



c/o 1 *****

Blue Anchor Lane

London

SE16 3

<http://35percent.org/>

2 October 2017

Dear Sir/Madam

Objection to Planning Application 16/AP/4458 demolition and mixed-use redevelopment of the Elephant and Castle shopping centre and London College of Communication.

We wish to make further objections to this planning application:

The need for Build to Rent

1. The Applicant (Elephant and Castle Properties Limited) proposes a 100% Build to Rent (BtR) scheme, with Discounted Market Rent (DMR) affordable housing, as the housing element of the redevelopment. The National Planning Policy Framework (NPPF) Section 47 'requires that local planning authorities maintain an evidence base to ensure that their Local Plan meets the full, objectively assessed need for market and affordable housing' (Applicant Affordable Housing Statement 3.3). Notwithstanding the support for BtR in the Mayor's Affordable Housing and Viability SPD, there has been no objective assessment of how BtR meets any identified housing and how DMR meets any identified affordable housing need.
2. We note that the Applicant make their own evaluation of housing need (Affordable Housing Statement 5.51- 5.59), but while this is based on Southwark's housing data, it is not independent and cannot be accepted as objective. Further, the same data is part of the evidence base of Southwark's Local Plan, which excludes affordable rent, which we deem must include DMR, from its Core Strategy. Southwark also excluded it, up

to June 2017, from its emerging policy in the New Southwark Plan (see below para 11-13). The Local Plan must supply the measures for housing needs – an applicant cannot be allowed to ‘mark their own homework’.

3. In addition the Applicant uses data from the Annual Survey of Hours and Earnings (ASHE) to bolster its claim that DMR ‘represents a genuine housing choice to a greater number of households than...CACI data envisages’ (Affordable Housing Statement 5.41). The Applicant’s purpose is to demonstrate that local incomes are higher than CACI figures, and so DMR is more affordable; however they do so by dispensing with the elderly and those who are not economically active and by ignoring their housing needs. The application thereby deliberately excludes at least one group of protected characteristics under equality legislation, the elderly, from its affordable housing offer. Other protected groups may be disproportionately represented amongst economically inactive households and would thereby also be excluded from the housing offer.

Social rented housing

4. The Applicant is proposing neither social rent nor affordable rent, but intermediate rent. It therefore does not meet the requirements of the Core Strategy which requires a proportion of social rented housing.
5. The Applicant proposes no social rent housing, only a ‘social rent equivalent’. This is contrary to the Core Strategy, which requires ‘social rent’, without qualification.
6. The Applicant’s proposal for ‘social rent equivalent’ housing (Applicant Affordable Housing Addendum, Table Two) falls outside the Core Strategy’s requirements for ‘social rented housing’ because it will not be owned by a private registered provider, but by the Applicant’s shareholders (Applicant Affordable Housing Statement 1.12).
7. We note that while the Applicant’s registered office is in London, its two active officers business’ addresses are in the British Virgin Islands and question whether affordable housing in London should be effectively controlled by an off-shore company, which was undoubtedly established to avoid tax-payments in the UK - <https://beta.companieshouse.gov.uk/company/04434716/officers>
8. The Applicant acknowledges that it will not be using a private registered provider to deliver or let the affordable housing. (Affordable Housing Statement Addendum pg 4). The application is therefore contrary to

Southwark's Core Strategy Policy 6, which requires that social rented housing be let by 'a housing association (known as registered providers) or other affordable housing providers'.

9. The Applicant states that 'It is only Affordable Rented homes that must be let by a Registered Provider, as required by the HCA's Rent Standard (section 2.4)' (Affordable Housing Statement Addendum pg 4). Section 2.4 of the Rent Standard April 2015 refers to annual rent increases and has no relevance. However, Section 3.18 – 3.20 lists 'intermediate rent' amongst exemptions to social rent and the Rent Standard, but goes on to define this as 'rent levels which are above social rent levels'; if therefore the Applicant's 'social rent equivalent' homes are truly equivalent they cannot be intermediate rent and therefore are not exempt from ownership by a private registered provider. If on the other hand, the Applicant claims they are not social rent, but intermediate rent, they are not meeting Core Strategy requirements, as stated above.

Affordable rented housing

10. The Core Strategy has no provision for DMR or affordable rent. Southwark's position on affordable rent is given in the Planning Committee Report 20 Dec 2011 and states that 'we are currently maintaining the Core Strategy, saved Southwark Plan and area action plan policies, supporting (sic) by the Affordable Housing SPDs'. It lays out 3 options to be applied to planning applications proposing Affordable Rented Housing, on a case by case basis.
11. The Applicant proposes types of affordable housing, and amounts, that do not conform to Core Strategy Policy 6 or the Elephant and Castle SPD, which require 35% affordable housing, equally divided between social rented and intermediate housing. The Applicant proposes 100% Discounted Market Rent (DMR), an affordable and intermediate rent.
12. The Applicant is proposing 'affordable rent at London Living Rent levels', which is affordable rent and therefore not supported by the Core Strategy.
13. Notwithstanding this, the Applicant is proposing that less than a third of DMR homes are let at LLR /a/r equivalent (Bands B and C, at incomes between £20,000 and £50,000), while two-thirds of the DMR will only be available to those with household incomes over £50,000, contrary to the Mayor's preference that DMR homes are let at LLR (4.23 Mayor's Affordable Housing and Viability SPD).

Free-market rent

14. The Applicant gives no information about the levels of rent that they will be charging for the 637 free-market properties, although we can deduce that the cheapest free-market rent will be in excess of the most expensive affordable rent, £539 pw. Rents at this level will significantly change the social make-up of the Elephant, introducing a sizeable population of affluent residents, without the counter-balance of less affluent households, because of the lack of new social rented housing, that are needed to maintain a mixed and cohesive community

Emerging policy

15. The Applicant relies solely on emerging policy for support from the Local Plan for the affordable housing proposed (Affordable Housing Statement 5.3). The October 2015 New Southwark Plan Preferred Option Policy DM1 Affordable Housing maintained the Local Plan's exclusion of affordable rent, stating 'We will not accept affordable rent as it fails to meet the affordable housing needs of Southwark residents...'. Policy DM4 Private Rented Homes required that BtR, aka Private Rented Schemes (PRS), provide as much affordable housing as conventional schemes (under DM1) noting that 'Evidence shows that PRS schemes are as viable as conventionally funded schemes'.
16. Thus the emerging policy situation when the shopping centre application was made in Oct 2016 was that affordable rent was not acceptable and BtR/PRS schemes must provide as much affordable housing as conventional schemes. The application was therefore non-compliant on several counts; it was offering affordable rents (Affordable Housing Statement 5.29) and it was not offering affordable housing in the tenure mix required.
17. This changed in June 2017 when the next version of Local Plan, New Southwark Plan Preferred Option – New and Amended Policies deleted the exclusion of affordable rent from DM1, and DM4 was amended to reduce the amount of social rented housing required from BtR/PRS schemes, from 25% of the total housing to 12%, and to allow BtR/PRS to deliver affordable rent. These changes were made without explanation.
18. Amendments to the application were submitted in July 2017, specifying a small number of 'social rent equivalent' units (33) and giving greater detail on the unit mix and rents. While the amendments do not bring the

application into full compliance with emerging policy (see below), the compliance gap has been narrowed, by a combination of small concessions on the Applicant's part and a relaxation of policy requirements, on Southwark's part.

19. This chronology suggests that Southwark Council has made policy changes to accommodate the Applicant and has thus compromised its integrity as the Local Planning Authority by proposing changes to the Local Plan that will facilitate the passage of this and similar applications, without offering any evidence to justify these changes.
20. In addition, it would be premature for Southwark as the LPA to apply the emerging policy on private housing for the determination of this application, in the light of its size and significance, and the substantial departure from established policy represented by the June 2017 amendments to DM1 and DM4. We note that the New Southwark Plan has yet to be submitted for its Examination in Public and is not due for adoption until 2018 -
<https://www.southwark.gov.uk/assets/attach/3972/LDS%20July%202017.pdf>
21. Notwithstanding the above, the application does not comply with emerging policy DM4, Private Rented Homes, which requires from the total housing 12% social rent; 18% affordable rent capped at London Living Rent equivalent; 5% affordable rent for household incomes between £60,000 and £90,000 per year. The Applicant instead proposes approximately 3.4%; 10.8% and 20% (for incomes between £50,000 and £90,000 per year)(percentages calculated by units).
22. Notwithstanding the above, the application's proposal of a 15 year covenant period for BtR housing remaining in the rented sector (Affordable Housing Statement Addendum pg 9), does not comply with emerging policy DM4, Private Rented Homes, which requires a 30 year covenant period.

Eligibility for affordable housing

23. The Applicant refers to 'economically active households' (Affordable Housing Statement 5.40, 5.41, 5.41) and states 'the key criteria for nominations should relate tothose who are economically active' (Affordable Housing Statement Addendum 'Eligibility' pg 4) and, further, states that 'the Council is in the process of collating an intermediate housing waiting list comprising economically active households who are in

need of a subsidised (sic) home' (Affordable Housing Statement Addendum 'Eligibility' pg 4). This clearly implies that households who are not economically active will be ineligible. The Applicant and Southwark Council must make this explicit, if this is the case. They must also further define 'economically active' and state whether this excludes the elderly, retired, unemployed and those who may be in receipt of benefit. They must also explain what would happen in the event of a economically active tenant becoming economically inactive.

24. We refer the authority back to para 6 for the equalities implications of using this 'economically active' eligibility criteria. Southwark should consider whether groups with protected characteristics under equalities legislation, such those from BAME backgrounds and the elderly, are not disproportionately detrimentally affected by any eligibility criteria.
25. Southwark should also confirm whether it is indeed 'collating an intermediate housing waiting list comprising economically active households who are in need of a subsidised (sic) home'. We note an Inside Housing report that consultation on such a list would be conducted in the spring of 2017, with reference to this application, but are unaware of such having taken place -
<https://www.insidehousing.co.uk/news/news/southwark-council-to-create-intermediate-waiting-list-49679>
26. DMR is not 'subsidised' housing; it is simply housing let at below full market rents; there is no subsidy involved, only an acknowledgement that many people, including professionals on middle incomes, cannot afford the high market rents that are customary in London.
27. We note the reference to GLA grant funding (Affordable Housing Statement Addendum pg 9) and ask for more information, without which there can be no meaningful public consultation. Any grant funding would clearly have an impact on the viability of the scheme and the amount and kind of affordable housing provided. The application should not be determined until the outcome of the discussions with GLA is known. In any event the Applicant should provide the full amount and kind of affordable housing, as required by the Core Strategy and the Elephant and Castle SPD and as the New Southwark Plan required, before its amendment in June 2017.

The management of housing

28. Our understanding of the application is that all prospective tenants will be means-tested, so that they can be allocated to different household income and rent bands. Tenants occupying identical flats would pay different rents, according to their incomes (Affordable Housing Statement, Tables Two and Three). Five different rents would be therefore be charged for identical flats (four in the case of a one -bed), ranging, in the case of a 2 bed flat, from £175 - £539pw ly put. We believe that this is inequitable. The Applicant must instead be required to supply affordable housing, 50% social rented; 50% intermediate, according to the Core Strategy and Elephant and Castle SPD.
29. Having to supply private financial information to the Applicant to establish the maximum rent that a prospective tenant can afford to pay is objectionable. The Applicant should state what information they intend to require to allow means-testing, how it will be verified and who will have access to it.
30. We have noted our concerns that the Applicant, Elephant and Castle Properties Limited, effectively an off-shore company, would be an affordable housing landlord, in para 6. We are similarly concerned that approving this application will encourage and promote off-shore arrangements generally in the still-nascent BtR sector.

Clawback

31. The need for a clawback provision, while prudent, raises doubts about the housing remaining in the rented sector and the affordable housing remaining so, in perpetuity (NB we assume all housing in the development, affordable and market, will be subject to clawback).
32. We are unconvinced that any clawback arrangements will be robust and effective enough in the face of the temptation to the Applicant, or any successor landlord, to cash-in their investment for a large profit.

Viability

33. The Applicant states that 'the amount of affordable housing that can be supported by the proposals will be determined by scheme viability' (Affordable Housing Statement 4.1) and has submitted a Financial Viability

Assessment (FVA) Executive Summary, according to Southwark's Development Viability SPD, DVG8. However does not meet the requirements of the SPD's Table 1 – it provides no profit figure, no finance fees, no residual land value and aggregates the construction costs, acquisition costs and professional fees.

34. Further, while the SPD is ostensibly designed to promote transparency, the requirement that the full FVAs will only be published one week before determination (DV9) deliberately frustrates any meaningful public consultation. One week is too short a time to digest the FVAs, let alone submit any informed comment or objection. We therefore make an EIR request, that all the full FVAs are released immediately.

We believe that it is clear that this application's housing proposals do not meet the housing needs of the local community and does not conform to the Local Plan and should not be approved.

Summary of objections and comments on the application's housing offer

- No objective assessment of how BtR meets any identified housing and how DMR meets any identified affordable housing need.
- The Local Plan must supply the measures for housing needs – an applicant cannot be allowed to 'mark their own homework'
- It excludes the elderly, a group with protected characteristics under equality legislation and may exclude others
- It does not meet the requirements of the Core Strategy for social rented and intermediate housing
- It proposes no social rent housing, only a 'social rent equivalent', contrary to the Core Strategy, which requires 'social rent', without qualification.
- The affordable housing will be effectively controlled by an off-shore company,
- The proposal for 'social rent equivalent' housing falls outside the Core Strategy's requirements for 'social rented housing' because it will be owned by the Applicant's shareholders
- It is contrary to Core Strategy Policy 6, which requires that social rented housing be let by 'a housing association or other affordable housing providers'.
- The 'social rent equivalent' homes cannot be intermediate rent and therefore are not exempt from ownership by a private registered provider.
- The Core Strategy has no provision for DMR or affordable rent.

- The application proposes types of affordable housing, and amounts, that do not conform to Core Strategy Policy 6 or the Elephant and Castle SPD
- It proposes 'affordable rent at London Living Rent levels', which is affordable rent and therefore not supported by the Core Strategy
- It proposes that less than a third of DMR homes are let at LLR /a/r equivalent while two-thirds of the DMR will only be available to those with household incomes over £50,000, contrary to the Mayor's preference that DMR homes are let at LLR
- High free-market rents will introduce a population of affluent residents, without the counter-balance, through new social rented housing, of less affluent residents, needed to maintain a mixed and cohesive community.
- The application relies on solely on emerging policy for support from the Local Plan for the affordable housing proposed
- It is non-compliant when measured against established policy and early emerging policy
- Southwark Council has made policy changes to accommodate the Applicant and has thus compromised its integrity as the Local Planning Authority
- It would be premature for Southwark as the LPA to apply the emerging policy on private housing for the determination of this application
- The application does not comply with emerging policy DM4, Private Rented Homes,
- The proposed 15 year covenant period does not comply with emerging policy DM4, which requires a 30 year covenant period.
- The application excludes the elderly, retired, unemployed and those who may be in receipt of benefit from affordable housing
- There has been no consultation on an intermediate housing waiting list
- Means testing tenants to set different rent-levels for identical flats is inequitable; the same rent should be charged for identical flats.
- The need for clawback raises doubts about the housing remaining in the rented sector and the affordable housing remaining so, in perpetuity
- The Viability Assessment Executive Summary does not meet the requirements of Southwark's Development Viability SPD Table 1
- We make an EIR request, that all the full FVAs are released immediately.

Yours sincerely

Jerry Flynn

35% Campaign