

The Planning Inspectorate
c/o Ms Litha Efthymiou
Haringey Council
North Tottenham Customer Services Centre
639 High Road
London
N17 8BD

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Our ref:
JP/NG

& BY E-MAIL: litha.efthymiou@haringey.gov.uk

Dear Sirs

**Haringey Core Strategy
Written Representations on behalf of Mr Stephen Brice**

1. We act for Mr Stephen Brice, a member of the Pinkham Way Alliance (“PWA”). PWA was established in late February 2011. It is a group of individuals who live locally to open land at Pinkham Way, known as the former Friern Barnet Sewage Treatment Works (“**the Friern Barnet Site**”), and who are concerned to safeguard the site’s future. This site is currently designated in Haringey’s saved UDP policies for “employment generating uses subject to no adverse effect on the nature conservation value of the site”¹. However, PWA’s understanding is that the site has in fact been vacant for nearly 50 years (since the closure of the former sewage treatment works in 1963). In that period of nearly half a century the site has not been put to any employment use, but has developed a wealth of flora and fauna (including bats and rare plants) leading to its listing in Schedule 11 of Haringey’s UDP as one of only 9 Sites of Borough Importance for Nature Conservation (Grade 1).²

2. The purpose of this letter is as follows:

2.1 To summarise, briefly, the major concerns of Mr Brice and PWA, as they currently stand, in relation to Haringey’s proposed allocation of the Friern Barnet Site as a locally significant industrial site (“**LSIS**”) in Policy SP8 of the Core Strategy, in order to “compl[y] with pre-application discussions which have already taken place to use part of site for recycling centre and other part as waste station” – an allocation which Mr Brice and PWA very strongly resist.

¹ See Item 5 of Schedule 1 (“Site Specific Proposals”) of Haringey’s saved UDP policies, available at <http://www.haringey.gov.uk/schedules.pdf>

² See item 9 of Schedule 11 (Ecologically Valuable Sites (Policy OS6)) of Haringey’s saved UDP policies, which is also available at <http://www.haringey.gov.uk/schedules.pdf>

2.2 To summarise, again very briefly, Mr Brice's major concerns, as they currently stand, as to Haringey's proposal that the Friern Barnet Site's designation as a Site of Borough Importance (Grade 1) (or equivalent) be removed – if that will indeed be the effect of the Core Strategy if adopted in its submitted form.

2.3 To explain to the Inspector the reasons why – regrettably, but for good reasons – Mr Brice has not raised these concerns previously.

2.4 To notify the Inspector of the desire of Mr Brice and PWA to attend and contribute to certain of the examination hearings, and request that PWA be added to the list of those attending the hearing sessions.

2.5 To request the Inspector to list Haringey's proposal to allocate the Friern Barnet Site as a LSIS under policy SP8, as an issue to be discussed during the examination hearings.

3. We address each of those points in turn below, after first briefly putting our concerns in context.

Context

4. Policy SP6 of the submitted Core Strategy sets out Haringey's proposed strategic policy on "Waste and Recycling". It is a "high level" strategic policy, in that it is concerned with the specifics of site allocation for waste and recycling facilities in only two respects. First, it provides that Haringey will safeguard existing waste sites unless compensatory provision is made. Second, it provides that Haringey will "continue with its partners in the North London Waste Authority to prepare a Joint Waste Plan, which will identify locations suitable for waste management facilities to meet the London Plan apportionment of 2,384,334 tonnes (equivalent to 28.4Ha)". Paragraph 4.3.3 of the explanatory text of the Core Strategy explains that the North London Waste Plan (hereafter, "**NLWP**") will be a development plan document in its own right, sitting within each constituent North London Borough Council's Local Development Framework³, and that it will provide "a planning framework with the aim of identifying suitable and viable sites to meet the sub-region's future waste management needs and satisfy the apportionment targets of the London Plan."

5. Elsewhere in the Core Strategy, Haringey proposes to allocate the Friern Barnet Site under Policy SP8 of the Core Strategy as a LSIS for use classes B1(b), B1(c) B2 and B8 (in other words, for most industrial processes, or for use as a storage or distribution centre) "and uses that share strong similarities to these classes". This proposed allocation derives from an insertion which Haringey made to policy SP8, after the conclusion of the original consultation process on the proposed submission Core Strategy, in its November 2010 document, "*Haringey Local Development Framework – Core Strategy – Additional Regulation 27 [Consultation Document] on Affordable Housing and Employment Land Designations*" (hereafter, "**Fundamental Changes (November 2010)**"). Haringey's stated

³ The NLWP is also identified in Haringey's local development scheme

reasons for proposing in Fundamental changes (November 2010) to change Policy CS8 so as to include the Friern Barnet Site allocation as a LSIS were twofold:⁴

- that “A change in designation will ensure this DEA [designated employment area] is targeted towards more traditional industrial uses”; and
- that this change “Complies with pre-application discussions which have already taken place to use part of site for recycling centre and other part as waste station”.

6. Meanwhile, as is flagged up in policy SP6, in a completely separate process from the Haringey Core Strategy examination, the Friern Barnet Site is proposed by 7 north London borough councils (including Haringey) to be allocated as one of only two “Schedule C” sites for development of waste facilities in the proposed submission NLWP, which was published in May 2011. If adopted in its current form, Policy NLWP 2 will provide that “An application will only be considered acceptable for sites in Schedule C [including the Friern Barnet Site] if it can be demonstrated that no suitable sites are available in Schedules A and B [which identify existing waste management sites and transfer stations]”, while Policy NLWP 4 will provide, in any event, that “All waste development proposals, including those replacing or expanding existing sites, will be required to demonstrate to the council’s satisfaction that” various environmental and amenity safeguards are met. However, the NLWP has not yet been submitted for independent examination. Public consultation on the proposed NLWP (and the proposal to allocate the Friern Barnet Site within it) is ongoing, and is not due to close until 8 July 2011.

(1) Current major concerns of Mr Brice and PWA: change of site allocation from employment to industrial use

7. The major concerns of Mr Brice and PWA on this front are currently as follows:

7.1 The proposed allocation of the Friern Barnet Site as a LSIS proceeds on the fundamentally misconceived and deeply misleading basis that the site is already a “*well established industrial area*” (para 5.1.10 of Fundamental Changes November 2010). In fact, as explained above, this site is currently designated for employment use (not industrial use) in Haringey’s saved UDP policies – but even that is “subject to no adverse effect on the nature conservation value of the site”. More crucially, regardless of the site’s existing *designation*, it has in fact been vacant for nearly 50 years, during which period it has not been used for any industrial or employment purposes at all, but instead has developed a wealth of flora and fauna leading to its listing in Schedule 11 of Haringey’s UDP as a Grade 1 Borough Wide Site of Importance for Nature Conservation.

7.2 Haringey’s stated reasons for seeking to allocate the Friern Barnet Site as a LSIS in policy SP8 of the Core Strategy – namely, specifically, for purposes of recycling and waste management – inappropriately pre-empt the ongoing preparation of the NLWP, including the ongoing public consultation process. By exactly the same token the proposed allocation in policy SP8 contradicts policy SP6 of the submitted Core Strategy, which makes clear that waste management site allocations will be addressed in the NLWP, not the Core Strategy itself.

⁴ See pages 24 to 25 (item 6) of Fundamental Changes (November 2010)

7.3 To be clear, insofar as Haringey seeks to allocate the Friern Barnet Site for any other industrial, storage or transfer purposes besides recycling or waste management, the proposed allocation also inappropriately pre-empts the NLWP process. Even assuming it is appropriate to allocate the Friern Barnet Site additionally for non-waste related industrial processes when it may yet prove to be a significant waste management allocation under the NLWP (which PWA disputes), the *range* of uses for which the Friern Barnet Site should be allocated (if at all) in development plan documents clearly ought to be considered at one and the same time, not piece-meal in separate examination processes by different Inspectors.

7.4 There has been no strategic environmental assessment of the proposal to allocate the Friern Barnet Site as a LSIS in policy SP8 for these purposes. Certainly the sustainability appraisal submitted with the Core Strategy for independent examination (February 2011) is entirely silent on the matter.

7.5 The proposed LSIS allocation wrongly, and abusively, inverts the plan-led system established in the Planning and Compulsory Purchase Act 2004 (“**the 2004 Act**”) and PPS12. Haringey’s stated reasons for proposing the Friern Barnet Site allocation in Fundamental Changes (November 2010)⁵ make very clear that Haringey has allowed itself to be led by the fact that a developer wishes to develop the site for recycling / waste facilities, rather than considering whether (in accordance with the tests set out in PPS12) the site allocation would be *sound*. To justify this allocation as a means of ensuring “compliance” with pre-application discussions with a potential developer of the site flies in the face of the fundamental principle in s.38(6) of the 2004 Act, that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise – not vice versa.

7.6 Haringey’s other stated reason in Fundamental Changes (November 2010) for proposing to allocate the Friern Barnet Site as a LSIS (“a change in designation will ensure this DEA is targeted towards more traditional industrial uses”) explains what the *effect* of such an allocation would be – but it fails completely to explain why such an allocation is *justified* and therefore sound in PPS12 terms or otherwise.

7.7 Elsewhere, Haringey’s “Schedule of Focussed Changes from Additional Regulation 27 Consultation” apparently sets out Haringey’s reasons for deciding, *after* Fundamental Changes (November 2010) had been consulted upon, that various sites (including the Friern Barnet Site) should indeed be added as LSISs in Policy SP8 – specifically “*To reflect comments received from the GLA and Nathaniel Lichfield & Partners on behalf of SEGRO*”. But while the GLA’s comments concerned a host of sites – including Tottenham Hale⁶, Lindens/Rosebery Works⁷, Millmead/Ashley Road⁸, Marsh Lane/Central Leaside⁹,

⁵ See paragraph 7 above

⁶ See the GLA’s “Additional Regulation 27 Consultation” submission (30 November 2010): at paragraph 25; and at Appendix 1, page 3 (point 3), page 4 (point 4), page 6 (point 13), page 7 (point 16)

⁷ *ibid.* Appendix 1, page 3 (point 3) page 4 (point 5), page 6 (point 13)

Willoughby Lane¹⁰, Hale Wharf¹¹, South Tottenham¹², Crusader Industrial Estate¹³, and Wood Green (northern area)¹⁴ – they were completely silent about the Friern Barnet Site.¹⁵ Similarly, the comments on behalf of SEGRO¹⁶ exclusively concerned the Crusader Industrial Estate – they did not mention the Friern Barnet Site at all. Haringey’s purported reasons for ultimately deciding that the Friern Barnet Site should be allocated as a LSIS in the Core Strategy submitted for independent examination therefore have no bearing on the proposed allocation of the site at all.

7.8 In any event, contrary to the PPS12 tests of soundness, there appears to be no evidence base at all justifying Haringey’s proposed allocation of the Friern Barnet Site as a LSIS (let alone a robust and credible evidence base). In particular, Haringey has not identified any evidence at all which justifies the allocation of the Friern Barnet Site as a LSIS now, when it is not currently designated for industrial uses in Haringey’s saved UDP policies (and is actually designated as nature conservation site of borough importance), and when the originally proposed submission Core Strategy (May 2010) did not allocate the Friern Barnet Site for class B industrial (or other similar) uses at all.

7.9 Contrary to the PPS12 tests of soundness, Haringey does not appear to have considered the suitability of allocating the Friern Barnet Site as a LSIS against reasonable alternatives, or if it has, it has not identified any reasons why the Friern Barnet Site LSIS allocation is said to be the most appropriate allocation, compared with those alternatives.

7.10 Moreover, we are concerned that the manner in which Haringey introduced this fundamental change to the proposed submission Core Strategy, and consulted on it, was procedurally unfair and therefore legally flawed (for reasons outlined in paragraphs 13 to 16 below).

⁸ *ibid.* Paragraphs 21 to 24; Appendix 1, page 4 (point 4), page 6 (point 13), page 7 (points 14, 15 and 16)

⁹ *ibid.* Appendix 1, page 3 (point 3)

¹⁰ *ibid.* Paragraphs 30 to 32; Appendix 1, pages 5 to 6 (point 11)

¹¹ *ibid.* Paragraphs 30 to 32; Appendix 1, pages 5 to 6 (point 11)

¹² *ibid.* Paragraphs 30 to 32; Appendix 1, pages 5 to 6 (point 11)

¹³ Appendix 1, page 6 (point 13)

¹⁴ Appendix 1, page 6 (point 13)

¹⁵ The only other representation from the GLA – besides its “Additional Regulation 27 Consultation” submission (30 November 2010) – which is available on Haringey’s Core Strategy website is dated 16 June 2010, before Haringey conceived of the proposed Friern Barnet Site allocation. It does not address Policy SP8 at all.

¹⁶ See the submission of Nathaniel Lichfield dated 29 November 2010. There is no record on Haringey’s webpage for the Core Strategy of Nathaniel Lichfield, or SEGRO, making any other representations concerning the Core Strategy.

8. Mr Brice is currently seeking counsel's advice on whether Haringey's proposed allocation of the Friern Barnet Site in Policy SP8 as a LSIS raises any issues of soundness or unlawfulness in addition to those set out above (and if so, Mr Brice / PWA will reserve the right to draw such matters to the Inspector's attention). But in any event, for the reasons above, Mr Brice on behalf of PWA invites the Inspector to determine that the allocation of the Friern Barnet Site in Policy SP8 is clearly unsound and unlawful, and to recommend that Haringey must delete it from the Core Strategy if the Core Strategy is to be adopted.

(2) Current major concerns of Mr Brice and PWA: removal of designation as Site of Borough Importance for Nature Conservation (Grade 1) (or equivalent)

9. It is currently extremely unclear to Mr Brice and PWA whether or not the Friern Barnet Site will (regardless of the proposed change from allocation for employment use to allocation for industrial use) continue to be designated in any event as a Site of Borough Importance for Nature Conservation (Grade 1) (or equivalent), if the Core Strategy is adopted in its current form.

10. Haringey was required by the *Town and Country Planning (Local Development) (England) Regulations 2004* ("the 2004 Regulations")¹⁷ to submit for examination along with the Core Strategy a "submission proposals map" showing any and all amendments that would be made to the current UDP proposals map if the Core Strategy as submitted were adopted. Haringey's current UDP proposals map¹⁸ clearly depicts not only the Friern Barnet Site's employment use allocation (as set out in Schedule 1 of the UDP), but also its designation as a Borough Grade 1 Ecologically Valuable Site. And the *Amendments to 2006 UDP Proposals Map*¹⁹ which Haringey has submitted for examination with the Core Strategy does not indicate any proposed change in the nature conservation status of the Friern Barnet Site.²⁰ Anyone contemplating the Proposed Changes to the UDP Proposals Map is entitled to proceed on the basis that no such change is proposed.

11. However, we note with concern that, on careful scrutiny, Figure 6.2 of the submitted Core Strategy (within chapter 6.3 on "Open Space and Biodiversity") itself omits to depict the Friern Barnet Site as enjoying any open space or biodiversity designation.

12. This lack of clarity is not acceptable in a set of submission documents. But whatever the true position may be, for the avoidance of doubt, Mr Brice and PWA strongly object to any change in the site's nature conservation status, for similar reasons to those given above. The fact is that the Friern Barnet Site's current designation for employment use is expressly "subject to no adverse effect on the nature conservation value of the site". Even if (contrary to the arguments summarised above), the Inspector were to find it sound for the employment aspect of the site's designation to be changed to an industrial designation, there is a complete absence of evidence base, reasoning, sustainability appraisal and

¹⁷ See Regulation 6(1)(b), Regulation 6(5), Regulation 13(4), and Regulation 30(1)(b) of the 2004 Regulations

¹⁸ Accessible at <http://www.cartoplus.co.uk/haringey/haringey.htm#>

¹⁹ Accessible at http://www.haringey.gov.uk/proposed_changes_to_the_2006_udp_proposals_map.pdf

²⁰ Nor does the larger scale "Amended Map 24, accessible at, http://www.haringey.gov.uk/amended_map24.pdf which relates solely to the Friern Barnet Site.

strategic environmental assessment that might conceivably begin to justify the removal of the site's separate nature conservation designation, which expressly qualifies the site's existing employment designation.

(3) Haringey's flawed consultation process, and PWA's reasons for not raising these issues sooner

13. Mr Brice and his fellow member of PWA regret that they have not raised these matters with the Inspector sooner: indeed the Inspector will notice they did not make representations on these matters when they were the subject of public consultation. In short, Mr Brice and PWA's other members did not begin to discover – and could not reasonably have been expected to discover – the proposals for the Friern Barnet Site until February of this year (several months after public consultation on Fundamental Changes (November 2010)) had ended. And since then, PWA's members have been under the impression – which we consider wrong – that they could only object to the proposed allocation of the Friern Barnet Site as a LSIS in Core Strategy Policy SP8 if Haringey Council gave them permission to do so (a point addressed in more detail at paragraphs 18 to 23 below.) The background, in somewhat more detail, is as follows.

14. PWA's members could not be expected to have made representations on these matters during the initial 6-week consultation period on the original proposed submission Core Strategy (10 May to 21 June 2010), because Haringey did not conceive of the changes that (as PWA later discovered) included the proposed allocation of the Friern Barnet Site as a LSIS, until after the May – June 2010 consultation period had ended²¹.

15. When Haringey *did* consult on its proposal to allocate the Friern Barnet Site as a LSIS (beginning 4 November 2010), the consultation process was so obscure or otherwise procedurally unfair, that we consider (and are advised) that it was unlawful. In any event, given the approach taken by Haringey, PWA members could not reasonably have been expected to appreciate that Fundamental Changes (November 2010) included a proposal to allocate the Friern Barnet Site as LSIS in order to “compl[y] with pre-application discussions which have already taken place to use part of site for recycling centre and other part as waste station”, or to appreciate that (if this is indeed the case) Haringey proposes to remove the Friern Barnet Site's current designation as a Site of Borough Importance for Nature Conservation (Grade 1) (or equivalent). Specifically:

15.1 It is as yet unclear to us *precisely* what steps Haringey took to advertise and publicise that there would be a period of public consultation on its Fundamental Changes (November 2010) document, but Haringey's Statement of Consultation (March 2011) says simply that “Notification of [this additional] consultation outlining the purpose and process was sent to those who made representations during the previous stage of consultation in May/June 2010. The consultation details were also posted in [unspecified] local newspapers and on the Council website”.²² But even assuming this fulfils the minimum *statutory* notification requirements under the 2004 Regulations Haringey was additionally required by s.19(3) of

²¹ See paragraph 4.6.1 (b) on page 39 of Haringey's Core Strategy Statement of Consultation (March 2011).

²² See paragraph 4.8.1 on page 44 of Haringey's Core Strategy Statement of Consultation (March 2011).

the 2004 Act to comply with its Statement of Community Involvement (“SCI”)²³. Despite amendments to the SCI in February 2011, Haringey’s SCI has always made clear that Haringey will seek to “go further” than the “minimum requirements” of the 2004 Regulations, “to ensure effective and wider community involvement” in preparing DPDs such as the Core Strategy²⁴. The wording of the SCI in force at the time the Fundamental Changes (November 2010) document was consulted upon sets out a wide variety of community engagement methods which it says “will be used for the preparation and revision of local development documents”²⁵ and which in the case of development plan documents such as the Core Strategy go beyond simple local newspaper advertisement and publication on the Council website, to include “letters”, “leaflets”, “public notices”, “public exhibitions”, and “public meetings with displays”²⁶. Haringey failed to use any of these methods to advertise the proposed Friern Barnet Site allocation or the related consultation process. Both the original and the subsequently amended SCI suggest that the precise choice of involvement method will depend on a variety of factors, namely “the extent to which the document will contribute to the desired outcome”, “the topic under discussion”, “geographic coverage of the document”, “which particular stage of the planning process has been reached”, and “the need for specialist knowledge”²⁷. However, both versions of the SCI also explain very clearly that there can be particular advantages to the use of the methods just identified²⁸, and that the use of “letters”, “leaflet”, and “public exhibitions” are “inexpensive” or involve “negligible” costs, while the use of “public notices” and “public meetings with displays” are said only to involve “moderate” costs²⁹. Given the Friern Barnet Site allocation’s site-specific nature and obvious importance to local residents, given that this proposal was made in the final stage before the proposed submission of the Core Strategy for independent examination, and given that this proposal involves a change in planning designation from “employment uses generating subject to no adverse effect on the nature conservation value” of a site which has been undeveloped for nearly 50 years, and which is listed as a Grade 1 Borough-wide Site of Importance for Nature Conservation, to designation as a LSIS to comply with pre-application discussions for the development of recycling and waste management facilities, on any view Haringey ought to have used some of the more focussed methods that the SCI lists for drawing the proposal to the attention of

²³ At the time Fundamental Changes (November 2010) was published and consulted on, the SCI in force was the SCI as originally adopted in 2008. The SCI was subsequently amended with effect from February 2011.

²⁴ See paragraphs 4.12 and 4.13 of the original 2008 SCI, and paragraphs 3.8 and 3.9 of the 2011 SCI

²⁵ See paragraph 3.18 of the original 2008 SCI

²⁶ See Table 4 (“Community Involvement Methods” of the original 2008 SCI. By contrast, the 2011 SCI does not clearly promise that these methods “will be used for the preparation and revision of local development documents”, but it still describes this list (set out, without any apparent changes, in Appendix 2 (“Community Involvement Methods”) of the 2011 SCI) as “A wide selection of potential methods for community involvement during the preparation stages of DPD”: see paragraph 3.8 of the 2011 SCI.

²⁷ See paragraph 4.12 of the original 2008 SCI, and paragraph 3.8 of the 2011 SCI

²⁸ See Appendix 2 (“Potential methods for Community Involvement”) of the original 2008 SCI, and Appendix 3 (“Potential methods for Community Involvement”) of the 2011 SCI

²⁹ *ibid.*

local residents. We consider Haringey's failure to do so to place them in breach of s.19(3) of the 2004 Act.

15.2 In any event, even if local residents had been aware of the *existence* of the Fundamental Changes (November 2010) document before the consultation on it ended, the key problem was that that knowledge of its *existence* gives no hint at all that it contains a proposal to change the designation of the Friern Barnet Site to one for LSIS in order to comply with pre-application discussions about the development of recycling and waste management facilities on the site. The November-December 2010 consultation expressly concerned fundamental changes to *Affordable Housing and Employment Land* designations, not industrial or waste management designations. Moreover, Policy SP6 of the Core Strategy – which was *not* the subject of any re-consultation or proposed fundamental changes – makes clear that site allocations for waste management purposes will not form part of the Core Strategy at all, but will instead be considered and assessed separately in the NLWP preparation and examination process. In those circumstances, members of the public surely cannot have been reasonably expected to understand that the changes which were the subject of the November consultation process on affordable housing and employment land designations, would include the insertion of the Friern Barnet Site as a LSIS “to comply with pre-application discussions ... to use part of [the] site for recycling centre and [an]other part as waste station”. To have introduced this fundamental change under the guise of an amendment to employment land designations, without proposing to change policy SP6's clear indication that waste management site allocations will be addressed in a separate DPD, is far from transparent, and is highly apt to mislead, to say the least.

15.3 It is in any event clear that, if Haringey does indeed propose through the Core Strategy to remove the Friern Barnet Site's existing nature conservation designation, Haringey's public consultation process has been rendered unlawful by its failure to make this change clear not only on its Amendments to UDP 2006 Proposals Map, and on the similar map which ought to have accompanied the documents publicised, advertised and made available to the public at the beginning of the Core Strategy consultation process under Regulation 27 of the 2004 Regulations.³⁰

15.4 In addition, the public consultation on Fundamental Changes (November 2010) only lasted for a 4 week period beginning 4 November and ending 2 December 2010³¹. We consider that, as the consultation concerned “fundamental changes” to the content of the proposed submission Core Strategy, it ought to have lasted for a similar period to the original consultation on the proposed Core Strategy – namely 6 weeks. Indeed, Haringey was legally required by s.19(3) of the 2004 Act to prepare the Core Strategy in accordance with its statement of community involvement (“SCI”). Although Haringey's SCI does not explicitly address a scenario whereby fundamental changes are made to a DPD after the intended final public consultation, but before subsequent submission for independent examination, the SCI *does* consistently provide that, at every stage at which Haringey says

³⁰ This is the effect of Regulation 27 of the 2004 Regulations, together with Regulation 24(2) (definition of “proposed submission documents”, paragraph (a)(ii)).

³¹ See paragraph 4.8.1 on page 44 of Haringey's Core Strategy Statement of Consultation (March 2011).

they will occur, public consultations on DPDs will last “6 weeks” (according to the SCI in force during the November-December 2010 consultation process)³², or “at least 6 weeks” (according to the amended SCI which has been in force since February 2011)³³. And on any view the SCI has always provided that Haringey will consult for “6 weeks” (2008 SCI), or “at least 6 weeks” (2011 SCI), on the content of the proposed submission Core Strategy: we therefore consider (and are advised) that Haringey’s failure to carry out a 6-week consultation process on the content of policy SP8 as submitted did not comply with Haringey’s SCI, and was unlawful.

15.5 We add that, even if PWA’s members *had* been aware of the Friern Barnet Site allocation proposal before the November-December 2010 consultation period ended, the fact there are currently multiple – but unrelated – ongoing processes for consideration of strategic proposals for waste planning generally (and, as it turns out, for the future of the Friern Barnet Site specifically) does not make it at all easy for members of the public to appreciate that, if they wanted to object to a proposal to allocate the Friern Barnet Site as a LSIS (specifically, to “compl[y] with pre-application discussions which have already taken place to use part of site for recycling centre and other part as waste station”), they and any other interested parties would need not only to keep track of the NLWP preparation process, but also to submit written representations on the proposed Core Strategy by 2 December 2010 in response to Fundamental Changes (November 2010).

15.6 As explained above, PWA’s members, including Mr Brice, only discovered that there were proposals that the Friern Barnet Site be allocated and developed as an industrial site for waste management purposes, in February 2011. It finally became aware of these proposals because the North London Waste Authority (which has recently bought much of the Friern Barnet Site) held a public exhibition between 12 and 16 February 2011 about its proposals to develop the site as a facility to manage 300,000 tonnes of waste per year, and in advance of the February exhibition, the North London Waste Authority leafleted all households within 1km of the Friern Barnet Site, wrote to local residents associations, ward councillors, the local MP, and site neighbours.³⁴ Had Haringey Council itself given local residents similarly focussed notice of the Fundamental Changes (November 2010) document and the fact that that document proposed to allocated the Friern Barnet Site as a LSIS to comply with a developer’s proposal to develop recycling and waste management facilities on the site (as Haringey’s SCI makes clear it ought to have done), PWA members and other locally interested parties would undoubtedly have made strong representations before the November-December 2010 consultation process had closed. But Haringey’s failure to do so left local residents in the dark.

16. In all the circumstances, unfortunately, PWA’s members simply did not appreciate – and could not reasonably have been expected to appreciate – until after the conclusion of the consultation period that the Core Strategy as ultimately submitted would seek to make any changes to the designation of the Friern Barnet Site at all.

³² See Table 7 at pages 20 to 21 of Haringey’s original SCI (adopted February 2008).

³³ See Appendix 5 at pages 36 and 37 of the current SCI (as amended February 2011).

³⁴ See page 1 of the North London Waste Authority’s “Pinkham Way EcoPark – pre-application exhibition panels”, available at http://www.nlwa.gov.uk/cms_downloads/Exhibition_Panels_low_res_2.pdf

17. In any event, it is clear that the Inspector's role in the examination process is to examine the Core Strategy to consider whether it passes the statutory requirements of the 2004 Act, including that it is sound. The Inspector's role is inquisitorial and the mere fact that no objection has been made within the time specified by the local planning authority cannot relieve the Inspector of that task. It is submitted that PWA's members should at the very least be entitled to have their current objections considered by the Inspector in light of the statutory requirement cast on the Inspector and his fulfilment of the same: see the Court of Appeal decision in *Blyth Valley Borough Council v. Persimmon Homes (North East) Ltd and others* [2008] EWCA Civ 861 at paragraphs [38] to [40].

(4) Request to attend examination hearings

18. Given their interests and concerns, Mr Brice and PWA members (either themselves, or through a representative) wish to attend the examination hearings, their interest above all being in the following sessions:

- Hearing 1 on 28 June (Matter 1 – managing growth)
- Hearing 2 on 29 June (Matter 3 – low carbon Haringey, water management, waste and recycling)
- Hearing 3 on 30 June (Matter 5 – jobs and businesses, including Policy SP8).
- Hearing 5 on 5 July (Matter 8 – open space and biodiversity)

19. Mr Brice and PWA members have hitherto been under the impression – which we consider to be wrong – that since they did not submit a written representation during the consultation processes on the original proposed submission Core Strategy or the Fundamental Changes (November 2010), they do not have the right to contribute their views to the Core Strategy examination processes unless *Haringey Council* now permits them to do so. That impression may derive – but in any event is certainly fuelled – by Haringey's webpage on the Core Strategy Examination Process³⁵, which says that “The Inspector has identified a range of Matters and Issues to examine and an opportunity exists for those who have previously made representation to submit additional statements if necessary” [emphasis added].

20. As the Inspector will be aware, neither Mr Brice nor PWA, as a member-organisation, is currently listed among the potential participants in the hearings set out in the draft examination (as revised on 8 April 2011). However, the draft programme does say that “The list of potential participants for each session is indicative and remains subject to change”, and so we presume that the opportunity still exists in principle for Mr Brice and for PWA to be added.

21. We also note that the Inspector's Pre-hearing notes (15 April 2011) say at para 5.1 that “Only those parties seeking specific changes to the CS are entitled to attend the hearing sessions.” For the avoidance of doubt, Haringey's own statement of community

³⁵ http://www.haringey.gov.uk/index/housing_and_planning/planning-mainpage/policy_and_projects/local_development_framework/corestrategy/corestrategysubmission/core-strategy-examination/core-strategy-examination-process.htm

involvement (SCI) says that “Anyone has the right to appear in person at the examination” of a DPD [emphasis added]”³⁶: we consider that this confers on Mr Brice and PWA members a legitimate expectation (as a matter of public law) that it will be entitled to attend any of the examination hearings concerning Haringey’s Core Strategy in any event. But, be that as it may, PWA *does* seek specific changes to the CS – the deletion of the Friern Barnet Site from Policy SP8 (and deletion of any proposal to change the site’s nature conservation designation) – and on that basis, we understand that Mr Brice and PWA members fall within the Inspector’s rubric for attendance, and so will be entitled to attend hearing sessions (personally and/or through representatives).

22. We also see from paragraph 7.2 of the Inspector’s Pre-hearing Notes that the Inspector will be continuing until 7 June to accept further “necessary written information” addressing the “Matters and Issues” identified by the Inspector for consideration in the week 1 hearings (and until 14 June in relation to the week 2 hearings): this indicates to us that the final shape of the examination hearings, and the final list of those attending, is still in principle open to change where appropriate.

23. For all of the above reasons, we understand that in principle, it is open to Mr Brice and to his fellow PWA members to attend relevant examination hearings. Given their concerns about the soundness and legality of Haringey’s proposed allocation of the Friern Barnet Site – and bearing in mind the numerous flaws and inadequacies we have identified in Haringey’s consultation process concerning the proposed allocation – we request that the Inspector add Mr Brice and PWA (through its members or representatives) to the list of those who will be attending the examination hearings.

(5) Request that the issues raised above be included as specific issues to be considered in the examination hearings

24. We understand that the Inspector’s Draft programme (as revised on 8 April 2011), and the Inspector’s list of Indicative Matters and Issues (Version 1) are expressly subject to potential revision. Nevertheless, we do see that the Inspector *is* currently proposing to hold an examination hearing which considers various aspects of Policy SP8 (Hearing 3, Matter 5). However, it is unclear to us from the currently identified list of matters for consideration whether the Inspector is yet minded to consider any of the specific issues which we have identified above, in relation to the soundness and legality of allocating the Friern Barnet Site in Policy SP8.

25. If not, and in any event for the sake of clarity and transparency, we respectfully ask the Inspector to add that issue to the list of issues to be considered at Hearing 3, and (insofar as this issue is inextricably linked to waste planning and Policy SP6 generally, and the NLWP specifically) to the list of issues to be considered at Hearing 2. We also ask the Inspector to add to Hearing 5 the issue we have identified as to the proposal (if this is the effect of the submitted Core Strategy) to delete the Friern Barnet Site’s current nature conservation designation from the development plan.

³⁶ See Haringey’s current CSI (2011) at Appendix 5, Stage 3 “Independent Examination”. See also Haringey’s previous SCI (adopted 2008) Table 7 (“Development Plan Making Stages”), Stage 3 “Independent Examination”

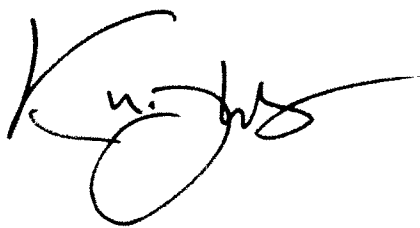
Conclusion

26. For the reasons set out above, Haringey's proposal to allocate the Friern Barnet Site as a locally significant site for uses B1(b), B1(c) B2 and B8 and uses that share strong similarities to these classes, and its proposal to delete the site's designation as a Site of Borough Importance for Nature Conservation (Grade 1) (if that is indeed the effect of the submitted Core Strategy) are clearly unsound and not compliant with the legal requirements of the 2004 Act. Mr Brice and his fellow PWA members regret that (for the reasons explained above) they have not brought these matters to the Inspector's attention sooner, but, given the serious inadequacies of Haringey's consultation methods, neither Mr Brice nor PWA feel that he or its members could reasonably have been expected to appreciate that Haringey proposed to allocate the Friern Barnet Site in Policy SP8 (or to remove the site's nature conservation designation) when consultations on these changes were carried out. In any event, Mr Brice's and PWA's concerns raise a number of issues which are clearly relevant to the soundness and legality of specific aspects of the Core Strategy, and which we respectfully suggest the Inspector will be obliged to duly consider in any event, given his inquisitorial role. We therefore request that Mr Brice and PWA (through its members and/or representatives) be added to the list of those attending the examination hearings.

27. As mentioned above, Mr Brice is seeking counsel's advice on whether Haringey's proposed allocation of the Friern Barnet Site raises any issues of soundness or illegality in respects which we have not identified above. Should any such issues be brought to Mr Brice's attention, or should Mr Brice and his fellow PWA members have any other written information which it will prove necessary to draw to the Inspector's attention, Mr Brice or PWA will seek to submit to the Inspector a further written representation, outlining them in succinct terms, before 7 June (insofar as they relate to week 1 hearings) or before 14 June (insofar as they relate to week 2 hearings).

28. Lastly and for the avoidance of doubt, we should be grateful for your response to the requests at sections (4) and (5) and paragraph 26 within seven days.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Knight', with a long horizontal flourish extending to the right.