

Examination of the Newham Local Plan - Hearing Sessions

Hearing Statement – Matter 9 (22nd January 2025)

Prepared on behalf of the Forward Group Trustees (FGT) and
THESET Ltd



Matter 9 – Town Centres

Forward Group Trustees (FGT) and THESET Ltd set out below their responses to the questions raised by the Inspector. The responses are set out in the order they appear in the Inspectors' MIQs. The Inspector should assume that no comment is made by FGT and THESET Ltd in respect of the questions that have are not included below.

Town Centre Network

Visitor accommodation

Question 9.6:

Is policy HS8 relating to hotels and other forms of visitor accommodation justified and consistent with national policy and the London Plan?

Response:

Our clients own the site referred to as N8.SA4 (Stratford High Street Bingo Hall).

Background context

Hotel proposals that are in 'opportunity areas', even if they are located outside of a town centre, are supported by Policy E10 (Visitor Infrastructure) of the London Plan (2021) which is the most up-to-date policy document in the context of Section 38(3B)(5) of the Planning and Compulsory Purchase Act 2004. LBN's emerging policy should, therefore, be consistent with London Plan policy.

An extract from Part G of Policy E10 is set out below:

"In outer London and those parts of inner London outside the CAZ, serviced accommodation should be promoted in town centres and within Opportunity Areas (in accordance with the sequential test as set out in Policy SD7 Town centres: development principles and Development Plan Documents) where they are well-connected by public transport, particularly to central London" [our emphasis].

In terms of applying Policy E10 of the London Plan, it supports hotel proposals in opportunity areas and therefore negates the need for a sequential test. This matter was specifically discussed with the Inspector responsible for testing the soundness of the London Plan on 20th March 2019 (as explained in the recording link below¹). At 5.11.15 on the recording the Inspector says, in terms of Policy E10, it gives 'equal weight to town centres and opportunity areas'. The expert witness then agrees with the Inspector, bearing in mind it was the Inspector's point. When the Greater London Authority's (GLA) barrister responds, he doesn't discuss this matter any further. This was explained to LBN in a planning advice note issued to them on 4th June 2024.

¹ <https://www.dropbox.com/scl/fi/9487ej2w0e6hxr8yxe8o/EiP-20-March-2019-4.wav?rlkey=juc983cqb6eleh5m96d4e4k4i&dl=0>

Our clients have undertaken discussions with the GLA in relation to the abovementioned proposals hotel-led, mixed-use proposals for their Site N8.SA4 (Stratford High Street Bingo Hall). The GLA's formal pre-application response (see **Appendix 1**) confirms that a hotel use on the Site is supported by Policy E10 of the London Plan. An extract of this response is set out below:

"London Plan policy E10 supports the provision of hotel uses in town centres and opportunity areas, where they are well-connected by public transport, particularly to central London. This site is just outside of the Metropolitan town centre boundary but is highly accessible to public transport, and is within an Opportunity Area with close access to visitor attractions within the Queen Elizabeth Park. The hotel use in this location is appropriately located and would not raise strategic objections, therefore"

Our client followed up the GLA's response with email to the GLA containing a clarification query. The GLA confirmed by reply email (see **Appendix 2**) that a hotel-led proposal on a site located within an Opportunity Area, but outside a town centre boundary, would not need to be supported by a 'sequential test' to accord with the objectives of Policy E10 of the London Plan.

Attached is a legal opinion (see **Appendix 3**) prepared by Victoria Hutton of 39 Essex Chambers which concludes that Ms Hutton agrees with FGT's interpretation of applying Policy E10.

The 'responses' set out below should be considered under the above context.

Response 1:

Considering the context, our clients note that draft 'Vision' for the Stratford and Maryland area, as set out on pages 490 to 492 of the Draft Submission Local Plan (Regulation 22) includes reference (parts 4b) to delivering 'visitor accommodation uses' in Stratford Town Centre, but does not acknowledge that there are other locations (i.e. Opportunity Areas) that are appropriate for this type of accommodation. As such, the Vision:

- Does not accord with Policy E10 of the London Plan; nor
- Does not meet the 'positively prepared' test set out in paragraph 35 of the NPPF.

At the Hearing Session for Matter 4 (Neighbourhoods and Allocation), our clients sought the Inspector's agreement to revise draft Vision by adding a new bullet point, as follows to ensure it is consistent with Policy E10 of the London Plan:

"The vision for Stratford and Maryland will be achieved by:

*17. supporting hotel development within centres in Stratford and Maryland Neighbourhood as a key tourist destination and parts of **Opportunity Areas** where they are well-connected by public transport.*

Our clients also sought the Inspector's agreement to revise the draft Site Allocation (ref: N8.SA4) to be more flexible by amending the Development Principles section and adding a new paragraph, as follows:

*"**Hotel and** residential development with employment floorspace. The employment floorspace should be consistent with Local Plan Policy J1 and should provide space for light industrial uses and business workspaces and complement the offer at Stratford Workshops on Burford Road.*

Hotel floorspace would be acceptable on this site on the basis that it falls into the Olympic Legacy Opportunity Area and the Elizabeth Line East growth area. However it must form part of a mixed-use scheme that includes employment and industrial floorspace and delivers other planning related benefits that help meet to primary objectives of Local Plan, such as the delivery of affordable homes and local employment opportunities".

Response 2:

In relation to Matter 9, the above context is also relevant to Policy HS8 (Visitor Accommodation) of the Submission Draft Local Plan (Regulation 22).

The 'background context' section above explains how the Council is already rigidly applying Policy HS8 during pre-application discussions and how the Council is disregarding the objectives of London Plan Policy E10 which allow visitor accommodation in Opportunity Areas, not just in Town Centres. As such, the Vision:

- Does not accord with Policy E10 of the London Plan; nor
- Does not meet the 'positively prepared' test set out in paragraph 35 of the NPPF.

Our clients seeks the Inspector's agreement to revise the Policy HS8 to be more flexible by amending the policy as follows:

1. Hotels and other forms of visitor accommodation will be supported on sites in:
 - a. Town and local centres where the function of the primary shopping area is protected in line with Local Plan Policy HS2, and principally within centres in Stratford and Maryland Neighbourhood as a key tourist destination, and parts of Opportunity Areas where they are well-connected by public transport; and
 - b. Areas within 15 minutes walking distance to the ExCel conference centre.
2. The scale of development should be proportionate to the scale of the centre and/or the tourism or employment function of the area it services, as relevant to the site, justified by market demand testing and a Sequential Test if proposed in an out of centre location. The development should be supported by a Visitor Accommodation Management Plan outlining:
 - a. How amenity and safety will be managed and maintained through the day and at night.
 - b. A servicing plan.
3. All visitor accommodation should meet the accessibility standards set by London Plan (2021) Policy E10.
4. Any ancillary leisure main town centre uses or recreation and sports facilities, which are proposed to be made accessible to non-hotel visitors, should meet relevant policy criteria set out in this Plan, and a leisure Impact Assessment where the cumulative floorspace is more than 300 sqm GIA.

Appendix 1

Buzz Bingo Hall, Stratford

in the London Borough of Newham

The proposal

Redevelopment of existing site to deliver a mixed-use development comprising hotel, co-living, market sale and affordable homes, workspace, community space and associated landscape and car parking/servicing arrangements.

The applicant

The applicant is **Forward Trustees Limited** and the agent is **Stantec**

On 23 July 2024 a pre-application "in principle" meeting was held online to discuss the above proposals with the following attendees:

Meeting attendees

GLA

- John Finlayson, Head of Development Management
- Katherine Wood, Team Leader (East) – Development Management

Applicant team

- Adam Fothergill - Assael
- Felicie Krikler – Assael
- Richard Quelch – QSquared
- Mohsin Kothia – Applicant
- Jack Savin Taylor – DS2
- Justin Kenworthy - Stantec

Summary of meeting discussions

1 The advice given by officers does not constitute a formal response or decision by the Mayor with regard to future planning applications. Any views or opinions expressed are without prejudice to the Mayor's formal consideration of the application.

Scheme overview:

2 The application site comprises a two storey building in use as a bingo hall, with associated car park, on the southern side of Stratford High Street between Cam Road and Burford Road. Stratford High Street DLR station is adjacent to the north. The site is currently within the administrative boundaries of the London Legacy Development

Corporation (LLDC), which will soon transfer responsibility back to the London Borough of Newham.

3 The site is within the Olympic Legacy Opportunity Area, and lies just outside the boundary of Stratford town centre (a metropolitan town centre), which is approximately 75m to the north east. This also marks the boundary of the Stratford St Johns Conservation Area which runs along the high street to the north. Due to the highly accessible nature of the site which is served by several frequent bus routes and access to the DLR, with underground and national rail services at Stratford, the site records the highest PTAL of 6b.

4 No strategic planning history exists on the site. It is not currently allocated, although the draft Newham Local Plan (Regulation 19) allocates it for residential led mixed-use development with light industrial employment use, in buildings up to 13 storeys.

5 The current proposals are to redevelop the site to provide hotel and serviced apartments (Class C1), co-living (sui generis) and market and affordable housing (Class C3), and workspace/light industrial space, within buildings up to 16 storeys.

Key comments and considerations

Land use principles

6 The site is in use as a bingo hall and car park. The redevelopment of a low-density brownfield site within an Opportunity Area to make optimal use of land is supported in principle by Good Growth Objective 2 and Policy SD1 of the London Plan. The principle of redevelopment is also supported by Newham Council's draft site allocation N8.SA4, although the draft site allocation envisages redevelopment for residential and employment use, rather than being led by hotel use.

Hotel use

7 London Plan policy E10 supports the provision of hotel uses in town centres and opportunity areas, where they are well-connected by public transport, particularly to central London. This site is just outside of the Metropolitan town centre boundary but is highly accessible to public transport, and is within an Opportunity Area with close access to visitor attractions within the Queen Elizabeth Park. The hotel use in this location is appropriately located and would not raise strategic objections, therefore. However, noting the Council's draft site allocation requirements and desire for this site to provide a contribution to much-needed housing and affordable housing, it should be demonstrated why this site could not provide a greater amount of Class C3 residential accommodation. The applicant explained viability constraints including the high existing use value of the bingo hall, which should be further explained and quantified. It is noted that the submitted documentation explains that the existing bingo hall is underused and no longer viable given the rise of online bingo, so this would need to be factored in to any assessment of the existing use value.

8 A mixture of hotel rooms and serviced apartments would be provided. It should be demonstrated how the Class C1 accommodation, especially the serviced apartment use, is distinct in nature and operation from the proposed co-living accommodation, as

the two uses have different requirements in terms of the size and space standards, and the need for an affordable housing contribution. Maximum stay lengths of up to 90 days would be expected to be secured, for instance, to confirm the use as a hotel.

Workspace

9 The provision of workspace is supported as a means of providing activity at ground level. There is no strategic requirement for this site to provide light industrial uses, but Newham's draft site allocation specifies this. The provision of light industrial uses would be supported in line with these requirements, and to provide employment opportunities for small businesses. The workspace should be designed and fitted to occupier requirements to ensure that fit-for-purpose and lettable space is provided.

Co-living

10 London Plan Policy H16 states that proposals for large scale purpose built shared living (LSPBSL/co-living) must be located within areas that are well connected to local services by active travel means. This site is highly accessible and can therefore be supported as a location for co-living development under Policy H16. Any proposals should respond to the requirements of the policy and the benchmarks and guidance set out in the LSPBSL LPG, particularly in terms of its design, management arrangements, size and amenities of private rooms, and the quantum and convenience of shared amenity spaces.

11 Whilst Policy H16 expects a payment in lieu contribution towards affordable housing, the principle of providing the required affordable housing contribution on-site, as Class C3 affordable housing, is accepted and supported. It is strongly encouraged that the threshold level of affordable housing is provided, which is 35% in this case. As set out within the draft Affordable Housing LPG, the percentage of affordable housing from co-living is calculated on a floorspace basis (rather than counting co-living units as one habitable room).

Housing and affordable housing

12 A mixture of market and affordable homes are currently proposed within the Class C3 element of the proposals (52 units). As such, the level of affordable housing is currently unlikely to meet the threshold level of affordable housing required from the combination of the c.200 unit co-living element and the market housing element, and the overall percentage contribution is likely to be very small. The applicant is strongly encouraged to engage early with a Registered Provider to gauge interest in the accommodation, their requirements in terms of quantum and tenure, and their access to grant funding to increase the affordable housing level. Consideration should be given to providing all of the C3 accommodation as affordable, which can have a positive impact on viability by de-risking this element of the scheme.

13 The tenure of the C3 affordable housing is expected to comply with Newham Council's strategic tenure split target (noting the Council's emerging strategic target of 60% affordable housing including 50% social rent and 10% affordable ownership).

14 If the scheme cannot follow the threshold approach, then early engagement with the GLA's viability team is strongly advised in a further pre-application meeting, to discuss the inputs and assumptions for the viability assessment.

Design considerations

15 Whilst detailed design matters were not discussed at this pre-application in principle meeting, key initial points are set out below.

Tall buildings

16 The site is not identified as suitable for tall buildings in an adopted development plan document. Proposals for tall buildings on this site would not therefore currently comply with the locational requirements of London Plan Policy D9 (Part B). Newham Council's draft site allocation N8.SA4 identifies the site as suitable for taller buildings up to a maximum height of 13 storeys, which the current proposal would exceed.

17 The acceptability of the building height and design would also depend on assessment against the qualitative criteria outlined in London Plan Policy D9, Part C (including its visual, functional, environmental and cumulative impacts), and local policy. In this respect, it is noted that this part of Stratford High Street contains a number of tall and very tall buildings, and in terms of its visual and cumulative impact, a building of the proposed height could sit comfortably within its context. The stepping down of massing to address sensitive heritage context is supported, although the localised impact of the 10 and 13 storey buildings fronting on to Burford Road would need to be tested further.

Layout and public realm

18 The replacement of the existing poorly activated building and surface level car park with a building which fully addresses each street frontage is supported in principle. The location of building services beneath a podium level creates greater opportunity for active frontages, which is supported. The opportunity to make improvements to the public realm outside of the red line boundary (e.g. resurfacing, improved crossings, planting, wayfinding etc) should be fully explored.

19 The proposed residential entrance is set into the site rather than being accessed from a street frontage, and is accessed through a parking and vehicle servicing area. It should be ensured that the residential entrance is safe and legible, and that a segregated route is provided so that pedestrians do not come into conflict with vehicles.

20 Regarding internal building layouts, the co-living elements and Class C3 residential accommodation would need to take into account relevant policy and guidance regarding internal layouts, space standards and access to external amenity space. The C3 housing will also produce a requirement for child playspace, with at least doorstep play for under 5s required onsite. If any required playspace is proposed to be located off-site, it must be shown that the playspace exists at a suitable walking distance (with safe travel routes), and should make financial contributions towards improvements to the playspace and/or the travel routes as required.

Other considerations

21 As a referable scheme, the application must be accompanied by a Circular Economy statement and a Whole Life Carbon assessment, and should respond to the energy and sustainability policies within the London Plan, including the minimising and reporting of carbon emissions, connecting to district heat networks where available, or connection to communal heat networks serving the whole development in line with the GLA's hierarchy, and incorporation of low carbon and renewable energy technology.

22 A car free development (with blue badge parking) is strongly supported. Detailed transport discussions with TfL will be required, particularly around Healthy Streets/ active travel, improvements to local connectivity including potential connections to Channelsea Path, vehicle access and servicing, any public transport mitigation, and cycling. Given the proximity to DLR line and Jubilee line applicant may also need to seek advice from TfL Infrastructure Protection for any significant construction works.

23 TfL also advises that it is working in partnership with Newham Council to develop and model numerous bus priority interventions along Stratford High Street. The A118 Stratford High Street Future Bus corridor runs from the junction of Stratford High Street / A12 Blackwall Tunnel Northern Approach to the junction of Stratford High Street / Great Eastern Road. The corridor forms part of the Strategic Road Network (SRN) within the London Borough of Newham and is approximately 1.5km in length. As the site is adjacent to this corridor, the proposed development should be aligned with emerging corridor work to improve the public realm and opportunities for any works in kind or contributions to further feasibility work and delivery.

Conclusion

24 The principle of redevelopment to optimise the use of this well-connected brownfield site is supported. While there would be no strategic objections to the location of a hotel in this location, in view of the draft site allocation requirements for residential use, and the pressing need for homes, it should be demonstrated why this site could not viably provide more housing. The provision of co-living accommodation and an element of market and affordable housing is supported in principle, but the proposals should make its fullest contribution towards affordable housing, with the threshold level being the target. Proposals that do not meet this level will be rigorously tested by GLA officers. The proposed 16 storey building would not comply with the locational requirements for tall buildings as set out in the London Plan, however initial indications are that the tallest building proposed could have acceptable visual and cumulative impacts. Further consideration may need to be given to greater stepping down to address the lower rise and heritage context towards the rear of the site.

24 The applicant is advised that this is in-principle advice only. A full pre-application meeting with the GLA will be necessary to fully discuss land use, viability, design (scale, massing, layout, public realm and playspace), heritage, energy and sustainability matters, and transport.

for further information, contact GLA Planning Team:

John Finlayson, Head of Development Management

email john.finlayson@london.gov.uk

Katherine Wood, Team Leader – Development Management

email katherine.wood@london.gov.uk

Appendix 2

From: [Katherine Wood](#)
To: [Kenworthy, Justin](#)
Cc: [John Finlayson](#); richard.quelch@qsquare.co.uk; [Mohsin Kothia](#)
Subject: RE: Buzz Bingo, Stratford - Comments on the GLA's Pre-App Response Letter
Date: 16 August 2024 15:15:43

Hi Justin,

Sorry for the delay in response whilst I was on leave.

Policy E10 states that outside of CAZ, hotels will be supported in town centres and in opportunity areas, where well connected by public transport. The policy references Policy SD7, which requires a town-centre-first approach for town centre uses, and seeks to apply a sequential test for proposals outside of town centres. In this case, the site is just outside the boundary of the town centre. Whilst it is not technically within the town centre, given the very close proximity to a Metropolitan town centre, and the fact that the site complies with the locational requirements of Policy E10 by being within an Opportunity Area, with the highest level of public transport accessibility, and also given that the proposal is for a hotel use rather than (for instance) a large scale edge-of-centre retail use, it is not considered that a sequential test would be required under the London Plan.

Local Plan policy requirements are also relevant, of course. The potential conflict between the proposed land uses and the draft site allocation has been highlighted, and would need to be resolved using suitable evidence, and as advised by the borough.

I hope this is of assistance.

Kind regards,

Katherine

Katherine Wood

Team Leader (East), Development Management

GREATER LONDON AUTHORITY

Union Street, London, SE1 0LL

www.london.gov.uk/what-we-do/planning

katherine.wood@london.gov.uk

[Register here](#) to be notified of planning policy consultations or [sign up](#) for GLA Planning News

Follow us on X [@LDN_planning](#)

From: Kenworthy, Justin <justin.kenworthy@stantec.com>

Sent: Wednesday, August 14, 2024 3:00 PM

To: Katherine Wood <Katherine.Wood@london.gov.uk>

Cc: John Finlayson <John.Finlayson@london.gov.uk>; richard.quelch@qsquare.co.uk; Mohsin Kothia <mohsin@thesetltd.co.uk>

Subject: RE: Buzz Bingo, Stratford - Comments on the GLA's Pre-App Response Letter

CAUTION: This email originated from outside this organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Katherine,

Further to my email of 2nd August in relation to the above site and in respect of the GLA's Pre-Application Response Letter.

We about to undertake further pre-application discussions with LB Newham and think it would be helpful if you could kindly confirm, via return email, that a sequential test is not required by Policy E10 of the London Plan to support our client's hotel proposals, as the principle of a hotel is considered to be acceptable in this location?

We look forward to hearing from you and undertaking continuing pre-application discussions with the GLA team in due course.

Kind regards,

Justin Kenworthy

Planning Director

Direct: +44 2074466851

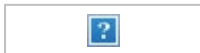
Mobile: 07920460861

justin.kenworthy@stantec.com

Stantec

7 Soho Square

London W1D 3QB



The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately.

Please consider the environment before printing this email.

From: Kenworthy, Justin

Sent: Friday, August 2, 2024 2:49 PM

To: Katherine Wood <Katherine.Wood@london.gov.uk>

Cc: john.finlayson@london.gov.uk; richard.quelch@qsquare.co.uk; Mohsin Kothia <mohsin@thesetltd.co.uk>

Subject: Buzz Bingo, Stratford - Comments on the GLA's Pre-App Response Letter

Hi Katherine,

We are now in receipt of the GLA's Pre-Application Response Letter in relation to the above site. Thank you so much for preparing this positive response.

It is great to see that the GLA recognises the benefits of our client's hotel, residential (including affordable homes), co-living, workspace and community use proposals in this opportunity area and in the context of supporting the adjacent Metropolitan Town Centre.

We have two quick comments that are connected to your response:

1. Unless otherwise advised, we assume that a sequential test is not required to support our client's proposals, as the principle of a hotel is considered to be acceptable in this location and otherwise you would have mentioned this in your response; and
2. In terms of the existing use value, it was mentioned at our meeting that our client had received a new significant offer from the Bingo operator. This will be 'evidenced' and factored into the financial viability assessment. However, in view of the possibility of optimising this PDL site to deliver planning benefits, this offer will not be taken up at this stage but remains a legitimate 'fall-back' option. Notwithstanding this, we are aware of the GLA's target of seeking to deliver the maximum amount of affordable housing on site.

We look forward to undertaking continuing pre-application discussions with the GLA team in due course.

Kind regards,

Justin Kenworthy

Planning Director

Direct: +44 2074466851

Mobile: 07920460861

justin.kenworthy@stantec.com

Stantec

7 Soho Square

London W1D 3QB



The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately.

Please consider the environment before printing this email.

Disclaimer: The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately. This communication may come from a variety of legal entities within or associated with the Stantec group. For a full list of details for these entities please see our website at www.stantec.com. Where business communications relate to the Stantec UK Limited entity, the registered office is Kingsmead Business Park, London Road, High Wycombe, Buckinghamshire HP11 1JU Tel: 01494 526240 and the company is registered in England as registration number 01188070.

This message has been scanned for viruses by the Greater London Authority.

Click [here](#) to report this email as spam.

We are London. Find out about the work of the Mayor, the London Assembly, and the Greater London Authority. <https://www.london.gov.uk/>

GREATER LONDON AUTHORITY NOTICE:

The information in this email may contain confidential or privileged materials. For more information see <https://www.london.gov.uk/about-us/email-notice/>

Caution: This email originated from outside of Stantec. Please take extra

precaution.

Attention: Ce courriel provient de l'extérieur de Stantec. Veuillez prendre des précautions supplémentaires.

Atención: Este correo electrónico proviene de fuera de Stantec. Por favor, tome precauciones adicionales.

Appendix 3

OPINION

INTRODUCTION

1. I am instructed by Stantec UK Ltd on behalf of Forward Group Trustees (**‘the Client’**) to give an opinion on a number of questions largely relating to a proposed draft allocation at Buzz Bingo Hall 341-351 High Street, Stratford (**‘the Site’**).

BRIEF FACTUAL BACKGROUND

2. The Site is situated within the London Legacy Opportunity Area where the London Legacy Development Corporation (**‘LLDC’**) is currently the local planning authority. However, the LLDC is in the process of handing back its planning powers to London Borough of Newham (**‘LBN’**) who will start receiving legacy planning applications from October 2024. Thus, at the point of deciding a planning application for the site, the LBN will be the local planning authority (**‘LPA’**).
3. Until LBN has adopted a new plan (the process for which is ongoing) LLDC’s Local Plan policies will, alongside the London Plan, form the Development Plan for the purposes of s38(6) Planning and Compulsory Purchase Act 2004 (**‘PCPA 2004’**).
4. The Client owns the Site and wishes to develop it for mixed use purposes. It has been discussing proposals with the London Borough of Newham (**‘LBN’**).
5. LBN consulted on its Regulation 18 Draft Local Plan in December 2022. That draft set out the following allocation for the Site:

“Residential development with employment and industrial floorspace. The employment and industrial floorspace should provide space for light industrial uses and business workspaces and complement the offer at Stratford Workshops on Burford Road”.

6. I understand that those instructing me have had pre-application discussions with LBN for mixed-use proposals at the Site including hotel, build to rent (**‘BTR’**), co-living uses, conventional residential, workspace and community floorspace. LBN has not been supportive of the inclusion of hotel floorspace on the Site. Page 3 of LBN’s pre-application response (July 2023) states:

“... there is no intention to support Hotel uses on this site. Current and emerging policy seeks to concentrate these uses in the Town Centre boundaries rather than encouraging spread further down the high street. They [LBN’s Policy Team] note that several hotels already exist along this area of the high street and there is no desire to further encourage a concentration of such uses in this location.

In the meeting it was discussed that the hotel use would enable a higher level of affordable housing that [is] otherwise possible. Whilst this is acknowledged, the policy position remains that Hotel use is not supported on this site and you are strongly encouraged to consider other options in line with the site allocation ...”

7. A follow-up pre-application meeting was held with LBN on 27th February 2024. I understand that LBN’s officers continued to question the appropriateness of a hotel use on the site, because it would be beyond the town centre boundary and would need to be supported by a sequential assessment. LBN has maintained this position in subsequent correspondence.
8. In June 2024 LBN published its regulation 19 local plan. Pages 484-5 of that draft detail that the Council continues to expect that the form of development on the site is ‘Residential development with employment and industrial floorspace’. I am instructed that such a scheme could not be viably provided at the Site.
9. The Client undertook pre-application discussions with the Greater London Authority (**‘GLA’**) on 23 July 2024. In those discussions the GLA agreed that policy E10 of the London Plan supports hotel use on the Site as it is within an opportunity area and there is no need for a sequential test.

10. I am informed that the Client is now preparing representations in relation to the Regulation 19 draft Local Plan (consultation closes on 20 September 2024) and I understand that the Client also intends to continue with pre-application discussions with LBN in relation to its mixed-use proposal.

11. In light of that factual background, I am asked for my opinion on the following questions:

- a. What is the proper interpretation of London Plan policy E10G, namely in relation to whether Policy E10G supports the principle of hotel accommodation in Opportunity Areas (to the same extent as Town Centres) and also whether a Sequential Test is required for a hotel within an Opportunity Area?
- b. If there is a conflict between London Plan policy E10G and other development plan policies, which should prevail?
- c. LBN appears to be treating the draft allocation at the Site as an allocation and requiring any scheme to accord with it, is that the correct approach in law?
- d. LBN's obligation under paragraph 35 of the NPPF (tests of soundness) is to ensure that the plan must be effective, which includes that it is deliverable over the plan period. Can LBN ignore evidence presented to it that demonstrates that the site allocation is not viably deliverable?
- e. The relevance of the draft NPPF and the likely change in Newham's housing targets and how the Council should consider this in relation to the draft Site Allocation and emerging Local Plan?

12. Before going on to address each question in turn, I set out the policy context for the Site.

POLICY CONTEXT

Adopted policies relating to hotel use at the Site

13. Part G of London Plan policy E10 states:

‘In outer London and those parts of inner London outside the CAZ, serviced accommodation should be promoted in town centres and within Opportunity Areas (in accordance with the sequential test as set out in Policy SD7 Town centres: development principles and Development Plan Documents) where they are well-connected by public transport, particularly to central London.’

14. London Plan policy SD7 states (at parts A and B):

A. When considering development proposals, boroughs should take a town centres first approach, discouraging out-of-centre development of main town centre uses in accordance with Parts A1 - A3, with limited exceptions for existing viable office locations in outer London (see Policy E1 Offices). Boroughs should:

1) apply the sequential test to applications for main town centre uses, requiring them to be located in town centres. If no suitable town centre sites are available or expected to become available within a reasonable period, consideration should be given to sites on the edge-of-centres that are, or can be, well integrated with the existing centre, local walking and cycle networks, and public transport. Out-of-centre sites should only be considered if it is demonstrated that no suitable sites are (or are expected to become) available within town centre or edge of centre locations. Applications that fail the sequential test should be refused

2) require an impact assessment on proposals for new, or extensions to existing, edge or out-of-centre development for retail, leisure and office uses that are not in accordance with the Development Plan. Applications that are likely to have a significant adverse impact should be refused

...

B Boroughs should support the town centres first approach in their Development Plans by:

1) assessing the need for main town centre uses, taking into account capacity and forecast future need

2) allocating sites to accommodate identified need within town centres, considering site suitability, availability and viability, with limited exceptions for existing viable office

locations in outer London (see Policy E1 Offices). If suitable and viable town centre sites are not available, boroughs should allocate appropriate edge-of-centre sites that are, or can be, well integrated with the existing centre, local walking and cycle networks, and public transport

3) reviewing town centre boundaries where necessary

4) setting out policies, boundaries and site allocations for future potential town centres to accommodate identified deficiencies in capacity (having regard to Policy SD8 Town centre network and the future potential town centre classifications in Annex 1).

15. Policy B2 for the LLDC Local Plan states:

‘Main town centre uses shall be focused according to the scale, format and position in the retail hierarchy identified in Table 4. In addition to the comparison floorspace requirements, Centres should contribute towards the identified need for convenience floorspace phased by 2036. The identified function for each Centre will be protected by:

...

3. The sequential assessment of sites for main town centre uses and subject to paragraph (1) of this policy, providing support for existing and proposed cultural and night time economy uses

...

5. Allowing edge-of-centre development supporting cultural, sporting and visitor growth associated at the Metropolitan Centre, subject to (3) above, and

6. Promoting complementary residential development in all Centres to optimise housing delivery.

NPPF

16. Paragraph 89 of the NPPF states:

‘Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.’

17. The glossary to the NPPF makes clear that main town centre uses include hotels.

18. The draft allocation for the Site (ref N8.SA4) provides for:

‘Residential development with employment and industrial floorspace. The employment and industrial floorspace should provide space for light industrial uses and business workspaces and complement the offer at Stratford Workshops on Burford Road.’

19. Draft policy HS8 states:

‘1. Hotels and other forms of visitor accommodation will be supported on sites in:

a. Town and local centres where the function of the primary shopping area is protected in line with Local Plan Policy HS2, and principally within centres in Stratford and Maryland Neighbourhood as a key tourist destination; and

b. Areas within 15 minutes walking distance to the ExCel conference centre.

2. The scale of development should be proportionate to the scale of the centre and/or the tourism or employment function of the area it services, as relevant to the site, justified by market demand testing and a Sequential Test if proposed in an out of centre location. The development should be supported by a Visitor Accommodation Management Plan outlining:

a. How amenity and safety will be managed and maintained through the day and at night.

b. A servicing plan.’

20. The explanatory text includes the following:

‘3.113 The ‘Building Newham’s Creative Future’ Cultural Strategy (2022) seeks to put Newham on the map and promote it as a visitor destination, with a growing visitor economy and encourage footfall from beyond the borough boundaries. It recognises the importance of well-known anchor institutions that can unlock an area by attracting visitors who may spend their time exploring the borough, as well as encouraging inward investment into revitalizing cultural infrastructure in nearby areas. Such institutions are increasingly establishing themselves in Newham as part of ongoing regeneration activity. These include large education, culture and leisure institutions in Stratford, and conference facilities at Royal Victoria Dock. Improving the availability and accessibility of visitor accommodation in line with the London Plan (2021) will support Newham’s developing visitor economy. More broadly, the Council will continue to support Newham’s economic growth and develop the tourism and leisure offer, cultural uses, and the evening/nighttime economy, and generally develop and improve

the business environment of town centres. Visitor accommodation will be an important part of the local offer to support the diversification of town centres.

3.114 However, the delivery of visitor accommodation must be balanced against need for other forms of development, not least housing. The London Plan (2021) estimates that London will need to build an additional 58,000 bedrooms of serviced accommodation by 2041, delivered primarily within the Central Activity Zones, but also increasingly in town centres more broadly. The study allocates a share of the need to Newham equating to 5.2 per cent or 3,031 net rooms. Latest monitoring indicates that 1,373 rooms have already been delivered, with a further 483 in the pipeline as of 2021/22. The policy therefore requires market demand testing to ensure there is not an over delivery of visitor accommodation and land is protected for other priority uses.’

21. The draft NLP currently includes delivery targets for housing of: 2,974pa in the short term, 3,836pa in the medium term and 3,475pa in the long term (p208).
22. As stated above, a regulation 19 consultation on the draft plan is ongoing.

Draft NPPF

23. The new government published a draft NPPF for consultation on 30 July 2024. This includes a new method for calculating housing needs. A spreadsheet published with the consultation draft shows a drop in housing numbers by c45% (from 4188pa to 2178pa).

OPINION

What is the proper interpretation of London Plan policy E10G, namely in relation to whether Policy E10G supports the principle of hotel accommodation in Opportunity Areas (to the same extent as Town Centres) and also whether a Sequential Test is required for a hotel within an Opportunity Area?

And

If there is conflict between London Plan policy E10G and other development plan policies, which should prevail?

24. I start with the proper interpretation of policy E10G. There are two competing interpretations of policy E10G. The first, held by the Client and the GLA is that policy E10G supports hotel use within Opportunity Areas without the conduct of a sequential test. The second

interpretation, held by LBN, is that the policy requires a sequential test even where the Site is within an Opportunity Area.

25. It is useful to re-state the wording of policy E10G:

‘In outer London and those parts of inner London outside the CAZ, serviced accommodation should be promoted in town centres and within Opportunity Areas (in accordance with the sequential test as set out in Policy SD7 Town centres: development principles and Development Plan Documents) where they are well-connected by public transport, particularly to central London.’

26. I note that policy E10G relates solely to serviced accommodation as opposed to all main town centre uses which are addressed by policy SD7.

27. Planning policies are to be interpreted objectively in accordance with the language used (*Tesco Stores v Dundee CC* [2012] UKSC 13).

28. Supporting/explanatory text is relevant to the interpretation of a policy, though it does not form part of the policy (see *R(oao Cherklely Campaign Ltd) v Mole Valley District Council* [2013] EWHC 2582 (Admin)).

29. At paragraph 6.10.3 the explanatory text to policy E10 states:

‘**Boroughs in the CAZ** are encouraged to direct strategically-significant serviced accommodation (defined as more than 20,000 sq.m. in the CAZ) towards the CAZ Opportunity Areas. Concentrations of serviced accommodation within parts of the CAZ that might constrain other important strategic activities and land uses (for example offices and other commercial, cultural and leisure uses) or erode the mixed-use character of an area should be avoided. **Boroughs in outer and inner London beyond the CAZ** are encouraged to plan proactively for new serviced accommodation in town centres to help spread the benefits of tourism to the whole of the capital.’

30. In my view the explanatory text is not terribly helpful as to ascertaining the true interpretation of the policy and, in particular, on the issue of the phrase ‘and within Opportunity Areas’ in the second line. The explanatory text does not address that text.

31. In my opinion, whilst I consider that the argument made by LBN as to the interpretation of E10 is arguable, the interpretation of the Client and the GLA is to be preferred. LBN relies upon the bracketed text in policy E10G as having the effect that policy E10G is subject to the requirements of policy SD7. Policy SD7 requires a sequential test for applications for main town centre uses where they are outside of town centres.
32. In my view, the problem with LBN's interpretation is that it renders the phrase 'and within Opportunity Areas' redundant. I consider that an objective interpretation of the text is that serviced accommodation is to be promoted (i.e. positively encouraged) within Opportunity Areas where they are well-connected by public transport. Opportunity Areas are not co-incident with town centres. The promotion of serviced accommodation in Opportunity Areas is to be understood, in my view, as an exception to the positive discouragement which London Plan policy SD7 gives for main town centre uses out-of-centre (requiring a sequential test to be undertaken for such uses). If policy E10G is to be read as requiring a sequential test for all out-of-centre serviced accommodation applications then there would have been no need to include the statement 'and within Opportunity Areas'.
33. Further I note that the bracketed text: 'in accordance with the sequential test....' does not state that policy E10G is 'subject to' policy SD7. I consider a credible interpretation of that text is that the sequential test set out in policy SD7 must be complied with where the development proposal is not either within a town centre and well connected by public transport and/or within an Opportunity Area and well connected by public transport. Such an interpretation would mean that the phrase 'and within Opportunity Areas' is not redundant and would enable policies E10G and SD7 to sit together.
34. Although the proper interpretation of policy is a matter for the court. I consider that it is of note that the GLA (whose policy E10 is) agrees with the Client's interpretation. I have also been provided with an audio recording of the examination into the London Plan. It is equally of note that the Inspector examining the plan agreed that policy E10G placed Opportunity Areas and Town Centres on an equal footing.

35. The Local Plan is made up of the London Plan as well as the LLDC Local Plan. The LLDC Local Plan requires a sequential assessment to be conducted for main town centre uses outside of the town centre. As such, there appears to be a conflict between London Plan E10G and LLDC policy B2. Section 38(5) of the Planning and Compulsory Purchase Act 2004 explains that where there is a ‘conflict’ between different documents in the development plan, the latest plan prevails. The London Plan, adopted March 2021, is the most recent development plan document. In this case, conflict between policy E10G of the London Plan and policy B2 of the LLDC Local Plan should be resolved in favour of policy E10G.

LBN appears to be treating the draft allocation at the Site as an allocation and requiring any scheme to accord with it, is that the correct approach in law?

36. The short answer is that it is incorrect to treat a draft allocation as having the same force, in law, as an allocation within an adopted development plan. Section 38(6) Planning and Compulsory Purchase Act 2004 (**‘PCPA 2004’**) states that decisions should be taken in accordance with the development plan unless material considerations indicate otherwise. In short, the development plan has statutory status and a decision maker must follow it unless material considerations indicate that it should not be followed (see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447).

37. The National Planning Policy Framework (‘NPPF’) is a material consideration in planning decisions. With regards to draft policy it states:

‘48. Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).’

38. Thus, following national policy, when attributing weight to a draft allocation LBN should take into account the fact that the draft plan is at Regulation 19 stage (i.e. not yet submitted for examination) and also whether there are unresolved objections to that allocation.

LBN's obligation under paragraph 35 of the NPPF (tests of soundness) is to ensure that the plan must be effective, which includes that it is deliverable over the plan period. Can LBN ignore evidence presented to it that demonstrates that the site allocation is not viably deliverable?

39. Paragraph 35 of the NPPF sets out the tests of soundness against which plans are to be examined. It states:

‘Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

- a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
- d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

40. Whether or not a particular type of development can viably be delivered (i.e. whether it will actually come forward during a plan period) is, in my opinion, highly relevant to all four tests, namely: (a) whether the plan is ‘positively prepared’, i.e. will it actually meet needs, (b) whether it is an appropriate strategy and therefore ‘justified’, (c) whether it is ‘effective’, i.e. deliverable over the plan period, and (d) whether the plan is ‘consistent with national policy’ i.e. whether it will enable the delivery of sustainable development.

41. Section 20(2) of the PCPA 2004 states that a local planning authority must not submit a development plan document for independent examination unless they think the document is ready for independent examination.

42. The Planning Inspectorate's ('PINS') Procedure Guide for Local Plan Examinations (updated 28 August 2024) states:

'1.1. The LPA should rigorously assess the plan before it is published under Regulation 19 to ensure that, in their view, it is sound and meets all the necessary legal requirements. In particular, they should ensure that it takes full account of all relevant policies in the NPPF and relevant guidance in the PPG. The plan should identify all the matters which need to be planned for, and provide policies to address them, paying careful attention to deliverability and viability. This approach may raise uncomfortable questions but the purpose of preparing a plan is to address all the necessary matters as far as possible, and not defer them to future updates or rely on the Inspector to deal with them, or to 'fix' deficient plans at examination.

1.2. Section 20(2) of the PCPA specifically states that the LPA must not submit the plan unless they think it is ready for independent examination. Having considered the Regulation 19 consultation responses, the LPA should only submit a plan if they consider it to be sound and there will not be delays of over 6 months during the examination because significant changes or further evidence work are required. It must not be assumed that examinations can always rectify significant soundness or legal compliance problems, which would require more than limited additional work to address. Before submission, the LPA must do all it can to resolve any substantive concerns about the soundness or legal compliance of the plan, including any raised by statutory undertakers and government agencies. Particular attention should be given to the duty to cooperate. Statements of Common Ground can be very helpful in this regard.' (my emphasis)

43. It is therefore clear to me that LBN cannot ignore evidence that the site allocation is not viably deliverable. This is an issue which goes to soundness and viability and deliverability is an issue which the PINS guidance explicitly states should be paid careful attention to.

The relevance of the draft NPPF and the likely change in Newham's housing targets and how the Council should consider this in relation to the draft Site Allocation and emerging Local Plan?

44. The Government is currently consulting on some proposed amendments to the NPPF and PPG. This includes a revised method for calculating housing need. In the event that the

proposed amendments are adopted, Newham's housing requirements would drop by c45% (from 4188pa to 2178pa). Whilst the text of the PPG amendments is indicated in the consultation document, the Government has not published the full proposed text to the PPG amendments.

45. The regulation 19 draft of the NLP provides for a delivery target of 2974dpa in the short term, 3,836dpa in the medium term and 3,475 in the long term (page 208). The consultation into the draft NPPF ends this month and any amendments are to be expected soon after that. In the event that the revised method becomes adopted national policy then LBN will need to decide how to react to this.

46. Annex 1 to the consultation draft of the NPPF sets out proposed transitional provisions to apply to local plans which are at an advanced stage of preparation. Draft paragraph 226 states:

'The policies in this Framework (published on ...) will apply for the purpose of preparing local plans from [publication date + one month] unless one or more of the following apply:

- a. The emerging annual housing requirement in a local plan that reaches or has reached Regulation 19 (pre-submission stage) on or before [publication date + one month] is no more than 200 dwellings below the published relevant Local Housing Need figure...

Where a, b or c applies, the plan will be examined under the relevant previous version of the Framework.;

47. If the draft NPPF is eventually adopted, it appears that because LBN's draft plan provides for more housing than would be required under the relevant Local Housing Need figure, it would be examined under the previous version of the NPPF (i.e. that which is currently in force). It is not explicit from the consultation documents as to whether this would include what would then have become the old method of calculating housing needs (i.e. the current housing need figure for LBN).

48. However, even if the plan were to be examined against an old housing need figure, I would expect that LBN will want to consider the potential impact of continuing to pursue a local

plan which significantly over-provides for housing when considered against the Government's latest housing need figures. This is likely to include the viability of delivering so much housing and whether, in practice, it will be difficult to defend many of the housing allocations if they are, in fact, not required to meet housing needs.

CONCLUDING REMARKS

49. I trust that I have addressed all of the matters asked of me. Please don't hesitate to contact me if I can be of any further assistance.

VICTORIA HUTTON

39 Essex Chambers

5 September 2024



With every community, we redefine what's possible.

Stantec is a global leader in sustainable engineering, architecture, and environmental consulting. The diverse perspectives of our partners and interested parties drive us to think beyond what's previously been done on critical issues like climate change, digital transformation, and future-proofing our cities and infrastructure. We innovate at the intersection of community, creativity, and client relationships to advance communities everywhere, so that together we can redefine what's possible.