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APPEAL BY COMER HOMES GROUP
REDEVELOPMENT OF NORTH LONDON BUSINESS PARK

CLOSING SUBMISSIONS
ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. There are three strands to Council's case in this appeal. (1) Does the appeal scheme's increased amount of development cause harm to the townscape, and in particular to views of the new blocks from the low lying suburban surrounding residential streets, as set out?
2. If it didn't cause harm, the Council wouldn't resist it. It does, however. The question then is (2) does that amount to a breach of the development plan when looking at the plan as a whole? The Council's position is that, if there is an unacceptable townscape impact, then clearly the development plan is breached.
3. In such cases, the usual position is that planning permission should be refused. However, the Appellant may (3) go on to argue that a breach of the development plan can be justified by other material considerations, which in this case can only be argued to be the additional planning benefits over and above the consented scheme. The Council's position is that those additional benefits are insufficient to justify a breach of the development plan, particularly in circumstances where the Council has a sufficient supply of housing in the Borough and the tilted balance is not engaged.

Factual Context

4. Before turning to an analysis of the Council’s case, it is worth setting out some historic background as it sets the scene as to why we are here at this appeal. Comer Homes purchased the North London Business Park in 2011, over a decade ago, a dated ‘campus style’ predominantly office development in landscaped grounds on a large site. It was a clear redevelopment opportunity. However, they were in no rush to realise its full potential. At that time, there was a 2006 Planning Brief in place for the site which reflected the site’s designation as a Strategic Industrial Location in the London Plan and proposed little in the way of housing. Comer Homes recognised that the low level of housing proposed would be a wasteful use of the land resource and approached planner Mr Mills in 2011 and then Dublin-based architect Mr Twomey in 2013 to commence a process of masterplan design that would provide answers to what the appropriate quantum of new residents could be on the land.¹ In March 2015, Comer Homes agreed a Planning Performance Agreement with the Council to cover preparation of a planning application as well as production of an updated 2016 Planning Brief.
5. Recollections appear to vary between Mr Twomey and Mr Mills as to who was ultimately responsible for the drafting of the 2016 Planning Brief.² However, irrespective of whether its genesis was by the hand of Comer Homes’ consultants or Council officers, it was part of that process of masterplanning and preparation of a redevelopment strategy by Comer Homes for the site to realise its proper potential. The basic parameters of how the site and its redevelopment potential were viewed has not really changed.
6. Paragraph 3.1 of the 2016 Planning Brief set out that: “North London Business Park is a large site of 16.5 ha, located in an established suburban area, within Brunswick Park Ward. Within the London context, the potential of the site needs to be optimised. Whilst any future development proposal must respect the character of the surrounding area

¹ Twomey original PE (his Appx) at 5.1.2 and 5.1.3

² CD 7.003

where the development meets neighbours, the site is large enough to have its own character and develop a modern, attractive place for the future. It is important that the redevelopment of the site for residential purposes results in a development that is knitted into the surrounding area in a seamless way and not as a separate “gated” community.” Paragraph 3.2 continued: “NLBP is located in the south-east of the Borough of Barnet in Brunswick Park ward. Brunswick Park is suburban, characterised by two storey terraced and semi-detached housing with parks and open spaces.” Map 3 identified the ‘Main constraints and relationships’ of the site and clearly flagged up views into the site including from the west of the mainline railway and from the entrance to the cemetery. Under ‘Site Opportunities’ it was set out at paragraph 4.2 and 4.3 that: “The site provides the opportunity to make a strategic contribution towards housing delivery in Barnet. The size of the site will ensure steady delivery of housing over the medium term. The size of the NLBP site also provides the opportunity for development to define its own character away from sensitive boundaries, and introduce a finer grain of development which increases local permeability and integration whilst retaining open space. This, coupled with the changes in levels which provide the opportunity to conceal the scale of buildings and add interest to amenity open space by exploiting potential views.” Again, even if Mr Mills (note not Mr Twomey) seeks now to distance the Appellant’s team from this document, there is nothing here which is particularly shocking. The reference to using the topography of the site to conceal the scale of the buildings is in fact entirely in accordance with Mr Twomey’s masterplan and strategy to increase heights in the lower levels. The only question is whether the latest increase is too big, such that there is no question of any ‘concealing’, and whether that renders the resulting townscape impacts unacceptable.

7. Aside from the 2016 Planning Brief, Mr Twomey confirmed that he considered a suitable height strategy and proposed locating higher buildings away from existing residential properties and in the lower parts of the site. Apparently, lots of testing was carried out of different potential maximum heights. However, no design options have ever been produced for scrutiny by a decision-maker. All that can be said is that, having taken account of the brief (both the client brief and the 2016 Planning Brief) to optimise the housing on site, Mr Twomey alighted on a maximum of 11 storeys and this formed the basis of the first application to the Council in 2017.

8. It was at this point that Mr Stewart commissioned a TVIA to accompany the planning application. Having reviewed the townscape impacts using that TVIA, the scheme was amended during application stage in response to officer comments to a maximum of 9 storeys, which officers felt they could support. Mr Twomey states that he was always of the opinion that taller buildings, in certain areas of the original masterplan, would be appropriate and could be accommodated.³ However, there is no evidence he was ever thinking of anything higher than his original 11 storeys. On the contrary, he states in terms that the maximum 9 storeys was: “a compromise in heights between that which I believed were possible and that which the Council officers considered supportable”.⁴
9. Interestingly, Mr Twomey also states that, at that time, there was no specific supporting local plan policy that allowed the original masterplan to confidently go forward with the building heights and masterplan density the site could comfortably, in his view, contain,⁵ as if that were a clear distinction between the position that has been reached today. However, as will be explained, nothing in substance has really changed in policy terms or as a result of the Secretary of State’s grant of permission for a maximum 9 storey scheme.
10. The London and Local Plans stated then, as they still do, that tall buildings should only be developed in locations which are identified as suitable in the Plan (see LP Policy D9 B(3) and Core Strategy Policy CS5 and DMP 2012 Policy DM05), of which NLBP was not one, and remains not one. The Council does not rely on these parts of the policies which are now considered out-of-date. However, there are still other areas of Barnet which are identified as suitable for tall buildings and thus have policy support for the location of tall buildings. NLBP did not have policy support as a location for tall buildings at the time of the first application and still does not have policy support now. So, no change there.
11. The Appellant suggests that the Council were originally rigidly applying a prohibition on any tall buildings (i.e. over 8 storeys) on the NLBP site and there is a change in

³ PE at 3.1.3 and XX

⁴ PE 3.1.3

⁵ Para 3.1.3

position in that regard, particularly as a result of the Secretary of State’s decision on appeal. That is not true though and the position is far more nuanced.

12. First, officers supported the first application which included tall buildings (of up to 9 storeys, after reduction on townscape grounds). Thus, Comer Homes were well aware that tall buildings were not being treated as an issue on the site *per se*, provided the design was acceptable.
13. Second, Members departed from officers’ recommendations in June 2017 but their reason for refusal was strictly limited to the townscape impacts (it spoke in very similar terms to the reason for refusal under consideration in this appeal of: “The proposed development, by virtue of its excessive height, scale and massing ... represent[ing] 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”.⁶) There was thus no suggestion that permission was being refused due to the location of tall buildings on the site, as a matter of principle.
14. Third, although arguments appear to have been made by the Council at the appeal inquiry concerning weight to be given to the fact that the site was not identified for tall buildings, the reason for refusal remained so limited and it was only ever said that there was a: “clear nexus between the site being ‘not an appropriate location’ for tall buildings, in terms of planning policy, and the council’s reason for refusal that the scheme is of “excessive height, scale and massing””.⁷ A similar point could equally be made now. The fact that the site still has not been identified for tall buildings in the emerging local plan, despite Comer Homes’ renewed efforts at persuading the EiP Inspector, must reinforce the fact that it has a sensitivity to excessive height, scale and massing, being in a suburban surrounding area comprising predominantly two storey semi-detached and terraced housing.⁸

⁶ Tania Sa Cordeiro PE 3.15

⁷ ID [25] at CD 4.001

⁸ See the Council’s note to the EiP Inspector on Tall Buildings: SOCG Appx 11 on p. 9

15. So, we haven't gone from a position of: lack of policy support for tall buildings to policy support for tall buildings on the NLBP site. And neither have we gone from a position of: application of any policy prohibition on tall buildings on the site to a lack of such an application. Nothing has changed. Other than one thing: The Secretary of State granted permission on appeal for the scheme of up to 9 storeys.
16. Whilst there is no suggestion that the consented scheme is unviable, or undeliverable, or even undesirable in any way,⁹ Comer Homes, taking the long view as they do, have decided to come back say, in the words of Oliver Twist: "Please, sir, I want some more". However it is presented, it is simply that. And the Council has no problem with this in principle. The Council applauds commercial enterprise and ambition and has worked hard with Comer Homes through the pre-application and application process to enable them to realise their vision.
17. However, in planning terms, the judgement which must be reached is not improved in the Appellant's direction by any change in circumstances since the 2020 appeal decision. And that is the fundamental point which this background exposition seeks to expose. On the contrary, there are a number of factors which suggest that caution against excessive height, scale and massing should be applied even more critically to the site now than then.
18. First, the London Plan (at the time of the previous appeal decision) used to talk about "maximising" the potential of a site. Policy D3 now talks about 'Optimising site capacity through the design-led approach'. This change in terminology is neither academic nor inadvertent. "Optimising site capacity means ensuring that development is of the most appropriate form and land use of the site" (D3 (A)). It is a different concept from 'maximising', as the supporting text paragraph 3.3.1 makes clear. 'Optimising' means ensuring the development's form is "the most appropriate for the

⁹ Note there is some impression in Mr Twomey's PE that heights have been increased to accommodate post-Grenfell fire safety measures: see Section 3.2. He accepted however in XX that this was not the justification for increased heights (which was simply the additional housing, although it should be noted that the increased storey heights (from 3m to 3.25m) increases the height for the taller buildings even more) and such amendments could be incorporated through RM on the OPP elements of the consented scheme or other amendments as necessary.

site”. “The optimum capacity for a site does not mean the maximum capacity”. To return to classic children’s fiction, it’s the ‘Goldilocks’ principle. Not too big, not too small, just right. Under the old policy, the Inspector and Secretary of State were content that the up to 9 storey scheme “respect[ed] existing development, and the outlook of existing residents of the area, but maximis[ed] the potential of the site in locations away from boundaries to existing development”.¹⁰ So, the Secretary of State was already maximising the potential of the site. ‘Optimisation’ demands more care about getting the most appropriate scale right rather than going for the biggest a site can handle. In other words, it cannot reasonably be argued that the Secretary of State and Inspector would have found that the 9 storey scheme was somehow making inefficient use of land if they were considering the scheme in the context of ‘optimisation’ rather than ‘maximisation’. Rather, if anything, if 9 storeys ‘maximises’ the use of the site, then it is hard to argue that 13 storeys is somehow the ‘optimum’.

19. Second, since the 2020 appeal decision, Comer Homes has engaged fully in the Examination in Public process for the emerging Local Plan. Through that process, they have vociferously argued that (a) NLBP should be identified as a strategic location for tall buildings in emerging Policy CDH04 and (b) the housing allocation for the NLBP should include the additional ‘uplift’ dwellings proposed in the appeal scheme in the context of the emerging ‘Schedule of Site Proposals’. Following a plan led approach, if this was the right thing to do, then one would have expected them to have had some success. They have however not had success to date on either front and that highlights the speculative nature of the appeal. The tall buildings policy does not identify NLBP (as set out above) and the site is allocated (as Site No 2) for an indicative residential capacity of 1,350 dwellings based on the extant hybrid consented scheme. Whilst the Main Modifications should confirm this is a minimum, it should also be made: “clear that should any subsequent application proposal seek an uplift to the residential density within the allocation it would require demonstration of acceptability through a design-led approach in accordance with Policy D3 of the London Plan at application stage.”¹¹ In other words, we are back to judging the scheme on its own merits and whether it ‘optimises’ the site following a design-led approach. There is no further support for this

¹⁰ ID [65] and SoS DL [35], CD 4.001

¹¹ Appendix to Inspectors’ letter of 17 August 2023, ‘Summary of Main Modifications requested to the Plan as submitted’ [132] bullet 2, CD 6.005

scheme found in the emerging plan, which one would expect were it clearly a good thing.

20. The consequence of the limited residential allocation in the emerging plan is that the ‘uplift’ housing finds no place in the Council’s housing supply. It is agreed that the Council is currently meeting its identified housing needs in accordance with the new up-to-date NPPF. It has no need whatsoever for the appeal scheme. This is very different to the position in 2020 when there was not only argument about whether the Council had the relevant level of supply at all, but, even on the Council’s case, meeting its supply was dependent on the consented scheme coming forward.¹² This represents a fundamental shift in the Council’s favour when considering if there are any material considerations which would outweigh a breach of the development plan.

Townscape Impacts

21. Against that background, I will turn to consider townscape impacts.

22. It is relevant that, in 2020, the conclusion reached by the Inspector and Secretary of State was that the up to 9 storey scheme was: “appropriate to the context of the site and its surroundings and the scale and massing of the development [were] not excessive”¹³ and the development “in terms of its appearance, scale, mass, height and pattern, would not adversely affect and would thus preserve the character and appearance of the area”.¹⁴ That is the lawful fallback. The judgement reached reflected the Statement of Common Ground where it was agreed that the redevelopment “would be of limited visibility from the surrounding area”.¹⁵ The Council had not identified any particular viewpoints in the Reason for Refusal as causing townscape harm and ended up having full costs awarded against them for failing to produce either written or verbal evidence to substantiate the reason for refusal of the application, and providing only vague and

¹² See case for Comer Homes Group at ID [57] bullet 1 of CD 4.001

¹³ ID [67], CD 4.001

¹⁴ ID [69], CD 4.001. To which the SoS agreed: DL [24]

¹⁵ As recorded at ID [48]

generalised assertions, unsupported by an objective analysis, about the proposed development's impact.¹⁶

23. By contrast, the Council's townscape case now finds some consensus with its own officers who recommended permission should nevertheless be granted, and GLA officers. The unanimous professional view (bar Mr Stewart for Comer Homes) is that there is now some harm, not no harm at all (let alone positive townscape impact). The officers' report to committee referred to a "minor degree of harm to townscape".¹⁷ In refusing to interfere with Members' resolution and 'call in' the application for the Mayor's determination, the GLA in their Stage 2 Report accepted that: "The proposed height and massing would have a relatively significant visual prominence in this suburban context" and that the development would be prominent in some views (e.g. view 16 (Fernwood Crescent), and 18 and 19 (Oakleigh Road), altering the background context in the suburban street scene and representing a step change in height and massing within what is a suburban area. The proposed buildings would also significantly increase the quantum of built form in the backdrop of the view from within the New Southgate Cemetery". Whilst the GLA did not consider the scheme would cause a "significant" detrimental harm to the townscape character, they clearly were of the view there was some harm, albeit in their view not enough to make the development unacceptable.¹⁸

24. Contrary to the impression given in the DAS¹⁹, Mr Twomey accepted that the Council officers never advised Comer Homes to make the buildings higher in the appeal scheme. Neither did the GLA or any DRP. At pre-application stage (when no TVIA views were available for the 13 storey scheme), the June 2021 GLA consultation Stage 1 report sought to encourage Comer Homes to continue engaging with the Council to ensure the acceptability of the proposed building heights and stressed that the impacts

¹⁶ See costs decision dated 9 January 2019 for APP/N5090/W/17/3189843, [8]

¹⁷ See OR under 'Visual Impact and Views', CD 4.004

¹⁸ GLA Stage 2 Report, [64] – [65] CD 4.003

¹⁹ In the DAS Masterplan Evolution, Mr Twomey says it was first stage GLA / Barnet feedback that suggested that Comer should explore more density with taller buildings rather than less ground cover (CD 1.235 p. 30). However, he clarified in XX that he was referring to prior to the first application and was not suggesting any encouragement to raise the height of the consented scheme.

in Part C of Policy D9 must be addressed.²⁰ Thus, the potential for harmful townscape impacts was very much at the forefront of professional advice from the outset.

25. None of this can, of course, be reconciled with Mr Stewart's position that 'big is beautiful' and the fact you can see more of it is a good thing. That is contrary, you may think, to the approach taken by all other professionals in respect of this site. From the very beginning of a Planning Brief (2016) speaking of using the topography to 'conceal' the scale of buildings to the EiP Examiner's refusal to identify this as a site suitable for tall buildings, the sensitivity of the low rise suburban context has been acknowledged. There is a perpetual debate within townscape discussions about whether seeing more of something is harmful or whether seeing more of something is beneficial because what you are seeing is itself beautiful. Both propositions can be right but it depends entirely on the location and what a scheme is trying to achieve. An iconic, landmark tall building may well be deliberately designed to be seen (a church spire would be the classic example designed to highlight itself and mark a focal point for a community). But the NLBP is not that kind of location. Although not relevant to townscape *per se*, its low PTAL serves to reinforce its remote suburban context. It is not a focal point. Were it such, it would no doubt have been identified for tall buildings in planning policy.

26. Mr Stewart accepted that the appeal scheme is not trying to be iconic and prominent. However, equally he said that it was not trying to conceal itself. He said it was neither 'one thing nor the other'. That, if it is indeed what Mr Twomey was seeking to achieve, simply spells out its design failings. Ultimately, as can be seen from the design evolution, this scheme has sought from the outset to make the best use of the site to bring about the highest density of development whilst using the topography to mask the scale and ensure that the height, scale and massing is not excessive in the suburban context. There is no question of seeing more being better. The question is simply whether what you can see is excessive. Mr Stewart's entire approach to this case is flawed.

27. With that in mind, I will turn to the particular views identified in the Reason for Refusal.

²⁰ 7 June 2021 Stage 1 Report CD 3.001 at [24] and see also [37]

Fernwood Crescent (View 16)

28. The tall buildings would appear starkly out of keeping in the low rise suburban context. Whilst the consented scheme retained some sense of perspective and was clearly viewed in the distance when looking down Fernwood Crescent, the appeal scheme would dwarf the semi-detached interwar housing.

Denham Road (new view)

29. Similar points can be made about Denham Road. Whilst the consented scheme retained a sense of perspective and did not rise above the chimney tops of the houses in the view, the appeal scheme jars with the housing and creates a strange relationship, interfering with the existing roof lines, particularly on the right of the image.

Oakleigh Close and Oakleigh Road North (View 18)

30. The consented scheme was barely perceptible behind the Oakleigh Close houses and retained the clear separation between the buildings on Oakleigh Road North, marking the entrance to the Close. By contrast, the massing of the appeal scheme would effectively merge the buildings on Oakleigh Road North, masking the entrance to the Close and completely dwarfing the suburban houses on the Close.
31. It is worth also having in mind the view from Oakleigh Road South (View 19).²¹ The approved view is arguably mitigated by the perception of there being only a lone, arguably slim and elegantly formed ‘tall’ building, whereas the appeal proposal would greatly widen the sense of tall buildings and create a bulky mass.

New Southgate Cemetery, looking towards entrance gateway (View 7)

32. Whilst visible, the consented scheme was proportionate and the rooftops were viewed below the existing treelines. The appeal scheme, however, is much larger in scale, rising

²¹ See Mr Sallin’s PE at 5.12

significantly above the trees on the left hand side of the image. Its sheer height, bulk and scale would be harmful to the overall lower set scale that is a character trait of the area.

33. As is agreed, all of these judgements are better viewed on the ground and appreciated as part of an ambulatory experience, as the Inspector will have seen during her site visit.

34. The Council's case is that the increased height, scale and mass results in a discordant and visually obtrusive form of development that fails to respect the local character. It is no wonder that the level of local opposition to it is so high, and no one who spoke in support of the scheme did so in the context of its townscape impacts. It is also unsurprising, and as Mr Stewart accepted, reasonable, that Councillors unanimously reached a judgement, on a cross-party basis, that the scheme was too big.

Planning Policy

35. That is a breach of the development plan, in particular as follows:

- The appeal scheme would fail to enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their scale with due regard to existing forms and proportions (contrary to London Plan Policy D3 (D(1));²²
- The appeal scheme would fail to respond to the existing character of the place (contrary to LP Policy D3 (D(11));
- The appeal scheme fails to make a positive contribution to the townscape in terms of visual impacts on views from the buildings from mid-range views from the surrounding neighbourhood (contrary to LP Policy D9 (C(1));²³
- The appeal scheme fails to respect local context and fails to enhance the Borough's high quality suburbs (contrary to Core Strategy Policy CS5);²⁴

²² CD 5.003 p. 110 (pdf p. 125)

²³ CD 5.003 p. 138 (pdf p. 153)

²⁴ CD 5.001 (p. 69)

- The appeal scheme fails to preserve or enhance local character and fails to respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets (contrary to Development Management Plan Policy DM01 (C));²⁵
- The appeal scheme fails to successfully integrate into the existing urban fabric (contrary to DMP Policy DM05 (ii));²⁶
- The appeal scheme causes an adverse impact on local views and the skyline (contrary to DMP Policy DM05 (iii)).

36. The development is also contrary to the new NPPF²⁷ in that:

- It will not add to the overall quality of the area, over the lifetime of the development (contrary to Paragraph 135(a));
- It is not sympathetic to local character including the surrounding built environment (contrary to Paragraph 135(c));
- It is not well designed and so should be refused (contrary to Paragraph 139).

37. All of these policies are essentially saying the same thing: the impact of the scheme on townscape must be acceptable. And if it is unacceptable, then development should not be permitted. Mr Mills held an intriguing opinion that, even in cases where the impact on townscape is unacceptable, a development should still be considered in accordance with the development plan looked at as a whole. That was his view notwithstanding that he agreed that this is not a case where policies in the plans pull in different directions so one might excuse a technical breach of one policy in light of the support found in others (see e.g. R v. Rochdale MBC ex p Milne (No 2) [2001] 1 Env LR 22 at [48]). Townscape policies do not pull away from policies which support redevelopment. They acknowledge that sites should be ‘optimised’ and the best use of land made (and with that delivering housing to the best extent). However, this is always caveated by the requirement to respond positively to the local context. If the scheme does not achieve this, then it should be refused in favour of a better scheme. Impact on townscape is never some insignificant matter that can just be ignored.

²⁵ CD 5.002 (p. 16)

²⁶ CD 5.002 (p. 29)

²⁷ CD 5.004

38. There is no precedent for Mr Mills' interpretation and it is wholly contrary to the approach taken where similar issues have arisen elsewhere, for example in the Victoria Quarter appeal decision. In that decision (for 8-10 storeys in an arguably more urban area), the Inspector found that the sheer scale would cause a dislocation within the area, inserting an alien typology of larger mass and scale.²⁸ That was considered contrary to Policies CS5 and DM01. There was no suggestion that it somehow complied with the Development Plan, and permission was ultimately refused.

The Planning Balance

39. As the NPPF makes clear, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Decision-makers may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.²⁹ There is nothing in the consultation changes to the NPPF which the Appellant seeks to rely on to change that.

40. Thus the balance is not about putting a whole lot of competing considerations into a pot and deciding whether the pros outnumber the cons (see Dignity Funerals Ltd. v. Breckland District Council [2017] EWHC 1492 (Admin) at [68] – [70] where it is said that planning balances should not be approached too mathematically or mechanistically). The proper method is clearly set out in statute in s. 38(6) of the Planning and Compulsory Purchase Act 2004.

41. Care should be taken not to give an inflated weight to a number of incidental benefits which would be generic to any redevelopment scheme and the fact that a large proportion of the planning benefits can come forward with the deliverable consented scheme, which is already in progress, is a significant material consideration militating against any pressing need for the appeal scheme. The timing of delivery of the various

²⁸ See [21] of CD 8.007

²⁹ At [12]

phases of both schemes is not transparent but, given the sheer scale of the appeal scheme, it would be a safe assumption that the full benefits are not going to be delivered in the short or even medium term. There may even potentially be a delay in bringing forward the benefits that the consented scheme would deliver as a result of a switch to the new scheme. There is no evidence one way or the other on this point but it must be a risk.

42. Furthermore, some of the alleged new benefits of the appeal scheme could easily be realised within the context of the consented scheme, if the Appellant had the will to do so. A clear example is the signalised crossing for the school which, it is agreed,³⁰ could be designed into the consented scheme and permitted either via a s. 96A or s. 73 amendment and corresponding amendment to the s. 106 agreement. The alleged benefit of an uplift in community space has a rather unique back-story.³¹ But if there is a real desire to accommodate the LiveWell Space (including the relocation of two GP surgeries from elsewhere in the Borough) into the development (as opposed to having a flexible community space) then that could also be achieved within changes to the outline elements of the consented scheme or via easy amendment.³²

³⁰ See agreed note submitted to the inquiry

³¹ It appears that Rev Dr Alec Corio (of St. Mary the Virgin, East Barnet) made contact with Comer Homes to set up meetings advocating for the provision of community facilities on the site, after viewing planning documents and attending online consultations at which community facilities were hardly mentioned. Through a number of positive meetings, Rev Dr Alec Corio brought Mr Finch of Community Wholecare Centres on board (CWC has a connection with the Church of England). Comer Homes visited the first CWC LiveWell Centre in Kew and decided it would be appropriate for their development. Heads of Terms have been agreed with Mr Finch. The Heads of Terms involve the delivery of community space to CWC on a 99 year lease who will rent out the lions share of the space to two existing GP practises in Barnet (Brunswick Park HC and Oakleigh Road Clinic, and use the proceeds for their charitable activities) and the remaining 250 sq m will be used for associated wellbeing activities (such as Covid vaccination clinics, 'Friday café', the 'Love Me' 7 Steps to Wellness Programme). There was no evidence from the named GP clinics that they would be amenable to rent the new space from CWC.

³² Indeed, the Appellant, having acknowledged that the Heads of Terms Accommodation Schedule provided by Mr Finch for CWC in fact set out a greater floorspace than proposed in the appeal scheme (2,050 sq m as opposed to 1,908 sq m), stated that this could easily be rectified through amendment given there was such a large amount of available space to play with. It was also wholly unclear what Mr Andall's position would be. He appeared certain he was being offered space for his Digital Hub in both the consented and appeal schemes. We were told it was only in the appeal scheme. When pressed where he would go, Mr Mills stated he would be accommodated within the LiveWell centre. However, that did not appear to be how Mr Finch viewed things.

43. The reality is that the only real additional benefit of the appeal scheme over the consented scheme is the uplift in housing (including affordable housing) and commercial space³³ and the knock-on economic benefits of building more (more construction jobs, higher CIL payments to the Council etc.). The appeal scheme delivers (assuming all phases are ultimately completed) 1,069 more homes including 377 more affordable homes.³⁴ This is obviously a good thing to which significant weight must be attributed. Housing figures in up-to-date plans are minima and delivering more than is required is to be encouraged. The latest round of NPPF changes put out for consultation support this, but it has in any event always been the position since the NPPF was first introduced in 2011.
44. But does this good thing, which could only ever amount to ‘windfall’ housing over and above the housing figures being examined as part of the emerging Local Plan, trump the breach of the development plan? The Council’s position is that, looking at it in the round, it does not, and the Council is not in some kind of crisis situation with regard to housing delivery that could possibly justify the long-term, permanent harm to its high-quality suburbs that the appeal scheme would cause.

Conclusion

45. The Council has no desire to stigmatise the appeal scheme as opportunistic but that’s ultimately what this is. The ‘uplift scheme’, as it was described by Comer Homes in the EiP examination, has no support in the emerging Local Plan. To allow it at this appeal would undermine the plan led system and, in turn, open the floodgates for further excessively high tall buildings, outside identified locations in the Borough. All of the comparables referred to by Mr Stewart are in much more central parts of London. Barnet is outer London. It is not Wembley, Acton, Lewisham or Islington. Its character is different and must be protected.

³³ An uplift of 1,971 sqm of non-residential floorspace, which includes the community space (and so this should not be double counted as a separate benefit).

³⁴ See Table in Appellant’s Statement of Case CD 9.001

46. If the appeal is allowed, one might wonder: will Comer Homes do as they have done again and say, thank you very much for the decision, but can we now have up to, say, 15 storeys please? Who knows, but there must be some limit. Allowing buildings that qualify as ‘tall’ on NLBP once does not give carte blanche for the developer to keep going up and up. There is nothing in policy or any other change in circumstances to justify Comer Homes’ push for more. (As has been set out, if anything, changes since 2020 support the Council’s position.)
47. The Secretary of State and Inspector were quite correct that the consented scheme of up to 9 storeys maximised the use the site (even if some such as Mr Sallin may still think that was too big). The consented scheme respected the townscape whilst making efficient use of land and contributing a very significant amount of housing. One can sympathise with the developer’s commercial desire to get the most out of the site possible, but the Council has made a decision consistent with its duty to optimise land use and that is that the appeal scheme is simply too big. There is no need for additional windfall housing in the Borough at the current time and no indication that the consented scheme cannot continue to be delivered, as it is already being. There are no material considerations capable of outweighing the clear breach of the development plan arising from the unacceptable townscape impact and the Inspector is thus respectfully requested to dismiss the appeal.

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