

London Borough of Barnet

Proof of Evidence on behalf of Local Planning Authority

Tania Sa Cordeiro (MA)– Principal Planner

Appeal By: Comer Homes Group

Proposed Development: "Hybrid planning application for the phased comprehensive redevelopment of the North London Business Park to deliver a residential-led mixed use development. The detailed element comprises up to 452 residential units in five blocks reaching 9 storeys, the provision of a 5 form entry secondary school, a gymnasium, a multi-use sports pitch and associated changing facilities and improvements to open space and transport infrastructure, including improvements to the access from Brunswick Park Road and; the outline element comprises up to 1,967 additional residential units in buildings ranging from three to twelve storeys, up to 7,148 sqm of non-residential floor space (use Class E and F) and public open space. Associated site preparation/enabling work, transport infrastructure and junction work, landscaping and car parking."

Appeal Site: North London Business Park, Oakleigh Road South,
London, N11 1GN

Appeal Reference: APP/N5090/W/23/3330577

LPA Reference: 21/4433/OUT

Public Inquiry: 13 February 2024

Appeal under Section 78 of the Town and Country Planning Act (As Amended) 1990

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1.0 INTRODUCTION

- 1.1. I am Tania Sa Cordeiro and work for London Borough of Barnet as a Principal Planner. I have a Masters in Urban Design and Regional Planning from the University of Westminster, London. I have over ten years post qualification experience as a planner.
- 1.2. I have worked with London Borough of Barnet since 2008, occupying various planning officer posts which involved the assessment of development proposals and pre-application schemes across the Borough.
- 1.3. I confirm that the opinions expressed in my evidence are my true and professional opinions.
- 1.4. I was not an officer involved in the pre application or the application process for this site.

2.0 SCOPE OF EVIDENCE

- 2.1 In terms of my scope, I am providing evidence focused on the relevant planning policy framework and planning matters that apply to the proposed development, in particular the planning balance.
- 2.2 Sections 3 and 4 of this proof set out the application description, site context and a summary of the proposed development. Section 5 summarises the key planning policies and guidance applicable from the relevant planning framework before considering the main planning issues having regard to the Development Plan and other material considerations in Section 6.
- 2.3 The overall planning balance is considered in Section 7. I conclude that planning permission should be refused for the proposed development as it would be contrary to the Development Plan overall, and this is not outweighed by other material considerations.

3.0 APPLICATION SITE AND SURROUNDING CONTEXT

- 3.1 This planning application concerns the redevelopment of the North London Business Park (the Site), which is located within the Brunswick Park Ward in the east of the London Borough of Barnet.
- 3.2 The Site measures 16.53 hectares, of which approximately 13 hectares comprises of areas of disused open space and car parking. The Site is bounded by the East Coast Mainline railway along the entire western boundary, whilst the New Southgate Cemetery is adjacent to the eastern boundary. Properties to the north and south are predominantly residential, typically characterised by two/three storey suburban detached, semi-detached and terraced housing. The site does not contain any listed buildings, nor is it located within a Conservation Area.
- 3.3 There are principally 4 buildings on site providing office accommodation in buildings up to ground plus three storeys in a campus style layout. The previous

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- single largest tenant of the site was Barnet Council who occupied approximately over 55% of the total floorspace on the site, before vacating the site in 2017.
- 3.4 St Andrew the Apostle School is also located on the Site having opened as a free school in September 2013, occupying 'Building 5' on a temporary basis, which is a central block to the west of the existing lake.
 - 3.5 The northern most existing building on the Site is currently occupied for function / conference purposes, as well as an existing nursery (Leo's Nursery).
 - 3.6 The Site varies significantly in topography with a steep gradient comprising a level difference of 24 m across the Site from the northern boundary to its lowest point at Brunswick Park Road.
 - 3.7 A lake currently occupies part of the lower section of the Site, which can be seen upon entry from Brunswick Park Road. This is a man-made structure dating from the mid-1980s with the primary function of water attenuation.
 - 3.8 The nearest National Rail stations to the Site are New Southgate to the south and Oakleigh Park to the north, both of which are located within one mile of the Site and provide access to central London within 20 minutes. Also located within one mile of the site is Arnos Grove Station which provides access to the London Underground Piccadilly Line. New Southgate has also recently been identified as a preferred location for Crossrail 2, which is proposed to connect National Rail networks in Surrey and Hertfordshire and link in with the existing London railway infrastructure, through tunnels connecting Wimbledon and New Southgate.
 - 3.9 The site is served by the 382 bus along Brunswick Park Road connecting the site from Southgate in the east, to Friern Barnet and Finchley in the west, and also the 34 (connecting the site from Barnet in the west to Walthamstow in the east) and 251 (connecting the site from Edgware in the west to Friern Barnet in the east) from Oakleigh Road South. The PTAL of the site is currently 1-2.
 - 3.10 The site has two principal access points, one to the south onto Oakleigh Road South (A109) and one to the east onto Brunswick Park Road. There is also a redundant, unused access point to the northern boundary which would provide

access to Ashbourne Avenue, were it not currently fenced off. Ashbourne Avenue leads onto Russell Lane (B1453), which comprises a neighbourhood retail frontage.

Planning History

- 3.11 The site at North London Business Park was historically first brought into use as a cemetery by the Great Northern cemetery company in 1855. Subsequently the site was purchased by Standard Telephones and Cables in 1922 and various industrial buildings were subsequently erected in the period up to the Second World War.
- 3.12 The site was partly redeveloped in the 1980's and in the early 200's into the form which is present today. Standard Telephones and Cables was bought out by Nortel in 1991 who vacated the site in 2002 when the site was renamed as North London Business Park.
- 3.13 The site benefits from an extant planning permission via ref. 22/1579/S73. Details of which are set out below within the planning history.

Recent Relevant History

- 3.14 15/07932/OUT Hybrid planning application for the "*phased comprehensive redevelopment of the North London Business Park to deliver a residential-led mixed use development. The detailed element comprises 360 residential units in five blocks reaching eight storeys, the provision of a 5 form entry secondary school, a gymnasium, a multi-use sports pitch and associated changing facilities and improvements to open space and transport infrastructure, including improvements to the access from Brunswick Park Road and; the outline element comprises up to 990 additional residential units in buildings ranging from two to nine storeys, up to 5,177 sqm of non-residential floor space (use Classes A1-A4, B1 and D1) and 2.54 hectares of open space. Associated site preparation/enabling work, transport infrastructure and junction work, landscaping and car parking*". March 2017 RECONSULTATION Amended Plans: involving the provision of 10% Affordable Housing across the site with an overall increase in the proposed number of housing units from

1,200 to 1,350. The tallest buildings have been reduced in height from 11 to 9 storeys with some buildings along the boundary of the rail line increased from 7 to 9 storeys.

- 3.15 The planning application was recommended for approval by LB Barnet Officers but refused by Members of the Planning Committee in June 2017 for the following reason:

'The proposed development, by virtue of its excessive height, scale and massing would represent an over development of the site resulting in a discordant and visually obtrusive form of development that would fail to respect its local context and the pattern of development in its context, to such an extent that it would be detrimental to the character and appearance of the area. The proposal would therefore not constitute a sustainable form of development and would be contrary to policies CS NPPF, CS5, DM01 and DM05 of the Barnet Local Plan Core Strategy and Development Management Policies (September 2012), policies 3.4, 7.4, 7.6 and 7.7 of the London Plan (July 2011, October 2013 and January 2014).'

- 3.16 The application was subsequently appealed and recovered by the Secretary of State (SoS), and an Inquiry was held between October and November 2018.

- 3.17 The Inspector reported to the SoS in January 2019 recommending the appeal to be allowed, with the SoS agreeing in January 2020, issuing the decision allowing the appeal.

- 3.18 The hybrid permission was approved as follows:

- Phase 1 was approved in detail and comprises 360 residential units in five blocks reaching up to 8 storeys, alongside the provision of a 5 form entry secondary school including a multi-use sports pitch and associated changing facilities, MUGA facilities on the school roof, improvements to open space and transport infrastructure; and
- Phases 2 – 5 were approved in outline and comprise a further 990 residential units in buildings ranging from two to nine storeys, up to 5,177 sqm of non-residential floorspace including shops, offices, food and drink, and public

buildings. This includes 2.54 hectares of public open space including play, alongside associated transport infrastructure, further landscaping and car parking.

- 3.19 In addition to the S73 application, a separate planning application was submitted in August 2021 for alterations to the appeal scheme to allow amongst other things an uplift of 1,078 units from 1350 to 2428 units. This scheme is still under consideration, the details of this application are as follows:
- 3.20 22/1579/S73 Variation of condition 1 (Approved Plans) of planning permission reference 15/07932/OUT, dated 24/02/20 for *'Hybrid planning application for the phased comprehensive redevelopment of the North London Business Park to deliver a residential-led mixed use development. The detailed element comprises 360 residential units in five blocks reaching eight storeys, the provision of a 5 form entry secondary school, a gymnasium, a multi-use sports pitch and associated changing facilities and improvements to open space and transport infrastructure, including improvements to the access from Brunswick Park Road and; the outline element comprises up to 990 additional residential units in buildings ranging from two to nine storeys, up to 5,177 sqm of non-residential floor space (use Classes A1-A4, B1 and D1) and 2.54 hectares of open space. Associated site preparation/enabling work, transport infrastructure and junction work, landscaping and car parking. March 2017 RECONSULTATION Amended Plans: involving the provision of 10% Affordable Housing across the site with an overall increase in the proposed number of housing units from 1,200 to 1,350. The tallest buildings have been reduced in height from 11 to 9 storeys with some buildings along the boundary of the rail line increased from 7 to 9 storeys.'* Variation to include: Changes to the school: Changes to the main access point on Brunswick Park Road: Changes to phasing. Approved on 20.10.2022.
- 3.21 23/0688/RMA Reserved matters application in respect of details relating to scale, layout, appearance and landscaping within Phase 2, pursuant to Condition 33, 34, 35 and 36 attached to planning permission ref. 15/07932/OUT (Appeal ref. APP/N5090/W/17/3189843) for the *"phased comprehensive redevelopment of the North London Business Park as amended*

by planning permission ref. 22/1579/S73, involving the erection of 139 residential units". This application is currently pending consideration, and a decision is yet to be made.

- 3.22 There are other minor applications for historic consents on the site including consents for educational uses utilising existing buildings on the site and condition applications.
- 3.23 Ref. 21/0155/CON: Submission of details of conditions 8 (Scheme of Landscaping Works), 28 (Scheme of Measures to Promote Biodiversity) and 29 (Method Statement including Temporary Tree Protections Measures) pursuant to planning reference 15/07932/OUT dated 24/02/20 – Approved.
- 3.24 Ref. 23/1281/CON: Submission of details of condition 32 (Written Scheme of Investigation) pursuant to planning permission 22/1579/S73 dated 20/10/22 – Approved.
- 3.25 Ref. 23/1282/CON: Submission of details of condition 14 (External Materials) pursuant to planning permission 22/1579/S73 dated 20/10/22 – Approved.
- 3.26 Ref. 23/1303/CON: Submission of details of condition 27 (Piling Method Statement) pursuant to planning permission 22/1579/S73 dated 20/10/22 – Approved.
- 3.27 Ref. 23/1756/CON: Submission of details of condition 16 (Noise impact from ventilation/extraction) pursuant to planning permission 22/1579/S73 dated 20/10/2022 – Approved.
- 3.28 Ref. 23/4420/CON: Submission of details of condition 15 (Refuse) pursuant to planning permission 22/1579/S73 dated 20/10/22– Approved.

4.0 APPEAL PROPOSAL

- 4.1 The proposal is for a phased *"comprehensive redevelopment of the North London Business Park to deliver a residential-led mixed use development. The detailed element comprises up to 452 residential units (Reduced from 461 as submitted) in five blocks reaching 9 storeys, the provision of a 5 form entry secondary school, a gymnasium, a multi-use sports pitch and associated*

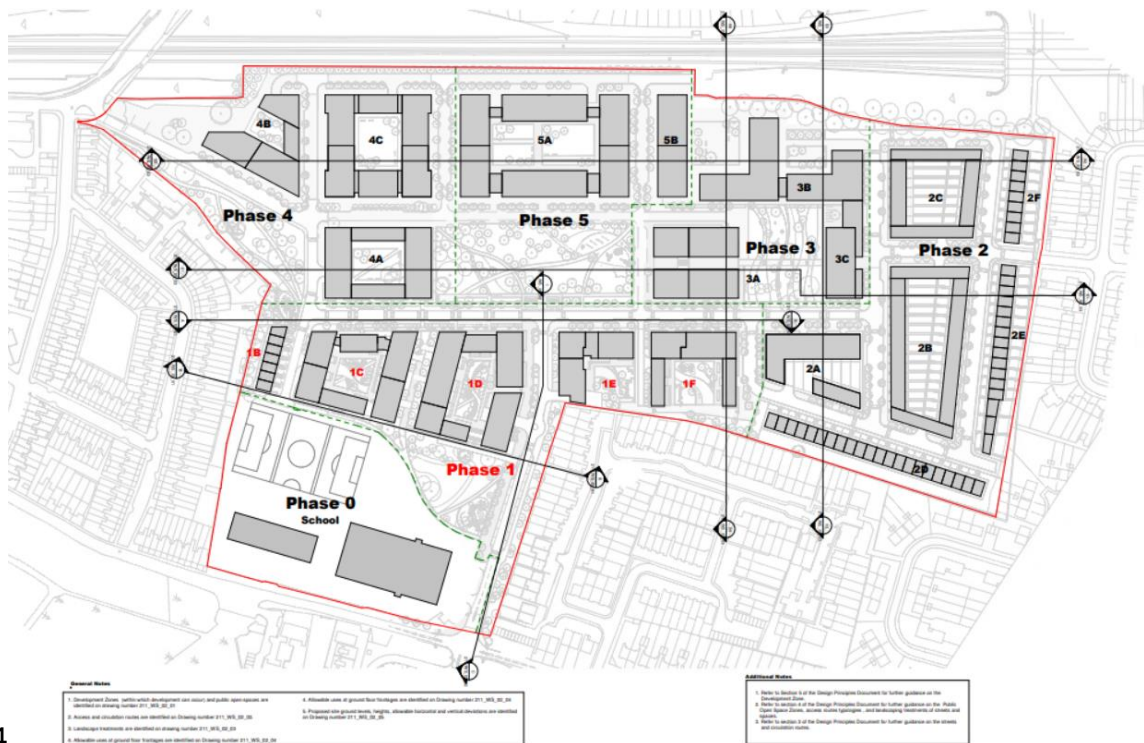
changing facilities and improvements to open space and transport infrastructure, including improvements to the access from Brunswick Park Road and the outline element comprises up to 1,967 additional residential units in buildings ranging from three to twelve storeys, up to 7,148 sqm of non-residential floor space (use Class E and F) and public open space. Associated site preparation/enabling work, transport infrastructure and junction work, landscaping and car parking”.

4.2 The site boundary for this application is illustrated below:

- All expressed storey heights include ground level
- The rear wings of blocks E and F are set on a steep incline, the stated storey height of the diagram is the number of storeys including ground level



4.3



4.4

Detailed Element

4.5 The detailed part of the Hybrid Application comprises Phase 1 of the masterplan as identified in the Parameter Plans. This includes the new secondary school and associated facilities together with 452 residential units.

New Secondary School Facilities

4.6 A new secondary school is proposed to be located in the south-eastern corner which will provide a purpose built and larger facility for the St Andrew the Apostle Greek Orthodox School which are currently operating out of converted office accommodation in Building 5. While the form of the proposed school building and ancillary space differs from the original approval under outline application 15/07932/OUT, a drop in S73 application (Ref 22/1579/S73) was approved by the Strategic Planning Committee in July 2021 (Decision issued in October 2022 following completion of Deed of Variation). The school proposals in the current application are identical to those approved under the S73 application.

Residential Accommodation

4.7 In addition to the secondary school facilities, Phase 1 also proposes the delivery of 454 residential units in five development blocks with the following unit mix.

| Phase | Unit sizes | | | | Total proposed units |
|------------|------------|-------|-------|------------------|----------------------|
| | 1 bed | 2 bed | 3 bed | 4 bed | |
| | 152 | 198 | 94 | 8 (inc 7 houses) | 452 |
| Percentage | 33.6% | 43.8% | 20.8% | 1.8% | 100% |

Outline Element

4.8 The outline element of the Hybrid Application comprises Phases 2-5 detailed on the masterplan and Parameter Plan. The outline elements are predominantly residential, however also include provision for complementary non-residential

uses such as office floorspace, small-scale retail floorspace and community facilities, alongside the provision of public open space, play space and other infrastructure.

Residential Accommodation

- 4.9 The outline elements of the application propose the delivery of an additional 1967 residential units across the site within four development phases. The unit split and configuration is set out below.

| Phase | Unit size | | | Total. of proposed unit |
|-------------------|--------------|--------------|--------------|-------------------------|
| | 1-bed | 2-bed | 3-bed | |
| 2 | 11 | 37 | 107 | 155 |
| 3 | 85 | 315 | 85 | 485 |
| 4 | 129 | 478 | 128 | 735 |
| 5 | 104 | 385 | 103 | 592 |
| Total | 329 | 1,215 | 423 | 1,967 |
| Percentage | 16.7% | 61.8% | 21.5% | 100% |

Non-Residential Floorspace

- 4.10 The application proposes approximately 7,148 sqm of non residential floorspace falling within Classes E & F of the uses classes order. The breakdown of the proposed space is as follows:

Community floorspace – 1,908sqm

Childcare – 960sqm

Office – 2,552sqm

Retail – 1,728sqm

- 4.11 Post submission following discussions with the local health trust the community space is now currently proposed to include provision for a new health centre as well as space for a collection of faith groups. The community floorspace proposed within this mix has been increased as a result of this at the expense of a small reduction in the amount of retail and office space.

4.12 The proposed car parking spaces will be provided within an undercroft under Buildings A - C and will be accessed via a new vehicular access into the site from Christchurch Avenue. A total of 63 car park spaces are provided within the development with 448 cycle parking spaces. The central spine from High Road is a one-way street from east to west and give priority to pedestrians and cyclists and will provide vehicular access for servicing and emergency access.

Car Parking

4.13 In addition to the school car parking residential car parking is proposed to be located within basement car parks with some additional on street parking spaces for visitors. For Phase 1 - It is proposed to provide car parking at a ratio of approximately 0.8 spaces per dwelling resulting in a total of 367 car parking spaces for the 445 total dwellings. A similar ratio is currently proposed for the outline elements of the proposals although the final details will be established at reserved matters stage.

Access

4.14 It is proposed to utilise the existing access routes into the Site at both Oakleigh Road South and Brunswick Park Road. In order to provide a safe entry and egress point for the School, it is proposed to undertake off-site improvements through the introduction of a new signalised junction and carriageway improvements.

4.15 The application also proposes to reopen an extinguished connection at Ashbourne / Weirdale Avenue, which is currently fenced off for pedestrian and cycle traffic only. This element has already been consented in the previous outline approval (15/07932/OUT).

Landscape

4.16 The Proposed Development would provide a total of 20,250sqm of usable open space which will include provision for playspace. This is predominantly laid out in three main parks, with additional publically accessible open space located throughout the development.

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- 4.17 The existing surface water attenuation lake in the south-eastern portion of the Site is retained but slightly reconfigured to reflect the location of the School, as well as maximising the landscape enhancements in the surrounding parkland. It is noted that the alterations to the lake have already been approved under the S73 approval earlier this year.

Revisions and additional information

- 4.18 In the course of the assessment, additional details and clarification were provided in respect of various detailed aspects of the scheme. A summary of the changes are as follows;

3 August 2022

- 4.19 Increase in community floorspace from 960 sqm to 1908 sqm within Block 3a. This involves a corresponding decrease of 474 sqm of retail space and 474 sqm of office space within Block 3a.
- 4.20 Reduction in number of single aspect units within blocks 1C, 1D and F and improvements in daylight to proposed units. This has had the effect of altering 10 x 1 bed units in block 1C to 5 2 bed units, two one bed units in Block 1D into a dual aspect 3 bed unit, and one 3 bed unit in block F changing to 2 x 3 bed units. As a result of the changes the number of units within the full part of the proposals has reduced from 454 to 445 units.
- 4.21 No consultation was carried out specifically in relation to these changes, as the changes did not materially affect surrounding properties and the minor reduction in the number of units would have been unlikely to have affected the comments which had been made.

October 2022 Changes

- 4.22 Amendments to proposed Brunswick Park Road junction providing for a signal controlled junction to replace the existing crossroads arrangements and widening the eastern side of Brunswick Park Road, requiring an alteration to

the Goldril Drive part of the junction along with additional junction widening of the site access.

4.23 Residents were consulted in relation to these changes for a period of 21 days.

5.0 PLANNING FRAMEWORK

Introduction

5.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that development proposals be determined in accordance with the development plan unless material considerations indicate otherwise. There is therefore a statutory presumption in favour of the development plan.

5.2 In this case, the Development Plan comprises The London Plan 2021, Barnet Local Plan Core Strategy and Barnet Local Plan Development Management Policies, adopted in 2012.

5.3 Relevant policies of the Development Plan are included as Core Documents and listed in the Statement of Common Ground and the Council's Statement of Case. A summary of the most relevant policies and guidance, having regards to the reasons for refusal are given below.

National Planning Policy Framework (NPPF) (2021) [CD5.004]

5.4 The NPPF was first published in March 2012 and most recently updated on the 19th December 2023.

5.5 For the sake of clarity, it should be noted that the guidance referred to within the statement of case and statement of common Ground relate to the superseded version on the NPPF. The NPPF has since been amended on the 19th December 2023. Notwithstanding this, the guidance referred to has not been altered and therefore the only amendments relate to the paragraph numbers within the updated NPPF, which have been corrected within this document.

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- 5.6 The NPPF sets out the Government’s planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced and for decision making. It states the purpose of the planning system is to contribute to the achievement of sustainable development, which is comprised of three overarching objectives: economic, social and environmental. The relevant sections of the NPPF have been highlighted in the council’s statement of case and are also listed within the Statement of Common Ground.
- 5.7 Paragraph 11 states there is a presumption in favour of sustainable development, with development that accords with an up-to date development plan to be approved without delay.
- 5.8 In order to support the Government’s objective of significantly boosting the supply of housing, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing needs are addressed, and that land with permission is developed without unnecessary delay (Paragraph 60).
- 5.9 Paragraph 77 states local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ or a minimum of four years’ worth of housing (if the provisions in paragraph 226 of the NPPF apply) worth of housing against their housing requirement set out in adopted strategic policies.
- 5.10 Section 11, *Making effective use of land* confirms at Paragraph 123, planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living condition. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously development or brownfield land.
- 5.11 Paragraph 124 at C states planning policies and decisions should;
- i. “give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support

appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land”

- ii. D outlines that planning policies and decisions
- iii. “promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)”

5.12 In Achieving appropriate densities, Paragraph 128 states that Planning policies and decisions should support development that makes efficient use of land, taking into account a number of factors including the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change.

5.13 Paragraph 129 advises that “area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places”.

5.14 With regards to this appeal, the revised NPPF also new drafting on protection from “out of character” residential development. Paragraph 130 states;

5.15 In applying paragraphs 129a and b above to existing urban areas, significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area. Such circumstances should be evidenced through an authority-wide design code which is adopted or will be adopted as part of the development plan.

5.16 It is the council position that the proposal is wholly out of character in terms of the level of development proposed, and paragraph 130 of the NPPF provides further, recent policy support that the Member reason for refusal can be substantiated.

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- 5.17 In Section 12, *Achieving well-designed places* the NPPF states at Paragraph 131 that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 5.18 Paragraph 132, although a plan making policy, states that “Design policies should be developed with local communities so they reflect local aspirations and are grounded in an understanding and evaluation of each area’s defining characteristics”.
- 5.19 Paragraph 135 states that planning decisions should ensure that developments will function well and add to the overall quality of the area for the lifetime of the development; are visually attractive as a result of good architecture, layout and landscaping; are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing discouraging appropriate change; establish or maintain a strong sense of place; optimise the potential of the site to accommodate an appropriate amount and mix of development; and create places that are safe, accessible and promote health and well-being.
- 5.20 Paragraph 139 confirms that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions taking into account any local design standards or style guides in plans or any supplementary documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.

National Guidance

National Planning Practice Guidance (NPPG) [CD5.005]

- 5.21 The National Planning Practice Guidance provides more detailed guidance on

how to apply the policies contained within the NPPF. The NPPG states that good design is set out in the National Design Guide under the following 10 characteristics (Paragraph: 001 Reference ID: 26-001-20191001):

context

identity

built form

movement

nature

public spaces

uses

homes and buildings

resources

lifespan

National Design Guide 2021 [CD5.006]

- 5.22 The NPPF sets out that achieving high quality places and buildings is fundamental to the planning and development process.
- 5.23 The National Design Guide (NDG) sets out the characteristics of well-designed places and demonstrates what good design means in practice. It advises that good design involves careful attention to other important components of place such as context, landscaping, technical infrastructure and social infrastructure. It continues that a well designed place is unlikely to be achieved by focusing only on the appearance, materials and detailing of buildings and it comes through making the right choices at all levels, including layout, form and scale, appearance, landscape, materials and their detailing.
- 5.24 The guide identifies 10 characteristics which contribute to well-designed places.
- 5.25 Paragraph 15 of the NDG states that the guide supports the NPPF which states that “permission should be refused for development of poor design that fails to

take the opportunities available for improving the character and quality of an area and the way it functions.”

London Plan 2021 [CD5.003]

- 5.26 The London Plan was published on the 3rd of March 2021 and sets out the Mayor's overarching strategic planning framework. This London Plan period runs from 2019 to 2041 and now supersedes the previous Plan (2016).
- 5.27 A table highlighting the relevant policies is provided within the Council's Statement of Case and Statement of Common Ground.
- 5.28 The relevant policies principally relating to the main reason for refusal are detailed below.
- 5.29 **Policy D3** - *Optimising site capacity through the design-led approach*

This policy states at part A;

All development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations. The design-led approach requires consideration of design options to determine the most appropriate form of development that responds to a site's context and capacity for growth. Development proposals should respond positively to the existing layout and character. A design-led approach to optimising site capacity should be based on an evaluation of the site's attributes, its surrounding context and its capacity for growth to determine the appropriate form of development for that site.

- 5.30 Criterion D 1) under Form and Layout expects development proposals to 'enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape, with due regard to existing and emerging street hierarchy, building types, forms and proportions. Also relevant is D 11) under Quality and character which expects developments to respond to the existing character of a place by identifying the special and valued features and

characteristics that are unique to the locality and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character.

5.31 In terms of density, the new London Plan 2021 takes a less prescriptive approach than the previous version, with Policy D3 stating inter alia, that the density of a development should result from a design-led approach to determine the capacity of the site. This should consider site context, its connectivity and accessibility by walking and cycling, existing and planned public transport (including PTAL) and the capacity of surrounding infrastructure.

5.32 **Policy D4** – *Delivering good design*

Whilst the council has referenced policy D.4 in the reason for refusal, upon review, it will not be relying on this policy in defence of this appeal.

5.33 **Policy D9** – *Tall Buildings*

This policy states at part A;

Based on local context, Development Plans should define what is considered a tall building for specific localities, the height of which will vary between and within different parts of London but should not be less than 6 storeys or 18 metres measured from ground to the floor level of the uppermost storey.

This policy states at part B;

- 1) Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, subject to meeting the other requirements of the Plan. This process should include engagement with neighbouring boroughs that may be affected by tall building developments in identified locations.
- 2) Any such locations and appropriate tall building heights should be identified on maps in Development Plans.

- 3) Tall buildings should only be developed in locations that are identified as suitable in Development Plans.

This policy states at part C;

Development proposals should address the following impacts:

1) visual impacts

- a) the views of buildings from different distances:
 - i. long-range views – these require attention to be paid to the design of the top of the building. It should make a positive contribution to the existing and emerging skyline and not adversely affect local or strategic views
 - ii. mid-range views from the surrounding neighbourhood – particular attention should be paid to the form and proportions of the building. It should make a positive contribution to the local townscape in terms of legibility, proportions and materiality
 - iii. immediate views from the surrounding streets – attention should be paid to the base of the building. It should have a direct relationship with the street, maintaining the pedestrian scale, character and vitality of the street. Where the edges of the site are adjacent to buildings of significantly lower height or parks and other open spaces there should be an appropriate transition in scale between the tall building and its surrounding context to protect amenity or privacy.
- b. whether part of a group or stand-alone, tall buildings should reinforce the spatial hierarchy of the local and wider context and aid legibility and wayfinding
- c) architectural quality and materials should be of an exemplary standard to ensure that the appearance and architectural integrity of the building is maintained through its lifespan

- d) proposals should take account of, and avoid harm to, the significance of London's heritage assets and their settings. Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm. The buildings should positively contribute to the character of the area
- e) buildings in the setting of a World Heritage Site must preserve, and not harm, the Outstanding Universal Value of the World Heritage Site, and the ability to appreciate it
- f) buildings near the River Thames, particularly in the Thames Policy Area, should protect and enhance the open quality of the river and the riverside public realm, including views, and not contribute to a canyon effect along the river
- g) buildings should not cause adverse reflected glare h) buildings should be designed to minimise light pollution from internal and external lighting

The policy text continues;

2) functional impact

- a) the internal and external design, including construction detailing, the building's materials and its emergency exit routes must ensure the safety of all occupants
- b) buildings should be serviced, maintained and managed in a manner that will preserve their safety and quality, and not cause disturbance or inconvenience to surrounding public realm. Servicing, maintenance and building management arrangements should be considered at the start of the design process

- c) entrances, access routes, and ground floor uses should be designed and placed to allow for peak time use and to ensure there is no unacceptable overcrowding or isolation in the surrounding areas
- d) it must be demonstrated that the capacity of the area and its transport network is capable of accommodating the quantum of development in terms of access to facilities, services, walking and cycling networks, and public transport for people living or working in the building
- e) jobs, services, facilities and economic activity that will be provided by the development and the regeneration potential this might provide should inform the design so it maximises the benefits these could bring to the area, and maximises the role of the development as a catalyst for further change in the area
- f) buildings, including their construction, should not interfere with aviation, navigation or telecommunication, and should avoid a significant detrimental effect on solar energy generation on adjoining buildings

3) environmental impact

- a) wind, daylight, sunlight penetration and temperature conditions around the building(s) and neighbourhood must be carefully considered and not compromise comfort and the enjoyment of open spaces, including water spaces, around the building
- b) air movement affected by the building(s) should support the effective dispersion of pollutants, but not adversely affect street-level conditions
- c) noise created by air movements around the building(s), servicing machinery, or building uses, should not detract from the comfort and enjoyment of open spaces around the building

4) cumulative impacts

- a) the cumulative visual, functional and environmental impacts of proposed, consented and planned tall buildings in an area must be considered when assessing tall building proposals and when developing plans for an area. Mitigation measures should be identified and designed into the building as integral features from the outset to avoid retro-fitting.

This policy states at part D;

Free to enter publicly-accessible areas should be incorporated into tall buildings where appropriate, particularly more prominent tall buildings where they should normally be located at the top of the building to afford wider views across London.

Barnet Local Plan (2012)

The Core Strategy (September 2012) [CD5.001]

- 5.34 The purpose of the Core Strategy is to guide the growth identified in the borough to ensure that the qualities that make Barnet an attractive place to live are maintained and enhanced. Three Strands Approach provides the spatial vision that underpins the Core Strategy and the Local Plan. The three strands are: Protection, Enhancement and Consolidated Growth. (Paragraph 2.2.1)
- 5.35 The Core Strategy sets out the major areas across the borough where development and regeneration is expected and the policies developed for them. In regard to the appeal the following policies are relevant.
- 5.36 ***Policy CS NPPF: National Planning Policy Framework – Presumption in favour of sustainable development***

Policy CS NPPF reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (NPPF). Planning applications that accord with policies in Barnet's Local Plan, will be approved without delay, unless material considerations indicate otherwise, as is the case

in this instance. On the basis of the reasons for refusal outlined in the Council's determination of the proposal, the appeal proposal is unable to be supported under Policy CS NPPF.

5.37 **Policy CS5:** *Protecting and enhancing Barnet's character to create high quality places*

Policy CS5 seeks to protect and enhance Barnet's character to create high quality places with the aim to ensure that development in Barnet respects local context and distinctive local character creating places and buildings of high-quality design.

It also identifies locations for tall buildings, stating that

..." Proposals for tall buildings will be considered in accordance with DM05 – Tall Buildings"... "Outside of these specific locations, proposals for tall buildings will not be supported"..

The appeal site is not within any of these identified locations. Notwithstanding this, we do not have an in-principle objection to tall buildings on this site given the planning history.

5.38 Within the supporting text in Section 10 Protecting and enhancing Barnet's character to create high quality places, paragraph 10.1.4 states that;

....."The borough is predominantly suburban in character and is mainly made up from detached, semi-detached and terraced housing".....

5.39 Paragraph 10.1.6 states,

"For Barnet to grow successfully it is imperative that safeguards are in place to protect and enhance the suburban quality of the borough. There is a need to identify the physical elements within the built environment that give Barnet its character and highlight those areas of the borough that may require further protection from development."

5.40 Paragraph 10.5.12 continues;

...“High quality design also takes account of its surroundings and what is distinctive and valued about the local area..... We will therefore expect the design of new buildings and places to respond to the local area and its defining characteristics and reinforce or create local distinctiveness”.....

5.41 With regards to tall buildings Paragraph 10.6.2 continues;

... “As Barnet changes over the next fifteen years it is expected that there will be pressure for tall buildings (defined in Barnet as being eight storeys (equivalent to 26 metres above ground level or more) to play a part in new development. While tall buildings offer the opportunity for intensive use, their siting and design should be carefully considered in order to not detract from the nature of surrounding places and the quality of life for those living and working around them”...

Development Management Policies [CD5.002]

5.42 **DM01** – *Protecting Barnet’s Character and Amenity and Locations for Tall Buildings*

It is an objective of DM01 to ensure development proposals are based on an understanding of local characteristics. DM01 Part B states proposals should preserve or enhance local character and respect the scale, height, density and pattern of surrounding buildings, spaces and streets.

5.43 The supporting text at Paragraph 2.2.1 states that the council will not accept designs for new development that are inappropriate to their context or do not take opportunities to improve the character and quality of an area. High quality design solutions help to make new places in the borough which can add to and complement the existing suburban character. Contemporary design may be appropriate provided it has regard to the local context.

5.44 Para 2.3.9 continues;

“Whilst the policy intention is to protect local character, it should not be used to restrict well designed and sympathetic development which meets other objectives in the Core Strategy, Development Management Policies DPD, the

council's suite of Design Guidance Notes and Supplementary Planning Documents. The Characterisation Study should be referred to for a more detailed description of the typologies and used as a tool to help judge the effect of a development on character. The Supplementary Planning Document (SPD) on Residential Design Guidance will provide more specific requirements on development that is suitable for Barnet's distinctive suburban character".

5.45 **DM02** – *Development Standards*

Local Plan policies require high quality design in all new development that creates attractive places which are welcoming, accessible and inviting. Policy DM02 requires new development to be in compliance with London Plan standards and is supported by the guidance set out in the council's suite of Supplementary Planning Documents.

5.46 **DM05** – *Tall Buildings*

This policy states that tall buildings outside the strategic locations identified in the Core Strategy will not be considered acceptable.

Proposals for tall buildings will need to demonstrate:

- i. an active street frontage where appropriate
- ii. successful integration into the existing urban fabric
- iii. a regard to topography and no adverse impact on Local Viewing Corridors, local views and the skyline
- iv. not cause harm to heritage assets and their setting
- v. that the potential microclimatic effect does not adversely affect existing levels of comfort in the public realm.

Proposals for redevelopment or refurbishment of existing tall buildings will be required to make a positive contribution to the townscape.

Emerging Policy [CD11.002]

-
- 5.47 Barnet's Draft Local Plan, on 26th November 2021, was submitted to the Planning Inspectorate for independent examination which was carried out on behalf of the Secretary of State for the Department of Levelling Up, Housing and Communities (the hearing sessions took place between 20 September 2022 and 11 November 2022).
- 5.48 The Regulation 24 Local Plan sets out the Council's draft planning policy framework together with draft development proposals for 65 sites. The Local Plan 2012 remains the statutory development plan for Barnet until such stage as the replacement plan is adopted and as such applications should continue to be determined in accordance with the 2012 Local Plan, while noting that account has been taken of the policies and site proposals in the draft Local Plan. Given the status of the emerging Local Plan Review at examination, significant weight is afforded to those relevant policies contained within the emerging Local Plan.
- 5.49 The Inspector in his [Interim Findings and Next Steps letter of August 17th](#) has set out how the Council can through making Main Modifications to the Local Plan address issues of legal compliance and deficiencies in soundness. These interim findings are a clear indication of what the Local Plan and the policies and site proposals within may look like at adoption, subject to making the Inspector's suggested Main Modifications.
- 5.50 Whilst the Council moves forward to formal consultation on the Main Modifications (expected to commence in January 2024) the Interim Findings and Next Steps letter of August 17th shall be considered, in the interim, a relevant material consideration in the Council's decision making on planning applications.
- 5.51 Relevant Emerging policies include for example:
- a. Policy CDH01 Promoting High Quality Design
 - b. Policy CDH03 Public Realm
 - c. Policy HOU02 Housing Mix

d. Policy CDH04 Tall Buildings

Other Material Considerations

5.52 In addition to the Development Plan, there are other material considerations relevant to the proposals including supplementary planning guidance. The Council has a number of adopted Supplementary Planning Documents (SPDs) which provide detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet including generic environmental requirements to ensure that new development within Barnet meets sufficiently high environmental and design standards. These have all been listed within the Council's Statement of Case and the most pertinent documents are referenced below, together with relevant non-SPD documents, namely the characterisation study.

North London Business Park – Planning Brief (2016) [CD7.003]

5.53 The Council adopted the North London Business Park Planning Brief following extensive public consultation in March 2016. The brief sets out the spatial strategy for the development of the North London Business Park Site.

5.54 This is an important material consideration in this case and carries significant weight. The relevance of this document was acknowledged within the officers report:

"The brief sets out the spatial strategy for the development of the North London Business Park Site.."

5.55 The brief is focused on how the site presents a significant opportunity to deliver housing growth in Brunswick Park creating a new suburban community.

The objectives for the site are to deliver:

- *comprehensive redevelopment of all existing buildings through a residential led scheme that effectively ties into the surrounding area;*

- *provision of a significant quantity of public open space, outdoor amenity space and a replacement pitch for sporting use to serve both the new development and the surrounding area;*
- *provision of affordable and flexible employment floorspace for Small to Medium Enterprises (SMEs);*
- *provision of education, replacement nursery and other community uses.*

5.56 The brief has been carried forward as part of the evidence base for the emerging Local Plan and should carry significant weight in the appeal consideration.

**Characterisation Study of London Borough of Barnet (CSB) (2010)
[CD7.001]**

5.57 The Study provides an assessment and understanding of the characteristics of the Boroughs built environment. It identifies the different architectural typologies and character areas in the borough. The Study provides the evidence base to support the Local Plan objectives and helps to identify areas that require greater protection, in addition to those that have the potential to accommodate new development. The Study although not adopted forms part of the evidence base upon which the Local Plan Policies are based and went through public and local stakeholder consultation.

5.58 The document also forms part of the evidence base for the emerging plan, and is therefore a current evidence base document. Under a recent appeal within the borough at "Homebase" (see appendix A) the Inspector noted at para.10 that "Barnet's Characterisation Study of 2010 is of some age but is a helpful guide to urban character and local distinctiveness". Accordingly, significant weight is given to this document.

5.59 At page 6 the study states:

"Barnet is predominately suburban in character, and is mainly made up from detached, semi detached and terraced housing. Barnet also has 20 town centres that provide a range of commercial, retail and leisure facilities. Many

of the town centres have evolved from historic villages, and form an integral part of the Barnet's distinct character."

5.60 The methodology at page 8 outlines that certain areas are excluded from the study, protected areas including green belt and conservation areas. The special character of these areas is already articulated by planning policy and as such they do not require further analysis. Areas identified for growth are also not included. These sites have been subject to detailed analysis and are recognised as having strategic development potential, and benefit from specific planning guidance and master planning exercises. The urban character within these areas is due to evolve significantly, and any analysis of the physical environment will quickly become outdated. The remaining urban area of Barnet is then divided and categorised in order to be effectively analysed. The criteria used to assess the urban environment are scale and grain, land use and network characteristics – arrangement of roads and footpaths and their relationship with surrounding buildings. Using these three criteria has then enabled the identification of broad categories of types of streets, or "primary typologies":

- *Box development* – typically large single buildings/retail units such as supermarkets, or industrial development. Large urban scale and coarse grain typically organised around series of car parks and are more functional than design led;
- *Campus Development* – range of uses across the Borough, including colleges, hospitals, civic buildings and business parks. Large buildings/urban scale and coarse grain;
- *Cores and Town Centres* – often located along major vehicular routes traffic has had a significant impact upon their historic character. Originated from historic centres and typically contain some of the oldest parts. Medium to large buildings arranged along streets forming strong terraces and coherent forms;
- *Residential Estates* – different to Residential Streets by the way the buildings are organised and how they relate to streets and open spaces.

Postwar housing estates were designed around complicated layouts which separated pedestrian and vehicular movement creating an illegible environment with lack of active frontages. Variable building scales, set in landscape and/or parking; and

- *Residential Streets* - predominant form of development in Barnet and most often associated with interwar housing. Characterised by a simple loose grid of streets forming a permeable network, with regular plots small to medium buildings fronting directly on the street.

5.61 Residential streets are then broken down into secondary typologies and categorised using the following criteria:

- density;
- building types and units;
- enclosure, street width, setbacks and building height;
- Architectural style and period; and
- Landscape character and streetscape

5.62 The application of these five criteria identified six secondary typologies which include:

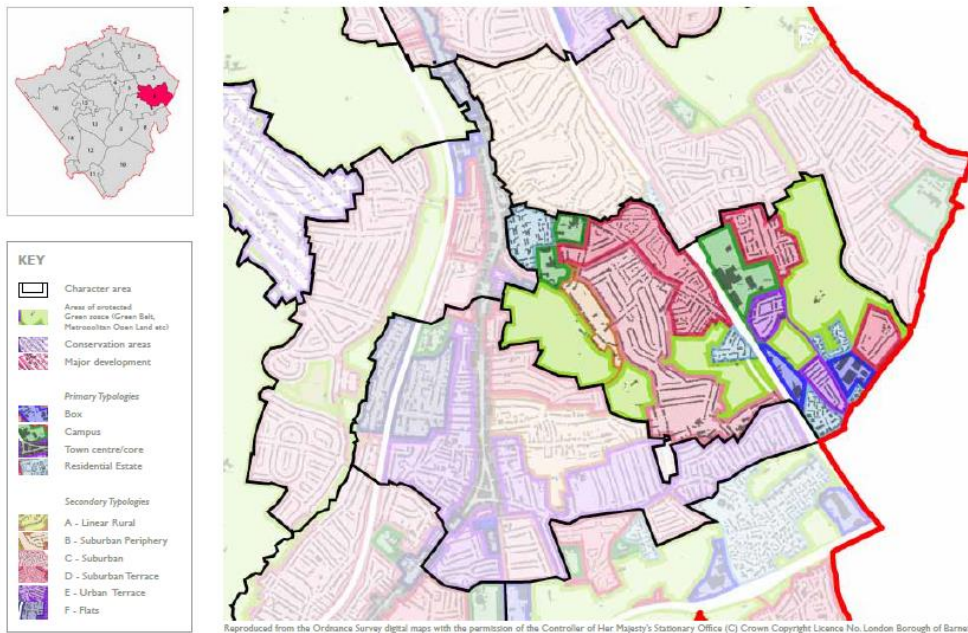
- Type A - Linear rural: product of sporadic, piecemeal growth along country lanes or tracks. No consistent house type or period and materials and styles equally diverse. Public space along linear rural routes remains primarily enclosed by mature vegetation, including trees and hedgerows.
- Type B - Suburban periphery: large plot sizes, and sense of enclosure provided by on street vegetation. Most areas have been identified in the north of the Borough, with the largest single area identified east of Totteridge. Houses are typically the product of the early twentieth century, and in particular the interwar years. Similar to the above with a mixture of different house types however there are in some cases where houses are

built to common template and dimensions, usually from the interwar period.

- Type C – Suburban: majority of the houses built during the interwar period with strong sense of architectural consistency and coherence. Contain both detached and semi detached houses with building heights predominantly two storeys and occasionally three storey.
- Type D - Suburban terrace: buildings from a range of architectural styles and periods from the interwar period and dating back to the Edwardian and Victorian periods. Despite this variation, individual streets retain strong sense of architectural cohesion and consistency.
- Type E - Urban terrace: predominately characterised by the architectural dominance of Victorian and Edwardian housing mostly located in the south and east of the Borough. Normally have a strong, coherent character due to the consistent and rhythmic architectural style and consistent street profile.
- Type F – Flats: most common blocks are the postwar period however there is a mixture of Victorian, Edwardian, interwar and modern buildings. Thus lack of uniformity in this built form.

5.63 The study then goes on to define 14 character areas which relate closely with the typologies defined above. They are organised around clearly identifiable centres which are typically the historic settlements - (see the Friern Barnet and Brunswick Park map below, map taken from page 105 of the study).

5.64 The appeal site is located within the Friern Barnet and Brunswick Park character area which principally comprises the residential street typology and limited areas of campus and big box typology. It is a box development because it previously included industrial development on site. Page 104 states of the Study for the Friern Barnet and Brunswick Park character area shows the appeal site itself falls within box development immediately surrounded by the primary typology of residential streets.



5.65

5.66 Page 104 sets out the character of the area, it goes on to state that

"The street layout in this area generally follows a rectilinear form with an interconnected street pattern, however some streets terminate into cul-de-sacs. The general street pattern is broken up by large areas of open space, and smaller areas of non-permeable layouts including big box, campus and residential estate typologies. Within the residential streets typology housing types and plot sizes vary, with no single secondary typology dominating. Typologies B (Suburban Periphery), C (Suburban) and D (Suburban Terrace) are the most common in the area, with smaller pockets of typology E (Urban Terrace)".

5.67 The key findings for the Study in regard to scale and massing concludes at Page 128 that:

"A key feature of the many Victorian, Edwardian and interwar streets that make up the borough is the cohesive character created through consistent architectural scale and rhythm. There is a clear and positive hierarchy of scale between the lower residential areas and the town centre areas and key routes. These typically feature three and sometimes four storey development, creating well defined urban spaces."

5.68 Despite its publication date, the Council contends that the Characterisation Study is highly relevant and highlight its reference as a helpful guide by two Barnet Appeal Decision notices, namely 679 High Road Appeal Decision (Ref: APP/N5090/W/21/3271077), paragraph 10, [CD8.002] and at Land formerly known as British gas Works [CD8.006]. In addition, the Characterisation Study has been submitted as part of the evidence base for the emerging Local Plan and so should continue to carry significant weight.

Tall Buildings Update 2019 (TBU)

5.69 This document is issued to inform the emerging Local Plan. It identifies the two main thoroughfares (A5 and A1000) as locations for existing clusters of tall buildings and locations along these routes are the focus for new tall buildings.

5.70 It defines the heights of buildings thus:

- Low rise buildings: 1 – 3 storeys
- Medium rise buildings: 4 – 7 storeys
- Tall buildings: 8 – 14 storeys
- Very tall buildings: 15 storeys and above

5.71 Key policy direction for tall buildings and intensification of development draws out a number of elements for consideration; namely, site context, public transport and infrastructure accessibility and growth potential. This study has considered each of these parameters across the Borough, with particular focus on the two major thoroughfares that have seen the historic evolution of key settlements along the route.

5.72 The Tall Building Update directs decision makers and designers to use the Characterisation Study as a starting point for appraisal of tall and medium rise buildings on their surrounding area and requires scrutiny of existing and permitted building heights adjacent and around the sites in question.

6.0 MAIN PLANNING ISSUES

- 6.1 As detailed within both the Council's Statement of Case and the Statement of Common Ground, the Council does not object to the principle of the development of this site, the loss of retail/employment from the site, or to the residential redevelopment of the site. The site already benefits from extant consents for redevelopment and therefore, we do not object to the principle of tall buildings on the site, subject to them being of appropriate scale, massing, height and design.
- 6.2 It is acknowledged that the proposal would deliver both market and affordable housing. With the affordable housing provision at 21% (512 units) across the whole development and provision of 35% affordable housing on this uplift (increase of 377 Units), with a tenure split between affordable rent and shared ownership.
- 6.3 Since the publication of the latest version of the NPPF on 19th December, it is now the case that the Council needs to demonstrate a 4-year housing land supply in circumstances where it has an emerging Local Plan. There is no dispute between the parties that the Council can do this and thus the tilted balance is not engaged.
- 6.4 Other aspects of the proposals relating to matters such as the mix, tenure and quality of units, quality of housing, the effects on the local environment, the transport network, and environmental constraints, including sustainable drainage, were found to be acceptable during assessment of the application or have subsequently been satisfactorily resolved, with any outstanding matters able to be addressed by the recommended planning conditions and or planning obligations. For these matters please refer to the officer's committee report and Statement of Common Ground.
- 6.5 Therefore, it is considered that the main issues for this appeal between the Council and Appellant, having regards to the Development Plan and other material considerations are:
- (i) The effect on the character and appearance of the local area.

- (ii) Planning obligations that are necessary to secure to make the development acceptable.
- (iii) Planning balance

6.6 In respect of the first issue the evidence in terms of design and character will be provided by Paul Sallin, Principal Urban Designer. I provide evidence focused on the relevant planning policy framework, S106 matters and planning balance.

6.7 The application was refused for the following reason.

- **Reason for Refusal**

The proposed development would, by virtue of its excessive height, scale, and massing, result in a discordant and visually obtrusive form of development that would demonstrably fail to respect the local context and established pattern of development when viewed from the west of the site on Fernwood Crescent, Denham Road, Oakleigh Close and Oakleigh Road North as well as New Southgate Cemetery to the East, to the detriment of the character and appearance of the area, and the visual amenity of adjoining residential occupiers. The proposal would therefore not create a high-quality development, not constitute a sustainable form of development and would be contrary to the provisions of the NPPF, Policies D3, D4 and D9 of the London Plan 2021 and policies CS5, DM01 and DM05 of the Barnet Local Plan Core Strategy and Development Management Policies 2012.

Effect on the Character and Appearance of the Local Area

6.8 Within this policy framework and the prevailing pattern of development around the site, it is the Council's case that the proposed scheme fails to reflect the height, scale, massing and pattern of these surrounding streets resulting in a harmful juxtaposition between the proposed buildings and neighbouring streets. The proposal therefore does not provide an acceptable response to the

site context, namely the character and appearance of the surrounding streets and the existing built form. The proposal would be contrary to London Plan D3 and D9 in that it would fail to enhance local context or positively respond to local distinctiveness and does not respond to the existing character of place.

- 6.9 As part of the application submission, the appellant provided a compilation of Verified Views around the site. It is agreed the visualisations provide helpful reference points, but subject to the qualification that they do not provide the full experience that can be gained from visiting the site and its surroundings. The Council consider that impact on the character and appearance of the area is best appreciated by the kinetic experience of walking the streets.

Section 106 Matters

- 6.10 Turning to the second issue identified earlier in this section, 'planning obligations that are necessary to secure to make the development acceptable.'

- 6.11 NPPF states at Paragraph 54 that:

"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."

- 6.12 The Development Plan seeks to ensure that development proposals fully mitigate the impacts of the development on the area through a Section 106 Agreement, where necessary or appropriate, having regard to supplementary planning documents and provide the Community Infrastructure Levy ("CIL") payments required by any charging scheduled, including the Mayor of London's CIL. A payment or other benefit offered in a Section 106 agreement is not material to a decision to grant planning permission and cannot be required unless it complies with the provisions of the Community Infrastructure Levy Regulations 2010 (Regulation 122), which provide that the planning obligation must be:

- (a) necessary to make the development acceptable in planning terms;

- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

6.13 These tests listed above are also replicated in paragraph 57 of the NPPF.

6.14 Under Regulation 123 (2), on the adoption of CIL the Regulations restrict local use of Planning Obligations to ensure that individual developments are not charged for the same items through both Planning Obligations and CIL.

6.15 The following draft Heads of Terms are considered necessary and should be secured by a Section 106 legal deed if the application was to be approved, all of which are considered to comply with the NPPF, the Development Plan, and the three Regulation 122 tests referred to above, and that without the obligations the scheme would represent an unsustainable development.

6.16 At the time of writing this evidence good progress has been made between the parties in respect of s106 obligations and accordingly the expectation is that these issues will be satisfactorily addressed.

6.17 The following Heads of Terms have been agreed as being necessary;

(A) Legal Professional Costs Recovery: Paying the council's legal and professional costs of preparing the Agreement and any other enabling agreements;

(B) Enforceability: All obligations listed below to become enforceable in accordance with a timetable to be agreed in writing with the Local Planning Authority;

(C) Affordable housing: Provision of 21% by habitable room across the whole development (2419 units in total) on the basis of the following tenure split.

Affordable Rent (246 Units)

20 x 1 bed

136 x 2 bed

90 x 3 bed

Shared Ownership (266 Units)

92 x 2 bed

174 x 2 bed

(D) Review mechanism: All affordable housing to be secured in perpetuity and a review mechanism (Early, Mid and Late) is to be secured and to be triggered if scheme not implemented within agreed timescale. The formula for this is set out within the Mayor's Affordable Housing SPG. In accordance with Policies H4-H7 London Plan 2021 and Barnet Local Plan Policies CS4 and DM10.

(E) School plot: land transfer to the EFA on a levelled, decontaminated and serviced plot.

(F) Community Use Agreement School

(G) Details of Delivery of SME Business Space including new Start up Units including tenancy details and rental costs.

(H) Details of new Community and Health Care Space

- Comer to deliver a long leasehold interest (not less than 99 years) of a shell of the new Centre to CWC (or alternative provider to be agreed in writing with the Local Planning Authority) in a position and configuration agreed by the Council within Block 3A;
- The shell to be available for community provision and uses within Class E;
- The Lease to reserve a peppercorn rent and a service charge that is directly related to the Centre's uses and not the overall upkeep of the new development;
- The long leasehold to include the use of appropriate car parking and an ambulance bay in locations agreed by the Council.

(I) Provision of Minibus Services in perpetuity, details of number of vehicles, frequency of movement and mechanism of funding to be specified.

(J) Bus Services Contribution of up to £1,525,000.

- (K) Betstyle Circus Feasibility Study.
- (L) Off Site Highway Works and Transport Measures
- (M) Details of Delivery of SME Business Space including new Start up Units including tenancy details and rental costs.
- (N) Travel Plan measures and monitoring:
- (O) Including Provision of Travel Plans covering the following:
 - Travel Plan – School
 - Travel Plan - Residential
 - Travel Plan – Non Residential
 - Travel Plan - Nursery
- (P) Travel Plan Monitoring Fee: An appropriate Travel Plan Monitoring Fee would also need to be paid.
- (Q) Section 278 Works: Necessary works to the public highway under section 278 of the Highways Act to facilitate the implementation of the development
- (R) Carbon Offset contribution: Contribution of (Currently £4,196,877) towards the Council's carbon offset fund. It is agreed that the shortfall (major developments to be net zero-carbon) shall be provided through a cash in lieu contribution to the Borough's carbon off-set fund. In accordance with Policy SI 2 London Plan 2021 and Barnet Local Plan Policy DM04.
- (S) Skills and Local Employment Agreement: Shall include Forecasting of job opportunities; Notification of job vacancies; Local labour target; Jobs brokerage and skills training; Apprenticeships and work experience; Use of local suppliers and delivery of specific LEA targets.
- (T) Public Open Space: Provision of Public Open Space which shall remain open and accessible to the general public.
- (U) Providing identified number of apprenticeships or alternative cash sum.

(V) Reptile Receptor Site Protection, Management and Monitoring: Appropriate identification of any off site location to be agreed with the LPA. Either works to be carried out to satisfaction of LPA or a financial contribution to be made to the LPA to enable the translocation, management and monitoring.

(W) Section 106 Monitoring contribution

(X) All financial contributions listed above to be subject to indexation.

6.18 The expectation is that these issues will be satisfactorily addressed.

7.0 PLANNING BENEFITS AND BALANCE

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *“where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise”*. Therefore, the appeal is to be determined in accordance with the Development Plan, with development that accords with its policies and which constitutes sustainable development to be approved without delay, and those that conflict with it to be refused unless other material considerations indicate otherwise.

Benefits of the scheme

7.2 With regards to the benefits of the scheme, I use the following scale – Limited, Moderate, Significant.

Market Housing and Affordable Housing

7.3 The proposal would provide an uplift of 1,069 (total 2419 units) new residential dwellings of which 266 Units would be Shared Ownership and 246 Units would be Affordable Rent. Barnet’s target as set out in the London Plan (2021) is to deliver 2,364 net new homes per year. In the previous London Plan (2016), Barnet’s target was to deliver 2,349 net new homes per year. Notwithstanding, that the Council is meeting its housing targets. It acknowledges that there

remains a need for housing across London as a whole, and that the provision of market and affordable housing would carry significant weight in the planning balance.

- 7.4 However, I take into account that the extant scheme would deliver both market and affordable housing of 135 Units (10%) and the appeal scheme proposes a greater quantity of housing and a greater percentage of affordable housing - a total of 512 Units (21%). However, policy H5 of the London Plan sets the threshold level of affordable housing on gross residential developments at a minimum of 35%. Therefore, the provision of 21% would represent a significant shortfall against policies and therefore the Council contends that reduced weight should be given to the affordable housing contribution. In the Council's view the affordable housing provision should attract a reduced level of weight which the Council assess as moderate.

CIL payments

- 7.5 I do not treat CIL payments as a benefit as this is part of the mitigation of the scheme. Within Appeal reference APP/E5900/W/17/3190685 (Sainsbury's Supermarket, 1 Cambridge Heath Road, London, E1 5SD) (Appendix 1) which was highlighted within the GLA representation [CD8.007] to this appeal, the Inspector made the following assessment:

"Most of the contributions from the s106 Agreement would be mitigation for harm and should not count as benefits. The exception to this is the AH which would make a significant contribution to the Borough's needs. The agreement on viability, and the two-stage review mechanism, all mean that the scheme would comply with policy on AH and viability. Nevertheless, there would remain a significant shortfall against policy expectation at one of the most accessible locations in London. This means that the weight to be given to the AH contribution as a benefit should be reduced."

- 7.6 This is aligned with the conclusion of the previous 679 High Road appeal decision, (Ref: APP/N5090/W/21/3271077) pg.10 [CD8.002] which found that

"Limited weight also attached to CIL payments...and construction employment."

7.7 The Council's approach is consistent with the rationale in that case.

New 5 form entry (5FE) secondary school

7.8 Provision of a new purpose-built 5 form entry (5FE) secondary school building for St Andrew the Apostle School which is currently operating out of unsuitable temporary buildings on-site as well as helping to meet Barnet's Education Needs. This carries limited weight, as the extant scheme would also provide this school and no uplift has been provided.

Local Economy

7.9 The proposal would generate indirect beneficial effects to the local economy through no residential floor space (Class E and F), including small scale health care facilities, nursery, retail and flexible commercial units for SME's from 5,177sqm to 7,148 sqm (uplift of 1,971sqm), by creating jobs during the construction phase and induced employment in the area through the local spending of residents. This carries moderate weight, and again similar economic benefits would arise from the less harmful extant scheme.

Community and Healthcare Floorspace

7.10 The proposal would provide increased 1,908sqm of community and healthcare floorspace over the approved 510sqm. On balance it is considered these carries between moderate and significant weight. The benefits could largely be achieved through a less harmful scheme such as the extant redevelopment scheme.

Other Elements

7.11 The proposal involves the provision of public open space (albeit a reduction of 2.53 hectares) to the wider community, ancillary sport facilities within the school - including public access during out of school opening hours and at weekends, site access and transport infrastructure, improvements including public transport and new permeable pedestrian and cycle linkage. This carries limited weight, as the extant scheme would also provide these improvements.

Balance

- 7.12 It is the council's position that the scheme is harmful to the character and appearance of the area. The proposal is in conflict with policy D3 and policy D9 of the London Plan (2021) and Policies CS NPPF, CS5 and DM01 of the Barnet Local Plan Core Strategy and Development Management Policies (2012). I therefore consider the appeal scheme in conflict with the Development Plan overall.
- 7.13 The proposal would include obligations to provide a contribution towards the Council's carbon offset fund, offsetting a shortfall in compliance to meet net zero emissions; and has other sustainable design measures including provision of travel plans. However, these measures are needed to meet policy requirements and are therefore not considered public benefits in their own right.
- 7.14 Whilst I acknowledge the benefits of the scheme, this is outweighed by the conflicts with the Development Plan.
- 7.15 It is respectfully submitted that planning permission should not be granted. The council and the appellant will seek to agree a list of proposed conditions for discussion at the Inquiry, in the event that planning permission is granted.

8.0 DECLARATION

- 8.1 The evidence I have prepared and provided for this appeal is true and has been prepared in accordance with the guidance of the appropriate professional institutions. I confirm that the opinions expressed are my true and professional opinions.

9.0 APPENDICES

APPENDIX 1:

Sainsbury's Supermarket, 1 Cambridge Heath Road, London, E1 5SD
Appeal Decision Notice Ref: APP/E5900/W/17/3190685

APPENDIX 2:

Homebase, 679 High Road, North Finchley, London N12 0DA
Appeal Decision Notice Ref: APP/N5090/W/21/3271077

(Left intentionally blank – please see separate documents)