

**Appeal by Redrow Homes
265 Burlington Road**

**CLOSING SUBMISSIONS
ON BEHALF OF THE LOCAL PLANNING AUTHORITY**

Introduction

1. As I set out in opening, lockdowns have highlighted the difference between whether you live in a decent home, in a decent place with a good community spirit or not. Bringing forward new housing is as important as ever. However, it must be done in a way which creates a high-quality sense of place and integrates well into the existing surrounding community. All new development must be sustainable and serve our future generations. Housing supply figures present a snapshot in time but poor development is permanent and the planning harm irreversible.

2. As Mr Pullan accepted, this is not the time to repeat the mistakes of the past – one can think of the post-War ‘build, build, build’ philosophy which led to some terrible examples of poor planning. This Redrow Homes scheme for 456 new homes, ranging in height between seven and 15 storeys, simply attempts to put too many flats on too small a site to the detriment of the surrounding community in terms of visual impacts and car parking overspill. It fails to provide a long-term regeneration solution for the whole Tesco site which will integrate well into a wider Masterplan. It is thus short sighted and, in fact, potentially prejudices the successful optimisation of delivery of much more housing in the future. This latter objection falls squarely within the Council’s second reason for refusal which speaks of the scheme: “failing to deliver a housing development of the highest quality in relation to its context”.

3. The Appellant did not call the architect of this scheme to defend its design. Instead they called their “critical friend”, Mr Pullan, who appeared to have had no input into the design itself. The architect’s approach, as set out in the DAS and in his written Report¹, appears to have been to view this site as “comparatively unconstrained”², in the sense

¹ Murch Appx 2

² Murch Appx 2 para 4.1 p. 10

of it not being next to any designated heritage assets or sensitive residential properties. However, as Mr Pullan accepted, that is not the end of the matter and every site will have its own individual capacity to accept change, based on its surrounding context, both local and the wider area in more strategic terms. When viewed properly, the site has a number of significant constraints, most notably the low lying suburban pattern of this outer London Borough.

4. The London Borough of Merton's Tall Buildings Background Paper (2010)³ makes clear that: "Tall buildings become very prominent in a suburban London borough such as Merton, and make a significant impact on local character and it is therefore essential that this evidence base thoroughly explores appropriate locations for tall buildings"⁴. That same care must be taken in the decision-making process having regard to the rarity of tall buildings in Merton. Any development on this scale will instantly create a landmark and change the urban pattern of the whole Borough, as can be seen from the wide Zone of Visibility of the development in Mr Nowell's Figure 4.1.⁵ There are, in fact, no other 14 plus storey buildings anywhere nearby other than in New Malden Town Centre.⁶ It is axiomatic that: "The standards demanded of tall buildings are therefore higher than those of low rise buildings, reflective of the relative visual prominence of tall structures".⁷

5. Bearing in mind that this development will be especially prominent, Mr Pullan agreed that, if it is to be permitted, there needs to be:
 - (a) Some locational justification for such tall buildings (policy reference: London Plan Policy 7.7(C)(d));
 - (b) If there is insufficient existing locational justification, the development itself needs to be creating a new quarter or sense of place;
 - (c) In all cases, new tall buildings must relate well to the character of the surrounding area (policy reference: London Plan Policy 7.7(C)(b));
 - (d) In all cases, they must be of "exemplary design" (policy reference: Core Strategy Policy 14 para 22.21 and London Plan Policy 7.7(C);

³ CD 3.8. This is not planning policy (it was not adopted as an SPD) but it is still informative as an evidence base and should be given weight. Mr Murch accepted that it has "some status" as part of the evidence base for the Core Strategy in cross-examination by Mr Elvidge.

⁴ Para 1.5.4 p. 5

⁵ PE p. 22

⁶ See Mr Nowell's Fig 2.6

⁷ Para 1.6.3

- (e) In relation to the Bulington Road site, they must be able to integrate into a wider Masterplan in order to bring forward the regeneration of the whole Tesco plot, as per the emerging plan allocation in emerging policy RP3.

Locational Justification and Character of the Surrounding Area

6. Contrary to Mr Pullan's suggestion in his proof of evidence that the: "appeal site is one of the few areas identified in the borough appropriate for tall buildings"⁸, it in fact has never been so identified and is actually defined as "inappropriate" for tall buildings in the Tall Buildings Background Paper.⁹
7. Shannon Corner, the site's immediate context, is (as the Appellant's TVA confirms) comprised of: "typical out of centre retail structures and smaller industrial buildings".¹⁰ With the exception of B&Q, who have raised the height of their building for advertising reasons by putting a prominent sign on the roof to direct customers there, there are no other tall buildings. There can, after all, be no justification for tower blocks to mark the presence of a retail park. The TVA acknowledges that the building scale of the scheme represents a departure from the existing scale of building in the character area which would result in the proposed development being visible across much of the area.¹¹
8. It is agreed that the existing townscape of Shannon Corner is poor, so it may be argued that the introduction of tall buildings does no active harm. However, there is no justification for them to mark out an existing place, by contrast with the other tall buildings in the Borough in New Malden town centre or Wimbledon town centre, for example. The only justification for them can be to regenerate Shannon Corner and create a new, better place. Therefore, for the scheme to achieve that aim in a long-term sustainable way, it is critical that a good sense of place is in fact created which will integrate well into future wider regeneration.

Surrounding Context: West Barnes Ward

⁸ PE para 2.18

⁹ CD 3.8 p. 59

¹⁰ CD 8.3 para 3.37

¹¹ Para 5.18

9. In contrast to the poor quality of the townscape in Shannon Corner, the real potential for active harm to existing townscape lies in the relationship of the proposed scheme to the residential streets of West Barnes ward.
10. As with much of Merton, West Barnes is a predominantly suburban area typically characterised by two storey houses.¹² 'Linkway', as seen in the Council's Character Assessment¹³, is pretty typical. It comprises an uninterrupted and complete row of 1930's semis. Whilst it may not be in a Conservation Area, it is nevertheless judged to be an "Area of established high quality" in the Character Assessment. There are also some older railway workers' cottages¹⁴ which are 'cottagey' in dimension and, although again not listed, have a certain charm about them – Mr Pullan said that he was rather fond of them. The large feeling of local resident objection to the scheme is, in itself, testament to the value that the local community place on their area.
11. Core Strategy Policy 14(c) makes quite clear the need to: "Protect the valued and distinctive suburban character of the borough by resisting the development of tall buildings where they will have a detrimental impact on this character".
12. Thus, if the Inspector concludes that there will be a detrimental impact on the character of the West Barnes suburban Townscape Character Area, that will be a breach of the development plan. Of course, this is ultimately a matter of judgment, but the images in Mr Nowell's proof of evidence and the TVA are informative. The towers will be highly visible from the surrounding streets. Furthermore, as Mr Pullan accepted, these images need to be seen in a dynamic context - as one walks along the streets, the towers will come closer and closer into view, looming over the existing open skyline of the houses. One can entirely sympathise with the local residents who do not wish to see this development dominating their currently open skyline with towers of a height and scale never before witnessed in the area.
13. Even the Appellant's consultants who prepared the TVA, Lichfields, say that: "changes to the character of the area would result from the visibility of the proposal"¹⁵ and that the

¹² As is acknowledged in Mr Pullan's PE at para 2.18

¹³ Pullan Appx p. 12

¹⁴ As seen in Mr Nowell's Fig 4.6 – View 5 on West Barnes Lane and Linkway junction

¹⁵ CD 8.2 TVA para 5.21

effect on West Barnes is “minor adverse”.¹⁶ The GLA also remarked on the “noticeable addition” to the surrounding low density area¹⁷ and the original case officer acknowledged: “a tension between the scale and height of the proposed buildings and the existing more low level suburban built form”.¹⁸

14. Thus, even taking the Appellant’s case at its highest (i.e. minor adverse), it is submitted that the scheme will still have a detrimental impact on the suburban character of the surrounding West Barnes ward, contrary to CS Policy 14, and without any real location justification for that detrimental impact.

Borough Wide Context

15. The harm in fact goes further than the West Barnes ward. Given that these very tall and prominent buildings are likely to change the skyline across much of the Borough, they need to serve some role to have meaning (other than simply providing lots of flats on the smallest ground footprint possible).

16. The Tesco Car park is not a town centre, nor even likely to become a new town centre. The development has variously been described by the Appellant as, on the one hand, a “gateway”, and on the other hand an “edge”. This is confused and, with respect, rather suggests that the Appellants are searching around in an attempt to find any function for the scale of their development, when there is in fact none. As Mr Nowell said, why would you want to create an ‘edge’ (or indeed a ‘gateway’) at this location? Why would you want to create a ‘barrier’ between your development and the surrounding residential area which you are trying to integrate into?

17. Whatever descriptive words professional designers seek to impose on this scheme, the reality is that it has nothing to do with gateways, or edges, or markers. The scale of the development is entirely dictated by the desire to maximise the amount of housing. And

¹⁶ TVA para 5.23

¹⁷ CD 7.3 Stage 1 Report para 45

¹⁸ Committee Report at para 8.2

it does so in a way which is simply dull and uninspiring. Looking at these buildings from afar, the viewer may well – given their scale – be deceived into thinking that this was a town centre, only to go there and find no shops or restaurants or usable public realm or anything other than office space (subject to potential PD rights which may or may not be utilized) and residential entrances. Were this a scheme which was seeking to create a new quarter and sense of place and marking such with its height and prominence, one would expect so much more from it.

Ability to Integrate into the Wider Masterplan

18. The Appellant's response relies on this being simply stage one of a wider redevelopment of the Tesco site with the promise, no doubt, that later phases will bring greater community enhancement.

19. It is not disputed that the scheme's ability to integrate into a wider Masterplan is crucial to its success. As the GLA said: "The partial redevelopment of the site must not prejudice the future development of the Tesco store".¹⁹ This is relevant not only in the context of bringing forward greater public realm and commercial opportunities. If the effect of this scheme is to preclude or hinder bringing forward the wider site for redevelopment, we are – in the longer term – losing the potential for bringing forward significantly more housing as well. Mr Murch accepted that optimisation of housing delivery must take account of the wider site in the longer term.

20. It is quite clear that the illustrative Masterplan was retrofitted to the scheme after the original comments of the DRP.²⁰ It is very rudimentary. It has to jostle with the existing tall buildings in this scheme and ends up putting a public park behind the inactive impermeable frontage along the western back wall of the scheme to separate out the buildings (in the centre of the site, the very part where the DRP said may be a better place for taller buildings²¹). It is all very well for the Appellant's Mr Pullan and Mr Murch to say that it is really unusual that this scheme has no daylight and sunlight issues given how dense it is. But that is simply a consequence of being first on site and there being no other buildings around this car park site. There is no guarantee that any subsequent

¹⁹ Murch Appx p. 7 para 33

²⁰ See CD 8.1 DAS Masterplan Section 4.1 p. 24

²¹ DRP comments in Committee Report CD 7.1 para 5.9.11 p. 64

phases would not suffer as a result of a lack of a proper integrated masterplan for the whole site designed at the outset and Mr Murch accepted that no daylight and sunlight assessment has been carried out for the indicative Masterplan.

21. The GLA were clear in their responses that the Appellant must adopt a “comprehensive approach”²² to the whole site. As can be seen from para 38 of their letter, they are not saying that the wider site is something which can be ignored now and only thought about later after this scheme is built. They are saying it should be considered and planned for now. The Appellant has tellingly failed to do that and the vexed issue of the inactive ground floor frontage on the western elevation is a case in point.

22. The inactive frontage is an immediate ‘problem’ for the delivery of a masterplan. The GLA have stated clearly: “The rear elevations will be completely devoid of openings. Whilst it is noted that these elevations would sit adjacent to a service road, the applicant should consider the impact of this inactive frontage following any redevelopment of the Tesco store. An inactive impermeable frontage is not acceptable in this location”. “Not acceptable”. These are strong words from the GLA. And their reasons are entirely justified when one looks at the CGI image at View 1²³ where one sees some trees in pots pushed up against car park vents in building alcoves. This is clearly not an animated and exciting place to surround a public park.

23. The Appellant’s solution is, apparently, at a later date, once the scheme is built, to see if they can reduce car parking without causing problems for overflow on residential streets and deal technically with the issue of cross ventilation of the car park, in order to attempt to change the scheme from its current form and put in some shops or other commercial uses along that elevation. They have even attempted to redraft the s. 106 agreement to provide for this. The Council’s reasons for refusing to agree that this is acceptable are clear. Not only must the scheme be judged on its own merits at the present time, but the Appellant cannot have it both ways given the parking reason for refusal – they cannot be expected to provide even fewer car parking spaces than the already inadequate number in order to deliver a successful masterplan. Mr Lipscomb said in cross examination that, whilst the Appellant may be able to bring forward a

²² Murch Appx 2 p. 7

²³ CD 8.4 View 1

different edge in the future and perhaps move the lost parking somewhere else within the scheme, the current uncertainty still “leaves a question mark over it”.

24. This example simply indicates the whole attitude of the Appellant to build high and wide and dense without any real thought given to good design. The DRP were quite right to give the opinion that the scheme exhibited a general “worrying lack of sense of place”.

Other Design Considerations

25. Overall, the scheme offers very little, if anything, for the community beyond its own residents. There is no public realm (apart from access roads) and the opportunities to make something of the Pyl Brook frontage which could be an attractive waterfront space have not been taken up.²⁴

26. The seriousness of the criticisms of the scheme levied by the Council’s Design Review Panel at an earlier stage – and the Appellant’s inability / unwillingness to address them – are, it is submitted, what has led to the Appellant’s position of having to seek to discredit the Design Review Panel itself. The decision-maker is bound by the NPPF to have regard to the outcomes of any DRP (see NPPF para 129). Mr Pullan agreed that the Panel Members were independent, he had no reason to doubt their expertise and there were architects, urban designers and planners on the Panel. Furthermore, the Council’s DRP pass judgment on numerous schemes in the Borough and no one is aware of any other complaints about their conduct or judgments.

27. The Appellants’ criticisms of the Design Review Panel, as set out in the architect’s report²⁵, may be summarized as follows:

- (1) Inadequate time to present the scheme;
- (2) DRP Members apparently out of touch with planning policy (presumably the focus on delivering a significant amount of housing);
- (3) Lack of understanding of the site;
- (4) Overall, a feeling that the comments were not constructive, relevant or achievable.

²⁴ CD 8.4 View 3 – this route is closed off by fencing and there is no reason for the public to go there. There is no active frontage – just residential entrances.

²⁵ Much Appx 4, Section 8, p. 30

28. Although Mr Murch complained to the Council about the DRP, no opportunity was taken to go back to a differently constituted Panel or, indeed, to the Design Council which could have provided a second opinion. The Appellant says this is because of dialogue with the case officer. In a subsequently prepared SOCG between the parties²⁶, the Council has agreed (with reference to the case officer for this scheme) that, whilst officers remained of the view throughout the application process that a further presentation to the DRP would have been beneficial to the evolution of the design of the proposed development, they confirmed that there was no internal procedural obligation for the scheme to be re-presented to the DRP before reporting to members. That may be so, but it does not follow – as the Appellant has sought to assert – that the DRP’s views must be given ‘no weight’ or that the later revisions of the scheme “addressed” the concerns of the DRP. The case officer never said this²⁷ and it is misleading to suggest otherwise.
29. The response of the DRP is set out in the Committee Report²⁸ and, reading it, there is nothing wildly odd about it and all their points are perfectly valid points to make about this scheme, as well as the earlier iteration. The DRP say that the scheme fails to sit within a clear wider framework and this leads to problems, in particular that the site’s context is a low-rise, low-density suburban one and the interface between the site and this context needs to be acknowledged and designed appropriately. There is no proper rationale for the chosen storey heights. High buildings might be appropriate in some places, but this is more likely to be in the centre of the larger Tesco-owned wider site.
30. The podium typology (still present) leads to a: “very poor interface with the street, dead frontage, places for concealment and lots of different building lines. This [is] exacerbated by the numerous service entrances etc. and makes for a poor quality public realm”. They note that the lack of a proper public space beside Pyl Brook is a missed opportunity. The river is a: “positive asset” that is not being taken advantage of, and there is “a worrying lack of sense of place to the whole development.” For a development of this scale it was felt that a more genuine mixed use development was justified, which would improve activity, surveillance and vitality.

²⁶ ID 23

²⁷ Pullan PE para 2.22 and para 4.33. The Committee Report simply notes the changes made and the Applicant’s comments. It does not proffer a view as to whether those changes have addressed the DRP’s concerns or not.

²⁸ CD 7.1 para 5.9.11 p. 64

31. With regard to heights, the DRP considered that there is no townscape or contextual justification for the heights chosen, and if this is considered acceptable, would the wider site then be able to justify even taller buildings?
32. All of these criticisms are valid points to make and do not suggest that the DRP had misunderstood the scheme or the site context or planning policy. The Inspector is invited to give the DRP's views significant weight in line with the guidance in the NPPF. As Cllr Bokhari said, to be given a "red response" by Merton's DRP is unusual. The case officer was not wholly content with the design (he noted, for example, the "tension" between the scheme and the surrounding area) but considered (as the SOCG says) that greater weight could be attached to the benefits of the housing delivery in drafting their conclusions on the scheme and recommendation to Members.
33. And that is ultimately what this appeal comes down to: A balance between the benefits of housing delivery and optimising housing delivery through a dense development and harm caused by poor design leading to overdevelopment – the "heart of the appeal", as described by Mr Tucker in cross-examination of Mr Lipscomb. This balance can be seen to be struck in the Council's second reason for refusal – "Notwithstanding the metropolitan planning objective of optimising housing potential, as set out in policy 3.4 of the London Plan..." Should the residents of Merton accept overdevelopment, which will impact on the local character, bringing forward a very prominent scheme in the Borough which has a worrying lack of sense of place, simply in order to get the housing numbers up? But before turning to housing numbers, I will consider the linked issue of car parking.

Car Parking

34. The other consequence of overdevelopment is that there is simply not enough parking capacity for the number of additional residential vehicles that will be generated. There is no dispute that the car parking for the scheme was designed entirely around the 'leftover' space on the ground floor (it being too expensive to put the parking underground). Thus, all arguments about numbers of spaces have evolved to justify a pre-determined size of car park.²⁹ Indeed, TfL - with their more strategic view to

²⁹ The parking surveys were done after the scheme had been designed in order to prepare the TA in May 2019

discourage car ownership in London generally - considered that there was too much – as opposed to too little – carparking.

35. Whilst having an average PTAL of 3, the site does not have particularly good public transport (by contrast with the Redrow Homes example given by the Appellants in Barnet which is right next to a tube station). The nearest railway station, Motspur Park, is ten minutes' walk away with a particular set of challenges to access, including the need to walk up and back down two separate flights of steps. Any future plans for improved station accessibility are far too remote to be given weight. Buses are infrequent and, as we heard from local residents, unreliable in terms of journey times. By contrast, the appeal site has excellent road connections (after all, why else would it be such a good location for a large Tesco store?) and thus owning and using a car in this location is especially attractive.³⁰

36. The car parking figures table agreed by Mr Lancaster and Mr Savage since evidence was given sets out the range of different scenarios of overspill³¹. It is agreed that, based on the ratio of car ownership for flatted development in the Borough, each flat will generate 0.62 cars. This would result in an overspill off-site of 63 vehicles into surrounding residential streets – significantly above the number of spare spaces observed in both the Motts pre-Covid and PWLC post-Covid surveys.

37. There is no good reason to assume that the demand for residential vehicles will be substantially less than in the West Barnes ward as a whole. The Appellant's argument appears to rely entirely on an assumed 'downward trend' in vehicle ownership generally as a result of climate considerations and the 'Greta Thurnberg effect'. It is very difficult to speculate about future trends (by contrast, one might argue people are being discouraged to use public transport for public health reasons at present and are therefore placing greater reliance on the private car). If the Inspector is of the view that the parking level is insufficient based on the most recently available Census data, then there is no good reason to displace that conclusion on the basis of speculation about the future or, indeed, about unquantified trends since the last Census.

³⁰ By contrast with, for example, areas of Central London where there are a number of deterrents to car use generally.

³¹ ID9

38. It is also worth noting that, even if Mr Savage is right and there are ample spaces within the scheme for all the residents, that does not automatically mean that pressure will not still be put on surrounding residential streets. It is reasonable to assume, as Mr Savage accepted, that new residents will have to pay for a permit to park in the scheme's carpark. They may therefore simply choose not to, preferring to park for no charge in the surrounding residential streets. Furthermore, the residents will have visitors from time to time who may well also need to park. Thus, there is no guarantee that, even if the spaces are there, they will in fact be used as intended.
39. Irrespective of the promised funding for a CPZ in the s. 106 agreement, a CPZ cannot be introduced in the surrounding streets without the majority support of the residents. This has not always been forthcoming (hence Cavendish Road being an isolated example of a local street where a CPZ is in force). Thus, very little, if any, weight should be given to the prospect of a CPZ coming forward. In any event, reliance on the prospect of a CPZ is misplaced. There are no CPZs in the Borough in these types of locations which are 24 hour and thus the issue of overnight parking stress (i.e. at the time when the parking surveys were carried out) will be unaffected by a CPZ.
40. The issue of parking may at first sight seem a bit of a side-point. However, it is a very real concern of the community for understandable reasons. In an area already experiencing high levels of parking stress, any significant number of new vehicles circumnavigating the area looking for parking spaces and being forced to park in compromised locations is going to cause problems, and affect the convenience of local residents³² (contrary to Core Strategy Policy CS 20). That does not make for a good sense of community and the level of public objection to not only the scale of the scheme in and of itself but to the consequent highways impacts speaks for itself.

Housing Need and Supply

41. Having set out the objections to the scheme I turn now to the benefits. It is agreed that the scheme will deliver 456 new homes, including affordable homes, which is a benefit of significant weight. This is the 'key' benefit to consider as against the harm, as Mr

³² And see, for example, the useful photographs at Mr Lancaster's Figures 4-8 which demonstrate some of the parking stress issues which are already occurring in the area.

Lipscomb said, and Mr Murch agreed. The other benefits are secondary or neutral (or an absence of harm rather than a positive benefit).

42. Whether the tilted balance applies or not depends entirely on whether the new London Plan is adopted or not before the Inspector's decision. If it is adopted, the Council accepts that it does not have a 5 year housing land supply as against the higher targets. However, the shortfall is not huge – the Council has a 95% supply (including buffer) if the 411 figure is maintained for 2020/21 and the 918 figure used for the remaining years and an 84% supply (including buffer) if the 918 figure is used for all 5 years.³³ This is relevant in terms of the balancing of scales, irrespective of whether they are tilted or not, as Mr Murch accepted.

43. If the emerging London Plan is not adopted before the Inspector's decision, the current development plan must be the benchmark for determining the Council's housing need since it is less than 5 years old. The reasons for this have been set out in full in opening and during the evidence of Ms Mowah and first cross-examination of Mr Murch. It is ultimately a matter of law and interpretation of the NPPF, not planning judgment. The Council maintains that its interpretation of the NPPF is absolutely right and any finding otherwise would be susceptible to legal challenge. The Appellant has provided no legal authority, Secretary of State decision or even local authority decision to support its

³³ As at today (January 2021) the 411 figure is adopted in the London Plan 2016. This is financial year 2020-21, Year 1 of the five year supply.

As set out in table 9 of Ms Mowah's proof:

- If London Plan remains unadopted until April 2021, the target for Year 1 / FY 2020-21 would be 411 (adopted) and Years 2-5 would be 918 (assuming new plan adopted after 31st March 2021)
- If London Plan is adopted before April 2021, then 918 from Year 1 (2020-21) applies for all five years.

Considering the correspondence between the Mayor and Secretary of State on the 24th December, it seems likely that the London Plan will be adopted before April 2021, but there is no guarantee, given the initial submission to the Secretary of State was in 2019.

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It is the Council's position that it is not possible to retrospectively apply 918 for decisions or monitoring in a previous financial year of 2019-20. The London Plan was submitted to PINS for examination in 2018, the Panel Examination Hearings started in January 2019 and concluded in May 2019, and Inspector's Report in September 2019. Clearly when submitting the Intend to Publish London Plan to the Secretary of State in 2018, in the Mayor considered that the London Plan would be adopted in FY 2019-20 (proposed as Year 1 of the Plan).

interpretation that you apply emerging plan figures where adopted strategic policies are less than 5 years old.

44. Thus, the tilted balance does not – at the time of delivery of this closing – apply and the appeal must be determined against the development plan unless material considerations indicate otherwise, in the normal way, whilst acknowledging that significant weight must be given to the fact that the higher figures are “coming over the horizon imminently”, in Mr Murch’s words. The Council is not ignoring this or burying its head in the sand. Its position is entirely rooted in the “real world”.

45. The Appellant has also sought to argue that the tilted balance ought to apply because the policies most important for determining the appeal are out of date. None of the policies in the reasons for refusal are out of date, as is accepted by Mr Murch³⁴. It is a completely circular argument to suggest that the policies are out of date because the housing need policies have been reviewed and found to need updating. That is not what is meant in para 11(d) – the route to the tilted balance on the basis of housing supply is set out in Footnote 7 and para 73 and is exclusive. Furthermore, whilst the NPPF does not specifically determine whether the titled balance applies when ‘one of’ or ‘any of’ the most important policies are out of date, *Wavendon Properties Ltd v SSHCLG* [2019] EWHC 1524 (Admin) has made it clear that the most important policies should be viewed together and an overall judgement made whether the policies as a whole are out of date.³⁵ It would be quite wrong to find that the policies (plural) which are the most important for determining this appeal (i.e. the design policies and transport policies as well as housing policies) are as a whole out of date, in circumstances where none of the policies in the reason for refusal are out of date.³⁶

³⁴ Murch PE para 4.14. “The acid test in relation to whether or not a policy is out-of-date is, it will be recalled, the extent to which it is consistent with the Framework” (Dove J in Gladman v Central Beds at para 34).

³⁵ Ultimately, a broad-brush assessment must be made that the “basket of policies” as a whole is not up-to-date (Wavendon at para 58). Thus, even if the Inspector were to consider that the housing target policies are out of date and are the most important policies for determining the application, she should not conclude that, overall, the basket of policies which are most important in this case are, as a whole, out of date.

³⁶ Murch PE para 4.14. “The acid test in relation to whether or not a policy is out-of-date is, it will be recalled, the extent to which it is consistent with the Framework” (Dove J in Gladman v Central Beds at para 34).

46. Mr Murch finally sought to argue that somehow account should be given to the fact that even the emerging figures in the Intend to Publish London Plan should be considered too low. However, he accepted that if and when the emerging London Plan is adopted, it will be the 918 figure which is used. Therefore, there is no basis for having regard to any speculative future figures and there is in any event no knowledge as to how these will be distributed between London Boroughs, a matter which is at the discretion of the Mayor.

47. In terms of supply, after lengthy provision of information and discussion, the dispute between the parties was reduced to the approach to 17 sites. The Council's case in relation to each of these sets is as set out in the Excel spreadsheet and the evidence at the round-table of Ms Butler. For the purposes of closing, I will deal with certain themes.

Developer led Sites without Planning Permission where Mr Murch says there is insufficient evidence of delivery

48. The Council's evidence on these sites was given in a clear, precise and unambiguous way by Ms Butler. Mr Murch's complaint proceeds on a misapprehension that every statement of fact must be independently corroborated by documentary evidence to constitute "clear evidence" on delivery, in the words of NPPF Annex 2 (Glossary). That is not right and the examples given in the PPG para 007 are examples only and are not determinative of what constitutes 'evidence'.

49. I am reminded of the classic case of *FW Gabbitts v Secretary of State for the Environment* [1985] JPL 630, often cited in planning enforcement appeals, where the High Court confirmed that there is no need for there to be corroborating "independent" evidence in order for an applicant's evidence to be accepted. If there is no evidence to contradict or otherwise make less than probable the version of events, it should be accepted. The Council has applied the same approach to evidence given by Mr Murch in his role as agent on certain schemes.

50. There is no reason to doubt the veracity of anything the Council's housing officer said and no motive for her to fabricate matters or exaggerate them. Therefore her statements in the Excel spreadsheet and given orally about delivery must be taken at face value and given full weight.

Council and other public body owned sites

51. The Council is in a strong position to be confident that these sites will come forward within the 5 year period. The NHS sites at Birches Close and Wilson Hospital have been confirmed to be completed by 2024/25.³⁷ The Assistant Director for Sustainable Communities of the Council has also confirmed that Morden Town Centre Phase 1, Battle Close, Worsfold House, Chaucer Centre, Gifford House and Mitcham CAB will all come forward within the 5 year period.³⁸

Sites with Permitted Development Prior Approval

52. Mr Murch agreed that these sites fall within (a) in the Annex 2 Glossary for deliverability i.e. they have the benefit of a grant of planning permission. Therefore, they must automatically be treated as deliverable until their permissions expire, unless there is clear evidence that homes will not be delivered within 5 years. All of the prior approval schemes remain extant – their permissions have not lapsed. There has been no ‘clear evidence’ provided that homes will not be delivered. No site visits have been carried out (either by the Council, or by the Appellant, for understandable reasons in both cases) to suggest that development is not going ahead.

Committee Refusal Rate

53. Mr Murch’s 33% Committee refusal rate is unreliable as it looks solely at an 11 month period and there will always be the issue of ebbs and flows in planning applications and decision-making during a short period. Looked over a longer 5 year period, the

³⁷ Appx 3 to the Council’s Housing Supply Matters Statement

³⁸ Appx 4. The Council’s submissions on the five year supply made at the inquiry and in writing clearly demonstrate “*firm progress towards the submission of an application*”, “*firm progress with site assessment work*” and “*clear, relevant information about site viability, ownership constraints...*” as per NPPG para 007 in respect of both the NHS and Council owned sites. Mr Murch’s suggestion (in his response to Appx 3 and Appx 4) that sites must be deliverable ‘now’ should not be interpreted to mean that deliverable sites are limited to those with planning permission or which are immediately ready to be built – the guidance in the NPPF and NPPG clearly envisages that the planning and site disposal stages may need to be undertaken in many cases. All of these sites are allocated in the existing or proposed development plan for residential.

refusal rate is 14%.³⁹ However, whichever figure is preferred, there is no justification for applying any refusal rate.

54. First, the NPPF does not require otherwise deliverable schemes to be rendered undeliverable as a result of applying such a rate. It does not constitute 'clear evidence' that schemes will not be delivered, as suggested by Mr Murch. Second, in any event, as Ms Butler said, practically all of these schemes which are refused permission by the Committee (90%) obtain permission in the end either by way of proactive and positive engagement with the Council to address the Members' concerns in the submission of a revised scheme, by already having an extant scheme with planning permission in place, or on appeal.⁴⁰ In each case where there is a potential planning objection (for example, a 'red response' from the Council's DRP), she has been careful to include the supply in the later years of the five years to reflect potential delays in the planning process, and in some cases only part of the overall number of houses proposed to be delivered by the particular scheme.

55. Overall, as Ms Butler said, the Council's approach to housing supply has been conservative and cautious. It is evidence-based and the very high degree of scrutiny applied to every aspect the raw data by Mr Murch during the course of this appeal should give the Inspector confidence that no stone has been left unturned.

Planning Balance and Conclusions

56. The proposals are contrary to the development plan in that they would result in an overdevelopment of the site. There are no material considerations to justify granting permission for a poor scheme which has put commercial attractiveness above high-quality place-making. Even were the tilted balance to apply, the objections are such that they would significantly and demonstrably outweigh the benefits.

57. The extent of the shortfall in respect of the 5 year supply (should the London Plan be adopted before the decision) is relevant in inputting the various factors into the scale.

³⁹ As in Table 3.1 of ID30 - Major development applications (10+ homes proposed) decided by Merton's Planning Applications Committee in the last five+ years FY15/16-FY20/21 (to December 2020).

⁴⁰ As in Table 3.2 of ID30 - Further planning details of schemes refused

So, too, is the ability for the Council to meet the higher London Plan targets over the plan period⁴¹, in line with its consistent significant outperforming of London Plan targets over the last 15 years.⁴² The London Plan itself acknowledges that the more than doubling of the figures is challenging and: “The increase in housing delivery required by these targets may be achieved gradually”.⁴³ Once the emerging Local Plan is adopted⁴⁴, there will be allocations in place to meet the higher figures.

58. Ultimately, housing supply is often, in Mr Tucker’s words, “lumpy”. Recent shortfalls should not detract from the longer-term position that Merton is very far from being a persistently under-performing Borough. On the contrary, the fact that it has a 95% supply (including buffer) as against the 918 figures (adopting a 411 figure for year 1) shows how well it has been doing. As Ms Butler said, over 2,300 more homes have been built in Merton during the past 15 years over and above the London Plan targets.

59. Building new homes is of course a pressing issue facing our society today in every case and the Government has recognised this with policy support. But decision-makers should not be distracted by the need to plan for new housing in the general sense, and thus underplay the unacceptable negative impacts on the environment of a particular proposal in a particular place. The simple point is that Merton does not ‘need’ a poorly designed scheme to solve a housing crisis. As Mr Lipscomb, who interestingly resigned from his role as the case officer on the application due to his concerns about the scheme’s height, scale and bulk, eloquently put it at the end of his evidence-in-chief: “In 30 years time when you look at buildings and they create a confusing hierarchy in terms of sense of place, the fact that 30 years ago Merton was a few percentage short of its 5 year housing land supply in a transitional period in a moment when we are swapping to a new plan”, and that led to permission being granted, “that, to my mind, would not be good planning for the future”.

60. Accordingly, irrespective of whether the tilted balance applies or not and notwithstanding the objective of optimising housing potential, the Inspector is respectfully

⁴¹ See Ms Mowah’s Figure 12 on p. 20. Mr Murch agreed that these matters are relevant in the weighing of the scales.

⁴² See Ms Mowah’s Figure 12 on p. 22

⁴³ Para 4.1.10 of the Intend to Publish London Plan

⁴⁴ Expected at the end of 2021 – it is acknowledged that this is an optimistic timescale but it is still not miles off as implied by Mr Murch

requested to dismiss the appeal due to the negative impacts of the overdevelopment of the site, in particular the poor design, the detrimental impacts on local character caused by the size, massing and bulk of these towers, and the associated inconvenience to the West Barnes community of car parking overspill on their residential streets.

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