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By e-mail only: Philip.Elliott@Haringey.gov.uk

Mr Philip Elliott
London Borough of Haringey

Dear Mr Elliott

High Road West Hybrid Planning Application (reference HGY/2021/3175) ("the High Road West Application").

We write in response to the Officer's Report to the Planning Sub-Committee meeting on 21 July 2022 regarding the High Road West Application ("the OR") on behalf of our client, Tottenham Hotspur Football Club ("THFC").

The OR is largely based upon the earlier report to the Planning-Sub Committee meeting on 17 March 2021 - when members subsequently deferred consideration of the High Road West Application.

Unfortunately, the OR still fails to properly and fairly set out all the issues raised by THFC in its representations dated 4, 14 and 16 March and 30 June 2022 and fails to address the fundamental concerns raised in those representations.

For the reasons set out below THFC maintains that the Council is still not yet in a position to lawfully determine the High Road West Application. If the Council does determine the High Road West Application, a decision to grant planning permission would be legally flawed.

1. CROWD FLOW AND SAFETY

1.1. The OR refers to and relies upon the advice from Dr Dickie which we understand is contained in two notes both dated 13 July and 14 July. The note dated 13 July has only been made public very recently after publication of the 14 July note (and both after publication of the OR). Given the importance of this issue, and the weight the OR places on Dr Dickie's advice this is wholly unacceptable. Whilst THFC's consultants, Movement Strategies, are in the process of reviewing Dr Dickie's notes and will provide their comments in due course, the lateness with which these documents have been published deprives interested parties the opportunity to properly review and consider them in advance of the Council's determination of the High Road West Application.

1.2. The OR deals with Crowd Safety in only cursory terms in 6 paragraphs (6.33-6.39). Paragraph 6.36 records that THFC has objected on the basis that it considers the submitted Crowd Flow Study is inadequate.

1.3. However, no explanation is provided to members as to why THFC considers the Crowd Flow Study to be inadequate. Likewise, the OR still fails to properly and fairly explain to members the real significance of the issue, the safety risks involved and the potential significant implications to the operation of the Tottenham Hotspur Stadium.

1.4. The OR at paragraph 6.37 states that:

"*Officers, the applicant and the Council's independent Crowd Flow Expert are satisfied that the existing queue provision within the site can be re-provided as a minimum both during construction and once the development is complete*"

1.5. THFC has explained in its previous representations that it is not appropriate to narrowly focus on a comparison between the quantum of space provided now, during construction of the development, and once the development is complete.

1.6. A wider assessment is required to determine whether crowd flows can be managed safely and efficiently across the High Road West site following the stopping up of the existing access routes along Love Lane.

1.7. The note from Dr Dickie makes clear that he was asked to respond to two very specific narrow questions relating purely to the quantum of space available.

1.8. The first question requested confirmation whether the minimum area allowed for in the parameter plans is equivalent to the existing area for crowds to queue to the station. The second question sought clarification about whether the parameter plans exceed the existing area and therefore provide a better position as compared to the existing position.

1.9. Dr Dickie's conclusion makes clear that "*During the construction phases it is not appropriate to couch questions solely in terms of area*". This reflects THFC's key concern. It is also clear from the wording of Dr Dickie's conclusion that he has not found that the information he has been provided with sufficiently addresses the position during the construction phase. It is therefore misleading for the OR to suggest at paragraph 6.36 that he considers the proposed queuing provision is sufficient.

1.10. The reality is that the crowds will need to traverse across a large construction site for potentially over 10 years – amounting to over 500 events. The issue is not purely regarding space. For example, at its meeting on 5 May 2022 the Stadium Safety Advisory Group raised specific concerns regarding the boundary treatments and in particular the risk of large crowds being trapped between large construction hoardings with no means of escape during an emergency.

1.11. Furthermore, THFC now understands that the Metropolitan Police Counter Terrorism Protective Security Operations have objected to the High Road West Application on this basis – highlighting that concerns they have raised previously have not been satisfactorily addressed.

1.12. In respect of boundary treatments, the submitted CEMP states that either "Rhino" barriers or traditional hoardings will be used depending on whether they are bounding queue areas or not. Rhino barriers - by virtue of their low height – are inappropriate for crowd management.

1.13. More fundamentally, whilst the CEMP sets out a suggested sequence of temporary routes through the construction site, no analysis has been undertaken of the safety of the boundary treatments and the need for suitable escape routes during emergencies.

The reality is that far greater space is likely to be required than is currently contemplated, which has not been considered in relation to the parameter plans or construction plots

1.14. The OR records that the detailed layout of the site and an interim crowd management strategy will be secured at the reserved matters stage and by condition (proposed as draft Condition 62).

1.15. Condition 62 requires the proposed interim crowd management report/strategy to "*confirm that the interim access and space for visitors to the stadium across the development is no less than the situation as at the date of grant of this planning permission in terms of minimum queue widths, minimum areas for queuing and general queue safety such as tripping hazards and ensuring queue configurations and locations meet the necessary requirements for crowd safety*" (emphasis added)

1.16. The Council may only lawfully impose such a condition if it has sufficient information to enable it to conclude it is capable of being discharged in due course. The submitted Crowd Flow Study and CEMP do not provide the Council with sufficient information to enable it to rationally and reasonably reach the conclusion that the proposals can meet the necessary requirements for crowd safety. Similarly, the issue of crowd flow is one that goes to the principle of development and cannot be left to reserved matters. The Council cannot lawfully decide the current application until it has sufficient evidence before it to reach a conclusion that there will not be any unacceptable crowd safety issues as a result of the proposed development.

1.17. Paragraph 187 of the NPPF sets out the 'agent of change' principle. The insufficiency of information prevents the Council from concluding that the development will not have a significant adverse effect on the operations of THFC. There is no mention let alone consideration of this policy in the OR nor to the commentary in the TAAP Policy NT7 which provides that the Council will work with THFC to ensure nearby developments respect the operational needs of the stadium.

1.18. By way of one example the Crowd Flow Study (originally submitted in February and then updated in May) does not factor in any analysis of non-sporting events such as concerts. THFC is aware that the applicant's consultants Buro Happold have monitored the first concerts held at the stadium on 1 and 2 July – but this analysis has yet to be factored into the Crowd Flow Study.

1.19. Dr Dickie's note defines such irregular events as "Category 2" events. He records that for such events there will be a queue of approximately 6000 people – with spectators having to wait for more than one hour to enter the station.

1.20. Dr Dickie concludes that with the exception of NFL events, excessive queues can be avoided – however this is reliant upon Event Management Plans being successful. Dr Dickie provides no assessment of how a queue of up to 6000 people through the High Road West construction site could be accommodated. He provides no commentary on how much space would be required for such queues to accommodate emergency egress requirements, the necessary boundary treatments to provide safe access or the geometry of such routes.

1.21. Furthermore, any effective solution will require THFC and spectators to be provided with legal binding rights of access across the construction site.

1.22. THFC has had two initial meetings with the applicant and its advisors and has been provided with copies of the proposed draft S106 obligations. These discussions are,

however, at a very early stage, and there are a number of points of principle that remain to be resolved. In particular THFC has explained to the applicant that it requires certainty that the proposed access will be provided.

1.23. The currently proposed wording that has been provided to THFC provides no certainty whatsoever to THFC that the necessary access will be assured.

1.24. By way of example –

a. The proposed obligation to provide access is only triggered once the applicant obtains a legal interest in the whole of the proposed access area and an access licence has been entered into – however, no clarity has been provided to THFC on the timing of the applicant acquiring such an interest. In practice THFC understands that this will not occur until completion of the relevant phases – which will be long after the need for the new access route arises. In short, the obligation proposed by LendLease does not work.
b. The obligation to enter into an access licence is only a "reasonable endeavours" obligation. This leaves open the high probability that neither THFC nor the Council will have sufficient legal control over the routes between White Hart Lane station and the High Road to ensure the safe and secure passage of spectators. This in turn would fetter the ability of all stakeholders, including THFC, the Council and the emergency services to perform their statutory responsibilities in respect of Zone Ex. This is not an issue to be deferred to reserved matters as the planning obligations upon which this scheme is reliant at cast now at outline stage.
c. As currently drafted the obligation to provide a temporary access route during the construction process is entirely discretionary. The obligation is only that the applicant "may" at its own discretion provide such access. This provides no certainty whatsoever.
d. The applicant is seeking an unspecified licence fee for providing such access – in circumstances where THFC relies on the public highway for which no such fee arises. THFC has made clear on several occasions to the applicant that it will not pay any such licence fee.
e. The entire obligation falls away if the access licence has not been entered into by the time the applicant acquires a legal interest in the land over which access is sought.

1.25. This risks THFC being placed in the unacceptable and wholly unreasonable position of not knowing whether such access will be provided in circumstances where the applicant fully acknowledges such access is necessary to provide safe and efficient crowd movement as a result of the High Road West Application.

1.26. All the analysis undertaken by Buro Happold on behalf of the applicant and by Dr Dickie on behalf of the Council regarding crowd safety matters is entirely dependent upon access actually being provided across the High Road West site (both during construction and upon completion).

1.27. No analysis has been undertaken or a proposal put forward by the applicant of an alternative solution that does not rely on access across the site. Given officers advice to members in the OR, unless the necessary access is actually guaranteed (both during construction and following completion), no weight can be placed on the proposed solutions and the Council cannot reasonably conclude that the necessary requirements for crowd safety will be delivered.

1.28. The current suite of planning conditions and obligations fall a long way short of providing the necessary certainty. These obligations are a material consideration in the determination of the application.

1.29. It is clear that further assessment and discussions are required regarding crowd safety matters and access arrangements. THFC remains extremely concerned that the applicant has not:

a. carried out the full technical analysis necessary to demonstrate to both THFC, the Metropolitan Police Counter Terrorism Security Advisor and the Council's own independent consultant that safe passage of spectators can be achieved; and
b. put forward credible planning obligations and access rights to ensure that in the event that safe arrangements can be achieved, legal certainty is provided in respect of the provision of access that can reasonably be relied upon by THFC and its stakeholders in respect of Zone Ex responsibilities.

1.30. In this context, THFC is extremely concerned that the Council is rushing to determine the application before these issues have been properly resolved and that for the reasons set out above, the Council is not in a position to lawfully defer further consideration of this issue to future reserved matters applications or the discharge of conditions or planning obligations.

2. RELEVANCE OF GRANT FUNDING

2.1. The conclusions of the OR highlight the huge importance and weight that officers place on the provision of grant funding towards the delivery of the scheme, in their recommendation for approval of the High Road West Application.

2.2. Paragraph 30.2 records that "…*the scheme is eligible for in the region of £90m of grant funding that ensures it is both deliverable and that the Love Lane estate regeneration can occur within the foreseeable future. Any delays in obtaining planning permission will likely lead in the loss of this funding and render the scheme undeliverable*" (emphasis added).

2.3. Paragraph 30.3 states "It is considered that this funding provided a very significant benefit that weights [sic] in favour of the proposal"

2.4. In turn Paragraph 31.2, when undertaking the overall conclusion states "*It is considered that this represents a prime opportunity, mostly as a result of the significant level of funding available, to demonstrable improve this environment for existing residents, such that it is the opinion of Officer's* [sic] *that the scheme should be considered favourably*" (emphasis added)

2.5. However, nowhere in the OR (or the submitted High Road West Application documentation) is any explanation provided to members or to the public about how the grant funding "ensures" delivery of the scheme. Indeed, the latest FVA note submitted by DS2 on behalf of the applicant does not mention the grant funding and indicates that there is still a deficit – this is a long way from "ensuring" deliverability.

2.6. No explanation is provided to members why "any delays in obtaining planning permission" will mean the funding is lost and the scheme is undeliverable.

2.7. Given the very significant weight attributed to the grant funding this is an unacceptable omission. The OR expressly identifies that the High Road West Application departs from the development plan (para 30.1), departs from the High Road West Masterplan Framework (para 26.9), will cause heritage harm (para 29.6) and will have negative aspects (paragraph 31.2).

2.8. Notwithstanding the identified "negative aspects" officers have recommended that the application be approved. Paragraph 31.2 of the OR makes clear that the availability of the grant funding is the key consideration that officers have relied on to recommend approval. The implication being that in the absence of the grant funding their recommendation may have been different.

2.9. In these circumstances, members cannot place any weight on the availability of grant funding unless they are properly and fully advised how that grant funding actually "ensures" delivery. To do so would amount to an unlawful reliance on an immaterial consideration.

2.10. In turn, members need to understand the precise deadlines after which the grant funding will be lost and whether there is any flexibility for this grant funding to be extended to provide time for the application to be properly considered. No information is provided to substantiate the claim that "any delays" would cause a funding problem.

2.11. Given the scale and impact of the High Road West Application scheme, the assessment and determination of the application should not be artificially rushed based solely on a need to meet an unspecified and unevidenced grant funding deadline.

2.12. The absence of any information on this point unlawfully prevents THFC, consultees and other interested parties from properly considering the validity of these claims which are at the core of the OR's justification for recommending approval.

3. HERITAGE MATTERS

3.1. Officers' assessment of the heritage impacts of the proposals is set out section in Section 10 of the OR.

3.2. In various places the OR refers to the comments of the Conservation Officer and elsewhere an appointed heritage specialist. In Appendix 3, under the Conservation Officer comments, members are referred to Appendix 12 which is the report of Ms Chakraborty – the independent heritage specialist. We therefore assume that references in the main OR to the Conservation Officer should be taken to refer to Ms Chakraborty. If this is not correct, then the Conservation Officer's own views have not been made publicly available.

3.3. In any event, it is clear that Officers have placed great weight on the report prepared by Ms Chakraborty. As you will be aware Ms Chakraborty is also the Council's expert witness in respect of heritage matters at the ongoing public inquiry into THFC's appeal scheme for the Goods Yard and Depot sites.

3.4. During her evidence at the public inquiry, Ms Chakraborty made a number of statements regarding her assessment of the High Road West Application. Most importantly she explained that her assessment of the High Road West Application had assumed THFC's existing planning permissions for the Goods Yard and Depot sites formed part of the current baseline for assessment purposes. She confirmed that her assessment did not therefore address the impact from those schemes.

3.5. Given that the approved Goods Yard and Depot planning permissions have been incorporated into the parameter plans as part of the High Road West Application, this is a significant omission. In practice, it means Ms Chakraborty's assessment of the harm caused by the High Road West Application will have been materially understated.

3.6. At paragraph 10.36 of the OR, officers record an overall finding based on Ms Chakraborty's assessment that the scheme would result in "medium-high level of less than substantial harm to the setting of significance of designated and non-designated heritage assets". If a proper and full assessment including the impacts of those part of the High Road West Application that reflect the existing Goods Yard and Depot planning permission, were undertaken, it is inevitable that a greater degree of harm would be identified.

3.7. In addition, there are a number of discrepancies between Ms Chakraborty's report and the OR, and also within the OR itself.

- The table at para 2.11 that Ms Chakraborty uses to determine levels of harm is incorrect. It confuses the importance of the heritage asset with the level of harm. The resulting attribution of harm according to this methodology provides an incorrect assessment that cannot be relied on. This approach also contradicts the NPPF and Historic England's guidance on setting.
- Para 10.13 of the OR states a requirement that the impact of the proposal on the heritage assets be *very carefully considered*, that is to say that *any harm or benefit needs to be assessed individually* in order to assess and come to a conclusion on the overall heritage position.
- The OR does not reflect the medium less than substantial harm to the locally listed building at 865 High Road that Ms Chakraborty identifies.
- Ms Chakraborty finds the demolition of the locally listed Electricity substation on the High Road would cause a "negligible level of harm". As a matter of fact, this entails the total loss of the heritage asset.
- For the locally listed building at 6a White Hart Lane, Ms Chakraborty finds a low level of harm plus additional harm. The OR does not reflect the additional harm.
- For the grade II listed building at 7 White Hart Lane, Ms Chakraborty finds a high degree of less than substantial harm to the listed building due to the proposed block G. This is reflected in the OR. But Ms Chakraborty additionally finds further harm due to the taller blocks. That is not reflected in the OR. This is especially important, since this additional harm would tip the harm from less than substantial to substantial harm, for which different policy tests apply. The OR does not address this issue. Para 10.1 of the OR only advises on the test in para 202 for less than substantial harm. The implication is that substantial harm is not relevant, though Ms Chakraborty's assessment does not rule that out.
- Given that Ms Chakraborty found a high level of less than substantial harm to the North Tottenham Conservation Area, and given that, as set out aboveMs Chakraborty has confirmed that she treated the extant permissions as part of the baseline, this would tip the harm from less than substantial to substantial harm, for which different policy tests apply. The OR does not address this issue.
- The harm to the North Tottenham Conservation Area is especially relevant given the OR recognises at para 10.14 that the North Tottenham Conservation

Area is in a fragile condition and it is currently designated a "Conservation Area at Risk" by Historic England.

- Ms Chakraborty found a mid-level of less than substantial harm to the Church of St Francis de Sales on the High Road. Approximately 100m to the south is a grade II listed building at 707 High Road. It follows that there would likely be a similar impact on this building. However, there is no assessment of this listed building.
- Ms Chakraborty's assessment omits any assessment of a non-designated heritage asset at 8-18 and 24-30 White Hart Lane, as identified in relation to the Goods Yard scheme. It is wholly inconsistent for the Council to treat this as a heritage asset in relation to one application, but not another, at the same time.
- None of the harm that Ms Chakraborty found to the listed building at The Grange in relation to the changes on White Hart Lane at the Goods Yard scheme are reflected in the assessment of the same building in this application. That is a wholly inconsistent approach.

3.8. By way of further example paragraph 10.21 of the OR finds a "medium level of less than substantial harm" to the listed building at 797-799 High Road. At paragraph 10.23 however the OR records that "a low level of less than substantial harm to the setting of no. 797-799 High Road".

3.9. This contradiction is not explained, and it is unclear which of these assessments has been weighed in the balance in the OR.

3.10. Similarly, the OR contains no mention that the locally listed buildings at 743-759 High Road will all be demolished. There is no assessment of the harm arising from such demolition and therefore this harm cannot have been weighed in the overall balance.

3.11. We have previously highlighted our concerns that given the degree of flexibility sought by the High Road West Application and the corresponding lack of certainty regarding the delivery of public benefits that it is argued offset that harm, it is impossible for the Council to lawfully exercise its duties under the Planning (Listed Buildings and Conservation Areas) Act 1990.

3.12. As a starting point in exercising its legal duties, the Council must be clear on the degree of harm caused to heritage assets. As set out above, both the OR and Ms Chakraborty's report contain a number of omissions and inconsistencies that mean it is impossible for members to properly understand and undertake this assessment.

3.13. There is a lack of clarity in the OR on the public benefits that can be weighed against the heritage harm. Paragraph 10.42 sets out a list of points which officers consider to constitute public benefits to be weighed in the balance.

3.14. However, these matters have not been properly quantified to enable members to undertake the balancing exercise. For example, reference is made to a new Library and Learning Centre. It is unclear whether officers have weighed the minimum size proposed in the Development Specification of 500 sqm or the maximum size of 3500 sqm. There is a significant difference in the public benefit to be provided by a 500sqm building compared to a 3500 sqm building. The Heads of Terms for the S106 Agreement under item 7 simply refer to a new "Library and Learning Centre in accordance with the parameters of the development specification". Given the scope of the development specification this provides no assistance to members on the actual nature of the building that will be provided.

3.15. The list of public benefits also refers to a number of generic matters such as "supporting and creating new jobs" and "creation of new affordable workspace". However, this list of benefits does not provide any proper context for members to assess the weight they should be given. To make this assessment it is necessary to understand that the High Road West Application could result in a loss of employment floorspace within the area and a material loss of jobs on-site – these alleged public benefits need to be considered in this context.

3.16. Finally in paragraph 29.6 officers conclude that the heritage harm caused by the High Road West Application constitutes "a clear reason for refusal". To reach such a conclusion officers must have considered that the harm caused to heritage assets was not outweighed by the public benefits in accordance with the requirements of paragraph 202 of the NPPF. This is in direct conflict with the conclusion in the heritage section set out in paragraphs 10.43 and 10.45 of the OR.

4. RELIANCE ON FUTURE RESERVED MATTERS APPLICATIONS AND CONSISTENCY IN DECISION MAKING

4.1. In numerous places the OR seeks to advise members that issues identified can be addressed through the approval of future reserved matters applications and/or the discharge of conditions or planning obligations – for example in respect of crowd safety, townscape and heritage matters.

4.2. As a starting point, members need to be clearly advised that at the reserved matters stage they will have limited ability to refuse an application that complies with the parameter plans, the design codes and the development specification. For example, the Council will be unable to require the developer to provide an increased amount of employment or community space on a specific plot beyond that provided for in the development specification. Likewise, it will be unable to limit the scale of an proposed building that complies with the parameter plans.

4.3. This is also relevant to the consideration of detailed development management issues and policy compliance – for example in respect of the proposed open space provision.

4.4. The OR deals with the Open Space provision within the High Road Application at paragraphs 6.16 to 6.26. As set out in our earlier representations, it is a core principle of public law that decisions must be taken on a consistent basis – see for example Fox Strategic Lane and Property Limited v Secretary of State for Communities and Local Government [2013] 1 P.&C.R.6. Furthermore, when considering the High Road West Application, the Council's refusal of THFC's application for the Goods Yard and the Depot sites (HGY/2021/1771) is a material consideration to which the Council must have regard – see for example R. (on the application of Rank) v East Cambridgeshire DC [2003] J.P.L. 454. In order for the Council to lawfully determine the High Road West Application it must have regard to not simply the fact of the refusal of the THFC application but the reasons for it – see for example R (oao Havard) v South Kesteven District Council [2006] J.P.L. 1734.

4.5. Whilst the OR acknowledges that THFC's current appeal scheme was refused by the Council due to the lack of provision of Open Space, it misleadingly seeks to distinguish the High Road West Application.

4.6. In the case of THFC's appeal scheme, the Council refused permission and in turn advanced its case at the public inquiry, based on a strict application of policy DM20 and a failure to meet the requirements for open space set out in the Council's Open Space and Biodiversity Study (2013).

4.7. The OR acknowledges that the High Road West Application provides only 33% of the required Open Space provision as against the DM20 requirements, based on a "worst case" scenario and 45% based on a "best case scenario". In contrast, the Council considers that the THFC appeal scheme provides over 50% based on the same comparison – i.e. 5% more that the best case scenario in the High Road West Application.

4.8. It is also important to note that the OR appears to take into account areas such as roadways which were specifically excluded from the calculations in the THFC scheme In essence it appears the Council have included any ground not covered by a building as being open space. Such an approach is not compliant with any lawful interpretation of the relevant open space policies. Unless the OR is updated to spell out precisely how this issue has been treated, it will at the very least, mislead members.

4.9. Whilst THFC does not agree with the Council's approach – the Council must apply it on a consistent basis.

4.10. The OR seeks to distinguish the High Road West Application on the basis that as the application is outline and "additional public open space can be delivered as part of the detailed design of the parcels of future development" (para 6.22)

4.11. Paragraph 6.24 of the OR records that it is proposed to impose a condition to require reserved matters application to seek to comply with Policy DM20 or any successor policy "thus ensuring compliance with policy….."(emphasis added).

4.12. Draft Condition 43 provides that: "For the avoidance of doubt, any future reserved matters submission shall be supported by an Open Space Assessment addressing the requirements of Policy DM20 of the Development Management DPD 2017 or any successor policy"

4.13. The stated reason for the condition is "To ensure an appropriate level of publicly accessible open space is provided within the area of identified deficit and in accordance with Policy DM 20 of the Development Management DPD 2017".

4.14. The clear advice to members is that the imposition of the condition can ensure compliance with policy DM20 and by implication meet the requirements of the 2013 Open Space and Biodiversity Study.

4.15. However, paragraph 6.24 goes on to state that "the policy conflict is considered to be outweighed by the substantial benefits the scheme delivers". Members are therefore provided with conflicting advice as to whether the scheme will comply with DM20 or not.

4.16. Furthermore, the condition does not ensure the delivery of any particular level of open space let alone more than the 45% recognised as the currently achievable maximum. All it requires is for an assessment to be produced, that does not guarantee any outcome it is entirely plausible that the outcome of the assessment is no further open space can be provided.

4.17. In any event members need to be clearly advised on the realistic likelihood of the scheme being able to achieve strict compliance with policy DM20. Paragraph 6.18 of the OR records that the Open Space Study would require the provision of 10.51 hectares of open space as part of the scheme. Given that the entire site is only 8.5 hectares it is impossible to achieve 10.51 ha of open space.

4.18. Likewise given the size of the proposed building plots, the scheme will be unable to provide materially more open space provision than that identified in the "best case" scenario in paragraph 6.19. As set out above this equates to only 45% of the required provision.

4.19. No assessment has been undertaken to suggest that it will be possible to deliver more than 45% of the requirement let alone match the level provided by the THFC scheme – which the Council considered warranted refusal of that application on open space grounds.

4.20. Even if materially more open space were to be provided, no assessment has been undertaken on the impacts of such proposals on the remainder of the scheme – either in terms of viability or in terms of the delivery of public benefits on which officers rely to offset the harms caused by the application. Any material increase in open space can only result in a reduction in the quantum of built development. This has not been factored into officers' analysis.

4.21. On this basis the reliance on Condition 43 would be unlawful as there is no realistic basis on which a policy compliant quantum of open space (based on the Council's interpretation in respect of THFC's appeal scheme) can be delivered.

4.22. If, in the alternative, it is suggested that Condition 43 would not require a strict application of the standards in the Open Space Study (and therefore Policy DM20) then the Council is adopting an entirely inconsistent approach to the basis on which it refused THFC's application and has subsequently advanced its case on appeal. As we have repeatedly stated to the Council, this inconsistent approach is a clear legal error.

4.23. A further example of the Council's inconsistency relates to the approach taken to the number of single aspect units comprised within the High Road West Application, and in particular north facing single aspect units.

4.24. The OR reports that "Most of the proposed homes are envisaged to be dual aspect. The majority of single aspect dwellings would be east and west facing". However this assessment is reliant on treating corner aspect units as dual aspect. In respect of THFC's appeal proposals the Council has maintained that such corner units should be considered as single aspect. Again, the Council must adopt a consistent approach.

4.25. We note that officers appear to have reached the conclusion that the harm caused by the height of Block F is unacceptable. The application parameters proposed up to 27 storeys whereas paragraph 6.56 has identified that this should be reduced to 15 storeys. We note in passing that Condition 39 itself only proposes to limit the height of Block F1 to 20 storeys.

4.26. Whether Block F is reduced to 15 or 20 storeys it represents a materially different scheme to that has been assessed in the application documentation. In turn, no analysis has been undertaken of the impact that such a reduction would cause in the viability of the scheme and to the delivery of identified public benefits that are relied upon in the overall planning balance.

5. APPROACH TO ASSESSMENT AND WEIGHING OF PUBLIC BENEFITS

5.1. As set out in our previous correspondence and in light of the failure by the applicant to provide greater commitment and certainty on the composition of the scheme, given

the extreme degree of flexibility sought in both the potential scale of development and the allocation of uses across the site, it is impossible for the Council to properly and lawfully assess the likely significant environmental effects of the development for the purpose of the EIA Regulations (R v Rochdale MBC Ex p. Milne (No 2) [2001] Env.L.R.22.

5.2. The Council commissioned several peer reviews of the submitted Environmental Statement and addenda. These reviews identified numerous concerns with the approach adopted. For example, WSP comment that "the information provided is very difficult to interpret given its volume and lack of focus on pertinent issues, aside from the general confusion about different development scenarios". The concerns of the peer reviewers and issues identified as part of this process have not been properly explained to members.

5.3. Likewise, the OR does not set out clearly for members the approach officers have taken to the weighing of the purported public benefits of the scheme. For example, in respect of the provision of employment space, nowhere is it made clear that the scheme could result in a loss of employment floorspace and a loss of jobs on-site – yet the proposed employment benefits of the scheme are put forward as a benefit of the scheme.

5.4. In its case in respect of THFC's current appeal, the Council's has maintained that to assess an outline application it is necessary to assess the "worst case" scenario based on the maximum proposed parameters of development.

5.5. In a number of places, the OR sets out an inconsistent approach to this analysis – on occasions focusing on the illustrative scheme rather than the maximum parameters. Section 3.3 sets out a long explanation of the illustrative scheme but the following analysis is selective. For example, paragraph 3.8 only sets out the density and open space calculations based on the illustrative rather than the maximum parameter scheme. In the maximum parameter scheme a total of 14.67 sqm of open space would be provided per home rather than the figure of 16.2 sqm cited in paragraph.

5.6. The stated density figures at paragraph 4.42 have not been calculated to reflect the proportion of non-residential space – which could take the figures close to 400 homes per hectare. Furthermore, the figure provided for the THFC appeal scheme for comparison purposes is 353 homes per hectare but that is based on a net site area. The comparison in paragraph 4.44 is therefore highly misleading and must be clarified.

5.7. The Addendum to the Environmental Assessment sets out a specific assessment "scenario" where the southern phase (being that part of the scheme south of White Hart Lane) is brought forward on its own. However, there is no analysis or assessment in the OR of the overall planning balance of such a "scenario". For example, in respect of density matters, the proposals south of White Hart Lane could exceed 400 homes per hectare. Nowhere in the OR do officers set out any assessment of the southern phase being delivered alone. This is important as an assessment of the scheme in open space, density, heritage and public benefits, will be very different if considered based on the southern phase alone.

6. BALANCING EXERCISE

6.1. The OR has failed to correctly apply the decision making policies of the NPPF. At 29.4 the OR correctly states that the tilted balance is engaged due to the lack of a 5 year housing land supply (albeit it incorrectly states that this is due to 'a limited shortfall').

At 29.6 the OR then states: "*29.6 In this case, the impact on designated heritage assets, subject to design detailing, has the potential to result in an upper level of 'less than substantial harm', with the value of the Conservation Area having already been eroded irrevocably as a result of the stadium development. It is therefore considered that this impact provides a clear reason for refusal for the purposes of Paragraph 11d(iI)*."

6.2. In order to have reached this conclusion officers must be of the view that the balancing exercise at paragraph 202 of the NPPF had not been passed. Accordingly, the tilted balance is disengaged because a clear reason for refusal exists. Where there is a clear reason for refusal arising from the application of policies contained within the NPPF, in this instance the heritage policies, then the correct approach is to refuse planning permission. Not carry out some separate, further balancing exercise, as the NPPF has already dictated that planning permission should be refused.

7. DEPARTURE FROM THE DEVELOPMENT PLAN

7.1. The OR at paragraph 30.1 expressly acknowledges that the High Road West Application departs from the Development Plan in a number of respects.

7.2. Given this conclusion the High Road West Application constitutes "development outside town centres" for the purpose of the Town and Country Planning (Consultation) (England) Direction 2021 as it is development to be carried out in an "edge of centre" location (as defined), is not in accordance with one or more provisions of the development plan (as acknowledged in the OR), and includes the provision of a building or buildings of 5000 sqm or more.

7.3. On this basis the Council is required to refer the application to the Secretary of State in accordance with the requirements of paragraph 10 of the Direction. This requirement is not set out in the recommendation to members in the OR.

CONCLUSION

THFC has set out its fundamental concerns regarding the design and composition of the High Road West Application repeatedly in previous correspondence.

It is concerned that the Council is not adopting a consistent approach to the determination of the High Road West Application compared to its approach to THFC's recent application for the Goods Yard and Depot sites that is currently at appeal. All three of the Council's stated reasons for refusal of THFC's application, and the case it has advanced on the appeal, apply with equal if not more force to the High Road West Application.

As is clear from the OR, it appears that the Council's determination of the High Road West Application is being driven primarily by considerations relating to the availability of grant funding rather than a proper application of its statutory duties under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas Act 1990).

THFC is concerned that officers have not given proper consideration to the numerous objections raised not just by THFC but by numerous local residents and businesses. This is illustrated in the evidence of Mr Reynolds in respect of THFC's current inquiry who indicated that the High Road West Scheme would be written up for approval in his proof of evidence – notwithstanding that his proof of evidence was produced in advance of the expiry of the most recent consultation period for the High Road West Application. For consultation to be lawful it must be meaningful; *R v N E Devon HA ex p Coughlan* [2001] QB 213 as per

Lord Woolf MR at [108]. The courts are clear that the product of consultation must be "conscientiously taken into account when the ultimate decision is taken". Given the Council were proposing to approve the High Road West Application before the consultation period had finished they have demonstrably failed in this regard.

For the reasons set out above THFC maintains that Council is not in a position to lawfully determine the High Road West Application and that its approach to defer consideration of matters of principle to the approval of reserved matters, conditions and planning obligations is unlawful.

Yours sincerely

RICHARD MAX & CO