



Department for  
Communities and  
Local Government

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Our ref: APP/Z5630/W/16/3159298  
Your ref: 3159298

12 September 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY SPENHILL DEVELOPMENTS LTD  
FORMER GOVERNMENT OFFICES, KING GEORGE’S GATE, SURBITON, KT6 7LE  
APPLICATION REF: 15/10074/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Philip J Asquith MA(Hons) MA MRTPI, who held a public local inquiry on 25-28 April 2017 into your client’s appeal against the decision of the Royal Borough of Kingston Upon Thames Council (“the Council”) to refuse your client’s application for planning permission for the redevelopment of the former Government Offices at King George’s Gate, Hook Rise South, Surbiton, KT6 7LE to provide a residential led, mixed-use scheme comprising buildings ranging from 3 to 18 storeys in height, providing 705 residential dwellings (Use Class A3); a mixture of Class A1/A3/D1/D2/B1 floor space (to include a 262sqm retail convenience store, a doctors [sic] surgery and day nursery) with associated car parking and bus interchange, in accordance with application ref: 15/10074/OUT, dated 13 March 2015.
2. On 20 October 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector’s recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Procedural matters**

5. The Secretary of State notes (IR3) that the application as submitted was a hybrid application but that, during the course of its consideration and at the request of the Council, its description was amended to become a wholly outline application. The Secretary of State does not consider that the issue that led to this minor change raises any matters that would require him to refer back to the parties, and he is satisfied that no interests have thereby been prejudiced. The Secretary of State is also satisfied that the confirmation of change of ownership (IR6) following the submission of the application does not affect his decision.
6. An application for a full award of costs was made by your client against the Council (IR9). This is the subject of a separate decision letter.

## **Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan consists of the London Plan of March 2016 (LP) and the Kingston Core Strategy (CS), adopted in April 2012 (IR17); and the Secretary of State agrees that the development plan policies of most relevance to this case are DM9, DM10, SB1 and T1 of the CS (IR18). Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

## **Main issues**

9. The Secretary of State notes (IR34-35) that, although the Parties were unable to agree as to whether the Council can demonstrate a 5-year housing land supply, they agreed that that issue need not be resolved if it was accepted that planning permission should be granted. The matter was not therefore pursued further at the Inquiry, and the Secretary of State agrees with the Inspector that the main issues pursued are those set out at IR36 and further elaborated on by the Inspector at IR142 and 143<sup>1</sup>.

## ***The impact of the proposal on the appearance and character of the area, including the mix of housing provision***

10. For the reasons given at IR144-156, including noting that the Greater London Authority considers that the site is capable of accepting an even greater level of development given its sustainable location (IR149), the Secretary of State agrees with the Inspector that, despite its proximity to areas of suburban housing, the density proposed would be appropriate as the site is more readily characterised by its location and immediate surroundings as being of an urban character and capable of successfully accommodating the proposed housing density (IR148); and he notes and that the Council now accepts that the proposed quantum of housing is suitable for the site (IR150).

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<sup>1</sup> As explained in paragraph 19 below, this appeal is being dismissed on grounds of deficiencies in the terms of the Unilateral Undertaking and are not related to housing land supply.

***The effect on the local highway network with particular reference to the free flow of traffic and parking***

11. The Secretary of State has carefully considered the Inspector's discussion on the effect on the local highway network at IR157-IR165. While agreeing with the Inspector (IR157) that the development of the appeal site would add traffic at the Tolworth Interchange junction of the A3 and A240, which is already subject to congestion at peak hours, the Secretary of State also agrees with the Inspector and the parties (IR158) that, through mitigation measures secured through the Section 106 Unilateral Undertaking (S106 UU), the appeal scheme would have acceptable impacts in transport terms, possibly including marginal improvements to journey times for some bus services.
12. With regard to residents' concern about the impact on conditions within Hook Rise South (IR161), the Secretary of State agrees with the Inspector's conclusion that the mitigation measures proposed as part of the appeal scheme would be likely to improve rather than exacerbate current conditions.
13. The Secretary of State has also considered the suggested level of parking (IR162-165), and agrees with the Inspector that there is a delicate balance between ensuring sufficient provision and promoting modal shift by not encouraging car use/ownership where more sustainable transport options exist. Thus, for the reasons given at IR165, the Secretary of State also agrees with the Inspector's conclusion that the proposed levels of parking provision would not be an unacceptable drawback of the scheme.

***Other matters***

14. In considering the concerns of the operators of the Strategic Rail Freight Site (IR166), the Secretary of State agrees with the Inspector that the mitigation measures proposed would be sufficient to safeguard residential amenity and prevent any complaint that might prejudice continued commercial operations.
15. The Secretary of State agrees with the Inspector at IR167 that the air quality assessment indicates that future residents' exposure to particulate matter would be well below legislative limits, except for a possibility of some exceedance of nitrogen dioxide for residents facing the A3. He also agrees that appropriate and effective mitigation for this could be achieved through the imposition of conditions.

***Planning conditions***

16. The Secretary of State has given careful consideration to the conditions set out in Schedules 1, 2 and 3 at the end of the IR, to the Inspector's analysis at IR134-138 and IR169, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission as those concerns relate to the terms of the Unilateral Undertaking as explained in the following paragraphs.

***Section 106 Unilateral Undertaking (S106 UU)***

17. The Secretary of State has carefully considered the Inspector's findings on the S106 UU at IR138-139, his analysis at IR171-197 and his conclusions at IR201-202; the executed version of the S106 UU provided after the close of the Inquiry (doc 26 listed on page 49 of the IR); paragraphs 203-205 of the Framework, the Guidance; and the Community

Infrastructure Levy Regulations 2010 as amended. He agrees that, for the reasons given by the Inspector, there are deficiencies within the terms of the Undertakings offered that are directly related to the development and which it would be necessary to remedy to make it acceptable in planning terms, particularly in relation to affordable housing provision, the contribution to the strategic roundabout works and guaranteeing the provision of other necessary obligations.

18. Overall, therefore, the Secretary of State agrees with the Inspector (IR202) that the planning obligations proposed would be directly related to the development and necessary to make it acceptable in planning terms so that, without such obligations being sufficiently guaranteed through an appropriate UU, the development as a whole is unacceptable and would not comply with the thrust of development plan policy and the Framework. Furthermore, while agreeing with the Inspector that the deficiencies identified could be resolved by the submission of an amended S106 UU, the Secretary of State takes the view that rectifying these flaws is essentially the responsibility of the parties to the obligation and, while encouraging the parties to do so, he concludes that planning permission should not be granted until they are resolved.

### **Planning balance and overall conclusion**

19. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with Policies DM9, DM10, SB1 and T1 of the development plan, and is in accordance with the development plan overall. However, he has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. In this respect, the Secretary of State accepts that the intentions behind the proposed scheme are aimed at implementing development plan policies and helping to ensure a 5-year housing land supply. However, he takes the view that, in order to achieve this, the scheme needs to be deliverable; and he concludes that, although the S106 UU contains obligations that seek to provide the necessary mitigation, there are sufficiently serious deficiencies within the UU to place the successful implementation of the appeal scheme at risk.

20. The Secretary of State agrees with the Inspector that the obligations are directly related to the development and necessary to make it acceptable in planning terms, but, like the Inspector, he considers that the UU as it stands fails to provide a sufficient guarantee, thereby rendering the development as a whole unacceptable in that it would fail to comply with the thrust of the development plan policy and the framework. He agrees with the Inspector that the deficiencies identified could be resolved by the submission of an amended S106 UU, but he considers that that is a matter for your client to resolve with the Council in the context of a fresh application.

21. The Secretary of State therefore concludes that the appeal be dismissed and planning permission refused.

### **Formal decision**

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the redevelopment of the site to provide a residential led, mixed-use scheme comprising buildings ranging from 3 to 18 storeys in height, providing 705 residential dwellings (Use Class A3); a mixture of Class A1/A3/D1/D2/B1 floor space (to include a 262sqm retail convenience store, a doctors [sic] surgery and day nursery) with associated car parking and bus interchange.

## Right to challenge the decision

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
24. A copy of this letter has been sent to the Royal Borough of Kingston and Thames Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Richard Watson*

Richard Watson

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Philip J Asquith MA(Hons) MA MRTPI

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

Date: 15 June 2017

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**APPEAL BY SPENHILL DEVELOPMENTS LIMITED**

**Royal Borough of Kingston-upon-Thames**

Inquiry held on 25 - 28 April 2017

Former Government Offices, King George's Gate, Hook Rise South, Surbiton, KT6 7LE

File Ref: APP/Z5630/W/16/3159298

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**File Ref: APP/Z5630/W/16/3159298****Former Government Offices, King George's Gate, Hook Rise South, Surbiton, KT6 7LE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Spenhill Developments Limited against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
- The application Ref. 15/10074/OUT, dated 13 March 2015, was refused by notice dated 4 August 2016.
- The development proposed was described as 'part full/part outline 'Hybrid Application'; (outline element seeking approval of layout, access and landscaping) for the redevelopment of the site to provide a residential led, mixed-use scheme comprising buildings ranging from 3 to 18 storeys in height, providing 705 residential dwellings (Use Class A3); a mixture of Class A1/A3/D1/D2/B1 floorspace (to include a 262 sqm retail convenience store, a doctors [sic] surgery and day nursery) with associated car parking and bus interchange'.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural Matters**

1. By letter of 20 October 2016 the Secretary of State, under powers within Section (S) 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, directed that he should determine the appeal. The reason for recovery of jurisdiction and this direction is that the appeal involves a proposal for residential development of over 150 units, which would significantly impact on the Government's objective of securing a better balance between housing demand and supply and creating high quality, sustainable, mixed and inclusive communities.
2. Accordingly, I held a Public Inquiry between 25 and 27 of April 2017. This report sets out the cases for the relevant parties, draws conclusions and makes a recommendation for the Secretary of State's consideration.
3. Although the application as submitted was as described above, during the course of its consideration and at the request of the Council, its description was amended from being a hybrid to a wholly outline application, save for means of access<sup>1</sup>. The description as amended was:  
*'Outline application (means of access only) for 705 residential dwellings (use class C3) with associated other ground floor uses including class A1 (convenience retail store) / A3 (café) /D1 (doctors surgery) [sic] /D2 (day nursery) /D2 (gym) /B1 (office) floorspace, with associated car parking and a bus interchange'.*
4. It is on this latter basis that I have considered the appeal.
5. The application form also described the address of the site as 'the former Toby Jug Public House and MoD site, Hook Rise South, Tolworth' although the Council's decision notice and subsequent appeal documentation describes it as set out in the banner. As noted above, I have considered the appeal on the basis as described in paragraph 3.

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<sup>1</sup> Doc 24



6. Following submission of the application, ownership of the majority of the application site changed (as set out in Appendix B to the agreed Statement of Common Ground<sup>2</sup> (SoCG)) although the application progressed under the same applicant's name<sup>3</sup>.
7. Because of the unavoidable absence of the appellant's advocate on 26 April, and with the agreement of all parties, I conducted an accompanied site visit during the morning of that day. This was followed in the afternoon by an Inquiry session (at which the Council's advocate also did not attend) to discuss potential conditions and the appellant's proffered S106 Unilateral Undertaking (UU)<sup>4</sup>.
8. During the course of the Inquiry discussions were ongoing between the appellant and the Council in relation to the UU. On conclusion of the presentation of evidence it was apparent that the appellant was not going to be in a position to submit an executed UU before the close of the Inquiry. I therefore agreed that any executed UU and any Council comments upon this should be submitted following the close of the Inquiry by 5 May 2017. Both an executed UU with explanatory note, and comments on this made on behalf of the Council, were duly submitted<sup>5</sup>.
9. At the Inquiry an application for costs was made by Spenhill Developments Limited against the Council. This application is the subject of a separate Report.

### **The Site and Surroundings**

10. The appeal site is roughly bounded by Hook Rise South and, immediately beyond that, the A3 trunk road to its north-western side, Kingston Road (A240) to its north-east and the Chessington South railway line and Tolworth Station to its immediate south-east<sup>6</sup>.
11. The vast majority of the site comprises a roughly rectangular, slightly tapering configuration that was formerly occupied by a series of uniform two-storey Government Offices. It has been vacant for over 15 years and has been cleared save for perimeter earth mounding that has been put in place to prevent illegal occupation and, currently, some limited use for the storage of container units.
12. The site area of some 4.4ha also includes part of Hook Rise South together with vacant land (formerly occupied by a public house) between the Tolworth Interchange Roundabout (the intersection of the A3 and the A240) and the Charrington Bowl, a 1960s-built, flat-roofed bowling alley. Also within the site is a strip of vacant land. This lies between the two blocks of three-storey residential units of Drayton Court and a small car park associated with the station. The present cul de sac of Lansdowne Close, and Toby Way, which provides a link between the A240 and Hook Rise South, complete the site.

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<sup>2</sup> Doc 24

<sup>3</sup> There are various references in the documentation to 'Spenhill Developments Limited' and to 'Spen Hill Developments Ltd'. Where referred to in this report I have used the former nomenclature for consistency.

<sup>4</sup> Section 106 of the Town and Country Planning Act 1990 (as amended)

<sup>5</sup> Docs 26 - 31

<sup>6</sup> See CD2/3 Plan 00-100 for the 'red line' site boundary and the Design and Access Statement (CD2/13) for aerial photographs showing the site and its surroundings.

13. Facing the site to the north-western side of the A3 is an area characterised largely by residential development, predominantly semi-detached houses<sup>7</sup>. Tolworth District Centre and Tolworth Broadway lie immediately north of the Tolworth Interchange Roundabout, comprising a mix of retail and service uses. Here is the landmark feature of Tolworth Tower, a 22-storey, highly glazed structure completed in 1964. A resolution to grant planning permission was approved in January 2016 for the refurbishment and change of use of Tolworth Tower to provide residential units, together with the construction of four new multi-storey buildings, with one up to 19 storeys in height, to provide further residential units<sup>8</sup>.
14. Pedestrian access to the District Centre from the appeal site is provided via The Greenway, which dissects the roundabout, and subways.
15. Facing the site to the north-east of the A240 are terraced residential blocks with the residential Sunray estate and the more recent Donald Woods Gardens stretching beyond.
16. To the south-eastern side of the railway line is an enclave of commercial uses, including a concrete batching plant and a bus depot occupying the Tolworth Depot, a Strategic Rail Freight Site. Adjacent to the A240 to the south-east of the station is a building of up to eight storeys in height currently under construction that is to be a budget hotel (Premier Inn). Beyond this is the site for which there is a resolution to grant planning permission for the construction of an office headquarters for the Lidl supermarket group. At the time of the Inquiry this permission had not been granted pending completion of S106 obligations. The area to the south-east of the railway is predominantly open and designated as Metropolitan Open Land<sup>9</sup>.

### Planning Policy

17. The current relevant development plan relating to the appeal site comprises The London Plan of March 2016 (LP) - the spatial development strategy for London consolidated with alterations since 2011 - and the Kingston Core Strategy (CS), adopted in April 2012. A considerable number of policies of both plans, which the Council considered relevant to the determination of the application, are listed within the report to the Council's Development Control Committee on 6 July 2016, contained within its Revised Statement of Case<sup>10</sup>.
18. In refusing permission, the Council referred to only four policies of the CS with which it considered the proposal would conflict – Policies DM 9 (managing vehicle use for new development), DM 10 (design requirements for new development), SB1 (local strategy for delivery of development in the south of the Borough) and T1 (local strategy for delivery in the Tolworth Key Area for Change).
19. In now having decided to not defend its reasons for refusal, the Council does not assert conflict with any development plan policy. The signed SoCG confirms

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<sup>7</sup> In Mr Adams's evidence (Doc 1, para 2.4.3) these are characterised as of the 1940s/50s, whilst in Dr Miele's evidence (Doc 2, Appendix 2) these are shown as dating from the 1930s.

<sup>8</sup> Doc 1, page 20

<sup>9</sup> Helpful depictions of the nature of surrounding land uses are provided in aerial photographs (Doc 14, section 5) and townscape character areas in Doc 2, Appendices 2 and 3.

<sup>10</sup> Doc 8

agreement between the Council and the appellant that the appeal scheme is compliant with policy and guidance (subject to appropriate conditions and matters to be covered in S106 obligations)<sup>11</sup>.

20. Relevant development plan policies, together with national policy in the National Planning Policy Framework (the Framework), are referred to within this report where relevant.

## Planning History

21. There is limited relevant planning history on the appeal site prior to the Council's dealing with the application relating to the present appeal proposals<sup>12</sup>. In terms of relatively recent planning history, the SoCG records that between 2006 and February 2014 three separate applications were made on the site. These each included the provision of a Tesco food store, community uses and varying quantities of residential units, with the more recent application also including a 99-bedroomed hotel. All applications were withdrawn prior to being considered by the Council.
22. In relation to the appeal application, this was originally submitted as a hybrid application; certain elements of the proposals were in full with all matters for determination, and other elements in outline with matters other than access for determination at a later date<sup>13</sup>.
23. As noted in paragraph 3 above, at the request of Council officers the application was amended from a hybrid form to a wholly outline one, with all matters other than means of access reserved.
24. After initial consideration by the Council's Development Control Committee in February 2016, the outline application was reported back to it in March 2016 with a recommendation of approval subject to referral to the Mayor of London, agreement of S106 obligations and imposition of conditions. The Committee, however, recommended refusal for two reasons:

### *Reason 1*

*The proposed development by reason of the scale and density required to deliver 705 units, would be out of keeping with the character and appearance of the surrounding area. The development would thereby conflict with Policies DM10, SB1 and T1 of the Core Strategy.*

### *Reason 2*

*Insufficient evidence has been submitted to demonstrate that the development would not have an adverse impact on the local highway network or local on street parking conditions. The development would thereby conflict with Policy DM9 of the Core Strategy.*

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<sup>11</sup> Doc 24, section 5

<sup>12</sup> Planning history of the site is contained within the SoCG at section 3 and also within Doc 6, section 5.

<sup>13</sup> This is set out in the SoCG, Doc 24

25. Notwithstanding this resolution, it was jointly agreed between the appellant and the Council that the application would be held in abeyance to allow the appellant time to address the putative reasons for refusal.
26. As a result, new architects (JTP) were instructed to consider alternative ways of accommodating 705 residential units on the site, further justification was provided regarding the density of development, and additional transport modelling was carried out.
27. The application was presented to a Pre-development Committee in June and was then considered at the Development Control Committee in July 2016 where, despite a further recommendation of approval, it was refused for the reasons set out above.
28. The Mayor of London considered he would not exercise his ability to call-in the application as of potential strategic importance following this determination<sup>14</sup>. His Stage 2 report<sup>15</sup> also suggested that a greater quantum of development could be achieved<sup>16</sup>.
29. Following a resolution of 1 February 2017, the Council agreed that it would not defend its reasons for refusal and agreed that planning permission should be granted subject to appropriate conditions and S106 obligations<sup>17</sup>.
30. Following the Mayor of London's Stage 2 report, the appellant submitted a further application on the site, described as a part detailed/part outline application for a total of 950 residential dwellings and other uses. At the time of the Inquiry this application remained to be determined by the Council.

## The Proposal

31. The scheme as refused by the Council was in outline with all matters other than means of access reserved for subsequent approval. It provides for 705 residential units, a proportion of which would be classed as affordable, together with a number of commercial and community uses. Having regards to access to the site, this would be taken from the existing Toby Way, linking to both the A240 and Hook Rise South, with a second access also to Hook Rise South to the south-western end of the site. A further bus-only access to provide a bus interchange facility adjacent to the Tolworth Station car park would be provided in the current position of Lansdowne Close.
32. All other matters would be reserved for subsequent approval. However, considerable illustrative detail was provided in the form of masterplans to accompany the application. The original masterplan (the ColladoCollins scheme) shows the primarily residential proposal set around a central spine road, with the creation of a hierarchy of open spaces and with denser, taller buildings towards the north-eastern end of the site<sup>18</sup>. Blocks of residential units are shown rising from three to a maximum of 18 storeys. The small amount of A1/A3 retail/food and drink uses, doctors' surgery, gym and childcare facility would be grouped

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<sup>14</sup> Article 7 of the Mayor of London Order 2008

<sup>15</sup> CD3/5

<sup>16</sup> CD3/5, para 9

<sup>17</sup> Doc 24

<sup>18</sup> See CD2/3, CD2/4, CD2/5 and CD2/8

towards the north-eastern end of the site. The provision of a doctors' surgery reflects the recognition of an increased demand for health services that would be likely to result from the development<sup>19</sup>.

33. In response to the Council's expressed concerns as the application was being considered, particularly regarding the potential height of some of the residential blocks, the appellant commissioned a different firm of architects. This was to review the submitted masterplan and consider an alternative illustration as to how a detailed scheme might be delivered. A second illustrative masterplan (the JTP scheme)<sup>20</sup> resulted. This shows the provision of the same quantum of development but with a reduction in height of the two previously tallest buildings of 15 and 18 storeys. There would also be an increase in public realm provision, reduction in the massing and footprint of the block adjacent to the Tolworth Roundabout, and the infilling of residential blocks alongside the railway line, this latter feature providing residential units that would be lost from the reduction in height of the tallest buildings. Both masterplans, albeit for illustrative purposes only, therefore show possible alternative approaches to development.

### Other Agreed Facts

34. The agreed SoCG<sup>21</sup> refers to the Council's five-year housing land supply. It records that a recent appeal decision of 29 March 2017 (APP/Z5630/W/16/3143390) indicated that it appeared that the Council could not demonstrate a Framework-compliant supply of housing land. This is a view that is consistent with that of the appellant. The Council disagrees, having reviewed its latest evidence on housing land supply, indicating that it can demonstrate a five-year supply of deliverable housing sites<sup>22</sup>.
35. However, the SoCG notes that, given the Council's position that permission for the proposed development should be granted even if there is a five-year supply, it is also an agreed position between the parties that a lack of a five-year housing land supply is not critical to the determination of the appeal. The SoCG notes that this issue need not be resolved if it is accepted that planning permission should be granted<sup>23</sup>.

### Main Issues

36. At the opening of the Inquiry I identified what I considered to be the main issues in this case, which were not challenged by any party. These were:

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<sup>19</sup> CD2/27

<sup>20</sup> See CD2/6 and CD2/7

<sup>21</sup> Doc 24

<sup>22</sup> CD4/17

<sup>23</sup> Following the close of the Inquiry, the Supreme Court's judgement on the case of Suffolk Coastal District Council v Hopkins Homes Ltd and the Secretary of State for Communities and Local Government, Richborough Estates Partnership LLP and the Secretary of State for Communities and Local Government v Cheshire East Borough Council [2017 UKSC 37] was delivered. This related to the interpretation of paragraph 49 of the Framework and its relationship with paragraph 14. The appellant and the Council were provided with the opportunity of commenting in the light of this judgement on whether there were implications for the appeal proposal. The appellant's response is at Doc 32. There is no response from the Council. The judgement does not appear to alter matters in light of the agreed position between the appellant and the Council set out in the SoCG.

- the impact of the proposal on the appearance and character of the area, including the mix of housing provision; and
- the effect of the proposal on the local highway network, with particular reference to the free flow of traffic and parking provision.

### **The Case for the Council**

37. The Council's position is that, following its resolution on 1 February 2017 at the meeting of its Development Control Committee, it no longer defends its two reasons for refusal of the appeal application. This was subject to the agreement of appropriate conditions and S106 obligations. Its position was set out at the Inquiry and is reiterated within its revised Statement of Case<sup>24</sup> and in the agreed SoCG<sup>25</sup>. This position was communicated to the Planning Inspectorate on 2 February 2017. Consequently, the Council presented no evidence at the Inquiry in relation to the reasons for refusal nor was cross-examination undertaken of the appellant's witnesses. A planning officer attended the Inquiry and contributed to discussion on conditions. The Council was also legally represented throughout the Inquiry. Despite this position, the Council has expressed reservations about the appellant's S106 UU, considering its shortcomings mean the appeal should be dismissed. I address this within my conclusions.

### **The Case for Objecting Third Parties**

#### ***Residents Against Over-Development (RAOD)***

38. RAOD was represented by four members who spoke at the Inquiry<sup>26</sup>. I provided them with the opportunity of questioning the appellant's witnesses. They each provided statements<sup>27</sup> to which they spoke, together with a composite closing statement<sup>28</sup>, the gist of the case made against the appeal proposal being summarised below.

#### *Density*

39. The density of the proposed development would be at the top end or above the London Plan Sustainable Residential Quality Density Matrix<sup>29</sup> based on units/hectare. The density would far exceed the range of the matrix based on habitable rooms/hectare. The site falls within the descriptions of both 'Urban' and 'Suburban' which means there is no argument for the density to be at or beyond the 'Urban' band. In most respects the site sits within the characteristics of the definition of 'Suburban' (predominantly residential, small building footprints and typically buildings of two and three storeys). Based on a density in the middle of that range, the total number of units should be approximately 400 (rather than the proposed 705).

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<sup>24</sup> Doc 8

<sup>25</sup> Doc 24

<sup>26</sup> Mr Self (also a Borough councillor), Messrs Ware and Robb and Mrs Walker

<sup>27</sup> Docs 9 - 12

<sup>28</sup> Doc 22

<sup>29</sup> CD4/4, Table 3.2

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40. RAOD questioned the measurement of the site area and what elements of the site should be included for the purposes of calculating density<sup>30</sup>.

*Character and design*

41. RAOD questioned whether the proposal, in terms of its form, height and character, would respect the suburban character of the locality which CS Policies such as T1 and CS 8 seek to protect<sup>31</sup>. The scheme as shown in the illustrative plans would provide a development which would look ugly, overbearing, out of scale and out of character compared with existing development in the vicinity. The suggested multi-storey, box-like blocks would be a crude parody of the successful Edwardian mansion block typology which achieved relatively high density levels. These modern-day blocks would not be acceptable in terms of increased density. The development would detrimentally affect the quality of the environment and would not be in keeping with the primarily suburban character of the Borough.

*Car parking and traffic*

42. The adverse effect of the high density proposed for the site is evidenced by problems which would arise with car parking, a contentious subject. Many Borough residents travel to work in areas requiring them to get access by car, rather than travelling to central London by public transport. The London Plan parking standard for development in this location<sup>32</sup> is up to one parking space per unit.
43. The demographic being targeted by this development is young professionals who would need a car for work and social use. Car ownership and car use are different things; people still want cars for social use even if they are not used every day for work. A review of the 2011 car ownership census data for the whole of the Borough suggests average household ownership levels of 0.75 vehicles per unit<sup>33</sup>. The standard of provision proposed is about 0.5 spaces per unit (356 on-site residential spaces) whereas it should be at or towards the upper levels specified in the London Plan for such a location (up to 1 space per unit).
44. There is little unused car parking capacity in neighbouring streets and inconsiderate and illegal parking occurs, with lamentable Council enforcement. The outcome would be that, even with the suggested 10% modal shift from the private car and the implementation of a travel plan, there would be increased pressure for more on-street parking. Existing parking within Hook Rise South poses a problem for safety and the free flow of traffic.
45. Whilst Transport for London supports the restraint-based approach to residential parking provision, it has recorded its concern about overspill parking given the uncontrolled on-street parking within surrounding streets. RAOD's appraisal of the appellant's parking beat survey suggests a far more limited availability of

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<sup>30</sup> Doc 9

<sup>31</sup> Doc 12

<sup>32</sup> In an area where the PTAL score is 1- 4 and there is a proposed density of 70 – 170 units per ha (CD4/4, Table 6.2)

<sup>33</sup> Doc 11

parking space within nearby streets<sup>34</sup>. Whilst the appellant proposes post-development monitoring of parking in adjacent streets, this is of little comfort to RAOD residents since it would by then be too late to incorporate adequate on-site parking.

46. The appellant agrees that traffic is already at capacity on the Tolworth Roundabout and in surrounding areas at peak times. Measures such as realignment of lanes around the roundabout and improved traffic light signalisation are proposed. However, RAOD does not accept that TfL's modelling adequately represents the final cumulative outcome of all potential developments projected to come forward over the next 5 -10 years in combination with the traffic that would be generated by the appeal proposal.
47. If allowed, the development would add to the already poor air quality in the vicinity by increasing traffic congestion, with construction generating large Heavy Goods Vehicle flows and exposing people to potentially unacceptable impacts during construction.

*Housing mix and affordable housing<sup>35</sup>*

48. CS Policy DM 13<sup>36</sup> requires that residential development should:

*"b. Incorporate a mix of unit sizes and types and provide a minimum of 30% of dwellings as 3 or more bedroom units unless it can be robustly demonstrated that this would be unsuitable or unviable. On sites particularly suited to larger family housing, this minimum figure should be exceeded".*

49. The Tolworth Regeneration Strategy<sup>37</sup>, which covers the appeal site indicates that:

*"Housing capacity has been estimated at up to 400 dwellings... for a better mix of housing with a greater proportion of family houses..."*.

50. Whilst the application is in outline, it is clear that the intention would be to provide the majority of housing as one- and two-bedroomed units and that the minimum of 30% three-bedroomed units would not be achieved. In this type of location – a transition between an edge of a district centre and a much more suburban area - it would be reasonable to expect at least 30% of dwellings to be of three bedrooms. The site is currently the largest brownfield site in the Borough and it would provide the wrong message about future housing need if less than 30% of the dwellings to be provided were of three bedrooms. The Borough's Strategic Housing Market Assessment indicates a need in the Borough for 70% of housing to be of three or more bedrooms<sup>38</sup>. A condition requiring the provision of a minimum 30% of dwellings to be of three bedrooms should be imposed.
51. CS Policy DM 15 indicates that in relation to residential development sites of ten or more units 50% of the units should be provided as affordable housing. This is

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<sup>34</sup> Ibid

<sup>35</sup> Doc 10

<sup>36</sup> CD4/11

<sup>37</sup> CD4/10, page 30

<sup>38</sup> Doc 10, Appendix 1



subject to justification of any lower proportion through a financial viability appraisal which demonstrates that project viability would be compromised<sup>39</sup>. The proposed 13.2% affordable provision, which is supported by a viability appraisal, is well below the Borough's aspiration. RAOD is not in a position to comment one way or another on the viability assessment. However, it is to be hoped that the review mechanism relating to viability and affordable housing provision within the S106 obligations would be undertaken in an open, publically-transparent manner reflecting the Council's 2016 Supplementary Planning Document on financial viability in planning.

***Councillor Richard Hudson***

52. Whilst local residents accept the need for housing on the site, this should not be at all costs and not without infrastructure provision, including improvements to the Tolworth Roundabout and adequate doctors' and school provision.
53. The scheme would not be in keeping with its surroundings, contrary to CS Policy DM 10. The development would be a modern-day Gorbals, which was demolished as being inappropriate. Allowing the proposal would be a case of act in haste, repent at leisure.
54. The assessment of land value and therefore the input into the viability appraisal affecting the level of affordable housing provision is questioned. It is also questioned whether the proposed improvements to the Tolworth Roundabout would be sufficient to offset the development's impact. There would be increased pressure for car parking and associated increases in air pollution as a result of residents seeking available spaces. A scheme with a much lower density, perhaps yielding about 300 dwellings and a greater amount of affordable housing, would be more appropriate.

***Councillor Chris Hayes***

55. The proposal would not be in character with its surroundings and he fails to see how there would be compliance with CS Policy DM 10 in terms of density and design. There would be no gradual build up to the introduction of the tower blocks and there would be an overbearing impact for residents on the Sunray estate to the north-east.
56. Parking is already at a premium on the Sunray estate and the proposed development would result in overspill parking, added congestion and pollution.

***Sir Ed Davey***

57. He is a resident of the Borough, which he represented as an MP between 1997 and 2015. As an MP he campaigned against a proposal to develop a Tesco supermarket on the site, arguing that it was more suited to housing and community use. He interpreted this as meaning a development of between 300 and 400 homes. There is a requirement for homes to meet needs but this should be at a lesser density. He opposes the scheme on the basis of overdevelopment and its impact on the community, with concern that it would add to traffic congestion at the Tolworth Roundabout.

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<sup>39</sup> CD4/11. See also LP Policies 3.11 and 3.12

58. When as an MP holding two surgeries a week, the biggest issue raised was housing, with the greatest demand being for three- to four-bedroomed family homes. If family homes are not built this will not tackle the housing crisis. From his 18 years' experience as an MP he considers the provision of 30% of new housing being three-bedroomed and above is not good enough.
59. The Crossrail 2 proposal, which would be likely to use the rail line adjacent to the appeal site, is at the very early stages and no decision has been taken to carry it out. For the appellant to rest its case on its likely provision is stretching a point and very limited weight should be attached to it in support of the present development proposal. It is not considered the proposal meets the criteria of sustainable development.

***Mr Paul Durrant***<sup>40</sup>

60. Whilst there is a housing crisis, this development would not meet needs in the short term as only 100 – 200 homes per year would be released.
61. By the time the development is built there would be more vehicles on the road and the proposed minor improvements to the Tolworth Roundabout would not be able to cope with the natural increase in traffic and that resulting from new developments surrounding it (the appeal proposal, the Tolworth Tower residential conversion, Lidl headquarters, and Premier Inn).
62. The proposal is for inner London densities when Tolworth only has suburban infrastructure, with no tube service and a poor bus service. It is nonsense to suggest most residents won't need a car; it is almost a must in Tolworth, with car ownership on the Sunray estate at 1.2 per household. Residents would have to find parking where they could and this might include the Chessington Industrial Estate behind the proposed development where there is already insufficient legal parking for visitors to the Estate. This could affect the viability of firms there.
63. If the development goes ahead the Council would have no alternative but to introduce residents-only parking in most Tolworth streets, with residents having to pay to park outside their own homes. The very easy way to reduce the parking problem would be to reduce the size of the development to a more sensible 200 – 300 homes.
64. Concern is expressed as to the availability of school places for children from the development.

***Mr Derek Firmin***<sup>41</sup>

65. Concern is expressed as to the number of cars that would be associated with the development and the additional pollution arising from the search for parking spaces, together with additional congestion.
66. There would be a reduction in privacy for existing residents as a result of overlooking from the proposed tall blocks, together with a loss of sunlight and loss of property value.

**The Case for the Appellant (Spenhill Developments Ltd)**<sup>42</sup>

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<sup>40</sup> Doc 17

<sup>41</sup> Doc 18

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67. In the midst of an acknowledged national housing crisis (as confirmed in the Government's Housing White Paper, 'Fixing our broken housing market')<sup>43</sup>, the proposal provides an opportunity to deliver 705 new homes in an urban area, on previously-developed land that has been unused for 19 years. It is immediately adjacent to Tolworth railway station, 30 minutes from the heart of the nation's capital city, and also adjacent to Tolworth District Centre. It is a paradigm scheme that would contribute to fixing the broken housing market and delivering urgently needed new homes in Kingston, and London more generally.
68. The proposed development of the site enjoys specific policy support. This includes:
- the site's location within one of only three 'Key Areas of Change' in the whole of the Council's area (CS Policy T1)<sup>44</sup>;
  - the site's specific identification in the CS as a 'Gateway', located within both a designated 'Housing Opportunity Area' and a 'development area' offering the potential "to provide significant new housing plus community uses"<sup>45</sup>;
  - the site's location in an 'Opportunity Area' in the Mayor of London's 'City in the West' document 2016<sup>46</sup>;
  - the site's identification as a 'development and improvement' site with "significant development potential" in the Council's Tolworth Regeneration Strategy of 2010<sup>47</sup>; and
  - the site's previous allocation in Proposal Site PS42 of the former Unitary Development Plan as a site for residential and community uses<sup>48</sup>.
69. This support is underpinned by the basic ingredients that represent 'sustainable development' in the Framework, as well as the whole thrust of the London Plan.
70. As a cleared former Government site, representing brownfield land in an ideal position adjacent to a station, confined on both sides by the A3 and a railway line, adjacent to the District Centre of Tolworth (which already has a landmark building of some 22 storeys in close proximity), it is an exemplar location for the form of development proposed: the delivery of 705 new homes – 93 of which would be affordable, with delivery of a Class A1 convenience store, A3 café, D1 doctors' surgery, D2 day nursery, and some B1 office floorspace. In addition, there would be a bus interchange to enable an existing bus service in the vicinity to come right into the heart of the site, with a bus stop immediately adjacent to the existing railway station. It is difficult to think of a more suitable development to contribute to "fixing our broken housing market", by "planning for the right homes in the right places" and "building homes faster".
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<sup>42</sup> Much of this summary is taken from the appellant's opening and closing statements (Docs 16 and 23)

<sup>43</sup> CD4/3

<sup>44</sup> CD4/11

<sup>45</sup> CD4/11, pages 91 and 93 and 'Vision for the Area', page 92

<sup>46</sup> CD4/20

<sup>47</sup> CD4/10, pages 13 and 29 et seq

<sup>48</sup> CD4/10, page 30

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71. The starting point for any proposal is the development plan which here consists of the London Plan (March 2016) and the Council's CS. The Council now accepts that the proposal complies in full with both elements. It is equally clear that there are no material considerations indicating otherwise than that the proposal should be allowed in accordance with the development plan. Nonetheless, those other material considerations (in the form of the Framework and other guidance) all strongly support the development. It is one to which the presumption in favour of sustainable development, as well as the presumption that it should be approved without delay (being in accordance with the development plan) applies, as made clear in paragraph 14 of the Framework.
72. The failure to grant permission is, regrettably, the fault of Council members rather than officers. Despite: (a) the significant patience shown by the appellant throughout the planning application process; (b) the full adherence to all good practice on pre-application consultation; and (c) the considerable indulgence provided to the Council in terms of the application, time to consider it and supporting information, the Council failed to act reasonably not just once, but twice, in deciding to refuse the planning application. The appellant was left with no choice but to appeal.
73. There are many ingredients to the Council members' unreasonable conduct. One revealing aspect relates to the form of the application itself. It is now in outline, with only access to be fixed at this stage. However, that is not for lack of willingness on the part of the appellant to provide detail, or to press forward with this much-needed development.
74. The application was originally submitted in hybrid form. Some elements (including the taller buildings) were submitted for detailed approval. At the specific request of the Council itself, however, the appellant agreed to revert to an outline application. The Council wished to retain control over subsequent details on reserved matters approvals in due course.
75. This should not have been necessary, but it means that the Council had even less reason for objecting to the outline scheme. All reserved matters (other than means of access) are for future control. This is in addition to the ability the Council had to consider the imposition of conditions to address any outstanding concerns (for example, in relation to height).
76. The original outline application was therefore subject to very significant amounts of detailed illustrative material demonstrating how the scheme could be successfully delivered on the site. This included the wealth of information provided in support of the illustrative design by ColladoCollins, a highly regarded practice with a proven track record of delivery of high quality schemes for sites of this kind.
77. The ColladoCollins illustrative scheme - originally submitted in March 2015 as a hybrid, but which subsequently became an outline scheme - illustrated the development of the site delivered in 21 buildings, ranging from 2 -18 storeys in height to reflect different character areas of the site itself<sup>49</sup>. The layout was conceived around the public realm, with a central spine road running the length of the site from Hook Rise South to the west, through to Tolworth Station to the

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<sup>49</sup> See CD2/3

north-east, incorporating classical principles of urban planning in the form of two 'turbine' or 'pinwheel' squares.

78. The disposition of the buildings on the site was carefully considered to address the challenges of the major A3 road to the north and the railway to the south. The design was the subject of a detailed Design and Access Statement including a masterplan<sup>50</sup>. This document illustrates the quality of what was envisaged and the very detailed thought that had gone into the planning process to produce such an exciting high quality scheme. It was supported by (amongst other things) a Townscape Assessment<sup>51</sup> demonstrating how well the buildings were assimilated into the wider townscape area.

79. Council officers subsequently agreed it would be beneficial to obtain feedback from an independent Design Advisory Panel. The appellant submitted the proposals to members of Design South East on 29 April 2015. The summary of that Panel's independent appraisal is:

*"The Panel was impressed by the quality of thinking behind the masterplan, which is set out clearly in the design and access statement. The overall layout is logical and the use – primarily residential – is appropriate. We support the idea of the central spine and hierarchy of spaces, which provide the masterplan structure for the buildings of broadly appropriate, varying heights and form. The tallest building seemed to the Panel to be in the right place, where it will act as counterpoint to the Tolworth Tower."<sup>52</sup>*

80. The more detailed recommendations of the Panel were taken on board in respect of the masterplan (though most of these relate to matters of detail rather than matters fixed by the outline). Accordingly, the appellant submitted amended and additional plans in June 2015 to reflect the recommended enhancements to the scheme<sup>53</sup>. These were accompanied by a Supplementary Design Statement and a Revised Townscape and Visual Impact Assessment<sup>54</sup>.

81. The proposal was also the subject of detailed consultation with Transport for London (TfL) both before and after submission of the planning application. TfL is the responsible body for the A3, the Tolworth Interchange and the A240 Kingston Road adjoining the site. As a result of that extensive consultative work, including submission of a full Transport Assessment<sup>55</sup>, TfL was entirely satisfied with the development subject to the appellant's proposed mitigation works and it confirmed that it had no objection to the scheme. Within the Transport Assessment the appellant had carried out detailed TRANSYT modelling of its proposal. It identified how any impact the proposal would have on the road network would be mitigated by proposed mitigation works. The appellant also demonstrated how any impact on the local highway network could be controlled.

82. Given the extensive consultative work, the policy framework and the efforts made by the appellant to accommodate the Council (including conversion of the

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<sup>50</sup> CD2/13

<sup>51</sup> CD2/5

<sup>52</sup> CD2/6, page 3

<sup>53</sup> CD2/4 and CD2/5

<sup>54</sup> CD2/5

<sup>55</sup> CD2/14

application to outline), the Council officers' comprehensive report<sup>56</sup> on the proposal resulted in a very clear and unequivocal recommendation that the proposal should be approved.

83. The Council officers' report is a detailed document which appraises the scheme against the entire relevant policy framework, before reaching the conclusion that the development should be approved subject to the imposition of conditions identified in the report. This was a full endorsement by officers of the ColladoCollins illustrative scheme, the associated parameter plans (which made provision for a building up to 18 storeys in the appropriate part of the site) and the general masterplan envisaged in those parameters. As the officers explained in their conclusion at paragraph 196:

*"The application proposes the development of a site which is identified for housing and lies within a Housing Opportunity Area for the erection of 705 residential units. The site is located in a sustainable location adjacent to Tolworth District Centre and Tolworth Railway Station and is proposed to be developed at a density in accordance with the London Plan. The indicative plans for layout and heights have been tested against the Council's adopted Development Plan to ensure that development of this quantum can be developed on the site without having any adverse impact on the character of the area, the amenity of surrounding residents and the highway network and all other material considerations detailed in the report. It is therefore considered that the development proposal complies with the terms of the development plan and there are no other material considerations that indicate that these policies should not apply."*

84. Despite the unequivocal nature of this recommendation and the strong supporting material to underpin these conclusions, Council members resolved to refuse the application at a meeting on 2 March 2016. There were only two claimed reasons:

*"(1) The proposed development by reason of the scale and density required to deliver 705 units, would be out of keeping with the character and appearance of the surrounding area. The development would thereby conflict with Policies DM10, SB1 and T1 of the Core Strategy."*

*"(2) Insufficient evidence has been submitted to demonstrate that the development would not have an adverse impact on the local highway network or local on street parking conditions. The development would thereby conflict with Policy DM9 of the Core Strategy."*

85. In light of this approach, although the appellant did not consider the members' approach to be reasonable or justified (given all the contradictory evidence that existed), the appellant asked the Council to consider additional information relating to scale and density, and to allow TfL to complete its own VISSIM modelling, before issuing any decision notice.
86. The appellant then commissioned a new, equally well-respected firm of architects – JTP – to produce a second illustrative scheme to demonstrate how the same number of dwellings could be provided on the site, but removing some of the

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<sup>56</sup> CD3/2

taller buildings and generating even more open space. This led to the submission of JTP's additional plans in May and July 2016<sup>57</sup>, which were accompanied by 'Additional Illustrative Material'<sup>58</sup> dated May 2016. Informed by its own context analysis, JTP showed a different layout arrangement under the outline proposal. This involved the particular redesign of building A, and a redesign of the areas around Buildings B and C (with the removal of Building C), to show an alternative design proposal with the maximum ten storey height of any building (building G), a new and enlarged area of open space, and with replaced floorspace being achieved by buildings set in between buildings F, K and L. The Appendix to the Additional Illustrative Material included updated images of the visual appraisal to show the effects of the reduction in building heights<sup>59</sup>.

87. In addition, the appellant's agents submitted a series of documents responding to some of the consultative responses dealing with (amongst other things): the density of the scheme (the correct figure being 160 dwellings per hectare) and how this accorded with the London Plan; the financial and social benefits of what was proposed; a Note on TfL's completed VISSIM modelling which confirmed the acceptability of what was proposed in transport terms; a detailed response to the Council's highway engineer; and a further statement in relation to noise assessments<sup>60</sup>.
88. Given that the Council officers had already accepted the principle of development illustrated by ColladoCollins, it was not surprising that they further supported the principle of development illustrated by JTP. The JTP scheme showed delivery of the same number of dwellings, but with a different and lower design. Again, officers compiled a report on the further information that had been provided and the illustrative scheme. This resulted in a further, clear and unequivocal recommendation for approval. The report demonstrates how the Council's reasons for refusal were unsustainable.
89. Despite being given this second chance, and the provision of yet more information to address all the concerns that had been expressed (no matter how unfounded), members proved intractable. The committee refused permission once again, for the same reasons. This was in the face of all the technical information that had been provided.
90. Understandably, this left the appellant with no option but to appeal. Faced with clear recommendations for approval from officers, a development plan which only supported more, not less, development on this site, and a failure by the Council members to address the detailed appraisals, the appellant submitted its appeal. The appellant also made clear its intention to apply for its costs against the Council.
91. The Council's subsequent Statement of Case in response to the appeal merely repeats the reasons for refusal but without purporting to provide any detail of the Statement of Case. Similarly, the Council did not engage with agreement on a SoCG despite repeated requests. The appellant therefore commissioned evidence to respond to the reasons for refusal.

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<sup>57</sup> CD2/6 and CD2/7

<sup>58</sup> CD2/6

<sup>59</sup> CD2/6

<sup>60</sup> CD2/9

92. On or around 3 February 2016, after this evidence had been commissioned, the appellant learned through a 'tweet' and a local news press release that the Council had decided at a private meeting on 1 February 2016 not to defend either reason for refusal. The appellant was not told specifically of this by the Council itself.
93. The decision is welcome. It is an inevitable, if belated, recognition that the Council never had any proper or reasonable basis for its reasons for refusal in the first place. The Council was clearly incapable of finding any professional support for them and unable to call evidence to substantiate those reasons for refusal. It means that this appeal is now unopposed by the Council as the relevant local planning authority. Through its Revised Statement of Case<sup>61</sup>, the Council now expressly confirms that planning permission should be granted subject to conditions and a S106 agreement<sup>62</sup>.
94. None of this is in dispute. The only concerns that now remain are those expressed by some local residents. They do not question the need for the site to be redeveloped, or the need for it to deliver the housing and other uses proposed. Their residual concerns principally relate to: (a) traffic congestion; (b) parking; (c) density/appearance; and (d) the percentage of family/affordable housing.
95. There were four individuals who attended the Inquiry under the name of RAOD, two other local residents, two councillors and a former MP. The latter did not know about the details of the application and, whilst expressing concerns over issues such as congestion, was unaware of the modelling that had been carried out and its results. His views are therefore not based upon any proper appreciation of the proposed development and the supporting material. For RAOD, none of the individuals live within the immediate vicinity of the site.
96. Whilst residual concerns of this type resulting from change are not uncommon in relation to new residential development proposals, the concerns are not justified in this case and have no objective foundation in policy or in fact, even without taking into account all of the other huge planning benefits that the appeal scheme would bring.

*Traffic congestion*

97. The appeal scheme's effect on the surrounding highway network in terms of traffic congestion has been rigorously analysed, not just by the appellant, but also by TfL and the Council.
98. There is unanimity of view amongst all of the many traffic experts that have scrutinised this scheme - this being a matter for empirical, technical evidence - that the scheme would have no material adverse impact on the highway network if the proposed mitigation measures that are secured in the S106 UU<sup>63</sup> are put in place.

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<sup>61</sup> Doc 8

<sup>62</sup> Whilst a section 106 agreement is referred to, what has been proffered by the appellant is a Unilateral Undertaking.

<sup>63</sup> Doc 26



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99. That is a conclusion which has been reached not simply through one detailed appraisal, conducted using the TRANSYT model, but also confirmed by an independent VISSIM model carried out by TfL using its own data and microsimulation<sup>64</sup>.
100. The VISSIM model was validated for both the morning and evening peak hours. This means the model was tested to ensure it accurately reflected existing conditions on the local highway network during these peak periods in an existing model. This model was then used to test the impact of the appeal scheme by adding the predicted traffic generated by it when fully built-out on top of existing flows<sup>65</sup>. The modelling took account of all necessary factors, including consented development. Furthermore, TfL has no reason to under-predict the traffic effects in any modelling as it is interested in ensuring that the traffic is not worsened in the area by development. This is particularly so when the A240 and the Tolworth Interchange suffer from congestion in peak periods<sup>66</sup>.
101. TfL has more recently been considering other changes to the Tolworth Interchange (including a fourth approach lane from the south). This would permit even more development to come forward and, in particular, a scheme for Lidl offices further down the A240 Kingston Road. The nature of that scheme as an employment destination, with considerable amounts of car-parking (311 spaces), is very different from the appeal scheme. It is not an approved scheme. Although the Council had previously resolved to grant planning permission, this was contingent on TfL identifying road improvements that would enable it to go ahead and, furthermore, the satisfactory conclusion of a S106 agreement. TfL has now identified achievable improvements to the Tolworth Interchange which could accommodate the traffic from the Lidl scheme (along with the other proposed developments in the area including the appeal site). To date, however, no permission has been issued and there is not even a draft S106 agreement available.
102. In light of this, TfL has suggested a further contribution from the appeal scheme for the delivery of those additional improvements to the Tolworth Interchange<sup>67</sup>. Nonetheless, the impacts of the appeal scheme would be fully mitigated by the more limited improvements to the Tolworth Interchange provided for in the S106 UU and confirmed by TfL in its own modelling. This has been accepted by the Council and is not challenged through any technical evidence.
103. The further strategic improvements to the Tolworth Interchange being proposed by TfL are therefore not in fact required in consequence of the appeal scheme, taken with all consented development, but rather relate to the potential for a future approval for the Lidl scheme (which may or may not proceed). As a matter of principle, therefore, requiring a contribution from the appellant for additional improvements to the Tolworth Interchange to address accommodating a different scheme does not appear to meet the necessary requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. It is not necessary in respect of the appeal scheme. Contributions and

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<sup>64</sup> CD2/9

<sup>65</sup> Doc 4

<sup>66</sup> Doc 13

<sup>67</sup> Doc 13

improvements to the interchange to address potential future development (such as Lidl) should be sought from those schemes.

104. Moreover, both the Council and TfL rightly accept that if such a contribution is taken from the appeal scheme, it would have a necessary impact on the viability calculations for the scheme. There would be a consequential reduction in the number of affordable housing units that could be delivered on the site.
105. The appellant has therefore provided a S106 UU to reflect this position<sup>68</sup>. It makes provision for payment of the additional contribution requested by TfL, provided that the Secretary of State considers such a contribution meets Regulation 122. That contribution would not be payable if the Secretary of State considers that it does not meet the Regulations, but rather the contributions for mitigating the appeal scheme (as agreed) would be.

### *Parking*

106. Concerns have been expressed by residents as to existing traffic conditions in Hook Rise South, with photographs shown relating to use of the carriageway by cyclists and the narrow width of the road with existing parking<sup>69</sup>. However, far from this being an issue for objecting to the appeal scheme, this is a reason to support it. The proposal would deliver an increase in carriageway width, with the relevant parking spaces not interfering with that carriageway, together with the introduction of a shared 3m-wide pedestrian/cycleway for the benefit of users.
107. This would therefore be a significant enhancement over the existing position. It would link in with the existing Greenway over the Tolworth Roundabout. The residents appeared to accept and welcome this when pointed out. Although reference was made to potential opposition to shared cycleway/pedestrian paths<sup>70</sup>, this is not a view expressed by either the Council or TfL (the body responsible for the road); moreover, as explained by the appellant's transport witness, the provision is entirely appropriate for the likely usage of that path<sup>71</sup>.
108. Concerns were expressed as to the level of parking to be provided within the site (356 residential, 10 commercial on-site, with 25 spaces off-site (on Hook Rise South)). RAOD believed that more parking should be provided as future residents of the development will have cars and there was concern about displaced parking onto the surrounding streets.
109. However, now the Council, TfL and the Mayor of London all agree, the level of parking to be provided is entirely appropriate and compliant with all relevant policy. It reflects the London Plan<sup>72</sup>. Parking standards are maxima, for the reasons explained in that document. The London Plan expressly recognises that restraint of parking affects modal travel choice. The appellant's transport witness also confirmed that there is a direct relationship between limiting parking spaces and achieving modal shift away from the car and car ownership. That is entirely consistent with the Framework.

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<sup>68</sup> Doc 26

<sup>69</sup> See for example Doc 11, Appendix 3

<sup>70</sup> Mr Self, questioning of Mr Gabbitas

<sup>71</sup> Answer by Mr Gabbitas in questioning by Mr Self

<sup>72</sup> See in particular Policy 6.13

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110. Moreover, the appeal site lies immediately next door to an existing railway station. It would be directly contrary to the whole thrust of sustainable development and sustainable transport policy to encourage more car use in a location such as this, by providing more parking for residents.
111. The ratio of 0.51 parking bays per dwelling was arrived at following discussion with both TfL and the Council (not imposed by TfL, as suggested). It is based on a range of factors: the target demographic for the development amongst which car ownership levels are anticipated to be considerably lower than is typical across the Borough; the mix of residential unit sizes; proximity to the station and Tolworth District Centre; proposed improvements to public transport including the extension of the No. 281 bus service into the site and the introduction of a new bus interchange facility next to the station; the suite of measures included in residential and workplace travel plans aimed at discouraging private car use and the promotion of more sustainable travel by public transport, foot and bicycle; and a robust parking management strategy to manage on-street parking and to monitor on-street parking demand in areas surrounding the site<sup>73</sup>.
112. The Council, TfL and the Mayor of London are all rightly satisfied with what is proposed. As to displaced parking, the appellant's transport witness explained that both he and the Council considered that the risk of displaced parking was unlikely, given the 'island' nature of the site and the separation from the surrounding areas to the east and the north. Residents are unlikely to want to park their cars in those areas<sup>74</sup>. However, to monitor this, the appellant has agreed a contribution to finance provision of surveys in the area and a contribution to implementing a potential car parking zone. The areas are wide and cover the areas of concern to residents. All of this should be seen in conjunction with the residential and workplace travel plan, with the detail of the measures to be agreed, to impose modal shift targets, monitoring and remedial measures. These are matters for the Council in terms of detailed control in due course.
113. Concerns expressed regarding congestion and bus travel in the area are misplaced. As noted above, it has been conclusively demonstrated that there would be no material detrimental impact in terms of congestion. As to buses, one of the appeal scheme's virtues is that it extends bus service provision into the appeal site (with the No. 281 now having a bus stop adjacent to the Tolworth station). Moreover, the VISSIM modelling demonstrates that, with the proposed mitigation measures, for significantly more buses that use the network through the Tolworth Roundabout journey times would decrease. Any increases are significantly outweighed by the decreases<sup>75</sup>.
114. Accordingly, proper analysis of the residents' remaining concerns demonstrates that they have been fully addressed. The appeal scheme has been subject to detailed modelling by the appellant and it has been independently scrutinised by TfL, which has conducted its own modelling. The conclusions have all now been agreed with the Council which has withdrawn its original reason for refusal.

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<sup>73</sup> Doc 4, para 5.2.10

<sup>74</sup> Answer by Mr Gabbitas's to questions by Mr Ware

<sup>75</sup> Doc 5, Appendix D

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*Density and character*

115. Residents have expressed concern about the consequential density of development that would arise from a scheme of 705 dwellings on the site. The root of this concern is based upon precisely what the London Plan advises against, namely a mechanistic approach to density calculations.
116. The factual position is clear. The red-line site area is 4.4ha. Application of this results in an overall site density of 160 units per hectare<sup>76</sup>, which is within the relevant density range in the London Plan for this urban area site. Both the Council and the Greater London Authority (GLA) have scrutinised this. The density proposed is clearly appropriate in the context of the London Plan for a site in this sort of location (an urban site with a current Public Transport Accessibility Level (PTAL) score of 2/3). That is without taking into account the future likely enhancement of that PTAL score with the potential for the development of Crossrail 2. This in the future might result in the doubling of rail service frequency at Tolworth from two to four trains per hour in each direction<sup>77</sup>. The Mayor of London's Stage 2 report on the application indicated the National Infrastructure Commission's reporting of overwhelming support for Crossrail 2 and specified Tolworth District Centre as a major opportunity for significant housing development<sup>78</sup>.
117. However, such measurements are inevitably only a 'starting point' as the London Plan advises<sup>79</sup>. More critically, ColladoCollins, JTP, the appellant's witnesses<sup>80</sup>, the officers of the Council and the Mayor of London have all assessed the appropriateness of 705 units on the site by reference to its consequential effects, not simply by reference to a numerical calculation. Again, the position is unanimous that what is proposed is acceptable. That is subject to one important factor. The GLA's view is that the site could in fact accept an even greater level of development, bearing in mind its potential as a sustainable location and the opportunities that exist for transport accessibility from the site that have been identified<sup>81</sup>.
118. Therefore, far from there being any reason for objection based on the London Plan density matrix, the guardians of that Plan and the matrix are the ones who are advocating higher density levels on the site in any event. This demonstrates how artificial the remaining point of objection is. The appellant responded to the GLA's requests in this regard by putting forward a scheme that would deliver 950 units<sup>82</sup>. This highlights that there is no proper basis for objecting to the 705 unit scheme on density grounds.
119. Moreover, even if this were a case that the density matrix figures were exceeded, that would not be a basis for objection anyway. To the contrary, the GLA has sought to increase the density on the site in light of the site's characteristics.

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<sup>76</sup> CD2/9, GL Hearn letters of 1 and 6 July 2016

<sup>77</sup> Doc 5, Appendix B

<sup>78</sup> CD3/5

<sup>79</sup> CD4/4, para 3.28

<sup>80</sup> Mr Adams and Dr Miele

<sup>81</sup> CD3/5

<sup>82</sup> At the time of the Inquiry this application remained undetermined by the Council

120. As to questions of character, the character of the area and the policy framework has been applied by two independent practices in providing illustrative schemes (ColladoCollins and JTP). Character has been further assessed in evidence for the appeal provided on behalf of the appellant<sup>83</sup>. The effects of the scheme (as shown in the two different illustrative versions) have been scrutinised by Council officers, a South East Design Panel and the GLA. All are agreed as to the benefits of what has been proposed.
121. The scheme at appeal is, of course, an outline scheme (at the Council's request). Therefore, matters of detail as to how the scheme would look are all matters for future approval. But the illustrations demonstrate how a scheme can be delivered with buildings up to ten storeys or with taller buildings (up to 18 storeys) in different ways. There are different merits of both approaches. The Council officers were rightly satisfied by both.
122. The Council has advocated the imposition of a condition which would limit development to 11 storeys. There is no justification for this in principle, or in logic. As a matter of principle, it fails the test for the imposition of a condition; it is unnecessary. This is because this is an outline scheme where the Council will have control over reserved matters (including height) based on the details of what comes forward. As the appellant has demonstrated that 705 units can be delivered in a number of ways, including with a scheme lower than 11 storeys, it is unnecessary to have a condition to this effect. The Council would be able to judge the acceptability of any scheme that comes forward in relation to its height, based on its merits. It is illogical, unsupported by evidence and unreasonable.
123. The Council has not produced any evidence, let alone any evidence to support the notion that only an 11-storey scheme would be acceptable. To the contrary, the Council's officers accepted that the ColladoCollins scheme was acceptable. In order to impose a condition of this type, the Council would need to have demonstrated that development above 11 storeys on the appeal site would have unacceptable impacts. It has not done so. Such a condition would artificially constrain both the appellant and the Council when there may be merit in a scheme which exceeds 11 storeys.

*Housing mix and affordable housing*

124. Residents and the Council have sought a condition requiring 30% or more of the housing as three-bedroomed or more. However, the policy they rely on states that this is subject to viability<sup>84</sup>. The appellant produced a viability assessment for the site, based on delivery of 20% of units of three bedrooms or more and which would yield an affordable housing level at over 13%. This has been independently tested by the Council's own consultants and provided to the GLA.
125. The Council has accepted this viability assessment. Accordingly, the Council's request for a condition requiring 30% now contradicts its own policy and its own acceptance of the evidence provided by the appellant. The appellant's Planning Statement indicates that the housing mix has been discussed at length with the

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<sup>83</sup> Docs 2 and 3

<sup>84</sup> Core Strategy Policy DM 13 (CD4/11)

Council and, whilst the Council has aspirations for the provision of family housing to the level suggested in CS Policy DM 13, there has been recognition that viability plays a significant part in a scheme's development<sup>85</sup>.

126. The Council has not called any evidence to support an increase beyond that shown to be viable, and therefore such a condition would be unreasonable and illogical. However, if 30% was to be imposed, then it would affect the amount of affordable housing to be provided. Furthermore, whilst the Council's Strategic Housing Market Assessment suggests a reduction in the proportion of small units in the future pattern of housing required in 2035, and an increase in the proportion of larger units, it also recognizes that this is a trend projection which could be affected by a number of factors<sup>86</sup> and which are applicable to the appeal site in this location.
127. As to affordable housing, the level to be provided is agreed with the Council based on the independent testing of the viability of the scheme and that is an approach which is accepted in the CS and the London Plan<sup>87</sup>. The appellant's Affordable Housing Statement sets out the basis of the 13.2% affordable provision based on the viability appraisal<sup>88</sup>. There has been no evidence to challenge this assessment.

#### *Other matters*

128. RAOD raised a concern about air quality, but this was principally based upon its concerns about increased congestion, which is not justified. In any event, there has been an Air Quality Assessment<sup>89</sup> and a further note<sup>90</sup> produced in response to the residents' concerns for the purposes of the Inquiry demonstrating the absence of significant impact and the way in which air quality would be controlled for residents on the site.
129. For these reasons, whilst recognising that development of this kind which brings much-needed change to an area always gives rise to local concerns from some, those concerns are not well-founded in this case. Even if that were not the case, the planning benefits of the scheme are overwhelming, including the contribution to meeting housing need in the area with a high-density scheme which has development plan policy support, and the bringing into beneficial use a long-redundant and vacant brownfield site within a sustainable location. These benefits significantly and demonstrably outweigh any of the residual concerns now being expressed.

### **Written Representations**

130. The operators of the Strategic Rail Freight Site and bus depot (to the southern side of the railway line)<sup>91</sup> are concerned that the proposed development would potentially prejudice the continued operation of this site. The arrival, unloading

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<sup>85</sup> CD2/10, paras 6.26 - 6.29

<sup>86</sup> CD4/18, paragraphs 6.65 – 6.69

<sup>87</sup> LP Policy 3.12 (CD4/4) and CS Policy DM 15 (CD4/11)

<sup>88</sup> CD2/11, paragraphs 3.1 – 3.6. The tenure split would be some 62.4%:37.6% affordable rent to shared ownership on an accommodation unit basis.

<sup>89</sup> CD2/16

<sup>90</sup> Doc 19

<sup>91</sup> The Day Group, London Concrete Ltd and London United Busways Ltd

and departure of trains, as well as activity in the open yard, as would be expected in an industrial site of this nature, give rise to some degree of noise and potential disturbance. The bus depot provides a key strategic function, operating seven days per week and predominantly in the night-time, when vehicle maintenance is scheduled.

131. The proposal to have residential blocks along the southern boundary of the appeal site, with domestic courtyards and amenity spaces and potentially windows and balconies facing the railway lines, could prejudice continued operations because of disturbance concerns. The operators considered the proposal should have been refused on the basis of conflict with CS Policy T1 (e)<sup>92</sup>. Appropriate protection to the commercial site should be provided and the appeal dismissed.
132. The operators had previously suggested, and had agreed with the Council, that in the event of permission being granted conditions should be imposed. These would form an absolute minimum as to what would be required to safeguard continued operation.
133. The following is the gist of the other written representations submitted in response to the appeal, most of which reiterate points made above<sup>93</sup>:
- the road network is already overloaded and additional traffic will be a burden on existing businesses;
  - there is already inadequate parking in the area and this would be exacerbated by additional parking from the proposal, which in itself would be inadequate. There would be pressure on parking spaces within Hook Rise South;
  - there is concern as to how the proposal would impact on general infrastructure facilities;
  - air pollution would increase in an area where it exceeds permitted limits<sup>94</sup>. Would it be correct to residentially develop this site when it is known there are pollution issues and without information as to how this issue would be mitigated?;
  - the high density of housing would be inappropriate for this suburban location, there would be excessive massing and the proposal would detrimentally affect the environment, contrary to CS policy; and
  - the proposal should not rely on Crossrail for support given that if this comes to fruition it would not be until about 2033.

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<sup>92</sup> This requires that any residential development on the appeal site should be planned, laid out and designed to take into account surrounding land uses and should not prejudice the existing or permitted use and operation of the Aggregates Depot which comprises a Strategic Rail Freight Site.

<sup>93</sup> Doc 15

<sup>94</sup> See CD2/16, Doc 8 paragraphs 168-173, and Doc 18

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## Conditions and S106 Obligations

134. In its revised Statement of Case<sup>95</sup> the Council set out the list of conditions it considered should be imposed if permission was to be granted. This list of conditions formed the basis of an Inquiry session at which these were discussed. Following this, and discussion between the Council and the appellant outside of the Inquiry, a revised list of conditions was submitted contained within the signed SoCG<sup>96</sup>.
135. Whilst the wording of the conditions was agreed, it was made clear that the appellant didn't accept the necessity for two conditions. These relate respectively to the provision of a minimum of 30% of the housing on the site being units of three bedrooms or more and that no building or structure should exceed 11 storeys in height.
136. The conditions, whose wording I have amended where necessary for clarity and consistency, together with the suggested reasons for their imposition are set out in Schedules 1 and 2 to this report (those respectively agreed and not agreed between the Council and appellant).
137. I set out my views on all the suggested conditions, together with what I consider to be an additional necessary condition, which is included in Schedule 3, in the Conclusions section of this report.
138. The appellant has also submitted a S106 UU<sup>97</sup>, together with a summary of its principal provisions<sup>98</sup>. In the event of planning permission being granted, this provides for various financial contributions and other commitments. These include:
- the phased payment of a sustainable travel contribution of £1,107,346 towards the extension of the No. 281 bus route, the installation or relocation of bus service infrastructure and the provision of additional No. 281 services during peak hours;
  - a contribution towards the monitoring of a Travel Plan;
  - a contribution of up to £1,855,263 towards strategic roundabout improvement works and with commitments to secure the undertaking of these works;
  - the provision of highway works directly connected with the proposal;
  - a contribution for parking monitoring;
  - the operation of a car club;
  - provision of cycle parking;
  - construction and marketing of a doctors' surgery;
  - construction of a day nursery; and

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<sup>95</sup> Doc 8

<sup>96</sup> Doc 24

<sup>97</sup> Executed version Doc 26

<sup>98</sup> Doc 27



- the phased provision of 93 affordable housing units, together with commitments to provide viability reassessments at specific points which could result in the provision of additional affordable units or an additional financial contribution towards affordable provision elsewhere in the Borough.

139. Discussion was ongoing outside of the Inquiry between the Council and the appellant as to detail of the obligations to be contained within the UU. Concerns have been raised on behalf of the Council about various elements of the UU<sup>99</sup>, with its suggested drafting revisions contained within a comparative version of the UU<sup>100</sup>. These include those relating to: the viability review mechanism and associated definitions; the provision of the community facilities of the doctors' surgery and day nursery; the 'owner margin percentage' definition; conditionality; enforceability; repayment of contribution; transport; parking monitoring; affordable housing provision and title.

140. My views and those of the Council on the S106 obligations are also set out in the Conclusions section of this report.

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<sup>99</sup> Doc 28

<sup>100</sup> Doc 31

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## Conclusions

141. The references in square brackets [ ] refer to earlier paragraph numbers in the report of relevance to these conclusions.
142. The conclusions are structured around the two main issues identified at the Inquiry and set out in paragraph 36 of this report. They then consider proposed conditions and the appellant's proffered S106 Unilateral Undertaking (UU). The conclusions should be seen in the context of the Council's agreed position in not defending its reasons for refusal of the appeal application and acceptance that planning permission should be granted, subject to suitable conditions and S106 obligations, though also in light of the concerns expressed by a number of third parties regarding the proposed development. [37]
143. The proposals should also be viewed against the general acceptance that the long-vacant brownfield site should be redeveloped and that this should be primarily for residential purposes for which there is development plan (the London Plan (LP) and the Council's Core Strategy (CS)) and other policy backing. This includes the site being within one of the Council's three Key Areas of Change, it being identified in the CS as a gateway located within both a designated Housing Opportunity Area and being in a development area where there is potential to provide significant new housing plus community uses. It is also in an Opportunity Area within the Mayor of London's 'City in the West' document. [67 -71, 94]

### *Main issues*

#### ***1) The impact of the proposal on the appearance and character of the area, including the mix of housing provision.***

144. The application is in outline with all matters other than means of access reserved for subsequent consideration. Therefore, details of layout, scale, appearance and landscaping are not for consideration at this stage. Nonetheless, a considerable amount of detail was provided during the Council's consideration of the application in the form of two differing illustrative approaches as to how development could be accommodated (the ColladoCollins and the JTP schemes). [77, 78, 86]
145. Both of the illustrative schemes provide logical and appropriate means of providing for principally what would be a housing redevelopment scheme, albeit with differing scales of development. The basic form of development, responding to the constraints of Hook Rise South and the A3 to the north, and the presence of a railway line and station immediately to the south, has found favour with the Greater London Authority, a South East Design Panel and with Council officers in making favourable recommendations on the application. It would provide an appropriate counterpoint to development within the district centre to the opposite side of the Tolworth Interchange, which is dominated in townscape terms by the multi-storey Tolworth Tower. Proposed condition No.4<sup>101</sup> would require the agreement of a Master Plan for the site with which reserved matters applications should conform, thereby providing the Council with control over the development parameters. [41, 53, 55, 120, 121]

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<sup>101</sup> See Schedule 1

146. The application is, however, specific in terms of the number of residential units to be provided - 705 - and this translates to a density of some 160 dwellings per hectare. The actual density calculation has been queried by Residents Against Over-Development (RAOD) based on the measurement of the appeal site area. However, I do not consider there are substantive grounds to query this, the site area having been checked and verified by both the appellant and the Council. [40, 87, 116]
147. RAOD and others have criticised the density that would result, suggesting this should be lower, with the site therefore yielding fewer units, and noting that the Tolworth Regeneration Strategy suggests a capacity of up to 400 dwellings. It has also been questioned as to whether this should be classed as an urban or suburban site in terms of what would be an appropriate density. [39, 41, 49, 54, 57, 87, 116]
148. However, given the site's location immediately next to the Tolworth railway station, adjacent to the district centre, and effectively being an 'island' site constrained by two principal roads and a railway line, the level of density proposed would be appropriate. Despite its proximity to areas of suburban housing, the site is more readily characterised by its location and immediate surroundings as of an urban character and one capable of successfully accommodating the proposed housing density. [39, 116]
149. Indeed, the GLA considers that the site is capable of accepting an even greater level of development given its sustainable location, and its PTAL score of 2/3. The GLA's view prompted the appellant to submit a second application for 950 dwellings on the site, an application which remained undetermined by the Council at the time of the Inquiry. This underlines the acceptability of the appeal scheme with its proposed lower density. Furthermore, this is especially so when it has been demonstrated through two illustrative schemes that the 705 unit quantum of development is capable of being appropriately provided, falling as it would within the relevant density range of the London Plan for such an area. [116-119]
150. In any event, as the London Plan notes, its density matrix should not be applied mechanistically. It is but one element in the overall goal of optimising housing development potential and where factors such as local context and transport capacity are important. The Council now accepts that the proposed quantum of housing, with the implied density of development, is suitable for the site. [115, 117]
151. The appropriateness of the density would be further underlined should the PTAL rating of the site increase as a result of Crossrail 2. However, whilst the Crossrail 2 project appears to have support, it is at a very early stage in its possible realisation and if it were to come to fruition this would be unlikely to be until the early 2030s. As such, the weight to be accorded to this possibility of contributing to the upgrade in public transport accessibility of the site should be very limited. [59, 116]
152. The ColladoCollins illustrative scheme suggested development of up to 18 storeys in height, concentrated towards the north-eastern end of the site close to the railway station, whereas the JTP scheme envisages development with heights not exceeding 10 storeys. The Council has suggested the imposition of a condition limiting any development to no more than 11 storeys. In considering the proposal on the basis of the ColladoCollins scheme, the Council's officers

indicated that, in terms of layout and height, development would not adversely affect the character of the area or residential amenity when considered against CS policies. Against this background the Council has not advanced any cogent evidence to suggest why such a height-limiting condition is required. [135]

153. As an outline application, with scale, design and layout reserved, there is force in the appellant's argument that such a condition fails the Framework test of necessity. In the event of outline permission being granted, the Council would be in a position to fully judge proposals that came forward under reserved matters. This would include the acceptability or otherwise of development in terms of its scale and height in relation to its surroundings. In consequence, such a condition would impose an artificial constraint without adequate justification. [122, 123]
154. The Council has sought the imposition of a condition requiring that 30% of dwellings on the site should be of three bedrooms or more. This would be in line with CS Policy DM 13. However, this policy contains the caveat that a 30% minimum should be provided unless it can be robustly demonstrated that such provision would be unviable. [135]
155. The appellant carried out a viability assessment for the site and this indicated the delivery of a scheme based on almost 20% of housing units as three-bedroomed or more. The Council has accepted this assessment after it was independently tested by its own consultants. Whilst the Council (and some objectors) might have aspirations to secure a greater proportion of larger units, this has to be tempered by what could be realistically provided when assessed against viability. In accepting the viability assessment which delivers a yield of some 20% of three-bedroomed units, and having provided no evidence to contradict this, a condition requiring the provision of a minimum of 30% such housing would be unrealistic and unreasonable. [124-126]
156. Against a background of a significant need to increase the provision of affordable housing to meet housing needs, CS Policy DM 15 and LP Policy 3.12 both expect the maximum reasonable amount of affordable housing to be provided, subject to viability considerations. The level of affordable housing to be provided within the scheme would amount to 13.2% (93 units), based on the independent testing of the viability of the scheme, which has been agreed with the Council. Whilst this level falls well below the aspirational target of 50% provision on larger sites, there has been no evidence to contradict this proposed quantum of provision. This figure could reduce, however, if there was to be a financial contribution to strategic highway improvements, discussed below. In terms of delivery of the affordable housing element, this is covered in the appellant's S106 UU on which I conclude below in considering conditions and the proffered obligations. [127]

***2) The effect on the local highway network with particular reference to the free flow of traffic and parking***

157. The Tolworth Interchange junction of the A3 and A240 is part of the strategic road network which is subject to congestion at peak hours and in respect of which development on the appeal site would add traffic. The development's impact on this and the surrounding highway network has been closely scrutinised with detailed modelling to predict impact, undertaken both on behalf of the appellant and by TfL. [46, 97-100, 132]

158. Mitigation measures for the impact of traffic generated by the development are proposed to the Tolworth Roundabout. These would be secured through the appellant's S106 UU. On the basis of the modelling and the provision of the mitigation, which would include alterations to kerbing, white lining and signage, both TfL and the Council's highway officers have agreed that the development, together with other consented proposals in the vicinity, would have acceptable impacts in transport terms. Indeed, for some bus services the proposed measures could result in marginal improvements to journey times. There is no substantive evidence to contradict the detailed technical analysis that has been produced. [46, 81, 99, 100, 102, 113]
159. However, TfL has been investigating future strategic highway intervention proposals for the Tolworth Interchange to relieve congestion and improve its operation. It has modelled impacts of the appeal proposal in combination with the Lidl office scheme, which the Council has resolved to approve subject to the conclusion of a S106 agreement. Results suggest that the development of a strategic highways solution would be necessary to offset unacceptable journey times and queue lengths arising from the two schemes in combination. One option would be the addition of a left-turn lane on the A240 northbound approach to the roundabout. TfL considers this would adequately mitigate the combined impact and in respect of which it would require a financial contribution from both schemes. [103]
160. Given that the Lidl scheme does not yet have planning permission, since there has been no concluded S106 agreement, and bearing in mind that the impact of the appeal proposal on its own would not require the larger strategic intervention, the necessity for such a contribution is questioned by the appellant. It has nonetheless included a commitment to the payment of a contribution to such strategic works within its S106 UU should this be considered necessary. This is considered further below in relation to the operation of the UU. [103, 105]
161. Residents' concerns have been raised about impact on conditions within Hook Rise South onto which the appeal site would have access. Part of this road would be incorporated within the appeal site so that the carriageway width clear of on-street parking would be increased, together with the provision of a shared pedestrian/cycleway. These measures would be likely to improve rather than exacerbate current conditions. [44, 106, 107]
162. The suggested level of parking provision within the appeal site would be at a ratio of 0.51 spaces per dwelling (356 spaces, with some further limited commercial parking space and 25 off-site spaces within Hook Rise South). This level of provision has been agreed with both TfL and the Council. It is based on a range of factors including the target demographic for the development, proximity to and improvements in public transport, and measures to be incorporated within a proposed workplace and residential travel plan. The suggested provision would meet standards set out in the London Plan, which specify maximum levels. The level of provision would be consistent with sustainable transport policy as set out in the Framework. However, RAOD and others have voiced concern that there would be a paucity of spaces and this would be likely to result in additional pressure in nearby residential streets where parking is already at a premium. [42-45, 62, 65, 108, 110, 111]
163. This issue is a delicate balance, on the one hand ensuring sufficiency of provision to cater for the likely residential needs of occupants of the proposed

development whilst, on the other, promoting modal shift and not encouraging car use/ownership where alternative, more sustainable, transport options exist.

164. In addition to measures aimed at encouraging the use of more sustainable forms of transport and discouraging the use of the private car, the appellant proposes the monitoring of on-street parking demand in surrounding streets. This would be secured through the S106 UU. The UU would also seek to control parking use by residents of any controlled parking zone within surrounding streets which the Council may see fit to introduce. [112]
165. The local concerns expressed are understandable. However, the nearby residential streets on which concern has focussed - those within the Sunray estate to the north-east and the area to the north-west - are separated from the appeal site by busy principal roads. This, together with distance and current levels of parking, would in my view act as deterrents for off-site car parking use. Parking provision would in any event be a matter for detailed consideration at the reserved matters stage. As such, the parking provision associated with the proposal at the suggested levels would not be an unacceptable drawback of the scheme. [44, 56]

### ***Other matters***

166. I have noted the concerns of operators of the Strategic Rail Freight Site, to the southern side of the railway line, that residential development could pose a constraint because of potential complaints of disturbance. However, proposed conditions 18 and 19 within Schedule 1 require the agreement of a mitigation scheme and appropriate acoustic insulation for the proposed development. These conditions are substantially the same as those agreed between the operators and the Council as a means of providing protection for residential amenity. Together with detailed design (which is a reserved matter) these should be sufficient to safeguard amenity and prevent complaint that might prejudice continued commercial operations. [130, 131]
167. The appellant's air quality assessment indicates that future residents' exposure to concentrations of particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) would be well below legislative limits. There could be some exceedance of annual concentrations of nitrogen dioxide above national air quality objectives for some of the residential properties that would face the A3. However, appropriate and effective mitigation could be achieved through the provision of mechanical ventilation systems to supply clean air, secured by condition. [47, 54, 65, 128, 133]
168. The proposal would result in demand for additional school places and for off-site leisure facilities. The development would generate a Borough Community Infrastructure Levy charge which would be used for appropriate provision. There would be additional demand on existing GP services within the area and, to help offset this, a doctors' surgery is proposed within the development. Its provision is subject to the proffered S106 UU. [64, 133]

### ***Conditions and the S106 UU***

#### ***Conditions***

169. I have considered the conditions agreed between the appellant and the Council, as set out in Schedule 1, in light of guidance within paragraph 206 of the Framework. All, save for Condition No. 28, are reasonable and necessary to make

the development acceptable. As to condition No. 28, I understand that this has been suggested to ensure acceptable air quality standards for those residential units that may be sited close to the A3. Nonetheless, whilst its objective is well-founded, as worded, the condition is imprecise. It is also unnecessary since its intent is adequately covered by proposed condition No. 26.

170. I have already concluded above that neither of the conditions in Schedule 2 (height limitation and percentage of three-bedroomed units) is necessary or reasonable. It is clear that a workplace and residential travel plan is intended for the development to promote the use of sustainable modes of transport with less reliance on the private car. The S106 UU includes a travel plan monitoring contribution but neither this nor the existing suggested conditions secure the provision, agreement and implementation of a travel plan itself. I therefore consider that if permission is to be granted a condition along the lines of that within Schedule 3 would be necessary.

### ***Section 106 UU***

171. The S106 UU has been considered in light of paragraph 204 of the Framework and in the context of the concerns expressed on its drafting on behalf of the Council. I consider the specific concerns in turn.

#### *a) Viability review mechanism and associated definitions*

172. The proposed development would be likely to take place over a number of years and therefore the financial background could change. The UU contains a mechanism for reviewing viability at differing stages in terms of implications for the quantum of affordable housing that could be provided.
173. The Council does not agree that in respect of the 'Additional Affordable Housing Amount' any surplus provided in any viability reassessment should be divided equally between a contribution to the Council and the owner. Its position is that once the 'Owner Margin Percentage' has been achieved, any additional surplus should go towards affordable housing provision up to the Council's policy cap of 50% affordable housing.
174. If any profit over 20% (the 'Owner Margin Percentage') was to go solely to the Council there would be an incentive for a developer to seek to limit the profit to exactly 20% as they would have nothing to gain until the additional profit goes over the contribution cap whereas, if the extra profit is split, there is no such incentive. The approach set out in the UU does not in my view seem unreasonable.
175. In respect of the 'Additional Affordable Housing Contribution' definition, the appellant proposes a formula for its calculation although the Council indicates that this has not been agreed with it; nor has the formula been agreed between the appellant's and the Council's viability consultants. Having regard to 'Viability Reassessment', the Council notes that negotiations were still ongoing and that in seeking to unilaterally specify a benchmark land value<sup>102</sup> this would undermine

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<sup>102</sup> Within the executed UU the benchmark land value is £18 million (Doc 26) whereas in an earlier draft on which the Council commented this is £20 million (Doc 31). The £18 million figure is referred to within the appellant's summary of the UU (Doc 27).

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future viability reappraisals and the delivery of further affordable housing on the site.

176. As an alternative to the specification of a 'benchmark land value' figure, the Council suggests wording that such a figure should be agreed between it and the owner before the commencement of development. It is unclear whether the benchmark land value figure as contained within the executed UU is one that has now been agreed between the appellant and the Council. I consider it important that there are measures which would ensure that viability reappraisals can be undertaken on the basis of agreed parameters to ensure an acceptable provision of affordable housing.

*b) Schedule 1, Part 5 Part B*

177. No phasing plan for the development has been agreed; suggested condition No. 4 requires the agreement of a Master Plan which should include a Phasing Plan. In paragraph 21 of Part B, reference is made to the submission of a Viability Reassessment for the second and penultimate fifth phases of the development. However, if there were four or fewer phases there would be no fifth phase so it would not be clear when the second appraisal would take place. If there were to be seven or more phases there would be a similar problem. This could lead to the viability review process failing where six phases are not used. As such, I consider there should be no reference to a fifth phase.

178. This schedule also imposes requirements on the Council and it is not a party to the Undertaking so those elements would not be effective. However, this would not make the UU unenforceable as the Council would have the choice of taking the proposed actions in order that the viability reassessment process continued.

179. As the S106 UU is currently drafted on this point, I consider there can be no certainty that all the obligations and the proposed mitigation would be delivered. This is especially important in relation to the provision of the affordable housing element particularly if the quantum was to be reduced because of the requirement to contribute to strategic highways improvements (discussed below).

*c) Community facilities*

180. There is a discrepancy between a singular doctor's surgery within the definitions and a plural doctors' surgery with Part 3 of Schedule 1. The Council sees the correct provision as the latter. Whilst the discrepancy is clearly a drafting error, this should not pose an insuperable objection since details of the surgery would be subject to approval at the reserved matters stage and so the Council would have control over this issue then.

181. I do not consider the Council's concerns as to lack of proper scrutiny of any marketing exercise for the doctors' surgery to be a significant issue. The UU contains a requirement in Part 3 for reasonable endeavours to be used in the marketing, with reports being provided to the Council every six months. The Council would have the opportunity of challenging what it considered to be inadequate marketing during an 18-month period following the occupation of the final dwelling in the first phase of the development. This should provide adequate assurance that the community facilities would be provided.



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d) *'Owner Margin Percentage' definition*

182. Whether the definition is set as a minimum 20% or, as the Council suggests, a maximum 20%, this has no effect in terms of working out any 'Additional Affordable Housing Amount' since this latter definition is clear in referring to 'the percentage return which is available in excess of the Owner Margin Percentage'. This would therefore be anything over a 20% profit.

e) *Conditionality*

183. I do not share the Council's view that there is uncertainty and ambiguity in the inclusion of clauses 4.2.1 to 4.2.3, relating to the Secretary of State's views on the obligations or replacement by condition, the likes of which are frequently adopted.

184. Clause 4.3 refers to the Strategic Roundabout Works Contribution. This is the sum which would be the applicant's share of the costs of the highway improvement works at the Tolworth Roundabout to improve its operational performance by increasing its capacity. These works are considered necessary as a result of the combined impacts of the appeal proposal and the Lidl office development. The Lidl development does not yet have planning permission (pending the conclusion of a S106 agreement).

185. Nonetheless, the appellant recognises that if permission is eventually granted the cumulative impact would justify the payment of the suggested contribution towards the Strategic Roundabout Works. I concur that such an obligation in these circumstances would meet the criteria of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests set out in Framework paragraph 204. However, clause 4.3 provides that in the event of the Strategic Roundabout Works Contribution being necessary this would reduce the quantum of affordable housing to be provided from 93 to 78 units. This is on the basis that the need to provide the Strategic Roundabout Works Contribution would impact on the viability of the development if the previously agreed amount of affordable housing was also to be provided and which had been agreed on the basis of agreed viability assessment<sup>103</sup>.

186. The Council considers clause 4.3 to be unacceptable as there has been no evidential demonstration that the costs of the 'Strategic Roundabout Works' equate to a reduction in delivery of 15 affordable housing units. I agree that there has been no demonstration to justify this particular reduction and therefore whether, in light of Framework paragraphs 176 and 205, the scale of this particular obligation would be appropriate. Furthermore, whilst the drafting is not fully clear, it would appear that clause 4.3 sub-clauses (a) and (b) would potentially allow the affordable housing contribution to be further reduced below the 78 units. This would be in a situation where the combined affordable housing and the roundabout contributions exceed the original amount for the provision of 93 units.

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<sup>103</sup> The 'Strategic Roundabout Works' is a factor that post-dates the viability assessment on which the quantum of affordable housing has been agreed with the Council and which did not account for the payment of such a contribution.

187. Clause 4.4 provides that there would be no obligation to pay the Strategic Roundabout Works Contribution in the event of the failure to issue a planning permission for the Lidl proposal, or there is a failure to serve notice of the commencement of the 'Strategic Roundabout Works'. The Council considers this to be unacceptable in principle but, in the event that the Secretary of State did consider the principle of the clause to be acceptable, the date for the issuing of the Lidl planning permission should be extended. This is in light of the Council noting that there is the possibility of a judicial challenge to what would be the permission.
188. The Council has not explained why in principle clause 4.4 is unacceptable, but I do agree that the stated timescale of 31 December 2017 is unreasonable for the issuing of the Lidl planning permission. This is in the circumstances of lack of information on the likely progress of the conclusion of any S106 obligations that would trigger the issuing of a permission and the stated possibility of a judicial challenge. The current trigger date could result in the undermining of the payment of the 'Strategic Roundabout Works Contribution' and therefore the implementation of what would be necessary and reasonable mitigation for the combined impacts of the proposed development and the Lidl scheme. However, although the Council suggests the UU could be amended, it would not be within the Secretary of State's power to make such a variation and only the appellant could do this.
189. I further note that clause 4.4.2 refers to the Strategic Roundabout Works Commencement Notice. This is said to be defined within Schedule 1 to the UU. However, there is in fact no such definition contained within that schedule. Given that the payment of the Strategic Roundabout Works Contribution is conditional upon such a notice being served, the absence of the definition could create ambiguity and make such a contribution less secure.
190. I therefore consider that in terms of conditionality, for the reasons given, the UU as drafted would not be acceptable in adequately securing obligations in relation to affordable housing and payment of a Strategic Roundabout Works Contribution.
- f) Enforceability*
191. Clause 6.2 seeks to exclude liability in respect of all obligations for owners/occupiers, which the Council considers would destroy the effectiveness of the restrictive obligations. The Council also considers the occupiers of affordable housing units need to be bound by the affordable housing requirements.
192. However, owners and occupiers of any dwelling (including affordable housing units) would be bound as the exclusion of liability in clause 6.2.2 is subject to the requirement in Schedule 1 Part A of Part 5, paragraph 20 that the affordable housing must be kept as housing. There would therefore be no necessity for the Council's suggested modifications as there would be adequate enforceability.
- g) Repayment of contribution*
193. Clause 8 of the UU effectively makes contributions in the UU conditional upon the Council entering into covenants described within the clause relating to the clawback of unexpended or uncommitted contributions. The UU also seeks to

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impose conditionality that there would be no liability for any obligations unless such a covenant is provided.

194. Whilst 'clawback' clauses are not unreasonable, as made clear in the PPG, the Council has not provided specific reason why it would not be prepared to provide clawback provisions in respect of financial covenants. In any event, the UU cannot impose covenants on the Council. However, without a covenant being provided, contributions would not be paid. On this basis there is no guarantee that any mitigation within the UU is secure.

*h) Transport*

195. In Schedule 1, Part 2 there is a clear covenant to complete the 'Highway Works' prior to first occupation. However, no date has been specified as to when the provision of cycle parking stands at the railway station would occur, only that it would be "following first Occupation of the first Phase of development". This could be effectively many years after first occupation and therefore I consider this casts doubt as to the security of its provision.

*i) Affordable housing*

196. The Council suggests that there needs to be specificity in relation to rent levels, household earnings limitations in respect of the intermediate units to be provided, and affordable housing management strategies. These were set out in its comments on the appellant's draft S106 UU but have not been included in the executed version, with no explanation by the appellant as to why these are considered to be unnecessary. I consider that to provide clarity, certainty and security of provision it would be important for these matters to be included, particularly as the provision of affordable housing is a clear priority and policy imperative, as set out in CS DM 15.

*j) Title*

197. Not all the land within the application boundary is within the full ownership of MB Tolworth Limited. Some titles are in the ownership of TfL for which there is no confirmation of its agreement to the terms of the UU. Part of the site on which it would be intended to locate the proposed bus interchange is in the ownership of a private individual and he has not been included as a party to the UU. The Council also notes that there is a charge in favour of the Secretary of State for Defence and whilst an application has been made for removal of this restriction there is no confirmation that this has been agreed. As any eventual planning permission would not be personal, it should be ensured that all parties who could implement the permission are also bound by the UU which, as drafted, they would not be. This would be important to ensure the enforceability of the obligations.

*Conclusion on the S106 UU*

198. As drafted, I consider there to be deficiencies within the UU that, were planning permission to be granted and the UU to become effective, would present a risk that various obligations would not be delivered. This would be the case particularly in relation to affordable housing provision and the contribution to the strategic roundabout works. These obligations are necessary to make the development acceptable. Without the obligations secured the proposal would conflict with the thrust of CS Policies DM 9 and DM 15 and LP Policy 3.12.

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**Overall conclusion and the planning balance**

199. There is development plan accord for the principle of the proposed development which would contribute to meeting housing needs whilst bringing into beneficial use a long-vacant brownfield site. If mitigation is adequately secured the proposal would represent a sustainable form of development which would be compliant with the intent of the Framework.
200. The Council does not oppose the proposal subject to the imposition of appropriate conditions and other mitigation secured through S106 obligations. The suite of suggested conditions which I consider to be necessary and relevant provide for mitigation and control of the details of development that would be subsequently submitted as reserved matters in the event that outline permission is granted. These are conditions 1 to 27 in Schedule 1 and the additional condition in Schedule 3 to this report.
201. The S106 UU proffered by the appellant contains obligations that seek to provide additional necessary mitigation for the impacts of the proposed development. However, for the reasons set out, I consider there are deficiencies within the UU as drafted, particularly in relation to the securing of affordable housing and the contribution to strategic roundabout works, and the guaranteeing of provision of the other necessary obligations.
202. These obligations are directly related to the development and are necessary to make it acceptable in planning terms. Without them being sufficiently guaranteed through an appropriate UU, I consider the development as a whole would be unacceptable and would not comply with the thrust of development plan policy and the Framework. Nonetheless, I acknowledge that the deficiencies identified could be resolved by the submission of an amended S106 UU.

**Recommendation**

203. For the above reasons I recommend that the appeal be dismissed.
204. In the event that the Secretary of State disagrees with my recommendation, I recognise that he may decide to exercise his discretion and invite the appellant to review the Unilateral Undertaking in light of my findings.
205. In the event that the Secretary of State is minded to grant permission, conditions 1 to 27 in Schedule 1 and the condition in Schedule 3 are the ones I recommend should be imposed.

*P J Asquith*

INSPECTOR

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## SCHEDULE 1

### Conditions agreed between the Council and the appellant

1. The following matters (the 'Reserved Matters') shall be reserved for the approval of the local planning authority in accordance with the provisions of Article 5 (1) of the Town and Country Planning (General Management Procedure) Order 2015 (or any Order revoking or re-enacting this Order):

- (a) layout
- (b) scale
- (c) appearance
- (d) landscaping

*Reason: As the application is submitted in outline form only and in order that the local planning authority may be satisfied as to the details of the proposal.*

2. Applications for approval of the Reserved Matters must be made within two years from the date of this decision. The development to which the permission relates must begin no later than whichever is the later of the following dates: -

- i) The expiration of three years from the date of this decision; or
- ii) The expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

*Reason: In order to comply with Section 92 of the Town and Country Planning Act 1990 (as amended)*

3. The development hereby permitted shall be carried out in accordance with the following approved plans:

00-100 Red line boundary	dated 30/03/2015
10-001 Existing topographical survey	dated 30/03/2015
70006141-SK-002-1 Proposed Highway Amendments	dated 12/03/2015

*Reason: For the avoidance of doubt and in the interests of proper planning*

4. Before the submission of any Reserved Matters application a Master Plan for the entire development site shall be submitted to and approved in writing by the local planning authority. Once approved the subsequent Reserved Matters applications shall be submitted in accordance with these details.

The Master Plan shall include the following information:

- (a) A Phasing Plan;
- (b) Design Code for the development including facing materials, window detailing, location of front doors and entrances;
- (c) A site-wide landscaping plan and strategy for both private and communal areas including areas of children's play;

- (d) A car parking strategy for within the site; and
- (e) An external lighting strategy.

*Reason: As the application is submitted in outline form only and in order that the local planning authority may be satisfied as to the details of the proposal.*

**5.** Prior to the first occupation of any residential unit details of how the residential units comply with Part M4(2) of the Building Regulations shall be submitted to and approved in writing by the local planning authority.

*Reason: To ensure that the development provides a range of homes to meet different needs and to ensure compliance with Policies 3.5 and 3.8 of the London Plan, March 2016 and Housing Standards Minor Alterations to the London Plan, December 2015.*

**6.** Prior to development commencing on site details of the location of the 'wheelchair user dwellings' which meet requirement M4(3) of Part M of the Building Regulations shall be submitted to and approved in writing by the local planning authority. The number of wheelchair user dwellings shall total at least 10% of the total number of residential units hereby approved. The development shall then be carried out in accordance with the approved details.

*Reason: To ensure that the development provides a range of homes to meet different needs and to ensure compliance with Policies 3.5 and 3.8 of the London Plan, March 2016 and Housing Standards Minor Alterations to the London Plan, December 2015.*

**7.** The site and building works required to implement the development shall be only carried out between the hours of 08.00 and 18.00 Mondays to Fridays and between 08.00 and 13.00 on Saturdays and not at all on Bank Holidays and Sundays.

*Reason: To safeguard the amenities of the adjoining residential occupiers in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**8.** Prior to commencement of any development on site, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the details and measures approved as part of the Construction Management Plan, which shall be adhered to throughout the entire construction period.

The Construction Management Plan should include the following:

- a) Statement on how the proposed development will be built, with method statements to outline how major elements of the works would be undertaken;
- b) Proposals for loading/unloading materials and site storage;
- c) The routes to and from the site for vehicles moving materials;
- d) Routes to and from the site for deliveries/collections and route signage for works traffic;
- e) Protocol for managing deliveries to the site;
- f) Protocol for managing vehicles that need to wait for access to the site;
- g) Whether any reversing manoeuvres would be required onto or off the public highway into the site, and whether a banksman will be provided;

- h) Temporary site access;
- i) Site access warning signs in adjacent roads;
- j) Whether it is anticipated that statutory undertaker connections will be required into the site;
- k) Storage of plant, materials and operatives vehicles;
- l) Measures for the suppression of noise and abatement of other nuisance arising from development works;
- m) Location of all ancillary site buildings;
- n) Means of enclosure of the site;
- o) Wheel washing equipment;
- p) The parking of vehicles for site operatives and visitors;
- q) Dust Management Plan; and
- r) Code of Construction Practice (which shall include details of contractor liaison for the local community).

*Reason: In order to safeguard the amenities of the surrounding residential occupiers and to safeguard highway safety and the free flow of traffic in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**9.** Each Reserved Matters application for a relevant phase shall be accompanied by a Car Parking Plan which details the number and location of spaces to serve that part of the development to which the Reserved Matters application relates. The total number of residential car parking spaces across the whole site shall not exceed 356 spaces.

The plans shall also identify the location of the spaces with electric charging points in accordance with the following requirements. The electric charging points shall be located in such a way that they could be accessible by up to four parked cars:

B1 use (Active) 20% of all spaces & additional 10% (Passive);  
Retail use (Active) 10% of all spaces & additional 10% (Passive); and  
Residential (Active 40% of all spaces).

All relevant spaces shall be laid out in accordance with the details prior to the occupation of the first residential unit to which the Reserved Matters application relates.

*Reason: In order to reserve car parking spaces for the use of residents in accordance with Policies DM 9 (Managing Vehicle Use for New Development) and Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**10.** The approved car parking areas shall be provided with a hard, bound and dust-free surface, adequately drained before the occupation of the first residential dwelling to which the parking areas relate. The respective areas shall be kept free from obstruction at all times, and shall not thereafter be used for any purpose other than those shown on the approved Car Parking Plan.

*Reason: To ensure that the proposed development does not prejudice the free flow of traffic or conditions of general safety on adjoining highways and that adequate parking, servicing and manoeuvring provision is made in accordance with Policies*

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*DM 9 (Managing Vehicle Use for New Development) and Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**11.** Each relevant Reserved Matters application for a residential phase shall include details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved. The approved facilities shall be fully implemented and made available for use prior to the occupation of the relevant residential phase and shall thereafter be retained for use at all times.

*Reason: To ensure the provision of satisfactory cycle storage facilities and in the interests of highway safety in accordance with Policy DM 8 (Sustainable Transport for New Developments) of the Core Strategy adopted April 2012.*

**12.** A Delivery and Service Management Plan for the convenience store shall be submitted to and approved in writing by the local planning authority before the development commences. The development shall be carried out in accordance with the approved details.

*Reason: In order to safeguard the amenities of the surrounding residential occupiers and to safeguard highway safety and the free flow of traffic in accordance with Policies DM 9 (Managing Vehicle Use for New Development) and Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**13.** The levels of buildings, roads, parking areas and pathways within the site shall only be in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority before development is commenced.

*Reason: To ensure that the appearance and functioning of the development is satisfactory and to safeguard the amenities of adjoining occupiers in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012 and to comply with Supplementary Planning Document 'Access for All' (July 2005).*

**14.** The A1, A3, D1 and D2 uses hereby approved shall not be used for the purposes hereby permitted between 00.00 and 07.00 Mondays to Saturdays or before 08.00 or after 23.30 on Sundays or Bank Holidays.

*Reason: To safeguard the amenities of the occupiers of the neighbouring properties in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**15.** Prior to commencement of the development, a detailed Arboricultural Method Statement and Tree Protection Plan shall be submitted to and approved in writing by the local planning authority. This submission shall include:

- (a) A plan to a scale and level of accuracy appropriate to the proposal, that shows the positions, crown spreads and root protection areas (RPA) on land adjacent to the site, in relation to the approved plans;
- (b) A schedule of pre-construction tree works, where appropriate;



- (c) Details and positions of the tree RPAs;
- (d) Details and positions of tree protection barriers and ground protection where appropriate;
- (e) Details and positions of construction exclusion zones;
- (f) Details and positions of the existing and proposed underground service runs, to be routed to avoid RPAs where possible;
- (g) Details and positions of any change in levels or the positions of any excavations within 5m of the RPAs of retained trees;
- (h) Details of any special engineering required to accommodate the protection of retained trees (e.g. in connection with foundations, service installation, bridging water features, surfacing); and
- (i) Details of the working methods to be employed for the installation of drives and paths within the RPA's of retained trees in accordance with the principles of 'No Dig' construction. The details shall be in accordance with British Standard BS 5837:2012 sections 9.3, 9.2, 9, 11.7, 5.2.2 and 10 for requirements (c) to (h) inclusive.

The approved protection scheme shall be implemented prior to commencement of any work on site and maintained until the completion of the development unless agreed in writing by the local planning authority.

*Reason: In the interests of visual amenity and so that the local planning authority shall be satisfied as to the details of the development in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**16.** Within one year of construction of the units for commercial occupation a BREEAM post-construction review shall be carried out and a Final BREEAM Excellent certificate shall be submitted to and approved in writing by the local planning authority. The post-construction review and certificate shall ensure the development has fully complied with the requirements of the BREEAM Excellent standard.

*Reason: In the interests of sustainability and energy conservation as set out in Policies 5.2 (Minimising Carbon Dioxide Emissions) and 5.3 (Sustainable Design & Construction) of the London Plan (2016) and Policy DM 1 (Sustainable Design and Construction Standards) of the Core Strategy adopted April 2012.*

**17.** Within 3 months of first occupation of each phase of development, evidence must be submitted to the local planning authority confirming that the development hereby approved has achieved not less than the CO<sub>2</sub> reductions (ENE1) and internal water usage (WAT1) standards equivalent to Code for Sustainable Homes level 4. Evidence requirements are detailed in the "Schedule of Evidence Required for Post Construction Stage from Ene1 & Wat1 of the Code for Sustainable Homes Technical Guide. Evidence to demonstrate a 35% reduction compared to 2013 part L regulations and internal water usage rates of 105 litres per day must be submitted to and approved in writing by the local planning authority, unless otherwise agreed in writing.

*Reason: In the interests of sustainability and energy conservation in accordance with Policies 5.2 (Minimising Carbon Dioxide Emissions) and 5.3 (Sustainable Design & Construction) of the London Plan (2016) and Policy DM 1 (Sustainable Design and Construction Standards) of the Core Strategy adopted April 2012.*

**18.** Before the development hereby permitted is commenced, a mitigation scheme for protecting the proposed dwellings against noise from the adjacent railway line and the associated commercial activity shall be submitted to and approved in writing by the local planning authority. Any works which form part of the approved scheme shall be completed before any of the dwellings is occupied.

*Reason: In order to safeguard the amenity of the occupiers of the dwellings in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**19.** Before the development is commenced, a scheme shall be submitted to and approved in writing by the local planning authority for the acoustic insulation of the buildings including where necessary the provision of non-openable windows. The approved scheme shall be implemented before the buildings are first occupied and shall thereafter be permanently retained.

*Reason: In order to control the noise emanating therefrom and in the interests of the residential amenity of the area in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**20.** Before any development takes place on site a piling method statement shall be submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement. The piling method statement should detail the type of piling to be undertaken, why this method has been selected, measures to be taken to minimise noise and vibration and a plan showing where the piles are to be installed. Piling shall only be undertaken in accordance with the approved piling method statement.

*Reason: To safeguard the amenities of the occupiers of the neighbouring properties and businesses in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

**21.** No burning of waste shall take place on site during construction of the development.

*Reason: to prevent harm to human health and pollution of the environment.*

**22.** The mitigation measures set out within the approved Flood Risk Assessment shall be implemented before the first occupation of the residential units hereby approved. Prior to the first occupation of any residential unit a maintenance strategy of the entire on-site surface water drainage system which sets out how the system will be managed for the lifetime of the development shall be submitted to and approved in writing by the local planning authority. The approved maintenance strategy shall then be carried out in perpetuity.

*Reason: To ensure that the development continues to provide effective surface water drainage and in accordance with Policy DM 1 of the Core Strategy adopted April 2012.*

**23.** If unexpected contamination is found after development commences, development must be halted on that part of the site until the following reports have been submitted to and approved in writing by the local planning authority:

- (1) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be submitted to and approved in writing by the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority.

The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health;
  - property (existing or proposed);
  - adjoining land;
  - groundwater and surface water; and
  - ecological systems;
- (iii) an appraisal of remedial options, and proposals of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

**(2) Submission of Remediation Scheme**

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and shall be submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

**(3) Implementation of Approved Remediation Scheme**

The approved remediation scheme must be carried out in accordance with its terms, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and shall be submitted to and approved in writing by the local planning authority.

**(4) Reporting of Unexpected Contamination**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of section (1) of this condition, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section (2).

Following completion of measures identified in the approved remediation scheme a verification report must be prepared and shall be submitted to and approved in writing by the local planning authority in accordance with section (3) of this condition.

**(5) Long Term Monitoring and Maintenance**

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation, and the provision of reports on the same must be prepared, and shall be submitted to and approved in writing by the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

*Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.*

**24.** No development shall commence on site until the applicant (or its heirs and successors in title) has secured the implementation of a programme of archaeological evaluation in accordance with a written scheme and a report on that evaluation has been submitted to and approved in writing by the local planning authority. If heritage assets of archaeological interest are identified then a programme of archaeological investigation in accordance with a written scheme of investigation shall be submitted to and approved in writing by the local planning authority. The approved archaeological investigation shall be undertaken prior to development commencing on site.

*Reason: To secure a recording of heritage assets in accordance with Section 12 of the National Planning Policy Framework.*

**25.** Before development commences on site a further reptile study shall be carried out in accordance with the Ecology Statement submitted with the application. The study shall then be submitted to and approved in writing by the local planning authority and any mitigation measures required shall be implemented in accordance with the approved study.

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*Reason: To ensure that protected species are correctly identified and the impacts of development on any identified species mitigated in accordance with Policy DM 6 of the Core Strategy adopted April 2012.*

**26.** Each Reserved Matters application for a residential phase of development shall include an updated air quality assessment or statement to demonstrate compliance with the site-wide air quality assessment submitted with the application. The details submitted for approval must not result in any potentially adverse air quality impacts for future residents. Where mechanical ventilation is proposed to provide dwellings with a clean air supply, evidence shall be provided (using monitoring or dispersion modelling) to demonstrate that the air quality is adequate in the locations where mechanical ventilation inlets will be sited.

*Reason: In the interests of the amenity of future residents and in accordance with Policy DM 10 (Design Requirements for New Developments including House Extension) of the Core Strategy adopted April 2012.*

**27.** Prior to occupation of the proposed development, a revised Air Quality Neutral assessment shall be submitted to and approved in writing by the local authority. The Air Quality Neutral assessment shall determine the relevant transport and building emissions benchmarks for the development, and compare them with the predicted building emissions (based on the final proposed energy plant specifications) and transport emissions (based on the predicted traffic generation of the detailed scheme) to determine whether or not the development is Air Quality Neutral. The assessment shall follow the methodology set out in the Greater London Authority's Sustainable Design and Construction Supplementary Planning Guidance. If the building or transport emissions exceed the relevant benchmarks, then an air quality mitigation strategy shall be prepared, setting out measures to minimise emissions from the development and shall be submitted to and approved in writing by the local planning authority. The strategy shall be implemented as approved.

*Reason: In the interests of the amenity of future residents and in accordance with Policy DM 10 (Design Requirements for New Developments including House Extension) of the Core Strategy adopted April 2012.*

**28.** Any Reserved Matters application along the boundary with the A3 will need to be accompanied by details of mitigation measures, where required, which may include such measures as mechanical ventilation. The units to which these measures relate shall then be constructed in accordance with these details and retained in perpetuity.

*Reason: In the interests of the residential amenities of the area in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

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## SCHEDULE 2

### Conditions disputed between the Council and the appellant

1. The development shall provide a minimum of 30% of the housing units on site as three-bedroomed or more.

*Reason: To ensure a mix of housing and to ensure compliance with Policy DM 13 of the Council's Core Strategy adopted April 2012.*

2. No building or structure on the site shall exceed 11 storeys in height.

*Reason: To ensure that the development is in keeping with the scale and height of that within the surrounding area in accordance with Policy DM 10 (Design Requirements for New Developments including House Extensions) of the Core Strategy adopted April 2012.*

## Schedule 3

### Suggested additional necessary condition

1. Prior to the occupation of any part of the development hereby permitted a Workplace and Residential Travel Plan, which adheres to the principles outlined in the submitted Transport Assessment dated March 2015, shall be submitted to and agreed in writing by the local planning authority. The measures included within the Workplace and Residential Travel Plan shall be implemented as approved.

**APPEARANCES**

## FOR THE APPELLANT

James Strachan QC

instructed by Karen Cooksley, Winkworth  
Sherwood Solicitors

He called:

Marcus Adams

DipArch, MA Urban Design, RIBA

Managing Partner JTP

Dr Chris Miele

IHBC, MRTPI, FRHS

Senior Partner, Montagu Evans

Timothy Gabbitas

BA(Hons), MA, MCIHT, TPP

Technical Director, WSP UK Ltd

Asher Ross

BA(Hons), MA, MRTPI

Planning Director, GL Hearn

## FOR THE COUNCIL

Saira Kabir Sheikh QC

instructed by the South London Legal  
Partnership

## OTHER PERSONS

Paul Durrant

Local resident

Derek Firmin

Local resident

Cllr Richard Hudson

Borough Councillor, Alexandra Ward

Cllr Chris Hayes

Borough Councillor, Alexandra Ward

Sir Ed Davey

Resident of the Borough and former MP

Malcolm Self

on behalf of Residents Against Over-  
Development (RAOD)

Rob Robb

RAOD

Richard Ware

RAOD

Bridget Walker

RAOD

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**DOCUMENTS**

1. Proof of evidence, Marcus Adams
2. Proof of evidence, Chris Miele
3. Summary of proof of evidence, Chris Miele
4. Proof of evidence, Timothy Gabbitas
5. Appendices to proof of evidence, Timothy Gabbitas
6. Proof of evidence, Asher Ross
7. Appendices to proof of evidence, Asher Ross
8. Council's revised Statement of Case
9. Statement by Graham Self
10. Statement by Rob Robb
11. Statement by Richard Ware, with appendices
12. Statement by Bridget Walker
13. Letter from Transport for London, dated 19 April 2017
14. Appeal Supplementary Drawing Information, March 2017
15. Bundle of representations received as a result of the notification of the appeal

*Documents received at the Inquiry*

16. Opening statement on behalf of the appellant
17. Statement, Paul Durrant
18. Statement, Derek Firmin
19. Air Quality Note, April 2017
20. Revised S106 Unilateral Undertaking (unsigned)
21. Documents regarding density calculations from R Ware
22. Closing statement from RAOD
23. Closing statement on behalf of the appellant
24. Signed Statement of Common Ground between the appellant and the Council

*Documents provided after the close of the Inquiry*

25. Council's Community Infrastructure Levy Statement
26. Signed version of the S106 Unilateral Undertaking
27. Explanatory note on the S106 Unilateral Undertaking
28. Letter from Trowers & Hamlins of 5 May 2017 on behalf of the Council commenting on the S106 Unilateral Undertaking
29. Clean copy of the draft S106 Unilateral Undertaking (ref. Tolworth UU –WS comments 2.5.17AM) submitted with the Trowers & Hamlin letter of 5 May 2017
30. Copy of the draft S106 Unilateral Undertaking submitted with the Trowers & Hamlin letter of 5 May 2017 with suggested drafting changes
31. Copy of the draft S106 Unilateral Undertaking submitted with the Trowers and Hamlin letter of 5 May 2017 showing comparative drafting changes between the Council and the appellant.
32. Appellant's comments on the implications of the Supreme Court's judgement on the Suffolk Coastal District Council et al. decision
33. Plan Ref 70006141 SK-002 Rev1, originally missing from plans bundle



**CORE DOCUMENTS****CD1 - APPEAL DOCUMENTS**

<b>CD1/1</b>	Appeal form and supporting documents submitted to the Planning Inspectorate by the appellant on 25 August 2016.
<b>CD1/2</b>	Draft Statement of Common Ground
<b>CD1/3</b>	Correspondence between PINS, Royal Borough of Kingston-upon-Thames (RBK) and the appellant
<b>CD1/4</b>	Correspondence between RBK and the appellant
<b>CD1/5</b>	S106

**CD2 - PLANNING APPLICATION DOCUMENTS**

<b>CD2/1</b>	Planning Application with Drawing Register and Issue Sheet
<b>CD2/2</b>	Existing Plans <ul style="list-style-type: none"> <li>○ 00-100 Red Line Boundary - 1:1250 A3</li> <li>○ 00-103 Site Plan - 1:500 A3</li> <li>○ 10-001 Existing Topographical Survey - 1:1000 A3</li> </ul>
<b>CD2/3</b>	Proposed Plans – As Submitted <ul style="list-style-type: none"> <li>○ 00-001 Proposed Site Plan - 1:000 A3</li> <li>○ 00-002 Proposed Landscape Plan - 1:625 A3</li> <li>○ 00-100 Red Line Boundary A3</li> <li>○ 10-001 Existing Topographical Survey - 1:1000 A3</li> <li>○ 20-099 Proposed Basement - 1:500 A3</li> <li>○ 20-100 Proposed Ground Floor - 1:500 A3</li> <li>○ 20-101 Proposed Level 01 - 1:500 A3</li> <li>○ 20-102 Proposed Level 02 - 1:500 A3</li> <li>○ 20-103 Proposed Level 03 - 1:500 A3</li> <li>○ 20-104 Proposed Level 04 - 1:500 A3</li> <li>○ 20-105 Proposed Level 05 - 1:500 A3</li> <li>○ 20-106 Proposed Level 06 - 1:500 A3</li> <li>○ 20-107 Proposed Level 07 - 1:500 A3</li> <li>○ 20-108 Proposed Level 08 - 1:500 A3</li> <li>○ 20-109 Proposed Level 09 - 1:500 A3</li> <li>○ 20-110 Proposed Level 10 - 1:500 A3</li> <li>○ 20-111 Proposed Level 11 - 1:500 A3</li> <li>○ 20-112 Proposed Level 12 - 1:500 A3</li> <li>○ 20-113 Proposed Level 13 - 1:500 A3</li> </ul>

- 20-114 Proposed Level 14 - 1:500 A3
- 20-115 Proposed Level 15 - 1:500 A3
- 20-116 Proposed Level 16 - 1:500 A3
- 20-117 Proposed Level 17 - 1:500 A3
- 20-118 Proposed Roof Plan - 1:500 A3
- 60-100 Outline – Application Areas - 1:625 A3
- 60-101 Outline – Building Envelopes - 1:625 A3
- 60-102 Outline – Balconies - 1:625 A3
- 60-103 Outline – Maximum Buildings Heights - 1:625 A3
- 60-104 Outline – Frontages - 1:625 A3
- 60-105 Outline – Block Access - 1:625 A3
- 60-106 Outline – Site Access - 1:625 A3
- 60-107 Outline – Vehicular Access - 1:625 A3
- 60-108 Outline – Parking - 1:625 A3
- 60-109 Outline – Amenity & Public Realm - 1:625 A3
- 60-110 Maximum Buildings Heights – Sections SH1 - 1:625 A3
- 60-111 Maximum Buildings Heights – Sections SH2 - 1:625 A3
- 60-112 Maximum Buildings Heights – Sections SH3 - 1:625 A3
- 20-200 Building A - Proposed Ground Floor - 1:100 A3
- 20-201 Building A - Proposed Level 01 - 1:100 A3
- 20-202 Building A - Proposed Level 02 - 1:100 A3
- 20-203 Building A - Proposed Level 03 - 1:100 A3
- 20-204 Building A - Proposed Level 04 - 1:100 A3
- 20-205 Building A - Proposed Level 05 - 1:100 A3
- 20-206 Building A - Proposed Level 06 - 1:100 A3
- 20-207 Building A - Proposed Level 07 - 1:100 A3
- 20-208 Building A - Proposed Level 08 - 1:100 A3
- 20-209 Building A - Proposed Level 09 - 1:100 A3
- 20-210 Building A - Proposed Level 10 - 1:100 A3
- 20-211 Building A - Proposed Roof Plan - 1:100 A3
- 20-300 Building B - Proposed Ground Floor - 1:100 A3
- 20-301 Building B - Proposed Level 01 - 1:100 A3
- 20-302 Building B - Proposed Level 02 - 1:100 A3
- 20-303 Building B - Proposed Level 03 - 1:100 A3
- 20-304 Building B - Proposed Level 04 - 1:100 A3
- 20-305 Building B - Proposed Level 05 - 1:100 A3
- 20-306 Building B - Proposed Roof Plan - 1:100 A3
- 20-400 Building C - Proposed Ground Floor - 1:100 A3

o	20-401 Building C - Proposed Level 01 - 1:100	A3
o	20-402 Building C - Proposed Level 02 - 1:100	A3
o	20-403 Building C - Proposed Level 03 - 1:100	A3
o	20-404 Building C - Proposed Level 04 - 1:100	A3
o	20-405 Building C - Proposed Level 05 - 1:100	A3
o	20-406 Building C - Proposed Level 06 - 1:100	A3
o	20-407 Building C - Proposed Level 07 - 1:100	A3
o	20-408 Building C - Proposed Level 08 - 1:100	A3
o	20-409 Building C - Proposed Level 09 - 1:100	A3
o	20-410 Building C - Proposed Level 10 - 1:100	A3
o	20-411 Building C - Proposed Level 11 - 1:100	A3
o	20-412 Building C - Proposed Level 12 - 1:100	A3
o	20-413 Building C - Proposed Level 13 - 1:100	A3
o	20-414 Building C - Proposed Level 14 - 1:100	A3
o	20-415 Building C - Proposed Level 15 - 1:100	A3
o	20-416 Building C - Proposed Level 16 - 1:100	A3
o	20-417 Building C - Proposed Level 17 - 1:100	A3
o	20-418 Building C - Proposed Roof Plan - 1:100	A3
o	30-200 Building A – Sheet 01 - 1:200	A3
o	30-201 Building A – Sheet 02 - 1:200	A3
o	30-300 Building B – Sheet 01 - 1:200	A3
o	30-301 Building B – Sheet 02 - 1:200	A3
o	30-400 Building C – Sheet 01 - 1:200	A3
o	30-401 Building C – Sheet 02 - 1:200	A3
o	20-600 Terraced Housing 1 – Proposed Ground Floor Second Floor Plan - 1:100	A3
o	20-601 Terraced Housing 1 – Proposed Level 01 - 1:100	A3
o	20-602 Terraced Housing 1 – Proposed Level 02 - 1:100	A3
o	20-603 Terraced Housing 1 – Proposed Roof Plan1:- 100	A3
o	20-605 Terraced Housing 2 – Proposed Ground Floor and Level 01 - 1:100	A3
o	20-606 Terraced Housing 2 – Proposed Level 02 and Roof Plan - 1:100	A3
o	20-610 House Type 01 Layout - 1:200	A3
o	20-611 House Type 02 Layout - 1:200	A3
o	20-700 Bus Shelter 1:200	A3
o	30-600 Terraced Housing – Sheet 01 - 1:200	A3
o	30-601 Terraced Housing – Sheet 02 - 1:200	A3
o	70-101 Typical 1 Bed 2 Person Flats - 1:50	A3
o	70-102 Typical 2 Bed 2 Person Flats - 1:50	A3

	<ul style="list-style-type: none"> <li>○ 70-103 Typical 2 Bed 4 Person Flats - 1:50 A3</li> <li>○ 70-104 Typical 3 Bed 5 Person Flats - 1:50 A3</li> <li>○ 70-105 Typical Wheelchair Flats - 1:50 A3</li> <li>○ 70-106 Typical Lifetime Homes SH1 - 1:50 A3</li> <li>○ 70-107 Typical Lifetime Homes SH2 - 1:50 A3</li> <li>○ 70-108 Typical Lifetime Homes House - 1:50 A3</li> </ul>
<b>CD2/4</b>	<p>Amended Plans (Post Submission) – June 2015</p> <ul style="list-style-type: none"> <li>○ 14018_20_108 – site layout level 8</li> <li>○ 14018_20_109 – site layout level 9</li> <li>○ 14018_20_110 – site layout level 10</li> <li>○ 14018_20_111 – site layout level 11</li> <li>○ 14018_20_112 – site layout level 12</li> <li>○ 14018_20_113 – site layout level 13</li> <li>○ 14018_20_114 – site layout level 14</li> <li>○ 14018_20_115 – site layout level 15</li> <li>○ 14018_20_116 – site layout level 16</li> <li>○ 14018_20_117 – site layout level 17</li> <li>○ 14018_20_118 – site layout roof level</li> <li>○ 14018_30_100 – context elevations</li> <li>○ 14018_60_100 – outline application areas</li> <li>○ 14018_60_101 – outline building envelopes</li> <li>○ 14018_60_102 – outline balconies</li> <li>○ 14018_60_103 – outline maximum building heights</li> <li>○ 14018_60_104 – outline frontages</li> <li>○ 14018_60_105 – outline block access</li> <li>○ 14018_60_106 – outline site access</li> <li>○ 14018_60_107 – outline vehicular access</li> <li>○ 14018_80-100 P2 – Play Space Location Plan</li> </ul>
<b>CD2/5</b>	<p>Additional Plans (Post Submission – June 2015)</p> <ul style="list-style-type: none"> <li>○ Supplementary Design Statement June 2015</li> <li>○ Revised Townscape &amp; Visual Impact Assessment June 2015</li> </ul>
<b>CD2/6</b>	<p>Additional Plans (Post Submission – May 2016)</p> <ul style="list-style-type: none"> <li>○ Supplementary Design Statement June 2015</li> <li>○ 01195_Additional Illustrative Material_160506_S</li> </ul>
<b>CD2/7</b>	<p>Additional Plans (Post Submission – July 2016)</p> <ul style="list-style-type: none"> <li>○ 01195 160701 Addendum Submission_P4</li> </ul>

<b>CD2/8</b>	Plans as appearing on Decision Notice <ul style="list-style-type: none"> <li>o LI 00-001 P3 Proposed Site Plan</li> <li>o 00-100 Red line boundary</li> <li>o 10-001 Existing topographical survey</li> <li>o 60-101 Outline - building envelopes P7</li> <li>o 60-103 Outline Maximum Building Heights P7</li> <li>o 60-107 Outline - Vehicular Access P7</li> <li>o 60-110 Outline Building Heights Sections SH1P6</li> <li>o 60-112 Building heights Sections SH3 P6</li> <li>o 01195_Additional Illustrative Material</li> </ul>
<b>CD2/9</b>	Additional Technical Information (Post-Submission) <ul style="list-style-type: none"> <li>o GL Hearn Letter - Additional Illustrative Material</li> <li>o Density Review 06/05/2016</li> <li>o Technical Note on TfL VISSIM Modelling 30 June 2016</li> <li>o Tolworth Financial and Social Benefits June 2016</li> <li>o 20151218 RBK Highway Response</li> <li>o Acoustic Technical Note November 2015</li> <li>o GL Hearn Letter - Density Calculation 1 July 2016</li> <li>o GL Hearn Letter - Density clarification</li> <li>o Meyer Homes - DCC Member Briefing July 2016</li> </ul>
<b>CD2/10</b>	Planning Statement – GL Hearn
<b>CD2/11</b>	Affordable Housing Statement – GL Hearn
<b>CD2/12</b>	Consultation Statement – GL Hearn
<b>CD2/13</b>	Design & Access Statement – Collado Collins
<b>CD2/14</b>	Transport Assessment (including travel plans) – WSP
<b>CD2/15</b>	Noise Survey – Sharps Redmore
<b>CD2/16</b>	Air Quality Assessment – Air Quality Consultancy
<b>CD2/17</b>	Flood Risk Assessment – Peter Brett Associates
<b>CD2/18</b>	BREEAM and Code for Sustainable Homes pre-assessment report – AECOM
<b>CD2/19</b>	Landscaping Report – Turkington Martin
<b>CD2/20</b>	Arboriculture Assessment – Simon Jones Associates
<b>CD2/21</b>	Ecology Assessment – Ecology Consultancy
<b>CD2/22</b>	Archaeology Assessment – AOC Archaeology

CD2/23	Visual Impact Assessment (see Section 12 of CD2/13) – Collado Collins
CD2/24	MEP Services Report – AECOM
CD2/25	Utility Services Report – AECOM
CD2/26	External Lighting Assessment – AECOM
CD2/27	Health Impact Assessment – AECOM
CD2/28	Daylight and Sunlight Report – GL Hearn
CD2/29	Energy Strategy - AECOM

### CD3 – PLANNING APPLICATION CORRESPONDENCE AND REPORTS

CD3/1	Pre-application responses from RBK, TfL and the GLA
CD3/2	RBK Committee Report dated 2 March 2016
CD3/3	RBK Committee Report dated 6 July 2016
CD3/4	GLA Stage I Report 20 May 2015
CD3/5	GLA Stage II Report dated 25 July 2016

### CD4 – POLICY DOCUMENTS

CD4/1	National Planning Policy Framework 2012
CD4/2	Extracts from NPPG Appeals / Design / Housing and economic development needs assessment / Housing and economic land availability assessment / Use of planning conditions
CD4/3	DCLG Housing White Paper and Ministerial Statement dated 7 February 2017
CD4/4	London Plan 2016
CD4/5	2014 Annual Monitoring Report
CD4/6	Mayor of London City in the West Plan
CD4/7	2013 London SHLAA
CD4/8	GLA Housing SPG (March 2016)
CD4/9	GLA Providing for Children and Young People's Play and Informal Recreation (September 2012)
CD4/10	Tolworth Regeneration Strategy (March 2010)
CD4/11	RBK Core Strategy (April 2012)
CD4/12	RBK Planning Obligations Strategy (September 2011)

<b>CD4/13</b>	RBK Residential Design SPD (July 2013)
<b>CD4/14</b>	RBK Affordable Housing SPD (May 2013)
<b>CD4/15</b>	RBK Sustainable Transport SPD (May 2013)
<b>CD4/16</b>	RBK Borough Character Study
<b>CD4/17</b>	RBK Briefing Note on 2016 Five-Year Housing Supply (2016/17 – 2020/21)
<b>CD4/18</b>	Strategic Housing Market Assessment for Kingston upon Thames and North East Surrey Authorities)
<b>CD4/19</b>	GLA - A City for all Londoners
<b>CD4/20</b>	City in the West – Direction of Travel for Royal Borough of Kingston upon Thames
<b>CD4/21</b>	RBK Briefing Note: 2016 Housing Trajectory

**CD5 – MISCELLANEOUS**

<b>CD5/1</b>	Committee Report for application 15/16356 (Tolworth Tower)
<b>CD5/2</b>	Committee Report for application 15/10247 (Hotel south of the railway)
<b>CD5/3</b>	Committee Report for application 15/10383 (Lidl Scheme)
<b>CD5/4</b>	Planning statement for application 15/10383
<b>CD5/5</b>	Transport statement for application 15/10383
<b>CD5/6</b>	TfL objections relating to application 15/10383



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.