and saved Policies 3.21 and 3.22

of the Southwark Plan seek to protect and enhance both local and strategic views. The Enterprise Quarter SPD requires that tall buildings contribute to a coherent and dynamic skyline for the Elephant and Castle. The impact on views and the buildings contribution to the skyline must be considered. Saved Policies 3.15 and 3.18 of the Southwark Plan require that permission will not be granted for developments that would not preserve or enhance the setting or views of a listed building or the setting and views into or out of a Conservation Area. In addition, PPS 5 'Planning for the Historic Environment' advises that developments must either preserve or enhance the setting of Conservation Areas and Listed Buildings.

- 120 The potential impact on views was considered within the Townscape and Visual Assessment submitted with the application, which includes a range of panoramas, river prospects, townscape and local views, and night-time views. The application site is reasonably prominent in terms of providing a focal point for views from several directions, primarily looking south from Borough High Street and north from the Elephant and Castle roundabout, and the building will be more visible from localised viewpoints. The building will form part of an emerging cluster of tall buildings, and is well articulated at the top which means it can stand in its own right as a building of merit and is considered to make a beneficial contribution to local views and skyline as well as respond positively to the context of the area. The impacts on the various viewpoints are acceptable as the development will be of a high quality, is located in a constantly evolving townscape, and will enhance the visual appearance of central Southwark by contributing positively to an emerging cluster of towers.
- 121 In terms of the View Management Framework, an important consideration is the impact of the proposed tower on Designated View 23, a townscape view from the Serpentine Bridge in Hyde Park which aims to protect the silhouette of historic buildings including the Palace of Westminster World Heritage Site, from visual intrusion caused by new buildings. The proposal does not impact on this view as it is completely obscured by existing development and is therefore acceptable.
- 122 Views indicate that the tower will be seen in immediate, local and distant views, thereby altering the setting of the Conservation Areas and any listed buildings within them. However, it is not considered that the building will harm the settings and will not dominate the views detrimentally. The nearest Conservation Areas are West Square, St. George's Circus and Trinity Church Square. Whilst the proposed scheme will be seen in views into and out of the proposed Conservation Areas, it is not considered that the impact will be of a detrimental nature since the articulated massing and height of the proposal will (in the distant views) be very limited. The nearest listed building is the Grade II Listed Inner London Crown Court (corner Newington Causeway and Harper Road) 160m to the northeast and the Faraday Memorial (Elephant and Castle northern roundabout) 240m to the southwest. Other nearby listed buildings include Numbers 47, 49-60 and 62 Borough Road, which lie approximately 220m north of the application site. It is acknowledged that there will be some impact on both listed buildings and Conservation Areas by reason of the proposed height and in some cases there is a noticeable change in the existing views. However it is not considered that these impacts will be detrimental to the character and appearance of the Conservation Areas and the views and settings would be preserved.

#### Suitability of a Tall Building

- 123 The overall strength of the design and in particular its ability to establish a gateway from the north are considered to be positive townscape benefits which will assist in the successful regeneration of the Newington area. The development should make a positive contribution to the London skyline, and the impact on localised views is considered to be acceptable as the building will contribute positively to the emerging cluster of tall buildings within the Elephant and Castle town centre. The scheme is

considered to achieve excellence in design which is of sufficient quality to justify a building of this scale, which relates well to its context. The scheme will make a positive contribution to the Elephant and Castle regeneration area in compliance with London Plan policies 2.13 & 2.14, Southwark Core Strategy policy 12 and Southwark Plan saved policy 3.20.

### **Impact on the Amenities of Neighbouring Residents and Future Occupiers**

- 124 London Plan policy 7.7 requires that all large scale development should be sensitive to their impact on the microclimate in terms of sunlight, reflection, overshadowing and wind. Southwark Plan policy 3.2 relates to the protection of amenity, including disturbance from noise, to present and future occupiers in the surrounding area or on the application site. Core Strategy Policy SP13 indicates that the Council will set high standards for reducing noise pollution and will seek to avoid amenity and environmental problems that affect how the environment is enjoyed and how we live and work.

#### Sunlight Daylight

- 125 A Daylight and Sunlight Report was submitted with the application. It assessed the impact of the proposed development on the daylight and sunlight of adjoining residential occupiers and future occupiers against the guidance provided in the BRE Guide BR 209 "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice" (2002). An assessment was made of the Vertical Sky Component (VSC), which assesses loss of daylight entering existing rooms by considering the amount of sky light reaching a window and No Sky Line (NSL), which considers the change in the visible sky line from existing and proposed situations i.e. the impact on the daylight distribution within a room.
- 126 There are a limited number of residential properties located in proximity to the application site that might be affected by the proposed development, namely the five storey Telford and Stephenson Houses in the Rockingham Estate, located over 40m away beyond the railway viaduct to the east. The next nearest residential development is some distance away to the south at Metro Central Heights, whose north facing windows are 80m from the proposed development. On the Telford and Stephenson properties, the report assumes that the elevations facing the application site (north-western side) contain a mixture of hallways, WCs, bedrooms and kitchens, and suggest that living rooms are located on the elevation facing away from the proposed development. The elevations contain long external access balconies along their length limiting the amount of daylight entering many of the windows in the existing situation.
- 127 The guidelines state that where the VSC remains above 27% this should be regarded as sufficient daylight but otherwise a reduction of over 0.8 times the former value (20%) will cause a noticeable loss of daylight to existing occupiers. In the case of both Telford and Stephenson House, the balconies mean most VSC values are well below 27% as a starting point, and those few windows over 27% saw no reductions greater than 20%, in line with BRE recommendations. In terms of NSL, the guidelines state that where the area of a room getting light is reduced by more than 20%, there could be a noticeable loss of light. In both Telford and Stephenson Houses, a vast majority of the rooms see no reduction in NSL, and those with any reduction are well below 20% in the majority of cases and are therefore in accordance with BRE recommendations.
- 128 Sunlight Assessment need only consider the annual probable sunlight hours (APSH) for windows facing within 90° of due south and there are no adjacent properties that fall into this category. Further, as there are no residential properties located to the

north or west, any overshadowing would be limited to late afternoon towards the east and would not be so significant as to warrant refusal.

- 129 Whilst it is certainly the case that in dense urban environments there will inevitably be some adverse impacts from a development of this scale, particularly on a site which is designated for high density development in a major town centre location, it is considered that only very limited daylight infringements would occur (to Telford and Stephenson House) from the proposed development in this case.

#### Outlook and Privacy

- 130 As the proposal includes a tall building, the scheme has the potential to impact on the outlook of many residents within the near and wider vicinity. In order to prevent any harmful overlooking, the Residential Design Standards SPD requires developments to achieve a separation distance of 12m at the front of a building and any elevation that fronts a highway and a minimum of 21m at the rear. The nearest residential occupiers are located within the Rockingham Estate, at least 40m to the east, and Metro Central Heights, which is 80m to the south. In terms of overlooking potential and privacy, it is considered that the significant separation distances between the proposal and the nearest residential development is such that there will be a negligible impact. Objections were received from residents of Metro Central Heights in terms of overlooking and loss of views, however given the closest distance from the edge of the proposed building and the nearest north facing window is some 80m, such impacts cannot be considered so significant as to warrant refusal of the application. Overall the proposed development is considered to adequately protect the amenity of adjoining occupiers consistent with the outcomes sought by policy 3.2 of the Southwark Plan.

#### Noise

- 131 PPG24 advises that local planning authorities should consider carefully in each case whether proposals for new noise-sensitive development (including new housing) would be incompatible with existing activities. Such development should not normally be permitted in areas which are subject to unacceptably high levels of noise. PPG24 goes on to advise that noise-sensitive development should not normally be permitted where high levels of noise will continue throughout the night, especially during the hours when people are normally sleeping (23.00 to 07.00).

PPG24 advises that mitigation to reduce potential noise impacts should be considered. A number of measures can be introduced to control the source of, or limit exposure to, noise. Such measures should be "proportionate and reasonable".

Where it is proposed to grant permission for noise-sensitive development in areas of high ambient noise, planning conditions should be imposed to ensure that the effects of noise are mitigated as far as possible. Further, it should be remembered that the sound level within a residential building is not the only consideration: most residents will also expect a reasonable degree of peaceful enjoyment of their gardens and adjacent amenity areas. This would include the balconies of the proposed development.

PPG24 advises that local planning authorities should have regard to "noise exposure categories" in determining an application for planning permission. This is considered further below.

- 132 The London Plan 2011 policies are intended to enable Londoners to live in well designed, high quality homes, limiting disturbance from noise. Policy 7.15 of the London Plan 2011 provides that development proposals should seek to reduce noise

by

- a. minimising the existing and potential adverse impacts of noise on, from, within, or in the vicinity of, development proposals
- b. separating new noise sensitive development from major noise sources wherever practicable through the use of distance, screening, or internal layout in preference to sole reliance on sound insulation

133 Southwark Plan saved Policy 3.2 seeks to protect the amenity of future occupiers from disturbance from noise. UDP Policy 4.2 seeks good quality living conditions for future occupiers including high standards of protection from noise pollution. Core Strategy Policy SP13 also indicates that a high standard of protection from noise pollution is expected.

134 The Sustainable Design and Construction SPD explains that existing sources of high and frequent noise near the site need to be considered when planning the layout of a site and the form and massing of buildings. Noise sensitive uses, such as hospitals, schools and residential developments, and amenity areas should be separated from noise sources. The SPD also advises that dwellings that only have windows that open onto busy roads or railways are not supported by the council. Double glazing should be used on windows to reduce noise levels inside buildings.

The Sustainable Design and Construction SPD provides that residential development should be designed to so that preferred noise levels for indoor spaces are below  
– LAeq 16hr 30dB (07:00-23:00) and LAeq 8hr 30dB  
– LAFmax 45dB (23:00-07:00).

The SPD also advises that mechanical systems of ventilation should only be used as a complement to natural ventilation to ensure a constant standard of indoor air quality. In other words, developments which propose sealed windows and which rely upon mechanical systems of ventilation for the provision of fresh air to a residential property are not supported. The Residential Design Standards SPD 2011 seeks a high standard of accommodation and in particular requires that all habitable rooms should have access to natural daylight and rooms should be designed to take advantage of natural sunlight and ventilation.

135 It is therefore necessary to consider whether:

- a) future residents of the proposed development would be disturbed by noise to an unacceptable degree;
- b) if so whether, it would be practical to use distance screening or changes to the proposed internal layout to reduce that level of disturbance;
- c) if not whether sound insulation or other mitigation may be required by condition to reduce that level of disturbance.

136 In addition to the general level of background noise in this area there are three main specific sources of noise in proximity to the application site:

- a) noise from trains passing on the railway viaduct;
- b) road traffic noise from Newington causeway; and
- c) noise related to the Ministry of Sound nightclub.

137 It is not appropriate to apply the noise exposure category approach advocated in PPG24 to noise related to the Ministry of Sound. That noise source requires particular consideration. Regard should be had to the noise exposure category approach in



relation to the rail and road noise sources however.

- 138 The noise survey submitted by the applicant with the planning application found that the application site falls into Noise Exposure Category C. PPG24 advises in relation to NEC C sites that planning permission should not normally be granted. Where it is considered that permission should be given, for example because there are no alternative quieter sites available, conditions should be imposed to ensure a commensurate level of protection against noise.
- 139 However, the noise exposure categories are based upon assumptions regarding the noise insulation properties of single glazing windows undertaken in the late 1980s. The noise insulation properties of glazing have considerably improved over the last twenty years and as a result officers do not consider that it is appropriate to give significant weight to the application of the noise exposure categories within PPG24. It is necessary for Members to have regard to the high specification of glazing that is available and which would be required by condition for the proposed development
- 140 The noise survey submitted by the applicant with the application for planning permission examines the impact of road noise upon the western elevation of the proposed building and rail noise upon the eastern elevation. This identifies that if thermal double glazing is provided the noise levels within the SPD would be likely to be attained internally.
- 141 Due to concerns about the amenity of future occupiers due to the close proximity to the railway and the busy Newington Causeway- the residential accommodation was raised to level 4 (third storey plus mezzanine) and the survey reflects this. Thus, the layout of the proposed development has been designed so far as is practical with regard to potential disturbance from road and rail noise sources.
- 142 The noise survey submitted by the applicant with the planning application also provides guidance on the sound insulation measures that would be required for the facades such that appropriate internal noise levels can be met and suggest that an alternative means of ventilation should be provided in order to minimise the need to open windows. This would accord with the SPD which allows for mechanical ventilation to be provided in conjunction with openable windows. Sound levels on balconies will exceed the 50dB LAeq, 16hr (07:00-23:00) referred to in the preferred standard of the SPD. This is not however an unusual scenario for a city location and while sound levels on balconies may cause annoyance to some residents, this must be balanced against the substantial benefit of private outdoor space.
- 143 The Council's Environmental Protection officer sought additional information in relation to this noise assessment, and also sought a vibration survey. A vibration assessment was undertaken which concluded that there will be a low probability of adverse comment from the occupiers of the premises regarding vibration. The proposed wind turbines have the potential to cause adverse impacts on amenity for occupiers, and an assessment was undertaken which concluded that noise from the turbines will be below the background level for the nearest noise sensitive receptor. Whilst higher wind speeds could increase the noise generated and affect residential amenity, it is likely this would be tempered by the fact that high wind speeds themselves create noise which could to mask the turbine noise.
- 144 Overall in relation to the noise from road and rail sources, Officers have concluded that provided that sound insulation measures and alternative means are required by condition, the likely effects of rail and road noise will have been appropriately minimised and are not likely to give rise to unacceptable disturbance to future occupiers. Future occupiers would have the ability to close their windows and obtain a quiet internal environment which fresh air provided by means of alternative

mechanical ventilation. It is considered that road and rail noise will not give rise to unacceptable living conditions for future occupiers and that the relevant policy standards are attained.

- 145 In relation to the potential impact of the Ministry of Sound nightclub, there has been a considerable amount of work undertaken on behalf of the applicant, the Ministry of Sound and the Council. The Council has sought advice from an external acoustic consultant Rupert Taylor.
- 146 Rupert Thornely-Taylor is a Fellow of the Institute of Acoustics and has headed the international acoustics, noise and vibration consultancy practice Rupert Taylor for 43 years. He has been an expert witness in over 100 cases in courts, planning inquiries and the Houses of Parliament. He has been President of the Association of Noise Consultants in the UK and a Director of the International Institute of Acoustics and Vibration. He is author of the Pelican book "NOISE", and of many other publications on the subject. He is an examiner of the Institute of Acoustics Diploma. He has extensive experience of the acoustics and noise aspects of clubs, studios and theatres, both from the design and enforcement points of view. He has been expert witness in many planning inquiries involving clubs and music venues.
- 147 The Ministry of Sound night club is located across Newington Causeway on Gaunt Street. It has registered a long-standing objection to the proposed development due to the possible impact of noise related to its activities upon future residents. The MoS is an internationally established business which has been located in Southwark for almost 20 years. MoS's current premises in a former warehouse sited between the railway viaduct and Gaunt Street operates 3 to 4 times a week (with potential to operate more frequently) from 7 pm through to the following morning.
- 148 There are three potential sources of noise associated with the Ministry of Sound that might affect residents of the proposed development:
- a) break out noise i.e. noise from music playing within the night club which passes through the fabric of the building and travels to the proposed development;
  - b) noise from patrons utilising the external courtyard; and
  - c) noise from persons in the street outside the Ministry of Sound i.e. those queuing, entering and leaving the night club.
- 149 **a) Break Out Noise:** The Applicant produced an assessment that examined the potential impact of break out noise dated January 2010. This identified the possibility of low frequency noise break-out from the Ministry of Sound which if not mitigated would be likely to cause an unacceptable level of amenity for future occupiers.
- 150 Further noise survey work was then undertaken in January and April 2011. These surveys appear to reveal that noise levels associated with break out noise were not so significant as to require the provision of noise mitigation
- 151 However, the reliability of these surveys was challenged by MoS. Indeed, after the last committee meeting at which this application was considered MoS submitted a further noise survey which contained results over a different time period and with different measurement locations to those in the January and April 2011 surveys. As a result, it was agreed that a further joint survey would be undertaken.
- 152 That further survey was conducted on the night of 23/24 July 2011. Representatives from the Council and MoS were present. On behalf of the Applicant, the Equus

Partnership undertook measurements at 89-93 Newington Causeway.

Those results indicate that break out noise from MoS does indeed increase during the night reaching a peak between 02:00-04:00. Low frequency noise is the main source of noise heard and measured at the application site. Music from MoS would be audible within the proposed development with windows open but an acceptable internal sound level could be achieved with dual glazed windows closed and alternative ventilation

- 153 This is corroborated by a measurements made by Rupert Taylor who identified similar noise levels related to low-frequency break-out noise.

As a result, noise mitigation in the form of a glazing specification is required. The proposal has been designed to an appropriate specification in order to achieve an acceptable level of noise within the development and in accordance with the Council's standards as set out in the SPD

- 154 Mechanical ventilation will be required in any event for reasons stated above and is incorporated within the scheme.

- 155 **b) Noise from the Courtyard:** There is a courtyard which is currently used by patrons of MoS. Patrons gather here to talk and smoke. Music is played via external speakers. The surveys undertaken do not suggest that this would impact on future occupiers of the proposed development due to a number of factors: distance, the intervening Newington Causeway – a busy road, rail noise and the fact that the site is shielded by another building from the courtyard and does not have a direct line of sight. Consequently, officers are of the view that any noise from the courtyard will not impact significantly on future occupiers either with windows open or windows closed

- 156 It should be noted that there are questions as to the lawfulness of the use of the courtyard in planning terms. It has been suggested to the Ministry of Sound that an application for a Certificate of Lawfulness be submitted in order to establish whether or not the use is lawful. This is likely to take some time to resolve and consequently, without prejudice to the Council's position in relation to this matter, Members should consider the use of the courtyard and its potential impact on future residents, as it currently operates regardless of its planning status.

- 157 It is also worth noting that speakers within the courtyard are not authorised under the club's license for public entertainment. This means that music played through these speakers must be at background level only

- 158 **c) Noise from patrons in the Street:** At Newington Causeway, noise from the street would be unlikely to give rise to disturbance to future occupiers either with windows open or windows closed.

It has been suggested by MoS that noise related to the setting up of barriers related to the control of queuing will give rise to noise problems. However, whilst this activity does create noise, given the level of back ground noise in this vicinity and given that for relatively little cost barriers can be given rubber footings to reduce the noise caused when dragged across the ground, Officers do not consider that this is likely to give rise to unacceptable impacts upon future occupiers.

It should be noted that activities associated with the Ministry of Sound are by no means the sole source of noise in the street, which contains bus stands and a cabin containing facilities for drivers. Patrons queuing to enter the Ministry of Sound have been observed on the three surveys attended by the Council's noise consultant to be relatively quiet. On one occasion an inebriated bystander was shouting for some time

(he did not appear to be a patron of the club). There were other isolated cases of shouting and the arrival of a police car. These shouting events would cause annoyance to a hypothetical resident in Gaunt Street with windows open, but would not be significant in Newington Causeway because of the additional distance and the intervening buildings.

- 159 It follows that absent a condition requiring sealed windows to be provided, future residents will be able to choose whether they have their windows open or closed. If they open them then when the MoS is operating there will be times when they may be disturbed. At such times if residents close their windows they are unlikely to experience disturbance and they will be able to obtain fresh air via that mechanical ventilation proposed.
- 160 Members will therefore need to consider:
- a) whether the provision of openable windows results in an acceptable level of amenity for future occupiers given the potential impact of break out noise;
  - b) if not whether it is necessary to require windows to be sealed.
- 161 If Members consider that with openable windows the proposed development provides a level of amenity which accords with the Council's standards, then in relation to the impact of rail/road noise and of MoS upon future occupiers there will be no breach of policy.
- 162 If, however, Members consider that the provision of openable windows results in an unacceptable level of amenity for future occupiers, members will have to consider:
- a) whether it is necessary to require that windows are sealed
  - b) if so, whether the provision of sealed windows would provide an acceptable level of amenity for future occupiers in accordance with the Council's standards.
- 163 Looking at the noise issues overall even without the effects of the MoS operation residents would have to close their bedroom windows at night in order not to be disturbed. The presence of MoS does not therefore affect this position because its operation similarly would result in the need to close bedroom windows to avoid disturbance.

Officers have considered the potential impact of the operation of MoS upon the amenity experienced upon balconies. As the MoS activities do not give rise to noise until relatively late in the evening when balconies are unlikely to be used it is not considered that the MoS operation would be likely to have a significant impact upon the use of balconies.

Officers have concluded that provided that sound insulation measures and alternative means of ventilation are required by condition, the likely effects of MoS will have been appropriately minimised and are not likely to give rise to unacceptable disturbance to future occupiers. Future occupiers would have the ability to close their windows and obtain a quiet internal environment with fresh air provided by means of alternative mechanical ventilation. It is considered that the activities of MoS would not give rise to unacceptable living conditions for future occupiers and that the relevant policy standards are attained.

- 164 If however, Members take a contrary view, Officers believe that the provision of sealed windows would result in a conflict with the Council's Sustainable Design and

Construction SPD which requires natural ventilation even where mechanical ventilation is proposed. Thus, the level of amenity that would be provided to future residents would not meet the council's standards if windows were sealed.

It follows that, if Members conclude that openable windows do not provide an acceptable level of amenity, there will be a conflict with Policy 7.15, Policy 3.2 and 4.1 of the UDP and Policy SP12 of the Core Strategy. This conflict could not be remedied through the imposition of a condition requiring sealed windows. Accordingly unless other policies in the Development Plan pull in favour of the grant of planning permission sufficiently to outweigh such a policy conflict, Members would have to refuse to application.

In relation to the condition proposed to secure the appropriate sound insulation the applicant is concerned that that condition seeks to specify the internal noise criteria in terms of an Lmax rather than an Leq noise index. They consider that the Leq noise index does take account of the fluctuating nature of entertainment noise.

In essence the applicant considers that the issue of entertainment noise has been fully considered within the design of their scheme. Glazing to the required specification can be provided and secured by conditions as advocated in PPG24. They state " we consider that the use of design targets expressed in terms of an Leq 5 minute noise index is appropriate; it is consistent with advice given in PPG24 and provides a stringent level of control ( beyond that normally imposed by Southwark for the development that includes entertainment uses) "

The applicant's acoustic consultant has looked further at their own noise monitoring data in order to review the potential implications of adopting the proposed condition with the Lmax criterion. On the basis of that assessment they are prepared to accept the revised condition although they maintain that it is unnecessary and that the condition as previously drafted with an Laeq criterion is appropriate and would take into account the fluctuating nature of entertainment noise.

165 Impact upon Ministry of Sound

The concern raised by the Ministry of Sound is that complaints could be made by future residents. MoS contends that such complaints could lead to proceedings against it in nuisance. If those proceedings were successful they would result in a requirement for MoS to abate the nuisance. MoS has indicated that any steps that would require a reduction in noise levels within the club would compromise the club's unique selling point (USP). This would impact upon MoS's ability to trade. MoS contends that ultimately this would lead to the closure of the club and the borough would lose a significant and important local business.

166 It is therefore necessary to consider:

- a) whether it is likely that an actionable nuisance could be established in proceedings;
- b) if so what steps would be likely to be taken;
- c) what would the impact of such abatement steps be upon the economic viability of the MoS.

167 A nuisance action could be commenced by a future occupier of the proposed development. In addition, under the Environment Act 1995, the Council has a duty to take enforcement action against nuisances arising in its area. If the Council considers that a nuisance is being caused to future occupiers of the proposed development by

MoS it will have to serve an abatement notice upon MoS.

It is no defence to an action in nuisance to argue that the person complaining of the nuisance knew of your activities before they moved in. Thus, even if future residents knew of the MoS activities prior to moving into the proposed development they would not be prevented from bringing a claim in a nuisance.

A nuisance is an undue interference with the comfortable and convenience of living according to the standards of the average person. Consideration of nuisance involves consideration of the give and take that is expected between neighbours. No-one can expect to live in a way which means they are completely undisturbed by their neighbours activities. The question is whether the level of disturbance is beyond that which is reasonable.

In relation to a noise nuisance there is no absolute standard to be applied i.e. a noise does not have to reach any particular defined level in order to cause a nuisance. In considering the standard of comfort or convenience that a reasonable person might expect regard must be had to the character of the neighbourhood. A person who lives in a large manufacturing town cannot reasonably expect the same purity of air or freedom from noise as one living in a secluded countryside location.

- 168 As has been set out above, disturbance is only likely to arise to a future occupier if they have their windows open. The purpose of opening a window is to obtain fresh air for ventilation. It follows that if apartments that might be adversely affected by noise from MoS are provided with mechanical ventilation the need to open windows at night may be mitigated or removed.

To succeed in any action in nuisance a future resident would have to establish that the average person would expect to be able to sleep without disturbance with his window open in an inner city London location. Officers consider that it is reasonable to conclude that there may be real difficulty in establishing this. However, it is not possible to rule out the possibility of a successful claim in nuisance against MoS by a future occupier or the potential for the Council to take action pursuant to its powers.

If a claim in nuisance were to succeed the Court would require MoS to take steps to ensure that nuisance does not recur i.e. to abate the nuisance. In relation to the potential impact of MoS upon future residents this would require steps to be taken to reduce the amount of break out noise.

- 169 MoS have explained that "for a nightclub that has built its reputation for bringing the world's biggest dance music DJs to London and being able to attract them in large part due to its reputation for delivering the highest quality nightclub experience, particularly in the area of sound reproduction (it's the name of the business), it is a fundamental requirement that the experience that both clubber and DJ receive is one of excellence in sound. Clubbers come to Ministry of Sound primarily to dance. Other nightclubs may have a business model which is built on socialising and selling alcohol, but the Ministry of Sound business model is based on music and dancing first and foremost.

As a venue fills, more people absorb the sound and it is necessary to increase system levels to compensate for that absorption. If levels were not increased then the noise of conversation would become more apparent, the effect of the music would lose its power and the clubber would have a significantly less satisfactory experience. Patrons would inevitably seek to get a better experience elsewhere and DJs would choose to perform in venues where they believed their craft was better exploited, Such an outcome would be disastrous for Ministry of Sound's reputation. A simple Google search for DJ comments on Ministry of Sound will reveal many of the world's most

prominent DJs talking effusively about the quality of sound reproduction in the venue. Put bluntly, it is simply inconceivable that Ministry of Sound be expected to turn the volume down. If it were compelled in whatever way to contain its noise levels to a certain level, business would inevitably be lost putting the future of the club and the business as a whole at risk of closure."

- 170 *Comment: Council's noise expert does not agree with this suggestion as this is not a acoustically acceptable argument. More people would indeed absorb sound but the increase in 'output' from the sound system would only need to compensate for this absorption. For example, if a full room reduces the sound levels in the room by 3dB, and increase of only 3dB will be required to bring sound levels back to their previous level. Overall sound levels would therefore remain constant)\_except in limited areas relatively close to the loudspeakers. Furthermore, the sound in the club that is radiated to the surrounding area is very strongly concentrated at low frequencies at which human bodies are not efficient sound absorbers)."*

What is notable about this argument is that no distinction is made between the different areas within the club.

- 171 The club has 4 distinct areas:

1. the box;
2. the baby box;
3. the bar; and
4. the loft.

- 172 1) The box is the main dance area where the "headline" DJs perform/operate. This area is effectively acoustically sealed and it is unlikely that any material noise break-out occurs from the box through the fabric of the building Hence in this key area it is unlikely that any reduction in volume would have a material impact upon break out noise. Thus even a successful action in nuisance would be unlikely to require any change in the operation of the box.
- 2) The baby box similarly has no material noise break-out through the building fabric largely due to its location within the club. Again, therefore it is unlikely that any reduction in volume would have a material impact upon break out noise.
- 3) and 4) It is the case that there is noise breakout through the roof of the bar and the loft area. One possible response to a successful nuisance action would be to lower noise levels in the bar and loft areas. There is no evidence to suggest that these are areas which are critical to the MoS business model of "music and dancing". It should be noted that the loft contains both a bar and a "chill out area". Similarly there is no evidence to suggest that such action would be fatal to the business or lead to the club's closure, bearing in mind that the main music and dance areas could operate unconstrained in this regard. The USP of the club is therefore unlikely to be affected even if a nuisance claim was upheld.

- 173 Abatement might also take the form of works to be undertaken to insulate the premises further, although this really only relates to the bar and loft area. Although clearly this would have a financial implications for the club, there is no evidence that the costs of such works would be so prohibitive that they would render the club financially unviable.

- 174 It follows from the above that if the proposed development does not have sealed windows there is the potential for claims in nuisance to be made. Officers believe that it would be difficult to establish such a claim. If such a claim were established any steps that MoS might be required to take to reduce disturbance would be unlikely to

result in the closure of the business although it may affect the profitability of the business to a degree.

The applicant has submitted comments in response to the MoS submission (October 2011) with regards to the potential for noise nuisance claims. They refer to legal advice they have obtained in relation to a potential nuisance claim:

*'...in my Opinion dated 26<sup>th</sup> March 2011, I observed: 'even if noise from MoS did reach a level which was audible at the Site with windows/doors open at night, the Court [in any nuisance claim] would have to consider whether any interference was 'unreasonable' – at a building specifically designed and equipped to protect occupants from high levels of existing external noise (to which MoS makes a modest contribution). As mentioned, I cannot see any prospects of a claim on the basis postulated succeeding'. I have no reason to alter this view.'*

A later opinion repeats the substance of the above:

*'In my opinion, it would be perverse of the Council to allow the very low risk of a nuisance claim against MoS to cast a sterilising pall over the regeneration of large tracts of land in its vicinity, which are otherwise accepted to be eminently suitable for redevelopment to assist with the provision of the new homes and jobs urgently needed in this part of London.*

*Accordingly, I continue to take the view that the Council can properly grant permission for the Development as recommended by its Officers'.*

- 175 These are matters to which Members should give some weight in determining whether or not to grant planning permission.

Whilst clearly consideration must be given to the concerns raised in this regard officers are of the view that the benefits of the development, in terms of the contribution it makes towards the delivery of housing, the regeneration of the Elephant and Castle area and the positive contribution made to the public realm in terms of urban design, outweigh the potential impact on the operation of the MoS, an existing and established business. London Plan policy 4.1 recognises the contribution made by central London and its businesses, such as MoS, to London's economic success. Taking this into account together with all other considerations set out elsewhere in this report it is considered that planning permission should be granted.

176 Air Quality

The site is located within an Air Quality Management Area so an Air Quality Assessment was submitted which assessed local conditions and the impact of the scheme. Further details were requested in relation to dispersal modelling and the impact on the amenity area/ child play space on level 15 which fronts Newington Causeway, which might be exposed to unacceptable pollution levels. Following submission of the additional details, no further objection was been raised by the Environmental Protection officer who was satisfied with the proposals. Although a dispersal model was not submitted, since the application was submitted guidance on air quality assessments had changed and a condition is recommended to ensure that a suitable scheme of mitigation is submitted based on a detailed modelling exercise. Officers are satisfied that an appropriate mitigation scheme is likely to be identifiable

**Other Matters**

- 177 MoS raised a number of policy matters in its representation dated 9 September 2010. The officer view is as follows.



Southwark Plan (UDP, July 2007) policies SP10 Development Impacts, SP11 Amenity and Environmental quality, 4.1 Density of residential development, and 6.1 Elephant and Castle Opportunity Area have been overtaken by the adoption of the Core Strategy and are not saved under the Core Strategy (2011). Members are advised that the relevant saved policies of the Southwark plan are listed in the body of the main report at paragraph 12 and the relevant strategic policies are listed at paragraph 13. Policy 4.1 is replaced by strategic policy SP5 – Providing new homes a set out in the body of the main report in paragraphs 67 and 68.

178 The MoS representation suggests that Southwark Plan (UDP) policy 2.1 Enhancement of community facilities is relevant. Officers disagree. Policy 2.1 is not relevant and members are to have no regard to this policy as there is no community facility (Uses Class D) either lawful or unlawful established on the site of the proposed development. For clarity, the established uses are set out in the body of the main report in paragraph 10.

179 The relevant London Plan policies are set out in the main report at paragraph 14. Officers do not agree with the MoS representation that London plan policies 3.A.18 Protection and enhancement of social infrastructure and community facilities and 3D.4 Development and promotion of arts and culture are relevant material considerations. Officers do accept that and members are to have regard to 5G.3 C Central Activities: Offices as a relevant consideration given that the application site does lie within the Central Activity Zone (CAZ). The scheme proposes a mix of uses that includes replacement floorspace of protected office (B1) and cafe (A3) uses that results in a slight shortfall of 1.5sqm that is considered acceptable as set out in the main body at paragraphs 64 - 66. The remainder of the 490sqm of existing floorspace (see main report - paragraph 10) has an established use as a bank (A2) which is not similarly protected by policy.

180 Regeneration and Housing Need

MoS argues that regeneration could be delivered in another way without high density housing. If high density housing is acceptable in planning terms, which officers consider to be the case, there is no requirement to look at alternatives

If the proposed development were identified as likely to have an adverse impact upon MoS then the balancing exercise identified by MoS in its letter of 2 June 2011 would have to be undertaken. However, the advice is that MOS is likely to be able operate without unacceptable impacts arising on future occupiers of the proposed development.

In regard to housing need, the MoS sets out on page 11 and 12 of its September 2010 representation that Southwark housing targets can be comfortably met without the Eileen House and Newington Causeway sites. Officers disagree with this for the following reasons:

The Core Strategy makes it clear that the housing targets contained within it are to be exceeded where possible. Further, there are two targets to which regard must be had the Elephant and Castle target and the overall target for the Borough. The Elephant and Castle target in the core strategy and the Replacement London Plan is 4000 net new homes to 2026. The Southwark housing target in the core strategy is 24,450 net over the 15 years (1630 net a year).

181 However, the Replacement London Plan 2011 increases this overall target to an annual target of 2005 net a year (30,075 over 15 years). In the last 14 years for which figures are available, this is a level of growth that the Borough has only achieved in one year (2006/7) at the height of the construction boom. Officers consider that the

Borough will struggle to achieve the housing targets anticipated by the Replacement London Plan.

MoS has focussed upon the sites identified in the Development Capacity Assessment (DCA) but has failed to recognise that not all of the sites identified within the DCA will come forward for housing. As a result of the above, officers consider that the proposed development would make a valuable contribution towards meeting housing targets. Weight should be given to this factor in favour of the grant of planning permission.

### **Transport Issues**

- 182 Car Parking: In line with national policies, the Council is seeking to encourage reduced car dependence particularly in areas with good accessibility to public transport and thus encourage the use of more sustainable transport modes. The proposal is situated in close proximity to Elephant and Castle with its overland and underground rail lines and the area is well served by local buses. The site falls within the Congestion Charging Zone and all roads in the immediate vicinity of the site are within a Controlled Parking Zone. Accordingly, the site has a very high public transport accessibility rating (PTAL) of 6. The scheme proposes no car parking provision, primarily because the size and configuration of the site, and location next to a major road, would make it impossible to provide, and this combined with the high level of accessibility fully justifies a car free scheme. Further to this, existing traffic orders would be amended to prevent future occupiers (excluding disabled occupiers) from obtaining parking permits. The Council has an agreement with a car club operator for the installation of car club spaces across the Borough and there are at least 3 spaces proposed that would be accessible to local residents as well as those within the proposed development.
- 183 Travel Plan: The submitted Transport Statement provides an outline of what is proposed to be included in the Travel Plan for the development, which is to promote more sustainable transport choices such as walking, cycling and public transport. A Travel Plan will be required via condition prior to occupation of the development. Commitment to the implementation of the Travel Plan will be included in the Section 106 Agreement, with a Travel Plan Co-ordinator to be appointed by the developer in order to develop, implement and monitor the Plan.
- 184 Cycle Parking: The Southwark Plan requires cycle parking at a rate of 1 cycle space per 250sqm A or B1 floorspace (i.e. 2 spaces) and within the Central Activities Zone, a minimum of 1 space per unit plus 1 visitor space per 10 units (i.e. 42 spaces). The scheme proposes 4 spaces for the commercial accommodation, plus 46 residential spaces at ground and mezzanine levels, with a cycle lift allowing for easy transportation between levels. A further 6 visitor cycle spaces are provided along the pavement directly in front of the café. The scheme provides cycle parking in accordance with the Southwark Plan. The comments from Southwark Cyclists are noted; however in the absence of a local or London-wide policy to support their suggested level, it would not be reasonable to refuse planning permission on this basis.
- 185 Refuse and Servicing: Given the site constraints, servicing from the on-street loading bay, located to the north of the site, has been agreed by transport officers, and any servicing which takes place will be subject to local restrictions. Further, full details of how the on-street servicing will operate will be sought through the submission of a Servicing Management Plan. Adequate refuse storage space has been incorporated for the commercial and residential element on the mezzanine level, and the waste strategy for handling residential waste is considered satisfactory. Building management staff will be responsible for moving the waste to the kerbside for

collection on the relevant collection day. There is a separate refuse store for the café at ground floor.

- 186 Overall, the proposal is considered consistent with Core Strategy policy 2 and policies 5.1, 5.2, 5.3, 5.6 and 5.7 of the Southwark Plan. It would help promote non-car modes of transport, provide an acceptable level of bicycle storage, and a suitable refuse and servicing arrangement.

### **Flood Risk Assessment**

- 187 The site is located within Flood Zone 3a which is considered to be an area of high risk of flooding due to the proximity of the tidal River Thames. However the site is protected by the Thames Barrier and related defences. A flood risk assessment has been submitted with the application and confirms that the site has the potential to be inundated in the event that the flood defences fail. As the residential accommodation will be located above ground floor, it will be protected from flooding even in the unlikely event of the river defences being breached. It is for the applicant to demonstrate that the proposed development can be made safe through measures set out in the submitted Flood Risk Assessment. The Environment Agency has raised no objections to the scheme subject to conditions. The proposal is therefore considered consistent with Planning Policy Statement 25.

- 188 Due consideration must be given to the sequential test, advocated in Planning Policy Statement 25 "Development and Flood Risk" which requires Local Planning Authorities to direct development towards lower flood risk zones and within development sites the highest vulnerability uses should be located on parts of the site at lowest probability of flooding. However a significant part of Southwark Borough is within Flood Zone 3 and there are no sites at a lower risk of flooding for some distance. It is acknowledged therefore there are no alternative sites in the locality. Whilst the application site is not designated within the Southwark Plan, the development of brownfield sites such as this is encouraged in order to maximise the efficient use of land with the provision of much needed housing as well as promoting mixed use development within the locality. The site is located on previously developed land and there are strong sustainability reasons why the site should be redeveloped and it has excellent accessibility to public transport. The proposed scheme therefore meets the Planning Policy Statement 25 sequential test.

### **Planning Obligations [S.106 undertaking or agreement]**

- 189 Core Strategy policy 14 and Policy 2.5 of the Southwark Plan advises that planning obligations can be secured to overcome the negative impacts of a generally acceptable proposal. This policy is reinforced by the 'Supplementary Planning Document' (SPD) on Section 106 Planning Obligations, which sets out in detail the type of development that qualifies for planning obligations, Regulation 122 of the Community Infrastructure Levy regulations, and Circular 05/05 which advises that every planning application will be judged on its own merits against relevant policy, , and other material considerations when assessing planning obligations. The applicant has submitted a proposed Heads of Terms based on the Council's Planning Obligations SPD. Full details are provided below.
- 190 Affordable Housing: The proposal provides 42 affordable habitable rooms resulting in an overall provision of 33% of the total habitable rooms being affordable;
- 191 Education: £28,915 in line with s106 toolkit;
- 192 Employment and Training: The applicant is providing their own Workplace Coordinator during Construction (WPC), which will be acceptable only if terms can be agreed

within the s106 for the functioning of the WPC. A clause will be included within the s106 such that should the developer not employ a WPC or there is under performance on behalf of the WPC then a contribution of £25,197 should be paid (in addition to the Management Fee). Management Fee of £2,043 to cover costs in association with WPCs;

193 Public Open Space, Children's' Play, Sports Development: £40,736 in line with s106 toolkit (Public Open Space £10,464, Children's Play £4,737, Sports Development £25,535);

194 Transport Strategic: £16,399 in line with s106 toolkit;

195 Site Specific Transport: £2,750 towards amending the Traffic Management Order to restrict future occupiers from obtaining parking permits in addition to the Transport for London bus improvement and public realm contributions (set out below);

196 Transport for London: £55,000 as requested by TfL/the Greater London Authority:

- £35,000 towards pedestrian and public realm works;
- £20,000 towards improvements to bus stops within the immediate Elephant and Castle area.

197 Public Realm:

- Works (being undertaken by applicant) estimated at £61,500, to the pavement area immediately surrounding the site, including street trees/seating/paving.
- £9,966 for further works in accordance with the toolkit.

198 Archaeology: £2,400 in line with s106 toolkit;

199 Health: £36,525 in line with s106 toolkit;

200 Community Facilities: £5,310 in line with s106 toolkit;

201 Sub Total: with TfL requirements and in-lieu works- £286,741  
Administration fee of 2%: £5,735  
TOTAL financial contribution: £292,476 OR £7,697 per unit.

202 The following clauses are also to be included within the Section 106 Agreement

- Commitment to connect as soon as possible to the ESCO or decentralised energy system and to investigate the value of the proposed energy efficiency measures to ensure maximum performance;
- Commitment to undertake a detailed wind modelling of the site and surrounding environment (utilising data from recent trials such as Ashenden for data input and verification) to provide insight into the wind climate at the height of the proposed wind turbines and allow for an accurate calculation of the energy converted. Should the modelling exercise demonstrate that limited energy savings are attributable to the installation of the turbines, a payment equal to the purchase and installation cost of the turbines (evidenced by a cost plan which will be subject to Council approval) should be made in lieu of the installation of the turbines, which would be put towards 'off site' carbon savings, to ensure an equivalent carbon saving can be made elsewhere and to assist in meeting the renewable energy target as required by Core Strategy policy 13 and saved policy 3.4 of the Southwark Plan.
- Commitment to developing, implementing and monitoring a travel plan including the appointment of a Travel Plan Co-ordinator.
- Commitment to entering into a s278 agreement with the Highways Authority in relation to public realm improvements to the pavement fronting the site.

203 The proposed Heads of Terms are considered satisfactory for the scale of the development and at the time of writing this report a draft S106 Agreement is in place. This is consistent with the requirements of Core Strategy 14 and Policy 2.5 of the Southwark Plan concerning Planning Obligations and Policy 8.2 of the London Plan and no objections are raised. In addition regard has been had to Regulation 122 of the Community Infrastructure Levy regulations 2010 and the proposed S106 agreement satisfies the relevant tests in that regard.

204 In accordance with the recommendation, should an acceptable Section 106 Agreement not be signed within the specified time (30th November 2011) the following reason for refusal would apply:

“In the absence of a signed Section 106 Agreement, there is no mechanism in place to avoid or mitigate the impact of the proposed development on the public realm, public open space, the transport network, health facilities and employment and the proposal would therefore be contrary to Core Strategy 14, Policy 2.5 of the Southwark Plan and Policy 6.3 of the Replacement London Plan.”

### **Conclusion**

205 The application would see the redevelopment of a currently underused brownfield site to provide both replacement employment opportunities, improving the immediate urban environment, and providing much needed private and affordable housing. The principle of the use is accepted. The height and design of the building is considered acceptable particularly given its siting within the Central Activities Zone and the Elephant and Castle Opportunity Area. Planning obligations will be secured to offset the impact of the development in accordance with the Supplementary Planning Document on Planning Obligations. The scheme will contribute towards the regeneration of the Elephant and Castle area and the Enterprise Quarter and will deliver a sustainable mixed-use scheme that would bring about a marked improvement in the local environment.

Sound insulation measures and alternative means of ventilation (which are integral elements of the proposal) will be required by condition, and therefore the likely effects of MoS will have been appropriately minimised and are not likely to give rise to unacceptable disturbance to future occupiers. Future occupiers would have the ability to close their windows and obtain a quiet internal environment which fresh air provided by means of alternative mechanical ventilation. It is considered that the activities of MoS would not give rise to unacceptable living conditions for future occupiers and that the relevant policy standards are attained.

206 Officers consider that whilst future occupiers might bring proceedings in nuisance it is reasonable to conclude that there may be real difficulty in establishing this. However, it is not possible to rule out the possibility of a successful claim in nuisance against MoS by a future occupier. If such a claim were established any steps that MoS might be required to take to reduce disturbance would be unlikely to result in the closure of the business although it may affect the profitability of the business to a degree.

Officers are of the view that notwithstanding any breaches in policy identified above the benefits of the development, in terms of the contribution it makes towards the delivery of housing, the regeneration of the Elephant and Castle area and the positive contribution made to the public realm in terms of urban design, outweigh the potential impact on the operation of the MoS. The balance lies in favour of granting planning permission in the terms detailed in this report.

207 Consistent with the objectives set out in the draft NPPF, the application proposal

ensures the effective and most efficient use of land and buildings, will help meet Southwark's housing needs, will promote the vitality and viability of the town centre and will promote prosperity. Consistent with the national policy approach, the application accord with the principles of sustainable development, is located on an appropriate site, in a sustainable location within the Elephant and Castle town centre, and with access to facilities and services.

- 208 Officers consider the proposed development to be sustainable and not to give rise to significant adverse impacts that would rebut the presumption in favour of the grant of planning permission in the draft NPPF. Thus, that draft policy weighs in favour of the grant of planning permission.

### **Community impact statement**

- 209 In line with the Council's Community Impact Statement the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process. In addition to this, the applicant has undertaken their own consultation during the application process, which described in the consultation section of this report. The impact on local people is set out above.

### **Human rights**

- 210 The application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with convention rights. The term 'engage' simply means that human rights may be affected or relevant. Few rights are absolute in the sense that they cannot be interfered with under any circumstances. 'Qualified' rights, including the Article 6, Article 8 and Protocol 1 rights, can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by a local planning authority providing a mixed use development for 38 new residential units combined with a commercial/retail use against potential interference with individual human rights. Public bodies have a wide margin of appreciation in striking a fair balance between competing rights in making these decisions.

This approach has been endorsed by *Lough v First Secretary of State* [2004] 1 WLR 2557 and clearly shows that human rights considerations are also material considerations in the planning arena which must be given proper consideration and weight. It is acceptable for the Council to strike a balance between the legitimate aim of the provision of a mixed use development against potential interference with some individual rights.

- 211 In the case of this application, a number of rights may be engaged including: -
- *The right to a fair trial (Article 6)* – giving rise to the need to ensure proper consultation and effective engagement of the public in the application process.
  - *The right to respect for private and family life (Article 8)* - Relevant considerations may include impacts on amenities or the quality of life of individuals by prospective development.
  - *Article 1, Protocol 1 (Protection of Property)* – this right prohibits interference with individuals' right to peaceful enjoyment of existing and future property / homes. Article 1 provides that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law". As set out above, the possibility of a successful claim in

nuisance against MoS by a future occupier cannot be ruled out. Accordingly the grant of planning permission for the proposed development has the potential to result in MoS being required to alter its operation and/or to expend funds to mitigate noise emanating from its premises. As a result, the grant of planning permission has the potential to interfere with MoS's human rights. Accordingly, planning permission can only be granted consistent with the rights if the benefits of the proposed development outweigh the impact upon MoS. As set out above, Officers consider that this is the case.

### **Supplementary advice from other officers**

212 Strategic Director of Communities, Law and Governance: No comments made.

### **Sustainable development implications**

213 Core Strategy Policy 1 and saved Policy 3.3 of the Southwark Plan assert that development will not be granted unless the economic, environmental and social impacts of a development have been addressed through a Sustainability Assessment. Core Strategy Policy 13 and saved Policy 3.4 of the Southwark Plan seek energy efficient development and renewable energy technology in new development. Saved Policy 3.6 seeks to maintain air quality. Saved Policy 3.9 advises that all development should incorporate measures to reduce the demand for water supply. Policy 5.2 of the Replacement London Plan requires that major development schemes should provide an assessment of their energy demands and demonstrate how they have taken steps to apply the Mayor's energy hierarchy. It requires a demonstration that the scheme has applied the Mayor's energy hierarchy and that a reduction in carbon dioxide emissions of 20% can be gained from on site renewable energy generation (required by Replacement London Plan policy 5.7).

214 An Energy Statement was submitted for the proposed development which advises that as a result of the energy strategy proposed the overall total CO<sub>2</sub> emissions of the site would be reduced by 61% over a Building Regulations compliant specification. The application followed the energy hierarchy as follows:

1) *'Be Lean'* Reduce carbon dioxide emissions through use of energy efficiency measures to produce a new energy efficiency baseline: A range of energy efficiency measures are proposed, including reduction of internal water consumption through the use of practical and hygienic water saving measures (water efficient taps and white goods/ flow restrictions/ water metres), potential future connection to a system providing non-potable 'green' water services for use in the WC's, washing machines and dishwashers, low energy lighting controlled by energy efficient means to ensure lights are not illuminated when the area is not occupied, high efficient boilers, fabric design to provide solar shading, achieved through 'set back' windows, and balconies set within the façade of the structure, natural ventilation. Together with natural ventilation, high levels of insulation will be included throughout to ensure heat is not absorbed through the fabric of the building resulting in temperatures remaining relatively constant throughout the year, and avoid overheating in the summer months. The intention to provide a green roof covering the entire top roof area, covering some 80sq.m, will promote biodiversity by allowing flora and fauna to populate the roof, and will assist surface water drainage. The 'Be Lean' improvements will reduce the regulated CO<sub>2</sub> emissions of the proposed dwellings by 9%. The reduction in total CO<sub>2</sub> emissions of the development will be 5.5% (327,814 kWh per annum) from these Be Lean measures.

2) *'Be Clean'* Further reduce carbon dioxide emissions from CHP connection to

provide a new energy baseline: The development originally proposed connection to the Elephant and Castle MUSCo network. Although the specific MUSCo is not being progressed the development of an alternative decentralized energy system (an ESCo) remains a council objective and is being pursued. Consequently plant room space has been provided in the basement to allow for this. The proposal to connect to this system results in a 45% reduction in total CO<sub>2</sub> emissions of the proposed development (the reduction does not represent a reduction in energy demand from the 327,814 kWh but from the overall energy demand). Following connection to the ESCo the development will be able to exceed Code for Sustainable Homes Level 3 energy targets. Given that the ESCo is unlikely to be operational at the time of construction, heat will be provided through natural gas-fired boilers.

- 3) 'Be Green' Reduce (by 20%) the energy supply baseline through renewables installation: The scheme proposes two 6kW roof mounted wind turbines which the applicant suggests could further reduce emissions by 8.2% of the new baseline post ESCo connection. However, officers are unconvinced that the proposed turbines will provide much benefit in terms of renewable energy. In addition, recent studies into the data used by the applicant have shown the database used can overestimate annual wind speed in urban environments. One possible way of estimating the amount of energy generated by the turbines would be by undertaking some detailed wind modelling of the site and surrounding environment. This would provide insight into the wind climate at the height of the proposed turbines and allow for more accurate calculations of the energy converted. It is therefore recommended that a detailed study be undertaken, utilising data from recent trials (the Ashenden trials) for data input and verification of the wind modelling results. The s106 agreement will stipulate that if the modelling exercise demonstrates that little benefit will be accrued from the installation of the proposed turbines, a payment (equal to the purchase and installation cost of the turbines) should be made in lieu of the installation of the turbines, and this obligation would be put towards 'off site' carbon savings, to ensure an equivalent carbon saving can be made off site.
- 215 The applicant has advised that providing the wind turbines was an attempt to reach the renewable energy targets, and due to the physical constraints of the site there are no other feasible measures that could generate a greater CO<sub>2</sub> reduction from renewable energy. Whilst the development may not reach the full 20% renewables target, it is considered that under the circumstances given what appears to be a substantial CO<sub>2</sub> saving, there is no objection in terms of the approach to energy, and it is considered that the Energy Hierarchy has been followed appropriately, and the proposals have been accepted by the GLA.
- 216 The Southwark Sustainable Design and Construction SPD set a mandatory Code for Sustainable Homes target of Level 3 for all residential units. However the Core Strategy policy 13 'High Environmental Standards' adopted in April 2011 has now set a target that all residential developments should achieve at least Code for Sustainable homes level 4. A preliminary Code for Sustainable Homes assessment was submitted which estimated that the scheme would achieve a Code for Sustainable Homes Level 3. However, further development of the scheme now demonstrates that the proposed residential units will achieve Code level 4 as required by the Core Strategy. The benefit of the ESCo connection in these calculations has been excluded since the Code for Sustainable Homes certification needs to be performed on completion of the dwellings and this connection would not be available at that stage.
- 217 The scheme as originally submitted was designed to achieve a 'Very Good' rating under the BREEAM Office Pre-Assessment, which was in compliance with



sustainability policies of both the London Plan and Southwark Plan at the time of application. However since April 2011 Core Strategy policy 13 sets a target that all non-residential developments (except schools and community facilities) should achieve at least BREEAM "excellent". Again further development of the scheme now demonstrates that the scheme will achieve BREEAM excellent.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/1411-91 Application file: 09-AP-1940 Southwark Local Development Framework and Development Plan Documents	Regeneration and Neighbourhoods Department 160 Tooley Street London SE1 2TZ	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: <a href="mailto:planning.enquiries@southwark.gov.uk">planning.enquiries@southwark.gov.uk</a> Case officer telephone: 020-7525-5527 Council website: <a href="http://www.southwark.gov.uk">www.southwark.gov.uk</a>

## APPENDICES

No.	Title
Appendix 1	Images

## AUDIT TRAIL

<b>Lead Officer</b>	Gary Rice, Head of Development Management	
<b>Report Author</b>	Brídín O'Connor, Development Management	
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