MONTREAUX CRICKLEWOOD LTD

CALLED-IN PLANNING APPLICATION FOR THE REDEVELOPMENT OF THE B&Q SITE, BROADWAY RETAIL PARK, CRICKLEWOOD LANE, NW2 1 ES

PUBLIC INQUIRY – 14 TO 24 FEBRUARY 2023.

THE CASE IN CLOSING FOR THE APPLICANT

Section 1– Introduction

1. The case presented against this proposal is one of isolationism, one of exceptionalism. It expects, indeed requires, that this site can and should stand apart from the aspirations and requirements of decades' worth of planning policy. It assumes that this site can and should turn its back on the housing crisis faced locally, regionally and nationally. It views this site as the whole picture, not part of a much bigger one. It flies in the face of 12 planning judgments that this site is required and should contribute in a very significant and material way to the provision of new housing, regeneration and intensification.

2. But no site is an island, however much some might want this site to be.

3. In the real world, this site, and the Applicant's outstanding proposals for it, matter – really matter – for four fundamental reasons:

   3.1 Reason 1. There is a desperate need for housing, not just in Barnet, but across London and indeed the country as a whole. It amounts to a real and pressing crisis:

      3.1.1 Nationally, 300,000 houses need to be delivered annually and yet only 204,530 were delivered last year.[1] That is a shortfall of over 85,000 units.

      3.1.2 Regionally, the London SHMA (2017) identified a need for 66,000 homes to be delivered annually, compared to a London Plan (2021) provision of 52,287 [Rhodes PoE, Appendix 2, §§1.1-12]. That is a shortfall of nearly 15,000 units pa.

      3.1.3 Locally, the Barnet SHMA (2018) identifies a housing requirement of 3,060 dwellings per annum. But the Government's standard methodology (2020) produces a target of 5,361, compared to a London Plan (2021) provision of 2,364 – which leaves a shortfall of around 3,000 units per year [Rhodes PoE, §8.6].

[1] ONS figures – 8 November 2022.

3.1.4 Barnet's historic delivery has been particularly poor, averaging 1,749 homes between 2009/10 and 2020/21 [Rhodes PoE, §8.20].

3.1.5 Perhaps unsurprisingly, the LPA now accepts that it is unable to meet the Government's minimum requirement to demonstrate a 5YHLS [ID.06, §2.1]. As Mr Rhodes explained, this means that the LPA is unable to meet a target (2,364) which itself falls well short of actual housing need.

3.1.6 The urgent and unmet need is not only for market homes, but also – especially – for affordable homes.

3.1.7 In Barnet, on average, only 210 affordable homes are completed each year, compared to an emerging plan requirement of 760 [Rhodes PoE, Appendix 2, §2.2], which itself fundamentally understates the extent of genuine need.

3.1.8 In the most recent year, only 142 affordable homes were delivered, which amounts to a shortfall of 564 units in one year. This means that only 20% of what was required was delivered and the cumulative shortfall continues to grow [Rhodes PoE, Appendix 2, §2.2, table 1].

3.1.9 On every criterion, however examined, the delivery of housing is lamentable.

3.1.10 These failures have serious and profound consequences.

3.1.11 The cases presented against the proposal give the impression that we have the luxury of waiting, debating, talking about these issues. We do not. This is not some academic debate but affects real people – residents of this borough - who are in desperate need for new housing, better housing, more affordable housing now – not in the future but now.

3.1.12 Barnet is now the 13th least affordable local authority in England and Wales [Rhodes PoE, Appendix 2, §5.2]. That is remarkable – there are now only 12 places less affordable to live in this country.

3.1.13 There are 2,014 households in Barnet currently living in temporary accommodation [Rhodes PoE, Appendix 2, §6.1] and 3000 households on the housing list of this authority. That is households, not individuals. Therefore thousands are in temporary accommodation waiting for their housing needs to be met properly so they can have the security of a home which most of us take for granted. Security and permanence are critical to wellbeing and a sense of happiness.

3.1.14 In the face of this crisis, the fundamental question is not if but where new housing should be located. This question must be answered immediately and with the delivery of new housing. There is no other response.

3.2 Reason 2. There is a critical need to make best use of sites like this:

3.2.1 There is a limited supply of land on which housing needs can be met. And, of the land which is available, not all sites are created equal – physically, spatially, or in policy. The experience of the London Plan (where the housing requirement was downgraded due to the lack of capacity) shows how important it is that we make best use of our best sites.

3.2.2 The application site is agreed by all parties to be under-utilised brownfield land, currently occupied by a retail warehouse and large surface car park. It is in a highly sustainable location, near a town centre and next to a rail station, with a PTAL rating of 5 (for a majority of the site). It lies within a borough which has a shortage of housing, and of land for housing, and which has 28% of its area designated as Green Belt [CDF.01, §2.3.2]. It is of some scale – 2.7 hectares. It offers real potential and opportunity as has been identified for many years as a site suitable for housing and growth.

3.2.3 Focusing large-scale development on sustainably-located, under-utilised brownfield sites like this one is the clear policy not only of the LPA and the GLA, but also Central Government. Doing so reduces development pressure on green open space and helps to protect the Green Belt – another clear policy of Government and one of the key strands of the Core Strategy.

3.2.4 Through the recent (December 2022) consultation on revisions to the NPPF, the Secretary of State provided an important reminder that, whilst the Government remains committed to the delivery of 300,000 new homes per year, there is a national interest in ensuring that urban areas play their full part in meeting local, regional and national housing needs and that opportunities such as this must be taken. This responsibility should not be "exported" from London to the non-urban areas which lie beyond.

3.2.5 For the Secretary of State's strategy, this is a seminal case.

3.2.6 Indeed a failure to grant permission would be a fundamental even critical blow to the long accepted proposition that brownfield land in highly sustainable locations should be at the forefront of meeting housing needs. Given the planning policy credentials of this site, a refusal of permission risks bringing the planning system into disrepute.

3.2.7 If homes cannot be brought forward on underutilised brownfield sites next to stations in London, on sites identified for growth, the aspiration for "Brownfield First" would be dead in the water. And, on the other side of the coin, the aspiration to protect the Green Belt would be under serious, if not existential, threat.

3.2.8 The LPA accepts that the site provides an "exceptional opportunity for high-density housing delivery in a location identified as appropriate for tall buildings" [CDI.05, §2.13].

3.2.9 Rightly so. As Mr Everitt said in his presentation, it is "rare" to come across a site "with so many positive attributes", which is "so suitable for development of this kind." In similar terms, Mr Rhodes commented on the site's "extraordinary credentials" – its "rare combination of characteristics" which make it so suitable for accommodating regeneration and growth.

3.3 Reason 3. There is an identified need for regeneration in this area.

3.3.1 Brent Cross/Cricklewood was first designated as an Opportunity Area in 2004 and as a Regeneration Area in 2005. As Mr Rhodes explained, the policy framework has "deliberately embrace[d]" the regeneration of Cricklewood for close to two decades.

3.3.2 In the Regeneration Area Development Framework SPG (2005), the LPA recognised that the area was "suffering from more problems of deprivation than average across England", with "certain local residential areas contain[ing] a proportion of residents trapped in a poverty cycle of low skills and educational attainment, poor health, a high incidence of single person housing and limited prospects" [CDF.06, p. 14]. New homes, new employment opportunities, and new public realm were all required [CDF.06, pp. 15, 17 and 26].

3.3.3 Today, the Brent Cross/Cricklewood Opportunity Area is recognised as having significant growth and regeneration potential. The London Plan (2021) expects it to deliver 9,500 new homes and 26,000 new jobs by 2041 [CDE.02, table 2.1]. Mr Rhodes explained that "making the most of Opportunity Areas" like this one is "absolutely essential" if the London Plan is to meet its requirements. He explained how, through the Opportunity Areas, the Plan has taken a "design-led approach to identifying areas for change" – a design-led approach which "starts at the macro-level" [see CDE.02, p. 104].

3.3.4 At the local level, and as a result of that careful approach to the selection of areas best suited to growth, the Barnet Core Strategy (2012) identifies the Brent Cross – Cricklewood Regeneration Area as "a major focus for the creation of new jobs and homes, building upon the area's strategic location and its key rail facilities" (policy CS2) [CDF.03, p. 48].

3.3.5 The emerging Local Plan (2021) retains this commitment to regeneration. It identifies Brent Cross/Cricklewood as the "largest and most significant area of regeneration" in the Borough [CDF.01, §4.9.1]. It singles out Cricklewood as its own Growth Area, recognising the "opportunity for regeneration and intensification" that it provides (policy GSS04) [CDF.01, p. 56]. Indeed for the

first time this specific area has been given a degree of autonomy and is expected to provide 1,400 homes. The Growth Area is small and specific – it is predominantly this site.

3.3.6 The application site falls within each of these designated areas – the Opportunity Area, the Regeneration Area, and the Growth Area.

3.3.7 As Mr Rhodes recognised, there is here a clear and longstanding "agenda for change".

3.3.8 LPA's putative RfR and evidence at this inquiry appear unaware of this carefully derived policy framework.

4. Reason 4 – There is no planning evidence or design evidence called by the LPA

4.1 The LPA officers clearly felt that planning permission should be granted, twice.

4.2 That was a judgment reached across 14 months – September 2021-November 2022, after an extensive period of pre-application and post application design development and engagement.

4.3 The members felt just one factor justified refusal – namely the scale, massing and height of the proposal.

4.4 However, any objection needs to be backed up by analysis and evidence.

4.5 We are going to take up the invitation offered yesterday and comment on the complete void that exists at the heart of the LPA's case.

4.6 The vast majority of policies relied on by the LPA in their arguments against the proposal at this inquiry relate to townscape and design, but the LPA have no professional evidence, no assessment, no analysis whatsoever on these issues before this inquiry. Cllr Young's evidence assumes the case will be made by Mr Evans but it isn't. Mr Evan's evidence cuts and pastes some policies and background to the Conservation Area but contains no critique or assessment of the scheme's design.

4.7 Prior to the Case Management Conference, the LPA told the Applicant it would call townscape evidence by an external consultant. It remarkably has not without explanation. One can speculate but maybe Mr Hughes felt the case was not capable of being supported.

4.8 The only evidence called is heritage evidence and the Chair of the Strategic Planning Committee.

4.9 Therefore the Inspector and the Secretary of State have no planning evidence which deals with the Section 38(6) balance, the NPPF 202 balance or the NPPF 11 balance. The documented assessment of these issues by the LPA's planning officers, their Urban Design Officer and by the officers of the GLA all support the development.

5. The LPA has failed to engage with the realities of any of this surrounding context or previous approach:

5.1 Let's not forget that on 21 September 2021 the LPA's strategic planning committee resolved to approve the Application [CDD.02].

5.2 And that was not the only occasion on which a planning judgment has been made that major residential development should take place on this site. Far from it. At least 12 such judgments have been made over the last 20 years, in:

5.2.1 The Regeneration Area SPG in December 2005 [CDF.06].
5.2.2 The Saved Barnet UDP in May 2006 [CDF.02].
5.2.3 The Barnet Core Strategy in September 2012 [CDF.03].
5.2.4 The GLA Stage 1 letter in November 2020 [CDB.01].
5.2.5 The London Plan in March 2021 [CDE.02].
5.2.6 The officer's report to the LPA's strategic planning committee in September 2021 [CDD.01].
5.2.7 The resolution of the LPA's strategic planning committee in September 2021 [CDD.02].
5.2.8 The emerging Local Plan submitted to the Secretary of State in June 2021 [CDF.01].
5.2.9 The GLA Stage 2 letter in March 2022 [CDB.02].
5.2.10 The LPA's proposed Main Modifications to the emerging Local Plan in June 2022 [CDF.01].
5.2.11 The GLA's position statement in October 2022 [CDC.04].
5.2.12 The officer's report to the LPA's strategic planning committee in November 2022 [CDD.03].

5.3 It was only after the Secretary of State called-in the Application that the LPA decided to depart from those 12 planning judgments, and – for the first time – to oppose the Application in November 2022.

5.4 The decision is one which, in the politest terms, is inexplicable in the absence of any change to the application, national policy, any change to the development plan, and any change to any material consideration relevant to this decision.

5.5 Frankly, the only change which occurred was a political change to the LPA and in the composition of its planning committee. It is no more sophisticated or complex than that as stated in opening.

5.6 Therefore the nub of the LPA's case is that the political machinations of November 2022 should trump 17 years of planning judgments encapsulated on 12 different occasions and now conformed in established planning policy.

Section 2– The proposal overwhelmingly complies with the development plan

6. Section 38(6) of the PCPA requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. This does not mean that an application must comply with each part of each policy. It means that planning permission should be granted if the application complies with the plan when read as a whole.

7. In this case, the conclusion reached by the LPA's officers in September 2021 [CDD.01, §15.6] and November 2022 [CDD.03, §3.1] was that the Application would comply with the development plan.

8. The LPA now advances a different position. It does so without any professional planning officer, or professional consultant, giving evidence in support of the members' view. That's despite, as Cllr Young told us, remarkably there being over 100 planning officers at its disposal.

9. For the purposes of the section 38(6) assessment, the parties agree that there are 103 development plan policies which are relevant: 64 in the London Plan, 14 in the Barnet Core Strategy, 14 in the Barnet Development Management Policies, and 11 in the Barnet Unitary Development Plan (saved policies) [CDI.03A §§5.3, 5.5, 5.7 and 5.11].

10. And yet, in cross-examination, Cllr Young accepted that his evidence focused only on those 8 policies mentioned in the LPA's putative RfR. In his proof of evidence, Cllr Young did not consider the other 95 policies agreed to be relevant in any way. They are completely ignored.

11. The attempt in re-examination to dress it up as focussing on the matters on which the Secretary of State wished to be informed of was risible. Section 38(6) is not diluted or affected in any way by the letter of the 30 August 2022 and the LPA have never suggested it should or could be. The CMC made clear that compliance with the development plan was a key issue for the Inquiry to address.

12. The reality is that Cllr Young took an entirely one-eyed approach, advanced without any design evidence to support his case. He did not consider whether the proposal complies with the plan as a whole, as section 38(6) required him, and the Inspector, asked him to do.

13. This means that the LPA is inviting the Secretary of State to refuse the Application on the basis of planning evidence which does not even begin to comply with the fundamental statutory requirements.

14. The proposal does not, in any event, breach the 8 policies to which Cllr Young refers, and are referenced in the reason of refusal:

14.1 It complies with Policy D3 of the London Plan, as it makes best use of this under-utilised, sustainably-located brownfield site. The proposal takes, as Cllr Young accepted, a design-led approach.

14.2 It complies with Policy D4 in delivering good design as the LPA's urban design officer concluded and the GLA concluded that the issues relating to urban design and inclusive design had been complied with.

14.3 It complies with Policy CS5 of the Barnet Core Strategy, which, Cllr Young accepted, identifies the application site (as part of the Brent Cross – Cricklewood Regeneration Area) as a location which can be appropriate for tall buildings.

14.4 It complies with Policy DM05 of the Barnet Development Policies, which, Cllr Young accepted, takes as its starting point that tall buildings can be acceptable on sites identified as strategic locations in the Core Strategy (of which the application site is one).

14.5 It proposes tall buildings in a location identified as suitable for them, within the meaning of Policy D9 of the London Plan.

14.6 It offers high quality design in outline now; and secures high quality design in the future at reserved matters stage through the design code, design review and a further stage of assessment by the professional officers of the LPA, and their elected members. It responds to and enhances the local townscape and causes no harm to surrounding heritage assets. It is wholly in accordance with Policies D3, D4, D9 and HC1 of the London Plan, Policy CS5 of the Barnet Core Strategy, and Policies DM01, DM05 and DM06 of Barnet's Development Management Policies.

14.7 Frankly the allegations in the LPA putative RfR are simply not correct on the evidence.

15. The compelling evidence of Mr Rhodes is that the Application accords with the development plan, for the purposes of section 38(6) of the PCPA.

<u>Section 3– The proposal complies with the NPPF</u>

16. The NPPF is the primary material consideration for the determination of this application.

17. It provides <u>strong support</u> for the proposal:

17.1 The proposal responds to Central Government's strategic objective – now at para 60 of the NPPF – to significantly boost the supply of homes and provide affordable housing at para 61 of the NPPF.

17.2 The proposal would deliver up to 1,049 new homes on a site which wholly accords with the Government's spatial priorities:

17.2.1 The application site is brownfield land, located within the largest city in the country. Para 120(c) of the NPPF states that substantial weight should be given to the value of using brownfield land within settlements for housing.

17.2.2 The application site is currently under-utilised, occupied by an out-of-centre retail warehouse and surface car park. Para 120(d) of the NPPF states that the use of under-utilised land (including, expressly, car parks) for housing should be promoted and supported.

17.2.3 Para 123 of the NPPF states that the use of retail land for homes in areas of high housing demand should be supported, where (as here) the vitality and viability of town centres will not be undermined.

17.2.4 The application site is in a highly sustainable location, adjacent to a rail station, a majority benefiting from what Mr Fitter described as "a high PTAL 5" rating (where 6 is the highest rating). Para 105 of the NPPF states that significant development should be focused on locations such as this, which limit the need to travel and offer a genuine choice of transport modes.

17.2.5 As Mr Rhodes observes: "Part 11 of the Framework (Making effective use of land) could have been written with this site in mind" [Rhodes PoE, §1.61].

17.3 The proposal does not only offer much-needed new housing. It also includes 1,200m² of enhanced commercial and community floorspace. It will promote economic growth and prosperity, a benefit to which para 81 of the NPPF attaches significant weight.

17.4 The NPPF, rightly, places emphasis on good design.

17.4.1 Para 126 of the NPPF identifies effective engagement with local planning authorities and communities as one aspect of good design. In this case, there was extensive engagement with the LPA and with the local community. The scheme was revised in response to suggestions made and concerns expressed. Para 132 states that proposals which have progressed in this way "should be looked on more favourably".

17.4.2 Para 125 of the NPPF recognises that using land efficiently is another aspect of good design. Where, as in this case, there is a shortage of land for meeting housing need, para 125 states that it is particularly important to avoid building homes at low densities. The LPA accepts that the site provides an "exceptional opportunity for high-density housing" [CDI.05, §2.13]. The proposal optimises this opportunity, through its use of tall buildings.

17.4.3 In addition, by gathering the proposed floorspace into taller buildings, the architect has freed up approximately 50% of the site area to be used for high-quality open space and public realm, in an area deficient currently in both. As

part of the proposed landscaping, there will be a significant uplift in trees and urban greening. This design approach finds support in para 131 of the NPPF, which encourages the use of trees in new developments, and para 179(b), which promotes the achievement of biodiversity net gain.

17.4.4 The result of all this is a design which is genuinely outstanding. The proposal will not only transform the site, but will also contribute to the regeneration of the wider area. Para 134(b) of the NPPF requires that significant weight be given to design of this kind.

Section 4– The proposal complies with emerging policy

18. Another material consideration in the determination of this application is the emerging Local Plan.

19. Mr Rhodes explained how the emerging Local Plan strengthens the support for the proposal. Over time local policy has become "more and more focused on this location" as providing opportunity for regeneration and growth.

20. For the first time, the emerging plan singles out Cricklewood as a Growth Area in its own right, recognising the "opportunity for regeneration and intensification" that it provides (policy GSS04) [CDF.01, p. 56]. Within the Growth Area, the application site (site allocation no. 8) is identified by the LPA as the "principal site" for intensification [CDI.05, §2.11]. The site was given an "indicative residential capacity" of 1,007 units [CDF.01, p. 304].

21. The Plan recognises that "very tall" buildings (of 15 storeys or more) may be appropriate in Growth Areas, including this one (policy CDH04) [CDF.01, p. 129], and in the June 2022 Main Modifications it was recognised that "tall buildings may be appropriate" on this site in particular [CDF.01, p. 496, MM328]. As Mr Rhodes explained, "this isn't a grudging acceptance of tall buildings". The Plan states expressly that tall buildings "can make a positive contribution to Barnet and become a valued part of the identity of places such as… Cricklewood" [CDF.01, §6.18.2]. It "encourag[es] change, because it brings benefits."

22. The LPA has made much of the fact that, in a note submitted to the EiP inspector just before the start of this inquiry, on 7 February 2023, it suggested that site allocation no. 8 be modified so as to reduce its indicative residential capacity from 1,007 to 583 units [Young Supplemental PoE, Appendix 1].

23. Remarkably this point appears to be the strongest ground relied on to refuse this application although it only emerged on 7 February, 4 months after the putative reason of refusal:

23.1 But, as Mr Rhodes explained, this is something which can only be given "extremely limited weight":

23.1.1 The change has not been approved by the relevant committee of the LPA. It has not been published as a modification. It has not been consulted on, and the EiP inspectors have not yet expressed a view on it. It is still at a very early stage.

23.1.2 The implications of the proposed modification have not been worked through. Cllr Young accepted that it will mean that the anticipation in Policies GSS01 and GSS04 that 1,400 new homes will be delivered in the Cricklewood Growth Area (1,007 of them on the application site) will need to be revised. The LPA has not put forward a proposed modification to Policies GGS01 and GSS04 which would reflect this.

23.1.3 Additionally the total result of the changes are a reduction in the supply of housing by 920 units as was put to Cllr Young. And, as Mr Rhodes observed, losing nearly 1,000 units from planned supply would be concerning, particularly when the LPA accepts that it does not have a 5YHLS. It is not apparent that this fact has been made known to the Local Plan Inspectors, and there is no evidence before the inquiry which updates the LPA's housing supply status.

23.1.4 As Mr Rhodes observed, there is no reason to expect that the proposed modification will be adopted. In fact, there are positive reasons why it should not be. It is "fundamentally flawed".

23.1.5 The proposed modification is based on the application of a density matrix which is derived from the previous London Plan and which does not form part of the current London Plan and was never intended to be applied mechanistically. Its deletion from policy isn't by accident or mistake. The new London Plan concluded that the utility of the density matrix was limited and should be ditched. It is remarkable therefore that this LPA is seeking to rely on a part of the development plan which has been revoked and abandoned two years ago.

23.1.6 The density matrix is, as Cllr Young accepted, a "blunt instrument". So blunt that, solely by changing the classification from "central" to "urban", more than 400 units are wiped from this site's indicative capacity. That's without any design, townscape or viability appraisal being carried out, and without anything changing on the ground.

23.1.7 The LPA's application of this blunt instrument is inconsistent. It has maintained the central density for North Finchley, despite North Finchley like Cricklewood being a District Town Centre, and despite North Finchley unlike Cricklewood not being within an Opportunity Area or Growth Area or suitable for very tall buildings.

23.2 In any event, on the LPA's own case, the proposed modification does not take them as far as they need it to and want it to. Cllr Young accepted that the indicative capacity is no more than a "starting point" – not the finishing point, or a ceiling, or a maximum. He

accepted that a proposal may exceed the indicative capacity, but still be acceptable. In his words, in each case, "a judgment will need to be made."

23.3 Just reflect on the wording – indicative capacity is indicative – no more and no less. It therefore bears no real relevance to this inquiry, whether the indicative site capacity (outside of the 5YHLS) is 1,007 homes or less. This is not a parameter established by the development plan, but merely a starting point to do more, based on the polices of the development plan, which include the in principle acceptance that this site may be acceptable for buildings taller than 15 storeys.

23.4 In our case, successive judgments have been made – including by the LPA's own officers – that the Application scheme, of up to 1,049 units, is acceptable after close scrutiny and understanding of the scheme.

Section 5 – The planning balance is overwhelmingly in favour of the proposal

24. If the proposals comply with the development plan and no heritage harm is caused, planning consent should be granted, without delay.

25. If not, there is the need to carry out a planning balance in the context of section 38(6), NPPF 202 and NPPF 11.

26. The fundamental position of the Appellant is that the proposal does comply with an up to date development plan as set out in NPPF 11 [c] which requires approving proposals without delay.

27. Although the Applicant's case does not require you to find that any policies are out of date, the tilted balance is nevertheless in play. On the first day of the inquiry, the LPA accepted because the Appellant pressed them that it could not demonstrate a 5YHLS [ID.06, §2.1], just as it did in the North Finchley inquiry in December of last year [CDG.11, §1.1].

28. Given its issues with delivery, that concession was unsurprising. It was only surprising that it came so late. In cross-examination, Cllr Young said that he was aware that the LPA could not demonstrate a 5YHLA when he prepared his proof of evidence, but chose not to mention it which is really surprising when the weight to be given to housing delivery is so fundamental to this inquiry. It is even more remarkable when the LPA has given weight to the local plan review, yet, as we understand has not informed that review of its undersupply, and has not updated its evidence base to address this point, and the further reduction in homes proposed by the site allocations note.

29. Whatever the history, the LPA now accepts that the tilted balance at para 11(d) of the NPPF is engaged, "subject to the applicability of fn. 7" [ID.06, §2.1] if the development plan is out of date.

30. This means that planning permission must be granted, unless:

30.1 The application of policies in the NPPF which protect areas of assets of particular importance – including those policies which relate to the protection of designated heritage assets [footnote 7] – provide a clear reason for refusal [para 11(d)(i)]; or

30.2 Any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits [para. 11(d)(ii))].

31. The proposal passes each of those tests with ease.

The proposal has significant benefits

32. The proposal has many, very weighty benefits. They include:

32.1 The delivery of a significant quantum of new housing. The proposal will make a meaningful contribution towards the Borough's housing need and housing choice, and will do so on brownfield land. Mr Rhodes' evidence is that this benefit should be afforded significant weight, as para 120(c) of the NPPF requires. Mr Rhodes described it as "extraordinary" that Cllr Young would seek to limit the weight to be attached to this benefit, when "it is not an exaggeration to say that there is a housing crisis nationally, certainly in London, and especially in Barnet."

32.2 The provision of much-needed affordable homes. Barnet is one of the least affordable places to live in the country; in Cllr Young's words, the extent of unmet need for affordable housing is a "very important issue". The proposal offers 35% of homes as affordable – that's (indicatively) 382 homes for households in genuine housing need – more affordable homes than have been delivered in any single year in this borough in the last five years. Mr Rhodes gives this benefit substantial weight. Again, he considered Cllr Young's attempt to limit the weight to be attached to this benefit as "remarkable".

32.3 The provision of flexible commercial and community floorspace (up to 1,200m^2) will support economic growth and productivity. The Applicant and the LPA agree that this benefit should be afforded significant weight [CDI.03A, §8.4].

32.4 A net reduction in vehicle movements and associated carbon, arising from the substantial reduction of car parking on the site (470 to 105 spaces). Mr Rhodes gives this benefit significant weight.

32.5 The outstanding design of the scheme, which responds to and will enhance the townscape character of the area, and which is the product of extensive consultation and community engagement. Mr Rhodes attaches significant weight to these benefits, in accordance with paras 134(a) and (b) of the NPPF.

32.6 By gathering the proposed floorspace up into taller buildings, the architect has managed to release approximately 50% of the site to be used as open space and public realm. This will add substantially to the amenity of the area, and promote a significant biodiversity

net gain. Cllr Young suggested that reduced weight should be given to this benefit, as the proposal does not deliver the quantum of open space (3.15 ha) that would be required by Policy DM15, which is the policy which sets standards for designated areas of Public Open Space. Mr Rhodes explained why that approach is fundamentally misguided: no one could sensibly suggest that the application site should give over to meet the LPA's open space deficiency – that it should be designated as a public park and compulsorily purchased by the LPA for this purpose. What the proposal does do is offer exemplar public realm and open space in an area which sorely needs it, a public benefit to which Mr Rhodes attaches <u>significant weight</u>.

33. Cumulatively, the LPA accepts that the benefits of the proposal are <u>significant</u> [CDI.03A, §9.2].

34. That is a fair and right judgment.

35. Additionally Cllr Young accepted that they are all public benefits within the meaning of para 202 of the NPPF.

36. We are not going to spend time on the specific weightings in Cllr Young's proof because it is of little merit:

    36.1 It flies in the face of the professional weightings of two planning officers reports.
    36.2 It conflates impacts and benefits in reducing the weight which is an impermissible approach.
    36.3 It makes some really poor points about why weight should be reduced.

<u>The proposal will not give rise to any harm</u>

37. Against those many, very weighty benefits, the LPA and R6 Party identify only three potential harms.

38. The first is the harm said to arise from the scheme's design.

    38.1 At the outset, is important to emphasise what this allegation is <u>not</u>.

        38.1.1 In cross-examination, Cllr Young accepted that a design-led approach has been taken. His criticism is only of the <u>outcome</u> which this design-led approach has produced.

        38.1.2 In cross-examination, Cllr Young also confirmed that he has <u>only</u> "three issues of concern", which are the proposal's height, scale and massing.

        38.1.3 <u>Most</u> elements of the scheme's design are simply not in dispute.

    38.2 Over the course of the inquiry, six specific points were raised in relation to the scheme's design. None of them withstand scrutiny.

38.2.1 Point 1: Engagement. In the design and heritage roundtable session, Mr Evans claimed that the Applicant failed to engage in "in depth conversations" with the LPA at the pre-application stage, that it failed to properly consider "the community and their views", and that his own "response to the scheme [in the pre-app meetings] was one of shock".

38.2.1.1 Those statements are inconsistent with Cllr Young's acceptance that the proposal is the product of a design-led approach.

38.2.1.2 They also bear no relation to the well-documented process by which the Application came to be.

38.2.1.3 A full chronology was appended to the Applicant's opening statement [ID.03], but the key points in the evolution of the scheme are these.

38.2.1.4 The Applicant engaged extensively with the LPA both before and after the Application was submitted, seeking the LPA's views and incorporating them into the scheme's design:

38.2.1.4.1 Five meetings were held with the LPA's officers over the course of 2019.

38.2.1.4.2 These were not one-way presentations, but collaborative workshops.

38.2.1.4.3 The LPA was actively engaged. Its officers expressed their preference between height and massing strategies, and shared their aspiration for the creation of a new green space adjacent to Kara Way playground.

38.2.1.4.4 The Applicant took the LPA's suggestions forward and incorporated them. The design process was, as Mr Everitt described in his presentation, "iterative".

38.2.1.4.5 Mr Evans accepted that the LPA did not communicate to the Applicant that they were "shocked" by or otherwise not supportive of the proposal. Mr Evans' objection was an entirely silent one.

38.2.1.4.6 The consistent message communicated to the Applicant by the LPA was positive – from the first pre-application workshop in May 2019 through to the committee meeting in November 2022.

38.2.1.4.7 It is, in any event, difficult to see how any of the LPA's officers could be "shocked" by the proposal, given that it responded to the LPA's own adopted and emerging plan. The LPA has planned for the residential-led regeneration of this site for nearly two decades. The proposal did not appear from nowhere, taking an unsuspecting LPA by surprise.

38.2.1.5 The Applicant also undertook extensive consultation with the local community, as is agreed in the Design and Heritage SoCG [CDI.05, §2.2]:

38.2.1.5.1 A two-day public consultation event was held in February 2020, advertised by flyers delivered to over 5,000 local residents, community groups and businesses.

38.2.1.5.2 Ten further meetings were held with a variety of stakeholder and community groups, including the R6 Party, in 2019-2020.

38.2.1.5.3 Overall, the feedback from the community was constructive. The community benefits of the scheme were welcomed, including the provision of new public open space. But concern was expressed in relation to the height of the buildings, which at that time extended up to 25 storeys [CDA.15, §1.36].

38.2.1.5.4 The Applicant listened. It reflected on and responded to the community's feedback. It revised the scheme, reducing the tallest element from 25 to 18 storeys.

38.2.1.5.5 It is the revised scheme which is before this inquiry – a proposal which is the product of genuine and effective engagement with the local community.

38.2.2 Point 2: Design Review. Cllr Young criticised the proposal on the basis that it "was not subject to a Design Review Panel" [Young PoE, §8.21].

38.2.2.1 But as Cllr Young acknowledged in the design and heritage roundtable session, the LPA does not have a Design Review Panel which makes this criticism ridiculous frankly. Additionally the LPA never said one should be undertaken by such a panel in 3 years of consideration of the proposal.

38.2.2.2 Instead, in this case, design review was undertaken by the LPA's officers, including a qualified urban designer, who was strongly supportive [CDD.01, p. 44].

38.2.2.3 The GLA – the guardians of the relevant policy – also reviewed the design of the proposal, and were supportive of it [CDB.02, p. 3].

38.2.2.4 Further independent review was undertaken by CityDesigner [CDA.28], and of course by Dr Miele.

38.2.2.5 In each of these independent assessments, the design of the scheme has been praised.

38.2.2.6 And, notwithstanding comments made by Cllr Young, the LPA has accepted in the Design and Heritage SoCG that the proposal has been "assessed proportionately to the outline nature of the application" [CDI.05, §§2.2].

38.2.2.7 The LPA has also accepted that at "detailed design stage… the reserved matters applications will be subject to design review by an independent and expert panel in accordance with LP Policy D4" [CDI.05, §2.5].

38.2.2.8 The proposal has been and will be rigorously reviewed.

38.2.2.9 Cllr Young's criticism is misplaced.

38.2.3 Point 3: Control over reserved matters. In opening, the LPA placed emphasis on the fact that "all the visual material is illustrative", suggesting that caution should be exercised "to allow for the fact that the development might, in real life, turn out differently" [ID.04, §2.4].

38.2.3.1 This ignores the fundamental point that all reserved matters must be approved by the LPA. Nothing can be built without their approval subsequently relating to the detailed design.

38.2.3.2 The Parameter Plans, Design Code and conditions give the LPA considerable control over the detailed design at the reserved matters stage.

38.2.3.3 There is no danger of the development "turning out differently" to what is guaranteed by those conditions, or otherwise taking the LPA by surprise. They can only "turn out" in a manner with which the LPA is satisfied.

38.2.4 Point 4: Landmark buildings. The R6 Party makes much of its claim that Cricklewood does not "need" a landmark building, because neither the town centre nor the station is "hard to find" [CDI.06, §4.4].

38.2.4.1 This misunderstands the design concept completely, as well as the policy framework to which the proposal responds.

38.2.4.2 As Dr Miele explained in the roundtable session, "it's not about direction or wayfinding – it's about the matching of urban form to the function in the planning spatial hierarchy, to give expression to the importance or otherwise of the place". The application site "warrants" a landmark, given the size of the site, its "obvious association with the station", and the "major injection of housing" that it will sustain.

38.2.4.3 This function extends beyond the site itself. As Mr Everitt added, the "landmark" will "announce" the regeneration the wider area, to which the site acts as a "gateway".

38.2.5 Point 5: Open space. Cllr Young expressed "concern over the provision of open space" [Young PoE, §9.13].

38.2.5.1 He did so despite open space not featuring in the LPA's putative RfR.

38.2.5.2 He did so despite the LPA accepting in the Design and Heritage and Planning SoCGs that:

38.2.5.2.1 The public realm "has been maximised" [CDI.03A, §7.84].

38.2.5.2.2 The new public realm is of "an appropriate size and proportion" [CDI.03A, §7.84] and indeed is "substantial" [CDI.05, §2.18].

38.2.5.2.3 The new public realm is of "high quality" [CDI.03A, §7.84].

38.2.5.2.4 The new public realm "would be beneficial to the townscape" [CDI.05, §2.18] and would constitute a "public benefit" [CDI.03A, §7.83].

38.2.5.3 And he did so despite:

38.2.5.3.1 Officers in the GLA stating that the "public realm proposals are strongly supported" [CDB.02, §27]; and

38.2.5.3.2 Officers in the LPA describing the new public realm as "large", "substantial" and "optimise[d]", and of "public benefit" [CDD.01, §§2.3, 6.3, 9.33, 13.13 and 15.2].

38.2.5.4 On any reasonable view, this is an outstanding offer of new open space.

38.2.5.4.1 Mr Everitt put this in context in his presentation: almost half the site will be delivered as open space and public realm. That's an area equivalent to 18 tennis courts.

38.2.5.4.2 A new "green lung" will be created at the heart of the town centre, supported by a comprehensive landscape strategy, bringing with it considerable biodiversity net gain.

38.2.5.4.3 This is reflective of the "significant ambition" on the part of the Applicant to deliver not merely policy-compliant but "exemplar public realm".

38.2.6 Point 6: Incongruity. In the end, the LPA's case is that the proposal will harm to the character and appearance of the area, because its height, scale and massing "fails to respect the local context and its established pattern of development."

38.2.6.1 As Dr Miele explains, this criticism is meaningless, because there is no "established" pattern of development for the proposal to conform with [Miele PoE, §3.21].

38.2.6.2 The character of the wider area is a varied one. In the design and heritage roundtable session, Dr Miele described the "variety of scale" in the wider area "as expressed in grain (which is size of building) and use." He identified a number of "notable deviations" from "the prevailing suburban typology", including a 9-storey block of flats to the west of the site [see View 11, Miele PoE, p. 98], an 8-storey residential development to the east, and a flatted development on Claremont Rd that ranges from 3-5 storeys.

38.2.6.3 Even if there were an "established" pattern of development, the LPA's adopted and emerging policy would require a significant departure from it. It would not be possible to deliver in excess of 582 homes (much less 1,007 homes) on this site without incorporating buildings of a certain height, mass and scale. As Cllr Young accepted in cross-examination, whichever indicative capacity is adopted, the allocation in the emerging plan entails "a significant magnitude of change".

38.2.6.4 In any case, rather than detracting from the townscape, the proposal will enhance it.

38.2.6.5 That is not only the view of Mr Everitt and Dr Miele, but also the view of the LPA's own urban design officer, the GLA's officers, and CityDesigner.

38.2.6.6 At present, the site is of low value in townscape terms. It detracts from views in the immediate vicinity and from the residential areas to the east. The site is consumed by a large area of hardstanding, an underused surface car park that is a remnant of the unloved past when the car was king. The existing buildings lack architectural merit and present a vacant

frontage to the street. With poor natural surveillance, the site attracts ASB. Ms Howey, for the R6 Party, put the point most strongly, when she said: "We all hate the B&Q car park – it's awful."

38.2.6.7 The proposal, meanwhile, is of outstanding design quality. It offers a new point of definition in key views, signalling the regeneration of this site and the surrounding area, in a manner sympathetic to adjacent development on Cricklewood Lane [see Everitt PoE, p. 79 figures 7.11-12]. The configuration of the buildings has been carefully considered so as to offer varied and generous new public realm and open space, and to create new pedestrian and cycle routes. It will link discrete and currently isolated parts of the townscape, improving the experience of Cricklewood Green.

38.2.6.8 To borrow the words used by the LPA's own urban design officer, the design of this scheme will "enrich the area" [CDD.01, p. 44].

38.3 The scheme's design is not a harm, but a substantial benefit.

39. The second allegation of harm is to the historic environment.

39.1 Again, it is significant what this allegation is <u>not</u>.

39.1.1 There is no allegation of direct harm to any heritage asset [Evans PoE, §§4.8 and 4.11]. The application site is some distance from the nearest Conservation Area and there are no listed buildings contained within it.

39.1.2 The only allegation of harm is an indirect one: to the significance of the Railway Terraces Conservation Area and The Crown (a grade II listed public house), caused by a potential impact to their setting which by definition is only a part of what contributes to the significance.

39.2 <u>The allegation of harm to the Railway Terraces Conservation Area</u>

39.2.1 Dr Miele set out the "staged approach" which must be taken to the assessment of harm in this context.

39.2.2 First, the significance of the heritage asset must be identified and assessed.

39.2.2.1 In this case, the significance of the Railway Terraces Conservation Area "lies in its character as a cohesive planned estate for railway workers associated with railway infrastructure" [Miele PoE, §6.48]. As Dr Miele explained, much of the special interest of the Conservation Area is derived from its "very strong inward looking character… Unlike many

areas of relatively low-density suburban housing, it has a clear boundary – a beginning and end."

39.2.2.2 This is confirmed explicitly in the Conservation Area Appraisal – see Mr Rhode's PoE, p. 64. A special characteristic of this Conservation Area is that it is self-contained, inward looking – an island in the urban area which draws none of its special character from its setting.

39.2.2.3 Third parties have described the "community spirit" that exits amongst residents of the Railway Terraces, but this is not an aspect of the Conservation Area's significance, although it may also reflect its self-contained nature.

39.2.2.4 As Dr Miele made clear, although the Railway Terraces were planned as a community, there has been no relevant "continuity of use". The current residents do not have the same connection to the railway as the Terraces' first residents did. Over time, the properties are bought and sold, and people move on, like on any other suburban street.

39.2.2.5 The significance of the Conservation Area is simply not dependent on its community value. We know this because, as Dr Miele put it: "even if there were no residents' association, all the architectural and historical interest would still be intact."

39.2.3 Next, the contribution that setting makes to the asset's significance falls to be assessed.

39.2.3.1 In this instance, Dr Miele emphasised that the setting of the Railway Terraces Conservation Area is "relatively narrowly-defined".

39.2.3.2 A "significant element" of its setting is the railway, on account of the functional connection between them that existed in the past.

39.2.4 One must then consider whether any impact of the proposal is positive, negative or neutral. Change does <u>not</u> of itself constitute harm.

39.2.4.1 Dr Miele's clear and convincing evidence is that the proposal will cause <u>no harm</u> to the Conservation Area.

39.2.4.2 He considers the "visual impact" of the proposal to be "limited, distant and peripheral" [Miele PoE, §1.30], as shown in Views 13, 14, 15 and 16 [Miele PoE, and pp. 102-106]. There will be greater visibility across the allotments (View 14), but these are not particularly sensitive views and were not part of the original (or indeed any) planned design.

39.2.4.3 In the design and heritage roundtable session, the LPA and R6 Party identified View E [Miele PoE, pp. 134-136] as the focus of their concern. That is a view out from the Conservation Area's well-defined boundary, across the Kara Way playground, which lies beyond its southern edge.

39.2.4.4 Dr Miele did not consider View E to show that harm will be caused to the Railway Terraces Conservation Area. If anything, it shows a benefit. He explained that "development of a contrasting form can draw further attention to the special qualities of the historic place… On the edges… the change makes you more aware".

39.2.4.5 The proposal will bring other benefits. At present, the poor visual character of the site detracts from the setting of the Conservation Area. The introduction of a well-designed scheme, with attractive landscape features, would be a marked improvement. So too would the provision of better links and access through the site to the Conservation Area beyond.

39.2.5 But if harm to the Conservation Area were found, the LPA and the Applicant agree that it could only be less than substantial.

39.2.5.1 The question then is: what is the nature and extent of that less than substantial harm?

39.2.5.2 As Dr Miele explained, "less than substantial" is "a very broad spectrum", coming up "just to the underside" of "substantial" harm at the upper end.

39.2.5.3 Mr Evans did not accept that this approach to "the sliding scale of harm" is the correct one. But it is the approach taken by the Secretary of State in the recent Edith Summerskill House appeal decision [see ID.22], among others. It goes without saying that the approach of the Secretary of State is to be preferred.

39.2.5.4 If harm were caused to the Railway Terraces Conservation Area, it could only be at the low end of less than substantial harm.

39.2.5.5 When deciding where on the spectrum of harm a particular case falls, the impact on the whole of the asset must be assessed. In this case, as even Mr Evans observed, the impact would be to only "one corner" of the Conservation Area. As he put it: "if you're not specifically looking generally in [the] direction [of the application site], you won't notice [the development]" at all.

39.2.5.6 Furthermore, in the language of the Edith Summerskill House appeal decision [CDG.08, §12.50], the Railway Terraces Conservation Area does

not derive a "major proportion" of its interest from its setting. It has a high level of intrinsic interest, each element of which will remain intact.

39.2.5.7 In those circumstances, Mr Evans' assessment of the harm to the Railway Terraces Conservation Area "as a 7" – a judgment not made in his written evidence, but offered for the first time during the roundtable session – is wildly overblown.

39.3 <u>The allegation of harm to The Crown public house</u>

39.3.1 The Railway Terraces Conservation Area is the only heritage asset mentioned in the LPA's putative RfR. Members did not endorse Mr Evans' view that harm would also be caused to The Crown public house [CDD.04]. Even when scrambling for some semblance of justification for their remarkable decision to withdraw support for the proposal on 8 November 2022, members did not consider this to be a point which was fit to take up.

39.3.2 In fact, even after the committee's resolution of 8 November, the LPA did not take the point in its Statement of Case [CDI.02]. It is utterly absent from that which is remarkable.

39.3.3 Nonetheless, an allegation of harm to The Crown has been advanced by the LPA to this inquiry, through the evidence of Mr Evans.

39.3.4 The allegation is wholly misconceived.

39.3.5 Again, a "staged approach" must be taken to the assessment of the alleged impact.

39.3.6 At the first stage, there is broad agreement as to The Crown's significance.

39.3.6.1 In the design and heritage roundtable session, Dr Miele emphasised two elements.

39.3.6.2 First, that The Crown is representative of a period in the history of the brewing and sale of beer, when there was a concentration of capital that led to the creation of the first "super pubs".

39.3.6.3 The second element is "purely architectural". The Crown offers an "eclectic" mix of "Flemish Renaissance Revival" and Elizabethan styles, standing out all the more because of the "uncharacteristic material" used.

39.3.7 The most significant element of The Crown's setting is the main road which sits in front of it. Dr Miele explained that this "communicates its purpose". It stands "as an advertisement in effect for the brewer" [Miele PoE, §8.29].

39.3.8 Dr Miele concluded that the proposal will have no more than a "transient effect" on The Crown.

39.3.8.1 It will not be seen from the nearside pavement, but only from the other side of the road, as shown in View 8 [Miele PoE, pp. 86-88].

39.3.8.2 It will be seen only "in the distance… in passing, in a gap, set well behind".

39.3.8.3 It will not be seen above The Crown's roofline. Mr Evans accepted that he was wrong to suggest otherwise in his proof of evidence.

39.3.8.4 Overall, given the "powerful architectural character" of The Crown, it is not credible to suggest that this limited "transient effect" would harm the ability to appreciate its special interest or significance.

39.3.9 And again, even if the proposal were found to cause harm to the setting of The Crown, it could only be at the <u>low</u> end of less than substantial harm.

39.4 <u>No allegation of harm to the Mapesbury Conservation Area</u>

39.4.1 On the first day of the inquiry, a third party, Mr Weston, suggested that the proposal would be "visible" from within the Mapesbury Conservation Area.

39.4.2 But to be clear: it was confirmed in the design and heritage roundtable session that there is no allegation of harm to the Mapesbury Conservation Area, or to the Church of St Gabriel which sits within it.

39.4.3 Nor could there be.

39.4.4 As Dr Miele explained, "the opportunities for inter-visibility" between the Mapesbury Conservation Area and the proposal "are nil". The only relevant viewpoint is View 10 [Miele PoE, pp. 94-96], which is located just outside the Conservation Area boundary, and which is a "significant" distance from the application site (some 700m). The AVRs clearly show that, in this view, the development would be "heavily screened".

40. The third and final allegation of harm is to <u>local transport</u>.

40.1 On this issue, the R6 Party stands alone:

40.1.1 The LPA agrees with the Applicant that an objection on transport grounds is unsustainable [CDI.04, §4.1.1].

40.1.2 There is no objection from neighbouring local highway authorities (LB Camden and LB Brent) or from the strategic highway authority (TfL).

40.1.3 The GLA found all "transport matters [to] have been acceptably resolved" [CDB.02, p. 3].

40.2 The only expert transport evidence before this inquiry is that of Mr Fitter. He has shown that each of the concerns expressed by the R6 Party are misplaced:

40.2.1 The proposal will not cause increased congestion on local roads. The proposal will actually result in a significant net reduction in vehicle trips on local roads: a reduction of over 4,200 trips per day. The proposal will therefore have a positive effect on local highway conditions.

40.2.2 The proposal will not overwhelm the public transport network. There is sufficient bus and train capacity to accommodate the additional trips that will be generated by the development. The predicted increase in peak rail trips amounts to no more than 4 additional passengers per carriage. Such an increase will be imperceptible to other passengers.

40.2.3 The proposal will not overwhelm pedestrian and cycle facilities. When distributed onto the network, the predicted increase in pedestrian and cycle trips will have no material effect. The proposal actually offers significantly improved facilities for both pedestrians and cyclists, including new routes between Depot Approach and Cricklewood Lane.

40.2.4 The proposal will not generate unacceptable parking demand on surrounding streets. The proposed number of parking spaces will meet the needs of the development, and future residents will not be eligible for on-street parking permits. The section 106 agreement includes a contribution towards a review of the existing CPZ's boundaries, and towards the costs of implementing any changes that might be required.

40.3 Yet again, the evidence shows that there is no harm, only benefits.

The balance at para 202 of the NPPF is passed

41. As set out above, the clear and convincing evidence of Dr Miele is that the proposal will not cause harm to any designated heritage asset.

42. But if less than substantial harm were found, para 202 of the NPPF would require that harm to be weighed against the public benefits.

43. This balance does not appear anywhere in the LPA's evidence.

44. The LPA since deciding to oppose this application have never understood properly that paragraph 202 has a balance intrinsic within it which is betrayed by the complete absence of the allegation in the reason of refusal that the public benefits do not outweigh the harm.

45. If properly applied, the balance would come down strongly in favour of the proposal:

    45.1 On one side of the scales, if there was harm, it could only be at the low end of less than substantial.

    45.2 On the other side of the scales, there are agreed to be many, significant benefits.

    45.3 In those circumstances, the public benefits must outweigh the harm.

<u>The overall balance is overwhelmingly in favour of the proposal</u>

46. If the balance at para 202 of the NPPF is passed, there will be no footnote 7 policies providing a clear reason for refusal.

47. It is then incumbent on the LPA to show that the considerable benefits of the proposal are <u>significantly</u> and <u>demonstrably</u> outweighed by the alleged harms.

48. The LPA's case does not come anywhere close to meeting that high bar set by para 11(d)(ii) of the NPPF.

49. The benefits of the proposal are overwhelming. It would take harms of a considerable magnitude not merely to outweigh them, but to significantly and demonstrably outweigh them. There is no evidence of harms of anything like that order. There is no convincing evidence of any harm at all.

<u>Section 6 – Conclusion</u>

50. In the end, this is a straightforward case.

51. There exists an incredible resource for meeting the urgent need for regeneration and housing need in this location in an underutilised and sustainable location.

52. The fundamental question is whether the imperatives of national policy and development plan policy are actually carried through by granting planning permission.

53. Or the political whim of 8 councillors takes precedence which will only lead to chaos, inaction and more harm to those who need housing as a matter of urgency.

54. Section 38(6) of the PCPA 2004 requires that the Application be determined in accordance with the development plan, unless material considerations indicate otherwise.

55. In this case, the proposal does not merely comply with the development plan. It is positively demanded by it.

56. Planning permission therefore must be granted, in accordance with section 38(6).

57. There are no material considerations which would justify a different conclusion.

58. Therefore it falls absolutely within the parameters of NPPF 11 [c] in which the injunction is that development proposals that accord with an up to date development plan should be approved without delay.

59. This is a proposal with many significant benefits, which will not give rise to any harm.

60. The LPA has failed to present credible evidence that the proposal would give rise to any harm, let alone harm of anywhere near that magnitude.

61. The case presented in favour of the proposal, meanwhile, is overwhelming.

62. In all these circumstances, to refuse the Application would be to throw our plan-led system – and the Secretary of State's own strategic priorities – entirely on their head.

24 FEBRUARY 2023

SASHA WHITE K.C. and ISABELLA BUONO

LANDMARK CHAMBERS
