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## Appeal Decision

Inquiry held 31 August – 3 September 2021

Site visit made on 6 September 2021

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 1 November 2021**

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**Appeal Ref: APP/N5090/W/21/3273189**

**Land adjoining The Whalebones, Wood Street, Barnet EN5 4BZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Hill Residential Ltd and Trustees of the Gwyneth Cowing Will Trust and Trustees of the Gwyneth Cowing 1968 Settlement against the decision of the Council of the London Borough of Barnet.
  - The application Ref 19/3949/FUL, dated 5 July 2019, was refused by notice dated 9 March 2021.
  - The development proposed is demolition of non-listed structures and construction of a new single storey building to be used as an artists'/bee keepers' studio building (Use Class D1) and new vehicular access point off Wellhouse Lane. Construction of 152 new residential dwellings (Use Class C3) consisting of 53 single family dwellings and 99 flats ranging from 2 storey to 4 storeys in height. New landscaping, public open space, play areas, public realm, ecological enhancements and private agricultural land. Creation of new vehicular access points off Wood Street and off Wellhouse Lane. New pedestrian and cycle access points off Wood Street and Wellhouse Lane, restricted emergency vehicle access off Wellhouse Lane.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of the proposal used above is that agreed between the main parties at the Inquiry<sup>1</sup>.
3. The current London Plan came into force on 2 March 2021, replacing the policies of the previous version referred to in the Council's decision notice. In directing publication of the Plan, the Secretary of State had written to the Mayor on 29 January 2021, expressly seeking work to deliver over and above the plan's housing targets and bridge the acute gap in meeting London's housing need.
4. Along with those in the London Plan, the other development plan policies referred to in the decision are contained in the two parts of the Council's current Local Plan. These are its Core Strategy<sup>2</sup> (CS) and the Development Management Policies<sup>3</sup> (DM).

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<sup>1</sup> CD 9.28 Amended description of development and updated conditions.

<sup>2</sup> CD 5.1 Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

<sup>3</sup> CD 5.2 Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

5. The Council's refusal notice contained two reasons (RfR). In summary, RfR 1 related to the loss of greenspace resulting in the proposal both failing to preserve or enhance the Wood Street Conservation Area (WSCA) and harming the visual amenities of neighbouring residents.
6. RfR 2 related to the absence of a formal undertaking to secure the planning obligations considered necessary to make the application acceptable. The appellants subsequently submitted to the Inquiry a draft undertaking made pursuant to section 106 of the Town and Country Planning Act 1990 (s106)<sup>4</sup>. With the agreement of all parties, this was duly completed after the event and binds the developers to a number of obligations. The s106 fully addresses RfR 2 of the Council's decision notice, which was thus not pursued.
7. On 16 June 2021, the Council approved its Regulation 19 Publication Local Plan (Reg 19 PLP). This underwent consultation between 28 June and 9 August and will form the Local Plan submission for Examination in 2022. The Reg 19 PLP allocates the appeal site<sup>5</sup> at Whalebones Park for residential development, with an indicative capacity of 152 units and 10% open space. The appeal proposal is closely aligned with this allocation, providing somewhat more by way of public open space. In recognition of this, the Council notified the Inspectorate on 20 July 2021 that it would no longer be defending RfR1 at the Inquiry. This nevertheless remains extant, reflective now of concerns raised by many interested parties, and forms the basis of the following main issues.

### **Main Issues**

8. These are:
  - the effects of the proposal on the character and appearance of the area, including the WSCA;
  - the effects of the proposal on the special interest of The Whalebones, a grade II listed building, and the heritage significance of the WSCA;
  - whether any harm to the significance of the designated heritage assets would be outweighed by the public benefits of the proposal;
  - whether, in the context of local and national policy, the proposal would comprise sustainable development in an overall planning balance.

### **Reasons**

#### *The site and proposals*

9. The appeal relates to land either side of a centrally located residential property, The Whalebones, and its entrance drive onto Wood Street. The entire area, known as Whalebones Park, comprises a triangular parcel of land formed at the junction of Wood Street and Wellhouse Lane. The site name derives from the distinctive arch at the residential entrance on Wood Street, formed by a pair of Blue Whale bones. The site is within an urban part of the Borough and forms a wedge of greenspace between residential development and Barnet Hospital. Whalebones Park is privately owned, with no public rights of access, and is wholly within the WSCA.

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<sup>4</sup> Listed as Inquiry Document (ID) 16 below

<sup>5</sup> CD6.2 Regulation 19 Barnet Local Plan - Site No. 45 Land at Whalebones

10. The Whalebones is an early nineteenth century dwelling which is grade II listed. It has walls faced in stucco, a slate roof and garden designed by the renowned landscape architect Dame Sylvia Crowe. The house and garden, which are located towards the middle of the Park, are surrounded by mature trees and vegetation which screen external views. The curtilage listed stable block near to the house is used by the Barnet Beekeepers' Association. Near to this is a timber studio, used by the Barnet Guild of Artists. Beyond is a smallholding containing poultry sheds with its own access onto Wood Street. The artists' studio and smallholding are to be removed and the stable block offered to the present owners of The Whalebones. As part of the scheme, a purpose-built replacement studio is to be provided for the artists and beekeepers. The tenants of the small holding are to be provided with alternative land adjacent to 2 Wellhouse Lane where they live, with direct access onto the highway.
11. Other than the buildings and uses described, the appeal site has mainly an open parkland character, comprising grassed areas interspersed by trees and small areas of mature woodland. The appeal scheme evolved from a heritage appraisal<sup>6</sup> commissioned by the appellants. This divided the land adjoining The Whalebones into three identifiable character areas. Most of the housing, comprising 147 apartments and houses, is proposed within Area A. This is the part appraised to have the lowest landscape quality and most potential for development. It comprises the section of land at the base of the triangle, between Wood Street and Wellhouse Lane at their furthest distance apart.
12. This Area A housing would be adjacent to the newly built development of 114 homes at Collinson Avenue. That existing development falls outside the WSCA and runs part of the way along the western appeal site boundary. Like Collinson Avenue, vehicular access to the Area A housing would be to the north and onto the A411 Barnet Road/Wood Street. There is emergency only vehicular access onto Wellhouse Lane. Area A was evidently once used as a tree nursery, then later contained allotments, and was associated historically with Elmbank, a property subsequently redeveloped as Collinson Avenue.
13. The remainder of the appeal site, comprising Areas B and C, was identified in the appellants' appraisal as the original grounds to The Whalebones. Compared with Area A, which was assessed to still have the appearance of overgrown allotments, these northern and eastern areas were appraised as retaining a more managed parkland landscape character<sup>7</sup>. Area B is the part of the appeal site currently containing the smallholding and includes the remaining land fronting onto Wood Street as far as The Whalebones entrance drive. Assessed to have the greatest potential to impact upon the setting of The Whalebones, the scheme keeps most of Area B free from housing. The housing that is proposed would extend to replace the smallholding sheds, but the remainder of Area B would form a managed area of public open space, with footpath/cycle access from Wood Street.
14. Area C is the remainder of the site, to the other side of The Whalebones entrance. The section of this fronting Wood Street was appraised to have the most landscape value and would accommodate a second area of public open space, with cycleway/footpath connection through to Wellhouse Lane. A further

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<sup>6</sup> CD 1.16.1 Heritage Statement appendices. Appendix 4: Land adjoining The Whalebones, High Barnet Heritage Appraisal V. Beacon Planning Ltd 22 February 2018

<sup>7</sup> CD 1.16.1 *ibid.* paragraph 4.13

five detached dwellings are proposed in the southern section of Area C, the part opposite to Barnet Hospital, with a shared access onto Wellhouse Lane. Adjacent to these houses would be the replacement artists'/beekeepers' studio building, with its own entrance and parking.

### *Character and Appearance*

15. It is recognised that Whalebones Park is not protected as open space in the current development plan. Being part of the WSCA would not preclude development, subject to satisfactory outcomes over heritage asset significance and character and appearance. Any harm in these respects needs to be weighed in an overall balance.
16. I saw that the mature trees and vegetation around the boundary provide quite effective screening both into and through the site and contribute positively to the townscape in this area. The tree growth has blocked out most of the long-distance views from Wood Street towards the open countryside to the south in the Dollis Valley. However, Whalebones Park is itself a relatively large area of mainly undeveloped greenspace. It currently provides an appreciable degree of separation and spatial relief between the very densely developed Barnet Hospital site along Wellhouse Lane, the quite closely spaced large suburban houses fronting Wood Street and the reasonably high density residential development in Collinson Avenue.
17. There are intermittent views into the site and its spatial extent is readily apparent and discernible. As a substantial greenspace within a mainly built-up urban area, Whalebones Park exerts a strong influence upon the overall character of the surrounding townscape and how this is experienced, including in terms of relative spaciousness, tranquility and proximity to nature. As a surviving relic of historic countryside, now surrounded by development, Whalebones Park is a valuable urban greenspace that makes a positive contribution to the overall quality of the local environment.
18. The proposals would result in housing encroaching into Whalebones Park from two directions, eroding this valuable undeveloped area of greenspace. Although two smaller public open spaces would be included, these would be more formally managed and there would be loss of the expansive parkland character. In this regard, the scheme would cause substantial harm to the established townscape quality of this part of Barnet.
19. In terms of the visual impact of the development, as the appellants' Townscape and Visual Assessment<sup>8</sup> (TVA) demonstrates, there would be limited harm within longer distance views. However, the appeal site is within a mainly built-up area of a varied but generally quite high density. Long distance views are already interrupted by intervening buildings and vegetation. For visual receptors within this urban area, experiences relate strongly to closer range views of the surrounding built environment and it is these which would be the most susceptible and sensitive to change. In this case, such visual receptors would include the residential occupiers along Wood Street and in Collinson Avenue, visitors and workers at Barnet Hospital and passers-by within the adjacent streets.

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<sup>8</sup> CD 1.47.1 and 2 Land adjoining the Whalebones Wood Street, London, EN5 4BZ Townscape and Visual Assessment. The Environment Partnership 30 April 2019.

20. At differing times of year and at different points around Whalebones Park, there are varying degrees of visibility into the site. Most of the development proposed is within Area A. From the public realm, there would be views of this housing from along Wood Street. Near the proposed entrance into Area A, the visualisation<sup>9</sup> provided in the TVA shows the housing occupying the currently open view above the hedging, where there are relatively fewer boundary trees. The land slopes downwards from Wood Street and the taller blocks of development would be concentrated towards the lower parts of the site and alongside Collinson Avenue. The housing would be set back from Wood Street, with two storey units towards the front, to avoid this scheme replicating the dominant street presence of the Collinson Avenue development. This would help prevent any overbearing impact on the private views from the adjacent Wood Street houses. The housing would nonetheless occupy a substantial gap in the streetscene. This would significantly reduce openness and the visual relief between development that this section of Whalebones Park currently provides, causing moderate harm to the area's character and appearance.
21. Some of the adjacent Collinson Avenue occupiers have rear gardens backing onto the appeal site and/or eastward facing windows and balconies that would overlook the adjacent four storey apartment blocks proposed. Despite the intervening trees and vegetation along the western site boundary, some of these occupiers would experience adverse impacts from the loss of open views and outlook. The separation distances would be such to preserve adequate daylight levels and privacy, but the overbearing impacts on some private aspects from Collinson Avenue would impact negatively, leading to a limited amount of further visual harm to weigh in the overall balance.
22. Further to the east along Wood Street, the boundary vegetation is taller and denser. The two public parks proposed here would preserve some of the existing openness and visual relief. However, as the TVA visualisation<sup>10</sup> shows, the five houses proposed in Area C would be quite prominent in views from the Whalebones entrance, a view where presently the hospital buildings are seen as more distant features. The loss of this full depth of parkland would foreshorten the rather intermittent views into the site from this section of Wood Street, causing further moderate harm to the character and appearance of the area.
23. As with along Wood Street, the visual effects of the proposed housing would vary west to east along Wellhouse Lane. The Area A housing would be prominent on the rising land seen above the boundary hedge opposite to the Barnet Hospital A&E entrance. From this point there are pleasing views of open grassland interspersed with trees and vegetation that provide visual relief in the context of the surrounding hospital development. However, compared to other parts of Whalebones Park, this lower lying area has a less mature parkland character and so is of comparatively reduced sensitivity to the visual change brought about by the proposed housing. Therefore, I find there to be limited further harm to visual amenity resulting from the impacts viewed from this location.
24. The thickly wooded boundary to The Whalebones, outside of the appeal site, abuts the central section of Wellhouse Lane, opposite the bulky hospital complex that sits hard up to the street. Beyond the densely wooded confines of

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<sup>9</sup> CD 1.47.2 TVA Figures Viewpoint 1

<sup>10</sup> CD 1.47.2 TVA Figures Viewpoint 4

The Whalebones, views open up and the Area C parkland, behind dense hedging, provides a verdant foil to a busy bus station and hospital car parking opposite. This undeveloped frontage would be occupied by the five detached houses and adjacent studio building, with their associated entrances and car parking. This would bring about abrupt visual change, with prominent buildings replacing a well vegetated frontage that currently provides a calm visual counterpoint to the high level of human and vehicular movement opposite. With only the isolated cottage at 2 Wellhouse Lane occupying this frontage, the proposed housing and community building would appear contextually out of place here, undermining the verdant parkland setting. The proposed open space and healing garden beyond this would offer only limited recompense and, overall, I find there would be significant harm to the appearance of this area from this element of the proposals.

25. Whilst currently an entirely private area, the undeveloped and verdant character of Whalebones Park undoubtedly provides significant visual amenity value to the surrounding area, as acknowledged in the Council officer's report<sup>11</sup>. The proposals would have varying degrees of visual impact on the surrounding area and the degree of harm overall would be significant in my view, rather than limited as found by the appellant's TVA. The amount and extent of housing proposed within this valuable greenspace would result in substantial harm to the character and appearance of the area, including the WSCA. This harm gives rise to conflict with Local Plan Policy DM01, which requires that development proposals be based on an understanding of local character so that it be preserved or enhanced.

#### *Heritage Assets*

26. Policy HC1 of the London Plan addresses heritage conservation and growth. Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. It further states that development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process. Local Plan Policy CS5 seeks to protect and enhance Barnet's heritage, including conservation areas and listed buildings. Policy DM06 states that all heritage assets will be protected in line with their significance and all development will have regard to the local historic context.
27. For an understanding of the significance of the heritage assets potentially affected by the proposal, I have turned to the WSCA Character Appraisal<sup>12</sup> (CA) and appellants' Heritage Appraisal<sup>13</sup>. On this basis, I consider that the significance of the WSCA relates broadly to the historical development of Chipping Barnet as read along the east-west axis of Wood Street. This runs from its busier commercial end to the east, evolving from the medieval market origins at the High Street junction, towards the more sedate residential parts at the west, as typified by the early nineteenth century houses that face onto Whalebones Park.
28. The Heritage Appraisal examines historical records in some depth and recognises that the openness of Whalebones Park forms part of the morphology

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<sup>11</sup> CD 4.1 Strategic Planning Committee report 13 October 2020.

<sup>12</sup> CD 7.7 Wood Street Conservation Area – Character Appraisal Statement July 2007

<sup>13</sup> CD 1.16.1 op cit



and history of the development of Barnet. The appellants' historical evidence<sup>14</sup> shows the history of the site is one of a variety of uses over time, from being part of Barnet Common, to later forming ownership parcels associated with Elmbank and The Whalebones. However, I disagree that this evidence indicates the present use is not an historic one of any material heritage value. To my mind, the evidence shows the site to be significant as a cherished remnant of Barnet's historic rural hinterland.

29. The CA refers to The Whalebones as a principal open space within the WSCA. It is described as an extensive area of private land, that is well maintained, secluded, quiet, formally laid out and partly interspersed with more natural open areas. The CA refers to the various greenspaces in the WSCA and their boundaries as forming an essential part of its character. This clearly applies to the large area of greenspace at Whalebones Park, which I consider forms an important part of the significance of the WSCA as a heritage asset.
30. The appellants' heritage evidence, in line with the TVA, focuses on the value of the boundary planting around Whalebones Park and the lack of both views and public access into the private areas these contain. However, the substantial amount of private green space within Whalebones Park is itself an integral part of the character of the WSCA, comprising a key part of its significance. This significance is not negated to any material degree by the lack of public access and is still readily appreciated from the surrounding public realm.
31. The two public parks proposed would preserve some of the openness of the site and allow it to be appreciated from within its boundaries. However, the spread of the proposed housing would erode substantially this historic area of wider greenspace. This would fail to preserve or enhance the character or appearance of the WSCA. Rather it would harm its significance as a designated heritage asset. In this respect, the proposals would conflict with Policy HC1 of the London Plan and with Local Plan policies CS5, CS7 and DM06 over protecting and enhancing Barnet's conservation areas and ensuring the character of green spaces of historic significance is protected.
32. The Whalebones house itself, being grade II listed, is also a designated heritage asset. The adjacent stables and whale bone arch are considered as curtilage listed. The dwelling and its Dame Sylvia Crowe designed garden are immediately surrounded by dense tree growth, which means they are almost entirely screened from external views. The 1870-77 OS map<sup>15</sup> shows an original Whalebones Cottage served by the drive through the parkland within which it is set. The later 1896 OS Map again shows the house within wider grounds titled 'Whalebone Park'.
33. Based on this evidence, the surrounding parkland clearly has a historical connection with The Whalebones and, forming part of its wider setting, contributes to its heritage significance as a former country estate house. Although the vegetation immediately around the house and garden has matured to screen views from these surrounding grounds, which are now in separate ownership, they provide the parkland setting which forms part of this dwelling's historic significance.

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<sup>14</sup> CD 9.18 para 4.42 Proof Evidence – Heritage – Charmain Hawkins, Brighter Planning

<sup>15</sup> CD1.16.1 op. cit.

34. By encroaching closely to this listed house, the proposed housing would detract from its relatively secluded and tranquil parkland setting, with which this property has a historic relationship. This brings the proposal into further conflict with Policy HC1 of the London Plan and Local Plan policies CS5 and DM06 in respect of preserving the settings of listed buildings.
35. Drawing my various findings together, I am in no doubt that this proposal would have a significantly harmful effect on the special interest of the listed Whalebones and the heritage significance of the WSCA.
36. In relation to designated heritage assets, the National Planning Policy Framework<sup>16</sup> (the Framework) identifies harm as being either substantial or less than substantial, with the former being tantamount to total loss of significance<sup>17</sup>. In this case, whilst I consider the harms to heritage significance to be less than substantial, the scale of these fall above the middle of the spectrum, edging towards the upper end of the scale.

*Whether any harm to the significance of the designated heritage assets would be outweighed by the public benefits of the proposal*

37. Where there would be less than substantial harm both to the character and appearance of the WSCA and to the significance of The Whalebones, paragraph 202 of the Framework requires that this be weighed against the public benefits of the proposal.
38. The appellants refer to a range of public benefits that are brought about by this scheme. Some of these mitigate for the impacts of the proposal and reflect an absence of harm rather than public benefits which attract positive weight. Of these, I include the required highway access works, the implementation of a residential travel plan and car club, the removal of parking permit entitlement and the measures aimed at achieving zero carbon status, including a financial contribution towards carbon offsetting.
39. However, positive weight is given to the public benefits the scheme provides towards meeting the requirement for more housing. In assessing the weight to be given to this, I recognise that the appellants calculate that the Council cannot currently demonstrate a five-year housing land supply (5YHLS)<sup>18</sup>. This might be as low as a four-year supply based on Housing Delivery Test evidence. As pertinent to any current 5YHLS deficit, is the further need for Barnet to accommodate the 2021 London Plan targets and meet the Secretary of State's exhortation to achieve over and above these. I am mindful, in this regard, of the strong constraints on housing growth in Barnet imposed by Green Belt and Metropolitan Open Land, and the need to look to sites within built up areas to meet future housing needs, as evidenced by the allocations in the Reg 19 PLP.
40. However, some perspective also needs to be applied to the matter of housing supply as a public benefit. Whilst deliverable within five years, this housing scheme would make only a relatively modest contribution towards the London Plan supply requirements set for Barnet of some 23,640 further dwellings by 2029. In this context, factoring in additional weight commensurate with the appellants' calculation of a maximum potential 5YHLS deficit, an overall

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<sup>16</sup> The updated National Planning Policy Framework on published 20th July 2021

<sup>17</sup> CD 8.1 Bedford Borough Council v SSCLG [2013] EWHC 2847 (Admin)

<sup>18</sup> CD 9.21 5 Year Housing Land Supply Assessment – Jonathan Dixon, Savills (August 2021).



apportionment of significant weight to the public benefits of the additional 152 homes is considered to be reasonable.

41. It is clear that Barnet has an acute affordable housing need, where targets for provision have not been met. Applying the same perspective as I have towards housing land supply, the scheme's bringing forward of a policy-compliant 40% affordable housing is also given significant weight as a public benefit.
42. I note that, of the 152 new homes, 16 of these would be M4(3) accessible homes, above the 10% policy requirement. Given the number of dwellings in this regard, this, weighs quite modestly as a public benefit.
43. The public open spaces proposed would provide access into Whalebones Park, allowing for better appreciation of its heritage asset status and providing the opportunity for some interpretation of the site's history. However, given the appreciation that is already gained, albeit from a public perspective from outside the site, I consider this to be a relatively modest benefit. Any further heritage benefits claimed to derive from the proposed tree retention and landscape management, the screening of unattractive hospital buildings and the provision of a new gateway feature to the WSCA, all appear to me to be limited. I also find little foundation to any heritage benefits deriving from the development reinforcing and conserving the distinctiveness of the different component parts of the site. Even taken together, these heritage benefits are relatively minor, relating in part to an absence of harm.
44. Use of the site by artists and beekeepers was fostered by Miss Cowing, the late occupier of The Whalebones. The secluded setting and verdant surroundings would have been particularly conducive to the emergence of these interests. The new community building would maintain accommodation for the artists and beekeepers and provide a wider community benefit. However, its peripheral siting within a reduced area of more formally managed open space would appear less suitable for these particular pursuits. Overall, moving these activities and providing the artists and beekeepers new accommodation confers only modest public benefits to the community.
45. The proposal would provide around 1.7ha of new public open space, including a woodland walk. This is a generous amount relative to the size of the development, the management of which is secured by the s106. This open space, and particularly the healing garden element, would be beneficial to visitors and patients of Barnet Hospital. The delivery of new play areas in an area of recognised deficiency adds to these public benefits, attracting moderate weight overall.
46. A biodiversity assessment under DEFRA Metric 2 Beta version was undertaken to consider the impact on habitat units. That work and assessment commenced before Metric 3 was published in July 2021. The proposal includes a range of biodiversity benefits including the provision of ponds, bird/bat boxes, reptile hibernacula, improved quality grassland and tree and hedgerow planting. However, the site in its current rather unmanaged state provides a natural habitat to bats and other species. On balance, given the significant net loss of greenspace existing as a wildlife habitat, I am not persuaded that there would be any material benefits to biodiversity arising from this proposal.
47. The local economy would derive benefits from a development of this size, and the s106 includes local supplier and labour agreements to help secure this. The

appellants provide evidence of the employment and household expenditure likely to be generated. I afford these public benefits moderate weight.

48. Set against these benefits, I have found that the development proposed would cause significant harm to the interest and significance of the designated heritage assets. The package of benefits arising from the development proposed, as set out above, are of considerable weight. However, the listed Whalebones House, together with the WSCA, are assets of national importance. Consequently, great weight is to be afforded to their conservation<sup>19</sup>. It is also well established that considerable importance and weight is to be given to the desirability of preserving the settings of listed buildings and the special character of conservation areas when undertaking any balancing exercise<sup>20</sup>.
49. I am firmly of the view that there would be harm to the significance of the grade II listed Whalebones House, in part due to the erosion of its pastoral setting. Further the proposal would neither preserve nor enhance the character or appearance of the WSCA for the reasons set out above. Whilst I have found that harm to be less than substantial in Framework terms, it is of considerable importance and great weight, sufficient, in my view, to strongly outweigh the public benefits which would flow from the development.

*Whether, in the context of local and national policy, the proposal would comprise sustainable development in an overall planning balance*

50. With reference to the terms of paragraph 11 d) i of the Framework, the outcome of the heritage balance above provides a clear reason for dismissing the appeal. This disengages the requirement to apply the so-called 'tilted balance' reflected in Framework paragraph 11 d) ii, should the policies most important for determining the appeal be out-of-date under footnote 8, over the lack of a 5YHLS. I have factored in a potential housing land supply deficit of the maximum order calculated by the appellants into the weight given to the public benefits of 152 additional homes.
51. I acknowledge that the proposal is allocated for development (Site No 45) in the Reg 19 PLP. This allocation recognises that the sensitive character of the site means proposals must pay great attention to the historical and local context. It requires the retention of trees and other natural features, new open space, pedestrian walks and community facilities, all of which the appeal scheme provides. It also recognises that residential development to the west, adjacent to the Elmbank development, will help to integrate the site into the surrounding suburbs. It is silent, however, on the matter of any housing to the east of The Whalebones.
52. In relation to Framework paragraph 48, and the criteria for the weight that may be given to relevant policies in emerging plans, the Reg 19 PLP is clearly reaching an advanced stage. However, through this appeal the Whalebones allocation reveals some inconsistency with the Framework, in respect of conserving and enhancing the historic environment, and significant unresolved objections, as evident from the high level of interested party opposition to this scheme. In this context, and given the emerging plan is yet to be examined, the policies and allocations of the Reg 19 PLP currently hold limited weight and this decision rests primarily on the currently adopted development plan.

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<sup>19</sup> Framework paragraph 199

<sup>20</sup> Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137

53. I have found conflict with London Plan Policy HC1 and Barnet Local Plan policies CS5, CS7, DM01 and DM06. These policies are consistent with those of the Framework in terms of conserving and enhancing the historic environment and, in achieving appropriate development densities, taking account of the desirability of maintaining an area's prevailing character and setting. I therefore give the conflict with them full weight. Whilst other of its policies are satisfied, the proposal would therefore conflict with the development plan as a whole.
54. The Whalebones site is not the subject of specific policy protection in the current development plan as either open or greenspace, but then neither is the land specifically allocated for housing. I recognise that residential development would be suitable in principle in this location, in respect of its accessibility to regularly required services and good public transport connections. Technical requirements relating to highways and utilities are met and the scheme also satisfies development plan policy requirements in respect of housing mix and the standard of accommodation proposed. Nevertheless, I am in no doubt that the proposal would have a significantly harmful effect on the character and appearance of the extensive appeal site itself and the surrounding area.
55. A finding of less than substantial harm in relation to designated heritage assets does not equate to a less than substantial planning objection. Whilst the benefits of the appeal scheme are clearly significant, collectively these would not overcome the cumulative substantial weight I attach to the identified harms. On a notional tilted balance, the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole. In the context of local and national policy, the proposal would not comprise sustainable development in an overall planning balance. Therefore, I conclude that the appeal should be dismissed.

*Jonathan Price*

Inspector

## **APPEARANCES**

### **For the local planning authority:**

Edward Grant, of Counsel

He called

Josh McLean BSc MRTPI	Planning Manager, London Borough of Barnet
James Gummery BSc (Hons) MA MRTPI	Principal Planning Policy Officer, London Borough of Barnet

### **For the appellants:**

Simon Bird, of Queen's Counsel, instructed by Colin Campbell of Hill Residential Limited

He called

Alexis Butterfield BA (Hons) Dip Arch	Associate Partner of Pollard Thomas Edwards architects
Ian Grimshaw BA (Hons) MA(LM) MSc CMLI MRTPI	Director, The Environment Partnership
Nicola Hancock BSc (Hons) MALA CMLI	Director, The Environment Partnership
Charmain Hawkins BA (Hons) Dip Bldg Cons Dip Surv MRTPI IHBC	Director, Brighter Planning
Jonathan Dixon BA (Hons) MA MRTPI FRSA	Director Planning, Savills
Ian Southwell BSc (Hons) MIHT MTPS MCILT	Director, Vectos
Gemma Dudley Solicitor	HCR Hewitsons
Colin Campbell BSc(Hons) DipTP MRTPI	Head of Planning, Hill Residential

### **Interested persons:**

The Rt Hon Theresa Villiers MP	Member of Parliament for Chipping Barnet
Councillor Julian Teare	London Borough of Barnet

Guy Braithwaite	The Barnet Society
Nick Saul	The Barnet Society
Robin Bishop	The Barnet Society
Dr Oliver Natelson	Local naturalist
Gordon Massey	Barnet Residents' Association
Dr Saman Haghighi	Collinson Avenue
Helena Boland Paddy Shanahan	Occupiers of The Whalebones
Fatma Janneh	Local resident
Dr Sundus Tewfik	Local resident
Jacqueline Young	Local resident
Dr Harjeev Rai	Local resident

## DOCUMENTS HANDED UP TO THE INQUIRY

ID 1	Appellants' opening statement
ID2	Council's opening statement
ID3	Appellants' closing submissions
ID4	Council's closing submissions
ID5	Appellants' list of witnesses
ID6	Council's list of witnesses
ID7	Theresa Villiers MP written up statement
ID8	Final Statement of Common Ground in respect of five-year housing land supply and Appendix 1 – schedule of sites – 1 September 2021
ID9	Note on LB Barnet Brownfield Register Sites disputed by appellants
ID10	Main parties agreed description of proposal and amended conditions
ID11	Extract from the current Plan policies map covering the appeal site
ID12	LB Barnet changes to the Policies Map (Reg 19) 2021
ID13	Further information on bats from Dr Oliver Natelson 31 August 2021
ID14	Commentary of further submitted information regarding lighting and bats, land adjacent The Whalebones, Barnet – MKA Ecology 2 September 2021
ID15	Note from the Trustees of the Gwyneth Cowing Will Trust and Trustees of the Gwyneth Cowing 1968 Settlement
ID16	Certified copy of Whalebones s106 executed by Bartlett and Powles – 10 September 2021

Core documents at : <https://www.whalebonesplanninginquiry.co.uk/>

