

Proof of Evidence

Jonathan Owen Davies Murch MATCP MRTPI

Town & Country Planning Act 1990, Section 78

Appeal by Redrow Homes Limited

265 Burlington Road, London Borough of Merton

PINS Reference: APP/T5720/W/20/3250440

LPA Reference 19/P2387

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1. JM CV;
2. GLA Pre-App Response;
3. TfL Pre-App Response
4. Architectural Report;
5. November 2014 Inspector’s Report, current London Plan;
6. October 2019 Inspector’s Report, draft London Plan;
7. 13th March letter from Rt. Hon. Robert Jenrick to Sadiq Khan;
8. Schedule of Accommodation;
9. Extract from Inspector’s Report for the Hackney Local Plan;
10. Turner Morum Viability Update;
11. Merton Hall Road Appeal Decision;
12. Economics Benefits Statement;
13. Land at Former Car Parks, Tesco Store, Connington Road, Lewisham, Appeal Decision;

14. North London Business Park, Oakleigh Road South, London, N11 1GN, Appeal Decision;
15. Land At Purley Baptist Church, 1 Russell Hill Road, 1-4 Russell Hill Parade, 2-12 Brighton Road, Purley Hall And 1-9 Banstead Road, Purley;
16. Land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX;
17. 27th July 2018 The Rt James Brokenshire MP to Sadiq Khan;
18. Court of Appeal Judgment on Hallam Land v SSCLG & Eastleigh BC, 31 July 2018.
19. Overlooking Distance Plan;
20. Letter from Rt. Hon Grant Schapps dated 31st October 2020;
21. Air Quality Assessment, 265 Burlington Road, New Malden, October 2020
22. LB Bromley, Housing Trajectory extract, September 2020

1. Qualifications and Experience

- 1.1 My name is Jonathan Owen Davies Murch. I hold a Masters degree in Town Planning from the University of Manchester. I am a Member of the Royal Town Planning Institute. In 2001 I joined Hephher Dixon Town Planning Consultants, who subsequently merged with Savills in April 2007. Up until October 2014 I was a Director within the Savills Planning Team. In October 2014 I founded DaviesMurch. I enclose my CV setting out relevant experience within **Appendix 1**.
- 1.2 I have nineteen years' professional experience in consultancy. I have been involved in a very wide range of projects, for various clients. Most of my professional work over the years has been in London, and I know the Borough of Merton well. I have worked on and am currently working on a number of major applications within the borough. I am also very familiar with residential-led urban redevelopment schemes, such as this.
- 1.3 I refer to a number of appendices within my evidence and these are bound separately. I also refer to core documents which have been agreed with the Council. These are identified with prefix CD followed by the document ref number that corresponds to the core documents list.
- 1.4 This proof of evidence has been prepared by me and provides my true and professional opinions based upon my knowledge and experience and in accordance with the guidance of my professional institution. My opinions are given irrespective of by whom I am instructed.

2. Background to the Appeal

The Site and Surrounding Area

- 2.1 The 2.35 hectare site is located between Raynes Park to north and Motspur Park to the south. It is in an area known as West Barnes. The site comprises three parts. First, a 3,880sqm¹ vacant two storey office building with ancillary warehouse and 100 car parking spaces that sits on the northern part of the site, and occupies approximately two thirds of the site area. This building is 265 Burlington Road. Second, part of the car park available to customers of the Tesco store, neighbouring the site to the west. This part of the site accommodates approximately 98 car parking spaces but had been identified as being surplus to requirements by Tesco. The third part of the site is also Tesco customer parking and will remain as such. Its inclusion within the application is to allow some minor changes to its layout to improve operation should this application be approved. The Tesco store will retain 577 car parking spaces out of the existing 675 spaces currently on site.
- 2.2 An egress from the Tesco store car park currently connects onto Burlington Road. The site is bordered to the east by Burlington Road which runs north south connecting Raynes Park to the north to Shannon Corner/ the A3 to the south.
- 2.3 To the north, the site is bordered by Pyl Brook, and beyond this, Raynes Park High School.
- 2.4 To the west of the site is a large Tesco Extra food store and associated facilities. To the south is a wedge of commercial and industrial units in various ownerships, sandwiched between the site and Burlington Road.
- 2.5 The wider area falls broadly into two typologies. To the east of Burlington Road the prevailing land use is residential, and typically sub-urban with two to four storeys terraced, detached and semi-detached properties.
- 2.6 To the west of Burlington Road, and following the A3 corridor, which includes the site, buildings are generally in commercial or educational use of various ages. They are predominantly large footprint

¹ The planning application identified 3,482sqm of existing floorspace, however, this has now been updated following accurate site survey information being provided.

buildings ranging in height up to the equivalent of approximately six residential storeys. The site lies within this area.

- 2.7 There are also a significant number of large open spaces including, Prince George's Playing Field, Cannon Hill Common and Raynes Park Recreation Ground to name but a few within walking distance of the site. Raynes Park is located just over a mile away from the site to the north along Burlington Road.
- 2.8 A train line runs north south to the east of the site, and on the eastern side of Burlington Road. Locally it connects Raynes Park and Mothspur Park Stations. Towards London, the train line connects to Wimbledon, Clapham Junction, Vauxhall and London Waterloo. Out of London, the train line connects to Epsom and Guildford, with connections to various south coast destinations including Portsmouth.
- 2.9 The site lies on the western side of the LB Merton close to the border to the RB Kingston.
- 2.10 Detailed consideration has been given to the site and its context within section 3 of the Proof of Evidence of Mr. Colin Pullan.

Planning History

- 2.11 The site has an extensive planning history with a significant number of entries for both the former industrial uses on the site and the Tesco store and associated works.
- 2.12 However, there is limited recent history which is of relevance to this proposal. Most of it relates to operational development associated with the Tesco store.
- 2.13 The entries of note for the two different portions of the site are set out below.

265 Burlington Road

Ref	Description	Date	Decision
90/P0445	Demolition of existing single storey buildings and erection of three storey building for office (B1) use comprising 3,756sqm of floorspace with associated car parking and landscaping.	04/11/91	Allowed on appeal

90/P0261	Outline application for the erection of 2x3 storey buildings for class B1 use (office, light industrial or research and development purposes) comprising 6,139sqm of floorspace with associated car parking and involving the demolition of the existing single storey B1 buildings.	19/04/90	Withdrawn
90/P0116	Use as offices (B1).	05/03/90	Permission not required.
MER419/84	Erection of new industrial building with offices formation of new access roads off Burlington Road, car parking and demolition of existing buildings with new access from Kingston-by-pass slip road.	09/08/84	Granted

2.14 Based upon the above, in relation to the existing office building and our understanding of the site, I understand that the existing building was developed under planning permission ref: 90/P0445 identified above. The building also includes a warehouse that provides an ancillary function to the main use of the planning unit, which is B1(a) (offices).

Tesco Car Park

2.15 In relation to the car parking element of the site serving the neighbouring Tesco store, as noted above, this part of the site has an extensive planning history. Much of this history is associated with the operational element of the Tesco store.

2.16 It would appear that permission (ref: MER800/84) was granted for the foodstore on the 15th July 1985, however, no documents are available online to confirm this to be the case. It is assumed that the car park element of the proposed scheme was approved as part of this application. The description of development reads as follows:

“Outline application for redevelopment of the site to provide retail store with unloading facilities, car park, petrol filling station and landscaping and vehicular access.”

2.17 A subsequent application for the approval of detailed plans (ref: MER1069/85) was submitted and approved on the 13th February 1986. This application makes specific reference to it being the '*site of new Tesco store*'.

2.18 In parallel with the above, permission was granted for another application (ref: MER/786/85) which was submitted and approved on the 20th March 1986 for the following:

"Erection of a B&Q retail DIY store including garden centre loading area and customer car parking."

2.19 Again, no details are provided online but its assumed that nothing further happened with this as Tesco implemented the permission referenced above to build the food store.

Related Applications

2.20 There are a number of applications that are related to the appeal site and relevant to this appeal. These are identified below:

Prior Approval Application for Conversion of 265 Burlington Road (Ref: 20/P1253)

2.21 This application confirms prior approval for conversion of the office building at 265 Burlington Road to residential. The indicative drawings submitted with the application show 38 dwellings.

2.22 This was approved on the 1st June 2020.

Temporary Egress Application, 247 Burlington Road (Ref: 19/P2578)

2.23 This application proposes to demolish the building at 247 Burlington Road to provide a temporary egress to the Tesco store for customers. It would temporarily replace the existing egress that would be realigned as part of the appeal proposals, whilst those works are taking place.

2.24 This benefits from a resolution to grant. The associated s106 is currently in the process of being negotiated.

Changes to the Layout of the Tesco Car Park (Ref: 19/P3085)

2.25 This application seeks to make changes to the layout to the Tesco car park to facilitate the development associated with the appeal. The application proposes to make the same changes to the car park as sought by the appeal scheme.

2.26 The application was submitted because it was hoped that this would be approved prior to the application for the main site and that the works to the car park could commence.

2.27 This was approved on the 30th July 2020.

Planning History in the Wider Area

2.28 In addition to the above, I have also undertaken a review of the planning history for surrounding properties. Again, there is a significant number of entries on the LBM’s online register. Most are historic or for operational development. We have identified a number of recent entries that are relevant in the context of this proposal and identified in the table below.

Ref	Address	Description	Date	Decision
17/P4417	Eagle House 257a Burlington Road	Prior approval in respect of the proposed change of use from office (class B1) to residential (class C3).	13/02/18	Prior approval not required.
17/P2372	Neba House, 275d Burlington Road	Prior approval in relation to the change of use from office use class B1(a) to residential use class C3.	21/08/17	Prior approval not required.
16/P3978	264 Burlington Road	Prior approval in respect of the proposed change of use from office space (class B1) to residential (class C3) creating up to 11 x new dwellings.	07/12/16	Prior approval not required.
15/P3357	245-247 Burlington Road	Erection of a two storey restaurant with drive-thru, car parking, landscaping, two customer order displays with associated canopies and one goal post height restrictor.	17/08/16	Refuse permission (refused at appeal)

16/P1002	253 Burlington Road	Part conversion of the vacant property at 253 Burlington Road into a leisure facility for martial arts and yoga with ancillary facilities.	26/07/16	Granted
15/P4633	Albany House, 300 Burlington Road	Demolition of existing MOT garage (sui generis) and carpet shop (A1) and the erection of 41 residential units (C3), 25 car parking spaces, 63 cycle parking spaces and associated landscaping.	30/06/16	Granted
15/P3421	266 Burlington Road	Extensions and alterations to create an enlarged showroom (Class A1) on ground floor and 4 x flats above, comprising 2x2 bed, 1x1 bed and 1 x studio flats each with rear facing balconies, associated parking, cycle parking, cycle storage and refuse storage provision.	26/05/16	Granted
15/P2046	249 Burlington Road	Change of use from furniture workshop to hand car was including alterations to elevations.	10/06/15	Granted
12/P0913	Emerald Service Station, 284 Burlington Road	Erection of part three, part four storey building comprising 20 flats (13x1 bed, 6x2 bed and 1x3 bed) with rooftop plant room and undercroft parking (10 car and 22 cycle parking spaces).	02/05/13	Granted.

07/P2524	255 Burlington Road	Change of use of business premises (use class B1) for use as a community centre, prayer rooms and for ancillary yoga classes (D1) for a temporary period of five years including alterations to elevations and erection of external staircase.	21/11/07	Granted. Extended for further five years by permission ref: 12/P2618
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2.29 The planning history for the surrounding area shows a gradual change from sites that have been in predominantly employment/ industrial use to intensified development with a mixture of uses that are predominantly residential. This pattern of change is found throughout London in similar locations where the nature of employment is changing and the demand for housing increases.

Pre-Application Consultation

Pre-Application Consultation with the Local Planning Authority

2.30 The application was subject to extensive pre-application discussions with Council officers, which started in March 2018. Section 5 of the Design and Access Statement sets out the main points arising from the various meetings and how the scheme responded to the comments made.

Pre-Application Consultation with the GLA and TfL

2.31 The scheme was also presented to GLA officers at a meeting in October 2018. A copy of the GLA's formal response is provided at **Appendix 2**. Again, section 5.3 of the submitted Design and Access Statement identifies the key points arising from that meeting and explains how the scheme has responded.

2.32 A pre-application meeting was also held with TfL in October 2018. A copy of TfL's response is provided at **Appendix 3**.

Pre-Application Consultation with the Public and Stakeholders

2.33 The Statement of Community Involvement submitted with the planning application sets out the engagement with the community. It confirms that two public exhibitions were held in September

and November 2018. Meetings were also held with residents groups, Raynes Park High School, Champion Timber Yards and elected Councillors.

Appeal Proposals

- 2.34 Full details of the proposed development are set out on the application drawings, Design and Access Statement and supporting documents submitted with the planning application, as well as the information submitted in support of subsequent amendments made to the scheme. A list of the drawings that comprise the proposed development are set out in Appendix 1 of the Statement of Common Ground. The proposed development is summarised below.
- 2.35 The application proposes to demolish the existing buildings on the site and provide two blocks of new development, one on the northern part of the site, in a similar location to the existing office building and one to the southern part of the site, where car parking associated with the Tesco store is located.
- 2.36 The two blocks are split by a realigned road that provides egress for Tesco customers from the store car park onto Burlington Road. It will also provide access and egress to the car parks within the undercroft of both blocks. Pedestrian and cycle access and egress will be provided to both the Tesco store and parts of the proposed development along this route.
- 2.37 For ease of reference we have identified the block on the northern part of the site as Block A and the southern part of the site as Block B. We describe these in turn below.

Block A

Ground Floor

- 2.38 Block A sits on the northern part of the site and is square. At ground level, it accommodates an undercroft car park with space for 149 cars. Eight of these spaces are wheelchair accessible. The entrance to the car park is from the re-aligned road linking the Tesco store car park to Burlington Road.
- 2.39 There are entrances to the residential accommodation above at the north west, north east, south east and south west corners of the site. A residents' concierge is located within the southern elevation of the block.

- 2.40 Four commercial units ranging in size between 83sqm and 125sqm run along the east elevation turning the corners on the north and south elevations. A fifth 57sqm commercial unit is located on the blocks south elevation. Refuse, plant and cycle stores are provided at various locations around the perimeter of Block A. There are five separate cycle stores located on each elevation, with two of the stores on the north elevation.
- 2.41 In order to maximise active frontage, the entrance to two, two bed duplex units is provided at ground floor level on the north elevation. To provide the best standard of accommodation, the bedrooms are at ground level with the living, kitchen and dining room above, to provide the units with a dual aspect.

First Floor and Above

- 2.42 Other than the bedrooms of the duplex units on the north side of the block, the residential is accommodated at first floor and above and is arranged in two buildings, one on the eastern side of Block A, which is a linear building fronting onto Burlington Road. The second is a C shaped building on the western side of Block A. The buildings are separated by a landscaped communal garden for residents of approximately 1,966sqm.
- 2.43 Each building has two cores, with no more than eight flats per floor being accessible from each core. Additional cycle parking, is provided within each core at first floor level.
- 2.44 In respect of height, the building on the eastern side of block A, fronting Burlington Road, ranges in height between seven and eight storeys. The building on the western side of Block A ranges in height between seven and 13 storeys.
- 2.45 Block A provides the following mix of units and tenures:

	Market	Intermediate	Affordable Rent	Total
1 Bed	43	12	0	55
2 Bed	77	46	51	174
3 Bed	0	0	34	34
Total	120	58	85	263

Block B

Ground Floor

- 2.46 Block B sits on the southern portion of the site. It is roughly triangular in shape with the southern part going to a point. Like Block A, Block B provides car parking within a podium undercroft, for 71 spaces. Six of these spaces are suitable for wheelchair users.
- 2.47 A 60sqm commercial unit is located on the north east corner of Block B. Refuse, plant and cycle stores are provided next to the entrances to the three residential cores at each corner of Block B that serve the residential accommodation above.
- 2.48 A 103sqm unit that will provide dedicated meeting and office space for residents only is provided within the north elevation of Block B, fronting onto the link road.

First Floor and Above

- 2.49 The residential is accommodated at first floor and above and is arranged in two buildings, one on the eastern side of Block B, which is a linear building fronting onto Burlington Road. The second is a longer linear building on the western side of Block B. The buildings are separated by another landscaped communal garden for residents of approximately 792sqm.
- 2.50 The building on the east side of Block B has one core serving no more than eight flats per floor. The building on the west side of Block B has two cores serving no more than seven flats per floor and per core. Additional cycle parking is provided within each core at first floor level.

2.51 In respect of height, the building on the eastern side of block B, fronting Burlington Road, ranges in height between seven and nine storeys. The building on the western side of Block B ranges in height between nine and 15 storeys.

2.52 Block B provides the following mix of units and tenures:

	Market	Intermediate	Affordable Rent	Total
1 Bed	62	0	0	62
2 Bed	116	0	0	116
3 Bed	15	0	0	15
Total	193	0	0	193

Public Realm and Landscaping

2.53 Every opportunity has been taken to accommodate hard and soft landscaping surrounding the site at ground floor. This includes:

- Public link road between the Tesco Car Park and Burlington Road, including seating, trees and planting;
- Public realm improvements along Burlington Road, including tree groups to provide a green edge and hard landscaping to link material used within the site;
- A living edge along the west side of the development at ground level fronting onto the retained Tesco car park providing climbing plants and shelter for birds and insects; and
- A 408sqm natural garden along Pyl Brook with a habitat and conservation focus, with two timber platforms created onto the brook. Gated access will be provided initially but should a future masterplan come forward, this can be removed to allow a pedestrian link to the land to the west currently used by Tesco for servicing.

2.54 In addition to the above, there are areas of semi-private landscaping and non-accessible greenspace. These are:

- The communal gardens for residents at podium level, which provide a mixture of uses, including playspace, general recreation, ecology and relaxation. There is a diversity of planting across the space to suit the differing exposures to sunlight; and
- Biodiverse roof spaces, where possible.

2.55 Finally, in respect of parking and traffic, the scheme incorporates two dedicated loading bays and five car parking spaces, including two car club spaces within the link road. This link road will continue to allow vehicular egress from the Tesco customer car park onto Burlington Road.

3. Statement of Common Ground

3.1 A Statement of Common Ground has been agreed with the Council, which identifies the areas of agreement and disagreement related to this appeal. It confirms that there is substantial agreement between the Appellant and the Council in relation to many points, including:

- The loss of the existing uses on the site is acceptable;
- The site is suitable for a mixed use, residential led development;
- The maximum reasonable level of affordable housing that the site can accommodate is 24%;
- The site is suitable for 'optimisation' in accordance with the definition set out in Policy H1 of the draft London Plan (DLP);
- The proposed accommodation is acceptable; and
- The impact on neighbouring amenity is acceptable.

3.2 It identifies that areas of disagreement between the Appellant and the Council relate to the two draft reasons for refusal which are set out in section 5 below.

3.3 In addition to the above, it also identifies areas of disagreement between the Council and Appellant in relation to the Council's housing need and five year land supply. Further work on this point between the parties has confirmed that it is common ground that the Council does not have a five year land supply. However, there remains a significant difference of opinion between the parties to the overall level of supply. My evidence on this is provided below.

4. The NPPF, the Development Plan and Emerging Policy

- 4.1 The purpose of this section is to identify the adopted and emerging policy documents and to determine the level of weight that I consider ought to be given to each. It identifies some of the key policies, but is not intended to be a review of all policies relevant to the application, which are set out in the list provided within the Statement of Common Ground.

The NPPF

- 4.2 Paragraph 11 of the NPPF requires that development plans should provide a presumption in favour of sustainable development. Part b) of paragraph 11 says that strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas.
- 4.3 Paragraph 31 of the NPPF says that policies should be underpinned by relevant and up-to-date evidence.
- 4.4 Paragraph 33 says that policies in local plans should be reviewed at least once every five years and updated as necessary.

The Development Plan

- 4.5 The Development Plan comprises the London Plan (2016) and the Merton Local Plan, including the Core Strategy (2011) and the Sites and Policies Plan and Policies Maps (2014-2024).

The London Plan

- 4.6 The London Plan provides the strategic planning framework for London and identifies strategic policies including for housing delivery. Policy 3.3 identifies housing targets for the individual boroughs.
- 4.7 The London Plan also sets out policies in relation to design quality, architecture and transport.

The Local Plan

- 4.8 Merton's Local Plan, includes the Core Strategy (2011) and the Sites and Policies Plan and Policies Maps (2014). The Core Strategy sets out the strategic policies for Merton, including the delivery of 320 new homes per year (paragraph 6.21), based upon the 2009 draft London Plan, which has now been superseded. Policy CS8 seeks provision of a mix of housing types, sizes and tenures at a local level to meet the needs of all sectors of the community.
- 4.9 The Sites and Policies Plan and Policies Map identifies site specific policies and provides detailed policies to guide development.

Weight to be given to the Development Plan

- 4.10 The London Plan is in the process of being reviewed and a new London Plan is expected to be adopted shortly. Critically, policy 3.3 in relation to housing supply, does not provide enough homes to meet London's objectively assessed need as required by paragraph 11b) of the NPPF. Policy 3.3 is out of date. Further commentary is provided on this in section 6 below.
- 4.11 I have considered the other London Plan policies relevant to the assessment of this appeal and I don't consider them to be out of date.
- 4.12 In respect of the Local Plan, the Core Strategy was published in 2011 and the Sites and Policies Plan and Policies Map was published in 2014. Whilst a new Local Plan is being prepared (further commentary provided below) the review and update to the plan has not been carried out within the five years required by paragraph 33 of the NPPF.
- 4.13 The housing targets identified in the Core Strategy are based upon an earlier version of the London Plan that has now been superseded. Its housing target is lower than in the current London Plan, which I have already identified as being out of date. Merton's Local Plan policy relating to housing delivery is therefore also out of date.
- 4.14 Whilst the Local Plan is over five years old, I have carefully considered the other policies relating to this appeal. I don't consider them to be out of date.
- 4.15 In respect of both the London Plan and Local Plan, I have identified that important policies relating to housing supply are out of date. This issue is explored further in section 6 below. Whilst I consider

other policies within both plans relevant to this appeal are not out of date, the plans should not be given full weight. In my opinion, they should be given moderate weight because whilst I consider most of their policies to be up to date, I have found that their housing policies are out of date, which are critical within the context of housing need in London.

Draft London Plan

4.16 The Intend to Publish draft of the London Plan (DLP) was sent to the Secretary of State at the end of 2019 having previously been through its examination in public. The Secretary of States response was provided in his letter dated 13th March 2020. This response was highly critical of the plan in a number of respects but particularly in relation to housing targets. Further commentary is provided on this in section 6 below.

4.17 The DLP identifies that Merton should deliver 9,180 new homes over the next ten years.

4.18 The DLP also sets out various other policies that are relevant to this appeal and that look to support increased housing delivery in London. Policies of particular relevance include:

- D3, Optimising site capacity through the design-led approach, which removes the density matrix from previous versions of the London Plan. Instead it focuses on a design led approach that optimises the capacity of sites. As part of this it requires development to respond to the existing character and be of high quality;
- H1, Increasing housing supply, which requires the optimisation of housing delivery on all suitable and brownfield sites. It specifically identifies sites with PTAL ratings of 3-6 and mixed-use redevelopment of car parks and low-density supermarkets to achieve this aim;
- H5, Threshold approach to applications, identifies that major development proposals should seek to deliver a minimum of 35% affordable housing; and
- T6.1, Residential parking, introduces maximum parking standards for development, which for this site allows up to 0.75 spaces per dwelling.

4.19 A full list of policies relevant to this application is set out within section 5 of the Statement of Common Ground.

4.20 Despite the issues raised by the Secretary of State in relation to housing targets, which I comment on in section 6 below, the DLP is at an advanced stage. The Secretary of State has not made directions in respect of many of its policies.

4.21 A recent recovered appeal decision for the Land at Purley Baptist Church, Purley attached at **Appendix 15**, confirms the weight that the Secretary of State attaches to the DLP. At paragraphs 13 and 14 of his decision letter he confirms:

“Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

New London Plan policies which are relevant to this case where changes must be made include policy D3 (Optimising site capacity through the design-led approach). However, details of the way in which the Plan will deliver the aims set out in the Secretary of State’s directions are not yet finalised. The Secretary of State therefore considers that these policies in the emerging Plan carry moderate weight. Other policies in the emerging Plan which are relevant to this case and where no modifications have been directed include D9 (Tall Buildings) and policy H1 (Increasing housing supply). The Secretary of State considers that these policies carry significant weight.”

4.22 I have therefore adopted the same approach.

Draft New Local Plan

4.23 The Council carried out Stage 2 consultation on its draft New Local Plan (NLP) between October 2018 and January 2019. Whilst the NLP is at an early stage, Strategic Objective 3: Housing, identifies that it will provide new homes and infrastructure through higher density development.

4.24 The appeal site, benefits from an allocation (RP3) in the Raynes Park Character Area that forms part of an allocation for a larger site, that includes the adjoining Tesco Store and associated car park. The allocation identifies the site to retain the supermarket and to optimise the remainder of the site for new homes, landscaping and access.

- 4.25 Strategic Policy LP H4.2 of the Housing chapter of the draft NLP identifies that the Council will facilitate the delivery of a minimum of 6,165 homes between 2020 and 2035, which equates to 411 homes per year (the current London Plan target).
- 4.26 Paragraph 4.2.15 goes onto identify the higher DLP housing target uplift, which it says will be unrealistic for Merton to achieve.
- 4.27 The NLP is useful in terms of showing a direction of travel and specifically for identifying development sites, including the appeal site. However, it is at the very early stages and is not in line with the DLP or NPPF in respect of housing delivery. We would therefore afford it limited weight.

Summary

- 4.28 The development plan is in a state of flux with both the current London Plan and Local Plan are in the process of being replaced. Neither document has up to date policies in respect of housing delivery, which reflects housing need, although I consider the other important policies relevant to determination of this application up to date.
- 4.29 The Council have acknowledged that they do not have a five year land supply and further analysis of this issue is provided in section 6 below.
- 4.30 In respect of emerging policy, I have identified that the policies within the DLP that are not subject to directions from the Secretary of State should be given significant weight. Those policies which are subject to directions, should be given moderate weight.
- 4.31 The DLP should be given very limited weight. It is useful that it shows a direction of travel and, importantly, identifies the site for development, however, it doesn't get to grips with its housing targets.

5. Reasons for Refusal, Rule 6 and Third Party Objections

- 5.1 The Council's case is based on the two reasons identified by the Planning Applications Committee at its meeting on the 13th February 2020, which resolved to refuse permission. For ease I refer to these as the 'draft reasons for refusal'. The precise wording for the draft reasons for refusal were set out in the email from the case officer, Mr. Tim Lipscombe, dated 17th March 2020. Prior to the application being referred to the Mayor of London for his Stage 2 review, the appellant appealed against non-determination of the application, the reasons for which are set out in the Statement of Common Ground.
- 5.2 The Council has not identified that it intends to pursue any other reasons upon which the application should be refused, subject to a satisfactory legal agreement securing necessary obligations and planning conditions to mitigate impacts arising from the development.
- 5.3 We have set out the draft reasons for refusal below.

Draft Reason for Refusal 1

- 5.4 The Appellant's response to this draft reason for refusal is set out within the evidence of Mr. Mike Savage. I rely entirely on his assessment in respect of this draft reason for refusal and don't intend to comment further, save to note that I understand that the Council have appointed a new consultant who plainly does not consider the evidential basis of the Council's draft refusal to be satisfactory since he has commissioned further work which Mr Savage will comment upon once it is to hand. The reasonableness of generating an ex post facto justification for a refusal will be addressed in submissions.

Draft Reason for Refusal 2

- 5.5 The Appellant's response to this draft reason for refusal is set out within the evidence of Mr. Colin Pullan. In regards to the architectural detail of the proposal, attached at **Appendix 4** is an Architectural Report provided by scheme architect, Mr. Simon Bacon of TP Bennett which I comment on in section 7 of my evidence.

Rule 6 Objections

5.6 The Raynes Park and West Barnes Residents Association has Rule 6 status. Their comments on the application are set out within their letter dated 6th June 2020. The basis of their objections can be summarised as follows:

- Scheme design, density and building height;
- Increase in traffic congestion;
- Change of use of the site from retail and employment to residential;
- Damage to the environment and carbon footprint;
- Conflict between density/ height and sustainable onsite energy generation;
- Carbon footprint;
- The proposals relationship with the wider allocation within the Council's draft Local Plan and failure to deliver a comprehensive redevelopment; and
- Incompatibility of residential and flood risk.

5.7 Consideration is given to the issues identified about in section 7 below.

Third Party Objections

5.8 During consultation of the application and as part of the appeal process third parties submitted comments on the scheme. These comments are generally consistent with those identified above but also raise the following issues:

- Impact on local infrastructure, including schools, healthcare and community services;
- Air pollution;
- Impact on Raynes Park High School in respect of overlooking, overshadowing, traffic congestion, air quality and adverse impacts on the schools heating system;
- Ground floor treatment;

- Consideration of the scheme during Covid-19 Pandemic;
- Lack of greenspace for residents;
- Impact on public transport;
- Water pressure;
- Lack of affordable homes;
- Charging associated with a CPZ and increased cost to residents; and
- Wind tunnelling.

5.9 Again, I consider the relevant planning issues raised above within section 7 below.

6. Housing Need and Supply

- 6.1 The dispute between the Council and Appellant on this issue has been refined during discussions regarding the Statement of Common Ground. Since this was submitted, further work has been undertaken to try and narrow the issues, which has resulted in agreement being reached that the Council does not have a five year land supply as required by paragraph 73(a) of the NPPF.
- 6.2 The Council considers that it can demonstrate 4.8 years supply, or 95%² housing supply (including the buffer). However, it is the Appellant's case that the Council's supply is in reality significantly below that figure equating to a much greater shortfall.
- 6.3 The Appellant considers that the Council has, at most, a 79% five-year land supply (3.9 years), although this should be seen in the context of its housing target being the bare minimum and significantly below the Council's own assessment of its OAN. Comparison of its supply against its OAN would be 42% (2.4 years).
- 6.4 In this section I have focused on the areas of housing need and supply which are in dispute following discussions with the Council.

Policy Requirement and the Council's Five-Year Housing Target

- 6.5 Policy and guidance in relation to supply (five-year housing land supply) and delivery (the housing delivery test) is set at national level.
- 6.6 The starting point is that the Council's adopted housing target of 411 dwellings per annum (dpa) is set by the adopted London Plan (2016, Table 3.1). Adopted Policy 3.3 is clear that the housing targets should be "*treated as minimum figures that should be augmented where possible with extra housing capacity, to close the gap between identified housing need and supply*" in individual boroughs and against London's housing need as a whole.

² Or 101% supply against a target of 105%.

6.7 The issue is complicated by the fact that the local plan and the London Plan are in the process of being updated, and the requirement within both adopted documents are therefore not up to date as a matter of fact.

6.8 The Council nonetheless consider that the current London Plan's housing targets are up to date, because the document isn't more than five years old, citing paragraph 73 of the NPPF.

6.9 However, Paragraph: 003 Reference ID: 68-003-20190722 of the PPG states:

"Where strategic policies are more than 5 years old, or have been reviewed and found in need of updating, local housing need calculated using the standard method should be used in place of the housing requirement." [My emphasis.]

6.10 The current London Plan identifies the Council's housing requirement to deliver 411 per year or 4,107 over ten years.

6.11 However, it is important to understand the background to the housing targets set out in the current London Plan, which were identified within the Inspector's Report published in November 2014 for the Further Alterations to the London Plan (i.e. the current London Plan).

6.12 At paragraph 57 and 58 (extract attached at **Appendix 5**) the Inspector states:

"The evidence before me strongly suggests that the existing London Plan strategy will not deliver sufficient homes to meet objectively assessed need. The Mayor has committed to a review of the London Plan in 2016 but I do not consider that London can afford to wait until then and recommend that a review commences as soon as the FALP is adopted in 2015.

Non adoption of the FALP would result in the retention of the existing housing targets in the London Plan (32,210 dpa³⁹) which are woefully short of what is needed. Despite my reservations, therefore, I consider that, subject to a commitment to an immediate review, the FALP should be adopted as not to do so would perpetuate the existing under delivery by not requiring Boroughs to increase supply."

6.13 The review of the London Plan has not happened as quickly as recommended by the Inspector, which has resulted in the housing targets set out in the current London Plan which, in the view of the Inspector tasked with examining the London Plan *"do not deliver sufficient housing to meet objectively assessed need"*.

- 6.14 The housing targets set out in the current London Plan were therefore adopted in the absence of alternative, higher targets being available at the time and as an expedient course of action. It is therefore no surprise that higher targets to meet need are required. The London Boroughs have had plenty of notice and opportunity to plan accordingly.
- 6.15 As a matter of fact, however it is obtuse to contend that the figures in the adopted London Plan are properly described as up to date.
- 6.16 Paragraph 28 of the Inspector's Report to the current London Plan confirmed that 62,000 homes were required to be delivered annually to meet need and address backlog over 10 years, based upon the London Strategic Housing Land and Availability Assessment 2013 (SHLAA).
- 6.17 The evidence base for the review of the DLP included the 2017 London Strategic Housing Market Assessment (SHMA), which identifies housing need of 66,000 homes across London per year covering the period 2016 to 2041. Paragraph 133 of the Inspector's report into the DLP, published in October 2019 (**Appendix 6**) confirmed that this housing target was justified.
- 6.18 Between the 2013 SHLAA and the 2017 SHMA, housing need within London has increased from 62,000 homes to 66,000 homes per year (6% increase).
- 6.19 On 27 July 2018 (published 30 July 2018), the Secretary of State for Housing, Communities and Local Government, the Rt Hon James Brokenshire MP, wrote to the Mayor of London, Sadiq Khan, regarding the importance of having a revised London Plan in place that meets London's housing needs. Importantly, that letter (**Appendix 17**) states:

“As you know, the Government is clear we need a London Plan in place that plans to meet London's housing needs in full. I welcome the proposed increase of London's housing target in your draft Plan from 42,000 to 65,000 homes a year as a helpful first step towards meeting London's housing needs. But as set out in the Government's response to your consultation, I am not convinced your assessment of need reflects the full extent of housing need in London to tackle affordability problems. I have listened carefully to yours, and others, representations, and I am clear that the public interest lies with ensuring you deliver the homes London needs, including in the short term, as quickly as possible. [My emphasis]. The letter therefore confirms that the housing target of circa 65,000 homes a year as proposed in the DLP was not considered by MHCLG to reflect the full extent of housing need in London to tackle affordability problems.

6.20 The Inspector's report into the current London Plan has recommended its annual housing target be reduced to 52,000 homes per year following concerns in relation to small sites delivery. This has resulted in the Council's revised target of 9,180 homes over ten years (average of 918 homes per year).

6.21 Paragraph 177 of the Inspector's Report to the DLP stated in respect of these revised targets:

"It is a major concern that the targets are so far below the assessed need."

6.22 In 2019 the Council published its Strategic Housing Need Assessment (SHNA), produced by GL Hearn to assess housing need across the borough between 2017-2035 to inform the emerging Local Plan. The assessment has been produced to comply with the requirements of the NPPF and PPG and to comply with the standard methodology to assess OAN.

6.23 This identifies housing need in Merton to be significantly higher than the DLP at 1,534 dwellings per year.

6.24 As noted above, Paragraph: 003 Reference ID: 68-003-20190722 of the PPG states:

"Where strategic policies are more than 5 years old, or have been reviewed and found in need of updating, local housing need calculated using the standard method should be used in place of the housing requirement." [My emphasis.]

6.25 In order to assess how this affects the Council's housing targets and whether they are up to date, (in accordance with Paragraph: 003 Reference ID: 68-003-20190722 of the PPG), the housing targets in the current London Plan have been reviewed by the SHMA and SHNA and found to be in need of updating (i.e. they are not up to date).

6.26 The Council should therefore have started work on increasing housing supply to meet these higher housing targets at the point the studies were published, if work had not already begun following the comments made by the Inspector in relation to housing supply for the current London Plan.

6.27 The Council should then have adopted the DLP housing target at the point at which the Inspector's report confirmed this was justified, which would have resulted in those higher targets applying from April 2020. At this stage, it was assumed that the DLP would have been adopted in early 2020 prior to the start of the Council year in April. However, the DLP was referred to the Secretary of State on the 9th December 2019 at the 'Intend to Publish Stage'. The Secretary of State decided to intervene

for the reasons explained below and within his letter attached at **Appendix 7**. This intervention therefore delayed the plan's adoption.

6.28 The Secretary of State's response was scathing, particularly in respect of the Mayor's track record of housing delivery and the draft plan not putting forward a strategy to meet London's OAN, resulting in *'significant consequences for Londoners'*.

6.29 The letter says that the Secretary of State *'had expected you [the Mayor] to set the framework for a step change in housing delivery'*. The letter goes on to say:

"Having considered your Plan at length my conclusion is that the necessary decisions to bring more land into the planning system have not been taken, the added complexity will reduce appetite for development further and slow down the system, and throughout the Plan you have directly contradicted national policy. As you know, by law you must have regard to the need for your strategies to be consistent with national policies.

For these reasons I am left with no choice but to exercise my powers to direct changes.

Your Plan must be brought to the minimum level I would expect to deliver the homes to start serving Londoners in the way they deserve. However, this must be the baseline and given this, I ask that you start considering the next London Plan immediately and how this will meet the higher level and broader housing needs of London."

And:

"The priority must be delivering the housing that Londoners need..... However, I must be clear that without the reassurances that you will raise your housing ambitions for the capital, I am prepared to consider all options, including new legislation if necessary."

It concludes by saying:

"Housing in our capital is simply too important for the underachievement and drift displayed under your Mayoralty, and now in your Plan, to continue."

6.30 It follows that whilst weight must be given to the emerging requirement figure of 9,180, the broader context is that the Secretary of State considers that the figure should be significantly higher, and he intends to exercise his power to achieve this. This is also supported by the fact that the Council's

own SHNA shows a significantly higher housing need of 1,534 dwellings per annum against DLP target of 918 dwellings per annum.

- 6.31 The Council have therefore paradoxically, used the delay to the adoption of the London Plan which was brought about by concerns that it is not doing enough to meet housing need, to try and justify a lower housing target.
- 6.32 Within its five year trajectory, the Council have applied the current London Plan housing target (411) for year 2020/21 and then the DLP housing target (918) for years 2021/22 to 2024/25, giving them an overall housing target of 4,083 homes.
- 6.33 Applying the DLP target to all five years would give the Council a housing requirement of 4,555 (an increase of 472 homes). It is my view that this is what they should be doing because I have identified that the current London Plan housing targets are out of date and don't address the up to date need.
- 6.34 The Council has confirmed its current pipeline of homes is 4,118, which represents a 95% supply (4.8 years) of its housing requirement based upon the assumption that the current London Plan target applies to the first year (2020/21) and the DLP target applies to the remaining four years.
- 6.35 However, it should be noted that this is assessed against a combination of the adopted and the DLP housing target, the latter of which has been criticised by the Secretary of State for not being ambitious enough and significantly below the need of 1,534 homes identified within the Council's own SHNA. Reliance on the OAN of 1,534 homes identified within the Council's own SHNA would result in a five-year target of 8,054 homes (including 5% buffer).
- 6.36 The DLP target of 9,180 homes over ten years (averaged at 918 per year) should therefore be seen as the minimum number it needs to deliver. I have therefore used this as the baseline position, but the Council's real housing need is patently substantially higher.
- 6.37 The Council's five-year target would therefore be 4,590 homes over five years (918 per year over five years). In addition, paragraph 73 a) of the NPPF requires an additional 5% to be added to that total to ensure choice and competition in the market for land. This would result in a housing target of 4,820 homes over five years and this should be the Council's five-year housing target. This should be seen as the minimum number they need to deliver, bearing in mind the DLP policy wording, conclusion of the SHLA, SHMA and paragraph 177 of the London Plan Inspector's Report.

6.38 I have provided a table below to compare the different requirements.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	2020/21	2021/22	2022/23	2023/24	2024/25	
LBM Trajectory						4,118
LBM Position	411	918	918	918	918	4,083 4,287 (5% buffer) 95% supply 4.8 years
Draft London Plan/ Appellant Baseline Position	918	918	918	918	918	4,590 4,820 (5% buffer) 85% supply 4.3 years
2017 GLA SHMA/ Pre-EiP Version	1,328	1,328	1,328	1,328	1,328	6,640 6,972 (5% buffer) 59% supply 2.95 years
2019 LBM SHNA	1,534	1,534	1,534	1,534	1,534	7,6708 8,054 (5% buffer) 51% supply 2.55 years

Table 6.1

6.39 The approach I have set out above is consistent with that taken by the LB Bromley, within their Housing Trajectory, September 2020. At paragraph 2.16 (extract attached at **Appendix 22**) it states:

“Although this is not yet adopted strategic policy, this FYHLS paper has assessed housing supply against the figure in the draft new London Plan, as the figure has not been subject to Directed Changes by the Secretary of State for Housing, Communities and Local Government and it is therefore considered to have significant material weight. Paragraph 006 of the PPG5 confirms that where there is a conflict between adopted strategic housing requirement policies (for example if a new spatial development strategy supersedes an adopted local plan) the most recently adopted policies will need to be used for the purposes of calculating FYHLS in accordance with Section 38 (5) of the PCPA.”

6.40 The above position adopted by LB Bromley is against the backdrop of it having adopted its Local Plan in 2019 and is therefore not yet two years old. The 2019 Local Plan identifies the housing targets in the current (2016) London Plan i.e. 641 per annum.

6.41 However, for the reasons set out in paragraph 2.16 above and despite the Local Plan not yet being two years old, the Council have moved to adopt the DLP housing targets.

The GLA's Position

6.42 **CD6.5** is an exchange of emails between the Council and officers and the GLA which confirms the GLA's position in relation to housing targets. The GLA's position is also consistent with my approach. In answer to point 1 the GLA officer confirms:

*“Despite the London Plan 2016 forming part of Merton's Development Plan, **the ItP London Plan provides the most up to date policies**. Officers at the GLA consider that the ItP London Plan housing targets(which cover the period 2019/20 to 2028/29 based on the London SHLAA and Panel report) have significant material weight as they reflect the Panel recommendation and have not been subject to a Direction from the SoS (see letter dated 13 March 2020 on the GLA web-site). Given the Mayor has accepted the Panel recommendation to reduce London's overall housing target, the ItP (and therefore the 2016 LP given its lower housing target) no longer meet OAN – as set out by the 2017 London SHMA.”*

It goes on to say:

“The ItP London Plan provides the most up to date policies based on the most up to date evidence for planning in London.”

6.43 From the above, it is therefore clear that the Council should be working to the housing targets set out in the DLP, which provide *‘the most up to date policies’*.

6.44 In respect of the current London Plan’s housing targets, the GLA’s position is:

“...the 2016 LP given its lower housing target) no longer meet OAN...”

Backlog

6.45 The Council has stated within its Response Document response document (at section 4 of **CD6.2**), that the 2013 and 2017 versions of the GLA SHMA take account of backlog. I have identified above that there is a substantial increase in the housing requirements to meet need between these two documents from 62,000 to 66,000 homes annually.

6.46 I have noted the comments made by the Inspector in relation to the current London Plan that recognised its housing targets fell *‘woefully short’* of need but not adopting would perpetuate issues in relation to supply.

6.47 The Council have noted over delivery against previous years housing targets. However, these targets were adopted in the absence of an alternative and on the basis that they would be reviewed immediately with higher targets introduced. The Council would have been aware of this and should have been planning to accommodate higher targets accordingly and to have done so immediately.

6.48 Paragraph: 002 Reference ID: 2a-002-20190220 of the PPG confirms that the purpose of the standard method for calculating housing requirements is to take account of *‘historic under-supply’* of backlog.

6.49 Regardless of the Council’s historic housing delivery rate, if they are not able to deliver sufficient homes to meet their five-year housing target, it will result in an additional backlog that will increase the burden on housing delivery on later years.

6.50 I agree with the Council that the GLA SHMAs’ do indeed take account of backlog. This is also confirmed by the GLA in response to question 4 of **CD6.5**. However, the latest 2017 version is now over three years old and was based upon 66,000 homes being delivered per year between 2016 to

2041³. I have already identified the increase in housing need that occurred within a four-year window between the 2013 SHLAA and the 2017 SHMA on a London-wide basis. The Council's 2019 SHNA confirms that need is higher again, increasing to 1,534 homes per year. The overall picture is therefore of increasing rather than decreasing need. It is in this context that the Council's reliance on over delivery against previous years' housing targets must be considered.

6.51 The latest version of the London Plan Annual Monitoring Report 2017/18 shows that London is not anywhere near meeting the target of delivering 32,083 homes. For 2016/17 it delivered 45,505 new homes. For those two years alone, there was a London wide shortfall of 54,412 homes against identified annual need of 66,000 (132,000 total).

6.52 The consequence of not providing enough housing to meet need is that the 'can is kicked down the road' to be added to housing requirements in future years.

6.53 Focusing on backlog in relation to the Council's five-year trajectory, it is the Appellants' case that if the Council does not apply the DLP targets to all years of its five-year trajectory, it will result in an even greater unmet backlog and increased burden on future years supply. As the Council are proposing to use the adopted London Plan targets of 411 units for 2020/21, this would create a shortfall and an immediate and additional backlog of 472 homes.

6.54 But the situation is worse than that. The 2017 SHMA assumed delivery of 66,000 per year from 2016, of which the Council would need to deliver 1,328 homes (pre-London Plan Examination in Public target) per year to address backlog. This is against the Council having delivered the following:

- 2016/17 – 434 homes;
- 2017/18 – 675 homes; and
- 2018/19 – 273 homes.

6.55 This delivered 1,328 homes against an identified need of 3,984 homes resulting in a deficit of 2,656 homes.

³ Paragraph 127 of the Inspectors Report into the London Plan

6.56 It is not the Appellants' case that the Council should have been working to these targets at this point in time (i.e. prior to the publication of the London Plan Inspector's Report), nevertheless it is useful to show the scale of housing need in London and Merton. The delivery set out above illustrates that for every year where need is not met, the backlog is pushed down the line to be addressed at a later stage. It will increase the burden to deliver higher unit numbers/ density on increasingly scarce brownfield sites coming through the system.

Small Sites Delivery

6.57 Within the Council's five-year trajectory, the Council have identified that small sites will make a significant contribution to its supply. They have identified an overall figure of 1,044 new homes from small sites.

6.58 In order to derive this figure, the Council have adopted the small sites delivery rate of 0.3% identified within the EIP Report to the DLP, which related to delivery rates from small sites on a pan-London basis.

6.59 Information provided by the Council has confirmed that it has actually achieved a delivery rate of only 0.21% historically. They have therefore assumed that delivery from small sites will increase by almost a third, without explaining why such an uplift is realistic.

6.60 Paragraph 68 of the NPPF states that small sites should be identified through the development plan and brownfield land registers. It also allows the inclusion of windfall sites, although at paragraph 70, it states:

"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends."

6.61 Paragraph: 007 Reference ID: 68-007-20190722 of the PPG also confirms that in order to demonstrate five years' worth of deliverable housing sites, 'robust up to date evidence' needs to be available. It then goes on to define such evidence.

6.62 The Appellant has asked the Council to provide evidence to support its small sites delivery rate, particularly in relation to the identified increase from 0.21 to 0.3%.

- 6.63 It has not been able to provide the requested evidence and has instead simply relied upon the DLP assumption and pointed to emerging planning guidance that is expected to be completed next year for small sites and also the extended scope for permitted development rights recently introduced by Government.
- 6.64 In my view this does not meet the evidential requirement and in the absence of any supporting evidence as set out by the NPPF and PPG, I consider that the Council's small sites delivery rate should be 0.21 to be consistent with historic delivery.
- 6.65 This would result in a reduction of 261 homes per year (total of 1,044 over the four years modelled) to 183 homes per year (total of 732 homes over the four years modelled). This would result in a reduction in the Council's housing supply of 312 homes, giving them a supply of 3,806⁴.
- 6.66 A supply of 3,806 homes, taken together with the increase to its overall target of 4,820 homes over five years⁵ shown in Table 6.2 below would give the Council 79% of its target (3.9 years).

Sources of Supply

- 6.67 The Council has identified that its sources of supply are made up of the following:
- 54% of sites have permission;
 - 8% are formal applications;
 - 13% are at pre-app stage;
 - 11% are allocations; and
 - 15% are windfall.
- 6.68 I have not undertaken a detailed review of the Council's list of sites that make up this supply, however, I do think caution needs to be applied to these assumptions. I have already commented on delivery from small sites above.

⁴ 4,118 (Council's stated supply) – 312 (small sites adjustment) = 3,806

⁵ 5 x 918 + 5% = 4,820.

6.69 In respect of those sites that are at pre-approval stage in the pipeline, I consider that these require closer scrutiny. I have set out below a table of decisions taken by the Council's Planning Applications committee in relation to major planning applications⁶ (outline and full) over the last 12 months from October 2019 to the end of September 2020. All of these applications were supported by an officer's recommendation for approval.

Ref	Address	Description	Decision
October 2019 Committee			
17/P0296	141 The Broadway, Wimbledon, SW19 1QJ	Redevelopment of site to create 20 x self-contained flats within a six-storey residential block with new frontage to ground floor commercial unit.	Granted
February 2020 Committee			
19/P1676	579-589 Kingston Road, Raynes Park, SW20 8SD	Demolition of existing buildings and redevelopment of site to provide office space and residential units in buildings of two to six storeys, comprising 118 self-contained flats, car and cycle parking, vehicle access, landscaping, plant and associated works.	Refused
19/P1675	579-589 Kingston Road, Raynes Park, SW20 8SD	Demolition of existing buildings and redevelopment of site to provide office space and residential units in buildings of two to seven storeys, comprising 124 self-contained flats, car and cycle parking, vehicle access, landscaping, plant and associated works.	Refused
March 2020 Committee			
19/P4266	Abbey Wall Works, Station Road,	Demolition of existing buildings and redevelopment of site to provide a part three, part five and part six storey block of 70 flats and a commercial unit (204 sqm) at ground floor level (comprising flexible A1 (excluding supermarket), A2,	Refused

⁶ More than 10 units.

	Colliers Wood, SW19 2LP	A3, B1, & D1 uses) and an associated landscaping, bin/cycle storage, parking, highway works and alterations to listed wall.	
June 2020 Committee			
19/P2383	Benedict Wharf, Off Hallowfield Way, Mitcham, Surrey CR4 3BQ	Outline planning application (with all matters reserved) for the redevelopment of the site comprising demolition of existing buildings and development of up to 850 new residential dwellings (class c3 use) and up to 750 sqm of flexible commercial floorspace (class a1-a3, d1 and d2 use) together with associated car parking, cycle parking, landscaping and infrastructure.	Refused
16 th July 2020 Committee ⁷			
20/P1412	Abbey Wall Works, Station Road, Colliers Wood, SW19 2LP	Demolition of existing buildings and redevelopment of site to provide a part three, part four, part five storey block of 54 flats and a commercial unit (204 sqm) at ground floor level (comprising flexible A1 (excluding supermarket), A2, A3, B1 and D1 uses) and associated landscaping, bin/cycle storage, parking, highway works and alterations to listed wall.	Granted
19/P4047	Elm Nursery Car Park, London Road, Mitcham	Erection of a five-storey building to create 21 new residential units. Comprising of one and two bedroom apartments, associate cycle parking, disabled parking bays and public realm enhancements.	Granted
19/P4046	Farm Road Church, Farm Road, Morden, SM4 6RA	Demolition of existing church buildings and erection of a four-storey development comprising 15 self-contained units (9x 1b and 6x 2b units), and erection of 3 x three storey	Granted

⁷ Note this was the second Planning Applications Committee in July 2020.

		dwellinghouses (1x 5b and 2x 4b); provided with associated cycle parking, refuse stores, parking bays and landscaping.	
19/P4050	Development Site North of 11 to 17 Madeira Road, Mitcham	Erection of a three storey development comprising 11 self-contained units (7x 1b and 4x 2b), and erection of 7 x three storey townhouses (4b); with associated cycle parking, refuse stores, 4 x parking bays (2 disabled bays) and landscaping.	Granted
19/P4048	Car Park, Raleigh Gardens, Mitcham	Redevelopment of existing car park to allow for the erection of a part five, part six storey development comprising 36 self-contained units (29x 1b and 7x 2b); with associated cycle parking, refuse store, 3x disabled parking bays and landscaping.	Granted
August 2020			
19/P4094	Tooting & Mitcham FC, Bishopsford Road, SM4 6BF	Erection of 6 storey residential building, comprising 77 residential units with associated parking and landscaping.	Granted
20/P1060	159 Commonside East, Mitcham, CR4 2QB	Demolition of existing buildings and the erection of buildings to create 25 self-contained residential units with associated parking and landscaping.	Granted
19/P2120	64-76 Kingston Road, Wimbledon, SW19 1LA	Restoration and extensions to the existing manor house building (including basement extension) at No.76, and redevelopment of the adjoining site at No.64 - 68 with the erection of a new four storey residential block (plus additional basement level) creating a total of 26 x self-contained flats (7 x 3 bed, 4 x 2 bed 15 x 1 bed units).	Granted

19/P2747	33-39 Upper Green East, Mitcham, CR4 2PF	Demolition of existing buildings and erection of a new four storey mixed use building comprising commercial units at the ground floor level (use classes a1, a2, a3, a5, b1 or d1) and 20 x selfcontained flats above (use class c3); with associated landscaping and bin and cycle store.	Granted
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- 6.70 The table shows that over a 12-month period, five (including this appeal scheme) out of 15 applications (33%) were refused permission against officer advice at the Council’s Planning Application Committee.
- 6.71 The Council have stated that they only include sites at pre-application stage that are *‘either significantly advanced or are likely to succeed from a planning policy perspective’*.
- 6.72 All of the sites noted above, were supported by an officer’s recommendation for approval and therefore were considered supportable in policy terms. However, for various different reasons, the Council’s Planning Applications Committee chose to refuse permission for five of these applications, including this appeal scheme.
- 6.73 I would highlight the approach adopted by the London Borough of Hackney in relation to their recently adopted Local Plan, who applied an 84% implementation rate to site allocations and sites that have planning permission. This approach was based upon historic delivery and considered sound by the Inspector. A copy of the relevant extract at paragraph 64 of the Inspector’s report is provided at **Appendix 9**.
- 6.74 The Council has stated that they don’t include pre-application requests that they *‘consider speculative or are not likely from a planning policy perspective’*.
- 6.75 In Table 4.1 of the Council’s Resonse Document at **CD6.2**, it confirms that it has delivered 8,064 homes over the last 15 years between 2004/05 to 2018/19. This is an average of 538 homes per year. The Council’s housing trajectory on page 7 claims it will deliver 4,118 homes over five years between 2020/21 to 2024/25. This is an average of 824 homes per year and would equate to a 53% increase over its previous 15 years of housing delivery. Only once within that 15-year period did the Council deliver more than 824 homes (in 2004/05 it delivered 987 homes).

6.76 The Council has not provided any detailed justification or evidence that supports the substantial increase (53%) in delivery rates assumed. Furthermore, the above table shows that there is quite a high likelihood of an application being refused at committee despite officer support.

6.77 The Council has also stated that sites have been selected based upon *'investment by the landowner/ developer'*. It is not clear what this means, and the Council has not provided supporting *'clear evidence'*.

6.78 Paragraph 67a of the NPPF requires that the Council's five-year supply is made up of deliverable sites. *'Deliverable'* is defined as:

"To be considered deliverable, sites 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."

6.79 Part b) above, applies to all major sites which either have an outline permission/ permission in principle or an allocation. However, the Council has not provided any *'clear evidence'* to confirm that housing completions will begin on site within five years.

6.80 Taking account of the above, 46% of the Council five-year land supply is based upon sites that do not yet have planning permission. I have already commented on the Council's approach in relation to windfall/ small sites above. In relation to the remaining 32%, the Council should either provide the clear evidence to support its assumptions, factor in an implementation rate or provide headroom within its housing trajectory.

- 6.81 It is important to note that the implementation rate is influenced by a number of factors, including those outside of the planning process over which the Council has no control. Whilst a site may 'tick all the boxes' from a planning perspective other factors such as economic conditions or the developers company dynamics may prevent a site coming forward. An example, drawn from the table set out above, is the 579-589 Kingston Road Site, as the Council have acknowledged, six major applications have been submitted for this site over a 10-year period. It is not clear what is preventing any of the previously approved schemes coming forward.
- 6.82 The Council have stated that they have not included this Site within their five-year supply, but their latest published list⁸ of permitted sites, shows that they have assumed the delivery of 99 units from this site. This should be clarified, and the number adjusted if required.
- 6.83 Taking account of the above, I consider that the Council's approach in relation to supply to be flawed in the absence of any 'clear evidence' as required by the NPPF, the track record of the planning committee over the last 12 months and a failure to take account of the influence of any external factors outside of the planning process. The Council ought therefore to apply an implementation rate or allow headroom to its supply to allow for drop-off.
- 6.84 It is difficult to gauge what would be a reasonable assumption would be in the absence of historic data, which is not available within the Council's online sources.

Summary Table

- 6.85 I have re-provided Table 6.1 set out above which shows the different housing targets. I have updated this to take account of the reductions in the Council's trajectory as a result of my analysis of their approach to small sites. Further reductions should be applied if the Council is not able to provide the required evidence to support the sources of supply.

⁸ Five Year Land Supply Statement 2020, published on the Council's website and shown in the table on page 4.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	2020/21	2021/22	2022/23	2023/24	2024/25	
LBM Trajectory						3,806⁹
LBM Position	411	918	918	918	918	4,083 4,287 (5% buffer) 89% supply 4.4 years
Draft London Plan/ Appellant Baseline Position	918	918	918	918	918	4,590 4,820 (5% buffer) 79% supply 3.9 years
2017 GLA SHMA/ Pre-EiP Version	1,328	1,328	1,328	1,328	1,328	6,640 6,972 (5% buffer) 55% supply 2.7 years
2019 LBM SHNA	1,534	1,534	1,534	1,534	1,534	7,6708 8,054 (5% buffer) 47% supply 2.4 years

⁹ Adjusted to reflect historic delivery from small sites and delivery rate of 0.21% rather than 0.3% as explained in paragraph 6.58.

I Table 6.2

Level of significance attached to the shortfall

6.86 In the *Hallam Land* Court of Appeal judgment, Lord Justice Davis was mindful of the Court’s finding on *Hopkins Homes* case (and the *Shropshire Council* case) (paragraph 83 of **Appendix 18**). Lord Davis agreed with the leading judgment from Lindblom L.J. prior to making his own observations on the main issue in that case where there was a housing supply shortfall.

Lord Davis considered that:

1. *“...the extent of the shortfall...is itself a planning judgment to be assessed in the light of various policies and other relevant considerations”* (paragraph 82);
2. *“The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development.”* (paragraph 83); and
3. *“...at least some assessment of the extent of the shortfall should ordinarily be made; for without it the overall weighting process will be undermined”* (paragraph 84).

6.87 It follows from these judgments, that the greater the shortfall the greater the weight should be applied by the decision-maker.

6.88 This approach has been followed in relation to some of the appeals identified in section 9 below. I have already identified above that there does not seem to be any robust evidence to suggest that the Council have sufficient land coming forward to make up the shortfall or that it will even deliver the housing numbers it claims to have within its supply.

6.89 I provide my assessment of the planning balance in section 10 below.

Summary of Housing Supply

6.90 At the time of writing, the Council’s position in relation to its housing requirement/ target isn’t clear. They have previously confirmed within the email of 17th September (CD6.4) that they do not have a five-year land supply and can only identify 101% of sites against a target of 105%. This equates to 95% of its target or 4.8 years of supply. However, two days prior to the exchange of evidence, they have provided a position statement (**CD6.6**), which claims the Council can demonstrate 192% supply.

We understand that this is because of the Council taking a different approach to how it calculates its requirement rather than additional housing supply becoming available.

- 6.91 It is my position, that the housing targets in the current London Plan are out of date for the reasons explained above, and therefore the Council should be working to those within the DLP. This would give the Council a housing target of 4,820 (including 5% buffer). This is consistent with the advice provided to the Council by the GLA as noted above and set out within the email at **CD6.5**. This is also consistent with the up to date approach being taken by the LB Bromley despite their Local Plan, which relied on the current London Plan targets, being less than two years old.
- 6.92 The Council has identified it has a supply of 4,118 homes, which would equate to 85% supply (4.3 years) against the DLP targets applying to all five years and the 5% buffer but making no other adjustments.
- 6.93 However, for the reasons set out above, within the letter from the Secretary of State regarding the DLP and the acknowledged and growing gap between housing need and supply in London, this should be seen as the minimum requirement.
- 6.94 Against its own assessment of OAN set out in the SHNA, the Council's five-year land supply target would be 8,055 (including 5% buffer). Against this target, the Council would have a supply of 47%, or 2.4 years.
- 6.95 This analysis is shown in Table 6.1.
- 6.96 In addition, to the above, I consider that the Council has not put forward evidence to support its increased assumptions in relation to small sites delivery and it should therefore default to its historic delivery rate of 0.21%. This would result in a reduction of 732 from the Council's five-year supply, reducing it to 3,806 against a target of 4,820, which equates to 79%.
- 6.97 This is shown in Table 6.2.
- 6.98 In relation to backlog, the higher housing targets identified in the 2017 SHMA assumed the delivery of 1,328 homes per year starting in 2016. The deficit in housing delivery that has accrued since this time will need to be dealt with in future years provision. The longer the Council takes to start addressing its housing need the higher this deficit will become. The GLA confirmed at point 6 of **CD6.5** that the Council should have been planning for the DLP housing targets starting in 2019/20,

allocating sufficient land to meet this target. The requirement should therefore come as no surprise to the Council and they should have been planning accordingly.

6.99 In relation to its other sources of supply, the Council has not provided any detailed evidence that all of its sites are deliverable in accordance with the definition set out within paragraph 67a and Annex 2 of the NPPF and how they will achieve a 53% increase in housing numbers over those delivered in the previous 15 years.

6.100 I therefore conclude that at best, the Council has a 79% five-year land supply (3.9 years), which is shown in Table 6.2 above, although this should be seen in the context of its housing target being the bare minimum and significantly below the Council's own OAN. Comparison of its supply against OAN would be 47% (2.4 years).

6.101 Paragraph 11d of the NPPF would be engaged on the basis of the Council's own assessment of its five-year land supply of 95% (4.8 years). On the basis of my assessment, very substantial weight ought to be given to housing delivery for the reasons identified above.

6.102 It is the intention that further work will be done to narrow the issues in relation to housing supply with the Council bearing in mind their fluid position up until this point.

7. Other Planning Consideration

7.1 Below I consider the various other key issues relevant to this appeal against the requirements of the development plan.

Delivery of a Masterplan

7.2 Allocation RP3 in the DLP, identifies that the appeal site, forms part of a larger site which has been identified for development. This proposes reprovision of the Tesco store and redevelopment so as to optimise the remainder of the site for new homes, landscaping and access.

7.3 Specific concerns were raised by officers at pre-application stage that the development of the appeal site, could potentially prejudice the delivery of the masterplan for the wider site.

7.4 Significant work was done, involving specialist input from Tesco's inhouse design team, as to how the appeal scheme could be bought forward without compromising the objectives of the masterplan.

7.5 This analysis was set out in TP Bennett's masterplan development document dated 24th May 2018, submitted as part of the pre-application discussions. A massing for this masterplan is shown at Figure 23 of Mr Colin Pullan's evidence.

7.6 The GLA Stage 1 report raised concerns about the inactive ground floor western elevation in the event that the masterplan is delivered.

7.7 It is agreed that active frontage is not required on the western edge of the appeal scheme, given that it would front onto the service road for the Tesco store. It is proposed that a green wall will be provided along this ground floor elevation so as to add visual interest and provide biodiversity enhancements.

7.8 Officers have identified that they are keen to ensure that public access can be provided along Pyl Brook, in the event that the masterplan is delivered.

7.9 In the current proposals, this is proposed to be gated to prevent public access for security reasons in line with advice from the Secured by Design officer.

7.10 A s106 obligation (part 12 of Schedule 1) is proposed that would allow public access along Pyl Brook in the event the masterplan is delivered.

- 7.11 Mr. Pullan comments on the issues associated with the delivery of a wider masterplan in paragraph 6.6 to 6.8 of his evidence.
- 7.12 Taking account of the above, I am entirely satisfied that the appeal scheme can be delivered and also that it would not prejudice the delivery of the wider masterplan. Furthermore, I am also satisfied that the scheme is sufficiently futureproofed to be able to adapt and respond to development of adjoining land to ensure good quality placemaking.

Viability

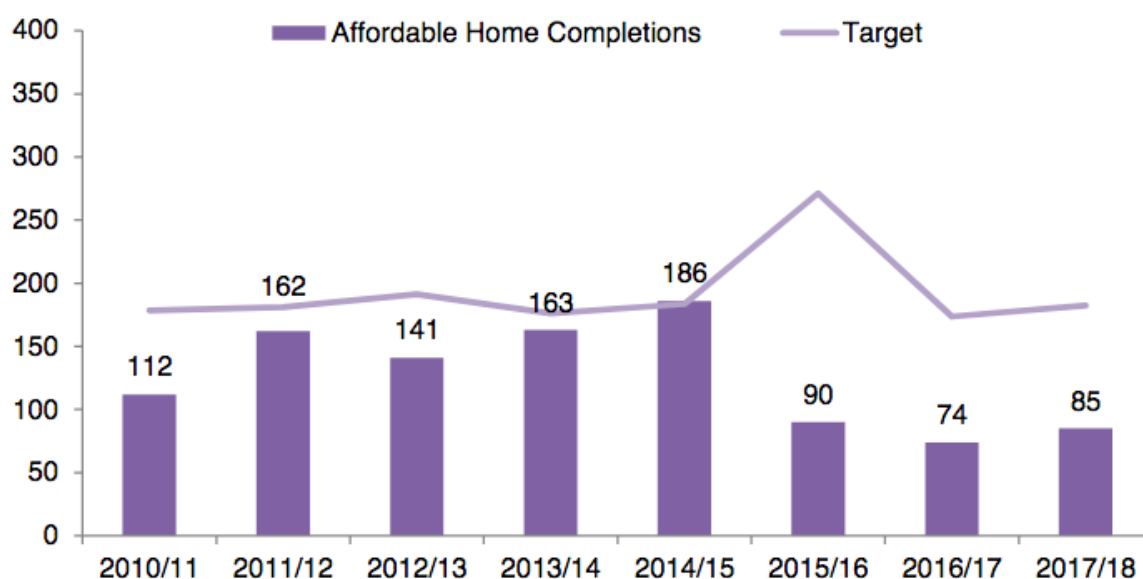
- 7.13 The appeal scheme proposes 35% affordable housing consistent with policy H5, Threshold approach to applications, of the DLP.
- 7.14 The GLA case officer for the application confirmed the affordable housing offer was in accordance with the fast-track criteria within her email dated 22nd January 2020. The Council have also confirmed this is the case within paragraph 6.21 of the SoCG.
- 7.15 Prior to the application being presented at the Council's planning committee, the Appellant wrote to the Council and increased the affordable housing offer from 35% to 40%. This was set out within the letter dated 22nd January 2020 from DaviesMurch. This was put forward solely on the basis that the application was presented to and approved at the Council's February committee. The letter makes it clear that the affordable housing offer would revert to 35% if the scheme were not approved at that committee.
- 7.16 The Appellant was able to make this increased affordable housing offer as a result of construction work completing of another site and the associated cost savings of being able to transfer the construction team from one site to another.
- 7.17 Without prejudice to the affordable housing offer put forward with the application, a viability assessment was submitted in support of the application. This was submitted and made publicly available with the other application documents on the Council's website because the scheme did not deliver the 40% affordable housing required on a unit basis by policy CS8 of the Core Strategy.
- 7.18 The Council appointed their own advisors to review the submitted viability information. Agreement was not reached between the Appellants advisors and the Council's advisors. The Appellant's advice was that 20% affordable housing was the maximum reasonable which the scheme could

accommodate at that time. The Council's advisors in contrast regarded 24% to be the maximum the scheme could accommodate at that time.

- 7.19 Discussions were not progressed to reach an agreed figure because it would be an academic exercise, given that both sets of advisors concluded that the maximum reasonable level of affordable housing that the scheme could accommodate was substantially below the 35% proposed by the Appellant.
- 7.20 Details relating to the viability discussion are set out within the Viability Study from Turner Morum, July 2019, submitted with the application, the response from the Council's consultants, Altair, dated August 2019 in their Financial Viability Assessment and concluded with the exchange of emails. See email from the Council's planning case officer dated 30th August 2019.
- 7.21 By agreeing to provide more affordable housing than the development can objectively afford to provide the Appellant recognises the benefit and importance of delivering mixed and balanced communities and that it takes its social responsibilities seriously.
- 7.22 Paragraph 7.5.11 of the officer's report confirms the affordable housing offer is acceptable and meets the emerging London Plan guidance.
- 7.23 As more than 12 months has passed since the viability review process was undertaken, Turner Morum have now provided an update to this assessment which is at **Appendix 10**. For ease, this has adopted the assumptions made by the Council's advisors but changed two inputs.
- 7.24 First, it has modelled the implications of an Alternative Use Value for the site following approval of the prior approval application for 38 residential units. This has increased the agreed land value from £5.980m to £6.675m.
- 7.25 Second, it has increased the assumed profit margin from 17.5% on GDV to 20% on GDV to reflect the risk in the current housing market and consistent with the approach being taken elsewhere in London, including by Altair the Council's assessors on a recent scheme in the borough.
- 7.26 This has resulted in the maximum reasonable level of affordable housing that the scheme can accommodate being reduced from 24% to 14%.
- 7.27 Further changes could be made to the appraisal to take account of sales values and build costs, but it is not the Appellants intention to re-open the viability process.

- 7.28 This exercise has been undertaken to show the challenges that this scheme faces in respect of affordable housing delivery. It is not the Appellant's intention to move away from the 35% affordable housing proposed, which they consider to be a very important benefit of the scheme.
- 7.29 In my view, the affordable housing component of the scheme should be given substantial weight in favour of the scheme in addition to the housing delivery more generally.
- 7.30 This should also be seen in the context of the Council having delivered relatively low numbers of affordable housing, proportionate to overall housing delivery. I have no doubt that this is largely due to the viability challenges faced by the Council and across London.
- 7.31 The appeal scheme would deliver 143 affordable homes, which would provide a substantial contribution towards the Council's affordable housing delivery.
- 7.32 Table 4.3 of the Council latest AMR 2018/2019 confirms that only one scheme has delivered affordable housing that was completed during that year. It delivered a mere 5 affordable homes. Paragraph 4.24 identifies that the Council has difficulty in delivering affordable homes following the introduction of Prior Approval rights to convert, retail and storage premises to residential. It also notes that a large proportion of new homes were on small sites, which do not contribute to affordable housing.
- 7.33 The graph below is taken from the Council's Authority Monitoring Report 2017/ 2018 and shows affordable housing delivery between 2010 and 2018. This shows that it has only met its affordable housing target once in the last 10 years.
- 7.34 Furthermore, the 143 units within the appeal scheme, would provide more affordable housing than Merton have delivered from all schemes on average per year (127 affordable homes per year) between 2010 to 2018 shown in Graph 4.10 below.

Graph 4.10 Affordable home completions 2010 - 2018



7.35 Paragraph 4.17 of the Authority Monitoring Report 2017/18 confirms that the Council delivered 25% of affordable homes on average, against its 40% target between 2013/14 and 2017/18.

7.36 I fully appreciate the viability challenges associated with affordable housing delivery and therefore, when sites come along, like the appeal site, every opportunity should be taken to 'optimise' them to maximise affordable housing delivery.

7.37 In my view, substantial weight should be given to the affordable housing component of the scheme.

Density and Making Efficient Use of a Highly Accessible Brownfield Site

7.38 The density matrix provided at Table 3.2 of the current London Plan identifies that a site with a PTAL of 2-3 within an urban setting should have a density range of 200-450 habitable rooms per hectare.

7.39 Paragraph 7.4.11 of the current London Plan confirms the proposed development would deliver 570 habitable rooms per hectare which is above the indicative range within the density matrix.

7.40 The supporting text that goes within the density matrix states at paragraph 3.28:

"A rigorous appreciation of housing density is crucial to realising the optimum potential of sites, but it is only the start of planning housing development, not the end. It is not appropriate to apply Table 3.2 mechanistically. Its density ranges for particular types of location are broad, enabling account to

be taken of other factors relevant to optimising potential – local context, design and transport capacity are particularly important, as well as social infrastructure, open space and play.”

7.41 This approach is endorsed by officers as confirmed within paragraph 7.4.15 of the officers report.

7.42 Crucially, I would note that the GLA Stage 1 report confirms at paragraph 36:

“...the scheme appropriately optimises its density and complies with the DLP Policy D4.”

7.43 The most up to date London Plan Annual Monitoring Report for financial year 2017/2018 provides at Table 2.4 the proportion of schemes of 15 units or more approved either within, above or below the density matrix set out within the current version of the London Plan.

7.44 It is significant to note that 11 of the 12 years that have been recorded, the proportion of schemes that exceed the range set out in the density matrix, is higher, in some cases significantly higher, than those sites that are delivered within the range.

7.45 Paragraph 2.4 states that:

“...this is indicative of the fact that the density matrix was only meant to be a conceptual and indicative tool of what could be developed on a site.”

7.46 At paragraph 2.5 it goes on to note:

“Land in London is a scarce resource. It is important that land is used appropriately and that schemes are designed to suit local circumstances and are deliverable. The new DLP therefore takes a new design-led approach to density, focusing on the importance of design, management and infrastructure capacity, rather than predetermined density ranges to manage the density of residential development in London.”

7.47 Taking account of the above, it is important to note that such a high proportion of sites are being delivered at higher densities than those within the density matrix range but London has still not come anywhere close to meeting its housing targets.

7.48 We would note that the DLP proposes to remove the density matrix. Instead it places the emphasis on optimising individual site capacity through the design led-approach, set out in Policy D3.

7.49 Detailed consideration is given to the townscape and design aspects within the evidence of Mr. Colin Pullan. The general approach of the policy is to make the best use of land to optimise the capacity of sites that responds to its context and capacity for growth.

7.50 I would also note the significant amount of time devoted to consideration of the wider townscape and context issues at pre-application stage.

7.51 I agree with the conclusions set out in Mr. Colin Pullan's evidence in relation to this issue, which state at 6.24:

"Having considered the appeal scheme in its setting, I find that the buildings will be an attractive and well-designed addition to the local context and will enhance rather than detract from the visual amenities within the area, consistent with the objectives of Policy D9 Tall Buildings".

7.52 In addition to the townscape and design matters that determine whether a site has been 'optimised', the policy also requires the development to be consistent with other planning objectives and policies. I consider these further below.

Standard of Proposed Accommodation

Unit Mix

7.53 The scheme provides the following mix of units:

- 117 x 1 bed units (26%);
- 290 x 2 bed units (64%); and
- 49 x 3 bed units (11%).

7.54 The justification for the unit mix was set out in sections 6.58 to 6.63 of the Town Planning Statement that supported the application. It acknowledges that the scheme does not accord with the *indicative, borough wide mix* provided within the supporting text that accompanies policy DM H2, however this is not a scheme specific requirement and there is flexibility within the policy.

7.55 The unit mix was discussed with the Council's housing officers at pre-application stage, who noted their preference for larger units for affordable rent. They also confirmed their preference for smaller units for the intermediate accommodation to ensure they were able to meet the Mayor's affordability

criteria. This approach has been prioritised with the majority of the three bed units within the scheme allocated to affordable rent.

7.56 Policy H10 of the DLP identifies the need for Council's to identify preferred unit mix for low-cost rent but allows for more flexibility in relation to intermediate and market units. In respect of smaller units, the policy recognises their ability to optimise housing potential, reduce pressure on conversion/ sub-division and freeing up family housing.

7.57 We therefore consider that the proposed unit mix provides an appropriate response to tenure specific requirements and is consistent with Policy H10 of the DLP, which carries substantial weight.

7.58 The Council have confirmed they consider the scheme provides an appropriate mix of units which accord with policy requirements at paragraph 6.24 of the Statement of Common Ground.

Space/ Accessibility Standards

7.59 The scheme complies with all relevant floorspace standards, including the Nationally Described Space Standards, the current and DLP and the Mayor's Housing SPG.

7.60 90% of the accommodation conforms to M4(2) of the Building Regulations and 11% of the accommodation conforms to M4(3) of the Building Regulations. Confirmation of this is provided within the Summary Schedule of page 4 of **Appendix 8**.

Dual Aspect Accommodation

7.61 As set out in 7.8.6 the officer's and paragraph 42 of the GLA Stage 1 report, the scheme provides 65% of the units as dual or triple aspect. A diagram showing this is provided on page 85 of the Design and Access Statement. However, this should be seen as a pessimistic assessment as a further 33% of the units provide a dual aspect within an 'enhanced return'.

7.62 The Mayor's Housing SPG excludes 'bay windows' from the definition of dual aspect accommodation but does not provide a definition as to the extent of the side return needed to create a dual aspect unit.

7.63 In this instance, 33% of the accommodation is provided with an 'enhanced return' of between 1.5 and three meters, which is significant and would be far more than would generally be associated with a side return.

7.64 In my opinion, it would be reasonable to regard 98% of the accommodation as dual aspect on this basis. Even if the 'enhanced return' is not regarded as dual aspect, the scheme delivers 65% 'true' dual aspect, which paragraph 42 of the GLA Stage 1 report and paragraph 7.8.6 of the officers report regard as '*good levels of residential quality.*'

Overlooking

7.65 The minimum distance between facing habitable rooms windows within the scheme is 17 metres, which is between the closest units within Core E and G, albeit these windows are at an oblique angle and not directly facing each other. All other minimum distances are at least 18 meters. The proposal accords with DM D2 of the Council's DMPD.

Units Per Core

7.66 The scheme serves no more than eight units per floor off each core consistent with Standard 12 of the Mayor's Housing SPG. This is confirmed within the Accommodation Schedule on page 3 of **Appendix 8**.

Private Amenity Space

7.67 All of the units benefit from private amenity spaces that meet or exceed the requirements set out within part 9 of Policy D6 Housing quality and standards of the DLP. A breakdown of the private amenity areas is provided within the Stacking Schedules on pages 17 to 24 of **Appendix 8**.

External Amenity and Playspace

7.68 The scheme provides 2,758sqm of communal space at podium level with a further 408sqm of amenity space along Pyl Brook.

7.69 In relation to playspace, the GLA playspace calculator requires a total of 1,980sqm of playspace to be provided for 0-18 year olds. Whilst, all playspace could be dealt with on site, in discussion with officers, it was agreed that playspace for older children of between 12-18 year olds is best dealt with off site, given the nature of the type of play equipment they require. A commuted sum payment of £24,600 towards a Multi Use Games Area has been agreed and is secured via a s106 obligation.

- 7.70 This has resulted in an on site requirement of 1,561sqm of playspace to be provided. Details of the playspace are provided in sections 6.1 and 6.2 of the Landscape Design and Access Statement submitted with the application.
- 7.71 Paragraph 32 of the GLA Stage 1 response, confirms it support for the approach to playspace.
- 7.72 Neither the Merton Local Plan or the GLA provide area specific requirements for communal amenity space within the development. Table 3.2 iv of the DLP provides guidance on how such space should be provided. We consider that the proposed communal amenity space meets these various requirements.
- 7.73 Taking account of the private amenity space, the development provides a total of 3,681sqm of private and communal amenity space, which equates to an average of 14sqm per unit.
- 7.74 It is considered that this is a very high standard of provision that exceeds the required standards set out in Policy D6 of the DLP.

Internal Daylight

- 7.75 The letter from EB7 dated 4th December 2019 that accompanied the revisions to the application confirms that the internal daylight levels for the proposed accommodation are '*exceptionally high*' with 98% of the proposed accommodation meeting or exceeding the BRE Guidance.
- 7.76 Paragraph 7.7.7 of the officers report to committee recognises the careful consideration given to design quality at the design stage and that the scheme achieves 'excellent' levels of overall compliance.

Overshadowing

- 7.77 Paragraph 7.3 of the Daylight and Sunlight Assessment confirms that the scheme fully complies with the requirements of the BRE Guidance in respect of overshadowing of the communal podium areas.
- 7.78 The letter from daylight and sunlight consultants EB7 dated 4th December 2019 confirms that with the revisions made to the proposal the amenity courtyards would continue to receive good levels of sunlight penetration throughout the day.

Proposed Accommodation Summary

- 7.79 As set out above, the scheme meets or exceeds all of the standards set for the proposed accommodation. Failure to meet such standards can sometimes be seen as a symptom of overdevelopment of a site.
- 7.80 However, in this instance, the scheme comfortably meets the various requirements, particularly those set out within Policies D6, D7 and S4 and Table 3.1 of the DLP and the Nationally Described Space Standards. This should be attributed to the careful design process the scheme has undergone and shows that it will deliver a very high standard of accommodation.

Impact on Neighbouring Amenity

- 7.81 The draft allocation for the wider site within the Council's emerging Local Plan notes that '*the site is not overlooked or constrained by neighbours*'. A plan is provided an **Appendix 19** which identifies the distance to surrounding buildings.
- 7.82 Consideration is given to the schemes relationship with Raynes Park High School below.
- 7.83 The closest existing residential properties are the terrace houses on the southern side of West Barnes Lane, next to the level crossing. The closest of these properties are over 38 meters away from the site and separated by the railway line and Burlington Road. Furthermore, their orientation faces north-east and south-west and therefore do not directly look towards the site.
- 7.84 Beyond this, there are terraced houses further to the north fronting Burlington Road, which are at least 44 meters north of the site. Again, their principle aspects do not directly face the site.
- 7.85 There are properties under construction at 300 Burlington Road, which form part of the Albany House development. However, this development is still approximately 23 meters away and it should also be noted is part of the changing context of the area.
- 7.86 We would note that prior approval has also be granted for the conversion of Dalbani House, Neba House and Eagle House at 257 Burlington Road to residential. It is not clear if those properties have been converted to residential use. However, any impact from the proposed development will be limited because of the existing Andrew Morton Furniture Workshop that separates them from the appeal site.

7.87 Paragraph 7.7.2 of the officer's report states that *'The site has a limited relationship with sensitive neighbouring uses'*. It goes on to consider this in respect of visual intrusion and loss of light and confirms at paragraph 7.7.10:

"In conclusion, the impacts of the proposed development on surrounding residential properties would accord with the BRE guidelines and are considered unlikely to harm neighbour amenity and accord with the NPPF and Mayor's Housing SPG."

7.88 In relation to privacy, paragraph 7.7.13 of the officers report concludes:

"The separation distances to neighbouring dwellings are such that there would be no direct overlooking to any residential properties at a distance that would result in a material loss of privacy."

7.89 No issues are identified within the GLA Stage 1 report in respect of concerns about impact on neighbouring properties.

7.90 The site is unusual given its London context to have limited constraints in terms of proximity to sensitive neighbours.

7.91 In my opinion, this lack of constraint, which is normally a significant obstacle for development proposals to overcome, provides an opportunity to ensure the site is optimised. It is acknowledged that this optimisation should not be at the expense of an appropriate approach in terms of townscape or other planning matters.

Impact on Raynes Park High School

7.92 During the course of the consultation of the planning application, objections were raised by Raynes Park High School and also the Council's Children's, Schools and Families Department. The basis of the objections were consistent and fall into the following broad categories:

- Height;
- Overlooking/ privacy;
- Highways impact;
- Flooding;
- Daylight, sunlight and overshadowing; and

- Construction safety/ impact.

7.93 Issues relating to height, highways impact and flooding are dealt with elsewhere within my evidence and within the evidence of Mr. Colin Pullan and Mr. Mike Savage.

7.94 In terms of principles, there is rightly no development plan policy or guidance that resists residential development from being built next to schools. Furthermore, there are many recent examples of successful high density residential developments being built next to or as part of schools within London. I have personally been involved in two such schemes which included a school as part of the redevelopment of the Green Man Lane estate in West Ealing and the Brook House Primary School, 881 High Road, Haringey, which formed part of the redevelopment of the former Canon Rubber Factory site.

7.95 The emerging site allocation for the wider site states that it is not said to be constrained by neighbouring buildings.

7.96 In respect of overlooking, the enclosed Architects Report, confirms that the distance between the proposed buildings and closest school buildings is 33.7 metres. In addition, there is extensive tree screening between the buildings that would significantly reduce any opportunities for overlooking at the lower levels. As the proposed building steps up, the ability for direct overlooking into the school building significantly reduces.

7.97 The Daylight and Sunlight Assessment submitted with the application considered the scheme's impact in respect of overshadowing of the school grounds and stated at paragraph 7.4 that it would remain fully compliant with the BRE criteria.

7.98 Notwithstanding the above and Council planning officers confirming that they did not consider the schemes impacts upon the school to be unacceptable in planning terms, the Appellant amended the scheme to try and mitigate some of the concerns the school raised.

7.99 These amendments were captured within the revisions to the application submitted on the 5th December 2019. The key changes were:

- Redistribution of height within the scheme to reduce the height of the tallest building (building A), closest to the school, from 14 to 12 storeys of residential;

- Increasing the height of building E, which now becomes the tallest building within the development, from 13 to 14 storeys of residential;
- Increasing the height of building F from seven to eight storeys of residential;
- Introducing privacy screens on the side of the balconies that have their primary aspect to the east on building A to reduce opportunities for overlooking towards the school; and
- Increasing the height of the railing of the balconies facing the school on building A to reduce opportunities for overlooking, particularly from within the associated unit.

7.100 In addition to the above, further detailed consideration was given to daylight, sunlight and overshadowing impacts of the development within the letter from EB7 that formed part of the submission. The conclusion of that assessment was that the changes would result in further improvements from an already acceptable position.

7.101 In relation to the concerns raised by the school about construction impacts, development near to schools is common place throughout London and beyond. Despite the proximity of the school to the site, it is not considered that there are any abnormal constraints that would make the delivery of the project unusually challenging.

7.102 It is expected that a Construction Management Plan would be secured should the scheme be approved which would be able to ensure adequate protection is put in place during construction to address the schools concerns.

7.103 We would note that no concerns have been raised by the GLA within their Stage 1 report in relation to the sites relationship with the school.

7.104 The officer's report at paragraph 7.7.5 to 7.7.8 consider the daylight, sunlight and overshadowing impacts to the school and don't raise concerns. Paragraph 7.7.14 considers the acceptability in respect of privacy and concludes that '*there would be no material overlooking to the school*'.

7.105 Taking account of the above, I consider that the schemes relationship with the neighbouring Raynes Park High School is perfectly acceptable in planning terms and safeguards its staff and pupils.

Architecture and Design

- 7.106 Matters in relation to the second reason for refusal are dealt with elsewhere within the Proof of Evidence of Mr Colin Pullan and are separate from considerations in relation to the architecture and detailed design of the scheme. At **Appendix 4**, I enclose an Architects Report from the scheme architects TP Bennett, which explains their approach to the proposal and how they have evolved during discussions with the Council, GLA and other stakeholders.
- 7.107 The Architects Report sets out the evolution of the scheme and identifies the issues raised during the pre-application discussions. Significant time was spent at pre-application stage looking at the architecture and detailed design.
- 7.108 I would note that particular regard has been given to the sites history and how that has informed the detailed design of the scheme, through the use of subtle references to its past.
- 7.109 Paragraph 46 of the GLA Stage 1 report confirms support for the architecture and requests that *'high quality'* facing materials, balcony treatments and window reveals should be secured *'to ensure exemplary design is carried through post planning to completion'*.
- 7.110 It is clear from the language used within the Stage 1 report that GLA officers regard the scheme as delivering 'exemplary design' and proposed 'high quality' materials.
- 7.111 The recognition of the high quality architecture and materials is set out within the officers report at paragraphs 7.6.50 to 7.6.58. In particular, paragraph 7.6.51 recognises the variety of surface materials that have been selected to *'define the various functions of the landscape spaces, reinforce space hierarchy and define areas of shared use'*.
- 7.112 This section concludes by stating that the facing materials and details are considered to be acceptable.
- 7.113 Commentary on the architecture and detailed design also forms part of the officer's overall conclusions on the application and at paragraph 8.4 states:
- "The proposals would however have the potential to improve the street environment. Officers consider the proposals would make a positive contribution to the Burlington Road frontage with the potential to enhance the public realm."*

- 7.114 Taking account of the above and consistent with paragraph 131 of the NPPF, great weight should be given to the design quality of the scheme, which as acknowledged by the GLA and Council officers will raise the standards of design in the area.
- 7.115 The scheme fully accords with the requirements of Policy D3, Optimising site capacity through the design-led approach and D4, Delivering good design of the DLP, in respect of the process undertaken, particularly during pre-application stage. Consistent with this policy, and as set out within the Architectural Report, the scheme has responded to the comments made by the Council's Design Review Panel, the GLA and Council officers.
- 7.116 Furthermore, the scheme fully accords with Policy CS14, Design, particularly in relation to part b. which requires schemes to respond to distinctive areas of the borough and improves Merton's overall design standard.

Flood Risk

- 7.117 The Site lies partly in Flood Zone 2 (medium risk) and Flood Zone 3 (high risk). A Flood Risk Assessment was submitted with the application which concluded that the development could be considered acceptable with suitable mitigation maintained for the lifetime of the development.
- 7.118 The Council's Flood Risk Management Engineer was consulted on the application and confirmed in his response on the 24th October 2019 that he didn't object to the application, subject to the imposition of planning conditions.
- 7.119 Similarly, the Environment Agency were also consulted and confirmed in their response dated 23rd October 2019 that they did not have any objections, subject to the condition set out within their letter.
- 7.120 Finally, the GLA confirm at paragraph 51 of their Stage 1 report, that the scheme complies with London Plan Policy 5.1 and DLP Policy S12 in respect of flood risk.
- 7.121 Taking account of the above, I consider that the schemes approach to flood risk is acceptable.

Transport

7.122 The transport issues associated with the draft first reason for refusal are covered within the evidence provided by Mr. Mike Savage. I rely on his evidence in respect of the issues identified within the draft reason for refusal and do not cover this here.

7.123 Below I have considered the other transport related issues.

Healthy Streets

7.124 Policy T2 of the DLP introduced the Mayor's 'Healthy Streets' initiative. The purpose of this initiative is to reduce the dominance of vehicles on London's streets and significantly increase levels of walking, cycling and public transport use.

7.125 Appendix L of the Transport Assessment provided a Street Improvement Strategy provided by Exterior Architecture which identified various improvements that could be made to the surrounding streets to support the requirements of draft Policy T2.

7.126 As noted in the response provided by Transport for London dated 27th January, a substantial financial contribution of £150,000 is proposed to deliver the various initiatives identified within the Street Improvement Strategy.

7.127 The requirements of draft Policy T2 have therefore been met.

Cycle Parking

7.128 The officers report to committee at paragraph 7.10.26 states that the development provides 798 long stay spaces and 12 short stay spaces.

7.129 This is incorrect. The schedule of accommodation submitted with the amendments made to the application identifies the scheme will provide 912 cycle spaces.

7.130 In accordance with the standards set out in Table 10.2 of the DLP, the development should provide 854 long stay cycle parking spaces and 13 short stay spaces. The commercial use should provide five cycle spaces. The total cycle parking requirement for the development is therefore 872 cycle parking spaces.

7.131 The total level of provision is therefore in excess of that required by the DLP.

7.132 The location of the cycle parking is shown on the proposed layout drawings. The precise details for the cycle parking can be dealt with via a condition as stated at 7.10.28 of the officers report. Condition 15 listed within the officer's report has been proposed to cover this.

Other Transport Matters

7.133 Other transport matters that don't relate to those identified above and the reason for refusal will be set out within the Statement of Common Ground.

Crossrail 2

7.134 During pre-application and formal application discussions, the Appellant met with officers from the Crossrail 2 (CR2) team, to discuss the scheme. Some of these meetings involved officers from the the Council.

7.135 The CR2 team have identified that part of the site may be required as either a works site or to accommodate the landings of a vehicular and/ or pedestrian bridge to replace the level crossing at the junction of West Barnes Lane.

7.136 The Site is not subject to safeguarding and we would note that other land within Merton is subject to safeguarding to facilitate CR2. It is also not subject to any adopted or emerging policy to use the land for CR2 purposes.

7.137 The response received from the CR2 team during consultation on the application stated:

"That granting planning permission on this site will make the future delivery of Crossrail2 more challenging."

7.138 Paragraphs 55 and 56 of the GLA Stage 1 response also comments on this issue, given that the CR2 team form part of TfL, and the Mayor of London is Chair of TfL. Paragraph 55 states that;

"...the proposed redevelopment of the site, as currently presented, would be prejudicial to the future delivery of the railway."

7.139 It goes onto note that discussions between the Appellant and CR2 are ongoing to test options, which may include a pedestrian foot bridge.

7.140 Commentary is given to the issue within paragraphs 7.10.3 to 7.10.9 of the officers report to committee. It notes that the comments from TfL, the GLA and CR2 have been '*carefully considered*' and that '*the site is not within any formally safeguarded area and therefore any weight that can be attributed is very limited*'.

7.142 The officer's report goes onto note at 7.10.8 that the Council have had experience at appeal on this issue at 2 Merton Hall Road, appeal ref: APP/T5720/W/17/3180585 (decision attached at **Appendix 11**). The main issue in this appeal is identical, regarding whether the development would prejudice the delivery of the CR2 scheme.

7.143 In that case, the site was also not subject to safeguarding. During the consultation of the application, TfL had objected to the application stating that it will be required to deliver the CR2 scheme. This informed the Council's reason for refusal. The conclusions of the Inspector are set out in paragraph 14 of his decision letter and state:

"...the appeal site does not currently serve a transport function, nor is it currently safeguarded for transport uses. I therefore do not consider that this policy is directly relevant to the appeal proposal at the current time."

7.144 The appeal was allowed and permission was granted. The decision was not challenged by either the Council or TfL.

7.145 The issues at the heart of this decision are identical to the Appeal Scheme. Furthermore, CR2 have not demonstrated that a crossing at West Barnes Lane is necessary and that this could not be achieved by some alternative means, either by alternative routing, providing a crossing at another location or using land that doesn't include the Site. In the absence of having gone through this exercise, it is wrong to say the Appeal Scheme would '*prejudice*' the delivery of the CR2 scheme.

I would also note that on the 31st October, the Rt. Hon Grant Schapps wrote to the Mayor of London, copy of the letter attached at **Appendix 20**. This letter set out the Extraordinary Funding and Financing Agreement for Transport for London (TfL) for the period to March 2021. At paragraph 13 b) it states:

"In relation to Crossrail 2, prioritises safeguarding activity and brings an orderly end to consultancy work as soon as possible. DfT will support such safeguarding activity for this project as required."

I am not aware of any safeguarding work in relation to the appeal site and there is clearly uncertainty about the future of CR2.

7.146 In the absence of a safeguarding direction or any policy allocation to use the land for transport purposes, I would agree with the assessment of this issue, set out in the officers report to committee that the comments from CR2 and the GLA Stage 1 report can be given very limited weight.

Air Quality

7.147 Comments submitted by third parties in relation to the appeal proposal have objected to the proposal on air quality grounds. Attached at **Appendix 21**, is an update to the Air Quality Assessment submitted with the planning application which has been updated to take account of the changes to the scheme in respect of transport, energy and sustainability. The conclusion of this updated assessment is as follows:

“Following the application of mitigation measures, it is considered that the proposed development complies with national, regional and local policy for air quality.”

8. Planning Benefits and Delivery of a Sustainable Development

8.1 The requirement to deliver sustainable development is set out in Section 2 of the NPPF. It identifies three overarching objectives, namely:

- 1) An economic objective;
- 2) A social objective; and
- 3) An environmental objective.

8.2 I consider the planning benefits arising from the development proposals against the overarching objectives below.

Economic Objective

8.3 Consistent with the NPPF, the development will optimise an underused brownfield site to provide new homes and jobs. The substantial benefits arising from the proposal are identified within the Economic Benefits Statement attached at **Appendix 12**, which can be summarised as follows:

- £124m investment in construction;
- 700 construction jobs per year;
- 120 jobs once completed supported through additional expenditure in the area;
- £11.4m additional household spend in the local economy;
- £0.87m additional Council tax revenue;
- 40 FTE jobs supported by the on-site employment space;
- £1.4m salary values for those working on site;
- £2.6m gross GVA per annum; and
- £95,000 of additional business rates revenue for the Council.

The site as it currently exists provides little economic benefit to the area. In my opinion the vacant office building detracts from the area.

8.4 I consider the appeal proposals fully meet the economic objective defined by the NPPF and I would attach moderate weight to the economic benefits arising from the proposal.

A Social Objective

- 8.5 The appeal proposals will provide 456 new homes and make a substantial contribution to the Council's housing targets. 35% of these homes will be affordable housing, for which there is an acute need as a result of lack of delivery.
- 8.6 Furthermore, the scheme will provide a range of unit sizes, which the Council's housing officers have confirmed will help address need.

The high level of affordable housing provision and mix of units sizes will support the delivery of a strong, vibrant and healthy community as sought by the NPPF.

- 8.7 The scheme will provide short term construction jobs. The employment space within the development will provide opportunities for longer term jobs, appropriately sized to take account of the high proportion of micro businesses locally, reducing the need to travel to other areas.
- 8.8 The site is well located in respect of local services available in West Barnes and Raynes Park.
- 8.9 The development will provide new areas of open space, including the potential for future public access along Pyl Brook, as part of the delivery of a wider masterplan.
- 8.10 The development has identified significant opportunities for investment and improvement in the surrounding area consistent with the Mayors Healthy Streets initiative.

I consider that the proposals fully meet the Social Objective requirements of the NPPF and I would attach very substantial weight to the housing delivery element of the scheme, particularly in light of the Council's lack of five year land supply and it's poor track record in relation to affordable housing delivery. I would also attach moderate weight to the economic benefits and access to local services arising from the proposal.

An Environmental Objective

- 8.11 The proposed development will optimise this underused brownfield site therefore reducing the pressure on releasing less sustainable sites, including greenfield sites.
- 8.12 The scheme includes a package of measures that will provide significant environmental benefit, 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 improvement over the current situation;
 - Tree planting; and
 - Offsite works that are proposed as part of the Mayor's Healthy Streets initiative.

I consider the appeal proposals fully meet the Environmental Objectives set out by the NPPF. I would attach substantial weight to the benefits of making effective use of this brownfield site. I would also attach moderate weight to the other aspects of the proposal in relation to energy and sustainability, biodiversity, floodrisk and off-site public realm improvement works.

Summary

- 8.13 Above I have identified that the proposed scheme complies with all objectives of a sustainable development. I have identified the weight I consider ought to be given to each element against these objectives.
- 8.14 Paragraph 11 of the NPPF requires that decisions should apply a presumption in favour of sustainable development. The presumption in favour of sustainable development is therefore engaged.

9. Relevant Appeal Decisions

9.1 This section identifies recent appeal decisions that I consider to be relevant in the context of this case. Below, I have identified the appeals and summarised the main issues arising and the conclusions of the Secretary of State. I have then gone on to consider the relevance of the issues in respect of this appeal.

9.2 I don't contend that direct detailed comparisons can be drawn between the appeal decisions identified below and this appeal scheme because of the different context relevant to each site. However, there are some high level comparisons that can be made that are important to the planning balance in each case.

Land at Former Car Parks, Tesco Store, Connington Road, Lewisham, SE13 7LH

9.3 This appeal was recovered by the Secretary of State and the decision letter was dated 22nd January 2020. It is attached at **Appendix 13**.

9.4 The application related to a mixed-use redevelopment, including 365 residential units, commercial and community space, car and cycle parking, landscaping and public realm.

9.5 The main issues related to:

- Provision of affordable housing;
- Character and appearance;
- Heritage matters; and
- Living conditions.

9.6 Affordable housing was the main issue at the heart of the appeal, which the Secretary of State found to be in accordance with the development plan overall.

9.7 Weighing in favour of the proposals the Secretary of State afforded 'very considerable weight' to the provision of market and affordable housing. He also accorded moderate weight to the positive contribution to the character and appearance of the emerging Lewisham Town centre.

9.8 The Secretary of State identified '*less than substantial harm*' to the significance of heritage assets and he attributed considerable weight to that harm.

9.9 He considered that the balancing exercise required by paragraph 196 of the NPPF is therefore favourable to the proposal and granted planning permission.

North London Business Park, Oakleigh Road South, London, N11 1GN

9.10 This appeal was recovered by the Secretary of State and the decision letter was dated 7th February 2020. It is attached at **Appendix 14**.

9.11 The appeal related to a mixed use scheme providing 1,350 homes, secondary school, commercial floorspace, public open space, transport infrastructure, landscaping and car parking.

9.12 The main issues in this appeal were:

- Impact on the character and appearance of the area;
- Housing land supply;
- Replacement secondary school;
- Access to sports facilities and public open space; and
- Potential for traffic congestion along Brunswick Park.

9.13 Within his decision, the Secretary of State, identified that the scheme was not in accordance with the development plan overall. As part of that, he identified that the development plan restricted tall buildings to certain locations, which did not include the appeal site and that the conflict carried significant weight against the proposal.

9.14 It was also identified that the Council could not demonstrate a five-year supply of housing land without taking account of the site.

9.15 The provision of the housing and ancillary facilities carried significant weight in favour of the proposal.

9.16 The Secretary of State considered that material considerations indicate that the proposal should be determined other than in accordance with the development plan and granted planning permission.

Land At Purley Baptist Church, 1 Russell Hill Road, 1-4 Russell Hill Parade, 2-12 Brighton Road, Purley Hall And 1-9 Banstead Road, Purley

9.17 This was a called in appeal, with the Secretary of State's decision letter dated 9th July 2020, a copy of this decision is attached at **Appendix 15**. The letter identified the following main issues:

- Character and appearance and effect of the proposed development;
- Heritage; and
- Housing.

9.18 Within his assessment of the application, significant weight in favour of the scheme was given to housing and affordable housing, regeneration and economic benefits, with public realm improvements being given moderate weight.

9.19 Despite the scheme resulting in a change in scale which would change the character of the town, no material harm was identified.

9.20 The Secretary of State found that the proposal accorded with the development plan and granted planning permission.

Land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX

9.21 This was a called in appeal, with the Secretary of State's decision letter dated 10th September 2020, a copy of this decision is attached at **Appendix 16**. That letter identified a number of issues, which included:

- Impact on heritage assets;
- Housing; and
- Design.

9.22 Within his decision the Secretary of Stated noted that the Council has a five year land supply but given the acute housing shortage across London gave this issue substantial weight.

9.23 He also noted the benefits that would arise from the provision of a nursery, construction jobs, economic and regeneration benefits.

9.24 Within his decision, he identified that the proposal would result in harm to identified heritage assets but considered the benefits arising from the scheme in including housing and affordable housing delivery outweighed that harm and concluded that the application accorded with the development plan and granted permission.

Relevance to the Appeal Proposals

9.25 The appeal decisions above have been chosen because they have some similarities to the appeal site and deal with townscape matters. A number of them also resulted in identified harm to heritage assets which is not a constraint facing the appeal scheme. The North London Business Park appeal was identified as conflicting with the development plan.

9.26 All of the appeal schemes resulted in taller development close to lower rise townscape, although in the case of the Citroen site in Brentford, there was already some precedent for taller buildings in the area.

9.27 At paragraph 6.13 to 6.15 of his evidence Mr. Pullan references the North London Business Park decision, quoting the Secretary of State who said:

“23. In considering the impact of the proposal outside the immediate surroundings the Secretary of State agrees with the Inspector at IR68 that, while the taller buildings would be visible from locations in the surrounding area, they would primarily be part of the background cityscape, a characteristic of London even in the suburbs.”

9.28 Despite the issues that weighed against the appeal schemes, in each case the appeal was allowed with substantial weight being applied to the delivery of housing and affordable housing.

9.29 In relation to the appeal proposals, we have identified above that the scheme does not result in significant impacts that weigh against the proposals. No harm has been identified to heritage assets and both the GLA and Council planning officers considered the scheme to be acceptable in townscape terms. No conflict was identified with the development plan.

9.30 Furthermore, the scheme would deliver a significant quantum of housing and affordable housing to a Council that does not have a five year land supply and has a very poor track record of affordable housing delivery. Furthermore, the appeal proposals constitute sustainable development as defined in Section 2 of the NPPF and discussed in section 8 above. Consistent with the appeal decisions noted

above, the housing delivery from this scheme should be given very substantial weight in the planning balance. The Council have stated at paragraph 8 of their position statement at **CD6.6** that the housing provision from this scheme should be given '*significant weight*'.

10. Conclusion

10.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

10.2 My evidence has considered the various issues that are relevant to the assessment of this appeal against the requirements of the development plan outside of the two draft reasons for refusal which are covered by Mr Savage and Mr Pullan.

10.3 In respect of the first reason for refusal, Mr Savage concludes:

“I have considered the reasons for refusal in turn, dealing firstly with the traffic reason and I concluded that the development is in accordance with policy and that the residual effects of the traffic are not severe. Indeed far from member’s concerns being warranted – my assessment has concluded that the original TA over-estimated impacts and that there was no proper highways reason for refusal.

In relation to car parking the provision on site is in accordance with policy as accepted by officers, and s106 funding is intended to be made available to enable LBM to implement a CPZ. London Plan and LBM policy supports the implementation of CPZ where required and the Intention to Publish London Plan states that An absence of local on-street parking controls should not be a barrier to new development, and boroughs should look to implement these controls wherever necessary to allow existing residents to maintain safe and efficient use of their streets.

In my judgement the proposed development accords with national, regional and local policy, the net change in traffic is negligible, the travel demand can be accommodated on the transport network and there are no transport reasons why this development should not be approved. I consider the first (putative) reason for refusal to be unfounded therefore.”

10.4 In respect of the second reason for refusal, Mr Pullan concludes:

“The imperative for seeking to secure ‘high quality’ design or ‘design excellence’ is set by the NPPF at Section 12, the National Design Guide and in the context of this appeal, underlined by Merton Local Plan Policy CS14. In my opinion, the appeal scheme is a well-designed and contextual proposal. In my

view draft rfr 2 is not justified. The appeal scheme is of a high standard of urban design and the requirements and guidance on good design have been met. It is demonstrable that the design has been carefully considered with reference to architectural forms and details found within the local context to ensure that this will result in a high quality scheme which will enhance the character and appearance of this area.”

- 10.5 I have identified that the current London Plan and Council’s housing targets set out in their respective policies are out of date and do not come anywhere close to meeting the OAN for either London as a whole or the LB Merton. The replacement housing targets that are set out in the DLP also do not meet London’s OAN and the Secretary of State has directed an immediate review.
- 10.6 As stated in section 6 above, weight should be afforded to the housing targets set out in the DLP given the stage that it has reached. Officers at the GLA have confirmed that they should be given ‘significant material weight’.
- 10.7 I believe it is common ground with the Council that it does not have a five year land supply and therefore paragraph 11d of the NPPF is engaged. However, the Council may have changed their position at a late stage, prior to submission of evidence. It may be necessary to provide further clarification on this point within a rebuttal proof, or a supplementary statement of common ground.
- 10.8 There is dispute between the Council and the Appellant about their housing targets and therefore the percentage of housing supply it is able to demonstrate. In my view, the Council can show 79% of its five year land supply (3.9 years) based upon the targets within the DLP, which the Secretary of State has confirmed should be the baseline and will not come close to meeting OAN.
- 10.9 The 456 homes proposed by the development will make a significant contribution towards Merton’s housing need and should be given very substantial weight in the planning balance, consistent with the appeal decisions identified in section 9 above.
- 10.10 The 143 affordable homes will also make a substantial contribution to the substantial need within the borough. It will deliver more affordable housing from one scheme than the Council has managed from all schemes, on average, over the last eight years. The affordable housing should also be given substantial weight in the planning balance.

- 10.11 I have considered the various other planning matters arising from the development. I have identified that the scheme will deliver a very high standard of accommodation that complies with all of the relevant policies and standards, and should therefore also be given moderate weight.
- 10.12 I have identified that no material harm will be caused to existing neighbouring properties in respect of daylight, sunlight and overshadowing, overlooking and loss of outlook, which meet or exceed the development plan standards. In my experience, it is rare that a scheme in an urban London context has such limited material impact on existing neighbouring properties.
- 10.13 I have identified that the architecture, including detailed design and materials is of a very high standard, which the GLA Stage 1 report identifies as being of exemplary design. This should also be given substantial weight in the planning balance.
- 10.14 The appeal scheme has been future proofed to set the standard and allow the delivery of a wider masterplan.
- 10.15 The Economic Benefits Statement attached at **Appendix 12** identifies the socio-economic benefits arising from the development in respect of construction and long term jobs, local spend, new homes bonus, Council tax, s106 and CIL contributions. This should be given moderate weight in the planning balance.
- 10.16 It is common ground that the Council do not have a five year land supply and therefore paragraph 11d of the NPPF is engaged. It is my opinion that the Council has, at best, a 79% (3.9 years) land supply.
- 10.17 Taking this into account along with the judgements identified in paragraphs 6.80 of chapter 6 above and the appeal decisions in chapter 9, I find that, taken together, very substantial weight ought to be given to the provision of housing and affordable housing, given the identified need in Merton and London.
- 10.18 Notwithstanding the fact that paragraph 11d of the NPPF is engaged for reasons previously explained, permission should also be granted on the basis that it accords with paragraph 11c of the NPPF for the reasons set out in chapter 7 above.
- 10.19 I have not identified any aspects of the scheme that cause material harm. I have not identified any harm that would justify a refusal of planning permission in this instance.

10.20 I have assessed the scheme against relevant development plan policy. S38(6) requires an overall judgment regarding whether the proposal is in accordance with the development plan. This case is unusual in that there is, in my judgment, no conflict with development plan policy. It is therefore my unequivocal position that this scheme is in accordance with the development plan. Further, there are substantial planning benefits arising from the scheme that weigh in favour of the proposals. It follows that the appeal proposal should be approved without delay.

10.21 On this basis, I find that the proposals constitute sustainable development consistent with the Development Plan policies and the NPPF as a whole and that the planning balance weighs heavily in favour of the proposals. Accordingly, I consider planning permission should be granted.

11. Declaration

11.1 I declare that the evidence set out in this proof for the appeal is true and follows accepted good practice. The opinions expressed are my own and are formed from professional judgements based on my experience.