

Re: RIVERINE CENTRE, CANNING ROAD, LONDON, E15 3ND

REFERENCES:

APP/G5750/A/13/2198313

APP/G5750/C/13/2203432

APP/G5750/A/13/2206531

CLOSING STATEMENT ON BEHALF OF NEWHAM CONCERN LIMITED

Introduction

1. Newham Concern Limited ('NCL') opposes the three appeals brought on behalf of the Trustees of Anjuman-E-Islahul-Muslimeen of (London) UK ('The Trustees') in relation to the proposed mosque and the temporary structures which are currently on site.
2. NCL continues to support the Council's case in relation to all three appeals; and insofar as the submissions made in this Closing Statement will address each of the Inspector's main issues, they will focus on the matters on which NCL has led evidence or raised as complementary matters for consideration by the Inspector and the Secretary of State.
3. The Inspector, in his list of issues, has raised four broad headings:
 - 1) The impact/effect of the development on (or alternatively whether the proposed development would materially harm) the planned regeneration of the site;
 - 2) The impact/effect of the development on (or alternatively, whether the proposed development would materially harm) highway safety in the area;

- 3) The impact/effect of (or alternatively, whether the proposed development would be materially harmed by) the previous use of land; and
 - 4) The impact/effect of the development on (or alternatively, whether the proposed development would materially harm) the character and appearance of the area.
4. These will form the framework of this Closing Statement with each of the above issues being considered with regard to both the proposed development and the continued use of the temporary mosque from the perspective of the local community's objections; though it should be borne in mind that, insofar as these were reflected in the refusal decision by the Council's Planning Committee in December 2012, that decision was made unanimously by democratically-elected representatives.

The Local Community

5. At this inquiry two parties have sought to represent the views of "the local community", the Newham People's Alliance ('NPA') as "supporters" and NCL as "objectors". Despite the high rhetoric of the NPA only one truly local resident'. Mr Bilal Hassan gave oral evidence¹. He admitted that he was a regular attendee at the Riverine Centre and had been throughout its duration on the site; and the petition of 'local residents' amassed only 110 names, most of whom were mosque attendees too². Indeed, the question asked by the petition refers only to the sports facilities and not to the mosque which is the bulk of the proposal. Accordingly, such material, and, indeed the NPA's evidence should not be treated as

¹ The statement from Mr Irfan Bagas of Happy Shopper had been obtained by the NPA and, in any event, Mr Bagas (according to Miss Harris) was not a local resident.

² Day 9 xx by JPS and Inspector

an objective representation of local opinion and should be viewed with great caution.

6. NCL is a community interest group which was formed due to local concerns regarding the perceived impact of proposed plans for a large mosque on the Riverine Site. The main driving force and campaign director is Mr Alan Craig, a former Newham Councillor for Canning Town and a long-time borough resident. NCL has, for the last six years, sought to raise awareness of the proposals and to stimulate debate about the future of the Site³. Both in the determination process and at this inquiry NCL has served as an umbrella under which local residents have sought to make their concerns known. At this inquiry these have been articulated by Mr Fitzgerald and Miss Harris who both gave oral evidence to the inquiry to voice their concerns about the appeal proposals as well as the problems experienced in relation to the current temporary mosque use. They are the only local residents who have given evidence to the inquiry who have no connection with the Trustees.
7. The Inspector is requested to note at the outset that although, throughout their evidence, the Appellants' witnesses have claimed that the Mosque is to address the needs and wishes of the 'community'⁴ they have never defined that community. It is NCL's contention that the 'community' spoken of by the Appellants is the narrow faith group of Muslims following Tablighi Jamaat whose followers are largely not local to the borough of Newham (as will be explained in the 'need' section below). As such, it would be inaccurate to report that the proposed mosque development is desired by the local community. Indeed, the appeal proposals were turned down unanimously by all of Newham LBC's democratically elected representatives on the planning committee; and of the 3,074 validated objections the vast number were from within the Borough, and, that a significant number of the responses received

³ Martin Fellow's NCL 1.1 Appendix 1

⁴ e.g. Peter Weatherhead in xx by NCL – Day 10

were due the mosque being too big for the site and the area and that they wanted a mixed development⁵. It further needs to be recorded, as mentioned by Miss Harris in her oral evidence⁶, that there has been a lack of awareness of this appeal inquiry within the local area and a mistaken belief that finality had been achieved in December 2012. This is reflected in the very limited attendances at the inquiry and absence of wider representations⁷. Certainly, finality is what is now sought.

8. Moreover, the fact that the proposal is not a 'community focussed scheme' is further evidenced by the wholly inadequate nature of the consultation which was conducted on the proposal. In February 2012 the Appellants carried out some consultation on a mixed-use scheme, the consultation results of which are, in themselves, suspect⁸. The proposal before this inquiry is entirely different. As Mr Fellows remarked in his proof:

*'Indeed, the manifest failure to effectively engage with the local community borders on contempt for the process of meaningful engagement. Therefore, it is unsurprising that the proposals themselves are so manifestly inappropriate.'*⁹

9. Furthermore, this is a proposal that is singularly lacking any endorsement by local community representatives, inter-faith or otherwise. Rather, as will be expanded upon later, it is essentially intended to be a facility with regional and national intentions that happens to be located in this part of East London.

⁵ CDF33/39-40

⁶ Day 9, am

⁷ Other than Mr Terry Brown, Day 8

⁸ Statement of Community Involvement (CDA16); e.g. Fitzgerald (NCL3.3)

⁹ Martin Fellows, Proof of Evidence, NCL 1.1, para.6.41.

Issue 1: The impact/effect of the development on (or alternatively, whether the proposed development would materially harm) the planned regeneration of the site

10. The Inspector has listed the relevant topics in respect of this issue as being:

- a. Planned housing provision
- b. Planned employment opportunities
- c. Planned West Ham local centre and sports facilities
- d. Permeability/connectivity
- e. Convergence
- f. Need for this particular use and user on this site
- g. The continuation of the use on site in the existing buildings
- h. Viability of the proposal/viability of the proposed planned regeneration use.

Of these eight, the following are now reviewed

Planned West Ham local centre/sports facilities

11. The starting point for consideration of this issue is the fact that the content of the S10 allocation in the Core Strategy reflects the representations of the Trustees through the Examination process¹⁰. However much the Appellants may wriggle over the issue of viability, at that stage in the development plan process the allocation requirements were found to be sound¹¹. It should also be borne in mind that we are still within the early stage of that development plan period (2012-2027) with achievement of S10 identified for the middle to long term phasing period i.e. 2017/18 to 2026/2027.

12. Secondly, the continuing need for a new local centre around West Ham station remains and was undisputed in evidence. Indeed, as

¹⁰ CDH/179

¹¹ CDH/206

highlighted by Mr Fitzgerald a balanced mix of community facilities is paramount¹²; for the local area is:

‘virtually devoid of shops, restaurants, sport & leisure facilities, public services and contrasts starkly with the Olympic Park/Westfield developments to the north and the emerging Canning town developments to the south. A faith based facility with the immense size of the proposed mosque precludes these needs being met.’¹³

13. Thirdly, as Mr Fellows pointed out the achievability of this facility is limited to the contributions made by the Core Strategy allocated sites S10 and S11 due to the disposition of allocations within the ‘Arc of Opportunity’¹⁴. Accordingly, the effective removal of S10 as one of these contributors significantly reduces the deliverability of this facility; and whilst the GLA, as promoters of the S11 site have aspirations to bring forward a housing led scheme of 2,500-3,000 houses no material has been presented by the Appellants as to how S11 could/would bring forward the local centre. Indeed, at face value, the pessimistic prognostications on viability of Mr Stephenson could suggest the continuing lack of achievability of this requirement.
14. Fourthly, whilst the Appellants now offer pedestrian and cycle linkages as a contribution these all have to be seen in the context of the essentially mono use of the site. Furthermore, given the nature of the religious activities, the times of services and other gatherings the likelihood of “spin-off” trade would be limited, further affecting viability.
15. Accordingly, real harm would arise from the removal of the ability of the Site to contribute to the local centre.
16. As has become apparent from the s.106 undertaking, the sports facilities are intended to be managed upon the basis of a private

¹² Kevin Fitzgerald, Rebuttal Proof, NCL 3.7 para.3.2

¹³ *Ibid.*

¹⁴ Day 8pm referring to plan at H33, p.37

membership arrangement subject to “rules”, the full outworking of which is unknown at this stage¹⁵. Whilst the Appellants have acknowledged that such “rules” must not be discriminatory, clearly, they will be reflective of the customs and practices of the Appellants. Accordingly, their wider public benefit will be constrained.

Permeability/connectivity

17. The starting point for consideration of this aspect is the physical presence of the mosque itself and the extent of its coverage. This is helpfully illustrated both the Appellants’ own “linkages” plan¹⁶ and in Mr Deely’s “pinch points plan”¹⁷. Accordingly, the very nature of the proposal runs counter to the concept of the development being permeable; and its connectivity is constrained by the current and continuing geographical containment of the Site and the physical inability of the Proposal to deliver meaningful links e.g. to West Ham station.
18. Furthermore, there is the system of regulation under the s.106 Undertaking. Other than what is identified as the “Crows Road Connection”, which will be kept open at all times, all other “public realm” elements will be subject to a variety of restrictions¹⁸. Accordingly, the attractiveness as well as the ability of the public to use these various connections is bound to be commensurately affected. Indeed, all the foregoing must also be viewed in the context of a landowner and operator with strict religious practices and codes of dress and behaviour.

¹⁵ S.106 Undertaking, Appendix 2: Terms and Conditions of Access to the Sports Grounds

¹⁶ CD B51/ drawing D008

¹⁷ LBN 3.1.

¹⁸ S.106 Undertaking, Schedule 2, Part 4, para. 4.3

Need for this particular use

19. The starting point for consideration of this issue is the extent to which the Appellants have demonstrated a need as against an aspirational demand driven by the proposed design and function of the building. In this context, the evidence of Dr Sennett requires particular scrutiny, and, its findings viewed with caution.
20. First, as acknowledged in both the Ecorys “need” report¹⁹ Tablighi Jamaat has no formal registration process and no official membership in consequence of which membership statistics are unknown. Secondly, the figure of 2,000 for large Thursday evening attendances was not done from an independent headcount (indeed Ecorys has never undertaken “headcounts”²⁰) but, essentially, from a rough calculation of the capacity of the current mosque²¹. Thirdly, the only empirical survey work undertaken by Ecorys was in Summer 2010 and by way of interviews of existing male Mosque worshippers²². Fourthly, the figure of 9,000 was provided by the Trustees in February 2012 and the task of Ecorys was to justify it²³. This they have sought to do by expressing the addition, speculatively, in terms of “supressed demand” and future demand based on demographic projections.
21. Accordingly, when Dr Sennett predicts that, with population growth, by 2031, average attendance levels for Thursday evenings will be 2,800 and for Friday prayers, 1,330, with an attendance of 4,200 on peak days²⁴ a degree of confidence can be placed on the accuracy of those figures. However, the upper figure still does not truly reflect “local need” (a better indication of which is given by the Friday prayers figure). Thereafter, it becomes a matter of speculation as to what extent there is a genuine need. If the

¹⁹ CDG7/158 ; CDA9/59

²⁰ Sennett in xx by LBN, Day 7am

²¹ Sennett and Weatherhead in xx

²² Sennett in xx by NCL Day 7 am

²³ Ditto. See also Owers in xx by LBN and Appendix 1.1B2 (Trustees Adopted Brief)

²⁴ Sennett Rebuttal APT 3.3, para. 2.14

intention is to enable the once or twice annual ijtimas to take place for the anticipated 9,000 attendees²⁵ then that that is not a true reflection of “need”. In any event, either an additional temporary facility could be constructed²⁶ or an alternative venue hired to facilitate the desired “group experience”. Indeed, from a sustainability perspective, a limit on the amount of purpose built accommodation must be desirable, given that the stated catchment would continue to include the whole of the South East, East Anglia, Oxfordshire, Cambridgeshire, Hertfordshire, Bedfordshire, the West Country, Plymouth, Southampton and Portsmouth.²⁷

22. In the above context, the position in respect of women is even more blurred. The Ecorys Need Report (2012) reports need as a fixed constant of 1870²⁸, again a figure provided by the Trustees²⁹, which, of course, happens to be the capacity of the dedicated space for women within the proposal. No empirical research was undertaken by Ecorys regarding this sector of the community other than some anecdotal survey work in 2010³⁰; and yet this section of the Muslim population will also grow³¹. Given the religious requirement for separate prayer space for women it must follow that the Trustees are desirous of placing a cap on the limit of attendees from one part of the Muslim ‘community’ for operational reasons or are, seemingly, indifferent to this element of need in the context of the proposals. Ecorys struggled with this aspect and was forced to conclude that the majority of visitors on both Thursdays and Fridays would continue to be men and the views of current attendees and comparable ratios in other large scale mosques³². Ironically, this is to be contrasted with the Al Samarraie 2013 proposal of a facility for 3,000 men and 1500 ladies³³; and if,

²⁵ Sennett Proof, para. 6.9; APT 3.1B, para. 6.5

²⁶ As contemplated in the Trustees Adopted Brief or at the Morden Mosque

²⁷ APT 3.1B, Appendix 6: ‘A Guide to Tablighi Jamaat in UK and London’ para.3.19

²⁸ CDA9/93

²⁹ Sennett in xx by LBN

³⁰ Sennett in xx by NCL

³¹ CD D6 4.6A

³² CDA9/91 & 93

³³ LBN EC – letter dated 7th June 2013

indeed, he was “parachuted in by Dewsbury”³⁴ to try and resolve matters post injunction then this reveals a willingness, when pressed, to embrace a greater degree of flexibility currently lacking in the appeal proposals.

23. In the context of planning policy, to which we will return, this limitation on women worshippers within the proposals runs counter to that found in the NPPF (paras. 69, 70), the London Plan³⁵ and Newham’s Core Strategy (INF8). Permitting such a large mosque with such a limitation would only exacerbate that degree of imbalance.

Nature of the Proposal and its User

24. On Day 1 of this inquiry (3 June 2014) the Inspector, having received submissions from the parties, ruled that the planning consequences which flowed from the nature of Tablighi Jamaat as the user of the mosque were capable of being material considerations in the planning decisions to be taken by the Secretary of State in these appeals. It is NCL’s case that the presence and use of a mosque of the size proposed would be both insular and exclusive such that its use runs contrary to planning policy.
25. The relevant planning policy can be found at both national and local level. The NPPF states that facilitating social interaction and the creation of healthy and inclusive communities is a major tenet of planning policy (para.69). The London Plan mirrors this objective in that it requires design which creates a more socially inclusive London (Policy 3.5). At the local level Newham’s Core Strategy Policy SP1 promotes healthy, stable, mixed and balanced communities and SP3 seeks mixed use areas providing

³⁴ Weatherhead in x, Day 10am

³⁵ See Fellows policy refs at paras. 5.20-5.26

accommodation for living, community and workplaces to secure integration and coherence in the local context.

26. In terms of guidance, DCLG's publication 'Creating the conditions for integration'³⁶ is instructive too. It states:

'Place is a key factor in integration. The long-term presence of a highly diverse population is generally an indicator of good integration and a strong sense that different people get on well. But this can be undermined and even reversed by a range of factors, for example if groups within the local community work and socialise separately...' (page 7, para.3) (emphasis added)

- and -

'Integration problems may be caused if people feel that they have little opportunity to sort out problems or grievances affecting their lives, either themselves or through public bodies, or they think that they are being treated unfairly or being discriminated against. This risk is compounded when unplanned separation and segregation occurs. Mainly because of the way houses become available in local areas and the tendency for new migrants to live close to each other, some people live only with others from the same ethnic background. Such segregation can reinforce fear of resentment of other people and cultures and can lead to trapped fearful and inward-looking communities.' (page 22, point 4) (emphasis added)

27. When evaluating the appeal proposals and whether they will contribute to integration and community cohesion it is important to bear in mind the extraordinary scale and dominant physical presence of the proposed mosque. Combined with the configuration of the Site, such an intentionally large and dominating built form would exacerbate the exclusive nature of the proposals and sense of exclusivity that they would have.
28. The Design and Access Statement is unapologetic about the scale and intended impact of the development. It states:

³⁶ NCL 4.1 – Mr Orr's Appendix 3

*'The mosque creates its own context, as all significant public or religious buildings should. It sets itself apart from the prosaic and mundane, establishing a new and aspirational order for future development, both of the immediate surroundings and of the wider context.'*³⁷

-and-

'The proposals provide a key civic building that acts as an architectural and cultural landmark, setting the necessary context for the future development desired on neighbouring sites and across the local area.'

29. Furthermore, the design and location of the building has not been set up to encourage integration and community cohesion. As touched upon already, neither the geography of the site nor the appeal proposals encourage or facilitate connection for the local community. Although there will be two points of access, the mosque building will stand between them both, squarely on a key desire line. In effect, the site would remain an island of separate development.
30. Whether or not this proposal will become the new headquarters for Tablighi Jamaat within the UK, after Savile Town Dewsbury, it is self-evident that the proposed buildings are intended to reflect the significance of the organisation and the religious practices which it espouses. The limitation on the dedicated space for women within the mosque is, by way of example, reflective of its position on the issue of gender inclusivity, or, rather, its permissible limitations.
31. In contrast with the current temporary mosque it is the scale, as well as the permanence of the appeal proposals, and, the identifiable social consequences that are capable of flowing from them that need to be carefully reviewed. Put another way, the Inspector has to ask himself whether this is the type of use and user which would encourage plan-led integrative re-generation.

³⁷ CD18,/7

32. Insofar as the findings of the 2011 Decision Letter are a material consideration upon this aspect only limited weight should be placed upon them for the following reasons. First, the decision of the 2011 inspector was solely in regard to a temporary two-year permission for a mosque on the appeal site whereas this proposal is for a permanent building of a much more significant size and impact as has been detailed above. Second, NCL immediately questioned the findings of the Inspector by way of a letter to the Planning Inspectorate dated 25 October 2011³⁸ calling into question their legitimacy. Third, this Inspector has heard expert evidence from different witnesses which has, itself, been the subject of cross-examination.
33. It should also be noted that whilst NCL has presented oral and written evidence on the nature of Tablighi Jamaat before this inquiry the Appellants have limited their evidence to the appendix attached to Dr Sennett's Proof despite being well aware, both from NCL's Statement of Case, as well as discussion at the Pre-Inquiry Meeting, that the point would be pursued. Accordingly, this failure represents:
- i) A tacit acknowledgement that such evidence would support NCL's case; and/or
 - ii) A refusal to engage with critical appraisals of the sect and the proposal³⁹.

Either of these potential motivations speaks volumes as to the likelihood of this group not using the Mosque in the furtherance of integration and community cohesion.

³⁸ NCL 2.6 appendix 5 and response at appendix 6.

³⁹ As appears from the tone of the Deen & Co letter dated 27.05.14

34. Dr Taylor⁴⁰, chief executive of Lapido Media, the Centre for Religious Literacy in World Affairs, gave her expert opinion to the inquiry on the nature of Tablighi Jamaat and on whether, in her opinion, the development of the proposed mosque would result in an 'inclusive' and 'cohesive' community. Dr Taylor is in a unique position to provide such an opinion given her contact with and research into Tablighi Jamaat. She explained to the inquiry, both in her proof and also in oral evidence, how Tablighi Jamaat are:

'not interested in surrounding society; they are encouraged to view it as unwholesome. The whole thrust of Tablighi Jamaat is purification: a return to a pristine version of Islam untrammelled by contamination by the world around them or other religious influence, even other forms of Islam.... They ban social contact with non-Muslims. Anything that is less than a total allegiance to Islam is a deviation from Allah's ordained plan – and to be resisted – by definition.

*The effect of this ethos is inevitably centripetal, rather than centrifugal. It spins in on itself, creating enclaves or ghettos, and a separatist ethos. Consolidation is reinforced as ordinary Tablighi Muslims buy houses within the purview of a mosque or markaz, for the guidance and reassurance they seek.'*⁴¹

35. When challenged by the Appellants in cross-examination that the planning system was not there to prevent such a gathering Dr Taylor reminded that the facilities here were also a training centre, similar to the one in Delhi where people would come in all over the country and Europe "to train in anti-worldly methodology". And in answer to the subsequent question that it was legitimate for the planning system to provide for that which those people consider was needed to fulfil practices and teaching she pointed out that we do not live in isolation from other factors; and that as a key contributor to the government's cohesion delivery framework was integration the provision of a centre teaching the opposite was "a

⁴⁰ Dr Taylor gave evidence to the inquiry in place of Tehmina Kazi who unilaterally withdrew her evidence, upon the basis of undisclosed "assurances" in a notification sent by the NPA late afternoon of Monday, 2nd June, immediately prior to Day 1 of the Inquiry.

⁴¹ NCL 2.1, paras 6 and 7

salient consideration for a planning inquiry". She also went on to add that her concern was that "this group alienates itself".

36. Mr Orr (the only other witness apart from Dr Taylor to have visited Savile Town, Dewsbury) provided empirical study work that bears testimony to this phenomenon. Whilst Mr Orr acknowledged that he could not, through his research, demonstrate a specific causal link with the presence of the Tablighi Jamaat mosque he stated that the rise in the Muslim population from 78% (2001) to 91.85% (2011) within this part of Dewsbury was more than co-incidence, and, that the presence of the Tablighi Jamaat mosque a "taken".⁴²
37. NCL's concern is that the permanent presence of so large a mosque and associated facilities on the Site would encourage a similar social phenomenon to develop; and given Dr Sennett's evidence that the 2011 Census revealed that Newham already has the highest number of Muslims for any London local authority and the second highest of all UK local authority areas⁴³ there is real potential for this type of phenomenon to occur within West Ham if the appeal proposals are implemented.
38. In respect of Tablighi Jamat's treatment of women Dr Taylor highlighted that the core text for women in the sect was *Heavenly Ornaments* by Maulana Ashraf 'Ali Thanwi. Her evidence quoted Metcalf's analysis of this book, which states:

'A scholarly annotated translation of this work notes that it takes for granted that women are socially subordinate to men. Indeed, religious knowledge is commended for women so as to be better able to 'manage' them. The ideal is for women to remain at home, secluded from all but family and selected female friends. Thanwi "lists women among men's possessions. Following the hadith [hadith], he identified dominant women as a sign of the Last Day...women [generally] are the greatest number in hell... A woman

⁴² Orr in answer to the Inspector (Day 5 am)

⁴³ Apt 3.1A, para.6.43

*is to follow her husband's will and whims in all things, to seek his permission on all issues...'*⁴⁴

39. Ms Tehmina Kazi's evidence from the 2011 Inquiry⁴⁵ and appended to that of Dr Taylor to this inquiry also explains Tablighi Jamat's discriminatory view of women. She highlighted:

*'Tablighi women are required to cover their entire body with a burkha and face veil'*⁴⁶

*'A woman must always be accompanied by a male relative ... in public places.'*⁴⁷

*'...female members of the Tablighi Jamaat are kept secluded, and the values surrounding this seclusion are transmitted to their children. Therefore, the female members of this movement – as well as future generations- do not integrate into mainstream British society.'*⁴⁸

40. Accordingly, it is unsurprising that the proportion of prayer space for women within the proposed Mosque is so limited, whether or not it has arisen from the practicalities of the design. It certainly does not reflect the needs of the gender.
41. The extent to which access to the public realm areas and to the sports facilities will be subject to Islamic dress codes for women is at present an unknown, and, one over which planning control would be unable to regulate on a lasting basis.
42. Given the foregoing, it is submitted that both the nature of the use as well as the user are, in this instance, material considerations which should be given significant weight and are considerations that weigh against granting the appeal proposals .

⁴⁴ NCL 2.1 para.28

⁴⁵ NCL 2.3 Appendix 2

⁴⁶ *Ibid.* para.5

⁴⁷ *Ibid.* para.6

⁴⁸ *Ibid.* para.14

Continuation of the current use

43. Given the planning history of this Site it is submitted that certainty and finality should now prevail and that the current use should cease.

Viability of the proposal/Viability of the proposed planned regeneration use

44. Given that the appeal proposals are promoted upon the basis that they are the only regeneration scheme capable of coming forward upon this site it is necessary to examine the viability and therefore 'deliverability' of the proposed mosque. The NPPF (para. 173) emphasises that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision taking. As such, concerns regarding the deliverability of a scheme are plainly relevant when considering this proposal. Indeed, if the Trustees' scheme is not deliverable then it would result in a 6 hectare site next to West Ham station lying fallow and in poor condition for several more years. This must be a material consideration in the planning decision to be made of great weight.
45. Accordingly, it is a conspicuous omission that the Appellants have failed to provide any evidence to the inquiry as to how the scheme will be delivered. This is all the more the surprising, given the emphasis on the economic benefits that would arise from the construction project⁴⁹. All the Inspector is advised, from the Operational Statement within the Environmental Statement⁵⁰, is that "The community does not under estimate the financial task ahead of it"; but since Mr Weatherhead was unable to advise as to what was "the community" in the context used within this

⁴⁹ Apt 7.1a, para. 5.39

⁵⁰ CDA9/114 (para. 12.2 etc)

Statement⁵¹ it must remain at large as to how the necessary funds would be raised and over what period⁵². It is also of note that the Appellants' technical report (Hillson Moran) estimates that the remediation of the site will be £6,383,250⁵³ the scale of essential "up front" costs should not be under-estimated even before the construction programme begins in earnest over its proposed three phase timescale.

46. Indeed, the financial capabilities and ability of the Trustees to deliver an extremely ambitious scheme is all the more questionable when one considers that they are a voluntary organisation, with no charitable status⁵⁴ and no publicly accountable structure or other basis. Accordingly, there is considerable doubt over whether this scheme can be delivered; and, as such, this aspect must be given substantial weight against granting permission in the overall balance.
47. NCL did not call separate evidence on the viability of policy S10 compliant development and so makes no submissions on this aspect.

Issue 2: The impact /effect of the development on (or alternatively, whether the proposed development would materially harm) highway safety in the area

48. The Inspector listed the relevant considerations in this issue as being:
- 1) Congestion;
 - 2) Sustainability;
 - 3) Pedestrian Safety;
 - 4) Parking;
 - 5) Effect/Impact on the Public Transport network.

⁵¹ Weatherhead in xx by NCL; para. 11.6

⁵² Kevin Fitzgerald, Proof of Evidence, NCL 3.1, paras 16 and 17.

⁵³ APT6.1B, appendix 2, p.62

⁵⁴ 'A Guide to Tablighi Jamat in UK and London', para.6.7

49. In its evidence and in this Closing we highlight the major concerns that arise from the inherent lack of travel sustainability of the proposed use and the effect of such use in terms of parking stress. We deal with each in turn.

Sustainability

50. National planning policy is clear that development decisions should take account of whether opportunities for sustainable transport modes have been taken up (NPPF, para.32). This sentiment is supported by local policy INF2 of the Council's Core Strategy, which states:

*'8. Development proposals will not be supported where they would have an unacceptable adverse impact on capacity or the environment of the highway network. Where applicable, proposals must be accompanied by Transport Assessments and monitored travel plans which show the likely impacts of trip generation, and which include; acceptable, robust, monitored proposals to counter or minimise potential impacts identified, to include 'smarter travel' strategies and plans; and proposed measures to facilitate and encourage more widespread walking, cycling and public transport use.'*⁵⁵

51. It was accepted by the parties to the inquiry that the proposed site has a PTAL rating of 6A. However, the proximity of the Site to public transport links and the opportunity for their use does not automatically make the site sustainable. As stated above, the Framework states that sustainable transport modes should be taken 'taken up' (para.32). The Appellants cannot, therefore, rely solely on the availability of opportunities for the use of public transport. It is clear that an ineffective travel plan which pays mere lip service to the requirement to have one will not suffice.
52. The evidence before the inquiry has shown that sustainable modes of transport are not being taken up by those currently using the mosque. The Appellants' Transport Assessment uses figures from

⁵⁵ Newham Core Strategy, CD H33

17 and 18 June 2010.⁵⁶ It recorded that of those using the site on the Thursday gathering: 27% were car drivers, 45% were car passengers, 1% cycled and 26% walked or took public transport. For Friday prayers the figures were: 20% car drivers, 35% car passengers, 1% cyclists and 1% walked or took public transport.⁵⁷

53. In comparison, the Council's independent traffic survey conducted by QTS⁵⁸ on Thursday 13 March and Friday 14 March 2014 recorded that on Thursday evenings 41.33% attended the mosque as a car driver, only 3.78% as a car passenger, 1.33% cycled and 53.56% walked or cycled.⁵⁹ On Fridays this was recorded as: 24.17% car drivers, 12.22% were car passengers, 1.67% cycled and 61.94% walked or took public transport.⁶⁰

54. The inquiry heard much argument as to the reliability of each of the surveys. With regard to the 2010 survey the Appellants were unable to confirm where the enumerators were standing, whether there was any raw data, how many enumerators there were and the process by which the data was collected.⁶¹ This lack of information and the blind reliance upon a four-year old survey which discloses nothing regarding its methodology is in stark contrast to the reliability of the Council's survey. The first point to note is that it is up-to-date (conducted on 13 and 14 March this year). Second, on request, the Council has tendered in evidence one of the enumerators (Mr Abkari) who conducted the traffic count and gave a thorough explanation of how it was done.⁶² During cross examination Mr Abkari explained he had no real difficulty with the count and that he was experienced in the job.⁶³

⁵⁶ CD C14, chapter M1, page 63.

⁵⁷ *Ibid.*

⁵⁸ Appendices LBN 4.12, 4.13, 4.14, 4.15

⁵⁹ LBN DA table 3.2. NB the walking figure represents all those walking final leg of journey to Canning Road. It includes those drivers who have driven some of their journey and then parked off site.

⁶⁰ *Ibid.*

⁶¹ Bellamy xx LPA, day 7

⁶² Cf Statutory Declaration of Mr Makil Akbain and Work Sheets, appendix LBN 4.30

⁶³ Mr Abkari, xx Apt, day 9

55. If one affords the Appellants the benefit of any doubt surrounding the veracity of their figures and takes their 2010 survey at face value, one can see that the current Travel Plan⁶⁴ (approved by LBN in 2011) is clearly failing. Travel by car-borne modes has increased and similarly, the number of car passengers has fallen. This is reflected in the accounts given by Mr Fitzgerald and Miss Harris and their fellow local residents.
56. Further, there is nothing to suggest that the draft Travel Plan⁶⁵ which accompanies the appeal proposals will be able to reverse the unsustainable modes of travel being used by worshipers at the mosque. On behalf of the Appellants, Mr Bellamy, claimed that the proposed travel plan will reduce the modal split to 20% of those attending being car drivers and 40% being car passengers.⁶⁶ This represents a reduction of car drivers by over 50% and an increase of car passengers by over 600% based on the Thursday figures from the 2014 survey. This is wholly unrealistic.
57. The suggested measures include briefings at the starts of prayer sessions, notice boards and leaflet distribution⁶⁷. These are mere aspirations and there is nothing to suggest that they will be effective. In NCL's view the Appellants have tacitly acknowledged this in their suggestion that a controlled parking zone ('CPZ') may be necessary.⁶⁸ Mr Bellamy acknowledged under cross-examination that the imposition of a CPZ was outwith the Appellant's control and would require a capital sum to fund it. It is noted that provision for any capital sum has not been included within the Appellants' unilateral undertaking.⁶⁹

⁶⁴ 'Draft Full Strategic Level Travel Plan', CD A7, July 2012, para 1.2.3

⁶⁵ 'Draft Full Strategic Level Travel Plan', CD A7, July 2012

⁶⁶ Apt 4.1A para 8.23

⁶⁷ CD A7, para 8.3.2

⁶⁸ Apt 4.1, para 8.5

⁶⁹ CD H36

58. It is therefore NCL's submission that no weight can be put on the travel plan advanced by the Appellants as meeting the identified harm from significant reliance on the motor car as a primary transport mode. Further, the likelihood that the proposed development (along with any temporary permission) will continue to attract a high percentage of car borne visitors must weigh heavily against each of the appeals.

Parking

59. On behalf of the local residents Mr Fitzgerald and Miss Harris gave evidence to the inquiry on this aspect. Both highlighted the problems arising from the use of the current temporary mosque. Both recounted having access to their driveways restricted by overlapping cars or being blocked.⁷⁰ Miss Harris stated:

*'When I have complained there have been no apologies. Rather, with a degree of disdain that I have found offensive, I have been told, now, on three occasions, "why don't you move house if you don't like us parking here", when I complained of my driveway being blocked.'*⁷¹

60. She continued:

*'Indeed, the continuing and lasting impression that we have, as existing residents, is that the mosque and its users really do not care about us. Therefore, I am really concerned that such an attitude will continue if the big mosque comes to be built; and despite assurances about a sustainable Travel Plan we have no confidence that it would be policed.'*⁷²

61. Given the current high modal share of car drivers outlined above and the inefficacy of the proposed travel plan, the problem will only get worse for the amenity of the local area. If there is, say, a peak

⁷⁰ NCL 5.1, para.6

⁷¹ NCL 5.1, para.6

⁷² NCL 5.1, para.6

of 4,000 worshippers attending the proposed mosque in 2031⁷³ and the modal share of car drivers continues to be 41.3% then this would result in 1652 cars (41.3% of 4,000) visiting the site. As only 300 of these can be accommodated on site this leaves 1,352 to park in the local area. This number greatly exceeds the available spaces in the local area; and it is highly optimistic that such experiences would result in drivers switching on a permanent basis to alternative transport modes. Indeed, it was accepted by Mr Bellamy that only once car driver numbers reduce to 20% would the area be able to provide sufficient parking.⁷⁴ Meanwhile, the problems would continue.

62. Given the inefficacy of the current and proposed travel plan, it is submitted that the Inspector and Secretary of State can have no confidence that the continued use of the temporary mosque and the use of the proposed mosque, if given permission, will not lead to continued and increasingly significant amounts of parking stress in the local area. This material consideration should also weigh heavily against the scheme.

Issue 3: The impact / effect of (or alternatively, whether the proposed development would be materially harmed by) the previous use of the land

63. NCL has not sought to call evidence on this issue nor become engaged in its outworking.

⁷³ APT 3.1A, para. 6.68.

⁷⁴ Bellamy, xx LPA, day 7

Issue 4: The impact /effect of the development on (or alternatively, whether the proposed development would materially harm) the character and appearance of the area

64. The Inspector has listed the relevant considerations in this issue as being:

- 1) Status of/weight to be given to, the details submitted in what is only an outline application with parameter plans;
- 2) Effect on the setting of the Conservation Area;
- 3) Effect of the setting of nearby statutorily listed buildings

65. NCL submits that the proposed mosque is a mono-use development which fails to meet the requirements of national and local policy in that it harms local character, the Conservation Area and heritage assets.

66. Core Strategy policies SP1, SP3 and SP5 require development to:

- 1) Respond to heritage, cultural and infrastructural assets (SP1 and SP5);
- 2) Respond to the character of the borough's districts, neighbourhoods and quarters (SP1);
- 3) Address local character and the specific attributes of the site, seeking to reinforce or create positive local distinctiveness, whilst securing integration and coherence with the local context (SP3); and
- 4) Address the need to conserve and enhance designated and non-designated heritage assets (SP5).

67. The Appellants' Design and Access Statement lists 'local design principles' as being: the Abbey Mills Pumping Station and the Bazelgette semi-detached houses, and the Three Mills. However, as Mr Fellows highlights: *'one of the significant design characteristics of the Conservation Area is the articulated pitched roofs and articulated facades of the significant buildings.'*⁷⁵ The Appellants'

⁷⁵ NCL 1.1 para.6.18.

proposal cannot be said to have responded to any of these features contrary to the policy objectives listed above.

68. Indeed, it is clear that the aspirations of the Appellants have never been to respond to local character; for as the Design and Access Statement states the intention that the 'proposals provide a key civic building that acts as an architectural and cultural landmark, setting the necessary context for the future development desired on neighbouring sites and across the local area.'⁷⁶ Therefore, as form, here, follows function then this building is rightly described by Mr Fellows as 'a massive monolithic box designed to enclose the minimum space required to accommodate the applicant's aspirations.'⁷⁷ Accordingly, even if the Islamic design references were to work on such a large scale they cannot be guaranteed due to the outline nature of the proposal and the absence of a commitment on the part of the Appellants to deliver them. Therefore, they cannot be given material weight.

69. The development sits on the edge of the Three Mills Conservation Area. The Conservation Area Character Appraisal makes clear that 'the setting of the conservation area is very important and development that impacts in a detrimental way upon the immediate setting and longer views, into and from the conservation area, will be resisted.'⁷⁸ It was admitted by Mr Stewart on behalf of the Appellants that one effect of the development on the Conservation Area is on views from the Greenway and Channelsea Bridge.⁷⁹ From the CGIs of these views it is clear that the proposed mosque will be the dominant feature in the landscape and result in significant adverse visual effects which merits considerable weight in the planning balance.

⁷⁶ CD A18,/80.

⁷⁷ NCL 1.1 para. 6.19.

⁷⁸ CD H26, para 2.1.5.

⁷⁹ Stewart, xx LPA, day 6.

70. Also meriting significant weight in the planning balance is the harm the proposal causes to nearby heritage assets. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 makes it clear that:

'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

71. In East Northamptonshire DC v Secretary of State for Communities and Local Government [2014] EWCA Civ 137 the Court of Appeal distinguished the section 66(1) and section 72(1) tests from that in section 70(2) Town and Country Planning Act 1990. Where a listed building or its setting is affected by a proposed development the decision maker should not treat those effects as an ordinary material consideration to be weighed in the balance. Instead the decision maker:

'should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise.' (per Sullivan L.J. para.29)

72. NCL, via the evidence of Mr Fellows and that of the Council, draws attention to the proposal which will result in considerable harm to the setting of local heritage assets within the Conservation Area. The harm to the settings brings with it consequent harm on the assets themselves and it is submitted that this further weighs against a grant of permission.

The Balancing Exercise

73. Paragraph 7 of the Framework sets out the economic, social and environmental roles to be performed by sustainable development. It

is instructive that in applying these roles to the appeal proposals the following emerge.

74. *The economic role:* Whilst the construction project could generate jobs during that phase, the volunteer basis of operation of the mosque and its associated facilities would not lead to any new jobs. Furthermore, because of the nature of the facility there are no certainties of "spin-off" through patronage of local shops and other facilities; and the Appellants have not raised this as a benefit. The provision of a massive refectory facility will severely limit any spin off to local restaurant facilities that might be expected on a local centre. In contrast, the failure to deliver the S10 allocation for the site would frustrate the wider and lasting economic benefits from the housing and employment opportunities from a mixed use development.
75. *The social role:* Whilst the provision of the mosque and associated facilities would meet a need of a section of the local and wider community there is no certainty that this would support its social and cultural well-being, given the nature of the proposed user and its religious and social practices.
76. *The environmental role:* Whilst the construction of the proposals would result in the de-contamination of the site and the achievement of built development upon it the nature of the end user would be to attract large numbers of visitors, many of whom would need or desire to travel by car with consequent adverse effects on climate change.
77. All the above is, of course, in the context of a scheme which the Appellants have not demonstrated that they could deliver. Moreover, this is on land for which there is a development plan allocation which is not out of date nor one demonstrably incapable of achievement.

Conclusion

78. For these reasons, the planning balance weighs against the grant of permission; and the Inspector is invited to recommend to the Secretary of State that the appeals are dismissed.

JOHN PUGH-SMITH
VICTORIA HUTTON