



Appeal Decisions

Inquiry Held on 9-12 January 2018

Site visits made on 8 & 12 January 2018

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2018

Appeal A Ref: APP/G5180/W/17/3174961

Land at the junction of South Eden Park Road and Bucknall Way, Beckenham BR3 3LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Northern Land Developments Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/02613/OUT, dated 31 May 2016, was refused by notice dated 28 November 2016.
 - The development proposed is residential development comprising of 105 units with a mixture of four bedroom houses and one, two and three bedroom apartments together with concierge's office, associated basement car parking and landscaping (outline application with access and layout to be determined).
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Appeal B Ref: APP/G5180/W/17/3179001

Land at the junction of South Eden Park Road and Bucknall Way, Beckenham BR3 3LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Northern Land Developments Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/17/00757/OUT, dated 17 February 2017, was refused by notice dated 13 June 2017.
 - The development proposed is residential development comprising 15 four storey townhouses and 52 apartments in 4 three and four storey blocks together with concierge's office, basement car parking, associated landscaping and tree planting (outline application with access and layout to be determined).
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Decisions

1. Both appeals are allowed and planning permission is granted for the developments as per the descriptions set out in the headings above at land at the junction of South Eden Park Road and Bucknall Way, Beckenham BR3 3LZ in accordance with the terms of the applications, Refs DC/16/02613/OUT and DC/17/00757/OUT, dated 31 May 2016 and 17 February 2017 respectively, subject to the conditions below.

Application for costs

2. At the Inquiry an application for costs was made by Northern Land Developments Ltd against the London Borough of Bromley. This application is the subject of a separate Decision.

Procedural Matters

3. Although the Council indicated in its Committee reports that various planning obligations would need to be secured via S106 should the applications be considered otherwise acceptable, it stated on the first day of the Inquiry that it was not now seeking such obligations. However, on the second day it changed its mind and explained that there had been a communications error between officers and made clear that it is now seeking such obligations. The Council provided a S106 and CIL Regulations Compliance Statement (CIL Statement) on the morning of the fourth day of the Inquiry.¹
4. The Inquiry was held open for a further period of time in order for the Council to provide supplementary written information to its CIL Statement including in terms of Regulation 123 of the *Community Infrastructure Regulations 2010* (CIL Regs). This was provided as per the agreed timetable on 19 January. The adjournment also gave the appellant the necessary time to prepare a S106 Unilateral Undertaking dated 19 January (UU1), a signed copy of which was provided to me on 25 January.
5. However, the Council pointed out in its comments on UU1² that the proposed financial contributions towards education and health provision would fail to meet the requirements of Regulation 123. This is because the relevant clauses (on pages 2 and 3 of UU1) merely refer to the "*funding of local schools*" and "*provision of coordinated care for patients via integrated health and social care services in the Borough*" for which there have already been five generalised contributions for such infrastructure. I agreed with this failing of UU1 and also pointed out to the appellant that such contributions must define the schools and the health projects that they will fund in order that they relate spatially to and are therefore directly related to the development in order to meet Regulation 122(2). The appellant responded by producing a second signed Unilateral Undertaking (UU2) dated 12 March 2018 that successfully addressed the above concerns.³
6. The Inquiry was also adjourned to allow the appellant to comment on the Council's closing statement in light of the fact that there was insufficient time for it to do so on the final sitting day of the Inquiry. This also allowed the submission of the appellant's costs application in writing, time for the Council to comment on this and time for the appellant's final say on costs. The relevant documents were all submitted within the timetable agreed on the fourth sitting day of the Inquiry.
7. Both applications were refused for essentially the same refusal reasons. The Council decided not to contest its second refusal reasons less than two working days before the start of the Inquiry having indicated in its Statement of Case that it would contest both reasons.

Main Issue

8. Consequently the main issue in these appeals is the subject of the Council's first refusal reasons, namely whether the proposed developments would lead to the loss of open land that serves an important function in the locality and

¹ CD44

² Email from Jim Kehoe dated 8 February 2018

³ As confirmed by the LPA in the email from Gill Slater dated 19 March 2018

provides an important break in the built up area contrary to relevant development plan policies.

Reasons

9. The site comprises a roughly triangular area of 1.44 hectares (4 acres) on the eastern side of South Eden Park Road approximately 50 metres south of the Chinese Garage roundabout. It is essentially flat land albeit raised above the adjacent road level by about 2-3 feet. Most of it comprises rough open grassland although that part of it close to its northern and eastern boundaries include hard surfaced areas that used to be the main vehicular and pedestrian access routes into the former Glaxo Wellcome site (North Drive and the adjacent footpath). A variety of cars are parked on these hard surfaced parts of the site, including new cars from the Kia dealership in the Chinese Garage.
10. The site is designated as Urban Open Space (UOS), a local (Bromley) open space designation contained in both the Bromley Unitary Development Plan adopted in July 2006 (UDP) and in the emerging Bromley Local Plan (ELP), which underwent its Examination in December 2017. 'Saved' UDP Policy G8 states that proposals for built development on UOS will only be permitted if: (i) the development is related to the existing use; or (ii) development is small scale and supports outdoor recreation or children's play facilities on site; or (iii) any replacement buildings do not exceed the site coverage of any existing development. It also states that proposals should not unduly impair the open nature of the site.
11. The appellant does not dispute that the proposed residential developments would fail to meet any of these criteria and would conflict with this development plan policy. Given that the wording of ELP Policy 55 is very similar it would also be in breach of that Policy. However, and as the appellant argues, I cannot attach full weight to Policy 55 because there are outstanding objections to it and the Council is awaiting the Examining Inspector's Report into the ELP.
12. The other part of the development plan, the London Plan adopted in March 2016 (LP), seeks to protect open spaces amongst its other objectives, which include delivering the new dwellings that the capital needs. Policy 1.1 (Delivering the Strategic Vision and Objectives for London) B states that growth will be supported and managed across all parts of London to ensure it takes place within the current Greater London boundaries without encroaching on the Green Belt or on protected open spaces or having unacceptable impacts on the environment. 'Protected Open Space' is defined in the LP as metropolitan open land (MOL) and land that is subject to local designation under Policies 2.18 and 7.18, and includes land in public or private ownership whether public access is restricted or not.
13. LP Policy 2.18 (Green Infrastructure: The Multi-Functional Network of Green and Open Spaces) A states that the Mayor will work with strategic partners to protect, promote, expand and manage the extent of, and access to, London's network of green infrastructure. Parts D and E of the Policy state that enhancements to green infrastructure should be sought. Part F states that a strategic approach to planning positively for the creation and protection of green infrastructure should take place through LDF preparation.

14. LP Policy 7.18 (Protecting Open Space and Addressing Deficiency) B states that the loss of protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area. Part C states that appropriate designations and policies for the protection of open space to address deficiencies should be included in LDFs.
15. The site falls within the LP definition of 'protected open space' and the above Policies encourage local designations like UOS. There is no specific policy within the National Planning Policy Framework (NPPF) restricting such local open space designations. Given the wording of Policies 2.18 and 7.18 the proposed development, because it would result in the loss of the site as UOS, would fail to comply with these Policies.
16. The appellant argues that less than full weight should be given to the conflict with these development plan policies for a number of reasons that I shall address in turn. It maintains that the whole of the site benefits from lawful use for the storage of cars and that this is a 'fall-back' justifying the proposed development because the site is no longer open. However the appellant submitted an application for a Certificate of Lawful Use or Development the day before the Inquiry commenced and it is the outcome of that application process that will determine whether such a lawful use exists. I see no need to pre-empt that process. Even if such a lawful use can be proven I saw no evidence that the site would be likely to be used in its entirety for storing cars and so I question whether such a use would in fact constitute a 'fall-back' in terms of the likelihood of it actually occurring. I also agree with the Council that the proposed development would have a greater impact on the openness of the site than such a use.
17. Nonetheless, the site is in private ownership and there is no public access to it as of right. I acknowledge the desire of the adjacent Park Langley Club to build four tennis courts on that part of the site contiguous with the Club's grounds in light of the Club's over-subscribed membership and its stated continued need for additional court space in the locality especially for juniors and including for the 'Tennis for Free' programme that it runs for the local community. But the appellant has shown no interest in selling part of the site for such a use and the Council has no intention of compulsorily acquiring it for such. That is unsurprising given that the Council acknowledges that there is no deficit of open space in the area, neither for parks and gardens, natural or small open spaces, children's play space nor for outdoor sports facilities including playing fields.⁴
18. The Council's 2017 Open Space, Sport and Recreation Assessment does not mention the site, despite it covering the role of open spaces that are not just recreational. Indeed the Assessment seeks to assess the strategic contribution that open spaces can make to the wider environment including in defining landscape character and providing an appropriate context and setting for built development.⁵ It sets out the various categories of open space and in Chapter 6 looks at amenity green space including small spaces (of a guideline) below 2ha. Table 6.1 within this Chapter states that Bromley has no specific policies relating to 'small open spaces' but highlights the relevance of UDP Policy G8.

⁴ Statement of Common Ground (SoCG), paragraphs 7.7-7.13

⁵ SJS4, paragraph 1.9

19. However, paragraph 6.15 of the Assessment refers to Map 6.2 which considers the interrelationship between parks and small open spaces and states: "*Where residents are within 240m of a Local Park, District Park or Metropolitan Park, as these are higher order facilities an additional small open space or pocket park would not be required.*" The site is not specifically identified as a 'small open space' on Map 6.1 of the Assessment and it is within 240m of Kelsey Park (also designated as UOS) immediately to the north and the Harvington Estate (MOL) immediately to the west. These are large local parks accessible to the public with a range of functions and facilities including playing fields and tennis courts, which would be a short walk from the proposed development.
20. Hence the Assessment appears to confirm that the appeal site is not required to be retained as open space, for these reasons and because it seeks to encompass the role that such small open spaces perform in providing an appropriate context and setting for built development.
21. The Council nonetheless argues that its retention as open space is necessary because it does precisely that: it acts as a 'green lung' or part of a 'necklace' of green spaces in the vicinity and its continued openness is important in order to break up areas of adjacent built development including the permitted but as yet unbuilt residential development to the north and south, which will be dominant from South Eden Park Road.
22. I agree with the Council that the purpose of UDP Policy G8 includes the role of UOSs in providing important breaks within the built-up area.⁶ But I disagree that the site forms such an important break. This is because there are several other nearby breaks in the local built-up area that have a much more significant effect: Kelsey Park to the north, the Harvington Estate to the west; the retained area of MOL opposite it on the Langley Waterside development on the east side of South Eden Park Road; and the land within the residential development at Langley Court to the south designated as UOS in the 2006 UDP. There are also much larger areas of open space little more than 1km to the south of the site, as clearly shown on the various Proposals Maps submitted at the Inquiry.⁷
23. The Inspector in the Oakley Road appeal decision⁸, where the very same issue was considered, found that as a consequence of two larger nearby areas of open space the appeal site in that case did not provide an important break within the local built-up area. I see no reason why the principle in that appeal should not be applied here. Like that case the proposed development here would, at worst, only result in limited harm to openness and the local residential environment, and the site provides no other beneficial use.
24. I make this judgement fully cognisant of the fact that both proposed development schemes would be visible from the site's surrounding roads and residential gardens and agree with the Council that the appellant's evidence that it is not possible to discern the site's openness from outside is rather far-fetched and inaccurate. But the fact that both developments would be clearly seen from both South Eden Park Road and Bucknall Way does not mean in this case that such a change in the views from these public locations would be unacceptable. Change is not synonymous with harm.

⁶ Paragraph 8.33 of the UDP – CD27

⁷ CDs 30, 31 & 32

⁸ JE19

25. The Council has withdrawn its second refusal reason in both appeals and has no concerns with the design of the schemes; whilst scale is a reserved matter it is clear that the developments will need to be 3 and 4 storeys in height in order to deliver the number of units applied for and the Council makes no submissions on this.
26. There would remain a sufficiently wide landscaped planting belt in front of the blocks of flats on South Eden Park Road, and between the flats and townhouses backing onto Bucknall Way in both the Appeal A and B schemes, including the rear gardens of the townhouses. All the healthy TPO trees on the boundary with South Eden Park Road would be retained. Although landscaping is a reserved matter, the appellant has signalled its intention to strengthen the boundary planting to the site and there is no reason to suggest this would not be achieved successfully. Given the likely height of the developments and the above landscaped belts there would be no significant adverse impacts on the living conditions of the inhabitants of dwellings on the opposite sides of the two roads.
27. The absence of any mention of the site in the 2017 Open Space, Sport and Recreation Assessment is somewhat surprising given the Assessment's acknowledgement of the contribution that open spaces can make to the wider environment including as gaps in the Borough's built development. That would not matter if the site and UOSs in general had been the subject of a proper assessment given that there is no ceiling on development generally and in view of the current need for residential development in Bromley, specifically the requirement in LP Policy 3.3⁹ to exceed the minimum figure of 641 dwellings per annum (dpa).
28. But that does not seem to have been the case. The 2015 and 2017 Site Assessments carried out as part of the evidence base for the ELP¹⁰ do not appear to balance the contribution the site could make to development needs in the Borough against the potential harm arising, which are listed as potentially affecting limited open views of the site only with no other specific harm identified.
29. The Council's response to Mr Escott's representations concerning draft Policies 49, 50 and 55 of the ELP¹¹ are revelatory of its approach in this respect. It states that LP Policy 1.1 seeks growth without needing to encroach on London's protected open spaces and that there is consequently no need to undertake a review of open space designations including UOS and that was the Council's continued position at the Inquiry. It acknowledges that even if there were surpluses of open space, it would not necessarily negate the need to retain an open space designation.
30. This evidence convinces me that no proper or full assessment or review of the Council's open space designations has taken place, including of the lower UOS designation in the hierarchy of open space protections. It seems to me that this is an unrealistic stance when faced with the pressure for new development, especially residential development, in a Borough that exhibits a wealth of open space which is not all MOL or Green Belt. That stance is certainly unrealistic on

⁹ JK1b

¹⁰ JE25 & 26

¹¹ JE27

this site, where the harm resulting from the loss of the existing open space would be insignificant.

31. In conclusion, the two proposed development schemes would clearly lead to the loss of open land designated as UOS and hence would be contrary to the wording of UDP Policy G8 and LP Policies 2.18 and 7.18. But the site does not provide an important break in the built up area for the above reasons and the limited loss of openness must be balanced against the current pressing need to provide additional dwellings in the Borough.

Other Matters

Five Year Housing Land Supply (5YHLS)

32. Considerable time was given at the Inquiry to looking at whether or not there exists a 5YHLS, both in terms of the housing requirement itself and the mooted supply within the next 5 years. But is unnecessary for me to draw a conclusion on either the relevant requirement or the prospective supply. That is because even assuming that the Council can deliver a 5YHLS there is, as indicated above, no ceiling on the amount of future residential development in the Borough. On the contrary, there is a stated requirement in LP Policy 3.3 D to achieve and exceed (my emphasis) the relevant minimum borough annual average housing target of 641dpa in Table 3.1 of the LP.
33. I acknowledge that LP Policy 1.1 B says that growth will be supported and managed across all parts of London without encroaching on protected open spaces. But this policy objective must be balanced against the current objectively assessed need (OAN), which is a minimum requirement of 1,320 dpa¹². Whilst I cannot give full weight to the new draft LP requirement for Bromley of 1,424dpa (set out in the 2017 SHLAA) because this figure has not been moderated or tested at Examination, the trend for the Borough is only ever likely to be upwards, and probably considerably upwards, of the current minimum figure of 641dpa.
34. The most recent London OAN as expressed in the 2017 SHMA and the slightly lower capacity figure in the 2017 SHLAA provide the most up-to-date evidence of housing need. They are, as stated in the relevant parts of Planning Practice Guidance (PPG)¹³, therefore highly relevant because they provide the latest evidence of housing needs notwithstanding that London has a two-tier system whereby individual Borough figures are allocated via the LP.
35. The undisputed evidence that 52% of dwelling completions over the past 5 years have resulted from planning permissions granted at appeal even to meet the minimum requirement figure of 641 dpa and the pressing need for and recent figures for the paucity of delivery of additional affordable housing point to the unsustainability of the Council's recent record of dealing with applications for residential development. It is notable that the amount of affordable housing units that would be delivered from the Appeal A scheme would more than double the total number of such units delivered in the whole Borough over the past 3 years.
36. This evidence also points to Bromley's unrealistic practice to date of failing to adequately balance the significance of the harm that would arise from

¹² CD43 – Letter from GLA to the Council re. ELP, 30 December 2016 – top of page 2

¹³ PPG 030 Reference ID: 3-030-20140306 – CD1

developing some designated UOS sites (such as this site) against the pressing current need for both affordable and market housing.

37. In conclusion, it is not my role to pre-empt the outcome of the ELP Examination or the draft LP consultation and Examination. But it is clear that Bromley is likely to have to deliver a step change in dpa completions in the coming years and that its recent failure to adequately balance the need to exceed the delivery of 641 dpa against a continued blanket protection of all UOS sites is unrealistic and unsustainable if London, the capital city and most prosperous part of the UK, is to achieve anywhere near its OAN.

S106 Unilateral Undertaking (UU)

38. The appellant's two UUs (UU1 and UU2) together deliver 3 planning obligations. First, an education contribution of £500,137 in respect of the Appeal A development scheme and £462,811 in respect of the Appeal B development scheme. Secondly, a health contribution of £140,180 in respect of the Appeal A scheme and £103,998 in respect of the Appeal B scheme. And thirdly, a contribution of £60 per tonne of CO² for a period of 30 years of the remaining emissions which cannot be reduced on site in accordance with the reduction targets set out in the LP.
39. UDP Community Services Objective 1 indicated that the Council will work in partnership with relevant agencies to secure the provision of accessible, good quality facilities to meet the health, education and other essential needs of the local community. UDP Policies C1, C4 and C7 set out the Council's approach to education and health provision with the intention of meeting identified need. The NPPF advises that the Government attaches great importance to ensuring that there is a sufficient choice of school places. PPG recommends that local authority planners should consider whether new development would cumulatively impact on the demand for healthcare and whether such impacts should be addressed through 106 obligations.
40. The Council plans to expand the nearby Marion Vain Primary School (within the Ward) from 3 to 4 forms of entry and to convert the former children and family centre into a nursery and to expand the nearby Bishop Justus Secondary School from 6 to 8 forms of entry to accommodate new development in the area, because the former is oversubscribed and the latter does not meet the requisite 5% spare capacity figure necessary to ensure a school place for all local children. Capital works will be required in order to carry out this expansion, which the education contribution would be spent on.
41. There is insufficient Department for Education Basic needs funding to cover this – there is a very significant funding gap as set out in the submission draft ELP and the Draft Infrastructure Development Plan that accompanied its submission. Unanticipated developments like this will increase anticipated pressure on these schools. The contributions are justified by a formula set out in the Council's *Planning Obligations Supplementary Planning Document* adopted in December 2010 (SPD). For these reasons the education contributions meet the three statutory tests of necessity, direct relationship to the proposed development and would be fairly and reasonably related in scale and kind as required by CIL Reg 122(2).
42. The healthcare contribution would go towards the provision of the new Bromley Health and Wellbeing Centre (HWC) at 32 Masons Hill near to the site and the

nearby Dysart Medical Centre (DMC). The HWC will bring together a range of healthcare services such as diagnostics, out-patient services and community and wellbeing services and seeks to tackle the care and quality gap and reduce unplanned hospital attendances through the Out of Hospital (OOH) Transformation Strategy. The DMC will provide GP services for residents of the development. The SPD sets out the justification for the Council's approach in determining the appropriate health contribution, which is based on the NHS London Healthy Urban Development Unit's (HUDU) impact formula. The health contribution accordingly meets the three above legal tests.

43. The carbon off setting contribution will only become payable if the minimum CO² reduction requirement cannot be achieved on-site, bearing in mind that the appellant's energy statements submitted with the applications indicate that they can be. Any such payments are based on the requirements in Section 10 of the NPPF to support a low carbon future, the carbon reduction targets in LP Policy 5.2, the GLA's Energy Planning Guidance of March 2016 and the addendum to the Council's SPD agreed at its Development Control Committee on 25 January 2017.
44. The addendum requires that where the required CO² reduction targets cannot be met on-site contributions from developers will be pooled to enable the Council to implement emergency efficiency measures elsewhere in the Borough to achieve the shortfall between a development proposal and the policy objectives. The Council's supplementary information lists such projects. The carbon off setting contribution would therefore meet the three legal tests in CIL Reg 122(2).
45. In terms of all the contributions the Council has also provided clear supplementary information that evidences that CIL Reg 123 would be complied with in that there would be no more than five contributions for each of the projects identified.
46. For these reasons I conclude that all these contributions are necessary to make the proposed development schemes acceptable and all of them would meet the legal tests in the CIL Regs and the policy tests in the development plan and NPPF.

Conditions and Conclusion

47. The Council put forward 30 conditions all with a reasoned justification. It was agreed at the Inquiry that its suggested Condition 2 relating to the materials of the external surfaces related to the reserved matter of appearance and so is not required in any outline permissions. Equally the Council's suggested Conditions, 4, 5 and 6 related to landscaping, also a reserved matter. Otherwise the 26 conditions listed below fulfil all the policy tests for conditions in the NPPF and PPG, as per the reasons attached below each. I have added the plan numbers to the last condition in the interests of precision and for the avoidance of doubt as to the layouts that have been approved in respect of both appeals. Subject to these conditions for the reasons given above I conclude that both the appeals should be allowed.

Nick Fagan

INSPECTOR

Schedule of Conditions for Appeals A & B

Reserved matters

1. (i) Details relating to the:
 - a. appearance
 - b. landscaping, and
 - c. scale of the development

shall be submitted to and approved by the Local Planning Authority before any development is commenced.

(ii) Application for approval of the details referred to in paragraph (i) above must be made not later than the expiration of three years beginning with the date of this decision notice.

(iii) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the details referred to in paragraph (i) above, or in the case of approval on different dates, the final approval of the last such matter to be approved.

REASON: No such details have been submitted and to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

Design

2. Details of the proposed slab levels of the buildings and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority before development commences and the development shall be completed strictly in accordance with the approved levels.

REASON: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area.

Highways

3. Details of the layout of the access road and turning area including its junction with South Eden Park Road and dimensions of visibility splays shall be submitted to and approved in writing by the Local Planning Authority and these access arrangements shall be substantially completed before any part of the development hereby permitted is first occupied. There shall be no obstruction to visibility in excess of 1m in height within the approved splays except for trees selected by the Authority, and which shall be permanently retained.

REASON: In order to comply with Policy T18 of the Unitary Development Plan and in the interest of pedestrian and vehicular safety.

4. Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use and no permitted development whether permitted by the Town

and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.

REASON: In order to comply with Policy T3 of the Unitary Development Plan and to avoid development without adequate parking or garage provision, which is likely to lead to parking inconvenient to other road users and would be detrimental to amenities and prejudicial to road safety.

5. Details of arrangements for storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development hereby permitted is commenced and the approved arrangements shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.

REASON: In order to comply with Policy BE1 of the Unitary Development Plan and in order to provide adequate refuse storage facilities in a location which is acceptable from the residential and visual amenity aspects.

6. Before any part of the development hereby permitted is first occupied, bicycle parking (including covered storage facilities where appropriate) shall be provided at the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and the bicycle parking/storage facilities shall be permanently retained thereafter.

REASON: In order to comply with Policy T7 and Appendix II.7 of the Unitary Development Plan and in order to provide adequate bicycle parking facilities at the site in the interest of reducing reliance on private car transport.

7. Details of a scheme to light the access drive and car parking areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is commenced. The approved scheme shall be self-certified to accord with BS 5489 - 1:2003 and be implemented before the development is first occupied and the lighting shall be permanently retained thereafter.

REASON: In order to comply with Policy T3 and Appendix II of the Unitary Development Plan in the interest of visual amenity and the safety of occupiers of and visitors to the development.

8. Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation, but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.

REASON: In order to comply with Policy T5, T6, T7, T15, T16 & T18 of the Unitary Development Plan and in the interest of the amenities of the adjacent properties.

9. An electric car charging point shall be provided to a minimum of 20% of car parking spaces with passive provision of electric charging capacity provided to an additional 20% of spaces prior to the first occupation of the development.

REASON: To minimise the effect of the development on local air quality in accordance with Policies 6.13 and 7.14 of the London Plan.

Drainage

10. The surface water drainage scheme hereby permitted shall be implemented in full accordance with the approved details as set out in the Flood Risk Assessment and Drainage Strategy Report by Herrington Consulting Ltd Dated 24 February 2017 unless otherwise agreed in writing by the Local Planning Authority.

REASON: In order to comply with Policy 5.13 of the London Plan and to reduce the impact of flooding both to and from the proposed development and third parties.

11. No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

REASON: The proposed works will be in close proximity to underground water utility infrastructure. Piling has the potential to impact on local underground water utility infrastructure. The applicant is advised to contact Thames Water Developer Services on 0800 009 3921 to discuss the details of the piling method statement.

Environmental Health

12. Details of a Travel Plan to set out measures to encourage sustainable means of transport (including walking, cycling and via subsidised or free-ticketing, improved links to bus stops, car sharing scheme, improved infrastructure and layouts to improve accessibility and safety) shall be submitted to the Local Planning Authority prior to the development commencing together with details of a scheme to measure its implementation and effect. Once approved the travel plan shall be implemented in full and permanently maintained thereafter.

REASON: To minimise the effect of the development on local air quality within an Air Quality Management Area in line with Policy 7.14 of the London Plan.

13. The application site is located within an Air Quality Management Area declared for NO_x: In order to minimise the impact of the development on local air quality any gas boilers must meet a dry NO_x emission rate of <40mg/kWh.

REASON: To minimise the effect of the development on local air quality within an Air Quality Management Area in line with Policy 7.14 of the London Plan.

14. All Non-Road Mobile Machinery (NRMM) of net power of 37kW and up to and including 560kW used during the course of the demolition, site preparation and construction phases shall comply with the emission standards set out in chapter 7 of the GLA's supplementary planning guidance "Control of Dust and Emissions During Construction and Demolition" dated July 2014 (SPG), or subsequent guidance. Unless it complies with the standards set out in the SPG, no NRMM shall be on site, at any time, whether in use or not, without the prior written consent of the local planning authority. The developer shall keep an up to date list of all NRMM used during the demolition, site preparation and construction phases of the development on the online register at <https://nrmm.london/> Further information and guidance is available at <http://content.tfl.gov.uk/construction-logistics-plan-guidance-for-developers.pdf>.

REASON: To protect local amenity and air quality in accordance with London Plan policies 5.3 and 7.14.

15. An acoustic assessment containing composite façade calculations for each sensitive receptor and detailing necessary glazing and ventilation specification to achieve a good standard of internal amenity at each location (accounting for internal MVHR noise) shall be submitted to the Local Planning Authority for written approval prior to development commencing. The approved glazing and ventilation specifications shall be installed in full prior to the first occupation of the development and permanently maintained thereafter.

REASON: In order to comply with Policies ER8 and Policy BE1 of the Unitary Development Plan and to ensure a satisfactory standard of residential amenity.

16. The development hereby permitted shall be carried out in complete accordance with the findings and recommendations contained within Air Quality Assessment dated July 2016 by Lustre Consulting.

REASON: To protect local amenity and air quality in accordance with London Plan policies 5.3 and 7.14.

17. Details of a scheme of lighting (including the appearance, siting and technical details of the orientation and screening of the lights and the means of construction and laying out of the cabling) shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced, and the approved scheme shall be implemented before the development hereby permitted is first occupied. Thereafter the approved scheme shall be permanently retained in an efficient working manner and no

further lighting shall be installed on the site without the prior approval in writing by the Local Planning Authority.

REASON: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of amenity and public safety.

Energy

18. Before any development on site is commenced, a site-wide energy strategy shall be submitted to and approved by the Local Planning Authority. The results of this strategy shall be incorporated into the final design of the buildings prior to first occupation. The strategy shall include measures to achieve a zero carbon standard unless otherwise agreed in writing by the Local Planning Authority.

REASON: To comply with London Plan Policies 5.1 – 5.7.

Secured by Design

19. The development hereby permitted shall incorporate measures to minimise the risk of crime and to meet the specific needs of the application site and the development. Details of these measures shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development hereby permitted, and implemented in accordance with the approved details. The security measures to be implemented in compliance with this condition shall achieve the "Secured by Design" accreditation awarded by the Metropolitan Police.

REASON: In the interest of security and crime prevention and to accord with Policies H7 and BE1 of the Unitary Development Plan.

Ecology

20. The development shall only be carried out in complete accordance with the findings and recommendations contained within the following documents:

- Preliminary Ecological Appraisal (The Ecology Partnership, February 2017)
- Reptile Survey (The Ecology Partnership, February 2017)
- Badger Monitoring (The Ecology Partnership, April 2016)
- Badger sett update survey May 2017 (The Ecology Partnership, June 2017)

REASON: To ensure the protection of the ecological value of the site protected species, in accordance with Policy NE7 of the Unitary Development Plan.

Trees

21. No trees on the site shall be felled, lopped, topped or pruned before or during building operations except with the prior agreement in writing by the Local Planning Authority. Any trees removed or which die through lopping, topping or pruning shall be replaced in the next planting season with trees of such size and species as may be agreed with the Authority.

REASON: In order to comply with Policy NE7 of the Unitary Development Plan and to ensure that as many trees as possible are preserved at this stage, in the interest of amenity.

22.No demolition, site clearance or building works shall be undertaken, and no equipment, plant, machinery or materials for the purposes of development shall be taken onto the site until an arboricultural method statement detailing the measures to be taken to construct the development and protect trees is submitted to and approved in writing by the Local Planning Authority.

The statement shall include details of:

- Type and siting of protective fencing, and maintenance of protective fencing for the duration of project;
- Type and siting of scaffolding (if required);
- Details of the method and timing of demolition, site clearance and building works
- Depth, extent and means of excavation of foundations and details of method of construction of new foundations
- Location of site facilities (if required), and location of storage areas for materials, structures, machinery, equipment or spoil, and mixing of cement or concrete;
- Location of bonfire site (if required);
- Details of the location of underground services avoiding locating them within the protected zone
- Details of the method to be used for the removal of existing hard surfacing within the protected zone
- Details of the nature and installation of any new surfacing within the protected zone
- Methods proposed for the watering of the trees during the course of the project

The method statement shall be implemented according to the details contained therein until completion of building works, and all plant, machinery or materials for the purposes of development have been removed from the site.

REASON: To ensure that all existing trees to be retained are adequately protected and to comply with Policy NE7 of the Unitary Development Plan.

Residential quality and affordable housing

23.90% of the dwellings hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' for the and shall be permanently retained as such thereafter.

REASON: To comply with Policy 3.8 of the London Plan and the Mayors Housing Supplementary Planning Guidance 2016 and to ensure that the development provides a high standard of accommodation in the interests of the amenities of future occupants.

24. At least 10% of the dwellings hereby permitted shall be provided as wheelchair dwellings in accordance with Building Regulations Part M4(3) 'wheelchair user dwellings'. Details of proposals to provide dwellings capable of occupation by wheelchair users (including related car parking spaces) shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development hereby permitted. The dwellings shall be constructed in accordance with the approved details and permanently retained as such thereafter.

REASON: To comply with Policy 3.8 of the London Plan and the Mayors Housing Supplementary Planning Guidance 2016 and to ensure that the development provides a high standard of accommodation in the interests of the amenities of future occupants.

25. The development shall not begin until a scheme for the provision of affordable housing has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme. The scheme shall include:

- the numbers, type and location on the site of the affordable housing provision to be made which shall consist of not less than 35% of the housing units distributed across the site (on a habitable room basis). The tenure of the affordable housing units shall be split 60% social or affordable rent, and 40% intermediate;
- the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Housing Provider is involved;
- the arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and
- the occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy criteria shall be enforced
- details of affordable wheelchair housing which shall consist of at least 10% of the affordable units

REASON: In order to ensure suitable housing provision on site and to accord with Policies H2 and H3 of the Unitary Development Plan.

Compliance with approved plans

26. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under these planning permissions unless previously agreed in writing by the Local Planning Authority. These are, in respect of Appeal A: 15124 S101 A; 15124 C101 D; 15124 P101 C; 15124 P102 B; 15124 P103 C; and 15124 P104 C. And in respect of Appeal B: 15124 C201 A; 15124 P201 C; and 15124 P202 A.

REASON: To comply with Policy BE1 of the Unitary Development Plan and ensure a satisfactory quality of development.

End of Conditions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mathew Fraser of Counsel
(Landmark Chambers, Fleet Street)

He called:

-Steven Sensecal
Carter Jonas, Oxford

-Jim Kehoe
Chief Planner,
London Borough of
Bromley (LBB)

FOR THE APPELLANT:

Jonathan Clay of Counsel
(Cornerstone Barristers, Gray's Inn Square)

He called:

-Jacquelin Clay
JFA Environmental
Planning

-Kevin Murray
Kevin Murray Associates

-Steven Butterworth
Lichfields

-John Escott
Robinson Escott LLP

INTERESTED PERSONS:

Tony Beddoe
For the Park Langley Club

Jane Green
Local Resident

End of Appearances

ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY

A list of Core Documents (CDs) numbered 1-20 inclusive was tabled at the start of the Inquiry. The following documents, numbered CDs 21-54, were additional documents tabled during the course of the Inquiry.

1. CD21 LBB relevant Post Submission Documents to Local Plan Examination 2017.
2. CD22 Report to LBB DC Committee re Review of Green Belt, MOL and UOS Boundaries 28/6/2012.
3. CD23 LBB Appendix 2 Suggested changes to MOL & UOS
4. CD24 St Modwen Developments Ltd v SSCLG & others [2017] EWCA Civ 1643
5. CD25 Aerial photos of site dated 2017, 2006 & 1945
6. CD26 CLUED Application submitted to LBB 8/1/2018
7. CD27 Section 8 from 2006 UDP: Green Belt and Open Space
8. CD28 Draft Policy 55 from ELP
9. CD29 Policy 2.18 and supporting text of LP
10. CD30 Extract from 1994 UDP Proposals Map showing site
11. CD31 Extract from 2006 UDP Proposals Map showing site
12. CD32 Extract from ELP Proposals Map showing site
13. CD33 Jane Green objection 10/1/2018
14. CD34 Tony Beddoe objection 10/1/2018
15. CD35 Email exchange between LBB's Tim Horsman & RE's Fiona Dalitis re S106 requirement
16. CD36 Opening submissions on behalf of appellant by Mr Clay
17. CD37 Opening statement on behalf of LBB by Mr Fraser
18. CD38 LBB suggested conditions
19. CD39A Table of disputed sites 10/1/2018
20. CD39B Final Table of main parties' stances on 5YHLS
21. CD39C Table of HLS components submitted by Mr Butterworth
22. CD40 St Albans v Hunston & SSCLG [2013] EWCA Civ 1610
23. CD41 West Berks v SSCLG & HDD Burghfield Common Ltd [2016] EWHC 267
24. CD42 The site's enforcement history
25. CD43 Letter from GLA to LBB re Proposed Submission Draft of ELP 30/12/2016
26. CD44 LBB CIL Compliance Statement
27. CD45 LBB Report to Property & Finance Sub-Committee of transfer of land at Langley Court 19/4/2000 provided by Mrs Green
28. CD46 Closing Statement on behalf of LBB by Mr Fraser
29. CD47 Closing submissions on behalf of Appellant by Mr Clay
30. CD48 Signed and dated Statement of Common Ground
31. CD49 LBB Supplementary Information re CIL Compliance
32. CD50 Appellant's response to Council's closing submissions by Mr Escott 19/1/2018
33. CD51 Signed S106 Unilateral Undertaking dated 19/1/2018 (UU1)
34. CD52 Appellant's Costs Application 19/1/2018
35. CD53 Council's rebuttal to costs application 22/1/2018
36. CD54 Appellant's response to above rebuttal 26/1/2018
37. CD55 Signed S106 Unilateral Undertaking dated 12/3/2018 (UU2)

End of Documents