

**PINS REF: APP/T5720/W/20/3250440**

**LPA REF: 19/P2387**

**APPEAL BY REDROW HOMES LIMITED**

**LAND AT 265 BURLINGTON ROAD, LONDON BOROUGH OF MERTON**

**OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT**

Introduction

1. This appeal is made by Redrow Homes Ltd (the Appellant) against the non-determination of full planning permission for:

*The demolition of the existing buildings and erection of two blocks of development ranging in height between seven and 15 storeys and comprising 456 new homes, of which 114 will be one beds, 290 will be two beds and 52 will be three beds. 499sqm of b1(a) office space will be accommodated at ground floor level along with 220 car parking spaces, 830 cycle parking spaces, a realigned junction onto Burlington Road, hard and soft landscaping and associated residential facilities. The application also includes minor changes to the layout and configuration of the retained Tesco car park, at 265 Burlington Road.*

2. The view of Government could not be clearer – the policy imperative to “boost significantly the supply of housing” has been recast in the national context to “build, build, build”. That is not a trite aphorism – rather the current pandemic has impacted the ability of a nation which was already in a housing crisis to address a national

housing shortage. In addition, the economic benefits which come from a vibrant development industry could not be more important as the nation faces an imminent economic downturn. Far from being immune from that national picture the need for housing in the specific context of the London Borough of Merton typifies the failure to properly plan and facilitate the delivery of an urgent and increasing need for new homes.

#### Identification of Benefits/ Harms

3. Central to the Appellant's case is that the scheme proposes 456 new homes of which 35%<sup>1</sup> will be much needed affordable housing (of which 60% are provided as London Affordable Rent and 40% as London Shared Ownership) in a sustainable location.
4. This is a scheme with significant benefits in its favour:
  - 4.1. The delivery of 456 new homes in a Borough that is failing to meet its up-to-date housing need and demonstrate a 5-year supply of housing land.
  - 4.2. The provision of a 143 affordable homes for which there is a clear and acute unmet need. The failure of the Council to deliver affordable housing is marked: the Council has delivered an average of 127 affordable homes per annum, equating to some 25% against a target of 40% over the last 10 years.
  - 4.3. A package of measures providing significant environmental benefits, including: an energy and sustainability strategy that complies with the DLP policies; biodiversity enhancements, including improvements to Pyl Brook, green roofs, opportunities for bird and bat nesting and insects; a flood risk and sustainable urban drainage system to reduce runoff rates

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<sup>1</sup> On a habitable room basis.

to 3 x greenfield which is a significant and obvious improvement over the current situation; tree planting; and offsite works that are proposed as part of the Mayor's Healthy Streets initiative.

- 4.4. Making effective use of a brownfield site (in accordance with para 123 (c) of NPPF).
  - 4.5. Significant economic benefits in the local economy, including job creation during and after the construction phase, local spend, new homes bonus, Council tax, s106 and CIL contributions.
  - 4.6. Generous external amenity and playspace. The scheme provides 2,758sqm of communal space at podium level with a further 408sqm of amenity space along Pyl Brook.
  - 4.7. High standard design and materials.
  - 4.8. Delivering sustainable travel patterns in line with the Mayors Transport Strategy.
5. All of the above will be delivered notwithstanding that there will be no material harm to neighbouring properties in respect of daylight, sunlight and overshadowing, overlooking and loss of outlook, which meet or exceed the development plan standards. Nor will there be an impact upon a conservation area, listed building or other heritage asset, let alone a protected view or any other designation. All residential quality standards in respect of floorspace, amenity provision, dual aspect etc are met or in many cases exceeded resulting in a scheme that provides a very high standard of accommodation. It will be obviously apparent why this scheme was recommended for approval – such a site is a rarity for a scheme of this scale in an urban London context, and it is precisely this sort of site which should be used efficiently in order to deliver the homes that the Capital needs.

5. The Appellant's firm submission is that whilst change may be unwelcome to some that in reality there simply is no harm that would justify a refusal of planning permission in this instance.
6. S38(6) of the 2004 Act, requires an overall judgment regarding whether the proposal is in accordance with the development plan taken as a whole (s.38(2)(b)). The Appellant's unequivocal position is that this scheme is in accordance with the development plan and that in accordance with para 11 of NPPF that the appeal proposal should be approved without delay and the substantial planning benefits realised as soon as possible.

#### Draft Reasons for Refusal

7. The LPA's draft reasons for refusal relate to transport and townscape matters. Mr Mike Savage addresses reason for refusal 1 (transport), which was never especially convincing and has now been emasculated to a point whereby it plainly should never have resulted in the withholding of permission. Mr Colin Pullan addresses reason for refusal 2 (townscape), which seems to have arisen out of the sophistication that Council members thought the scheme was too big.

#### Draft Reason for Refusal 1: Transport/ Highways

8. In terms of draft reason for refusal 1 (rfr 1), Mr Savage's evidence establishes that draft rfr 1 is not and never has been justified. He concludes that that the development is in accordance with policy and that the residual effects of the traffic are not severe. To the contrary the net change in traffic on the local network will be negligible and that the travel demand can be accommodated on the transport network and there are no transport reasons why this development should not be approved. Mr Savage's evidence demonstrates that there are no outstanding road safety issues and none that would warrant a reason for refusal.

9. In relation to car parking the provision on site is in accordance with policy as accepted by officers. On the evidence there is no need for the introduction of a CPZ, but nonetheless if Mr Lancaster's evidence were to prevail then s106 funding is proposed to enable LBM to consult upon and to implement a CPZ. Whilst that is addressed under other legislation whose outcome cannot be known, it would be an odd stance for LBM to take to assert in a planning appeal that a CPZ was needed, and then after that appeal is lost to change its mind. Its case of course ought to be that a CPZ **may** be needed and that the s.106 obligation enables that to happen should it be thought to be needed within a period of 10 years, such that there is no tenable transport objection to the scheme if it is assessed fairly and properly.
10. Furthermore, the appeal scheme will help to deliver sustainable travel patterns in line with the Mayor's Transport Strategy. Overall, the site has good access by walking, cycling, and public transport, having four frequent bus routes that serve the site and access to a number of rail stations. The site is accessible with access to a range of local facilities.
11. Mr Savage has set out an alternative approach to more accurately forecast the proposed development trips. In this approach the mode shares for private and affordable units follows more closely the methodology proposed in the TA Scoping report. The Council has now concluded that it is satisfied that the reflection of travel demand set out in Mr Savage's tables 10 (existing uses), 12 and 13 (proposed uses), 15 (net change in trips for all modes), 16 (net change for vehicular trips) and Tables 17 and 18 (net change in flows on the network) reflect a realistic assessment of the implications of the development (see SSOCG at [5]). The Council, having now had an opportunity to consider the approach set out in Mr Savage's evidence no longer consider that they could sustain a reason for refusal on the basis of traffic impacts on the Site's junction with Burlington Road because the development, with respect to its impact on traffic flow and congestion, would not have a significant impact or a severe highways impact (see SSOCG at [3 & 8]).

12. The Council therefore accept that the modelling and assumptions made by Mr. Savage in respect of the schemes impacts on that junction are accurate and this aspect of the scheme would be acceptable in planning terms (SSOCCG at [5]).
13. The revised forecast for the proposed development shows that the proportion of trips by foot, cycle or public transport (as a proportion of total daily trips) is in line with the Mayor's Transport Strategy for 80% of travel demand to be by these priority modes.

Draft Reason for Refusal 2: Townscape/ Urban Design

14. In terms of reason for refusal 2, Mr Pullan's evidence firmly establishes that draft rfr 2 is not justified. The appeal scheme is of a high standard of urban design and the requirements and guidance on good design have been met. It is demonstrable that the design has been carefully considered with reference to architectural forms and details found within the local context to ensure that this will result in a high-quality scheme which will enhance the character and appearance of this area.
15. Mr Pullan and Mr Murch demonstrate that:
  - a) The appeal site is within an urban area for which the principle of redevelopment and change is supported by emerging planning policy (Policy N3.4 Raynes Park: Site Allocation RP3 - Merton Local Plan 2015-2030 second consultation).
  - b) Consistent with allocation RP3 and NPPF Paragraph 130, the design of the scheme accords with the clear expectations in plan policies to regenerate the area with regard to its surroundings.
  - c) There are no policy designations or guidance that seeks to define a particular character or quality that should be preserved at Shannon Corner over and above the imperative for good design and to use land efficiently that also has proper regard for its context.

- d) The site is within a sustainable location. There is an emerging policy supporting regeneration and as such, development should seek to optimise capacity, subject always to producing a design of high quality.
- e) The townscape around the appeal site is of a variable quality and has been rightly assessed as having the capacity to accommodate change.
- f) There are no designated or identified important views identified within the local context. Whilst views will change looking towards the appeal site, the fact that such change will occur is accepted and anticipated as part of the emerging policy that supports regeneration of the Shannon Corner TCA. The TVIA concludes there would be a major beneficial effect within the site itself which will enhance rather than detract from the visual amenities within the area, consistent with the objectives of Policy D9 Tall Buildings.
- g) There are no special circumstances in the local context to pre-determine density or height.
- h) The GLA Stage 1 report advised: “the scheme optimises the development potential of the site and complies with draft London Plan Policy D4”.
- i) There is no overriding character within the Shannon Corner TCA in terms of building style.
- j) In accordance with the supporting text to London Plan Policy 7.4 (paragraph 7.14) the appeal scheme will help reinforce a sense of meaning and civility through:
  - a. the layout of buildings and streets;
  - b. the natural and man-made landscape;
  - c. the density of development; and

- d. the mix of land uses at Shannon Corner.
  
- k) In accordance with Policy 7.6 Architecture: the appeal scheme will make a positive contribution to a coherent public realm, streetscape and wider cityscape. It will incorporate high quality materials and design appropriate to its context.
  
- l) In accordance with the objectives of draft Policy DM.D2, the appeal scheme relate positively to the siting, rhythm, scale, density, proportions, height, material and massing of surrounding buildings on Burlington Road. It will reinforce the street pattern along Burlington Road and relate through design to the historic context. The design and appearance are well referenced to the local vernacular and appropriate to the location.
  
- m) The appeal proposal will result in a high-quality scheme which will enhance the character and appearance of this area. It will result in a high-quality liveable environment which will result in a suitable and accessible place for people to live from the ground floor upwards; and
  
- n) Far from restricting any future development on the remainder of the land identified under RP3 it will enable that land to come forward in due course should it be appropriate for that to occur.

### **Overview of the RfR**

15. Irrespective of the issue of housing land supply this appeal should be allowed. Should the Inspector conclude that some adverse impacts arise, then it is firmly submitted that such harm should not lead to dismissal of the appeal but is rather decisively outweighed by the substantial benefits which arise, not least of which is the issue of housing land supply, despite the LPA's most recent foray into forensic hokey-cockey.



## Housing Land Supply

16. The Appellant's case is not dependent upon the issue of demonstrating the lack of a 5YS. To the contrary the existence a deficit against the Government's minimum expectation of deliverable supply is an additional factor that weighs in favour of the proposals. Whilst it is tempting to leave the point there, nonetheless in anticipation that the LPA may spend some moments defending their logically indefensible position the following observations are intended to be helpful by way of overview.

17. It is regrettable that the Council has changed its position on 5YS on a number of occasions. Its most recent approach to establishing a 5YS is, regrettably fundamentally flawed, for reasons which appear to be founded upon a misinterpretation of policy which will necessarily be addressed in evidence and in closing. However, by way of summary:

17.1. The Council will no doubt point to para 73 of NPPF and say that the strategic policies are less than 5 years old and therefore they form the basis of calculating 5YS, and that no other method is appropriate because the second limb of para 73 is not engaged. Anything said or inferred from the PPG is secondary, it may be said and that to do otherwise would be to fall into legal error. With regret, that is an invitation to leave the real world, take a grossly oversimplistic view of the position of Government, and to be blunt is the planning of Wonderland:

- NPPF, like PPG is but a material consideration;
- NPPF needs to be read sensibly and as a whole, if it leads to an illogical outcome it isn't being read properly;
- NPPF is not drafted to cover every eventuality – it covers every square mile of England with radically different policy contexts. Its content has

to be read with a sensible planner's eye and applied to the particular context in hand;

- NPPF doesn't tell the reader the mechanics of how to calculate the 5 YS referenced in paragraph 11, it expressly incorporates by reference the approach in PPG<sup>2</sup>. Read sensibly one has to have regard to PPG when undertaking such an exercise;
- Policy needs to be applied as policy not legislation, and guidance has to be had regard to where relevant. Mr Murch provides the details in his rebuttal, but to suggest that the requirement in the Merton CS is up to date and forms the basis of calculating 5YS because it is less than 5 years old in the circumstances of plan making in London generally and this part of London in particular might entertain the Dormouse and the Mad Hatter, but not, it is to be hoped, a Planning Inspector.
- Even if the LBM's submission was (wrongly) accepted. Then so what – relevant housing policies are palpably out of date and the titled balance engaged anyway and it must be the most powerful of material considerations that whichever other way this particular cake is sliced that there is nowhere near enough houses to meet its needs.

17.2. The wording of para. 005 PPG<sup>3</sup>, properly construed, is not supportive of allowing the LPA to choose to rely on housing requirement figures in adopted strategic housing policies on the basis that the plan was adopted in the last 5 years;

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<sup>2</sup> E.g. para 60, ff37,

<sup>3</sup> Paragraph: 005 Reference ID: 68-005-20190722; Revision date: 22 July 2019. URL: <https://www.gov.uk/guidance/housing-supply-and-delivery>

- 17.3. In the present case, the 2016 London Plan need and supply calculations have been reviewed within the 2017 SHMA and SHLAA respectively (part of the evidence base for the draft new London Plan), leading to new capacity based targets for every borough in the 2019 ItP nLP. In the circumstances that are before this inquiry it is firmly submitted therefore that it is the up to date strategic housing targets of the 2019 nLP that should be used, as these are not subject of a direction to modify by the SoS.
- 17.4. The LPA's approach is counter-intuitive and illogical. The LPA's approach means that there is no need for the second bullet point of para. 005 PPG and is in conflict with other advice in PPG (see, for example, paras. 002, 003 & 004 PPG);
- 17.5. The Appellant's approach is also consistent with the advice given to the LPA by the GLA (CD 6.5);
- 17.6. The GLA recognise that the housing targets set out in 2016 London Plan "no longer meet OAN". Therefore, the draft London Plan provides the clearest evidence that those targets have been reviewed and found to be out of date and that the draft London Plan figures comprise the most up to date policies and have 'significant material weight';
- 17.7. The LPA's approach, which is to give draft London Plan housing targets significant weight, but at the same time, apply full weight to a housing target that is almost half of that figure, flies in the face of good sense;
- 17.8. The Appellant has been unable to find any London borough that has adopted the same approach as the LPA in the present case. Mr. Murch has identified five other London boroughs that have either recently adopted or are at a very late stage of Local Plan preparation that have applied the draft London Plan housing targets;

- 17.9. In a matter of weeks, the 2016 London Plan will be over five years old and/ or the draft London Plan will have been adopted. In either case the LPA cannot show a 5YLS;
- 17.10. The LPA are also not taking into consideration the direction provided by the Secretary of State that there is going to be an immediate review of the new London Plan to increase housing targets to meet identified need. It may be of passing interest to the Inspector to note that if one were to calculate 5YS on the basis of a palpably out of date figure then the LBM is able to pass the 5-year supply mark. But how that should form the rational basis for the judgment as to whether there is or isn't enough housing coming forward escapes the Appellant – a point seemingly accepted, at least by inference in the LPA's housing evidence.
18. When all of these factors are taken into account, the Council's approach to establishing a 5YS is fundamentally flawed.
19. The current London Plan and Council's housing targets are out of date and do not come anywhere close to meeting the up-to-date housing needs for either London as a whole or the LB Merton. Indeed, even the replacement housing targets that are set out in the DLP also do not meet London's OAN and the Secretary of State has directed an immediate review.
20. The Council cannot demonstrate 5 years of supply. The Appellant considers that the Council only has a 4.4 -year supply. This is on the basis that LB Merton's housing requirement figure is 4,820, against its claimed supply of 4,288. However, the Appellant considers that the Council's pipeline is 3,806 homes at most (JM PoE at 6.96), this means the LPA has 79% of its target or a supply of 3.9 years.
21. The tilted balance is engaged for that reason, and in any event and the housing requirement in the adopted local plan is unequivocally out of date.

## Other Considerations

22. The Raynes Park and West Barnes Residents Association (“RPWBRA”; “Rule 6”) raise various matters in addition to the main issues set out above.
23. In terms of the environmental impacts of the proposal and energy and sustainability, the Appellant’s Energy and Sustainability Consultants, Hodkinson have provided the Energy Consultation Response Document (Appx 6, JM RPoE) to inform the round table session on this topic. This comprehensive report concludes that the proposed design of the development will enable it to reduce its CO<sub>2</sub> emissions in line with London Plan requirements (35%) over the overall baseline case, which represents a high level of sustainable design. Further, should the Inspector be willing to accept the Circular Economy Statement as part of the appeal proposals, it could be controlled through an appropriately worded planning condition.
24. In terms of Flood Risk, the Appellant relies on Ambiental’s Flood Risk Assessment (FRA), Surface Water Drainage Strategy (SWDS) and the letter of Ambiental (Appx 8, JM RPoE, dated 19 November 2020). The evidence provided by RPWBRA does not evidence flooding directly from the existing site. Further, as Ambiental observe in their letter, the Appellant has promoted the use of SuDS to provide a betterment compared to the existing situation.
25. The evidence from RPWBRA provides a view from West Way and Brook Close junction. However, this view does not however provide an accurate representation as the buildings are located in the incorrect position in relation to Brook Close (JM RPoE). A more accurate representation can be found at Appx 9, JM RPoE.
26. It is understood that RPWBRA raise issue with the identity of the developer for the scheme (RPWBRA Opening). Planning permission runs with the land and should be granted on the basis of the planning case for the scheme and not on the basis of who is promoting the scheme. The identity of the developer is irrelevant save only to evidence scheme delivery. In any event, there is substantial interest in the scheme. The Newsteer

letter of 2 December 2020 advises that out of a closed list of 8 parties there are 4 shortlisted parties who would suit and are interested in the appeal scheme as a development opportunity. All of the 4 parties have confirmed that they have made their bids on the basis of the Appeal Scheme and the associated planning approvals for the car park reconfiguration temporary road schemes, in accordance with the Agreement for Lease between Tesco and Redrow, as well as their intention to build out the Development, should full planning permission be granted.

#### Conclusion

27. In conclusion, the Council cannot demonstrate a 5-year supply of housing land. In favour of the appeal are the significant benefits of 456 new homes, including 143 affordable homes, economic benefits and significant biodiversity net gain. The scheme complies with the development plan and should be approved without delay. The appeal benefits are substantial whether or not the tilted balance is engaged.
28. The balance, tilted or not, is overwhelmingly in favour of granting consent for this sustainable scheme; and it is firmly submitted that this should be the outcome of this appeal.

*Paul G Tucker QC*

*Constanze Bell*

*07 December 2020*

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM – LEEDS

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**LAND AT 265 BURLINGTON ROAD, LONDON BOROUGH OF MERTON**

**COUNSEL:**

**Paul G Tucker QC**

**Constanze Bell**

**INSTRUCTED BY:**

**Jonathan Murch of DaviesMurch**

**WITNESSES:**

**Planning: Jonathan Murch MA TCP, MRTPI – Director, DaviesMurch**

**Transport: Mike Savage BEng MSc MCIHT – Director, Arup**

**Urban Design: Colin Pullan BA(hons) DipUD – National Head of**

**Masterplanning and Urban Design, Lambert Smith Hampton**

**Architecture (if required): Simon Bacon BA Arch Dip Arch ARB, Director of**

**TP Bennett LLP**