



APPEALS ON BEHALF OF TOTTENHAM HOTSPUR FOOTBALL CLUB

THE GOODS YARD 36 AND 44-52 WHITE HART LANE, N17 8DP
REBUTTAL PROOF OF EVIDENCE OF SEAN BASHFORTH ON PLANNING

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Appendix SB9 – Email from LB Haringey relating to contributions

1 Introduction

- 1.1 This rebuttal report responds to the Proof of evidence of James Hughes (JH) in respect of planning matters. Claire Dickinson primarily responds to the evidence of Anthony Lee.
- 1.2 I note that no new issues have been raised in relation to the principle of development or the acceptability of the appeal proposals in terms of development management/control matters.

2 Quantum and Type of Affordable Housing

Policy Requirements

- 2.1 The Council's case relies heavily on the appeal proposal's interaction with an estate renewal project (Love Lane) which lies outside of the Appeal Site. As I explained in my Main Proof (paragraph 5.18), policies relating to estate renewal and replacement housing are not directly relevant to these appeal proposals:
 - 2.1.1 London Plan Policy 3.14 (Existing Housing), which JH refers to in 8.2.7¹ as justifying '*at least equivalent amount of floorspace reprovided*', only applies where there is a loss of housing (criteria B). The Appeal Scheme does not result in the loss of any housing and it is therefore not necessary in policy terms to provide equivalent floorspace.
 - 2.1.2 Draft London Plan Policy H10 (Redevelopment of existing housing and estate regeneration), which JH refers to at 8.2.11², again, this does not apply to the Goods Yard because there is no loss of existing housing (Criteria A) or loss of existing affordable housing (Criteria B).
- 2.2 The position on the Goods Yard can also be contrasted with the William Sutton Homes Secretary of State decision referred to by JH (at paragraph 8.2.23), where those appeal proposals resulted in the direct loss of 383 homes on a housing estate. No homes would be lost by the Goods Yard proposals and they would not prejudice estate renewal.
- 2.3 In my view it is relevant that the GLA, as the guardian of the London Plan policies, did not raise any concerns, or indeed, flag the applicability of such policies in its Stage 1 consultation response dated 8 May 2018 (CD2.11), where the focus was on whether a different affordable housing quantum should apply because part of the site was considered to be industrial use.
- 2.4 The Council's case also relies upon balancing what it considers are competing policy requirements within the Tottenham AAP. JH (paragraphs 8.2.49- 8.2.56) argues that Policy AAP3 is 'less important' in the overall planning assessment than the site specific requirements of Policy NT5. In my view such a balancing exercise is not needed and not envisaged within the plan itself.
- 2.5 Policy AAP3 is specific. It explicitly requires affordable housing within the Tottenham AAP Area (which includes the appeal site and NT5) to be 60% intermediate and 40% affordable rent. The reasoning is set out in the supporting text to the policy at paragraph 4.12 which

¹ The first part of this paragraph refers to Policy 3.4 (Optimising Housing Density) which I presume is an error and the correct reference is paragraph 3.14 (Existing Housing) which is also cited.

² This refers to paragraph H10C of the draft London Plan as it refers to existing affordable housing floorspace being replaced on an equivalent basis. Criteria C has been deleted in the August 2018 Minor Changes to the London Plan, with similar requirements now appearing in criterion b and footnote 50A.

explains that it is needed to redress high levels of social rented housing in the area and introduce alternative tenures³. In my view this requirement cannot be downplayed or set to one side because of NT5:

- 2.5.1 Policy NT5 does not say that it requires a different approach to that set out in AAP3. If that was the intent it would say so. Both policies were formulated and examined at the same time in the same policy document and accordingly NT5 would have needed to make it clear that the specific requirements of AAP3 would not apply or would be 'less important' than a site specific requirement for High Road West. It does not do this.
- 2.5.2 Neither Policy NT5 nor its supporting text impose a requirement to proportionately re-provide social housing on a like for like basis for Love Lane residents as is suggested by JH (paragraph 8.2.46 onwards). The supporting text to NT5, at paragraph 5.126, states that the new neighbourhood will provide new high quality homes for existing secure tenants of Love Lane. This is repeated in a slightly different way in the Site Requirements supporting text (3rd bullet point on page 104) to 'offer of alternative accommodation for secure tenants, and assistance in remaining within the area for resident leaseholders from the Love Lane Estate'.
- 2.5.3 Whilst the Site Requirements Supporting text refers to the '*re-provision of existing social rented council homes*' it does not say that this needs to be undertaken on a site by site basis and had this been the intent policy would have said so. Nothing in NT5 changes the clear policy requirement set out in AAP3
- 2.6 I am clear that the Appellant has followed policy requirements correctly. It has complied directly with the tenure split requirements of AAP3 by providing 40% affordable rented accommodation.
- 2.7 The supporting text to NT5 (paragraph 5.126) refers to providing homes for existing secure tenants at Love Lane. JH's appendix JH4 indicates that there are currently 49 secure tenants on the Love Lane Estate. The proposed S106 agreement would allow any of the affordable rented homes in the Goods Yard scheme to be used for the purposes of social rent at the discretion of the Council. Therefore, up to 84% of the secure tenants could be decanted into the Goods Yard (up to 41 units could be provided with grant compared to the 49 existing tenants). By any measure, this is more than a proportionate provision in accordance with policy requirements.

³ This is borne out by Table 7.5 of the Environmental Statement (CD1.13) which indicates that within the Northumberland Park Ward, within which the appeal site and the NT5 designation sit, 49% residents are social rented. This compares to 27% on average for the Borough and 24% for London as a whole.

- 2.8 JH states (at paragraphs 8.2.28 to 8.2.30) that 77 social rented homes (26% of 1,200 shown as the indicative site capacity of NT5 designation multiplied by the 297 existing homes on the Love Lane Estate) would be a '*reasonable barometer for assessing the extent to which development on part of the NT5 site supports the policy requirement*' and goes on (at 8.2.31) to express a preference for this approach over an area based one.
- 2.9 The Council's approach has been put forward for the first time in JH's evidence. It was not raised during the determination of the application and indeed contrasts with the approach set out in the Committee Report (CD4.1), where paragraph 6.3.49 states that the 40% rented :60% intermediate split would need to be reversed or the affordable housing should be exclusively provided as social rented.
- 2.10 In my view there is has no basis for the Council's approach. As set out above (and in my Main Proof, table 5.1 and SB5.20) I consider that the appeal scheme's provision of 36-41no affordable rented homes (which can be social rented if the Council elect and used for the decant of Love Lane residents) is consistent with the policy requirements of AAP3 and NT5.
- 2.11 In my view there are also some basic flaws in the logic of the Council's approach.
- 2.12 First, the Council's requirement for the-reprovision of all 297 homes on the Love Lane Estate ignores the fact that a number of the homes are in leasehold occupation. Notwithstanding concerns about the applicability of estate renewal policies cited above, it is clear that policy only contemplates providing replacement affordable not private (leasehold) housing, with for instance paragraph 5.1.15 of the Mayor of London's Housing SPG (2016) (CD10.3) stating that former social rented properties sold under the right to buy /right to acquire should be categorised as market sector provision. There were 66 leaseholders in March 2019 according to appendix JH4. Using the Council's approach there would therefore be 231 affordable homes in the Love Lane Estate at March 2019 not 297.
- 2.13 Second, the Council's approach is based incorrectly on the delivery of 1,200 homes across the AAP. JH has followed the same approach as the Council's calculation for infrastructure contributions and therefore suffers from the same inherent flaws in relation to 'how proportionate' it should be. As set out in paragraph 6.28 of my Main Proof, the AAP refers to both 1,200 and 1,400 residential units. More critically for the Council's suggested approach to affordable housing, the higher (1,400) number is specifically referred to in the 'Site Requirements' section relating to housing on page 104 of the AAP. I note that Anthony Lee's evidence also refers to 1,400 units (paragraph 4.1). The Council's Development Partner has also been selected on the basis of delivering 2,500 homes and has been undertaking consultation on the basis that it would deliver this quantum of development. On this basis, 1,200 unit figure used by the Council would disproportionately disadvantage the Good Yard proposals, would fail to meet the relevant test of planning obligations in the CIL regulations

(Regulation 122 requires amongst other things requires obligations to be directly related to the development) and would put an increasing burden on the viability of the scheme thereby resulting in an overall reduction in the quantum of affordable housing (see paragraph 6.72 onwards of my main proof). Using the Council's approach, based on 1,400 homes the appeal proposals would represent up to 22.6% of the overall amount (indicating 67 social rented units rather than 26% or 77 social rented). Based on 2,500 homes the appeal proposals would represent up to 12.6% of the overall amount (indicating 37 social rented units); less than half the proportion and amount suggested by the Council.

- 2.14 Third, the Council's approach which seeks to replace all of the housing in the Lovel Lane estate, ignores how it has already increased the pool of affordable housing in a number of instances specifically for the purpose of decanting Love Lane residents. As explained in my Main Proof (SB4.16 and SB4.21) planning committee reports show how provision has been made in the Cannon Road scheme and 500 White Hart Lane scheme to rehouse 30 and 29 affordable tenants respectively. It is therefore potentially seeking to impose obligations again to address the same issue which would fail to meet the relevant tests in policy and statute.
- 2.15 Accordingly, the Council's approach has major flaws. There is no policy basis for the approach and even adopting the methodology requires significant adjustments to the Council's 'ask'. As set out in paragraph 5.31 of my Main Proof, the Goods Yard represents 11% of the area of the NT5 High Road West Designation. JH (8.2.31) dismisses the utility of this approach. However, taking into account the necessary cumulative adjustments set out above, the Council's approach would result in a proportion similar, or indeed lower, than this benchmark. This of course ignores the clear requirement of policy in AAP3 which I have set out above.

Viability

- 2.16 Paragraph 8.2.47 of JH's proof states that the housing offer is unacceptable in planning terms regardless of the viability position. Such a statement plainly ignores the requirements of planning policy at all levels, with the London Plan (Policy 3.12B), Local Plan (SP2, criteria 5 & DM13 D) and NPPF (paragraph 76) confirming that affordable housing delivery is subject to viability considerations.
- 2.17 I also note that Mr Lee has not reflected JHs 'ask' for 77 social rented homes in his viability evidence.

3 Planning Obligations

- 3.1 I have not read anything in JH's or Anthony Lee's evidence that has changed my position on Planning Obligations and particularly the Council's request for £7.12million 'Infrastructure Contributions'⁴.
- 3.2 It is disappointing that the Council has not provided a justification for each item and instead sought to rely upon the generality of broad policies to support its approach. My Main Proof raised fundamental concerns about the apportionment process that the Council has followed which I do not intend to repeat at length here. Amongst other concerns, no clear costing for each item has been provided, it is unclear whether costs have been correctly apportioned for NT5 or North Tottenham and it is not evident that proper regard has been paid to other funding sources such as grant. As an example, I attach an email from the Council explaining that they are unable to provide any justification for the highways costs sought (appendix SB9).
- 3.3 Paragraph 8.3.18 is the only place that JH makes specific reference to the requirements of NT5 and refers to a new learning centre (including library and community centre), a range of leisure uses and reprovided open space which I also cite at SB6.23:
 - 3.3.1 As set out in SB 6.53 in relation to the library and community space inadequate justification has been provided in terms of the relevant proportion (in the context of up to 2,500 or 1,400 homes being delivered not 1,200) and whether these items have been funded by Housing Zone grant or other sources;
 - 3.3.2 I can find no justification for 'leisure use' contributions, with indoor sports provision and a community sports hall appearing to represent the same requirement and consisting of 'Sports and Leisure Facilities' in the Council's CIL Regulation 123 List which would preclude double dipping (See paragraph SB6.50 to 6.52);
 - 3.3.3 In terms of re-provided open space – the Appeal Scheme would not cause the loss of any existing floorspace and, as I explain in paragraph 6.43 to 6.45 of my Main Proof there is no justification for playspace (which is provided by the scheme) and playing pitches where much more modest requirements are needed for the NT5 designation compared to what the Council are seeking obligations for.
- 3.4 At paragraph 8.3.24 JH makes references to Regulation 123 being revoked. I note that this is still in place at the time of preparing this evidence and should only be dis-regarded once secondary legislation is enacted to remove it.

⁴ I note that Mr Lee's suggested infrastructure costs total £7.21 million and are out of date, having been adjusted by Council Officers after being issued (see table 6.1 and 6.2 of my Main Proof).

- 3.5 JH relies on the Local Plan Inspector's endorsement of the AAP and lack of specific objections to the policies by the Appellant as lending support to the Council's policies (e.g. at paragraph 8.3.30). However, neither the AAP Inspector nor the Appellant would have been aware of the Council's intention to put forward a tariff based approach to securing planning obligations which is not set out in planning policy and, indeed, only emerged in the lead up to this planning inquiry after the Council had been to Planning Committee.

4 Heritage Conservation

- 4.1 As set out in my Main Proof (SB8.10) and drawing on the evidence of Ignus Froneman, contrary to what is suggested (at JH paragraph 8.5.10) there is no harm to heritage assets and it is not necessary to undertake the balancing exercise as set out in JH's evidence.
- 4.2 Notwithstanding this position, the Appellant has demonstrated how it has complied with policies relating to affordable housing and is willing to contribute towards wider infrastructure requirements if these meet the CIL Regulation tests and policy requirements. It is therefore incorrect for JH to suggest (at paragraph 8.5.11) that there is a risk of underfunded infrastructure and a lack of social rented housing proposed, such that would weigh against the proposals in the planning balance. As set out in paragraphs 8.11 and 8.12 of my Main Proof, the appeal proposals will also result in wide variety of benefits including the delivery of social housing and the regeneration of an underutilised brownfield site.

5 Conclusions

- 5.1 Having thoroughly reviewed the Councils' evidence, nothing has changed by view that the appeal proposals are consistent with Planning Policy and the appeal proposals should be allowed.

DECLARATION

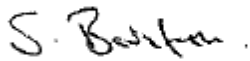
I confirm that my report includes all facts which I regard as being relevant to the opinions I have expressed and that attention has been drawn to any matter that would affect the validity of those opinions.

I am not instructed under any conditional fee arrangement and have no conflict of interest.

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true.

The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Dated: 30 April 2019



Signed

Position: Director

Sean David Bashforth

Appendix SB9

Sean Bashforth

From: Williamson Emma <Emma.Williamson@haringey.gov.uk>
 Sent: 21 March 2019 13:58
 To: Sean Bashforth
 Cc: McNaugher Robbie; Hermitage Dean; Hughes James; 'Richard Serra'; David Warman
 Subject: RE: Goodsynd site - S106 apportionment - JH EDIT2 - 20.03.2019.xlsx

Sean

Further to my email below I have reread the evidence base which I was given by the regen team to back up the off-site Highways cost and it actually doesn't include any evidence. It sets out a suggested cost of £1,000 per unit which would now be increased through indexation to £1,138 per unit. So if we adopted this cost then your contribution would be £359,702.

From: Williamson Emma
 Sent: 21 March 2019 13:44
 To: 'Sean Bashforth' <sean.bashforth@quod.com>
 Cc: McNaugher Robbie <Robbie.McNaugher@haringey.gov.uk>; Hermitage Dean <Dean.Hermitage@haringey.gov.uk>; Hughes James <James.Hughes@haringey.gov.uk>; 'Richard Serra' <Richard.Serra@tottenhamhotspur.com>; David Warman <David@RichardMax.co.uk>
 Subject: RE: Goodsynd site - S106 apportionment - JH EDIT2 - 20.03.2019.xlsx

Sean

Please see my response below.

It is unfortunate that the Council wasn't copied into the viability information that was sent to Anthony Lee as we didn't therefore realise this was progressing. Please can you ensure that we are copied into any further correspondence.

Thanks

Emma

From: Sean Bashforth <sean.bashforth@quod.com>
 Sent: 21 March 2019 08:28
 To: Williamson Emma <Emma.Williamson@haringey.gov.uk>
 Cc: McNaugher Robbie <Robbie.McNaugher@haringey.gov.uk>; Hermitage Dean <Dean.Hermitage@haringey.gov.uk>; Hughes James <James.Hughes@haringey.gov.uk>; 'Richard Serra' <Richard.Serra@tottenhamhotspur.com>; David Warman <David@RichardMax.co.uk>
 Subject: RE: Goodsynd site - S106 apportionment - JH EDIT2 - 20.03.2019.xlsx

Thanks Emma,

1. Could you please explain the rationale for the differential approach for each of the items. We don't understand, for instance, why all new homes in North Tottenham would not connect to the DEN. The Council agreed to provide further explanation at the last meeting (see attached) and the change to the approach makes the justification even more important to understand.

All the items that are divided 92%/8% are where the infrastructure is to be delivered across the whole of the North Tottenham Area. Where they are split 74%/26% these are just to be delivered on the NTS site. The DEN is included in the latter category because although all units are expected to connect to the DEN the business case assumes that the DEN itself will be built on the NTS site with pipe work allowing connection.

2. Could you please provide the background studies that were promised from Aecom on highway works etc. (see attached).

To follow and noted.

3. Attached is the 8 March email to Anthony Lee enclosing the viability note.

We will discuss with Anthony

4. The draft S106 will be with you later today.
5. Can the draft SOCG please come back to us as early as possible today (its due tomorrow). James has been asking about agreeing quotes from the questionnaire but we don't see this as necessary. We have also still not seen any comments on the conditions.

Both of these will be coming from James shortly

Many thanks

Regards

Sean