

## I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION

1. Full name: Professor Brad BLITZ, on behalf of the HENDON RESIDENTS' PLANNING FORUM
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## II. PARTY CONCERNED

2. United Kingdom.

## III. FACTS OF THE COMMUNICATION<sup>1</sup>

### *Summary of complaint*

3. This communication concerns development plans proposed by London Borough of Barnet (LB Barnet):
  - a. The Burroughs and Middlesex University Supplementary Planning Document (SPD) (**A2a**);
  - b. The Hendon Hub (HH) proposals; (**A2b**); and,
  - c. The Local Plan stage 1 (Reg. 18); and stage 2 (Reg. 19) documents (**A2c**).
4. Consultations over all of these plans have now closed:
  - a. the Draft Local Plan (Reg. 18) (LP 18) consultation concluded on 16 March 2020.
  - b. the Draft Supplementary Planning Document (SPD) consultation concluded on 22 February 2021.
  - c. The Hendon Hub (HH) consultation concluded on 7 June 2021.
  - d. The Draft Local Plan (Reg. 19) (LP 19) consultation concluded on 9 August 2021.
5. The plans were approved on: 20 July 2021 (SPD); 27 July 2021 (HH), 19 October 2021 (LP Reg. 19).

### *The Context<sup>2</sup>*

6. The London Borough of Barnet is one of 32 local authority districts in London. It is the largest London borough by population with 402,700 (2020) inhabitants, making it the 13th largest district in England.
7. Hendon is an ancient ward situated within LB Barnet, with an estimated population of 19,613.
8. 'The Burroughs' is a street in the civic centre housing the library, town hall, church, and fire station.
9. In 2014, Middlesex University relocated to The Burroughs and leased LB Barnet buildings.
10. LB Barnet is responsible for delivering local services, including planning and environmental protection. Regulation set by central government is enforced at the local level, and is supported by local authority initiatives, including public information activities on development, planning and the environment.
11. As a London borough, LB Barnet is responsible for preparing a Local Plan. The development plan comprises strategic policies and (more detailed) non-strategic policies. Paras 17 -19 of the National Planning Policy Framework describe the framework which allows flexibility in the way policies are produced (**A1a**).
12. A borough may produce Supplementary Planning Documents (SPD) which offer more detailed guidance on policies in the Local Plan and are material considerations in determining planning applications.
13. All local authorities should abide by *Local Government Association (LGA) guidelines*, that consultations should last up to 12 weeks, unless in exceptional circumstances when the period should be extended.

### *Chronology of Events*

14. On 29 May 2019, LB Barnet, published 'Project Brief including Strategic Outline Case (SOC) – Proposed Hendon Redevelopment' which identified sites in Hendon. This document was withheld until 17 June 2021, and only made public following a Freedom of Information request by Brad Blitz on 20 April 2021 (**A2d**).
15. On 13 June 2019, LB Barnet approved the SOC, the identified sites, and redevelopment plans but marked this information 'exempt' and withheld it from the public. The decision to approve the SOC was recorded

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<sup>1</sup> Supporting information is included in Annexes 1 and 2. Documents referenced are indicated in bold e.g. (**A1a**).

<sup>2</sup> Statements underlined and in bold refer to domestic remedies pursued.

in the subsequent 'Outline Business Case – Hendon Hub', published by LB Barnet on 27 November 2020 (A2i).

16. On 27 January 2020, LB Barnet initiated a consultation over its Draft Local Plan (Reg. 18) (A2e).
17. On 10 February 2020, the UK introduced the Coronavirus Regulations 2020. The next day, the Secretary of State for Health reminded the public to remain in doors for 14 days if they developed symptoms.
18. On 1 March 2020, the Secretary of State advised the public to remain and work from home, a call reiterated by the Prime Minister on 3 March 2020, who said a national lockdown was imminent.
19. On 16 March 2020, the LB Barnet consultation closed, after the Secretary of State for Health called for 'unnecessary social contact' to cease.
20. On 27 November 2020, LB Barnet, through its partner Capita PLC and GL Hearn produced an Outline Business Case for the Hendon Hub, in conjunction with its key stakeholder Middlesex University (MU). Page 33 of the Outline Business case records that this development had been previously decided by Committee in June 2019 (A2b).
21. The redacted Outline Business Case identifies three major sites included within the proposed development: Ravensfield, Fenella and Town Hall Car Park site ('RFC'), Meritage Centre ('MC'), and Building 9 ('B9') which includes the Hendon Library building (A2b).
22. On 8 December 2020, two hours before the Policy and Resources Committee meeting, Hendon resident Tony Mason sent an email marked 'urgent'. He wrote *'I am challenging the decision (by both LBB Officers and LBB Councillors) to make item 17 of the P&RC Meeting of 8th Dec 2020 an exempt item (under Schedule 12A of LGA) to prevent approx. 400 pages of the Hendon Hub "Outline Business Case" from being placed in the public domain.'* In spite of his request, the document was withheld (A2e).
23. On 8 December 2020, LB Barnet Strategic Planning & Resources Committee approved the HH Outline Business Case. Tony Mason immediately submitted an information request for its release (A2e).
24. On 16 December 2020, Tony Mason sent an email to LB Barnet stating that he had written to the Information Governance Officers formally invoking the EIR and requesting:
  - a. Original (signed-off) Public Interest Test (PIT) document that supports the Schedule 12A exemption decision related to Item 17 of the 8th Dec P&RC Meeting.
  - b. Full 'Outline Business Case' which LBB claim as exempt under Item 17 of the P&RC Meeting (A2e).
25. Tony Mason said LB Barnet was acting unlawfully and that the HH presentation by officer Suzi Carter was not available on the website for public consultation and requested that it be made available (A2e).
26. On 11 January 2021, LB Barnet published, 'Hendon: The Burroughs and Middlesex University Supplementary Planning Document (SPD)' and initiated a rapid 6-week consultation (A2a).
27. On 21 January 2021, LB Barnet organised an online consultation about the Draft SPD. Factually incorrect and misleading information was provided by the officers, including the size of buildings and the history of the area. Middlesex University's car park was included in the PowerPoint as a potential opportunity.
28. On 21 January 2021, Council officer Ngaire Thomson released the emails of attendees, making them public. This breach of the UK Data Protection Act was subsequently reported (A2f). In the meeting, Thomson said a transport survey had been conducted in May 2020 during the national lockdown, which residents claimed would present an inaccurate illustration of the demand for parking.
29. On 27 January 2021, LB Barnet provided Tony Mason with a heavily redacted Outline Business case from which virtually all financial information had been redacted.
30. On 28 January 2021, Tony Mason requested an internal review of the response to his EIR request (A2e).
31. On 2 February 2021, an email from Simone Simmons to Ngaire Thomson was returned 'deleted, unread'.
32. On 3 February 2021, Barnet Council organised an online consultation on the SPD. Residents were unable to speak, microphones disabled, as officers presented information in a lecture format. Factually incorrect information was provided by LB Barnet officers, but participants were unable to challenge their assertions. The chat function was heavily moderated, and was inaccessible to those dialling in by phone (A2k).

33. On 5 February 2021, local business owner Robert Glazer wrote to Ngaire Thomson that he had not received invitations to online consultation events, even though he asked to attend and was denied access.
34. On 5 February 2021, Nick Lynch, Senior Policy Planning Officer wrote to residents suggesting the breach was the fault of a resident, Alexander Fischbaum, not the LB officer. This information was untrue (A2f).
35. On 6 February 2021 Brad Blitz wrote to Chief Executive of LB Barnet John Hooton to record that residents and local businesses had been denied the right to participate in the SPD consultation, and that he would be reporting the data breach by Ngaire Thomson (A2f).
36. On 6 February, Brad Blitz wrote to Jessica Farmer, the Monitoring Officer of LB Barnet, the solicitor who advises on legal compliance, to inform her of the data breach by Ngaire Thomson (A2f).
37. On 6 February, **Brad Blitz reported the breach to the Information Commissioner's Office (ICO) (A2f)**.
38. On 7 February 2021, Brad Blitz issued a complaint, writing to LB Barnet Chief Executive John Hooton complaining of an abuse of process over the SPD consultation, citing the timing of the consultation, the denial of the right to be consulted and the right to participate in the consultation process, and violations of domestic and international law over rights to information and participation (A2f).
39. On 12 February 2021, Brad Blitz wrote to Barnet Council leader Dan Thomas noting that the organisers had changed the date of the event and only some who had previously registered have been informed. Blitz also alerted Thomas to a statement from the Forward Planning Team which advised that once adopted, the SPD *"will provide for a material consideration for the determination of planning applications within the SPD boundary"*. Blitz wrote, *"This is misleading. The Local Plan must first be adopted and approved by the Secretary of State"* (A2f).
40. On 17 February 2021, Barnet Council organised an online consultation about the SPD. Residents were muted and microphones disabled as officers presented information in a lecture format. Factually incorrect information was provided by LB Barnet officers, but participants were unable to challenge their assertions. The chat function was heavily moderated and was inaccessible to those dialling in by phone (A2f).
41. During the online event, participants noted that development on Middlesex University car park was excluded from the PowerPoint presentation – it was no longer listed as a development opportunity. This was confirmed by the officer leading the event. The documentation had been changed from one consultation to another.
42. On 22 February 2021, the consultation over the SPD ended.
43. On 26 February 2021, Barnet launched the 'Hendon Hub'. One day later, it published a leaflet advertising that it would be building 792 new student dorms and re-providing parking (A2d).
44. On 1 March 2021, LB Barnet Leader, Dan Thomas sent out emails marked 'myths and facts', which included factually inaccurate statements about the Hendon Hub and its impact on the neighbourhood (A2g).
45. On 8 March 2021, Brad Blitz filed a complaint against LB Barnet Leader Dan Thomas and Councillor Peter Zinkin, charging they had violated the code of conduct (A2f).
46. On 26 Mar 2021, LB Barnet issued its final refusal notice to Tony Mason, refusing to release the Outline Business Case for the Hendon Hub. This information was withheld from the public (A2e).
47. On 7 April 2021, Tony Mason filed a **complaint with the Office of the Information Commissioner (ICO)** regarding LB Barnet's refusal to release the Outline Business Case (A2e).
48. On 23 April 2021, Jessica Farmer, Monitoring Officer dismissed Brad Blitz's complaint against Councillors Thomas and Zinkin.
49. On 5 May 2021, the ICO launched an investigation into Tony Mason's complaint against LB Barnet (A2e).
50. On 16 June, the **ICO wrote to Brad Blitz upholding his complaint regarding the data breach (A2f)**.
51. On 28 June 2021, LB Barnet launched a consultation over the revised Local Plan (Reg. 19) and invited residents to submit representations on its soundness and legal compliance.
52. On 13 July 2021, Tony Mason sent an information request for the Full Hendon Hub Business Case (A2e).

53. On 15 July 2021, LB Barnet refused Tony Mason's request for the Full Hendon Hub Business Case (A2e).
54. On 18 July 2021, Tony Mason filed a complaint with the ICO regarding LB Barnet's refusal to make public the Full Hendon Hub Business Case - deliberately withholding essential information from the public (A2e).
55. On 19 July 2021, Brad Blitz sent by email a notice of action to LB Barnet Chief Executive, Councillors, Governance Officer, Monitoring Officer and Planning team charging:
- a. The publication of factually inaccurate descriptions of sites, including their history, and heritage;
  - b. The misrepresentation of height, scale and size of existing and proposed buildings in background reports, consultation documents, and in online presentations by LB Barnet officers;
  - c. The obfuscation of heights, scale and size of proposed buildings in reports and plans, to undermine transparency, and prevent informed discussion;
  - d. The unlawful withholding of documentation, including information regarding the sites proposed for development, which is not in the public interest;
  - e. Failure to consult with statutory bodies, including Historic England, in the development of plans;
  - f. Information data breaches, including the unlawful publication of residents' personal details;
  - g. Gaslighting and making false allegations against residents, attributing to them unlawful acts committed by LB Barnet officers, including the release of residents' personal details;
  - h. Failure to release documentation in time, thereby denying residents the opportunity to submit questions and to offer formal comments of objection at meetings;
  - i. The publication of perfunctory due diligence reports, which contain inaccurate statements, and are inadequate for the purposes intended; and the failure to produce an adequate Public Interest Test;
  - j. Failure to conduct an Environmental Impact Assessment, including information reasonably required to assess the likely significant environmental effects of the development, listed in regulations 18(3), and 18(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
56. On 19 July 2021, Brad Blitz complained to the Interim Office for Environmental Protection (OEP) that LB Barnet had not conducted an Environmental Impact Assessment (EIA) as required by regulation 18(3), 18(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (A2f).
57. On 20 July 2021, the LB Barnet Policy & Resources Committee did not disclose the (critical) advice they had received from the statutory body Historic England, but approved the SPD (A2h).
58. On 27 July 2021, the full LB Barnet Council approved and adopted the Hendon Hub Business Case (A2h).
59. On 9 August 2021, the consultation over Local Plan (Reg. 19) concluded.
60. On 12 August the law firm Leigh Day, on behalf of Hendon resident Richard Lecoat, issued a letter before claim regarding the adoption of the Burroughs and Middlesex University SPD, arguing that: i) the SPD needed to be adopted as a DPD under the 2012 Regs. framework; ii) LB Barnet has failed to comply with Regulation 14 of the 2012 Regs; and that iii) LB Barnet failed to comply with the Public Sector Equality Duty. Leigh Day wrote that the Claimant reserves the right to add to or vary grounds in relation to any claim it may bring (A2i).
61. On 20 August 2021, Liz Baker of the Interim Office of Environmental Protection wrote to Brad Blitz to say that Barnet Council had never recorded his complaint of 8 February 2021 as a complaint, and he could not therefore submit a complaint to the independent watchdog (A2f).
62. On 27 August 2021, GL Hearn, LB Barnet's development partner, published an Environmental Impact Statement – three weeks after the last consultation had closed.
63. On 20 September, Leigh Day, on behalf of Hendon resident Richard Lecoat issued a second letter before claim addressed to Cath Shaw, Deputy CEO, regarding their approval of the Hendon Hub Business case arguing: i) Failure to consult as required under section 3 of the Local Government Act 1999; ii) unlawful delegation; and iii) breach of section 2(3) of the Localism Act 2011 (A2i).

64. On 30 September, Brad Blitz sent a stage 1 complaint to LB Barnet Monitoring Officer Jessica Farmer, claiming the Local Plan (Reg. 19) consultation was unlawful since residents did not have access to information required to submit a representation, and this failure further violated Equality Act 2020 (A2f).
65. On 30 September 2021, at 16:43 the Hendon Hub team and LB Barnet Leader Dan Thomas advised by email and newsletter that planning applications had been validated and published on the HH website. Detailed planning applications had been prepared well in advance of the adoption of the Local Plan (A2g).
66. On 30 September 2021, at 19.00 LB Barnet Policy & Resources Committee approved the final version of Local Plan (Reg. 19), that would be sent to the Secretary of State (A2h).
67. On 17 September 2021, the Information Commissioner's investigator informed Tony Mason he had completed a first draft of the Decision Notice into the lawfulness of Barnet withholding Outline Business Case information, and that the first draft required further internal review and sign-off. This Information Commissioner has not yet issued the final Decision Notice as of 29 October 2021 (A2e).
68. On 1 October 2021, Residents received letters advising that 7 planning applications for the Burroughs had been submitted by LB Barnet, including thousands of pages of attachments.
69. On 6 October, Brad Blitz photographed spray paint markings along the Burroughs in front of sites listed for redevelopment in the Hendon Hub, SPD and Local Plan, in the 7 planning applications. These markings indicate where demolition and construction will be required (A2k).
70. On 12 October 2021, Alice Leach Infrastructure Planning Manager responded to Blitz's complaint of 30 September 2021, refuting his claims policies should be made available (A2f).
71. On 12 October 2021, Brad Blitz visited Hendon Library, and saw a small collection of public documents including the print copy of the Local Plan Reg. 19 hidden on a shelf under books (A2k). The archivist, Hugh Petrie confirmed that there were no hard copies of the documents he had requested. Blitz then sent an email requesting the documents, which Petrie forwarded to Jess Harris, LB Barnet Records Manager. Both confirmed they could not locate the requested documents in the Library (A2f).
72. On 13 October 2021, Jess Harris, LB Barnet Records Manager wrote to Brad Blitz to say she could not locate the documents he sought but provided a link.
73. On 13 October 2021, finding that the link provided by Jess Harris did not provide access to the published policies, and that Lynch was based in the same department as Alice Leach, who was unable to provide the documents, Brad Blitz escalated his complaint to the head of governance, Andrew Charlwood (A2f).
74. On 13 October 2021, on behalf of Richard Lecoat, Ricardo Gama of Leigh Day Solicitors, with Sarah Sackman of Matrix Chambers and Merrow Golden of Francis Taylor Building filed R (ON THE APPLICATION OF RICHARD LECOAT) Claimant - and - LONDON BOROUGH OF BARNET (Defendant) - and - MIDDLESEX UNIVERISTY (interested party) in the High Court of Justice, Queen's Bench Division, Planning Court (A2j).
75. On 14 October 2021, Mrinalini Rajaratnam of HB Public Law wrote to Ricardo Gama, refusing his request to waive potential adverse costs for a second claim; instead she suggested that a complaint to the ACCC would not be appropriate because Barnet is not itself a party to the Aarhus Convention.
- We do not understand what you mean to complain about [Are 9(3) allegation], and see no basis for any complaint. Further, if you are suggesting that your client will complain about the Council, this is misconceived. The ACCC considers certain matters in relation to the role of the Parties to the Convention, and may make non-binding decisions. The Council is not a party to the Convention.*
- In her email, she also advised that correspondence should be directed to Jessica Farmer in her absence (A2j).
76. On 15 October, Brad Blitz asked Nick Lynch, Policy Planning Officer, to identify where the Local Plan documents were located in the Library (A2f).
77. On 8 October 2021, London Assembly Member Anne Clarke asked Leader, Dan Thomas, *On LBB Barnet's own statistic, 88% of residents were strongly opposed to the Hendon Hub plans. Precisely what level of dissatisfaction is necessary for the Council to take heed and alter its course on these colossally unpopular proposals.* Thomas responded: 88% of respondents is not the same as 88% of all residents (A2h).

78. On 17 October 2021, Brad Blitz filed a stage 2 complaint with Andrew Charlwood, Head of Governance, noting that Neeru Kareer could not adjudicate his complaint since she was named in the pre-action letter and there was an appearance of bias. He also recorded that the Monitoring Officer, Jessica Farmer could not be considered an independent monitor as she was part of LB Barnet's defence team (A2f).
79. On 19 October 2021, Barnet Council approved Local Plan (Reg. 19), with 206 pages of objections (A2h).
80. On 24 October 2021, Tony Mason sent a **multiple service complaint to ICO**, charging that after more than 5.5 months of active investigation had failed to issue a Decision Notice related to his EIR complaint about Barnet withholding the Outline Business Case, and that this delay was not in the Public Interest. He cited 4 service complaints against the ICO including lack of due process and excessive delay (A2e).
81. On 24 October 2021, **Brad Blitz issued a complaint to the Local Government Ombudsman (Ref. 66532)** against LB Barnet Leader, Dan Thomas and Councillor Peter Zinkin claiming they violated the code of conduct and alleging pre-decision (A2f).

#### IV. PROVISIONS OF THE CONVENTION WITH WHICH NON-COMPLIANCE IS ALLEGED

##### 82. *Article 3 – General Provisions*

- a. Para 2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

##### 83. *Article 4 - Access to Environmental Information*

- a. Para 1. Each Party shall ensure that [...] public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation.
- b. Para 2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request.

##### 84. *Article 6 - Public Participation in Decisions on Specific Activities*

- a. Para 2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner.
- b. Para 3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public and for the public to prepare and participate effectively during the environmental decision-making.
- c. Para 4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.
- d. Para 8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

##### 85. *Article 9 – Access to Justice*

- a. Para 3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

##### 86. Further we note the relevance of UK domestic law, regulations, and court decisions including:

- a. Regulation 2 of the Town and Country Planning (Local Planning) (England)
- b. Regulations 2012 ('2012 Regs'); UK Local Government Act 1972, Schedule 12A and Section 3;
- c. Section 2(3) of the Localism Act 2011;
- d. Environmental Information Regulations 2004.

- e. UK government guidelines, including the HM Code of Practice on Consultation; and, Local Government Association guidelines; and,
- f. Decisions by UK courts in: *Jopling v Richmond-Upon-Thames London Borough Council & Anor* 2019 EWHC 190 (Admin) (08 February 2019); *R (William Davis Ltd) v Charnwood BC* [2018] JPL 549; *R (Skipton Properties Ltd) v Craven DC* [2017] JPL 825; *West Kensington Estate Tenants and Residents Association v Hammersmith and Fulham LBC* [2013] EWHC 2834 (Admin); *R (RWE Npower Renewables Ltd) v Milton Keynes BC* [2013] EWHC 751 (Admin); and, *R (Wakil) v Hammersmith and Fulham LBC* (No. 1) [2012] EWHC 1411 (QB).

## V. NATURE OF ALLEGED NON-COMPLIANCE

87. The above events, acts, omissions or situations demonstrate a failure by the public authority to comply with or enforce the Convention.

### 88. **Claim 1: Obstructing Access to Environmental Information**

- a. Violations of Art. 3 are sustained by officers and councillors failing to assist and provide guidance to the public in seeking access to information and in facilitating participation. As recorded above, during the SPD consultations, members of the public were denied access to attend, as well as the right to speak in meetings. Factually inaccurate information was provided by officers which could not be challenged. Further, key documents including those pertaining to the Business Case were withheld.
- b. Violations of the Convention Art. 4(1) and 4(2) include the deliberate withholding of information, and the excessive delay in the release of environmental information.
  - i. LB Barnet deliberately withheld from the public the Strategic Outline Business Case of May 2019, which detailed the plans for Hendon, until 17 June 2021, when it responded to a freedom of information request from Brad Blitz.
  - ii. LB Barnet has not released the full Outline Business Case requested by Tony Mason on 8 December 2021; but excessively and unlawfully redacted the document to deny the public having access to information contained within it.
  - iii. As a result of LB Barnet's refusal to provide access to this information, Tony Mason filed a complaint with the Office of the Information Commissioner, which has investigated this matter, but even after 6 months, has not released its report.
  - iv. LB Barnet failed to publish Environmental Impact Assessments during the public consultations, and only did so on 27 August 2021, three weeks after the final consultation, on the Local Plan (Reg. 19), which feeds directly into a statutory review, and had closed. Residents could not therefore comment on the environmental impact of the plans in their representations to the independent inspector.

### 89. **Claim 2: Failure to Take into Account Public Participation**

- a. Art. 6(8) sets out the obligation on parties regarding public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments. The Convention stipulates that the result of the public participation shall be taken into account as far as possible. The above record of events indicates pre-decision on the part of LB Barnet. Both before and during the consultations regarding the SPD, the Hendon Hub and the Local Plan (Reg. 19), the Leader of LB Barnet, Dan Thomas and others, including Councillor Peter Zinkin, made statements indicating that the developments had been pre-decided. These include: statements of intention, public declarations and tweets affirming decisions had already been reached, and the publication of promotional materials advertising 'a new library' before the Committee had met to consider proposals.
- b. During the consultation over the Local Plan, LB Barnet Leader Dan Thomas dismissed the public survey results, which he had commissioned. The results indicated that 88% respondents objected to the developments. Thomas' response was that '88% of respondents is not the same as 88% of residents'.
- c. By the end of September 2021, some 10 weeks before the Council was to decide on individual planning applications, the streets where demolition/construction was proposed, were marked with spray paint indicating where utilities were located.

90. **Claim 3: Violations of Convention Rights to Public Participation in Decision-Making**

- a. Violations of Art. 6 regard the timing of public participation. We note that Art. 6(2) including a stipulation that the public is informed early in the environmental decision-making and in an adequate, timely and effective manner. LB Barnet deliberated delayed informing the public. It withheld the development plans in the May 2019 SOC, from the public for 20 months. The public was made aware of them when the SPD was announced in January 2021.
- b. Art. 6(3) includes the provision that parties should respect *reasonable time-frames*. This is complemented by the provision in Art. 6(4), that *each Party shall provide for early public participation, when all options are open and effective public participation can take place*. In spite of these provisions, and further guidance from the Local Government Association, including the extension of the time allotted for consultations under exceptional circumstance, LB Barnet launched three consultations in the middle of a pandemic – each one lasting just 6 weeks.
- c. The organisation of these consultations ran counter to ACCC case law and recent recommendations including to the government of Kazakhstan, (1 July 2020),<sup>3</sup> and ‘Statement on the application of the Aarhus Convention during the COVID-19 pandemic and the economic recovery phase’, adopted 2 September 2020.<sup>4</sup>
- d. Further, we note that LB Barnet then overburdened residents, placing them under great pressure to respond to 4 consecutive consultations in just 6 months, over the SPD, the Hendon Hub, the Library, and the Local Plan (Reg. 19).

91. **Claim 4: Preventing Access to Justice**

The applicant has sought to exhaust domestic remedies, including applications for judicial review, but has been prevented by the refusal by LB Barnet to recognise Aarhus cost claims and by their unwillingness to agree to a cost cap so the applicant could afford to pursue both claims regarding the SPD the Hendon Hub Business Case decisions. The refusal to recognise this matter as an Aarhus claim, and to agree to a cost cap makes it prohibitively expensive to apply for judicial review of the Business Case decision and therefore prevents the communicant from achieving access to justice through UK courts.

92. While referring the above claims for consideration to the ACCC, we reserve the right to pursue additional claims and believe there is evidence of further violations of the Convention committed by LB Barnet, including violations of Art. 7 which requires parties to provide a transparent and fair framework, having provided the necessary information to the public.
93. The communication identifies a general failure by the Party concerned to introduce the necessary legislative, regulatory and other measures to implement the Convention; as well as specific instances where individuals’ rights under the Convention have been violated by the public authority.

**VI. USE OF DOMESTIC REMEDIES**

94. According to paragraph 21 of the annex to decision I/7, the Committee should also at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress
95. We have pursued the following domestic remedies:
  - a. Submitted complaints to Information Commissioner’s Office (ICO).
  - b. Submitted complaint to Interim Office of Environmental Protection (OEP).
  - c. Sent letters before claim regarding the SPD and Hendon Hub business case.
  - d. Submitted claim for judicial review of SPD decision.
  - e. Submitted complaint to Local Government and Social Care Ombudsman (LGO).

<sup>3</sup> See: ECE/MP.PP/C.1/2021/6, *Supra 4*.

<sup>4</sup> See: ECE/MP.PP/C.1/2020/5/Add.1, *Supra 3*



96. Information Commissioner’s Office (ICO): complaints were initiated only after multiple requests for information to LB Barnet by Tony Mason were ignored. This remedy has proven unreasonably prolonged and an ineffective means of redress.
- a. On 8 December 2020, Tony Mason requested the Outline Business Case from LB Barnet. He has only received heavily redacted information.
  - b. Tony Mason’s request was expedited by the ICO, which conducted and concluded an investigation, but has failed to release its report, even after 6 months, which we consider to be unreasonably prolonged.
  - c. Jessica Farmer, LB Barnet Monitoring Officer has written to Tony Mason to advise that while the ICO is reviewing his complaint, they could not respond to any communication from him. We therefore see no reason why after all this time Barnet would now make this information available. (The full chronology of Mason’s correspondence with the ICO is attached to this communication.)
  - d. In the absence of the ICO’s report, it is clear that the documentation requested will not be made public by LB Barnet, and therefore this matter cannot be escalated to a first tier tribunal.
  - e. On 24 October 2021, Tony Mason issued an internal complaint against the ICO for excessive delays in issuing its report.
  - f. On 29 October 2021, Tony Mason learned that is multipart service complaint to the ICO submitted by email had been ‘blocked’ from being received by the intended recipients. One such recipient was IC investigator dealing with the LB Barnet Outline Business Case.
97. Interim Office of Environmental Protection (OEP): This new watchdog does not have powers to investigate complaints regarding environmental information, and is thus does not offer an effective means of redress. Its remit has been further narrowed by the Environment Bill 2021 and complaints received must pertain to the natural environment.
- a. The complaint submitted by Brad Blitz on 19 July 2021, was in part based on the fact that LB Barnet had not published any Environmental Impact Assessments, including information reasonably required to assess the likely significant environmental effects of the development, listed in regulations 18(3), and 18(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
  - b. While this watchdog has the power to initiate judicial and environmental reviews, in this case, Blitz’s complaint was dismissed on the grounds that LB Barnet had never recorded his complaint. Liz Baker, Senior Complaints Advisor write to Blitz by email on 23 August, saying:
 

*Unfortunately the Council did not consider your email as a complaint and we cannot consider your complaint unless the public authority confirms you have completed their complaints process. As I have previously explained, we do not have a choice about this.*
98. Application to the High Court for Judicial Review: There are many limitations of judicial reviews, not least the fact that they are limited in scope and do not touch on the substantive rights included in the Convention. Any decision issued by a court would find only on the lawfulness process. For reasons of cost, residents have only been able to consider two claims, on the unlawful process of consultation over the SPD, and on the consultation over the Hendon Hub Business Case.
- a. On 13 October 2021, on behalf of Richard Lecoat, the law firm Leigh Day has issued a claim for judicial review in the High Court. This claim is restricted to the SPD.
  - b. Residents considered a second claim regarding the Hendon Hub Business Case, but this has proven to be prohibitively expensive. Residents had to raise £20,000 just to file one claim, and have been advised they will need to budget up to £45,000 if this claim were to be admitted, and eventually reach the point of decision. Although Leigh Day asked if LB Barnet would agree not to seek its costs in respect of a second claim challenging the adoption of the Hendon Hub Business Case. This request was rejected on 14 October 2021 by Mrinalini Rajaratnam of HB Law who wrote:
 

*We of course recognise the importance of the principle of access to justice. However, the Council is manifestly entitled to decline your client’s request which is not only that the Council agree to apply the Aarhus costs regime, but to agree a non-reciprocal nil costs cap. The Council contends, entirely properly, that this is not an Aarhus claim. It is entitled to have that matter determined by the Court, should a claim be brought. In so doing it is not “shutting out its own residents from access to justice”. Further, the Council has a quasi fiduciary duty in respect of public funds which means that it would*

*have been very unusual for it to apply the Aarhus regime when it contended entirely properly, and on the basis discussed, that the regime did not apply.*

*In response to your question, therefore, the Council declines to agree to apply the Aarhus costs capping regime.*

- c. Given LB Barnet's intransigence, residents have been unable to submit a second claim regarding the Hendon Hub Business Case. The three month deadline has now passed. We anticipate that a judge will decide on the admissibility of the SPD claim before December 2021.

99. Complaints to the Local Government and Social Care Ombudsman (LGO): the LGO does not offer an effective remedy and is not an appeals body. The LGO cannot deal with far-reaching issues and as its website records, cannot take up complaints which affect most people in the council's area – which is the case for the Hendon Hub and Barnet Local Plan. The above mentioned complaint submitted to the Local Government Ombudsman relates to standards and member conduct, specifically the actions of LB Barnet Leader, Dan Thomas, and Councillor Peter Zinkin, who were charged with breaching the Code of Conduct.
100. The above domestic remedies have proven to be excessively prolonged and ineffective. They are limited in scope and do not take into account the substantive rights to information and public participation provided by the Convention. We therefore request the ACCC give full consideration to this communication.

## VII. USE OF OTHER INTERNATIONAL PROCEDURES

101. The EU Trade and Cooperation Agreement affirms the Aarhus Convention remains in effect and contains non-regression clauses.<sup>5</sup> We have not invoked other international procedures but note the right of privacy is guaranteed by ECHR Art.8 and the Court has drawn upon Articles 6(8) and 9(2) of the Aarhus Convention.<sup>6</sup>

## VIII. CONFIDENTIALITY

102. I am not requesting that any of this documentation be kept confidential

## IX. SUPPORTING DOCUMENTATION (COPIES, NOT ORIGINALS)

103. List of Annexes

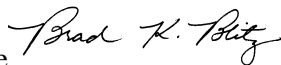
Annex 1: Relevant national legislation.

- a. National Planning Policy Framework, 2021.
- b. Local Government Act 1972.
- c. The Town & Country Planning (Local Planning) 2012 & Environmental Impact Assessment 2017.
- d. Environmental Information Regulations 2004.
- e. LGA Conversations – New Guide to Engagement & HM Code of Practice on Consultation.

Annex 2: Relevant documentation, and correspondence with LB Barnet, Middlesex University, ICO and ACCC.

- a. The Burroughs and Middlesex University Supplementary Planning Document (SPD) & PowerPoint.
- b. Outline Business Case and Full Business Case for Hendon Hub.
- c. Local Plan (Reg. 18 and Reg. 19).
- d. Brief - Strategic Outline Business Case (SOC).
- e. Tony Mason correspondence with LB Barnet & ICO.
- f. Brad Blitz complaints & correspondence with LB Barnet to officers, councillors, ICO, OEP.
- g. Emails, letters, and tweets from LB Barnet Leader, Councillor Dan Thomas & Councillor Peter Zinkin.
- h. Minutes and reports of LB Barnet meetings.
- i. Letters before action filed by Leigh Day Solicitors (SPD and Hendon Hub Business Case).
- j. Claim for Judicial Review Richard Lecoat v London Borough of Barnet and Middlesex University.
- k. Photographs of street markings to guide construction, and planning documents mislaid.

Signature



London 30 October 2021

<sup>5</sup> See: EU-UK Trade and Cooperation Agreement; Available at: [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en) Accessed 17 October 2021.

<sup>6</sup> See: Taşkın and Others v. Turkey (app. no. 46117/99) Judgment of 10 November 2004.