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Dear Mr Wilson and Mr Kirby,

Aylesham Centre Redevelopment – Community Engagement

1. We are writing on behalf of Aylesham Community Action (“**ACA**”), in relation to the proposed planning application to redevelop the Aylesham Centre (the “**Application**”) by Berkeley Homes (“**BH**”).
2. We want to acknowledge that Southwark Council (the “**Council**”) has taken steps to include ACA in deliberations around the Application from an early stage, including via the Aylesham Centre Community Forum. We and ACA are very appreciative of these steps.
3. Our aim now is to ensure that this engagement is meaningful and translates into material outcomes. We believe this can only happen if the Council ensures that BH meets its legal requirements around consultation, equalities considerations, and assessments of social impact.
4. In this letter we set out (1) the processes BH is required to follow and the documents BH is required to produce in relation to the Application, (2) the Council’s

duties in relation to requiring such processes and documents, and (3) what ACA believes is necessary to meet these requirements in relation to this particular site.

5. We and ACA want to make very clear that these community engagement processes are more than just procedural hoops to be jumped through, or mere attempts to obstruct the process. They are essential to ensure that the process is transparent and equitable, and that the development serves the community, particularly those who are at the greatest risk of suffering negative consequences.

The processes BH are required to follow

6. The Council adopted a new Statement of Community Involvement (“**SCI**”) and Development Consultation Charter (“**DCC**”) on 6 December 2022. They can be found on the Council’s website [here](#). It should be noted that local authorities are required by statute to produce a statement of community involvement. Although a separate document to the SCI, the DCC document is intended to be part of the statement of community involvement (and the Council website makes that clear).
7. The SCI requires applicants (in this case BH) “*to consult with the community*”, and to do so “*Before the application is submitted*”. While the SCI does not set out exactly what level on consultation is required, we believe the relevant standard is that dictated by the so-called *Gunning* principles¹. The *Gunning* principles state that consultation is only legitimate if:
 - Proposals are still at a formative stage;
 - There is sufficient information to give ‘intelligent consideration’;
 - There is adequate time for consideration and response; and
 - ‘Conscious consideration’ is given to the consultation responses.
8. Therefore, while BH has some discretion in deciding what forms of consultation to carry out (subject to the further requirements of the DCC, as set out below), such consultation needs to at least satisfy these four principles.
9. The DCC sets out much more substantive requirements, which we now summarise.

Early Engagement Strategy (EES)

- The purpose of the EES is to “*ensure that developers engage with residents and local stakeholders from the start of the development process*”. The DCC recognises that “[e]arly engagement is essential to ensure that residents and local stakeholders have a say in the development. It can also help to identify elements in the design of the scheme that may have a detrimental impact on certain individuals or groups”.
- This document is stated as a “*requirement for pre-application discussions*” – therefore it must be produced prior to submission of the planning application. The DCC does not explicitly state (1) exactly at what stage the EES should be submitted, and (2) whether residents and local stakeholders should be sent this

¹ *R v London Borough of Brent ex parte Gunning* (1985) 84 LGR 168

document. In our view, it is clear from the purpose of the document that the intention is for (1) the EES to be prepared at the beginning of pre-app discussions, and (2) stakeholders to review and scrutinise the document prior to submission.

- The DCC sets out the required components of the EES, including a facts-based audit and the proposed approach to engagement. The Council website (following the link above) includes a template for the EES. While it is not essential that the template is followed, the EES must meet the clear standard set out by the DCC, leaving little room for deviation.

Engagement Summary (ES)

- The purpose of the ES is to *“provide an overview of the engagement that has taken place with local stakeholders prior to submitting the application”*.
- The ES must be submitted with a planning application and is stated in the DCC as a *“validation requirement”*. The DCC goes on to state that a *“planning application will remain invalid until [an ES] has been submitted”*. Clearly, the planning application should remain invalid if the ES is submitted but is unsatisfactory.
- The DCC again sets out the required components of the ES, including a summary of the facts-based audit, a summary of stakeholder views (including their vision for the future use of the site and likes and dislikes of the scheme), an outline of changes made to the scheme as a result of stakeholder engagement, and a ‘Social Value Statement’. Again, the Council website provides a template to follow.

Equalities Impact Assessment (EqIA)

- The DCC requires developers to support the Council in meeting and discharging the Council’s public sector equality duty by producing an EqIA.
- The EqIA 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 where these are different from the needs of other people”*.
- Again, the DCC sets out the required components and a template is provided on the Council website.

10. In addition to the requirements of the DCC, there are requirements to ensure an EqIA satisfies the Council’s public sector equality duty:

- Southwark Council has elected to *“include socio-economic status”* in the list of different protected characteristics. Therefore, the EqIA must consider socio-economic status as a standalone category in the same manner as it considers the protected characteristics defined under the Equality Act 2010.
- The Equality and Human Rights Commission has produced technical guidance on the public sector equality duty (link [here](#)). This guidance expects public

bodies (or the developers to whom the Council delegates the task of preparing the EqlA) to actively obtain data by engaging directly with affected individuals, rather than a desktop analysis, which can only consider impacts in the abstract, on a dangerously homogenising basis.

The Council's duties to ensure BH compliance

11. As the local planning authority, the Council must ensure that these processes required under the SCI and DCC are adhered to by BH in relation to the Application. This means ensuring the following:

- BH consults with stakeholders prior to submission of the Application to an extent that satisfies the *Gunning* principles. BH must also properly evidence this consultation, and how it has resulted in meaningful changes to the scheme.
- BH submits the EES at an early stage in the process and before submission of the Application, and that the EES satisfies the criteria set out in the DCC / template. The Council should liaise with community stakeholders to ensure they have reviewed the EES and agree it is accurate. In our view, the EES should have already been produced, much earlier in the pre-application process, to set a baseline and structure for consultation. We are concerned that the Council does not refer to an EES in its Forward Plan of key topics. It seems therefore that no EES is being required, let alone at the appropriate early stage. We ask the Council to confirm the date that an EES was first requested from BH.
- BH submits the ES alongside the planning application, and that the ES satisfies the criteria set out in the DCC / template. The Council must not validate the Application until the ES has been received – and again the Council should liaise with community stakeholders, in particular the Aylesham Centre Community Forum, to determine whether it is satisfactory.
- The Council meets their public sector equality duty by ensuring that the EqlA is adequate, both in terms of the standards in the DCC, but also by the standards in the EHRC technical guidance referenced above. We explain in more detail below what an adequate EqlA would look like in this context. If BH produces an unsatisfactory EqlA, the Council must refuse to determine the Application until BH prepares a revised version, carrying out any further consultation and mitigation required.

12. The Council has a duty to follow the clear commitments it has made under the SCI and DCC. This is underpinned by the legal doctrine of 'legitimate expectation', arising where a public authority gives an unequivocal assurance that it will consult in a certain way before making a decision. There is a line of case law² confirming that such a legitimate expectation arises where assurances are provided in a statement of community involvement. Therefore, if the Council proceeds with

² See the cases of *R (Majed) v London Borough of Camden* [2009] EWCA Civ 1029, *R (Kelly) v London Borough of Hounslow* [2010] EWHC 1256, and *R (Vieira) London Borough of Camden* [2012] EWHC 287 (Admin)

granting planning permission for the Application without fulfilling the assurances under the SCI and DCC, the decision will be prone to legal challenge.

13. Similarly, if the Council grants planning permission for the Application without satisfying the public sector equality duty, its decision will be unlawful and prone to legal challenge.

ACA goals and expectations

14. We and ACA do not want to stop development. On the contrary, we strongly welcome development; but we want to ensure the scheme properly responds to the community's needs and brings the entire community along with it. Those needs can only truly be articulated by the community itself. To some extent those needs can be conveyed by ACA, but crucially BH must also reach out directly to those who are not yet actively engaged in the planning process. While ACA is constantly seeking to reach those groups, the Council must be clear that the duty to reach them falls on BH. They cannot rely on community groups like ACA to do this work for them. We also want to ensure the scheme is sustainable and well-integrated into Peckham Town Centre.

15. The EES, ES, and EqIA are key routes through which the various needs of the community can be uncovered, considered and ultimately met. For example:

- The demographic analysis required as part of the EES facts-based audit, as well as the evidence gathered under the EqIA process, will help better understand the needs of traders, shoppers and other town centre users, particularly from racially diverse and lower socio-economic backgrounds. We expect to see clear protections in place to ensure independent businesses and those appealing to BAME and lower socio-economic groups, are protected.
- The 'Social Value Statement' required in the ES must "*describe[] the economic, social and environmental impacts of the development, how the development will contribute to the long-term wellbeing and resilience of existing and future residents and businesses*". This requires a nuanced analysis of social impact, including an awareness of potential indirect effects of the development. A recent Evening Standard article, entitled ['Are we witnessing the slow death of Peckham? How residents are battling big business to save the area's soul'](#), captures these sensitivities well. Examples include:
 - how the changing commercial offer and influx of more affluent residents may in turn affect rents nearby (both commercial and residential);
 - how this may in turn lead to displacement of certain groups; and
 - the particularly high demand for affordable housing in Southwark and in particular in the local area.

These impacts need to be analysed and mitigated as far as possible. In light of the above context, the scheme should deliver the strategic target of 50% affordable housing, not the 35% *minimum* dictated by the Southwark Plan (policy P1).

- The EES facts-based audit must include an analysis of accessibility and movement to, from and around the site. This should be informed by direct engagement with the community by BH. We see the development as a key opportunity that cannot be missed to improve the surrounding traffic flows of pedestrians and the variety of two and four wheeled vehicles, particularly the Rye Lane / Peckham High Street / Hill Street junctions. It's important that this goes beyond desktop technical analysis and properly understands the needs and desires of those using it. This analysis should be developed with the Council and TfL to create a network that mitigates the development and works for the community. This is essential to ensuring the scheme is adequately integrated into the town centre.
- The EES facts-based audit must also include analysis of climate change and mitigation and adaptation considerations. Again, this should be informed by equalities considerations, including how development can provide immediate climate / health benefits to the local community, in particular those who might otherwise lack access to such benefits.
- The ES must be clear in setting out stakeholders' vision for the site, their likes and dislikes regarding the Application, and a *'You Said, We Did'*-style summary of changes made in response to community feedback. Far too often we see summaries of community engagement in planning applications intentionally avoid detailed analysis of consultation feedback and responses to it. This sets a higher and more prescriptive standard for conducting and recording community consultation that must be adhered to.

16. We are well aware that similar analysis will be conducted as part of the Application, especially under the environmental impact assessment. However, the SCI and DCC regime requires a different approach with a different conceptual underpinning: environmental impact assessments require a scientific and objective analysis, whereas the SCI and DCC requires a more subjective, socially minded approach, informed by community consultation and site-specific equalities analysis.

Conclusion

17. There is a strict regime for community consultation and equalities considerations in Southwark that places clear requirements on BH. The Council is under a legal duty to ensure compliance with these requirements, and the Council would be acting unlawfully were it to validate or grant permission for the Application without ensuring compliance.

18. We welcome the preliminary consultation opportunities offered to date, but now expect the above regime to be followed – this is essential to ensuring an equitable, transparent and lawful process.

19. The key next step is ensuring an EES is prepared in line with the Council's template, including a detailed facts-based audit. ACA, and other stakeholders, should be allowed an opportunity to comment on and discuss the EES prior to submission of the Application. A similar process must be followed in relation to the ES prior to validation of the Application.

Yours sincerely,

Planning Voice Project

Southwark Law Centre