

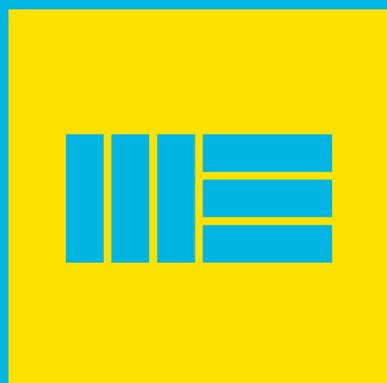
LONDON BOROUGH OF BARNET LOCAL PLAN EXAMINATION

HEARING SESSIONS

WRITTEN STATEMENT: MATTER 8 – TALL BUILDINGS, QUESTION 4

PREPARED BY MONTAGU EVANS, ON
BEHALF OF REGAL JP NORTH
FINCHLEY LIMITED

SEPTEMBER 2022



WWW.MONTAGU-EVANS.CO.UK

CONTENTS

1.0	INTRODUCTION	3
2.0	MATTER 8, QUESTION 4, TALL BUILDINGS.....	4

1.0 INTRODUCTION

- 1.1 Montagu Evans LLP has been instructed by Regal JP North Finchley Limited to prepare this statement (the Statement) and participate in the forthcoming examination of the London Borough of Barnet (LBB) Local Plan 2021 to 2036 (the Plan).
- 1.2 Regal JP North Finchley Limited are generally supportive of the Plan, although firmly believe that further modifications are required in order for it to be found sound in terms of being Positively Prepared; Justified, Effective and Consistent with the 2021 National Planning Policy Framework (the Framework).
- 1.3 A list of recommended modifications to the drafting of Policy CDH04 are provided at Appendix 1.

2.0 MATTER 8, QUESTION 4, TALL BUILDINGS

Policy CDH04 seeks to provide an approach to tall buildings in strategic locations, is it positively prepared, justified, effective, consistent with national policy and in general conformity with the London Plan in those respects? Responses should address the following:

- A) ***Is the overall policy approach consistent with the expectations of Policies H1 and D9 of the London Plan in terms of identification of locations for tall buildings and optimising housing delivery in PTAL3 to 6 locations or within 800m distance of a station or town centre boundary, and the Framework insofar as it seeks to achieve well-designed places?***

Summary

- 2.1 No. The 2021 London Plan approach to tall buildings in Policy D9 is broadly to:
- seek Local Plan positive designation of areas appropriate for tall buildings;
 - allow proposals where they pass the D9(C) filters (confirmed in the *Master Brewer* case¹).
- 2.2 The 2004 Planning and Compulsory Purchase Act requires general conformity with this overarching spatial strategy, which is intended to achieve housing supply in a housing market area suffering extreme housing stress through optimisation of site capacity. The Framework approach equally promotes the effective use of land in urban areas (Paras 8, 11(a), 119) and criteria-based approach to design excellence and placemaking. We recognise this approach as being a means of achieving good place-making and increasing housing supply.
- 2.3 Policies that 'rule out' areas for tall buildings would require a substantial, detailed, evidence base in order to be Justified. The submitted evidence base recognises that this level of assessment has not been undertaken.
- 2.4 The Main Modifications (MM) proposed by the LBB reinforce and extend some of the failings of the Submission ELP. Chapter 6, as modified, explicitly seeks to preserve the existing position without providing a framework for positive growth where design and other place-making criteria are applied through the ELP or within the proper limits of an SPD. We explain below why this is not Justified and would not be Effective (because it would undermine the ability to optimise housing delivery in North Finchley as a Main Town Centre identified as a priority for investment and revitalisation).
- 2.5 The policy is capable of being made consistent with the London Plan, by
- 1 positively identifying suitable, sustainable, locations for tall buildings;
 - 2 positively identifying the criteria against which tall buildings will be assessed for acceptability outside these areas.

Growth Strategy

- 2.6 The Growth Strategy identifies the need to increase the supply of housing and proposes a focus on town centres and major road corridors, with specific reference made to North Finchley Town Centre ("NFTC") (page 12). The document explains the significant regeneration opportunities that exist in NFTC, which offer the potential "to deliver substantial new housing opportunities" (page 44).
- 2.7 NFTC is individually and specifically identified as a centre that could grow to become a Major Town Centre - there is only one other town centre in this tier in the LBB, Edgware, which highlights the scale of change envisaged.

¹ *R (London Borough of Hillingdon) v Mayor of London* [2021] EWHC 3387 (Admin)

- 2.8 Similarly, Annex 1 of the London Plan identifies NFTC as a District Centre with 'high' potential for residential growth.
- 2.9 The NFTC SPD (2018) sets a vision for the regeneration of the town centre, noting "*the supply of housing will be significantly boosted*" (page 17). A series of six 'Key Opportunity Sites' ("KOS") are identified but there are also a number of 'Other Opportunity Areas' and 'Parade Enhancement Areas' where redevelopment is expected to come forward. These areas, combined with the KOS, cover the majority of NFTC, reflecting the comprehensive nature of the regeneration proposed.
- 2.10 As acknowledged in the Growth Strategy and NFTC SPD, joint working is required with developers and other stakeholders to deliver the full regeneration aspirations. Regal JP North Finchley Limited has been working extensively with the LBB and in October 2021 entered into a Site Assembly and Land Agreement ("the Agreements").
- 2.11 The Agreements identify the sites that might form part of an initial phase of regeneration, and those which may fall into subsequent phases (see the plan from the 2022 NFTC Frequently Asked Questions ("FAQs") [here](#)). The plan shows that six sites have been identified as potentially forming part of Phase 1, some of which are KOS, whilst others represent Other Opportunity Areas. Work is ongoing between the LBB and Regal JP North Finchley Limited, and the full extent of the development sites and associated phasing is still to be resolved.
- 2.12 This is reflected in the drafting of Policy GSS08 (Barnet's District Town Centres) where it states, "*it is expected that further sites will come forward in response to the challenges of growth*". As such, to deliver the growth aspirations proposed for NFTC, redevelopment and revitalisation will be required across the town, rather than being limited to 6 sites.

Soundness

- 2.13 There are core issues with the alignment between the Policy as proposed to be modified and the Framework/ London Plan.
- 2.14 Firstly, the MM to Policy CDH04A limit the direct policy support for tall buildings to the six sites allocated in Annex 1 (which are not consistent with the Phase 1 six sites identified in the Agreements) and does not recognise the potential, subject to detailed testing, for tall buildings to come forward on other sites as part of wider regeneration aspirations. This approach is not consistent with the evidence base and the policy does not optimise housing delivery as required by the London Plan.
- 2.15 Limb (a) is not a restraint policy. It would confer potential acceptance on specific sites. It would have been open to the LBB to extend their analysis and further solidify the positive support for these locations but the evidence base itself recognises (page 29 of the 2019 Barnet Tall Building Study Update (the Study Update), for example) that far more is required for this. Instead, the policy confers potential support on the Annex 1 sites but would not restrain tall buildings on other sites of up to 14 storeys – they would just start from a neutral basis and need to satisfy the NPPF criteria-based approach and D9(C) approach. This is consistent with the proper application of D9 following Master Brewer. The reality, though, is that the Annex 1 list fails to include sites (see Quod Matter 10 representations) that are Justified for inclusion in the evidence base.
- 2.16 Secondly, the policy as now proposed to be modified in Limb CDH04(b) would be far more restrictive than the policy approach in D9 and would depart from the NPPF, because:
- (A) It seeks to prohibit tall buildings over a set height in specific locations without:
- (i) specific evidence, which is as a result not Justified; or
 - (ii) allowance for application of the LP D9(C) filters (which as a result is not in conformity with the London Plan or consistent with the NPPF approach to see effective use of land in urban areas and criteria-based approach to design excellence noted above);

(B) The blanket prohibition outside these locations (MM163) is not consistent with the submitted evidence base, which:

(iii) recognises that positive contribution tall buildings can make in areas like North Finchley (MM 6.18.2);

(iv) makes clear that in relation to North Finchley, tall buildings should be considered via a "full site appraisal [...] with particular consideration for existing form and high quality design to promote integration of taller buildings" (Tall Buildings Study Update (2019)). [emphasis added]

The Plan is not supported by that level of site assessment, and it is exactly this kind of assessment (in line with the Framework principles noted above) that criteria-based policy filters as found in London Plan D9(C) provide to allow a Positive approach.

(C) The Plan now approaches, via the MM, the strategy for growth as a 'preserve and enhance' exercise in relation to the existing low density suburban character regardless of the application of specific design criteria policies envisaged by D9(C) and the Framework. This is not Positively prepared and casts a shadow of the wider MMs which will undermine the Effectiveness of policies in contributing to the stated Growth Strategy. There is, for example, no proper evidence base for the position now adopted via MM149 – treating the whole Borough as 'highly constrained'

2.17 As recognised by the Study Update, the kind of blanket prohibition in limb (b) of the Policy would require far greater detail than found anywhere in the Plan evidence base: "full site appraisal" with "particular consideration" of design specifics. The evidence base does not include that. Nor would it be appropriate to allow an SPD process which will lack Examination in Public scrutiny to supplant the role of the DPD in that sense.

2.18 We note in the Annex to this Statement how the Policy should be modified to be capable of being found sound in light of the above.

B) *Is the identification of the strategic locations listed in the policy where 'tall' buildings (defined as 8 to 14 storeys or 26 to 46 metres) are appropriate, informed and justified by robust evidence, and are the locations sufficiently precise?*

2.19 The Study Update forms the evidence base for the identification of strategic locations for tall buildings. The Study Update assesses the potential for tall buildings along the A1000 Great North Road and after taking into consideration existing building heights, the character of the area, proximity to town centres and public transport accessibility, it concludes the potential for tall buildings in two locations, one of which is NFTC. Individual sites are not identified and the evidence base document explains that full site appraisals will be required with particular consideration given to existing form and high quality design (Page 39).

2.20 The proposed main modifications restriction of positive support for Tall Buildings to allocated sites only in NFTC is not supported by the evidence base, and is inconsistent with Policy GSS08 and the Agreements which recognise the need for redevelopment and revitalisation across a wider range of town centre sites. Instead, Policy CDH04 should identify NFTC as an appropriate strategic location for tall buildings, as shown on Map 4, and individual sites should be subject to a detailed assessment as required by criteria of Policy CDH04 (and as anticipated by the tall building evidence base).

C) *Are there any other locations where evidence suggests that 'tall' buildings may be suitable and if so, should these be reflected in the policy?*

2.21 The current drafting risks stifling development opportunities in areas not identified as suitable for tall buildings, whilst placing greater pressure on other areas, thus undermining the Council's strategic growth objective.

2.22 Facilitating lasting regeneration in NFTC is a complex matter, which requires viable individual development sites that can support improvements to town-wide infrastructure. Given the complexity of NFTC, the Council's viability evidence is not considered methodologically sound or comprehensive according to the requirements of the

Framework. In particular the development typologies selected do not reflect the diversity of development coming forward across NFTC; and the supporting evidence is not representative of the geographical spread of costs and values across the complex urban area of NFTC.

- 2.23 Notwithstanding this, whilst the viability evidence concludes that the typologies tested are potentially viable, this is subject to a series of caveats including that the impact of individual policies on residual land values is highly variable; and that there is a clear relationship between sales values, build costs, density of development and residual land values. As a result, the assessment indicates that a degree of flexibility will need to be provided and acknowledges that the Council will need to apply a careful balanced approach in respect of policies for individual sites.
- 2.24 In light of the complexity of delivering regeneration across NFTC and facilitating improvements to infrastructure, the viability evidence makes clear that flexibility is required in planning policies which, when combined with the LBB's wider evidence base, reinforces the need for a more flexible approach to the tall building policy.
- D) ***Would the policy approach be consistent with and support the delivery of the specific strategic requirements of Policies GSS01 to GSS12 and the density expectations and site capacities of the proposed site allocations identified in Annex 1 of the Plan?***
- 2.25 No. The policy approach is not considered consistent with Policy GSS08 and the associated evidence base. Please refer to the responses to Questions 4A, 4B, 4C and 4E.
- E) ***Is there sufficient evidence to support the approach to 'very tall' buildings of 15 storeys or more and if so, why are exceptional circumstances required to be demonstrated rather than the identification of specific suitable locations?***
- 2.26 No. Policy CDH04 states "*Very Tall buildings of 15 storeys or more will not be permitted unless exceptional circumstances can be demonstrated, such as appropriate siting within an Opportunity Area or a Growth Area*". The evidence base is not sufficiently robust as a basis to conclude that Very Tall Buildings should not be provided within NFTC.
- 2.27 As noted above under 4A, the evidence base recognises that significantly greater analysis is needed on acceptability of specific building heights. London Plan Policy D9 accommodates this by the performance-based criteria in limb (D). Adopting this approach instead of the word 'exceptional' would be Effective and would ensure that the Plan is positively prepared in this regard and consistent with the NPPF principles noted above.
- 2.28 Equally, the test of "exceptional circumstances" places an arbitrary threshold to deliver very tall buildings. The Study Update has identified locations that have the capacity to accommodate taller development, and subject to assessment against criteria set out within Policy CDH04 and Policy D9, no other policy tests are required to determine the acceptability of a Very Tall Building.
- 2.29 We also note that a Very Tall Building already exists in NFTC (see site allocation 61). This location represents the focal point within the town centre, linked to public transport and shops/facilities etc. The redevelopment of the existing Very Tall Building itself with another Very Tall Building or the provision of other Very Tall Buildings in this location is a sound urban design response, subject to detailed testing.
- 2.30 The height threshold for Tall Buildings and Very Tall Buildings is not informed by a granular analysis of the local area. The lack of a robust evidence base affirms that these thresholds must form guidance to be tested through detailed planning assessments, rather than absolute parameters. We therefore recommend additional text recognising that there is scope for greater height where a full evidence base or where criteria-based assessment supports it.
- 2.31 This approach was recently tested by the Planning Inspectorate at the Brent Local Plan Review. The January 2022 Report on the Examination of the Brent Local Plan found the Tall Building Policy BD2 to be sound ([here](#)).

- 2.32 The adopted Brent Local Plan acknowledges “*heights likely to be generally acceptable to the council*”; however, paragraph 6.1.15 of the Brent Local Plan states: “*There might however also be circumstances where the quality of design of a development and its impact on character is such that taller buildings in these locations could be shown by applicants to be acceptable*”. Policy BD2 thus includes the necessary level of flexibility to support the planning application process, and the need to meet other policies of the development plan. This is consistent with the D9(C) and wider Framework approach we note above.
- 2.33 We consider that the approach in the examination of the Brent Local Plan is sound and can be adopted by the LBB.
- F) ***Why would ‘appropriate siting in an Opportunity Area or Growth Area’ constitute exceptional circumstances?***
- 2.34 See answer to Question 4E.
- G) ***Are the policy requirements which defer specific parameters for tall and very tall buildings in identified strategic locations to the preparation of and compliance with a Building Heights SPD; positively prepared, justified, effective, consistent with national policy and in general conformity with the London Plan?***
- 2.35 The LBB’s evidence base to support Policy CDH04 is principally contained within the Study Update. This evidence identifies broad areas with the greatest potential to accommodate tall buildings, and does not consider suitability at an individual site level. As a result, the draft policy explains that the Designing for Density SPD will set out site specific and character area considerations. It is, therefore, clear that such considerations have not formed part of the evidence base prepared to date, which further reinforces the inappropriate stance of the policy to assign tall buildings only to the 6 sites identified in Annex 1. As acknowledged by the drafting of Policy CDH04, further testing and analysis is required before site specific detail can be determined.
- 2.36 The SPD must be in accordance with Policy CDH04 and not import new policy restrictions. We suggest Part C of Policy CDH04 be amended to state the Designing for Density SPD “*will set out, within the identified strategic locations, further guidance of how the Council will assess the appropriateness of Tall Building proposals. In the absence of the SPD, the Council will assess Tall Building proposals against criteria contained in this Policy CDH04 of the Local Plan and Policy D9 of the London Plan*”.
- H) ***Is the policy approach insofar as it relates to heritage assets and their settings, consistent with relevant statutory duties and associated national policy seeking to conserve and enhance the historic environment?***
- 2.37 Part D iii of Policy CDH04 sets out a requirement for proposals to avoid harm to the significance of heritage assets and their settings. In contrast, paragraph 194 of the Framework requires applicants [our emphasis] “*to describe the significance of any heritage assets affected, including any contribution made by their setting*”. Paragraph 194 goes on to state “*the level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance.*” Harm to setting is not a recognised test within the Framework and this should be omitted.
- 2.38 Paragraph 6.18.11 states “*Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are tangible public benefits derived that outweigh that harm.*” First, we recommend the removal of the word “tangible” to ensure consistency with the drafting of Policy D9, and not place additional requirements on the tests set out within the Framework. Second, the general requirement to balance heritage harm against public benefits is consistent with the Framework, although this test is not carried through to Part D iii of Policy CDH04. It is important that this forms part of the policy itself, rather than the supporting text.
- I) ***Would the individual requirements of development proposals result in a design-led approach and are they sufficiently clear and effective, when taken together, so it is evident how a decision maker should react to development proposals?***

2.39 See answer to Question 4A and 4G.

- J) ***The Council's proposed modifications, include changes to Map 4 of the Plan and seek to reinforce the need for careful consideration of heritage assets. Why are such changes necessary for soundness and would they require any consequential modifications to the policy, its supporting text or other parts of the Plan?***

2.40 The proposed modifications to paragraph 6.18.2 states "*However, given the historical and suburban character of the Borough the potential for Tall Buildings is highly constrained in Barnet. Such a form of development is not the preferred model for delivering high densities*". The proposed MM are a significant change in emphasis towards tall buildings relative to the Regulation 19 wording which was supported by an evidence base. It should be made clear that the quote relates to the Borough more generally, mindful that the strategic locations have been identified following a sieving exercise, including proximity to heritage assets. The NFTC SPD confirms "*There are no designated heritage assets within the SPD Area and only one locally listed building – the Tally Ho public house.*"

2.41 To this end, paragraph 6.18.1 recognises "*certain locations will evolve a different local character*". To achieve this evolution and change, tall buildings in the selected strategic locations must be a preferred model to deliver higher densities and optimise housing delivery.

2.42 The decision maker is required by statute to give considerable importance and weight to the desirability of preserving or enhancing the significance of heritage assets. The LBB's proposed MM are therefore not necessary for soundness.

- K) ***Would any other changes to the policy or its supporting text, including the Council's proposed modifications relating to character and appearance and fire safety considerations, be necessary to achieve soundness?***

2.43 In relation to specific policy drafting, paragraph 6.18.12 states [our emphasis] "*The Council requires that visual impact is addressed in terms of long range views from the top of the building, mid-range views from the surrounding neighbourhood and intermediate views from the surrounding streets.*" Views from the top of a building are not material to the determination of a planning application. We suggest "*from the top of the building*" be deleted or amended to state "*of the top of the building*".

2.44 We also query whether "*intermediate views*" should read "*immediate views*" to be consistent with D9 of the London Plan. This also applies to Policy CDH04 Part D ii.

2.45 Paragraph 6.18.12 states "*Map 4 shows locally important views, as well as conservation areas in the Borough, the extent of Green Belt / MOL and the location of existing tall buildings together with the strategic locations identified for tall buildings. The Council will seek to ensure that development is compatible with such views in terms of setting, scale and massing. Proposals for buildings of height that the Council considers cause harm to these views will be resisted.*" It is suggested that the Designing for Density SPD incorporate management guidance to determine what facets of the view are important to provide a framework to understand how "harm" may be construed.

2.46 Finally, and importantly, paragraph 6.18.3 states [our emphasis] "*development proposals that include tall buildings must demonstrate compliance with all relevant parts of Policy CDH04 as well as the requirements listed in the London Plan Tall Buildings policy D9...*". This is contrary to Policy D9 itself, in relation to the requirements listed at Part C, which states [our emphasis] "*Development proposals should address the following impacts...*" The drafting of D9 recognises that tall building applications should address all relevant parts of the policy criteria, although a scheme may still be found acceptable if not compliant with all relevant parts of the policy, when read as a whole.

APPENDIX 01

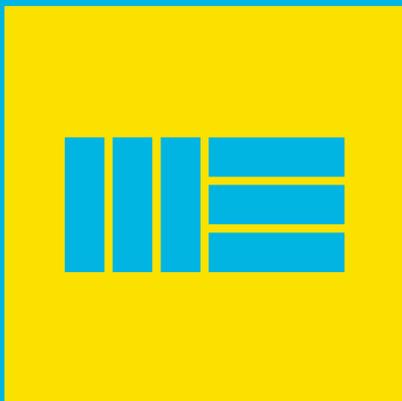
RECOMMENDATIONS

Recommended Modifications

To address the matters raised in the Statement, the following modifications are recommended:

- 1 Amend paragraph 6.18.2 to state “*However, given the historical and suburban character of the Borough the potential for Tall Buildings is highly constrained in Barnet. Such a form of development is not the preferred model for delivering high densities other than where demonstrated to be appropriate through detailed assessment.*”
- 2 Amend paragraph 6.18.3 to state “*development proposals that include tall buildings should address all relevant parts of Policy CDH04 as well as the requirements listed in the London Plan Tall Buildings policy D9...*”.
- 3 Amend paragraph 6.18.11 to state “*Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are ~~tangible~~ public benefits derived that outweigh that harm.*”
- 4 Amend paragraph 6.18.12 to state “*The Council requires that visual impact is addressed in terms of long range views ~~of from~~ the top of the building, mid-range views from the surrounding neighbourhood and ~~intermediate~~ immediate views from the surrounding streets.*”
- 5 Amend paragraph 6.18.12 to state “*Map 4 shows locally important views, as well as conservation areas in the Borough, the extent of Green Belt / MOL and the location of existing tall buildings together with the strategic locations identified for tall buildings. The Council will seek to ensure that development is compatible with such views in terms of setting, scale and massing. Proposals for buildings of height that the Council considers cause harm to these views will be resisted. The Designing for Density SPD will incorporate management guidance to determine what facets of the view are important to provide a framework for assessment.*”
- 6 Amend the bullet points in Part A of Policy CDH04 to include North Finchley in the list of strategic locations where tall buildings may be appropriate, and amend the final sentence as follows: “*Sites where Tall Buildings may be appropriate have been identified in Annex 1 - Schedule of Proposals for ~~the Finchley Central~~ Town Centres ~~of Finchley Central and North Finchley~~ (Policy GSS08) and the Major Thoroughfares – Edgware Road (A5) and Great North Road (A1000) (Policy GSS11).*”
- 7 Amend Policy CDH04 Part B as follows: “*Very Tall buildings of 15 storeys or more (~~Very Tall~~) will not be permitted ~~unless exceptional circumstances can be demonstrated, such as appropriate siting within an Opportunity Area or a Growth Area. Very Tall Buildings are not acceptable~~ outside an Opportunity Area or a Growth Area identified as a strategic location in CDH04A unless they satisfy the criteria in London Plan Policy D9(C). Any proposal for a Very Tall Building must have a legible and coherent role, integrating effectively to its location in compliance with part D.*”
- 8 Amend Part C of Policy CDH04 to state: “*The Council will produce the Designing for Density SPD which will set out, within the identified strategic locations, further guidance of how the Council will assess the appropriateness of Tall Building proposals; this will ~~include~~ address the impacts detailed in London Plan Policy D9C, setting out site-specific and character considerations including typologies related to uses, views, form, public realm, safety, amenity and microclimates. In the absence of the SPD, the Council will assess Tall Building proposals against criteria contained in this Policy CDH04 of the Local Plan and Policy D9 of the London Plan.*”
- 9 Amend Policy CDH04 Part D ii to state: “*how the building responds to topography, with no adverse impact on longer range Locally Important Views (as shown in Map 4), as well as mid-range and ~~intermediate~~ immediate views”*
- 10 Amend Part D iii of Policy CDH04 to state “*Proposals should take account of, and avoid harm to, the significance of heritage assets ~~and their settings~~. Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm. The buildings should positively contribute to the character of the area”.*

MONTAGU EVANS
5 BOLTON STREET
LONDON
W1J 8BA



WWW.MONTAGU-EVANS.CO.UK

London | Edinburgh | Glasgow | Manchester

WE CONSIDER OUR CREDENTIALS, HOW WE HAVE STRUCTURED OUR BID AND OUR PROPOSED CHARGING RATES TO BE COMMERCIALY SENSITIVE INFORMATION.
WE REQUEST THAT THESE BE TREATED AS CONFIDENTIAL