

**PLANNING INQUIRY:
APP/N5090/W/23/3330577**

North London Business Park, New
Southgate
January 2024

Proof of Evidence by:

Mr Charles Mills MRICS ARTPI
of Daniel Watney LLP

Contents

1	Introduction.....	2
2	Background to Scheme	3
	Site Background.....	3
	The Planning Application.....	4
3	The Development Plan and Addressing the Reason for Refusal.....	7
	The Development Plan.....	7
	Reason for Refusal 1.....	8
4	Material Considerations.....	14
	The Original Scheme.....	14
	The Existing Scheme	15
	National Planning Policy Framework	15
	Emerging Local Plan Review.....	16
	Scheme Benefits	18
	Conclusion of Material Considerations	21
5	Third Party Representations	22
6	Summary and Conclusions	23

Appendices

Appendix 1	Assessment of the Appeal Scheme against the adopted development plan policies listed in RfR1
Appendix 2	Assessment of the Appeal Scheme against other relevant development plan policies
Appendix 3	Assessment of the Appeal Scheme against the National Planning Policy Framework
Appendix 4	Assessment of the Appeal Scheme against emerging development plan policies
Appendix 5	Third party representations

1 Introduction

- 1.1 My name is Charles Mills. I hold a BSc (Hons) degree in Planning and Development Surveying. I am a Member of the Royal Institute of Chartered Surveyors (Planning and Development) and I have worked in private practice for over 23 years.
- 1.2 I advise on all town planning matters in respect of my clients' developments and work on sites within and outside of London. I have significant experience of advising on large-scale redevelopment sites for both the private and public sector.
- 1.3 I was first appointed on the North London Business Park project (hereafter NLBP or the Site) in 2011 by the Comer Homes Group (hereafter the Appellant), which to date has included giving evidence as Planning Witness at Inquiry in 2018, representations on the Core Strategy and later the Local Plan Review, liaising with the Council in pre-application discussions and speaking on behalf of the Appellant at committee in support of the Appeal Scheme.
- 1.4 This Proof is true and has been prepared in accordance with the Royal Institute of Chartered Surveyors Code of Conduct. The opinions expressed are my true and professional opinions.
- 1.5 This Proof is aimed at addressing the single matter pursued by the Council (as set out in the Decision Notice issued on 23 March 2023, as qualified at the Case Management Conference) at Inquiry from a planning policy perspective, with a review of the planning balance associated with this Appeal.
- 1.6 As appropriate, I refer to the Proofs of the Appellant's other witnesses, Peter Stewart addressing townscape and visual matters and Des Twomey addressing architectural matters and I rely on their conclusions in forming my planning judgements.
- 1.7 The structure of my Proof is as follows:
 - 1.7.1 Section 2 provides background details that I consider are of most importance in the determination of the Appeal Scheme relating to site context, the previous permission, pre-application engagement and local determination.
 - 1.7.2 Section 3 addresses the Appeal Scheme's compliance with the adopted development plan policies listed in the reason for refusal as set out on the Decision Notice issued on 23 March 2023.
 - 1.7.3 Section 4 details those material considerations relevant to the Appeal Scheme which lend further support including the National Planning Policy Framework, the emerging Local Plan Review, the Original Scheme and the numerous substantial benefits.
 - 1.7.4 Section 5 addresses the third-party representations received as part of the Appeal.
 - 1.7.5 Section 6 summarises and concludes.
- 1.8 My evidence is supported by several appendices, as referred to when applicable.

2 Background to Scheme

SITE BACKGROUND

- 2.1 The detailed context of the application and this Appeal are found within Sections 3–7 of the Appellant’s Statement of Case (**CD9.001**) so are not repeated here, but I include those specific elements that I feel are important below.

SITE DESCRIPTION

- 2.2 The Site covers a significant area of land within the London Borough of Barnet, measuring 16.37 hectares, of which approximately 13 hectares is still currently undeveloped, comprising 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. The Site varies significantly in topography with a steep gradient comprising a level difference of 24 metres across the Site from the northern boundary to its lowest point at Brunswick Park Road.
- 2.3 Properties to the north and south are 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.

2020 HYBRID PERMISSION AND SECTION 73 PERMISSION

- 2.4 The Site benefits from an existing planning permission with reference 22/1579/S73 (the Existing Scheme)
- 2.5 As detailed in the Appellant’s Statement of Case (**CD9.001**), the Existing Scheme is a variation of a planning permission with reference 15/07932/OUT which was originally granted by the Secretary of State (SoS) on 24 February 2020 (the Original Scheme). The Secretary of State decision followed from a recommendation of approval of the Original Scheme in the officer’s report to committee, refusal by the committee, and a recommendation for approval from the Inspector. The Secretary of State also upheld the Inspector’s decision to award costs to the Appellant.
- 2.6 There have subsequently been a number of applications to discharge conditions and a non-material amendment application submitted by the School in relation to Phase O.

PRE-APPLICATION MEETINGS

- 2.7 Following my appointment and involvement as Planning Consultant on the Original Scheme where the Secretary of State granted the Original Permission, I was then appointed to the Appeal Scheme. Alongside Plus Architecture and other core members of the team, we reassessed the Original Scheme in the context of the up-to-date development plan which included the newly adopted London Plan.
- 2.8 In February 2021, the Appellant initiated pre-application discussions with the London Borough of Barnet Major Projects team alongside the Greater London Authority (GLA) as well as presenting the evolving scheme to Urban Design London as Design Review Panel. The scheme evolved positively throughout this pre-application engagement of which the Council were a key part.
- 2.9 A number of pre-application meetings were held with LBB including:

- 2.9.1 NLBP Pre-App with LB Barnet – 3 February 2021
 - 2.9.2 NLBP Pre-App Meeting with LB Barnet – 8 February 2021
 - 2.9.3 NLBP Design Workshop with LB Barnet – 1 April 2021
 - 2.9.4 NLBP Highways Scoping Meeting – 14 April 2021
 - 2.9.5 NLBP Design Workshop – 17 June 2021
 - 2.9.6 NLBP Highways Workshop – 22 July 2021
 - 2.9.7 NLBP Trees/Landscaping Workshop – 23 July 2021
- 2.10 Pre-application meetings were held with other stakeholders:
- 2.10.1 NLBP Pre-App meeting with GLA – 21 April 2021
 - 2.10.2 TfL Pre-App Meeting – 19 May 2021
- 2.11 As detailed further in Section 4 of Mr Twomey’s Proof, the scheme evolved through this extensive pre-application engagement with the relevant stakeholders in respect of design, landscaping and highways matters. The comments of officers were duly noted and layout amendments were undertaken.
- 2.12 Due to the outbreak of COVID-19, the Appellant held a virtual public exhibition which ran from 27 April to 11 May 2021. In addition to this, two public webinar sessions were held on 28 April 2021 and 5 May 2021. Across the two-week period 423 new users viewed the Virtual Exhibition with 20 feedback forms submitted and 14 emails were received. The principle of more homes, height and parking were the most common themes which were largely responded to and established as part of the Original Scheme however, the Appeal Scheme is carefully designed to sensitively consider locations of increased height, and providing car parking as well as car club spaces, a new bus route through the site and a shuttle bus service.

THE PLANNING APPLICATION

- 2.13 As detailed in Section 5 of the Statement of Case (**CD9.001**), a hybrid planning application was submitted to the Council on 10 August 2021 which was validated that same month under application reference 21/4433/OUT. Additional documents were submitted in September 2021.

RESPONSE FROM STATUTORY CONSULTEES DURING APPLICATION CONSULTATION PERIOD

- 2.14 A summary of statutory consultation responses received throughout the course of the planning application and the Appellant’s responses can be found at Table 1 of Appendix 7 of the Statement of Case (**CD9.001**).

LOCAL RESIDENT OBJECTIONS

- 2.15 A summary of third-party responses received throughout the course of the planning application can be found at Table 2 of Appendix 7 of the Statement of Case (**CD9.001**).

POST-SUBMISSION AMENDMENTS

- 2.16 A summary of post-submission amendments can be found at Paragraph 5.5 and 5.6 of the Appellant’s Statement of Case (**CD9.001**).

LOCAL DETERMINATION

- 2.17 A detailed summary of the steps leading up to and including the determination of the Appeal Scheme

at application stage can be found at Paragraph 5.8 to 5.11 of the Appellant's Statement of Case (CD9.001).

- 2.18 The officer's report to committee in December 2023 recommended the application for approval however the committee voted to refuse the scheme. As set out in Paragraph 5.13 of the Appellant's Statement of Case (CD9.001), a decision notice was issued on 23 March 2023 and it is common ground that the 23 March 2023 Decision Notice is the decision notice subject to this Appeal.
- 2.19 The Officers Report to Committee recommended approval and the following extracts and the following sections are of particular note:
- 2.19.1 Section 3.2 Employment – "The proposal provides the opportunity to deliver a mixed use development that will better reflect the needs of the local community, whilst retaining some SME/incubator employment to serve local start-up businesses."
 - 2.19.2 Section 3.2 Housing – "...the emerging Barnet Local Plan site allocation identifies the site as capable of providing 1350 residential units which reflects the extant approval. This however does not mean that the provision of a greater number of units would be contrary to emerging policy as housing targets are a minimum rather than a maximum and the provision of an increased number of units would contribute towards Barnet's housing supply and 5y1s."
 - 2.19.3 Section 3.2 Housing Density – "The density of the proposed scheme which follows a design based approach and involves extending upwards from the approved extant permission is broadly considered appropriate by officers subject to further assessment on design and highways."
 - 2.19.4 Section 3.4 Visual Impact and Views – "As such the Officer's conclusions are that the proposed changes in scale would not significantly impact the townscape impact on the surrounding area."
 - 2.19.5 Section 3.4 Character and Appearance – "Both the Phase 1 detailed design component and the information submitted in support of the outline Development phases 2- 5 indicate a high quality design which will improve and enhance the site and the wider area."
 - 2.19.6 Section 7 Conclusion – "the scheme is considered acceptable on balance having regard to relevant national, regional and local planning policies and guidance. The principle of the redevelopment of the site is considered acceptable and accords with the adopted Policy Framework."
 - 2.19.7 Section 7 Conclusion – "The proposed detailed design for Phase 1 is considered to be high quality with appropriate levels of amenity space, public open space and residential standards achieved for future occupiers reflecting a development of this intensity and balanced with the need to optimize the use of the site."
 - 2.19.8 Section 7 Conclusion – "The impact of the increased density and height of the development on the character of the surround (sic) area and amenities of neighbouring residents and is considered to not result in a significant increase in the level of harm over and above the extant permissions on the site."

CM emphasis

- 2.20 It is clear from the officer's point of view, having undertaken significant engagement with DRP, design officers and the GLA that they supported the scheme and was welcomed as reflected in the report which concluded the scheme was in accordance with the development plan.

GLA STAGE 2

- 2.21 Independent of the outcome of the local committee, the GLA's Stage 2 report (CD4.006) concludes

as follows:

- 2.21.1 Paragraph 39 – “The proposed further optimisation of this consented residential-led masterplan to deliver an uplift of up to 1,078 new homes over the extant planning permission was supported at Stage 1. The uplift in flexible commercial floorspace was also supported.”
- 2.21.2 Paragraph 56 – “The urban design and landscape approach in terms of movement and overall perimeter block layout follows the key principles embedded in the extant planning permission which are supported and responds appropriately to the site opportunities and constraints.”
- 2.21.3 Paragraph 60 – “GLA officers recognise that the proposed development would have an adverse townscape impact on these views. However, this is considered to be acceptable, on balance, noting the overall public benefits set out in paragraph 96 and noting that no heritage assets would be harmed in any of the views.”
- 2.21.4 Paragraph 61 – “The scheme would not harm any local or strategic views. Overall, taking into account the findings of the applicant’s TVIA, GLA officers consider that the proposed height and massing could be accommodated on this large site without causing a significant adverse impact on the surrounding townscape or local character.”
- 2.21.5 Paragraph 66 – “In terms of environmental impact in terms of wind, daylight, sunlight overshadowing is considered to be acceptable and would not cause any unacceptable impacts. The architectural quality of the proposed tall buildings in the detailed element is acceptable. Furthermore, the proposals would accord with the design-led approach to optimising the housing capacity of the site, in line with the London Plan.”
- 2.21.6 Paragraph 67 – “The application is contrary to the plan-led and locational principle set out in London Plan Policy D9, Part B. However, GLA officers therefore consider that the height and massing of the scheme could comply with the qualitative assessment criteria set out in Part C of London Plan Policy D9. The visual, functional, environmental and cumulative impact of the proposed scheme is acceptable. As such, notwithstanding the conflict with the plan-led and locational principle set out in Part B of London Plan Policy D9, GLA officers consider that in this instance, the tall buildings are, on balance, acceptable..”

CM emphasis

3 The Development Plan and Addressing the Reason for Refusal

THE DEVELOPMENT PLAN

- 3.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that “*in dealing with an application for planning permission...the authority shall have regard to the provisions of the development plan, so far as material to the application...and any other material considerations*”.
- 3.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that “*if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise*”.
- 3.3 The development plan for the Appeal Site currently comprises the following:
- 3.3.1 Barnet’s Local Plan Core Strategy (2012);
 - 3.3.2 Barnet’s Local Plan Development Management Policies Document (DMPD) (2012); and
 - 3.3.3 London Plan 2021.
- 3.4 As set out in the section above, it is agreed that the original Decision Notice issued on 23 March 2023 is the only Decision Notice subject to this Appeal. The Decision Notice contained one reason for refusal (RfR1). I will continue to use the term RfR1 for consistency with the Appellant’s Statement of Case.
- 3.5 The Council’s RfR1 alleges that the Appeal Scheme would conflict with the following development plan policies: Policies D3, D4 and D9 of the London Plan 2021; Policy CS5 of the Core Strategy; and Policies DM01 and DM05 of the DMPD 2012.
- 3.6 Both parties agree that Section 38(5) of the Planning and Compulsory Purchase Act 2004 applies to Policies CS5, DM05 and D9 stated in RfR1. Section 38(5) states:
- “If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”*
- 3.7 On this basis, it has been agreed by both parties that the locational requirements referred to in Policies CS5 and DM05 conflict with Policy D9, in that local policy states tall buildings will “not be acceptable” outside in the identified locations. In accordance with S38(5), it is resolved that Policy D9 is the precedent policy for the consideration of tall buildings.
- 3.8 I consider, as per the conclusions of the Officer’s Committee Report that the proposed development complies with the development plan when taken as a whole.
- 3.9 With regards to emerging policy, the Inspector in his Interim Findings Letter of 17 August 2023 does not suggest any additions to Part A of Policy CDH04 – locations that may be suitable for tall buildings. North London Business Park is not an area identified suitable for tall buildings. The Council in their letter to the Inspector (Examination Document 79) (**CD11.002**) confirmed to the Inspector that Policy CDH04 is aligned to Policy D9, in that tall buildings outside identified areas may also be suitable subject to criteria set out in the policy.
- 3.10 The emerging Local Plan Review is due for adoption in Summer 2024, and I afford the relevant policies in this document significant weight. My reasons are set out in Section 4 further below.
- 3.11 I therefore refute the Council’s position in relation to RfR1.

- 3.12 A second Reason for Refusal 2 was discussed at the January 2023 committee but was not included on the original Decision Notice issued on 23 March 2023, but in any event will be entirely resolved by the Section 106 agreement (making all necessary provision for the matters identified in the RfR) which will be finalised before the conclusion of this Appeal.
- 3.13 I deal below with RfR1 in the light of the relevant policies alleged to be breached and a full analysis of the policies referred to in RfR1 is contained at **Appendix 1**.
- 3.14 A fully detailed policy by policy analysis of the Appeal Scheme against other relevant adopted development plan policies is contained in **Appendix 2** to this Proof which supports the conclusion that overall, the Appeal Scheme accords with the development plan.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 3.15 The revised National Planning Policy Framework came into force on 19 December 2023. I consider the weight to be given to the NPPF in Section 4 below.
- 3.16 A fully detailed policy by policy analysis of the Appeal Scheme against the National Planning Policy Framework (NPPF) is contained in **Appendix 3** to this Proof.

REASON FOR REFUSAL 1

- 3.17 RfR1 contends that by virtue of the Appeal Scheme's excessive height, scale, and massing, the Appeal Scheme would result in a discordant and visually obtrusive form of development that would fail to respect the local context and established pattern of development when viewed from five specific views. RfR1 contends that this failure would be to the detriment to the character and appearance of the area, and the visual amenity of the adjoining residential occupiers (please refer to Paragraph 7.20.2 of the agreed Statement of Common Ground for the Council's updated position on this latter point). RfR1 concludes that the Appeal Scheme would therefore not create a high-quality development, not constitute a sustainable form of development and would be contrary to the policies listed in Paragraph 3.5 above.
- 3.18 It is important to consider the wording of the refusal reason, with the perceived policy conflicts arising by virtue of the perceived excessive height, scale and massing.
- 3.19 It must follow that if the height, scale and massing are concluded to not be excessive (as perceived by the Council in RfR1), then the claims made in consequence thereof by the Council (that the Appeal Scheme would result in a discordant and visual obtrusive development, failing to respect local context and the established pattern of development from those specific views, to the detriment to the character and appearance of the area, and the visual amenity of adjoining residential occupiers) would fall away. Following on further, if the height, scale and massing are demonstrated not to be excessive, and the alleged shortcomings said to occur in consequence do not in fact result, the final elements of RfR1 (that the Appeal Scheme does not create a high-quality development and does not constitute a sustainable form of development) would also fall away.
- 3.20 The matters of architectural design and townscape impacts upon those five specified views as listed in RfR1 are discussed at length in Mr Twomey and Mr Stewart's respective Proofs. I summarise their findings on each of the key matters of the refusal reason in turn below.

HEIGHT

- 3.21 The relevant and precedent adopted development plan policy in relation to assessing proposals for tall buildings is London Plan Policy D9.
- 3.22 Whilst RfR1 suggests that the Appeal Scheme does not comply with DMPD Policy DMO5 and Core

Strategy Policy CS5 which relate to tall buildings, these policies were adopted in September 2012, prior to the adoption of the London Plan 2021 and also the NPPF as revised in 2021. I therefore consider those local policies, in relation to height, are out-of-date and in conflict with more recent adopted policy (Policy D9), as detailed above in relation to Section 38(5).

- 3.23 Policy CS5 "*protecting and enhancing Barnet's character to create high quality places*" is identified within the Council's reason for refusal. The policy sets out a series of design criteria. It then states that "*tall buildings*" – which are defined in the policy as buildings of 8 storeys (or 26 metres) or more – may be acceptable in certain specified areas (these are listed in the policy) before stating that "*outside these specific locations, proposals for tall buildings will not be supported.*"
- 3.24 As with the Existing Scheme, the Appeal Site is not in a location designated in Policy CS5 as suitable for tall buildings and to this extent, does not comply with this part of the policy. However, as I will go on to explain, this policy should be read in conjunction with Policy DMO5 and more importantly Policy D9 of the London Plan, particularly in light of the recent Master Brewer Judgment (**CD8.004**).
- 3.25 Policy DMO5 of the DMPD cross references to Policy CS5 of the Core Strategy, stating that "*tall buildings outside the strategic locations identified in the Core Strategy will not be considered acceptable*". The site is not within a strategic location but contrary to the Council's position, I conclude the scheme complies with the assessment criteria that Policy DMO5 requires all tall buildings to meet. My assessment of the Appeal Scheme against the Policy DMO5 criteria is set out in **Appendix 1**.
- 3.26 The Appeal Scheme accords with London Plan Policy D9 through its compliance with the qualitative criteria in Part C as set out in **Appendix 1**. As decided in the Master Brewer judgement of the High Court which can be found at **CD8.004** (London Borough of Hillingdon, R (On the Application Of) v Mayor of London [2021] EWHC 3387 (Admin) (15 December 2021)), there is no wording which indicates that Part A and/or Part B of Policy D9 are gateways, or pre-conditions, to Part C.
- 3.27 On this basis, it follows that the Site does not need to fall within a location specifically identified for tall buildings to comply with Policy D9 as a whole, which is the precedent development plan policy.
- 3.28 The Council's Statement of Case (**CD10.001**) confirms that the Council does not object on the basis that the Appeal Scheme contains tall buildings but rather, that the Appeal Scheme fails to demonstrate compliance with criteria (ii) and (iii) of Policy DMO5. I have drawn out my assessment of part (ii) and (iii) of DMO5 below for ease of reference.
- 3.29 Part (ii) seeks proposals for tall buildings to demonstrate a successful integration into the existing urban fabric.
- 3.30 As described in Mr Stewart's Proof at Paragraph 5.14 and 5.15, the buildings close to the Site's boundaries nearest the existing residential properties (Building 1B, 2D, 2E, and 2F) are the lowest on the Site, at three storeys in height, appropriately reflecting and integrating with their location close to existing low scale housing near the edges of the site. Heights would, logically, increase away from these boundaries with the tallest buildings located in the centre of the Site, having less visual impact in the surrounding area. The taller buildings would be against the open space created by the adjacent railway lines.
- 3.31 Paragraph 5.17 of Mr Stewart's Proof goes on to explain that the location of the main school building on the eastern part of the Site would help to provide Brunswick Park Road with definition. The positioning and layout of other proposed buildings at the Oakleigh Road South entrance would help to enhance the sense of arrival. Overall, Mr Stewart concludes that the effect would be to open up the Site to a considerably greater degree than is currently the case and integrate it more closely with its surroundings.
- 3.32 Mr Stewart concludes at Paragraph 7.14 that "*the result in this case is an attractive and well-designed scheme. While some of the building heights proposed are greater than those that prevail in the area*

today, this is a scheme that is very different from higher density schemes found in more densely developed contexts in inner London – the new buildings are set in generous green landscape that ensure that there is no sense of overdevelopment.”

- 3.33 Part (iii) [requires] proposals for tall buildings to demonstrate a regard to topography and no adverse impact on Local Viewing Corridors, local views and the skyline. As previously noted, and as noted in the officers report to the December committee, the Site varies significantly in topography with a steep gradient comprising a level difference of 24 metres across the Site from the northern boundary to its lowest point at Brunswick Park Road.
- 3.34 Paragraph 62 of the GLA Stage 2 Report also confirms that due to the overall site size and sloping topography and the proposed layout, there is limited visibility of the Appeal Scheme in the medium-long distance views to the east, south and north of the site. In terms of views from the west including Fernwood Crescent, and the two views from Oakleigh Road, Paragraph 64 of the GLA Stage 2 report states that whilst the Appeal Scheme would be *“prominent in these views, ...GLA officers do not consider that the proposed development would cause a significant detrimental harm to the townscape character, given the clear separation from the suburban context due to railway and line and topography and due to the fact that the proposed scheme would be viewed as a more distant contemporary development at a higher density within the suburban context”*.
- 3.35 Paragraph 65 goes on to assess the impact on the New Southgate Cemetery, where again, GLA officers conclude that the harm caused to the overall visual character of the cemetery is considered to be, on balance, acceptable.
- 3.36 Having taken into consideration the compliance with qualitative criteria and overall planning balance, the GLA Stage 2 Report confirmed that the Appeal Scheme’s visual, functional, environmental, and cumulative impact and the principle of the proposed tall buildings are acceptable.
- 3.37 As per the direction of S38(5), I consider Policy D9 to supersede adopted local policies relating to height and I consider the Appeal Scheme complies with the qualitative criteria of Part C. I therefore consider, as was the conclusion of the officer’s report to December committee, that when taken as a whole the Appeal Scheme accords with the development plan.
- 3.38 In Section 4 below, I have assessed the Appeal Scheme against the emerging Local Plan Review and in particular, assess the scheme against draft Policy CDH04 which I consider reflects a more up-to-date approach to assessing tall buildings, aligning to the relevant adopted strategic policy of the London Plan (Policy D9).

SCALE AND MASSING

- 3.39 London Plan Policy D3 requires proposals to enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their scale and shape amongst other things, with due regard to existing and emerging street hierarchy, building types, forms and proportions.
- 3.40 London Plan Policy D3 states that development must make the best use of land by following a designed approach that optimises the capacity of sites, including site allocations where the location is well connected to jobs, services, infrastructure, amenities and public transport. Part (1) goes on to state that development proposals should:
- “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”*
- 3.41 Part (11) states that development should respond to existing character of a place by identifying the special and valued features and characteristics that are unique to the locality.

- 3.42 The design of the proposed development has carefully considered the scheme with regard to the considerations set out in Policy D3. Furthermore, in line with Policy D4, the design of the development proposals have been thoroughly scrutinised by LB Barnet planning, design and highways officers as well as having undergone an independent Design Review Panel.
- 3.43 The Proof of Mr Stewart concludes that the scale of the buildings across the Site would respond appropriately to the Site's surroundings (Paragraph B.17), and that "*the whole scheme is in [his] view carefully considered and, taken as a whole and in its detailed aspects, consistent with current good practice in urban design*" (Paragraph 7.13).
- 3.44 I therefore conclude that the scale and massing of the Appeal Scheme is not excessive and is therefore not in breach of Policy D3, D4 or DMO1.

THE REMAINDER OF RFR1

- 3.45 I have concluded above that the height, scale and massing are not excessive and by virtue, the remainder of RfR1 should fall away, nevertheless I provide my assessment of the other matters contained within RfR1 below.

DISCORDANT AND VISUALLY OBTRUSIVE

- 3.46 The Secretary of State previously concluded at Paragraph 68 and 69 of the Original Scheme Appeal Decision that "*all elements of the proposed development are respectful of their surroundings and that the buildings would be visible from some vantage points in the surrounding area but they would not be discordant or visually obtrusive, and would be set within substantial areas of complementary public landscaped open space.*"
- 3.47 Mr Stewart has provided evidence in his Proof that the Appeal Scheme would not result in a discordant and visually obtrusive form of development that would 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, Oakleigh Road North and New Southgate Cemetery (to the east).
- 3.48 I refer to Mr Stewart's Proof which states at Paragraph 5.28 and 5.29:

"When comparing the Appeal Scheme with the Original Scheme, there is no fundamental change in any of the views illustrated; the effect is of a background layer of new development that contrasts with the suburban development in the foreground, and is clearly different in character and scale. The difference between the two schemes, in considering the effects of the schemes on townscape and views, is a difference of degree, not a difference of kind. As a result, the assessment of the effects of the Appeal Scheme as set out in Appendix B is the same as set out in my previous evidence for the Original Scheme.

The resulting effect on the views, whether considering the Original Scheme or the Appeal Scheme, is not harmful in any way."

- 3.49 Mr Stewart argues at Paragraph 7.15 that the layout and massing are calm, ordered and rational and represents something different from its surroundings, contributing positively to the variety and choice of housing.
- 3.50 Policies CS5 and DMO1 relate to protecting and enhancing Barnet's character and amenity to create high quality spaces.
- 3.51 The conclusion of Mr Stewart's evidence demonstrates that the Appeal Scheme would not be discordant or visually obtrusive and therefore not in conflict with Policies CS5 or DMO1.

LOCAL CONTEXT AND THE ESTABLISHED PATTERN OF DEVELOPMENT

- 3.52 Local Policy DMO1 states that development proposals should be based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect among others, the scale, mass and patterns of surrounding buildings, spaces and streets.
- 3.53 As the Council's Statement of Case (**CD10.001**) states at Page 24, "*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...*".
- 3.54 Whilst the housing around the site is typically semi-detached 2 and 3 storey properties, the site area is substantial and enjoys unique topography allowing it to not only create its own character but create areas within it that can accommodate areas of more dense development, for example along its boundary with the railway line, whilst respecting the areas closest to its residential neighbours.
- 3.55 The scheme provides a transition into the site from the surrounding neighbourhood, ensuring that there is no visual impact on the wider townscape. Mr Stewart states at Paragraph B.23 of his Proof that the Appeal Scheme would be "*neighbourly in its approach to the distribution of massing across the Site, and the enhanced permeability and new public realm it would offer would be of benefit to the local and wider area in which the Site is located*".
- 3.56 The GLA Stage 2 report states at Paragraph 62 that due to the overall site size and sloping topography (which is a level change of 24 metres, equating to 8 residential storeys), and the proposed layout which places the secondary school and playground adjacent to Brunswick Park Road and locates the taller blocks within the centre of the site, with predominantly terraced housing to the north, there is limited visibility of the proposed development in the medium and long-distance views.
- 3.57 Mr Stewart advises at Paragraph 7.23 of his Proof that "respect does not mean replicate", concluding that the Appeal Scheme, whilst following a different pattern from its surroundings (as is the existing development on the site), it would respect its surroundings by using a carefully responsive approach at the more sensitive edges of the site (unaltered from the Original and Existing Scheme), again demonstrating that the Appeal Scheme complies with Policies CS5 and DMO1.
- 3.58 I conclude that the Appeal Scheme does respect the local context and established pattern of development based on the evidence supplied by Mr Stewart in respect of the five specified views considered in RfR1.

DETRIMENT TO THE CHARACTER AND APPEARANCE OF THE AREA

- 3.59 The officers report to the December committee states under the character and appearance section that the information submitted indicates "*a high-quality design which will improve and enhance the site and the wider area*". It is therefore clear that the Officer's opinion was that the Appeal Scheme would not cause harm to the character and appearance of the wider area.
- 3.60 As set out in **Appendix 1** of my Proof, I have assessed the Appeal Scheme against the eleven criteria of Policy DMO1 and conclude that the Appeal Scheme does not harm the local character of the area, and is a well-designed and sympathetic development as was the conclusion of the Inspector and Secretary of State on the Original Scheme (Paragraph 82 Page 16 of **CD4.001**) The Appeal Scheme also meets other objectives of the adopted development plan and should be supported.
- 3.61 Mr Stewart finds that the Appeal Scheme would not be detrimental to the character and appearance of the area and would in fact add something positive to the area, "*replacing a rather ad hoc set of buildings on site today, with few positive qualities beyond some aspects of the green landscape, with a coherent, well planned, attractive scheme that seems likely to be a popular place to live*" (Paragraph 7.24).

DETRIMENT TO VISUAL AMENITY OF ADJOINING RESIDENTIAL OCCUPIERS

- 3.62 Since the Decision Notice was issued, the Council has withdrawn this element of their RfR and are not

pursuing the visual amenity of adjoining residential occupiers as part of RfR1. This is set out in the Statement of Common Ground.

3.63 As set out in Paragraph 7.20.2 of the agreed Statement of Common Ground, it is agreed by both parties that the visual amenity of adjoining occupiers is acceptable.

A SUSTAINABLE, HIGH- QUALITY DEVELOPMENT

3.64 I conclude that the Appeal Scheme has been design-led since its inception, in consultation with the design review panel, GLA and Council design officer and is fully in accordance with the economic, social and environmental objectives of the NPPF.

3.65 The Appeal Scheme will be of a high-quality and is designed to incorporate large-scale infrastructure to last for future generations of the local community, including a new school facility, community floorspace, childcare floorspace, retail and flexible office floorspace, and high-quality housing with a mix of tenures and sizes to meet the needs of future occupiers.

SUMMARY OF RFR1

3.66 The evidence of the Appellant's witnesses concludes that the height, scale and massing of the Appeal Scheme is not excessive, therefore the scheme does not represent a discordant and visually obtrusive form of development and does not fail to respect the local context and established pattern of development to the detriment to the character and appearance of the area and the visual amenity of adjoining residential occupiers. On the contrary, Mr Stewart considers the Appeal Scheme will bring something positive to the area. I therefore conclude the scheme complies with Policies D3, D4, D9, CS5 and DM05, insofar as I consider S38(5) applies to the local adopted policies.

3.67 The Appeal Scheme accords with all the policies in the development plan except the tall building elements of Policy CS5 and DM05, to the extent that they provide that tall buildings will not be acceptable outside the specific locations that are set out in Policy CS5. Importantly, however, it is clear that the buildings satisfy all the design criteria that apply to tall buildings and complies with Policy D9 which is the precedent policy as set out in S38(5). The proposals accord with every other development plan policy.

3.68 I conclude accordingly that the Appeal Scheme provides a high-quality and sustainable development, that represents an appropriate form of development on the NLBP site. I consider that none of the breaches of policy alleged in RfR1 are accurate and my opinion is that the development complies with each of the policies mentioned in RfR1 and with the development plan as a whole. It is clear in my view that there are no material considerations which indicate otherwise which would warrant an alternative determination of this appeal.

3.69 If, contrary to my evidence, the Inspector was to conclude that Appeal Scheme did not accord with the development plan when read as a whole, I consider that there are a wealth of material considerations, including significant planning and public benefits, which would nonetheless justify the grant of planning permission, which I deal with in the next section.

3.70 On this basis, the Appeal should be allowed.

4 Material Considerations

- 4.1 I have already explained my view that the Appeal Scheme accords with the development plan when taken as a whole and therefore on that basis, and having regard to Section 38(5) and 38(6), the Appeal should be allowed.
- 4.2 Turning to Paragraphs 2, 11(c), 12 and 47 of the NPPF, if the Inspector is minded to take the view that the Appeal Scheme conflicts with the development plan, there are material considerations including numerous substantial benefits which in my view should be afforded degrees of weight such that they would allow the plan not to be followed, and permission granted.
- 4.3 In attributing weight to each material consideration and benefit, I have used the following gradations of weight which is my judgement based upon the merits of the Appeal Scheme as well as the site and planning policy context:
- 4.3.1 Substantial
 - 4.3.2 Significant
 - 4.3.3 Moderate
 - 4.3.4 Limited

THE ORIGINAL SCHEME

- 4.4 As set out in some detail in the Appellant's Statement of Case and at Para 2.4 above, the Site benefits from planning permission for wholesale redevelopment which was originally granted on appeal and has since been varied.
- 4.5 The Secretary of State, in February 2020 agreed with the Inspector and Council officers and allowed the appeal granting the Appeal Scheme. I attribute substantial weight to the Secretary of State's consideration to the character and area of the site and surrounding area, and the proposed layout of the Original Scheme.
- 4.6 I set out below, the key points and conclusions made by the Inspector and Secretary of State in the Original Appeal Decision.
- 4.7 I strongly agree with the Secretary of State and Inspector's view that "*for the reasons given at IR64, he [SoS] agrees with the Inspector that, as the existing character of the site is entirely different to the surrounding area, it does not contribute to the character and appearance of the area*" (Paragraph 22, Page 4, **CD8.005**).
- 4.8 I strongly agree with the Secretary of State and Inspector's consideration to the proposed site layout, in that "*the taller buildings would be located away from existing development, in the interior of the site (IR66, IR68) or adjacent to the railway lines (IR65) that provide a buffer to existing development; while the buildings proposed closest to existing development would be three storeys (IR65, IR66). He [SoS] also notes that open space would be retained between blocks (IR67). For these reasons, he [SoS] agrees with the Inspector that the proposal is appropriate to the current character of the site (IR65), and that the taller buildings would not be visually obtrusive (IR68) to those living around the site.*" (Paragraph 22, Page 4 and 5, **CD8.005**).
- 4.9 I strongly agree with the Secretary of State and Inspector that, in relation to the impact of the proposal outside the immediate surroundings "*while the taller buildings would be visible from locations in the surrounding area, they would primarily be part of the background cityscape, a characteristic of London*

even in the suburbs.” (Paragraph 23, Page 5, CD8.005)

- 4.10 I strongly agree with the design rationale which follows through from the Original Scheme and which the Secretary of State agreed with the Inspector is saying “*the design approach is appropriate to the context of the site and its surroundings are the scale and massing of the development are not excessive*” and “*all elements of the proposed development are respectful of their surroundings and have been carefully designed and masterplanned...*”
- 4.11 The Appeal Scheme was designed in collaboration with Council Officers with significant regard to the Original Scheme and the Secretary of State and Inspector’s deliberations.

THE EXISTING SCHEME

- 4.12 I attribute substantial weight to the position of the fallback Existing Scheme as an implemented and extant permission.

NATIONAL PLANNING POLICY FRAMEWORK

- 4.13 Several aspects of the NPPF are material to the determination of this appeal which I have set out at **Appendix 3** and afford substantial weight.
- 4.14 Paragraph 11 requires decision-makers to apply a presumption in favour of sustainable development. The implications for decision taking are discussed in parts (c) and (d) of Paragraph 11 as follows.

c) approving development proposals that accord with an up-to-date development plan without delay: or

d) where there are no relevant development policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 4.15 The development plan consists of the local Core Strategy and DMPD (both dated 2012), and the London Plan (2021). As I set out earlier in these Proofs which I will not repeat in detail here, I contend that the tall building element of Policy CS5 in the Core Strategy and DM05 of the DMPD are out-of-date and do not align with London Plan Policy D9 and the Master Brewer Judgement. The main area of change between the Appeal Scheme and the Original Scheme lies in the additional storeys to some of the buildings proposed.
- 4.16 In line with Part (c) of Paragraph 11 of the NPPF, the Appeal Scheme accords with the most up-to-date policies in the development plan.
- 4.17 Paragraph 12 of the Framework sets out that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Local planning authorities 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. This is furthered by Paragraph 47 which states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 4.18 I consider the benefits of the Appeal Scheme latterly in this Proof alongside my assessment that, when taken cumulatively, they significantly outweigh any perceived policy conflict of the Appeal Scheme which have been identified by the Council in their reason for refusal.

EMERGING LOCAL PLAN REVIEW

- 4.19 Lending further weight to the Appeal Scheme is the emerging Local Plan Review which has been submitted to the Secretary of State for Examination. This Plan has been through two rounds of public consultation. As the draft Local Plan Review is now in Examination in Public, all hearing sessions have concluded and consultation on Main Modifications is expected in early 2024 with adoption in Summer 2024
- 4.20 Paragraph 48 of the Framework assesses the weight to be given to relevant policies in emerging plans, stating that decision makers may give weight according to:
- a. "the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
 - b. the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
 - c. the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."*
- 4.21 I consider these policies to be at an advance stage having been through Examination and the Inspector has recommended Main Modifications. The Council are anticipating adoption in Summer 2024. Therefore, I afford significant weight to the relevant policies contained within the draft Local Plan Review.
- 4.22 I have undertaken an assessment of all relevant policies in the draft Local Plan Review which is set out in **Appendix 4**, however I deal with those emerging policies which I consider to be of particular relevance below.

POLICY CDH04 (TALL BUILDINGS) AND THE DRAFT SITE ALLOCATION

- 4.23 Emerging Policy CDH04 lends further support to the appeal given its focus on locations where tall buildings may be appropriate. The Council's position on Policy CDH04 was not clear at the time of the resolution to refuse the planning application in January 2023.
- 4.24 The emerging policy considers suitable locations for tall buildings (8-14 storeys) within the Borough. My firm submitted various representations and appeared at the Examination in Public Hearing session on this matter to discuss the NLBP site as a suitable location for tall buildings which was not given proper weight by the Council in drafting the policy. I remain firm that the Secretary of State decision on the Original Scheme, allowing tall buildings at NLBP is a material consideration to be given substantial weight in determining if the additional height to some of the proposed buildings is acceptable. The Existing Scheme has commenced and is a legitimate fallback position where tall buildings will be built.
- 4.25 Policy CDH04 is listed in the Inspectors' Interim Findings and Next Steps letter dated (EXAM 143, **CD6.002**) at Paragraph 7 as one of a handful of policies which need to be recognised as strategic policies rather than non-strategic policies.
- 4.26 Paragraph 31 of Examination Document 143 states:

In terms of the approach to tall buildings in Policy CDH04, modifications are required for effectiveness so that it is evident how a decision maker should react to development proposals for tall buildings. This includes clarification that sites outside the locations specified as potentially suitable for tall buildings will

not be refused as a matter of principle but rather assessed against specified development management criteria. The MM should also include the necessary removal of references to very tall buildings as such a sub-categorisation is not justified by sufficient evidence. It should also delete New Southgate Opportunity Area from the identified list of suitable locations for tall buildings as it has not been supported by substantive evidence. The changes in the MM should also seek to align the policy and Map 4 with the evidence of appropriate locations in the Tall Buildings Study Update and clarify that Annex 1 includes site allocations that are identified as potentially appropriate for tall buildings.

- 4.27 The Inspector requested clarification that sites outside the locations specified as potentially suitable for tall buildings will not be refused as a matter of principle and will be assessed against specified development management criteria.
- 4.28 Further to the above, and in relation to emerging Policy CDH04 of the draft Local Plan Review, at Page 4 of the Examination Document 79 of the Local Plan Review Examination (**CD6.003**) Barnet Council confirmed that emerging Policy CDH04 accords with the Master Brewer Judgement, stating that Policy CDH04(d) “*makes clear that all proposals for tall or very tall buildings (therefore irrespective of their location), need to be assessed in accordance with the impacts outlined in London Plan Policy D9 Part C as well as other relevant Local Plan policies*”.
- 4.29 The policy direction confirmed by the Council above, further highlights that Policy CS05 is out-of-date and conflicts with Policy D9. Policy D9 is materially different to Policy CS05 which the Council has acknowledged by the wording of its emerging policy which is far more in line with Policy D9 than Policy CS05. This highlights that the Council could not adopt a policy worded like Policy CS05 now due to conflict with Policy D9 which should be given precedence.
- 4.30 Part (a), (b) and (c) are not relevant to the Appeal Scheme.
- 4.31 The SPD referred to in Part (d) has not been published at the time of writing these Proofs.
- 4.32 Part (e) sets out the criteria that the Council intend to use when assessing tall buildings in line with Policy D9 (visual, functional, environmental and cumulative impacts). Particular attention will be given to six criteria which I have assessed against the Appeal Scheme in **Appendix 1**.
- 4.33 In line with emerging Policy CDH04, I consider the Appeal Scheme complies with the six criteria set out at part (e) of the policy. I support the findings of Mr Twomey and Mr Stewart that the Appeal Scheme that the scheme is well-designed and is appropriate to the site and setting in respect of height, scale and massing.

ANNEX 1 – SCHEDULE OF SITE PROPOSALS

- 4.34 The examination document 143 also seeks a minor modification to the draft site allocation for the NLBP Site (Site No.2). The Inspector requests the following at paragraph 132:

Site No. 2 (North London Business Park): The MM should include changes to provide certainty that the indicative residential capacity contributing to housing supply in the Plan is 1,350 dwellings based on the extant hybrid planning permission (15/07932/OUT). The MM should also confirm that this is a minimum and that the development timeframe is 0–5 years for 360 dwellings consistent with the detailed element of the permission, with the remainder in the developable supply. Furthermore, the MM should be 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. In addition, the MM should also clarify the need for development to include greenspaces, pocket parks, walking and cycling routes and

linkages.

- 4.35 As highlighted above, the Inspector agrees with the representations made at the hearing that the 1,350 residential capacity figure is a minimum. In the Council's Statement of Case, the Council do not cite any conflict with the emerging local plan policies in terms of the principle of locating tall buildings in this location. The Council only allege that the Appeal Scheme would cause harm due to a failure to successfully integrate into the existing urban fabric.
- 4.36 With regards to the requested modification that any future application that seeks to uplift residential density demonstrates acceptability through a design-led approach in accordance with Policy D3. This has been complied with in respect of the Appeal Scheme, as demonstrated at **Appendix 1**.
- 4.37 Further, the Appeal Scheme provides high-quality greenspaces, pocket parks, walking and cycling routes and linkages in line with the Inspector's recommendations for the draft site allocation.

SCHEME BENEFITS

- 4.38 I have already explained how the Appeal Scheme accords with the development plan as a whole and that the following benefits lend further support to the Appeal Scheme. Should the Inspector consider there is conflict with the development plan, I consider these benefits outweigh any perceived conflict.

CONTRIBUTION TO HOUSING DELIVERY

- 4.38.1 The provision of 2,419 new homes is a major benefit. This will contribute to meeting London's dire housing shortage, to which I attribute substantial weight.
- 4.38.2 In determining the Original Scheme, the SoS agreed with the Inspector (Paragraph 27, Page 5, **CD4.001**) that the provision of 1,350 market and affordable homes represented a clear benefit and attracted significant weight in favour of the proposal. I consider that as the Appeal Scheme provides a substantial increase in the supply and mix of new homes, compared to the Original Scheme, this is afforded substantial weight.

CONTRIBUTION TO AFFORDABLE HOUSING DELIVERY

- 4.38.3 I attribute substantial weight to the proposed affordable housing offer representing an uplift of 377 units above the Original and Existing Scheme. The proposed affordable housing offer is 95 units in Phase 1, comprised of 38 London Affordable Rent units and 57 shared ownership units, being the maximum viable amount that can be delivered in Phase 1, which is agreed between Appellant and the Council's advisor as a result of interrogation of the Appellant's viability appraisal, in line with local Policy CS4 and London Plan Policy H5. The overall proposed affordable housing offer of 512 units (21% in total) represents 35% of the uplift in housing across the Appeal Scheme. The overall affordable housing offer comprises 246 Affordable Rent units and 266 Shared Ownership units and is the maximum viable amount that can be delivered on the Site.
- 4.38.4 As highlighted in the Broadway Retail Park decision (**CD8.003**) at Paragraph 76 of the Inspector's Report to the Secretary of State, only 210 affordable homes are completed each year against the DLP requirement of 760, which represents a significantly undersupply. The report found in the most recent year only 142 units were delivered, a shortfall of 564 units in a single year. This is in the context of the Inspector's finding of Barnet being the 13th least affordable local authority in England and Wales. The Inspector goes on to state that "*2,014 households are housed in temporary accommodation in the borough and 3,000 households on the housing list, resulting in an immediate need for new housing. The limited supply of land*

for new housing in London was recognised during the production of the London Plan, where the housing capacity was downgraded given a lack of capacity of potentially suitable sites".

- 4.38.5 The Appeal site represents an available, suitable site in London that can substantially contribute to local housing need and more specifically, and importantly, affordable housing need. The 512 proposed affordable housing units represent a substantial number of homes that would overcome the most recent years undersupply.

MAKING EFFECTIVE USE OF LAND

- 4.38.6 The delivery of 2,419 homes in this location will also make the best use of an available, deliverable, brownfield site in LB Barnet which is a Local Authority constrained by Green Belt land in the north-west of the Borough. Sites of this size and layout are rare in this part of London, so development on this type of site should be favoured to ensure that the Green Belt elsewhere in the Borough can be protected, to which I attribute substantial weight.
- 4.38.7 Paragraph 124(c) of the NPPF states that planning decisions should 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*".

NEW 5FE SECONDARY SCHOOL

- 4.38.8 The provision of a new 5FE secondary school to provide a long-term home to St Andrew the Apostle School is another major benefit. The School provides a valuable service to the local and wider community from temporary buildings and achieves extremely high rates of success. By providing a brand-new state of the art facility, this benefit can be provided to a wider number of pupils in the local community, to which I attribute moderate weight.

PROVISION OF NEW FLEXIBLE OFFICE FLOORSPACE

- 4.38.9 I attribute significant weight to the provision of over 2,552sqm of flexible office floorspace which is more reflective of local need rather than the existing Business Park which has never been fully occupied. It is intended that the units will offer flexible accommodation for start-up businesses in line with the Comer Innovation Centre which is the only successful employment generating building on the existing site. Whilst this is a reduction of approximately 30,000sqm of Class E (office) floorspace, there will in fact be an increase in employment generated through the proposals and, alongside the facilitation of a major residential-led scheme and brand new school, which will be generated on the site, there would also be a substantial number of jobs created during the construction period which will be a major benefit to the local public.

PROVISION OF NEW COMMUNITY, CHILDCARE AND RETAIL FLOORSPACE

- 4.38.10 An uplift of 1,971 sqm of non-residential floorspace including a 1,398sqm increase in community floorspace, 55sqm increase in retail floorspace and a 660sqm increase in childcare floorspace. The total amount of proposed community floorspace is 1,908sqm, which will provide valuable facilities for residents on site but also to the wider community in the surrounding areas. These units will not detract from nearby retail parades but will serve the new community to be created and the wider community. I attribute substantial weight to the delivery of an additional non-residential floorspace compared with the Original and Existing Scheme.

PROVISION OF NEW PUBLIC OPEN SPACE

- 4.38.11 I attribute significant weight to the provision of over 20,000sqm of usable, public open space is a major benefit. The site does not currently offer any usable public open space, whilst this scheme would deliver three large parkland areas which will not be of benefit to future residents, but also the wider public.

PROVISION OF NEW SPORTS FACILITIES

- 4.38.12 The scheme will deliver high quality sports facilities including an all-weather as well as three MUGA pitches on the roof of the School building. These will be for educational use during school hours, however will be made available to the wider community outside of these hours in the evenings, at the weekends and in the holidays which will be a major benefit for the public. I attribute significant weight to this.

PROVISION OF NEW PLAYSACE

- 4.38.13 I attribute significant weight to the provision of a range of dedicated playspace which children of the development also the wider community will be able to use is a major benefit.

CREATING A NEW, SAFE, LONDON COMMUNITY

- 4.38.14 The bringing forward of well-designed buildings and spaces to create a new, safe community of London residents, as corroborated by both Des Twomey and Peter Stewart, and a representing design-led approach following refinement in line with design review panel and urban design officer guidance, delivering a significant enhancement to the low-quality condition of many buildings on site at present, to which I attribute significant weight.

SUBSTANTIAL CIL CONTRIBUTIONS

- 4.38.15 I attribute at least significant weight to the substantial CIL contribution which will likely be upward of £60 million, with an uplift of £34 million against the Existing Scheme. This will be a significant benefit due to the funding towards local infrastructure through LB Barnet CIL and Mayoral CIL.

SUBSTANTIAL DECONTAMINATION OF LAND

- 4.38.16 The redevelopment would necessitate the substantial decontamination of the land. Due to the historic use of the site and the WWII air raid shelters which are located on site, there is a possibility that radium and other potential contaminants across the site. There would be the residual benefit of clearing the site of contamination should this be found during the construction process which would be a major benefit to the wider public. I attribute this substantial weight.
- 4.38.17 As set out above, the NPPF Paragraph 124(c) directs that decisions should give substantial weight to using suitable brownfield land, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.

FLOOD ATTENUATION IMPROVEMENTS

- 4.38.18 The scheme includes improvements to flood attenuation through the reconfiguration of the pond which will create better flood defence for the site, but also ensure that there are no adverse impacts on the wider area as a result of the development which is a public benefit. I attribute moderate weight to this.

TREE PLANTING

4.38.19 The scheme will deliver a 74% increase in trees across the site which will be a major benefit to the public as it will assist in screening the development for those existing residents who live around the site. The additional planting in the new public open spaces will create a high quality public realm which will be a major benefit for all users of the site including the public, to which I attribute significant weight.

URBAN GREENING

4.38.20 The urban greening of a site which currently offers limited greening with a score of 0.41 Urban Greening Factor, exceeding the London Plan standard for a development of this type to which I attribute significant weight.

SUBSTANTIAL HIGHWAYS IMPROVEMENTS

4.38.21 I attribute moderate weight to the substantial highways improvements proposed through the redevelopment including permeability through the site and rationalising the entrance to the site through local junction upgrades and improvements at Brunswick Park Road and signalisation. The permeability will be of benefit for the wider public in terms of being able to walk through the site which has previously been shut off to the public, allowing for more direct access through.

NEW HOMES BONUS

4.38.22 I attribute moderate weight to the Council benefitting from payment of a New Homes Bonus, the grant paid by central government to local councils to reflect and incentivise housing growth in the areas, based on the amount of extra Council Tax revenue raised for new build homes with an extra payment for providing affordable homes.

CONSTRUCTION AND OPERATIONAL EMPLOYMENT AND LOCAL SPEND

4.38.23 Social and economic benefits through both the construction and operational phases of the development including construction jobs, apprenticeships and local spend during the construction phase to which I attribute significant weight having regard to Paragraph 82 of the NPPF which places significant weight on the need to support economic growth and productivity. I attribute moderate weight to this.

CONCLUSION OF MATERIAL CONSIDERATIONS

- 4.39 Overall, the Appeal Scheme proposes to regenerate and enhance a largely vacant, available, brownfield site in London, within an area accepted in principle at all levels for housing redevelopment and identified as suitable for tall buildings by an Inspector and Secretary of State previously. The Council also accept that there is no in principle objection to the Appeal Scheme.
- 4.40 It is my assessment that there is no policy or actual harm weighing against the proposal. As such, I deem the planning balance weighs in favour of the development and permission should therefore be granted.
- 4.41 Should the Inspector consider the Appeal Scheme conflicts with the development plan, I consider the above material considerations are substantial benefits which would outweigh any perceived conflict.

5 Third Party Representations

- 5.1 There have been a number of third-party representations to the Appeal which raise several matters associated with the Appeal Scheme. These representations include matters regarding height, scale and massing which form part of the matters disputed by the Council. These are responded to in the evidence of Mr Twomey and Mr Stewart.
- 5.2 The Statement of Common Ground confirms that many of the perceived concerns raised by third party representors are not matters of dispute between the Appellant and the Council.
- 5.3 I set out the Appellant's response to the remaining representations in **Appendix 5** to this Proof which respond to matters raised.

6 Summary and Conclusions

- 6.1 Section 38(6) of the 2004 Act provides that the Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.2 Section 38(5) of the Planning and Compulsory Purchase Act 2004 applies to Policies CS5, DM05 and D9 stated in RfR1.
- 6.3 None of the alleged harm contained in RfR1 are established as demonstrated above and especially through the evidence of Mr Twomey and Mr Stewart. The development does not conflict, but complies overall, with the development plan and I apply S38(5) in my assessment of this.
- 6.4 A Section 106 Agreement is to be agreed prior to the end of this Appeal.
- 6.5 Planning permission should therefore be granted and the appeal allowed under Section 38(6) and in line with paragraph 11(c) of the NPPF unless material considerations indicate otherwise.
- 6.6 Material considerations in this instance clearly do not indicate otherwise.
- 6.7 On the contrary, the many substantial benefits of the Appeal Scheme are material considerations which further support the grant of planning permission.
- 6.8 Even assuming (contrary to the Appellant's case) that there are policy breaches and a failure to comply with the development when taken as a whole, the benefits of the scheme would outweigh any perceived policy conflicts.

Daniel Watney

FOR MORE INFORMATION PLEASE CONTACT US

T: +44 (0)20 3077 3400
E: info@danielwatney.co.uk

Daniel Watney LLP
165 Fleet Street, London EC4A 2DW, United Kingdom
www.danielwatney.co.uk