

Colin Wilson
Head of Strategic Development

Neil Kirby
Head of Regeneration

Southwark Council
160 Tooley Street
London
SE1 2QH

By email: colin.wilson@southwark.gov.uk; neil.kirby@southwark.gov.uk

CC: helen.dennis@southwark.gov.uk; esme.dobson@southwark.gov.uk;
chloe.tomlinson@southwark.gov.uk; jasmine.ali@southwark.gov.uk;
sabina.emmanuel@southwark.gov.uk; barrie.hargrove@southwark.gov.uk;
cleo.soanes@southwark.gov.uk; reginald.popoola@southwark.gov.uk;
gavin.edwards@southwark.gov.uk; sandra.rhule@southwark.gov.uk;
renata.hamvas@southwark.gov.uk; victoria.mills@southwark.gov.uk;
stephanie.cryan@southwark.gov.uk

4 June 2024

Dear Mr Wilson and Mr Kirby,

Aylesham Centre Redevelopment

1. We are writing on behalf of Aylesham Community Action (“**ACA**”) further to our previous letter dated 11 March 2024 and various meetings and events held since, regarding the proposal by Berkeley Homes (“**BH**”) to redevelop the Aylesham Centre site.
2. This letter sets out what we see as the key legal and policy failings with the proposals, and BH’s and the Council’s approach surrounding the proposals, and sets out the urgent steps for them to be addressed.

Early Engagement Strategy

3. **The Development Consultation Charter (“DCC”) has not been complied with.** In the 7 May meeting between the Council and ACA, Colin Wilson confirmed that **no Early Engagement Strategy (“EES”) has been submitted by BH**, despite being a *“requirement for pre-application discussions”*, and despite Mr Wilson accepting it *“should have been submitted”*. It is irrelevant that conversations with BH started before the DCC came into effect; the DCC still applies to the scheme.

An EES should have been required as soon as possible from December 2022. We note BH took this approach with the Borough Triangle application.

4. The EES requires a facts-based audit including stakeholder analysis, heritage and site layout, accessibility and movement, and climate change and sustainability. The lack of an EES has led to **none of these points being properly analysed or consulted on, leading to an inadequate consultation process.**
5. The failure to require an EES amounts to a breach of a legitimate expectation established in the DCC document, as part of the Statement of Community Involvement (“**SCI**”). Accordingly, the Council’s failure to apply its own policy in this way is **unlawful.**
6. We ask that an **EES is produced immediately**, and **consultation on the fundamental aspects of the scheme are reopened** so that the community can have a meaningful say in shaping the development, as intended and required by the DCC.

Poor consultation so far

7. In the 7 May meeting, **Mr Wilson agreed that good engagement hasn’t happened yet**, and that it was “*very very clear*” the community did not feel consulted. He confirmed the Council has asked BH for more public meetings. The ACA responded that further consultation must be “*meaningful*”: if future events are similar to previous ones, then the consultation will remain ineffective. Mr Wilson confirmed it would ask BH to evidence changes in the ‘You Said, We Did’ format, as required in the ES. However, there are concerns that BH will not accurately capture what the community has said. For example, at the 16 May consultation event, BH representatives confirmed that **they were not recording any oral feedback given by attendees**. This shows that consultees’ views expressed at these events are in no way affecting proposals.
8. All parties accept that there has been a strong community response against the density and size of the proposals. However, BH’s the final proposals have *increased* the unit number to 878, above the site allocation (NSP74) indicative capacity and the number used in early discussions and consultation materials (850). At the drMM event held on 22 May, **BH and drMM could not give a single example of how community feedback around density had changed BH’s original masterplan.**

Engagement Summary (“ES”)

9. The Council **has refused to share** the ES with the Aylesham Centre Community Forum (“ACCF”) prior to validation. Given BH’s approach to date and failure to provide an EES, there is a high risk the ES will be flawed. The ACCF is best placed to ensure the ES accurately summarises what consultation has occurred and what the community response was.

10. If the Council fails to consult the ACCF and validates an ES that fails to meet the requirements of the DCC, this would **yet again be an unlawful breach of a legitimate expectation** – a point Mr Wilson accepted in the 7 May meeting. We ask the Council to reconsider its position and ensures the ACCF can verify the ES prior to validation.

Inadequate assessment of socioeconomic and equalities impacts

11. Peckham’s socioeconomic context is summarised in the draft Peckham Character Area Study. It notes the broad ethnic diversity of Peckham, and the higher levels of deprivation around the town centre. It also notes the following:

“It has many small and medium enterprises, include retailers specialised in West African goods and creative industries.”

“There are also concerns about gentrification and the history of some group being lost.”

“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.”

“There are concerns about some of the changes in Peckham. There has been an increase in pricier shops, bars and restaurants.”

12. The Peckham Character Area Study goes on to set the following goals:

“Protect the history of all the different groups who have strong links to Peckham.”

“Protecting long-standing businesses to ensure they don’t get priced out of the areas.”

13. However, BH has failed to properly analyse the socioeconomic context or shape the scheme in light of it. This has resulted in multiple legal concerns, which we set out below.

14. BH’s 2022 “Aylesham Centre, Peckham Baseline Assessment” is almost entirely silent on issues of race, ethnicity and socioeconomic status. Quod’s “Local Economy assessment” provides an analysis of the “ethnic makeup” of Peckham, noting that 52% of respondents identified as being from BAME groups (including mixed or multiple ethnic groups), and 37% identified as being from Black, Black British, Black Welsh, Caribbean or African. However, this data does not translate to any identified needs or potential harms, and there is no evidence it has shaped the scheme proposals.

15. In term of shopping and businesses, BH has failed to analyse which shops currently meet the needs of these ethnic groups, or of those of lower socioeconomic groups. We note this is not just about small and independent businesses, but also shops

that are affordable to these groups or meet their unique needs. It has failed to analyse how the potential loss of these shops, either directly onsite or indirectly (through increased prices), might disrupt the offering to these groups. This might not only threaten the unique nature of Peckham's commercial offering, but also risk displacing these communities. This approach risks failing to meet the public sector equality duty and the requirements of the DCC. Furthermore it appears to breach Southwark Plan policy P35(1)(4) (Town and Local Centres): development must *"not harm the amenity of surrounding occupiers or result in concentration of uses that harms the vitality, viability and economic growth of the centre"*.

16. BH's analysis of retail provision in the area appears to be selective and misleading. Quod's "Local Economy assessment" identified "Sport and Leisure facilities, Bars, Cafes and Clubs" as "under-represented" in the area. However, it excluded Peckham Pulse, Copeland Park and Bussey Building, which are three of the largest leisure offerings in the area. It is entirely inappropriate to exclude them. We fear this is an attempt to warp the assessment in order to justify delivering more bars, cafes, clubs and gyms. They won't be subject to any affordability controls, and therefore risk exacerbating the concerns identified in the draft Peckham Character Area Study of an *"increase in pricer, shops, bars and restaurants"*. The Council must push back on this selective approach and ensure the development delivers retail that meets the needs of all of Peckham's residents.
17. Once baseline data is obtained, there are three key opportunities in the planning process to analyse consider the broader socioeconomic impacts (both positive and negative) of a development and propose mitigation:
 - a. The socioeconomic chapter of the Environmental Statement;
 - b. The Social Value Statement required as part of the ES; and
 - c. The Equality Impact Assessment ("**EqIA**").
18. All of these documents serve as material considerations in the planning decision-making process, meaning they are able to justify a decision not in accordance with, or requiring something further to, planning policy.
19. Mr Wilson agreed that these documents should include commentary on the *downsides* of a proposed development, including indirect social impacts such as gentrification. The DCC makes clear:

"some groups with protected characteristics experience differential and sometimes negative impacts as a result of a development proposal or plan..."

we require developers to undertake an [EqIA] for their developments to identify potential impacts from an early stage... It must illustrate how the proposal will remove or minimise disadvantages suffered by people due to their protected characteristics, and what steps have been taken to meet the needs of people from protected groups"

20. When we asked BH representatives what would be included in these assessments, they suggested they would main focus on the positive aspects of the development. This is evidenced by **BH choosing to scope out any assessment of indirect socioeconomic effects on the broader area** in the Environment Statement. Furthermore, Quod's "Community Effects" presentation confirms that the EqIA will only assess "*differential and direct impacts*", and not indirect impacts.
21. BH's approach therefore fails to meet the requirements of these assessments and the underlying public sector equality duty. The public sector equality duty ultimately rests with the Council, meaning the Council would be acting unlawfully if they do not require BH's EqIA to go further. Of course, BH will not carry out these assessments (which might harm its commercial interests) unless the Council insists upon it.
22. However, **the Council is failing to take steps to ensure socioeconomic impacts are positively considered**. Firstly, the Council approved BH's decision to scope out indirect effects from the socioeconomic assessment. At the 7 May meeting, Mr Wilson said the Council will not proactively set out expectations to BH of what should be included in these assessments and will instead wait and see what BH produces. This approach will inevitably result in BH producing weak documents that overlook the negative effects of the development. If the Council waits for BH to take the lead, the work simply won't be done, and it will be too late.
23. **The Council's 'wait and see' approach is unacceptable. The Council must proactively demand that the Environmental Statement, the Social Value Statement and EqIA include a deeper socioeconomic analysis. They must set out the negative impacts of the development, including indirect affects for the broader area, and propose detailed mitigation.**

Small and independent businesses

24. BH's proposed approach to retail provision **fails to apply the requirements of the Southwark Plan policies P32(1) and P33 and the site allocation**.
25. Policy P32 (Small Shops) requires states that "small shops" **must be retained**, with like for like floorspace or bespoke space to suit their requirements. Quod's "Community Effects" incorrectly only identified one "small shop" on-site for the purposes of P32. We assume this is based on the outdated 2022 baseline assessment, which inexplicably "*excludes market stalls, concessions, and street food operators*". **The traders in the arcade and the food traders in Marketplace Peckham qualify as small shops and must be protected and retained under policy P32.**
26. Policy P33 (Business Relocation) covers "*small or independent businesses*" as well as small shops, and so has a broader scope than P32. Businesses space must be re-provided onsite or, failing that, relocated to other premises that are "*suitable for the viable continuation of the business*" (with a reason why they could not be

relocated on site). This must all be set out in a business relocation strategy. BH has not yet provided a summary of the small / independent businesses currently on site, or evidence of detailed discussions with businesses so far.

27. At the multi-ward forum, Councillor Reginald Popoola commendably asked what was being done to avoid another Elephant and Castle shopping centre regeneration. Cllr Dennis and Mr Kirby's response was yet again to wait for BH to produce a business relocation strategy. There is a high risk that BH will exclude relevant businesses or fail to initially seek re-provision on site. The Council must be more proactive in setting out expectations and demanding evidence of early engagement with businesses. The failures at the Elephant & Castle shopping centre show that a **relocation strategy alone is not enough**: Delancey produced one for the shopping centre, but it was poor, and was passively approved by the Council without proper scrutiny. The recent failings around PlushSE16 further show the need for the Council to enforce policy P33 at an early stage.
28. The site allocation (NSP74) requires the development to *"provide at least the amount of retail floorspace currently on site"*. However, BH's May exhibition boards show a total of 10,396 sqm, significantly less than the existing 11,420 sqm of retail on site. Crucially, we think the actual existing figure may be even higher, assuming this figure is derived from BH's original baseline, which excluded market stalls, concessions, and street food operators.
29. **The Council needs to learn from past failures and proactively insist that these policies are properly followed, so that all small and independent businesses are either retained onsite, or offered detailed and appropriate relocation plans designed in collaboration with the businesses as required by policies P32 and P33.**

Affordable housing, social rent and family housing delivery

30. **The Council is not properly enforcing its own affordable housing policy and ignoring Peckham's acute need for truly affordable housing, completely undermining the claim made by Cllr Helen Dennis at the multi ward-forum event that *"social rent is our priority"*. BH's design brief confirms that BH have only ever aimed for 35% affordable housing. **This fails to meet the policy P1 requirement** to provide the *"maximum viable amount of social rented and intermediate homes. The minimum amount should be 35%"*.**
31. BH and the Council (via Mr Kirby) have both incorrectly suggested that the policy only requires delivery of 35%. **This is a clear misreading of the above policy wording**. The Inspectors Report to the Southwark Plan clarifies the correct interpretation:

*"The Plan's overall approach to affordable housing is effectively that **there is no formal 'minimum' policy percentage, and that the maximum amount of***

affordable housing is sought... Due to the overall need for affordable housing and having regard to the strategic affordable housing target [of 50%], a policy approach of seeking the maximum viable level of affordable housing is justified in the specific circumstances in Southwark”.

32. The Council must insist on further affordable housing delivery as the starting point.

33. We appreciate the maximum viable amount will be determined by BH’s viability assessment. Inherently, BH will be seeking to present the development as unviable as possible, so as to avoid higher affordable housing delivery. It is crucial that the Council robustly scrutinises BH’s viability assessment – however, given the Council’s passive approach and failure to demand full planning policy compliance to date, we are concerned that the Council will not do so. For example, the Council must scrutinise the percentage of developer profit BH allows itself. The latest draft Development Viability LPG from the Mayor states that the return should be low for affordable housing and commercial uses and should be “*nominal*” for returning occupiers like Morrisons and the independent businesses. Mr Wilson accepted these points at the 7 May meeting. Therefore, **this should result in a drastic reduction in developer’s return**. The Council must put this to BH before the viability assessment is prepared, and ensure this is factored into its independent review. We note this is just one example of the points to be considered; it is for the Council to conduct a robust review picking up all relevant points.

34. Mr Wilson has committed to sharing summaries of the BH viability assessment and Council review as soon as possible, and of publicising the full BH assessment prior to the committee date. However, unless the community has the opportunity to give comments that can materially shape the decision, this publicity is meaningless in practice. We ask that the ACCF is given the opportunity to provide comment before the Council’s independent assessment.

Family Housing

35. BH’s May consultation boards show there will be 45% 1-bed units on Phase 1, and 43% 1-bed units on Phase 2. **This breaches Southwark Plan policy P2 (New Family Homes)**, which states that major residential developments *must* provide a minimum of 60% homes with two or more bedrooms (i.e. a maximum of 40% one-bedroom homes).

36. Secondly, the boards are misleading as the 1-bed units also includes studio units. The exact amount of studio units is currently unclear, but we remind the Council that policy P2 states major residential development can only have a maximum of 5% studios, which can only be for private housing. Consultation on the housing mix is only legitimate if this is made clear.

37. BH's proposed delivery is in breach of policy P2, and does not meet the needs of the borough or Peckham. **The Council must ensure that the size mix of the units accords with policy P2.**

Community Land Trust ("CLT")

38. The site allocation requires provision of *"new intermediate affordable housing through a community land trust"*. But in the design brief, BH only commits to *"explor[ing] the delivery of Community Land Trust housing as part of the intermediate housing"*. BH have since been reluctant to commit to delivering the full 10% intermediate housing as CLT. Unless the Council is robust, there is a high risk BH will undermine this allocation requirement by delivering no CLT housing, or a very small proportion of the 10% of the intermediate affordable housing being offered. **Cllr Dennis's suggestion at the forum event that this "will be the biggest CLT in the country" entirely depends on the Council insisting upon this. So far, there is no evidence the Council will do so.**

Conservation and heritage impacts

39. The site falls partially within the Rye Lane Peckham Conservation Area and adjacent to local heritage buildings, including the Jones and Higgins clock tower. The site allocation requires *"careful consideration"* of the conservation area and important local heritage buildings, and that development could only include taller buildings *"subject to consideration of impacts on existing character, heritage and townscape"*. This wording has been overlooked by BH and the Council, who are suggesting the allocation allows circa 850 homes and tall buildings up to 20 storeys on any terms.

40. As per the design brief, BH have only focused on the view from 46-52 Peckham High Street (Burger King) and along the road (Persepolis). They have failed to consider the impacts on the broader conservation area and Jones and Higgins tower from other viewpoints, including other street views and the viewing platforms at Bussey Building and the multi-storey car park. The Burger King view is clearly not definitive, and BH's selective approach is masking the true visual impact and the requirements of the site allocation. The Council must insist on scrutinising the full visual impact from a range of views, in light of the above site allocation wording.

Public space

41. The boards claim there are *"3 public spaces equating to 41% of the site given back as publicly accessible high quality open space"*. **This is false, and BH accepted this at the drMM event on 22 May.** A large proportion of this open space is not in the "3 public spaces" and is in fact servicing routes, vehicle access and space around buildings. BH have committed to correcting this figure; however, consultation has already been carried out on the basis of this misinformation.

Conclusion

42. BH has failed to comply with the DCC and has failed to carry out meaningful consultation. The proposals breach policy requirements around affordable housing,

family homes and protection for small shops and small and independent businesses. BH are failing to adequately assess and mitigate the socioeconomic and equalities impacts of the development on the residents and businesses of Peckham. The proposals do not adequately consider the impact on the Peckham Rye Conservation Area and important local heritage buildings like the Jones and Higgins tower, and accordingly do not meet the site allocation requirements. There is also a risk that the allocation requirement for CLT will be undermined.

43. Despite these clear shortcomings, the Council is failing to insist that these issues are remedied. The Council is adopting a 'wait and see' approach instead of proactively scrutinising proposals and ensuring requirements are met. There is a risk this will continue throughout the application process, including with the viability assessment. The Council is also refusing to be forthcoming with the community in commenting on the consultation process required under the DCC, creating a high risk of a legally flawed decision.

44. We ask that the Council:

- a. Encourages BH to delay the application timeline until these points can be reviewed;
- b. Commits to meaningful consultation and compliance with the DCC, including ensuring information is accurate and not misleading;
- c. Allows the ACCF to review the EES and ES prior to validation;
- d. Ensures a detailed assessment of the socioeconomic and equalities impacts of the proposals, including indirect effects on the residents and businesses of Peckham;
- e. Ensures proposals comply with Southwark Plan policies P1, P2, P32, P33 and P35 at an early stage in pre-application discussions;
- f. Ensures proposals adhere to the site allocation (NSP74), particularly around density, consideration of the conservation area, heritage buildings and delivery of CLT.

45. We ask that the Council gives a clear response to each of the points raised, with a view to these issues being discussed at a meeting between ACA, the Council and Southwark Law Centre.

Yours sincerely,

Planning Voice Project

Southwark Law Centre