

**Land Formerly Known as
British Gas Works, Albert
Road, New Barnet, EN4 9SH
Statement of
Common/Uncommon Ground**

**Between Appellant (Citystyle Fairview VO LLP) and
the London Borough of Barnet**

Planning Appeal Reference APP/N5090/W/22/3294689

4 July 2022

LICHFIELDS

PERSONAL/SSI

THIS STATEMENT OF COMMON/UNCOMMON GROUND HAS BEEN AGREED BY:

London Borough of Barnet

Signed: _____ D. Duffin _____

Name: _____ Dominic Duffin _____

Dated: _____ 05/07/2022 _____

Citystyle Fairview VQ LLP (Appellant)

Signed: Simon Slatford

Name: Simon Slatford (of Lichfields) on behalf of the appellant

Dated: 6 July 2022

Executive Summary

The Council and Appellant agree that there are a number of matters agreed in relation to the proposed development at Land Formerly Known as British Gas Works, Albert Road, New Barnet, EN4 9SH. This includes matters relating to the land use, access and highways capacity, car parking, biodiversity and sustainability. A full list of these matters is included in Section 7.0.

In addition, there are a number of benefits of the development which are agreed between the parties. This includes that it will secure the redevelopment of a disused site and provide much needed housing, including affordable housing, of varying sizes and types to make an important contribution to local housing needs. The site is accessible to a range of different transport modes and in close proximity to local services and facilities.

The Council and the Appellant agree that the main issues in dispute, as set out in the reasons for refusal are whether:

- 1 The proposed development, by virtue of its scale, massing and density would represent an over development of the site resulting in a visually obtrusive form of development that would fail to respect its local context and the pattern of development in the area, to such an extent that it would be detrimental to the character and appearance of the area.
- 2 In the absence of a Section 106 Agreement, the application does not include a formal undertaking to enable an amendment to the Traffic Regulations Order and to secure the planning obligations which are necessary to make the application acceptable.

It is envisaged that a S106 Undertaking will be agreed before the Inquiry that will address the concerns raised in the third main issue.

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1.0 Introduction

1.1 This Statement of Common/Uncommon Ground ('SoCUG') has been prepared by Lichfields, acting on behalf of Citystyle Fairview VQ LLP (Fairview, 'Appellant'), and the London Borough of Barnet ('Council'), in relation to a site known as Land Formerly Known as British Gas Works, Albert Road, New Barnet, EN4 9SH ('Site').

1.2 This SoCUG relates to the planning appeal ('Appeal') submitted by the Appellant against the
1.3 Council's non-determination of planning application reference 21/3676/FUL for:

"Redevelopment of the site to provide 539 residential units (Use Class C3) within 13 buildings ranging from 4 to 7 storeys, with 267.1sqm of retail/commercial space and 112.7sqm of community space (Use Class E and F) at ground floor, new public realm with communal landscaped amenity areas, alterations and additions to existing highways arrangements plus the removal of existing elevated footbridge and creation of new pedestrian routes, 334 car parking spaces (including car club and accessible provision) with basement and surface level provision, secure cycle parking, servicing and other associated development"

1.4 As the Appellant has lodged an appeal against non-determination there are no formal reasons for refusal. However, the application was reported to the Planning Committee on 22 February 2022, with an officer's recommendation that permission should be permitted, but the Committee resolved that permission should be refused. To date, no decision notice has been issued. However, the printed draft minutes of the meeting note the reasons for refusal are as follows:

1. *The proposed development, by virtue of its scale, massing and density would represent an over development of the site resulting in a visually obtrusive form of development that would fail to respect its local context and the pattern of development in the area, to such an extent that it would be detrimental to the character and appearance of the area. The proposal would therefore not constitute a sustainable form of development and would be contrary to the provisions of the NPPF; Policies D3 & D4 of the London Plan (2021); Policies CS NPPF, CS5, DMO1 and DMO5 of the Barnet Local Plan Core Strategy and Development Management Policies (2012).*

2 *The proposed development by reason of its density, design and layout, would provide an unsatisfactory standard of residential accommodation due to the poor layout of some of the proposed flats, poor outlook and limited natural light. The proposal would therefore represent a poor form of development to the detriment of the amenity and living conditions of future occupiers. Therefore, the proposal is contrary to the provisions of the NPPF; Policies D4 & D6 of the London Plan (2021); Policy CS5 of the Local Plan Core Strategy (2012); Policy DMO1 and DMO2 of the Development Management Policies (2012); the Council's Residential Design Guidance SPD (2016); and Sustainable Design and Construction SPD (2016).*

3 In the absence of a Section 106 Agreement, the application does not include a formal undertaking to enable an amendment to the Traffic Regulations Order and to secure the planning obligations which are necessary to make the application acceptable. The application is therefore contrary to the NPPF; London Plan Policies S4, H4, H5, E11, SI2, T2, T3, T4, T5, T6, G6, G7 & DF1, Policies DM02, DM04, DM10, DM14, DM16, DM17; and Policies CS4, CS7, CS8, CS9, CS15 of the Development Management Policies (2012); Barnet Local Plan Core Strategy (2012); the Barnet Planning Obligations (adopted April 2013); Affordable Housing (adopted February 2007 and August 2010) Supplementary Planning Document; the Barnet Supplementary Planning Document on Delivering Skills, Employment and Enterprise Training (SEET) (adopted October 2014); and the Mayor's Supplementary Planning Guidance on Affordable Housing and Viability (2017).

1.5 However, on the 16th June 2022 the Strategic Planning Committee resolved to withdraw reason for refusal 2 concerning living conditions. The Council's Evidence therefore addresses reasons for refusal 1 & 3.

1.6 In this SoCUG the proposed development which is the subject of the Appeal is referred to as the 'Development'. In this SoCUG the Appellant's Statement of Case which has been prepared in support of the Appeal is referred to as the 'SoC'.

2.0 Site and Surroundings

- 2.1 The appeal site is located to the north of Victoria Road and comprises of land formerly part of the British Gas Works site. The site is 3.24ha and is currently vacant with the former buildings, structures and hard surfacing removed. The site has also been decontaminated and the basement car park dug out in accordance with extant Planning Permission ref. B/04834/14. Access to the site is achieved from Victoria Road/the A110.
- 2.2 The site is located on the edge of New Barnet town centre which is to the immediate south along East Barnet Road. Adjoining the site to the east is Victoria Recreation Ground. The Albert Road Gas Works is located to the north with a right of access running through the site. The wooded embankment to the railway line runs along much of the western boundary, with the railway line raised approximately 10.0m above the site. In the south west corner are a number of two storey buildings. A range of two and three storey semi-detached and terrace houses are located to the south east of the site.
- 2.3 An elevated, caged pedestrian walkway (approx. 3-4m above ground level) crosses the site from east to west and provides a pedestrian route via a tunnel beneath the network rail track between Victoria Recreation Ground (to the east) and Cromer Road (to the west). This is a public right of way.
- 2.4 The nearest national rail station to the site is New Barnet Station. The station is located 270m walking distance from the site frontage (if using the Nirvana Close footpath) with Great Northern and Thameslink providing regular services towards destinations such as Welwyn Garden City, Moorgate and London Kings Cross. The closest bus stops are located on East Barnet Road (A110), a 100m walk to the eastbound stop and 140m to the westbound stop; further bus stops are provided at New Barnet Station and Station Road which are located approximately 300m to the west of the site. The nearest London Underground stations are High Barnet (1.7km walk to the west) and Cockfosters (2.0km walk to the east). High Barnet is a terminus on the Northern Line, while Cockfosters is a terminus of the Piccadilly Line. The majority of the site has a Public Transport Accessibility Level (PTAL) score of three although this drops to 1b for a section at the northern end of the site.
- 2.5 Within the town centre on East Barnet Road, building heights generally range from two to four storeys with the exception of the Sainsbury's store. Beyond the railway embankment is a mixture of office, retail and residential buildings varying in height from two to eight storeys around the district centre. To the west of the railway bridge on Station Road the height and massing increases with large blocks extending up to 11 to 12 storeys in height.

3.0 Proposed Development

- 3.1 Prior to this appeal, planning permission was previously refused for a development on the appeal site. As a consequence, the appellant undertook a range of changes to the development, as summarised below, before resubmitting an application for the current appeal proposal. The changes from the originally refused development ref. 20/1719/FUL are:
- 1 Reduction in the quantum of residential units from 652;
 - 2 Reduction in the height of Block A from 8 to 7 storeys;
 - 3 All remaining blocks designed at 7 storeys or below;
 - 4 Amendments to the layout of the flats to optimise orientation;
 - 5 Separation distances between building blocks set to a minimum of 20 metres to optimise daylight and sunlight and improve outlook;
 - 6 Inclusion of 4-bedroom units;
 - 7 Increased quantum of on-site playspace;
 - 8 267.1 sq.m. of commercial floor space, 112.7sq.m. of community use; and,
 - 9 334 parking spaces.
- 3.2 The proposed appeal scheme is, therefore, for the redevelopment of the site to provide 539 homes within 13 apartment buildings. The proposal will provide mix of flat types, including 1-bed, 2- bed, 3-bed and 4-bed family units. Of the 539 homes, 35% will be proposed as affordable housing calculated by habitable room, a total of 149 units in both London Affordable Rented and Shared Ownership tenures. A breakdown of the proposed tenure split of the units is provided within the DAS Addendum supporting the application.
- 3.3 The development has a range of main character areas; High Street, The Gateway Garden; The Park Plaza and Approach, Courtyard Gardens and Blocks, Mansion Blocks and Spine Road and Park Edge.
- 3.4 A wide variety of landscaping is provided across the site. The main vehicular route will have widened landscape space to provide a green defensive space and a residential active frontage. Private and secured amenity space will be provided between the central blocks, with natural surveillance provided by the surrounding residential units.
- 3.5 The scheme provides a total of 1,713sqm of public open space on site and 5,158 sqm of communal amenity space as well as 5,567sqm in private amenity space in the form of terraces and balconies. The open space is provided in three areas around Block A/B1/B2 and between B1/B2, C1/C2 and D1/D2. Within this provision, there is 1,857sqm play space proposed, which accords with the GLA on-site requirement for under 5s and is just under the playspace requirement for 5-11 years. It is proposed that the 12+ age group would be catered for offsite within the adjacent Victoria Recreation Ground, which has a range of facilities and equipment suited to older children, and a financial contribution towards improvements will be provided.

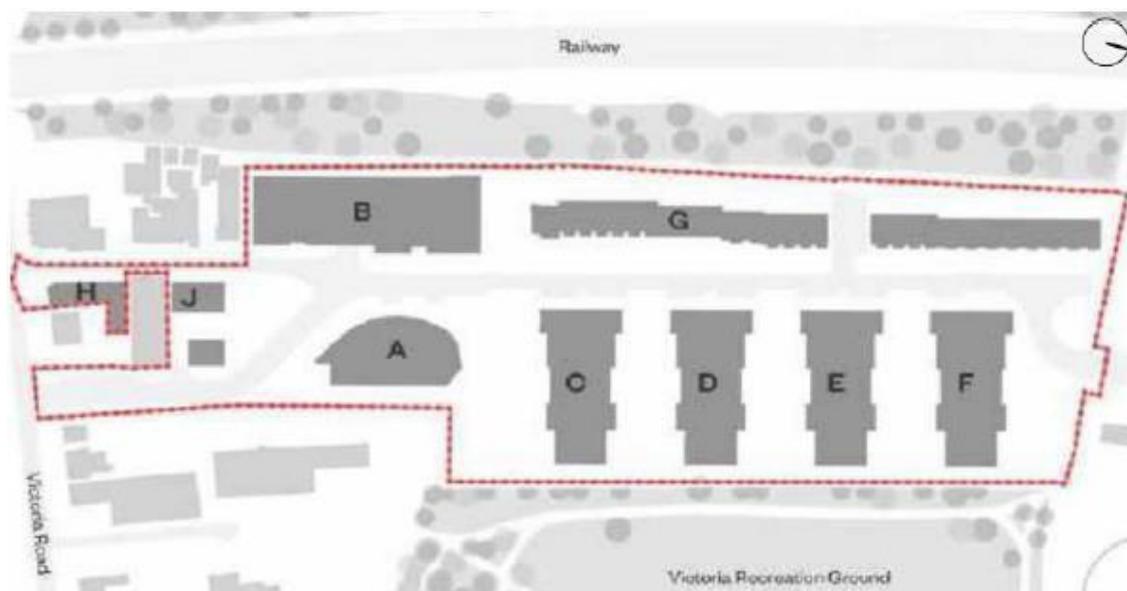
- 3.6 The scheme includes provision of 334 car parking spaces and will also provide 980 secure cycle parking spaces for residents, and 14 cycle spaces for visitors.
- 3.7 Further details of the proposed scheme are included in the DAS and DAS Addendum submitted with the application.

4.0 Planning History

4.1 The site benefits from a number of relevant planning permissions set out below.

- 1 **Application ref. B/04834/14:** Permission was granted in May 2015 for 305 residential units including 15% affordable and 674sqm mixed-use commercial space, with heights from three to six storeys. This included creation of new public open space; the removal of the existing elevated footbridge and creation of new pedestrian routes together with associated works including landscaping, provision of basement and surface car parking, servicing and plant area. A number of conditions relating to the site clearance, demolition and remediation have been discharged. The permission has been implemented. The boundary for this application is as below:

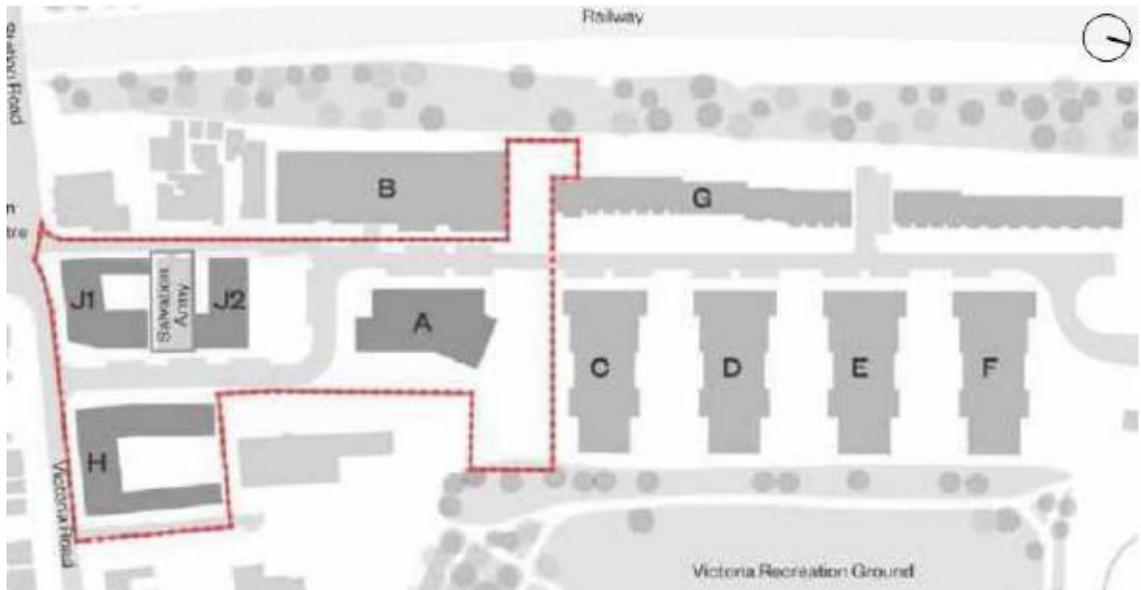
Figure 4.1 Site boundary of application ref. B/04834/14



Source: DAS for application ref. 21/3676/FUL, Section 2

- 2 **Application ref. 16/7601/FUL:** Permission was granted in July 2020 to cover an additional piece of land to the front of the site as well as part of the existing site. This was for an additional 104 residential units (net increase of 52 units), 623sqm of mixed-use commercial floorspace, the creation of new publicly accessible open spaces, pedestrian routes and car parking, cycle parking and landscaping. The boundary for this application is as below:

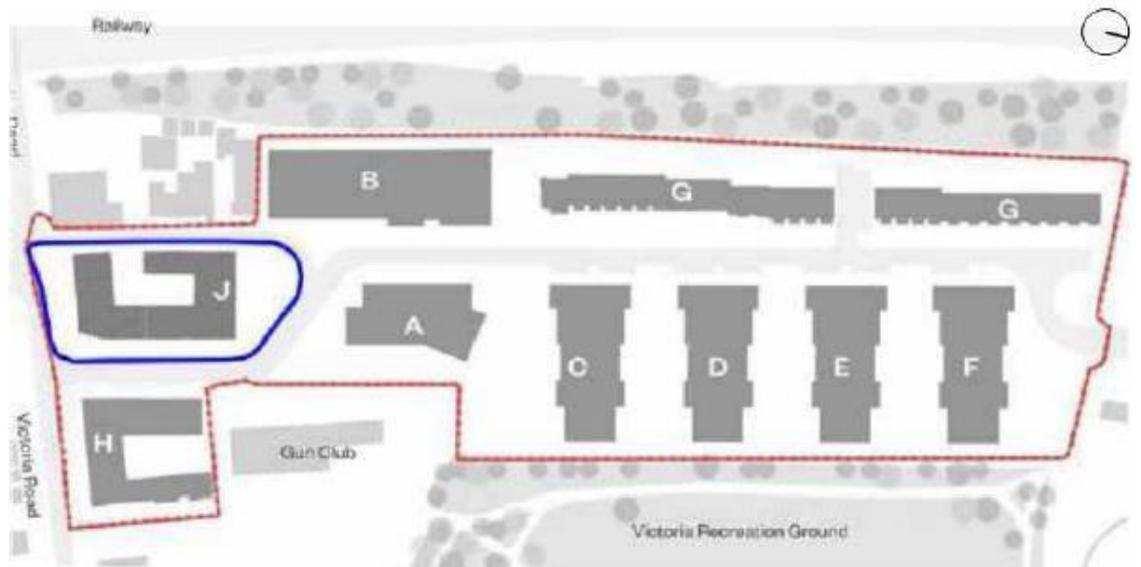
Figure 4.2 Site boundary of application ref. 16/7601/FUL



Source: DAS for application ref. 21/3676/FUL, Section 2.2

- Application ref. 17/5522/FUL:** The third application was granted in July 2020, which relates to the southern area (front part – Block J) of the site to construct 39 residential units and 265sqm of commercial/retail/office floorspace, the creation of new publicly accessible open spaces and pedestrian routes together with associated access, servicing, car parking, cycle parking and landscaping. The boundary for this application is as below:

Figure 4.3 Site boundary of application ref. 17/5522/FUL



Source: DAS for application ref. 21/3676/FUL, Section 2..2

4.2 The above extant planning permissions resulted in a combined scheme which provided a total of 371 units; 18% affordable by habitable rooms; 618sqm of mixed-use commercial floorspace in buildings up to a maximum of eight storeys; and 396 car parking spaces along with the other improvements to the surrounding area. The S106 Agreement for B/04834/14 was varied to include applications 16/7601/FUL and 17/5522/FUL and combines all three applications.

- 1 **Application ref. 20/1719/FUL** was submitted in 2020 for 652 units and 423sqm commercial space within 14 buildings ranging from 1 to 10 storeys, a scheme which would have superseded the composite applications. The scheme was refused on 16 December 2020, with the reasons for refusal set out below. The boundary for this application is as follows:

Figure 4.4 Site boundary of application ref. 20/1719/FUL



Source: DAS for application ref. 21/3676/FUL, Section 2.2

4.3 Application no. 4 (20/1719/FUL) was reported to committee with an Officer recommendation for approval on 2 September 2020. The Chairman moved a motion to defer the vote on the reasons for refusal, which had been outlined at the meeting, in order that he could prepare well- worded and detailed grounds for refusal in discussion with Planning Officers, to be agreed at the next meeting of the Committee. The application was then refused by the Council’s Planning Committee on 12 October 2020 and the decision notice was issued on 16 December 2020.

Reasons for refusal for application ref. 20/1719/FUL

4.4 Following an Officer recommendation for approval, the 2020 scheme was refused by Members. Four reasons for refusal were given, relating to:

- 1 Excessive height, scale, massing, and density resulting in overdevelopment of the site;
- 2 Impact on the amenity and living conditions of future occupiers;

- 3 No provision of four-bedroom family units; and
- 4 Absence of a Section 106 Agreement to secure planning obligations.

4.5 The Appeal scheme was amended in the following ways in order to address the reasons for refusal on the previous scheme:

- 1 Reduction in the quantum of residential units from 652 to 539 (-113 units);
- 2 Reduction in the height of Block A from 8 to 7 storeys;
- 3 All remaining blocks designed at 7 storeys or below;
- 4 Amendments to the layout of the flats to optimise orientation;
- 5 Separation distances between building blocks set to a minimum of 20 metres to optimise daylight and sunlight and improve outlook;
- 6 Inclusion of 4-bedroom units;
- 7 Increased quantum of on-site playspace;
- 8 267.1 sq.m. of commercial floor space, 112.7sq.m. of community use; and
- 9 334 parking spaces

5.0 **Planning Policy**

Adopted Plan

5.1 For the purpose of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the
5.2 current development plan (“Development Plan”) for the Site comprises the London Plan 2021 (published after 2020 application was refused), the Barnet Core Strategy DPD (2012), and the Barnet Development Management Policies DPD (2012).

5.3 The relevant policies from the London Plan for the appeal are:

- GG2: Making the best use of land
- SD6: Town centres and high streets
- D2: Infrastructure requirements for sustainable densities
- D3: Optimising site capacity through the design-led approach
- D4: Delivering good design
- D6: Housing quality and standards
- D7: Accessible housing
- D8: Public realm
- D14: Noise
- H1: Increasing housing supply
- H4: Delivering affordable housing
- H5: Threshold approach to applications
- H6: Affordable housing tenure
- H10: Housing size mix
- S4: Play and informal recreation
- G4: Open space
- G5: Urban greening
- G6: Biodiversity and access to nature
- SI 2: Minimising greenhouse gas emissions
- SI 4: Managing heat risk
- SI 12: Flood risk management
- T1: Strategic approach to transport
- E11 Skills and Opportunities
- G7 Trees and Woodland
- DF1 Delivery and Planning Obligations
- T2 Healthy Streets

- T3 Transport Capacity, connectivity and safeguarding
- T4 Assessing and Mitigating Transport Impacts
- T5 Cycling
- T6 Car Parking

5.4 The relevant policies from the adopted Core Strategy for the appeal are:

- CS4: Providing quality homes and housing choice in Barnet
- CS5: Protecting and enhancing Barnet's character to create high quality places
- CS9: Providing safe, effective and efficient travel
- CS12: Making Barnet a safer place
- CS13: Ensuring the efficient use of natural resources
- CS14: Dealing with our waste
- CS7: Enhancing and protecting Barnet's character to create High Quality Places
- CS8: Promoting a strong and prosperous Barnet
- CS15: Delivering the Core Strategy
- CS NPPF

5.5 The relevant policies from the adopted Development Management Policies DPD for the appeal are:

- DMO1: Protecting Barnet's character and amenity
- DMO2: Development standards
- DMO3: Accessibility and inclusive design
- DMO4: Environmental considerations for development
- DMO6: Barnet's heritage and conservation
- DMO8: Ensuring a variety of sizes of new homes to meet housing need
- DM10: Affordable housing contributions
- DM16: Biodiversity
- DM17: Travel impact and parking standards
- DM14: New and existing employment space

5.6 Due weight should be given to the policies of the adopted Plan, according to their degree of consistency with the NPPF - the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given.

5.7 Other local policy documents that are material to the consideration and determination of the application include supplementary planning guidance and documents prepared by the GLA as follows:

GLA Guidance

- Be Seen Energy Monitoring Guidance (2021)
- Affordable Housing & Viability SPG (2017)
- Housing SPG (2016)
- Play and Informal Recreation SPG (2012)

Barnet Guidance

- New Barnet Town Centre Framework (2010)
- Characterisation Study of London Borough of Barnet (2010)
- Planning Obligations (2013)
- Delivering Skills, Employment, Enterprise and Training from Development through S106 (2014)
- Sustainable Design and Construction (2016)
- Residential Design Guidance (2016)
- Green Infrastructure (2017)
- Affordable Housing SPG 2007 (updated 2010)

Emerging Policy and Guidance

- 5.8 The Council is reviewing and updating the borough's planning policies as part of a Local Plan Review. The Local Plan was submitted to the Planning Inspectorate for independent Examination in Public (EiP) on 26 November 2021. The site is not allocated in the Draft Local Plan, but it would have been, if the site did not benefit from planning permission.
- 5.9 The programme for Hearing sessions has not yet been published and a letter from the Inspectors, which was sent to Barnet on 9th February 2022, outlines a range of queries and observations, the content of which will require the Council to undertake additional work prior to the EiP milestones being mapped out. Therefore, the draft policies of the Local Plan can only be afforded limited weight subject to the degree of objection to the relevant policies. It is not yet known whether the change in council control following the May 2022 council elections will have any impact on this timetable.
- 5.10 The following London Plan guidance is in draft form:
- Fire Safety LPG
 - Housing Design Standards LPG
 - Circular Economy Statements LPG
 - Whole Life Carbon LPG

Other Material Considerations

National Policy

- 6.2 In addition to the above, the following are material considerations in the determination of this

appeal:

- National Planning Policy Framework (2021)
- National Planning Practice Guidance
- National Design Guide (2019) updated January 2021

6.0 **Matters Agreed Between the Parties**

General

- 6.1 The Executive Summary in Section 1.
- 6.2 The description of the Site and its surroundings in Section 3.
- 6.3 The description of the Development in Section 4.
- 6.4 The description of the planning history of the Site in Section 5.
- 6.5 The identification of relevant planning policies in Section 6.

Benefits of the Development

- 6.6 Matters relating to the merits of the Development that are agreed between the parties are:
 - 1 It will secure efficient re-use of a disused site.
 - 2 It will provide new housing, including affordable housing, which will make an important contribution towards meeting the local housing requirements. Subject to planning permission being granted, the Site is available, and housing could be delivered within the short term.
 - 3 It will generate indirect beneficial effects to the local economy by creating jobs during the construction phase and induced employment in the area through the local spending of residents.

Land Use

- 6.7 The principle of residential use of the Site is acceptable and there is a need to deliver housing and particularly affordable housing on the site. This is previously developed land within an urban area of predominantly residential development and in an accessible and sustainable location, with a number of extant permissions for residential development.

Five Year Housing Land Supply

- 6.8 The Council's position is that they have 6.5 years HYLS. The appellant is not contending that the Council does not have a 5 year housing land supply, but this will be revisited by both parties following the outcome of another current appeal.

Affordable Housing and Overall Dwelling Mix

- 6.9 The provision of 35% affordable housing by habitable room, with 60.9% affordable rent and 39.1% shared ownership tenure split is agreed. The proposed dwelling mix across the appeal scheme is agreed.

Residential Standards

- 6.10 The national residential space standards are met.

Privacy

6.11 It is agreed that acceptable privacy distances to all properties is provided.

Daylight and Sunlight Amenity

6.12 The technical daylight/sunlight data provided by the Appellant at planning application stage is acceptable.

6.13 It is agreed that planning policy and guidance at a national, regional and local level requires guidance on daylight and sunlight to be considered flexibly and that overall the levels of sunlight and daylight across the appeal scheme is acceptable.

Access and Highways Capacity

6.14 The proposed access to and within the site is acceptable. There are no objections on highway grounds.

Accessibility

6.15 The site is in an accessible location, having regard to public transport, shops and services.

Parking

6.16 The proposed level of car and cycle parking is acceptable.

Amenity Space

6.17 The amount of amenity space provided within the Site is acceptable.

Playspace

6.18 The amount of playspace provided within the Site is acceptable, subject to a financial contribution for off-site enhancements to play for older children.

Sustainability

6.19 The energy strategy is agreed and the development would be sustainable and energy efficient.

Noise

6.20 Subject to the implementation of mitigation measures outlined in the Noise Impact Assessment, the noise impacts of the development are acceptable.

Overheating

6.21 The development is acceptable in terms of overheating.

Air Quality

6.22 The Development is acceptable in view of Air Quality and Air Quality Neutral requirements.

Ecology

- 6.23 The Site comprises land with habitats of relatively low ecological interest for which appropriate mitigation to ensure no adverse effects occur will be utilised. The proposed development would result in a Biodiversity Net Gain.

Social Infrastructure

- 6.24 It is agreed that the impact of the appeal scheme on social infrastructure (such as schools and doctors) can be mitigated through CIL monies.

Trees and Vegetation

- 6.25 There are no objections to the proposals subject to a condition securing the provision of a Landscape Management Plan.

Heritage

- 6.26 There is no adverse impact on heritage assets. The site is not subject to any conservation designations and will not impact on any heritage assets.

Contamination/Remediation

- 6.27 Subject to an appropriate condition, the site the site can be appropriately remediated for residential development.

Flooding

- 6.28 The site is not within a flood plain. There is no objection to the proposed development from the Lead Local Flood Authority.

S106 Requirements

- 6.29 The Heads of Terms for the S106 Agreement as set out in the Committee Report are agreed and the amount of contributions are agreed as meeting the test in the NPPF and CIL regulations.

7.0 **Uncommon Ground Between the Parties**

7.1 Matters that are not agreed between the parties are:

- 1 In the context of RfR1, the parties do not agree to the weight to be given to the Core Strategy policies, the New Barnet Town Centre Framework 2010, the Characterisation Study of London Borough of Barnet 2010 and the Residential Design Guide SPD 2016;
- 2 the effect of the proposed development on the character and appearance of the surrounding area (this issue arises in respect of the surrounding sub-urban streets notably Leicester Road, Lytton/Bulwer Road and to a lesser extent Victoria Road, and the Victoria Recreation Ground); and,
- 3 the weight to be given to the benefits in the planning balance, and the judgement as to where the balance lies.

8.0 Conditions

- 8.1 The main parties will agree a schedule of conditions for the Inspector's consideration in the event that planning permission is granted, to be discussed at the conditions session at the Inquiry.