The Planning Inspectorate

Appeal Decision

Inquiry opened on 5 November 2019

Site visit made on 6 November 2019

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2020

Appeal Ref: APP/L5810/W/18/3205616
Former Imperial College Private Ground, Udney Park Road, Teddington TW11 9BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Quantum Teddington Development Ltd, Quantum Teddington LLP and Teddington Community Sports Ground Community Interest Company against the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 18/0151/FUL, is dated 16 January 2018.
- The development proposed is erection of a new extra-care community, with new public open space and improved sports facilities, comprising: 107 extra-care apartments (Class C2 use), visitor suites, and associated car parking; 12 GP surgery (Class D1 use) and associated car parking; new public open space including a public park, and a community orchard; improved sports facilities (Class D2 use) comprising a 3G pitch, turf pitch, MUGA, playground, pavilion and community space, and associated parking (68 spaces); paddock for horses; and a new pedestrian crossing at Cromwell Road; and all other associated works.
- The Inquiry sat for thirteen days: 5 to 8, 12 to 15, 19 & 20 November 2019 and 9 to 11 March 2020.

Decision

1. The appeal is dismissed and planning permission for erection of a new extra-care community, with new public open space and improved sports facilities, comprising: 107 extra-care apartments (Class C2 use), visitor suites, and associated car parking; 12 GP surgery (Class D1 use) and associated car parking; new public open space including a public park, and a community orchard; improved sports facilities (Class D2 use) comprising a 3G pitch, turf pitch, MUGA, playground, pavilion and community space, and associated parking (68 spaces); paddock for horses; and a new pedestrian crossing at Cromwell Road; and all other associated works is refused.

Procedural Matters

2. After the appeal was lodged the Council resolved that, had it been in a position to do so, it would have refused the application for nine reasons. Following discussions between the appellants and the Council, the appellants submitted amended plans in April and May 2019. These were then consulted upon and the Council further considered the matter. It then resolved that,

subject to completion of a satisfactory Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the TCPA 1990) it would not pursue its objections relating to transport and sustainability/air quality. It continued to oppose the appeal in relation to the other reasons.

3. I held a Pre-Inquiry Meeting in relation to the administration of this appeal on 16 September 2019. This did not discuss the planning merits but dealt with the arrangements for the Inquiry. Immediately before this meeting, I viewed the site from public land on an unaccompanied basis.

4. Before the Pre-Inquiry Meeting Sport England (SE), the Udney Park Playing Fields Trust and the Teddington Society were granted Rule 6 status[1]. Following the Pre-Inquiry Meeting, the Udney Park Playing Fields Trust and the Teddington Society agreed to make a joint case to the Inquiry and were jointly represented. For simplicity, in this decision when I refer to "the Trust" I am referring to both bodies jointly.

5. During the Inquiry I undertook an accompanied site visit to the site and, following the close of the inquiry, I undertook an unaccompanied site visit to the surroundings of the site and, at the request of the appellants, visited a site operated by the appellants in Salisbury accompanied by representatives of the appellants, the Council and the Trust.

6. In a pre-Inquiry note following receipt of evidence, I raised an issue that the detailed landscape drawings showed that the fencing around the Artificial Grass Pitch (the AGP), the Multi-Use Games Area (the MUGA) and the cricket nets would be 2.5 m high chain link fencing when the elevations of the AGP and MUGA indicated that they would be 4.5 m high. The appellants confirmed at the Inquiry that the fences for the AGP and MUGA should be 4.5 m high and submitted amended plans to this effect. In relation to the fence around the cricket nets the appellants took the view that this could be resolved by a planning condition; the amended drawings showing no fence for this facility.

7. The Trust was concerned that this change was material and there needed to be publicity as interested parties may have been of the view that the fencing was only to be 2.5 m high. I took the view that as fences at 2.5 m high would not be effective for their purposes, and from information on the elevations that 4.5 m high fencing could be presumed, these changes to the drawings only represented a clarification. I therefore accepted these plans. I note that the Trust did not pursue its concerns on the basis that they wanted the appeal determined expeditiously.

8. The London Borough of Richmond-upon-Thames Local Plan (the Local Plan), which was adopted in July 2018, was the subject of litigation[2]. This resulted in the High Court quashing the adoption of that part of the Local Plan insofar as it related to the appeal site and this part being remitted for reconsideration.

9. A second Examining Inspector was appointed to consider this matter and he reported during the adjournment of the Inquiry between November 2019 and March 2020. He concluded that the vast majority of the site met the criteria to be considered as Local Green Space (LGS) and the Council adopted the Local

[1] Pursuant to Rule 6 of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (as amended)
[2] Jopling v Richmond-upon-Thames London Borough Council and another [2019] EWHC 190

Plan to include that designation on 3 March 2020. For clarity, when I refer to the Local Plan, I am referring to the Local Plan as a whole as adopted at the date of this decision.

10. Prior to the Inquiry opening, the appointed Examining Panel reported on the draft emerging London Plan and the Mayor set out his 'Intention to Publish' version in December 2019. There were discussions about the proposed changes to policy at the Inquiry. Following the closing of the Inquiry, the Secretary of State exercised his power under Section 337 of the Greater London Authority Act 1999 (as amended) to direct that the Mayor could not publish the final version of the London Plan without incorporating various alterations.

11. None of the Secretary of State's alterations affect the policies relating to the main issues applicable to this appeal, and consequently I do not consider it necessary to revert to the parties on this. Paragraph 48 of the National Planning Policy Framework (the Framework) makes clear that weight may be given to relevant policies in emerging plans according to three criteria. The plan is now very well advanced, objections on material issues to this appeal have effectively been resolved, and the policies can thus be considered to be consistent with the Framework. I therefore will give the emerging London Plan very significant weight even though it does not yet form part of the development plan.

12. The Trust provided a number of proofs of evidence by witnesses on various matters. At the Inquiry a number of those who had intended to give such evidence were unable to attend. In some cases, the evidence was adopted by others who then gave further oral evidence and were cross examined on the whole. In the remainder only the written evidence was presented. As this was not subject to the potential for cross examination, I give it less weight than that which was so subject.

13. The appeal was accompanied by a Planning Obligation under Section 106 of the TCPA 1990 and Section 16 of the Greater London Council (General Powers) Act 1975 (as amended) by way of Unilateral Undertaking dated 11 March 2020. In light of this, the Council withdrew its putative reasons for refusal in relation to transport and sustainability/air quality. I will discuss the Obligation below which also deals with other matters.

Application for costs

14. At the Inquiry an application for costs was made by the Trust, against the appellants. This application is the subject of a separate Decision.

Main Issues

15. In light of all the evidence and the development plan at the date of this decision the main issues are:

    (i) the effect on the character and appearance of the area, including the effect of floodlighting and the effect on trees;

    (ii) the effect on Local Green Space (LGS) and Other Open Land of Townscape Importance (OOLTI):

    - in respect of the LGS whether the proposal would represent inappropriate development in an LGS, and

- in respect of both LGS and OOLTI, the effect on openness;

(iii) the effect on the living conditions of the occupiers of:

- neighbouring properties, both existing and proposed, in respect of noise,
- 38 Kingston Lane in terms of overbearing effect, sense of enclosure and perceived loss of privacy, and
- 83 Udney Park Road in terms of overbearing effect;

(iv) the effect on sports provision in the area in both quantitative and qualitative terms;

(v) the effect on protected species, particularly bats, stag beetles and Great Crested Newts;

(vi) how what is described as the 'extra-care' provision should be considered in relation to the requirements for affordable housing, and whether the proposal makes adequate provision for affordable housing;

(vii) the effect of the proposal on the Asset of Community Value; and

(viii) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

Character and appearance

16. The appeal site is approximately 5.1 ha in size and lies within the Teddington area to the south of Teddington High Street. The site is generally flat and open, although around the edges of the site are mature trees and boundary enclosures consisting of fences and railings. The site is surrounded to the east and south by highways, Kingston Lane and Cromwell Road respectively. To the north on the eastern side is frontage residential development facing Kingston Lane and on the western side an older persons' development, Fullerton Court, which faces both Udney Park Road and the appeal site. To the northern part of the western boundary is Udney Park Road, and to the southern part are the rear gardens of dwellings. The appeal site lies in a residential townscape that predominantly consists of Victorian and Edwardian buildings and the built form mainly consists of frontage development.

17. The site currently provides a playing field and a pavilion (changing rooms and ancillary facilities) towards the western side, and a car park slightly separate and to the south of that accessed off Udney Park Road. There are three hard surfaced tennis courts, which are fenced, in the southwestern corner.

18. The proposal is to erect a series of six buildings in the northeastern corner of the site (Plot A). The most northern of these would be a 12 GP (General Practice) surgery and a pharmacy[3], the remainder would be the communal facilities for the extra-care accommodation and most of the extra-care

[3] These would be in a single building and for simplicity I will refer to the GP surgery and pharmacy as "the GP Surgery" unless I need to differentiate them.

accommodation. The existing pavilion (Plot B) would be converted to extra-care accommodation and a new, three storey building constructed on the site of the existing car park (Plot C), also for extra-care accommodation. There would be a car park between Plots B and C accessed off Udney Park Road.

19. To the east of Plot C and southwest of Plot A would be a floodlit AGP surrounded by a 4.5 m fence. To the east of this would be a grass pitch. Immediately to the south of the AGP would be a new pavilion building which would include changing rooms and associated facilities including community/club room(s)[4], catering and a crèche. Car parking would be to the east of the pavilion building. There would be a pétanque court and play area to the west of the pavilion.

20. In the southeastern corner would be a MUGA, which would also be floodlit, and a drainage pond. To the north of the MUGA would be a paddock for use for horse riding, particularly by a Riding for the Disabled group, and two cricket nets.

21. Between Plots B and C would be a community orchard which would connect to an area of Public Open Space to the north of Plot B and between this and Plot A, which would include a second pond. There would be various areas around the site which would be used for habitat creation.

22. The Council adopted a Design Quality Supplementary Planning Document in February 2006. While the main purpose of this document is to advance high quality inclusive design it also undertakes an analysis of the various character areas in the Borough. In that document the appeal site falls on the southern extent of the Strawberry Hill and Teddington East area. This indicates that the area has a suburban character with small pockets of open space and large gardens. Teddington High Street is particularly mentioned.

23. In June 2017 the Council adopted the Hampton Wick and Teddington Village Planning Guidance (the VPG) which is cited in Policy LP 1 of the Local Plan. The purpose of the VPG is primarily to establish a vision and planning policy aims for the area, in light of existing and emerging Local Plan policy. By identifying key features of the villages, the VPG seeks to clarify the most important aspects and features that contribute to local character. The appeal site lies centrally in the area covered by the VPG.

24. The VPG divides the area into character areas, with the appeal site falling in 'Character Area 6: Udney Park Road and surrounds'. The appeal site is identified as having a collegiate aspect. The area of Cromwell Road, Kingston Lane and the northern half of Udney Park Road to a lesser degree are described as well-proportioned residential tree lined streets, with mature trees and grass verges running between the pavement and the road. These roads feature a mixture of terraced, semi-detached and detached houses. The majority of houses are paired and taken together they form a harmonised whole.

25. The appeal site is described as one of the largest open spaces in the area. The VPG continues to state that a number of houses back onto the playing fields (to the south of Udney Park Road) with much of the perimeter kept clear, allowing for important views across the field. The southern section of Udney

[4] With demountable walls to allow for flexible configuration.

Park Road has the highest concentration of twentieth century housing in this character area but they are generally uncommon. These buildings are much plainer than the earlier houses and do not contribute to the overarching character of this area. I agree with this analysis.

26. Among the threats from development identified in the VPG is the potential loss of the appeal site to development. Conversely, the maintenance of the open space provided by the appeal site and the maintenance of its tidy boundary are identified as opportunities.

27. The appellants undertook their own Townscape Character Assessment which emphasised the presence of two larger buildings in proximity to the appeal site; Fullerton Court and Virginia Court on the eastern side of Kingston Lane, to the northeast of the appeal site. They also undertook an analysis of the heights of buildings against Ordnance Datum and a Townscape Contextual Analysis.

28. While Fullerton Court and Virginia Court form part of the existing character and appearance of the area, neither are in keeping with the wider, overall character and appearance of the area as identified in the VPG and contribute little to its overall character and appearance. This is particularly the case with Fullerton Court through its larger size and form, and its relationship to the road frontage as it creates a courtyard layout at the front of the building. To reinforce this approach of larger buildings would be to harmfully detract from the identified quality and character of the area, rather than taking an opportunity to improve those features in line with Policy LP 1 of the Local Plan.

29. Therefore, the development of Plot A would detract from the quality and character of the area. It would not represent frontage development and would create development in-depth, which is also not a prevailing characteristic. The access to the extra-care communal facilities and GP Surgery would be from, effectively, a new private cul-de-sac, which does not form part of the wider character of development in Kingston Lane, other than to the south of Virginia Court at The Willow. However, in the case of The Willow the buildings are noticeably lower in height than those on Kingston Lane and thus have little presence in the Kingston Lane street scene.

30. While in absolute terms against Ordnance Datum the buildings would not be significantly higher than other buildings in the area, and in the case of the GP Surgery lower than Fullerton Court, they would have substantially greater apparent height and massing than the vast majority of other buildings in the area. This is due to a number of features. Firstly, the reduction in ground level, so that the lowest floor accommodation would be effectively one-storey below existing ground level, would mean that the full three, four or five storey height of the elevations would be readily appreciated in certain views. Secondly, the nature of the roofs with significantly lower pitches than others in the area facilitates a greater massing from the overall height of the building; the set-back of the upper storey only partially mitigates this due to the vertical rather than angled approach. Thirdly, there would be no reduction in height of the windows going further up the building, which can be a design technique to reduce apparent height and massing.

31. The appellants produced a Townscape Contextual Analysis Response citing various examples which they considered characteristic of the area. These

showed the use of dormers, set-backs and roofscape stepping. However, the majority of these examples fell outside Character Area 6 as identified in the VPG, and predominantly fell in 'Character Area 5: High Street (Teddington) Conservation Area'. The appellants did not explain, other than in proximity, why they considered these examples in a different Character Area were material. Given Character Area 5 has a completely different character to the area of the appeal site, being based on a traditional high street, I give these examples little weight.

32. In respect of Plot C the Council was concerned that the arched dormers in the mansard would emphasise the height of this building. However, this building would not relate to others in close proximity, and given the difference in building styles in the area, the hierarchy of window size on the uppermost floor and the concentration of twentieth century building in the immediate vicinity, as a single building the design would not be harmfully out of keeping with the area.

33. Currently it is possible to see across the appeal site from Udney Park Road to Kingston Lane, and vice versa, and from Cromwell Road to the north towards Fullerton Court and the properties facing Kingston Lane. The existing boundary treatments vary, but the majority are either railings or fencing, both approximately 1.8 m high. Looking through the railings this produces a wide spread of view and a sense of space.

34. At the Inquiry there was discussion about the need or otherwise to install acoustic screens around at least parts of the AGP and MUGA. For reasons I explore below I consider that they are required.

35. Further, the interior of both the AGP and the MUGA would represent enclosed land to which the public would not have a right of access. Consequently, the display of advertisements which are not readily visible from outside the enclosed land would not require express consent. They could not be required to be removed by a discontinuance notice under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended). The backs of any advertisements would be likely to block views through both the AGP and the MUGA. For reasons I will explore below, the display of these advertisements would be likely.

36. While theoretically possible to prevent the display of such advertisements by condition, in my view such a condition would not be reasonable. This would be because it would not meet the relevant tests in paragraph 55 of the Framework and would be contrary to the ethos behind the Planning Practice Guidance relating to the use of conditions to restrict permitted development[5] which indicates that such conditions may not pass the test of reasonableness or necessity.

37. From the northern part of Udney Park Road, the depth of public view would be truncated by approximately half across the current width of the site. Further, the end of the view would be of large buildings, and even when the intervening landscaping has matured, these would still have significant presence.

[5] See Reference ID: 21a-017-20190723

38. Equally, the oblique view from the northwest corner of the appeal site to the southeastern one and vice versa would be truncated, once it matures by the proposed 4 m high hedgerow to the north of the AGP, and in the shorter term by the AGP and MUGA and any acoustic screening or backs of advertisements. The site would effectively be divided into two halves (north and south) substantially reducing its openness and sense of space.

39. From the northern part of Kingston Lane public views across the appeal site would be harmfully interrupted by the buildings themselves and in the southern part by the AGP and any acoustic screening or backs of advertisements across approximately half the distance of the existing vista.

40. From Cromwell Road the current longer distance open views would be replaced by the view across the car park, the pavilion and the AGP with its screening and backs of advertisements, and separately by the MUGA in closer proximity.

41. These effects would be substantially harmful to the collegiate character of the area, reducing the sense of extensive space across the appeal site which forms an important part of the character of the area.

42. Replacing existing timber fencing with railings would open up some views to create a sense of space and reveal views which are currently obscured in some locations. However, these views would only be over relatively short distances to buildings, the AGP or landscaping. The opening of these views would not outweigh the substantial harm to the wider character and appearance of the area I have identified above.

43. Concerns were also expressed about the introduction of floodlighting into the area. Among the criteria set out in Policy LP 9 of the Local Plan on floodlighting is that the impact on local character will be taken into account. Currently the playing fields are lit, during the autumn to spring period, by mobile lights to provide training facilities. By their nature the effects change depending on where they are located and, when I saw them during the day, they were retracted so that the lights themselves were relatively small having little effect on the character and appearance of the area. I also heard that they were only extended and illuminated when training takes place, so are not lit for a long time.

44. The appellants provided a Lighting Impact Study showing existing and proposed lighting levels. Both the AGP and the MUGA would be illuminated by lighting columns in the corners and the AGP additionally by lighting at the sides in the centre of the length of the pitch. There would also be column lighting between the GP Surgery and the northern extra-care block and in the car park for the pavilion, and low level, in height, lighting within the central courtyard of Plot A, the areas in front of Plots B and C and their car park, and around the pavilion.

45. Even with the use of appropriate luminaires and cowling to minimise light spill leading to sky glow the presence of the high level lighting would be highly noticeable. High levels of water vapour in the atmosphere, through rain, fog or mist, would emphasise this through reflection and refraction increasing harm. The concentration of lighting, particularly for the AGP and MUGA would emphasise the presence of activities in these areas. The extended hours of use when compared to the current situation, which I will discuss below

principally in relation to sports provision, would also underscore this. The effect of the floodlights as proposed would have a harmful effect on local character.

46. The Council was also concerned that the proposal would have a harmful effect on the health and longevity of trees, particularly street trees along Cromwell Road, through works within the Root Protection Areas (RPAs). Four of the trees are covered by a Tree Preservation Order[6] (TPO). The protected trees had all been classified as Category B trees pursuant to BS5837:2012[7] in the Arboricultural Assessment & Method Statement submitted with the application and thus are of moderate quality with an estimated remaining life expectancy of at least 20 years. This classification also applied to two other potentially affected trees that are not protected by the TPO.

47. The Council's main concern related to whether the RPAs had been correctly described and thus whether the proposed works would unduly interfere with the roots. In each case the trees are within the footway and thus the rooting systems are likely to be constrained by the carriageway leading to asymmetry towards the appeal site. Having said that, the trees have each been pruned or pollarded, which would mean that the rooting system would be less extensive than had the trees not been pollarded or pruned over the years.

48. Although there are some inconsistencies with the information provided by the appellants, particularly to do with levels, given the areas which would be affected and the already constrained nature of the existing rooting systems, I am satisfied that technical solutions in the form of no-dig and appropriate surfacing materials could be delivered to ensure that the health and longevity of the affected trees would not be adversely affected and this could be secured by planning conditions.

49. However, and notwithstanding this, the proposal would be substantially harmful to the character and appearance of the area and would thus substantially reduce openness. It would therefore be contrary to Policies LP 1 and LP 9 of the Local Plan which requires development to be compatible with local character and take opportunities to improve the quality and character of spaces and the local area and as set out above. Finally, in this regard, it would be contrary to paragraph 127c of the Framework which indicates planning decisions should ensure that developments are sympathetic to local character and history.

Local Green Space and Other Open Land of Townscape Importance

50. The vast majority of the appeal site is covered by LGS and OOLTI designations. The only part of the appeal site that is not so covered is the area of the existing car park which is proposed for the extra-care accommodation of Plot C.

LGS

51. Policy LP 13 of the Local Plan indicates that LGS will be protected from inappropriate development that could cause harm to its qualities. The explanatory text states that in line with the Framework (paragraph 101) managing development within a Local Green Space should be consistent with

[6] Reference T0989 dated 19 September 2018
[7] Trees in relation to design, demolition and construction - Recommendations

policy for Green Belts. Development, which would cause harm to the qualities of the Local Green Space, will be considered inappropriate and will only be acceptable in very special circumstances where benefits can be demonstrated to significantly outweigh the harm.

52. It was agreed by the parties that the proposal would represent inappropriate development in the LGS and would adversely affect its openness. The appellants sought to characterise certain elements of the proposal as not inappropriate development and thus the harm from these should be given less weight, but it seems to me that this development needs to be considered as a whole. Equally, the principal elements that were considered by the appellants to be not inappropriate development, that is the provision of appropriate facilities for outdoor sport and outdoor recreation, would only be not inappropriate development if they preserve the openness of the LGS and do not conflict with the purposes of including land within it, which I conclude elsewhere they would not do this.

53. Further, the test is not whether the benefits of the proposal would go towards the special characteristics which led to the designation of the LGS in the first place. The test, as set out in paragraph 101 of the Framework is that, once designation has happened, the policies should be consistent with those for the Green Belt, albeit that to be not inappropriate development the proposal should not conflict with the purposes of including land within the LGS. The purpose of LGS is somewhat different to those of the Green Belt and is set out in paragraph 99 of the Framework. This is to protect green areas of particular importance to the community. In that the proposal would result in the significant loss of part of a green area of particular importance to the community the proposal would not comply with the purpose of the LGS.

54. As such, the proposal would represent inappropriate development and in line with paragraphs 143 and 144 of the Framework this is, by definition, harmful to the LGS and should not be allowed except in very special circumstances and substantial weight should be given to any harm to the LGS.

OOLTI

55. Policy LP 14 of the Local Plan indicates that land designated as OOLTI will be protected in open use and enhanced where possible. The policy recognises that there may be exceptional cases where appropriate development is acceptable and sets criteria to be taken into account when assessing whether development is appropriate. These are that it must be linked to the functional use of the OOLTI, or it can only be a replacement of, or minor extension to, existing built facilities, and it does not harm the character or openness of the open land.

56. The way the policy is drafted means that either of the first two criteria needs to be met, and assuming that one or the other is complied with, so must the third. In this case the extra-care accommodation and GP Surgery are not linked to the functional use of the OOLTI. The replacement of the existing changing rooms would pass the second criterion so this needs to be considered in relation to the character or openness of the open land. I have concluded above that the proposal would be harmful to character and openness.

57. The appellants sought to characterise this interpretation as resulting in a binary application of the policy with it failing or passing, and not recognising the realities. However, this binary approach would appear to be the correct interpretation, but it is then a judgement as to the weight that should be given to the harm due to the degree of adverse effect. I will consider that below, particularly in considering whether there may be an exceptional case within the terms of the policy.

Openness

58. Turning next to "openness", all parties agreed that this had the same meaning as in the Green Belt and there was no difference in meaning between the effects on LGS or OOLTI. The Courts[8] in relation to Green Belt have confirmed that openness is open textured and a number of factors are capable of being relevant.

59. The appellants sought to characterise that 'openness' is not an essential characteristic of LGS as it is with Green Belt[9] and thus had a different role. However, if policies for managing development in an LGS are to be consistent with those for the Green Belt, then it must be part of the consideration. In this case, of course, there is no dispute that OOLTI must be open since that is part of its title and the proposal should be considered against Policy LP 14 of the Local Plan.

60. In spatial terms there would be new buildings on a significant area of the site, materially greater than at present and for reasons I will explore below, the welded mesh fencing around the AGP and MUGA would be likely to be at least partially covered so that any transparent nature would be materially reduced. Further the open car parking area for the sports facilities and for Plots B and C would be on LGS and OOLTI when the current car park area is not covered by those designations, and parking upon them would adversely affect the spatial aspect of openness.

61. Insofar as openness has a visual component, I have considered that above and have concluded the proposal would be harmful to that.

62. The proposal would therefore be substantially harmful to openness in both spatial and visual terms. In the terms of the LGS and OOLTI designations the proposal would be contrary to Policies LP 13 and LP 14 of the Local Plan and would not comply with the exceptional circumstances test within the terms of the latter policy as it would harm the character and openness of the open land. It would also be contrary to Policy 7.18 of the London Plan which states the loss of protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area. It would also be contrary to Policy G4 of the emerging London Plan which indicates that development proposals should not result in the loss of protected open space.

[8] R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3 endorsing Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466.
[9] See paragraph 133 of the Framework.

Living conditions

Noise

63. SE produced evidence on the effect of noise from sports activities on the appeal site. Its concerns principally related to the hours in which activities would take place on the facilities and mitigation that may be required. The evidence dealt principally with the extent to which noise from activities on the AGP and MUGA would potentially adversely affect the living conditions of those in proximity to those facilities. In particular they would be those living in the southwestern block of Plot A, the eastern side of Plot C, 83 and 85 Udney Park Road and along the southern side of Cromwell Road opposite the proposed MUGA. This would be a mixture of existing and proposed residents.

64. There is a preliminary point to deal with as whether the noise from the proposed facilities would represent a 'new' source or an amendment to an existing source due to the existing playing field use of the appeal site. It seems to me that due to the magnitude of the scale of the proposed increase in sports use, along with it being from fixed locations rather than moving around the site, the activities should be considered to be a new source. Further, the existing tennis courts would be relocated from the west to southeastern corner of the site and used more extensively as a MUGA and activities there would affect different, or 'new', occupiers.

65. During the course of the Inquiry the appellants accepted that use of the AGP and MUGA should be restricted to 2200 hours. Therefore, any effects would be to the daytime, which includes the evening, rather than at night. SE argued that, if activity until this hour was to be permitted, there would need to be mitigation, principally in the form of an acoustic barrier around the sensitive sides of the AGP and MUGA so as to reduce effects. However, SE was not satisfied that this would completely mitigate the effects for the upper floor flats since there would be a direct 'line of sight' from the noise source to the relevant windows and balconies which any acoustic barrier would not 'interrupt'.

66. A suggestion seemed to be made by the appellants that if I concluded that the proposal could only be made acceptable by the removal of openable windows and balconies and the use of artificial ventilation then this could be dealt with by condition and a redesign. I do not think this would be appropriate for two reasons. Firstly, the proposal is a full application and such a change would not be minor, particularly as the area behind the parapet would be used as a balcony for the top floor flat. Secondly, being required to not have opening windows for living rooms on a large new build scheme in a location such as this can only be considered to be a failure in design, or poor design, since this would not give rise to a good standard of amenity. Poor design should be refused in line with paragraph 130 of the Framework.

67. SE has published a Technical Guidance Note "Artificial Grass Pitch (AGP) Acoustics – Planning Implications", which is derived from World Health Organisation (WHO) "Guidelines for Community Noise". For outdoor living areas serious annoyance can occur at 55 dB $L_{Aeq(T)}$ and moderate annoyance at 50 dB $L_{Aeq(T)}$. I consider these to be appropriate standards given the

reference to the WHO in the Explanatory Note to the Noise Policy Statement for England and to these criteria being cited in BS 8322:2014[10].

68. The appellants used noise levels from a Teddington Athletic Football Club training session, while SE used more generic data from existing facilities unconnected with the proposal. The nature of noise is that it will inevitably vary according to the precise activity taking place and I consider that more generic data should be preferred as it avoids any taint of potential, even unconscious, bias, even though SE was careful not to criticise the accuracy of the appellants' data.

69. Another difference between the two models was the appellants did not include reflected noise from existing buildings. I consider that this should be included, particularly in peak noise levels as ball strike can lead to specific echoes. This leads to slightly higher results.

70. Having said that, the results from the two models are very similar in respect of the AGP. The difference between SE and the appellants was the degree of significance of the agreed slight exceedance of the SE Guidance Note criteria for existing dwellings; this is a subjective judgement.

71. The appellants' report predicted a 56 dB $L_{Aeq,\ 1\ hour}$ for the balconies of the southwestern block of Plot A, and 53-54 dB $L_{Aeq,\ 1\ hour}$ at the gardens of the existing residential properties in Udney Park Road. The appellants sought to characterise the latter as only a slight exceedance of the 50 dB criterion on the basis that it requires a 3 dB increase in noise levels for it to be noticeable. I do not think this approach to be appropriate as it presupposes that 50 dB is acceptable in the first place. Rather this is the threshold at which moderate annoyance can start, which must mean that to some there would already be some degree of annoyance, and an additional 3 dB would only be a worse situation.

72. As I have identified above the AGP should be considered to be a new noise source and I therefore conclude that the noise level should be considered significant and would be harmful. Mitigation in the form of acoustic barriers would therefore be necessary and should be secured by condition. I have discussed the effect of these barriers on the appearance of the area above. However, even then, the height of the southwest block of Plot A would be such that acoustic barriers would not be effective in relation to the upper floor balconies and thus potentially lead to complaints to the Council's Environmental Health department which could lead to operating hours being curtailed under complementary legislation. An alternative, as discussed below, would be to restrict the use so that it would be required to cease earlier in the evening.

73. In respect of the amenity area on the east side of Plot C acoustic barriers would also be needed, but depending on the precise height of the acoustic barrier above ground level there could be the same issue where a balcony is proposed. There would also be harmful effects in the rear gardens of 83 and 85 Udney Park Road, where a significant moderate increase on the existing situation would occur.

[10] Guidance on sound insulation and noise reduction in buildings.

74. The effects from the use of the MUGA would be on the existing dwellings on the south side of Cromwell Road with different noise levels predicted. For the reasons given above I prefer the SE modelled results. This would result in predicted noise levels of 52 dB $L_{Aeq,\ 1\ hour}$, which would be in excess of the SE and WHO guidance, and would be a significant moderate increase on the existing situation in the 2100 hours to 2200 hours period. Again, this should be considered a new noise source and complaints to the Council's Environmental Health department could also lead to operating hours being curtailed or the hours of use restricted to earlier in the evening.

75. In relation to peak noise levels there is a greater difference between the parties. Examples of peak noise occurrences being from shouting, whistles and balls bouncing or hitting fences. The effects from whistles and ball impacts in particular would, depending on the precise details, have significant effects and also could lead to the hours of use being curtailed or the hours restricted.

38 Kingston Lane

76. This property is located immediately to the north of the northeastern corner of the appeal site and north of the proposed GP Surgery building. It consists of a three storey dwelling with the uppermost storey being rooms in the roof space. There is an outbuilding level with the front of the house close to the boundary with the appeal site. There have recently been works to the property to the rear including a single storey extension at the level of the garden which is approximately half a storey below the ground floor accommodation. The Council's concerns, as well as those from the occupiers who addressed the Inquiry, relate to potential overbearing effect, sense of enclosure and perceived loss of privacy.

77. The two storey eastern wing of the GP Surgery would extend to the depth of the dwelling, the three storey element would face the recent garden extension and the remainder of the garden. Although further away from the joint boundary than the height of the building, the scale of the overall building, including its length, would result in an overbearing effect leading to a harmful sense of enclosure. This is exacerbated by the size and number of windows in the proposed north elevation.

78. Furthermore, although the appellants agreed that the windows in the north elevation of the GP Surgery should be obscure glazed and non-opening below 1.7 m above floor level to avoid direct overlooking, the extent, size and number of windows would result in a perceived loss of privacy. The movement of people behind these windows would be unmistakable, particularly when lights were on in the building, which could be open until 2200 hours, and give the occupants of No 38 the perception of being overlooked. While there is some existing overlooking from the rear of the adjoining dwelling to the north to the rear garden of No 38 and from those using the playing field, the number and scale of windows in the proposed north elevation of the GP Surgery would be such that this would be of a magnitude more harmful to the living conditions of the occupiers of No 38 than the current situation.

79. The appellants looked at other examples where they considered existing development resulted in similar, or worse, levels of overbearing effect and loss of privacy. However, these examples are all in a different Character Area. To my mind there will be different expectations of the effects of adjoining

development, including in overbearing effect and perception of overlooking, in different areas depending on the character of those areas. What may be considered acceptable in a tightly grained area may not necessarily be acceptable where there is more space between buildings. Given the existing context for 38 Kingston Lane, I consider that these examples in a denser area do not show that the relationship proposed here would be acceptable.

83 Udney Park Road

80. This property is a bungalow which faces Udney Park Road, with an attached single garage on its northwestern corner and a single storey extension on its northeastern corner. It has a low pitched roof. At its closest proximity Plot C would be 6.9 m away from the main side, northern wall. The Council's concern relates to overbearing effect.

81. The side elevation of Plot C facing No 83 would not have any dormers in it, and given the set back of the roof form and the orientation to the north of No 83, I am satisfied that there would be sufficient separation between the two buildings for the proposal not to result in an overbearing effect for the occupiers of No 83.

Conclusions on effect on living conditions

82. To sum up in respect of noise effects, the proposal would be likely to result in harm to the living conditions of the occupiers of neighbouring properties, both existing and proposed. Mitigation in the form of acoustic barriers, which should be provided, may reduce these effects for some occupiers, but this would not be possible for all. To avoid adverse effects, the end of the operational hours should be brought forward to 2100 hours. In my view this would avoid harm to the living conditions of neighbouring occupiers, both existing and proposed. This will be factored into other aspects of this decision.

83. To restrict the hours to 2100 hours would be in accordance with Policy LP 10 of the Local Plan which indicates that it should be ensured that the environmental impacts of development proposals, including noise, do not lead to detrimental effects on health and amenity for existing and new users or occupiers of the development site or surrounding land. It would also comply with Policy 7.15 of the London Plan which states that development proposals should avoid significant adverse noise impacts on health and quality of life as a result of new development, and to paragraph 170 of the Framework, which states that planning decisions should prevent new development from contributing to unacceptable levels of noise pollution. Further, it would accord with Policies D13 and D14 of the emerging London Plan which set out the Agent of Change principle and state that proposals should manage noise by avoiding significant adverse noise impacts on health and quality of life.

84. Consequently, with this restriction the noise effects on the living conditions of occupiers of adjoining properties both existing and proposed would be acceptable as would be the effect on the occupiers of 83 Udney Park Road. However, the proposal would give rise to harmful living conditions for the occupiers of 38 Kingston Lane from an overbearing effect leading to a sense of enclosure and from a perception of loss of privacy. This should be given significant weight. This would be contrary to Policy LP 8 of the Local Plan which states that all development will be required to protect the amenity and living conditions for occupants of existing, adjoining and neighbouring

properties. It would also be contrary to paragraph 127f of the Framework which states that planning decisions should create places with a high standard of amenity for existing and future users.

Sports provision

85. The whole of the appeal site represents a playing field. Policy LP 31 of the Local Plan indicates that playing fields will be protected and where possible enhanced. Policy 3.19B of the London Plan states that development proposals that increase or enhance the provision of sports and recreation facilities will be supported. It continues that proposals that result in a net loss of sports and recreation facilities, including playing fields, should be resisted. Policy S5 of the emerging London Plan states that existing sports and recreation land (including playing fields) and facilities for sports and recreation should be retained unless:

    a) an assessment has been undertaken that clearly shows the facilities to be surplus to requirements at the local or sub-regional level, with a borough's assessment of need for sports and recreation facilities informing this assessment; or

    b) the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

    c) the proposal is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

86. The explanatory text to Policy LP 31 of the Local Plan states that proposals that could affect the loss of quality of a playing field will be assessed against the Borough-wide Playing Pitch Strategy, the criteria in the Framework as well as the SE's Playing Fields Policy (the SE Policy) on planning applications for development on playing fields. It continues that the Council will resist the loss of a playing field unless the proposal meets the exceptional circumstances test as set out in the SE Policy, and there is also an expectation that overall the development will deliver an increase and enhancement of sports facilities, provision of wider public benefits, including public access, and therefore enable and promote physical activity and encouraging healthier lifestyles and habits for all ages.

87. The Framework, in paragraph 97, states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

    a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements, or

    b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location, or

    c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

88. The SE Policy was last updated in August 2018, said to be in response to the updating of the Framework the previous month[11]. It sets an aim in working with the planning system to help provide places that maximise opportunities for sport and physical activity for all, enabling the already active to be more so and the inactive to become active. This aim is supported by three objectives: to protect the right opportunities in the right places; to enhance opportunities through better use of existing provision; and to provide new opportunities to meet the needs of current and future generations.

89. The SE Policy is to oppose the granting of planning permission for any development which would lead to the loss of, or would prejudice the use of:

    a) all or any part of a playing field, or

    b) land which has been used as a playing field and remains undeveloped, or

    c) land allocated for use as a playing field,

    unless, in the judgement of SE, the development as a whole meets with one or more of five specific exceptions.

90. There was discussion at the Inquiry as to how consistent the SE exceptions were to the national planning policy in the Framework and it makes sense to consider that first.

91. There was general agreement that paragraph 97a of the Framework related to Exception 1, namely that a robust and up-to-date assessment has demonstrated, to the satisfaction of SE, that there is an excess of playing field provision in the catchment, which will remain the case should the development be permitted, and the site has no special significance to the interests of sport.

92. Similarly, there was agreement that paragraph 97b of the Framework related to Exception 4, that is the area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

    a) of equivalent or better quality, and

    b) of equivalent or greater quantity, and

    c) in a suitable location, and

    d) subject to equivalent or better accessibility and management arrangements.

93. Exception 5, which is that the proposed development is for an indoor or outdoor facility for sport, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss, or prejudice to the use, of the area of playing field was agreed to relate to paragraph 97c[12].

[11] There were no material changes in this topic area between the July 2018 and February 2019 versions of the Framework.

[12] For completeness, there was no case put by the appellants that the proposal complied with Exceptions 2 and 3 of the SE Policy, namely the proposed development is for ancillary facilities supporting the principal use of the site as a playing field, and does not affect the quantity or quality of playing pitches or otherwise adversely affect their use, and the proposed development affects only land incapable of forming part of a playing pitch, subject to various criteria.

94. The appellants consider that SE Policy is not totally consistent with the Framework and therefore should be given lesser weight. This is because it considers the response to the given question "Do proposals for artificial grass pitches and multi-use games area meet with Exception 5" set out in the SE Policy, not to be consistent with the Framework in respect of the consideration of quality.

95. The SE Policy response states: "[AGPs] or [MUGAs] may be able to sustain more intensive use than natural grass playing pitches. However, they will not be preferred in relation to Exception 5 purely for this reason. This is because a proposed [AGP] or [MUGA] may be unsuitable to accommodate some grass pitch sports or the standards of play or grades of competition required for some sports. Also, they may not be sufficiently flexible to readily accommodate changes in demand for playing pitch types and sizes compared to the current area of playing field".

96. The SE Policy continues that SE "will therefore assess the benefit to sport of a proposal, alongside the impact on those sports that need natural grass pitches, when assessing whether proposals for [AGPs] or [MUGAs] meet with this exception. This assessment will include reviewing local information and advice provided by the national governing bodies of sport".

97. It seems to me that there could be some degree of overlap between paragraph 97b/Exception 4 and paragraph 97c/Exception 5 in the scenario of this case. The provision of an AGP or MUGA will reduce the area of the playing field, but it may be that they make a better quality of provision. This can be resolved through a value judgement as to whether the benefits of an AGP and MUGA clearly outweigh the loss of part of a playing field based on the nature of the need for sports pitches in the area, including the balance between the need for games and training, and the effect of the location of the AGP or MUGA on the flexibility that could otherwise be delivered on the playing field.

98. The need for pitches for games and areas for training has been assessed by the Council in its Playing Pitch Strategy (the PPS) and Playing Pitch Assessment (the PPA) which were last updated in March 2018[13]. The Trust, in particular, sought to show that the PPS and the PPA were slightly out-of-date in the light of recent data on use and demand which showed an increase. This additional data is material but I consider that the PPS/PPA data should be given greatest weight as it provides a holistic assessment of all sports and is specifically referred to in the Local Plan.

99. In looking at the data the appellants focussed on the Hampton and Teddington sub-area specifically, but I consider that the assessment should be undertaken on a Borough-wide basis. This is because that is the area upon which data was collected and allows for some local evening-out of capacity with need while minimising the need to travel in line with Government policy. However, demand which is currently met by travelling to facilities outside the Borough also needs to be considered. This is because making provision closer to need will assist in minimising the need to travel going forward.

100. While the PPS/PPA identifies the appeal site has having uncertainty over its future, the appeal site does provide the opportunity for use and has been

[13] It was explained that in some areas these two documents were combined and known as the Playing Pitch Strategy. For the purposes of this appeal I will consider the two documents together.

used since the appellants purchased the site, although I was told that the teams playing there had been given notice to quit. While the planning system cannot require land to be used in a certain way, it can ensure that land is not used in a way that would prevent its future use for sports.

101. There was a suggestion from the appellants that the need for sports should be considered on a sport-by-sport basis. However, I do not consider this to be appropriate. The point of playing fields is to allow flexibility in provision both by sports, nature of those sports (for example, by age or numbers in a team) and layout on an overall site. Taken together there is no evidence to show that the appeal site is surplus to requirements. Approximately half of the playing field area would be lost to non-sports development. While there are disputes of the extent of the sports need, these related principally to the geographic area which I have dealt with above. Therefore, paragraph 97a/Exception 1 would not be complied with.

102. As regards football, the PPS/PPA identified a shortfall overall for adult pitches match sessions and a very large shortfall for youth 11v11 pitches. While there were slight oversupplies for younger groups these do not affect the overall conclusion of there being a shortfall. For rugby union not only was there a shortfall of match equivalent sessions over the week, but there was a significant element of 'overplay' (or excessive use of a pitch). For cricket the position set out in the PPS/PPA is that there was a surplus of provision for senior cricket but, given that this is considered over a whole season and, at peak hours, the surplus is marginal, this is not significant. The PPS/PPA identifies that need for pitches will increase in the period to 2033 for all main sports.

103. It was not in dispute that there is a shortfall in provision of AGP pitches. These are particularly needed for training purposes rather than matches, with some witnesses making it clear that they were not preferred for matches, although they could be so used. It is also clear that there is a significant need for floodlit training facilities, since most training takes place in the evenings in the autumn to spring period. This had been exacerbated by the recent decision of the Royal Parks to prevent floodlighting on Bushy Park on ecological grounds where a number of teams represented in the Community Interest Company, being one of the appellants, had previously trained.

104. I heard evidence from the England and Wales Cricket Board that due to the success of both the women's and men's elite national teams there had been a material increase in demand in recent times. I also fully appreciate the need for a pyramid of provision to allow for the elite players of the future to work their way up the system.

105. Set against this is the evidence of the appellants that since they had owned the site no local cricket club had expressed any desire to play on the site. This may be the case, but I think that this is at least partially a function of the uncertainty over the long-term future of the site and with clubs not wanting to put down roots only to have to move, and of the unfortunate division in the local community between those who were willing to work with the site owners and those who were not.

106. It is quite clear that the popularity of some sports, the notable exceptions being football and, in this area, rugby union, changes over time. The advantage of a playing field is that it allows the necessary pitches to be laid

out as that popularity changes. It also allows the orientations and locations to be altered to ensure that areas of pitches, particularly goal mouths, do not get overly worn preventing play.

107. The layout of the proposal would substantially restrict the options available to re-provision grass pitches on the site. Effectively there would be a single adult grass football or rugby union pitch to the east of the AGP. While this could be divided into smaller pitches, and there was some suggestion that a mix of artificial and natural grass could be installed to increase the potential for use around goal mouths, this would not provide the opportunities for substantive reorganisation in the future across the whole playing field should needs change. This is, of course, currently available. Rather the proposed position of the AGP would prevent flexibility of use across the remaining playing field. This is particularly the case when around half of the playing field would be lost when there would otherwise be a significantly greater scope for varying the layout and for use by different sports.

108. Turning next to the benefits of an AGP it is quite clear that the proposal would allow a substantial increase in use when compared to grass. Grass pitches can generally be used for 7 hours a week. Although the appellants initially suggested that an AGP could theoretically be used for up to 70 hours a week, it was agreed that a more likely figure was 44 hours. It could also be used in different configurations. However, as I have found above, this extent of additional hours is not likely to be sustainable given the relationship to the proposed extra-care accommodation and neighbouring properties and would be less. However, the increase in hours of use, particularly floodlit and for training, which could reduce 'overplay' elsewhere, should be given significant weight in undertaking the balance in relation to sports provision.

109. The MUGA would also provide additional facilities. It would, predominantly, be used for tennis (to replace the existing facility) and for netball and basketball. It could also be used for sports training. The potential hours of use were not specified but are likely to be similar to the use of the AGP. Given it is principally a replacement facility this can only be given moderate weight from the provision of floodlighting and thus extended hours.

110. The provision of two cricket nets would also make up for some of the loss. However, the provision of these nets unrelated to a team based at the appeal site and playing matches there would be, at best, only a marginal provision and I give this benefit very little weight.

111. The other benefits identified by the appellant, such as the provision of the modern changing rooms (since it would be at least partially a replacement facility), the pétanque court, outdoor gym and fitness trail are more general benefits of the scheme than sporting benefits and I will consider them below.

112. The appellants indicated that to bring the grass pitches up to modern standard would need significant investment. I will consider the question of this and alternatives and the weight that should be given to them later in this decision.

113. Another matter that needs to be considered is the value to the local community of the proposed sports provision set against the previous use. The site was until recently owned and used by Imperial College London (ICL). It was disposed as ICL wished to consolidate its sporting provision elsewhere. As

well as being used for sport by the students the site was let out to local sports clubs and a local school for sporting purposes.

114. This provision was on a paid-for basis, as the proposed use would be, and provided benefits to the community. While the site was not run for the benefit of the community, as would be the purpose of the Community Interest Company, it provided a facility to the local community. In general terms the planning system is 'blind' to who operates a facility, what is material is the extent that the use could take place. I have discussed this above and therefore do not give any additional weight to this consideration.

115. Taking all of this together I conclude that the proposal would not protect the playing field in an area where there is shown to be a deficit. There would be a quantitative loss of playing fields area, and while there would be qualitative benefits from the provision of the AGP and MUGA, these are nowhere near sufficient to outweigh the overall loss of the area of the playing field and the flexibility of provision that can currently be delivered. I therefore conclude that the proposal would not comply with the exceptions set out in paragraphs 97b and 97c of the Framework or Exceptions 4 and 5 in the SE Policy. This harm should be given substantial weight. The proposal would be contrary to Policy LP31 of the Local Plan, Policy 3.19 of the London Plan, Policy S5 of the emerging London Plan, paragraph 97 of the Framework and the SE Policy.

Ecology

116. There is no dispute that the appeal site is important for ecology. The site is used for foraging and commuting by at least 8 species of bats and there is a roost in the pavilion and other roosts nearby. It forms part of a network, or mosaic, of open spaces in the general area, including the River Thames corridor and Bushy Park, used by bats. There are also concerns that the site provides a habitat for stag beetles and for Great Crested Newts.

117. There was some discussion at the Inquiry as to the importance of the site and whether it should be subject to some ecological designation or considered as if it had such a designation. It is not the purpose of a Section 78 planning appeal to make such a designation. I therefore will consider the appeal on the basis of the current non-designated status of the site but in light of the information as to its ecological importance provided in evidence.

118. The Trust raised concerns that the lack of sufficient surveys earlier in the process meant that the scheme had not been evolved in design to take account of the ecological concerns. This meant that the biodiversity mitigation hierarchy of avoidance, mitigation, or (as a last resort) compensation, set out in paragraph 175a of the Framework, had not been followed. This may or may not be the case, but for decision making it is necessary to judge the scheme as I have it in front of me, not whether an enhanced ecological response could have been delivered by an alternative.

119. The Trust considered that there was insufficient information from the surveys to allow for a proper consideration of the effects on these protected species, based principally on a lack of information as to content or methodology.

120. In the form that the application was originally submitted I have considerable sympathy with the position of the Trust. However, further survey work was undertaken in 2018 and 2019 and, in respect of bats, there is now sufficient

information to allow me to come to a reasoned conclusion as to the effects of the development.

121. The survey information shows that the majority of bat activity is recorded at the boundary edges with a particular emphasis in the northeastern corner and along the eastern boundary, and along the western boundary with Udney Park Road. There was also activity to the north of the existing pavilion building, which may be related to the roost in the pavilion.

122. The appellants sought to retain or provide corridors along the northern and eastern boundaries of the site. There would also be a potential corridor through the new open space area and down the western side of the site between the AGP and the backs of the houses in Udney Park Road. Finally, it was also indicated that there would be a potential bat corridor across the site between the northern end of the AGP and grass pitch and the southern end of Plot A.

123. The Council considered that the presence of light from windows in Plot A and from the floodlights to the AGP in particular would not be conducive to the maintenance of populations, making reference that bat species are particularly light sensitive. It made reference to the Bat Conservation Trust Guidance Note 'Bats and artificial lighting in the UK'[14] (the Bat Guidelines). While this is only guidance and needs to be interpreted within the context of the existing situation, it is sectoral information and I consider that it provides a proper starting point for consideration of the proposal.

124. Street lighting columns on Kingston Lane in the vicinity of the appeal site are located on the eastern side of the carriageway; that is on the opposite side to the appeal site. This will limit their effect on the appeal site. The main elevations of the two nearest blocks of Plot A would be approximately 12 m from the edge of the site, although the balconies extend by just over 1 m into this area. Distances are, of course, not exact, because the western edge of Kingston Lane is a verge and thus extends the corridor width and the corridor includes trees along the boundary which vary in size and are likely to grow.

125. The evidence at the Inquiry is that different species of bats travel at different heights and speeds, with some feeding at height and others dropping close to ground level. Ensuring minimal (less than 1 lux), or preferably nil, illumination levels is the best way of ensuring population levels are protected. As the Bat Guidance makes clear artificial light is thought to increase the chances of predation, so bats modify their behaviour to respond to this threat. The Bat Guidance recommends a zonal approach from the key bat habitat with the dimensions of the zones being determined by the value of that habitat to bats. Given the results of the surveys I consider that this northeastern section of the appeal site is of high importance and thus requires particular attention.

126. External lighting to provide access at the southern end of Plot A would be low-level bollard lighting and I am satisfied that using appropriate luminaires would ensure that this would not adversely affect bat populations in this corridor. However, the area between the two northern blocks, that is the main communal facilities and the GP Surgery, would have greater illumination levels at higher levels extending into the corridor and this would be harmful.

[14] Guidance Note 08/18

127. Another area of concern relates to light from the various flats and from the GP Surgery into this corridor. The Bat Guidance emphasises the use of good design to minimise light spill on to key habitats and features. To that end the appellants sought to show that the use of specific luminaires inside the buildings and the potential for specialised glass would mean that there would be a dark corridor along the eastern boundary of the site varying between 7.35 m and 20.7 m. There was also a suggestion that the balconies could be omitted, but, for the same reasons I have rejected this in relation to noise from the AGP, I consider that this would not be appropriate.

128. The relevant drawing indicates that the GP Surgery is shut at night, in this context between dusk and dawn. However, this would not necessarily be the case particularly as the NHS has looked to extend GP Surgery hours. Part of the ground floor level would be fully glazed for the pharmacy and there would be treatment rooms at first floor. This would result in light spill.

129. While the use of designed lighting within the extra-care accommodation and around the buildings of Plot A would be a positive feature, I consider that it is unlikely to be sufficiently effective. It would not be reasonable to restrict the use of the balconies, and seeking to prevent users from bringing lights out on to them would be unenforceable. I therefore conclude that there would be harm to bat populations along this section of the existing corridor.

130. I will explore the two proposed corridors around the AGP next, but it is first necessary to explore the hours when the floodlights would be first turned on each evening. It was suggested by the appellants that this would only be once the sun has set, but I do not think this is realistic. On gloomy days it is likely that the floodlights would be turned on earlier than this to facilitate play. The alternative, unenforceable, scenario of ceasing play until sunset, when lights can be turned on, is unrealistic. While bats are less likely to go out on gloomy days when there are often lower temperatures, and thus less food, there is likely to be some overlap. I therefore conclude that the times when both bats are likely to be active and the floodlights on is probably considerably greater than suggested by the appellants, leading to additional harm to bat populations.

131. As with the effect on the character and appearance of the area, the effect of high levels of water vapour in the atmosphere, through rain, fog or mist has not been explored. Even though the times when bats are active and levels of water vapour high may be limited the effect of reflection and refraction are also likely to lead to harm to bats.

132. As set out above, the appellants are suggesting that there would be a movement corridor across the site between the south of Plot A and the north of the grass pitch and the AGP. I consider that this is not likely to be effective for the following reasons. The proposed gap between the southwestern block of Plot A and the fence of the AGP is approximately 10m wide. As with the eastern boundary there are balconies extending into this area, and the equilux drawing in the Lighting Impact Study shows levels of 6.0 lux at 4 m above ground level at the edge of the balconies. The floodlighting columns are shown to be some 15 m above ground level, and while there would be expected to be some direction to the lighting spread, this would mean that this corridor would not be dark and thus provide a route in which bats would thrive. Rather, bats, being sensitive to light, would be likely to avoid it.

133. The proposed corridor to the west of the AGP would also be affected by the proposed floodlighting. This area is particularly important because of the bat roosts at 85 Udney Park Road and the pavilion. Here the dark corridor would include the rear gardens to the properties in Udney Park Road, but there would still be a narrow pinch point which means that bats would be adversely affected and less likely to use this route.

134. The appellants emphasised that the site is currently floodlit to some extent through the use of the mobile lights, which are less directed and do not have cowls. Such lights could have a harmful effect on bats. However, I was not given details of the current hours when this lighting was used. Given the whole premise of the appellants' case is that the hours of use would be materially increased, it is axiomatic, therefore, that lighting would be materially more than at present. Also, the number of lights I saw on site is such that at present there are likely to be significant dark areas through and around the site between the lit areas which the bats could use.

135. It is not clear what works would be required to convert the existing pavilion building to extra-care accommodation. However, I am satisfied that should works be necessary they would be proportionate and, subject to European Protected Species licensing, of themselves unlikely to be harmful to protected species.

136. The provision of the open space in the northwestern and southeastern corners together with the green roofs and tree and hedgerow planting would provide benefits. This would include additional habitat for the invertebrates on which bats feed particularly around the ponds. They should be considered as mitigation in the ecological hierarchy within the overall consideration of the effect on ecology. However, the ponds could suffer from light spill from the MUGA or, to a lesser extent, windows in Fullerton Court which may reduce their effectiveness for mitigation. There would also be a potential mis-match between the use of the proposed open space for habitat and its function for informal recreation. The benefit of the mitigation habitat would not outweigh the other harms that I have identified by some degrees of magnitude. The proposal would, therefore, reduce the effectiveness of the site in its contribution to connectivity of the wider mosaic of open spaces in the area and harm bat populations.

137. There is concern that there was insufficient information to allow for a proper assessment of the effects of the proposal on stag beetles. No report to date has analysed the potential for existing tree stumps in the area to act as a habitat for this species. However, given that the stumps in question are off-site I am satisfied that looking at the evidence it is unlikely that the proposed scheme would have a detrimental effect on stag beetles.

138. In respect of Great Crested Newts the issue is that the reports have not identified ponds in the area which may host this species. However, the lack of existing ponds on site and the proposed provision of two new ponds on site, means that, provided sufficient safeguards are put in place during construction, I am satisfied that there would be adequate protections for this species.

139. Overall, the proposal would be significantly harmful to protected species, bats. As such it would be contrary to Policies LP 12 and LP 15 of the Local Plan which seek to protect Green Infrastructure and to protect and enhance

biodiversity including the connectivity between habitats. It would be contrary to Policy 7.19 of the London Plan which indicates that development proposals, wherever possible, should make a positive contribution to the protection and enhancement of biodiversity and resisted where they would have a significant adverse effect on the population or conservation status of a protected species. It would be contrary to Policy G6 of the emerging London Plan which states that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain. The proposal would fail to meet the biodiversity hierarchy set out in paragraph 175 of the Framework in that it would significantly harm biodiversity and those effects would not be adequately mitigated or compensated for. As such there would be no net gain for biodiversity as required in paragraph 170 of the Framework.

Extra-care provision and affordable housing

140. I heard various different opinions as to how the extra-care provision should be considered, particularly whether it would fall within Class C2 or Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), and whether all the extra-care accommodation should be considered on the same basis due to the different locations of the units around the site and proximity to the communal facilities.

141. The main reason for the dispute, principally between the appellants and the Council, related to how the affordable housing provision should be considered. This is because they disputed whether the extra-care accommodation should be considered to be "housing" for the purposes of Policy LP 36 of the Local Plan which deals with affordable housing.

142. The emerging London Plan makes clear in Policy H13 that specialist older persons housing provision should deliver affordable housing, and it is also clear that this does not differentiate between Classes C2 and C3 provided it meets various criteria set out in the explanatory text.

143. Paragraph 4.13.6 of the explanatory text is relevant to the circumstances of this appeal. It makes clear that affordable housing should be delivered where the specialist older persons' housing has various attributes. Firstly, where care is provided or available where there is a separate contract/agreement for care and/or a choice of care provider. The nature of the accommodation here would be on a shared-ownership basis. As it is a requirement of occupation to receive care, I consider that this criterion is met whether care is provided on a single contract or not, since otherwise an artifice could easily be constructed to combine the rental and care elements. In any event, the 'care' element is to be provided through a service charge separate and additional to the rental element. Secondly, the housing would be on long lease or freehold. Thirdly, that an older persons' age restriction would be met and, finally, likely Care Quality Commission regulated activity would occur. I therefore conclude that the proposal would meet all these criteria.

144. This policy and its explanatory text were amended in the Intention to Publish version of the emerging London Plan in response to the Examining Panel's Report. The appellants argued that until the plan had actually been published it should be given reduced weight as it was possibly subject to change and advised that there had been representations to the Secretary of State on this issue. However, I note the Secretary of State has not directed any change to

this policy or explanatory text. I therefore conclude that this matter has now been effectively resolved.

145. In light of this, I consider that this resolution is now a material consideration of such weight that it indicates a different conclusion to following the policies of the development plan in this regard. It is therefore not necessary for me to decide whether the proposal would fall in Class C2 or Class C3. In accordance with Policy H13 of the emerging London Plan the proposal should seek to deliver affordable housing.

146. It was agreed that the scheme would deliver 100% shared-ownership affordable housing within the definition of affordable housing in the Glossary to the Framework. The issue being the weight that should be given to this. This needs to be considered against Policy LP 36 of the Local Plan. This expects that 50% of the housing should be affordable, but within this 40% should be for rent. In other words, there should be an 80:20 tenure split between affordable rent and shared ownership; this would not be met. Policy LP 36 makes clear that the precise split can be subject to negotiation based, principally, on viability, but also on the overall mix of uses and other planning benefits. The appellants made no case on viability and I will consider the mix of uses and other planning benefits below.

147. Policy LP 36 of the Local Plan was recently adopted by the Council in light of the evidence base. It is clear that in the Borough there is a pressing need for rented accommodation, including for older persons, and the appellants did not produce any argument that rented accommodation could not be delivered either on viability grounds or operationally.

148. Consequently, while the proposal would more than meets the quantum expectations for affordable housing set out in Policy LP 36 of the Local Plan it would fail to meet its expectations as regards housing tenure. I will consider this further in the planning balance section of this decision.

Asset of Community Value

149. The appeal site has been designated as an Asset of Community Value (ACV) under the Localism Act 2010 (as amended). Policy LP 28 of the Local Plan deals with social and community infrastructure and paragraph 8.1.15 in the explanatory text to this policy indicates that the loss of ACVs will be strongly resisted in line with the requirements and criteria set out in this policy.

150. Policy LP 28 indicates that the loss of social or community infrastructure will be resisted. Proposals involving the loss of such infrastructure will need to demonstrate clearly there is no longer an identified community need, or it no longer meets the needs of users and cannot be adapted; or the existing facilities are being re-provided, or that there are sufficient alternative facilities in the locality; and the potential for re-using or redeveloping the site for the same or an alternative social infrastructure use for which there is a local need has been fully assessed. The use of a two year marketing exercise is referenced.

151. The proposal would result in the substantial physical loss of part of the ACV in the sense that the area for the extra-care housing would no longer be available for community use. While there is a need in this community for extra-care accommodation, as discussed below, I do not consider that this

represents a "community need" for the purposes of this policy. As has already been concluded, there is a continuing need for sports provision in the area and the proposal would not adequately re-provide that.

152. As such the proposal would be contrary to Policy LP 28 of the Local Plan. I will consider the weight for this in the planning balance below.

Planning Obligation

153. The completed Planning Obligation makes provision for the delivery of the sports facilities and the open space and their transfer to the Community Interest Company before the occupation of the extra-care accommodation. The Obligation also makes provision that the land so transferred shall only be used for purposes as set out in the Community and Sports Specification and Community Use Agreement. There are also 'in default' provisions should the Community Interest Company be unwilling or unable to accept such a transfer.

154. The Obligation also makes provision for the transfer of the land for the GP Surgery to a specified Healthcare Provider, and reasonable endeavours by the owner to ensure that the GP Surgery is constructed.

155. As set out above, the Obligation makes provision for the extra-care accommodation to be affordable housing and that there would be provision of care for the residents.

156. The Obligation also makes provision for financial contributions to carbon off-setting and air quality mitigation. It would also deliver a local employment scheme and employment and skills plan, the delivery of a car club, the provision of off-site highway works and contributions towards any Traffic Regulation Orders necessary to deliver those highway works.

157. I am satisfied that each of these provisions is necessary and meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 56 of the Framework. As a consequence, I am able to take them into account. I will discuss the weight I give to them in the planning balance section.

158. Finally, the Planning Obligation makes provision for the residents to be unable to apply for a residents' parking badge except for those who would be entitled to a Disabled Persons' Badge. These provisions are made under the Greater London Council (General Powers) Act 1975 (as amended) as this Act allows for such a provision which would not be permitted pursuant to Section 106 of the TCPA 1990. I will discuss this provision in relation to the quantum of car parking below.

Planning benefits

159. The appellant stressed the benefits of the proposal. Some I have considered above in relation to the individual issues, but there are others which do not fall into these areas. While many of these benefits were not in dispute, they need to be assessed for the weight that should be given to them. I have also taken into account the multiple benefits through the proposal being a mixed use scheme (see paragraph 118 of the Framework), but consider this does not affect my overall conclusion.

160. The first benefit is the provision of 107 additional extra-care units. This can be considered under the headings of general need for housing, and the specific need for older persons accommodation with care.

161. The provision of additional housing should be given significant weight in line with the Government's objective of significantly boosting the supply of homes set out in the Framework.

162. There was no dispute that there was a need for older persons accommodation in the Borough, the dispute was over the extent of that need. The Council's Strategic Housing Market Assessment (2016) and Extra Care Housing Evidence Base (2015) had both informed the Local Plan and had resulted in policies such as Policy LP 37 which relates to support for schemes to deliver housing for an identified local need. The Council recognised that the Borough population is ageing with increasing levels of disability and frailty but considered that there was no evidence that the needs of older people will not be met through general provision and schemes with resolutions to grant planning permission.

163. The appellants' view was that the Council had underestimated that need. However, its methodology was based on an analysis of demographic trends for those over state retirement age, which was stated at being on a person's sixty-fifth birthday. The state retirement age has already been raised to 66 years of age and is set to rise further. I was provided with no information as to the numbers or percentage of persons over state retirement age or years since state retirement age to compare the current situation with future trends. This, along with improvements to general health and fitness, means that I consider that the appellants' figures would overestimate the need and I therefore consider that the Council's approach is to be preferred.

164. This is not to say that there is no need for older persons' accommodation. To say otherwise would fly in the face that people have been living longer in recent years than in the past. Equally, as was stated by the appellants the main need for this type of accommodation would be for those over 75 years of age and for those with age-related health conditions. Consequently, I give the benefit of the proposal as extra-care accommodation moderate weight in addition to that for the general need for housing. I will consider the benefit of the accommodation as affordable housing below.

165. The proposal would result in the provision of an area of open space which is currently not available to the public. This would include outdoor gym equipment and be open to the public from dawn to dusk. Notwithstanding my concerns about the relationship with the use of this part of the site for ecological mitigation set out above, this would be a benefit to the local community. Because of my concerns I give this moderate weight.

166. The proposal would involve the provision of a new pavilion. This would provide a better quality of provision than the existing pavilion which, it was agreed, needs significant expenditure to bring it up to modern standards. It would also provide a different range of facilities. The Trust sought to indicate that the refurbishment of the existing pavilion could deliver this. This may or may not be the case, but in general terms it is not for a Section 78 planning appeal to consider alternatives unless there are clear planning objections to a proposal which could be overcome by an alternative proposal.

167. The appellants also made much of their credentials in delivering and running sports facilities, and this was not disputed. The appellants sought to go further than this and indicated, in the absence of a fully costed and identified alternative, or 'Plan B', that theirs was the only realistic way the site could be brought forward, and that the site would not be viable in the long term as a grass playing field due to the on-going maintenance costs.

168. One concern with the appellants' approach was a lack of detailed evidence or analysis of how the playing field had been maintained when in the ownership of ICL. There was no information to which I was directed as to whether ICL subsidised the running and maintenance of the site. As I have set out above, the main reason I was given for ICL disposing of the site was that it sought to consolidate its provision on another site which it had the opportunity to expand, rather than it being unviable in its pre-existing use, including obtaining income from the letting of the site to third parties such as the local schools and teams.

169. The appellants did put forward an income/expenditure analysis based on a non-floodlit use of the site which showed a loss. However, this does not take account of the fact that the site is floodlit, albeit in a materially less intensive way than set out in the proposal. This would allow for some training to take place in the evenings and income derived. It also only included minimal income from the pavilion, for example it did not include use of the clubhouse for social activities beyond use by the Scouts. Clearly these would also have consequential expenditure effects, such as greater maintenance costs, but given these obvious deficiencies I can only give this analysis limited weight.

170. As set out above, if permission were to be granted, then there would be greater restrictions on the hours of use because of the potential effects on living conditions of neighbours. This would reduce the income from that identified by the appellants in their business plans. Reasonably they would seek to recoup such a reduction by alternative means such as charges for the display of advertisements around the inside of the AGP and MUGA. This explains why I consider that such displays would be likely and should be factored into the consideration of effects.

171. The appellants hypothesized as to various scenarios as to what might happen in the event of the appeal being dismissed, particularly as they considered that significant capital sums were required to bring the existing facilities up to modern standards, let alone to purchase the site in the first place. However, it is not the purpose of a Section 78 planning appeal to undertake such an analysis, rather to ascertain whether the current proposal is appropriate in the terms of development plan policies and other material considerations. Another materially different proposal may be put forward that accords with the policies of the development plan or where material considerations would indicate a decision otherwise than in accordance with those policies.

172. There were a number of other benefits identified. These include the pétanque court, the horse and pony paddock for use by Riding for the Disabled, the café and playground, outdoor gym and fitness trail, and community orchard and medicinal herb garden. While recognising the importance to those involved and to society, there was nothing in front of me which meant that any of these facilities needed to be located on the appeal site. I therefore can only give them moderate weight in the final balance.

173. The appellants also submitted that the transfer of the relevant parts of the appeal site to the Community Interest Company was a benefit ensuring that the facilities remained available to the community in perpetuity. However, as identified above, the planning system is generally 'blind' to who operates a facility and I therefore give this only moderate weight.

174. The provision of the GP Surgery (and pharmacy) are a benefit of the scheme. Although it was designed to allow an existing practice to relocate, I have nothing to show that the existing site would not remain in such a use. I was not advised, for example, that planning permission had been granted to redevelop or otherwise re-use that site. Having said that the Planning Obligation only secures the site and reasonable endeavours to facilitate the building, not that a surgery would be delivered, so funding is not clear.

175. The Trust felt that this site would be inappropriately located for where current patients live, but this does not mean that the provision of additional healthcare facilities should not be given significant weight.

Other matters

176. The Trust considered that the site and/or the pavilion should be considered as non-designated heritage assets. It highlighted that it had recently made representations to Historic England that the site and pavilion should be statutorily listed on the basis of, *inter alia*, being a war memorial and to, earlier, views of Historic England that the site should be considered to be a non-designated heritage asset.

177. While the playing fields were laid out and pavilion was built in 1922 as a war memorial, neither the Council nor the Mayor as plan-making bodies have identified the appeal site or the pavilion as a non-designated heritage asset. I therefore conclude that at this point in time the site should not be considered to be a non-designated heritage asset.

178. I heard concerns about traffic and highway safety particularly during the construction period, given the proximity of the nearby Collis Primary School. I also note that, subject to planning obligations and conditions, the Highway Authority has raised no objection. I am satisfied that provided these provisions are delivered, including a Construction Management Plan, that the proposal would not give rise to an unacceptable highway safety impact, or that the residual cumulative impact would be severe. These are the tests set out in paragraph 109 of the Framework if development is to be prevented or refused in this regard.

179. The proposal would make provision for car parking for the residents, employees and visitors to the extra-care accommodation under the central court of Plot A and between Plots B and C. With the restrictions on off-site car parking in the Planning Obligation I am satisfied that the proposal would make appropriate provision for car parking so as to not cause highway safety concerns or lead to harm to the convenience of other highway users.

Planning Balance

180. The proposal would be inappropriate development in the LGS and contrary to the purpose of the LGS in that it would not protect a green area of particular importance to the community. This should be given substantial weight in line with paragraph 144 of the Framework.

181. Furthermore, the proposal would be substantially harmful to the openness of the LGS and the OOLTI and to the character and appearance of the area. These are matters to which I attribute substantial weight. I consider that the harm to openness of a purpose-designed new pavilion would be greater than its other benefits.

182. In addition, there would be significantly harmful effects on the living conditions of the occupiers of 38 Kingston Lane.

183. The proposal would make provision for the long-term use and management of the sports facilities for the benefit of the community. It would also facilitate their increased use of the site for sports. However, because of the effects on living conditions of existing and proposed occupiers this would be less than that identified by the appellants. Taking account also of the loss of playing field land and the flexibility that can currently be utilised the proposal overall would be substantially harmful to the provision of sports facilities within an area of deficit. While there would also be an effect on the ACV, this is of little additional weight as the harm principally arises on account of the loss of the sporting facilities and effect on the character and appearance of the area.

184. There would be a significant adverse impact on bats as a protected species and to the overall connectivity between habitats in the area.

185. The provision of the additional housing in its own right would be a significant benefit and as older persons accommodation given additional moderate weight. However, in the same way that unmet housing need will not normally be of sufficient weight to outweigh the presumption against inappropriate development in the Green Belt, as policies for LGS should be consistent with policies for the Green Belt, I consider that similar considerations should apply in relation to LGS.

186. While the proposal would provide for 100% affordable housing, it would not meet the specific needs of the area in terms of tenure. While there are benefits from the overprovision against the policy requirement of 50%, the failure to deliver an 80:20 tenure split in favour of affordable rented accommodation would significantly reduce this benefit.

187. The Planning Obligation would principally deliver the infrastructure necessary to facilitate the development. Therefore, the provisions relating to the delivery, transfer and running of the sports facilities, including the pavilion and associated works, the carbon off-set, air quality mitigation, local employment scheme, highways works, car club and parking restrictions are neutral in the final balance. However, the provision of the GP Surgery would be a significant benefit.

188. The various small-in-scale facilities, that is the pétanque court, the horse and pony paddock for use by Riding for the Disabled, the café and playground, outdoor gym and fitness trail, and community orchard and medicinal herb garden are of moderate beneficial weight.

Conclusion

189. The proposal would be contrary to the terms of the development plan taken as a whole. Paragraphs 101 and 144 of the Framework make clear that substantial weight should be given to any harm to LGS and I have identified other harms that add to this. While there are benefits, I find that the other

considerations in this case do not clearly outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Furthermore, material considerations do not indicate that the proposal should be determined otherwise than in accordance with the development plan.

190. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

R J Jackson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robert Walton	Queen's Counsel Instructed by the South London Legal Partnership
He called	
Mr Will Marshall NatCert MSc	Principal Transport Planner, London Boroughs of Richmond-upon-Thames and Wandsworth
Ms Natasha Hunter BSc MSc	Ecology Policy and Planning Officer, London Borough of Richmond-upon-Thames
Mr Craig Ruddick TechArborA	Arboricultural Manager, London Borough of Richmond-upon-Thames
Mr Marc Wolfe-Cowan MA PGDip CMLI MRTPI	Principal Urban Design Officer, London Borough of Richmond-upon-Thames
Mr Paul Bradbury BA (Hons)	Development Project Officer, London Borough of Richmond-upon-Thames
Mr Simon Graham-Smith	Senior Planner, London Borough of Richmond-upon-Thames

In addition, Mr Chris Tankard, Area Team Manager with the Council and Mr George Chesman from the South London Legal Partnership appeared at the round table sessions on the Planning Obligation and planning conditions.

FOR THE APPELLANTS:

Mr Rupert Warren	Queen's Counsel Instructed by Town Legal LLP
Assisted by:	
Mr Tom Morris	of Counsel
He called	
Mr Ian T Roberts DipCE MCIHT	Partner, Bellamy Roberts LLP
Mr Davog McCloskey BSc MCIEEM	Managing Director, Peach Ecology
Mr Gary Johnson	Managing Director, LK2 Sport & Leisure
Mr Matthew D Chard BA (Hons) Dip (Hons) MAUD CMLI	Partner, Landscape Planning and Design Group, Barton Willmore LLP
Mr Simon Cartmell OBE	Director, Teddington Community Sports Ground Community Interest Company and Vice-Chairman of Teddington Rugby Football Club Ltd and of Teddington Town Sports Club Ltd
Mr Nigel J W Appleton MA (Cantab)	Executive Chairman, Contact Consulting (Oxford) Ltd
Mr Robin Meakins BSc (Hons) Dip TP MRTPI	Partner, Barton Willmore LLP

In addition, Ms Juliet Munn, Solicitor and Senior Associate, Town Legal LLP, and Mr Daniel Osborne, Planning Director, Barton Willmore LLP appeared at the round table sessions on the Planning Obligation and planning conditions.

FOR SPORT ENGLAND:

Miss Stephanie Hall	of Counsel Instructed by Pinsent Masons LLP
She called	
Mr Daniel Oldaker BSc (Hons) MIOA	Director, Acoustic Consultants Limited
Mrs Vicky Ashton BA (Hons) MA MRTPI	Planning Manager, Sport England

In addition, Miss Emma Hargreaves, Solicitor, Pinsent Masons LLP appeared at the November 2019 round table sessions on the Planning Obligation and planning conditions with Miss Elizabeth Nuttall, Solicitor, Pinsent Masons LLP appearing at the equivalent session in March 2020.

Prior to the March 2020 resumption, Sport England submitted an additional statement on changes in circumstance since the November 2019 hearings. This was prepared by Mr Stuart Morgans BA (Hons) MRTPI, Planning Manager, Sport England.

FOR THE UDNEY PARK PLAYING FIELDS TRUST AND THE TEDDINGTON SOCIETY:

Mr Daniel Steadman Jones	of Counsel Instructed on a Direct Access basis[15]
He called	
Mr Ryan Wheal	Partner, Rider Levett Bucknall
Mr Elliott Newton MSc	Local Professional Conservationist
Mr Colin Cooper	Chief Executive South West London Environment Network
Ms Katarina Hagstrom MA (Hons)	Local Resident
Dr Sarah Cox CECOL CENV MCIEEM	Associate Director, The Ecology Consultancy
Mr Miles Woodley[16]	Chairman, Harlequins Amateur Rugby Football Club
Mr Jonathan Dunn	Local Resident and Managing Director, J P Dunn Construction Limited
Mr Frank Davis	Member of Management Committee, Bushy Park Girls Cricket Club
Mr Jatish Mistry	Local Resident and Chairman, Hearts of Teddlothian Football Club
Mr Daniel Musson	National Participation Development Manager, England and Wales Cricket Board
Mr Mark Jopling BSc MBA PhD	Local Resident and Chair, Udney Park Playing Fields Trust

[15] At the Pre-Inquiry Meeting the Udney Park Playing Fields Trust was represented by Ms Jenny Wigley of Counsel.
[16] Mr Woodley spoke on his own behalf at the public session, and was later called on behalf of the Trust in the stead of Mr Andy Brampton.

Mr Jonathan Drew BA PGDip MRTPI	Manager, Drew Planning & Development Limited

INTERESTED PERSONS:

Mr Joshua Samuels	Local Resident
Mr John Viemanus	Coach, Hearts of Teddlothian Football Club – he also spoke on behalf of Mrs Sarah Viemanus
Mr Miles Woodley	Chairman, Harlequins Amateur Rugby Football Club
Mr Richard Sharples	Local Resident
Mr David Blakely	Local Resident
Mr David McDonald	Local Resident
Mr Neil Syers	Local Resident and Coach, Hearts of Teddlothian Football Club
Ms Charlotte Andrew	Local Resident
Mr Thomas Herman	Local Resident and Coach, Hearts of Teddlothian Football Club – he also spoke on behalf of Mrs Jenna Herman
Mr David Hogben	Local Resident
Ms Linda Birkett	Local Resident
Mrs Jane Plant	Local Resident – she also spoke on behalf of Mr Julian Plant
Councillor Robin Brown	Ward Councillor, Hampton Wick and Teddington Ward
Mr Philip Barnes	Local Resident
Mr Jon Peachy	Local Resident – he also spoke on behalf of Mrs Kathy Peachy
Mr Mark Gaughan	Local Resident and Coach, Hearts of Teddlothian Football Club
Ms Melanie Spencer	3rd Teddington Scout Group
Mr Tom Bedford	Local Resident and Wearside Rangers Football Club
Ms Sheila Stanley	Local Resident
Ms Liz Heaton	Local Resident
Ms Natalie O'Rourke	Park Lane Stables
Mr Grant Kunneke	Local Resident and Architect
Mr Peter Shaw	Local Resident

INQUIRY DOCUMENTS

ID1	Appellants' Witness Appearance Sheet
ID2	Suggested Inquiry Programme
ID3	Extract from the Design Quality SPD relating to Hampton Wick and South Teddington
ID4	Current (November 2019) iteration of the Policies Map to the Local Plan
ID5	Opening statement on behalf of the appellants
ID6	Opening statement on behalf of the Council
ID7	Opening statement on behalf of Sport England
ID8	Opening statement on behalf of the Trust
ID9	Note on height of fences around AGP, MUGA and cricket nets and accompanying drawings

ID10	Draft Planning Obligation (6 November 2019)
ID11	Note on location and transport from/to Park Lane Stables.
ID12	Note setting out locations of photographs in respect of Townscape Contextual Analysis
ID13	Bat Conservation Trust - Bat Surveys for Professional Ecologists - Good Practice Guidelines
ID14	Eurobats (publication series 8): Guideline for consideration of bats in lighting projects
ID15	Copy of representation by Mr Phillip Briggs - Richmond Bat Species Action Plan Steering Group
ID16	Natural England Biodiversity Metric 2.0 Beta version - User guide
ID17	Email from Dr Grundy relating to alternative sites for GPs Surgery
ID18	Report into the London Plan
ID19	Phase 2 Bat and Reptile Survey Report – Issue No 3 (Replacement of CD F41)
ID20	Signed Statement of Common Ground between Sport England and Appellant including V1 of Noise Statement
ID21	V2 of Noise Statement - Agreed by appellants' noise consultant and Sport England but not signed off by appellants
ID22	Additional Appendix to Supplementary Core Document from Mr Philip Barnes put in by the Trust
ID23	Comparison of visualisations and existing photographs put in by the Council
ID24	Enlarged and annotated extracts of drawings showing relationship Trees and Root Protection Areas put in by the Council
ID25	Appeal decision APP/U1240/W/18/3215572 – 44 Lake Road, Verwood
ID26	Revised Landscape Drawings showing fence at 4.5 m
ID27	Email from Natalie O'Rourke relating to fencing around paddock
ID28	Redetermination Report on proposed Main Modifications to Richmond-upon-Thames Local Plan (February 2020)
ID29	Copy of Planning Obligation relating to Fullerton Court development dated 10 June 1997
ID30	Draft Planning Obligation (March 2020)
ID31	Note from Council in response to additional information on lighting and trees
ID32	Closing submissions on behalf of the Trust
ID33	Closing submissions on behalf of Sport England
ID34	Closing submissions on behalf of the Council
ID35	Closing submissions on behalf the appellants
ID36	Completed Planning Obligation dated 11 March 2020

The Planning Inspectorate

Costs Decision

Inquiry opened on 5 November 2019

Site visit made on 6 November 2019

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2020

Costs application in relation to Appeal Ref: APP/L5810/W/18/3205616
Former Imperial College Private Ground, Udney Park Road, Teddington TW11 9BB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Udney Park Playing Fields Trust and The Teddington Society for a partial award of costs against Quantum Teddington Development Ltd, Quantum Teddington LLP and Teddington Community Sports Ground Community Interest Company.
- The inquiry was in connection with an appeal against the failure of the Council of the London Borough of Richmond-upon-Thames to issue a notice of their decision within the prescribed period on an application for planning permission for erection of new extra-care community, with new public open space and improved sports facilities, comprising: 107 extra-care apartments (Class C2 use), visitor suites, and associated car parking; 12 GP surgery (Class D1 use) and associated car parking; new public open space including a public park, and a community orchard; improved sports facilities (Class D2 use) comprising a 3G pitch, turf pitch, MUGA, playground, pavilion and community space, and associated parking (68 spaces); paddock for horses; and a new pedestrian crossing at Cromwell Road; and all other associated works.
- The Inquiry sat for thirteen days: 5 to 8, 12 to 15, 19 & 20 November 2019 and 9 to 11 March 2020.

Decision

1. The application for an award of costs is refused.

Reasons

2. The costs application was submitted in writing following the close of the Inquiry as was the response and final comments.

3. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4. The applicants' principal ground was that once the Local Green Space (LGS) designation in the London Borough of Richmond-upon-Thames Local Plan had been confirmed by the Second Examining Inspector the appellants should have reviewed their case and withdrawn the appeal on the basis that it no longer had a reasonable prospect of success. In any event, the appellants failed to take into account a proper assessment of the changed circumstances and that

they provided inadequate supporting evidence to justify development which was clearly not in accordance with the development plan.

5. The appellants' response was that even with the LGS designation in place, there still needed to be a balance between the harms and benefits. While the LGS designation changed the position, the case made by the appellants was supported by evidence. While the relevant witness agreed under cross-examination that he had given insufficient weight to the LGS designation this did not mean that the overall approach was unreasonable.

6. Clearly the designation of the LGS marked a material change in circumstances in the consideration of the appeal. However, it was clear from a response to my question at the Pre-Inquiry Meeting held in September 2019 that this was not going to change the appellants' overall approach. The only difference was that the appellants then needed to show very special circumstances, and their approach was that the benefits of the case taken together represented such very special circumstances in any event. This effectively was the way the appeal was approached prior to the LGS designation, although the balance would have changed at that point.

7. While I have disagreed with the appellants on many aspects of the appeal and the weight that they gave to the various issues, these were principally matters of planning judgement where, even looking at the same evidence, two people can reasonably come to different conclusions.

8. The one area where the appellants did not reasonably assess matters related to the weight that should have been given to harm for the proposal representing inappropriate development in an LGS. While weight, generally, is a subjective matter, the weight to be given here is clearly set out in paragraph 144 of the National Planning Policy Framework and the appellants gave no reason for departing from that approach. That was unreasonable.

9. However, if the appellants had approached this aspect of the appeal in a reasonable way it does not mean that they should have inevitably withdrawn the appeal. While this was clearly a very weighty consideration in the determination of the appeal, the appellants explained why they considered, collectively, the benefits that they were promoting represented very special circumstances. While I have disagreed with this conclusion that does not mean that this approach was unreasonable.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

R J Jackson

INSPECTOR