

EXAMINER'S REPORT COMMUNITY RIGHT TO BUILD ORDER

PHOENIX PLACE (SOUTH), EC1A 1BB

A Report to the Council of the London Borough of Camden of the
Examination into the Phoenix Place Community Right to Build Order

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Introduction

- 1 This Report provides the findings of the examination into the Phoenix Place Community Right to Build Order (referred to as the Order).
- 2 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.
 - *Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*" (Paragraph 183, National Planning Policy Framework)
- 3 This Order was proposed by the Mount Pleasant Neighbourhood Forum (referred to as the Neighbourhood Forum). In line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014), the Neighbourhood Forum is the *qualifying body* responsible for the preparation of the Order. The Neighbourhood Forum was designated on 4th February 2016. Its purpose is to further the social, economic and environmental well-being of people living in the area.
- 4 This Examiner's Report provides a recommendation as to whether or not the Order should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Order would be *made*¹ by the Council of the London Borough of Camden (Camden Council).

¹ Whereas a Local Plan is "*adopted*" and planning permission is "*granted*," a Community Right to Build Order is "*made*."

Community Right to Build Orders

- 5 The Community Right to Build came into force on 6 April 2012. It forms part of the Neighbourhood Planning (General) Regulations contained within the Localism Act 2011.
- 6 A Neighbourhood Development Order grants planning permission for specific types of development in a specific neighbourhood area. It can apply to a specific site, sites, or wider geographical area.
- 7 A Community Right to Build Order is a form of Neighbourhood Development Order. It can be used to grant planning permission for small-scale development for community benefit on a specific site, or sites, in a neighbourhood area.
- 8 The Localism Act² establishes that a neighbourhood development order is a Community Right to Build Order if:
 - (a) *the order is made pursuant to a proposal made by a community organisation;*
 - (b) *the order grants planning permission for specified development in relation to a specified site in the specified neighbourhood area;*
 - (c) *the specified development does not exceed prescribed limits.³*

- 9 In respect of the above:
 - (a) the Neighbourhood Forum, as a designated qualifying body, constitutes community organisation.
 - (b) The specified development is set out in a Design Statement and accompanying plans. It comprises a mixed use development, comprising housing and commercial space, on a specified 0.43 hectare site within the Mount Pleasant Neighbourhood Area⁴.

² Ref: Localism Act 2011, Schedule 11 which inserted Schedule 4C to the Town and Country Planning Act 1991 and S.61Q.

³ Ref: (2) Regulations under sub-paragraph (1)(c) may prescribe a limit by reference to—
(a) the area in which the development is to take place; (b) the number or type of operations or uses of land constituting the development, or (c) any other factor.

⁴ Mount Pleasant Neighbourhood Area was approved by the Councils of the London Boroughs of Camden and Islington on 4 February 2016.

(c) No substantive evidence has been submitted to suggest that the specified development exceeds prescribed limits.

10 Planning Practice Guidance⁵ states that:

“A Community Right to Build Order can be used for example to approve the building of homes, shops, businesses, affordable housing for rent or sale, community facilities or playgrounds. Where the community organisation wishes to develop the land itself (subject to acquiring the land if appropriate) then the resulting assets can only be disposed of, improved or developed in a manner which the organisation considers benefits the local community or a section of it.”

11 Planning Practice Guidance goes on to point out that the legislation also provides a mechanism to enable housing developed using a Community Right to Build Order to be retained as housing that is affordable in perpetuity. This is achieved by dis-applying certain statutory rights of tenants of long leases to buy their freehold and the statutory right given to qualifying tenants to acquire social housing⁶.

⁵ Ref: Para 12 ID: 41-012-20140306.

⁶ Ref: Paras 11 and 12, Schedule 4C to the Town and Country Planning Act 1990 (as amended) and Part 7 of the Neighbourhood Planning (General) Regulations 2012 (as amended).

3. Role of the Independent Examiner

- 12 I was appointed by Camden Council, with the consent of the qualifying body, to conduct an examination and provide this Report as an Independent Examiner.
- 13 I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.
- 14 I am a chartered town planner with 25 years relevant experience. I am an experienced Independent Examiner of Neighbourhood Plans and Community Right to Build Orders. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.
- 15 As the Independent Examiner, I must make one of the following recommendations:
 - a) that the Order should proceed to Referendum, on the basis that it meets all legal requirements;
 - b) that the Order, as modified, should proceed to Referendum;
 - c) that the Order does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 16 With regards a Community Right to Build Order, the Examiner's Report is binding. If the Examiner's Report recommends that the draft order be refused, the local planning authority must refuse the proposal. If the Examiner's Report recommends that the draft order be submitted to a Referendum (either with or without modifications), then a Referendum must be held on the making of the Order by the local planning authority.
- 17 If recommending that the Neighbourhood Plan should go forward to Referendum, the Examiner must consider whether or not the Referendum Area should extend beyond the Neighbourhood Area to which the Plan relates. Without prejudice to the recommendation of this Report, I note that whilst the Referendum Area could be extended to include parts of surrounding areas, there appears to be no need to do so. The site the subject of the Order is within a densely built up part of Camden and wholly within the Mount Pleasant Neighbourhood Area, designated by the Council of the London Borough of Camden on 4 February 2016, and which forms a defined and logical area.

18 The Order must meet the Basic Conditions and other requirements set out in Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended). The Basic Conditions are:

- *having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order;*
- *having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order;*
- *having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order;*
- *the making of the order contributes to the achievement of sustainable development;*
- *the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);*
- *the making of the order does not breach, and is otherwise compatible with, EU obligations;*
- *prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.*

19 Regulations 32 and 33 of the Neighbourhood Planning Regulations (2012) as amended set out two further Basic Conditions. These are:

- *The making of the neighbourhood plan or order is not likely to have a significant effect on a European site or a European offshore marine site either alone or in combination with other plans or projects;*
- *Having regard to all material considerations it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.*

20 In carrying out the Examination, I have also had regard to the following requirements:

- *The order proposal is accompanied by a draft of the order and a statement that contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits.*
- *The order proposal may not provide for the granting of planning permission for development that is excluded development, where planning permission is already granted for that development, and may not relate to more than one neighbourhood area.*
- *The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended), which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified.*
- *Whether the draft order is compatible with the Convention rights.*

21 The Phoenix Place CRTBO has been considered against the basic conditions and requirements set out above.

4. Mount Pleasant Neighbourhood Forum

- 22 Part 4 of the Neighbourhood Planning Regulations 2012 (as amended) makes provision in relation to additional prescribed conditions a community organisation must satisfy in order to be a Community Right to Build organisation. These include: allowing anyone from the area to be a member of the organisation; ensuring that such members have majority voting rights for the body; and prescribing the way profits must be used and assets distributed on a winding up (Regulation 13).
- 23 The Requirements of Regulation 13 are set out below and specific references to how the Mount Pleasant Neighbourhood Forum addresses these are provided **in bold**.

- *Prescribed conditions for community right to build organisations 13.— (1) For the purposes of paragraph 3(1)(b) of Schedule 4C to the 1990 Act, the following additional conditions are prescribed for any community organisation which is not a parish council -*

*(a) individuals who live or work in the particular area for which the community organisation is established (**In this case the particular area for the Order is the Mount Pleasant Neighbourhood Area**) must be entitled to become voting members of the community organisation (whether or not others can also become voting members);*

The Neighbourhood Forum's constitution states that "Members of the Forum shall be open to any individual who lives or works in the Neighbourhood Area" and allows them to become voting members.

- *and (b) the constitution of the community organisation must— (i) provide that taken together the individuals who live in the particular area— (aa) hold the majority of the voting rights; and (bb) have the majority on the board of directors or governing body, of the community organisation.*

The Neighbourhood Forum's constitution requires more than 50% of the Management Committee (which is elected by members at the Annual General Meeting) to be Neighbourhood Area residents.

- *(ii) include a statement— (aa) that the community organisation will carry on its activities for the benefit of the community in the particular area or a section of it...*

This is provided in Appendix 1 of the Basic Conditions Statement, which was submitted alongside the Order.

- *...and (bb) indicating how it is proposed the community organisation's activities will benefit the community in the particular area (or a section of it).*

This was provided in Appendix 1 of the Basic Conditions Statement submitted alongside the Order.

- *(iii) provide that any assets of the community organisation may not be disposed of, improved or developed except in a manner which the community organisation consider benefits the community in the particular area or a section of it.*

This was provided in Appendix 1 of the Basic Conditions Statement submitted alongside the Order.

- *and (iv) provide that any profits from its activities may only be used to benefit the community in the particular area or a section of it (the payment of profits directly to members or directors is not to be considered a benefit to the community in the particular area or a section of it).*

This was provided in Appendix 1 of the Basic Conditions Statement submitted alongside the Order.

- *(v) provide that in the event of the winding up of the community organisation or in any other circumstances where the community organisation ceases to exist, its assets must be transferred to another.*

This was provided in Appendix 1 of the Basic Conditions Statement submitted alongside the Order.

- *(vi) provide that the organisation has at least 10 members, living in different dwellings to each other, who live in the particular area.*

This was provided in Appendix 1 of the Basic Conditions Statement submitted alongside the Order.

- *For the purposes of this regulation, "dwelling" has the meaning given in section 3 of the Local Government Finance Act 1992(a).*

- 24 The Neighbourhood Forum's constitution states that:

"The Forum is established for the express purpose of promoting and/or improving the social, economic and environmental well-being of individuals living and working in the area including promoting the carrying on of trades, professions or other businesses, primarily through the development and implementation of a Neighbourhood Plan and such other purposes as the Forum may from time to time decide."

- 25 The Neighbourhood Forum constitution goes on to state that:

"All income to the Forum is used to further the Aims and Objectives of the Forum given in this Constitution and for no other purposes...If the Forum votes to disband, any assets held in the name of the Forum after the payment of all debts and liabilities will be applied towards charitable purposes for the benefit of residents in the area."

- 26 The Neighbourhood Forum community organisation is "a body corporate" that meets "membership requirements."

- 27 It satisfies the 1990 Planning Act (as amended), in respect of para. 3 (1) (a) relating to a 'body corporate' established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live in a particular area, and which meets such other conditions in relation to its establishment or constitution as may be prescribed, and; para. 3 (2), where provisions relate to the distribution of profits by members, the distribution of assets of the body, the membership of the body and the control of the body.

- 28 The Neighbourhood Forum also satisfies that part of the 1990 Planning Act (as amended) that states:

"4 (1) A community organisation is authorised for the purposes of a community right to build order to act in relation to a neighbourhood area (whether or not any part of the neighbourhood area falls within the area of a parish council) if (a) the area mentioned in paragraph 3(1)(a) consists of or includes the neighbourhood area, and (b) at the time the proposal for the order is made more than half of the members of the organisation live in the neighbourhood area. (2) Accordingly, the community organisation is in that case to be regarded as a qualifying body for the purposes of section 61E."

- 29 Taking everything into account, I am satisfied that the Mount Pleasant Neighbourhood Forum meets the prescribed conditions required for community right to build organisations as set out in Part 4 of the Neighbourhood Planning Regulations 2012, as amended.

The Proposed Development

30 The proposed development comprises the provision of:

- 125 residential units including one, two and three-bedroom flats in a series of five linked buildings ranging from four storeys to eight storeys (plus lower ground);
- approximately 1,200 sqm of commercial space;
- a newly created communal open space over 900 sqm in size that will be enclosed by the proposed block on three sides;
- communal roof terraces private to the residents and accessible by lift;
- widening of the western end of Mount Pleasant to create a new 'pocket' park adjacent to Christopher Hatton Primary school and with traffic calming measures along the section of road fronting the development site;
- parking, related to relevant accommodation, for disabled drivers to be located on Gough Street and Phoenix Place for residents and Mount Pleasant for visitors;
- and a minimum of 242 long stay cycle parking spaces and 16 short stay cycle parking spaces.

6. Content of a Community Right to Build Order

31 According to Section 22 of the Neighbourhood Planning (General) Regulations 2012, a Community Right to Build Order submitted to a local planning authority must include:

a) A map identifying the land to which the order relates.

This has been provided in the form of the illustrated masterplan and Design and Access Statement submitted to the Council of the London Borough of Camden.

b) A consultation statement which includes a) details of those bodies and persons who were consulted, b) explains how they were consulted, c) summarises the main issues and concerns raised by those consulted and d) describes how those issues and concerns have been considered and addressed in the proposed order.

This has been provided in the form of the Consultation Statement, submitted to the Council of the London Borough of Camden.

c) The proposed order.

The proposed Order was submitted to the Council of the London Borough of Camden for examination.

d) An archaeology statement if the qualifying body considers it to be appropriate after consultation with English Heritage. When one is submitted this should confirm that information contained in the historic environment record has a) been reviewed, b) sets out the findings from that review and c) explains how the findings have been taken into account in preparing the order proposal. Where no findings of relevance are identified the statement need only a) confirm the review has taken place and b) explain there are no relevant findings.

An Archaeology Statement was submitted to the Council of the London Borough of Camden.

e) A statement that explains how the order meets the Basic Conditions.

A Basic Conditions Statement was submitted to the Council of the London Borough of Camden.

f) Details of any enfranchisement rights and the properties or types of properties to which the qualifying body proposes are not exercisable.

The submitted Order provides this information on page 7.

- 32 Taking all of the above into account and in summary, I am satisfied that the requirements of Section 22 of the Neighbourhood Planning (General) Regulations 2012, a Community Right to Build Order have been met.
- 33 I am satisfied that the Order is made by a qualifying body and seeks to grant planning permission for a specified development on a specified site in a specified neighbourhood area. The Order does not grant permission for development that already has planning permission and does not relate to more than one neighbourhood area.
- 34 The Order proposal contains a draft of the Order, statement of the proposal and reasons why the Order should be made.

7. Background Documents

35 In undertaking this examination I have considered various information in addition to the Order. This has included, but is not limited to, the following:

- National Planning Policy Framework (referred to in this Report as “the Framework”) (2012)
- Planning Practice Guidance (2014) (as updated)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Camden Core Strategy and Development Policies 2010-2025 (2010)
- Islington's Core Strategy (2011)
- Islington's Local Plan: Site Allocations and Development Management Policies (2013)
- The London Plan 2016
- Mount Pleasant Supplementary Planning Document (2012)
- Basic Conditions Statement
- Consultation Statement
- Screening Opinions
- Mount Pleasant Planning Permissions (P2013/1423/FUL; 2013/3807/P) and associated Section 106 Agreement

Also:

- Representations received
- Information relating to Camden's emerging Local Plan

36 In addition, I undertook an unaccompanied visit to the Mount Pleasant Neighbourhood Area and the site the subject of the Order.

Public Hearing

37 According to the legislation:

"It is expected that the examination of a draft neighbourhood plan or Order will not include a public hearing. Rather the examiner should reach a view by considering written representations."
(Planning Practice Guidance⁷)

38 However, legislation also establishes that, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.

39 Further to consideration of all of the relevant information, I determined that a public hearing was necessary in order to ensure adequate examination of a number of issues. Consequently, I arranged for a public hearing to take place on 20 March 2017.

40 The public hearing was held at London Welsh Centre in Camden, in close proximity to the site the subject of the CRTBO.

41 At the public hearing, people representing the Neighbourhood Forum, Camden Council, the Council of the London Borough of Islington (Islington Council) and the Royal Mail Group were invited to speak.

42 Matters considered included, but were not limited, the proposed CRTBO's effect on operational requirements, including car parking; whether the development proposed by the CRTBO could come forward independently of the wider Mount Pleasant site; and whether the CRTBOs treatment of affordable housing meets the basic conditions.

43 The public hearing was conducted in an exemplary manner and has informed the production of this Examiner's Report.

⁷ Ref: Paragraph 056, Reference ID: 41-056-20140306.

8. Consultation

- 44 Successful public consultation can help to enable a Community Right to Build Order to reflect the needs, views and priorities of the local community. It can add to a sense of public ownership, lead to community consensus and provide the foundations for a 'Yes' vote at Referendum. Further, as the making of a Community Right to Build Order replaces the need for a traditional planning application, public consultation provides for essential community engagement.
- 45 The Neighbourhood Forum submitted a Consultation Statement alongside the Order. This addresses the requirements of the Neighbourhood Planning (General) Regulations 2012, Part 6, Regulation 21, which relate to:
- publicity, community awareness and participation in the drafting of the Order;
 - consultation with affected parties, including local infrastructure service providers, statutory bodies and landowners;
 - copying proposals to the local planning authority.
- 46 In line with the Regulations, the Consultation Statement sets out who was consulted and how. It summarises the main issues and concerns raised by those consulted, and it describes how these issues and concerns have been considered and where relevant, addressed.
- 47 The Neighbourhood Forum summarised the consultation process at the public hearing and taking this and the above into account, I am satisfied that public consultation was robust and that it was fundamental to the production of the Order.

9. Whether the Order Meets the Basic Conditions

- 48 Further to consideration of all of the evidence, including taking into account the matters discussed at the public hearing, I am under no doubt that the Neighbourhood Forum has produced an Order that represents local community views and aspirations.
- 49 A wealth of information has been produced in support of the local community's clear aim of achieving a high quality, sustainable design.
- 50 Whatever the final conclusions of this Report, the information before me demonstrates the Neighbourhood Forum's commitment and dedication to producing an Order that is based around the purpose of enhancing life in the Neighbourhood Area.
- 51 The high quality proposal presented is a testament to all of those involved. I find that its aims and aspirations reflect a strong and welcome sense of civic pride. In this way, the Order, as submitted, should be regarded as a successful example of neighbourhood planning in action.
- 52 Notwithstanding this, however, it is a legal requirement, in order for the Order to proceed to Referendum, that it meets the Basic Conditions (and the other requirements set out in Paragraph 8 of Section 4B of the Town and Country Planning Act (as amended)).
- 53 This section of the Examiner's Report considers the Order against each of the Basic Conditions (which are identified in **bold**). The two basic conditions that require the Order to have regard to national policy and guidance, and to be in general conformity with the strategic policies of the development plan, are considered together. This helps with the consideration of a number of issues, particularly those relating to affordable housing.

Basic Condition: Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Order;

and

Basic Condition: The making of the Order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).

54 The National Planning Policy Framework (2012) (the Framework) and Planning Practice Guidance (2014) set out national planning policies and advice. The relevant development plan comprises the Camden Core Strategy 2010-2025 (2010) (Core Strategy) and Camden Local Development Framework Development Policies 2010-2025 (2010) (Development Policies) together with the London Plan (2016).

55 The Framework establishes that:

“The purpose of planning is to help achieve sustainable development...”

and that

“...Development means growth.” (Ministerial foreword, the Framework)

56 The Ministerial foreword of the Framework goes on to recognise that our historic environment – buildings, landscapes, towns – can better be cherished if their spirit of place thrives, rather than withers, and that the planning system is about making sustainable development happen.

57 In the above regard, it is established that a presumption in favour of sustainable development:

“...should be seen as a golden thread running through both plan-making and decision-taking.” (Paragraph 14, the Framework)

- 58 The Framework explicitly recognises that the application of this presumption in favour of sustainable development will have direct implications for how communities engage in neighbourhood planning. Specifically, neighbourhoods should:

"...identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed." (Paragraph 16, the Framework)

- 59 The Order seeks the redevelopment of Phoenix Place (South). It seeks to bring new housing, employment and open space to the Neighbourhood Area. As this would replace an area of car parking, the Order would, in general terms, appear to comprise the effective use of brownfield land, in accordance with Paragraph 17 of the Framework, which encourages:

"...the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value."

- 60 Furthermore, substantive evidence has been submitted to demonstrate that the proposal has been carefully designed to meet with other Core Planning Principles established in Paragraph 17 of the Framework. For example, evidence has been submitted to demonstrate that the Order would:

- empower local people to shape their surroundings;
- embody a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- seek to secure high quality design and a good standard of amenity; that it takes account of local character;
- support the transition to a low carbon future;
- promote mixed use development;
- seek to conserve heritage assets in a manner appropriate to their significance;
- apply to a site in a sustainable location; and
- support local strategies to improve health, social and cultural wellbeing.

- 61 All of the above provide notable examples of how the Order, as submitted, has regard to national policy and advice; and Camden Council has confirmed that the principle of the proposed development is considered acceptable and that *"the provision of additional residential floorspace in the Borough is strongly supported"* by local strategic policies.

- 62 However, whilst I acknowledge the Neighbourhood Forum's clear aspiration to provide affordable housing in line with policy requirements, the Order's approach to affordable housing may not necessarily result in its delivery, and this raises a significant concern in respect of the requirement to meet the basic conditions.
- 63 Paragraph 50 of the Framework promotes the creation of sustainable, inclusive, mixed and balanced communities to provide for the needs of different groups in the community; and together, London Plan policy 3.8, Core Strategy policy CS6 and Development Policies policy DP3 promote the provision of affordable housing to help meet the needs of those who could otherwise not afford to live in the Borough.
- 64 Development Policies policy DP3 sets an affordable housing target of 50%, subject to viability. The Order suggests the provision of 30% affordable housing and seeks to justify this lower provision through a financial viability assessment, partly founded on a land purchase price of £56.65 million.
- 65 However, it was established at the public hearing that no purchase price has been agreed between the Neighbourhood Forum and the landowner. Moreover, it was also confirmed that there was no agreement to sell the Phoenix Place (South) site to the Neighbourhood Forum, nor to any related party, for the development proposed by the Order; and that it is the intention of the landowner to sell the whole of the Mount Pleasant site on the basis of the extant permissions.
- 66 The representative of the landowner, the Royal Mail Group, confirmed that the extant permissions are being progressed and that the majority of pre-commencement conditions have been discharged. Furthermore, the representative confirmed that the Royal Mail Group is actively marketing the Mount Pleasant site and that the first round of bidding is well underway.
- 67 The suggested land purchase price has a fundamental impact on the suggested provision of affordable housing. It was agreed by the Neighbourhood Forum at the public hearing that the proposed percentage of affordable housing was effectively a factor of the land price. However, and notwithstanding the fact that the landowner is not seeking to sell the site on the basis of the Order, there is no mechanism in place to fix the land price and therefore, as a consequence, there is no mechanism in place to fix the percentage – or the delivery – of affordable housing.

- 68 In the above regard, the Neighbourhood Forum stated that, were the land price higher than that estimated in the viability statement, then there would be less affordable housing. Conversely, the Neighbourhood Forum considered that, were the land price to be lower than that estimated, then more affordable housing might be provided.
- 69 Such an approach gives rise to significant uncertainty. Were the site the subject of the Order to be purchased on behalf of the Neighbourhood Forum – and there is no evidence to demonstrate that this is likely to be the case – the delivery of affordable housing would be a factor of the purchase price. The purchase price is unknown.
- 70 In addition to the above, evidence submitted demonstrates that it is difficult to be certain about future land purchase prices in London. The possible purchase price of £56.65 million that is relied upon by the submitted viability assessment is based on very limited evidence, largely comprising of two land sales elsewhere in London during 2014 and 2015. Given that approximations of the value of the site in recent years appear to vary by tens of millions of pounds, it appears reasonable to conclude that the true value of the site will only be known when, or if, an agreement for its sale has been reached.
- 71 Taking the above into account, I find that the Order's proposal to set the affordable housing level largely on the basis of an estimated land value simply means that there can be no certainty in respect of the provision of affordable housing.
- 72 In the above regard, I am mindful that Islington Council has submitted evidence to demonstrate that the approach taken by the Order is contrary to Mayoral and borough guidance⁸ and that the risks associated with such an approach have been identified in research published by the RICS⁹.

⁸ Ref: Mayor's Housing SPG (March 2016) and Draft Affordable Housing and Viability (November 2016); London Borough Viability Protocol (November 2016).

⁹ Ref: RICS Guidance Financial Viability in Planning (2012).

- 73 National planning policy requires that, in pursuing sustainable development, careful attention be paid to viability in plan-making and decision-taking. In this respect, Paragraph 173 of the Framework states:
- *“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*
- 74 The approach set out by the Order means that *“the costs...such as requirements for affordable housing”* are entirely dependent upon an unknown factor. A direct consequence of this is that it is not known how much affordable housing will be provided.
- 75 It may well be, as the Order suggests, that a land value of £56.65 million would enable the provision of 30% affordable housing whilst returning a 17.49% profit. However, the *“land value”* of £56.65 million is hypothetical, for all of the reasons set out above and furthermore, as agreed by the Neighbourhood Forum, were the site purchased for a different amount, then the provision of affordable housing would differ.
- 76 This is an unsatisfactory approach as it could, for example, result in an Order that provides very little, or even no affordable housing. If this was the case, the Order runs the risk of failing to have regard to national policy in respect of delivering a wide choice of high quality homes and creating sustainable, inclusive and mixed communities.

- 77 In addition, the uncertainty of the Order in respect of affordable housing conflicts with local strategic policy, which is in no way uncertain in respect of its approach to affordable housing. The introduction to Core Strategy policy CS6 is explicit in stating:

"The Council shares the government's goal of seeking to ensure that everyone has the opportunity to live in a decent home at a price they can afford in a community where they want to live. We will therefore seek to establish a plentiful supply and a broad range of homes."

- 78 Policy CS6 seeks to achieve this by:

"...seeking to ensure that 50% of the borough-wide target for additional self-contained homes is provided as affordable housing."

- 79 As set out, the Order falls considerably short of proposing 50% affordable housing and furthermore, it fails to provide certainty to ensure the delivery of any affordable housing. Whilst I acknowledge that Planning Guidance¹⁰ states that:

"Where local planning authorities are requiring affordable housing obligations...they should be flexible in their requests."

it appears that the approach of the Order, based on a possible future land value, takes such flexibility beyond what is reasonable, as it provides for too much uncertainty.

- 80 Some, but not all, of this uncertainty arises from the fact that there is no Section 106 Agreement attached to the Order. More than this, no draft agreement or agreed heads of terms have been presented and there is no evidence to demonstrate that the Neighbourhood Forum has, or will have, a relevant interest in the land the subject of the Order.

- 81 In addition to the above, the representative of the landowner confirmed at the public hearing that the Royal Mail Group was not seeking to enter into a Section 106 Agreement with the Neighbourhood Forum or any other party on the basis of the Order. Rather, as pointed out above, the landowner is pursuing a land sale based on the extant planning permissions relating to the wider Mount Pleasant site.

¹⁰ Ref: 23b-006-20140306.

- 82 Paragraph 176 of the Framework establishes that where safeguards are necessary to make a particular development acceptable in planning terms then:

“...the development should not be approved if the measures cannot be secured through appropriate conditions or agreements.”

- 83 The absence of a Section 106 Agreement, combined with the approach of the Order considered above, means that affordable housing is not secured. Even if there were a Section 106 Agreement in place, it is difficult to understand how it could secure the provision of affordable housing, when such provision would be reliant upon a future land purchase.

- 84 In the above regard, it was suggested at the public hearing by the Neighbourhood Forum that a Section 106 Agreement could be entered into once the land had been purchased. However, even if the land the subject of the Order was to be purchased by, or on behalf of, the Neighbourhood Forum (and there is no evidence to demonstrate that this will be the case), that would mean that it will remain unknown how much affordable housing would be delivered by the Order until after any such purchase has taken place. It may be that the land purchase price would be such that no affordable housing would be provided and for the reasons given above, such an approach would fail to meet the basic conditions.

- 85 Further to this, Planning Guidance¹¹ establishes that:

“Planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation...or an agreement under other powers. Such a condition is unlikely to pass the test of enforceability...Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.”

- 86 It goes on to establish that, in the exceptional circumstance where a negatively worded planning condition requiring a planning obligation or agreement to be entered into before development can commence, is being considered, then:

¹¹ Ref: 21a-010-20140306.

"The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency."

87 To some considerable degree therefore, national advice cuts to the heart of this matter. Principal terms have not been agreed to ensure that the test of necessity is met. Rather, there is conflict with policy and it is unclear how such terms could be agreed on the basis that the delivery of affordable housing is reliant upon an unknown factor. In this regard, the Order does not "*deliver sufficient certainty*" and does not have regard to national advice. It does not meet the basic conditions.

88 The delivery of sufficient certainty is important. Paragraph 198 of the Framework states that:

"Where a Neighbourhood Development Order has been made, a planning application is not required for development that is within the terms of the order."

89 If the Order was to succeed at Referendum, then it would, as is its purpose, allow the development proposed within it to come forward. There would be no "second chance."

90 Essentially, based on the evidence presented, the Order, if it were to be made, would result in the right to construct, amongst other things, 125 dwellings, without any certainty that any of them would comprise affordable housing.

91 One of the stated aims of the Neighbourhood Forum is to provide for more affordable housing at Phoenix Place than do the extant planning permissions. In respect of the wider Mount Pleasant site, Islington Council states:

"It was considered that the whole site viability was impacted by enabling works on Calthorpe Street which affected the affordable housing that was deemed viable across the site. Explicit links were therefore put in place to ensure that Phoenix Place did not come forward in isolation from Calthorpe Street with lower affordable housing provision than would have been viable. The enabling works at Calthorpe Street were deemed to be a key element of the overall viability position."

- 92 Given this fundamental difference, it is difficult to see how the overall provision of affordable housing at the site the subject of the Order, can be directly compared to that that would be provided by the wider Mount Pleasant-wide development scheme, as permitted.
- 93 Phoenix Place (South) effectively forms part of the wider (4.8 hectare) Mount Pleasant regeneration site. This wider site straddles the boundaries of the London Boroughs of Camden and Islington. Due to its scale and location, the Mount Pleasant site is strategically important and is the subject of the Mount Pleasant Supplementary Planning Document (the SPD), which was jointly adopted by the Councils of the London Boroughs of Camden and Islington in 2012. The SPD provides a guide to development on the Mount Pleasant site:
- “The adopted SPD will provide planning guidance for development management purposes and be considered as a material consideration in the determination of any planning applications for the redevelopment of the site.”* (Paragraph 2.13, the SPD)
- 94 The SPD recognises the need to provide for a holistic approach to the redevelopment of Mount Pleasant, with particular regard to viability:
- “Islington and Camden councils are committed to a joint approach with regard to viability and planning obligations. As a principle, the comprehensive development of the Mount Pleasant site across the two boroughs would be considered as a whole, with costs, benefits and viability assessed accordingly.”* (Paragraph 4.3.40, the SPD)
- 95 The Mount Pleasant planning permissions¹² are tied to a shared Section 106 Agreement. The Section 106 Agreement applies across the Mount Pleasant site (the planning permissions comprise five parcels of development, one of which largely relates to the boundary of the land the subject of the Order). Together, the Section 106 Agreement and the planning permissions provide for a holistic approach to development, in line with the guidance set out in the SPD and for certainty in respect of the delivery of infrastructure and affordable housing across a complex, phased development.
- 96 As set out above, the extant planning permissions provide for the integration of redevelopment with ongoing Royal Mail Group operations.

¹² Ref: 2013/3807/P; and P2013/1423/FUL.

- 97 It was established at the public hearing that the unfettered continuation of Royal Mail Group operations from Mount Pleasant is an essential consideration. The enabling works at Calthorpe Street provide for parking, vehicular circulation, loading and unloading of HGVs, re-fuelling and maintenance and additionally, the permitted development provides for operational vehicle and car parking spaces at the site the subject of the Order.
- 98 The landowner's representative stated at the public hearing that the Royal Mail's requirements at Phoenix Place "*are critical to operations.*" Like the enabling works, the extant permissions purposefully provide for ongoing operations.
- 99 However, the Order does not provide for "*critical*" parking spaces and as a consequence, the Order does not safeguard the operational requirements of the Royal Mail Group.
- 100 Such an approach fails to have regard to planning's economic role, which is recognised by the Framework as one of the three dimensions of sustainable development. National policy requires:

"...sufficient land of the right type...in the right places at the right time..."

and the need for:

"...coordinating development requirements, including the provision of infrastructure" (Paragraph 7, the Framework)

- 101 With regards this latter point, Islington Council states that:

"The links between the different parts of the wider (Mount Pleasant) sorting office site were a key issue in the original application and S106 Agreement."

- 102 Whilst I acknowledge that the Neighbourhood Forum is seeking to reduce car journeys in a location with exceptional public transport links, simply ignoring operational needs not only results in the above conflict with national policy, but also gives rise to problems associated with the potential displacement of the required parking spaces.
- 103 In this regard, Camden Council, as the Highway Authority, has expressed "*serious concerns*" that the Order will result in the displacement of 198 car parking spaces and that this will have a "*severe impact*" on the surrounding area.

104 Given the densely developed nature of the area around the site, it appears reasonable to conclude that such a level of displacement does have the potential to result in significant highway safety issues and there is no substantive evidence to the contrary. Such an outcome fails to have regard to Paragraph 32 of the Framework, which suggests that proposals should be prevented or refused:

"...where the residual cumulative impacts of development are severe."

105 The existence of exceptional public transport links does not in itself mean that the 198 parking spaces required for the Royal Mail's operational needs are not required. If this were to be the case, it seems unusual that the parking spaces are purposefully provided for by the permitted development.

106 Also, whilst I acknowledge that efforts to reduce air pollution are extremely important, no substantive evidence has been provided to demonstrate that failing to provide operational parking spaces is necessarily the same thing as reducing air pollution. If all 198 vehicles comprised electric cars, then that might, for example, reduce air pollution more effectively than a measure that could result in more car journeys and additional congestion as drivers of the 198 vehicles seek out alternative locations to park.

107 In addition to all of the above, I am also mindful that if the Order was to be implemented, then the permitted Mount Pleasant scheme could not come forward as per the requirements of the extant planning permissions, the associated Section 106 Agreement and the SPD. New planning permissions and a new site boundary would be required. This could have the consequence of placing the development of the wider Mount Pleasant site at risk and of preventing or slowing down the delivery of sustainable development, contrary to national policy, which states that:

"Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision."

108 In considering all of the above in respect of the basic conditions, I am very conscious of the considerable efforts that the Neighbourhood Forum has gone to in order to provide an Order aimed at providing for a better place.

109 The thoughtful and aspirational approach of the Neighbourhood Forum came across strongly at the public hearing and there is little doubt that the combined knowledge and commitment of the Neighbourhood Forum's members is to the great benefit of the Neighbourhood Area.

- 110 However, as established above, whilst much of the Order has regard to national policy and is in general conformity with the development plan, the examination process is not simply a balancing exercise to weigh benefits against harm, but is concerned, expressly, with whether the Order meets the basic conditions.
- 111 Unfortunately, in this case, for the reasons set out above, there are circumstances whereby the Order does not have regard to national policy and advice; and is not in general conformity with the strategic policies of the development plan. For these reasons, I am unable to conclude that the Order meets the basic conditions.
- 112 In highlighting those areas where the Order fails to meet the basic conditions, I note that this Report may help to identify specific things that the Neighbourhood Forum might do to produce an Order that does meet the basic conditions.

Basic Condition: Having regard to the desirability of preserving any Listed Building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the Order.

113 Paragraph 128 of the Framework requires:

“...an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance.”

114 A Heritage Statement has been submitted alongside the Order and this considers the effect of the proposed development on heritage assets and their settings.

115 The site the subject of the Order is close to a Grade II Listed terrace on Mount Pleasant and a Grade II Listed pub at the corner of Mount Pleasant and Warner Street.

116 The Heritage Statement provides evidence to demonstrate that the Order would have a more positive impact on the area’s heritage assets than would the extant permissions.

117 The Council of the London Borough of Camden has assessed the proposal and concluded that the Order would result in “*minimal harm*” to the setting, character and appearance of heritage assets. In such instances, the Framework (Paragraph 132) establishes that any harm should require clear and convincing justification.

118 In this regard, I am particularly mindful of the extant permissions. There is little doubt that the Order would result in lower and less imposing buildings than would the implementation of the extant permissions. However, the determination in favour of these permissions concluded that they were justified as the sustainable development benefits outweighed any harm arising.

119 Taking everything into account, I find that the proposed development has been designed to respect the Listed Buildings and Conservation Area and that the Order would result in a development that has regard to the desirability of preserving the setting of these.

- 120 The City of London has raised a concern in respect of the potential impact of the Order on the London Panorama View 2A.1¹³ from Parliament Hill towards St Paul's Cathedral. However, the Order would result in a development lower in height and less visible in distant views than the extant planning permission. There is nothing before me to the contrary and no substantive evidence to demonstrate that any harm would arise in respect of London Panorama View 2A.1.
- 121 Taking all of the above into account, I am satisfied that the Order satisfies this basic condition.

¹³ Ref: London View Management Framework (LVMF) Supplementary Planning Guidance (also, see Policies 7.11 and 7.12 of the London Plan).

Basic Condition: Having regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area, it is appropriate to make the Order.

- 122 The site the subject of the Order is located opposite and within the setting of the Hatton Garden Conservation Area.
- 123 The Heritage Statement considers the effect of the Order on the Conservation Area and outlines a number of benefits of the proposal. I recognise these and consider that the proposal has regard to the desirability of preserving the character and appearance of the Hatton Garden Conservation Area. No substantive evidence to the contrary was submitted during the Submission consultation period.
- 124 The Order meets this basic condition.

Basic Condition: The making of the Order contributes to the achievement of sustainable development.

- 125 Paragraph 7 of the Framework recognises that there are three dimensions to sustainability: economic, social and environmental. Notwithstanding the findings set out above in respect of the Order failing to have regard to national policy and advice, I recognise that the proposal, as a major mixed use development, would bring about social, economic and environmental benefits.
- 126 For example, it would provide for new commercial space and encourage employment. It would also provide for 125 new dwellings and so contribute to the need to boost, significantly, the supply of housing, as per Paragraph 47 of the Framework.
- 127 The Order would provide for social and environmental benefits, through the provision of new open space, ecological and biodiversity enhancements and aims built around the reduction of carbon dioxide emissions, for example, the proposal identifies an aspiration to achieve a BREEAM excellent rating.
- 128 In the above ways, the Order, together with the information submitted alongside it, provides evidence to demonstrate that it will contribute to the achievement of sustainable development.
- 129 However, sustainable development is all-embracing and specific examples of where the Order does not have regard to national policy and advice, and is not in general conformity with local strategic policy, are identified earlier in this Report. Given this, I am unable to conclude that, overall, the Order contributes to the achievement of sustainable development, or that it meets the basic conditions in this regard.

Basic Condition: The making of the Order does not breach, and is otherwise compatible with, EU obligations.

130 I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.

131 In respect of environmental obligations, the Council of the London Borough of Camden issued a Screening Opinion in November 2016, which concluded that:

“...the development is not considered to be likely to have significant effects on the environment by virtue of factors such as its nature, size or location... The proposal is not considered to constitute EIA (Environmental Impact Assessment) development...”

132 In reaching its opinion, the Council of the London Borough of Camden concluded that the scale and magnitude of the proposed development does not trigger the need for EIA and that it could be regarded as “*separate*” from the wider Mount Pleasant scheme. In this regard, I concur with the view that the Order is simply for the Phoenix Place (South) site and that, whilst this raises other issues and concerns as highlighted elsewhere in this Report, the Order does not form part of any wider development.

133 In addition to the above, all of the statutory consultees have been consulted and none of them has stated that the making of the Order would breach, or would not otherwise be compatible with, EU obligations.

134 Taking the above into account, I am satisfied that the Order satisfies this basic condition.

Basic condition: Prescribed conditions are met in relation to the Order and prescribed matters have been complied with in connection with the proposal for the Order.

135 Subject to the contents of this Report and its Recommendation, the Order meets prescribed conditions and prescribed matters.

136 Further to all of the above, Regulations 32 and 33 of the Neighbourhood Planning Regulations (2012) as amended set out two further **Basic Conditions:**

- *The making of the neighbourhood plan or order is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.*

137 Taking the above into account, I find that the Order complies with this and note that there is no substantive evidence to the contrary.

- *Having regard to all material considerations it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.*

138 As above, the Council of the London Borough of Camden has undertaken a screening assessment and confirmed that EIA is not required for the development proposed in the Order.

139 For completeness, as identified earlier in this Report, the Examiner is required to consider whether:

- *The order proposal is accompanied by a draft of the order and a statement which contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits.*

140 This information has been provided and therefore the Order complies.

- *The order proposal may not provide for the granting of planning permission for development which is excluded development, where planning permission is already granted for that development, and may not relate to more than one neighbourhood area.*

141 Further to consideration of information relating to the Order, I find that the Order complies with the above.

- *The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended) which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified.*

142 The Order complies.

- *Whether the draft order is compatible with the European Convention on Human Rights.*

143 The Order complies.

Basic Conditions - Summary

144 To conclude this Chapter of the Examiner's Report, I have found that the Order does not meet the following basic conditions:

- *Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Order.*
- *The making of the Order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).*
- *The making of the Order contributes to the achievement of sustainable development.*

145 The failure to meet these the basic conditions is, to some considerable degree, the result of the absence of certainty. Unfortunately, this is not a factor can be resolved by recommended modifications to the Order but is dependent upon matters outside the scope of the Examiner's Report.

146 Consequently, as the Order does not meet the basic conditions and there are no recommended modifications to resolve this, the recommendation at the end of this Report is that the Order should not proceed to Referendum.

10. Enfranchisement rights and retention of affordable housing in perpetuity

- 147 The legislation provides a mechanism that enables housing developed using a Community Right to Build Order to be retained as housing that is affordable in perpetuity. This is achieved by dis-applying certain statutory rights of tenants of long leases to buy their freehold and the statutory right given to qualifying tenants to acquire social housing as per the provisions of the Town and Country Planning Act 1990 (as amended) (paras. 11 and 12 of Schedule 4C) and the Neighbourhood Planning (General) Regulations 2012 (as amended), Part 7.
- 148 The Order, on page 7, "*Statement of Enfranchisement rights*," states that both the right to buy and the right to acquire are not exercisable. In this way the Order could provide for the retention of a stock of affordable homes for the benefit of the local community in perpetuity.

11. Modifications to the Order

149 I conclude above that the Order does not meet the basic conditions. I also note that the factors that result in the Order failing the basic conditions are not matters that can be resolved through examination, via recommended modifications.

150 Camden Council has suggested a number of planning conditions to be imposed should the Order be recommended for Referendum. However, an Order that does not meet the basic conditions cannot progress to Referendum. I have considered the suggested conditions and note that, individually or combined, their imposition would not alter the fact that the Order does not meet the basic conditions.

12. Referendum

151 For the reasons set out above, the Phoenix Place Community Right To Build Order does not meet the basic conditions. Consequently, I must recommend to the Council of the London Borough of Camden that the Phoenix Place Community Right to Build Order should **not** proceed to a Referendum.

Referendum Area

152 Given the recommendation above, there is no requirement to consider whether the Referendum Area should be extended beyond the Mount Pleasant Neighbourhood Area approved by the Councils of the London Boroughs of Camden and Islington on 4 February 2016.

Note

Whilst I am, of course, conscious that the findings of this Report will be disappointing to everyone involved in the Neighbourhood Forum, I hope that the content of the Report can be regarded as relevant information to enable the Forum to look forward.

The Neighbourhood Forum is pioneering in its attempts to bring forward an Order of such scale and complexity, without examples of best practice to provide a clear steer, and it has made remarkable progress to reach the stage that it has.

As highlighted in this Report, it is abundantly clear that the express purpose of the Neighbourhood Forum is to make this part of Camden a better place.

The people associated with the Neighbourhood Forum must be congratulated on their knowledge, commitment and tremendous civic pride in getting to this stage. I sincerely hope that, despite this setback, the work to date is treated as a success and that this milestone is considered as another step forward towards attaining the goal of making Mount Pleasant a better place for the local community and for anyone who wishes to enjoy it in the future.

Nigel McGurk, April 2017
Erimax – Land, Planning and Communities

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