



**LBE Planning Application Number:
20/01049/FUL**

**Car park adjacent to Arnos Grove Station,
Bowes Road N11 1AN**

23 November 2020

LBE Planning Application: 20/01049/FUL

EXECUTIVE SUMMARY

- 1 We ask that the London Borough of Enfield (LBE) Planning Committee rejects the above Application. The LBE would contravene the Equality Act 2010 (the Act) if it approves it.
- 2 The Planning Committee must also note that the percentage of truly affordable units offered in the Application is **12%** not 40%. The Applicant has been disingenuous and the Officers have not made this clear to the Committee.

DUTIES IMPOSED BY THE EQUALITY ACT 2010

- 3 Section 149(1) of the Act imposes a duty on public sector authorities to eliminate discrimination and advance equality of opportunity for the benefit of those with protected characteristics.
- 4 Section 149(3) imposes a Public Sector Equality Duty (PSED) requiring the London Borough of Enfield (LBE) to have 'due regard' to the need to 'advance equality of opportunity'.
- 5 LBE must 'remove or minimise disadvantages' and 'take steps to meet the needs' of protected persons.

ELIMINATING DISCRIMINATION

- 6 The loss of the car park will do the exact opposite to the Act's requirements.
- 7 The intended re-provision of the existing spaces and taxi provision does not even preserve the status quo.
- 8 The protected characteristics of age and pregnancy and maternity have not been considered in the Officers' Update.
- 9 If the Committee approves this application it will have acted positively to worsen the life chances of LBE residents and others within those statutorily protected characteristics.

DUE REGARD

- 10 The Equality Statement (para.9.1) is simply a restatement of relevant sections of the Mayor's 'Intend to Publish London Plan' and the requirements of the Act.
- 11 The PSED cannot be delegated. Even if Transport for London (TfL) had evidenced 'due regard', LBE must conduct its own due diligence.
- 12 Para. 110(b) of the National Planning Policy Framework (February 2019) (NPPF) has not been addressed.

AFFORDABLE HOMES

- 13 The Officers have overstated the contribution of the proposed development towards satisfying the need for affordable housing.
- 14 Of the 162 units proposed, only 19 (11.7%) will be at the London Living Rent level, 98 (60.49%) will be at market rent.
- 15 The application is conceded to be at the very margins of financial viability. We believe that the tenure split has been dictated by this factor, not by the need to provide truly affordable housing for disadvantaged Enfield residents.

DUTIES IMPOSED BY THE EQUALITY ACT 2010

- 16 Section 149(1) of the Act imposes a duty on public sector authorities to:
 - (a) eliminate discrimination ...
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- 17 By virtue of s.149(3), this Public Sector Equality Duty (PSED) requires the London Borough of Enfield (LBE) to have 'due regard' to the need to 'advance equality of opportunity' between persons who share a relevant protected characteristic and persons who do not share it. LBE must:
 - (c) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (d) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- 18 We are here concerned with the protected characteristics of disability, age, and pregnancy and maternity.
- 19 The PSED is a positive duty, it requires action by this Committee.

ELIMINATING DISCRIMINATION

- 20 The loss of the car park will do the exact opposite to the Act's requirements.
- 21 We note the intended re-provision of the existing 6 Blue Badge spaces and taxi provision highlighted in the Officer's Update to the Committee: para. 2.3.3. However, this does not even preserve the *status quo*. Without the car park, it will not be possible for Blue Badge holders to plan a journey with any expectation of being able to park at the Station. To all intents and purposes the re-provision will be useless. It is not the positive action to 'eliminate discrimination' and 'advance equality of opportunity' required by the Act. 'Improving access' and promoting 'feelings of increased community safety' (para. 2.3.4) are irrelevant to the Duty.
- 22 Further, since the existing Blue Badge provision predates the extension of the Blue Badge Scheme to those with hidden disabilities, the current provision of six spaces is almost certainly inadequate and possibly contrary to law. An opportunity, to increase the provision in line with the protection the Act requires must not be missed.
- 23 The protected characteristics of age and pregnancy and maternity have not been considered in the Officers' Update. Such characteristics are not of themselves entitlement to a Blue Badge but the Act requires the characteristics to be protected.
- 24 Indeed, by highlighting the alternative step-free access at Oakwood Station, even though its car park is half the size of that at Arnos Grove, the Officers comes close to stating that disabled people and possibly the aged and women who are pregnant or on maternity should not use the Station. The development affords Enfield the opportunity to 'take steps' as required by the Act to enable them.

- 25 In para. 2.3.4 of the Update, the Officer reiterates the ‘benefits and mitigations’ of the Scheme. These are not, at law, ‘countervailing factors’ under the Act.
- 26 If the Committee approves this application it will have acted positively to worsen, not improve, the life chances of LBE residents and others within those statutorily protected characteristics.

DUE REGARD

- 27 The Enfield Transport User Group raised equality concerns with LBE in their submission (*see* Officer’s Report para. 6.9.4). These matters have not been addressed in the Report. The included Equality Statement (para.9.1) is simply a restatement of relevant sections of the Mayor’s ‘Intend to Publish London Plan’ and the requirements of the Act. The PSED is not further considered.
- 28 Thus, far from taking ‘due regard’ as required by the Act, on the evidence, LBE has taken no regard of the Act’s requirements. This is so despite having been specifically alerted to this point within the submissions it received. As such, to agree the Application would be a *clear contravention of the Act*.
- 29 Further, the duty imposed on a public authority cannot be delegated. Thus, even if Transport for London (TfL) had evidenced ‘due regard’ during its involvement with Connected Living London – we know of no evidence that it has other than the Officers’ last-minute assurance – LBE cannot rely on that evidence without first conducting its own due diligence.
- 30 Note that the Act provides a simple procedure to evidence ‘due regard’: an Equality Impact Assessment (EIA). There is no duty to complete an EIA but given the clear breach of s.149 that would result from the grant of planning permission, it is surprising that Officers do not appear to have considered the efficacy and benefit of completing one.
- 31 Further, para. 110(b) of the National Planning Policy Framework (February 2019) states that applications for development should ‘address the needs of people with disabilities and reduced mobility in relation to all modes of transport’. The Officers’ report does not specifically address para. 110(b).

AFFORDABLE HOMES

- 32 We welcome the commitment of both LBE and the Mayor of London to provide truly affordable housing in the local area, particularly for key workers. We do not doubt the Officer’s statement that ‘approximately 56,000 Enfield households could be eligible to access the affordable element’. We also recognise the particular need to provide affordable 3-bed units.
- 33 However, the Officers have reported in a way that misleads the Committee into thinking that the contribution of the proposed development to satisfying the need for affordable housing is greater than it actually is.
- 34 The Mayor has stated affordable housing to be ‘truly affordable housing’, defined as,

amongst other things, accommodation at a London Living Rent (LLR). We assume that the members of the Committee support this definition: see also the Report para. 8.3.39. We totally commend the Mayor's straightforward and easily quantifiable definition of 'truly affordable housing'.

- 35 The true position is summarised in the table in para. 8.3.40. Of the 162 units, only 19 (11.7%) units will be at LLR levels whilst 98 (60.49%) will be at market rent. The remaining 27.8% will be discounted but almost certainly not by a sufficient amount to make them affordable to the Enfield residents who most need them. (Note that the proposal would contribute only four units to the most acute demand: 3b5p.)
- 36 Para. 2.11 states that 40% by habitable room must be affordable. It then specifies the tenure mix: 30% LLR and 70% discounted market rent. Thus, since none of the planned 162 units will be council-owned or 'part-rent-part-buy' (the Mayor's other criteria for truly affordable housing), only (40% x 30% =) 19 (12%) by habitable room will meet the mayor's own criteria. Therefore, only **0.00033%** of the needs of the 56,000 households' cited in the Report can be met by the development. The Report simply repeats the Applicant's figures, it does not critically exam them.
- 37 The proposed Scheme is conceded to be on the very margins of financial viability. We believe that the tenure split has been dictated by this factor, not by the need to provide truly affordable housing, particularly given that TfL's majority partner in Connected Living London is a private sector developer.
- 38 It follows that the primary beneficiaries of this Report and the grant of planning permission will not be Enfield residents, such as key workers and others with genuine and pressing housing needs, but the operation of TfL and the profits of a private sector property developer. LBE and its residents will undoubtedly contribute directly or indirectly to these profits.

CONCLUSION

- 39 Given the above, and because we do not see scope for the matter to be remediated – either at law under the Act, or financially on a viability basis – the application should be rejected outright and permission to revise the proposal refused. At the very least it should be deferred until the Committee is provided with the full and accurate account of the facts.
- 40 Approval of the Application would be subject to a possible review by the Equality and Human Rights Commission as being a clear breach of the Equality Act 2010.