

**B&Q BROADWAY RETAIL PARK, CRICKLEWOOD LANE,
LONDON NW2 IE3**

**OPENING STATEMENT
on behalf of the
LOCAL PLANNING AUTHORITY**

1. INTRODUCTION

- 1.1. This is an unusual inquiry. The Application has been called in by the Secretary of State for his own determination. The Minister's policy is to exercise this power sparingly. In his letter of 30th August 2022, which stands as his statement under Rule 6(12) of the Town and Country Planning (Inquiries Procedure) (Procedure) Rules 2000, he has stated that the matters about which he particularly wishes to be informed are:

“The design, scale and massing of the proposal, together with such other matters as the Inspector considers relevant.”

The Inspector has formulated one of the main considerations for the Inquiry as:

“The effect of the proposed development on the historic environment and the character and appearance of the area.”

He has also noted that other parties have raised concerns about transport and that, as always, it is necessary to consider the planning balance.

- 1.2. The Inspector’s formulation of the first main issue reflects, not only the Secretary of State’s statutory statement, but also the putative Reason for Refusal (“RfR”) given by the London Borough of Barnet (“LBB”) as Local Planning Authority (“LPA”), when reconsidering the Application on 8th November 2022 in the light of the Secretary of State’s call-in decision. Despite the 2021 resolution to grant, LBB resolved in November 2022 to oppose the Application for the following reason:

“The proposed development and the parameters sought, by virtue of the excessive height, scale and massing would result in a discordant and visually obtrusive form of development that would demonstrably fail to respect the local context and its established pattern of development, to the detriment of the character and appearance of the area and the setting of the adjacent Railway Terraces Conservation Area. The proposal would therefore not create a high-quality development, not constitute a sustainable form of development and would be contrary to the provisions of the NPPF, Policies D3, D4, D9 and HC1 of the London Plan 2021 and Policies CS5, DM01, DM05 and DM06 of the Barnet Local Plan Core Strategy and Development Management Policies 2012.”

- 1.3. LBB’s witnesses explain in their proofs of evidence the concerns which have prompted the decision to oppose the scheme at this Inquiry. Cllr Young recognises that the proposals would bring benefits but he, like the Council’s Planning Committee, considers that these would be outweighed by what he describes as *“the major harmful impacts of the scheme on the surrounding context and heritage assets”*.

2. THE DEVELOPMENT PLAN AND OTHER MATERIAL CONSIDERATIONS

- 2.1. The development plan is comprised of strategic and local components. The Site lies within an Opportunity Area and a Growth Area where major development is promoted. There is no dispute about the principle of development. But redevelopment of the Site must, according to the London Plan, be “*good growth*”, which respects its context and the heritage assets which will be influenced by it.
- 2.2. In particular, whilst Tall Buildings (“TBs”), as a matter of principle, may be acceptable as part of a scheme of redevelopment, they must be appropriate. Therefore there must be a site and scheme-specific assessment by the decision maker (now the Secretary of State advised by the Inspector) of any particular TBs proposed, paying particular attention to the effect of such a design solution upon the surrounding context.
- 2.3. Other important material considerations are the statutory and policy tests and processes relating to designated heritage assets. S.66 Planning (Listed Buildings and Conservation Areas) Act 1990 is engaged in relation to the setting of the Crown public house on Cricklewood Broadway. Moreover, although the Site does not lie within a designated area, the Railway Terraces Conservation Area (“CA”) is close by and its setting would be affected. LBB’s position is – and always has been – that the impacts of the development would cause harm to the setting of this CA and the Crown public house. National policy presumes against harm being caused to designated heritage assets (“DHA”). NPPF says that such assets are “*an irreplaceable resource*”.

Consequently, “*great weight*” should be given to such an asset’s conservation, irrespective of the level of harm, when considering the impact of a proposed development on the significance of a DHA. Any harm to its significance “*should require clear and convincing justification*”. Where a proposal would, as here, lead to less than substantial harm to the significance of a DHA, the harm should be weighed against public benefits.¹

2.4. The heritage balance is a very important consideration in this case. Because of the Application’s outline nature (save for access), it will be important to remember that all the visual material is illustrative. Careful judgment will therefore be required to allow for the fact that the development might, in real life, turn out differently, quite apart from the usual, proper caution to be applied when making use of visualisations.

2.5. The Government has put beauty at the heart of the current version of the Framework and its National Design Guide. The NPPF notes the importance of local communities, their aspirations and the “*understanding and evaluation of each area’s defining characteristics*”.² Policy on density includes a requirement for optimisation to be “*tested robustly at examination*”.³ Plan policies and decisions should, amongst other things, be “*sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)*”⁴ (Emphasis added).

¹ NPPF [189], [199], [200], [202].

² NPPF [127].

³ NPPF [125]

⁴ NPPF [130]

- 2.6. LBB’s witnesses described the clash of height, scale and massing between the proposal and the receiving environment, which means that the form of innovation proposed in this Application is anything but “*appropriate*”. No amount of attention to materiality via a Design Code can address the mismatch between the humble, domestic scale of the Railway Terraces and their proposed multi-storey neighbours. That relationship is best considered on the site visit and the Council is very grateful that such a visit will take place early in the inquiry. Other particularly significant relationships occur along Cricklewood Lane and in the Groves to the south, as well as the setting of the listed Crown pub. As the National Design Guide recognises, a “*place*” is a complex and multi-faceted thing and qualities of delight and beauty may be experienced in many different ways; no visualisation, however good, can fully do justice to the entity of a “*place*” in which a proposal is to be set.
- 2.7. An important material consideration is the emerging Barnet Local Plan, which addresses the specifics of the Application Site for the first time, as distinct from the identification of the wider area or other parts of it in earlier plans. The submitted version of the document is currently undergoing Examination in Public (“EiP”). The Applicants and LBB agree that “*significant weight*” must be given to the draft Plan.⁵ The final form of the Plan, however, is not fixed. Specifically, the Site allocation for 1007 units of residential accommodation was the subject of objection by third parties and the EiP inspector asked the Council to reflect more broadly on the application of the ‘central’ setting in its density matrix for several allocations, including the

⁵ Planning SOCG [5.16]

Application Site. LBB has reviewed its stance as a result and proposes to reduce the proposed site capacity by almost 50%. In essence, this is because the Council recognises that it had misjudged one of the indicators used for capacity analysis – the characterisation of setting. For reasons set out in its Note on Site Allocations,⁶ it considers that the site should be classified as ‘urban’ rather than ‘central’ and that proximity to the CA should also be taken into account, with the consequence that the indicative capacity in Annex 1 to the Plan should be reduced to 583. Clearly, the Application is fundamentally inconsistent with this proposed Main Modification to the EBLP.

- 2.8. This revised emerging Local Plan proposal is context-led and highly relevant to the call-in matters of design, scale and massing, as well as the important related issue of heritage impacts. For this reason, the proposed Main Modifications to the Site’s allocation are significant material considerations which must be taken into account in judging the appropriateness of granting planning permission. It will be LBB’s submission that the emerging development plan’s direction of travel is now very different and that the flaws of this Application demonstrate why the modified approach is the right one. The call-in, on grounds intimately bound up with the issues prompting the Proposed Main Modifications, provides the opportunity for the necessary rethinking in the context of development management, to accompany the reflection required by the Local Plan inspector.

⁶ Appx 1 to Cllr Young’s Supplemental Proof of Evidence.

3. CONDITIONS AND S.106 AGREEMENT

- 3.1. LBB has, in accordance with the Inspector's requests and standard practice, collaborated with the Applicants on a Without Prejudice basis. The CIL statement and the s.106 agreement have yet to be formally agreed, but the intention is that a final engrossment will be submitted by the end of the Inquiry once the outstanding matters have been dealt with.

MORAG ELLIS KC