**RE: Land Formerly Known as British Gas Works, Albert Road, New Barnet, EN4 9BH**

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**CLOSING SUBMISSIONS**

**ON BEHALF OF**

**APPELLANT**

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**Introduction**

1. This case turns upon a planning balance, whereby you will need to weigh up:

* 1. the need for new homes in London and in the Borough, particularly affordable homes (factors which the Council agrees should be given significant weight) and the other benefits provided by the scheme (which the Council agree can be given moderate weight).
  2. against the degree of any harm to the wider character of the area and to the living conditions of future occupiers of the Scheme that you may identify as arising.

1. The Appellant’s case is that the Appeal Scheme will not cause any harm by reference to these considerations. The Council and the R6 party have suggested otherwise – but it is crucial note that no-one here is saying that housing should not come forward on the Appeal site.

1. Rather, at its core this Appeal centres on a dispute as to the scale of development that should come forward at the Appeal Site. On the one hand the Appellant supported by its team of professional experts, the expert Officers at the GLA, the expert Officers of the London Borough of Barnet all agree that the Appeal Scheme is to be supported. Against that expert view the lone professional voice is that of Mr Duffin. He is supported by the Members of the Planning Committee who refused planning permission following a significant local political campaign and the NBCA who promulgated that campaign.
2. Indeed, the extent of the political pressure that has been created locally is evident from:
   1. The fact that Council Members refused the Appeal Scheme by reference to policies which the Council now accepts were not relevant;
   2. The fact that the Council withdrew reason for refusal 2 without any change in policy or circumstances – that reason for refusal simply could not be substantiated by any professional or other witness;
   3. The fact that the local MP actually attended the Inquiry to make representations – a rare event indeed.

1. It is striking that, apart from Mr Duffin, all the professionals support the Appeal Scheme whilst the non-professionals do not. The reason for this has become apparent – with the exception of Mr Duffin, all of the professionals appreciate the recent change in the degree of flexibility within Development Plan policy which has been made in order to ensure that housing comes forward in greater numbers and at greater densities than the past in order to address the Housing in crisis in London. It is notable that this is also not acknowledged in the Council’s closing submissions.

1. The NBCA via Ms Henderson suggested of course that Officers of both the Council and the GLA have “lost sight” of design considerations in a dash for housing numbers – like so much of her evidence this is entirely unfounded assertion and is to be entirely rejected. There is nothing in the evidence which supports Ms Henderson’s assertion whatsoever – rather, what can be seen in the history of discussions with the Appellant’s team, in the Officer Report to Committee and in the GLA Stage 1 report is a careful process of detailed appraisal of the design of the Appeal Scheme by the GLA and LBB Officers. We are sure, Sir, that you will appraise the scheme on the basis of the evidence and not unfounded assertion or conspiracy theories.

**The Housing Crisis**

1. At the national level it is of course the case that the NPPF encourages the delivery of housing to meet needs. Paragraph 60 of the NPPF explains

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed..”

1. I explained in opening that London has a housing crisis. The housing that London needs is not being delivered year on year. The lack of supply of the homes that Londoners need has played a significant role in its housing crisis. The 2017 London Strategic Housing Market Assessment has identified a significant overall need for housing, and for affordable housing in particular. London needs 66,000 new homes each year, for at least twenty years, and evidence suggests that 43,000 of them should be genuinely affordable if the needs of Londoners are to be met[[1]](#footnote-1).
2. The failure to provide sufficient numbers of new homes to meet London’s need for affordable, market and specialist housing has given rise to a range of negative social, economic and environmental consequences, including worsening housing affordability issues, overcrowding, reduced labour market mobility, staff retention issues and longer commuting patterns[[2]](#footnote-2).

1. As Mr Slatford explain, the London Plan (CD5.1) at 4.1.3 explains that

‘The Mayor recognises that development of this scale will require not just an increase in the number of homes approved but also a **fundamental transformation** in how new homes are delivered’.

1. Neither the Council nor the NBCA has understood that the London Plan 2021 promulgates new policy which fundamentally transforms how homes are to be delivered.
2. The first aspect of the transformative approach is to the recognition that it is critical that brownfield sites such as the Appeal Site are utilised efficiently to optimise the delivery of market and affordable housing. Indeed, the London Plan recognises that such sites are “scarce” and that delivery upon them is “crucial” to meeting the objectives of Strategic Policy[[3]](#footnote-3). For this reason, Policy GG2 of the London Plan explains that a positive approach to brownfield sites must be adopted with those involved in planning and development required to “enable the development of brownfield land, … on surplus public sector land, and sites”. Mr Duffin agreed in XX that this means that a planning decision maker has to adopt a positive attitude to the development of the Appeal Site.
3. The second aspect of the transformative approach is that the London Plan recognises that to accommodate the anticipated scale of growth over the Plan Period the nature of development will have to change from that promulgated in the past.
4. London’s population is set to grow from 8.9 million today to around 10.8 million by 2041. As it does so, employment is expected to increase on average by 49,000 jobs each year, reaching 6.9 million over the same period. This rapid growth will lead to increasing and competing pressures on the use of space. To accommodate growth while protecting the Green Belt, the London Plan proposes more efficient uses of the city’s land[[4]](#footnote-4). It explains that[[5]](#footnote-5):

“The key to achieving this will be taking a rounded approach to the way neighbourhoods operate, making them work not only more space-efficiently but also better for the people who use them. This will mean creating places of higher density in appropriate locations to get more out of limited land.”

1. Crucially, the London Plan explains[[6]](#footnote-6) that:

“As change is a fundamental characteristic of London, respecting character and accommodating change should not be seen as mutually exclusive. Understanding of the character of a place should not seek to preserve things in a static way but should ensure an appropriate balance is struck between existing fabric and any proposed change. Opportunities for change and transformation, through new building forms and typologies, **should be informed by an understanding of a place’s distinctive character, recognising that not all elements of a place are special and valued.” (emphasis added)**

1. Thus, the London Plan’s new and fundamentally transformative approach is to support growth via greater development density than was used in the past, whilst protecting the elements of the character of an area which are distinctive. The London Plan does not require development to respect the elements of a place which are not special and which are not valued.

1. This approach is also reflected at the national policy level. Paragraph 130(c) of the NPPF states that planning decisions should ensure that developments:

“are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)”

1. Accordingly, at a national policy flexibility is provided to allow for development at increased density where this is proposed in a manner which is sympathetic to local character.

1. This flexibility is reflected in the wording of London Plan Policy D3 which provides that all development must make the best use of land by following a design-led approach that optimises the capacity of sites. Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site.
2. Policy D6 goes on to state that proposed residential development that does not demonstrably optimise the housing density of the site in accordance with this policy should be refused.
3. Greater detail is provided as to which elements of character are to be protected in London in London Plan Policy D3 paragraph D(1) and D(11)[[7]](#footnote-7). Under the heading “form and layout”, Policy D3.D(1) provides 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” (emphasis added)

1. Under the heading “quality and character”, Policy D3.D(11) provides that development proposals should:

“respond to the existing character of a place by identifying **the special and valued features and characteristics that are unique to the locality** and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character.” (emphasis added).

1. Thus, it is elements of character that are locally distinctive, or which are special or valued feature that are unique to a locality which are to be respected. It is only development proposals which do not respond appropriately to such elements of local character which will be contrary to the London Plan.
2. It follows that the broader approach of the past has been changed in order to bring about a “fundamental transformation in how new homes are delivered’. Gone are the days in London of protection of character and appearance generally – not all the elements of the character of a locality are now to be protected because not all elements of a place are special or valued. Instead, it is necessary to drill down into the elements of a place and to identify any elements which are local distinctive or unique. It is these elements which have to be respected by new development.
3. As Mr Slatford explained to the Inquiry, this has important consequences for the approach to be taken to the older development policies in the Barnet Core Strategy and the Development Management DPD. He explained that, while there may be similarities in terms of general design principles in these documents, the devil is int the detail of the wording which provides a different approach and emphasis from that which national and London plan policy now requires.
4. Policy CS5 provides:

“We will ensure that development in Barnet respects local context and distinctive local character creating places and buildings of high quality design.”

1. Thus, the focus of the Core Strategy is to protect “distinctive local character” – it is not to protect all elements of “local character” per se. As with the London Plan this must mean that the Core Strategy recognises that not all elements of a place contribute to distinctive local character. The reference to respecting local context must be read in this light. It is the elements of local context which are locally distinctive which must be respected. If Policy CS5 is read more broadly than this then it will conflict with the approach in the London Plan i.e. it will not achieve the same policy objectives as the London Plan. Such a conflict would have to be resolved in favour of the London Plan, applying section 38(5) of the 2004 Act, since that is the most recently adopted development plan.

1. Further as Mr Slatford explained, Policy CS5 requires development to be in accordance with guidance which is out of date and out of step with the NPPF and the London Plan. For example, By Design was produced to support PPS1. It does not advocate a design led approach to the optimisation of site capacity with a view to fundamentally transforming the delivery of housing as is now the case in London. It does not reflect the approach in the NPPF paragraph 130 (c ) since CS5 does not recognise the need to allow for change via the delivery of schemes of increased density. For these reasons, Mr Slatford was entirely correct to indicate that it should have reduced weight.
2. In respect of Policy DM01, paragraph (b) states:

“Development proposals should be based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets”.

1. As can be seen, this policy is broader still than Policy CS5 and does not reflect the approach in the London Plan and if applied would not achieve the policy objectives of the London Plan. It is not confined to seeking to protect the elements of local character which are distinctive, or which are special or valued and render a place unique. Rather, Policy DM01 policy requires development to preserve local character even where that character is not distinctive. Thus, Policy DM01 is inconsistent with the policy approach required by the London Plan Policy D3. Since the London Plan is most recently adopted, applying section 38(5) of the 2004 Act it the approach in London Plan Policy D3 that is to prevail. To the extent that Policy DM01(b) is inconsistent with London Plan Policy D3 it is then to be put to one side.

1. But DM01 also does not reflect the degree of flexibility which paragraph 130 (c) of the NPPF requires because it does not acknowledge the need to allow change via schemes of greater density than in the past. Thus, even if my submission above is rejected, it too must be given reduced weight to reflect its lack of consistency with the NPPF as Mr Slatford explained.

1. As a result, it is submitted that the policy test to apply, drawn from the national and development plan context, is whether the Proposed Development respects the elements of local character which are distinctive and/or which are special/valued and unique to the locality?

**Other Guidance**

1. The Town Centre Framework must also be approached with the requirements of the London Plan in mind. It was adopted in November 2010. As such it predates even the original NPPF never mind the policy contained in the NPPF 2021. It was not produced in the context of the National Design Guide. It promulgates a policy approach which was not informed by any kind of design led optimisation process and which was not founded upon protecting only those elements of character that are locally distinct/unique. As a result, the Town Centre Framework can only be given limited weight. Mr Duffin’s suggestion that it should be given significant weight cannot stand – indeed, it is quite bizarre.
2. The Residential Design Guide 2016 should also be given limited weight for similar reasons. Whilst it adopts an approach to design principles which in general terms reflects aspects of the National Design Guide, it too fails to reflect the flexibility now incorporated in the NPPF 130 (c) which recognises that change to enable development at higher density is acceptable. The wording of paragraph 58 of the NPPF 2012 which the RDG was developed to support was materially and deliberately altered to ensure the flexibility to deliver development at an increased density could come forward. Whilst the RDG does refer to design led optimisation this is in the context of an approach to density in which densities were to be capped by reference to the London Plan Density Matrix – an approach which has been abandoned in the London Plan 2021[[8]](#footnote-8).
3. Further, the RDG 2016 was not promulgated or developed by reference to the approach required by the NDG. Of course, it contains elements of approach which are similar, but because it cannot have reflected the NDG since the NDG was not published when the RDG was produced, it cannot be taken as a design guide for the purposes of apply paragraph 134 of the NPPF. I return to this below.

**Local Distinctiveness/Uniqueness**

1. It follows that in order to apply national and Development Plan policy correctly a decision maker has to begin by identifying any elements of local distinctiveness exhibited in the character of the local area. This is where Members and Mr Duffin erred.

1. Members, of course, did not recognise the policy shift in the London Plan. The reason for refusal alleges that the Proposed Development 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.”* As Mr Duffin rightly accepted in XX that does not reveal that Members applied an approach of seeking to protect that which is locally distinctive or unique; rather it is apparent that Members applied a broader policy test of whether a development would adversely affect the character and appearance of the area generally. In so doing they failed to apply the approach required by the London Plan.
2. Mr Duffin too failed to apply the correct approach. He sought to rely upon the 2010 Characterisation Study as the basis for concluding that what is to be respected by new development on the Appeal Site is a “low rise sub-urban character.” The Characterisation Study does indeed contain broad statements identifying the broad character of large areas within the Council’s administrative area. In large part those broad statements remain true today as they did in 2010 when first written – no doubt precisely because these statements are so generic and so broad.
3. As the Homebase Inspector said, the Characterisation Study is a useful starting point, but the Characterisation Study does not undertake the task that is required in order to apply Policy D3 of the London Plan. As Mr Duffin agreed in XX, the Study does not appraise and identify that which is local distinctive in the area. It does not identify the special, valued characteristics that make a place unique. That is why it is out of date – it does not analyse the character of New Barnet on a basis which is consistent with the approach now required by the London Plan and Mr Slatford was correct in saying it should have limited weight. It is a useful starting point when applying Policy D3 but further appraisal of the elements of character has to be undertaken in order to apply that Policy correctly.
4. Since the Council has no published character appraisal that can be relied upon when applying the Policy D3 approach, one might have expected Mr Duffin to carry out an appraisal of the character of the local area in order to identify the elements of its character which are locally distinctive or unique. However, he did not do this as he agreed in XX. The attempt in re-examination to suggest otherwise, whilst improper, simply elicited an assertion that an exercise of identifying the elements of character that are distinctive had been undertaken. But there is in fact no evidence of this. Mr Duffin merely asserts in his proof of evidence that the surrounding streets are of low-rise suburban character[[9]](#footnote-9). There is no appraisal of the elements of character. There is no assessment of whether those elements are distinctive, special valued or unique. Rather, what Mr Duffin has done is the very thing that the London Plan says should not be done - he has sought to appraise the Appeal Scheme against all the elements of the character of the locality rather than against those which are locally distinctive/unique.
5. The result is that Mr Duffin’s judgment that the Scheme gives rise to a breach of Policy D3 cannot be relied upon, since he has not undertaken the correct exercise or applied the policy test that Policy D3 requires.
6. Neither Ms Harrison nor Ms Miller’s evidence contained any attempt to appraise the elements of character which are local distinctive, special, valued or unique. This means that the NBCA’s assertion that the Appeal Scheme is unacceptable in terms of its impact upon the character of the area must also be rejected since that assertion is not based upon the assessment of the elements of character that must be undertaken in order to apply London plan Policy D3 correctly.
7. Mr Pullan was, in fact, the only witness to the Inquiry who had conducted a careful appraisal of the elements of the character of the area in accordance with the approach required by London Plan Policy D3. He noted that the Appeal Site is not within a conservation area. This of course means that the area is not one which exhibits any special architectural or historic character. Further, the Appeal Site does not lie within the setting of any relevant heritage assets. There are no other relevant protective development plan policies. Mr Pullan noted, and Mr Duffin agreed in XX that the Appeal site is self-contained with well-defined boundaries and limited views into the Site.
8. Mr Pullan explained that the Characterisation Study 2010 promulgates a ‘Three Strand Approach’ to ‘protect, enhance and grow’ the Borough, and consistent with the Combined Permitted Scheme, the appeal site is demonstrably an area for the exploitation of ‘growth’ for which the aspirations of the CSLBB is to:

“...accommodate a significant amount of growth throughout the borough, by exploiting opportunities for the development of major brownfield sites and strategic regeneration. Through this approach the council aspires to provide the accommodation, infrastructure and public services necessary to support a growing population”

1. Indeed, Mr Pullan explained that the Characterisation Study explains

“Larger planned development schemes and concentrated areas of infill and redevelopment with conversion to flats will define their own typologies and scale, but there is a risk that this will gradually leech into the adjoining suburbs. This prevailing scale and massing should be protected in areas where there is consistent character. At the same time, it may be possible to identify areas which would be more able to tolerate change so that new development can be concentrated in a strategic manner to relate to areas which benefit from good transport links and services as well as those which have already been denuded of much of their original character through previous development.”

1. Thus, the Appeal Site is evidently an area considered tolerant for change including higher densities and flats of a different form to the houses in the suburbs. Thus, unlike the area at issue in the Homebase decision, the area around the Appeal Site is not one which is sensitive to change; rather it is precisely the sort of location where the London Plan expects higher density growth to occur in order to meet London’s housing needs.

1. Mr Pullan conducted a very careful assessment of the character of the Area in his Evidence. He identified that the character of the area was very mixed and diverse without any coherent/consistent heights or massing of buildings. The only consistent thing within this area is in fact its inconsistency. Indeed, Ms Henderson also identified variety and variation as the key element of the character of this part of the area.
2. The surrounding residential streets to the northwest and west of Victoria Park are characterised by a range of dwellings, of different height and scale, age and style (shown at Figures 11 – 15 within Mr Pullan’s evidence). The built form of the town centre can be perceived. There is little evident local distinctiveness to the overall mix of built form which is typical of many outer London boroughs.
3. Indeed, GLA Officer’s noted that

“the application site is in an area of changing character and has been identified as an opportunity site by the Council. It is also noted that the Council officers have previously supported the provision of up to 10 storeys on the site and considered its townscape impact acceptable.” (CD3.1 paragraph 50)

**The Combined Permitted Scheme**

1. The Combined Permitted Scheme comprises 371 units; 618sqm of mix use commercial floorspace and 396 car parking spaces. The Combined Permitted Scheme proposes ten development blocks up to eight storeys as can be seen in Mr Pullan’s Figures 17 and 18.
2. The Combined Permitted Scheme is not put forward as a fall-back scheme. Indeed, there is no evidence before you which demonstrates that building that scheme out would be viable or likely in the event of a refusal. It would thus be a mistake to consider as providing a fallback position. Instead, the Combined Permitted Scheme is relevant because it establishes a number of design principles which have already been determined by the Council to be acceptable – indeed, Ms Henderson confirmed that the NBCA also sees the Combined Permitted Scheme as acceptable also.

1. There is an urban character to the Combined Permitted Scheme, informed by the scale of development, the coarse grain (large footprints), the mix of uses, the enclosure of street and open spaces – in contrast to the character of the suburban streets to the northwest and west beyond Victoria Park. Architecturally the buildings are all similar (See Mr Pullan’s Figure 20).

1. Buildings are up to eight storeys, Block A the tallest at eight storeys is located towards the park entrance and would have been prominent in views along the existing path through the park. At the park edge buildings (C, D, E, and F) are a uniform five storeys stepping down towards the park. Along the railway line there is linear development at four storeys with two breaks (Blocks B and G) containing residential units orientated East/West.

1. A new edge to Victoria Park would be seen to contain Blocks C, D, E and F. These blocks would read as a new urban edge particular when seen in an oblique view from the path within the park. When standing immediately opposite the spaces between the parkside blocks, one would be able to see into the scheme towards the spine road. Between Blocks C, D, E and F the view would have been of the linear blocks G in the background – contained and visually tightened by the narrowing gap (down to 15.5 m at its narrowest) between each of the finger blocks towards the spine road. There would have been a number of single aspect south and generally north facing dwellings which would have been subject to overlooking from adjacent and opposite windows/balconies (See Mr Pullan’s Figure 19).

**The Evolution of the Appeal Scheme**

1. As Mr Pullan explained the design of the Appeal Scheme evolved out the scheme which, although supported by officers of LBB and the GLA, was refused by Members in December 2020. As can be seen from the DAS (CD1.3) Section 4, there was first an analysis of previous schemes which included numbers up to 652 units and then a study of eight options (4.4 Design Studies); followed by further testing and review. With reference to the initial testing of eight options the DAS is clear (pages 29 and 30):

“652 Unit Mix

Having worked closely with officers at New Barnet to develop a scheme that we felt fully optimised the site, the scheme was refused planning consent despite support from the GLA and an officer’s recommendation for approval.

Following planning refusal, EPR re-analysed the 652 scheme against the reasons for refusal, identifying areas of concern.” (Page 29)

“The following sketches summarise the various design options explored by the design team. Each option was assessed against its compatibility against the defined and fixed below ground constraints, planning policy, and the reasons sighted against the previous application (‘652’ scheme submitted in 2019), whilst achieving a consistent level of accommodation of approximately 550 units.” (Page 30)

1. The SNB Design Response (Appendix B CD 1.19) of October 2021 also explains that a design led approach was followed and refers to the GLA response (CD3.1 page 10):

“44. The overall layout of the proposed development remains broadly similar to the previous application; however, the scale of the buildings has been reduced in response to the reasons for refusal on the previous scheme. The proposal now includes larger outdoor amenity and public realm areas and would maintain a separation distance of 20 metres between building blocks. The height of the buildings has also been reduced and Block A would be the tallest element of the development with a height of 8 storeys. The reduction in scale has consequently reduced the quantum of residential units by circa 100 units.”

1. Given the evidence, the reality here is that LBBs Officers and the GLA considered that a 652 scheme was acceptable. The Appeal Scheme represents a significant reduction in the scale of development compared to a scheme which professional officers have considered to be acceptable. The Appeal Scheme cannot therefore represent a maximisation of the site and to suggest otherwise is absurd.

**Not Target Driven**

1. It is then remarkable that in the face of this evidence that Ms Henderson should assert that the scheme was not design led but rather target driven. All of the evidence demonstrates that this scheme was design led and unfounded assertions to the contrary must be rejected. The only “evidence” pointed to by the NBCA is a written note of a number by an officer from a pre-app meeting – but Mr Pullan explained that naturally in such meetings officers will ask how many units the design process is “throwing out”. That is plainly what happened here, and officers were given the figure then being thrown out by the design process which was underway at that time. It is submitted that the Scheme has not been target driven but has been properly design led from its inception.

**Appropriate Design Scrutiny**

1. The NBCA also contend that there has been a breach of policy requirements for independent design scrutiny. That contention must also be rejected for the same reasons it was rejected by the GLA who explained:

“Whilst the proposal has not undergone a Design Review Panel in line with Policy D4, following the refused scheme, the proposals have evolved as part of a design-led process involving sufficient levels of design scrutiny from Barnet Council planning and design officers during pre-application stage. The revised proposal has also been subject to review by GLA officers during preapplication discussions and an independent design audit carried out by the applicant. On balance, officers consider that the revised scheme has undergone a sufficient level of design scrutiny.”[[10]](#footnote-10)

**Quality of Spaces**

1. As Mr Pullen explained, the Proposed Development will include good quality amenity space and children’s playspace. Both the GLA and the Council are satisfied in this regard. It includes a variety of playspaces and makes appropriate provision for “play on the way” as Mr Pullan explained. The applicant has agreed to provide this contribution towards improvements to Victoria Park, to enable play space for all other play age ranges as required by the Play and Informal Recreation SPG. In view of the location of the site adjacent to a recreation ground, which is suitable to provide playspace for older children, the GLA have confirmed that this is an acceptable approach in this case. Accordingly, the objectives of London Plan Policy S4 are achieved.
2. The NBCA has made a number of assertions with regard to microclimate. Appendix D Microclimate to the SNB response (CD 1.19) addresses matters of microclimate in depth and concludes that communal and public recreational spaces are generally expected to enjoy amenable conditions for planned activities.
3. The criticism of the quality of the amenity space and playspace raised by the NBCA is therefore misplaced and unsupported by any professional who has reviewed the Scheme.

**Orientation of Buildings**

1. The NBCA also contended that a re-orientation of the built form should have been considered particularly in relation to the blocks along the railway line. However, the NBCA’s focus has been too narrow here. It has focussed upon single issues – potential overheating and potential noise impacts – and not seen design for the holistic process that it is. The design of this scheme as Mr Pullan explained has sought to optimise a range of factors overall. This inevitably means that some common sense has to be applied. As Mr Evans explained if one’s sole focus was to prevent overheating, then no windows would be provided! Mr Evans explained that the desire to orientate buildings to face, and thus integrate with, the park was a factor affecting the orientation of the buildings within the scheme. Mr Yates explained that he had been asked to consider the orientation of the buildings and has advised that different orientation should be looked at from a noise perspective. This demonstrates that this issue was considered and actively considered by the Appellant as the design led process requires. In the event, the architects determined that such a different alignment was not appropriate from a design perspective. But the architects were not alone in reaching that conclusion.
2. Indeed, the Combined Permitted Scheme grants consent for E/W orientated buildings along the railway line side of the site. The Council also granted permission for another development in Albert Road with E/W orientation and habitable rooms and balconies facing the railway line. Further, Ms Henderson recognised herself the good sense in an E/W alignment in her proposed maisonette design for the buildings along the railway side of the site. Her design adopts an E/W orientation. The NBCA submissions on orientation are thus not supported by its own witnesses recommendations of what is appropriate.
3. Quite apart from the obvious inconsistency of its position given Ms Henderson’s Figure 8 design, the reality here is that the NBCA has not recognised the holistic nature of the design process that it is necessary to pursue in order to undertake a design led optimisation of site capacity. The reality is that no planning or design professional supports the contention that the Scheme is unacceptable as a result of the orientation of the units within it. Members did not refuse permission on this basis either.

**Height to Width Ratio**

1. A further thoroughly bad point pursued by Ms Henderson was that there is some hard and fast rule regarding what an appropriate height to width ratio is in the National Model Design Code or in Manual for Streets. There is not. The National Model Design Code is a document which is to inform the production of design codes by local planning authorities. It explains in terms that that is its purpose. It does not set out development management policies. Further, it explains that the recommendations it makes are to be amended as appropriate to the local context.

1. The part of the NMDC relied upon by NBCA was put to Mr Pullan in XX and he explained that that part of the NMDC did not relate to streets but to squares and plazas.
2. Further, in his rebuttal Mr Pullan demonstrated that there are many award-winning schemes, including by the firm that Ms Henderson used to work for, which do not adhere to the “rule” which she contended was breached by the proposed development. He explained that, rather than applying some general rule drawn from a book, what needs to be determined is what is appropriate in the circumstances of each scheme.
3. It is not correct to assert that Mr Pullen had not considered height to width ratios in his appraisal of the scheme as asserted by NBCA. They have misquoted what Mr Pullan said. His design review addresses the point in terms (CD1.20 paragraph 4.37).

1. You will judge for yourself whether the relationship between the buildings and spaces is appropriate. But when you consider this point, you are asked to note that Ms Henderson is a lone voice in asserting that the relationship is unacceptable. Not a single planning or design professional who has looked at the Appeal Scheme supports the contention that the height to width ration of the scheme is inappropriate in any way. Members did not refuse permission on this basis either.

**Waste Management**

1. The NBCA state that waste management of the site is designed to be complex and labour intensive, risking the sustainability of the scheme, contrary to London Plan Policy D6 (B) and Table 3.2 (iv).

1. In terms of access to the basement refuse areas for Blocks B1, B2, C1, C2, D1 and D2, with reference to the Basement Floor Plan (CD 2.5), the refuse areas for these blocks are located adjacent to the lift and stair core, conveniently located for residents who would therefore either use the lift or stair to access these areas. Collection would be the responsibility of the management company taking the bins through to a central basement refuse collection store and via lift to the ground floor of C1 and for collection from street adjacent to a loading area. All refuse areas that connect internally are further secured by a lobby to residential areas.

1. In terms of walking distance to the bin stores for residents of the blocks, all dwellings are within a short walk of the lift or stair; and from the basement, would be conveniently adjacent to the bin store. Residents would not be disadvantage via the provision of basement refuse stores. Rather, there is an advantage in the increase of active ground floor uses by locating bins below ground. Indeed, the acceptability of this approach is established, since it is what is proposed in the Combined Permitted Scheme as Mr Pullan explained.

1. On collection day the bins can be taken directly to the refuse vehicle by the management company. This is not over-complex since there will be a basement with level access; and for apartment complexes one of the functions of the management company is usually waste management. It is submitted that the appeal scheme complies with London Plan Policy D6 (B) Table 3.2 (iv).
2. Once again, the NBCA has pursued a point which is not supported by any expert evidence nor anyone with relevant expertise. Neither the Council officers or Members nor the GLA officers have raised nay concerns whatsoever.

**The Design Approach**

1. Consistent with the principles established by the Combined Permitted Scheme and the Characterisation Study 2010, the appeal scheme creates its own ‘place’ informed by context, the constraints of the appeal site and resolved through dialogue with Officers and stakeholders, in accordance with London Plan Policy D1 London’s form, character and capacity for growth and Local Plan Policy D3 (A) Optimising Site Capacity through the Design-led Approach.
2. The design approach, through the creation of new open spaces linked to the park and centre, is also accordance with London Plan Policy GG1 Building Strong and Inclusive Communities, which states that those involved in planning and development must:

“...ensure that new buildings and the spaces they create are designed to reinforce or enhance the identity, legibility, permeability, and inclusivity of neighbourhoods, and are resilient and adaptable to changing community requirements”

1. Overall, the GLA concluded that:

“…the changes to the massing of the blocks successfully reduce their apparent bulk and scale and improves residential quality by increasing separation between habitable room windows…

…the masterplan layout demonstrates a simple sequence of blocks with strong street-based frontages along the spine road and good levels of residential frontages onto communal/playspace areas. Blocks are also arranged and formed to optimise sightlines towards the open space to the east and the landscaping strategy is well developed, making good use of level changes running east-west through the site. On this basis, the masterplan layout is supported.” (CD3.1 paragraph 45)

“The masterplan layout and revised massing strategy are supported…GLA officers are of the view that the proposed height and massing could be suitable for the site.” (CD3.1 paragraph 83 Urban Design conclusions)

1. LBB’s Officers determined that:

“The application site has been subject to a design-led approach to optimise the potential of the site. In this instance it is not considered to result in any overdevelopment symptoms. Officers consider that the density of the scheme is suitably expressed through D6 of the London Plan.” (CD 3.2 paragraph 3.1.8)

**The Impact of the Scheme Upon Character**

1. Mr Duffin alleged that the proposed development would have an unacceptable impact upon character in two respects:

* 1. Upon the streets to west of the Appeal Site on the other side of the railway embankment and beyond the development to its immediate west.

* 1. Within the context of the Recreation ground.

**The Western Streets**

1. VP14 shows the view east along Bulwer Road, presently characterised by a mix of dwelling types. As illustrated by VP 14 Proposed, the seven storey Block F will be seen in the background, behind the distinctive red brick building and trees that terminate the view. The proposed building is seen in the distant background and set below the skyline, visually contained by the two-storey terraced housing in the fore and middle ground.

1. As Mr Pullan explained to the Inquiry, any view of the Appeal Scheme will always be at a distance since, as the viewer walks east along Bulwer Road, the built form along Lytton Road and behind in depth will screen the scheme more and more until it is lost from view.
2. When it is seen, the appeal scheme is an addition and of a different style to the suburban houses in the foreground. However as evident from walking the street and Mr Pullan’s Figure 47, there is a considerable variety in built form along Bulwer Road such that a difference in form and scale does not present any intrinsically harmful juxtaposition. The Appeal Scheme will be read just as the town centre buildings are read – buildings of scale in the distance. The Appeal Scheme will not be dominant in this view, nor will it impact harmfully upon this area. There is nothing which fails to respect any element of local distinctiveness, or which harms any element of character which is special, valued or unique to this locality.

1. VP 15 shows the view to the west of the railway line from Leicester Road towards and towards Block E which would be at seven and six storeys. With reference to VP15 Proposed, Block E would be seen in the distant background and set at the skyline. The distant view of the proposed buildings is framed by the three storey apartments and two storey terraced housing in the fore and middle ground. Indeed, there has been a recent addition of a storey to the white building at the end of the road has been extended to four storeys pursuant to a planning permission granted in 2019. This simply adds to the variety of heights and massing within this mixed area. Again, any view of the Appeal Scheme will always be at a distance since, as the viewer walks east along Leicester Road, the built form along Lytton Road and behind in depth will screen the scheme more and more until it is lost from view. In this view, Block A of the Combined Permitted Scheme would have been visible. The Appeal Scheme will have no greater impact that that scheme in this location since both Block F and Block A would read as being in the distant. The appeal scheme will not be dominant in this view. To the extent that the proposed development will be seen it would have little influence on the viewer. The relationship of the appeal scheme to this context would not be harmful, nor would it impact adversely upon any element of local distinctiveness or any element of character which is special, valued or unique to this locality.

1. The LBB Officers agree:

“The bulk, scale and massing of the scheme is broken down into a series of blocks responding to the surrounding context, including the neighbouring properties on Victoria Road, Victoria Recreation Ground and Network Rail land. It strikes a balance of optimising the density whilst providing a scheme that is appropriate in respect of character and appearance as well as achieving high quality accommodation for occupiers and maintaining amenity for neighbours. The townscape analysis demonstrates that the proposal has little impact on the neighbouring surroundings.” (CD3.2 paragraph 3.3.9)

“there are no outright in principle objections to the overall proposed massing and height” (CD3.2 paragraph 3.3.13)

1. It is submitted that the only reasonable conclusion to draw is that, whilst the scheme might be seen, it will not have any materially adverse impact upon the varied and diverse character of these western streets which is contrary to either national or Development Plan policy

**The Recreation Ground**

1. Whatever form of development comes forward on the Appeal Site it will be seen from the Park. This was recognised in the Town Centre Framework which advised that a strong visual connection should be created between the park and the Appeal site (CD 6.3 paragraph 3.6) and proposed “New residential development to front park (to create a new open ‘edge’) and bring activity to park.” (CD6.3 p29).

1. Mr Pullan explained that Viewpoints VP8 (1) and 8D are views from the tree lined path looking towards the town centre and the National Grid depot. Along the path towards the town centre view the towers within the centre become evident (see Pullan Proof Figure 2).
2. At VP8B 1 and VP8 D - Proposed, the proposed buildings are revealed between and above the trees. There is change, but within this context one would also see the new Leisure Centre to the east - a building which is not screened by trees and a far greater juxtaposition upon the openness of the park when compared the built form screened by trees above. A feature of Victoria Park is the tree planting along the boundaries and the path, such that there will be many instances where the buildings are predominantly screened or framed by trees in both summer and winter. It is submitted that the proposed buildings would integrate appropriately into this context and would not have any unacceptable additional impact when compared to the edge created by the Combined Permitted Scheme. The views from the park would change but not in any way which is harmful i.e. which fails to respect any element of character which is locally distinctive, special valued or unique.
3. Mr Duffin’s insistence on an adverse impact due to impact upon openness and the creation of enclosure is wholly misconceived. He has failed to consider the extent to which the Appeal Scheme actually presents any kind of harmful change when compared with the Combined Permitted Scheme. The argument that there would be a wall of development is wholly flawed given that at best the appeal scheme only reduces the gap between buildings by 4 metres and actually maintains a wider gap between the buildings at the western end of the blocks facing the park when compared to the Combined Permitted Scheme.
4. Even if a sense of openness is to be adopted as an element of the character of this area which is locally distinctive (which is not accepted), it is submitted that the Appeal Scheme will not give rise to any greater impact upon openness than the Combined Permitted Scheme. A viewer within the park would not perceive any marked loss of openness if the Appeal Scheme were present compared to if the Combined Permitted Scheme were present.
5. Of course, once again Mr Duffin is a lone voice. The GLA supported the Appeal Scheme in its relationship with the Park and LBB’s Officers described the Scheme as providing a “positive edge to the Park”.

“The GLA states, that the proposed massing alongside the park boundary creates a frame for the park, while other frontages and adjusted massing along the high street and the spine road complements the high street character of Victoria Road. The massing of the development is supported.” (CD3.2 paragraph 3.3.12)

1. LBB Officers determined that:

“The development also acts successfully as a gateway with clear views into the site from the pedestrian perspective. The development is visible from the recreation ground but is a positive edge to the park.” (CD 3.2. paragraph 3.3.15)

1. Accordingly, it is submitted that the only reasonable conclusion to draw is that whilst the scheme will be seen from the park, it will not give rise to any adverse impact which is contrary to either national or Development Plan policy.

1. Overall then, the scheme will not have any unacceptable impact upon character. As LBB Officers concluded:

“The architecture presents a consistent and high-quality appearance which responds to its surroundings. It is considered that the scheme provides an attractive development which is contemporary in appearance yet employs devices of classical architecture and traditional London housing forms, creating a new character for the site that is considered appropriate and acceptable.” (CD3.2 paragraph 3.3.20)

**Appraisal Against the NGD**

1. The Council did not refuse planning permission on the basis of any conflict with the National Design Guide. Indeed, when Mr Duffin wrote the Statement of Case for the Council, he did not identify any conflict with the NDG either. It was then a surprise to read in his evidence for the first time that the Council was seeking to contend that the Appeal Scheme conflicts with the NDG.

1. Mr Duffin identified conflict with paragraphs 40, 41, 43, 51 and 53.
2. It will be apparent that this conflict arises out of Mr Duffin’s conclusion that the proposed development fails to respect its context because it gives rise to an unacceptable degree of harm to the character of the area. It follows that if you conclude as the Appellant has submitted that the proposed development does not have any unacceptable degree of harm, Mr Duffin’s allegations of conflict with the NDG fall away.
3. Within his Section 9, Mr Pullan conducted a detailed and careful appraisal of the Appeal Scheme against the ten characteristics of successful places. His conclusion was that the appeal scheme responds well and positively to the criteria of the NDG; and in particular to those relating to the response to character and in terms of design quality.

1. The result is that the Appeal Scheme is consistent with the NDG and national design policy.
2. Paragraph 128 of the NPPF explains that

“To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes **consistent with the principles set out in the National Design Guide and National Model Design Code**, and which reflect local character and design preferences.”

1. As I have already explained, the Council has not produced a local design guide on a basis which is consistent with paragraph 128. The NPPF at paragraph 129 explains that in the absence of a local design guide the NDG is to be used to guide decisions.
2. Paragraph 134 of the NPPF provides that:

“significant weight should be given to… development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.”

1. Read alongside paragraph 129, this can only be sensibly interpreted to mean that since the Appeal Scheme accords with the NDG then the scheme reflects the appropriate guidance at the national level and garners the support of paragraph 134 of the NPPF. It is submitted that the design of the Scheme is such that it garners the significant weight of paragraph 134 of the NPPF in its favour. The Scheme then accords with the quality of design required by the NPPF.

**Daylight/Sunlight**

1. The scheme has been carefully designed with potential Daylight/Sunlight impacts in mind. Mr Pagani explained to the Inquiry that he had appraised a number of different iterations of the Scheme. He explained in his evidence that he had looked locally to see the extent to which flexibility in the application of the BRE guidelines had been applied and he had identified a number of schemes in which it had been. His conclusion was that, within the context of the flexibility in the application of the then existing BRE Guidelines:

“the overall daylight performance of the Appeal Scheme is more than adequate for the typology of development proposed.”

1. “Adequate”, of course, is the wording of the policy test created by Policy DM01 (Protecting Barnet’s character and amenity) of the Development Management Policies 2012. Thus, by saying that the scheme is more than adequate, he is stating that it complies with development plan policy.

1. LBB’s Officers looked carefully at this issue and they concluded (CD3.2 paragraphs 3.4.6-7):

“3.4.6 The BRE guidelines explain that the guidelines are not mandatory and that the guide should not be seen as an instrument of planning policy; its aim to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design. In special circumstance the developer or planning authority may wish to use different target values. For example, in a historic city centre, or in an area with modern high-rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings. It should also be noted that the London Plan guidance states that in view of London’s context accepting VSC reductions exceeding 20% is acceptable. A reduction of under 30% is classified as minor adverse, under 40% moderate adverse and over 40% substantial adverse.

3.4.7 In regard to the proposal the assessment with regard to the daylight and sunlight enjoyed by the neighbouring properties, demonstrates that in all instances the numerical values set out in the BRE guidelines, will be achieved. Where they are not, the levels would be improved when compared to the consented schemes. Accordingly, it is concluded that the proposals will not therefore have a significant effect on the daylight and sunlight enjoyed by the neighbouring residential properties.”

1. Members did not pursue a reason for refusal relating to sunlight/daylight.

1. Since then and only very recently, the BRE Guidance has been replaced with a new version. Mr Pagani and his team did a huge amount of work in a very short space of time and produced a new assessment based upon that new guidance in his addendum proof. He explained that when using the new BRE Guidance in this Addendum, it is important to appreciate that the Guidance needs to be read in conjunction with the British Standard and European Norm BS EN 17037 2018 (CD 9.11), where the targets for daylight in buildings are contained. BS EN 17037 includes a specific UK National Annex providing further clarity and more appropriate target levels for dwellings in the UK. The main change to the assessment of quality of daylight within the proposed accommodation occurs in relation to the introduction of a climate-based methodology, which is provided as an alternative to study of light under an overcast sky. The climate-based methodology provides target illuminance values (lux) which are based on the local climatic conditions, and are captured within given weather files.
2. The results clearly demonstrate that according to the new BRE and BS EN methodologies, the proposed Appeal Scheme will offer future occupants good daylight amenity with 91% (1487 out of 1627) of the proposed habitable rooms meeting or exceeding the minimum illuminance targets as recommended within the UK National Annex. When considering a 150 Lux target for combined Living Kitchen Dining (LKD) rooms, another 46 LKD would meet the minimum recommendation for living rooms and, therefore 94% of the living areas assessed can be considered well daylit. In the 'no-balcony' scenario 98% of the tested rooms achieve the minimum recommendations for daylight. The provided data demonstrates that only 10 LKDs fall short for the illuminance target for living rooms (150 Lux). All but one of these LKDs see at least the target for bedrooms. Nine of them are located at ground level and the remaining one at first floor achieves 150 Lux over 46% of its area and half of the daylight hours where 50% is the suggested target.

1. Accordingly, while there are a few rooms that would fall slightly short of the minimum recommendations, this is usual in any flatted development and the other examples of approved schemes demonstrate this.

1. Only the NBCA sought to contend that the standard of daylight/sunlight would be unacceptable. They did so without any assistance from anyone qualified in the field. The nature of the case presented in respect of sunlight/daylight was frankly shambolic and at times offensive.
2. It was unacceptable for Ms Henderson to suggest to a public inquiry, without any evidential foundation for doing so, that Mr Pagani was giving anything other than his independent, honest and expert opinion in his evidence. All the more so when he had explained in his proof that he understood his duty to the Tribunal ahead of any duty to his client. To be clear you must reject any suggestion to the effect that the Appellant’s witnesses have given you any other than their true independent professional opinions.
3. But the fact that the NBCA were prepared to go this far in presenting evidence reveals rather a lot. The case it has presented has involved accepting the detailed output of modelling and procedures from a number of experts which the NBCA does not have the expertise to produce itself. Thus, the NBCA accepts that the Appellant’s experts are competent enough to produce the outputs required for assessment purposes. However, the NBCA then disagrees with the same experts when they reach a conclusion based upon those outputs. In essence any expert who expresses a view which does not support a scheme design which accords with what the NBCA wants for the site is wrong. The NBCA case is that Mr Pagani has got it wrong, Mr Ian Dix has got it wrong, Mr Yates has got it wrong, Mr Evans has got it wrong and so have the officers of LBB and the GLA. Thus, bizarrely you are being asked to rely upon the appraisal work undertaken by the Appellant’s experts but to reject all of their expert conclusions founded on that work, and to prefer instead conclusions offered by a resident’s group with limited to no expertise.
4. Nowhere is this more starkly evident than in respect of sunlight and daylight. The NBCA pursued a point that it was inappropriate to use a 1.5% target figure for LKDs as Mr Pagani had for a some of the units. This of course is in the context of the old BRE guidance. Mr Pagani explained that the use of 1.5% was in fact quite usual and was an approach adopted by Dr Paul Littlefair the author of the BRE Guidance. This was to avoid designers seeking to meet the target for living rooms by creating subdivided small kitchens which would not be naturally lit. But even being told this was not enough to alter the NBCA from its course. Instead, the NBCA sought to contend that it was wrong in principle to use 1.5% in the way which it had been – they actually argue that Dr Littlefair did not know how to apply the guidance that he wrote. This should obviously be rejected. The approach adopted to LKDs in the assessment is entirely appropriate.
5. Ms Henderson also argued that the Combined Permitted Scheme performed better against the BRE guidance than the Appeal scheme. However, the Combined Permitted Scheme looked only at a sample of rooms to conclude that 88% (77 out of 88 of the tested rooms) meet the ADF targets. The analysis carried out by GIA (CD-1.7) for the Appeal Scheme modelled and assessed all of the 1627 proposed habitable rooms and therefore provides a much more comprehensive appraisal of the daylight performance of the proposed scheme. Thus, Mr Pagani explained that the results of the studies should not be directly compared. That is obviously right.
6. It submitted that the NBCA has not presented any substantive evidence that comes close to establishing that the proposed development is unacceptable in terms of sunlight daylight. Indeed, the NBCA’s pursuit of this issue has been wholly unreasonable.
7. Looked at in the round, the only reasonable conclusion is that the Appeal Scheme will offer future occupants good daylight amenity and accords with national planning policy and the Development Plan in this respect.

**Noise**

1. In terms of the noise climate, the proposed development site is located in a mixed residential and commercial area. To the north of the proposed development site, the gas works is generally quiet apart from a small number of vehicle movements associated with it passing along Spine Road. To the east of the site is Victoria Park and approximately 30m to the west is the East Coast Main Line railway. On the eastern boundary of the site is a shooting range and meeting hall for the East Barnet Shooting Club, beyond which are residential houses. On the south-western boundary of the site are two public houses and a new residential development (recently completed). To the south of the site is a mixed residential and retail/commercial area along the A110 East Barnet Road and Victoria Road.

1. Mr Yates carefully described the noise measurement procedures, analysis and noise modelling which was undertaken. He demonstrated how this is in line with normal good acoustic practices and relevant legislation and guidance documents. He also set out the expected internal and external acoustic environments at the future development and demonstrated how any adverse impacts are controlled and mitigated. He concluded that the internal and external noise level criteria set out in the ProPG, BS 8233 and the WHO guidelines would be achieved.
2. Accordingly, it has been demonstrated that National, London and Local planning policy has been complied with in that significant adverse impacts are avoided and any residual adverse impacts are mitigated and reduced to a minimum by compliance with current professional practise guidance. Thus, the proposed development is entirely acceptable in noise terms.
3. LBB Officers agree. They explained (CD3.2):

“3.2.32 **Good acoustic design has been shown by the site layout** in that only a very small number of flats (within Blocks H and J) are directly facing the dominant noise source at the site, Victoria Road/A110 East Barnet Road. Additionally, there are a number of communal amenity areas around the proposed development site located within courtyards between buildings where they be significantly shielded from noise.

3.2.33 The submitted Noise Impact Assessment has been reviewed by the Council's Environmental Health team and satisfied with the information provided, subject to conditions relating to the proposed extraction and ventilation equipment and associated noise mitigation measures.”

1. Once again, only the NBCA sought to suggest that the acoustic environment would be unacceptable. Once again they adopted Mr Yates’s modelling but rejected his conclusions based upon it.

1. The NBCA question the attenuation utilised by Mr Yates for balconies. He explained in his rebuttal that a 5 dB attenuation was used as an approximation of the noise reduction from a partially screened noise source. Even with the slightly open balustrade selected a partial screening would still occur. Even should there be a small change to the numbers, this is not likely to change the overall conclusions since the predicted noise levels at the railway façade are 56 dBLAeq,16hr, and therefore only a 1 dB reduction would be required to achieve the upper guideline noise level for amenity areas (55 dB LAeq,16hr). He also explained when he gave evidence that he had not taken into account any boundary fencing which would also provide some attenuation for those in amenity areas.
2. Plant noise will be controlled via the imposition of a standard condition to ensure that it will not have any adverse impact upon amenity. The NBCA suggested that the precise nature of the plant should be known by now and have been assessed. This just reveals the depth of their lack of familiarity with planning procedures. The reality is that plant is very rarely selected prior to the grant of a planning permission and the use of conditions to address plant noise is a standard process. The only reasonable conclusion is that plant noise will not give rise to any adverse impacts.
3. A number of points were raised in relation to road noise; all of them are bad. Mr Yates explained that the proposed development would not exhibit street canyon effects. He explained that such an effect only arises from a very long street with unbroken tall buildings close to the road and a constant traffic flow, where sound will reflect off buildings constantly. This is not the case with the proposed development - there are many gaps between buildings where reflection cannot take place along a relatively short road and therefore the Street Canyon build-up of sound will not occur.
4. He also explained that the assumptions of the calculation procedure (CRTN) produce a constant noise level across the day, this is simply to produce a worst-case average noise level based on the traffic flows and therefore allowing selection of appropriate glazing specifications to ensure future residents will be protected, it does not actually reflect the use of the road in practice. Along the spine road, traffic flow will not be constant. A total traffic flow of 1339 is expected across a typical weekday (which is what has been input into the noise model);480 of which will be during peak hours (0800 hrs to 0900 hrs–261 vehicles and 1700 hrs to 1800 hrs–219 vehicles as detailed in the Transport Statement for the scheme). Accordingly, higher numbers of cars will use the road in the peak hours but with very few vehicles passing during the remaining hours, when people are more likely to be outside enjoying neighbouring amenity spaces. Accordingly, noise levels along the street and in neighbouring amenity areas will generally be relatively quiet and only raised during busy traffic periods.

1. Ms Henderson also raised points by reference to a comparison of an internal noise level target (35 dB –which is set for daytime noise levels in habitable rooms) and said this was exceed by reference to predicted external noise levels. This is not an appropriate exercise since it fails to take into account the attenuating effect of buildings and/or any mitigation that will be in place. Mr Henderson’s conclusions by reference to this comparison are to be rejected.
2. The reality is that this Site is no different from any Site that is proximate to a railway and a road. They are routinely brought forward for development with the type of mitigation in place which is proposed in the Appeal Scheme. Mr Yates confirmed that there was nothing unusual about the degree of mitigation being provided.
3. The only reasonable conclusion then is that future residents will not be unacceptably affected by noise; rather the appeal scheme accords with relevant national and Development Plan policy in respect of noise related matters.

**Overheating**

1. In terms of matters related to overheating, there are two aspects to note. Firstly, the GLA is satisfied with the appeal scheme proposals. The June email (CD16.2) confirms that there are no matters outstanding in respect of overheating. The GLA thus accepts that the proposed development complies with policy SI4 of the London Plan. That really is the end of the matter.

1. The NBCA sought to argue that the proposals were unacceptable in terms of overheating, but its position cannot be sustained in the light of the GLA’s position. The reality here is that the combined constraints of the Appeal Site led to a design which has E/W facing flats alongside the railway – this is no different to the Combined Permitted Scheme which the NBCA considers acceptable. If this is acceptable in the permitted scheme, then it must be in the Appeal Scheme. Mr Evans explained that west facing balconies are in fact sought after by residents who like to be able to enjoy evening sun from their balconies. Further, just as with the Appeal Scheme Ms Henderson’s suggested acceptable maisonette design included habitable rooms and gardens on the western side by the railway.
2. The assessment of the residential development explains how the development has integrated appropriate passive measures to reduce the risk of overheating and modelling in accordance with TM59. These include the use of openable windows, balconies, reflective blinds and low g-value glazing. (That is glazing that allows a lower level of energy through.) The results of this were that that 810 of the 833 rooms met the criteria required. Some units are required to be able to operate comfortably with the windows closed, because of security and/or noise from the railway line or Victoria Road. As Mr Evans explained, this is almost always the case for new developments in London where homes immediately adjacent to significant roads, railway lines or industrial processes cannot achieve the desired internal noise levels with the windows open.
3. In this situation it is very likely that only mechanical cooling will enable comfort levels to be obtained in line with TM59. Once the cooling has been applied to the affected homes, the proposed design, as approved by officers, achieved temperatures in line with TM59, except for 3 living rooms in Block B2 which failed marginally. This has been addressed by small changes to the g-value of the glazing for these rooms
4. The mitigation provided has followed the appropriate approach of first seeking to utilise passive measures and ensures that an acceptable temperature can be provided within every flat. This is required by the Building Regulations Part O in any event.
5. As Mr Pullan explained in his rebuttal (paragraph 1.17), air management heating/cooling conditioning units are available that can be wall mounted (allowing space below for a unit such as a washing machine or tumble dryer) and would not impact upon the net internal floor area. In essence this can and will be addressed at the detailed design stage.
6. In terms of cost, there is no planning policy which requires costs to be kept at any particular level for future residents whether occupying affordable housing or otherwise. It is then not an aspect of the case which has any implications in planning policy terms. Nevertheless, Mr Evans sought to engage with the point. He has explained that the broad-brush calculations provided cannot be relied upon since they do not reflect actual usage and thus power consumption. He reworked them nonetheless and identified costs of £157 against which £60 is recovered by way of heat recovery. Filters would cost about £60. New homes are much cheaper to run than the average of the housing stock in the country. A study by the Home Builders Federation (HBF) found that a new home is £435 per year less to run than the average of the housing stock. Even allowing for the saving being less in a flat, it is clear social housing tenants at Victoria Quarter will have much lower energy bills than the average across the housing stock.
7. As the energy statement makes clear the proposed development meets the net zero requirements in the London plan and will delivery significant carbon emission savings. The GLA has no outstanding issues in relation to the Energy Strategy which has been signed off.

1. The reality here is that residents will be better off financially in the proposed development and they will be better off than almost all other existing homes in the UK in terms of resilience to climate change, as Mr Evans made very clear. The only conclusion is that the proposed development responds to overheating issues in an entirely appropriate way and accords with relevant national and Development Plan policy related to overheating.

**Parking**

1. In terms of parking provision, the London Plan Policy T6 is the key policy. It provides:

“A. Car parking should be restricted in line with levels of existing and future public transport accessibility and connectivity.

B. Car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport, **with developments elsewhere designed to provide the minimum necessary parking** (‘car-lite’). Car-free development has no general parking but should still provide disabled persons parking in line with Part E of this policy.

C. An absence of local on-street parking controls should not be a barrier to new development, and boroughs should look to implement these controls wherever necessary

allow existing residents to maintain safe and efficient use of their streets.” (emphasis added)

1. Policy T6.1 also requires parking to be provided below defined maximum standards. These standards are a hierarchy with the more restrictive standard applying when a site falls into more than one category. The NBCA position is that he Appeal Site has in part a PTAL of 1 and in Part 3. This means that for parking the more restrictive PTAL of 3 standard is to be applied. Thus, there is no need to resolve the dispute over the PTAL rating of the site for parking purposes, although Mr Ian Dix’s detailed assessment of the appropriate PTAL is obviously right.
2. Overall then, in essence, the London plan requires parking to be provided below the maximum standards at a level which represents the minimum necessary.
3. It is important to note that the NBCA raises issues relating to parking because they are concerned to ensure that a CPZ is not introduced. That is not a proper basis for raising objection to a planning application in London. As I have set out above paragraph C of Policy T6 explains that such controls should be introduced where necessary in response to new development.
4. Despite there being no impact on parking on the roads around the site a contribution has been offered to the Council to implement a CPZ if this is desired. By way of belt and braces, this option is included in the S106 Agreement that is being executed. It will also be the case that no new residents on the site will be able to apply for residents permits within any CPZs in the wider area. That is not to say that a CPZ will be required to address the Appeal Scheme since it will not, but the provisions of s106 are intended to provide some comfort nevertheless.
5. As Mr Ian Dix explained, the GLA’s starting position in discussions was that a ratio of 0.5 spaces per dwelling was appropriate as the minimum necessary below the maximum standards. In fact, the proposed development provides parking at a ratio of 0.62 spaces per dwelling.
6. What is an acceptable level of parking is complex matter. Getting it right requires years of experience. The justification for the proposed level of car parking is set out in the Transport Assessment (CD1.13) that supported the planning application for the proposed development.
7. As Mr Ian Dix explained, it is a matter of balancing the likely level of demand with the wider policy aspirations of reducing car usage and promoting the use of more active modes of travel and public transport as encapsulated in the London Mayor’s target for 80% of all trips in London to be made by foot, bicycle or public transport by 2041. Mr Ian Dix explains that the proposed level of car parking spaces ensures space is available to enhance the wider offer of the scheme and enhance the design to achieve the best design possible. If a higher level of parking were to be provided this would negatively affect the scheme design by reducing the space available for other features.

1. He explained that the Appeal Site benefits from having very close access to National Rail and public bus routes, with London Underground routes also available in the wider area, which can be reached on foot, by cycle or by bus. Whilst the London Underground routes are located further away from the site, there is still likely to be a reasonable amount of demand generated for these services by the development on the basis that there are multiple ways in which to access them. Many key facilities (i.e. supermarkets, schools, post office, recreational space, gym) can all be reached within a short walk of the site
2. In terms of the demand for parking, using 2011 census data some 367 spaces would have been required to accommodate demand. This census data captures all car and van use and encompasses demand arising from trades people with a work van. However, Mr Ian Dix identified a number of trends since 2011 which meant that a reduced number of spaces from the 367 figure is appropriate. He pointed to the use of car clubs. Four car club spaces are proposed and Enterprise has expressed interest. It would be unreasonable to expect a contract to have been entered into for car club spaces in respect of a scheme which has not yet obtained planning permission. Mr Ian Dix expressed confidence that the four spaces would be operated by car club operators.
3. Each space has the potential to remove 17 vehicles, this represents 68 vehicles / spaces across the development. If this reduction is applied to the 367 spaces identified to support car ownership in 2011 this would mean that only 299 car parking spaces would be needed as part of the scheme. However, there needs to be some allowance for visitors. The additional 31 spaces (334 in total, less 4 for car clubs and 299 to meet revised car ownership) would provide for this.
4. Mr Ian Dix also examined the type or “segments” of people who would be likely to occupy the proposed development. Whilst the proposed development does not preclude people from any of the identified segments from becoming future resident, it is anticipated that the majority of future residents will be those within the urban mobility, students and graduates and city living segments. The reasons for this are the short journey time commuting into London, the site’s links to public transport and access to amenities on foot and by cycle. Car ownership and use is expected to be low as a result. Mr Dix also pointed to evidence showing that younger people are becoming less likely to be car owners. These factors all point to a reducing trend in car ownership and use over time.
5. Mr Ian Dix has thus explained to the Inquiry that in his expert judgement the proposed level of parking is appropriate. The expert officers at TFL are also satisfied that the proposed parking provisions is appropriate. The expert Highways Officer at LBB was also satisfied (CD3.2 paragraph 3.5.6):

“This has been reviewed by the LBB highways team and the parking provision ratio of 0.62 is considered acceptable in principle, given wider London policy framework, TfL’s Healthy Streets Policy, current and emerging Borough Policy, and previous LBB approvals for schemes with similar accessibility levels.”

1. In short no qualified highway engineer or transportation planning has concluded that the amount of parking proposed is insufficient.

1. Whilst the NBCA express fears that the parking proposed is insufficient, they have not adduced any evidence which comes close to demonstrating that Mr Ian Dix’s judgement, the TFL Officers judgement and the LBB Highways Officer’s judgement are all incorrect.
2. The policies in the Development Management DPD are inconsistent with those in the London Plan, since they allow for higher levels of parking than Policy T6 and T6.1 allow. Section 38(5) of the 2004 Act applies to mean that it is the London Plan policy which is to be applied. The evidence establishes that the parking provision proposed accords with national planning policy and Policy T6 and T6.1 of the London Plan.
3. In addition, car parking management is appropriately addressed by proposed condition 42. Thus, parking management will be controlled in accordance with the objectives of Policy T6 (J). The NBCA submissions to the contrary are thus misconceived.

**Family Homes**

1. The scheme that was refused in December 2020 was refused on a number basis including a failure to provide sufficient four-bedroom family units. The Appeal Scheme sought to address this concern. Members did not refuse permission by reference to this issue and so it can be taken that this matter has been addressed to the satisfaction of the Council. Indeed, Officers explained:

“3.2.4…. Given the application site's edge of town centre location and urban character, it is considered that the proposed mix is acceptable and consistent with the highlighted policy approach. Indeed, half of the overall number of proposed units are large two-bed, or three-bed units, with 111 of these provided as affordable housing units.

3.2.5 Overall it is considered that the proposed scheme comprises a good mix of housing types and sizes to address the housing preference and need. Officers therefore consider the proposed dwelling mix to be acceptable and in accordance with Policy DM08 of the Local Plan. Furthermore, the GLA has confirmed, in strategic planning terms the mix is acceptable and note the provision of family housing has been appropriately provided within the affordable component of the mix of which (following the amendments to the scheme) 73 units are 3 bedroom properties”

1. It has to be remembered that the Council also now treats larger 2-bedroom homes as family homes. As is explained in the Reg 19 draft of the emerging Local Plan:

“In the past a family property would traditionally consist of three bedrooms or more. Many families now live in two bedroom accommodation. Table 9 sets out minimum space requirements for all new self-contained accommodation. Well-designed two bedroom properties of between 70m2 and 79m2 gross internal floor area12 can now be considered as family homes as they are capable of accommodating 4 bedspaces. In assessing the size of new homes, the AMR will reflect the number of bedspaces as well as homes.”

1. The NBCA objection to the housing mix is therefore to be rejected. It is unsupported by any up-to-date assessment of housing needs nor any expert evidence.

**Affordable Housing**

1. The NBCA have made a number of statements which focus upon the provision of affordable housing is in the blocks adjacent to the railway line. The true and complete position is as follows. With reference to the Tenure Plans, the ‘affordable’ housing comprises shared ownership and London Affordable Rent. It is located within the blocks adjacent to the railway (G, F4, F3, F2, F1 and E); Block D1 along the spine road; Blocks J and H. Only Blocks G, F3, F2, F1 and E are only affordable. Blocks F4, J, H are mixed private and affordable and only B1, C1, B2, C2 and D2 are wholly private. Outwardly the appeal scheme is designed ‘tenure blind’. All residents have access to the private communal spaces between the private blocks. This will be an integrated and inclusive environment.

**Infrastructure**

1. The Appellant and the Council have agreed the package of measures necessary to support the proposed development in a section 106 planning obligation. This, together with the CIL payment which will be made, ensure that the necessary infrastructure to support the scheme will be provided.

**The Benefits**

1. There are many benefits of the appeal scheme which can be given degrees of weight in the consideration of this case.

1. The Council contends that something which is required by policy cannot be a benefit. But housing and affordable housing are required by policy to meet needs in London and Barnet. The provision of housing on an allocated site still delivers public interest benefits which are to be given weight in the planning balance. The Council’s point then is obviously wrong. If you do not ascribe weight to factors that deliver benefits in the public interest you will err in law since you will leave out of account a material consideration. You are urged therefore to reject the Council’s submissions in this regard.

1. It is agreed that that there is a need for housing across London as a whole, and that the provision of market and affordable housing should carry significant weight in the planning balance. It is agreed that the site is previously developed land in the urban area, that is suitable and appropriate for residential development. It is confirmed by all parties that the principle of redevelopment of the sites is acceptable, subject to the proposals meeting other development management criteria discussed in this report. It is agreed by the Council that development at the site can be sustainable i.e. that is achieves the objectives for sustainable development set out in the NPPF, and Mr Slatford considered that this should be given significant weight.

1. It is also relevant to note that the appellant is of the view that the site could provide new homes by 2025. Thus, the benefit of these new homes can be delivered quickly.

1. The proposed development would create 539 new households which would, in turn, generate demand for local shops and services, utilising public transport. Construction of the proposed development would generate additional expenditure in the local economy via 313 direct FTE construction jobs per annum; 310 FTE indirect and induced jobs per annum; £32.1 million of direct GVA; and £36.9 million of indirect and induced GVA. This should be given moderate weight, as any new development on the site will generate some growth in expenditure for the local area. Further, apprenticeships and training for local people would be provided during construction.

1. The proposed development would improve the residential environment of the area by delivering a high-quality residential scheme on a disused urban site. The design proposals adhere to established principles of place making and urban design which are fundamental in creating good places to live. The proposed development includes 112.7sqm of community floorspace (Class E), which has the potential to accommodate social infrastructure if there is demand for these uses. The appeal development would also provide new high-quality amenity spaces for the enjoyment of future residents and a larger public open space.
2. The social benefits arising would therefore include: easing local deprivation, supporting local population’s wellbeing and enhancing the quality of living for its new occupiers; increasing housing choice and supporting dealing with affordability issues; encouraging active lifestyle for all ages; and support for social interaction and enhance community participation. Mr Slatford was right to consider that these matters should be given significant weight.
3. The majority of the site comprises buildings and hard standing associated with its former use. The landscape proposals would allow for the creation of new and enhanced habitats and would achieve a net biodiversity gain which could be subject to a planning condition. The proposed development would incorporate a variety of energy reducing measures and take a fabric first approach. The proposed development incorporates various measures to improve sustainability credentials and reduce energy and climate change impacts, including reduced energy / power demands for heating, hot water and lighting. Electric Vehicle (EV) charging points would be provided on the development to promote and encourage uptake and help reduce emissions. Water efficiency measures would be specified to reduce demand for potable water by residents

**Conclusion**

1. The principle of residential development at the appeal site is agreed by all parties and the Council agree that the delivery of new homes, including a substantial number of affordable homes, should be given significant weight.

1. As explained above, the proposed development accords with policy D3 of the London Plan. It respects the elements of character which are locally distinctive a delivers a high-quality development. The Appeal Scheme accords with the approach required by the National Design Guide and this is to be given significant weight in favour of the grant of planning permission (NPPF 2021, paragraph 134). None of the matters relating to technical aspects of the case raised by the NBCA are of any moment whatsoever and all have been rejected through expert evidence.
2. Mr Slatford and LBB Officers agree that the appeal scheme is in accordance with the development plan as a whole. This is a scheme of high-quality design proposed for a vacant urban site, that is in accessible location and that, for these reasons, is suitable for residential development. This is agreed by all parties. In addition, there is no severe highway impacts or material harm to amenity.

1. The development does not conflict with any aspect of the NPPF and is compliant with national planning policy.

1. As Mr Slatford and LBB Officer’s concluded, there is no harm arising from the appeal scheme that would outweigh the benefits, when assessed against the policies in the Development Plan and the National Framework taken as a whole.
2. If, however, it was determined that there was any conflict with the development plan or that any harm would arise from the proposals, Mr Slatford explained that his view was that any such conflict or harm would be minor and that it could thus not have significant weight. As I have explained there are a number of material considerations of significant weight which would mean that planning permission should nevertheless be granted.
3. This is the right scheme for this site. It reflects the fundamental transformation that is necessary to deliver the housing that London so desperately needs. It has been carefully designed to be appropriate for its site and context. The time has come for a planning permission for this Site to be granted which can be taken forward. We ask you, Sir, to circumvent the politics, which has delayed delivery of much needed housing in this location for far too long, and to grant permission for this high quality and exciting scheme.

29 July 2022

REUBEN TAYLOR Q.C.

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1. London Plan 1.4.3 p20. [↑](#footnote-ref-1)
2. London Plan 1.4.2 p20 [↑](#footnote-ref-2)
3. London Plan 1.4.4 p20 [↑](#footnote-ref-3)
4. London Plan 1.2.1 p15 [↑](#footnote-ref-4)
5. London Plan 1.2.2 p15 [↑](#footnote-ref-5)
6. London Plan 3.1.7 p106. [↑](#footnote-ref-6)
7. Duffin para 7.20. [↑](#footnote-ref-7)
8. See section 5 of the RDG2016 [↑](#footnote-ref-8)
9. [↑](#footnote-ref-9)
10. CD3.1 paragraph 42 [↑](#footnote-ref-10)