



Barnet Draft Local Plan
Publication Stage Representations Form

Ref:

(For official use only)

PART B - Your representation

Please complete a separate Part B for each representation and return along with a single completed Part A.

Question 1: To which part of the Local Plan does your representation relate?

Representations must be made on a specific policy or part of the Plan, please state the policy number, paragraph number, figure/table or Policies Map designation.

Policy **CDH08** Paragraph _____ Figure/Table _____

Policies Map designation _____

Question 2: Do you consider that this part of the Local Plan is:

Tick all that apply, please refer to the guidance note for an explanation of these terms.

- | | | |
|--|------------------------------|--|
| a) Legally compliant | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b) Sound | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| c) Compliant with the Duty to Co-operate | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Question 3: Please give details of why you consider this part of the Local Plan is not legally compliant, is unsound, or fails to comply with the duty to co-operate.

Please be as precise as possible. If you wish to support the legal compliance or soundness of the Plan, or its compliance with the duty to co-operate, please also use this box to set out your comments.

Please refer to attached covering letter.

Continue on a separate sheet if necessary

Question 4: Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect to the matters you have identified in Question 3 above. *Please note that non-compliance with the duty to co-operate is incapable of modification at examination. You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.*

Please refer to attached covering letter.

Continue on a separate sheet if necessary

Please note:

In your representation you should summarise succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues they identify for examination.

Question 5: If your representation is seeking a modification to the plan, do you consider it necessary to participate in examination hearing sessions?

Yes, I wish to participate in hearing session(s)

No, I do not wish to participate in hearing session(s) /
I am not seeking modification to the Plan

Question 6: If you wish to participate at the examination hearings, please outline why you consider this to be necessary.

Please note that the inspector will make the final decision as to who is necessary to participate in hearing sessions, and to which hearing session(s) they should attend, and they will determine the most appropriate procedure to adopt to hear those who wish to participate at the examination hearings.

Please refer to attached covering letter.

Declaration of consent

The personal information you provide on this form will be processed in accordance with General Data Protection Regulations 2018 (GDPR). The information you provide will only be used for the purposes of the preparation of the Local Plan as required by the Planning and Compulsory Purchase Act 2004 (as amended), and may be used by the Council to contact you if necessary, regarding your submission. Your name, name of organisation, and comments, will be made available for public inspection when displaying and reporting the outcome of the statutory consultation stage and cannot be treated as confidential. You will not be asked for any unnecessary information and we will not publish any personal data beyond what is stated in this declaration.

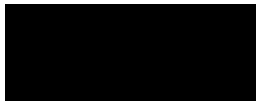
Your details will be kept in accordance with the Council's Privacy Notice, until the Local Plan is adopted plus a further five years to evidence that a fair and transparent process has been followed. Processing is kept to a minimum and data will only be processed in accordance with the law. We will take all reasonable precautions to protect your personal data from accidental or deliberate loss or unauthorised disclosure.

The Council's Privacy Notice can be viewed at <https://www.barnet.gov.uk/your-council/policies-plans-and-performance/privacy-notices>

The legal basis which enables the Council to process your data for this purpose is consent from the data subject (you) under Article 6, paragraph (a) of the GDPR. Information provided will be stored in accordance with the Council's retention and disposal guidelines.

By completing and signing this form I agree to my name, name of organisation, and representations being made available for public inspection on the internet, and that my data will be held and processed as detailed above, in accordance with the Council's Privacy Notice:

Signature



Date 09.08.2021



London Borough of Barnet
Planning Policy Team
7th Floor
2 Bristol Avenue
Colindale
London
NW9 4EW

9th August 2021

Dear Sirs,

London Borough of Barnet Draft Local Plan (Regulation 19) Consultation Representations on behalf of KRF Services (UK) Limited

These Representations are submitted on behalf of KRF Services (UK) Ltd (KRF). They have been made in the context of their proposals for the demolition and replacement of No. 45 Winnington Road, London, N2 OTR which is the subject of planning application ref. 21/0925/FUL, recently appealed.

The Representations are made with specific reference to Policy CDH08 (Barnet's Heritage).

Supporting paragraph (6.25.4) notes the following:

“When considering applications for demolition of buildings that are locally listed or are considered to make a positive contribution, the Council will take into account the significance of the building and its contribution to the conservation area. The Council will resist the total or substantial demolition of such buildings, including proposals for facadism, unless significant public benefits, which should include heritage benefits, are shown that outweigh the case for retention. Applicants will be required to have regard to National and Local Plan policies and any other relevant supplementary guidance produced by the Council in order to justify the demolition of a building that is considered to make a positive contribution to a conservation area. All planning applications proposing total or substantial demolition within conservation areas must clearly demonstrate that effective measures will be taken to ensure the structural stability of all retained fabric during demolition and re-building. The Council must be satisfied that any approved development will proceed within an agreed timespan.”

In relation to conservation areas, Policy CDH08 notes the following:

“The Council will seek to preserve or enhance the character and appearance of its conservation areas when assessing development proposals. Conservation area character appraisals and where applicable, conservation area-based design guidance will be used in the assessment of planning applications. The following criteria will be applied:

- (i) The loss or substantial demolition of a building that makes a positive contribution to the character or appearance of a conservation area, including a locally listed building will be resisted....”*

As drafted, the wording of this policy is not clear in what it is directing the decision maker to do, when such a proposal is submitted as part of a planning application. It suggests through the wording **“will be resisted”** that there is a policy objection to demolishing buildings, which are considered to make a positive contribution to the character or appearance of a conservation area.

In terms of plan-making, paragraph 16 (part d) of the NPPF states that plans should **“contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”**. As

drafted, Policy CDH08, is inconsistent with this guidance.

The wording of the policy indicates that the Council's starting policy position is to resist demolition of buildings that are considered to make a positive contribution to the character or appearance of a conservation area per se.

However, to the contrary, the loss of a positive building in a conservation area can be considered acceptable, providing that any replacement building preserves, or enhances, the character and appearance of that conservation area.

The Legislation governing listed buildings and conservation areas is the Planning (Listed Building and Conservation Areas) Act 1990. Notably, Section 72 (1) of the Act requires the decision maker with respect to any buildings or other land in a conservation area to pay *"special attention...to the desirability of preserving or enhancing the character and appearance of that area"*. To preserve, in this context, means to cause no harm.

There have been some significant recent judgements and determinations which have helped to clarify the appropriate mechanisms contained within the NPPF for the determination of heritage-based planning applications. Most notably these have included *Bramshill -v- SSHCLG [2021] EWCA Civ 320* and the called-in decision on the *'Whitechapel Bell Foundry'* (appeal refs. APP/E5900/V/20/3245430 & APP/E5900/V/20/3245432).

In paragraph 12.76 of the called-in decision on the *'Whitechapel Bell Foundry'*, the interaction between paragraphs 193 and 196 of the NPPF, the so called *'internal balance'*, was considered. This paragraph stated the following:

"In terms of the Framework, the significance of the designated heritage asset would be conserved, and the proposals would accord with the requirements of paragraphs 184 and 193. In this scenario, there is no need to consider paragraphs 195 or 196 because considered in the round, the proposals would cause no harm to the significance of the designated heritage asset affected."

This judgement by the Planning Inspectorate was endorsed in their decision by the Secretary of State in paragraph 23 of their decision, where they stated the following:

"The Secretary of State agrees with the Inspector at IR12.76-12.77 that the proposals would accord with the requirement of Framework paragraphs 184 and 193, and in this scenario, there is no need to consider Framework paragraphs 195 or 196 because considered in the round, the proposals cause no harm to the significance of the designated heritage asset affected."

A similar issue was considered in the Court of Appeal's *Bramshill* judgement which addresses the interpretation and application of policies in the NPPF and the assessment of harm and benefit to heritage assets.

In this judgement, it was outlined in paragraph 74 that there is no one approach that is suitable for considering the approach to paragraphs 195 and 196 of the NPPF. Notably, Paragraph 74 of the judgement specifically addressed this point:

"The same can be said of the policies in paragraphs 195 and 196 of the NPPF, which refer to the concepts of "substantial harm" and "less than substantial harm" to a "designated heritage asset". What amounts to "substantial harm" or "less than substantial harm" in a particular case will always depend on the circumstances. Whether there will be such "harm", and, if so, whether it will be "substantial", are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying "harm" or gauging its extent. It distinguishes the approach required in cases of "substantial harm ... (or total loss of significance ...)" (paragraph 195) from that required in cases of "less than substantial harm" (paragraph 196). But the decision-maker is not told how to assess what the "harm" to the

heritage asset will be, or what should be taken into account in that exercise or excluded. The policy is in general terms. There is no one approach, suitable for every proposal affecting a “designated heritage asset” or its setting.”

These decisions also consistent with the judgement in *Bohm -v- Secretary of State for Communities and Local Government [2017] EWHC 3217 (Admin)*, which clearly held that, the loss of a positive building from a Conservation Area would meet the duty under S72 of the PLBCAA 1990, should the replacement building preserve or enhance the character and appearance of the conservation area.

The position in ‘*Bohm*’ has been routinely endorsed and the demolition of non-designated heritage assets considered acceptable, due to the quality of the replacement building. Given the judgement in *Bohm* (specifically at paragraph 33), when considering the impact of the proposal on the CA under s.72, it is the impact of the entire proposal which is in issue. Therefore, the decision maker must consider not merely the removal of the building which made a positive contribution, but also the impact on the CA of the building proposed to replace it.

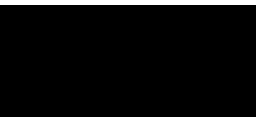
On this basis, we suggest that in order to ensure that the Local Plan is consistent with Paragraph 16 and Section 72 (1) of the Planning (Listed Building and Conservation Areas) Act 1990, we advise a modification to the wording of draft Policy CDH08, which should be amended to read as follows:

“The Council will seek to preserve or enhance the character and appearance of its conservation areas when assessing development proposals. Conservation area character appraisals and where applicable, conservation area-based design guidance will be used in the assessment of planning applications. The following criteria will be applied:

- (i) The loss of substantial demolition of a building that makes a positive contribution to the character or appearance of a conservation area, including a locally listed building will be resisted unless the proposals preserve or enhance the character and appearance of the conservation area”*

I trust that the above comments can be taken into consideration in the preparation of the Local Plan, and we would welcome the opportunity of being kept updated as to how the Local Plan progresses over the coming months.

Yours faithfully,



Alastair Thornton

Director