

IN THE MATTER OF

**2-4 RINGERS ROAD AND 5 ETHELBERT ROAD
BROMLEY, BR1 1HT**

APP/G5180/W/24/3340223

**CLOSING SUBMISSIONS
MADE ON BEHALF OF THE APPELLANT**

No5
BARRISTERS
CHAMBERS

Introduction

1. This is a proposal to bring 94 urgently needed new homes to Bromley, in the form of a part 14, part 12 storey building (“the Appeal Scheme” or “the Proposed Development”), in the town centre facing onto both Ethelbert Road and Ringers Road (“the Site”). It is a proposal to bring forward housing on a site that is specifically allocated for housing in the Bromley Local Plan (January 2019) (“the Local Plan”). The Site also lies entirely within an identified Opportunity Area in the London Plan (March 2021) (“the London Plan”).
2. The Appellant has brought forward, after many years of consultation, design work, and engagement with Bromley Council (“the Council”) and other consultees, with a high-quality proposal that can fundamentally be delivered.
3. Now, faced with a scheme that does exactly what the allocation envisaged, the Council is unacceptably retreating from its acceptance in principle that this Site together with the surrounding area should be redeveloped at a high density. All of the Council’s remaining objections, relating to urban design, amenity, and heritage are effectively objections to the principle of developing the Site for a tall building. They are concerns that arise from the very nature of densification itself. Yet, the principle of redeveloping is agreed and was relied on by the Council to have its Plan found sound. The Council cannot have it both ways.
4. It is because the Council continues to resist appropriate and urgently needed housing developments like this that it remains in such a dire position as regards affordable and market housing supply. The consequence of the agreed lack of five-year housing land supply (“5YHLS”) is that the tilted balance applies. Permission should be granted unless the harms “*significantly and demonstrably*” outweigh the benefits.
5. The structure of these closing submissions addresses first the principle of development, then design and townscape; historic environment; onsite amenity; offsite amenity, including daylight and sunlight; housing land supply; affordable housing; housing mix; and finally the planning balance.

Principle of Development

6. The Site forms part of the allocation Site 10 West of Bromley High Street and land at Bromley South in the Local Plan. The allocation seeks the redevelopment of the land for

mixed use development comprising 1,230 additional homes together with offices, retail and transport interchange.¹ It is agreed that this allocation, by far, is the largest in the plan comprising nearly half of the total allocated dwellings, is the “*centrepiece*” allocation.² To find the plan sound, the Local Plan Inspector will have been provided with evidence to support the intended yield of the site.³

7. Yet, the allocation has not been brought forward to deliver the necessary houses as expected. As Mr Batchelor explained, the Council has failed to show leadership to date, and we are now half way through the plan period.⁴ The Council has no masterplan at present, having rejected that provided by Stitch, with no evidence of any timeframe for drawing up a masterplan in future.⁵ As will be discussed below in more detail, there is now only 1.3ha of land available for development remaining within the allocation.⁶ That will require significant densification.
8. In that context, the Council states that it accepts the principle of residential or mixed use on the Site, not of just 2-3 storeys but regeneration to deliver a particular yield.⁷ It is agreed that the consequence of the allocation is an inevitable intensification and densification, with significantly greater height anticipated across it.⁸
9. Mr Batchelor also drew the Inquiry’s attention to Policy 1 of the Local Plan, which sets out Bromley’s (now superseded) housing target and explains how this will be achieved. The very first two points it outlines are that it will be achieved through (a) the development of allocated sites and sites with planning permission, and (b) town centre renewal involving the provision of housing – both of which apply to the Site.
10. The principle of redevelopment, regeneration, and intensification on this Site does not derive from the Local Plan alone. Bromley town centre is also identified as an Opportunity Area in policy SD1 of the London Plan. Table 2.1 identifies potential for 2,500 additional homes and 2,000 additional jobs in the town centre.⁹ The Local Plan’s Policy 90 explains that the Council will prepare an Opportunity Area Planning Framework to achieve these objectives. As with the masterplan, it has not done so.

¹ Main SOCG at §2.12

² Agreed Ms Daye in XX

³ Agreed Ms Daye in XX

⁴ Mr Batchelor in XIC

⁵ Ms Daye in XX

⁶ ID25

⁷ Agreed Ms Daye in XX

⁸ Ms Daye in XX

⁹ Main SOCG at §2.11

11. The London Plan also identifies through Policy D3 (Optimising site capacity through the design-led approach) at (A) that all development must make the best use of land by following a design-led approach that optimises the capacity of sites, including allocations; and at (B) that higher density developments should generally be promoted in locations that are well connected to jobs, services, infrastructure and amenities as well as by public transport, walking and cycling. Mr Batchelor explained that the Site is not only within the most sustainable part of Bromley Borough – in the heart of the town centre within the allocation – but also within one of the most sustainable parts of all of South London.¹⁰ Indeed, the Site has a PTAL score of 6b, with shops, services, amenities, public open space, two train stations, and buses day and night all on its doorstep.¹¹ In short, this is exactly where housing should be delivered.¹²
12. Similarly, at Policy H1, the London Plan emphasises the importance of optimising the potential for housing delivery on all suitable and available brownfield sites, especially on sites “*with existing or planned public transport access levels (PTALs) 3-6 or which are located within 800m distance of a station or town centre boundary*”. Both of those considerations apply here.
13. The final aspect of the development plan that relates to the principle of development in this case is the Bromley Town Centre Area Action Plan (October 2010) (“the AAP”). This extant development plan document identifies a location very near the Site as a possible location for tall building development.
14. In terms of national policy, it is agreed with the Council that an absolute priority for Government is that better use should be made of urban land, with an entire chapter (11) in the NPPF devoted to making effective use of land.¹³ It is also the policy of the Government to increase the housing requirement of all London Boroughs by way of a 35% uplift.¹⁴
15. Paragraph 124 of the NPPF provides that planning policies and decisions should “c) *give substantial weight to the value of using suitable brownfield land*” and “d) *promote and support the development of under-utilised land and buildings especially if this would help to meet identified needs for housing where land supply is constrained and available sites*

¹⁰ Mr Batchelor in XIC

¹¹ Mr Batchelor in XIC, his Proof at §8.13

¹² Mr Batchelor in XIC

¹³ Agreed Ms Daye in XX

¹⁴ Agreed Ms Daye in XX

could be used more effectively". Ms Daye acknowledged that this whole site is under-utilised and that land supply is constrained in Bromley, given the 5YHLS shortfall.¹⁵

16. The NPPF at §129 similarly provides that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is "*especially important*" that planning decisions "*avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.*" It also states that plans should contain minimum density standards for town centres – again, no such standards exist in Bromley. At §129 c), the NPPF states that decision-makers should refuse applications which they fail to make efficient use of land.
17. In all, it is clear that the Council has always intended for this Site to be redeveloped at significantly higher densities. Ms Daye agreed that the fact that this Site is allocated for housing and densification in the adopted Local Plan is very significant in the determination of this appeal.¹⁶
18. Yet, while the Council continues to state that they support that densification and regeneration in principle, their approach to the remaining issues in this appeal tells the real story. It is unclear how the Council's acceptance of significant densification has factored into its analysis of the acceptability of the impacts, when these are the straightforward corollary of such redevelopment. It is to the Council's reasons for refusal that we now turn.

Design and Townscape

19. The Site sits within a varied townscape context of diverse land uses, building heights and architectural styles.¹⁷ Taller buildings are interspersed across the town centre, from the Churchill Theatre in the north, to Henry and William House opposite the Site, and St Marks Tower.¹⁸ The baseline also includes the permitted 62 High Street (Laura Ashley) and its roof extension and 66-70 High Street, a future 12 storey building on Ethelbert Road.¹⁹ Ms Reynolds explained that there is an established pattern of taller buildings set back from the High Street.²⁰ The introduction of traffic in the south of the High Street changes the character, as does the topography and larger grained, more apparent taller buildings.²¹

¹⁵ Ms Daye in XX

¹⁶ Ms Daye in XX

¹⁷ Mr Hammond in the Roundtable, Mr Hammond's Proof at §8.1, see also the two plans at §9.6 of his Proof

¹⁸ Mr Hammond in the Roundtable, Mr Hammond's Proof at §8.2

¹⁹ Mr Hammond's Proof at §8.3

²⁰ Ms Reynolds in the Roundtable

²¹ Inspector comments in the Roundtable

20. Both Ringers Road and Ethelbert Road themselves are fairly wide streets that experience a notable change from top to bottom. The Site falls as part of the transition between the typologies of the High Street and the lower Victorian terraces stepping down the topography on those roads.²² The existing buildings on Site include the service elevation on Ethelbert Road and the restaurant on Ringers Road; uses that transition between the High Street and the more residential part.²³ It is agreed that those secondary commercial buildings are of little townscape value.²⁴
21. The Site is part of a townscape assessed by the Bromley Town Centre SPD as having a “medium to high” development potential (within the sub-area High Street) and where there is an acceptance in principle of a change in building scales.²⁵ Mr Hammond explained that the SPD does not refer to an Italian hilltop model, nor to development being subservient to civic buildings; instead it provides general guidance on urban design, including stating that new developments responding to existing patterns of building heights should not preclude variations in scale.²⁶ Indeed, the SPD notes at §5.17 that tall buildings will provide much needed homes at increased densities.
22. Mr Hammond also explained that the SPD’s high-level character areas are influenced to some extent by the character areas in the AAP. While the Council has recently tried to withdraw the AAP because it does not like what it has to say about tall buildings, it is agreed that it still remains an extant part of the development plan.²⁷ It shows a tall building in very close proximity to the Site (as indeed does the Stitch Masterplan).²⁸
23. Bromley town centre also comprises an Opportunity Area within the London Plan, which means it is an area “*identified as significant locations with development capacity to accommodate new housing*”, typically containing “*capacity for at least 5,000 net additional jobs or 2,500 net additional homes or a combination of the two*”.²⁹ In other words, an area identified with scope for significant development.
24. Finally, in terms of the policy context, the Appeal Site is part of Allocation Site 10 in the Local Plan, which the Council at the time accepted “*would bring significant change to the*

²² Mr Richards’ Proof at §4.20

²³ Mr Richards in the Roundtable

²⁴ Ms Reynolds in the Roundtable

²⁵ Mr Hammond’s Proof at §8.5. CD5.2 at §7.34 Agreed Ms Reynolds in the Roundtable. See also Mr Hammond’s Proof at §4.20

²⁶ Mr Hammond in the Roundtable

²⁷ Agreed Mr Johnson in XX

²⁸ Stitch Masterplan is

²⁹ Mr Batchelor in the Roundtable, having regard to Table 2.1 of the London Plan and SD1 to which table relates on p.30, together with the reasoned justification at §2.1.1

character of the area” and which the Local Plan Inspector described as a “*comprehensive redevelopment*”.³⁰ Site Allocation 10 has an intended capacity of some 1,230 dwellings. Mr Richards explained that the only way this capacity will be achieved is to build upwards, in appropriate locations.³¹ A number of permissions have already been granted within the allocation, totalling just 101 homes, which places a greater emphasis on the remaining sites to deliver meaningful development.³²

25. Mr Richards has put together a series of maps of the remaining developable area of the allocation, excluding those sites with planning permission, the tree preservation order, the roads, the Conservation Area, a railway exclusion zone, and assuming 400 homes would be brought forward on the Churchill Quarter.³³ The result is that the remaining area for potential development is 1.3ha with a remaining requirement of 729 homes. For this to be achieved, the remaining sites would need to be developed to an average density of 561 dwellings per hectare.³⁴ However, such a uniform density of development is clearly unrealistic.³⁵ Not all of the land within the remaining sites can and will be developed, and such a density would be difficult to achieve on the smaller parcels of land remaining within the allocation, particularly towards the south, between the approvals at 52 and 62 High Street and around the junction between Ravensbourne Road and High Street. The allocation also seeks provision of other non-residential uses, including offices, retail and a transport interchange. That takes further land away. The emphasis, therefore, must be for the larger remaining plots to deliver the housing expected by the allocation.

26. In all, Mr Hammond and Ms Reynolds both agreed that the Appeal Site is part of a townscape that is able to accommodate change, being a development site, currently occupied by several rundown and redundant buildings, and an excellent location for residential development.³⁶

27. As to the Proposed Development itself assessed in its context, Mr Hammond explained that what is proposed are taller buildings, set back from the High Street, which reflects the existing pattern of buildings such as William and Henry House.³⁷

³⁰ CD4.1 Mr Batchelor’s Proof at §4.7, §4.8.

³¹ Mr Richards in the Roundtable

³² Mr Batchelor in the Roundtable, referring to his Proof at Table 2

³³ ID25

³⁴ ID25, Mr Batchelor’s covering note at §10

³⁵ ID25, Mr Batchelor’s covering note at §11

³⁶ Mr Hammond’s Proof at §4.20, Ms Reynolds in the Roundtable

³⁷ Mr Hammond in the Roundtable

28. The tall building assessment and townscape analysis work established appropriate heights that would not cause harm to the area, while pre-application discussions with the Council determined the appropriate location for the taller element within the Site.³⁸ The Proposed Development would be perceived as stepping down in height from the proposed building at 66-70 High Street, which sits further up the hill.³⁹
29. Where the Proposed Development would be visible, it would be seen as an integrated part of a cluster of existing buildings, including Henry and William House and 66-70 High Street.⁴⁰ Blocks A and B would be read as separate buildings, with blue sky between them in many views.⁴¹ Similarly, the Proposed Development would not coalesce with 66-70 High Street, given the pale grey façade proposed there is very different to the articulated brickwork of the Appeal Scheme.⁴² There would also be sufficient physical and visual separation between the Proposed Development and the Churchill Theatre, with the Proposed Development lower on the skyline, such that the visual function of the important civic landmark would remain.⁴³
30. The street frontage has been specifically designed to ensure that the Proposed Development does not feel incongruent with its immediate setting.⁴⁴ Mr Richards explained that going down Ethelbert Road, for the first two storeys the Proposed Development would be on the existing building line, with what is currently a private garden becoming open space in the form of a wider colonnaded part of the footpath.⁴⁵ On Ringers Road, the current building line would be maintained, with the widest part of the footpath on the road in front of the Proposed Development.⁴⁶ The façade is recessed to give a buffer zone between the public and private realm.⁴⁷
31. Mr Richards explained that the recessed brick panelling, piers, columns, and angled windows would break down the massing and give shadow, depth, texture and movement across the façade throughout the day.⁴⁸ In that way, the façade would be effectively articulated without compromising future buildings through provision of windows facing west.⁴⁹ The detailing would be visible all the way to the bottom of Ringers and Ethelbert

³⁸ Mr Richards' Proof at §4.2

³⁹ Mr Richards in the Roundtable and see his Proof at p.18

⁴⁰ Mr Hammond's Proof at §§8.8-8.9, §8.14

⁴¹ Mr Richards in the Roundtable

⁴² Mr Richards in the Roundtable

⁴³ Mr Hammond's Proof at §8.14 and §8.22

⁴⁴ Mr Richards' Proof at §4.4

⁴⁵ Mr Richards in the Roundtable

⁴⁶ Mr Richards in the Roundtable

⁴⁷ Mr Richards in the Roundtable

⁴⁸ Mr Richards in the Roundtable

⁴⁹ Mr Richards in the Roundtable

Road – that much is clear from the detail one is currently able to see of the TK Maxx building from the bottom of the hill.⁵⁰ There would be a clear bottom, middle and top to the building, with the upper tiers lighter and the lower floors an appropriate response to what exists at ground floor level.⁵¹

32. In all, the Proposed Development would represent a bespoke design, that has worked effectively with the constraints and opportunities offered by the Site, to deliver a quality building that can fundamentally be delivered.⁵² It is Mr Richards' professional opinion that the scale, height and massing of the proposals are successful, taking into account both the immediate context and the town centre skyline.⁵³ Similarly, Mr Hammond concludes that the Proposed Development would be a beneficial addition to the townscape and that it responds positively to the relevant policies in respect of design and visual matters.⁵⁴
33. In terms of the reason for refusal ("RfR") itself, the combination of the high-quality design of the Proposed Development, the improved streetscape and the reduced perception of the massing via the stepped roof profiles, in combination with the relatively wide streets and existing and future tall buildings in proximity to the Site, would ensure that the Proposed Development would be neither overly dominant nor an overbearing addition to the townscape.⁵⁵
34. In terms of the future development of the surrounding area, Mr Richards has provided various draft masterplans to show how the wider block could come forwards.⁵⁶ The Proposed Development leaves scope for a public link all the way through from Ethelbert to Ringers Road.⁵⁷ The Scheme also specifically seeks not to sterilise the rest of the allocation further down the hill by not having west-facing windows (unlike, for example, the future development at 66-70 High Street, which has windows looking directly onto the TK Maxx site).⁵⁸ As such, the Scheme would not prejudice the delivery of the rest of the allocation.

Historic environment

⁵⁰ Mr Richards in the Roundtable, see Mr Hammond's appendix volume 2, CD9.6c, view 103b and view K

⁵¹ Mr Richards in the Roundtable, Mr Hammond's Proof at §8.11

⁵² Mr Richards at the Roundtable

⁵³ Mr Richards' Proof at §4.8

⁵⁴ Mr Hammond's Proof at §8.19, §8.23

⁵⁵ Mr Hammond's Proof at §8.16

⁵⁶ See Addendum DAS pp.9-10 CD1.61, as well as the the 3D modelling in relation to the original design at p. 25 of the original DAS. Page 42-44 of the DAS show proposals in current context and with Stitch Masterplan in 3D.

⁵⁷ Mr Richards explained in the roundtable, with regard to the plans at CD1.27 and CD1.13

⁵⁸ Agreed Mr Wade in XX, Mr Richards at the Roundtable

35. The Council also alleges by way of RfR 3 that the development would cause heritage harm to the Conservation Area by virtue of being an “*overly dominant and overbearing addition*” to the town centre skyline. When the Proposed Development is assessed in the context of already existing and approved tall building development, it becomes clear that such an objection simply cannot be maintained.
36. Mr Froneman’s Proof, following the methodology set out in Historic England’s guidance GPA3, carefully analyses what constitutes the heritage significance of the Conservation Area, having regard to the adopted Bromley Town Centre Conservation Area Statement dated 2011.⁵⁹ Today, the Conservation Area includes well-established commercial buildings and uses with varied building ages and designs, creating a lively urban environment.⁶⁰ While in his Proof Mr Crone identified that the High Street Character Area “*has a bustling urban character*”, in XX he inexplicably changed his mind and refused to accept that either the Conservation Area or indeed Bromley town centre itself is urban (despite it being identified in the London plan as a metropolitan centre, one of the largest centres in London).⁶¹ That was not a reasonable approach.
37. Mr Froneman explained that there is a distinct change between the character and appearance of the Conservation Area, with its finer grain lower buildings, and its setting to the south.⁶² The southern hinterland includes larger scale, tall modern buildings, and the distinction between it and the Conservation Area will be further emphasised in future by the approved building at 66-70 High Street.⁶³ Mr Froneman told the Inquiry that it is possible to understand both the smaller fine grain buildings and larger buildings beyond as distinct at the same time.⁶⁴
38. While views out to the south provide some context of a different, evolved townscape, they do not meaningfully contribute to the Conservation Area’s significance.⁶⁵ Unsurprisingly, none of the key views identified in the BTCCA Statement look towards the Site.⁶⁶ It is Mr Froneman’s view that the Site, as part of such views out to the south west, does not add to

⁵⁹ See section 4 of Mr Froneman’s Proof. BTCAA Statement is at CD5.5.

⁶⁰ Mr Froneman’s proof at §§4.7-4.9

⁶¹ Mr Crone’s Proof at §4.3 on p.12

⁶² Mr Froneman in XIC, pointing to photos 27 and 28 on p.41 of his Proof. See also Mr Froneman’s Proof at §4.19

⁶³ Mr Froneman’s proof at §4.11, §§4.16-4.18

⁶⁴ Mr Froneman in XIC

⁶⁵ Mr Froneman’s Proof at §4.19

⁶⁶ Mr Froneman’s Proof at §4.15

the heritage significance of the Conservation Area or the ability to appreciate its significance.⁶⁷

39. In the broader context of longer distance views, the Proposed Development would similarly be perceived as located within an area where there are existing and approved large-scale modern buildings.⁶⁸
40. Having regard to the GPA 3 Historic England guidance which describes sensitivity as “*the capacity of the setting to accommodate change without harm to the heritage asset’s significance*”⁶⁹, Mr Froneman told the Inquiry that this part of the setting of the Conservation Area is not sensitive to change.⁷⁰ There are many other tall buildings there; they are already a characteristic of the southern part of the setting.⁷¹ It is for that reason that 66-70 High Street would not cause harm.⁷²
41. Mr Crone has been clear that he accepts that the existing and consented taller buildings outside the Conservation Area to the south do not cause any heritage harm.⁷³ That includes 66-70 High Street, which Mr Crone is happy to accept would cause no harm.⁷⁴
42. Yet, the Proposed Development would appear as lower and comparatively more recessive than 66-70 High Street, and subservient to it, particularly in close-range views.⁷⁵ While it would be visible, that does not equate to harm.⁷⁶ The experience of the Conservation Area would not be materially different: it would remain juxtaposed with the existing and emerging large scale modern buildings to the south.⁷⁷ Accordingly, Mr Froneman finds there would be no harm to the Conservation Area arising at all.⁷⁸
43. Having been asked to look in XX at a series of viewpoints from which it is apparent to anyone that 66-70 High Street would have a significantly greater impact than the Proposed Development, Mr Crone insisted inexplicably that 66-70 High Street would not cause harm, but that the Proposed Development would.⁷⁹ That is an incoherent and illogical position. If

⁶⁷ Mr Froneman’s Proof at §4.20

⁶⁸ Mr Froneman’s Proof at §4.22

⁶⁹ at §17 - GPA 3 – CD8.22

⁷⁰ Mr Froneman in XIC

⁷¹ Mr Froneman in XIC

⁷² Mr Froneman in XIC

⁷³ Mr Crone’s Proof at §4.29

⁷⁴ Mr Crone in XX, his Proof at §4.29

⁷⁵ Mr Froneman’s Proof at §4.23, §4.25 – see his Figure 17 and 28 for example

⁷⁶ Mr Froneman’s Proof at §4.27

⁷⁷ Mr Froneman’s Proof at §4.30

⁷⁸ Mr Froneman’s Proof at §4.31

⁷⁹ Mr Crone in XX, having regard to Mr Froneman’s Figure 17 and 28 for example

Mr Crone's descriptions apply to any building, it is to 66-70. Examples of how Mr Crone describes the Appeal Scheme from his proof include:

- i. 'greater massing and inappropriate urban scale' (§5.4)
- ii. 'bulky appearance that will form a visually and architecturally dominant new addition to the skyline' (§5.6)
- iii. detract from 'an appreciation of some of the key attributes of the High Street (central section) character area - notably the coherent scale of the built form and varied interesting roofscape which provides the pedestrianised area with its character as a traditional shopping street' (§5.6)
- iv. 'a greater more unforgiving bulk, scale and single mass of wider proportions than any of the existing isolated tall buildings' (§5.11)
- v. 'brings the height and scale of Bromley South (an area of very different character as confirmed in local character studies) right up to the boundary of the historic core of the town centre and the Conservation Area' (§5.12)

44. None of these allegations make sense when 66-70 High Street is considered not to cause any harm. When pressed to explain why the Proposed Development would be harmful but 66-70 High Street would not, Mr Crone suggested that the two buildings would be cumulatively harmful together.⁸⁰ He stated that while the consented scheme seen on its own would be seen as a wayfinder, the combination with the Proposed Scheme becomes uncomfortable, detrimental, and creates a wall of buildings.⁸¹

45. Mr Froneman took the inquiry to Historic England's guidance on cumulative change, which starts as follows:⁸²

*"Cumulative Change
Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, ..."*

46. In other words, for there to be a cumulative impact, there has to be a baseline of harm.⁸³ Yet, the Council's evidence is that there would be no harm from any of the tall buildings that exist or are approved to the south of the Conservation Area. As such, there is no baseline of harm to cumulatively add to.⁸⁴

⁸⁰ Mr Crone in XX

⁸¹ Mr Crone in XX

⁸² CD8.22 GPA3 p.4 centre right, Mr Froneman's Proof at p.58 §3.16

⁸³ Mr Froneman in XIC

⁸⁴ Mr Froneman in XIC

47. Mr Froneman also explained that 66-70 High Street does not help to wayfind anything in the Conservation Area or wayfind anything that makes the Conservation Area significant – as such, the point is irrelevant to an analysis of **heritage** impact.⁸⁵

48. It is important to have regard to the decision of the Inspector at 66-70 High Street,⁸⁶ who found as follows (emphasis added):

“12. Views south along the High Street from in and around the area of the theatre appreciate the smaller scale of the CA against the larger and more prominent feel to the southern, non pedestrianised end. It is thus contained and distinct despite how the architecture of the appeal site’s building relates well to it. one can clearly see the 10 storey building at Henry’s House and also the mono pitched roof to one of the residential blocks at St Marks.... these buildings provide a back drop and a context of greater height for the appeal site, when viewed south from within the CA.

13. The scheme for appeal A would be the tallest building in the immediate area. Its overall effect would however be reduced by a number of factors. Firstly, as I have explained above and when considering views of the building from the southern extents of the CA, it would be (visually speaking) in amongst other tall structures....”

49. So, a key factor for that inspector was that the scheme he was allowing would be visually in amongst tall structures: its existence was justified because of other existing large scale buildings.⁸⁷ Mr Froneman elaborated this point by explaining that the perception of distinction of the townscape is already legible, with the Appeal Scheme only representing incremental rather than fundamental change.⁸⁸

50. What is also unreasonable is that at the appeal for 66-70 High Street, the Council objected on the basis that scheme would be “*isolated*” and “*piecemeal*”.⁸⁹ Now, it objects to the Appeal Scheme on the basis that it would be seen together with other tall buildings and would detract from the singularity 66-70. Simply put, that is entirely inconsistent.

51. The focus of the Council’s case should have been on the RfR itself, which refers to the Appeal Scheme being “*overly dominant*” and “*overbearing*”. Mr Froneman explained, having regard to his Figure 17, that it is difficult to understand that allegation.⁹⁰ The dominant building would be the no harm scheme at 66-70 High Street, with the Appeal Scheme being very much subservient.⁹¹ Mr Froneman explained that he does not

⁸⁵ Mr Froneman in XX

⁸⁶ CD7.1

⁸⁷ Mr Crone in XX

⁸⁸ Mr Froneman in XIC

⁸⁹ CD7.1 at §25

⁹⁰ Mr Froneman in XIC

⁹¹ Mr Froneman in XIC

understand why seeing less of a lower building adjacent to something that dominates it is harmful.⁹² Even in longer range views, the Churchill Theatre would be seen as taller and 66-70 High Street would be generally perceived as taller or sometimes a similar height.⁹³

52. As to whether the Proposed Development would be part of a “wall” with other buildings, Mr Froneman told the Inquiry that even in the 2D images provided, one can see a juxtaposition of forms rather than a single mass.⁹⁴ Moving kinetically on the ground, the buildings would move in relation to each other.⁹⁵ The experience would be of perspective and layers of development, with separate buildings in front of and behind each other rather than simply one plane or coalescence of mass.⁹⁶
53. The final point relates to the consultation responses. While the Greater London Authority (“GLA”), Bromley Civic Society, the Design Review Panel and the Council’s conservation officer conclude like Mr Crone that there is harm, those responses simply cannot be relied upon in this case.⁹⁷ Starting with the GLA, their response provided no analysis whatsoever of why harm would arise. There is also no explanation for why their first letter could not draw any conclusions but their second letter then did.⁹⁸ There is also no evidence that there was any input to the response from the GLA’s heritage expert.⁹⁹ As to the Civic Society, their objection is exactly the same as it was to 66-70 High Street – the appeal decision conclusion that that was unfounded has simply not been taken into account at all.¹⁰⁰ The Design Review Panel are not heritage experts. Finally, the Council’s conservation officer failed to take into account the decision on 66-70 High Street and reached the untenable conclusion that the Proposed Development would be overly dominant and overbearing.
54. In all, Mr Froneman is clear that, like with 66-70 High Street, this is another case where the Council has simply got it wrong on heritage.

On-Site Amenity

55. The Council’s remaining case on on-site amenity impacts is not particularly clear. Most of RfR 4 appears to have fallen away. By email of 3rd July, the Council confirmed it is no longer pursuing the daylight objection in RfR 4 relating to impact on future occupiers. In response

⁹² Mr Froneman in XIC

⁹³ Mr Froneman in XIC, having regard to the VuCity views at Mr Hammond’s Appendices Volume 2. He explained that the closest the Appeal Scheme is in height to the 66-70 High Street is in Figure 21.

⁹⁴ Mr Froneman in XIC

⁹⁵ Mr Froneman in XIC

⁹⁶ Mr Froneman in XIC

⁹⁷ As Mr Froneman explained in XX. The GLA reports are CD3.2 and 3.5, the Officer’s Report is CD3.3, and

⁹⁸ Mr Froneman in XX, pointing to his Proof at §§3.46-3.50

⁹⁹ Mr Froneman in XX

¹⁰⁰ Mr Froneman in XX

to a question from the Inspector at the Inquiry, Ms Daye clarified that the Council is also no longer pursuing an objection in terms of single aspect design. That was in response to Mr Batchelor's Proof, which made clear that the Proposed Development would include no single aspect north facing units and 79% of the homes proposed would be of a dual, or triple aspect design.¹⁰¹

56. The main amenity issue remaining between the parties with regards to the Proposed Development itself is playspace for under 5s. It became very obvious over the course of Ms Daye's evidence that is not an objection that can realistically be maintained, in circumstances where (a) it is agreed that there is excellent existing provision within a very short walk of the Site with the playgrounds at Church House gardens,¹⁰² (b) the Appellant is making a contribution to offsite needs in compliance with policy, and (c) there is also space on-site for a play area, which can be secured by condition.

57. Policy S4 of the London Plan advises that development which is likely to be used by children and young people should incorporate good quality, accessible play provision for children of all ages, with 10 sqm of play space provided per child. Paragraph 5.4.6 then explains that off-site provision (including the creation of new or improved facilities) can be supported where it can be demonstrated that will address the needs of the development and where the provision would be within 400m of the development.

58. There is no deficiency of open space in this part of Bromley.¹⁰³ The parties agree that down Ethelbert Road there is very nearby access to Church House Gardens, a huge outdoor park that already includes a children's playground.¹⁰⁴ It is also common ground that the gardens are accessible, on the other side of a street that is not busy, with the park entrance just 30m from the Site and the children's playpark, which is both suitable and appropriate for under 5s, just 150m from the Site.¹⁰⁵ Ms Daye accepts that the presence of that very large park is an important relevant context in assessing the acceptability of playspace provision.¹⁰⁶

59. In terms of over 5s, Ms Daye agreed that is already exceptionally good access for a town centre site to open space and a playground: no more needs to be provided on site.¹⁰⁷ As

¹⁰¹ Mr Batchelor's Proof at §§6.13-6.14.

¹⁰² Ms Daye in XX, Mr Richards' Proof at §4.38

¹⁰³ Agreed Ms Daye in XX

¹⁰⁴ Agreed Ms Daye in XX

¹⁰⁵ Mr Batchelor in XIC, Agreed Ms Daye in XX

¹⁰⁶ Ms Daye in XX

¹⁰⁷ Agreed Ms Daye in XX

to under 5s, it is not clear why Ms Daye considered that such starkly different considerations applied. She accepted that under 5s are not allowed to walk off by themselves, and that there is nothing wrong with the experience of an under 5 accompanied by an adult walking down the hill the short distance to the very large public park.¹⁰⁸

60. Nonetheless, some provision for under 5s can be provided on site. The on site amenity area comprises 180sqm total. Ms Daye suggests that 127 sqm of playspace should be provide. There is plenty of space.

61. Ms Daye suggests deductions should be made resulting in an available area of 121 sqm, by deducting the bike storage areas (2 sqm) and circulation pathway (57 sqm).¹⁰⁹ It is not clear why the paths have to be deducted; paths are a very common part of children's play areas, whether in parks or on development sites. However, even if they are deducted, that leaves an area that is extremely close to the full total the Council seeks. The details of playspace and landscaping on the Site are within the Council's control under proposed condition 16. Ms Daye accepted that children's playspace can co-exist with amenity spaces for adults: the two can occupy the same space.¹¹⁰ There is also additional communal space for adults inside in the ground floor of the proposed buildings.¹¹¹

62. Mr Batchelor explained that the idea for the outdoor amenity area is to create a playable landscape, where younger children can play, other residents can sit and enjoy the outdoor amenity, with the park down the road for additional space.¹¹²

63. In terms of the offsite contribution, the sum contained within the section 106 agreement derives from using the GLA's Population Yield Calculator. The Council is willing to accept the financial contribution proposed of £16,711.32 to facilitate the delivery of offsite playspace.¹¹³

64. In all, Mr Batchelor is satisfied that the playspace offer, with both its onsite and offsite components, is wholly acceptable.¹¹⁴

65. There were three other concerns raised by Ms Daye in terms of onsite amenity.

¹⁰⁸ Ms Daye in XX

¹⁰⁹ Ms Daye in XIC

¹¹⁰ Agreed Ms Daye in XX

¹¹¹ Agreed Ms Daye in XX

¹¹² Mr Batchelor in XIC

¹¹³ Mr Batchelor's Proof at §§6.66-6.69

¹¹⁴ Mr Batchelor's Proof at §6.74

66. First, while the Council has withdrawn its allegation in relation to single aspect units, for the first time in oral evidence Ms Daye raised a concern about outlook from some specific single-aspect rooms. The two positions are inconsistent. Some of the flats identified by Ms Daye are also in a significantly elevated position, with the living spaces (as opposed to bedrooms) deliberately designed to look out over streets.¹¹⁵ While further windows could be added to the side elevation, that would prejudice the rest of the allocation, which the Council maintains it wants to see redeveloped.¹¹⁶ Mr Batchelor considers that the design and layout of the units – 79% of which would be dual and triple aspect – is both acceptable and compliant with relevant policy. Ms Daye agreed with his position.
67. Secondly, Ms Daye also made a brief comment about overlooking between the blocks in response to a question from the Inspector, although this did not feature as a significant part of her XIC or the XX of Mr Batchelor, other than for the Council to point out that they had found a narrower point to measure the separation distance. Mr Batchelor explained that the Appellant has taken the mid-point from the windows to calculate the separation distances.¹¹⁷
68. Ms Daye’s concern related to the corner balconies. If considered necessary, screening for those specific balconies can be provided by way of condition without significant design changes; privacy screening is not unusual. However, Mr Richards is clear that the building mass, balconies and windows have all been designed specifically to be angled away to avoid direct overlooking.¹¹⁸ That accords with the approach of Part C of the Housing Design Standards LPG, which specifically explains “*Visual privacy is more difficult to achieve in dense environments, particularly on lower floors. Offsetting or angling windows can mitigate problems...*”¹¹⁹. Further to this, the design of the units have been planned so that the windows are staggered and that any bedroom is located opposite to a kitchen/Living/Dining area with recessed balcony to provide a level of privacy.¹²⁰
69. It is agreed that there is no prescriptive policy requirement to meet in respect of separation distances between habitable room windows.¹²¹ Given the careful design and the context of a regenerating town centre allocation, Mr Batchelor considers that separation distances of a minimum of 11.8m but with c.12.5m being more common are wholly appropriate.¹²²

¹¹⁵ Agreed Ms Daye in XX

¹¹⁶ Agreed Ms Daye in XX

¹¹⁷ Mr Batchelor in XX

¹¹⁸ Mr Richards’ Proof at §4.33

¹¹⁹ §4.1.2, CD8.5

¹²⁰ Mr Richards’ Proof at §4.34

¹²¹ SOCG at §7.18

¹²² See the window separations drawing CD8.13

Similar separations have been supported by the Council on other sites that are neither allocated nor in the heart of the town centre (including the Blenheim Centre and the Pikes Close Estate).¹²³

70. Thirdly, Ms Daye raised a concern about the wheelchair units, which does not form part of the Council's RfR. She accepted that in terms of numbers, the scheme complies with policy.¹²⁴ It is unclear where Ms Daye's objection really lies. The Inquiry was told that wheelchair units should be provided across a range of units. Mr Batchelor explained that wheelchair units would be provided across a range of units: both 1- and 2- bed flats, on a range of floors (1-4) and across all tenures.¹²⁵ While it was put to him that daylight is poorer in the lower floors, the Council has accepted that daylight impacts are acceptable for proposed occupiers. Mr Batchelor explained that some of the wheelchair units are south-facing, with strong performance in daylight and sunlight terms. In the event of an emergency, it is easier to evacuate people in wheelchairs from the lower floors.¹²⁶ In all, there is simply nothing of substance in this point.

Offsite Amenity: Daylight and Sunlight

71. RfR 5 relates to offsite amenity. We start by addressing the daylight and sunlight aspect of this.

72. The methodology and results of the modelling are now agreed in all material respects.¹²⁷ What remains between the parties is a difference as to the interpretation of the results.

73. It is common ground that the relevant guidance is that produced by the BRE and found at CD8.1. It is also agreed that the Site is an allocation, located within an urban context in a metropolitan town centre, and that these considerations should be taken into account when interpreting the BRE Guidance.¹²⁸

74. Indeed, that is exactly what policy and guidance demand, making clear that if land is to be used more efficiently and density is to be increased in urban locations, then deviations from the BRE target values will occur.¹²⁹ It is important to remember that daylight and sunlight is

¹²³ Mr Batchelor in XX, his Proof at §§6.36-6.61

¹²⁴ Ms Daye in XIC

¹²⁵ Mr Batchelor in XX

¹²⁶ Mr Batchelor in Re-X

¹²⁷ Mr Wade's Rebuttal at §2.1.3, SOCG and Supplemental SOCG.

¹²⁸ Daylight / Sunlight SOCG at §7.4

¹²⁹ Mr Keating's Proof at §§4.1.45-4.1.48

but one form of amenity, which should not be considered in isolation when reviewed against other material planning considerations.¹³⁰

75. The BRE Guidance makes this acknowledgement within the document itself, stating:¹³¹

“....The advice given here is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design (see Section 5). In special circumstances the developer or planning authority may wish to use different target values. For example, in a historic city centre, or in an area with modern high-rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings.”

76. This is an area with modern high-rise buildings, where the expectation is for densification, increased mass, and increased height. Mr Keating is clear that strictly applying the BRE target values would not be appropriate.¹³² The Council agrees that the Guidance should be interpreted flexibly in this case.¹³³

77. That was also the approach of Inspector Lyons in the Whitechapel Estate case, who addressed this very issue and concluded at §108:¹³⁴

“The BRE document offers guidance on generally acceptable standards of daylight and sunlight, but advises that numerical values are not to be rigidly applied and recognises the importance of the specific circumstances of each case. Inner city development is one of the examples where a different approach might be justified. This is specifically endorsed by the Housing SPG, which calls for guidelines to be applied sensitively to higher density developments, especially in (among others) opportunity areas and accessible locations, taking into account local circumstances, the need to optimise housing capacity, and the scope for the character and form of an area to change over time. This approach is clearly relevant to the appeal site. The area’s identification for transformation through high density housing development indicates high scope for its form and character to change over the short and longer term. I agree with the appellants that blanket application of the BRE guide optimum standards, which are best achieved in relatively low-rise well spaced layouts, is not appropriate in this instance.”

78. Turning then to policy. The NPPF also makes expressly clear that daylight and sunlight guidance should be applied flexibly in the context of the need to make efficient use of land, stating at §129(c) that (emphasis added):

“local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a

¹³⁰ Mr Keating’s Proof at §§4.1.45-4.1.48

¹³¹ Mr Keating’s Proof at §§4.1.45-4.1.48. BRE Guidelines CD8.1 at p.7 section §1.6 (introduction)

¹³² Mr Keating’s Proof at §§4.1.23-4.1.25

¹³³ DLSL SOCG at §7.3

¹³⁴ Appendix A1 to Mr Keating’s Proof

flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)."

79. The London Plan prioritises high density developments, in the right places, with transport accessibility and connectivity being key considerations in determining optimal density.¹³⁵

Context is also specifically recognised as an important part of assessing daylight and sunlight impacts under Policy D6 (Housing quality and standards). The context here is a metropolitan town centre, an Opportunity Area, an allocated site and an area at the start of a phase of regeneration.¹³⁶

80. Perhaps most important of all given the detailed consideration it gives to daylight and sunlight considerations is the London Mayor's Housing SPG, which addresses the matter as follows (emphasis added):¹³⁷

"1.3.45. Policy 7.6Bd requires new development to avoid causing 'unacceptable harm' to the amenity of surrounding land and buildings, particularly in relation to privacy and overshadowing and where tall buildings are proposed. An appropriate degree of flexibility needs to be applied when using BRE guidelines to assess the daylight and sunlight impacts of new development on surrounding properties, as well as within new developments themselves. Guidelines should be applied sensitively to higher density development, especially in opportunity areas, town centres, large sites and accessible locations, where BRE advice suggests considering the use of alternative targets. This should take into account local circumstances; the need to optimise housing capacity; and scope for the character and form of an area to change over time.

1.3.46. The degree of harm on adjacent properties and the daylight targets within a proposed scheme should be assessed drawing on broadly comparable residential typologies within the area and of a similar nature across London. Decision makers should recognise that fully optimising housing potential on large sites may necessitate standards which depart from those presently experienced but which still achieve satisfactory levels of residential amenity and avoid unacceptable harm.

....

2.3.47.... BRE guidelines¹ on assessing daylight and sunlight should be applied sensitively to higher density development in London, particularly in central and urban settings recognising the London Plan's strategic approach to optimise housing output (Policy 3.4) and the need to accommodate additional housing supply in locations with good accessibility suitable for higher density development (Policy 3.3). Quantitative standards on daylight and sunlight should not be applied rigidly, without carefully considering the location and context and standards experienced in broadly comparable housing typologies in London."

¹³⁵ §§1.2.2-1.2.3, Policy GG2, Policy D2

¹³⁶ Mr Keating's Proof at §§4.1.29-4.1.30. The metropolitan town centre designation is within the London Plan's 'Town Centre Network' in Table A1.1, page 476.

¹³⁷ CD8.6 At §1.3.45, §1.3.46, §2.3.47 – see §§4.1.31-4.1.37 of Mr Keating's Proof

81. Remarkably, Mr Wade made no reference to that SPG anywhere in his Proof, despite setting out the BRE thresholds, other guidance such as the RICS guidance, and having a section titled policy context.¹³⁸ Yet, he accepted in XX that the Inspector will need to have regard to the SPG when making his decision.¹³⁹
82. Mr Wade also agreed that each of the factors where the SPG emphasises BRE values should be applied particularly sensitively are relevant in this case: the Site represents a higher density development, in an opportunity area, in a town centre, on part of a large site, and in an accessible location (with PTAL level 6).¹⁴⁰
83. The policies all point the same way. The BRE target values must be interpreted flexibly, in context. The real question is what that means in practice. That is why the SPG is so important. It tells applicants and decision-makers how to conduct such a flexible, context-driven assessment. It does that by saying that proposed schemes should be assessed by drawing on broadly comparable residential typologies in London. That is absolutely critical. It is only by drawing comparisons with broadly comparable typologies that any judgement can sensibly be made about acceptability of impacts.
84. Mr Keating explained that it is “*extremely important*” to assess other comparable typologies in London, for the following additional reasons.¹⁴¹
85. First, the BRE Guidance does not set out a framework to determine how or whether particular levels of harm should be deemed acceptable in a given context. The BRE Guidance only begins to identify impacts that are “noticeable” rather than providing any analysis of acceptability.¹⁴² The SPG’s recommendation to assess other comparable typologies starts to give an indication of how consultants and local authorities can begin to evaluate the numerical guidance in the context of acceptability of impacts.
86. Secondly, the BRE target values are generally based on a suburban 2-3 storey housing typology. In a more urban context, the figures are in many instances unrealistic.¹⁴³ Mr Keating explained that if decision-makers were to apply the approach of the BRE rigidly, that would eliminate the ability to have meaningful development on urban sites in London,

¹³⁸ Agreed Mr Wade in XX

¹³⁹ Agreed Mr Wade in XX

¹⁴⁰ Mr Wade in XX

¹⁴¹ Mr Keating in XIC

¹⁴² Mr Keating in XIC

¹⁴³ Mr Keating in XIC

as significant numbers of windows would fall short.¹⁴⁴ Mr Keating explained that in his experience, it can take only fairly meagre development to result in a breach of BRE target values, especially in dense urban housing environments, with obstructions near to windows such as balconies overhead, and where existing daylight values are already low.¹⁴⁵

87. Following the approach set out in the SPG, Mr Keating has therefore analysed a whole series of comparable schemes in London (and outside it), approved by both local authorities and inspectors at appeal.¹⁴⁶ This enables an assessment of whether the Appeal Scheme's impacts are reasonable, seen in comparison with other urban residential typologies.

88. Mr Wade accepted that looking at comparable housing typologies is relevant for this Inspector.¹⁴⁷ However, his evidence did not explore any comparable housing typologies in London, even though the relevant guidance tells us to do that. Mr Wade also accepted that he had not read the detailed daylight and sunlight reports relating to other comparable schemes that were provided by Mr Keating.¹⁴⁸

89. The lack of analysis of comparable developments represents a fundamental flaw in Mr Wade's approach. His evidence simply highlights where there are breaches of BRE target values. While he accepts BRE target values must be applied flexibly, without providing any other examples he gives no way for the Inspector to carry out such a flexible analysis.

90. There is a further problem with Mr Wade's approach in this case. In addition to setting out that the urban context and site typology is important, the BRE Guidance is also clear that other site-specific factors are also relevant to an analysis of the numerical results. For example, the BRE Guidance is clear that when carrying out a significance analysis in respect of Environmental Impact Assessment ("EIA"), where only a small number of windows or limited area of open space lose light, a classification of minor impact is more appropriate (even if there is a high percentage loss).¹⁴⁹ The BRE Guidance also points to a range of other factors that affect conclusions on significance: the numbers of windows affected, how far outside the guidelines the loss is, whether an affected room has other sources of skylight or sunlight, whether the affected building or open space only has a low level requirement for skylight or sunlight, or whether there are particular reasons why an

¹⁴⁴ Mr Keating in XIC

¹⁴⁵ Mr Keating in XIC

¹⁴⁶ See section 6.1 of Mr Keating's Proof, agreed Mr Wade in XX

¹⁴⁷ Mr Wade in XX

¹⁴⁸ Mr Wade in XX

¹⁴⁹ CD8.1 Appendix H at H5

alternative target value should be applied, for example an overhang above the window or a window standing unusually close.¹⁵⁰

91. The difficulty arises because Mr Wade's traffic light system simply cannot account for such important contextual considerations. Mr Wade has applied a sweeping red colouring to every single instance of an impact of over 40%. Yet, applying the approach of the BRE itself, an impact over 40% is not automatically unacceptable and must be understood in context. Mr Wade accepted that the traffic light system alone is therefore insufficient to determine the acceptability of impacts.¹⁵¹
92. Having set out the relevant guidance and policy, we now turn to the specific impacts arising in this case. Mr Wade identifies five properties of concern for daylight impacts: Henry House, William House, Simpsons Place, Salvation Army Church, and 62 High Street. Mr Wade also raises 35-36 Ethelbert Close for overshadowing. The following sections address these impacts by looking at the various assessments that have been carried out in the following order: Vertical Sky Component ("VSC"), No Sky Line ("NSL"), Annual Probable Sunlight Hours ("APSH"), and finally overshadowing.

VSC

93. As Mr Keating explained to the Inquiry, the VSC test measures the amount of sky that is visible to a specific point on the outside of a property, which is directly related to the amount of daylight that can be received.¹⁵² It is measured on the outside face of the external walls, usually at the centre point of a window.¹⁵³ The BRE Guidance suggests that existing daylight may be noticeably affected by new development if windows achieve a VSC below 27% and see a loss of VSC of 20% or more.¹⁵⁴ For all the reasons set out above, those numerical values cannot be determinative of the acceptability of impacts.
94. Mr Keating explained that it is important to not just look at the percentage reduction but also at the retained VSC – the light the neighbours would be left with.¹⁵⁵ That is at least in part because where there is a low baseline VSC, even small changes can be expressed as potentially misleading high percentage differences.¹⁵⁶ In other words, the real impact of a

¹⁵⁰ Agreed Mr Wade in XX, CD8.1 Appendix H at H6

¹⁵¹ Mr Wade in XX

¹⁵² Mr Keating's Proof at §4.2.5

¹⁵³ Mr Keating's Proof at §4.2.5

¹⁵⁴ Mr Keating's Proof at §4.2.7

¹⁵⁵ Mr Keating's Rebuttal at §4.1.17

¹⁵⁶ Mr Keating's Proof at §6.3.16 and in Re-X

particular percentage loss depends very significantly on the existing daylight performance of the window.¹⁵⁷ Accordingly, looking at the comparison tables produced by Mr Wade, the columns that should be the focus of the analysis are the loss column (i.e. absolute loss) and proposed column (i.e. what is left), rather than the percentage difference).¹⁵⁸

95. In terms of the impacts of the Appeal Scheme, five properties are of concern to the Council: 62 High Street, Henry House, William House, Simpsons Place, and Bromley Temple. A detailed assessment was also carried out for a further 14 properties, and the Council is accepting of the impacts with regards to all of these. The properties of concern would experience a range of VSC losses, including over 40% relative loss for some windows (2 windows at 62 High Street, 21 windows at Henry House, 25 windows at William House, 12 windows at Simpsons Place, and 20 windows at Bromley Temple).¹⁵⁹ Fewer windows would experience losses of 30-40% and even fewer 20-30%. The full details of the agreed results are set out at Appendix B 6 to Mr Keating's Rebuttal.¹⁶⁰

96. These impacts must be understood in context. For example, Henry and William House see some windows with a retained VSC of less than 15%. However, the design of these buildings is significantly constrained in that it leaves these north facing units very vulnerable to daylight impact, with a very high dependency on a sole window with its own significant constraints (balcony, recessed walls and fin features).¹⁶¹ In response to this, one must consider the shortfalls of the BRE targets for these windows with a particularly high degree of flexibility: it is the design of the building that makes it so very vulnerable to daylight loss.¹⁶² As the BRE Guidance explains:¹⁶³

“Existing windows with balconies above them typically receive less daylight. Because the balcony cuts out light from the top part of the sky, even a modest obstruction opposite may result in a large relative impact on the VSC, and on the area receiving direct skylight.

.... A larger relative reduction in VSC may also be unavoidable if the existing window has projecting wings on one or both sides of it, or is recessed into the building so that it is obstructed on both sides as well as above.”

97. In terms of balconies specifically, Mr Keating explained that given the technical way the VSC assessment works, requiring a geometrical distortion of the spherical environment onto a 2D plane, greater weighting is applied to visible sky closer to the zenith or directly

¹⁵⁷ Mr Keating in XIC

¹⁵⁸ Mr Keating in Re-X, referring to ID14

¹⁵⁹ ID23 and 23a

¹⁶⁰ Starting at PDF page 93/295

¹⁶¹ Mr Keating's Proof at §§4.2.5- 4.2.7

¹⁶² Mr Keating's Proof at §§4.2.5- 4.2.7, §4.2.12, §4.2.13

¹⁶³ CD8.1 at §§2.2.13-2.2.14

overhead than to sky further towards the horizon.¹⁶⁴ When a balcony is introduced overhead, that therefore severely limits the calculation.¹⁶⁵

98. Mr Wade accepted that the price paid for the amenity benefit of having a balcony, a popular feature on new developments, can be the compromising of daylight in the flat.¹⁶⁶ He also accepted that the Appellant cannot redesign existing neighbouring development that has such features already.¹⁶⁷

99. In this particular case, the balconies do have a significant effect on William and Henry House, with the absolute values of the VSC increasing by an average of 7% in the without-balcony assessment.¹⁶⁸ William and Henry House are also affected by projecting wings and recessed rooms, with room depths of up to 9m.¹⁶⁹ Mr Keating explained that the rooms in William and Henry House with the greatest impacts generally experience balconies, projecting wings, and/or recessed rooms, which together render relative losses in VSC effectively unavoidable.¹⁷⁰ For William House, windows which are not located under a balcony maintain a retained level of VSC in the mid-teens at the least and often greater than 15%.¹⁷¹

100. When assessing impacts on Henry and William House, it is also important to keep in mind that these properties were built – and residents moved into them – knowing that the wider area formed an allocation for significant urban redevelopment and large-scale regeneration, including densification over the road.¹⁷²

101. Another property of concern for Mr Wade is the Salvation Army. However, the Salvation Army (Bromley Temple) is a place of worship and not a residential receptor.¹⁷³ The whole focus of the BRE Guidance for VSC is on places where people live. While Mr Wade stated that in his view the Salvation Army is nonetheless sensitive, a place of worship/community centre is not a use type listed as an example of a sensitive non-residential receptor by the BRE (which refers to, for example, hotels and hospitals).¹⁷⁴ The

¹⁶⁴ Mr Keating in XIC, his Proof at pp.21-23 and the figures therein

¹⁶⁵ Mr Keating in XIC

¹⁶⁶ Mr Wade in XX

¹⁶⁷ Mr Wade in XX

¹⁶⁸ Mr Keating in XX, his Rebuttal at §4.2.9. The detailed no balcony assessment is at Appendix B.13 to Mr Keating's Rebuttal Starting at PDF p.241/295

¹⁶⁹ Mr Keating in XX, his Rebuttal at §4.2.8

¹⁷⁰ Mr Keating in XX, his Rebuttal at §§4.2.6-4.2.19

¹⁷¹ Mr Keating's Rebuttal at §4.2.18

¹⁷² Agreed Ms Daye in XX

¹⁷³ Agreed Mr Wade in XX

¹⁷⁴ See BRE Guidelines CD8.1 at §2.2.2

Salvation Army spokesperson at the Inquiry explained that a key concern is the various bands that play in the evening. Such users are transient – and their light will already be significantly restricted in winter.¹⁷⁵ Mr Wade agreed that the religious and community uses in the building are simply not the same as impacts on a house where people live.¹⁷⁶

102. Thirdly, when looking at impacts to both the Salvation Army and also to Simpsons Place, it must be borne in mind that these developments are within the Local Plan allocation 10 as sites that the Council wants to see redeveloped. They have been intentionally included within that allocation, and it is agreed that is a relevant contextual consideration for informing the Inspector’s analysis of the acceptability of impacts.¹⁷⁷ In terms of Simpsons Place specifically, the Appeal Scheme buildings are also intentionally set back from the boundary to reduce the impacts arising.¹⁷⁸ Each of the windows serving kitchen-living-diners, where daylight is most sensitive, would retain VSCs of at least 15% and the majority of the remaining windows serving bedrooms would retain VSCs in the mid teens.¹⁷⁹

103. Finally, as regards 62 High Street, 154 windows were tested, of which only 9 would be in the 30% and 40% categories.¹⁸⁰

104. What is clear from Mr Keating’s evidence is that these results are very much comparable with other urban, town centre development that has been deemed acceptable, whether by local authorities or on appeal.

105. One example Mr Keating gave was the granted appeal at Whitechapel Estate.¹⁸¹ In that case, there was a range of transgressions of the BRE target values and with exceedances above 40% over the existing value.¹⁸² The properties affected include Silvester House, for which 61% of rooms (or 27 rooms) would have impacts over 40; 61-81 and 56-58 Cavell Street, for which approximately half of the rooms would have impacts over 30% or over 40%; Porchester House for which the majority of tested rooms would have impacts of 20-30% or more than 40%; and Wilton Court, where 32 out of 42 rooms would have impacts of greater than 40%.

¹⁷⁵ Agreed Mr Wade in XX

¹⁷⁶ Agreed Mr Wade in XX

¹⁷⁷ Agreed Mr Wade in XX

¹⁷⁸ Agreed Mr Wade in XX

¹⁷⁹ Mr Keating’s Rebuttal Appendix B 6

¹⁸⁰ Agreed Mr Wade in XX, see ID15

¹⁸¹ ID23a. See also Figure 18 on p.38 and APPENDIX A.16 (within Part 3) WHITECHAPEL ESTATE ENVIRONMENTAL STATEMENT DSO CHAPTER

¹⁸² Mr Keating’s Proof at §6.1.5 and Figure 18 on p.38, agreed Mr Wade in XX. See ID23a.

106. In all, having regard to the tables in ID23a, there are a greater number of rooms affected by either the 30-39% or over 40% categories in the Whitechapel Estate case than would be for the Proposed Development. What this shows is an Inspector's decision where there are more surrounding developments with a reduction in daylight over the BRE target values, and where a number of properties would experience a greater number of significant impacts, compared with the Appeal Scheme.¹⁸³
107. A further example provided by Mr Keating is Brixton Hill Place. In that case, retained VSCs as low as 1.34% to 10.15% for the first and third floors of this building were allowed, well below not only the BRE recommendation of 27% but also the alternative target that has been suggested in some cases of 15%.¹⁸⁴
108. Within Bromley itself, a useful comparator is the Blenheim Shopping Centre development for 230 dwellings in Penge, which was approved by the Council in March of this year.¹⁸⁵ The Committee Report explains that 27 windows (5% of the total assessed) recorded between 30% and 40% VSC difference, with 91 windows (18% of the total assessed) recording over 40% difference, with the greatest difference being up to 100%.¹⁸⁶ In other words, some affected properties would have daylight completely removed, but that was deemed acceptable given the relevant contextual details.¹⁸⁷ In terms of particular dwellings affected, 47 rooms at Colman House would see impacts over 40%, 15 would at John Baird House, and 10 properties would at 126-128 High Street.¹⁸⁸ It was also accepted in that case that retained VSC values of between 5%-11% at ground floor exist in the Borough and do not appear to be a barrier to acceptable living conditions by residents in a dense urban environment.¹⁸⁹
109. Careful analysis of the Blenheim scheme demonstrates again that for development in a town centre in Bromley, where meaningful development comes forward transgressions greater than 40% in a number of surrounding properties have been deemed acceptable on balance.¹⁹⁰

¹⁸³ Mr Keating in XIC

¹⁸⁴ See Mr Keating's Proof at §6.1.23, agreed Mr Wade in XX

¹⁸⁵ Mr Keating's Appendix A.9 is the Committee Report

¹⁸⁶ Mr Keating's Appendix A.9 at §6.6.5 and his §6.3.10 and in Re-X

¹⁸⁷ Mr Keating in Re-X, his Proof §§6.3.10-6.3.14

¹⁸⁸ See ID23, Mr Keating in XIC

¹⁸⁹ Mr Keating in Re-X, his Proof at §6.3.17 and §6.5.21. Mr Keating also referred to his Proof at §6.3.22, which gives another example of existing VSCs of 5% in Bromley.

¹⁹⁰ Mr Keating in XIC

110. Both parties also referred to the recent report for the Waitrose scheme in Bromley town centre.¹⁹¹ In that scheme, some 122 windows in the neighbouring Perigon Heights property would experience a VSC of over 30% or over 40% (some 45% of all windows tested).¹⁹² That is a more significant impact than on Henry House and William House, where a lower proportion and lower absolute number of the rooms tested would experience such impacts.¹⁹³ In addition, for the Waitrose scheme, the retained VSCs would be as low as 0.4%, 1.8% and 4%; larger reductions than on the Appeal Scheme.¹⁹⁴ Mr Keating considers that to be a useful, like-for-like comparison – what is proposed here is consistent with the Waitrose Scheme.¹⁹⁵

111. Overall, this analysis shows that in other comparable local cases there have been a number of instances of breaches of BRE standards, but the Council has recommended such schemes for approval and granted planning permission.¹⁹⁶ In terms of the Blenheim development, in the Committee Report officers specifically considered daylight impacts to be acceptable.¹⁹⁷

112. Mr Wade accepted that Inspectors and Councils are simply not strangers to allowing appeals in his “red” category, namely with VSC impacts >40%.¹⁹⁸ A series of other examples of schemes where VSC losses and retained VSCs comparable to the Appeal Scheme have been deemed acceptable are set out in Mr Keating’s Proof both within Bromley (at his §§6.3.3-6.3.57), within London (at his §§6.1.6-6.1.86 and §§6.4.5-6.4.29) and outside of London (at his §§6.2.3-6.2.13). They only serve to further emphasise the point that when analysed together with comparable urban typologies, as the Mayor advises, the impacts of the Appeal Scheme are acceptable in VSC terms.

NSL

113. Turning next to NSL. The NSL test simply looks to see whether from the working plane, typically the height of a table, the sky is visible from one of the windows in a room.¹⁹⁹ Again, the BRE Guidance suggests that existing daylight may be noticeably affected by

¹⁹¹ See ID15 for the Appellant’s analysis

¹⁹² ID15, agreed Mr Wade in XX

¹⁹³ Agreed Mr Wade in XX

¹⁹⁴ Mr Keating in XX and Re-X, referring to ID14

¹⁹⁵ Mr Keating in XX and Re-X

¹⁹⁶ Agreed Mr Wade in XX

¹⁹⁷ See subheading after §6.2.11 (pg. 397 in Mr Batchelor’s appendices - volume 2). Also §6.2.20 on the following page

¹⁹⁸ Agreed Mr Wade in XX

¹⁹⁹ Mr Keating’s Proof at §4.2.6 and in XIC

new development if there is a 20% reduction in levels of NSL.²⁰⁰ However, for the reasons set out above, like with VSC rigidly applying that target value is not appropriate or helpful in this particular context.

114. Mr Keating emphasised that while the NSL test is useful in that it incorporates room layouts, it also has its limits. In particular, he explained that the NSL test should not be interpreted as a description of the amount of light or physical brightness within a room – it is simply a geometrical assessment of how much of the sky can be seen.²⁰¹ Daylight can still penetrate even where the sky cannot be seen; so NSL is not an effective means of quantifying the amount of daylight a room receives.²⁰² Mr Wade agreed that throughout London, there are many flats where people have light coming in but cannot necessarily see sky, and the more urban the area the less likely it will be to see sky.²⁰³ For these reasons, Mr Keating explained that VSC should be ascribed more weight – it provides more of a description of the potential for a window to achieve daylight.²⁰⁴

115. Mr Keating also told the Inquiry that NSL is a particularly sensitive test that has a tendency to unfairly constrain development, especially where the design of a room makes assessed impacts inevitable.²⁰⁵ The BRE Guidance specifically explains that room design can influence the NSL contour, stating that if an existing building contains rooms *“lit from one side only and greater than 5m deep, then a greater movement of the no sky line may be unavoidable”*.²⁰⁶

116. In terms of the Appeal Scheme itself, the key properties that see would see NSL impacts in the over 40% category are Henry House (13 rooms), William House (19 rooms) and Simpsons Place (10 rooms).²⁰⁷ The full details of the agreed results are set out at Appendix B 6 to Mr Keating’s Rebuttal.²⁰⁸

117. Again, similar considerations in relation to Henry and William House apply as they did for VSC. Not only do these buildings have balconies for many rooms, but the rooms are

²⁰⁰ Mr Keating’s Proof at §4.2.7

²⁰¹ Mr Keating in XIC

²⁰² Mr Keating in XIC and XX

²⁰³ Agreed Mr Wade in XX

²⁰⁴ Mr Keating in XIC

²⁰⁵ Mr Keating in XIC

²⁰⁶ CD8.1 at §2.1.12

²⁰⁷ ID23

²⁰⁸ Starting at PDF page 93/295

also deep – sometimes up to 9m.²⁰⁹ Again, the impacts of the balconies on NSL can be seen in the “no balcony” assessment results.²¹⁰

118. Similar considerations also apply with respect to Simpsons Place as they did to VSC (namely, the separation distances and the intention of the Council to redevelop that site as part of a comprehensive regeneration of the area).

119. Mr Keating has again provided the Inquiry with some comparator tables for other London schemes. Starting with the Whitechapel Estate appeal, ID23 shows that there were losses of greater than 40% in terms of NSL for quite a lot more rooms than the Appeal Scheme. These were found at 61-81 & 56-68 Cavell Street (13 rooms), Wilton Court (8 rooms), Silvester House (19 rooms), Porchester House (10 rooms), Dickson House & Mellish House (19 rooms), 20-30 Varden Street (7 rooms), and 33-49 Walden Street (19 rooms).²¹¹ In all, there are some 95 rooms with NSL losses of greater than 40%, as well as additional rooms with losses of 30-39.99%, accepted by the Inspector on appeal.

120. Within Bromley at the Blenheim shopping centre development, the daylight and sunlight reports again reveal NSL losses of greater than 40% in a number of cases, including Colman House, John Baird House, 2, 4, 8, 10 Croydon Road and 126-128 High Street.²¹² In all, some 54 rooms record between 30-39% or >40% losses, with the greatest difference being up to 72% in some cases.²¹³

121. In all, Mr Keating concludes that while the NSL assessment is not as useful as VSC in assessing daylight impacts to neighbouring properties, the results for the Appeal Scheme are nonetheless acceptable and comparable with other schemes granted on appeal or by councils in London and in Bromley itself.

Sunlight

122. As to sunlight, the BRE Annual Probable Sunlight Hour (“APSH”) test relates mainly to existing living room windows, although care should be taken to ensure that kitchens and bedrooms receive reasonable amounts of sunlight.²¹⁴ The APSH assessment states that the existing living room window should receive at least:²¹⁵

²⁰⁹ Mr Keating in XIC

²¹⁰ Starting at PDF p.241/295 at Appendix B.13 to Mr Keating’s Rebuttal.

²¹¹ ID23

²¹² Mr Keating in XIC, ID23

²¹³ ID23, Mr Keating’s Appendix A.9 at §6.6.6

²¹⁴ Mr Keating’s Proof at §4.2.10

²¹⁵ See Mr Keating’s Proof at §4.2.10

- i. 25% of annual probable sunlight hours throughout the year;
- ii. 5% of annual probable sunlight hours during the winter months;
- iii. not less than 80% of its former sunlight hours during either period;
- iv. not more than a 4% reduction in sunlight received over the whole year.

123. The term 'annual probable sunlight hours' refers to the long-term average of the total of hours during a year in which direct sunlight reaches the unobstructed ground (when clouds are taken into account).²¹⁶ In other words, it is an annual figure for the amount of sunlight received in a theoretical unobstructed open plane, based on historic cloud data.²¹⁷

124. APSH assessment is only carried out when the window is facing within 90 degrees due south, accordingly sunlight assessment results have not been provided for a number of properties that were assessed for daylight. Mr Keating also explained that there is a particular difficulty in meeting the BRE Guidance targets for APSH where qualifying windows are predominantly east or west facing; only up to half the sunlight hours are even theoretically available in the first place in such cases.²¹⁸

125. Mr Keating told the Inquiry that the Proposed Development would bring about only a small number of transgressions of the BRE Guidance for APSH, and where those occur it is unlikely to be to living rooms (the clear emphasis in the Guidance).²¹⁹ The main property affected is 66-70 High Street (which is not a concern for the Council and is mostly east facing) a.²²⁰

126. In short, Mr Keating's unchallenged evidence was that there is no issue about sunlight for neighbouring properties.²²¹ Sunlight was not a matter taken up as a concern by the Council in oral evidence or in Mr Wade's Proof.

127. Nonetheless, for completeness, Mr Keating has provided a comparison of the APSH results for the Proposed Development with some other schemes. For the Whitechapel scheme there are instances of APSH impacts which are greater than those experienced in the most affected properties for Proposed Development.²²² Furthermore, more rooms

²¹⁶ Mr Keating in XIC

²¹⁷ Mr Keating in XIC

²¹⁸ Mr Keating in XIC

²¹⁹ Mr Keating in XIC, explaining he had done an external visit to those properties

²²⁰ See ID23. The full details of the agreed results are set out at Appendix B 8 to Mr Keating's Rebuttal Starting at PDF page 164/295

²²¹ Mr Keating in XIC

²²² Mr Keating in XIC

exceed the BRE target values for APSH than the Appeal Scheme, with 44 rooms in the 40% category (at 61-81 and 56-58 Cavell Street, Wilton Court, and 33-49 Walden Street).²²³

128. Within Bromley, there were APSH losses over 40% found in the Blenheim shopping centre case, both at Colman House and 126-128 High Street.²²⁴ At Waitrose, the Perigon Heights building would see 33 rooms with losses of over 40%, and a further 13 rooms with losses of 20-29.9% or 30-39.9%.²²⁵

129. In all, it does not appear to be contested that the sunlight results are acceptable.

Overshadowing

130. The last assessment is overshadowing. Open spaces should retain a reasonable amount of sunlight throughout the year. The BRE states that for an amenity space to appear adequately sunlit throughout the year, at least half of the area should receive at least 2 hours of sunlight on 21 March. Where this is not achieved, the difference between the area achieving 2 hours of sun on 21st March should be no less than 0.8 its former value.²²⁶ Accordingly, while a local resident on Day 1 expressed concern that the analysis had been carried out on 21st of March rather than in the middle or summer or winter, that is exactly what the BRE assessment specifically requires.

131. Mr Wade highlighted a concern with just one property, 35-36 Ethelbert Close. Mr Keating explained that the overshadowing effect measured for that property would not be experienced in the summer, which is when people enjoy their gardens more.²²⁷ That is because the angle of the sun during summer is significantly greater with shadows shorter, such that the obstruction of both the Appeal Scheme and fences of the garden itself would be less of a problem than on 21st March.²²⁸

132. It is also important to note that the effect on this garden only arises when assessed against a combination of the cumulative impact of the Appeal Scheme and the future consented building at 66-70 High Street.²²⁹ Indeed, it is the building at 66-70 High Street which has the greatest effect.²³⁰

²²³ ID23

²²⁴ ID23 Summary of sunlight (APSH) results between Appeal Scheme and Blenheim Shopping Centre

²²⁵ ID15

²²⁶ Mr Keating's Proof at §4.2.14

²²⁷ Mr Keating in XIC

²²⁸ Mr Keating in XIC

²²⁹ Agreed Mr Wade in XX, Mr Keating's Rebuttal at §5.9

²³⁰ As Mr Keating explained in XIC

133. Finally, 35-36 Ethelbert Close is also part of the allocated redevelopment area.²³¹ Mr Johnson confirmed that it is still the Council's intention to redevelop that part of the allocation for approximately 400 homes, despite the collapse of the Vistry scheme.²³² That must be relevant to understanding the acceptability of the impacts on the current garden configuration. It is also agreed that despite 35-36 Ethelbert Close being in a metropolitan urban area, there is a substantial public park just a short walk down the hill.²³³

Conclusion

134. In all, the evidence of Mr Keating is that there will be some impact on the light amenity of neighbouring residents, but the scale of impact would be both acceptable and not unusual in the context of a town centre environment. The Appeal Scheme generally results in a high proportion of surrounding windows and rooms meeting the BRE targets. While a number of properties exceed BRE value targets, the modelling shows that acceptable living conditions would be maintained.²³⁴ It is agreed that what Mr Wade describes as "significant" effects are not an embargo on development and that any daylight and sunlight impacts would be a planning matter to be judged in the round.²³⁵

135. Mr Keating's conclusions as to the acceptability of the impacts are justified by numerous case study examples where similar levels of effect have been supported in urban regeneration schemes permitted locally in Bromley and in other London Boroughs.²³⁶

Off-Site Amenity: Other Matters

136. The Council maintains a number of additional specific concerns about amenity of neighbouring buildings.

137. When considering amenity issues, it is important to keep in mind the policy context that is strongly supportive of densification on sustainable brownfield sites, such as this. Some of those policies are set out above. They include Policy D3 of the London Plan, which makes clear that developments must make best use of land, responding positively to an emerging context. In other words, in the early phases of a cycle of regeneration and

²³¹ Agreed Mr Wade in XX

²³² Mr Johnson in XX

²³³ Agreed Mr Wade in XX

²³⁴ Mr Keating's Rebuttal at §5.10

²³⁵ Agreed Mr Wade in XX

²³⁶ Mr Keating in XIC, Mr Keating's Proof at §§7.4-7.5

townscape evolution, development potential should not be limited by what is on the ground already, but instead should seek to take full advantage of opportunities to optimise outputs.²³⁷

138. Similarly, London Plan Policy H2 sets out at Part B Subsection 1) that Boroughs should recognise that *“local character evolves over time and will need to change in appropriate locations to accommodate additional housing on small sites”*.

139. Taken together, Policies D3 and H2 set out a clear vision for the evolution of London’s townscapes, away from low density housing towards higher density development in those locations best suited to such development, which most logically and clearly includes allocated sites in metropolitan town centres, Opportunity Areas and with excellent access to public transport.²³⁸

140. That context is essential to understanding the acceptability of the amenity impacts of this scheme.

141. The Committee Report and Ms Daye’s Proof raised a generic objection as regards visual amenity, not specifying any specific rooms which would be affected.²³⁹ The concern appears to relate to Simpsons Place and 7 Ethelbert Road.

142. Turning first to Simpsons Place. The rear elevation of that property is approximately 7m from the common boundary, with the rear windows in Block B also approximately 7m from the rear boundary, resulting in >14m separation between windows, shared equally on both sides of the fences.²⁴⁰ Mr Batchelor explained that is a reasonable amount of separation, and would avoid any unacceptable impact on the neighbour’s visual amenity or outlook. Indeed, 7m from the boundary was considered acceptable when Simpsons Place was approved; there is no reason why it should not be now on the other side, when more permissive policies are in place.²⁴¹

143. Simpsons Place is also part of the allocated site that the Council wants to see redeveloped, as well as forming part of the identified Opportunity Area.²⁴² The Council has

²³⁷ Mr Batchelor’s Proof at §7.10

²³⁸ Mr Batchelor’s Proof at §7.12

²³⁹ Mr Batchelor in XIC

²⁴⁰ Mr Batchelor in XIC

²⁴¹ Mr Batchelor in XIC

²⁴² Agreed Ms Daye in XX, Ms Batchelor in XIC

the power to compulsorily purchase land for purpose of progressing its development proposals; it is agreed that would be perfectly normal in town centre location.²⁴³

144. In terms of impacts on 7 Ethelbert Road, and the allegation the Appeal Scheme might be “overbearing”, Ms Daye accepted that area is also part of the allocation, which the Council wants to be redeveloped.²⁴⁴ The existing property at 7 Ethelbert Road is very obviously untidy and not maintained at a normally expected level.²⁴⁵ There are substantial trees in the garden that are affecting the amount of light getting to neighbouring properties.²⁴⁶ Mr Batchelor told the inquiry that the visual impact assessment for this building must be tempered by a recognition of its condition.²⁴⁷ Yet, Block B has still been designed to respect the rear building line, and would have no significant aspect on outlook from this triple aspect property.²⁴⁸ Block A would have even less impact, being greater than 20m away.²⁴⁹

145. Having considered the proposed relationships in detail, it is Mr Batchelor’s firm opinion that there would not be any unacceptable visual impact arising from the Proposed Development and all existing neighbours will continue to enjoy an acceptable level of outlook from their properties: the proposed relationships would be typical of the type of relationship commonly found in any evolving and regenerating town centre environment.²⁵⁰

The other aspect of the on-site amenity objection relates to overlooking. This was not raised by Ms Daye as a significant concern in oral evidence, but it is understood that her primary concern relates to Simpsons Place. Mr Batchelor told the Inquiry that Block A has been specifically designed so that the triangular boundaries direct outlook from the kitchen-living room-diner to Church House Gardens and away from Simpsons Place. Ms Daye also agreed that any overlooking would be primarily to the carpark area.²⁵¹ That cannot be unacceptable. As with outlook, the proposed separation between Block B and Simpsons Place is shared equally on both sides of the common boundary and thus the proposed development simply replicates the way in which the Council historically allowed Simpsons Place to be developed.²⁵² As with offsite impacts,

²⁴³ Agreed Ms Daye in XX

²⁴⁴ Agreed Ms Daye in XX, Mr Batchelor in XIC

²⁴⁵ Agreed Ms Daye in XX

²⁴⁶ Agreed Ms Daye in XX

²⁴⁷ Mr Batchelor in XIC

²⁴⁸ Mr Batchelor in XIC

²⁴⁹ Mr Batchelor in XIC

²⁵⁰ Mr Batchelor’s Proof at §7.27

²⁵¹ Ms Daye in response to a question from the Inspector

²⁵² Mr Batchelor’s Proof at §§7.29-7.30

it would also be possible to provide enhanced privacy screening for any particular properties of concern, controlled by condition 15.

146. Paragraph 4.1.2 of the Housing Design Standards LPG explains that it is often difficult to achieve privacy in dense environments, particularly on lower floors. For this reason, it advocates for the offsetting, or angling of windows, but notably avoids setting any arbitrary separation standard to which new development should adhere.

147. Having regard to that guidance, Mr Batchelor considers that the Appeal Scheme has been designed carefully to respect the relationship with neighbouring plots, with the considered design and layout avoiding any unacceptable privacy or visual impacts.²⁵³

Housing Land Supply

148. Turning next to the critical background context for this scheme, which is the market and affordable housing emergency in Bromley.

149. The Council says that it acknowledges there is a national housing crisis.²⁵⁴ Yet, actions speak louder than words, and the reality is that this Council does not have anything near a 5YHLS: on its own calculations, it can only demonstrate a 2.96 year supply. Mr Pycroft finds the supply is even lower, at just 2.4 years; less than 50% of the required five-year target. In Mr Batchelor's words, "*housing supply in Bromley is in crisis*".²⁵⁵

150. The Council also has not had a 5YHLS for several years past.²⁵⁶ Whilst it claimed a 5YHLS in 2015, 2017, and 2019, appeal Inspectors concluded those claims were unfounded.²⁵⁷ The Council accepted it could not demonstrate a 5YHLS in 2020 and 2021.²⁵⁸

151. Remarkably, the Council's most recently published 5YHLS assessment dates back to November 2021, with a base date of 1st April 2021.²⁵⁹ The Council has not done what the NPPF requires of it at §77 and updated annually its supply of deliverable sites – it is some three years late.²⁶⁰ Mr Pycroft explained that in his experience authorities up and

²⁵³ Mr Batchelor's Proof at §7.34

²⁵⁴ Mr Johnson XX

²⁵⁵ Mr Batchelor's Proof at §4.13.

²⁵⁶ Agreed Mr Johnson XX. See the graph of housing delivery in Bromley 2016-2022 in Mr Batchelor's Proof at §4.16

²⁵⁷ Mr Pycroft's Proof at §1.9

²⁵⁸ Mr Pycroft's Proof at §1.9

²⁵⁹ CD6.12

²⁶⁰ Agreed Mr Johnson in XX

down the country largely comply with the requirement for annual statements, with some doing them every six months or quarterly.²⁶¹

152. Because of the failure to update the position, to calculate the 5YHLS for this appeal the agreed base date is 1st April 2021 and the five-year period runs to 31st March 2026 – less than two years from now.²⁶²

153. Both parties agree that the “base” 5YHLS requirement is 3,870 dwellings (i.e. the 774 from the London Plan x 5 = 3,870).²⁶³ It is also agreed that the 687 dwelling shortfall should be added to the 5YHLS requirement, prior to then adding the 20% buffer.²⁶⁴

154. Mr Pycroft explained that one benefit to the Council of not carrying the 5YHLS calculations annually is that the requirement is reduced as the further cumulative shortfall since the 2021 position statement is not being accounted for. When the Council redoes its position statement, the requirement will be significantly higher.²⁶⁵ Mr Johnson accepted that any new position statement is unlikely to show the Council has suddenly achieved a 5YHLS.²⁶⁶

155. As to the Housing Delivery Test, it is agreed that Bromley has delivered only 52% of its housing requirement across the last three years.²⁶⁷ Since the adoption of the London Plan in 2019, there has been a sharp and continuing decline in the delivery of housing.²⁶⁸

156. The key difference between Mr Pycroft and Mr Johnson is on the supply side. A site must be deliverable in order for it to be included in the 5YHLS. The definition of a deliverable site is set out in the NPPF glossary, as follows:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in

²⁶¹ Mr Pycroft in XIC

²⁶² HLS SOCG at §2.1

²⁶³ HLS SOCG §§2.2-2.4

²⁶⁴ HLS SOCG at §§2.5-2.6

²⁶⁵ Mr Pycroft in XIC

²⁶⁶ Mr Johnson in XX

²⁶⁷ HLS SCOG at §2.7

²⁶⁸ Mr Batchelor's Proof at §4.16.

principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

157. There is one large site in dispute: Land at junction with South Eden Park Road and Bucknall Way, which leads to a difference between the parties of 143 units.²⁶⁹ Mr Pycroft does not consider there is a realistic prospect that 143 dwellings will be delivered on that site by 31st March 2026 (i.e. in 1.75 years from now): there is considerable work to do before any dwellings are actually completed.²⁷⁰ Whilst a start on below ground works has been made, applications to discharge conditions relating to above ground works have not. In Mr Pycroft's experience, it takes over three years for such large sites to deliver housing – yet we are now less than 2 years off the end of the 5-year period.²⁷¹ It was put to Mr Pycroft that a year ago Inspector Palmer found the site would be delivered in the Worsley Bridge Road Appeal. Mr Pycroft explained that matters are now a whole year on, there has been no material change on site, and an email from the agent confirms it is unlikely to start completing within the next two years.²⁷²
158. There is also disagreement on the small sites and windfall allowance that results in a difference of 464 dwellings.²⁷³ The Council includes 1,974 dwellings from small sites in its 5YHLS. This comprises:²⁷⁴
- i. For the first two years: dwellings with planning permission as at 1st April 2020, assumed permissions approved during 2020/2021, minus assumed completions and a lapse rate (for a total of 418 and 419 dwellings per annum).
 - ii. For the remaining three years: a 1,137 dwellings small sites windfall allowance, derived from the London Plan small sites target of 379 dwellings per annum.
159. Rather than base his conclusions on assumptions, Mr Pycroft has based his analysis on empirical evidence. He explained to the inquiry that it is relevant to take into account what has actually happened; the Council is relying on figures that are simply inconsistent with what has been delivered on the ground.²⁷⁵ Actual completions on small sites in Bromley in 2021/22 and 2022/23 were as low as 63 and 112 respectively, suggesting a significant downward trend.²⁷⁶ Mr Pycroft explained that one possible

²⁶⁹ HLS SCOG at §2.7

²⁷⁰ Mr Pycroft in XIC

²⁷¹ Mr Pycroft's Proof at §1.11

²⁷² Mr Pycroft in XX, pointing to his EP6

²⁷³ HLS SCOG at §3.4

²⁷⁴ HLS SOCG at §3.2

²⁷⁵ Mr Pycroft in XIC

²⁷⁶ See §6.20 of Mr Pycroft's Proof, Mr Pycroft in XIC

approach would be to deduct the 662 missing units that the Council assumed would be delivered in those first two years but that were not actually delivered.²⁷⁷ Instead, Mr Pycroft has been rather more generous, and concludes a small sites windfall allowance of 1,510 dwellings over the 5YHLS, which is the average number of dwellings completed on small sites over the period 2010/11 to 2020/21 of 302 dwellings x 5 years.²⁷⁸ He explained that this is a robust approach, as it looks at a longer period and thereby accounts for economic peaks and troughs as well as any data fluctuations.²⁷⁹

160. The reality is that delivery has been significantly less than Mr Johnson's very hopeful expectation of 395 dwellings per annum every year since 2019.²⁸⁰ Mr Johnson accepted that the best available evidence demonstrates a trend that is "*a long way away*" from his chosen figure.²⁸¹ There is simply no real-world justification for assuming far greater delivery in the coming years. Applying Mr Pycroft's more realistic approach, 464 dwellings should be removed from 5YHLS.²⁸²

161. It was put to Mr Pycroft that the Inspector at Worsley Bridge Road²⁸³ did opt for the London Plan figure of 379 dwellings per year. Mr Pycroft explained that circumstances have changed fundamentally since, with critical new information available to this Inspector that was not available then.²⁸⁴ That new information is the actual completions data: what we know now is that the authority's projected figures for years 1 and 2 were not robust, and that nothing like the London Plan target has been delivered since its adoption in 2021.²⁸⁵ It is now clear that it was Mr Pycroft's analysis at Worsley Bridge Road that was closer to reality than the Council's.²⁸⁶

162. In all, Mr Pycroft concludes that the supply is just **2.4 years** (a shortfall of 2,840 homes), whereas the Council considers it has a 2.96 year supply (still a stark shortfall of 2,233 homes).²⁸⁷ The Council has less than half of a 5YHLS, despite being one of the biggest London Boroughs geographically, with plenty of space for growth. Mr Johnson recognises that this level of undersupply is "*very significant*".²⁸⁸ Mr Johnson also accepted

²⁷⁷ As Mr Pycroft explained in XIC, see Table 6.3 on pp24-25 of Mr Pycroft's Proof

²⁷⁸ HLS SOCG at §3.3

²⁷⁹ Mr Pycroft in XIC

²⁸⁰ Mr Pycroft's Proof at §6.8

²⁸¹ Mr Johnson in XX

²⁸² Mr Pycroft's Proof at §1.11

²⁸³ CD7.13 at §§80-82

²⁸⁴ Mr Pycroft in XX

²⁸⁵ Mr Pycroft in XX

²⁸⁶ As Mr Pycroft explained in Re-X

²⁸⁷ HLS SOCG at §§3.5-3.7

²⁸⁸ Mr Johnson in XX, Mr Johnson's Proof at §4.3

that the Council is failing to plan for housing needs in the area and that there is no prospect of achieving the London Plan figure over the next five year period.²⁸⁹

163. It must be borne in mind that not only does this Council not have a 5YHLS, but the target it is repeatedly missing is already a suppressed one, as the London Plan figure (774) is a capacity-based approach to housing requirements and not a reflection of objectively assessed need.²⁹⁰ The standard method figure for Bromley is 1,464 dwellings per annum – 774 is nowhere close to that.²⁹¹ While the examination into the London Plan identified a need for 66,000 homes per year across London, the adopted requirement is just 52,000.²⁹²

164. What this means, as identified by Inspector Singleton, is 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*”.²⁹³ Mr Batchelor described the London Plan as a plan to fail.²⁹⁴

165. The reason we have a standard method figure and uplift is that to deliver 300,000 homes, the starting point must be a target that achieves that ambition.²⁹⁵ This country has not met the 300,000 home target since 1969; some five decades ago.²⁹⁶ As Mr Johnson accepted, there is a national housing crisis – and it is a plan-led crisis.²⁹⁷

166. Mr Pycroft was asked to explain why the 5YHLS position is so bad in Bromley. First, one issue is that the Local Plan only planned for the old London plan housing figure of 641 units, whereas the current requirement is 774.²⁹⁸ In other words, the Local Plan is not even aiming to meet the up-to-date requirement but instead aiming for a lower figure.

167. Secondly, Mr Pycroft explained that allocated sites have not come forward as the Council envisaged at time of the Local Plan, as is clear from the detail provided at his Appendix EP1.²⁹⁹ Even Council-owned allocations have not produced intended results, with many allocated sites still many years off delivery. Site 10, which is the allocation in

²⁸⁹ Mr Johnson in XX

²⁹⁰ Mr Pycroft's Proof at §§5.3-5.13, referencing the Footzie decision – §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*”

²⁹¹ Agreed Mr Johnson in XX, Mr Pycroft's Proof at §§5.3-5.13

²⁹² Mr Batchelor in XIC, referring to the London Plan at §4.1.1

²⁹³ Footzie appeal CD7.17 at §25

²⁹⁴ Mr Batchelor in XIC

²⁹⁵ Agreed Mr Johnson in XX

²⁹⁶ Agreed Mr Johnson in XX

²⁹⁷ Mr Johnson in XX

²⁹⁸ Mr Pycroft in XIC

²⁹⁹ Mr Pycroft in XIC. Mr Johnson was also taken through these sites in XX.

which the Site lies, is a good example: it is a key allocation in the town centre, but the larger elements are yet to come forward (including the Churchill Quarter, where the Council has not continued its agreement with Vistry to pursue hundreds of homes).³⁰⁰

168. Thirdly, Mr Pycroft stated that the Local Plan allocations have proved to be insufficient. There is no “Plan B” in the Local Plan, be that reserve sites, safeguarding, or surplus allocations. Indeed, the Local Plan contains very few allocations at all – most of the current supply is windfall sites, many of which have been granted on appeal.

169. Inspectors have repeatedly told this Council that it is falling far short in terms of providing much-needed housing.³⁰¹ Yet, the Council has failed to take heed of such advice, and it currently can demonstrate no solution for the shortfall.

170. One solution might be granting more planning permissions. Yet, major schemes are routinely refused and challenged on appeal, with appeals often successful.³⁰² Mr Johnson accepted that more than half (51%) of the Council’s entire supply from large sites comes from permissions granted at appeal.³⁰³ Without those, the supply would be significantly lower than it already is. That shows something is going wrong with the Council’s development management control. Mr Pycroft considers it shows housing shortfall is simply not a priority for the Council.³⁰⁴ As Inspector Singleton found at the Footzie appeal³⁰⁵ (emphasis added):

“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.”

171. As to other potential solutions, the Council has produced no interim position statement or housing SPD suggesting where additional windfall developments will be supported.³⁰⁶ That is something authorities around the country do when they are in this

³⁰⁰ Mr Pycroft in XIC.

³⁰¹ See Footzie appeal CD7.17, Dylon appeal CD7.10

³⁰² Mr Batchelor in XIC

³⁰³ Mr Johnson in XX, see Mr Pycroft’s Proof at Table 3.2 on p.13 and Footzie Appeal, CD7.17, §27

³⁰⁴ Mr Pycroft in XIC

³⁰⁵ CD7.17

³⁰⁶ Agreed Mr Johnson in XX

position. Similarly, the Council has not set up a determined regeneration team, exercising its CPO powers to proactively progress its centrepiece allocations.

172. The Council has also expressed no ambition to release Green Belt or Metropolitan Open Land sites; its current approach is not to build in such areas.³⁰⁷ The only option is to build up, to densify, with a focus on urban regeneration around nodes with good public transport.³⁰⁸ Mr Johnson agreed that in terms of those principles this site “*ticks the boxes*”: it is an allocation, close to public transport, in the right area.³⁰⁹ The Council blocking delivery of such a site speaks to why the 5YHLS is in such a dire position.

173. The only alleged solution Mr Johnson could point to was an eventual possible new local plan, which the Council admits would not be adopted until 2027 at the very earliest.³¹⁰ Yet, he also accepted that could be afforded no weight at all at this stage.³¹¹ Mr Pycroft explained that plans can take years to prepare and examine, and that in his experience of authorities around the country – including previous plans in Bromley – confidence in the 2027 date should be “tempered”.³¹²

174. In short, as Mr Pycroft concluded, the Council simply does not have any tangible solution to their deteriorating and persistent acute 5YHLS problem.³¹³ One of the core objectives of the plan-led system is to ensure that enough housing comes forward, to meet the most basic of human needs; that system is clearly failing in Bromley.

Affordable Housing

175. The affordable housing position is even worse. There is incontrovertible evidence that there is a national housing crisis in the UK affecting many millions of people, who are unable to access suitable accommodation.³¹⁴ There is also a local affordable housing emergency in Bromley itself.³¹⁵ Ms Gingell described the situation in Bromley as “*incredibly poor*”.³¹⁶

176. In particular, Ms Gingell’s evidence establishes:

³⁰⁷ Agreed Mr Johnson in XX

³⁰⁸ Agreed Mr Johnson in XX

³⁰⁹ Mr Johnson in XX

³¹⁰ Mr Johnson in XX

³¹¹ Mr Johnson in XX

³¹² Mr Pycroft in XIC

³¹³ Mr Pycroft in XIC

³¹⁴ Sections 3 to 5 of Ms Gingell’s Proof analyses the evidence on the national housing crisis

³¹⁵ Ms Gingell’s Proof at §11.3

³¹⁶ Ms Gingell in XIC

- i. In March 2023, there were 1,539 households in temporary accommodation, with 72% of these in nightly paid, privately managed accommodation.³¹⁷ While the Council has not provided up-to-date data for 2024, Ms Gingell explained that in 2023, 73% of such households were housed outside the Borough.³¹⁸
- ii. Of the households in temporary accommodation, 24% had been in such accommodation for 5 years or more, and from 1 April 2022 to 31 March 2023, the Council spent £23,120,000 on temporary accommodation.³¹⁹
- iii. Rates of homelessness are increasing rapidly, in terms of both those in need of the prevention duty and the relief duty.³²⁰
- iv. Those on lower incomes in Bromley need to find almost 14 times their annual income to afford a median priced property.³²¹
- v. The average lower quartile monthly rent in Bromley in 2022/23 was £1,110 pcm, a 35% increase from 2013/14.³²²

177. Mr Johnson's evidence provides figures relating to the housing register that also shows a deteriorating position, with numbers on the register increasing by **18%** in the last year alone.³²³ Ms Gingell told the Inquiry that the register has been increasing despite the Council at the same time introducing progressively more restrictive criteria to join the list.³²⁴ In her view, that demonstrates the severity of the affordable housing crisis in the area.³²⁵

178. A fundamental reason for this crisis is the Council's stark failure to deliver new affordable homes. In the last year, in the context of a housing register of over 3,000 people and a population of 330,000 people, the Council delivered just **29** affordable homes.³²⁶ Mr Johnson accepted that is "*disappointing*".³²⁷ The total cumulative shortfall of affordable housing against the SHMA target from a decade ago is some **16,571** homes.³²⁸ In other words, 91% of households have been let down against the SHMA figure.

³¹⁷ Ms Gingell's Proof at §7.31

³¹⁸ Ms Gingell in XIC

³¹⁹ Ms Gingell's Proof at §7.32 and §7.35

³²⁰ Ms Gingell in XIC, her Proof at §§7.41-7.43

³²¹ Ms Gingell's Proof at §9.17

³²² Ms Gingell's Proof at §9.5

³²³ Agreed Mr Johnson in XX

³²⁴ Ms Gingell in XIC, referring to her Proof at Figure 7.2 and 7.3 and §§7.22-7.25, including to the decision at Oving Road, Chichester (CD7.5, p.11, [63]) in which the Inspector commented on this issue

³²⁵ Ms Gingell in XIC

³²⁶ Agreed Mr Johnson in XX

³²⁷ Mr Johnson in XX

³²⁸ See Ms Gingell's fig. 8.3 on p.74

179. Similarly, the Council has not been achieving its affordable housing policy target of 35%. While Mr Johnson suggested it has been doing reasonably well and hitting 27%, Ms Gingell explained that (a) that is still far short of the target, (b) Mr Johnson's figures inexplicably rely on evidence dating back to 2009, before the policy target was adopted, whereas counting from the start of the SHMA period the figure is 23%, and (c) a further percentage point should be deducted for right to buy losses.³²⁹ As such, the real figure is just 22% since 2011/2012.³³⁰ Since 2015, the start of the Local Plan period, the result is even lower – just 15% or 16%, depending on whether right to buy losses are deducted.³³¹

180. Mr Johnson accepted there is a "*housing crisis*" in Bromley and that there is also an "*acute need*" for affordable housing.³³² It is Ms Gingell's view that the Council is "*drastically failing in addressing the needs of those in the most acute housing situation.*"³³³

181. That is the critical context for understanding the benefit of the affordable offer as part of this Scheme. The Appellant's viability assessment has been independently assessed on behalf of the Council, and it is agreed that when assessing viability according to the criteria in the PPG, the scheme cannot viably deliver any affordable housing at all.³³⁴ Mr Evans explained that the last couple of years have seen a "*perfect storm*" of house prices levelling off and in some cases reducing, excessive build cost inflation, alongside increasing finance costs.³³⁵ In his experience, reduction in affordable housing viability is now not uncommon.³³⁶ Mr Evans also explained that if the building were to be slimmer, shorter, or to contain a higher proportion of larger units (which generate a lower value per square foot), that would result in a lower land value and an even less viable scheme.³³⁷

182. Nonetheless, despite the viability assessment, the Proposed Development would deliver 10 affordable housing units comprising a policy-compliant 6 social rent and 4 shared ownership, amounting to 12% by habitable room or 11% by unit provision.³³⁸ Mr Richards explained that the affordable housing would be provided across the standard and M4(3) units.³³⁹ Early and late stage review mechanisms are included in the s.106 agreement. This

³²⁹ Ms Gingell in XIC

³³⁰ Ms Gingell's Proof at Fig 8.1 on p.71

³³¹ Ms Gingell in XIC, her Proof at Table 8.2

³³² Agreed Mr Johnson in XX

³³³ Ms Gingell in XIC

³³⁴ As Mr Evans explained in XIC, referring to his Proof at §2.5 on p.3

³³⁵ Mr Evans in XIC

³³⁶ Mr Evans in XIC

³³⁷ Mr Evans in XIC

³³⁸ Main SOCG at §7.11

³³⁹ Mr Richards in the Roundtable, CD8.15 and CD8.16

could result in an increase (but not reduction) in delivery of affordable homes if economic circumstances improve.

183. The Appellant also considers that the s.106 agreement should include a cascade mechanism, by which the Proposed Development could still proceed if a registered provider cannot be found, by delivering an off-site contribution rather than on-site homes.³⁴⁰ There would be clear criteria for when the cascade would be triggered. While the intention is to build the affordable homes on-site and a registered provider has already expressed an interest, Mr Evans and Ms Fouracre explained that in the current market this cascade is critical to deliverability as a contingency fallback – necessary to satisfy lenders funding the development.³⁴¹ It is worth noting that were the Appellant to follow the agreed conclusions of the viability assessment and not provide any on-site affordable housing, there would be no need for a cascade.

184. If the Inspector finds that Paragraphs 3 and 4 of Part 1 of Schedule 2 are incompatible with one or more of the tests for planning obligations set out in regulation 122 of the CIL Regulations (or any successor tests for planning obligations) and/or paragraph 57 of the National Planning Policy Framework and accordingly attaches no weight to these obligations in determining the Appeal, then the Inspector shall state in his decision letter that these obligations shall, from the date of the Inspector's decision letter, cease to have effect but such cancellation shall not affect the validity of enforceability of the remaining provisions of the Section 106 Agreement which shall remain in full force and effect.

185. Policy 2 of the Local Plan allows for viability considerations in respect of affordable housing provision, as does Policy H5 of the London Plan. Consequently, the resultant offer is policy compliant.³⁴²

186. By boosting the affordable housing supply, households in need will spend less time in unsuitable accommodation, and the Council will spend less money on temporary accommodation – which can be diverted to other important aims like education and social care. It is positive for everyone, not least for those households who would benefit from the provision of high quality, affordable homes that meet their needs.³⁴³

³⁴⁰ Mr Evans in XIC

³⁴¹ Mr Evans in XIC, Ms Fouracre in the Roundtable

³⁴² Ms Gingell's Proof at §11.6

³⁴³ Ms Gingell's Proof at §11.28

187. Sites like this are particularly important when, as with market housing, the Council has no realistic strategy to boost affordable housing delivery. These are linked issues: Ms Gingell explained that a key mechanism to deliver affordable homes is through section 106 agreements.³⁴⁴

188. In relation to affordable homes specifically, the Council has not updated the SHMA since 2014, when it identified a stark need of 1,404 net affordable homes each year based on a higher affordability threshold than recommended by the ONS (33.3% v 30%).³⁴⁵ When asked about the Council's affordable delivery strategy, Ms Gingell told the Inquiry that it has done "very little".³⁴⁶ All Mr Johnson could point to was the Council's Corporate and Housing Strategy.³⁴⁷ However, Ms Gingell explained that this sets a target for just 1,000 new affordable homes between 2019 and 2029 – just 100 affordable homes a year, compared with a register of more than 3,000, 1,500 in temporary accommodation, and a SHMA figure of more than 1,000 new homes needed each year.³⁴⁸

189. Considering the Authority's past poor record of affordable housing delivery and worsening affordability indicators at a local level, Ms Gingell finds that the provision of 10 affordable dwellings on Site should be afforded substantial weight.³⁴⁹ Mr Johnson agrees.³⁵⁰

Unit Mix

190. Finally, the Council somewhat surprisingly continues to maintain RfR2, which alleges that the Proposed Development, by reason of not providing any 3-bed+ units, would be contrary to policy. It is surprising because (a) the Council accepts that Bromley already has a very significant proportion of family houses,³⁵¹ with 1- and 2- bed flats being what is needed most, (b) the Council accepts that a higher proportion of 1- and 2- bed flats are justified in a town centre rather than urban location,³⁵² and (c) there is no policy in the development plan that requires 3-bedroom homes as part of the housing mix.

³⁴⁴ Ms Gingell in XIC

³⁴⁵ Agreed Mr Johnson in XX, Ms Gingell XIC and §§§7.7-7.8 of her Proof

³⁴⁶ Ms Gingell in XIC

³⁴⁷ CD6.7 and CD6.6

³⁴⁸ Ms Gingell in XIC

³⁴⁹ Ms Gingell's Proof at §11.29

³⁵⁰ Mr Johnson in XX

³⁵¹ Agreed Mr Johnson in XX

³⁵² Agreed Mr Johnson in XX

191. Indeed, Mr Johnson squarely accepted that the policies are flexible and do not set out a prescriptive size mix of different sized units to be delivered.³⁵³ The Local Plan does not include a policy on housing mix at all. Neither Policy 1 nor 2 refer to unit mix.³⁵⁴ London Plan Policy H10 sets out that developments should generally consist of a range of unit sizes, to be determined by, *inter alia*, local evidence of need, and the nature and location of the site. As Mr Batchelor explained, it is not a restrictive policy and allows a flexible approach on a site-by-site basis.³⁵⁵ In terms of local evidence, the 2014 SHMA highlights that the highest levels of housing need across the Borough up to 2031 is for 1 bedroom units (53%) followed by 2 bedroom units (21%).³⁵⁶ This is repeated at §2.1.17 of the Local Plan.³⁵⁷

192. Policy H10 further advises that developments should contain a higher proportion of 1- and 2-bedroom units in town centres and other areas of good public transport accessibility to optimise housing potential.³⁵⁸ That is exactly what this scheme proposes: a town centre location in one of the most sustainable areas in Bromley.³⁵⁹ It is also notable that the Council did not raise housing mix as a concern in recent comparable developments in town centre locations at 66-70 and 62 High Street, neither of which include any 3-bed flats.³⁶⁰

193. It is essential to keep in mind this is a Borough made up of swathes of interwar suburban housing of 3 to 4-beds with a garden.³⁶¹ The area immediately surrounding the town centre is characterised by low to medium density family housing, with comparatively few examples of higher density blocks of 1- and 2-bedroom flats in greatest local need.³⁶² Ms Daye accepts that there is a “*greater need*” for one and two bedroom units.³⁶³

194. Mr Batchelor concludes that the proposed development includes a unit mix which is appropriate to this metropolitan town centre location, and which facilitates the

³⁵³ Mr Johnson’s Proof at §2.16

³⁵⁴ Mr Batchelor in XIC

³⁵⁵ Mr Batchelor in XIC

³⁵⁶ Mr Batchelor’s Proof at §5.4

³⁵⁷ Mr Batchelor’s Proof at §5.4

³⁵⁸ Policy H10 part (6) refers to “*the nature and location of the site, with a higher proportion of one and two bed units generally more appropriate in locations which are closer to a town centre or station or with higher public transport access and connectivity*”

³⁵⁹ Mr Batchelor in XIC

³⁶⁰ Mr Batchelor in XX. See his Proof at §§5.14-5.20.

³⁶¹ Mr Batchelor in Re-X

³⁶² Mr Batchelor’s Proof at §§5.27-5.38.

³⁶³ Ms Day’s Proof at §6.9

optimisation of this allocated Site's potential.³⁶⁴ The Proposed Development is supported by the objectives of London Plan Policy H10, the evidence in the 2014 SHMA and is not in conflict with Local Plan Policies 1 and 2.

Planning Balance

195. Turning then to the overall balance. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the application should be determined in accordance with the development plan, unless material considerations indicate otherwise. If the Appeal Scheme is found to be in accordance with the development plan, then permission should be granted without delay.³⁶⁵
196. In terms of the development plan, the Site is entirely within a wider allocation and opportunity area for housing. Ms Daye agreed that the fact that this Site is allocated for housing and densification in the adopted Local Plan should be very significant in the determination of this appeal.³⁶⁶ It is Mr Batchelor's view that the proposal accords with the development plan read, as it must be, as a whole.
197. However, the absence of a 5YHLS – with Mr Pycroft finding the supply to be as low as just 2.4 years – means this is also a case where the development plan is automatically out of date and reduced weight should be afforded to the policies most important to the consideration of this appeal. It is agreed that those include all the policies referenced in the RfR.³⁶⁷ Applying paragraph 11(d) of the NPPF, permission should therefore be granted unless the adverse effects of doing so would “*significantly and demonstrably outweigh the benefits*”.
198. Ms Daye agreed that the purpose of the tilted balance is to provide a solution in local authority areas where there is a lack of supply, making it easier to secure planning permission by reducing the weight to policies that stand in the way.³⁶⁸
199. There are limited, if any, adverse effects in this case.
200. Starting with amenity, Mr Batchelor concludes, having regard to the comprehensive evidence of Mr Keating on daylight and sunlight and his own analysis of amenity, that the development would be acceptable in terms of neighbour and on-site

³⁶⁴ Mr Batchelor's Proof at §5.21

³⁶⁵ Agreed Ms Daye in XX

³⁶⁶ Ms Daye in XX

³⁶⁷ Ms Daye in XX

³⁶⁸ Ms Daye in XX

impacts. As such, no negative weight should be afforded to this consideration. If any negative weight is to be given to amenity impacts, it would be very limited.³⁶⁹

201. Ms Daye has now downgraded her weighting of harm to daylight impacts to moderate. Yet, she also ascribes a separate substantial weighting to surrounding occupier living conditions. Ms Daye accepted that living conditions are in part a product of the light issue, and as such it is fair to say that the “harm” side of her balance includes a degree of double counting.³⁷⁰ In addition, despite conceding that the main part of RfR 4, the original allegation of too many single-aspect units, has gone, Ms Daye still somehow maintains that other future occupier living conditions attract “substantial” weight. That is simply not justified.

202. Even were the Inspector to find some adverse effects arising with respect to amenity, Ms Daye accepted that harm can be accommodated into the planning balance.³⁷¹ Indeed, given the tilted balance applies, even if the Inspector agrees with all of the harms Ms Daye identifies, he will still have to assess whether those harms significantly and demonstrably outweigh benefits.³⁷²

203. In light of Mr Froneman’s conclusion of “no harm”, heritage is also a matter which Mr Batchelor finds is neutral in the planning balance. It is of note that despite heritage being a standalone RfR, Ms Daye only affords the harm to the setting of the Conservation Area alleged by Mr Crone limited weight. She explained that is because, in her view, the impact is not significant, recognising that the Inspector’s decision at 66-70 High Street is an important material consideration in assessing the heritage impact.³⁷³

204. What is remarkable is that while Ms Daye agrees that the heritage impact is not significant and should be afforded only limited weight, the Council still maintains heritage as a standalone RfR. As such, the Council considers the heritage balance alone weighs in favour of a refusal. They are alleging that the limited harm to heritage is somehow not outweighed by the very substantial weight given to market housing, the substantial weight to affordable housing, and a range of other benefits weighted from moderate to limited. That approach is an indication of how these RfR have come about – this is a Council that simply does anything it can to resist new development at all costs.

³⁶⁹ Mr Batchelor’s Proof at §§8.30-8.36

³⁷⁰ Ms Daye in XX

³⁷¹ Ms Daye in XX

³⁷² Ms Daye in XX

³⁷³ Ms Daye in XX

205. The Council has also given substantial harm design and townscape. Mr Batchelor disagrees, finding instead that the high-quality design appropriate to its context articulated by both Mr Richards and Mr Hammond is a benefit of the Scheme.
206. Other matters raised by local residents would be neutral in the balance. In terms of the point made about groundwater and underground springs, it is relevant to note that there is no objection from the Environment Agency, Lead Local Flood Authority, or the Council's drainage officer. The Council agreed that this can be dealt with by condition.³⁷⁴
207. As to the "agent of change" principle and the noise made by the Salvation Army, a first noise survey was undertaken in October 2020 for 5 days.³⁷⁵ A second survey was then carried out across a 10 day period in November 2022, ensuring 2 weekends were covered. For the second survey, the recording equipment was set up next to a window in the church so worst case results were recorded. The Noise Impact Assessment sets out that with suitably specified façade construction (including glazing specifications), there would be no adverse impact. Accordingly, it is common ground that draft condition 10 would also deal with the issue.
208. As to the benefits, these are stark, wide-ranging, and urgently needed.
209. **Housing:** There have been sharp declines in housing delivery in Bromley in recent years and the Borough faces significant shortfalls.³⁷⁶ Housing delivery has collapsed, with house price ratios getting ever worse.³⁷⁷ The Local Plan is simply failing to deliver the housing requirement.³⁷⁸ In that context, it is agreed that very substantial weight should be given to the proposed housing supply.³⁷⁹ It is all too easy to become desensitised to the numbers, but each new unit could be provided to a real person, a couple, or a family facing fear and frustration of being unable to access a home.
210. **Affordable:** Ms Gingell's evidence paints a very concerning picture in relation to affordable housing provision in Bromley. Again, the figures tell of a worsening trend, with delivery collapsing and housing registers going up. The delivery of 10 affordable homes, comprising 6 social rent and 4 shared ownership units, is an important planning benefit which it is agreed attracts substantial weight.³⁸⁰

³⁷⁴ Ms Brew in the conditions Roundtable

³⁷⁵ CD1.55 is the Noise Impact Assessment

³⁷⁶ Mr Batchelor's Proof at §§8.3-8.6

³⁷⁷ Agreed Ms Daye in XX

³⁷⁸ Mr Batchelor in XIC, pointing to his Proof Chart 1 above §4.16. See also his Proof at §4.18

³⁷⁹ Main SOCG at §7.9

³⁸⁰ Main SOCG at §7.12

211. **Mix:** There is a shortage of homes of all sizes in Bromley. However, the greatest need exists for 1 and 2 bedroom homes, of which 94 are proposed to be delivered. Mr Batchelor considers this also attracts substantial weight.³⁸¹ Ms Daye affords it moderate weight.
212. **Sustainable location:** The Site is in a highly sustainable location within Bromley town centre (a Metropolitan Centre and London Plan Opportunity Area), one of the most sustainable places for housing development across the whole of south London within very easy walking distance of public transport connections, shops, services and amenities.³⁸² In accordance with paragraph 124(c) of the NPPF, substantial weight should be given to the redevelopment of suitable brownfield land within settlements to meet local housing need.³⁸³
213. In terms of location, it is also important to keep in mind that this is not a speculative application to meet the 5YHLS shortfall but an application that seeks to bring forward a Site allocated for densification in the Local Plan. That must be seen as a separate benefit to the simple provision of housing itself (which could be anywhere in the Borough).
214. **Townscape:** the development would provide more visual interest to the skyline, which is a benefit which that Mr Batchelor considers attracts limited weight in the planning balance.³⁸⁴
215. **High Quality Design:** Mr Batchelor considers that the proposed high-quality design, both in respect of the development's appearance and the quality of accommodation provided for future residents, attracts significant weight.³⁸⁵
216. **Small Sites:** At §70, the NPPF supports the development of small sites to meet an area's housing requirement given the relatively quick build-out speed. At part c), it requires local authorities to support the development of such sites, affording great weight to the use of suitable sites within existing residential areas.³⁸⁶ Mr Batchelor has adopted the approach advocated by the NPPF and given great weight to this as a benefit. His approach is also supported by Policy H2 of the London Plan, which provides that Boroughs should proactively support well-designed new homes on small sites to significantly increase the contribution of small sites to meeting London's housing needs, support small and medium-

³⁸¹ Mr Batchelor's Proof at §§8.10-8.12

³⁸² Mr Batchelor's Proof at §§8.13-8.14

³⁸³ Mr Batchelor's Proof at §§8.13-8.14

³⁸⁴ Mr Batchelor's Proof at §8.17

³⁸⁵ Mr Batchelor's Proof at §8.22

³⁸⁶ Mr Batchelor's Proof at §8.23

sized housebuilders, and achieve minimum targets for small sites. Bromley's small sites target is 379 homes per annum, but delivery over the London Plan period so far has fallen far short of that.³⁸⁷

217. **Economic benefits:** The Proposed Development would also deliver a range of economic benefits, including construction job creation, future employment on the Site, increased local spend, enhanced Council Tax receipts as well as CIL payments. These benefits are all the more important in the context of current macro-economic conditions. The Proposed Development would also deliver affordable workspace in Bromley town centre, a benefit recognised by the GLA in its Stage 1 Report. Together, Mr Batchelor concludes that the economic benefits attract significant weight.³⁸⁸ Ms Daye affords these moderate weight.
218. **BNG:** The proposed redevelopment of the Site presents an opportunity to significantly enhance biodiversity and would achieve a substantial net gain of 424.9%.³⁸⁹ The biodiversity benefit arising from the site's development attracts moderate weight.³⁹⁰
219. **Urban Greening:** The Appeal Scheme would also achieve an Urban Greening Factor of 0.48 against a policy target of 0.4. Mr Batchelor ascribes this moderate weight.³⁹¹
220. **Car Club Space:** Finally, the proposed development would deliver a publicly accessible car club space on the highway within 800m of the appeal site, reducing car ownership locally and encouraging more sustainable transport choices.³⁹² It is agreed that this benefit attracts limited weight.³⁹³
221. Accordingly, the Appeal Scheme would bring about multiple and varied benefits, some of which are urgently needed, set against what are at most only very limited harms. Critically, Ms Daye conceded that even from the Council's perspective, this decision is "*finely balanced*".³⁹⁴ In the context of that concession, Ms Daye acknowledged that were the Inspector to disagree with her about some of the harms – for example, if he considers that harm would not arise to the character and appearance of the area and the design is not harmful – that would tip the balance the other way.³⁹⁵

³⁸⁷ The targets are at Table 4.2 and 4.1 of the London Plan

³⁸⁸ Mr Batchelor's Proof at §§8.24-8.26

³⁸⁹ This is an agreed figure – see Main SOCG at §8.3

³⁹⁰ Mr Batchelor's Proof at §8.27 and in XX he explained that considerable = moderate

³⁹¹ Mr Batchelor's Proof at §8.28

³⁹² Mr Batchelor's Proof at §8.29

³⁹³ Ms Daye in XIC

³⁹⁴ Ms Daye in XX

³⁹⁵ Ms Daye in XX

222. Mr Batchelor does not see this as a finely balanced case, but one where even on a straight balance the policies very strongly support the Proposed Development.³⁹⁶ When the tilted balance is applied, the adverse effects simply cannot significantly and demonstrably outweigh the benefits.³⁹⁷

Conclusion

223. In all, the Council's decision to refuse planning permission is unsustainable. The development complies with the development plan read as a whole. Even were the Inspector to find some conflict, the tilted balance applies, and that weighs very significantly in favour of a grant of permission.

224. So, for all the reasons outlined above and set out by the Appellant's witnesses throughout the Inquiry, the Inspector is invited to allow the appeal.

26th July 2024

CHRISTOPHER YOUNG KC

ODETTE CHALABY

No5 Chambers

Birmingham – Bristol – London

³⁹⁶ Mr Batchelor in XIC

³⁹⁷ Mr Batchelor's Proof at §§9.10-9.13

No5

BARRISTERS
CHAMBERS

IN THE MATTER OF

**2-4 RINGERS ROAD AND 5 ETHELBERT ROAD
BROMLEY, BR1 1HT**

APP/G5180/W/24/3340223

**CLOSING SUBMISSIONS
MADE ON BEHALF OF THE APPELLANT**
