



**LONDON BOROUGH OF BARNET
LOCAL DEVELOPMENT FRAMEWORK**

**CORE STRATEGY AND DEVELOPMENT MANAGEMENT POLICIES UDP
EXAMINATION IN PUBLIC**

**HEARING STATEMENT BY CAPITA SYMONDS
ON BEHALF OF HIGGINS HOMES PLC**

**MATTER 10:
LAND TO THE REAR OF
BRIARFIELD AND ROSEMARY AVENUE, LONDON N3**

THURSDAY, 8TH DECEMBER, 2011

INTRODUCTION

1. This Hearing Statement has been prepared by Capita Symonds (incorporating Andrew Martin Associates) on behalf of Higgins Homes PLC, who own land to the rear of Briarfield and Rosemary Avenue, Finchley, London.
2. The Statement supplements the representations made to the Core Strategy Pre Submission Amendments Draft in June 2011.
3. The following section directly addresses the Inspector's Issues and Questions on Matter 10 – Land rear of Briarfield and Rosemary Avenue, London N3.

RESPONSE

- 1. Should CS Map 11 identify this site as Open Space? If so, why? What would be the effect of this designation?**

What part of the CS is sound/unsound?

4. It is considered that the submitted CS is sound and that the identification of land to the rear of Briarfield and Rosemary Avenue as white land and not as Open Space on CS Map 11 is correct.
5. Land to the rear of Briarfield and Rosemary Avenue does not represent Open Space. The land is privately owned by Higgins Homes PLC and does not provide recognised, well established or unrestricted public access. Higgins Homes PLC has not allowed unrestricted public access to the land and has placed signs on land to make clear that the land is privately owned. Considerable attempts have been made by Higgins Homes PLC to secure the site. However the means of enclosure provided on site have either been damaged repeatedly, or removed, by unknown parties.
6. Representations made by local residents to the Regulation 28 Stage Core Strategy (Publication) Pre-Submission Amendments, August 2011, support the identification of land to the rear of Briarfield and Rosemary Avenue as Open Space. Local residents and the Greensquare Residents Association (GRA) continue to claim that the land is well used for the recreational purposes of local residents and should therefore be safeguarded for Open Space purposes.
7. Land to the rear of Briarfield and Rosemary Avenue has been the subject of two dismissed planning appeals for residential development. The first was dismissed on 20th August 2008 under PINS ref: APP/N5090/A/07/2046984. In dismissing the appeal, the Inspector commented that *"the appeal site is essentially defined by the dwellings which surround it. The means of access into the land is narrow and confined and unlikely to be apparent other than to those who live in the immediate area."*
8. The second appeal was dismissed on 23rd November 2010 under PINS ref: APP/N5090/A/10/2131311. At paragraph 4, the Inspector noted that *"the appeal site is overgrown but appears to be used as an informal recreation space. The central area is largely maintained as grass and used for recreational purposes"*. (Respondent's underlining).

9. It is important to note that the Inspector's appeal decisions were based on the assumption that the land was used for informal recreation space and that no detailed analysis of the site's use was carried out. In 2010 an application to register the land as a town or village green known as 'Greensquare Field' was the subject of a public inquiry. The Inspector subsequently recommended that the application should be rejected (see attached decision letter dated 26 November 2010). In reaching his decision, the Inspector heard oral evidence from 22 supporters of the application for village green status, and written evidence from a further 27 supporters. He also received oral or written evidence from 6 objectors to the application for village green status.
10. The Village Green inquiry represented an incredibly thorough and robust assessment of evidence relating to the historic use of land to the rear of Briarfield and Rosemary Avenue.
11. In considering the application for Village Green status, the Inspector made a number of important points which are set out below:
 - para 7 – *"It seemed to me that most of the scrubland identified on the Land Survey was impenetrable. I would estimate that only about 25% of the total area of the scrubland is reasonably accessible and I doubt very much whether informal use of such land is widespread."*;
 - in considering the case for village green status, it is necessary to demonstrate compliance with subsections (2), (3) or (4) of Section 15(4) of the Commons Act 2006. Part (a) refers to *"a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years."*;
 - in considering this point, the Inspector at paragraph 55 referred to the case of *R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd (2002) EWHC 76 (Admin) Sullivan J*. This stated that 'significant' did not mean a considerable or substantial number. He said that the correct answer *"is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers"*; and
 - in summarising the application for village green status, the Inspector states at paragraph 152 that: *"It is probable therefore, that any user after 2000 (other than on the main path) has been largely attributable to the exhortations of the Association and that before such time user would have been limited or trivial and very largely confined to use of the main path which, in view of what I have seen and heard about the application site, is exactly what one would have expected. Against this background, it seems to me to be a very real possibility that the commitment of the applicant and his supporters to prevent development has unconsciously distorted their recollection in so far as it concerns the evidence which they gave in relation to their own use of the Green Land and the use which they observed on the part of others during the relevant period of 20 years."*
12. In conclusion, it is submitted that identification within the Barnet Core Strategy, through Map 11, of land at Briarfield Avenue as Open Space would be unnecessarily and unreasonably prescriptive. Identification of the site as Open Space through Map 11 would lend weight to an argument that the land should not be the subject of change or development at any future date. Higgins Homes considers that an appropriate way forward to realise the long-term potential of this site both for local residents, and the wider community, would be through a small scale residential development together with some provision of publicly accessible open space possibly incorporating a formal children's play area. Higgins Homes met with representatives from the GRA on 27th September 2011 to

consider a development proposal for 3 dwellings together with provision of an area of public open space. A copy of the draft provided to GRG is appended to this Statement. Unfortunately, to date, the GRG has not supported such a proposal.

13. The Core Strategy should set out policies and principles of a strategic nature and identify strategic areas for growth and development. The Core Strategy is not the correct or appropriate Development Plan Document for making site specific allocations or policies. Any site specific allocation or policy should be appropriately identified through the Barnet Site Allocations Development Plan Document in due course.

2. Is the Council's decision to exclude this site from CS Map 11 based on a robust and credible evidence base, or does this decision reflect inadequacies in its open space audit? Is the audit consistent with national policy set out in PPG17 or other supporting evidence behind the CS (e.g. the Characterisation Study of London Borough of Barnet, May 2010)?

14. The Council's decision to exclude land to the rear of Briarfield Avenue from CS Map 11 is sound and based on a robust and credible evidence base. Land to the rear of Briarfield Avenue does not represent: public open space, Metropolitan Open Land, or Green Belt and the land does not provide a children's play area. Our submission that land to the rear of Briarfield Avenue should not be identified by Map 11 as open space is supported by the Barnet Characterisation Study, which forms part of the evidence base to the Core Strategy. The Characterisation Study identifies land to the rear of Briarfield Avenue as character area D (Suburban Terrace). It is notable that the Characterisation Study does not identify land to the rear of Briarfield Avenue as 'Green Space'.
15. Land to the rear of Briarfield Avenue is private land. The case might be advanced by members of the GRA that land to the rear of Briarfield Avenue provides some level of visual amenity to existing residents whose properties back on to the site. Similarly, many private gardens and private spaces throughout Barnet provide visual amenity to neighbouring homes and other land uses. However, the provision of some degree of visual amenity from a site should not result in a site being identified in a strategic Development Plan Document as Open Space, and the merits or demerits of identifying any such site should be determined through the appropriate level of Development Plan Document, namely – the Site Allocations Development Plan Document.
16. Clear evidence that land at Briarfield Avenue does not represent Open Space can also be seen through the Planning Inspector's decision letter rejecting the Town and Village Green application ref LLC/MM/004/2008 relating to land at Briarfield Avenue.
17. It is submitted that as Map 11 forms part of the strategic level Core Strategy Development Plan Document, then Map 11 should only identify the general distribution of existing publically accessible open space focussing on principal parks and recreation areas including Children's Play Areas, Metropolitan Open Land and Green Belt. Any attempt to include within the Core Strategy a map that places restrictions on smaller, non-strategic sites, would be inconsistent with the general approach to plan making through strategic level Core Strategies and Site Allocation Development Plan Documents.