



Southwark Law Centre

53 Addington Square, Camberwell,
London SE5 7LB
T 020 7732 2008 F 020 7732 2034
DX 34250 Peckham
www.southwarklawcentre.org.uk

Victoria Lewis
Planning Officer

Colin Wilson
Head of Strategic Development

Neil Kirby
Head of Regeneration

Dipesh Patel
Strategic Applications Manager

Southwark Council
160 Tooley Street
London
SE1 2QH

By email: victoria.lewis@southwark.gov.uk
colin.wilson@southwark.gov.uk
neil.kirby@southwark.gov.uk
dipesh.patel@southwark.gov.uk

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Dear Victoria,

Proposed Aylesham Shopping Centre Development

1. We are writing in relation to the proposed redevelopment of the Aylesham Shopping Centre site (the “**Site**”) by Berkeley Homes (“**BH**”), the applicant (“**The Applicant**”) with application reference ref 24/AP/2074 (the “**Application**”).
2. Below we set out key issues with the Application that indicate refusal. We want to ensure not only that the Council refuses the Application, but also that it does so as robustly as possible to withstand an appeal.
3. In light of the new paragraph 125(c) of the NPPF, “*substantial weight*” should be given to using brownfield land such as this for homes, “*unless substantial harm would be caused*”. Any rejection of the Application must be framed with this in mind. Our firm view is that there is clear evidence of substantial harm.

Affordable Housing and Viability

Critique of BH viability assessment

4. We support and supplement the GLA's critique of BH's viability assessment, and the points of disagreement raised by the Council's independent viability report. Our arguments rely on the Mayor's Affordable Housing and Viability SPG, and the draft Development Viability LPG (which is a material consideration):
 - a EUV too high – as per paragraph 4.4.8 of the draft LPG, *“Where existing buildings are in a poor condition or do not meet current standards, or where there is limited demand, it is expected that the EUV would be nil or very low”*. BH repeatedly claim the current buildings are in poor condition yet adopt a high EUV (and a premium).
 - b It is inappropriate to adopt an EUV+ approach – as per paragraph 4.4.12 of the draft LPG, *“When considering the requirement for a premium, the RLV of the proposed scheme should also be assessed based on a policy-compliant scheme. If the RLV is lower than the EUV, it is unlikely that a premium would be justified”*. BH's assessment shows a negative RLV, and so a premium is not justified, especially one as high as 20%. As the GLA's critique notes, this negative RLV output is *“difficult to reconcile”* with BH's purchase of the site for £44.65m.
 - c 20% is too high a return for the market sale units. BH originally relied on the 'London Plan Viability Evidence' (which we take to mean the 2017 London Plan Viability Study), but this only sets a 20% return for buildings over 20 storeys. None of the Application buildings are over 20 storeys. For 6-20 storey buildings, 17.5% should be adopted; for parts at 4/5 storeys (the Application documents are unclear and inconsistent), 15% should be adopted. BH are seemingly now relying on a different justification, but this is clearly a post-event rationalisation that must be refused.
 - d Noting BH has accepted a 10% return for Morrisons, we believe this should be even lower: as per paragraph 4.3.34 of the draft LPG, it should be *“nominal”* (as a returning tenant).
 - e Predicted sales values should better reflect the likelihood of increased house prices in Peckham by the time sales are realised. Despite claims by BH, there is nothing in policy or guidance that calls for using current local sales values.

Broader circumstances requiring more affordable housing

5. Crucially, even if BH's viability is accepted, that is not the end of the discussion. Paragraph 59 of the NPPF states: *“The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case”*. Viability assessments are not determinative, and it is entirely legitimate for the Council to conclude that less weight should be given to the viability assessment in these specific circumstances, in particular:

- a The socioeconomic context of Peckham and its acute need for social housing, and particularly family-sized social housing. Peckham is ranked within the 10% most deprived areas in England and suffers from particularly high overcrowding (15.1%). In one school in Peckham, 80 per cent of students are homeless. Looking at the borough more widely, there are 18,000 people on the housing waiting list in Southwark, a situation which has significantly worsened since the drafting of the Southwark Plan. The draft Peckham Character Study found *“House Prices in the Rye Lane area are higher than Southwark and London averages”* and continue to rise. This creates a strong imperative to ensure large-scale strategic sites in Peckham deliver high levels of affordable housing to meet this need.
 - b The high level of private housing will likely increase rents in the area further and exacerbate deprivation. The draft Peckham Character Area Study (which is a material consideration) notes: *“There are also concerns about some ongoing and planned developments. They may have an impact on housing affordability, local businesses and income equality. There are concerns about rising housing costs undermining support networks”*.
 - c The Council’s recent decision to stop its council housebuilding programme, instead relying exclusive on cross subsidy delivery through private development. This places a greater need to ensure private development delivers high percentages of social housing, particular on large strategic sites. The Council’s strategic target of 50% affordable housing is also highly relevant.
6. The assessment of socioeconomic impact under the Applicant’s ES failed to consider the indirect impacts on the surrounding area, and so the Application fails to respond to and mitigate them. The EQIA acknowledges this broader context and the potential impacts but fails to offer any meaningful mitigation. Therefore, the failure to respond to the surrounding context and local need also results in a failure to meet the public sector equality duty.

Low affordable housing as a material consideration

7. Similarly, even where a scheme is compliant with local policy around affordable housing (i.e. it is *“subject to viability”*), it is still legitimate to consider low delivery of affordable housing as a material consideration and a reasonable ground for refusal. Recent case law affirmed that an LPA can still hold that low affordable housing is *“too high a price to pay”*¹. For the reasons above, such low levels of affordable housing are unacceptable for this site. The reason for refusal based on insufficient affordable housing (and particularly social housing) should be framed as a material consideration and not breach of policy.

¹ *Schneck v Secretary of State for Levelling Up Housing and Communities* [2022] EWHC 3335 (Admin)

Breach of site allocation CLT requirement

8. The site allocation (NSP74) states that *“Redevelopment of the site must provide new intermediate affordable housing through a community land trust”*. The Application proposes no CLT and therefore breaches this clear site allocation requirement (which is not subject to viability). BH’s vague commitments to exploring opportunities of delivery are unmeasurable and unenforceable, rendering them meaningless in practice.

Housing Mix

9. Southwark Plan Policy P2(7) stipulates developments can have *“A maximum of 5% studios”*. The Application includes 90 1b1p flats: 10 *“fully open plan”* studios, and 80 described as *“semi-open plan”* i.e. *“part separated”* bedroom with no door. The Southwark Plan defines studios as *“homes with only one main room with no separate bedroom”*. A partially separated bedroom without a door should not be considered a separate bedroom, and so these units meet the definition of studio. BH’s suggestion that the units *“can be easily modified to provide a fully separate room”* does not change this fact. BH’s Planning Statement is silent on this point. This means the Application includes 10.4% studios – a significant breach of Policy P2(7).
10. The latest drawings submitted by BH appear to redesign these 1b1p units to have fully separate bedrooms but with only single-sized beds (however this is not set out in writing in any of the submission documents). In such a case, the Southwark Plan definition and Policy P2 should be interpreted purposively: reason 3 under Policy P2 explains that *“Studio apartments do not adequately meet the housing needs of most households [and are] unsuitable for families”*. A small 1b1p with only enough room for a single-sized bed fails to meet housing needs in the exact same way. BH should not be allowed to cynically side-step the policy on a technicality.
11. Beyond the policy, the poor quality of such small units, and the failure to meet housing needs, should also be seen as a material consideration that points to refusal. The previously mentioned urgent need for family housing in Peckham provides further support for this view.

Local Businesses

12. BH’s proposed approach to retail provision breaches Southwark Plan Policies P32, P33, P35 and the site allocation requirement to retain retail floorspace.

Small and Independent Businesses (P33)

13. Policy P33 relates to small businesses, independent businesses and small shops. It requires a business relocation strategy (BRS) which must:
 - a Be written in consultation with affected businesses;
 - b Set out viable relocation options;
 - c Detail engagement with existing businesses regarding re-provision or relocation options;

- d Detail engagement with the council, local agents, businesses, businesses associations and workspace providers to secure options for new employment space;
- e Where businesses are accommodated onsite, the BRS must include specific businesses requirements (servicing, fit out and lease/ownership terms) and temporary relocation arrangements;
- f Where businesses are relocated offsite, the BRS must set out reasons why businesses cannot be located on site, details of relocation options explored and the assistance and support that will be provided (including statements from the businesses as evidence that relocation is suitable for the viable continuation of businesses), identify alternative premises in Southwark (and failing that, adjacent boroughs), collaboration with other landowners to find suitable workspace.

14. BH's BRS identifies Duses Shoes, PAK Butchers, Just for You Fashions, Factory Outlet, Image Furniture and handcart traders as small/independent businesses. However, it fails to identify the following businesses:

- a Wing Tai – BH have since informally confirmed via email that this business is in fact a small/independent business, but this update is not reflected in the BRS Addendum. It is particularly disheartening to see reference to bringing in a new 'Oriental Supermarket' to the site without any reference to securing that place for Wing Tai (see table at para 5.7 of Appendix II of Planning Statement).
- b Market Place Food Hall vendors – BH have confirmed via email that they have treated Market Place as a single business. This is factually incorrect (each vendor is a separate business) and the vendors must be supported. The position is directly comparable to the traders at Mercato Metropolitano, where BH have accepted each trader must be considered separately.

15. Beyond the failure to correctly identify all relevant businesses, the contents of the BRS fall short of the requirements set out above:

- a It was not written in consultation with the businesses – the only engagement evidenced so far is the survey included at Appendix 1, which is incredibly limited and does not even give the option of remaining on site. We have spoken to many of the business owners directly, and they have made clear that they do not have a clear sense of what is going on, and do not feel that they have been offered any meaningful engagement or support;
- b It does not set out any viable relocation options or any evidence of engagement with the listed third parties;
- c It does not give reasons as to why businesses cannot be relocated onsite, or set out detail as to what assistance and support will be offered, including what obligations are proposed under the s106 agreement;

- d There is reference to the potential for some businesses to be retained onsite, but this is not set out in detail, including terms and details around temporary relocation.
16. Therefore, the current BRS completely fails to meet the policy requirement. It provides nowhere near enough support and certainty for the displaced businesses, and nothing that can be meaningfully measured and enforced. On its current terms, it seems incredibly likely that the BRS would not result in the successful retention or relocation of the businesses.
17. We acknowledge that BH's intention is for BRS process to continue and develop over time, and that eviction may be some years away. However, past failings in Southwark have revealed the urgent need for detailed engagement at an early stage to allow businesses to plan effectively, and for detailed terms to be set out at the committee stage and then secured in the s106. It is unacceptable to wait until after this moment and avoid full scrutiny.

Town and Local Centres (P35)

18. Policy P35(1)(4) states that development must *"not harm the amenity of surrounding occupiers or result in a concentration of uses that harms the vitality, viability and economic growth of the centre"*.
19. The draft Peckham Character Area Study serves as the best source to define the amenity, vitality, viability of Peckham town centre, and notes the following:
- a *"Peckham is praised for its diversity, community links and cultural life. This area is seen as vibrant and authentic."*
 - b *"It has many small and medium enterprises, include retailers specialised in West African goods and creative industries."*
 - c *"There are also concerns about gentrification and the history of some groups being lost."*
 - d *"The variety of local shops in Peckham cater to a wide variety of needs, and often have long opening hours. There are also many popular chain shops. Rye Lane has a crowded market atmosphere. There are a range of independent shops, restaurants, bars and cafés. Peckham also has a popular nightlife scene."*
 - e *"There are concerns about some of the changes in Peckham. There has been an increase in pricier shops, bars and restaurants. This has also changed the appearance of the street. Many of the newer arrivals have a plainer minimalist appearance. This is in contrast to some of the older stores in Peckham, which are vibrant and colourful."*
20. Over the past few years Peckham has witnessed a transition as Peckham's more traditional shops, including those serving the West African and other ethnic minority communities, and those catering to people from lower socioeconomic groups, have closed down. In their place has come a proliferation of the *"pricier"* restaurants, bars, cafes and shops. If this trend continues it will undermine the diversity,

vibrancy, authenticity and multicultural spirit of Peckham. It will also have profound equalities impacts as it will end the community-specific offerings and render shopping in Peckham unviable for those from lower socioeconomic groups. This is recognised in the goals in the draft Character Area Study:

- a *“Protect long-standing businesses to ensure they don’t get priced out of the areas”,*
- b *“Protect the history of all the different groups who have strong links to Peckham”.*

21. The Application threatens to rapidly accelerate this trend by displacing the small and independent businesses on site, which by and large are run by and provide for Peckham’s ethnically diverse communities and lower socioeconomic groups, and replacing them with pricier shops. Furthermore, the Application will result in a large demographic change and likely an increase in rents in the area (both residential and commercial), which is likely to have a further indirect impact that accelerates this trend. The Application has failed to consider the socioeconomic impacts on the broader area as a whole, instead limiting the assessment (as part of the ES) only to impacts on site. Similarly, while the Applicant’s EQIA acknowledges this context and potential impact, it offers nothing to mitigate it; therefore we believe the Application should also be refused on the grounds of a failure to meet the public sector equality duty.

22. BH’s retail strategy is informed by the *“CF Commercial report”* (appended to the Planning Statement). Examples of what shops it proposes for the site include a *“high-end offer”* hair and beauty business; boutique fitness; competitive socialising; boutique cinema; artisan baker; Amazon Fresh; homeware (cites Oliver Bonas as an examples); premium specialist food store; gastro pub; wine bar and tap room. These are all clearly *“pricier”* shops. Meanwhile, nothing is proposed that is targeted at the multicultural community or residents from lower socioeconomic groups. Therefore, the Application is likely to harm the amenity of existing businesses and harm the vitality and viability of Peckham Town centre, in breach of policy P35. To the extent the Council does not think these points fit under policy P35, they should be considered as material considerations.

23. We note that the CF Commercial report tries to sidestep this point by speaking about the desire for *“independent”* businesses in Peckham – this term is unhelpfully broad and includes two disparate concepts: specialist small businesses run by and for the local community (often serving a specific community at an affordable price); and high-end boutique offerings (often without any existing community ties) that are often particularly expensive. We believe the CF Commercial report is intentionally eliding the two, and this must be resisted. The CF Commercial report does nothing to analyse the different demographics these shops serve, or the equalities impacts resulting from their loss.

24. Paragraph 5.3 of the Planning Statement claims that the CF Commercial report *“identified a number of under-represented occupier types”*, including the high-end businesses mentioned above. However, the CF Commercial report itself does not

actually state that these businesses are under-represented, or that there is a particular need for them – in fact, in many cases it acknowledges that there is an abundance of businesses in these sectors already. Rather, the report suggests there is ‘scope’ for another one of these businesses. Therefore, the Planning Statements claim to be meeting a need / providing under-represented occupier types is false and must be rejected - the motivation is clearly profit.

25. In light of this, the Application fails to meet the site allocation requirement to *“diversify and complement the existing retail offer in the town centre”* – rather, it reflects an active detriment to the established specialist community offering, and a homogenisation of pricier *“high end”* offers.
26. Tellingly, Section 7 of the CF Commercial report, refers to providing larger operators with *“a financial contribution by way of capital or rent-free period to assist with fit-out based on shell & core handover specification”*, while smaller businesses (described as ‘affordable retail’) would only be given white box specification. This approach runs contrary to the public sector equality duty and spirit of Policies P32 and P33.

Site allocation requirement to retain floorspace

27. The site allocation states redevelopment on the site must *“provide at least the amount of retail floorspace currently on the site”*. BH’s Planning Statement Addendum (Table 9.5) confirms existing retail space as 11,574.9 sqm, and proposed retail space as up to 9793.4 sqm (within the flexible space). Workspace is not retail space and so must be excluded. Further, since up to 320 sqm of the flexible space can also be workspace, the total retail may end up being even lower. The site allocation does not refer to ‘main town centre use’, and does not require any office space. Therefore in prioritising office space over replacement retail space, the Application breaches the site allocation requirement.
28. This loss of retail floorspace also breaches Policy P35(3), which requires development to *“retain retail floorspace or replace retail floorspace with an alternative use that provides a service to the general public”*. Private workspace does not provide a service to the general public.

Public space

29. The public space offered under the Application is of poor quality. Firstly, the Urban Greening Factor fails to meet the target of 0.4 under London Plan policy G5. This suggests the Application also fails to meet Southwark Plan Policies SP6(4) (improving natural environment through urban greening) and P65(2) (address the impacts of poor air quality through urban greening).
30. The Applicant’s statements about the amount of open space are highly misleading. Paragraph 5.14 of the Planning Statement Addendum claims the Application includes 10,240 sqm of *“new publicly accessible space... This comprises four distinct character areas”*. However, this figure includes ancillary areas that (while being technically publicly accessible) are not quality public open space, including service roads, loading bays, cycle routes and residual space at the base of

buildings; such spaces do not offer public amenity benefit and should not be included. BH's implication that the four distinct areas add up to 10,240 sqm is false – our estimate is that the four areas add up to roughly 4,620 sqm. Below is a diagram showing the areas included in our calculation (in green), excluded areas in red.



31. Furthermore, we dispute the quality of the four character areas:

- a Firstly, they are bounded and even intersected by loading bays, service roads (noting these will be used frequently for commercial and residential deliveries) and cycle routes, reducing their amenity value and making them unsafe for children and those with disabilities; and
- b As noted by the GLA, large portions of the public realm will not receive more than 2 hours of sunlight in March, therefore failing to meet the test in section 3.3 of BRE guidelines.

32. Therefore, the open space fails to meet Southwark Plan Policies P13(5) (ensure high quality public realm that is safe, legible and attractive, and eases the movement of pedestrians etc) and P13(8) (provide accessible and inclusive design for all ages and people with disabilities).

Visual Impact (including Tall Buildings and Heritage)

33. The site allocation indicative capacity of 850 homes includes the large bus station, which is not included in the Application. While the site allocation suggests some buildings of 20 storeys *could* be appropriate, the site allocation does not suggest multiple tall buildings are appropriate, and we understand conversations at the time anticipated only one or two tall buildings. Furthermore, this aspect of the site allocation is subject to other requirements, for example:

- a *“Careful consideration would also need to be given to the neighbouring residential areas and important local heritage buildings”;*

- b *“any taller development should be set back from the Rye Lane shopping frontage, towards the eastern end of site, to mitigate its impact”;*
- c *“Development massing should be directed to the east of the site to minimise impact on the view to the City from the Bussey Building rooftop”.*

34. Therefore, it is wrong to suggest that the site allocation inherently supports this density of development, 20-storey development or a high number of tall buildings. BH is unjustifiably giving strong weight to certain parts of the site allocation despite their conditional language, while minimising other aspects even though they are stated in more absolute terms (not only the limitations on visual impact above, but also the retention of retail floorspace, diversification of/complement to existing retail, and delivery of CLT). This imbalanced, selective approach must be rejected.

35. The Application exceeds the indicative capacity despite having a substantially smaller footprint. The significant visual impact to surrounding heritage assets does not demonstrate *“careful consideration”*. While the buildings on Rye Lane are lower, heights quickly rise to 11 and 12 storeys on the western side of the site. Massing is not sufficiently directed to the east of the site, and the rooftop views to the City are almost entirely lost. Therefore, these key conditions of the site allocation are not met, meaning the 20-storey height and number of tall buildings is not justified *in this case*.

36. Furthermore, Southwark Plan Policy P17 requires tall buildings to:

- a Have a height that is proportionate to the significance of the proposed location and the size of the site – while one or two tall buildings might meet this criteria, a high number does not;
- b Make a positive contribution to the London skyline and landscape – the significant impact on local views means this aspect of the policy is not met;
- c Respond positively to local character and townscape – the excessive density for the Peckham context and the heritage impact mean this policy is not met;
- d Provide a functional public space that is appropriate to the height and size of the proposed building – for the reasons set out above, the amount of public space has been overstated, and it is of poor quality;
- e Conserve and enhance significance of heritage assets and make a positive contribution to wider townscape character, and where there is an affect on significance, there must be *“clear and convincing justification in the form of public benefits”*. The Application has a distinct lack of public benefits and in fact poses many public harms, including: very low affordable housing, indirect negative impacts on local prices in the area, the displacement of local businesses, poor open space and lack of urban greening.

37. For these reasons, the Application breaches Policy P17 on multiple fronts.

38. Furthermore, implicit in the site allocation is that other fundamental policy goals will be achieved, including affordable housing. While high density and visual impact may be acceptable where it allows for high levels of social housing and other public

benefit, it should be refused where affordable housing delivery and public benefits are lacking.

Daylight Impacts

39. The daylight effects can be summarised as follows:

- a VSC: 308 windows will experience a significant adverse effect, 219 of which experiencing a major adverse effect. 77 windows would experience a loss of over 60%, and 3 windows a loss of over 90% (one being as high as 99.01%) – this level of impact is incredibly high, well above the major adverse threshold.
- b NSL: 110 habitable rooms will experience a significant adverse effect, 84 of which experiencing a major adverse effect. 26 rooms would experience a loss of over 60%.

40. These are significant impacts that represent a substantial harm. BH cannot rely on the overused excuse that impact is inevitable in urban locations – this cannot be used to justify any level of impact. A scheme that responded better to the site allocation – i.e. was closer to the capacity anticipated for the site (being a fraction of 850), and delivered only one or two, carefully considered tall buildings – would have a much lesser impact. This impact is not justified in this case, particularly given the lack of public benefits.

41. The most significant effects will be experienced at Purdon House, Hanover Park and along Rye Lane. Residents in these buildings are more likely to be from lower socioeconomic groups, and also other groups with protected characteristics (given the demographics of Peckham and the intersection of these socioeconomic status and other protected characteristics). This has not been adequately assessed or mitigated.

Transport

42. The transport-related planning policies are particularly relevant to the Application:

- a London Plan Policy T4(B): *“transport assessments/statements should... ensure that impacts on the capacity of the transport network (including impacts on pedestrians and the cycle network), at the local, network-wide and strategic level, are fully assessed”*;
- b London Plan Policy T4(F): *“Development proposals should not increase road danger”*;
- c Southwark Plan Policy P49: development must (1) *“demonstrate that the public transport network has sufficient capacity to support any increase in the number of journeys”* and (3) *“improve, maintain and enhance public transport services”*;
- d Southwark Plan Policy P50: development must (3) *“ensure safe and efficient operation of the local road network, the bus network and the Transport for London Road Network”*;

- e Southwark Plan Policy P51: development must (1) *“enhance the borough’s walking networks by providing footways, routes and public realm that enable access through development sites and adjoining areas”*.

- 43. As noted in TfL’s response to Arup note (added to the planning portal on 4 February 2025), BH has underestimated trip generation by between 17-45%, meaning the impacts on the transport network capacity have not been properly calculated or mitigated. TfL raises various other issues that result in policy breaches.
- 44. BH’s assessment of the impact on the public transport network relies on improvements to Peckham Rye station which are by no means guaranteed. Therefore there is a real risk that the Application results in a much greater impact to the public transport network than anticipated.
- 45. The Application fails to propose any improvements to the surrounding public highway. We note in particular that the junction of Rye Lane and Peckham High Street is in particular need of improvement. The large increase in residents pursuant to the Application will greatly increase usage and risk increasing road danger.
- 46. As such, the Application fails to meet the above policies and should be refused.

Conclusion

- 47. The incredibly low amount of affordable (and particularly social) housing being offered is unacceptable in planning terms. BH’s viability fails to meet the requirements under GLA policy and the incoming draft LPG. In any event the NPPF and case law allow the Council to look beyond viability and consider the broader context of the site, and the specific socioeconomic needs of Peckham mean that it is too high a price to pay for such a strategic site. This is particularly true when the indirect effects on the area are considered, which BH failed to do. The Application also fails to meet the site allocation requirement for CLT. The excess of studio flats (or potentially very small 1b1p units with single-sized beds) breaches policy P2(7) and fails to meet local need.
- 48. The BRS fails to correctly identify the small and independent businesses on site, and fails to meet the requirements of policy P33. The equalities and socioeconomic context of this loss must also be considered, particularly given the *“high end”* businesses BH intends to replace them with. The impact the Application would have on the town centre further results in a breach of policy P35 – the failure to meet the goals of the draft Peckham Character Area Study affirms this. The total reduction in retail floorspace (to make way for office space) breaches the site allocation and policy P35(3).
- 49. The public space proposed is poor. It fails to meet the London Plan policy G5 Urban Greening Factor target. BH has misleadingly includes ancillary areas not designed for public amenity. The value of the main public space areas is undermined by surrounding loading bays, service roads and cycle routes, making them unsafe for children and disabled people.

50. The Application exceeds the height and density allowed under the site allocation, resulting in large visual impact including heritage impact. The Application fails to deliver clear and convincing justification for this harm through public benefit. Consequently, there are significant daylight impacts well beyond BRE guideline amounts. The most impact properties are council estates and housing along Rye Lane, adding an equalities impact element to this harm.
51. The transport proposals in the Application rest on an incorrect assessment of trip generation and delivery of public transport improvements out of BH's control. The Application fails to make much-needed improvements to surrounding highway, despite the increased strain on capacity and road danger.
52. BH's consultation failed to meet the legitimate expectation of compliance with the DCC.
53. These policy breaches, material considerations and equalities impact indicate that the Application must be refused on multiple grounds.

Yours sincerely,

Southwark Law Centre

Planning Voice project