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

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. The Appellant's primary submission is that this scheme[1] accords with the development plan and that the appeal proposal should be therefore approved without delay[2] and that the substantial planning benefits realised as soon as possible[3].

2. Furthermore, because the Council cannot demonstrate a 5-year supply of housing land, the tilted balance is engaged which further warrants allowing the appeal. In favour of the appeal include the substantial benefits of 456 new homes, including 143 affordable homes (in a district which has grossly underperformed over the last several years against its AH need), economic benefits and significant biodiversity net gain.

[1] 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 Class E commercial, business and service uses 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] NPPF para. 11

[3] 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)).

3. Should the Inspector conclude that some limited adverse impacts would arise from granting planning permission for the appeal scheme, then it is firmly submitted that such harm should not lead to the dismissal of the appeal but rather is decisively outweighed by the substantial benefits which arise. Importantly this was the approach of the Head of Service reporting the application to members on an untilted balance (CD7.1 section 8).

4. The benefits of the appeal scheme are substantial whether or not the tilted balance is engaged. Planning permission should be granted for the appeal scheme.

5. These closing submissions address the arguments presented under the two draft reasons for refusal before turning to other matters raised by the R6 party and other interested parties.

Draft Reasons for Refusal

6. The LPA's draft reasons for refusal relate to transport and townscape matters. Of those two issues it remains baffling that the first RfR was persisted with, and Mr Lipscomb ('TL') rightly accepted that the primary issue was the balance arising from RfR2 – ie the effect of the development on the townscape against the benefits arising from optimising the site in a time of clear housing need.

7. Mr Mike Savage's evidence concerns reason for refusal 1 (transport) ('MS') and responds to the evidence of Mr Richard Lancaster ('RL'). Mr Colin Pullan ('CP') addresses reason for refusal 2 (townscape) and responds to the evidence of Mr Hugo Nowell ('HN').

8. Importantly, TL accepted that if MS and CP's evidence is accepted in preference to that of HN and RL, that the appeal should be allowed even the tilted balance is not engaged. That is realistic and compelling, and it is tempting not to pursue this closing submission beyond that important concession since it is firmly submitted that for

reasons we explore below (having resisted the temptation not to proceed further), both CP and MS's evidence is overwhelmingly to be preferred over their opposite numbers.

Draft Reason for Refusal 1: Transport/ Highways

9. Following the evidence of RL[4], and in particular the agreed emasculation of the 1st RfR, the LPA's case, is as follows:

   i. The revised draft RfR says: "in the absence of controlled parking zone", the concern is therefore a ***conditional*** concern. If the Inspector were to consider that there was anything in the LPA's concerns (which there isn't) then she could choose to limit the development of the Site subject to a Grampian condition requiring the introduction of a controlled parking zone (*contra the Appellant's case*). As he conceded, this would overcome RL's concerns as LP Highways Witness (RL XX), telling the decision maker that this is not an appropriate basis to withhold consent;

   ii. The concern expressed in the draft RfR is an amenity concern, there is no safety concern, RL now raises no safety concern (RL XX)[5];

   iii. The LPA does not rely upon or advance any road traffic accident data, junction assessments or capacity assessments which suggest that the local road network would not be sufficient to accommodate safely what RL supposes will be displaced traffic looking for car parking spaces. The focus is not on congestion issues (RL XX);

   iv. If the Inspector thinks that this appeal should otherwise be allowed and she is just concerned with car parking as an issue, the approach should be to implement controls to maintain safe and efficient use of the streets (RL XX)[6];

[4] RL EIC – day 2 [Weds, 09 Dec 2020], session 1; RL XX by Appellant day 2 [Weds, 09 Dec 2020], session 2.
[5] Paragraph 7.4, p.32 RL PoE should have the words "including safety" struck out as the RfR does not allege safety concerns (RL XX). Likewise, at para. 7.2 RL PoE the concern is efficient operation of the network, not safety (RL XX).
[6] Policy T6 of the Intend to Publish London Plan (December 2019), p.475 (or p.486 of the pdf version).

v. The issue between the parties is not merely whether there would be overspill but whether there would be overspill ***and*** whether any overspill would give rise to land use planning consequences (RL XX). To that extent the LPA's concern differs from that of the residents who just want no overspill parking at all;

vi. A CPZ would, in principle, alleviate the concern of the Council regarding overspill (RL XX/ IQs);

vii. The fact that there is a future possibility that residents may not want a CPZ and so a refuse a solution to the problem (if it materialises) is not an appropriate reason to withhold consent now; and

viii. RL's photographs show locations where problematic parking ***could*** take place, they do not show actual real-world examples of problematic parking taking place, since there is no evidence of this problem actually occurring.

10. In XX/EIC RL confirmed that there is no breach of the following policies:

i. London Plan policies 6.3[7]; 6.10[8]; 6.13[9]; CS18[10] (RL XX);

ii. table 6.2[11] in the Parking Addendum to the London Plan as there is no breach of the maximum car parking standards for residential development, (RL XX)[12];

iii. IP London Plan policy T6 ('Car Parking') (RL XX)[13];

iv. IP London Plan policy T6.1 ('Residential Car Parking') (RL XX);

v. CS18 of the LB Merton Core Planning Strategy[14] (RL XX); and

vi. T2 of LB Merton SPP 2014[15] (RL XX).

[7] RL in XX confirmed that he could not disagree that there was no breach of 6.3 given the withdrawal of part of the draft reason for refusal. The London Plan (March 2016), p.259-260 (or p.274 of the pdf version).
[8] The London Plan (March 2016), p.263 (or p.274 of the pdf version).
[9] The London Plan (March 2016), p.267-8 (or p.278-9 of the pdf version).
[10] Policy CS18, LB Merton Core Planning Strategy, p.173 (p.175 of the pdf).
[11] The London Plan (March 2016), p.274 (or p.287 of the pdf version).
[12] There is no breach of the maximum car parking standard policies by providing less than the maximum set out therein (RL XX).
[13] RL in XX agreed when policy T6 is read as a whole, the mere fact that there would be overspill car parking does not give rise to a breach of policy.
[14] Policy CS18, LB Merton Core Planning Strategy, p.173 (p.175 of the pdf).
[15] LB Merton Sites and Policies plan, Part 1, p.124 (p.125 of the pdf version).

11. The LPA's case is based on the following alleged breaches of policy (RL EIC/ XX):

    i. There is a breach of IP London Plan policy T4(A) (RL XX);

    ii. There is a breach of policy CS20 of the LB Merton Core Planning Strategy[16] (RL XX) at CS20(d) in terms of harm to the convenience of local residents;

    iii. There is a breach of emerging policy T6.7(a) of the LB Merton Local Plan (Stage 2 Consultation Draft)[17];

    iv. There is a breach of emerging policy T6.6 of the LB Merton Local Plan (Stage 2 Consultation Draft)[18] because "Development should be safe, minimise impacts on the transport network and the environment" 'environment' means amenity of local residents in terms of overspill car parking (RL XX).

12. The LPA's position regarding policy breach is based on a misunderstanding of how such policy is to be interpreted:

    i. IP London Plan policy T4(A) sets out a broad ambition for development proposals to reflect and be integrated with current and planned transport access, capacity and connectivity. SoCG at para. 6.38 records that the Site has "*good access*", which RL expressly does not resile from. The appeal scheme has good accessibility in terms of local amenities, commuting links and access to the highways (MS EIC). There is no breach of this policy.

    ii. LB Merton CS policy CS20 is concerned with implementing "effective traffic management". The policy actually endorses the use of CPZs where appropriate.

    iii. LB Merton Local Plan (Stage 2 Consultation Draft) emerging policy T6.6[19] at (a) refers to "the environment" in the context of transport impacts of new development. It is not credible to suggest that this is to be read as a reference

[16] Policy CS20, LB Merton Core Planning Strategy, p.184 (p.186 of the pdf).
[17] Policy T6.7 of the LB Merton Local Plan (Stage 2 Consultation Draft), at p.6-25, (p.14 of the pdf).
[18] Policy T6.6 of the LB Merton Local Plan (Stage 2 Consultation Draft), at p.6-22, (p.11 of the pdf).
[19] Policy T6.6 of the LB Merton Local Plan (Stage 2 Consultation Draft), at p.6-22- 6-23, (p.111-12 of the pdf).

to avoiding any overspill car parking onto public streets. Policy T6.7 is a dedicated car parking policy. It is plain that it is a policy seeking to restrict parking, T6.7(a)[20] requires that only "the level of car parking necessary" is provided. This has been done. There is no breach of this policy, properly construed.

13. Following the evidence of RL[21], the LPA accept the following points of principle regarding relevant policies:
    v. Policy T6 of the IP London Plan[22] adopts an in-principle approach to restrict car parking (RL XX);
    vi. Policy T6(c) of the IP London Plan[23] is germane to the issues at hand and, with the benefit of hindsight should have been in RL's PoE (RL XX). However, unhelpfully to RL's case, policy T6(c) advises that an absence of local "*an absence of local on-street parking controls should not be a barrier to new development*";
    vii. Emerging LB Merton policy T6.7(b)[24] shows that LB Merton considers sites with PTAL 3[25] or above, which includes this one, have "good connectivity by public transport" (RL XX); and
    viii. Emerging LB Merton policy T6.7(b)[26] demonstrates the huge impetus placed on minimising on site car parking.

14. Following the evidence of RL[27], the LPA accept the following points of principle regarding factual matters:
    i. There is now no challenge to MS's PTAL figures (RL XX);

[20] Policy T6.7 of the LB Merton Local Plan (Stage 2 Consultation Draft), at p.6-25, (p.14 of the pdf).
[21] RL EIC – day 2 [Weds, 09 Dec 2020], session 1; RL XX by Appellant day 2 [Weds, 09 Dec 2020], session 2.
[22] Intend to Publish London Plan (December 2019), p.475 (or p.486 of the pdf version).
[23] Intend to Publish London Plan (December 2019), p.475 (or p.486 of the pdf version).
[24] Policy T6.7 of the LB Merton Local Plan (Stage 2 Consultation Draft), at p.6-25, (p.14 of the pdf).
[25] In written evidence RL flirted with the suggestion that the site has a lower PTAL but conceded the point in EIC, presumably in part motivated by the SOCG which concedes the point in the same paragraph!
[26] Policy T6.7 of the LB Merton Local Plan (Stage 2 Consultation Draft), at p.6-25, (p.14 of the pdf).
[27] RL EIC – day 2 [Weds, 09 Dec 2020], session 1; RL XX by Appellant day 2 [Weds, 09 Dec 2020], session 2.

ii. TfL asked that the Applicant/ now Appellant ***reduce*** the car parking provision[28], and this was picked up in the GLA Stage 1 report;

iii. In general terms reducing the car parking is a sensible approach (RL XX);

iv. TfL are right that reducing car parking discourages car ownership (RL XX);

v. Before someone buys a flat, they will obviously make themselves aware of the local transport arrangements and in the real world a significant proportion of people will either not be interested in the site because of restricted car parking or will decide to dispose of their car before coming to the site (RL XX); and

vi. LBM & TfL Transport officers were unequivocal and raised no issue or transport concerns in relation to the Site. The Supplementary Report stated that a CPZ was not necessary as no harm had been identified to justify it. After hearing evidence on this issue Mme Inspector may find that conclusion difficult to disagree with.

15. The LPA's position on car parking is in clear conflict with the position adopted by LB Merton's officers, the GLA and good sense.

16. In terms of the applicable parking ratio, the evidence of MS in EIC and captured in ID9 (The Table of Parking Demand and Supply) demonstrates that the applicable ratio is well below 0.48 for several reasons[29]. The WebCat[30] map (RL PoE) shows that the appeal site is better located than most of the surrounding area and closer to transport corridors; when the differential in stock and tenure is appreciated, the figure reduces further[31]; car ownership in London is agreed to be decreasing; the parking constraint acts as a further reduction; and the presence of the car club acts as an incentive to reduce ownership. RL accepted that all these factors will inevitably "push down the 0.62 ratio" (XX RL).

[28] JM PoE Appx 2, para. 50, p.9, TFL comments.
[29] See MS RPoE and ID9 (Table – Summary of Parking Demand and Supply).
[30] A tool developed for calculating PTAL as a first-stop (MS EIC).
[31] MS RPoE at [1.3.2- 1.3.3], stock is 82% houses and 76% of West Barnes is owner-occupied. Just factoring in flats gives a ratio of 0.62 for the borough (283 spaces instead of 220), far below 497 vehicles.

17. RL does not allege that the Motts survey underestimated car parking. This survey shows that stress level of 90% is not exceeded in most instances. The PWLC survey which likely overestimates the position (as RL confirmed in XX) just about exceeds the 90% threshold. Both surveys were properly undertaken (RL XX). The final position is that one survey, undertaken at a time when it is agreed will be likely to be an overestimation of parking demand, shows an increase above 90%, whilst the other survey, which is not alleged to show an overestimation, shows a level of demand well below the 90% stress threshold. On this basis the LPA simply fail to demonstrate evidentially any real issue regarding overspill parking. However, without prejudice to that position, were the inspector to find that there was sufficient evidence to demonstrate a real concern regarding parking, the CPZ is a complete answer to the point.

18. The transport evidence demonstrates that the Appellant was right to observe in opening that RfR1 has now been emasculated to a point whereby it plainly should never have resulted in the withholding of permission. And the debate ought to have been limited to the simple issue as to whether or not funding of a possible future CPZ is a necessary "safety net". There is no application for costs, but with respect the pursuit of the residue of RfR1 as a freestanding basis for withholding consent plainly isn't reasonable – which is presumably by TL properly accepted that the real determinative issue in this case relates to RfR2.

19. Turning to other highway issues raised by third parties. The Philip Champion annotated google photograph (ID 11) is not a "simple solution to capacity" as suggested by Mr Lister. As MS observed in EIC: he is not aware of what discussions may have taken place with the Council regarding this plan; however, national, regional and local policy is aimed at reducing car ownership and focusing on active travel modes. Thus a scheme which widened a carriageway and added additional lanes might create more road capacity but it would make the crossing more difficult for pedestrians and cyclists and would therefore be very unlikely to attract policy support (MS EIC). In addition, in order to accommodate three traffic lanes, it is likely that cycle lanes would need to be

removed or widening the carriageways and removing street trees. Private forecourts are a further obstacle to widening the highway. This is not the sort of scheme either MS or LBM considered that the planning system ought to be promoting because it does not accord with the direction of policy (MS EIC).

20. As for the actual level of accessibility – this is best judged on site. However it is fanciful to say that Raynes Park is not readily accessible, and whilst Motspur Park Railway station may be substandard on arrival for people with disabilities or mobility difficulties, that doesn't mean that it will deter its use by the vast majority of future residents. Moreover, money has been allocated in the February 2020 budget and there is an expectation that step free access will in due course be provided at Motspur Park station. There is the option of using Raynes Park station as an alternative where this station is more convenient for the user (for whatever reason). The route is a busy route but the walk is easy and convenient and far from unusual in the London context (MS in response to XX by Mr Elvidge).

Draft Reason for Refusal 2: Townscape

21. Whilst the LPA consider that the site merely has good accessibility, judged properly, this is a highly sustainable site in urban design terms with ready access to local facilities and amenities. It is a site where one would look to densify the urban area (CP EIC), where there is a national imperative to refuse permission on sites which are not being used efficiently and in particular London context where there is a serious need for additional housing in sustainable locations such as this. Indeed both CP and HN both accept that this is a site which is appropriate for high density residential development in buildings which are taller than those to the East of Burlington Road. A point also implicitly recognised by the emerging LP.

22. Not only would such a high density residential development optimise the use of the site (agreed to be an appropriate design principle (XX HN) but a clear imperitive of the ItP London Plan (TL XX). The issue between CP on the one hand and HN on the other can essentially be summed in two points:

(i) not the principle of high density tall development but the extent of development proposed – a matter of degree not principle;

(ii) a series of comparatively modest criticisms of the design, many of which bear only a tangential relationship to the RfR, and need to be viewed in the context of HN's explicit recognition that the primary concern of members, the RfR and his professional opinion relates to the scale of the development and not the array of other rabbit holes that the LPA has pursued in evidence.

23. Indeed the metaphor of rabbit holes may be misplaced and better case as mission creep. For example, an inordinate amount of time has been spent at this inquiry addressing whether or not the development of the appeal site would prejudice the delivery of the remainder of the site. That included the discussion of the western side of block A (despite the longstanding offer of a s.106 to address the issue and TL's rapid concession that the market would resolve that issue when the wider development comes forward), and the kite flying in XX of JM of the unevidenced suggestion that the development of the appeal site might impinge on the ability of some as yet unknown development to secure an appropriate degree of sunlight and daylight. With respect a case which involves an exercise in so much straw clutching doesn't evidence a Council which is comfortable with the merits of what its witness concedes is the primary concern.

24. As for the nature of the area, Shannon Corner is palpably different to the land to the E and SE. The site itself and its immediate context is urban even if the surrounding area to the E and SE is suburban (CP EIC and HN XX). The Shannon Corner area is palpably different in character and properly described as urban whereas the existing residential area is suburban. For the purposes of the appeal, one is concerned with the redevelopment of part of a distinct urban Shannon Corner character area (CP EIC). It is an area which is ripe for redevelopment and the sort of site that the increased policy to optimise sites is made for – explicitly recognised by the emerging allocation.

25. No heritage assets, designated or undesignated will be impacted to even a trivial degree. No identified, designated or important views will be affected; and whilst HN sought to

talk up the attraction of the Grand Drive Neighbourhood Area (CP PoE Appx2; and PoE fig. 7) the analysis shows that there are no key views or significant identified interactions directed towards the Site. The real concern was beautifully illustrated by Mr Elvidge in his last Q in XX of JM – ie the fact that the change in the townscape can be seen necessarily means that the development will have an oppressive and overbearing effect. With respect, that is untenable, and if accurate would derail the clear underlying principles of the emerging London Plan. The fact that one may see higher density development whilst within a suburban London context in locations beyond such suburban areas is not a criticism in itself but rather is a reflection of the wider character of the City, which is recognised by the SOS[32]. Change, even visible and unwelcome change doesn't amount to harm let alone harm sufficient to warrant dismissing an appeal for a scheme which otherwise optimises development.

26. In XX HN confirmed that he invited dismissal of the appeal on the basis of the terms of the 2nd RfR alone, despite his evidence seeming to range beyond it (the mission creep point refered to above). In terms of policies, HN relies on the policies cited in the RfR: London Plan policy 7.7[33] and emerging policies in the LB Merton Local Plan (Stage 2 Consultation Draft). The RfR does not refer expressly to active frontage or other specific placemaking concerns (HN XX) which HN spent so much of his evidence upon. Rather he properly accepted that the primary concern of members was scale, height and massing (HN XX), a position with which he concurred. It is difficult to avoid the inference therefore that HN's focus upon detail was reflective of the absence of real harm in respect of LBM's primary case.

27. Rightly members were mindful of the need to optimise housing potential, in accordance with the policy imperative of policy 3.4 of the current London Plan[34], this is reflected in the wording of the RfR. Optimising brownfield sites for housing is agreed to be a legitimate and important concern for a scheme designer (HN XX). HN's PoE however

[32] Appendices to Mr. Murch's Proof of Evidence: North London Business Park, Oakleigh Road South, London, N11 1GN - APP/N5090/W/17/3189843
[33] The London Plan (March 2016), p.293-294 (or p.304-5 of the pdf version).
[34] The London Plan (March 2016), p.100 (or p.111 of the pdf version).

fails to identify 'optimisation' as a benefit or positive of the scheme design (HN XX). NPPF, as national policy, also emphasises optimisation of land (at para.123c). National policy advice is to refuse planning applications which do not make efficient use of a site. This is an unusual example of national policy giving mandatory advice to refuse an application.

28. By contrast the GLA Stage 1 report rightly advised: "the scheme optimises the development potential of the site and complies with draft London Plan Policy D4".

29. The density matrix at 3.2 of the London Plan[35] is not being pursued in the IP London Plan and so reflects an old approach (HN XX). Density optimising is not to be judged just by reference to the density range (HN XX), but by the increased emphasis on optimisation (a proper design objective in its own right as HN accepted – undermining the implicit criticism of the GLA stage 1 report that emphasised optimisation – of course of it – its policy and a proper design objective).

30. HN's case regarding breach of policy 3.5 is that the new housing development does not enhance local context and character. The reference in policy 3.5 B to "*enhance the quality of local places*" must refer to the present situation. Consequently, HN was driven to advance an absurd case that this scheme which had been recommended for approval by officers of LBM is an "active detractor" when compared to the existing situation – ie a site comprising a car park and an architecturally unprepossessing office and attached warehouse which does not address the street at all. It may be understandable that there are differences in view as to whether the scale, height and massing are inappropriate and/or whether they have an acceptable impacts on the surrounding area (HN XX), but to assert that what it proposed will be worse than currently exists on site -is plainly not credible.

31. In terms of the current London Plan policies (7.4 and 7.6)[36], whether there is conformity with this policy turns on the resolution of the difference in professional judgment

[35] The London Plan (March 2016), p.101 (or p.112 of the pdf version).
[36] The London Plan (March 2016), p.288 (or p.299 of the pdf version).

between CP and HN[37] (HN XX) on the issue of scale, height and massing and character. If CP is right then it is agreed that these policies are complied with. In terms of policy 7.6 of the current London Plan[38], no case is raised in relation privacy, wind, overshadowing and microclimate.

32. In terms of policy 7.7[39] there are no designated or even identified views which are impacted by the appeal proposal (HN XX). HN alleges breach of all of policy 7.7C apart from (e), (h) and (g) (in answer to questions in XX/ IQs arising out of those questions). Extraordinarily, he alleges breach of 7.7C(i) notwithstanding the substantial regenerative benefits of the scheme (a matter addressed by JM in planning evidence).

33. It is comparatively unusual for a tall building in the Capital to have no effect on heritage assets (HN XX). This is the agreed position here, and it is a clear indication of the capacity of the Shannon Corner area to accommodate taller buildings – a fact long recognised by the LBM. Yes the Tall Building Study, beloved of Mr Elvidge references the site immediately to the South of the appeal site – however that it nothing to the point since at the time the appeal site was in active use – the point is that it is the broad location of Shannon Corner that has been recognised as appropriate for change including taller buildings which is the clear inference from HN's evidence in any event, as well as the draft allocation.

34. Importantly, the text justifying CS14 (22.20- 22.22), demonstrates that the Council thinks tall buildings are appropriate not just within centres, notwithstanding HN's view that they must always 'mark something'. The Council is open to the potential of tall boroughs outside the three centres of Colliers Wood, Morden and Wimbledon (HN XX).

35. HN's evidence is that parts (a)(i)-(iii) of DM D2 are breached. Nonetheless, HN rightly accepted that given what has already been granted along with the change of character,

[37] And between GLA Design Officers/ Council Officers.
[38] The London Plan (March 2016), p.291 (or p.302 of the pdf version).
[39] The London Plan (March 2016), p.293 (or p.304 of the pdf version).

that there is greater capacity to step up the scale of development as one moves further from Burlington Road (HN XX). Therefore when pressed about the fact that the existing office and warehouse has a prior notification approval for C3 use, he accepted that it would be an unwelcome consequence if that was brought forward in an appeal dismissed world instead of the Site being properly and efficiently redeveloped (HN XX).

36. It is firmly submitted that CP's evidence is to be preferred which establishes that, in accordance with the objectives of draft Policy DM.D2, the appeal scheme relates 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 and local context. The design and appearance are well referenced to the local vernacular and appropriate to the location.

37. HN was only able to refer to one example of his experience of tall buildings within London (the Matalan scheme) and examination of that scheme reveals that HN was supporting tall buildings very close (within circa 20 meters) to two storey terraces houses and directly opposite a conservation area. In comparison, CP has extensive experience of tall building schemes in London.

38. The historic map regression exercise (TVIA, CD 8.3) demonstrates that the Shannon Corner area has never been used for suburban housing. There is no overriding character within the Shannon Corner TCA in terms of building style (CP EIC). The Shannon Corner area is rightly marked for redevelopment and suffers from a lack of integration with the wider area (HN XX). It is, with respect an area which is crying out to be 'better used' in the townscape and comprises an obvious redevelopment area – as recognised in the emerging local plan. Indeed, the Tall Buildings Study[40] has long identified that

[40] CD 3.8; LB Merton- LDF- Tall Buildings Background Paper at [3.8.18] and [4.7.6].

the Shannon Corner Area is a location which can accommodate tall building redevelopment.

39. That difference of character is most starkly seen in the view from the railway bridge with the appeal site to the right at the end of West Barnes Road (see figure 6, p.18 of CP PoE [*photograph of the view from the railway bridge*]), demonstrates a very different relationship to the relationship of the built form of Albany House to the existing residential development. Albany House backs on the back gardens of two storey development at the southern end (HN XX). The condition at the southern end is different (HN XX). The suburbs have grown around and down from the appeal site, this is a completely different area distinct from the appeal site (CP EIC). The areas do not relate to each other and are quite apart (see figure 6, p.18 of CP PoE [*photograph of the view from the railway bridge*]). The separation distances further demonstrate the distinct areas (JM Appx 19) (CP EIC).

40. The Shannon Corner area is in a different townscape character area to the suburban housing to the east, they are areas of different form and character (HN XX), and therefore has a much greater capacity to accommodate change. To be blunt if locations such as this cannot be redeveloped in the manner proposed then the aspirations of the Mayor in the ItP, let alone the SOS in the new Standardised Methodology need to be shelved.

41. The TVIA demonstrates that Burlington Road and railway line form a physical barrier clearly separating this TCA from the West Barnes suburban area (CP EIC). A clear delineation in the townscape separating the two distinct character areas.

42. Importantly HN recognised (HN PoE fig.3.1 (p.14)), that his issue is not that there is proposed to be a step up beyond 5 storeys on the appeal site, but rather that the step up is “too much”. CP’s evidence is that a step up is entirely acceptable given the distinct character and given the existing marked stepped change at Albany House. In principle there is no issue with stepping up the built form (HN XX). Similarly, there is no in principle objection to the mass of blocks D and C (fig. 3.1). A building of some stature

or height is required (in his view) on Burlington Road to address the space to be enclosed by them, a more urban condition can be created on a main street (HN XX). Thus, the extent of the height not the principle of height is in issue (HN XX). It is worth reflecting therefore that whatever members may have thought – it became clear from HN's evidence that the issue is that of the extent of the tall buildings (using LBM's definition) and not the principle of redevelopment of the site with tall buildings[41].

43. The emerging local plan sets no height limit (HN XX). The existing site is a baseline (HN XX) and a change from the existing position does not equate to harm (HN XX). CP's evidence is that the judgment of what is appropriate in terms of height is often informed by daylight, overlooking concerns and identification of harm. Here there are no technical concerns and the TVIA persuasively identifies that the streetscape will be improved by the scheme (CP EIC). The townscape height stepping is appropriate (CP EIC).

44. The Site is not within a conservation area. The mere fact of seeing built form in the distance is not in itself harmful (HN XX). This is an area with capacity for change and it is a node in the townscape (HN XX). Nor is the fact that the view will change from close at hand – indeed from closer views the difference will be obvious – high quality residential development which for the first time will address this side of Burlington Road creating a vibrant and interesting street front with a backdrop of residential development beyond.

45. With respect, entirely absent from HN's case was an articulation of exactly what harm arises and at what point (as reflected in IQs). HN confirmed that the Site offers potential for significant residential development but in answer to IQs HN was unable to identify precisely where the critical point in terms of scale lies – ie where it veers from properly using the land efficiently into active harm. Saying that a building is too tall or its mass too great is not a meaningful criticism unless one explains why that is the case.

[41] Ie 'tall buildings' as defined locally in the tall building study.

46. 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) (CP EIC). Emerging policy is an exaltation to optimise the land use of the broader Site (including the appeal site) and to deliver housing (HN XX). 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. 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 (CP EIC).

47. An inordinate but not unexpected amount of attention was directed at the views of the DRP in HN's EIC. With respect this is a very bright red herring to the issues in hand. The relevant factual background is set out in the SSOCG on the DRP process[42]. As CP explained, this matter was not returned to the DRP because of the unsatisfactory nature of the process (CP EIC). Ten minutes is an unusually short amount of time to present a scheme of this complexity (CP EIC), and the quality of the debate that followed was to say the least disheartening. It is to be noted that there is no policy imperative for anyone to follow up a redesign with a presentation to the same DRP, however as JM has explained – he was always willing for the scheme to be represented to the DRP if his concerns about process had been addressed – which never happened. In the recent Supplemental Statement of Common Ground officers confirm that there was no obligation to represent the scheme to the DRP and that they (the officers) were satisfied that the remaining concerns could be resolved in direct discussions rather than remitting the matter back to the DRP

48. In any event it is right to note that the case officer in the report that the scheme had been revised since its presentation to the DRP and he carefully goes through each of the points, explaining how they have been addressed (CP EIC). The exercise in the XX of CP of suggesting that the officer was merely reporting the Appellant's view is, with

[42] an inquiry document prepared by the Appellant/ LPA.

respect untenable, since the officer uses the self-same headings when assessing the scheme in the body of his report. The officer, in common with the GLA considered the design of the scheme acceptable, and the belated enthusiasm for the LBM to rely upon a flawed process of assessment says more about the strength of their arguments than about the reliability of the DRP's assessment which relates to an earlier iteration of the scheme in any event.

49. In the same vein, the emphasis placed upon the GLA's pre-application response is of far less utility to the assessment of the appeal scheme than the Stage 1 report which actually assesses the scheme which is before this inquiry. To assert, as HN did, that the stage 1 report is not really design led does a dis-service to the professionalism of the GLA. Indeed CP's experience is that the GLA's urban designers are very good and expert in London matters and he does not accept design was underplayed in the GLA Stage 1 report, it is incumbent on those designers to achieve the best possible scheme (CP EIC).

50. The one point which remained from the design comments of the GLA stage 1 report relates to the nuanced issue of how the western frontage of the northern block would relate to the **future** redevelopment of the remainder of the Tesco site. Even in his wildest flights of fancy HN did not assert that there is a need for the scheme to address the service yard of an active superstore with an active frontage in the same way as it addresses Burlington Road. The Appellant's view on this issue has been clear throughout – that the scheme is designed with flexibility that would enable that frontage to be revisited in the event that there was a commercial incentive for the ground floor in this location to accommodate an active frontage. Indeed, the apprehension is not (on MS's evidence) that every square metre of the car park will need to be retained – but rather that this will be reviewed annually and in a future world that this aspect of the scheme could and would be revisited.

51. Certainly officers didn't think that this was a shortcoming of the scheme and an offer to make this frontage subject to an enforceable obligation wasn't considered to be necessary. Nonetheless this has been revisited following AGP's XX of CP and the

Appellant remains willing to bind itself in this way, should the Inspector consider that to be necessary notwithstanding the Appellant's view that it is not and LBM's subsequent confirmation of the same[43], , albeit that it is CP's firm view that this just isn't necessary, a point reiterated by TL. HN's evidence takes a different view and the claimed lack of activity on western edge is said to be a significant issue. With respect it plainly isn't whilst the Tesco store continues to operate and, in any event, the proposed western edge is a living wall which is to be lit to make it an attractive edge. The ground floor area will be overlooked from above. It will be used by visitors to the Tesco and will not be empty, the space will be used. This too is a non-point – but if there is anything in it then it is resolved by the UU as well.

52. The CGI pack (CD 8.4) shows that space will be overlooked by windows and balconies. The same is true of the Pyl Brook area which will also be overlooked and used for recreation and bike storage, and which will be opened up to public access if the wider scheme comes forward. Again this fixation upon comparatively peripheral aspects of the scheme which are resolved in any event belies the lack of real substance to the LPA's case. And in relation to these elements, the views in the CGI pack demonstrate that the built form of the development overall is not unduly prominent in the street scene, and that on each frontage the buildings properly comport themselves in the street scene (CP EIC).

53. The Appellant firmly submits that 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.

[43] See LBM Tim Lipscombe's 7 January email to Jon Murch on Western edge to car parking area and S106 obligations.

Overview of the Reasons for Refusal

54. Irrespective of the issue of housing need and housing land supply (explored below) this appeal should be allowed. If the Inspector were to conclude that some adverse impacts arise, then it is firmly submitted that such harm should not lead to dismissal of the appeal. The substantial benefits of the appeal scheme would markedly outweigh any harm arising from adverse impacts.

Issues Arising from the Round Table: Flood Risk & Sustainability

55. Mr Daniel Cook ('DC') represented the Appellant in relation to flooding matters at the round table. The Level Two FRA (figures, 9, 10, 11 and 12, pp.1-16, p.67) demonstrates that the surface water high risk event (1 in 30-year event) would not be experienced at the Site nor would the risk materialise at the 1 in a 100-year event. Further, there is no strong hydraulic link between the area which is regularly flooded and the Site, as the railway acts as a barrier.

56. As DC explained the Site is mostly impermeable at present. The proposed scheme allows for a betterment where surface water the run-off can be better managed.

57. Mr Sly of the Council acknowledged that there is a risk of surface water flooding in the area. However, he explained that the surface water drainage study submitted by the Appellant demonstrated that the Site's run off could be reduce to 3 times greenfield rates (18 l/s) from existing brownfield rates (500 l/s). This reduction in run-off is a significant benefit. The approach is policy complaint and provides a betterment.

58. Thames Water's consultee response confirms that the Site has appropriate capacity.

59. Mr Cuthbert on behalf of the residents raised two issues: embodied carbon and energy. Mr Matthew Bailey ('MB') represented the Appellant regarding sustainability matters.

JM and MB were able to reach agreement with the Council and the Rule 6 party regarding appropriate conditions to address the matters raised.

60. In respect of flood risk, sustainable urban drainage, energy and sustainability, the strategies proposed are fully in accordance with the most recent policies set out in the draft London Plan. Furthermore, the Appellant has volunteered a condition which seeks the approval of a Circular Economy Statement prior to the commencement of the application, which wasn't a requirement at the time the application was submitted.

Housing Need: Part 1 the Housing Requirement

61. The central dispute between the parties in terms of whether LBM has a 5YHLS is whether or not it is appropriate to use the 411 pa figure from the adopted London Plan or the figure from the nearly adopted ItP London Plan. AGP's submission has the benefit of simplicity but lacks the benefit of common sense. True enough, paragraph 73 of NPPF states that the figure to use to calculate 5YS is that contained in a local plan which is less than 5 years old. However the self-same paragraph cross refers the reader to the PPG which includes paragraphs which are inconvenient to her argument and which are therefore unattractively characterised by her as 'wrong'. Perhaps most importantly the NPPF needs to be read with a sensible planner's eye and not with that of a lawyer construing a contact[44]. NPPF para 73 does not deal with how to calculate a 5YS in every possible circumstance, such as when the figure in the development plan was adopted less than 5 years ago, but where it was:

- out of date on adoption;

- subject to an immediate review which didn't happen;

- is based on an evidence base which has long since been superseded (in this case by the 2017 SHLAA;

[44] Tesco v Dundee [2012] UKSC 13

- is a figure which has been reviewed and considered to be wrong by a factor of more than 2;

- not only has the figure been reviewed but it is now to be replaced in a replacement plan which is on the verge of adoption.

62. LBM's witnesses[45] introduced the inquiry to a new concept, a figure which has been superseded by a 'more up to date' figure, but which itself remains "up to date". By that token Apple should still be retailing earlier models of its iPhone on the basis that they remain 'up to date' irrespective of the production of later models. The reality is that VM did not want to concede the obvious – that 411 is patently "out of date"- since that makes AGP's interpretation of para 73 of NPPF nonsensical. IE that even where the figure in the development plan is out of date – it should still form the basis of calculating 5YS. Such an argument might be attractive to a black letter lawyer, but to a sensible planner it is "nonsense on stilts"[46]. Fundamentally, the Council's approach would fail to deliver the housing that both London and the country so badly needs.

63. That this comprises the inescapable conclusion of the sensible planner's eyes is confirmed not only by its use by all of the other London Boroughs who have been researched by the parties and presented in evidence and also noted within the Mayor's most recent letter to the SoS sent on the 21st December; but also since this was also the approach of the LBM until they received the advice of AGP.

64. In opening the point was put very highly by the LBM – that to do otherwise than use the 411 would be to fall into legal error – with respect that is wrong, and strongly disputed by the Appellant. Paragraph 73 is silent as to what to do where the requirement in question is demonstrably out of date and in particular where it has been reviewed

[45] VM's stance on this point was untenable as she plainly refused to accept the obvious – however TL's evidence exposed the fallacy of the LPA's evidence – the 918 figure is the up to date figure, but the 411 figure is not out of date because it's in the development plan. Merely being in a development plan doesn't make a policy or proposal up to date that defies common sense, the express words of NPPF and a body of jurisprudence – but other than that it's a great point.

[46] To misapply Jeremy Bentham's famous quotation.

and found to be out of date. However, whilst paragraph 73 may be silent on the point PPG isn't and makes it clear[47] that where a requirement has been reviewed and concluded to be out of date then the standard methodology should be used. Again, this has been the approach taken by the other London Boroughs as set out within the Appellants evidence.

65. It is an unattractive argument to contend that §73 of NPPF should be construed strictly even if that leads to an illogical result and that inconvenient parts of PPG which are bang on point should be disregarded. If the contrary approach is taken of reading §73 as the starting point, and then reading it together with PPG and applying a sensible planner's judgment then the inescapable conclusion is that it is just plain daft to use 411 as an up-to-date basis to calculate 5YS.

66. If the Council were correct, then what would be the point in the guidance referring to the potential to review of plans? If the Council were correct then national guidance would surely simply say that plans are out of date after five years.

67. If one adds to the above the following points:

- that we are a matter of weeks away from the point when even §73 would not be engaged;

- that it is overwhelmingly likely that within a similar timescale that the new London Plan figure will be published;

- that the use of the standard method (particularly its latest iteration) would suggest a much higher figure need anyway as the starting point for establishing the housing the requirement figure;

[47] PPG "What is the Purpose of the 5 Year Housing Land Supply?", Para.:003; Ref ID: 68-003-20190722, Rev. Date: 22 July 2019.

- that the emerging LBM local plan will have to use the 918 dpa figure as its requirement;

- that the basis for calculating 5YS – during the currency of the 5 year period will necessarily increase from year one onwards even on the LPA's case.

68. The LPA's approach of relying on the 411 dpa statutory London Plan figure for LBM for decision taking/ assessing whether the Council have a 5YHLS and the 918 IP London Plan figure for plan-making is therefore illogical and wrong both as a matter of planning judgment and as a matter of law / policy interpretation.

69. The Appellant advocates relying on the recent (21 December 20) Publication London Plan requirement figure as the most up-to-date figure before the Inquiry (918 per year) (JM EIC). The Secretary of State's directions did not require a reconsideration of the housing requirement figure and so the figure stands as being overwhelmingly likely to be 'adopted' and adopted imminently. Following the publication of the IP London Plan, following the Inspectors' Examination report, the 918 figure took precedent and the 411 figure became out of date if not before. Furthermore, the GLA correspondence supports this interpretation ((JM EIC; CD 6.5).

70. JM has reviewed other London boroughs' approach to need and has found that LB Merton is out of step (RPoE, Appx 1). Other authorities are using the IP London Plan figure (RPoE, Appx 1), as did LBM before AGP's advice – presented at a point that it was otherwise faced with accepting no 5YHLS. In the case of LB Hackney, this approach has been tested at its recent Local Plan hearing and found sound by an Inspector. LBM can find no examples of its approach being used by any other London authorities, which it has sought to distinguish on the basis that the examples given relate to plan making not decision taking.

71. With respect, the LPA's approach is illogical because it relies on a false distinction between decision taking and plan making which ignores that an application, when submitted, is assessed against the housing target and the need to meet that housing

target (JM EIC). There is no sense in using '918' for plan making and '411' for decision taking because any applications made now will feed into the requirement for plan making purposes. Therefore, applications should be assessed against that number (JM EIC). When faced with the obvious question in respect of each of the other LBs if one asked what the 5YS was at a given point in time then the obvious answer for each of the examples cited would be the figure from the ItP London Plan.

72. Thus, in summary the LPA's approach is wrong as a matter of planning judgment because:

    i. The 2016 London Plan was 'adopted' notwithstanding the concerns of the Inspector regarding a need for an immediate review[48]. It was out of date from the point of adoption which was an expedient course of action[49].

    ii. The emerging London Plan Inspectors raised specific concerns about the deliverability of small sites which resulted in a revised target of 918 homes per year (JM EIC). The 918 figure is the requirement figure in the Dec 2020 Publication London Plan but it does not go anywhere near meeting need (JM EIC), the need is in fact much greater – ie 1,328 homes per year (2017 SHMA) or 1,534 homes per year (LB Merton SHNA 2019).

    iii. The 918 figure is intended to apply to a ten-year period from 2019- 2028 (JM EIC; CD 6.5; table 4.1 IP London Plan). Not dealing with that increased housing requirement now merely 'kicks the can down the road' creating a substantial backlog and increased burden on sites coming forward later in within its supply. The Council have provided no evidence to the Inquiry that there will be such sites available to accommodate this level of need, which is deeply worrying.

[48] In 2014 the Inspector concluded that not to adopt a plan would have left London in an even worse position and so an immediate review should take place to review housing requirements (Extracts of the relevant report are at Appx 5, JM PoE). The review did not, in fact, take place for some 2 years.

[49] Continuing the iphone analogy – the adoption of a plan with an out of date figure is akin to buying a second hand iphone 6 because you urgently need a phone – that fact that it has been purchased doesn't render it thereby 'up to date'. By analogy the fact that an expedient figure which doesn't meet need has been adopted doesn't mean it is up to date.

The IP/PLP figure of 918 falls far below LB Merton's own assessment of need, and encompasses the 5 year period under consideration.

iv. CD3.3A, the emerging local plan housing chapter, shows that the Council is using an averaged trajectory, not a stepped trajectory (at 4.22- 4.25), despite its odd contention that it might do otherwise in its evidence. The only sensible inference from the indicative numbers is that the Council have considerable work to do to meet the IP London Plan target for the annualised requirement[50].

v. In the event that the Inspector were to proceed on the basis of the 411 figure as the basis to calculate (contrary to the Appellant's case and common sense), then nonetheless it is agreed that Inspector should then go on to give significant weight to the imminent, future requirement of 918 once the IP London Plan is published – in effect, adopted - on the basis that this is "a reality coming over hill" (JM EIC). And that when that occurs on the LPA's case there will be no 5YHLS.

vi. The Inspector should also give some weight to the SoS direction for a standard methodology increase in housing need to the top 20 cities (including London) as whilst the detail is forthcoming this can only be an upwards trajectory (JM EIC).

vii. The granting of a scheme of this scale which is deliverable in the next 5 years should be given substantial weight because it can contribute to meeting the considerable and growing unmet need (JM EIC). The broader context here is that a new adopted local plan for Merton is about two years away (JM EIC), and so in the short term the only way its needs can be met is to grant planning permissions – a message that one hopes will start to get through to elected

[50] VM's figure 11 (which wrongly fails to take account of the backlog) shows that on a cumulative basis, even with a dramatic increase in supply in the next 3 years, that it will not be until 2027 that Merton will meet its cumulative housing requirement – a point TL properly accepted pointed to an additional reason for concluding that there is a need for additional houses now.

members given how regularly the recommendations of their officers are overturned.

viii. The 411 figure was out of date ab initio and has since been reviewed and found to be out of date (JM EIC). The direction in NPPF to "*boost significantly the supply of housing*" cannot endorse the use of an out-of-date figure.

73. The LPA's approach is wrong as a matter of policy interpretation/ law because:

i. The NPPF is a framework or skeleton to be read with PPG and London's spatial development strategy. These documents must be read together in the circumstances of the case at hand and used to form a sensible planning judgment (JM EIC).

ii. NPPF at para.59 informs the debate on housing need and housing requirement; it has to be borne in mind for plan making and decision taking that there is an acute national need for housing (JM EIC). It is important that LPAs make sufficient provision for housing land (JM EIC).

iii. PPG, dealing with the cap and spatial development strategies, does not cover a situation where the spatial development strategy is out of date. Where this is the case, an up-to-date figure should be used (JM EIC).

iv. Policy is to be applied having particular regard to the LPA in issue and regard is also to be had to PPG (JM EIC). NPPF and PPG proceed on the basis that housing requirement can be reviewed within 5 years of adoption (para. 003 PPG). If the housing requirement is less than 5 years old it does not follow that it is up to date, if a housing requirement has been reviewed and it has been found that it is not up to date then the more up to date figure should be preferred (JM EIC).

74. All of the above should not divert the Inspector from the main point that this appeal should be allowed on the un-tilted balance (as officers recommended to members) The Appellant doesn't rely upon the 5YS argument, nor does it need the tilted balance to 'get home'. Rather the absence of a 5YS is an additional powerful material consideration in favour of allowing the appeal. If the LPA's case in this regard was to be accepted that their approach to the calculation of the 5YS is technically correct, then with respect that still doesn't help, since:

- the 411 figure is out of date and there are unmet up to date needs which are going unmet since the London Plan was not immediately reviewed and the view could properly be taken that the titled balance is engaged in any event as the most important policies are out of date;

- the requirement is about to double and within weeks the LBM won't have a 5YS, helping to meet that imminent deficiency is still a powerful material consideration;

- there is an immediate and growing need however one looks at this case to which the appeal proposals will contribute – which is a powerful material consideration in any event.

Housing Land Supply

75. Finally, now that the LPA have had the good grace to evidence its assertions, the Appellant takes no issue with small sites with planning permission, a 0.3% small site delivery rate, nor larger sites with planning permission. The Appellant's concerns under this heading relate to 19 sites that are 'in the pipeline' and do not yet have planning permission[51].

[51] See JM Housing Supply position statement for a list of 19 sites without planning permission.

76. The list of sites without planning permission can be grouped into four different categories: sites with outline permission[52], sites owned by public bodies[53], pre-application private developer led sites[54] and sites with the benefit of a prior approval decision (office to residential)[55] (JM Housing RT). JM relied on part B of Annex 2 of the NPPF and para. 007 of the Housing Supply & Delivery Section of PPG[56] in reaching his professional view regarding the deliverability of these sites.

77. According to the NPPF glossary, to be deliverable a site for housing should be *"available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*

    (a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans)
    (b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

78. PPG advises "*In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions*". PPG specifically notes that sites with outline permission are a category of site which would require further "clear evidence" to be considered deliverable. PPG advises that evidence to demonstrate deliverability may include evidence regarding current status, firm progress (for example, written agreements and site assessment work) and clear and relevant information about site viability, ownership constraints or infrastructure provision.

[52] Sites with outline permission: 5, 101.
[53] Sites owned by public bodies: 8, 19, 24, 25, 29, 37, 55, 56.
[54] Pre-application private developer led sites: 6, 13, 14, 23, 35.
[55] Sites with the benefit of a prior approval decision (office to residential): 52, 54, 70.
[56] PPG "What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking", para. 007, ref.: 68-007-20190722.

79. The requirements in PPG are very clear: in order to show that a site is deliverable and can therefore form part of the supply, the Council must produce compelling evidence to support that position[57]. The LPA 5YS Spreadsheet[58] is a summary, it does not provide sufficient detail or adequate evidence to demonstrate that the sites are 'deliverable' in the manner required by national policy and guidance. The evidential burden on sites without PP is on the Council.

80. There are five sites in the pre-application private developer led sites (6, 13, 14, 23, 35). There are various reasons to conclude these sites are not 'deliverable' in terms of national policy and guidance. However the fundamental point is that there is simply no site-specific clear evidence regarding these sites. There is no real detail regarding the stage that has been reached with respect to each site. The Council's position is mere assertion. There is site-specific evidence however regarding obstacles to delivery on these sites. These contra-indications cast substantial doubt on whether any of these sites are deliverable. Sites 6, 14 and 23 have all received 'Red' verdicts from the DRP. Red verdicts slow the process down as they may lead to refusals/ appeals There is something of an irony that the LPA are telling the inquiry that a Red DRP verdict is not a reason to conclude, that the site wont be delivered in the teeth of the DRP's view. Site 23 has specific constraints known to JM because he is the agent, including seeking approval from Network Rail and a requirement to build a new station before work can commence on the housing (JM RT). Site 35 has recently been refused planning permission. Site 13 has to overcome an objection from the GLA on viability grounds.

81. No PPG compliant evidence has been provided to support the position that either of the two sites with outline planning permission (5, 101) are deliverable. No RMA has been submitted for site 5.

82. No evidence has been provided regarding the stage of disposition reached with respect to the numerous sites owned by public bodies: 8, 19, 24, 25, 29, 37, 55 & 56. Indeed

[57] PPG "What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking", para. 007, ref.: 68-007-20190722
[58] ID27 Spreadsheet "Merton 5 Year Supply Jan 2021".

the evidence in appx 4 suggests that there are some very significant hurdles to surmount before those sites can come forward. By way of example, the Council is under a duty to obtain best consideration reasonably obtainable for the site[59]. This will inevitably slow down the sale process and consequently the realisation of the site for housing. There is evidence that Site 24 has been subject to a soft-marketing test, but this an extremely early stage in the overall process. In any event, this exercise was carried out some 14 months ago and no sale has resulted from it. Site specific contra-indications include: existing tenants who will need to be relocated (sites 37 and 56).

83. There are three sites with the benefit of a prior approval decision (office to residential): 52, 54, 70. Prior Approval decisions will lapse within 3 years of the date of approval unless an extension is granted. There is no clear evidence of commencement for sites 54 and 70, and no clear evidence of completion within three years as is required for such applications. The LPA's deeply unattractive point is to dodge the issue by arguing that these sites are actually in category (a) of deliverability (which is not what the definition actually says) and relying on the absence of evidence to further their case.

84. The issue before the inquiry regarding housing supply is: where is the clear evidence demonstrating deliverability? The Council has the burden of providing the evidence and has failed to discharge it. Further there are numerous contra-indications suggesting that the sites relied upon are not deliverable within 5 years.

85. On the LPA's case its claimed supply has dropped repeatedly since this process started, and is now down to 4044 units. Whereas the Appellant's final supply figure is 3,306.

86. As against the wrong 411 requirement figure on both cases there is a 5YS. But, frankly, "so what?" since 5 years is nearly up from the start date of the 2016 London Plan, and the ItP London Plan is on the verge of being adopted – in which instance both parties

[59] Disposal of land must be for the best consideration reasonably obtainable (except in the case of short tenancies), unless the Secretary of State consents to the disposal (section 123, LGA 1972). The purpose of s.123 is to ensure, so far as reasonably possible, that public assets are not sold by public authorities at an undervalue, save, if at all, with the consent, general or specific, of the Secretary of State.

accept that there is no 5YS. Unhappily, the LPA has forgotten about the backlog since the start of the ItP London Plan – so its actual supply falls flat at only 75% of its required supply (ie 3.75 years).

87. In EIC TL created a vision of plan making written as if from the pen of Lewis Carroll, with an imminent adoption of the Local Plan which will resolve at a stroke the deficit against the 918 figure (albeit not until 2027). Consultation on the reg 18 LP (which has already been through 2 iterations and has taken several years to get to this point) will end on 1st Feb – but consideration of the reps will be dealt with in a few weeks and a reg 19 plan will be published as the LPA's case to meet a doubling of the requirement (411 to 918), and will lead to submission by the summer. Unlike the controversy encountered by many of the draft local plans – in this case the Examination will then take place rapidly and smoothly, with no need for Main Mods to be published resulting in adoption by the end of the year.

88. With respect the timescale is fanciful and in reality, the only way that the present and increasing deficit will be met will be by granting deliverable permissions.

89. Despite assertions to the contrary the Council has not set out a stepped approach to the target and NPPF requires a 5 YHLS. Even on a 'stepped change' approach the Council do not meet the 918 figure until 2027/28[60].

90. In terms of the relevant housing supply figures, on the basis that the Council's supply is 4,044, the following years of supply are demonstrated, taking account of backlog and significant under-delivery in 2019/20:

    - Basis of 411 + 918 x 4 = 4.1 years supply or 83%

    - Basis of 918 x 5 = 3.75 years supply or 75%

[60] VM PoE at fig.10.

91. On the basis of the Appellant's supply figure of 3,306, the following years of supply are demonstrated:

    - Basis of 411 + 918 x 4 = 3.4 years or 68%

    - Basis of 918 x 5 = 3 years or 61%

    Planning Evidence

92. The scheme optimises the development potential of land. This is unusual in the London context, in most London schemes there is a failure of technical standards at some point (JM EIC). There is a clear policy mandate to optimise housing potential (see [23] above).

93. It does so without any prejudice to the wider Tesco site coming forward for redevelopment or overall optimisation of the wider site.[61].

94. Central to the Appellant's case is that the scheme proposes 456 new homes of which 35%[62] 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. London-wide viability is a challenging issue. The delivery of 143 affordable homes from this scheme will be more than the borough has managed combined over the graph period[63] (JM EIC). The provision of affordable housing must attract substantial weight in the balance (JM EIC).

95. In terms of housing in general, it is clear that there is an upward direction of travel regarding housing need and failing to meet need now only delays the solution and exacerbates the problem.

[61] TL in XX by PT and JM in XX by AGP and JE
[62] On a habitable room basis.
[63] Graph 4.10, JM PoE

96. The Appellant's case remains in the alternative as stated in opening. The scheme accords with the development plan and should be approved without delay. In the alternative, the tilted balance applies (on the basis of no 5YHLS or on the basis that housing policies are out of date in that they rely on out-of-date figures) and planning permission should be granted.

97. The 918 figure reflects actual need in the borough (TL in XX). The only basis upon which it is contended that 411 is 'up to date' for decision taking is that it is in the development plan. If the 918 figure were to reflect actual need – it is in fact the requirement figure which is less than the need - it is absurd to suggest that the 411 figure and associated planning policies relying on the figure are up to date.

98. Under NPPF (para. 11(d)) a conclusion that the policies which are most important for determining the application are out of date is an alternative route to the tilted balance. The interpretation of para. 11(d) was recently considered by the Court of Appeal in *Paul Newman New Homes Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 15*. In *Paul Newman New Homes* the Court of Appeal held that the plural "policies" "*embraces the singular, avoids linguistic awkwardness, and makes sense*" (at [47]). The Court of Appeal decisively rejected the notion that the tilted balance could only be engaged by policies rather than one policy.

99. This is a scheme with significant benefits in its favour:

    99.1. A package of measures providing significant environmental benefits[64].

    99.2. Making effective use of a brownfield site (in accordance with para 123 (c) of NPPF).

[64] 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 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.

99.3. 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.

99.4. 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.

99.5. High standard design and materials.

99.6. Delivering sustainable travel patterns in line with the Mayors Transport Strategy.

97. 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 by an impact upon a conservation area, listed building or other heritage asset, let alone a protected view or any other designation.

100. The Appellant's firm submission is that whilst change may be unwelcome to some, there simply is no harm that would justify a refusal of planning permission in this instance.

101. The views of the local community, presented through the consultation process, have been considered and addressed through the planning application. The SCI forms one of the application documents and SB's report shows the evolution of the design following consultation (JM in response to JE XX).

102. The Newsteer letter of December[65] demonstrates that a national housebuilder is intending to deliver the scheme. There is simply no evidential basis to doubt the deliverability of this scheme.

Conclusion

103. In conclusion the appeal scheme comprises high quality development which is appropriately located and appropriately optimises the use of a brownfield site. It is exactly the sort of scheme that London in general and Merton in particular needs in order to address its current and increasing housing needs. It is consistent with the relevant policies of the development plan and ought to be consented pursuant to the conventional s.38(6) balance, underscored by para 11(c).

104. In addition the Council cannot demonstrate a 5-year supply of housing land now, but even on their case won't be able to demonstrate a 5YS imminently and it won't be in a position to meet its needs under the ItP London Plan for another 6 years – the need case is overwhelming.

105. In favour of the appeal are the substantial and obvious benefits of 456 new homes, including in particular 143 affordable homes, economic benefits and significant biodiversity net gain. The appeal benefits are substantial whether or not the tilted balance is engaged, but if the tilted balance is engaged then the balance becomes overwhelmingly in favour.

[65] ID24

106. Thus, 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

13 January 2021

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM – LEEDS

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

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