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Our Ref: WFNP Initial Examination Response

Dear Ms Kingaby

West Finchley Neighbourhood Plan Examination

Thank you for considering the West Finchley Neighbourhood Plan and setting out initial questions for the West Finchley Neighbourhood Forum to respond to. It is noted that due to the coronavirus pandemic, these questions were answered by the Forum Executive Committee on behalf of the Forum.

The Council has considered both your questions and the Forum Executive's responses to these and have set out our response in the table below. The Council appreciates the hard work that the Forum have put into the Plan as well as considering your initial questions to help clarify the Plan. We have set out where we have either agreed with the changes suggested or have additional amendments that we feel would help further clarify the Plan.

Yours sincerely



Nick Lynch

Planning Policy Manager

Response to Examiner's initial questions and the Forum Executive's response seeking further clarification on the West Finchley Neighbourhood Plan Table

Examiner Comments	Forum Executive Response	LBB Barnet Response
<p>As the LBB states, permitted development rights are a key issue, which a Neighbourhood Plan is unable to withdraw. I note that permitted development rights are mentioned in paragraph 5.5, and included in the Glossary, but the LBB states that the Plan should recognise the reality of these rights throughout the document. I request guidance from the Forum, in liaison with LBB ideally, as to whether more references should be added, or policies adjusted; and if so, where exactly within the Plan.</p>	<p>The Forum Executive felt that the Plan had taken on board this comment in the revisions post the regulation 14 consultation.</p>	<p>The Council suggests the following amendments:</p> <p>Policy RD1 – modification to the policy is required to take into account it is only for developments that are not under pd</p> <p>Policy RD2 – this should recognise that there are a range of works which can aid security to be undertaken without the need to make a planning application</p> <p>Policy RD4 - planning permission is not required for new driveways of any size if permeable surfacing is used. The Council still questions the merits of this policy and recommends its removal</p> <p>More references to PD rights should also be noted throughout the Plan particularly within Chapter 5 – Residential Development in relation to policies listed.</p>
<p>In addition, the Heritage and Character Assessment, prepared as the Neighbourhood Plan was developing, puts forward character design principles in paragraph 5.4. The last principle suggests that an Article 4 direction might be applied to restrict some permitted development rights, and prevent harmful incremental change to the streetscene.</p>	<p>The Plan does not propose any request for Article 4 directions and the response from LBB implies that they would not consider any, especially regarding the conversion of front gardens into driveways. The Forum Executive therefore sees RD4 as advisory in regard to permitted development. The Forum</p>	<p>As an Article 4 Direction is not proposed by the Council, the merits of Policy RD4 remain questionable.</p>

<p>Although an Article 4 direction would be a measure for adoption and application by LBB, not West Finchley Neighbourhood Forum, could it be mentioned in the Plan as a potential future mechanism to secure high design standards when properties are altered and/or enlarged? I note that LBB, in its Regulation 16 consultation response, pointed out that the development of driveways was covered by permitted development rights. Without an Article 4 Direction, Policy RD4 would not be effective. It would be helpful to know whether the Forum and LBB would be willing to consider (or have already considered) an investigation into the potential for future use of an Article 4 Direction in West Finchley; and whether such an approach should be referenced in the Plan?</p>	<p>Executive therefore suggests that RD4 be amended as follows:</p> <p><i>'Where planning applications are required which include proposals involving the creation of a new driveway to the front of existing residential properties plans should seek to minimise the use of impermeable materials. Some planting should be retained, and the cumulative effect of adjacent driveways should be considered, particularly in relation to water runoff.'</i></p> <p>The Forum Executive also suggests that the first sentence in 5.12 might be amended to read:</p> <p><i>While the Neighbourhood Plan understands the desire to create front driveways under permitted development, it supports well-designed driveways that do not increase run-off, and thereby reduce flood risk, through use of permeable materials (such as gravel or permeable paving) and retain an element of planting. This reduces surface water run-off rates in the Neighbourhood Plan Area. Planting has an added benefit of reducing the impact of new driveways on the character of the Neighbourhood Plan Area. The Neighbourhood Plan Design Guide provides further detail on the layout of new residential development including for driveways and planting.</i></p>	
<p>At the Regulation 14 stage, LBB suggested that aspirations for funds from the</p>	<p>No sites for development have been identified in the Neighbourhood Plan and the</p>	<p>Development within the Neighbourhood Area is still liable for CIL payments. It is therefore</p>

<p>Community Infrastructure Levy (CIL) – how funding might be utilised in West Finchley – should be set out. LBB highlighted schemes in Policies S2 and T3, concerned with improvements sought to the public realm and to the underground station, as having potential for future CIL funding. I consider that reference to CIL in the Neighbourhood Plan would provide clarity, in order to demonstrate that consideration has been given to the manner in which its policies and proposals could be implemented. The West Finchley Heritage and Character Assessment made a similar recommendation.</p>	<p>area is already densely developed. The Forum Executive therefore feels that it is unlikely that there will be development in the area which will generate CIL funds, which is why CIL was not mentioned in the Plan. Given the nature and scale of the area and the lack of development sites we believe that specifying uses of CIL money at this stage is premature.</p>	<p>still suggested that public realm improvements in Policy S2 are amended to be CIL aspirations.</p>
<p>One way to address the above three questions could be the addition of a new section at the end of the Plan on Plan Implementation, which would make a commitment to delivering the Plan’s policies and proposals. This could address the matters of future Article 4 Directions, CIL priorities and funds, and Section 106 obligations, and state the need to monitor progress on achieving the Plan’s Vision and Objectives</p>	<p>The Forum Executive gave considerable consideration to the suggestion of adding an implementation chapter but decided that given the size and nature of the Neighbourhood Area this was not needed. The Forum is in the process of applying for redesignation and it is through the Forum, working with the West Finchley Residents’ Association, that the Vision and Objectives will be monitored and any proposals concerning CIL monies would be discussed.</p>	<p>Given that no referendum can take place this year the Council has received the Forum’s application for re-designation and will seek to determine it by October 2020. Upon successful adoption of a Neighbourhood Plan it is the Council’s understanding that a Neighbourhood Forum will cease to have any continuing role.</p>
<p>My role is to examine the submitted Neighbourhood Plan, and not the evidential documents which accompany it. Therefore, I shall not be examining the West Finchley Neighbourhood Plan Design Guide. The Design Guide will not have the same status as adopted neighbourhood plans, or LBB’s supplementary planning documents. The</p>	<p>The Forum Executive believes that Policy RD1 as drafted does not overstate the status of the Design Guide. The policy only requires development proposals to have ‘due regard’ to the Design Guide. Having ‘due regard’ is not considered to be an onerous requirement given that one reasonable outcome of having had ‘due regard’ is an alternative approach to</p>	<p>As highlighted in the Council’s Reg 16 response the proportionate statement is not a local or national requirement and the deletion of this sentence would clarify the status of the Design Guide.</p>

<p>latter may carry significant weight in development management decision-making. I agree with LBB that Policy RD1 can only encourage applicants to have due regard for the Design Guide; it cannot require compliance. It would be helpful if the Forum would advise on modifications which might be made to the Neighbourhood Plan, notably Policy RD1, so that the status of the Design Guide is not over-stated, and so that the Plan has regard for national planning policy.</p>	<p>that set out within the Design Guide. In accordance with National Planning Policy Framework (paragraph 125), Policy RD1 and the supporting Design Guide document provide a clear design vision and set of expectations, so that applicants have as much certainty as possible about what is likely to be acceptable.</p>	
<p>The Design Guide is shown on the Contents page of the Plan after the Proposals Map, and separately from the subsequent "Supporting Documents". Table 1, on Pages 15 and 16, lists relevant development plan documents and "material considerations". Clearly, the NPPF and NPPG are not development plan documents, but they are "material considerations", and Neighbourhood Plans must have regard for national policy. LBB's adopted supplementary planning documents and the emerging Local Plan are appropriately included in the table. However, I am concerned that the West Finchley Neighbourhood Plan Design Guide (neither a neighbourhood plan nor a LBB supplementary planning document) is also shown. I consider that Page 16 of the Plan should be modified to remove the reference to West Finchley Neighbourhood Plan Design Guide.</p>	<p>The Forum Executive does not understand the point about the position of the Design Guide on the Contents page. It is clearly a supporting document to the Neighbourhood Plan and is specifically referred to as 'Supporting Document B'. In our view the decision-maker can be in no doubt that the Design Guide is a technical supporting document and does not form part of the statutory development plan.</p> <p>With regard to material planning considerations, the Planning Practice Guidance (PPG) states (ID: 21b-008):</p> <p><i>"A material planning consideration is one which is relevant to making the planning decision in question (eg whether to grant or refuse an application for planning permission).</i></p> <p><i>The scope of what can constitute a material consideration is very wide and so the courts</i></p>	<p>The Council agrees with the Examiner. To avoid any misinterpretation the reference to the Design Guide should be removed from Table 1.</p>

	<p><i>often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.”</i></p> <p>Within the context of the PPG, the Design Guide is demonstrably a material planning consideration given that it has been prepared by the local community and sets out local guidance on fundamental factors involved in land-use planning i.e. design, external appearance, and access. On this basis, the Forum Executive believes that reference to the Design Guide should remain within Table 1.</p> <p>However, for the avoidance of any confusion over the status of the Design Guide the ‘Date of adoption/emerging timetable’ column in the bottom row of Table 1 could be amended as follows:</p> <p><i>“This will be published alongside the Neighbourhood Plan (as a support document B)”.</i></p>	
<p>Should Policy RD2 be modified, as minor and household planning applications are not required by national or local planning policy</p>	<p>The Forum Executive would agree to remove the last sentence of the first paragraph of RD2, namely: ‘When submitting applications related to new or altered dwellings, applicants should include supporting</p>	<p>The Council supports the removal of the sentence.</p>

<p>to submit supporting evidence demonstrating resilience to crime?</p>	<p>justification demonstrating how the proposals are resilient to crime.'</p>	
<p>Policy RD5: Basement development - expects applications to be accompanied by a number of studies/assessments/documents which, according to LBB, does not accord with the Council's existing approach and would appear quite onerous. LBB recommends that Policy RD5 should be revised, partly to include considerations of viability. Henry Planning Limited also objected to the requirement for basement impact assessments, and argued that the Building Regulations already ensure that basements are built to required standards. Thames Water requested that the policy be strengthened because of the need to avoid flooding. Would the Forum, ideally in liaison with LBB, consider how the policy can be modified with revised wording in order to meet the Basic Conditions?</p>	<p>The Forum Executive is strongly of the view that the topology of the area sloping as it does down to the Dollis Brook and the geology, evidenced by the frequent eruption of springs, poses particular issues regarding the addition of basements and that therefore special care should be taken in planning and undertaking such works. The Forum Executive therefore accepts Thames Water's proposal to strengthen policy RD5 by, in their wording:</p> <p><i>“requiring all basement development to incorporate a positive pumped device or other suitable flood prevention device to avoid the risk of sewage backflows which can cause sewer flooding.”</i></p> <p>This could be supported by a paragraph provided by Thames Water explaining that:</p> <p><i>“This is because the wastewater network may surcharge to ground level during storm conditions. Such measures are required in order to comply with the NPPF which highlights the need to avoid flooding and also in the interests of good building practise as recognised in Part H of the Building Regulations.”</i></p>	<p>The Council supports the addition to the Policy as proposed by Thames Water. However, we are still concerned with the expectation of accompanied documents to proposed basements.</p> <p>As stated in our Regulation 14 and 16 response to the Plan, the requirements of policy RD5 i.e. a Basement Impact Assessment, a geological and hydrological report, a detailed engineering study, a basement construction method statement and a monitoring report, would appear quite onerous with financial implications, particularly with the lack of specific evidence to support this policy. This does not accord with the Council's existing approach on basement development. The Council's Local Plan Reg 18 sets out specific policy on Basements (Policy CDH06). It is recommended that Policy RD5 is revised to be more in step with the Council's approach and to reconsider the issues of viability for basement proposals. This includes the resources of the local planning authority to assess this additional information as part of the planning decision process. This entails the removal of the requirement of a Basement Impact Assessment from the policy.</p>

<p>Policy A1 – Local Parade of Shops states that “The row of shops is designated as a Local Parade of Shops.” The Barnet Draft Local Plan (Reg 18), January 2020, advises that the Borough contains 50 local parades, and emerging Policy TOW02 aims to protect A1 retail use within all parades and isolated shops, subject to specific criteria. I am unable to see reference to the row of shops on Nether Street as a designated parade in either the Core Strategy or Development Management Policies document. LBB commented that Policy A1 is too restrictive and inflexible, and should have greater consideration for the approach in Policy TOW02. The Forum’s views on this would be helpful.</p>	<p>The Forum Executive thanks the Examiner for pointing out that the parade of shops by West Finchley station is not designated by LBB. It is not clear as to why this should be so. The value of the shops to local residents was established in the first consultation and this has remained unchanged in subsequent consultations. It is unclear to the Forum Executive why/how LBB feels that the proposed policy A1 conflicts with policy TOW02 b and c in the emerging LBB Local Plan as the Forum Executive believes that it complies.</p>	<p>The Local Plan does not list all local parades in Barnet – it refers to over 50 local parades. So in principle the Plan values the contribution of local parades and therefore seeks to protect such uses.</p> <p>Change of use to non A Class uses in the retail units along the parade would only be acceptable in exceptional circumstances, where the new use delivers a greater community benefit than the existing use.</p> <p>Our position is that Policy A1 by referring to ‘exceptional circumstances’ remains restrictive and inflexible. It also raises the question of how to measure ‘community benefit’.</p>
<p>Should paragraph 6.10 be extended to include a reference to the impact of development on water and waste water, and give a link to Thames Water’s website, as the agency proposed?</p>	<p>Having seen the response from Thames Water in full, the Forum Executive would agree to accept the comments from Thames Water and insert in the supporting paragraphs to Policy A5:</p> <p><i>“Developers need to consider the net increase in water and waste water demand to serve their developments and also any impact the development may have off site further down the network, if no/low water pressure and internal/external sewage flooding of property is to be avoided.</i></p> <p><i>Thames Water encourages developers to use their free pre-planning service https://www.thameswater.co.uk/preplanning).</i></p>	<p>Additional supporting paragraphs to Policy A5 are supported.</p>

	<p><i>This service can tell developers at an early stage if there will be capacity in the water and/or wastewater networks to serve their development, or what Thames Water do if it doesn't.</i></p> <p><i>The developer can then submit this as evidence to support a planning application and Thames Water can prepare to serve the new development at the point of need, helping avoid delays to housing delivery programmes."</i></p>	
<p>Transport for London (TfL) was pleased to note that its comments on an earlier version of the Plan had been taken into account. However, it commented that there remains ambiguity about the approach to parking, and TfL seek a much stronger commitment to encourage alternatives to car use, so as to facilitate the efficient movement of people, rather than traffic. Support for measures such as controlled parking zones may be necessary, it was suggested, to enable existing residents to park reliably and safely near their homes. What is the Forum's view, and should parking controls be mentioned as a future way forward?</p>	<p>Throughout the development of the Neighbourhood Plan when parking and pavement parking issues have arisen, the Forum has been made aware that parking regulations are not within the remit of the Neighbourhood Plan. Neighbourhood Plans do not have the power to designate CPZs or other parking restrictions. Moreover, the existence of a CPZ does not guarantee that residents will be able to park close to their home and, as it increases costs, a CPZ may stimulate further conversion of front gardens into driveways. Throughout the consultations within the neighbourhood, the issue of parking and CPZs is one in which residents' opinions are fluid and divided. The Forum Executive has therefore sought to find a compromise position for the Plan as it was guided by local residents. We would be happy to emphasise a commitment to supporting active travel and to add support for Dial-a-Ride and other similar services.</p>	<p>Provision of additional text demonstrating a commitment to encourage alternatives to car use is welcomed.</p>

<p>LBB commented that the provision of electric charging points (Policy T1) could only be applied to major developments. Should the policy be modified to clarify this?</p>	<p>The response from LBB is unclear as it is already providing charging points in other areas that are not major developments. However, as the sale of new petrol and diesel engine cars will be banned from 2035 (at the end of the life of the Plan) we feel it is important that electric charging points are available to residents in all areas of the borough. We support active travel and the use of public transport; indeed according to the 2011 Census only about a third of residents in the West Finchley Neighbourhood Plan area who work travel to work by car or van. However, we believe that the topography and the age profile of residents means that private cars will remain an important part of travel for some residents in the immediate future. We therefore see electric powered vehicles as an important part of the local transport infrastructure.</p>	<p>Planning permission is not required for the installation of electric charging points for off street parking.</p>
<p>TfL raised questions around Policy T3, and commented that the Government's intention to ban the sale of petrol and diesel vehicles by 2040 has been brought forward to at least 2035. Should modifications to the Plan therefore be made?</p>	<p>The question about petrol vehicles is covered in our response to Q11 above. Policy T3 relates to West Finchley Underground station, which is owned by TfL. We can only encourage and support improvement of the station. Indeed we have been in correspondence with TfL about unconstrained step free access via the Wentworth Avenue entrance.</p>	<p>Noted.</p>
<p>The Environment Agency sought a stronger Policy LE1 to improve the biodiversity and water quality of Dollis Brook. The Agency drew attention to the NPPF which now requires planning policies and decisions to provide a biodiversity net gain. The</p>	<p>The Forum Executive would highlight that the boundary of the Plan area runs down the middle of Dollis Brook. The Forum Executive shares the vision of the Environment Agency. In light of these comments the Forum Executive would welcome changes to Policy</p>	<p>Noted</p>

Environment Agency would support the adoption of a stronger approach in West Finchley. Should the policy be modified and, if so, how exactly?

LE1 as follows to make the policy more in line with the NPPF paragraphs 170 and 174.

Policy LE1: Planning decisions should contribute to, and enhance, the natural and local environment by minimising impacts on, and providing net gains for, biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

To protect and enhance biodiversity and geodiversity, plans should identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and promote the conservation, restoration and enhancement of priority

	<p><i>habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.</i></p> <p>This will be supported by the following paragraph.</p> <p><i>The National Planning Policy Framework states that planning policies and decisions should protect and enhance valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.</i></p>	
<p>The Regulation 16 consultation responses included information from LBB Bye-Laws relating to Pleasure Grounds. It is contended that the bye-laws do not permit cycling along any of Dollis Valley Greenwalk. Is this factually correct and, if so, should the Plan be modified?</p>	<p>The issue of pedestrian and cycle use along Dollis Valley Greenwalk has been contentious particularly so since LBB upgraded some of the paths and provided new signage. We took the signposting in the section of the Dollis Valley Greenwalk between Fursby Avenue and Lovers Walk to indicate that cycling is permitted though we are not aware of when and how the bye-laws may have been amended.</p>	<p>Use by cyclists can be permitted here just as it could be in other parts of the park, without this affecting the status as a public footpath.</p>
<p>I note that the most westerly area of land in the Neighbourhood Plan area is designated Green Belt. Section 2.0 A Portrait of West</p>	<p>The Forum Executive has provided a replacement map.</p>	<p>The Council welcomes the updated map showing Green Belt, Special Archaeological Significance, Metropolitan Open Land and</p>

<p>Finchley usefully acknowledges this (in paragraph 2.27). As Green Belt is a nationally important designation, I consider that one of the maps in the Plan should show the extent of Green Belt land in West Finchley. Would the Forum advise how this might be achieved?</p>		<p>Site of Borough Importance for Nature Conservation that lies within the Neighbourhood Area.</p>
<p>The designated Green Belt land includes Finchley Lawn Tennis Club which is given protection from any future redevelopment by Policies A2 and A3. Policy A3 would designate the Tennis Club as a Local Green Space, but I have reservations as to whether this would be appropriate, given the existing status of the site in the Green Belt. National Planning Practice Guidance (ID-37-010-20140306) states that consideration should be given as to whether designating sites in the Green Belt would give any additional benefit. I note that Policy A2 would give protection to the Tennis Club in the future. Also, the Club has hard courts (not grass) and the Regulation 14 consultation responses included an expression of support for a “bubble on the lower courts and development of a small gym facility”. This raises concern as to whether designation as Local Green Space might be in conflict with plans for the Tennis Club’s future development to meet the needs of its users and social wellbeing? It is clearly an important community and social asset. In order to preserve this position and</p>	<p>The Chair of Finchley Lawn Tennis Club has been consulted on these points. He informed the Forum Executive that the Club has discussed a bubble and completely ruled it out. However, it is not the intention of the Plan to prevent the development of local community assets.</p> <p>For information, the Club replaced the original grass courts with surfaces that it hoped would be all weather is in the process of converting all the courts to artificial grass.</p>	<p>The Council agrees with the Examiner. There are no planning merits in adding Local Green Space to the existing and strong designation as Green Belt.</p>

<p>recognising its location in the Green Belt, should it be removed from Policy A3?</p>		
<p>Finally, whilst I am not examining the Design Guide, LBB stated that it supports the underlying approach to encouraging good design set out in the Design Guide, but was critical of paragraphs 4.5 (c); 5.3 (g) and 7.2 (e). The Forum may wish to consider amendments to the Design Guide, so that the Neighbourhood Plan is directing its readers and users to robust supporting evidence.</p>	<p>4.5c The Forum Executive thought that we should clarify what we mean by backland. We mean both the back alleys that provide access to the rear of the terraced properties, which tend to be no more than 4 feet wide, and other alleyways that give vehicular access to garages or storage facilities at the side or the rear of some houses, both terraced and others.</p> <p>5.3g The Forum Executive thinks that it is too early to say exactly where street furniture might be located.</p> <p>7.2e The Forum Executive believes that our understanding of 'external' may not be the same as LBB's. Our concern is that the residents of the flats above the shops should not be subjected to continuous lighting from shop signs.</p>	<p>4.5c – the definition of backland development from the Forum Executive suggests that new build developments would not be appropriate for these areas and as such this point is suggested for removal.</p> <p>5.3g – Noted</p> <p>7.2e – it should not cause a physical or visual obstruction, including light pollution from flashing or illumination</p>