

LONDON BOROUGH OF WANDSWORTH

**APPEAL UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT
1990**

(AS AMENDED)

BY

PROMONTORIA BATTERSEA

**IN RESPECT OF THE APPEAL AGAINST THE DECISION BY THE LONDON
BOROUGH OF WANDSWORTH TO REFUSE PLANNING PERMISSION FOR THE
DEVELOPMENT OF**

1 BATTERSEA BRIDGE ROAD, LONDON, SW11 3BZ

REBUTTAL PROOF ON BEHALF OF THE LOCAL PLANNING AUTHORITY

JOANNA CHAMBERS BA BTP MRTPI

Appeal reference number: 6002127

LPA Reference: 2024/1322

CD9.07

1. Introduction

- 1.1 I have reviewed the Planning Proof of Evidence and associated appendices prepared by Jonathan Marginson MA Hons MRTPI on behalf of the Appellant (CD8.04-8.05). A number of matters have been raised in that Proof of Evidence which the Local Planning Authority (The 'LPA') would wish to contest and where a rebuttal has been considered necessary. These matters are set out below.
- 1.2 I have not responded to every point set out in Mr. Marginson's proof with which I disagree. My focus in preparing this rebuttal proof has been on the main points which I consider would benefit from a written response in advance of my oral evidence to the inquiry.

2. Section 5: Main Issues

Development Plan

- 2.1 Mr Marginson discusses policy compliance with London Plan GG2 Making the best use of land in paras 5.2-5.7 of his proof. However, GG2 is not a policy but one of the six Good Growth objectives which inform each of the policy areas of the London Plan. GG2 promotes the best use of land and higher density development by *inter alia* applying a design-led approach to determine the optimum development capacity of sites (GG2 D) and understanding what is valued about existing places (GG2 E). The Appeal scheme fails in both these respects for the reasons I have explained in detail in my main proof of evidence.

Design-led Approach and Consideration of Alternatives

- 2.2 Mr Marginson maintains at para 5.5 of his proof that a design-led approach to determine the optimum capacity of development was applied at the Appeal Site taking full account of local context and scale and that the proposal is therefore in accordance with London Plan Policy D3 (CD5.01). Para 5.7 quotes part A of Policy D3 which states that 'the design led approach requires consideration of design options to determine the most appropriate form of development that responds to a site's context and capacity for growth'. This underscores the importance of being able to demonstrate that genuine alternatives have been considered in order to demonstrate that a design led approach has been adopted.
- 2.3 Para 5.8 of Mr Marginson's proof of Evidence states that 'extensive design options were explored and tested by the Appellant's team to determine the most appropriate form of development for the Appeal Site in relation to its

context' and that 'a design-led approach was followed by the Appellants in accordance with Policy D3 of the London Plan'.

- 2.4 I disagree with this statement. With the exception of a retrofit scheme for conversion of the existing building to residential use for which prior-approval was granted in May 2018 (as referenced in the Statement of Common Ground (para 3.1) (CD7.01) and consideration of existing building capacity in the Design & Access Statement (page 30) (CD1.07), the Appellant has not considered any options for the Appeal Site apart from a very tall building in excess of 29 storeys. Furthermore, the Appellant has not explored other options in pre-application discussions with the LPA or meetings with the Wandsworth Design Review Panel (DRP). This is confirmed in the Design and Access Statement submitted in support of the planning application (CD1.07). The options considered have merely comprised 3 alternative versions of the same tall buildings with just two incremental height reductions from 38 storeys to 34 storeys and from 34 storeys to 29 storeys. This does not constitute the consideration of genuine alternatives required by Policy D3 Part A

Weight placed by the Appellant on the Consultation Draft NPPF (December 2025)

- 2.5 The parties agreed in the Statement of Common Ground (para 7.6) (CD7.01) that minimal weight can be attached to the draft NPPF which was published for consultation in December 2025 and is now expected to be published in Summer 2026. The consultation period ends on 10th March 2026 and the final version may still be subject to significant change prior to adoption. However, Mr Marginson now appears to place significant weight on this document in his Proof of Evidence (paras 5.23-5.31).
- 2.6 The LPA remains of the view, and it is my evidence, that, in accordance with the Statement of Common Ground agreed with Mr. Marginson, minimal weight only should be attached to the consultation draft NPPF and the assessment of the proposed development against the approach and policies set out in that document should also be given limited weight in the determination of this appeal. Mr Marginson in his proof goes as far as asserting that if the Urban Design Study (CD5.16) were to be undertaken now having regard the draft NPPF the outcome is 'likely to be markedly different'. This statement cannot be substantiated and I do not accept it. The Urban Design Study forms an important part of the evidence base underpinning the recently adopted Local Plan and the Inspectors at the Local Plan Examination in Public found the tall buildings strategy set out in Local Plan Policy which is informed by the Urban Design Study to be 'appropriate, justified by evidence and in general

conformity with the approach advocated in the London Plan' (CD6.11 para 113).

Housing need and delivery

- 2.7 The Appellant has agreed for the purposes of the inquiry that the LPA has a 5.5 Year Housing Land Supply (5YHLS) but has reserved its position in relation to the Council's performance against the soon to be published Housing Delivery Test for 2024. This is set out in Statement of Common Ground Addendum (CD7.05) and in the DP9 Ltd response to LBW regarding the 5YHLS and Housing Delivery Test (HDT) (CD8.06).
- 2.8 However, Mr Marginson in his Proof of Evidence continues to question the Council's housing completions and future supply and in para 6.10 states: *' I consider that the 5YHLS is fragile, particularly given the uncertainties that remain in relation to the delivery of a number of sites in the AMR and the continuing projected decline in housing delivery in the borough and in London. This is a material consideration in the determination of the appeal and must further support the weight to be given to the delivery of housing in the borough and London'*. Having agreed that the Council has a 5YHLS of 5.5 years which meets national policy requirements, there is no basis for the continued interrogation of this matter. However, as a result of the statements made in Mr Marginson's Proof of Evidence, there is now significant uncertainty over the position which has been adopted by the Appellant for the purposes of this Inquiry. The Council proceeds on the basis that the Appellant has not reneged from what it set out in the Statement of Common Ground Addendum (CD7.05). If it becomes apparent that the Appellant is doing otherwise, then the Council reserves its position.
- 2.9 As part of the pre-Inquiry discussions which took place between the Council and the appellant regarding the 5YHLS and HDT results, the Council provided the Appellant with the HDT figures it submitted to MHCLG for the next two sets of results. This was summarised at para 5.16 of my Proof of Evidence (CD9.03) which states: *'The LPA has submitted its HDT data to government based on the figures in the AMRs for these periods and is confident that the delivery rates will pass the HDT and no action will be required to increase housing delivery in the Borough. The submitted figures indicate a Housing Delivery Test measurement of 123% for 2024 and 124% for 2025. These figures differ from the figures set out in the AMR by reason of different assumptions that apply when delivering HDT results to Government'*.
- 2.10 The HDT results which have been submitted to Government for 2024 and 2025 show that the Council's future HDT results are most likely to be even

higher than the most recently published HDT result by Government. In addition to being able to demonstrate a 5 year housing land supply of 5.5 years, the Council can demonstrate the supply of around 5,000 dwellings above the Local Plan Housing requirement between now and 2037/28, which shows a considerable short- and long-term supply. Mr Marginson's Proof of Evidence (CD8.04) is purely speculative as it provides no convincing evidence that the Council will not meet its housing targets in the future.

- 2.11 Mr Marginson's Proof of Evidence (para 5.42) also refers to the Council's AMR (2024/25) Housing trajectory (CD5.17), stating that *"The LBW housing trajectory projections for 2025/26 are 1,694, 1,497 for 2026/27, and 1,791 for 2027/28"*. Given the Council has met over 45% of the London Plan housing requirement in only 4 years since the London Plan was adopted, the Council remains on track to deliver its London Plan housing requirement of 19,500 dwellings over the 10 year period between 2021 and 2031. The Council would therefore reject the unsubstantiated and speculative assertion of Mr Marginson that the Council will not be meeting the HDT in forthcoming years and that based on his projections, the Council may require an action plan and may even fall into 'tilted balance' under para 11 of the NPPF. Mr Marginson states that the projections are a material consideration in the determination of the Appeal (para 6.8). I disagree. There is also no requirement within the NPPF or PPG to consider projected future trends as part of the tilted balance and speculation about future housing supply should therefore not be given any material weight as part of the decision-making process
- 2.12 Mr Marginson's Proof of Evidence also seeks to draw upon London wide completions data. It is important to note that Wandsworth is only required to deliver its own housing requirement within the London Plan and not required to deliver a larger proportion of the London wide requirement. For the purposes of determining this Appeal, it is only necessary to consider the supply and completions data for Wandsworth. It would not be appropriate to speculate on completions trends in other London boroughs which may not have housing markets that are comparable to Wandsworth.

Social Rent Delivery

- 2.13 At para 5.43 of his Proof of Evidence, Mr Marginson refers to the level of Social Rented completions in the borough as follows: *"Strikingly, there were no social rented affordable housing starts in 2024/2025 in LBW, and only 42 social rented completions (Table 7, CD 5.17). That is highly concerning for a borough which has high levels of need for affordable housing, particularly in social rented housing"*.

- 2.14 This statement does not address the full context of social rented housing delivery in Wandsworth. Given the Council is carrying out extensive estate regeneration across the borough, it is important to consider gross Social Rented completions rather than only net Social Rented completions. This is because the GLA requires the Council to record demolitions in the year they occur, which can artificially reduce the Social Rented completions figures during years when large-scale demolitions have had to take place as a result of long-term estate regeneration plans. Considering the above, there have been 106 gross completions of Social Rented dwellings in 2024/25 in Wandsworth, with 691 Social Rented dwellings currently under construction. Although there were no new starts of Social Rented homes in 2024/25, 494 Social Rented homes were permitted in 2024/25 (in addition to the aforementioned 691 Social Rented homes under construction), which taken together demonstrates that there is a considerable supply of Social Rented homes within Wandsworth. All demolitions and net/gross completions are included in the AMR (CD5.07) (see Tables 8b-8e). The Homes for Wandsworth web page and dashboard provide more detail on each of the schemes if this should be required. The Local Plan Partial Review was adopted by Full Council on 4th March 2026 and seeks to enhance the delivery of genuinely affordable homes for residents including requiring affordable housing or affordable housing contributions from a greater variety of site types including Student Housing developments, Co-living, Build to Rent and small sites (CD5.43).

Deliverability

- 2.15 Mr. Marginson's Proof of Evidence (CD8.04) seeks to respond to the question of deliverability which was raised in the Council's Statement of Case (CD9.01) and is addressed in my Proof of Evidence (CD9.03). Appendix A to his Proof of Evidence contains a Letter from the Appellant in relation to deliverability dated 20 February 2026 (CD8.04A) and Appendix G contains the Viability Report prepared by DS2 dated February 2026 (CD8.04G). Whilst the letter from the Appellant concludes that the development is both commercially viable and deliverable, it is noted that neither document provides detailed viability evidence to support this statement. At para 5.54 of his Proof of Evidence, Mr Marginson himself acknowledges the substantial challenges involved in housing delivery due to build cost inflation, stagnant house prices, higher interest rates and Gateway 1 and 2 approval requirements which have led to the decline in housing delivery in London but fails to explain why the proposed development is immune to these challenges- let alone how it can deliver 50% affordable housing ALL at social rent. Indeed, at para 6.12 of the Viability Report prepared by DS2, reference is made to "*positive dialogue with the GLA in respect of grant funding opportunities that are currently available*

through the GLA's Accelerated Funding Route programme which would improve viability'. This statement itself serves to question whether the proposed level and tenure of affordable housing is in practice deliverable without grant funding. By way of context, para 4.8.1 of the GLA Draft LPG Support for Housebuilding (CD5.31) states that 'Partners with projects consented at 35% or more affordable housing that are currently stalled due to viability reasons are encouraged to assess the availability of grant where this is needed to support delivery'.

- 2.16 Appendix A (CD8.04A) of Mr Marginson's Proof of Evidence refers to the Planning Applications Committee (PAC) report (CD3.01) which according to the Appellant "expressly acknowledges the affordable housing provision as a significant benefit of the scheme (para. 20.29 of the officer report to committee)" and "does not raise any concerns regarding delivery". While the Council's Committee report does reference the benefits associated with the proposed affordable housing provision, it is important to note that the application was not viability tested and was considered at PAC in April 2025. Since then, the Greater London Authority (GLA) have consulted on the Support for Housebuilding London Plan Guidance which acknowledges London wide viability challenges and seeks to improve viability through the new Time Limited Planning Route. The Government has also consulted on changes to the Community Infrastructure Levy (CIL) regulations which would allow up to 80% reductions in CIL to support house building. These measures all point towards increasing viability challenges across London, indicating that the economic landscape has continued to change significantly since the proposal was considered at PAC.
- 2.17 In addition, I am aware of a number of recent appeal decisions where soon after planning applications had been approved, a Section 73 application has been submitted seeking to reduce the number of affordable homes on the grounds of viability, and in some cases removing the affordable housing provision completely. Due to this trend, it is only right that the Council should consider the possibility of this situation arising and the overall question about the site's deliverability
- 2.18 As a result, given the proposed changes to the affordable housing requirements and CIL regulations by the GLA and the government in response to the changing economic landscape in terms of viability since the application was determined at PAC in April 2025, as well as recently approved appeals where affordable housing requirements have been lowered through Section 73 applications, the Council is of the view that it is well within its rights to question the deliverability of the scheme.

Planning Balance

- 2.19 The appellant refers to paragraph 125c within the NPPF (December 2024) which requires planning decisions to give substantial weight to the value of using brownfield land. Mr Marginson states that *“Consequently, I consider that paragraph 125c of the NPPF would support the grant of planning permission on the Appeal Site”*. However, it must be acknowledged that Para 125 (c) also makes clear that planning permission should not be granted if substantial harm would be caused.
- 2.20 The Planning Applications Committee report (CD3.01) attaches only moderate weight is attached to the additional housing proposed as it represents a very low proportion of the Council’s overall housing requirement. This is also addressed in my at para 5.22 of my Proof of Evidence (CD9.03) which states: *“Furthermore, when the proposal (totalling 110 dwellings) is considered in the context of the LPA’s recent housing delivery and substantial pipeline, the proposal would represent only 5.6% of the annual requirement for housing in Wandsworth of 1,950 dwellings per annum”*. Wandsworth has a housing supply of 5.5 years and a Housing Delivery Test result of 112%, which illustrates that the borough’s housing supply is not constrained. As the proposal only makes a small contribution to the Council annual housing requirement, the wider impacts of the scheme need to be balanced against the benefits.
- 2.21 However, regardless of supply considerations and the weight which it is agreed should be attached to the value of using brownfield land it is essential that the planning balance takes into account the broader impacts of the scheme. As set out in my Proof of Evidence, this approach aligns with appeal decision (APP/M9584/W/24/3350592, 302-312 High Street, Stratford, London E15 1AJ) (CD13.01). In that decision, whilst the borough could demonstrate only a 2.14-year housing land supply and had met just 61% of its housing delivery target, the Inspector concluded, *“While the changes to paragraphs 11d)ii and 125c mean that the balance would be closer, this does not mean development at any price or that any height of tower would be acceptable, nor does it annul the design emphasis in the NPPF”*.
- 2.22 At paragraph 5.22 of his Proof of Evidence, Mr Marginson states that the Officer report (CD3.01) does not identify ‘substantial harm as a result of the proposed Development’ nor do the reasons for refusal refer to ‘substantial harm’ and for this reason has questioned whether the terms of para 125(c) of the NPPF are therefore met. In arriving at the recommendation Officers carefully applied the requirements of the NPPF and balanced the benefits, along with disbenefits, of the proposal against these overarching objectives. To this end, the material weight that the individual components of the proposal

were considered to achieve, were required to be balanced against the harm identified. It is noted, however, that there is no weighting hierarchy in the NPPF and different hierarchies can be applied in assessing the weight to be applied in decision making. The material weight applied by the officers in assessing the development proposals was in the ascending range of neutral, moderate, great and significant- *significant being the highest level of weight applied*. This is set out in para 20.29 of the Officer Report and the Officer Report provides a clear and justified assessment as to why there is no justification to engage the weight that para 125(c) places on the Council to approve a proposal that has been demonstrated to cause significant harm. It is clear, therefore, that the consistent use of the term significant in the Officer Report and Reasons for Refusal equates to substantial in terms of the weighting hierarchy applied by Officers.

- 2.23 A different scale was agreed between the parties in the Statement of Common Ground with substantial weight being the highest level of weight applied and I have used this agreed scale in assessing the Planning Balance in my Proof of Evidence.

Assessment of Proposals against Policies D9 and LP4

- 2.24 Mr Marginson has assessed the proposed development against London Plan Policy D9 and Local Plan Policy LP4. and concludes that despite not being located within a tall building zone, the proposed development would *comply* with both policies if it can be demonstrated that it complies with other parts of those policies when read as a whole. The LPA disagrees with his interpretation of these policies.
- 2.25 The Site is not located within a defined tall building zone and is, therefore, in the LPA's view clearly contrary to London Plan Policy D9 Part B 3). This is confirmed in the GLA Stage 2 Referral Report (CD11.09/15) which states at paras 41- 42: *'As set out at consultation stage, the proposed development would be considered a tall building in line with the definitions set out in the Wandsworth Local Plan and the London Plan. However, as it sits outside of a tall building zone, it would not meet the locational requirements of London Plan Policy D9 (Part B)'*. As such it cannot, as Mr Marginson has argued, be said that the proposed development is in full conformity with London Plan Policy D9 when read as a whole.
- 2.26 In setting out the Appellant's case, Mr Marginson has placed significant weight on the Master Brewer High Court Judgement (CD13.07). That Judgement must, however, be looked at in its correct and proper context. The Judgement makes clear that the Defendant (The Mayor of London) had concluded that

the proposed development *did not fully accord* with Policy D9 because it had not been identified as suitable in the Development Plan but notwithstanding the non-compliance with Part B of Policy D9, had determined that the proposal accorded with the provisions of the development plan when read as a whole. That was a planning judgment, based on the benefits of the proposal and the weight given by the Mayor to the fact that the proposals would comply with the other criteria in Policy D9. Whilst the Master Brewer Judgement is relevant, the circumstances of the Appeal Site are very different. Whilst Officers undertook a full assessment of the proposed development against the criteria set out in Policy D9 C (which is consistent with the Master Brewer Judgement), on the basis of that assessment, it was concluded that the proposed development did not comply with the criteria set out in Policy D9 C. This is not, therefore a case (unlike the proposed development in the Master Brewer Judgement) where part compliance with Policy D9 and other material considerations that would support a tall building outside an identified tall building zone can be demonstrated.

- 2.27 Similarly, the intent of Local Plan Policy LP4 is to manage the development of tall buildings within areas identified as suitable for them. Policy LP4 B clearly states that proposals for tall buildings will only be appropriate in designated tall building zones' and there is no basis for Mr Marginson's assertion in para 5.94 of his Proof of Evidence that 'a proposal for a tall building must be capable of meeting the requirements of Policy LP4 if it complies with other parts of Policy LP4'. Whilst it is agreed that Policy LP4 C introduces an element of flexibility, as with Policy D9, the policy must be read as a whole to determine policy compliance. The fact that the Appeal Site is outside a designated tall building zone means that it does not comply with Policy LP4 B and as in the case of the Master Brewer Judgement, it would be necessary to satisfy the criteria set out in Policy LP4 to achieve even *partial* compliance with that Policy and in those circumstances, to make a planning judgement as to whether there were material considerations that would support a tall building outside a designated tall building zone. As set out in the LPA's Statement of Case and my Proof of Evidence, such considerations do not come into play in this case. The impacts of the proposed development have been assessed against the detailed criteria set out in Policy LP4 and this demonstrates that as well as being located outside a designated tall building zone, there would be a substantial adverse effect and the proposed development is not in compliance with Policy LP4 or the Development Plan when read as a whole. In this respect, it is also significant to note that the Inspectors did not intend the modification to Policy LP4 to encourage the development of tall buildings outside identified areas. The Inspectors Report (CD6.11) (para 115) states: '*The modification will allow a degree of flexibility and thus, provide opportunities for tall buildings where one can demonstrate*

other material considerations in support of a tall building beyond an identified tall building zone. However, it must be borne in mind that such opportunities are likely to be extraordinary rather than ordinary, and we are not persuaded that the Borough should be made a free for all in relation to tall buildings across Wandsworth'. The Inspectors go on to say at para 117 'Moreover, there is nothing persuasive before us to demonstrate that it is necessary to allow buildings to exceed the appropriate height range within the tall building zones as stated at Criterion D of Policy LP4'.

- 2.28 The LPA would therefore strongly contest the statement made by Mr Marginson in para 5.70 that 'This is exactly the type of site that I believe the Inspectors in their report on the Local Plan were contemplating could accommodate a tall building outside of a Tall Building Zone'. This statement is unsubstantiated and unrealistic. Not only is the Appeal Site not within an identified tall building zone, it is located within a designated mid-rise zone where a maximum of 6 storeys is considered appropriate and the Appellant has failed to demonstrate material considerations which would support a building of the height proposed in this location and to justify a decision being taken otherwise than in accordance with the Development Plan.