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## Appeal Decision

Inquiry Held on 15 December 2020

Site visit made on 16 March 2021

**by Paul Singleton BSc MA MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 29 March 2021**

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**Appeal Ref: APP/G5180/W/20/3257010**

**Footzie Social Club, Station Approach, Lower Sydenham SE26 5BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Dylon 2 Limited against the Council of the London Borough of Bromley.
  - The application, Ref DC/20/00781/FULL1, is dated 28 February 2020.
  - The development proposed is demolition of existing buildings and redevelopment of the site by the erection of a four to eleven storey development comprising 254 residential units (130 one-bedroom; 107 two-bedroom; and 17 three-bedroom).
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and redevelopment of the site by the erection of a four to eleven storey development comprising 254 residential units (130 one-bedroom; 107 two-bedroom; and 17 three-bedroom) at Footzie Social Club, Station Approach, Lower Sydenham SE26 5BQ in accordance with the application Ref DC/20/00781/FULL1, dated 28 February 2020, and the conditions in the schedule at Annex 1 to this decision.

### Applications for Costs

2. Two applications for costs were made. One by Dylon 2 Limited against the Council of the London Borough of Bromley and one by the Council against Dylon 2 Limited. These applications are the subject of a separate Decision.

### Preliminary Matters

3. A list of Core Documents is included at Annex 2. Those referred in this decision are referenced as they appear in that list; e.g. CD1.5. A list of Inquiry Documents is at Annex 3; these are referred to as ID1, ID2 etc.
4. The appeal is against the failure of the Council of the London Borough of Bromley (the Council) to determine the application within the statutory period. On 20 September 2020, the Council resolved to resist the appeal for three reasons as set out in the officer report at Appendix 1 to its Statement of Case [CD1.9]. The putative Reasons for Refusal (RfR) alleged conflict with the London Plan (March 2016), the Intend to Publish London Plan (issued by the Mayor of London in December 2019), the London Borough of Bromley Local

- Plan (January 2019) (BLP), the National Planning Policy Framework (Framework) and supplementary planning documents and guidance issued by the Mayor's office.
5. Whilst the inquiry was sitting a further version of the new, replacement London Plan in the form of the intended 'Publication Plan' was issued on 21 December. On 29 January 2021 the Secretary of State (SoS) wrote to the Mayor to confirm, in accordance with section 337(8) of the Greater London Authority Act 1999, that the version of the London Plan issued on 21 December contains all the modifications necessary to conform with the Directions previously issued by the SoS. This enabled the Mayor formally to publish the new London Plan which he did on 2 March 2021. As of that date, this new London Plan became part of the development plan for the purposes of the appeal. It replaces all previous versions of the London Plan. All subsequent references to the London Plan (LonP) in this decision are to this newly published Plan which sets out the development strategy for Greater London for the next 20-25 years.
  6. References were made during the course of the inquiry to the Publication Version of the London Plan issued on 21 December. However, the SoS letter made it likely that the new Plan would formally be published before my decision was issued. Accordingly, the parties were given the opportunity to comment on what implications, if any, they considered this change in circumstances had in relation to the issues in the appeal, and to clarify which policies in the new London Plan they considered to be relevant (some policy numbers having changed from the earlier Intend to Publish version referred to in the Council's putative reasons for refusal). I have taken the comments received from the parties on this matter into account in my consideration of the appeal.
  7. Signed Statements of Common Ground (SoCG) in respect of general planning matters, 5 Year Housing Land Supply (HLS), and Affordable Housing (AH)<sup>1</sup> were submitted before the start of the inquiry. Further SoCG in relation to Viability<sup>2</sup> and the Building Cost Plan<sup>3</sup> were submitted during the inquiry. A Unilateral Undertaking (UU), prepared under s106 of the Town and Country Planning Act 1990, was submitted by the appellant. This includes planning obligations relating to: affordable housing; wheelchair housing; the provision and maintenance of open space; the introduction of car club services; the implementation of a travel plan; the provision of electrical vehicle charging points; and the payment of financial contributions in respect of education, health, highway and traffic works, carbon offsetting and an obligation monitoring fee. I have been provided with a certified copy of the signed document.
  8. An application made by the Council for a partial adjournment of the inquiry, such that evidence on building costs and viability should be heard at a later time, was resisted by the appellant. I ruled against a partial adjournment and requested that the parties prepare an additional SoCG in respect of building costs and the construction period. The deadline that I set for this was not met but the Building Costs SoCG was finally submitted on 22 January 2021.

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<sup>1</sup> Respectively: CD1.5(i), 1.5(ii) and 1.5(iii)

<sup>2</sup> CD1.5(v)

<sup>3</sup> ID 20

9. Following a flurry of emails early in the New Year I issued a Note re Additional Evidence on 20 January.<sup>4</sup> This set out a ruling on what further evidence would be accepted and clarified the deadlines for receipt of this evidence and closing submissions. Following receipt of the parties' comments on the implications of the SoS letter to the Mayor of London dated 29 January the inquiry was closed in writing on 15 February 2021.
10. With the agreement of the main parties my site inspection was carried out on an unaccompanied basis. I inspected the site and surrounding area on 16 March 2021.

### **Main Issues**

11. The site is designated in the development plan as Metropolitan Open Land (MOL) which enjoys the same general protection as the Green Belt. The built component of the proposal comprises inappropriate development having regard to the Green Belt policies in the Framework and LonP Policy G3. Such development is harmful to the MOL and should be permitted only if there are very special circumstances to justify a grant of planning permission. The open space component of the proposal is agreed not to constitute inappropriate development in the MOL.
12. The Council does not have a 5 year HLS as required under the Framework. The tilted balance in favour of sustainable development, set out in paragraph 11 d) of the Framework, is triggered for this reason. The parties agree that MOL policies are not included in the list of policies referred to in Footnote 6 of the Framework and that sub-paragraph ii of paragraph 11 d) is, therefore, engaged. As a result the most important policies for determination of the appeal are deemed to be out of date. Table 3 of the main SoCG lists the BLP policies which are agreed to be the most relevant to the proposal. Having regard to the parties' submissions, I have identified the most important policies in the new LonP as being D3, D9, G3, H4, H5 and H6.
13. The Council's putative RfR alleged a lack of agreement on the planning obligations needed to mitigate impacts of the proposal in terms of education, health and children's play provision. Agreement has subsequently been reached on these matters and on the related obligations within the UU, other than those relating to the provision of AH.
14. In that context the main issues in the appeal are:
  - a) The effect on the character and appearance of the site and its surroundings, with particular reference to the density, height, scale and massing of the proposal;
  - b) The effect on the openness and visual amenity of the MOL;
  - c) The effect on the living conditions of: (a) the occupiers of apartments in the adjacent residential development with regard to outlook and sense of enclosure, and (b) the future occupiers of the proposed apartments having regard to natural lighting levels and the quality of communal entrances;

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<sup>4</sup> ID 15

- d) Whether the proposal would made adequate provision for affordable housing in line with national and local planning policy;
- e) Whether the harm by reason of inappropriateness, and any other harm, would clearly be outweighed by other considerations so as to amount to the very special circumstances required to justify a grant of planning permission in the MOL.

## **Reasons**

15. The site was previously a sports ground for employees of Dylon International. It is broadly triangular and bounded to the west by the Hayes to London Charing Cross railway line and to the east by the Pool river. It contains a number of buildings and hardstandings associated with the former use and some 37.98% of the total site is previously developed land. To the north, it abuts the site of the former Dylon International premises, now redeveloped for residential use, and the former Maybrey Works.
16. The site is within the New Beckenham area of MOL, most of which comprises private sports grounds to the east of the river. To the west of the railway is an industrial estate and the area to the east of the MOL, around Copers Cope Road and Worsley Bridge Road, is predominantly in residential use. The site is within a few minutes' walk of Lower Sydenham Station and in a sustainable location in terms of its accessibility to public transport and local services.

## *Planning history*

17. Five planning applications have been submitted for the redevelopment of the appeal site since 2015. The full details of these are set out in the SoCG but much of the evidence relates to two of these schemes which I subsequently refer to as follows:

The 2016 Appeal Scheme: relating to planning application reference 15/04759/FULL1 for a 253 dwelling scheme and the subsequent appeal<sup>5</sup> which was dismissed by Inspector Peerless on 2 August 2016.

The 2019 Appeal Scheme: relating to application reference 18/01319/FULL1 for 151 apartments and the subsequent appeal<sup>6</sup> which was allowed by Inspector Baird on 26 June 2019.

18. It is common ground that the 2019 planning permission is a material consideration and that the pre-commencement conditions have been discharged. That permission could now be implemented subject to compliance with other conditions and the terms of the S106 agreement attached to it.

## Adjacent Sites

19. Planning permission was secured on appeal<sup>7</sup> in April 2010 for redevelopment of the former Dylon premises, immediately to the north of the appeal site (the Dylon 1 scheme), for 149 residential units, with B1 office accommodation, café and creche in buildings rising to 8 storeys above basement level. A subsequent

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<sup>5</sup> APP/G5180/W/16/3144248 [CD6.4]

<sup>6</sup> APP/G5180/W/18/3206569 [CD6.5]

<sup>7</sup> APP/G5180/A/09/2114194 [CD6.1]

appeal decision,<sup>8</sup> in 2015, allowed the replacement of the office space with 74 apartments. The site has been developed under that revised permission.

20. Permission was granted on appeal in July 2018<sup>9</sup> for the redevelopment of the adjacent Maybrey Works site for 159 residential apartments, together with commercial space and a residents' gym, in buildings of between 5 and 9 storeys in height. At the time of my site visit, this development was at an advanced stage of construction with the main structure of the various blocks having been completed to parapet level.

21. Neither the Dylon 1 nor the Maybrey Works sites are within the MOL.

#### *Housing Land Supply*

22. The most recent position is set out in the 5 year HLS paper produced in September 2020 which covers the period from 1 April 2020 to 31 March 2025. This forms the basis of the agreement within the SoCG that the Council is unable to demonstrate a 5 year HLS.

23. In view of the stage that the new London Plan had reached when preparing their evidence, the parties agreed that the 5 year requirement should be calculated on the basis of the targets in the new London Plan rather than those in the then adopted London Plan. The new LonP has now been published and forms part of the development plan for the area. This sets a target of 7,740 net housing completions in Bromley over the 10 year period to 2028/29, giving an annual average target of 774. With the 5% buffer that is agreed to be appropriate, this provides for an annual average of 813 dpa and a 5 year target of 4,064.

24. The Council assesses the land supply as providing for 2,661 units, equating to a supply of 3.27 years. It acknowledges that this amounts to a significant undersupply against the 4,064 target for the 5 year period. The appellant's assessment is that the supply provides only for 2,409 units, equating to 2.96 years. The areas of difference concern the level of the small sites/windfall assumption and the inclusion of a large site in Bromley as a deliverable site within the 5 year period.

25. The housing target in the LonP is a constrained target, reflecting the capacity within the London Boroughs for accommodating new development, and does not equate to the objectively assessed need for new housing in Greater London. The new Standard Method for assessing housing need<sup>10</sup>, issued alongside the Ministerial Statement on 16 December 2020, sets an indicative housing need figure for Bromley of 1,211 dwellings per annum (dpa). This confirms that the level of need going forwards is significantly greater than would be met even if the LonP 10-year target level of housing delivery in the Borough is achieved.

26. This situation is confirmed in the January 2021 SoS letter to the Mayor which states that, notwithstanding the publication of the replacement LonP, *"you still have a very long way to go to meet London's full housing need... I will be seeking to work with those ambitious London Boroughs who want to deliver over and above the housing targets you have set them."* Whereas the current

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<sup>8</sup> APP/G5180/A/14/2219910 & A/13/2206836 [CD6.3]

<sup>9</sup> APP/G5180/W/17/3181977 [CD5C.2]

<sup>10</sup> CD7A.27(ii)

shortfall amounts to approximately 2 years against the 10-year target in the LonP, the actual level of unmet need for new housing in Bromley is substantially greater than that figure suggests.

27. Mr Butterworth's evidence, that some 53% of the dwellings in the large sites category and 16% of those in the small sites category of the Council's claimed supply were granted permission on appeal, was not challenged by the Council. This high proportion suggests that the Council has been far from pro-active in ensuring the provision of a 5 year HLS. Part 4 of Mr Butterworth's proof also provides convincing, and again largely unchallenged, evidence that the future supply for Years 6-10 in the most recent housing trajectory is relatively weak. This evidence shows little prospect of a step change in the annual rate of housing delivery in the Borough in the short to medium term.
28. Without needing to undertake a detailed review of all of the areas of dispute in that appeal, Inspector Baird found, in his 2019 decision, that the housing supply then available amounted to 4.25 years at best, and that this fell materially below the level that the Council acknowledged to be significant. He accordingly attributed very substantial weight to the contribution that the 151 dwellings proposed in that scheme would make to meeting housing need.
29. At either end of the range agreed by the parties (of 2.96 to 3.27 years supply), the shortfall in the housing supply is now significantly greater than that found by Inspector Baird. It is, therefore, unnecessary for me to reach my own finding as to the exact extent of the shortfall. By any measure, the shortfall in supply is very significant. This has to be considered in the context both of an increasing level of housing need and the limited prospect of development coming forward to make up that shortfall. I agree with the appellant that nothing less than very substantial weight should be given to the contribution that the 254 dwellings proposed in the appeal scheme would make to meeting housing need in Bromley.

#### *Character and appearance*

30. The Council accepts that the 2019 appeal decision established the principle of the site's use for dense residential development in the form of two apartment buildings. However, RfR 2 alleges that, by reason of its excessive height, scale and massing, and its relationship the neighbouring development, the proposal would have an adverse impact on the skyline and be over dominant. As the two schemes have an almost identical footprint the additional scale and massing of the proposal derives primarily from its increased height. The officer report of September 2020 states that the proposed north block would tower over the neighbouring developments.
31. Much of the evidence focused on the differences between the 2019 appeal scheme and the current proposal. The Council also argued that the proposal would have similar effects on character and appearance as the 2016 appeal scheme which Inspector Peerless found to be unacceptable. In advancing those arguments the Council has not, in my view, given adequate weight to the important changes in the site's context and the significant design differences between the current proposal and the 2016 appeal scheme.
32. In 2016 Dylon 1 was still under construction and there was no planning permission or application on the Maybrey Works site. The industrial buildings on the Maybrey site were part of the '*relatively small scale development*' that

Inspector Peerless referred to as forming part of the site's development context. That context has changed very significantly with the construction of buildings of up to 10 storeys on the Maybrey site and the completion of the Dylon 1 scheme. I accept that these two developments are not on MOL. However, my observations on my site visit support Mr Miele's evidence that these schemes have resulted in the formation of a new cluster of dense development and comparatively tall buildings close to the station.

33. Also since 2016, the Council has granted planning permission for a covered football pitch as part of the use by Crystal Palace FC (CPFC) of the former National Westminster Bank sports ground to the east of the river. The officer report on that application stated that this building would not significantly harm the character and appearance of the area,<sup>11</sup> but noted that it would obstruct views across the MOL.
34. At the time of my visit, the steelwork for that new building had been completed and the roof had been covered in a light coloured cladding. Works to fill in the ends of the building were ongoing but I was able to gain a clear appreciation of the full size and height of the finished structure. My observations are that this new building is a very large structure of solid appearance. It is a prominent feature in the various views available from Worsley Bridge Road and Copers Cope Road. Having regard to the photograph of the site at Figure 4 of the Officer report on that planning application,<sup>12</sup> I find that the new covered pitch has had a significant adverse effect on the openness of this part of the MOL. It has also impacted upon potential views of the appeal scheme from public vantage points. Together these factors constitute a significant change in the context of the appeal site compared to that assessed by Inspector Baird in 2019.
35. The 2016 appeal scheme was for a similar number of apartments but was of a materially different built form to that now proposed. The long elevation of that scheme would have extended some 150m from north to south, forming what Inspector Peerless described as a "*solid wall of development with little variation along its length to relieve its somewhat monumental character.*"<sup>13</sup> She found that this would create a hard and dominant edge to the proposed area of open space and would be overly dominant when seen from that space.
36. The design of the current proposal overcomes these concerns. This is achieved by various means including: the subdivision of the proposal into two distinct blocks separated by a substantial open gap; variations in the roof height and the setting back of the top levels; the folded building plan; strong vertical elements and articulation to the building elevations; and the varied use of glass, steel and brick cladding that would introduce light and shade into the elevations. These design elements would significantly reduce the visual impact of the proposal, such that it could not sensibly be described as forming a solid or an uninterrupted wall of development.
37. The substantial gap (of 29m minimum width) between the two blocks and the proposed alignment of these blocks would create significant areas of open space between and around each of these. These would provide a physical and

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<sup>11</sup> Officer Report [CD7B.1]

<sup>12</sup> CD7B (ii)

<sup>13</sup> CD 6.4(i) paragraph 55

- visual relationship with the proposed public open space to the east. As a result, the current proposal would not create a hard edge to the proposed open space.
38. A comparison of the site plan and elevational drawings for the two schemes confirms the substantial differences in their design. The appeal proposal is so different, in form and design, from the 2016 appeal scheme as to render that appeal decision of limited assistance as a benchmark against which its visual effects should be measured. The current proposal would be taller, and have a greater scale and massing, than the 2019 appeal scheme. Those differences do not, however, render the proposal objectionable if its visual and townscape effects are not unacceptable.
  39. The new buildings would not be of a uniform height. The north block would rise to 11 storeys above basement at the northern end and step down to 8 storeys above basement at its southern end. The northern part of the south block would be 7 storeys above basement, stepping down to 4 storeys above basement at its southern end. This means that the highest part of the northern block would be 3 storeys higher than that in the 2019 appeal scheme (agreed to be a difference of +8.3m) and the highest part of the southern block would be 2 storeys higher than in the 2019 scheme (a difference of +5.3m).
  40. Due to the building plan, the highest part of the north block would not be sited in a face-to-face relationship with the nearest part (the western block) of the Dylon 1 development. Instead, it would be aligned with the eastern block of that development which would be some 30m from the nearest part of the appeal scheme. Because of the folded building plan, the site section drawings do not give an accurate impression of the relationship between the two developments. This can best be seen in the perspective images included as DS4-01 to DS-15 in the DAS and the aerial view in Mr Ritchie's proof.
  41. The stepped parapet height is a notable feature of the proposal, adding variety and interest to its external appearance. This is particularly the case in respect of the north block, where the stepped height would be markedly different to the largely uniform height of buildings within each of the Dylon 1 and Maybrey schemes. The angled footprint, the stepping back of the upper floors, and use of lighter materials to these upper floors would all combine to soften the visual impact of the additional storeys. Overall, the proposed design would provide for a comfortable relationship with the Dylon 1 and Maybrey developments, notwithstanding the increased height compared with the 2019 appeal scheme.
  42. No part of the proposal comprises a free-standing tower. The tallest part of the north block would be 3 storeys higher than the nearest existing buildings and only 4.75m higher than the tallest block within the Maybrey development. The remainder of the block would be no taller than the nearest part of the Maybrey development. Given those relationships, I do not accept the Council's assertion that the appeal proposal would tower over or dominate these neighbouring buildings. It would, rather, be seen as a localised extension of an existing cluster of taller buildings close to the station.
  43. It is appropriate that the tallest element should be located next to the existing cluster of taller buildings and that the scheme should reduce in height towards the south, where it adjoins the wider area of MOL. I agree that there is no design virtue in making all of the buildings within a cluster the same height. I do not accept that, as a matter of principle, the proposal should be no higher than the Dylon 1 development. That is unnecessary both in townscape terms



and in respect of the development's effect on the MOL. I also consider that the Council's contention, that a 8.4m increase in height compared to Dylon 1 would undermine that development's role in helping to define the entrance to the station, is flawed.

44. In townscape legibility terms, the cluster of taller buildings would help people walking along Worsley Bridge Road from the north or east to identify the general location of the station. However, as they come to the junction with Station Approach, other visual signals, including street signage, would guide them to the station entrance on this side of the railway. I do not consider that, having reached this point, they would be dependent on views of the adjacent buildings for this purpose. They would, in any event, be less able to read the relative heights of the nearby buildings in these closer views.
45. The Council's argument also ignores the fact that the lowest buildings within the Dylon 1 scheme front on to Worsley Bridge Road and Station Approach, with that development then stepping up in height from north to south. The scheme has been designed so that the tallest elements do not become over dominant in the street scene on these roads. I saw that this approach has been successful in allowing the Dylon 1 development to have a comfortable visual relationship with the 2-storey commercial buildings on Station Approach and the Montana Gardens development on Worsley Bridge Road.
46. In that context, and given my conclusions (as set out in the following section) about the effect on the openness of the MOL within the appeal site than the 2019 appeal scheme, I see no reason why the northern component of the north block should not form the tallest element in the extended cluster of taller buildings. This would not cause harm in visual and townscape terms and would have no discernible effect on the role which that cluster plays in providing legibility within the townscape. Any redistribution of apartments from the north block to the south block, as suggested in the Greater London Authority's (GLA) Stage 1 report, would undermine the design strategy for the scheme.
47. Having regard to the shadow testing drawings, I am satisfied that the proposal would not cause an unacceptable degree of shadowing to the proposed area of open space. The increased height, compared with the 2019 appeal scheme, would not result in the open space being dominated or adversely enclosed by the proposed buildings. The size and quality of this open space would be unchanged from the 2019 appeal scheme and would provide the same benefits as in that proposal.
48. As part of my site visit, I viewed the site from the agreed key viewing points,<sup>14</sup> and, in view of the concerns expressed by the Council, sought to identify from where else along the Worsley Bridge and Copers Cope Road corridors the proposal might also be seen. I also viewed the site from the train on the section of line between New Beckenham and Lower Sydenham Stations and from the bridge at Lower Sydenham Station. Although my visit was carried out in mid-March, very few of the trees within the various views were in leaf and I observed only limited new growth on most of the boundary vegetation to the CPFC site.
49. Viewpoint 1 on Worsley Bridge Road is the nearest to the site and that which would provide the most direct view of the proposal. When seen from this

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<sup>14</sup> As shown on the plans and images within Dr Miele's Appendix 5.0

viewpoint, the development would be more noticeable than the 2019 appeal scheme. Comparison of the image on page 10 of Dr Miele's Appendix 5.0 with Image G in his Appendix 4 shows that the visual impact would be substantially less harmful than that of the 2016 proposal. This again confirms the significant differences between that scheme and the current proposal. Comparison of the two images also demonstrates how significant a change there has been, since 2016, in the site's visual and design context as a result of the redevelopment of the Maybrey site. The 'solid wall' of development that Inspector Peerless may have perceived in this key view is not repeated in the current proposal.

50. In this view, the tallest part of the north block would project by a fairly modest extent above the Maybrey buildings. The lower parts of the north block would extend to the west of the Maybrey development but would be of a similar height to those existing buildings. The upper floors of the south block would form a new element in that view but the viewer would also be aware of the substantial gap between the two blocks. The upper floors would protrude above the trees on the skyline but the sky would be visible through the gap.
51. The separation of the two blocks and their stepped height would contrast with the more uniform height and solid appearance of the Maybrey development when seen from this vantage point. In my judgement, those design details would combine successfully to break up the scale and massing of the proposal so that its additional height would not be readily apparent in this view. Due to their closer proximity and more solid form, the Maybrey buildings would continue to be the dominant feature in the view available from Viewpoint 1.
52. Although the upper part of the south block would be visible from where the photograph was taken, the development would largely be seen in transient views by people as they move along Worsley Bridge Road. Having walked along Worsley Bridge Road, between its junctions with Copers Cope Road and Station Approach I did not identify any alternative viewpoints that would give a clearer view of the proposed development. As confirmed by the animation presented by Dr Miele, the width and clarity of the view that is available from Viewpoint 1 is reduced as one moves north from this point. In my assessment, it would be the Maybrey development that is dominant in most of the transient views along this corridor. The overall impact of the proposal on views available from this direction is likely to be slight.
53. The boundary treatments submitted under conditions attached to the CPFC permission have not yet been approved and final details of these are not yet clear. I observed that some sections of the proposed 'ball-stop' netting have now been erected and that these neither prevent nor obscure the views available across the open parts of the CPFC site. However, as the images in Dr Miele's Appendix 6.0 show, it is common practice for major football clubs to screen their training and coaching facilities from public view. Any future fencing erected in accordance with the planning conditions or landscaping not requiring planning permission, is likely to further restrict rather than open up views across their land.
54. Viewpoint 2, from Copers Cope Road is across a heavily vegetated site which provides only for glimpsed views across that land, even at the time of my site visit. These views are available through only a short section of the boundary to the CPFC site close to the junction of Copers Cope Road with Worsley Bridge Road. None of the views available at the time of my visit were as open as is

suggested by the image at Figure 3 in the GLA's report [CD 3.1]. I can only assume that this is based on an old photograph that does not reflect the current level of vegetation to this boundary.

55. In the limited views available from this section of Copers Cope Road it is possible to pick out the location of the appeal site by reference to the industrial buildings behind it, to the west of the railway. Other buildings can also be seen on the higher ground that forms the backdrop to the view as this rises towards the ridge. In my assessment some filtered views of the proposal would be possible if one stopped on the opposite pavement and looked in the direction of the site. The proposal would not be significantly more prominent in those views than the 2019 appeal scheme would have been. It would be seen in the context of the nearer and more solid form of the Maybrey Works scheme and would not have a significant adverse impact on views from this public vantage point. The views most likely to be experienced from this direction would be transient ones and are likely to be heavily filtered for much of the year.
56. Viewpoint 4 was assessed in relation to the 2019 appeal proposal. However, as evidenced by the images in Dr Miele's appendix, and as I saw on my site visit, any potential views from this section of Copers Cope Road have now been blocked by the construction of the covered football pitch. This viewpoint does not, therefore, require further consideration.
57. Viewpoint 6 is from further along Worsley Bridge Road near Overbrae. Because of its location adjacent to the road junction, people may experience this view when waiting at the junction or crossing the road but most views would be transient ones. As shown in the existing photograph on page 29 of Dr Miele's Appendix 4, a person standing at this location would have a view extending beyond the appeal site to the Sydenham Ridge and Crystal Palace transmitter tower. Although the effect is not quite as marked as is suggested in Dr Miele's 'Cumulative' image, the available view has been severely compromised by the erection of the CPFC covered pitch. It is possible still to see the upper part of the transmitter tower but much of the ridge that would previously have been seen is now obscured. Even in winter, these views are filtered by the boundary vegetation and trees within the adjacent sports ground.
58. In my assessment it would be possible to see parts of the appeal scheme from this location. I do not consider that it would have a greater visual impact when seen from here than the 2019 appeal scheme would have had. At this distance from the site, the additional height of the two blocks would not have a significant additional impact. Although part of the north block would break the horizon line, the new buildings would mostly be seen against the background of existing buildings on the higher ground to the west. The physical gap between the two blocks and their stepped height would serve to reduce their impact. The Maybrey scheme buildings would continue to stand out more because of their more uniform height and more solid form. Given that these would be transient and, for much of the year filtered, views the effect of the appeal proposal would be slight.
59. I consider the design of the current proposal to be of the same exceptional quality that was noted by Mr Baird in his 2019 appeal decision. The proposal would result in the creation of a generous area of publicly accessible open space of a very high standard of design and utility. Together with the landscaping to the podium and gap between the buildings, this would

significantly enhance the landscape quality of the site itself and the visual amenity of this part of the MOL.

60. Taking all of these considerations together, I find that the appeal proposal would not have an unacceptable effect on the character and appearance of the site or its wider surroundings. The proposal complies with BLP Policy 4, that requires a high standard of design in new housing developments, and with Policy 37, relating to the general design of new development. Although parts of the proposal would be seen on the skyline, the development would not adversely affect views of the ridge at Crystal Palace or any of the other important views or landmarks listed in Policy 50. The proposal therefore complies with that policy.
61. Having considered the evidence submitted on this matter, I find that the proposal does not constitute a tall building for the purposes of BLP Policy 47. The north block would include a taller element but, taken as a whole, the two blocks would neither be substantially taller than their surroundings nor cause a significant change to the skyline. Even if I had found otherwise, I would still conclude that the proposal complies with Policy 47 because it is of the highest architectural design quality and materials and would make a positive contribution to the townscape in this part of Bromley.
62. I note the Council's reliance on Policy D9 of the LonP which states that local authorities should define what a 'tall building' is for specific localities. This definition should be not less than 6 storeys or 18m measured from the ground to the floor level of the uppermost storey. Where a local definition of a tall building has not yet been adopted, these parameters should be used as the default definition. Policy D9 does not impose a ban on tall buildings but requires an assessment of factors such as their effect on the skyline, their architectural quality, and whether they would stand in isolation or as part of a group. For the reasons set out above, I find no conflict with Policy D9.
63. A number of London Plan policies were cited in Putative RfR 2. Not all of these are directly concerned with the adequacy of the design or absence of harm to character and appearance. Having regard to those matters, I find that the proposal is consistent with LonP Policy D4 which is concerned with delivering good design. The design strategy adopted seeks to make best use of the previously developed part of the appeal site. The proposal is, therefore, consistent with the ambitions set out in LonP Policy D3 for optimising site capacity through a design-led approach. Policy D3 also states that higher density development should be promoted in locations that are well connected including by public transport. The proposal complies with and derives support from Policy D3.

#### *Effect on Openness*

64. The 2019 appeal decision established the acceptability in principle of the development of the brownfield portion of the site for residential use. The developed area of that proposal (including buildings, the access road, surface parking and private amenity areas) covered 37% of the total site area, all contained within the brownfield portion of the site. The current scheme proposes new buildings only within the previously developed part of the site, with the developed area accounting for 37% of the total site area and the remaining 63% being laid out as open space for public use. The proposal would, therefore, have no greater impact on the spatial dimension of openness,

- either than the existing buildings and hardstandings or the scheme with extant permission.
65. The proposed footprint of the two blocks and the width of the gap between them are largely unchanged from the 2019 scheme. Users of the public open space, or anyone passing through it, would have the same views from that space that they would have had in the 2019 scheme. I saw on my site visit that, in combination, the Dylon 1 and Maybrey Works buildings form a continuous wall of buildings immediately to the north of the site. Seen from within the site, this forms a hard built edge to the open land and curtails any views beyond that built edge. That hard edge to the northern boundary of the appeal site would not be altered by the proposal.
66. If constructed, the 2019 appeal scheme would have resulted in the new buildings being sited along the western boundary with a substantial gap between the north and south blocks. Views from within the site to the railway, and to the industrial estate to the west, would have been possible through the gap but would have been closed off along the rest of the western boundary. That partial enclosure of the western boundary would, undoubtedly, have resulted in a reduction in the visual dimension of the openness of the site. Although the gap in the current appeal scheme is in a slightly different position, the proportion of open gap to built edge would be unchanged and would provide the same degree of visual enclosure to that boundary.
67. A person looking towards the development from the south-eastern edge of the site, next to the river, might comfortably have a view of the full height of the proposed development. But, as noted in Dr Miele's evidence, most people walking or passing through the area of open space are unlikely to be looking upwards. As they get closer to the development, their gaze would increasingly be directed to the lower floors of the two blocks. The additional storeys would be visible from certain positions within the proposed open space but would make very little difference to how the visual dimension of the openness of the site is perceived or experienced by users of this area. For these reasons, I do not find that that effect on the openness of the site itself would be materially different from that which would have resulted from the 2019 appeal scheme.
68. For the same reasons, I do not consider that there would be a material difference in the way in which those passing the site on a train would perceive the openness of the wider MOL. They would have the same width of view through the gap between the blocks and their perception of the depth and width of the MOL is unlikely to be affected by their increased height. Indeed, the position and size of the carriage windows are such as to cut off the upwards view of any passenger sitting on a passing train. The effect on the visual dimension of openness of the MOL, as experienced from the railway bridge, would also be largely unchanged compared with that resulting from the 2019 appeal scheme.
69. It is only in medium to longer distance views from the north east and east that the increased height of the proposal could, potentially, alter the way in which a viewer experiences the openness of the MOL. However, those public vantage points are few in number and are at some distance from the site.
70. When comparing images of the 2019 scheme with those of the current proposal the eye is obviously drawn to the differences between the two. In reality, when seen from the main viewpoints, the new buildings will be read in the context of

the existing tall buildings on the Dylon 1 and Maybrey sites. In most cases, they will also be viewed across an expanse of undeveloped land in the foreground, with the new buildings towards the back of the available view. The construction of the CPFC covered pitch has reduced the extent of open land in some of those views. However, the appreciation of openness is derived largely from the depth and width of undeveloped land in the foreground. There is currently no direct view of the open land within the site from any of these public vantage points. This would not be changed by the development.

71. From a very small number of viewpoints, the upper parts of the two blocks would break the horizon or skyline. However, I do not consider this particularly significant in terms of the effect on openness. In my judgement, the effect on the viewer's perception of openness is informed more by the position of buildings within their view rather than by the height of those buildings. In reaching his conclusion that there would be a limited effect on openness, Inspector Baird made reference to the fact that, in most views, the south block would be materially below the skyline and the north block would barely break the skyline. However, he also took account of the gap between the buildings and the level of existing screening. I have also had regard to these factors.
72. When viewed from Viewpoint 1, the north block would project slightly above the Maybrey buildings and would be partially visible to the west of that development. Its scale would be more apparent than that of the northern block in the 2019 scheme. In that scheme, the south block would have been seen above the trees in that same view. In the current proposal, it would appear as slightly taller but its position within the view would be unchanged. Overall, a viewer would see slightly more built development and a narrower gap between the appeal scheme and the Maybrey buildings. This would result in a marginally greater impact on the visual dimension of openness as experienced from this viewpoint. However, most views from this direction are transient. The new buildings would generally not appear as prominent features in the view that people have as they are moving along Worsley Bridge Road.
73. In the other viewpoints discussed, the overall perception of the openness of the New Beckenham MOL would largely be unchanged from that which would have resulted from the 2019 appeal scheme. I therefore, conclude that the appeal scheme would have broadly the same limited effect on the openness of the MOL as Inspector Baird found when assessing the 2019 scheme.
74. As established in the 2016 appeal decision, the appeal site is visually separated from the main body of the New Beckenham MOL to the east of the river. Although some limited views across the river are available in winter, I agree with Inspector Peerless that it is only really in aerial photographs that the site can clearly be linked with the open land to the east. Its character, use and current condition are quite different to the maintained, private sports grounds that make up most of the MOL. The site makes a limited contribution to the openness of that main area of MOL. Given that relationship, I do not agree that the value of the appeal site as MOL has increased as a consequence of the Maybrey development and the CPFC permission. In my view, the contribution it makes is the same as assessed in the previous appeals. The contribution it makes to the openness of the wider MOL would not be further reduced because of the additional height of the proposed buildings.

75. Inspector Peerless found that the appeal site does not fulfil two of the three MOL designation criteria as there is no public access to it and it does not contain features or landscapes of national or metropolitan value. I agree with that conclusion. Although annotated as forming part of a green chain in the BLP, the site does not in practice perform this function. Accordingly, the site does not fulfil the fourth MOL designation criterion in LonP Policy G3 and BLP Policy 50.
76. By creating an attractively landscaped area of open space the proposal would significantly enhance the visual amenity of the retained open MOL within the site. These proposed works, and the granting of public access to that land, would also have the benefits of addressing the missing gap in the South East London Green Chain, in line with BLP Policy 54, and enabling the site to fulfil three of the four designation criteria. The proposal would, therefore, provide some material benefit to the MOL within the site itself.

### **Living Conditions**

77. The northern component of the north block would be aligned with the eastern building of the Dylon 1 scheme, rather than with the part of that development which is closest to the site. This layout has been planned so as to protect long views from the apartments in the Dylon 1 scheme and not to block sunlight from reaching those apartments or the courtyard within that development. This is supported by the appellant's shadowing assessment. The concerns raised by interested parties about the effect on sunlight reaching the courtyard and their apartments are not borne out by that evidence.
78. The physical relationship between the north block and nearest Dylon 1 building is unchanged from that in the 2019 appeal scheme; the only difference is the additional height of the current proposal. The various perspective images in the DAS show the significant gap between the north block and the nearest part of Dylon 1. The figures included at page 50 of Mr Ritchie's proof also show that views from the apartments within Dylon 1 would not be adversely affected by the proposal. Based on the evidence presented on this matter, and the observations made on my site inspection, I find that the proposal would neither have an unacceptable effect on the outlook of apartments within Dylon 1 nor result in an increased sense of enclosure for the occupiers of that development.
79. In paragraph 28 of his decision, Inspector Baird dismissed the Council's objection that a significant number of the apartments proposed in that scheme would be single aspect. He noted that, although the Mayor's Supplementary Planning Guidance (SPG) on Housing (March 2016) advised that developments should seek to minimise the number of single aspect dwellings, it does not specify a level at which the number or proportion of units should be regarded as being unacceptable. I agree with him that the incorporation of single aspect units is not unusual in apartment buildings in this type of area.
80. The single aspect units would amount to 45.3% of the total number of apartments compared with a ratio of 42.28% in the 2019 appeal scheme. That small increase is not sufficient, on its own, to justify a refusal of permission. In any event, Standard 29 of the SPG seeks only that the number of single aspect units within the scheme should be minimised. This can only be assessed in respect the scheme under consideration and does not require comparison with the proportion achieved in a previous planning permission on the same site.

81. The Housing SPG requires that, where single aspect units are provided, the design should address issues such as noise, insulation, ventilation and daylight. No concerns have been raised about noise, insulation or ventilation. I am satisfied that the scheme has been designed so as to maximise the levels of sunlight and daylight into each of the apartments as demonstrated in the sunlight and daylight assessments. The extensive use of glazing, balconies and winter gardens would maximise the levels of daylight into each of the apartments. This design approach meets the objectives of Standard 29 although it may not be in accordance with the letter of that guidance. As noted by Mr Finch, the avoidance of single aspect units does not guarantee that all occupiers will have an attractive view.
82. All the apartments would have a private balcony or wintergarden. All single aspect units are one bed apartments and all of those facing west (towards the railway) would have wintergardens, providing occupiers with the opportunity to enjoy views in more than one direction. All units facing east would have attractive views to the east and south over the MOL. I do not accept that the 8 units, where the recessed flank wall and glazed window would be positioned close to the flank wall of the adjacent apartment, should be treated as single aspect units. The illustrations in Mr Ritchie's proof and in the DAS show that these units would enjoy good views in more than one direction.
83. Putative RfR 2 sets out a concern that the communal entrances and corridors would be unwelcoming and would fail to demonstrate a good quality living environment. This part of the RfR was not expanded upon in the Council's Statement of Case and not addressed in Mr Bord's proof of evidence. Mr Ritchie's evidence (paragraph 12.9) indicates how these concerns might be addressed through minor amendments. However, the Council has not proposed a condition requiring the submission and approval of those details. I therefore find that these concerns are of minor significance and do not warrant a refusal of permission.
84. Accordingly, I find that the effects on living conditions would not be unduly adverse and that the proposal complies with BLP Policies 4 (relating to the standard of housing design) and 37 (with regard to the relationship between buildings and safeguarding the amenity of neighbouring buildings). The proposal also complies with LonP Policies H6 (housing quality and standards) and H10 (housing size and mix) and complies with the Housing SPG in this regard.

#### *Affordable Housing*

85. The most up-to-date assessment of AH needs in Bromley<sup>15</sup> identified a need for 1,404 net affordable homes per annum in the Borough between 2011 and 2031. This equates to 28,080 affordable dwellings over the 20 year period.<sup>16</sup> The AH SoCG confirms that, on average, only 104 net new affordable homes have been delivered in each of the last 5 monitoring years (2015/16 to 2019/20), with only 1,475 having been delivered since 2011. Total delivery over that 9 year period is only marginally greater than the annual average requirement. There is a cumulative shortfall of 12,636 affordable units against what should have been delivered over that same period. By any measure that performance can fairly be described as woeful.

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<sup>15</sup> South East London Strategic Housing Market Assessment (SHMA) (2014)

<sup>16</sup> AH SoCG AH [CD1.5(iii)] paragraph 2.7



86. The largest number of units delivered in any one year (357) equates to 25% of the annual average need. Given that performance and the scale of the shortfall, there is little prospect that the rate of delivery of AH will improve significantly in the short to medium term. Alongside that poor level of delivery, affordability in the Borough has been getting worse. Lower quartile private rental rates have increased to almost double the national average,<sup>17</sup> average house prices are 12 times average incomes, and the median house price ratio to incomes has increased by 59% since 2011. This evidence provides a strong indication that the provision of decent housing for all members of the community is not being given the highest priority as is claimed in the forward to the Council's Sustainable Community Strategy.
87. This demonstrates that the Council is consistently failing to provide for the needs of large numbers of people residing or wishing to reside in the Borough. Various documents in Mr Stacey's appendices and the core documents indicate the priority placed by the Government on fixing the "*broken housing market*"<sup>18</sup> and helping "*more people onto the housing ladder.*"<sup>19</sup> It is in this context that the proposal for the provision of 49 affordable homes needs to be considered.
88. The 49 AH units would be offered, both on first purchase and subsequent resale, at 30% below full market price as assessed by an independent surveyor. The units would comprise Discount Market Sales Housing (DMSH) consistent with part c) of the definition of AH in the glossary to the Framework. As low cost homes with a sales price of at least 20% below market value, the proposed units also fall within part d) of that definition. In the AH SoCG the parties have agreed that the units would be DMSH. On behalf of the Council, Mr Johnson agreed during the Round Table session that First Homes (FH) would be an 'intermediate housing' product.
89. Paragraph 62 of the Framework states that, where a need for AH is identified, planning policies should specify the type of AH required applying the definition in the glossary.<sup>20</sup> Paragraph 62 devolves to local planning authorities the identification of the type of AH required in its area and FH is not listed in BLP Policy 2 as one of the Council's preferred AH types. That is unsurprising given that the Plan was adopted before the FH consultation was carried out. The 60% social rented/affordable rented and 40% intermediate provision set out in Policy 2 is the preferred mix that the Council will seek when negotiating AH provision. The policy allows for a scheme with less than 35% affordable homes and for an alternative tenure mix if justified following consideration of the developer's Financial Viability Assessment (FVA).
90. Paragraph 2.1.34 of the BLP states that AH includes intermediate housing, which is sub-market housing available to people on moderate incomes who cannot afford to rent or buy in the open market, and that it may take the form of low cost home ownership. The provision of DMHS with a discount of more than 20% against full market value is, in my view, within the scope of Policy 2. The LonP adopts the Framework definition of AH.<sup>21</sup> The units proposed would fall within the 'other affordable housing products' category of AH referred in the explanatory text to Policy H6.

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<sup>17</sup> Mr Stacey's Table 5.7

<sup>18</sup> Housing White Paper [CD7A.10]

<sup>19</sup> Former Prime Minister's speech to National Housing Federation, September 2018 (Appendix JS6)

<sup>20</sup> Footnote 27

<sup>21</sup> Footnote 53 on page 190 of the LonP Written Statement

91. The Government's consultation on FH indicates that, if and when national policy is amended such that development plans will need to require FH units as part of AH provision in their areas, local planning authorities may seek a discount of more than 30% if justified by local circumstances. London and the South East are listed as areas where affordability levels may warrant such an approach. However, as DMHS with a 20% discount is acceptable under Policy 2 in its current form, subject to a viability justification, I see no reason why DMHS with a larger discount of 30% should be considered unacceptable in principle. The Council has produced no evidence that a discount of 30% would render the AH units unaffordable having regard to the housing income and upper limit thresholds set out in the BLP.
92. I find that the proposed DMHS would deliver AH in accordance with the definitions set out in the Framework and the development plan. BLP paragraph 2.1.34 recognises that, although not a priority need, low cost market housing may assist households unable to access market housing who the Council has a duty to assist. Under the terms of the UU, key workers and those with a local connection or need to reside in Bromley would be given priority for the affordable units. The 49 DMSH units would, therefore, help to meet part of the need for affordable homes in accordance with the objectives of Policy 2.
93. The FH consultation, and the work that has been carried out with regard to the proposed introduction of FH, demonstrate the Government's intention that this should be a key component of its strategy for improving access to the housing market<sup>22</sup>. The planning system is intended to be the key tool for delivering FH. Although options for legislation to ensure delivery are being considered, the Government's position is that this is not required for the implementation of FH.
94. The Government intends to run a pilot scheme to ensure that FH achieve the stated objectives and for this to be done before requiring local authorities to impose a policy requirement for FH in their development plans. The evidence on these matters does not, however, lead me to conclude that the Government intends that developers and local authorities should not make use of FH in the interim period, before any national policy changes are brought into effect, where it can be shown to meet AH needs. I accordingly reject the Council's objection to the use of a FH form of AH on these grounds.
95. Notwithstanding that the UU was not available before the appeal was lodged, the Council has had an opportunity to review and comment on the draft wording of the UU. It has not suggested any specific changes to that wording. Its contention that my allowing the appeal would result in the eligibility criteria for the FH units being imposed on the Council is, therefore, rejected. Information on average incomes and affordability ratios is readily available for the Council to judge whether a 30% discount would render the units affordable in Bromley. In addition, the 'local connections test' is well-established within the planning framework and should not be new to the Council.
96. Accordingly, I see nothing in the terms of the UU in relation to the proposed arrangements that should give rise to significant concerns on the Council's part. The Government considers that FH can be secured through planning obligations under s106 of the Town and Country Planning Act 1990. The objections advanced by the Council do not provide good reason for me to come to a different conclusion.

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<sup>22</sup> Government's Consultation paper [CD 7.7] and Response to the FH Consultation [CD 7A.8]

97. At the inquiry the Council asserted that allowing the appeal could negate or frustrate consideration of borough-wide arrangements for the future delivery of FH in Bromley. The Council's closing submissions go further, asserting that it would be unlawful for me to allow the appeal including the AH provision as proposed because my decision would have the effect of introducing a new policy regulating the use of land in Bromley. Having considered those submissions carefully, I am not persuaded that I am invested with such a power. Given that the FH proposed would be a form of DMHS that falls within the BLP definition of AH, I also reject the assertion that my allowing the appeal would have that effect.
98. The approval of a single scheme including FH at this stage would not prevent the Council from preparing a report on these matters and drafting whatever policy or guidance it considers appropriate. However, given the scale and pressing nature of the AH need in Bromley, I do not consider it either necessary or appropriate that the appeal scheme should be rejected because the Council has yet to undertake that exercise.
99. The definition of AH set out in the signed s106 agreement for the Homefield Rise development [ID18] includes a reference to FH. However, the approved scheme on that site does not include FH. On my reading, the agreement only contemplates FH units forming part of the Additional AH Scheme in the event that an early stage review indicates a surplus in the amount of AH that the scheme can reasonably provide. I do not consider that this UU supports the appellant's case.
100. As noted above, BLP Policy 2 provides for AH provision at a level below 35% and/or a with different tenure mix if this is justified following consideration of the scheme specific FVA. This is consistent with LonP Policy H5, which requires that applications following the 'Viability Tested Route' should be supported by viability evidence so as to ascertain the maximum level of AH deliverable on the scheme.
101. It is clear from the parties' positions on viability at the close of the inquiry that the appeal proposal could not support 35% AH. The Council had also retreated from its assessment that a 28% level of provision would be viable. Having regard to Policy 2, the key test is whether the viability evidence demonstrates that the proposed 49 FH (19%) provision represents the maximum level that could be delivered. The dispute between the parties is now largely about tenure rather than quantum.
102. A large volume of evidence on viability was presented and the issues between the parties have narrowed. The Building Costs SoCG [ID20] sets out agreement on a number of matters but shows a difference of £2.74M between the parties in their assessment of building costs. However, in showing an ongoing dispute on the building programme, it is inconsistent with the Viability SoCG (agreed at an earlier date) which agreed a 36 month overall building period. I have taken that to be the agreed position and note that this amendment would result in an increase of £798,541 in the Council's estimate of the building costs.
103. Having assessed all the evidence, I consider that the appellant's estimates for staircases (of a quality commensurate with the overall design) and for 4 rather than 3 cranes (given the location next to the railway) are to be preferred. Together with additional costs resulting from the 36 month programme, these adjustments would increase the Council's estimate by £1.6M to just under

- £60M. I do not have a reworked FVA using this figure. However, as Appraisal Nos. 1A to 4A in Dr Lee's final FVA note use a cost estimate of £59.715M (being the midpoint between the parties' final estimates), I consider that these provide a sound basis on which to assess the viability of the scheme.
104. In relation to the 19% FH option, Appraisals 3A and 4A adopt the position agreed in the Viability SoCG that receipts from the sale of these units would come at the end of the 36 month build period. For the 19% Shared Ownership (SO) options (1A and 2A) Dr Lee has used his preferred approach of a 'golden brick' (30%) payment on commencement with the balance being received over the construction period. The parties have agreed that receipts from the sale of 40% of the market housing units would commence in the first quarter after completion of the south block (at the end of the first 24 months of the 36 months overall building period) and then continue at a rate of 4.5 per month. Although no specific evidence was given to support Dr Lee's position on sales receipts from the SO units, my notes do not record that Dr Lee was cross examined on this point.
105. The economic downturn resulting from the Coronavirus pandemic is the biggest since the second world war and we remain in a period of great economic uncertainty. However, the balance of evidence from the residential agents and Land Registry data shows that house prices, including those of apartments in London, held up over the 12 months to October 2020 and have increased rather than decreased since the start of the pandemic. Those who prepare FVAs have to have regard to the current economic climate at the time of their assessment and to future prospects over the likely building and sales programme for the scheme.
106. Dr Lee's examples of FVAs, submitted since March 2020, for other residential developments in London and the South East have been prepared during the current economic crisis. These have all adopted a profit level of 17.5% on Gross Development Value (GDV) on the market housing component of those schemes. Many of these schemes have not yet secured planning permission. However, the figures in his Table 13.1 are the profit levels sought by the developers in the submitted FVAs and, therefore, reflect their starting point in the negotiations. It is unlikely that many developers would submit an appraisal that adopts 17.5% profit in the expectation that those acting for the local authority would seek to increase this. Hence, I consider that those appraisals provide a good indication of what levels of return are currently being sought by residential developers in the London market.
107. In comparison, the examples relied upon by Mr Turner are quite historic and are of more limited use for that reason. I acknowledge that 20% was used in respect of the Dylon 1 scheme. That scheme was appraised at a time when the residential market nationally was very flat; that is not the case in respect of the London residential market at present. I accept that the construction risks are likely to be similar and that the scheme cannot be phased to control cash flow. However, the market conditions are different, and it seems to me that sales in the Dylon 2 development are likely to benefit from this part of Bromley having now been established as a high density residential location.
108. The Dixon Searle report of 2016 was a high level study and, being over 4 years old, is somewhat dated as a benchmark for an appropriate level of profit in current market conditions. Their December 2020 report also adopts a figure

of 20% for developer profit but this update is concerned only with viability in relation to the CIL Charging Schedule. The assessment adopts what it calls a "buffered approach"<sup>23</sup> which seeks to ensure that not all of the viability headroom is taken to fund CIL charges. It may have been appropriate to adopt a 20% profit in a strategic level assessment which seeks to strike an appropriate balance between the desirability of funding public infrastructure and development viability. I do not accept that this sets a precedent for scheme specific FVAs for all development proposals in the Borough. On balance, therefore, I consider a return of 17.5% on GDV to be appropriate for the market housing in the appeal scheme.

109. Using that profit level, and the midpoint construction costs, Appraisal 2A in Dr Lee's final FVA note shows that a scheme with 19% SO would generate a higher residual land value than a scheme with 19% FH (Appraisal 4A). It is possible that some further adjustments to the costs side of the equation might be needed to reflect the amendments that I have accepted in paragraph 102 above. However, I consider that this evidence is sufficient for me to conclude that the appellant has not demonstrated that a scheme with 19% FH would represent the maximum level of AH deliverable in the appeal proposal. The appellant's failure to demonstrate that this is the case gives rise to a conflict with LBP Policy 2 and LonP Policy H5.
110. As both policies are agreed to be amongst the most important policies for the determination of the appeal they are deemed to be out-of-date by virtue of the Council's inability to demonstrate a 5 year HLS. That does not mean that no weight should be given to them. However, having regard to the case law in *Suffolk Coastal and Richborough Estates*,<sup>24</sup> I consider that the rigid enforcement of Policy 2 and LonP Policy H5 would be likely to frustrate the delivery of new housing to help meet the shortfall against the 5 year housing target in Bromley. In this context, and in view of the significant undersupply against the 5 year housing target and the shortage of new AH in the Borough, I find that only limited weight should be given to the conflict with those policies.
111. The Council raised the possible need for a late stage review clause in the UU in respect of AH provision but has not addressed this in its closing. This requirement is promoted in the LonP but there appears to be no guidance as to how it should be implemented. Neither has the Council provided any wording which could be inserted into the UU or a legal agreement. In the absence of such wording, I am unable to determine whether an appropriate mechanism could be put in place without creating the significant risks to delivery of the project that the appellant fears. I therefore find that this requirement should not be imposed in respect of this appeal.

#### *Very Special Circumstances*

112. Paragraph 143 of the Framework advises that the very special circumstances needed to justify inappropriate development in the MOL will not exist unless the potential harm by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. As in respect of the 2019 appeal decision, the starting point is that substantial weight must be given to the definitional harm by reason of inappropriateness

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<sup>23</sup> Paragraphs 18-19 of Executive Summary and

<sup>24</sup> CD 5A

and to the harm caused to the openness, notwithstanding my finding that there would only be a limited effect on openness.

113. For the reasons already set out, I attach very substantial weight to the delivery of the market housing proposed in the scheme. Although not policy compliant in accordance with BLP Policy 2, the provision of 49 affordable units would make a significant contribution to meeting the considerable need for AH in the Borough. I attach substantial weight to this social benefit of the proposal. As identified at Appendix 2 to Mr Butterworth's rebuttal proof, the proposal would result in substantial economic benefits through construction employment and investment, additional expenditure, and local authority revenue. I agree that significant weight should be given to these economic benefits.
114. The proposal would also provide a new high quality open space for public use, new planting to the bank of the River Pool that would enhance its biodiversity and appearance, and a new public path through the site that would fill an existing gap in the Green Chain and Waterway Link. I accept Mr Butterworth's assessment that, taken together, these environmental and social benefits of the proposal should be given very significant weight.
115. Collectively these benefits of the proposal would clearly outweigh the harm that I have identified and amount to the very special circumstances needed to justify a grant of permission for inappropriate development in the MOL. Accordingly, I find that the proposal complies with the policies in section 13 of the Framework, BLP Policy 50 and Policy G3 of the LonP.

### *Planning Balance*

116. I find that the proposal conflicts with BLP Policy 2 and LonP Policy H5 but that only limited weight should be given to that conflict. The proposal accords with all of the other relevant policies in the development plan. Although these most important policies are deemed to be out of date because of the absence of a 5 year HLS, I consider them to be consistent with the policies in the Framework and that full weight should be attached to them. In light of the compliance with these other policies, and the positive support for the proposal from LonP Policy D3 which encourages the optimisation of housing sites close to a station, I find that the proposal complies with the development plan as a whole.
117. Having regard to the conclusions set out above, I also find that the adverse impacts of the proposed development would not significantly and demonstrably outweigh the many benefits of the scheme. The presumption in favour of sustainable development, therefore, applies. As I have not identified any material considerations which would indicate a decision other than in accordance with the development plan, I conclude that permission should be granted for the appeal proposal.

### **Conditions**

118. As the suggested conditions discussed at the Inquiry were largely a repeat of those attached to the 2019 planning permission there was very little dispute as to the need for or wording of these. I have adopted them with only minor changes to add clarity where I thought this appropriate.
119. For the avoidance of doubt a condition listing the plans approved as part of the permission is required (2). A number of pre-commencement conditions are

needed, requiring the approval of certain details before development is started so as to ensure a safe and satisfactory form of development. These relate to tree protection (3), contaminated land assessment (4), a Construction and Environmental Management Plan (5), floodplain storage (6) and piling works (7). Further conditions requiring the approval of details before certain works are commenced relate to flood protection (8), external materials (9), lighting (10), glazing and ventilation (11), crime prevention measures (12) landscape buffer to the River Pool (13), and hard surfacing (14). These are all needed to ensure that the development is carried out to an acceptably high standard.

120. In order to ensure that all necessary facilities and services are in place for the development to operate safely and satisfactorily, I have attached a number of pre-occupation conditions relating to the outdoor gym and play facilities (15), cycle parking (16), car parking and electric vehicle charging points (17), refuse and waste storage (18), water network upgrades (19), waste management (20), and energy efficiency (21,22). Other conditions require the completion of the soft landscaping and tree planting works (23) and the publicly accessible open space (24), and the provision of the agreed percentage of accessible and wheelchair accessible dwellings (25). These conditions are required to ensure that the development is policy compliant and delivers the benefits that I have taken into account in my determination of the appeal.

### **Planning Obligations**

121. The UU contains obligations relating to the payment of financial contributions in respect of health, education, highways, traffic and carbon offsetting. I am satisfied that all of these are justified in terms of mitigating the potential effects of the development and to ensure compliance with the development plan. I am also satisfied that the contributions have been calculated in accordance with the Council's standard formulae for such contributions. I note that there is no policy basis for the financial contribution to cover the Council's costs in monitoring the planning obligations. However, the payment of such a contribution is permitted under the Community Infrastructure Regulations and the proposed payment is not unreasonable given the number and extent of the obligations in this case.

122. The obligations in respect of the Travel Plan, car club spaces, electric vehicle charging points are all warranted in order to ensure that future occupiers of the development have a choice of means of travel. The provision and future maintenance of the publicly accessible space and walkway are required to ensure adequate recreational provision for the development. The affordable housing provision forms an integral component of the proposal and a key social benefit that I have had regard to in my determination of the appeal.

123. All of the obligations contained in the UU are necessary to render the proposal acceptable in planning terms and satisfy the other tests for planning obligations as set out in paragraph 56 of the Framework. I have taken these into account in reaching my decision.

### **Conclusions**

124. I find that the very special circumstances exist to justify a grant of planning permission for the proposed development within the MOL. Notwithstanding the conflict with BLP Policy 2 and LonP Policy H5, the proposal complies with the development plan when taken as a whole. In view of absence of a 5 year HLS

paragraph 11 d) the Framework is engaged and I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development. The presumption in favour of sustainable development, therefore, requires that planning permission should be granted. There are no material considerations that indicate a refusal of permission against the provisions of the development plan.

125. For these reasons I conclude that the appeal should succeed and that planning permission should be granted, subject to the conditions set out in Annex A to this decision and the obligations comprised in the UU.

*Paul Singleton*

INSPECTOR



## **ANNEX 1**

### **SCHEDULE OF CONDITIONS ATTACHED TO APPEAL REF: APP/G5180/W/20/3257010**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings:
  - 634\_P06A\_101 R00 Site Plan
  - 634\_P06A\_102 R00 Site Survey Plan
  - 634\_P06A\_103 R00 Section Line Location
  - 634\_P06A\_201 R00 Level 00 (Ground Level) Plan
  - 634\_P06A\_202 R00 Level 01 Plan
  - 634\_P06A\_203 R00 Level 02 Plan
  - 634\_P06A\_204 R00 Level 03 Plan
  - 634\_P06A\_205 R00 Level 04 Plan
  - 634\_P06A\_206 R00 Level 05 Plan
  - 634\_P06A\_207 R00 Level 06 Plan
  - 634\_P06A\_208 R00 Level 07 Plan
  - 634\_P06A\_209 R00 Level 08 Plan
  - 634\_P06A\_210 R00 Level 09 Plan
  - 634\_P06A\_211 R00 Level 10 Plan
  - 634\_P06A\_212 R00 Roof Plan
  - 634\_P06A\_213 R00 Level-1 (Undercroft Car Parking) Plan
  - 634\_P06A\_214 R02 Landscape Plan
  - 634\_P06A\_215 R00 Site Plan with spot height elevations
  - 634\_P06A\_301 R00 Sections
  - 634\_P06A\_401 R00 Main Elevations (East & West Side)
  - 634\_P06A\_402 R00 Main Elevations (North & South Side)
  - 634\_P06A\_403 R00 Partial Elevations
  - 634\_D2\_P06A\_410 00 Context elevation looking West
  - 634\_D2\_P06A\_411 00 Context elevation through Station Approach
  - 634\_D2\_P06A\_412 00 Context elevation from WBR looking
  - 634\_D2\_P06A\_413 00 Context elevation of PI and PII to East A1
  - 634\_D2\_P06A\_501 00 Part Elevation and Details A1

#### *Pre-commencement conditions*

- 3) No development, including demolition and all preparatory work, shall be carried out until a scheme for the protection of the retained trees, prepared in accordance with BS 5837:2012 and including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) has been submitted to and approved in writing by the local planning authority. The TPP and AMS shall include:
  - a) construction details of any hard surfaces within the Root Protection Area (RPA) of any retained tree (if required);
  - b) a specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing;

- c) proposals to ensure that no boundary treatments take place within the within the RPA;
- d) the methodology and detailed assessment of root pruning (if required);
- e) arboricultural supervision and inspection by a suitably qualified tree specialist;
- f) reporting of inspection and supervision;
- g) methods to improve the rooting environment for retained and proposed trees and landscaping.

The development thereafter shall be implemented in strict accordance with the approved scheme and details.

- 4) No development shall take place until a contaminated land assessment, site investigation report, remedial strategy and quality assurance scheme, together with a timetable of works, have been submitted to and approved in writing by the local planning authority.
  - a) the approved remediation works shall be carried out in full on site in accordance with the approved remedial strategy and quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance;
  - b) upon completion of the works, a validation report shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works carried out, (including of waste materials removed from the site), the quality assurance certificates and details of post-remediation sampling;
  - c) the contaminated land assessment, site investigation (including the report), remediation works, and validation report shall all be carried out by contractor(s) who have been approved in writing by the local planning authority.

If, during development, contamination not previously identified is found to be present at the site, then no further development shall be carried out until the developer has submitted and obtained written approval from the local planning authority for a remediation strategy detailing how this contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.
- 5) No development, including any demolition or construction phase of the development, shall be carried out unless a Construction Environmental Management & Construction Logistics Plan (EM&CLP) for that phase of the works has been submitted to and approved in writing by the local planning authority. Each EM&CLP submitted under this condition shall include the details of:
  - a) telephone, email and postal address of the site manager and details of complaints procedures for members of the public;

- b) a dust management strategy to minimise the emission of dust and dirt during demolition and/or construction including, but not restricted to, spraying of materials with water, wheel washing facilities, street cleaning and monitoring of dust emissions;
- c) measures to maintain the site in a tidy condition in terms of disposal/storage of waste and storage of construction plant and materials;
- d) a scheme for the recycling/disposal of waste resulting from demolition and construction works;
- e) ingress and egress to and from the site for all vehicles;
- f) the proposed numbers and timing of vehicle movements through the day and the proposed access routes, delivery scheduling, use of holding areas, logistics and consolidation centres;
- g) the parking of vehicles for site operatives and visitors;
- h) a travel Plan for construction workers;
- i) location and size of site offices, welfare and toilet facilities;
- j) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing;
- k) measures to ensure that pedestrian access past the site is safe and not obstructed;
- l) measures to minimise risks to pedestrians and cyclists including, but not restricted to, accreditation of the Fleet Operator Recognition Scheme (FORS) and use of banksmen for supervision of vehicular ingress and egress.

The development in the relevant phase shall not be carried out other than in strict accordance with the approved EM&CLP for that phase.

- 6) No development shall take place until a scheme for compensatory floodplain storage works has been submitted to and approved in writing by the local planning authority. The scheme shall set out the sequence of works for the transition from the existing situation to the completed development and specify finished landscape levels whilst preventing an increased risk of flooding during the work. The development shall subsequently be carried out in strict accordance with the approved scheme and completed prior to the first occupation of any part of the development.
- 7) No development shall take place until details of any piling or other penetrative methods of foundation construction have been submitted to and approved in writing by the local planning authority. The details shall demonstrate that there will be no unacceptable risk to groundwater. The development shall be carried out in strict accordance with the approved details.

*Conditions to be discharged prior to commencement of works above slab level*

- 8) No construction works above slab level shall be commenced unless the following measures, as detailed within the approved Flood Risk Assessment (FRA) 'Dylon Phase 2 Worsley Bridge Road, Sydenham,

London' (March 2018) plus accompanying report Reference Mb/Ra/Rcef60978-003 L (8th June 2018), have been completed:

- a) the provision of levels for level floodplain storage compensation and external ground levels as detailed in Section 9.8 of the submitted FRA and submitted drawing SK1755;
  - b) water entry grille thresholds set no higher than 24.00m AOD as detailed in drawings P04A/DS707 Rev 01 'Car-Park Waterflow Strategy' and SK1753 'Car-Park Waterflow Strategy-West Grill';
  - c) ground floor (access) level set no lower than 27.0m AOD as detailed in drawing number P04A/201 Rev R1 'Level 00 Ground Level) Plan (27.00)';
  - d) the lower deck car park floor level set at 24.0 m AOD as detailed in drawing number P04A/210 Rev R1 'Level-1 (Undercroft Car Parking) Plan (24.00)';
  - e) Surface Water Infiltration Systems including the installation of the geocellular crate soakaways and geocellular crate detention tank, in accordance with the design details shown within the submitted FRA, to provide an infiltration rate of 0.010 metres/hour and to accommodate flows arising from a 1 in 100 year storm return period plus a 40% allowance for future climate change, with a final outflow to Pool River limited to 5 litres/second shall.
- 9) No construction works above slab level shall be commenced unless samples of all external materials, including green roof, wall facing materials and cladding, window glass, door and window frames and decorative features, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No construction works above slab level shall be commenced unless a detailed lighting scheme for the access drive and basement car and cycle parking areas has been submitted to and approved in writing by the local planning authority. The submitted scheme shall be self-certified as being in accordance with BS 5489-1:2003 and shall be implemented in full prior to the first occupation of any part of the development.
- The lighting shall subsequently be retained and maintained in good operational order for the lifetime of the development.
- 11) No construction works above slab level shall be commenced unless full written details, including relevant drawings and specifications, of the proposed glazing and ventilation of the proposed apartments, so as to achieve the standard recommended in the Cole Jarman Noise Assessment (ref 11/4200/R3), have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the details approved.
- The glazing and ventilation installed in accordance with the details approved under this condition shall be retained in situ for the lifetime of the development.
- 12) No construction works above slab level shall be commenced unless details of measures to minimise the risk of crime, and to meet the specific security needs of the application site and development, have been submitted to and approved in writing by the local planning authority.

Measures to minimise the risk of crime shall be implemented in full in accordance with the approved details prior to the first occupation of any part of the development. The security measures implemented in compliance with this condition shall achieve the "Secured by Design" accreditation awarded by the Metropolitan Police.

- 13) No construction works above slab level shall be commenced until a scheme for the provision and management of a buffer zone alongside the Pool River has been submitted to and agreed in writing by the local planning authority. The buffer zone scheme should be free from built development and could form a vital part of green infrastructure provision. The scheme shall include:

- a) Details of proposed river in-channel/bank enhancements (within the identified zone for naturalisation of river edge) in drawing 'Landscape Plan' 634\_P06A\_214 Rev02 to help maintain and enhance the 'River Pool at New Beckenham', a Site of Importance for Nature Conservation;
- b) Details of any proposed planting scheme (native species of local provenance should be used);
- c) Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision together with a named body responsible for management and production of a detailed management plan. Details of the longer term management of invasive non-native species should also be included.

The approved scheme shall be carried out as part of the landscaping works and shall be completed in the first planting season following the first occupation of any of the buildings hereby approved. The enhancement works shall thereafter be managed and maintained in accordance with the approved details for the lifetime of the development.

*Additional details to be approved*

- 14) A detailed scheme for the treatment of all paved areas and other hard surfaces, together with samples of the materials to be used in the construction thereof, shall be submitted to and approved in writing by the local planning authority prior to the commencement of any works involving the use of the specified materials. The development shall subsequently be carried out in accordance with the approved details.

*Conditions requiring works prior to occupation*

- 15) The Outdoor Gym and Children's Play area shall be constructed in accordance with the details shown on Plans Nos. P06A/20GP 00; 01; 02; 03; 04; 05 and 06 inclusive and as set out in the Outdoor Gym and Playground report dated February 2020 (634/P06A/OGP). The works shall be completed such that the facilities are available for use prior to the first occupation of any part of the development.
- 16) No part of the development shall be occupied unless the cycle parking provision has been completed in accordance with the approved plans and the London Cycle Design Guide. The cycle parking shall thereafter be retained exclusively for this purpose for the lifetime of the development.
- 17) No part of the development shall be occupied unless:

a) the car parking and wheelchair accessible car parking spaces in the basement car park and street levels have been laid out and completed in accordance with the approved drawings; and

b) the electric vehicle (EV) charging points (both active and passive) have been installed in accordance with Plan No 634 P06A/201/R00 and 213/R00 and are available for use.

All car parking and EV charging points provided under the terms of this condition shall thereafter be retained exclusively for their intended purpose for the lifetime of the development.

- 18) No part of the development shall be occupied unless the refuse and recycling storage facilities have been installed in accordance with plans that have been submitted to and approved in writing by the local planning authority. The facilities installed under the terms of this condition shall thereafter be retained exclusively for their intended use for the lifetime of the development.
- 19) No part of the development shall be occupied unless written confirmation has been submitted to and approved in writing by the local planning authority, either that all water network upgrades that are required to accommodate the additional surface water flows from the development have been completed or that a housing and infrastructure phasing plan has been agreed in consultation with Thames Water which expressly allows for occupation of some or all of the apartments within the development.

Where a housing and infrastructure phasing plan is agreed no occupation of any of the apartments shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

- 20) No part of the development shall be occupied unless a plan for the management and collection of refuse has been submitted to and approved in writing by the local planning authority. The Waste Management Plan shall be adhered to for the lifetime of the development.
- 21) No part of the development shall be occupied unless:
- a) The energy efficiency and sustainability measures, as detailed in the approved Energy Assessment dated 1 June 2020 and the Sustainability Statement, dated 8 June 2020, have been installed in accordance with the approved details; and
- b) Details of the location and size (square metres) of the Photovoltaic Panel arrays have been submitted to and approved in writing by the Local Planning Authority.

All energy efficiency and sustainability measures and Photovoltaic Panel arrays installed under the terms of this condition shall be maintained in accordance with the manufacturer's specifications and shall be retained for the lifetime of the development.

- 22) Within 6 months of the first occupation of the development, a post-completion verification report certificate for the building shall be submitted to and approved in writing by the local planning authority. The submitted report shall confirm that the minimum standards set out in Condition 21 have been achieved, and that all of the approved energy efficiency and sustainability measures have been implemented.

*Other conditions*

- 23) The soft landscaping and tree planting shall be completed in accordance with the details shown on Plan No 634/P06A/214 R02 and as set out in the Landscape Management Plan No. 634/P06A/LMP. The approved planting shall be carried out in the first planting season following the first occupation of any of the buildings hereby approved. The soft landscaping shall thereafter be managed and maintained in accordance with the Landscape Management Plan as submitted (634/P06A/LMP) for the lifetime of the development hereby approved.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 24) The public accessible open space hereby approved shall be provided and made available for public use by the end of the first planting season following occupation of 50% of the residential units.
- 25) The development shall be built so that:
- a) 90% of the dwellings hereby permitted accord with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings'; and
  - b) at least 10% of the dwellings hereby permitted are provided as wheelchair dwellings in accordance with Building Regulations Part M4(3) 'wheelchair user dwellings.'

The 'accessible and adaptable' and 'wheelchair user' dwellings provided in accordance with this condition shall thereafter be retained in a condition suitable for those intended users for the lifetime of the development.

## **ANNEX 2**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Young QC and Leanne Buckley-Thompson of Counsel instructed by West and Partners

They called:

Mr I S Ritchie CBE, RA Dip Arch (Dist) PCL ARB RIBA RIAI MIASBE FRSA FSFE, FSHARE Hon FAIA Hon FRIAS Hon FRAM Hon MCSA Hon MSC Pdim Hon D Litt. Director, Ian Ritchie Architects

Mr P Finch OBE Hon FRIBA  
Editorial Director of Architectural Review and Programme Director of World Architecture Festival

Dr C Miele MRTPI IHBC  
Senior Partner, Montague Evans LLP

Mr S J Butterworth BA (Hons) BPI MRTPI  
Senior Director, Lichfields

M J Stacey BA (Hons) DipTP MRTPI  
Director, Tetlow King

Mr J Turner BSc (Hons) MRICS  
Partner, Turner Morum LLP

#### FOR THE LOCAL PLANNING AUTHORITY

Gwion Lewis Of Counsel, instructed by G Ullman, Solicitor, London Borough of Bromley

He called:

Mr D Bord BA (Hons) PG (Dip) MRTPI  
Principal Planning Officer, London Borough of Bromley

Dr A Lee PhD MRTPI MRICS  
Senior Director and Head of UK Development Consultancy, BNP Paribas Real Estate

#### INTERESTED PERSONS

Mr A Tanchev local resident

Mr C Hazelhurst local resident

Mr D Rayson local resident



## **ANNEX 3**

### **CORE DOCUMENTS**

#### **1.0 Appeal Documents [file 1]**

- 1.1 Covering Letter
- 1.2 Appeal Form
- 1.3 Statement of Choice of Procedure
- 1.4 Statement of Case
- 1.5 (i) Statement of Common Grounds
  - (ii) (a) 5YHLS SoCG
  - (ii) (b) Appendix 2-Sites Approved on Appeal
  - (iii) (a) Affordable Housing SoCG
  - (iii) b) Appendix 1-Affordable Housing Completions
  - (iv) Draft Planning Conditions 22 December 20
  - (v) Viability SOCG 21 December 20
- 1.6 List of Core Documents
- 1.7 Start Date Letter 21 August 2020
- 1.8 LBB Questionnaire
- 1.9 LBB Statement of Case
- 1.10 Appendices to LBB SoC
- 1.11 Case Management Conference Note

#### **2.0 Application Documents [file 2]**

- 2.1a Covering Letter
- 2.1b Application Form
- 2.2 CIL Form
- 2.3 Acknowledgement Letter 13 March 2020
- 2.4a Application Drawing List
- 2.4b Application Drawings
- 2.5 Planning Design & Access Statement
  - Addendum A-Appeal Decision 26 June 2019 ref 3206569
  - Addendum B-Letter from SoS to the Mayor 27 July 2018
  - Addendum C-Topographic Survey
  - Addendum D-Photographs 1 - 29
- 2.6 Appendix 1-Architectural Design Statement
- 2.7 Appendix 2-Transport Assessment
- 2.8 Appendix 3-Travel Plan
- 2.9 Appendix 4(i)-FRA
  - Appendix 4(ii)-Foul Water Drainage Assessment
- 2.10 Appendix 5-Tree Survey Report
- 2.11 Appendix 6-Habitat & Ecological Survey
- 2.12 Appendix 7-Geotechnical and Geo-environmental Ground Investigation Report
- 2.13 Appendix 8-Noise & Vibration Assessment
- 2.14 Appendix 9-Air Quality Assessment
- 2.15 Appendix 10 (i-a) R1-Energy Assessment Report
  - Appendix 10 (i-b) GLA Consultation - Energy Memo
  - Appendix 10 (I-c) Carbon emission spreadsheet
  - Appendix 10(ii) Sustainability Statement
  - Appendix 10 (iii) Overheating Assessment
- 2.16 Appendix 11-Construction Logistics Plan
- 2.17 Appendix 12-Affordable Housing Statement
- 2.18 Appendix 13-Daylight Sunlight Assessment

- 2.19 Appendix 14(i) Archaeological Assessment  
Appendix 14(ii) Archaeological Evaluation Report
- 2.20 Appendix 15 (i-v) Playing Pitch Assessment
- 2.21 Appendix 16-Landscape Management Plan
- 2.22 Appendix 17-Outdoor Gym & Playground Design
- 2.23 Appendix 18-Biodiversity Metric Report & Metric Calculation
- 2.24 Appendix 19-Fire Safety Strategy Statement
- 2.25 Appendix 20-Playspace Provision Statement

### **3.0 Post Application Documents [file 3]**

3.1 GLA Stage 1 letter and report 26 May 2020

3.2 Correspondence with LBB

- 3.2 (i) e-mail WP to LBB 130520
- 3.2 (ii) e-mail WP to LBB 100620
- 3.2 (iii) e-mail WP to LBB 150620
- 3.2 (iv) e-mail IH to LBB 230620
- 3.2 (v) e-mail WP to LBB 150720
- 3.2 (vi) e-mail WP to LBB 160620
- 3.2 (vii) e-mail WP to LBB 290620
- 3.2 (viii) e-mail WP to LBB 240720
- 3.2 (ix) e-mail LBB to WP 100620
- 3.2 (x) e-mail LBB to WP 150720
- 3.2 (xi) e-mail LBB to IH 250620
- 3.2 (xii) e-mail LBB to WP 230720
- 3.2 (xiii) letter WP to LBB 240720
- 3.2 (xiv) e-mail LBB to WP 290720

3.3 Correspondence with GLA

- 3.3 (i) e-mail WP to GLA 210420
- 3.3 (ii) e-mail GLA to WP 230420
- 3.3 (iii) e-mail WP to GLA 280420
- 3.3 (iv) e-mail WP to GLA 050520
- 3.3 (v) e-mail GLA to WP 200520
- 3.3 (vi) e-mail WP to GLA 200520
- 3.3 (vii) e-mail GLA to WP 280520
- 3.3 (viii) e-mail GLA to WP 250620
- 3.3 (x) e-mail GLA to WP 020720
- 3.3 (xi) e-mail WP to GLA 070720

3.4 LBB report of application to Development Control Committee 24<sup>th</sup> September 2020 (item 6)

3.5 Transcript of DC Committee consideration of item 6 report

- 3.6 (i) LBB Housing Trajectory 2020 report to Development Control Committee 24<sup>th</sup> September 2020 (item 10)
- (ii) Minutes of LBB DC Committee 24 Sept 2020 re 5YHLS

3.7 Transcript of DC Committee consideration of item 10 report

3.8 Appellant's Viability Assessment

- 3.9 (i) Section 106 Unilateral Undertaking
- 3.9 (ii) Inspector's Route Map
- 3.9 (iii) Title Plan and Register Copy

#### **4.0 Development Plan Documents [file 4]**

##### **[file 6]<sup>25</sup>**

- 4.6 Bromley Local Plan
- 4.7 Local Plan Inspector's Report
- 4.8 LBB Planning Obligations SPD December 2010
- 4.9 LBB Addendum to Planning Obligations SPD January 2012
- 4.10 LBB Addendum to Planning Obligations SPD June 2013
- 4.11 LBB Addendum to Planning Obligations SPD June 2015
- 4.12 LBB Addendum to Planning Obligations SPD January 2017
- 4.13 LBB Addendum to Planning Obligations SPD July 2018
- 4.14 LBB Adopted Affordable Housing SPD March 2008
- 4.15 LBB Addendum 2 to AH SPD January 2012
- 4.16 LBB Addendum to AH SPD June 2013
- 4.17 LBB Addendum to AH SPD July 2018
- 4.18 LBB Adopted SPG1 General Design Principles

##### **[file 7]**

- 4.19 GLA Strategic Housing Land Availability Assessment (2013)
- 4.20 GLA London Strategic Housing Market Assessment (2013)
- 4.21 GLA Sustainable Design & Construction SPG April 2014
- 4.22 GLA Character and Context SPG June 2014
- 4.23 GLA London Housing SPG March 2016.

##### **[file 8]**

- 4.24 GLA Affordable Housing and Viability August 2017
- 4.25 GLA London Strategic Housing Market Assessment (2017)
- 4.26 GLA Strategic Housing Land Availability Assessment (Nov 2017)
- 4.27(i) GLA Good Quality Homes for all Londoners
- 4.27(ii) GLA Optimising Site Capacity – A Design Led Approach SPG
- 4.27(iii) GLA housing design-Quality & Standards SPG
- 4.28 South East London SHMA (2014)
- 4.29 Letter of 9 December 2020 from Mayor to SoS
- 4.30 SoS Letter of 10 December 2020 to Mayor
- 4.31 Annex A to letter of 10 December 2020 from SoS to Mayor
- 4.32 Annex B to letter of 10 December 2020 from SoS to Mayor pdf
- 4.33 GLA Letter 21 December 2020 Mayor to SoS
- 4.34 Publication London Plan 21 December 2020

#### **5.0 Court and Appeal Decisions [file 9]**

- 5A.1 Suffolk Coastal DC v Hopkins Homes
- 5A.2 Samuel Smith v N Yorkshire CC
- 5A.3 Timmins v Gedling BC [2015] EWCA Civ10

- 5B.1 Turner v SSCLG & EDC [2016] EWCA Civ 466
- 5B.2 Hunston Properties Ltd v SSCLG [2013] EWHC 2678 (Admin)
- 5B.3 St Modwen v SSCLG & ERYC [2017] EWCA Civ 1643

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<sup>25</sup> Files 4 & 5 related to the now superseded London Plan 2016 and Intend to Publish version of the replacement London Plan

- 5B.4 Timmins v Gedling BC and Westerleigh [2014] EWHC 654 (Admin)
- 5B.5 Fordent Holdings v SSCLG [2013] EWHC 2844 (Admin)
- 5B.6 Euro Garages v SSCLG and Another [2018] EWHC 1753 (Admin)
- 5B.7 Wychavon DC v SSCLG [2008] EWCA Civ 692
- 5B.8 Lee Valley Regional Park Authority v Broxbourne BC [2015] EWHC 185 (Admin)
- 5B.9 Hallam Land Management Ltd v SSCLG & Eastleigh BC [2017] EWHC 2865 (Admin)
- 5B.10 Gladman Developments Ltd v SSCLG & CBC [2019] EWHC 127 (Admin)
- 5B.11 CPRE and Powcampaign v Waverley BC and SSCLG [018] EWHC (Admin)
- 5B.12 R (Basildon District Council) v SofS & Temple [2004] EWHC (Admin) 2759
- 5B.13 Brentwood v SoSE (ref (1996) 72P. & C.R. 61) J.P.L. 939
- 5B.14 McCarthy and Stone and Others v GLA 2018

- 5C.1 South Eden Park Road BR3 3LZ – APP/17/3174961
- 5C.2 Maybrey Works SE26 5AZ – APP/17/3181977
- 5C.3 North of Boroughbridge Road York – APP/19/3227359
- 5C.4 Land north of Nine Mile Ride, Finchampstead, Berkshire – APP/19/3238048
- 5C.5 Land at Pear Tree Lane, Euxton, Chorley – APP/20/3247136
- 5C.6 Hayes Street Farm – APP/18/3206947 & 3206949
- 5C.7 Millharbour, Muirfield Crescent and Pepper Street London APP/18/3194952
- 5C.8 Conington Road Lewisham SE13 7LH APP/18/3205926
- 5C.9 Land at the corner of Oving Road and A27, Chichester PO20 2AG  
APP/16/3165228:
- 5C.10 Land off Aviation Lane, Burton-upon-Trent APP/20/3245077
- 5C.11 Land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX  
APP/19/3226914
- 5C.12 The Manor Shinfield Reading APP12\_2179141
- 5C.13 (i) Oxford Brookes University Wheatley APP19\_3230827 (SoS Letter)
- 5C.13 (ii) Oxford Brookes University Wheatley APP19\_3230827 (Inspectors  
Conclusions)

## **6.0 Dylon Phase 1 and 2 Appeal Documents [file 10]**

- 6.1 (i) Dylon 1 APP 2114194- 5.04.10
- 6.1 (ii) Dylon 1 Approved Plans
- 6.2 Dylon 1 APP 2206836-18.03.14
- 6.3 Dylon 1 APP 2219910 and 2206836-16.0.15
- 6.4 (i) Dylon 2 APP 3144248-02.08.16
- 6.4 (ii) Dylon 2 APP 3144248-02.08.16 Plans
- 6.4 (iii) Dylon 2 APP 3144248-02.08.16 AVR's
- 6.5 (i) Dylon 2 Appeal Decision 26 June 2019 ref 3206569 (also at CD 2.5  
Addendum A)
- 6.5 (ii) Dylon 2 26 June 2019 3206569 Approved Plans
- 6.5 (iii) Proof of Evidence of Steven Butterworth

## **7.0 Other Documents Reports and Publications**

### **A [file 11]**

- 7A.1 National Planning Policy Framework (2019)
- 7A.2 NPPG Housing and economic needs assessment July 2019
- 7A.3 NPPG Housing supply and delivery July 2019
- 7A.4 HDT Measurement Rule Book July 2018
- 7A.5 Housing Delivery Test 2018 Measurement Technical Note (19 February 2019)

- 7A.6 Changes to the current planning system - consultation Aug 2020
- 7A.7 First homes Consultation Feb 20
- 7A.8 First homes-design and delivery consultation response
- 7A.9 Guide to First Homes
- 7A.10 Housing White Paper-Fixing Our Broken Housing Market (February 2017)
- 7A.11 Conservative Party Manifesto (July 2017)
- 7A.12 Conservative Party Manifesto (December 2019)
- 7A.13 Building a Better Bromley - Sustainable Community Strategy (2009 - 2020)
- 7A.14 London Borough of Bromley Homelessness Strategy (2018 - 2023)
- 7A.15 Bromley Council Housing Strategy (2019-2029)
- 7A.16 Association of Residential Managing Agents 'The Guide to the Management of Mixed Tenure Developments'
- 7A.17 Planning Appeals Quarterly Monitoring Report April 19-December 19
- 7A.18 Planning Appeals Monitoring Report November 2020
- 7A.19 LBB Housing Trajectory (September 2020)
- 7A.20 White Paper-Planning for the Future August 2020
- 7A.21 (i) LBB 5YHLS Report, April 2019
- 7A.21 (ii) Appendices 1-7
- 7A.22 LBB Annual Monitoring Report (1st April 2018 -31st March 2019) November 2020
- 7A.23 Lichfield's Start to Finish (Second Edition) February 2020
- 7A.24 LBB Report to DCC Committee, Tuesday 18th March 2020, Town Centre Planning Policy Strategy: Bromley and Orpington
- 7A.25 River Corridor Improvement Plan SPD, London Borough of Lewisham, September 2015
- 7A.26 Spending Review 2020 speech
- 7A.27 House of Commons Public Accounts Committee Starter Homes report
- 7A.28 Oral evidence Starter Homes HC 88
- 7A.29 Government response to the local housing... the current planning system"
- 7A.30 (i) Written statement of SoS 161220 (previously numbered 7A.27(i))
- 7A.30 (ii) London-new SM December 16 2020 (previously numbered 7A.27(ii))
- 7A.31 NPPG Chapter 10-Viability

## **B [file 12]**

- 7B.1 (i) Planning Permission dated 11 June 2020 for National Westminster Bank Sports Ground Copers Cope Road Beckenham BR3 1NZ
- 7B.1 (ii) Committee Report 18 March 2020
- 7B.1 (iii) Site and Roof Plan
- 7B.1 (iv) Elevations
- 7B.1 (v) Illustrative view from Copers Cope Road.
- 7B.1 (vi) App reference 19/04644/CONDT1, and details pertaining to condition 20
- 7B.1 (vii) App 21.11.20 for discharge of Condition 10(7)
- 7B.2 (i) Maybrey Works revised pp 21 November 2019
- 7B.2 (ii) Maybrey Works approved Section drawing 21 November 2019
  
- 7B.3 (i) South Eden Park Road PP 29.10.20
- 7B.3 (ii) Committee Report 20.10.20
- 7B.3 (iii) Boyer FVA re SEPR
- 7B.3 (iv) S73 Application 30 October 2020 Covering Letter
- 7B.3 (v) S73 application 30 October 2020 Form
  
- 7B.4 Famingo Park Club-S106 Covering Letter 10 August 2020

7B.5 124-126 High Street Bromley 17/04945

7B.6(i) 1 Scotts Lane 19\_01755

7B.6(ii) 1 Scotts Lane 19\_01805

7B.7 Lewisham Ravensbourne River Corridor Improvement Plan (2014), Waterlink Way and Pool River Maps (extracts), Lewisham website

7B 8 (i) 6-10 Sherman Road, Bromley North, GLA Stage 2 Letter (October 2018)

7B 8 (ii) 6-10 Sherman Road, Bromley North, LBB Decision Notice (24th July 2018)  
ref 17/05790/FULL

7B.8 (iii) 6-10 Sherman Road, Bromley North, Committee Report ref  
17/05790/FULL

## **ANNEX 4 INQUIRY DOCUMENTS**

- ID1 Appellant's Opening Statement
- ID2 Council's Opening Statement
- ID3 Text of Mr Tanchev's Statement
- ID4 Text of Mr Hazlehurst's Statement
- ID5 Council's application for a partial adjournment
- ID6 Appellant's response to partial adjournment application
- ID7 Inspector's ruling on partial adjournment application
- ID8 Correction sheet for Dr Miele's POE
- ID9 Inspector's Note re Agreed Deadlines for further written submissions
- ID10 BNP Paribas Acklam Road Site FVA
- ID11 Round Table Discussion Agenda
- ID12 Environment Agency Letter August 2018
- ID13 Environment Agency Letter July 2020
- ID14 Ministerial Statement on Standard Methodology for assessing Local Housing Need
- ID15 Inspector's Note re Additional Evidence
- ID16 Mr Rees's email 29 December 2020
- ID17 Mr Rees's note on Application of S106 of TCPA
- ID18 S106 Undertaking re Homefield Rise Site
- ID19 Decision Notice for Homefield Rise Site
- ID20 Building Costs SoCG (signed)
- ID21 LBB CIL Viability Update Report December 2020
- ID22 Mr Turner's note re CIL Viability Update Report
- ID23 Dr Lee's response to Mr Turner's Note
- ID24 Dr Lee's Final Note Re Scheme FVA
- ID25 Council's Closing Submissions
- ID26 Judgment in William Davis and Others v Charnwood BC [2017] EWHC 3006 (Admin)
- ID27 Appellant's Closing Submissions
- ID28 SoS letter to Mayor of London 29 January 2021
- ID29 Inspector's Note to Parties re SoS letter dated 29 January 2021 and Publication of LonP
- ID30 Appellant's comments on SoS letter dated 29 January 2021 and Publication of LonP
- ID31 Council's comments on SoS letter dated 29 January 2021 and Publication of LonP



## Costs Decisions

Inquiry Held on 15-22 December 2020

Site visit made on 16 March 2021

**by Paul Singleton BSc MA MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 29 March 2021**

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### Application A

#### **Costs application in relation to Appeal Ref: APP/G5180/W/20/3257010 Footzie Social Club, Station Approach, Lower Sydenham, London SE26 5BQ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Dylon 2 Limited for a full award of costs against the Council of the London Borough of Bromley.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of the existing buildings and redevelopment of the site by the erection of a four to eleven storey development comprising 254 residential units (130 one bedroom; 107 two bedroom and 17 three bedroom) together with the construction of an estate road and ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.
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### Application B

#### **Costs application in relation to Appeal Ref: APP/G5180/W/20/3257010 Footzie Social Club, Station Approach, Lower Sydenham, London SE26 5BQ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Council of the London Borough of Bromley for a partial award of costs against Dylon 2 Limited.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of the existing buildings and redevelopment of the site by the erection of a four to eleven storey development comprising 254 residential units (130 one bedroom; 107 two bedroom and 17 three bedroom) together with the construction of an estate road and ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.
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## Decisions

1. Application A for a full award of costs against the Council of the London Borough of Bromley (the Council) is refused.
  2. Application B for a partial award of costs against Dylon 2 Limited is refused.
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## **Application A**

### **The submissions for Dylon 2 Limited**

3. The application is made on both procedural and substantive grounds and a full award of costs is warranted because of unreasonable behaviour in the Council's unnecessary pursuit of the appeal to the inquiry stage. The resolution to resist the appeal was passed without any debate. It was also passed without proper consideration of the weight to be given to the market and affordable housing that would be delivered by the appeal scheme, in light of the Council's inability to demonstrate a 5 year housing land supply (HLS). The Council failed to acknowledge the presumption in favour of sustainable development arising from the absence of a 5 year HLS.
4. The necessary planning balancing exercise could have been undertaken on the basis of Dylon 2 Limited's proposal (at that stage) to provide 35% affordable housing (AH) with tenure to be agreed at a later stage. The Council could have resolved to approve the planning application subject to a legal agreement (or a planning condition) requiring a detailed AH scheme at a later date. It was, therefore, unreasonable for the Council to pursue putative Reason for Refusal (RfR) 1.
5. In resolving to pursue putative RfR 2, the Council failed to have proper regard to the 2019 appeal decision and material changes in the development context of the site. The Council chose to oppose the appeal on design grounds despite having resisted requests that it commission an independent design review of the scheme. It has also failed to produce any substantive design evidence to substantiate RfR 2. The Council's objections regarding the effect on living conditions were 'make-weight' historic objections that were resolved in the 2019 appeal decision.
6. Notwithstanding repeated requests before the date for exchange of evidence, the Council declined to release information concerning its decision to approve another residential development within the Borough with zero AH provision. As the circumstances of that approval are directly relevant to issues before the inquiry, the Council failed to act consistently in its decision making and to discharge its duties to the inquiry. The Council's witnesses in respect of viability submitted evidence to the inquiry which is inconsistent with their professional advice on other residential developments including in relation to the approved Dylon 1 development.

### **The response by the Council**

7. The planning application included scant information re AH and, despite repeated requests, Dylon 2 Limited refused to be drawn on what tenure mix was to be provided. This meant that the viability of the AH offer could not be assessed. As a policy compliant AH provision had not been proposed, Bromley Local Plan (BLP) Policy 2 required the submission of a Financial Viability Assessment (FVA) to justify an alternative tenure mix. Neither the FVA nor any additional information as to the proposed tenure mix had been provided by the end of the statutory period for determination of the application.
8. At the end of that period, the Council made it clear that it wanted to continue discussions in the hope of reaching agreement on this issue and there was no need for an appeal to be lodged. The appellant's decisions to appeal, and to

delay outlining its detailed case on AH and viability until late in the process, amounted to an attempt to bypass the responsibility of the Council, and of the Greater London Authority (GLA) as strategic planning authority, to assess a key planning issue in the public interest. This is not how the planning system is intended to operate.

9. At the Council's Planning Committee in September 2020, there was a contribution from the ward member and an opportunity for other members to ask questions before moving to a vote. The members resolved to accept the officers' recommendations. The Chairman's decision to take the report on the 5 year HLS position before that on the appeal proposal meant that members were fully aware of the lack of a 5 year HLS when they considered the appealed application.
10. In the absence of the necessary information on AH tenure mix and viability, it would have been wrong for the Council to agree to defer the assessment of the viability of the scheme to a point after passing a resolution to grant planning permission. The planning balance assessment could not have been undertaken on this basis. The approach taken in respect of the appeal decision in the South Eden Park Road scheme provides no support for the appellant's contention that the AH issue could have been dealt with by a planning condition, thereby rendering the appeal unnecessary.
11. The impact of the Crystal Palace FC (CPFC) covered pitch on local character is a matter of subjective judgement. There is no approval for high fencing around that site. The Council's assessment of the appeal proposal had full regard to the details of the scheme approved in the 2019 appeal decision. It was not required to undertake an independent design review and nothing in any policy or guidance suggest that it was unreasonable (for costs purposes) not to commission such a review. The Council's planning witness provided evidence to support the its concerns with regard to the design and impacts of the appeal scheme. The Council did not ignore Inspector Baird's findings with regard to single aspect units. It was not unreasonable for the Council to take issue with the increased proportion of such units in the appeal proposal.
12. Dylon 2 Limited's claim that it was unable to provide a FVA because of the economic uncertainty due to the Covid 19 pandemic has never been substantiated. All other residential developers who submitted applications during this period have, without exception, been able to particularise their case on viability. The mere fact that a party wishes to challenge the evidence of the other party does not mean that the costs jurisdiction is engaged.

## **Reasons**

13. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. There must be a causal link between the unreasonable behaviour and the unnecessary and wasted expenditure which is alleged in the application. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example by unreasonably refusing an application or by a failure to produce evidence to substantiate each reason for refusal on appeal.

14. Dylon 2 Limited's complaints about the lack of debate at the 24 September 2020 Planning Committee are not borne out by the transcript of the proceedings. These show that the meeting was addressed by Councillor Mellor, whose comments were supported by another ward member, and that the Chairman invited other members to comment. Councillor Mellor made a point of drawing the Committee's attention to the detailed report on the application and stated his assumption that all members had read this. The absence of further comments or questions from the Committee suggests that they considered that the report provided sufficient information for them to come to a view on the officer recommendations rather than a lack of interest in the case.
15. The Chairman decided to take the update report on the Council's 5 year HLS before the report on the appealed application. In my view, this demonstrates both his understanding of the relevance of the 5 year HLS to the Council's decision whether or not to oppose the appeal and his desire that members should have a clear understanding of the HLS position. The officer report fully explained the implications of the absence of a 5 year HLS in terms of the presumption in favour of sustainable development in section 11 of the National Planning Policy Framework (Framework). Paragraphs 6.1.2 and 6.1.3 of the report expressly advised members what the presumption means in terms of decision making and the relevant development plan policies. Paragraph 6.1.6 explained that the subsequent sections of the report set out the officers' assessment of the overall planning balance of the proposal, having regard to that presumption.
16. The report acknowledged that, in the 2019 appeal decision, the Inspector had attributed very substantial weight to the market housing and AH that would be provided and that the current scheme could potentially contribute to an uplift in housing and AH provision. The report noted that the AH offer in the 2019 appeal scheme had been fully policy compliant and explained that it was uncertain that the same benefit would be delivered by the current proposal because of the lack of a confirmed AH tenure or FVA.
17. These considerations were carried forward into section 8 of the report which set out the officers' conclusions, both on whether the very special circumstances needed to justify a grant of permission in the Metropolitan Open Land (MOL) had been demonstrated and on the planning balance. The report was both extensive and comprehensive. It provided more than sufficient information to enable the Committee to make its decision.
18. BLP Policy 2 states that, in negotiating AH provision, the Council will seek a tenure split of 60% social/affordable rented and 40% intermediate provision. The policy is clear that, where the proposed tenure split is not compliant with this preferred mix, the Council will require evidence in the form of a FVA to justify that alternative mix. Since both Policy 2 and the related London Plan policies were cited in the AH Statement that accompanied the application, the appellant was fully aware of the policy requirements when the application submission was being prepared. Despite Dylon 2 Limited's many protestations to the contrary, the absence of any firm proposal as to the AH tenure mix to be provided, and of a FVA to justify any proposed departure from the Council's preferred, meant that the application submission was not policy compliant in this regard.

19. In those circumstances, the Council was entitled to take the view that it had insufficient information to form any firm conclusions as to the weight to be given to the potential benefit of the AH, either in respect of the very special circumstances test or in the overall planning balance. The Council's decision to resist the appeal on the grounds set out in RfR 1 did not, therefore, constitute unreasonable behaviour.
20. Irrespective of the position that may have been adopted by the Council in the South Eden Park Road appeal, the condition attached to the permission granted on appeal (condition 25) required the submission of an AH scheme that met the policy requirements for a minimum of 35% of the units to be affordable and a mix that accorded with the Council's preferred 60:40 split. The absence from the Inspector's decision on that appeal of any detailed reasoning for the imposition of this condition suggests that its wording had been agreed by the parties.
21. That Inspector's use of that condition does not support Dylon 2 Limited's case that the Council should have been willing, at the application stage, to agree to a condition which left the AH tenure to be agreed at some subsequent date. The Planning Inspectorate does have a model condition in respect of AH. However, this is to be used in exceptional circumstances and in cases where the heads or principal terms of the legal agreement that is likely to be required under that condition have largely been agreed. That was clearly not the position at the time that the appeal was lodged.
22. The officer report included considerable detail on the planning history of the appeal site and on the key differences between the various proposals that had been submitted for its development. It also included a detailed comparison between the current proposal and the 2019 appeal scheme in terms of their relative height, scale and massing and their effects on the openness of the MOL. For example, paragraph 6.3.10 of that report states the officers' view that the "*proposed development would have a greater impact in terms of its scale and bulk when compared to the scheme allowed at appeal.*"
23. Having regard to these many references, I can see no grounds for the assertion that the Council failed to have proper regard to the 2019 appeal decision. Given that the appellant had firmly rejected the GLA's suggestion about the redistribution of units from the north to the south block, I see no reason why the officers should be expected to have reported that possible revision of the scheme to the Committee.
24. The officer report noted that there are no new or emerging large scale developments in the townscape surrounding the site "*except the indoor and outdoor sports facilities at the National Westminster Sports Ground*". Although the appellant may have a different view as to how significant that change in the townscape context of the site has been, it is not correct to assert that the Council did not have regard to this change.
25. These matters were both taken up and expanded upon in Mr Bord's proof of evidence. In that proof, he set out his analysis of the impacts of the increased height, scale and massing of the proposal, both in respect of the scheme's acceptability in design terms and its effect on openness. That assessment was set very clearly within the framework of the form of development that had been found to be acceptable in the 2019 appeal scheme. The proof provides further information on the Council's decision to grant permission for the CPFC

- covered pitch and the assessment that was made by officers of its likely effects on openness and available public views when recommending that application for approval. Mr Bord concluded that the covered pitch would not have a significant bearing on views into the appeal site or significantly affect the open character of the wider area, except along a section of Copers Cope Road. Those are matters of subjective judgement.
26. PPG advises that a local planning authority may be found to have acted unreasonably if it fails to produce evidence to substantiate each reason for refusal on appeal. PPG does not require that that evidence should itself be substantial or that it should be supported by an independent design review. What is required is that the LPA should produce evidence to demonstrate that it had some respectable basis for its reason for refusal. Although I have come to a different conclusion than Mr Bord in respect of putative RfR 2 in my determination of the appeal, I have no doubt that his evidence satisfies that requirement.
27. Standard 29 of the Mayor's Supplementary Planning Guidance (SPG) on Housing seeks that the number of single aspect units should be minimised. This requires an assessment of the scheme under consideration and of whether or not this meets the SPG requirement that the design should address issues such as noise, ventilation and daylight. The fact that Inspector Baird found the 2019 appeal scheme acceptable in this regard does not mean that a wholly different design for a much larger scheme on the same site should also be considered acceptable. The scheme has to be assessed on its own merits and this is what the Council did. The fact that I have come to a different conclusion in my appeal decision does not mean that the Council's assessment amounted to unreasonable behaviour.
28. The preparation of an FVA is normally informed by an assessment of costs and values achieved or adopted in other developments within the local area but the final assessment must be particular to the circumstances of the scheme under consideration. Where a consultant, such as Dr Lee, produces a large number of such appraisals over the course of a year it is to be expected that he will adopt different, and on some occasions seemingly contrasting, assumptions in respect of those different appraisals. At the appeal inquiry, Dr Lee provided a reasonable explanation for the alleged discrepancies put to him by counsel for the appellant. I do not agree that his evidence was inconsistent with his professional advice on other schemes unrelated to the appeal proposal. His explanation as to the different economic circumstances under which the Dylon 1 scheme was assessed was clear. I have accepted that explanation in reaching my conclusions on the viability of the appeal scheme.
29. Had the Council refused to make information available to the inquiry which it knew to be directly relevant to the issues in the appeal and directly contradictory to the case that it presented at the inquiry, that could have amounted to unreasonable behaviour on its part. I do not consider that that is what occurred in this case.
30. The Council agreed, in October 2020, to the removal of a condition on the South Eden Park Road planning permission that required AH to be provided as part of that development. That decision was taken by the Council in the particular circumstances of that case, having regard both to the FVA submitted by the applicant and the advice received from Boyer, its independent viability

expert. Scheme viability needs to be assessed in the particular circumstances of each case. The Council was entitled to come to the view that the circumstances relating to the South Eden Park Road development were not identical to those in respect of the appeal proposal. Having considered the viability evidence in that case, the Council resolved to accept a zero level of AH. That did not create a precedent in respect of the position it should adopt in relation to the appeal scheme. I do not accept that its reluctance to release what it considered to be financially sensitive information amounted to unreasonable behaviour.

31. Whether the Council should have published the Boyer report as a background paper at the time that the application was considered by the Planning Committee is a separate matter which is not for me to determine.
32. It may have been helpful for Dr Lee to have seen the Boyer report when preparing his evidence, so that he could have been aware of their assessment of the building programme in that scheme and how they had dealt with the issue of cost inflation. This may possibly have led to an earlier narrowing of the differences between the viability experts in the appeal. However, given the extent of those differences at the exchange of proofs, I cannot be certain that this would have been the case. Even if that information had been available at an earlier date, I am not persuaded that this would have had a significant effect in terms of the time needed for Mr Turner to produce his evidence for the inquiry. Hence, I do not find that the timing of the release of that report has caused the appellant to incur unnecessary or wasted expenditure in the preparation of its viability case.

### **Conclusions**

33. For the reasons set out above I find that the Council's actions with regard to its decision to oppose the appeal and in producing evidence to substantiate its putative RfR do not amount to unreasonable behaviour. I also find that there was no unreasonable behaviour with regard to the timing of the Council's release of the Boyer report. The application for costs is, therefore, refused.

### **Application B**

#### **The submissions by the Council**

34. The application is for a partial award of costs relating to the instruction of two of the Council's witnesses to prepare evidence on viability and act for the Council in the appeal. The appellant failed to provide the viability assessment required at the planning application stage. Its backloading of the viability evidence until a late stage in the appeal process was demonstrably unreasonable.
35. The late provision of this evidence caused the Council to incur additional expense in instructing these consultants at late notice. By misusing the appeal process, the appellant has evaded the expectation, in accordance with the Council's Planning Obligations Supplementary Planning Document (SPD), that it would pay the costs of any independent expert that the Council may need to appoint to review the appellant's FVA. Had the appellant provided the FVA at the application stage, the Council would not have incurred the costs of instructing these consultants. The extensive common ground agreed by the

close of the Inquiry could have been agreed at the application stage, taking these matters off the table by the time the appeal was lodged.

36. The appellant's Statement of Case did not comply with the guidance in the Planning Inspectorate's Procedural Guide in relation to Planning Appeals. It did not set out the full particulars of the appellant's case on AH and viability, it failed to contain full details of the relevant facts and planning arguments that the appellant intended to rely on and did not outline the methodology or assumptions to be used to support the viability case. The Statement included no meaningful disclosure of what became an unexpected and controversial case with regard to AH provision. As a result, the Council was not fully aware of the appellant's case, arguments and issues from the start. This represented a further failure to comply with the Procedural Guide and amounted to unreasonable behaviour.

### **Response by Dylan 2 Limited**

37. As the Council had no viability expertise in house, the only circumstances in which it would not have had to call viability evidence would have been if all matters had been agreed. Dr Lee's evidence on the three main areas of difference between the parties on viability, the differences with regard to the Cost Plan and his evidence on First Homes (FH) all demonstrate that whatever might have been agreed before the Inquiry is immaterial, as these matters would always have been in dispute.
38. The appellant exercised its right of appeal some 7 weeks after the end of the statutory period available for the Council to determine the application. Prior to lodging the appeal, it had proposed that, if officers would recommend that permission be granted, the Council could pass a 'minded to approve' resolution, subject to completion of a S106 Agreement to cover the tenure of the AH. Alternatively, the Council could have attached a condition that required the submission of a scheme for the provision of AH which would include the details of the level and tenure of that provision. Both of these are established and accepted mechanisms for dealing with AH and a condition of this type was suggested by the Council in respect of the planning appeal for the South Eden Park Road development scheme.
39. The appellant was unable to submit detailed viability information either with the application, or at the time that the appeal was lodged, because of the economic uncertainties caused by the Covid 19 pandemic. As a result of the pandemic the RICS had, on 17 March 2020, introduced a requirement that Chartered Surveyors should include a statement regarding 'Material Valuation Uncertainty' in all valuations and FVAs, thereby rendering them of limited value. This was only lifted in mid-September 2020. Following the lifting of that requirement, the appellant's presentation of its viability case has been exemplary and in accordance with the deadlines set by the Inspector.
40. Having prepared an alternative costs plan, the Council's costs expert was then unavailable to attend the inquiry. This led the closing of the inquiry to be deferred and to additional costs being incurred by the appellant. The Council receives a planning fee when a planning application is made and is legally bound to determine the application on its merits. The Council's SPD is a non-statutory document which is not binding on the applicant. The SPD does not constitute the necessary authority for the Council to impose a charge for the instruction of external consultants to advise on viability assessments.

## Reasons

41. The application was lodged on 2 March 2020. In the AH Statement that accompanied the application Dylon 2 Limited advised that 35.4% of the units would be affordable units and that these would all be accommodated in the south block. However, the Statement did not provide any information as to the proposed tenure mix of the AH or include any statement to the effect that this would be in accordance with the Council's preferred mix as set out in BLP Policy 2. Neither this Statement nor the Planning Statement accompanying the application, gave any indication that Dylon 2 Limited had concerns, at the time the application was made, about the viability of the proposal or that economic uncertainty, arising from the then emerging picture with regard to the Covid 19 pandemic, would make it impossible for a tenure mix to be agreed.
42. The AH Statement claimed the proposed AH provision is "*fully in accord*" with the relevant development plan policies and related SPDs. However, as set out in paragraph 18 above, Dylon 2 Limited should have known that this was not the case. Although it was fully aware of the requirement for a FVA to be submitted to support a non-policy compliant tenure mix, Dylon 2 Limited chose not to submit either a FVA or any detail as to what the mix might be.
43. In its email to West & Partners, dated the 20 April 2020, the GLA stated that it had been unable to find any information within the application as to the AH tenure mix. It requested that this should be provided. In his reply, Mr Francis advised only that the AH would be within the scope of the definition set out in the glossary to the Framework. He asserted that "*at the present time, with the new economic reality of Cov 19 we cannot go further than this.*" Thereafter, this same reason appears repeatedly to have been stated by Dylon 2 Limited for its failure to produce the required FVA until October 2020. However, the preparation of the planning application and accompanying documents predated the Government's announcement, on 23 March 2020, of the first Covid 19 lockdown and the introduction by the RICS of the requirement for valuations to include a Material Valuation Uncertainty statement.
44. Nothing in the evidence provides a reasonable explanation as to why a FVA was not submitted with the application. The failure to provide one left the Council in the position that it could not properly assess whether the proposal complied with Policy 2. It also had insufficient information to conclude what weight should be given to the AH provision in determining whether or not the MOL very special circumstances test had been met.
45. For the reasons set out in paragraph 21 above, I do not accept Dylon 2 Limited's contention that the matter could have been resolved either through a minded-to- approve resolution subject to the completion of a S106 agreement, or by a planning condition such as that attached to the permission for the South Eden Park Road development.
46. Dylon 2 Limited's Statement of Case provided only scant information about the case to be presented in respect of AH. Paragraph 2.9 states only that AH provision will be made in accordance with the definitions in the Framework and development plan and that, in light of unknown impacts of the Covid 19 pandemic, the tenure could not currently be specified. The Statement of Case gave no indication that the scheme might not provide 35% AH as had been claimed in the application or that the use of FH was being contemplated. These



possibilities were first outlined during the Case Management Conference on 12 October 2020.

47. I agree that this fell short of what is required in terms of setting out the full particulars of the appellant's case in accordance with the Procedural Guide. The appellant might not have formulated its final AH offer at that stage. However, given its reliance upon the economic uncertainties arising from the pandemic to justify its position with regard to scheme viability, it seems unlikely that, in July 2020, the appellant was not already contemplating an AH offer below the 35% level required under Policy 2.
48. Following on from the above, I find that Dylon 2 Limited acted unreasonably in failing, at the application stage, to provide any detail about the form of AH proposed and to submit a FVA to demonstrate what level of AH and tenure mix the scheme could support. Given the timing of the application, I do not accept that this can simply be excused by reference to the economic uncertainty arising from the Covid 19 pandemic. I also find that there was unreasonable behaviour on the appellant's part in its failure to set out full particulars of its likely case in relation to AH in its Statement of Case.
49. However, although I find that the failure to provide this information amounted to unreasonable behaviour, I am not persuaded that this has directly resulted in unnecessary or wasted expenditure on the Council's part.
50. As no FVA was submitted with the application it is impossible to know what conclusions this might have come to. The only information available is the FVA that was eventually provided by Dylon 2 Limited dated 21 October 2020. The findings of that FVA were that the scheme viability would not support a 35% level of AH and that it shows a deficit when assuming a policy compliant provision of AH. The FVA also concluded that, even with the 19% First Homes AH provision that the appellant offered at the appeal inquiry, the scheme still shows a deficit against the Benchmark Land Value.
51. When the Council's viability and building costs experts reviewed Dylon 2 Limited's FVA at the end of October, they challenged many of the assumptions both in the building cost plan and in the viability appraisal itself. Although these issues were narrowed through the discussions that I requested the parties should enter into, significant differences remained at the close of the inquiry.
52. The extent of the remaining differences gives me no confidence that the parties would have reached any agreement as to the level of AH to be provided, even had the FVA been submitted with the application. Given the strength of the case it presented at the inquiry, it seems unlikely that the Council would have accepted that a 19% FH provision would render the proposal compliant with LBP Policy 2. The Council's vehement opposition to the FH format as an acceptable form of AH provision in Bromley also indicates that it would have been extremely unlikely that the Council would have accepted this AH offer as being policy compliant. In my judgement, there would have been a strong likelihood that these matters would have been in contention at the appeal inquiry in any event.
53. For these reasons, I consider that, even if the FVA had been submitted at an earlier stage, viability and the maximum level of AH that could be delivered within the scheme would have remained a main issue in the appeal. The Council would, in those circumstances, still have found it necessary to instruct

appropriately qualified experts to deal with these matters. Dr Lee was the Council's witness both in respect of the acceptability in principle of FH and the scheme viability issues. As Dr Lee's evidence depended, in no small part, on Mr Brown's Construction Cost Review this evidence could not have been prepared without Mr Brown also having been instructed. I do not think it possible to disaggregate the inputs of either of the experts to reach some arbitrary view as to the extent of evidence that might have been needed had the FVA been available at an earlier date.

54. The Planning Obligations SPD seeks that applicants should fund the costs of external consultants that the Council may need to appoint to review FVAs. However, the SPD is not a policy document and does not provide the necessary legal authority for the Council to require such a contribution from the applicant. Even if that were the case, that contribution would not extend to the costs of instructing those consultants to prepare evidence for and to appear at any subsequent planning appeal inquiry. It is clear that Mr Brown's instruction did not extend beyond preparing a report as an input into Dr Lee's evidence since it transpired that the Council had not checked his availability for the agreed inquiry dates.
55. I accept that Dr Lee had to prepare his evidence in a relatively short time. However, the timetable agreed at the Case Management Conference expressly allowed him to have more time to prepare a full Proof of Evidence if he needed it; this additional time was not used. Neither has the Council produced any evidence to demonstrate that the actual time inputs required by Dr Lee to write his evidence were in any way affected by his not having earlier sight of the appellant's FVA.
56. The Council's application repeats concerns that were raised during the inquiry about the rebuttal evidence submitted by the appellants after the exchange of main proofs. That evidence was accepted into the inquiry for the reasons that I gave at that time. It was for the Council to decide how it should deal with it. I do not accept that the appellant's submission of rebuttal evidence has resulted in the Council incurring any unnecessary costs or expenditure in relation to the appeal.

## **Conclusions**

57. For the reasons set out above, I find that Dylon 2 Limited acted unreasonably in its failure to provide any details of its proposed AH tenure mix and a FVA to support that offer, either at the planning application stage or in its Statement of Case. It has not, however, been demonstrated that this unreasonable behaviour has resulted in the Council incurring unnecessary or wasted expenditure in relation to the planning appeal. The application is, therefore, refused.

*Paul Singleton*

INSPECTOR