

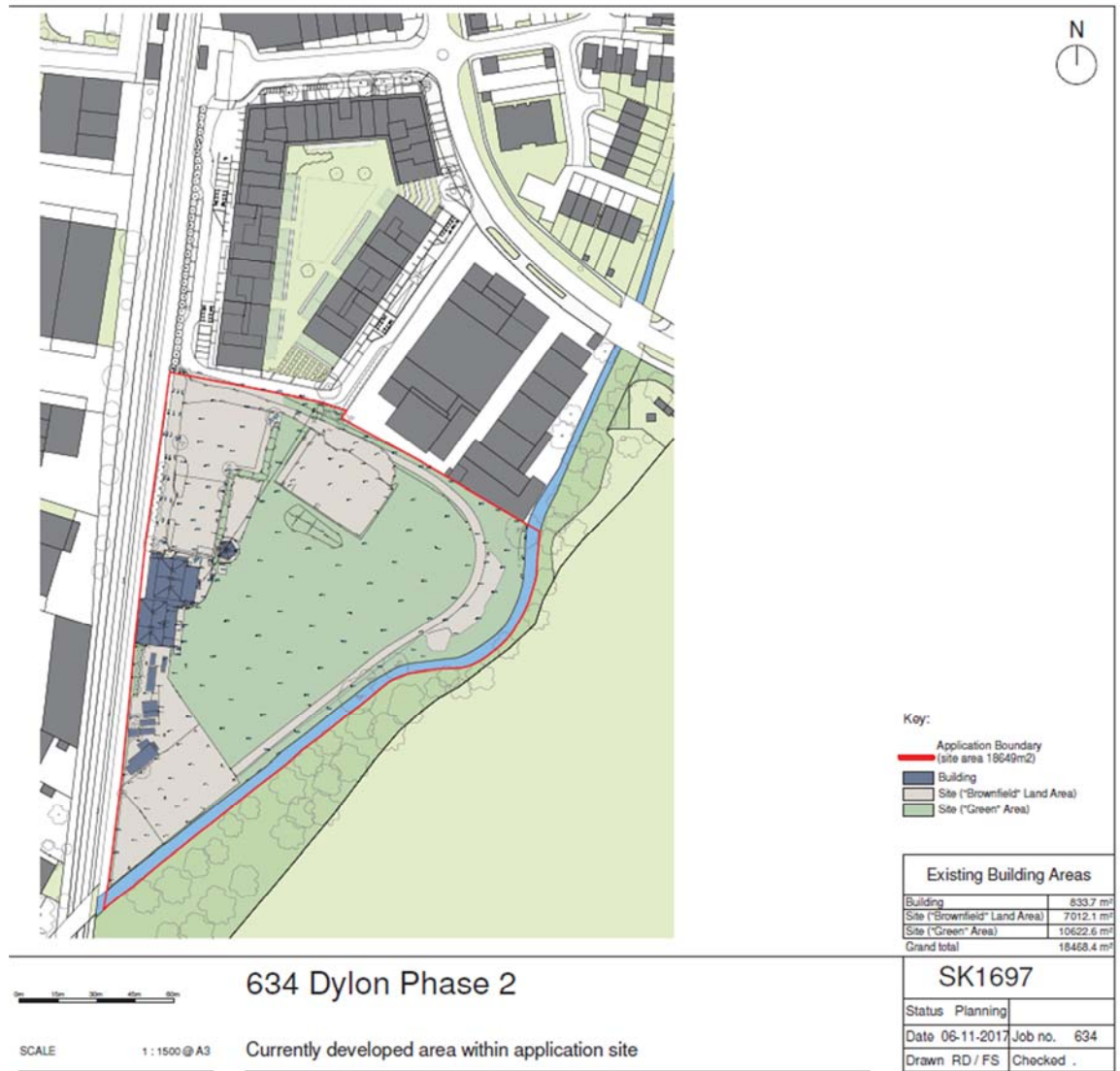
London Borough of Bromley Local Plan Examination – Matters Statement

Our ref 14473/05/SB/RM
Date November 2017
From by Lichfields on behalf of Dylon 2 Limited and Relta Limited (Objections 134 & 135)

Issue **10 - Are policies related to valued environments justified, consistent with national policy and will they be effective?**

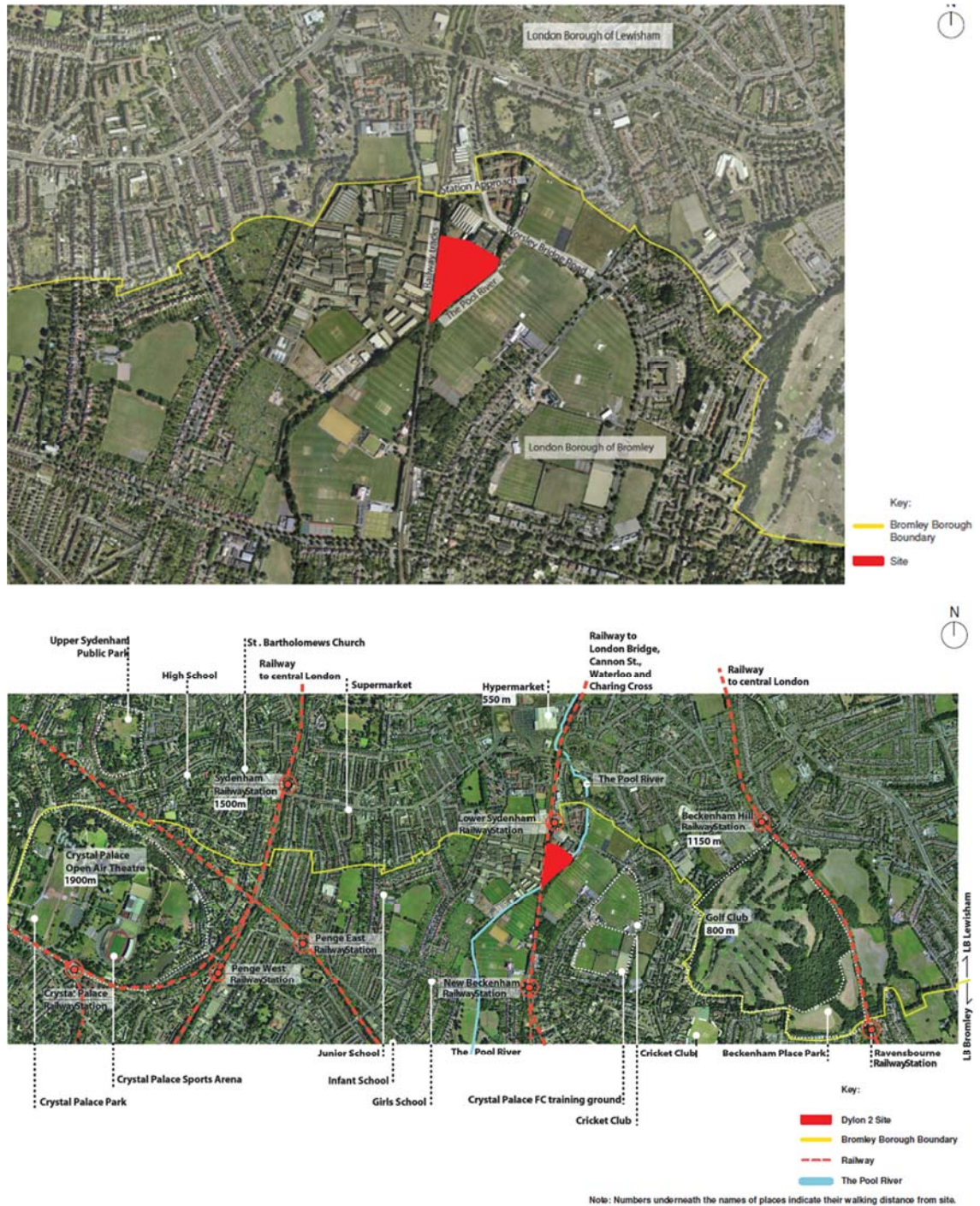
- 1.1 There are a number of different types of Valued Environments in the BLP. To be justified, consistent with national policy and effective, necessitates that land is properly and appropriately valued in the light of the Evidence, be that for conservation areas, Green Belt or agricultural land, as examples.
- 1.2 The specific Valued Environment of interest to our client is Metropolitan Open Land (MOL), the subject of Policy 50. Our concern is that this MOL policy, whatever its intent or detailed wording, cannot be a sound policy unless the land to which it relates justifiably warrants such designation and associated policy application.
- 1.3 That is patently not the case in respect of our clients' Dylon 2 site at Lower Sydenham within the MOL, as there has been no review of its contribution to the purposes of MOL. Had that occurred, as it should have done, LBB would have found that the Dylon 2 site does not fulfil any MOL purpose. In the case of the Dylon 2 site, this has already been tested and found to be the case at a planning appeal in May 2016 (2 August 2016 decision, Annex 4 to Appendix 1 to this Hearing Statement). The same may well be the case for some other MOL, Green Belt and Urban Open Space sites too, but - again - there has been no such assessment by LBB.
- 1.4 We provide a full assessment of the Dylon 2 site and related considerations in our MOL Evidence (at Appendix 1 to this Hearing Statement) which justifies the removal of the site from the MOL and its allocation for housing and associated publically accessible open space.
- 1.3 In summary, there is no public access to the site and it makes no contribution to the public realm, or sports provision. Its use, urban character and immediate context, make it distinct and separate from the wider area of MOL on the other side of Pool River.

Figure 1 Dylon 2 Site Location and Existing Areas



Source: Ian Ritchie Architects

Figure 2 Dylan 2 Site Context



Source: Ian Ritchie Architects

1.4 Our assessment of the site against the London Plan criteria finds that:

- 1 The partially developed nature of the site and its geographic seclusion means that it is not physically distinguishable from the adjacent built-up area to the north and west.
- 2 It is, however, distinguishable from the wider area of MOL to the east which has a different townscape character and is visible in many public viewpoints.
- 3 There is no link across the river (to the east)
- 4 There is no active open air facility. The former football field was never public and did not serve the whole or significant part of London.
- 5 It does not contain any feature or landscape (historic, recreational, biodiversity) of national or metropolitan value; nor does it contain any feature or landscape of local value.

Figure 3 Dylon 2 Site Aerial Photographs



Source: Ian Ritchie Architects

1.5 Our assessment shows that the Dylon 2 site does not fulfil a MOL role under London Plan Policy 7.17D criteria. This assessment was endorsed in the appeal decision (reference APP/G5180/W/16/3144248, 2 August 2016) where, in respect of the MOL designation, Inspector Peerless states, inter alia:

“37. The last 2 criteria, (these are that it should include open air facilities for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London, or it should it contain features or landscapes of either national or metropolitan value) are not met as there is no public access to the land and no features that meet the description. It is the case that the land is not clearly visually linked with the playing fields to the east of the Pool river from any of the viewpoints visited during the site inspection and, at the time of that visit when the vegetation was at its thickest, the extent of the wider MOL was not readily apparent from the site itself.”

38. However, I would disagree with the finding of the Greater London Authority (GLA) in its advice on the proposal that the site is ‘clearly distinguishable from the built up area to the north’ or that it ‘connects with a wider network of open space’. There is no link across the river and the site is surrounded by dense development on all other sides. It is only really in the aerial photographs that the site can be clearly linked to the open land around it. For these reasons, I find that the contribution that the site is making to the MOL designation criteria is not as significant as the adjacent sports fields beyond the river and the harm caused by the proposed development to the MOL will be considered in the light of this finding.”

- 1.6 In respect of the provision of the park Inspector Peerless states:
“The provision of the park in what is, at present, underused and neglected land is very welcome and would serve not only the residents of both Dylan schemes but would be open to other visitors”
- 1.7 The Dylon 2 site should therefore be removed from MOL and allocated for residential development and associated publically accessible open space.
- 2.0 Q.42 Is the Plan consistent with the London Plan in terms of balance between the Green Belt, open space and residential development? How is this reflected in the evidence base?**
- 2.1 No.
- 2.2 As set out in our response to Issue 5, the Council has not assessed housing need in the context of London’s needs as a whole and as such the plan has not been positively prepared with a strategy that seeks to meet objectively assessed needs.
- 2.3 As set out in our response to Q.44, the 2014 review of the Green Belt, Metropolitan Open Land (MOL) and Urban Open Space (UOS) is not only outdated, it fails to provide a comprehensive review of all historic designations against a clear and transparent set of criteria.
- 2.7 Consistent with the NPPF, London Plan Policy 7.17D promotes plan-led alteration of MOL boundaries (C) and sets out that, to designate land as MOL, boroughs must establish that it meets at least one of the following criteria (D):
“a. it contributes to the physical structure of London by being clearly distinguishable from the built up area
b. it includes open air facilities, especially for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London
c. it contains features or landscapes (historic, recreational, biodiversity) of either national or metropolitan value
d. it forms part of a Green Chain or a link in the network of green infrastructure and meets one of the above criteria”
- 2.9 Despite this clear definition of what MOL should constitute and the ever-increasing need for more housing in the Borough, the Council has consistently and resolutely failed to review its areas of MOL against other needs.
- 2.10 The Council has not conducted any detailed review of whether the current designated parts of the MOL individually meet the London Plan criteria. The review of the Local Plan is the time that this exercise should be undertaken to ensure consistency with the London Plan. The failure to do so is contrary to the requirements of the NPPF.
- 2.11 The issues raised by Q.42 are very similar to those evident in the 2005 Local Plan Inquiry, in particular the balance between policies and the supply of residential development to meet need. The Council again is promoting an over optimistic stance with an exaggerated over-reliance on delivery of sites in the town centre (which as our assessment in response to Issue 5 show not to be feasible in the first 5 years of the plan period) and an overestimation of a never ending supply of windfall sites.

- 2.12 The history of the BUDP (2006) shows that that Inquiry Inspector recommended the Council identify additional housing sites to reduce the deficit in housing completions. In response, the Council commissioned a ‘Housing Land Supply Strategy’ (by NLP, May 2005) which included an analysis of the robustness of the housing figures and a sequential and sustainability assessment of various sites in the Borough for housing purposes, including those protected by GB, MOL and UOS designations. It concluded that the Council’s housing needs could not be met without large scale releases of GB and MOL.
- 2.14 For the purposes of the sequential testing the potential sites for re-designation were ranked as follows:
 Level 1 – sites considered sequentially preferable and sustainable locations;
 Level 2 – sites which demonstrated some sustainable characteristics;
 Level 3 – sites considered unsustainable and should not be allocated for housing.
- 2.15 The assessment concluded and recommended to the Council that without the release of additional GB and MOL sites it could not meet its housing requirements. These recommendations were rejected by the Council.
- 2.16 That Strategy did not consider the Dylon 2 site as the premises were in operational occupation and no representations had been made relating to its promotion for housing at that time (2006). There was no indication of developer interest but this is no longer the case.
- 2.17 We consider that, had the Dylon 2 site been assessed at that time, its location adjacent to Lower Sydenham station and surroundings, would have been sequentially preferable to other identified sites and would have warranted a ‘Level 1’ status.
- 2.18 It is important to note that, while the Council rejected these recommendations, planning permission has subsequently been granted for the residential development on GB (the former Blue Circle site) and MOL (91-117 Copers Cope Road) land recommended for release at that time
- 2.19 In light of the foregoing and our submissions in response to Issue 5, we conclude that the BLP fails to address the balance between the significant need for residential development and the extent of current (restrictive) designations of GB and MOL, does not accord with the requirements of the NPPF and is not sound.
- 2.20 In order to be sound a full and comprehensive review of Green Belt, MOL and UOS boundaries is required to enable the Council to “*meet objectively assessed development and infrastructure requirements*” as required by the NPPF (para.182) as the MOL review is not “*adequate, up-to-date and relevant evidence*” (NPPF para. 158).
- 3.0 Q.44. Does the 2014 review of the Green Belt, Metropolitan Open Land (MOL) and Urban Open Space (UOS) represent an adequate basis for the positive planning of development in the Borough?**
- 3.1 No.
- 3.2 The ‘2014 Review’ (SD26) does not set out any clear and transparent criteria for review and consequentially is wholly inadequate. It fails to meet the requirement for ‘positive planning’ and is not “*up-to-date and relevant evidence*” as required by the NPPF (para. 158), let alone adequate or transparent.

- 3.3 It provides only limited commentary and a schedule of changes that were originally reported to the Council's Development Control Committee in June 2012 (SD58).
- 3.4 It wholly ignores housing need.
- 3.5 The NPPF requirement to carry out assessments of the need and supply for market housing and a separate exercise for affordable housing, are not mentioned.
- 3.6 As set out in our response to Q.42 and appended Evidence, the Council has historically failed to properly assess or review its MOL (and Green Belt) boundaries so as to identify whether sites continued to form such purposes or their appropriateness for release to meet some of its development needs, particularly housing needs. Even when a bespoke assessment was commissioned (in response to a Local Plan Inquiry Inspector's request, in 2005), the Council rejected recommendations regarding suitable UOS, MOL and GB releases to accommodate housing need. LBB has consistently failed to meet its housing target in the intervening period and much housing delivery has been achieved through the appeal process.

Inadequacy of Current Approach

- 3.7 We have to assume that the Council asserts that the limited changes to the GB, MOL and UOS boundaries it proposes recognise and meets the need for review. In respect of Green Belt and Open Space Designations, the Plan states:

"The Council is seeking to amend the Green Belt only where there are exceptional circumstances, and the amendment will help meet identified needs which it can demonstrate cannot be accommodated elsewhere."
- 3.8 As set out in our appended Evidence, this cannot be. The 'review' is dated, selective and partial and does not amount to an assessment in line with the requirements of the NPPF.
- 3.9 The 2014 review consists of a schedule of amendments to Green Belt, MOL and UOS boundaries originally published in June 2012, with assessment work carried out before then. This in no way provides a basis for meeting any objectively assessed development and infrastructure requirements for Bromley in 2017: let alone over the plan period.
- 3.10 While the Committee report of June 2012 references the London Plan MOL criteria, it does not provide a clear methodology for comparative assessment of sites against the MOL (or GB) criteria.
- 3.11 The MOL changes now proposed consist of: amendments to the boundaries at Crystal Palace Park; reconciling boundaries following permissions granted on appeal and removal of MOL for education use.
- 3.12 The latter confirms the Council's acceptance of the need for review in respect of infrastructure requirements and the same is required to meet housing need.
- 3.13 The 2014 review fails to provide an adequate basis for the positive planning of development in the Borough and will lead to pressure to release land throughout the plan period
- 3.14 Neither the timing, nor scope of the 2012 study respond to the Council's current, or future, development needs.
- 3.15 This fundamental flaw will contribute to a continued 5YHLS shortfall and 'planning by appeal'. It does not support a proactive plan led approach as required by the NPPF.

Failure to Meet Housing Need

- 3.16 As is set out in our evidence submitted in response to Issue 5 , the Council cannot demonstrate a five year housing land supply (5YHLS) (Q.18), particularly as a number of identified housing sites are not deliverable in accordance with paragraph 47 of the NPPF (Q.20), nor does the 15 year housing trajectory adequately address the shortfall and need.
- 3.17 Consequently, the plan has not been ‘positively prepared’ as required by the NPPF and the MOL evidence base does not provide a strategy which seeks to “*meet objectively assessed development and infrastructure requirements*”.
- 3.18 A full and comprehensive review of MOL (and GB) boundaries is required for the Council to consider how housing need could partly be accommodated on MOL land such as the Dylon 2 site which is currently in ‘brownfield’ use and does not meet the definitions of MOL set by the London Plan.

Summary

- 3.19 The Council’s approach to this review, its age, and its lack of methodology, evidence and findings renders it, as an evidence base document, wholly inadequate in the light of the NPPF guidance and other Local Plan examinations. It is our assessment that in this respect the BLP has not being ‘positively prepared’ as required by the NPPF (para. 182).
- 3.20 Accordingly, a full and comprehensive review of MOL boundaries should be undertaken as part of the BLP process to assess the contribution (or otherwise) of sites against the purposes of including land within the MOL and, where removal justified, their suitability for identification as additional housing sites. We consider that the Dylon 2 site, for reasons explained above, warrants removal from its present the MOL designation and allocated for residential development and associated publically accessible open space.

4.0 Q.45. Is policy 50 consistent with the definition of MOL in the London Plan?

- 4.1 Yes.
- 4.2 Policy 50 is consistent with the definition of MOL in London Plan Policy 7.17.
- 4.3 However, as noted in our answer to Q.44 and our appended Evidence, the Council have not undertaken a comprehensive review of its MOL boundaries. Sites that do not meet the London Plan MOL criteria, as repeated in the supporting text to this policy (para. 5.2.12), should be removed from the MOL and this policy would then only apply to sites that genuinely meet the MOL criteria.
- 4.4 This should lead to the release of sustainably located sites such as Dylon 2 for much needed housing, including 35% affordable housing allocation.
- 4.5 In this way sites currently locked and off limits to the general public can be remediated landscaped and made accessible alongside the provision of much needed housing.
- 4.6 The benefits of development of the Dylon 2 site will tangentially generate inward investment to, create jobs for local people and bring about the transformation of a blighted landscape and deliver advantages for housing, health, recreation, environment, the local economy and regeneration as part of the transformation of Lower Sydenham.

4.7

MOL Policy 50 and Housing Policies 1 and 2 are unsound without modifying the BLP to remove the Dylon 2 site from designated MOL and allocation it for residential development and associated publically accessible open space

Total Word Count – 2,711

Issue 10 Hearing Statement Appendix 1 Metropolitan Open Land Evidence

Dylon 2 Limited and Relta Limited (Objections 134 & 135)

November 2017

LICHFIELDS

1.0 Introduction

- 1.1 This Evidence supports our Matters Statement on Issue 10 (Valued Environments) of the Draft Bromley Local Plan (BLP).
- 1.2 While addressing this Issue and the questions formulated under it, this submission is aimed directly at the removal of the Dylon 2 site as Metropolitan Open Land (MOL) and its allocation as a residential site with associated publicly accessible open space. It does not contribute to any of the purposes of MOL and, if sites are to be found to meet pressing housing needs, it is a particularly strong candidate.
- 1.3 It is appropriate and essential to review MOL designations as part of the local plan process so as to determine not only whether designated sites continue to perform a MOL function but also, even if they do, to review MOL boundaries having regard to the need for sustainable development.
- 1.4 MOL and Green Belt are very important designations, but they should be reviewed as part of the local plan process against a clear and transparent set of criteria. A local plan which relies on an in principle objection to such a review is inconsistent with the NPPF (paragraphs 84 and 85) is not sound and is open to challenge. If land is incorrectly designated this needs to be corrected as part of the Local Plan process.
- 1.5 The purpose of this Evidence is to examine the Council's evidence base and proposed Metropolitan Open Lane (MOL) policies and their inadequacies in meeting the Council's objectively assessed housing needs (OAN). We conclude and recommend that the BLP is modified such that the Dylon 2 Site is removed from the MOL and allocated for housing development and associated publically accessible open space.
- 1.6 The London Borough of Bromley (LBB) is the largest London Borough (in terms of area) and over half is within the Green Belt (GB). A significant area is also designated MOL. Despite exhaustive searches we have found no background reports, assessments or analysis justifying the initial designation of Bromley's MOL.
- 1.7 Given the depth of Bromley's housing crisis and the absence of any rational assessment for initial designation, or subsequent comprehensive assessment, it is vital that the designation of sites such as Dylon 2 are revisited.

2.0 Policy Guidance

- 2.1 Whilst there is no reference to MOL in national policy, the London Plan seeks to apply the GB provisions of the NPPF to MOL. Unique to London, the London Plan (Policy 7.17 and para. 7.56) states that sites designated as MOL have the same level of protection as sites in the GB and that paragraphs 79-92 of the NPPF equally apply to MOL (as there is no separate national policy on MOL). The essential characteristics of both are openness and permanence (NPPF 79). In the absence of any National Policy for MOL, the provisions of paragraph 14 NPPF apply to the plan making function. The criteria for designation of MOL and GB are markedly different and any meaningful review must take the current use and function of the land against those MOL criteria into account.
- 2.2 Paragraphs 83-85 of the National Planning Policy Framework (NPPF) set out how Local Planning Authorities (LPA) should approach the designation and review of GB (MOL) land. Para. 83 confirms:

“Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.”

- 2.3 In reviewing their GB (MOL) boundaries LPAs should *“...take account of the need to promote sustainable patterns of development”* (NPPF para. 84). The NPPF (para. 85) set outs the criteria for defining boundaries. LPAs should:

“- ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development;

- not include land which it is unnecessary to keep permanently open;

- satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period;

- define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.”

- 2.4 MOL was introduced as a designation in the Greater London Development Plan of July 1976. Paragraph 9.8 of which stating that MOL is *“open land which is of significant for Greater London as a whole”* and 9.9 stated: *“The Key Diagram and Urban Landscape Diagram give a general indication of the location of MOL which it is the intension to keep in predominantly open use”*.

- 2.5 We have sought, but not found, any analysis for the initial designation of MOL within Bromley.

- 2.6 Consistent with the NPPF, London Plan Policy 7.17D promotes plan-led alteration of MOL boundaries (C) and sets out that, to designate land as MOL, boroughs must establish that it meets at least one of the following criteria (D):

“a. it contributes to the physical structure of London by being clearly distinguishable from the built up area

b. it includes open air facilities, especially for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London

c. it contains features or landscapes (historic, recreational, biodiversity) of either national or metropolitan value

d. it forms part of a Green Chain or a link in the network of green infrastructure and meets one of the above criteria”

- 2.7 Accordingly, the strategic planning policy framework for MOL designation and its review identifies:

- 1 NPPF GB provisions apply to the MOL;
- 2 MOL boundary reviews should be undertaken in exceptional circumstances, at local plan review stage;
- 3 Such reviews should promote sustainable patterns of development and with regard to the NPPF and London Plan criteria for MOL.

3.0 Bromley Approach

Historic

- 3.1 The history of the extant BUDP (July 2006) shows that the Secretary of State (SOS) lodged an objection to the draft: setting out a specific requirement for the Council to bring forward an early review of its housing policies to achieve a robust and deliverable strategy for meeting the overall housing requirement in the Borough. Despite this SOS requirement a formal early review of the plan never materialised.
- 3.2 In 2005, the Bromley Unitary Development Plan (BUDP) Inquiry Inspector recommended (at IR 4.8.41) that the Council *“Identify additional proposal sites, following a sequential analysis of all potential and identified housing sites to assist in reducing the current deficit of housing completions.”* (Inspector’s Report, February 2005, Section 4.8 on Policy H1 in Appendix 10).
- 3.3 In response, the Council commissioned the ‘Housing Land Supply Strategy’ (by NLP, May 2005) to assess this shortfall and undertake a sequential analysis of all potential housing sites, including some within the GB and MOL. The report recommended releasing four sites from the Urban Open Space / MOL / GB, including: 91-117 Copers Cope Road (MOL) and the former Blue Circle site (Bromley Common) (GB) for residential development (Appendix 11 para. 10.15).
- 3.4 These particular recommendations were rejected and the sites were not allocated. Planning permission for residential development at both sites were granted on appeal.
- 3.5 At the former Blue Circle site, it is only now that the 850 dwelling Trinity Village development is complete that the Council is removing it from GB.
- 3.6 There has, therefore, been a history of LB Bromley resisting boundary reviews and GB/MOL land releases, with a number of residential schemes being approved on appeal.

Current Local Plan Approach

- 3.7 The Council’s approach to GB and open space designations (including MOL) sets out that the Council is only seeking to amend the GB in exceptional circumstances and where the amendment “...will help meet identified needs which it can demonstrate cannot be accommodated elsewhere.” (para. 1.4.17). Areas subject to GB/MOL amendments are (para. 1.4.18):
- 1 Biggin Hill Strategic Outer London Development Centre;
 - 2 Existing and proposed School sites; and
 - 3 Traveller sites.
- 3.8 The BLP is informed by the Draft Policies and Designations Document February 2014 (SD26), which itself references (pg. 104) the Council’s ‘Suggested Changes to Metropolitan Open Land & Urban Open Space’ and states that this documents is part of the consultation.
- 3.9 This suggested changes document (February 2014), comprises the briefest of explanations, a summary schedule of changes by type and area and a schedule of suggested changes with accompanying consequential changes to the proposals map. That review (pg. 3) claims it assessed existing MOL boundaries against four criteria:
- 1 Land is not included which it is unnecessary to keep permanently open;
 - 2 The boundaries will not need to be altered at the end of the development plan period;

- 3 The boundaries are defined clearly, using physical features that are readily recognisable and likely to be permanent; and
- 4 Any changes would not make other sites more vulnerable – i.e. there would be a risk of further encroachment.

- 3.10 The document does not reference any further studies but claims the Council undertook a 'Review of Green Belt, Metropolitan Open Land and Urban Open Space Boundaries' in June 2012 (SD58a). The table of 'Suggested Changes to Metropolitan Open Land & Urban Open Space' at Appendix 2 (SD58c) is identical to the suggested changes document.
- 3.11 There is no further evidence of MOL boundary assessment or review with the BLP evidence base. Accordingly, the Council's 'MOL Review' consists of the June 2012 Review, the outputs of which (the suggested boundary changes) were consulted upon in February 2014. The '2014 Review' therefore actually dates from 2012.
- 3.12 BLP proposed changes to the MOL largely reflect those identified in the above suggested changes. There have been a few additions to the MOL, specifically at Crystal Palace Park, and a number of MOL deletions and changes to the MOL to UOS to accommodate schools. No assessments however have been made as to why these additions and deletions are justified.
- 3.13 There are a number of further MOL amendments set out in the 'Policies Map Set Part 2' (SD3b) not included in the original 2014 Review. These relate to Crystal Palace Park (Sites 10 and 11), a successful appeal for residential development (Site 15), removal of back gardens (Site 37) and the removal of Scotts Park Primary School (Site 38). Most of these changes are insubstantial or small boundary amendments.
- 3.14 The Council has not conducted any detailed review of whether the current designated parts of the MOL such as the Dylon 2 site individually meet the London Plan criteria. The review of the BLP is the time that this exercise should be undertaken to ensure consistency with the Regional Strategy. The failure to do so is contrary to the requirements of the NPPF.
- 3.15 In summary, the Council has not undertaken a clear and transparent nor comprehensive GB or MOL review, instead making changes to meet certain development needs as recognised by the Inspector (Issue 3, Q.12). Whilst it has sought to address its duties as education authority and towards travellers and employment growth by amending MOL/GB boundaries, it has failed to carry out any similar assessment regarding its housing shortage.
- 3.16 The basis for the so called open space review is five years out of date and was prepared in the context of a housing requirement of 500 in 2012 (London Plan July 2011, Table 3.1) as against current needs of up to 2,564 (CLG draft 2017) and 1,404 affordable dwellings per year (SEL SHMA 2014).

4.0 Critique of Bromley Approach

- 4.1 The Council's approach fails to respond to future development needs or promote sustainable patterns of development as it is inadequate and outdated in the context of meeting the Council's objectively assessed development (particularly housing) and infrastructure needs as:
- 1 The Council have historically resisted a comprehensive review and this has had consequentially negative impacts on the delivery of much needed housing.
 - 2 The 2014 review actually dates from 2012, and does not provide a thorough and comprehensive assessment of the suitability of existing MOL sites in the context of the London Plan MOL criteria.

- 3 The Council does not have a 5YHLS and the continued resistance to a comprehensive needs based MOL review is a significant barrier to achieving this.

Persistent Failure to Adequately Review MOL

- 4.2 The Council have persistently failed to comprehensively and adequately review its GB/MOL boundaries and this has been a key factor in housing supply being dependent on appeals and consistently failing to meet its OAN.
- 4.3 Over the past 5 years, 52% of housing completions were achieved following the grant of permission on appeal (based on LBB's net housing completions from the LBB 5YHLS Report November 2016 and Lichfields analysis). This includes development of sites in MOL. In terms of housing delivery these are windfall sites and takes the overall level of windfall delivery well above an acceptable level.
- 4.4 This continued failure to address OAN and seek to identify sufficient land for housing to meet the OAN is contrary to the plan-led approach to significantly boost housing supply.

Inadequacy of Current Approach

- 4.5 Local Authorities, and the communities who elect them, are in charge of planning for their own areas. LBB purports to have prepared a 'Review of GB, MOL and UOS boundaries' (SD58). On the face of it this would indicate that the Council recognise the need to review its GB/MOL boundaries to meet its development needs and achieve its spatial strategy.
- 4.6 The product of that review dating from June 2012 and prepared earlier; belies a proper understanding of a full review and is inadequate and an outdated assessment.
- 4.7 The June 2012 Development Control Committee Report (the 'Committee Report') lists the types of sites considered in the review (para. 3.2.1) but the four page Committee Report and accompanying schedules do not provide a clear methodology or comparative assessment against the GB/MOL criteria. There is no consideration of how the various dimensions of sustainable development have been considered as required by NPPF para. 85.
- 4.8 Although dating from June 2012, all assessment work was carried out earlier and accordingly the Review does not provide a basis for meeting objectively assessed development and infrastructure requirements of Bromley in 2017 and beyond.
- 4.9 In reviewing LBBs GB/MOL 'review' we have had due regard to other Local Plan examinations. A number of key conclusions and relevant references regarding an appropriate approach to GB reviews which are pertinent, these are::
- 1 GB (MOL) sites to meet development plan needs should only reasonable and realistically be identified as part of a formal independent GB review process that includes full public consultation and a comparative assessment of realistic opportunities. (Gravesham Borough Council, Inspectors Report (IR) July 2014).
 - 2 A selective review may lead to pressure to release land in the review area, when having regard to the advice in paragraph 85 of the NPPF, there is more suitable land elsewhere. A comprehensive review is also more likely to ensure consistency with the spatial strategy and increase the likelihood that boundaries will not need to be review again at the end of the period. (Leeds City Council, IR, September 2014).
 - 3 St Albans were recently criticised by the Courts for failure to cooperate failure to shoulder its share of housing need and its reluctance to release GB land in order to meet OAN.
- 4.10 In the Hunston Properties case [2014] J.P.L. 599 (also St Albans) the Court of Appeal held:

"In principle, a shortage of housing land when compared to the needs of an area is capable of amounting to very special circumstances. None of these propositions is in dispute."

- 4.11 In a local plan context housing need can, and in circumstances of Bromley's current housing crisis should, constitute exceptional circumstances (NPPF para. 14 applies).
- 4.12 As an evidence base document, the submitted 'Review of GB MOL and UOS boundaries' (SD58) is not "*adequate, up-to-date and relevant evidence*" as required by the NPPF (para. 158). In its current form the submitted (that LBB agree by virtue of its production is necessary) does not allow the Inspector to:
- 1 Be satisfied there is consistency with the Local Plan strategy for meeting its objectively assessed development (housing) and infrastructure needs and identified requirements for sustainable development;
 - 2 Be satisfied that land which is unnecessary to be kept permanently open is not included within the defined GB/MOL boundary; and
 - 3 Be satisfied that the GB/MOL boundaries will need to be altered especially given the history of 'planning by appeal' in the borough.
- 4.13 Therefore, the Council's approach to this review, its age, and its lack of methodology, evidence and findings renders it, as an evidence base document, wholly inadequate and not in accordance with the NPPF guidance and other Local Plan examinations. As such, the BLP is not being 'positively prepared' as required by the NPPF (para. 182).

Meeting Housing Need

- 4.14 As recognised in the BLP (para. 1.2.3) the plan must be 'positively prepared', as required by the NPPF, based on a strategy which seeks to "*meet objectively assessed development and infrastructure requirements*". A key part of this 'need' is to provide a range of homes of different types and sizes (BLP para. 1.3.6).
- 4.15 The Council state that GB/MOL release will be in exceptional circumstances where it can help meet identified needs which cannot be accommodated elsewhere. As evidenced in Dylon² Limited and Relta Limited Matters Statement in response to Issue 5, the Council cannot demonstrate a five year housing land supply (5YHLS) (Q.18) and a number of housing sites are neither deliverable or developable in accordance with paragraph 47 of the NPPF (Q.20). Nor does the Council come anywhere close to addressing the market and affordable housing needs (Q24).
- 4.16 The Council's housing development needs cannot be accommodated 'elsewhere' and, given the scale of the shortfall, a full and comprehensive review of MOL (and GB) boundaries is required to assess whether its housing need could, in part, be accommodated on suitable MOL land that does not currently meet the LP criteria for designation.

The Dylon 2 Site

- 5.0
- 5.1 The Dylon 2 site comprises a triangular area of 18,649sqm just to the south of Lower Sydenham Station which is a commuter hub providing excellent connectivity to Central London and Canary Wharf. It is also within easy walking distance of the employment areas in Lower Sydenham the nearby retail park shops and other facilities.
- 5.2 A site location plan, context plans and site photographs of the Site are provided as Annexes 1, 2 and 3 to this Evidence.

- 5.3 It is bounded to the west by the Hayes to London Charing Cross railway line; to the north by the site of the ongoing redevelopment of the former Dylon International premises (Phase 1) and Maybrey Works and to the south-east by the Pool River. It is accessed via a private road running parallel to the west boundary of the Phase 1 site.
- 5.4 Formerly part of the Dylon International Works site, it was originally the company sports ground however the sporting use of the site has long since been abandoned and it has been in occupation for a range of commercial uses with single storey buildings and hard-standing uses occupying circa 37% of the site for over ten years (see Annexes 1 and 3)
- 5.5 Although designated as MOL there is no public access to the site and it makes no contribution to the public realm, or sports provision. Its use, urban character and immediate context, make it distinct and separate from the wider area of MOL on the other side of Pool River.

MOL Designation

- 5.6 In the absence of a comprehensive MOL review and the exceptional circumstances that exist (persistent failure to review and acute housing need), one needs to assess the appropriateness of the continued inclusion of the Dylon 2 Site within the MOL.
- 5.7 The Dylon appeal decision (reference APP/G5180/W/16/3144248, 2 August 2016, forming Annex 4 to this Evidence) provides an independent planning inspector's consideration of the MOL designation criteria (London Plan Policy 7.17D, see above), in summary:
- 1 The partially developed secluded Site is not physically distinguishable from the adjacent built-up area to the north and west, but is distinguishable from the wider area of MOL to the east which has a different townscape character and is visible in many public viewpoints.

The Inspector found that there was no link across the river (to the east) and the Site is surrounded by dense development on all sides, thereby disagreeing with the GLA's advice and concluding that the Site's contribution to the MOL designation criteria is not a significant as the adjacent sports fields [37 - 38].
 - 2 The Site has no active open air facility. The previous single pitch was never public and (we understand) has not been used since at least 2007; it did not and never has served the whole or significant part of London in any event.

The Appeal Inspector agreed that the Site did not meet this criterion [37].
 - 3 The Site does not contain any feature or landscape (historic, recreational, biodiversity) of national or metropolitan value (nor does it contain any feature or landscape of local value).

The Appeal Inspector agreed that the Site did not meet this criterion [37].
 - 4 Criterion d is not applicable as the proposal does not meet any of the other three criteria. In any event, the proposal enhances its (absent) contribution to the designated South East London Green Chain, by replacing the existing built development and open land with significantly better quality development and open space (which would be publicly accessible; not private, as at present) and improving the environmental quality, biodiversity of the River Pool and the adjoining open land.
- 5.8 The Appeal Inspector did not endorse the MOL role of the Site's designation and found its contribution to the MOL to be very limited.
- 5.9 The Dylon 2 Site is separate and distinct from the remainder of the MOL land at New Beckenham, some of which has a history of residential and other development within it. It neither satisfies the MOL designation criteria, nor any purpose for including land within it. The site is a very low quality urban site, of poor landscape character and no visual amenity. It is

visually, physically and functionally separate from the wider MOL. We are not aware of any other MOL site having had this degree of scrutiny against updated MOL criteria

- 5.10 Accordingly, any comprehensive up to date review of MOL in the context of LB Bromley's objectively assessed development requirements should result in removal of the land from the MOL.

Suitability for Housing

- 5.11 The Dylon 2 Site is a deliverable site against the NPPF footnote 11 tests and is suitable for residential-led development:

- 1 It is in close proximity to an established commuter hub (Lower Sydenham Station) where government statements indicate development should be focused.
- 2 It is located within easy walking distance of the employment areas in Lower Sydenham including the neighbouring industrial estate, the nearby retail park and commercial development at Bell Green.
- 3 It is not located in the setting of sensitive heritage assets.
- 4 The site is a very low quality urban site, forming part of the former Dylon Factory complex within what is perceived to be part of the Lower Sydenham urban area.
- 5 Its immediate Lower Sydenham context is urban and this will be further emphasised by the form and massing of the 5-8 storey housing development of adjacent Dylon Phase 1 Site.
- 6 Its use, poor landscape character and lack of visual amenity make it distinct and separate from the MOL to the east of Pool River, at New Beckenham.

- 5.12 In terms of availability, the site is available now and owned by a single willing developer.

- 5.13 In terms of achievability, viable residential developments have been and continue to be proposed.

- 5.14 Proposals have been advanced which would deliver appropriate new housing, including 35% affordable tenure on an area equivalent to the existing 'brownfield' use of the site together with privately funded publicly accessible high quality usable open space.

- 5.15 In respect of the provision of a park within a residential scheme, the Inspector stated (Appeal Decision para. 54):

"The provision of the park in what is, at present, underused and neglected land is very welcome and would serve not only the residents of both Dylon schemes but would be open to other visitors".

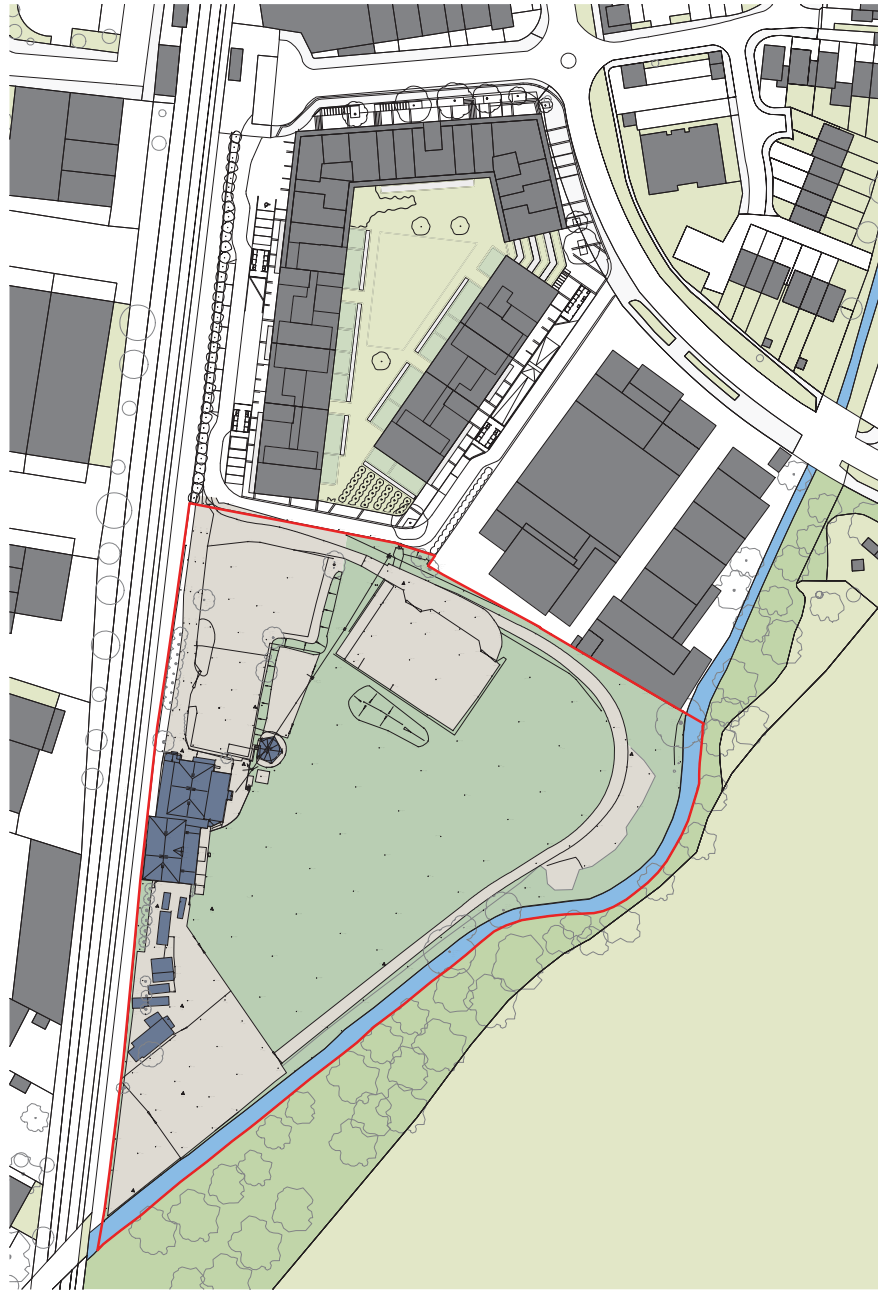
6.0 Summary

- 6.1 The Council's 2014 'review' of the GB, MOL and UOS is an outdated and inadequate basis for the positive planning of the development and infrastructure needs, specifically objectively assessed housing need, in the Borough over the plan period.

- 6.2 The review (actually 2012), is outdated, selective and fails to provide a comprehensive assessment of suitability of existing MOL sites. Consequently, the Council is unable to "*meet objectively assessed development and infrastructure requirements*" as required by the NPPF (para.182), nor is the MOL review as "*adequate, up-to-date and relevant evidence*" (NPPF para. 158).

- 6.3 The situation is compounded by the Council's historic failure to undertake a comprehensive review, despite recommendations to do so. The consequential negative impacts on the delivery of much needed housing have resulted in planning by appeal.
- 6.4 A full and comprehensive review of MOL boundaries is required and such an assessment would conclude that the Dylon 2 Site does not fulfil London Plan Policy 7.17D MOL criteria and should be removed from the MOL.
- 6.5 Failure to undertake this review now will delay the delivery of much needed housing, result in further planning by appeal and require a review of the extant GB/MOL designations at the end of the Plan period, contrary to NPPF requirements

Annex 1: Dylon 2 Site Location Plan



Key:

- Application Boundary
(site area 18649m²)
- Building
- Site ("Brownfield" Land Area)
- Site ("Green" Area)

Existing Building Areas

Building	833.7 m ²
Site ("Brownfield" Land Area)	7012.1 m ²
Site ("Green" Area)	10622.6 m ²
Grand total	18468.4 m ²

SK1697

Status	Planning
Date	06-11-2017
Job no.	634
Drawn	RD / FS
Checked	.

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0m 15m 30m 45m 60m

SCALE

1 : 1500 @ A3

634 Dylon Phase 2

Currently developed area within application site

Annex 2: Dylon 2 Site Context Plans



Key:

- Bromley Borough Boundary
- Site

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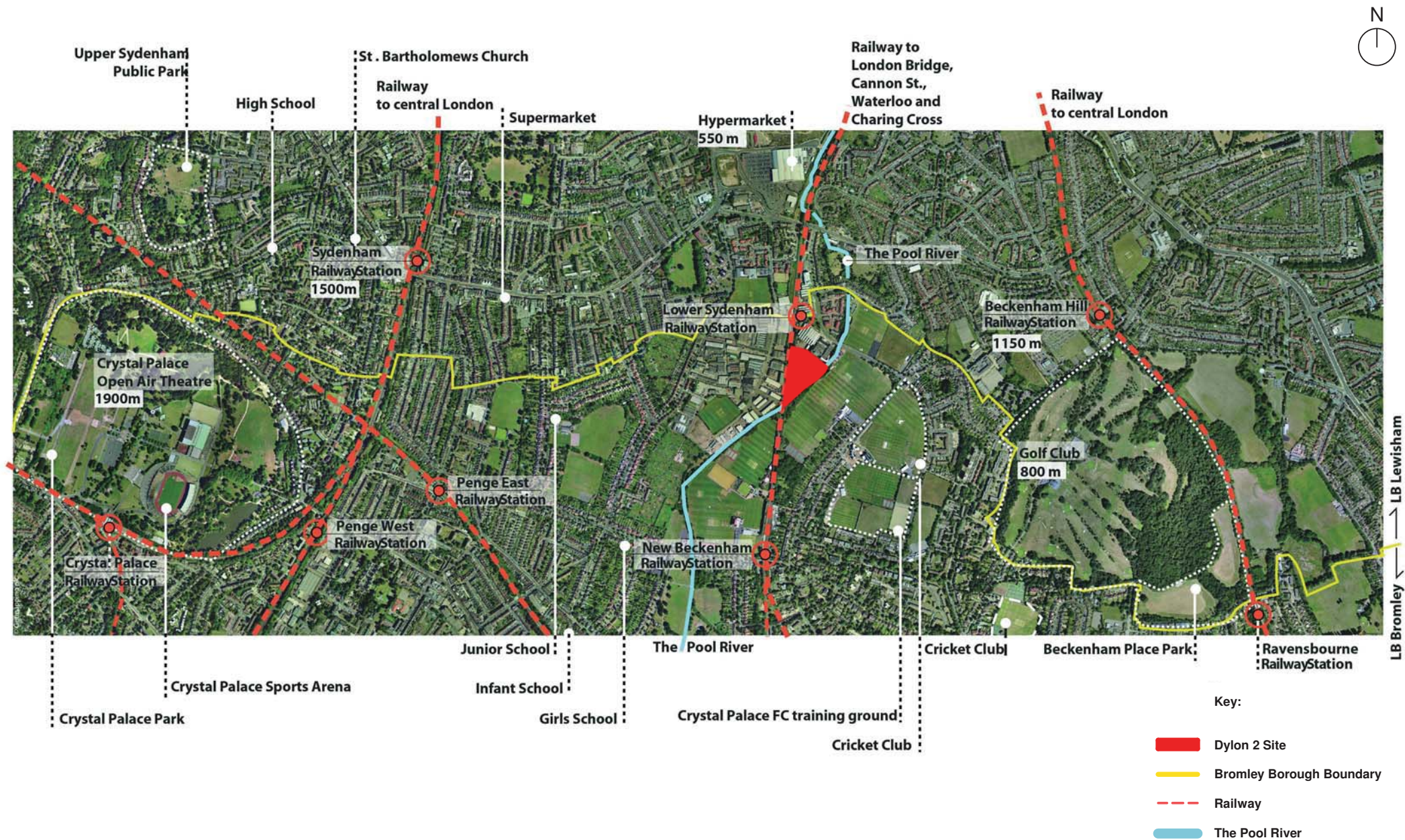
nts @ A3

634 Dylon Phase 2

Site Context

SK1694a

Status	Planning
Date	13-11-2017
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Note: Numbers underneath the names of places indicate their walking distance from site.

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634 Dylon Phase 2

Site Wider Context

SK1693a

Status	Planning	
Date	13-11-2017	Job no. 634
Drawn	RD	Checked .

Annex 3: Dylon 2 Site Photographs



Aerial View from South



Aerial View from Southeast



Aerial View from Northeast



Aerial View from West



Aerial View from North



Aerial View from East

NOTE: Photos taken April 2016

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634 Dylon Phase 2

1 of 2 Aerial Views of Site - Spring 2016.

SK1696.1

Status	Planning
Date	06-11-2017
Job no.	634
Drawn	RD / FS
Checked	.



Aerial View from above



Aerial View from west



Aerial View from Southeast



Aerial View from East



Aerial View from South



Aerial View from Southeast

NOTE: Photos taken January 2017

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634 Dylon Phase 2

2 of 2 Aerial Views of Site - Winter 2017

SK1696.2

Status	Planning	
Date	06-11-2017	Job no. 634
Drawn	RD / FS	Checked .

Annex 4: Dylon 2 Appeal Decision

Appeal Decision

Inquiry held on 24 – 27 May & 2 June 2016

Site visit made on 27 May 2016

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 August 2016

Appeal Ref: APP/G5180/W/16/3144248

Land to the rear of former Dylan International Premises, Station Approach, Lower Sydenham, London SE26 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Iain Hutchinson against the Council of the London Borough of Bromley.
 - The application Ref: DC/15/04759/FUL1 is dated 30 October 2015.
 - The development proposed is demolition of existing buildings and redevelopment of the site by the erection of a part eight, part nine storey development comprising 253 residential units (128 one bedroom, 115 two bedroom and 10 three bedroom) together with the construction of an estate road and ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.
-

Decision

1. The appeal is dismissed.

Main Issues

2. Since the appeal was lodged, the Council has indicated that, had jurisdiction not passed to the Secretary of State, it would have refused the appeal on a number of grounds. Taking these into account, I consider that the main issues in this case are as follows:

The effect of the proposed development on

- (i) the area of Metropolitan Open Land (MOL) in which it would be located, in particular whether it constitutes inappropriate development and, if so, whether there are any material considerations that outweigh the harm caused by inappropriate development in the MOL, and any other harm, sufficient to justify the proposal on the grounds of very special circumstances.
 - (ii) the character and appearance of the surroundings, with particular reference to the quality of its design, especially in relation to its scale, form, density and the measures taken to mitigate the risk of flooding;
- and
- (iii) the amenities of the future occupiers of the dwellings with particular reference to natural ventilation and solar gain and noise.
-

3. Although the Council was initially concerned that the proposed development would not meet its requirements in terms of numbers of apartments with wheelchair accessibility, further information submitted at the Inquiry resolved this question and the Council withdrew its objection on this ground.

Site and surroundings

4. The appeal site is part of former industrial premises and was previously a sports ground for the employees. It is roughly triangular in shape and is bounded to the west by a railway line and to the north east/south west by the river Pool. It contains the remains of a number of disused buildings associated with the sports ground use and areas of hardstanding. A part of the site is presently being used as a temporary compound associated with the development of the remainder of the former works on the land to the north and there is also an enclosed compound in a commercial use to the south but the remainder is mostly now rough grass with a track running close to the river from north to south.
5. The site lies within the New Beckenham area of Metropolitan Open Land, most of which comprises other sports grounds and playing fields. All of these areas are also part of the Green Chain. Beyond the railway, to the west, lies an industrial estate with residential development in Copers Cope Road and Worsley Bridge Road to the east. Lower Sydenham Station is close by, to the north.

The appeal proposals

6. The proposed development consists of 253 apartments in a single, articulated block on a north/south axis adjacent to the railway line. An access road with on-street parking would run parallel to the railway line and further parking space would be located in a basement beneath the building. This would allow the first level of residential accommodation to be raised and so prevent flooding should the river level rise. Water would be allowed to flow in and out of the car park via a series of grilles set into a landscaped area to the east of the block.
7. The remainder of the site would also be landscaped into an area of recreational parkland accessible to the public, containing an outdoor gym and a children's playground, with parking spaces to the north.
8. The scheme has been designed by the architect of the adjacent residential development on the site of the former works and would have a similar palette of materials, including yellow London stock brickwork, ribbed translucent glazed panels to the circulation cores and recessed balconies. The block would have 10 storeys, including the basement, and be set out in a 'zig-zag' shape along a central spine, with 7 facets on each long elevation, set at an angle of 120°. The apartments are a mixture of studio, two and three bedroom units, each with at least one balcony or private terrace.

Reasons

9. There is no dispute between the parties that the site lies within MOL or that policy 7.17 of the London Plan (LP) gives the same protection to such areas as is given to Green Belt in national policy as set out in the National Planning Policy Framework (the Framework). It is therefore also agreed that the

proposed development would be inappropriate development which would be inherently harmful and consequently only acceptable if shown to be justified through the existence of very special circumstances.

10. One of the main differences between the parties centres on the weight to be accorded to the MOL policies and the other Development Plan (DP) policies relating to housing land supply (HLS), with the Council considering that it can demonstrate a 5 year supply of housing land to meet its objectively assessed need (OAN). The appellants, however, submit that the claimed supply, at 5.1 years, is an over estimation and that there is a shortfall in the 5 year supply. This would mean that the policies relating to the supply of housing would be considered out of date and paragraphs 49 and 14 of the Framework would consequently be engaged.

Housing Land Supply

11. I consider that the starting point for this case is therefore whether the Council can demonstrate a 5 year HLS. The parties have produced a Statement of Common Ground (SoCGH) on the topic which sets out the areas of agreement, and disagreement, between them. It is agreed that the base date for calculating the supply is 1 April 2015 and that the annual housing target for the Borough as set in the Further Alterations to the London Plan (FALP) is 641 dwellings per annum (dpa) to which a 5% buffer should be applied to ensure variety and availability of choice. This gives a figure of 673 dpa for the period 2015 – 2020; a total of 3365 units.
12. The Council, in the SoCGH, considers that it can demonstrate a supply of 3443 units or, if it is considered that a 5% lapse rate (as discussed below) is applied to known sites with planning permission, 3403 units. This equates to 5.1 or 5.05 years' supply respectively. Taking all the reductions suggested by the appellants' results, in the worst case scenario, to a supply of 2480 units or 3.68 years HLS.
13. The matters in dispute between the parties are limited to the following points: firstly the position on 3 sites where the numbers of units that will be delivered are not agreed, secondly, the number of windfall sites that should be included per annum and thirdly, whether lapse rates should be applied to the categories of 'known sites with planning permission not commenced' and 'other sites', which are included in the 5 year supply figures.
14. Of the 3 sites in dispute, the first, Sundridge Park Manor, is considered by the Council to be capable of delivering at least 14 dwellings. The site has planning permission for this but the developers have stated that this level is unviable and will not be built out. The appellants suggest that, for this reason, the site should be removed from the list. The developers also applied to build 22 dwellings on the site but the revised scheme was refused permission at a planning committee meeting on the evening of the day the Inquiry closed, despite an officer's recommendation for approval.
15. It seems to me that, in these circumstances, the future of the site is very uncertain and it would be imprudent to assume that any units might come forward within the 5 year time frame. This means that 14 units should be deducted from the Council's total.

16. A site at Tweedy Road is being released by the Council for development with design guidance indicating that 24 units are likely to be acceptable. The appellants consider that it is a sensitive site that is not suitable for the scale of development originally envisaged, i.e. 40 units, and should be removed in its entirety. The site is now being actively marketed by the Council and, given the design studies carried out, I see no reason why the number of units included in the SoCGH calculations should not be deliverable within the 5 year time scale.
17. The final site is the former Town Hall and car park that was granted planning permission for 53 units in November 2015, after the base date of 1 April 2016. The appellants submit that the appropriate estimate is the 20 units envisaged at the base date, whereas the Council considers that the latest position should be the one on which the figures are based.
18. Whilst there is more up-to-date information now available, it seems to me that if additional units granted planning permission after the base date are to be taken into account, so should any units that have been completed after the base date and consequently removed from the future supply availability, in order to present the most accurate overall picture. This exercise had not been completed for the Inquiry and I therefore conclude that for the purposes of this appeal, the position as agreed in the SoCGH should be adhered to.
19. In conclusion therefore, on this topic, I consider that 47 units¹ should be taken out of the total of allocated sites and other known sites that the Council consider to be deliverable in the table attached to the SoCGH.
20. Turning to the number of windfall sites that should be included, the Council rely on the figures which were informed by the Strategic Housing Land Availability Assessment (SHLAA) carried out in 2013 and based on the years 2004 - 2012. However, the appellants point out that this was a measure of capacity and does not necessarily reflect the actual rate of delivery of sites.
21. At the Examination in Public (EiP) into the FALP the Inspector found that it was likely that it would not deliver sufficient homes to meet London's OAN but non-adoption would result in the retention of the existing housing targets, which were even lower than those in the FALP. In those circumstances, he concluded that the FALP should be adopted but subject to an immediate review, with the clear intention of increasing the supply across all forms of delivery.
22. The Council considers that any review of the likely level of windfall sites should wait until the next SHLAA is carried out, but, given the situation set out in the EiP Report into the FALP, I disagree. There is now more recent data available which demonstrates that the availability of such sites has reduced in the 3 years since the SHLAA was published and given the FALP Inspector's conclusions on the need to increase delivery, even though capacity might be sufficient, I consider that the windfall allowance suggested by the Council is unrealistic and should be reduced.
23. At present, the Council has included a total of 1100 units (220 dpa) in its small sites allowance for windfalls for the relevant 5 year period which equates to about 1/3 of its housing requirement. The total from all small sites is set at 352 dpa in the Council's calculations, but this figure has not been achieved in the Borough since 2007/8, with the overall trend for such completions moving steadily downwards.

¹ 14 from the Sundridge Park Manor site and 33 from the former Town Hall site

24. The level of reliance on 'unknown' sites has been criticised in the past by Inspectors and the appellants suggest that the 5 year trend figure of 1330 units from small sites over 5 years, resulting in 742 windfall dwellings over the period would be a better estimate. This figure is based on actual completions and it has been previously agreed by the Borough, in its evidence to the FALP EiP, that about 1800 small sites over the period 2015 - 2025 would be a more realistic figure.
25. Given the downward trend, and even taking a conservative figure midway between the 1100 now supported by the Council and its previous prediction of 900 (over 5 years) suggested as achievable at the EiP, would mean that the Council would narrowly miss the 5 year HLS target.
26. Even if this were not the case, the Council has made no allowance for any lapse rates on sites where planning permission has already been granted but not yet commenced. It has agreed, through the Inquiry process, that a 5% rate could possibly be applied to such sites, if found necessary, and this on the Council's own calculations would bring the HLS down to 5.05 years, as noted above.
27. The appellants submit that a lapse rate of between 30 – 50% should be applied to these sites and also to 'other known sites' where planning permission has not yet been granted. This view is based on the findings of previous Inspectors who were concerned that a 100% delivery rate was unrealistic and a variety of other evidence, including the 2013 SHLAA and comparison of delivery rates against Annual Monitoring Reports (AMR).
28. The figures show that there has been an overall failure to achieve the projected completions and while there are some years where targets have been met, the overall trend is a shortfall of up to 50%. It therefore seems to me that a lapse rate should be applied, to give a more accurate picture of what is likely to be achieved in terms of actual completions and that figure should be higher than the Council's assumed 5% and applied to both categories.
29. Even if a lapse rate of only 6%, rather than the 30 – 50% suggested by the appellants, were to be applied to the sites with planning permission that have not commenced and to other known sites as adjusted as set out above, the 5 year HLS would not be met. This would be the case even if the Council's figure on windfalls were to be accepted. I have however, for the reasons set out above, concluded that this would be an unreliable estimate.
30. I therefore conclude that, on the figures used to inform the agreed position on the SoCGH, the Council cannot demonstrate a 5 year supply of deliverable housing sites and, for the purposes of this appeal, the policies that are relevant to the supply of housing are not up-to-date.

Metropolitan Open Land

31. The designation of MOL is linked to that of Green Belt in national policy and both parties agree that the policies in respect of it are relevant to the supply of housing. My findings on the HLS situation therefore mean that they are now out-of-date and that, while they are still part of the DP for the Borough, the weight that can be accorded to them is consequently reduced.

32. The appellants also submit that, in this situation, the MOL designation is a local one, related only to the LP, and does not therefore fall within footnote 9 of the Framework which relates back to paragraph 14. This paragraph notes that where relevant DP policies are out-of-date permission should be granted unless any adverse impacts would '*significantly and demonstrably outweigh the benefits*' when assessed against '*the policies in this Framework as a whole*' and '*specific policies in this Framework*' indicate that development should be restricted.
33. Footnote 9 cites Green Belt as one of these specific policies. The appellants maintain that every word in the Framework is important, carefully considered and should be read as written and that therefore, because MOL is not mentioned in the Framework, there are no policies relating to it therein and paragraph 14 is not engaged in respect of the designation.
34. The Council disagrees, submitting that the Framework refers to national policy only, with MOL being a local designation that relies on the LP for its association with Green Belt policy and this is why it is not mentioned in the examples given in footnote 9. It submits that this does not mean that MOL policy is not covered by, or is inconsistent with the Framework; rather the Green Belt policies of the NPPF nevertheless apply by analogy to MOL by virtue of the references to it in the adopted DP which includes the LP.
35. However, I consider these arguments to be somewhat academic in this case. Whether or not MOL is a 'specific policy' in terms of footnote 9, it remains part of the adopted DP, through the up-to-date LP, and triggers the need to identify very special circumstances if planning permission is to be granted. In any event, the appellants do not dispute that 'very special circumstances' will need to be found here. To this end, they submit that the Framework clearly infers that significantly less weight should be accorded to policies that are found to be out-of-date and have made their submissions on this basis and that very special circumstances apply that are sufficient to justify the scheme.
36. To this end, the appellants also question the extent to which the appeal site is contributing to the purposes of its MOL designation. To be designated as MOL, LP policy 7.17 requires it to meet one of the following criteria. It should contribute to the physical structure of London by being clearly distinguishable from the built up area, it should include open air facilities for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London, or it should it contain features or landscapes of either national or metropolitan value.
37. The last 2 criteria are not met as there is no public access to the land and no features that meet the description. It is the case that the land is not clearly visually linked with the playing fields to the east of the Pool river from any of the viewpoints visited during the site inspection and, at the time of that visit when the vegetation was at its thickest, the extent of the wider MOL was not readily apparent from the site itself. Nevertheless, I accept that this may be somewhat different when the leaves are off the trees, as seen in photographs of the site. In any event, the site nonetheless makes a contribution to the larger open area through the fact of its designation and, as with land in Green Belt, the extent of visibility of the site does not necessarily reduce the importance of the contribution that it makes. It is 'openness' that is the critical factor, with visual impact being judged under different criteria.

38. However, I would disagree with the finding of the Greater London Authority (GLA) in its advice on the proposal that the site is '*clearly distinguishable from the built up area to the north*' or that it '*connects with a wider network of open space*'. There is no link across the river and the site is surrounded by dense development on all other sides. It is only really in the aerial photographs that the site can be clearly linked to the open land around it. For these reasons, I find that the contribution that the site is making to the MOL designation criteria is not as significant as the adjacent sports fields beyond the river and the harm caused by the proposed development to the MOL will be considered in the light of this finding.
39. There is already some development in the form of single storey buildings and hardstanding used for commercial storage on part of the land. The footprint of the new block and its related development would cover about 44- 48% of the site, compared to the area of 'brownfield' land which is about 37% of the total at present. Although the GLA appeared to believe that some of the development on the site was unauthorised, there was no suggestion made at the Inquiry that this was the case or any challenge to the planning status of the previously developed land.
40. The appellants were at pains to point out that loss of openness is to be distinguished from visual impact and that, in their view, openness is lost once land ceases to be free from development and the height or bulk of the development is not relevant to an assessment of the extent of this loss. The impact of the scale of the development should therefore be judged through a separate visual assessment and they maintain that land that is previously developed already has lost its open status for the purposes of MOL policy and any additional development on such land should not be 'double counted' when the extent of any harm is being assessed .
41. I agree that the concepts of openness and visual impact are distinguishable and that the difference between the existing and proposed percentages of developed footprint on the site, at 11% at most, is relatively small when set against the wider expanse of MOL of which the appeal site is part. Nevertheless, there is no dispute that the proposed development would result in a loss of openness and this loss would be clearly discernable from wherever the new block could be viewed.
42. However, the weight to be given to this harm is reduced because, at local level, it is a relevant policy for the supply of housing and I have found there to be no 5 year HLS. Nevertheless, there is still a considerable amount of undeveloped land that would be lost from the MOL and if considered on the same terms as Green Belt policy, the Framework makes clear that substantial weight should be accorded to any harm to the MOL. In this case therefore, I consider that, while the harm caused by inappropriate development and loss of openness may be tempered by the relevant policies being out of date, it is still a considerable factor weighing against the proposal.

Design

43. The architect for the proposal is well known and respected and has explained his design rationale for the proposal in detail at the Inquiry and in his proof of evidence. The scheme has also been considered by independent architectural experts on behalf of both main parties.

44. They come to differing conclusions with the Council criticising the design of the development on several grounds, including its scale, bulk and detailing, its relationship to the public realm and surrounding development and the amenities that it would provide for the occupants.
45. The Council believe that the building would have a poor relationship with the public open space to the east through being set at a higher level on this elevation to allow for the flood defences. It also considers that it would be overly large in its context and that it would appear featureless, lacking the interest created by the varied roofline of the other part of the former Dylon land, referred to hereafter as 'Dylon 1' scheme.
46. Criticism is also made of the internal layout, based on the submissions that there would be minimal natural light available to the internal corridors, that there would be too many single aspect dwellings and that reliance on artificial ventilation to ensure that noise levels in the west facing units indicates poor design.
47. The appellants' expert disagrees, submitting that the building would provide a graduated link between the public and private areas and that would appear as a well-considered and appropriate response to, and continuation of, the Dylon 1 scheme. The constant roof line is said to be 'calm' and the geometry of the scheme is said to ensure entrances are clearly visible. It is also claimed that the quality of the internal amenities could be controlled by conditions to ensure that noise and ventilation levels were satisfactory.
48. Having carefully considered these contrasting views, I consider that the design of the building, taken in isolation, is indeed a meticulous and finely detailed concept that would reflect that of the Dylon 1 scheme. I find no problem with the integration of the flood protection measures into the layout, considering that they would be discreet and well integrated into the landscape proposals. Similarly, the 'podium' layout objected to by the Council would, I consider, be an appropriate method of providing private open space that is clearly separate, but not isolated from the park or access way, providing a link of at an appropriate human scale between the public and private realm at ground floor level.
49. Nevertheless, I am not persuaded that the relationship with the Dylon 1 site is the most important in this situation. That site is not within MOL and whilst its character is a factor that must now be taken into consideration in the design of any development on the appeal site, the proposed new block would, I consider, be of an overly dominant height when seen against the relatively small scale development on, and open nature of, other surrounding land.
50. The appeal scheme would maintain a uniform roof level and would be one storey higher than the top floor level of the Dylon 1 buildings, the bulk of which are then reduced as they step down towards the north. However, the remainder of the surrounding development is a mixture that includes industrial and commercial uses, generally at no more than 2 storeys high, the sports grounds that comprise the remainder of the MOL and suburban residential streets where development does not generally exceed 4 storeys at most, with much of it being limited to 2 storeys.

51. In this context, a building of 10 storeys and of the length proposed would, I consider, create a hard dominant edge that would be better suited to a more central urban area where the surrounding densities are more comparable. The constant height of the block would convey the impression of it being considerably larger than Dylon 1, which, as has been noted, is outside the MOL.
52. While the argument has been made that if development is to take place, it should deliver the highest density possible, it seems to me that if development is to take place that would effectively remove some of the designated MOL, it should be more closely aligned with the generally open nature of the remainder of the land within this designation and the suburban and less densely built-up character of the majority of the land adjoining it.
53. I noted at the site visit that the accurate visual representations presented by the appellants, while being a faithful reproduction of how the proposals would sit in the landscape nevertheless do not appear exactly as they do to the human eye when standing in the position from which the photographs were taken. In reality the site appears closer and the proposed buildings would look consequently larger when seen from surrounding roads. The impact of the scale of the development would therefore be greater than depicted in the illustrations.
54. The provision of the park in what is, at present, underused and neglected land is very welcome and would serve not only the residents of both Dylon schemes but would be open to other visitors. I am not persuaded that it would appear as private space for the blocks; local people would, I am sure, soon realise that it was open to all to use and would appreciate having a landscaped area adjacent to the river in which they could walk, exercise and take their children to play.
55. However, I am also of the opinion that the proposed building would be excessively high when seen from, and in relation to, the park and would have the effect of enclosing it, so that the open land would appear dominated and overlooked by the block. The sense of space would be diminished and the appreciation of the remaining areas of MOL within the site, and beyond where available, would also be reduced. The building would appear as a solid wall of development, despite the angled façades, with little variation along its length to relieve its somewhat monumental character.
56. It would be visible from a considerable distance and be prominent on the skyline, from where it would clearly be seen as one block despite the articulation of the elevations. There is no objection *per se* to seeing an attractive building in a location where previously there was little development, but in an area where specific protection has been accorded to the openness of the surroundings, I consider that particular care should be taken to ensure that any change does not appear overly bulky or higher than absolutely necessary.
57. The Planning Design and Access statement that accompanied the application comments as follows on the scale of the development: *'In determining an appropriate scale for the development regard has been had to the topography of the site; the relationship with and scale of the approved adjacent Phase 1 development; and the need to use scarce land resource effectively and efficiently.'*

58. It goes on to say: *'The proposed massing aims to optimise the potential of the site in terms of light, views and accessibility while being sensitive to the form and scale of its context. The massing is urban; however, the architectural articulation of the elevations with the rhythm and proportion of the windows gives the buildings a domestic scale.'*
59. Whilst the aims set out above are appropriate and the massing of the block is indeed urban, for the reasons set out above I am not persuaded that this is necessarily an acceptable solution for this predominantly open site set in a largely sub-urban townscape or that the building would in any way have a 'domestic scale'. It would be impressive and massive but these are not the qualities that I feel are suitable for a site such as this and the scheme would consequently fail to relate sympathetically to the open space within and beyond the site boundaries across which most views of it would be achieved. Whilst it would continue the theme of the Dylon 1 development, I question whether this would be the correct template to follow, given the difference in designations between the 2 sites.
60. Turning to the question of residential amenity, whilst the majority of the units would span the full width of the block and consequently have a double aspect that would include the proposed park from at least some of the windows, I am nevertheless somewhat concerned about the number of single or limited aspect flats on the western elevation.
61. Each floor above ground level would have 6 units that faced only the railway, with another 2 having additional windows looking north or south, but not across the park. It is also the case that it is the units closest to the railway, at the points where the angled façades meet, which would have this limited outlook, as well as being closest to the source of most noise. Whilst mechanical ventilation and noise reduction measures could help to maintain minimum standards I am still concerned that this is a design flaw that results from an attempt to increase densities to more than could be comfortably accommodated on the site.
62. If permitted, the appeal scheme is likely to be used as a precedent for the character of the surroundings against which any future development of nearby sites would be judged. I am concerned that this could lead to a concentration of high rise development that would fail to make an appropriate transition between the open playing fields and sub-urban characteristics of the residential development to the east and the more commercial and urbanised areas to the north and west.
63. In conclusion on this topic, I consider that the extent of the proposed development on the site would be excessive, given the designation of the site and the impact on the character of the surroundings. I find that the scheme would not respect the character and appearance of its surroundings because of its overly dominant height and scale. It would thereby conflict with the policies set out in Chapter 7 of the Framework which seek to promote and secure good design that would help to raise the standards in the area.
64. I consider that the proposal would also fail to meet criterion H7 (iii) of the London Borough of Bromley Unitary Development Plan 2008 (UDP) which requires, amongst other things, that the site layout, buildings and space about buildings are designed to a high quality and recognise, as well as complement, the qualities of the surrounding areas.

65. Similarly UDP policy BE1 calls for all development proposals to be of a high standard of design and layout and they are expected to meet a number of criteria that include complementing the scale, form, layout and materials of adjacent buildings and areas. For the reasons set out above, I conclude that the scheme would be in conflict with this policy as, although it would be seen as clearly related to the Dylon 1 development, it would still fail to complement the wider context in which it would be set.

Very special circumstances/the balancing exercise

66. I have found that the Council does not have a 5 year HLS and the provision of 253 new units, including 90 affordable units, is a significant benefit of the proposal. In addition to this, the economic benefits that would result from the building of a project of this scale are considerable.

67. The public park is another factor that weighs in favour of the scheme and the biodiversity improvements and provision of a possible link to the Waterlink Way would also add to the benefits. The housing delivery grant would, of course, be an advantage but the infrastructure contributions cited by the appellants as benefits are required to make the development acceptable in any event and do not add to the balance in favour of the scheme.

68. I do not accord any additional weight to the fact that the appearance of the site would be improved. This is because, as with Green Belt policy, the condition of the land is not a contributory factor in the designation; it is the openness of the MOL that is important in this context.

69. While the building might, in other location, be considered a valuable addition to the townscape, for the reasons set out above I do not find its relationship with its surroundings would be of sufficient architectural quality to be a consideration in its favour. Indeed, my concerns about the scale and massing of the block, together with the quality of the accommodation for some of the future occupants, are major factors weighing against the proposal.

70. I have found that there is harm to the openness of the MOL as well as the harm by reason of inappropriateness, albeit at a level that is reduced due to the factors outlined above and by the policies of the UDP being outdated in terms of their relevance to the supply of housing. Nevertheless, I also note that the Government's Planning Practice Guidance (PPG) states that '*unmet housing need ... is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt.*'

71. Even if it is considered that the MOL policies are not carried through to the Framework, they are nevertheless still treated in the same way as those relating to the Green Belt in the LP and I consider that the PPG applies to them in the same way as to the Green Belt policies.

72. I have taken account of the other housing sites that have been granted planning permission in MOL in the Borough and elsewhere but the circumstances in each of these were very different to those in this case and preceded the latest edition of the PPG. I have therefore considered this case on its own particular circumstances and merits.

Conclusions

73. I consider that the extent of harm that would be caused through inappropriate development, loss of openness and to the character and appearance of the surroundings are factors that cause the proposed development to conflict with the DP to a substantial degree. I find that the scheme would not represent sustainable development as defined in paragraph 7 of the Framework because of its failure to meet the environmental criteria set out in that paragraph, through the harm to the character of the surroundings.
74. Even though the policies for the supply of housing may be out of date, I conclude that the identified harm significantly and demonstrably outweighs the benefits in favour of the proposal identified above, when assessed against the policies of the Framework as a whole. Very special circumstances to justify the grant of planning permission do not, therefore, exist in this case.
75. Consequently, for the reasons given above I conclude that the appeal should be dismissed.

Katie Peerless

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Gwion Lewis	Of Counsel instructed by Greg Ullman, Solicitor for the London Borough of Bromley
He called	
Claire Glavin BA (Hons) MRTPI	Principal Planning Officer, Planning Policy Team, London Borough of Bromley
Stephen Sensecall BA (Hons) DipTP MRTPI	Senior Partner, Kemp and Kemp LLP

FOR THE APPELLANT:

Russell Harris QC	Instructed by Nathaniel Litchfield and Partners
He called	
Ian Ritchie	Architect
Richard Coleman Dip Arch (Cant) RIBA	Architecture, Heritage and Townscape Consultant
Steven Butterworth	Senior Director, Nathaniel Litchfield and Partners.
Christopher Francis	West and Partners, Town Planning Consultants

INTERESTED PERSONS:

Cllr. Russell Mellor

DOCUMENTS

- 1 Notes of Mr Harris' opening statement
- 2 Notes of Mr Lewis' opening statement
- 3 Tibbald's report on 1st application on appeal site
- 4 Extract from PAS website
- 5 Screenshots from Hambridge website
- 6 Advertisement for Tweedy Road development site
- 7 Mr Ritchie's notes on acoustic and ventilation matters
- 8 Note on developed area including car park
- 9 Email from Environmental Health Officer in response to noise notes
- 10 Suggested Conditions
- 11 RPS note
- 12 UU Version A – Starter Homes version
- 13 UU Version B
- 14 Route Map to UU versions
- 15 Notes of Mr Lewis' closing submissions
- 16 Notes of Mr Harris' closing submissions

Bristol
0117 403 1980
bristol@lichfields.uk

Cardiff
029 2043 5880
cardiff@lichfields.uk

Edinburgh
0131 285 0670
edinburgh@lichfields.uk

Leeds
0113 397 1397
leeds@lichfields.uk

London
020 7837 4477
london@lichfields.uk

Manchester
0161 837 6130
manchester@lichfields.uk

Newcastle
0191 261 5685
newcastle@lichfields.uk

Thames Valley
0118 334 1920
thamesvalley@lichfields.uk