**RE : LAND FORMERLY KNOWN AS BRITISH GAS WORKS, ALBERT ROAD, NEW BARNET**

**APP/N5090/W/22/3294689**

**CLOSING SUBMISSIONS BY LONDON BOROUGH OF BARNET**

*[These submissions refer to witnesses by their initials : DD (Dominic Duffin), CP (Colin Pullan), SS (Simon Slatford) ]*

**Optimisation or Maximisation**

1. It was suggested in LBB’s Opening that this development proposal was a textbook example of maximisation masquerading as optimisation, and as this Inquiry draws to a close that could not be clearer.
2. Optimisation is not a catch-phrase but a clearly-understood term from the London Plan :

*Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site. The design-led approach requires consideration of design options to determine the most appropriate form of development that responds to a site’s context and capacity for growth, and existing and planned supporting infrastructure capacity […][[1]](#footnote-1).* [My underline]

1. This is given further explanation in the supporting text to the policy :
2. A design-led approach for optimising site capacity should be based on an evaluation of the site’s attributes, its surrounding context and its capacity for growth to determine the appropriate form of development for that site[[2]](#footnote-2) ;
3. The optimum capacity for a site does not mean the maximum capacity[[3]](#footnote-3).
4. It is clear therefore that optimisation means ensuring that development is of the most appropriate form for the site, and it cannot be the most appropriate form if it fails as a response to the site’s context.
5. It is LBB’s case that the appeal proposal is not an appropriate response to its surrounding context. It is therefore not optimisation, no matter how many times the appellant repeats that it is.
6. It is maximisation.
7. The appellant’s contention, advanced at the eleventh hour during Re-ex of SS, that the proposal cannot be maximisation because the previously-refused scheme sought even more development on the site is an absurd argument :
8. If that argument were correct, it would mean it is would always be virtually impossible to establish the ‘maximum’ ;
9. If that argument were correct, it would mean that any developer could submit a hopeless scheme for a vast amount of development on a site, knowing that it would be refused, in order to be able to say that a subsequent scaled back scheme did not amount to maximisation.
10. The appellant’s argument on what is meant by maximisation should be given short shrift.

**Main issue : character and appearance of the area**

1. LBB issued three reasons for refusal. RfR 2 related to living conditions and was subsequently withdrawn (although a number of living conditions objections are pursued by the Rule 6 party). RfR3 related to planning obligations which have now been satisfactorily addressed by the s106 agreement. That leaves RfR1 as the ‘live’ objection pursued by LBB, and this alleges that the proposal would be “detrimental to the character and appearance of the area”. That was identified as a main issue by the Inspector at the CMC[[4]](#footnote-4) and expressed as follows :

*The effect of the proposed development on the character and appearance of the area which will include scale, massing and density.*

1. In opening the Inquiry, the Inspector repeated that the impact on the character and appearance of the area was a main issue.
2. During the Inquiry, however, the appellant has sought to redefine that issue as a narrow reflection solely of part of paragraph 1) and paragraph 11) of Part D of London Plan policy D3. The appellant’s invitation to the Inquiry is plainly to treat the issue as whether the proposal “responds to local distinctiveness and to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality”. That approach is wrong, ignoring entirely the remainder of relevant development plan policy and national policy. Even on that approach, however, the scheme should fail.
3. The correct approach is to treat the main issue precisely as the Inspector set out, whether the proposal would harm the character and appearance of the area, and which development plan policies are thereby breached.
4. Indeed it is important to note that SS – who is after all the appellant’s planning witness – confirmed both in writing[[5]](#footnote-5) and in XX that Policy CS5 should carry moderate weight and in XX that Policy DM01 should carry moderate weight. Thus even on his approach it is highly relevant to consider whether the proposal breaches the terms of those policies. His approach therefore does not correspond to the suggestion in the appellant’s Opening[[6]](#footnote-6) that Policy DM01(b) should be “put to one side” nor with the theme of the appellant’s case during the Inquiry that it is only D3 that “counts”. More will be said about these policies and the weight that should be given to them later in these submissions.
5. LBB have clearly articulated their case to identify those areas in the appeal site’s surroundings that would be harmed by the appeal scheme :
6. The western enclave of low-rise residential streets in particular Bulwer Road, Leicester Road, and Lytton Road.
7. The park known as Victoria Recreation Ground.

*The western residential enclave*

1. In 2010 LBB published their Characterisation Study, which formed part of the evidence-base for the adopted local plan and remains highly relevant hence it now forms part of the evidence-base for the emerging local plan. In 2021 the Inspector at the Homebase Inquiry (a Barnet site, at 679 High Road) described the Study as “[…] of some age but is a helpful guide to urban character and local distinctiveness”. Snookered by the recent approach of that Inspector, SS accepted in XX that it remains a helpful document, although he clung nonetheless to the claim that it should carry only limited weight. Whilst it is easy to see how a document which is not very helpful might be given limited weight, it is difficult to see how a document which is agreed to be helpful in the determination of this appeal should at the same be given limited weight.
2. It is relevant to remember that the purpose of the document is to provide “ a detailed understanding of the Borough’s urban character. This will help to identify areas within the borough that require greater protection in addition to those that have the potential to accommodate new development”[[7]](#footnote-7). CP fairly agreed in XX with DD that in terms of character description the relevant descriptive sections remain accurate. The Study acknowledged that “Barnet’s suburban character is one of the Borough’s greatest assets”[[8]](#footnote-8) and that remains the case. The chapter specific to New Barnet [[9]](#footnote-9) set out a character description which distills into nine propositions. CP in XX agreed with DD in EiC that all of these propositions remain accurate. These propositions include :
3. The character of housing types remains relatively consistent ;
4. There is an overall consistency of massing within the built form, with most residential units rising to two of three storeys at most.
5. Those propositions clearly apply to the residential streets identified to the west of the appeal site (the ‘western enclave’ as referred to for the purposes of this Inquiry).
6. The Study identified conclusions in the Borough in relation to scale and massing[[10]](#footnote-10). In particular, “the prevailing scale and massing should be protected in areas where there is consistent character” although “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”. CP and SS both agreed in XX that this approach remains valid. Although LBB regard the surrounding residential character as consistent, they have clearly identified the appeal site as one where change can be tolerated, hence the approval of the combined permitted scheme. Change, however, does not mean any change ; and tolerance does not mean unlimited tolerance.
7. It is difficult therefore, when looking properly at the relevant content of the Study, to understand why SS remains of the view that the Study should be given limited weight. It’s all very well saying it pre-dates the current London Plan and NPPF, but there is nothing in the relevant sections that is outdated. It recognises that there can be flexibility in decision-making even where there is a consistent prevailing character. In fact CP looks to rely on the Study where he thinks it helps his case[[11]](#footnote-11), at the same time as his team encourage the Inspector to give the document limited weight.
8. Insofar as the appellant’s argument can be understood, it appears to be that the Study does not identify in the specific language of parts of Policy D3 the special or valued features or characteristics and uniqueness or local distinctiveness. That argument is simplistic and misconceived :
9. The Study within its Methodology section[[12]](#footnote-12) recognises that Barnet’s suburban character is one of the Borough’s greatest assets and explicitly identifies “Barnet’s **special suburban character**”.
10. In the section for New Barnet, the Study plainly describes a suburban area, recognising the most predominant form of residential street type to be suburban.[[13]](#footnote-13)
11. It is the suburban character in the Borough that is identified as special.
12. That approach to what is ‘special’ is entirely consistent with the explanatory text[[14]](#footnote-14) to D3 of the London Plan re what might fall within the meaning of special characteristics.
13. The Study is correctly treated by LBB as a document of significant weight in understanding where in the borough the suburbia that is one of Barnet’s greatest assets can be found.
14. There can be no sensible argument to resist the proposition that the western enclave of streets are clearly suburban.
15. That the streets are not designated as part of a Conservation Area does not diminish their character. Even D3 does not even begin to suggest that special/valued etc is established only by CA designation, and in the Homebase appeal the Inspector was entirely satisfied that harm to non-designated residential streets could underpin breaches of policies D3, CS5, and DM01 (amongst others)[[15]](#footnote-15).
16. The western enclave consists of low-rise residential suburban streets, and is is entirely appropriate to regard them as consistent, distinctive, and part of the Borough’s special suburban character.
17. The appeal scheme, albeit separated from these streets by a railway, would introduce into the character and appearance of the western enclave a wholly uncharacteristic presence of tall blocks (albeit just short of LBB’s definition of ‘tall buildings’ for the purposes of tall building policy).
18. It is agreed between the parties that the blocks from the appeal scheme would be visible from the western enclave and Viewpoints 14 and 15 in the AVRs[[16]](#footnote-16) show this clearly. In both viewpoints (as agreed by CP in XX) the visible blocks would become more prominent walking towards them from the camera positions in VPs 14/15. It is hardly a surprise that they would be so visible when one considers the proposed heights of the blocks along the western boundary of the site : Block E is mainly 7 storeys (with a 6 storey element to the northern corner of the site), Blocks F2 and F3 6 storeys, Block F4 7 storeys)[[17]](#footnote-17). In the views from the western enclave, the appeal proposal blocks would be intrusive[[18]](#footnote-18), starkly out-of-keeping[[19]](#footnote-19), dominant and bulky[[20]](#footnote-20), and incongruous in the street-scene[[21]](#footnote-21).
19. The appellant’s case in respect of the impact on the western enclave, presented by CP, is manifestly flawed :
20. It is not correct to say that the blocks would be “only just perceptible” and “in the far distant background”, such a judgment simply does not tally with the AVRs such as VP 15.
21. His reliance on there being “a considerable variety of built form” in Leicester Road and Bulwer Road is not credible, there is a consistent 2-3 storey form and as CP accepted in XX nothing approaching the height and scale of the proposed buildings.
22. His reliance on the extant combined permitted scheme and in particular Block A is perplexing. The combined permitted scheme[[22]](#footnote-22) is dominated by Block G along much of the western boundary, which is 4 storeys. Block B at the southern end is 4-5 storeys. CP accepted that at only 4 storeys Block G would not be visible in VP15 and the same must be true of VP14. Block A is set considerably further back into the appeal site and would only be seen at oblique angles from these streets. It is not comparable.
23. It is not surprising that the appeal scheme would be harmful to the western streets bearing in mind the urban design advice given to the architects after the refusal of the previous scheme. The urban design input came from CP, who was instructed in October 2020 to advise following the refusal. CP accepted that in respect of the western streets his advice reflected his conclusions that they had little local distinctiveness[[23]](#footnote-23), contained a variety that gave latitude to the architects[[24]](#footnote-24), that the appeal scheme would only be seen in the far distance background[[25]](#footnote-25), and that these western residential streets were “not particularly sensitive to change”[[26]](#footnote-26). We can trace that advice through the DAS, which in the usual way identified site constraints[[27]](#footnote-27) but did not treat the residential streets as a constraint at all. In the section of the DAS dealing with the rationale taken to height and massing[[28]](#footnote-28), the document referred to Victoria Road, the Spine Road, and Park Edge, but made not even passing reference to the western residential streets. In a subsequent section of the document[[29]](#footnote-29) it was noted that the proposal would have “little or no impact on the neighbouring surroundings”.
24. It is little wonder, then, that the appeal scheme responds badly to the western enclave, because the advice given to the architects by CP was that they needn’t worry about the western residential streets.
25. At around the same time as CP was giving that advice to the scheme architects, he was also involved as the urban designer supporting the Homebase scheme in Barnet which came to Inquiry in 2021. As he confirmed in XX, in that case he argued that the proposal would not harm and would actually enhance the surrounding low-rise residential streets (also not in a CA, and containing 3-4 flatted development as well as 2-3 storey housing). His view in that case was rejected by the Inspector but it is significant, and telling, that the Inspector concluded that the Homebase scheme (and therefore CP in giving their urban design evidence) had “under-estimated the sensitivity of the largely homogenous low-mid-rise urban terrace and suburban areas around it”[[30]](#footnote-30). In relation to two schemes at around the same time (this one and the Homebase one) CP was under-estimating the sensitivities of edge-of-centre residential areas in Barnet. That amounts to a pattern. It is noted that in his Proof CP had listed appeals in which he had given evidence between late 2019 and 2022 where character and appearance had been in issue, but he omitted the one Barnet Inquiry in which he had been involved and where the Inspector had rejected his judgment.
26. In November 2010 LBB published the New Barnet Town Centre Framework[[31]](#footnote-31). That document was intended “to guide developers in drawing up development proposals which will enable the vision for the town centre to be realised”[[32]](#footnote-32), and the vision included growth based on a series of objectives which included :
27. To take advantage of key brownfield site opportunities including the appeal site[[33]](#footnote-33) ; and
28. Ensuring an appropriate scale of development[[34]](#footnote-34).
29. CP agreed that in respect of the descriptive passages at 2.3 (scale and massing) , 4.11 (Victoria Recreation Ground) , and 5.10/5.11 (residential character) these remain accurate. SS accepted that the growth objectives were consistent with ‘modern’ policy and having initially suggested in XX that the TCF was silent on making efficient use of land he then accepted that the TCF was in fact explicit not just about “the most effective and efficient use” but also directed a “design-led approach to […] residential densities”[[35]](#footnote-35), precisely the approach relied upon by the appellant from the LP and the NPPF. As to scale and quantum the Development Principles recommended “up to 4/5 storeys along railway line” and “appropriate heights to reflect the low level suburban nature of the surrounding area elsewhere”[[36]](#footnote-36). Although in Re-ex SS made the point that at the time of the TCF a density matrix was still in use, it is impossible to understand why that is particularly significant when SS described the TCF guidelines as high level only rather than based on modelled scenarios. As with every other document relied upon by LBB the appellant imaginatively seeks to reduce the document’s weight, even though at the same time the appellant relies on it to support the principle of development at the site at a greater density than the residential surroundings. For the purposes of this site, the document remains significant.
30. CP accepted at the end of his XX that as an experienced designer he would not describe a scheme which was harmful to the character and appearance of its surroundings as a high quality design.
31. The appeal scheme would harm its surroundings. It is therefore not a well-designed scheme.

*The park*

1. The Inspector will through his site visit be able to see what a valuable and pleasing facility the local community has in the shape of Victoria Recreation Ground. It is a green and open space carefully-landscaped and including playing fields and incorporating a leisure centre where indoor sport/recreation complements the outdoor facilities.
2. The tree-lined western edge is presently largely open, and that open edge would be maintained by the extant permitted scheme, whose blocks along the western edge would appear as Ms Henderson eloquently described them, as “pavilions in the trees”.
3. The TCF had identified the importance of an open edge[[37]](#footnote-37), and the appellant has also recognised the significance of this in the DAS[[38]](#footnote-38).
4. DD described that the appeal proposal would appear as a wall of development along the western edge of the park which would be dominant and enclosing, eroding a sense of openness[[39]](#footnote-39).
5. Those conclusions are absolutely clear from the visual evidence :
6. The AVRs at VP8[[40]](#footnote-40) ;
7. The CGIs (notably the CGI of the summer scene with the man in pink shorts looking towards the scheme).
8. It should be noted that those telling images represent a best-case scenario, depicting the summer months when trees along the western edge are in leaf.
9. Even in that best-case depiction, CP agreed in XX that the CGI shows “**the antithesis of an** **open edge**”.
10. The proposal seeks to locate along the western edge a series of substantial blocks B2, C2 and D2. C2 and D2 would be 7 storeys high, B2 would be 6 storeys high. Proposed Block A would also be 7 storeys but would be set away from the edge with the shooting club intervening. If these heights weren’t harmful enough, the scheme is designed with the long-side of these rectangular blocks running parallel to the park, hence the appearance of a wall of development as described by DD.
11. CP for the appellant seeks to justify the scheme’s heavy-handed approach to the park by relying on four factors :
12. Screening from existing trees ;
13. Existing tall buildings in views from the park ;
14. The unscreened Leisure Centre at the eastern end of the park ;
15. The baseline position established by the extant permitted scheme.
16. Each of these four justifications are wholly without merit.
17. First, the AVRs and CGIs are effective in indicating how ineffective the trees would be to screen the sheer scale and height of the proposed buildings, and that is when they are in leaf during the summer months. CP accepted in XX the deciduous nature of the trees and that in the winter months the scene would be very different. The Inspector is respectfully invited to pause to view again the key CGI (pink shorts), and to now picture the equivalent scene in winter months.
18. Second, the existing tall buildings are located around Station Road, away from the site and contained within views in the direction of the town centre to the south-west of the site. CP accepted (1) that they would be read within their town centre context (2) that to the extent that they are a detractor in views from the park, as a matter of principle a detractor does not justify a further detractor. They play no meaningful role in affecting the openness of the park particularly in respect of the western edge.
19. Third, the Leisure Centre is a two-storey building on the site of the old tennis courts within the park and – importantly – that building was designed and intended to read as part of the park. The officer report[[41]](#footnote-41) for that scheme records that “the design visually links the primary activities (swimming and fitness) taking place within the building, with the park setting by introducing a large glazed façade with vistas to the adjacent football pitches and out to the wider park beyond […] all elevations are considered to interface appropriately with the park’s setting”. Thus with respect to CP he had rather missed the point – the Leisure Centre, low-scale as it is, is intended to be part of the park on the site of the tennis courts.
20. Fourth, the attempt to draw comparison with the extant scheme to somehow lend support to the proposed scheme is simply mis-judged. CP’s claim[[42]](#footnote-42) that the extant scheme would appear as a “continuous built /urban edge” does not bear scrutiny. CP made the point in his written evidence[[43]](#footnote-43) that the extant scheme accepted change at the western edge, but he accepted in XX that this did not mean that any change is acceptable. It is a matter of agreement that there is no material difference between the schemes in terms of proximity to the park edge[[44]](#footnote-44), however the impact of built development along the park edge between consented and proposed schemes would be dramatically different :
21. Blocks B2, C2, and D2 as proposed are 6 storeys, 7 storeys and 7 storeys respectively ; Blocks C, D, E, and F as consented are each 5 storeys.
22. Blocks B2, C2, and D2 as proposed are long-side on to the park ; Blocks C, D, E, and F as consented are finger blocks which are short-side on to the park.
23. Blocks B2, C2, and D2 as proposed offer 2 separation visual relief gaps between blocks (between B2 and C2, and between C2 and D2) ; Blocks C, D, E, and F offer 3 such gaps (between C and D, D and E, and E and F).
24. The separation gaps between B2, C2 and D2 as proposed are narrower than the separation gaps between consented C, D, E, and F.
25. CP made the point that in the consented scheme Block G would be seen between the gaps, but that is of little consequence because the primary view between the gaps will be of landscaped areas, with Block G beyond in the background. His contention that it is relevant to note that Block A is a storey lower in the proposed scheme is of relatively little significance when considering the park edge since Block A is not adjacent to the park edge, it is set in both schemes towards the centre of the site away from the edge and with the shooting club between the park and the Block.
26. It is notable that in the Design Response[[45]](#footnote-45) submitted by the developer in October 2021 ‘Containment of the Recreation Ground’[[46]](#footnote-46) was identified as a virtue of the proposed scheme. CP agreed in XX that ‘containment’ is another way of saying ‘enclosure’. That acknowledgement in the Design Response is revealing.
27. The proposed scheme would harm the park in the way that DD described, and in a way that the extant scheme would not. The Inspector is respectfully invited to consider that the sense of openness in the park is distinctive and valuable.

**Policy breaches**

1. It is LBB’s case that the proposal would harm the character and appearance of the area. By doing so, it would breach Policy CS5 of the Core Strategy, Policy DM01 (in particular at b) of the Development Management Policies, and Policy D3 of the London Plan (in particular at D1) and D11)).
2. It is these documents – the CS, the DMP, and the LP – that comprise the development plan. The appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise[[47]](#footnote-47).
3. LBB’s position is that CS5, DM01, and D3 are all policies which should be given full weight. The appellant’s position is that D3 can be given full weight, but that CS5 and DM01 should be given moderate weight. This was clarified by SS in XX, confirming that as the appellant’s planning witness it was not the appellant’s case that DM01 should be ‘set aside’ (as had been submitted in Opening).
4. In assessing the weight which should be given to these policies there are three relevant matters of approach :
5. Paragraph 219 of the NPPF directs that policies should not be considered out-of-date simply because they were adopted/made prior to the publication of the NPPF.
6. Paragraph 219 further directs that due weight should be given to policies pre-dating the (2021) NPPF, according to the degree of consistency between the policy and the NPPF.
7. S38(5) PCPA provides that if to any extent a policy in a development plan conflicts with another policy in the development plan the conflict must be resolved in favour of the policy contained in the last document.
8. CS5 requires development to respect local context and distinctive local character creating places of high quality design. That is consistent with the NPPF’s drive for high quality design (Chapter 12) and attention is drawn in particular to paragraph 130c) that development should be sympathetic to local character including the surrounding built environment and landscape setting. The appellant’s argument appears to be twofold. First, that CS5 is not consistent with the additional words in 130c) “while not preventing or discouraging appropriate innovation or change (such as increased densities)”. Second, that CS5 identifies that developments should address the principles, aims, and objectives of the then-current national design guidance most notably By Design (the forerunner to the National Design Guide), but that the design guidance has been superceded (by the NDG).
9. There is clear consistency between CS5’s objective to respect local context and distinctive local character and 130c)’s objective to be sympathetic to local character. Even the appellant appears to accept this, and SS accepted in XX that ‘consistency’ for the purposes of paragraph 219 does not mean ‘replicate’ or that the respective policies should be identical. However, the fact that CS5 does not include words akin to “while not preventing[…]” does not make it inconsistent with the NPPF. It is a core objective of the CS to promote development to meet housing need at a local and regional level[[48]](#footnote-48) whilst the CS looks explicitly to optimise development by encouraging higher densities in the regeneration and development areas, the priority town centres and other identified locations that are accessible by public transport. SS agreed in XX that the appeal site is one such identified location and that LBB’s approach to the site in granting the extant scheme is an encouragement of a higher density. The fact that at that time density matrix was still a feature in London policy does not mean that development policies adopted in the context of that earlier approach should therefore be regarded as out-of-step with 130c)’s words “while not preventing or discouraging innovation or change (such as increased densities)”. That is a nonsensical argument, the effect of which would almost certainly be to reduce the weight to all pre-2021 local plan policy relating to local character in every London Borough. The more appropriate question as to that second limb of 130c) is to ask “does CS5 prevent or discourage innovation or change (such as increased densities) ?” The answer is that CS5 (and its CS context) does not do this, in fact the CS actively encourages it where appropriate, and the appeal site has benefitted from that approach.
10. The second strand of the appellant’s CS5 argument is even more far-fetched. CS5 says that developments should address the principles, aims and objectives of national design guidance which was then listed. SS confirmed in XX that the argument could focus on By Design and didn’t need to go into Safer Places, Inclusive Design etc (although note that DD did do this in EiC to identify relevant paragraphs in the NDG). The aim of By Design was “to promote higher standards in urban design”[[49]](#footnote-49). The principles/objectives were set out[[50]](#footnote-50) and repeated at 10.5.5 of the supporting text to CS5. Each of those principles is consistent with the NDG (Promoting a sense of place by responding to locally distinctive characteristics and patterns of development – see NDG at paragraphs 39, 42, 53, 56 ; Continuity and enclosure – see NDG at paragraphs 63 and 69 ; Quality of Public Realm - NDG at 100 and 101 ; Ease of Movement – NDG at 63, 75-77 ; Legibility – NDG at 53 ; Adaptability – NDG 121 and 119 ; Diversity – NDG at 54). SS in XX accepted that he could not identify how the aims, objectives and principles of By Design (or any of the other guidance listed in CS5) was at odds with the NDG. They are entirely consistent.
11. Full weight should be given to CS5.
12. DM01 at b requires development proposals to 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”. It is to be noted that no issue with the weight to be given to DM01 was raised in the appellant’s Statement of Case, in the appellant’s proofs, or in the Statement of Common Ground including the paragraph where those policies and documents whose weight was challenged were listed[[51]](#footnote-51) (and which was completed and signed as recently as 6th July). The first that LBB were aware that the appellant was making this argument was when it was raised in the appellant’s Opening on the first morning of the Inquiry. It is not understood that the appellant is alleging inconsistency between paragraph 130 of the NPF and DM01, but if they are then see above re CS5 and the second part of 130c). The appellant does argue that DM01 is in conflict with D3 of the London Plan and should therefore carry reduced weight. There is a high bar to find that policies in a development plan are “in conflict” with one another. The fact that they may not replicate one another does not place them in conflict with each other. DM01 is not in conflict with D3. There may be differences but that does not amount to conflict. D1) of D3 requires development to “enhance local context by delivering spaces and buildings that positively respond local distinctiveness through their layout, scale, appearance and shape with due regard to existing and emerging street hierarchy, building types, forms and proportions”. That is not in conflict with DM01. Nor is DM01 in conflict with D11), read alongside the supporting text at 3.3.7. It is instructive to note that, on the approach to policy taken by the appellant, D1) and D11) would be in conflict with each other - which is a good illustration of the lack of merit in the appellant’s approach.
13. Full weight should be given to DM01.
14. Even if the Inspector was attracted by the appellant’s arguments about the weight to CS5 and DM01 and accepted that they should be given moderate weight, then if he is satisfied that they are breached (with or without D3) he can still quite properly conclude that the proposal is not in accordance with the development plan. It is noted that in XX SS acknowledged that CS5 and DM01 are “still good robust design policies”.
15. The appeal proposal is in conflict with DM01, CS5 and D3 – and the development plan overall.
16. It is pertinent to note the approach taken by Mr Jackson in determining the Homebase appeal. He referred explicitly to the wording of D1) and D11) in D3[[52]](#footnote-52). He was concerned with the impact of a proposal on low-rise domestic development[[53]](#footnote-53). He was satisfied that the scheme conflicted with D3, CS05, and DM01[[54]](#footnote-54). A reading of the decision letter does not indicate anything more remarkable about the surrounding area than the relevant context identified in this case. Yet he must have concluded that the character was either distinctive or comprised special and valued features and characteristics unique to the locality, or both.
17. I turn briefly to the Residential Design Guide SPD (adopted 2016). The chapter which relates to local character is Chapter 6. Once again the appellant embarks on an argument to seek to reduce the weight given to this document, produced in the context of the previous iterations of the London Plan and NPPF. SS introduced a point in his EiC about the approach of recent policy to Outer London, a non-point in reality since it was a strategic policy objective of the 2016 LP[[55]](#footnote-55) to being forward higher density housing in and around town centres (the appeal site being around the New Barnet town centre). However, Chapter 6 of the RDG sets out a series of design principles (see 6.1, 6.2. 6.6, and 6.12) and SS agreed in XX that each of these principles are consistent with the current NDG – in respect of Chapter 6 and the approach to local character, there is no proper basis to reduce weight. Even if the document was ignored altogether, it is difficult to see where this takes the appellant because in any event LBB say the proposal conflicts with paragraphs 40, 41, 43, 51 and 53 of the NDG[[56]](#footnote-56).

**Planning balance**

1. If the Inspector concludes that the proposal would harm the character and appearance of the area, it is quite rightly necessary to weigh up the harm against the planning benefits in the planning balance :
2. DD and SS agree that the provision of market and affordable housing should be given significant weight in the planning balance. Nonetheless it is relevant to make two observations :
3. The appellant accepts that LBB are able to demonstrate a 5YHLS. LBB put the figure at 6.5 years[[57]](#footnote-57) and note that there is no evidence to the contrary other than that the appellant does not accept this figure ;
4. The extant consented scheme would also produce significant market and affordable housing albeit in a lesser quantum.
5. The redevelopment of an edge-of centre brownfield site should be given moderate to significant weight in LBB’s view and significant weight according to SS. Once again it is noted the extant scheme would also achieve this.
6. DD has been very fair in attributing moderate weight to the economic benefits :
7. SS agrees that local expenditure attracts moderate weight[[58]](#footnote-58) ;
8. SS agreed in XX that construction jobs are a short-term benefit and this was given limited weight by the Homebase Inspector[[59]](#footnote-59) in a 307-unit scheme ;
9. SS agreed in XX that council tax and business rates are mitigation for the development by paying for services required by the occupiers ;
10. In a scheme for 307 homes in Barnet, the Homebase Inspector gave limited weight to the New Homes Bonus[[60]](#footnote-60).
11. DD in oral evidence said that limited to moderate weight should be given to biodiversity net gain ;
12. In LBB’s view no weight should be given to the provision of public open space and amenity space since these simply meet a policy requirement, and SS agreed in XX that this is not a case where the provision exceeds the requirement.
13. These benefits do not outweigh the conflict with the development plan arising from the harm which would be caused to the character and appearance of the area.
14. There is no issue with the principle that the appeal site should be developed to provide a significant amount of housing. That is what the extant permitted scheme would achieve. However, a change in developer has meant a change in approach to the site and successive attempts to squeeze substantially more development onto the site. As Ms Henderson observed for the R6 party, the developer appears to see the site as a container for housing. Instead of the permitted 10 blocks the majority of which were at 4 and 5 storeys, providing 371 dwellings, the current developer is attempting to cram onto the site 13 blocks (10 of which are 6 storeys or more with 8 of those at 7 storeys). The result would be a scheme that would harm the character and appearance of the area. It is a badly-designed scheme which is not the answer to this site, and the appeal should fail.

Ed Grant 29th July 2022

Cornerstone Barristers

2-3 Gray’s Inn Square

London WC1.

1. London Plan Policy D3 at A,CD 5.1 [↑](#footnote-ref-1)
2. Supporting text at 3.3.2 [↑](#footnote-ref-2)
3. Supporting text at 3.3.1 [↑](#footnote-ref-3)
4. CD 7.4 [↑](#footnote-ref-4)
5. SS Proof para 7.21 [↑](#footnote-ref-5)
6. At para 39 [↑](#footnote-ref-6)
7. Characterisation Study CD 6.8 at page 4 [↑](#footnote-ref-7)
8. Page 8 [↑](#footnote-ref-8)
9. Page 96-97 [↑](#footnote-ref-9)
10. Page 129 [↑](#footnote-ref-10)
11. See 7.45 of CP proof [↑](#footnote-ref-11)
12. Page 9 [↑](#footnote-ref-12)
13. Page 96 [↑](#footnote-ref-13)
14. 3.3.7 of the London Plan at CD 5.1 [↑](#footnote-ref-14)
15. Paras 26 and 40 at CD 15.1 [↑](#footnote-ref-15)
16. CD 1.17 [↑](#footnote-ref-16)
17. Masterplan at p4 DAS Addendum CD 1.4 [↑](#footnote-ref-17)
18. DD Proof at 8.18 [↑](#footnote-ref-18)
19. DD Proof at 8.19 [↑](#footnote-ref-19)
20. DD Proof at 8.20 [↑](#footnote-ref-20)
21. DD Proof at 8.21 [↑](#footnote-ref-21)
22. See Masterplan at p28 of DAS at CD 1.3 [↑](#footnote-ref-22)
23. CP Proof at 4.4 [↑](#footnote-ref-23)
24. CP Proof at 9.34 [↑](#footnote-ref-24)
25. CP Proof at 10.8/10.11 [↑](#footnote-ref-25)
26. CP Proof at 10.20 [↑](#footnote-ref-26)
27. DAS CD 1.3 at p22 [↑](#footnote-ref-27)
28. Page 58 [↑](#footnote-ref-28)
29. Sitewide Sections at p60 [↑](#footnote-ref-29)
30. CD 15.1 at para 40 [↑](#footnote-ref-30)
31. CD 6.3 [↑](#footnote-ref-31)
32. Para 1.6 [↑](#footnote-ref-32)
33. Objective 7 at p15 [↑](#footnote-ref-33)
34. Objective 8 at p15 [↑](#footnote-ref-34)
35. Development Principle 4.3 at p19 [↑](#footnote-ref-35)
36. Page 29 [↑](#footnote-ref-36)
37. Page 29 [↑](#footnote-ref-37)
38. Page 59 [↑](#footnote-ref-38)
39. DD Proof at paras 8.29 and 8.30. [↑](#footnote-ref-39)
40. CD 1.17 [↑](#footnote-ref-40)
41. CD 12.35, at Section 3.3 [↑](#footnote-ref-41)
42. CP Proof at 5.5 [↑](#footnote-ref-42)
43. Proof at 10.17 [↑](#footnote-ref-43)
44. CP Proof at 9.8 [↑](#footnote-ref-44)
45. CD 1.19 [↑](#footnote-ref-45)
46. Page 16 [↑](#footnote-ref-46)
47. S38(6) PCPA [↑](#footnote-ref-47)
48. 6.2.1 of the CS [↑](#footnote-ref-48)
49. CD12.34 at p8 [↑](#footnote-ref-49)
50. Page 15 [↑](#footnote-ref-50)
51. CD 7.5 at para 7.1 [↑](#footnote-ref-51)
52. CS 15.1 at para 18 [↑](#footnote-ref-52)
53. CS 15.1 at para 12 [↑](#footnote-ref-53)
54. CS 15.1 at para 26 [↑](#footnote-ref-54)
55. Policy 2.7 at h [↑](#footnote-ref-55)
56. DD Proof at para 8.31 [↑](#footnote-ref-56)
57. CD 12.1 [↑](#footnote-ref-57)
58. SS Proof at 6.10 [↑](#footnote-ref-58)
59. CD 15.1 at para 39 [↑](#footnote-ref-59)
60. CD 15.1 at para 39 [↑](#footnote-ref-60)