

**SHEEN LAWN TENNIS AND SQUASH CLUB LTD,
THE CLUBHOUSE, PARKLANDS CLOSE,
EAST SHEEN, LONDON, SW14 7EH**

PLANNING STATEMENT

INSTALLATION OF FLOODLIGHTS



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Applicant



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1.0 INTRODUCTION

- 1.1 This statement accompanies a full planning application submitted to the London Borough of Richmond Upon Thames.
- 1.2 The application site comprises Sheen Lawn Tennis and Squash Club, The Clubhouse, Parklands Close, London SW14 7EH (the **Site**) at which tennis has been played for 100 years.
- 1.3 Sheen Lawn Tennis and Squash Club (**SLTSC**) is a not-for-profit members club. The club currently benefits from three acrylic tennis courts, and 5 artificial clay all weather courts, one of which is floodlit, two squash courts and a clubhouse with a bar. The club's facilities also provide indoor exercise classes open to the community and non-members generally including yoga, keep-fit, and Pilates, plus classes in Kumon mathematics and English study programmes for children.
- 1.4 The Club currently has approximately 900 members, made up of 500 adult tennis members, 150 adult squash members, 220 junior tennis members, 40 junior squash members. The club also has 20 non-playing social members.
- 1.5 The Club offers a range of activities for members including competitions, coaching, inter-Club league tennis and squash tournaments, and internal Club tournaments, as well as a range of social events. However, the Club are finding it difficult to attract and retain young adult members for tennis as they are currently unable to offer court availability that such members need. In particular, many local residents working full time are looking for the ability to play in the evenings during the week, including in the winter months. The effects of recent successes in tennis, including Raducanu's 2021 US Open win, have only served to increase the popularity of the sport and add to the existing pent-up demand for facilities of this kind, particularly amongst younger age groups.
- 1.6 To allow the longstanding Club to continue to prosper in serving the local area and community, the Club seek to provide floodlights to some of their existing courts, to facilitate the flexibility that its members, and importantly, potential members are seeking. The enhancement of the existing facilities will allow the Club to increase the range of activities they are able to offer which in turn will allow the Club to continue to attract and retain members, and ultimately allow more residents of the borough to benefit from this local amenity.
- 1.7 In addition to the existing one court that is served by permanent floodlights, the Club have the benefit of a Certificate of Lawful Use/Development issued by the Council, which allows the erection of temporary lights to facilitate play during the evenings (Ref: 11/0758/PS192). Whilst the use of floodlights in this way are unrestricted in use, the Certificate notes that the submission suggested use until 10.30pm, October to March, and would go some way to meet the Club's demands as outlined above and allow play in the evenings.
- 1.8 The Certificate confirms that the temporary lights must be taken down and stored when not in use. Operationally this is very cumbersome for the Club and far from an ideal solution, and moreover, the existing temporary floodlights are prone to cause nuisance on neighbouring amenity in terms of light spillage. Therefore, the Club are pursuing the potential for a better, permanent, and appropriately design-engineered solution, over the "fallback" which would be the use of these temporary lights.
- 1.9 An application for permanent floodlights was sought at the Site in 2016. However, that development sought a relatively large degree of development together with the floodlights

including “the re-orientation and resurfacing of three existing tennis courts to form two floodlit tennis courts and two mini courts and associated fencing.” Furthermore, it is clear that the club’s fallback position of utilising temporary lights was not considered as part of the Council’s assessment. The application was subsequently refused for one reason, namely;

“The development, by reason of the siting, scale and extent of proposed floodlights and the extended hours of proposed play, would be visually intrusive and result in noise that would give rise to significant adverse impacts on the amenity of neighbouring residents. The hedge, by reason of its height, extent and siting on the southern boundary of 10 The Mall, would affect the reasonable enjoyment of the garden of this property. The development is thereby contrary to the aims and objectives of the NPPF and Local Plan, particularly policies DM DC 5 and DM OS9 of the Development Management Plan, LP8 and LP9 of the Publication Local Plan and the Draft Noise SPD.”

- 1.10 The Club have since instructed NTA (planning consultants) to take a fresh look at the Site and to advise on a more appropriate form of development which will meet the Club’s ambitions, whilst avoiding the use of temporary floodlighting.
- 1.11 Accordingly, the proposed development, for which permission is now sought, comprises a much simpler installation of floodlights, serving only two of the existing courts. No reorientation or resurfacing of the courts is proposed, and a reduced number of floodlights are also sought overall. The reduction in the number of lights, and their proximity to neighbouring properties further reduces the need for any significant boundary additions to mitigate the impacts of the proposals.
- 1.12 The Club acknowledge their suburban context and wish to continue to be a good neighbour to residents who reside adjacent to the Club’s boundaries. Accordingly, the Club seek to minimise the proposed hours of floodlight usage to the minimum necessary to fulfil its needs. It is expected that floodlights will *only* be required in the late autumn, winter, and early spring months, with little to no use in the summer.

Statement Structure

- This statement first provides a description of the Site and surrounding area (section 2), followed by a summary of relevant planning history (section 3).
- The proposals for which permission is sought are described in detail in section 4.
- At section 5 we outline the relevant policy framework, followed by a planning appraisal of the material considerations in section 6 of this statement.
- Finally, this statement is concluded at section 7.

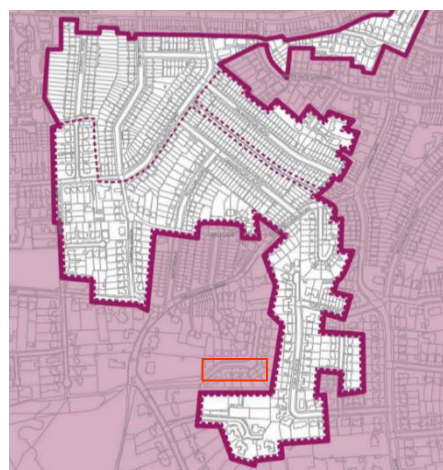
2.0 SITE DESCRIPTION

- 2.1 The Site is located on the north side of Parklands Close, accessed via Fife Road to the west, and falls within the East Sheen Ward of the London Borough of Richmond.
- 2.2 SLTSC Ltd is a long-established sports facility offering sporting and social facilities in a welcoming and family friendly atmosphere predominantly to local residents. The club boasts three acrylic tennis courts (courts 1-3), and five artificial clay all weather tennis courts (courts 4-8), only one of which is currently floodlit, two squash courts, and a clubhouse with bar and clubrooms. The Sheen Lawn Tennis Club was founded on the present site in 1921. The squash courts were constructed more recently in 1973.
- 2.3 After extensive nearby building development over the years, since the club was founded in 1921, the property is now bounded by residential properties on all sides, with neighbouring properties in Parklands Close (to the south), Fife Road (west), The Mall (north) and York Avenue (east). However, the application proposals relate only to two courts (nos. 4 and 5, edged yellow below), which sit to the immediate east of the clubhouse in the centre of the Site. The closest properties to the proposals are those in The Mall to the north, and York Avenue to the east.



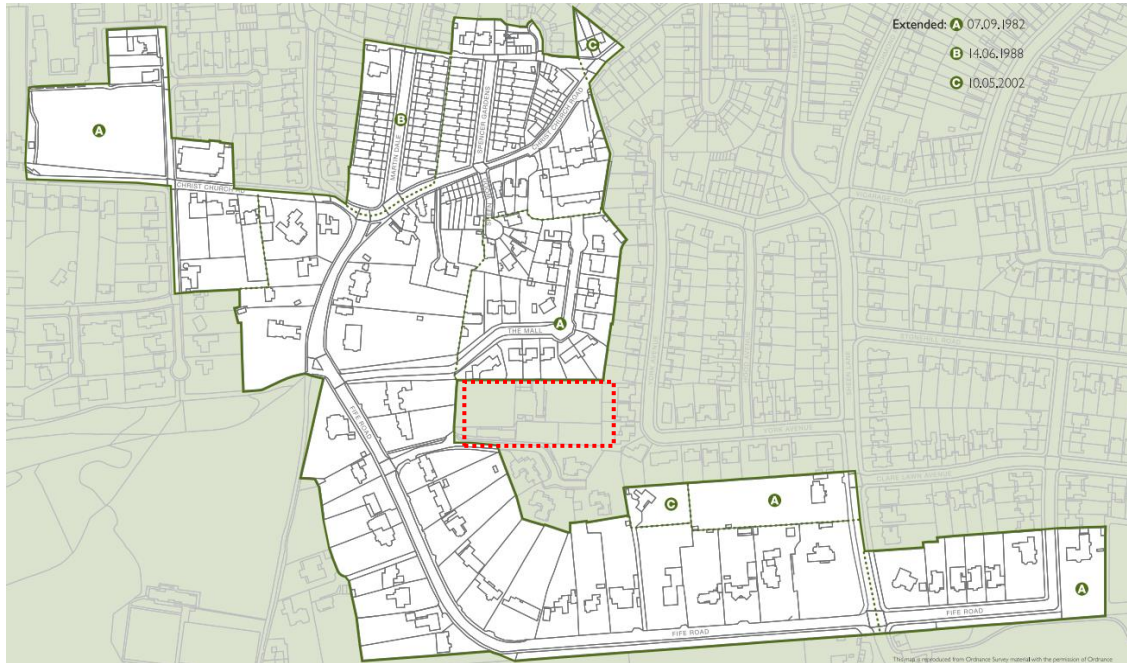
SITE LOCATION PLAN (COURTS 4 AND 5 EDGED YELLOW)

- 2.4 The Site is located within East Sheen Village and located in Character Area 12 - Temple Sheen Road/Palmerston Road/York Avenue. (Site edged red, right).
- 2.5 The Site borders (but is outside) the Christchurch Conservation Area. The Site is bound to the north by residential properties which are within the Conservation Area (The Mall). Views from the surrounding conservation area are therefore material.
- 2.6 Sheen Common is located approximately 110m west of the Site and Richmond Park approximately 170m.



EAST SHEEN VILLAGE CHARACTER AREA 12 MAP

2.7 The Site has a PTAL of 0, which on a scale of 0-6 is considered to be the lowest.



CHRISTCHURCH CONSERVATION AREA (SITE OUTLINED IN RED)

3.0 PLANNING HISTORY

- 3.1 There have been several planning applications over the years for works at the Site. We provide a summary of the cases below.

82/1080

- 3.2 Demolition of first floor office and use of flat roof as terrace and erection of single storey extension. Permission granted 22.12.1982.

82/1185

- 3.3 Erection of single storey extension to Club House. Permission granted 08.11.1982.

86/1920

- 3.4 Installation of double skin airdome for the playing of tennis during the winter months (October 1st – March 31st) taken down during the summer. Permission refused 24.08.1987.

89/2215/FUL

- 3.5 Installation of floodlights to existing tennis courts. Permission refused 29.01.1990.

- 3.6 The above refusal under 89/2215/FUL, was subsequently appealed to the Planning Inspectorate (PINS Ref: 160121/P8). The appeal was dismissed due to light and noise impacts.

94/0571/FUL

- 3.7 In 1994, under application, 94/0571/FUL, permission was granted for the **“replacement of existing 10 no floodlights to tennis court with 6no, 6m high floodlights.”** The planning permission granted use of the floodlights **between the hours of 8am and 10pm on any day.** Decision notice attached at Appendix 1. The lights were installed many years ago and since then have served court 8 which lies in the south-west corner of the Site.

97/1264

- 3.8 Erection of 6 floodlighting columns to court 4. Permission refused 12.08.1997.

- 3.9 The above decision was subsequently appealed to the Planning Inspectorate (PINS Ref: 288670/P2), however the appeal was dismissed due to light and noise impacts.

98/0094

- 3.10 Single storey extension to Club House and pitched roof to part of existing building. Permission granted 09.04.1998.

08/2172/FUL

- 3.11 Part floodlighting of junior training lawn tennis court. Permission refused 23.10.2008.

11/0758/PS192

- 3.12 In 2011, under application 11/0758/PS192, a **Certificate of Lawfulness was granted for the erection of temporary lights.** The decision notice is attached at Appendix 2. The officer report acknowledged that the proposed **temporary floodlights would be 8m high when fully extended from their fold down storage position.** At that time, the temporary lights were proposed to be used at court 7, in the south-east corner of the site, bounding the rear garden of no.13 York Avenue and no.4 Parklands Close, and were to be **utilised until 10:30pm daily between the months of October and March.**

3.13 Officers confirmed that the use of such lights would not amount to development, having regard to Section 55 of the Town and Country Planning Act 1990, as they could be wheeled away from the court and stored and are not attached to the ground. Prior planning permission would therefore not be required for lights of a similar nature.

3.14 **It follows that the Club would have the ability to use this type of lighting on all existing courts, provided that the lights were removeable when not in use** as this would not amount to development. This was recently confirmed at the Planning Committee for the below application (Ref: 16/2877/FUL) on Wednesday 31st Jan 2018. The webcast recording of the meeting shows the Planning Officer, in addressing the Planning Committee, stating that;

“The Club do also have use of removable floodlights, they are not subject to planning control, they’re not development and this was confirmed a few years ago with an application of a certificate for lawful development so we have no control over that.”

Councillor Christine Percival subsequently poses the question;

“Could you just tell me, you mention the Club have removable floodlights, is there anything to stop them getting more and do we have any control over them or not?”

The Planning Officer responds;

“No, as long as they are removeable, they are not development, it doesn’t come within the realms of the planning system.”

3.15 The Planning Officer then further confirms that no mitigation measures are required for the removeable floodlights.

16/2877/FUL

3.16 Most recently, application 16/2877/FUL, sought the reorientation of three existing tennis courts to form two floodlit tennis courts and two mini tennis courts. The application was referred to Planning Committee on Wednesday 31st January 2018, but ultimately refused. Officers considered that the development, by reason of the siting, scale and extent of the proposed floodlights, and the extended hours of proposed play, would be visually intrusive and result in noise that would give rise to significant adverse impacts on the amenity of neighbouring residents. The one reason for refusal reads;

1. The development, by reason of the siting, scale and extent of proposed floodlights and the extended hours of proposed play, would be visually intrusive and result in noise that would give rise to significant adverse impacts on the amenity of neighbouring residents. The hedge, by reason of its height, extent and siting on the southern boundary of 10 The Mall, would affect the reasonable enjoyment of the garden of this property. The development is thereby contrary to the aims and objectives of the NPPF and Local Plan, particularly policies DM DC 5 and DM OS9 of the Development Management Plan, LP8 and LP9 of the Publication Local Plan and the Draft Noise SPD.

3.17 The officer’s delegated report noted that **“the enhancement of existing sports and leisure facilities to promote and support healthy lifestyles is supported in principle.”**

- 3.18 It was further noted that the introduction of floodlighting to SLTSC would ***“go some way to addressing the needs of different users’ groups and changing levels of participation as well as promoting healthy and active lifestyles, which is a benefit to the wider community.”***
- 3.19 However, when balancing the planning benefits of the introduction of floodlights against design, character, ecology, transport and associated residential amenity considerations, officers concluded that the harm would not be outweighed by the benefits of the scheme.
- 3.20 Ultimately, officers considered that the visual impact of the proposed lighting would cause some harm to neighbouring occupiers and the intensification of the use year-round would result in increased noise and disturbance.

19/0237/FUL

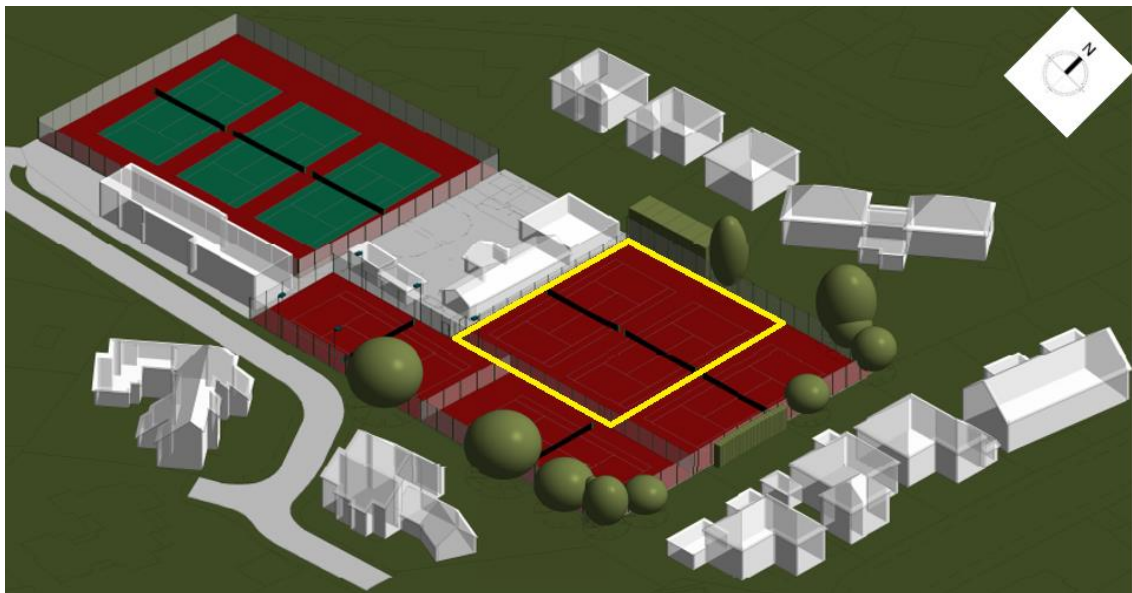
- 3.21 Maintenance/resurfacing of five existing tennis courts including renewal of the existing impermeable acrylic playing surface of five tennis courts with an 'Advantage Red' artificial clay woven carpet playing surface, together with renewal of existing internal court divider fencing, net posts and tennis nets. The court configuration and boundary fence heights remain unchanged. Permission granted 05.03.2019.
- 3.22 In approving the development, the officer delegated report noted that ***“the proposed surface would reduce the noise impacts of the courts. The materials used absorbs the impact of the ball bounce and running. The proposal would improve noise impacts of the site”***.

20/3468/FUL

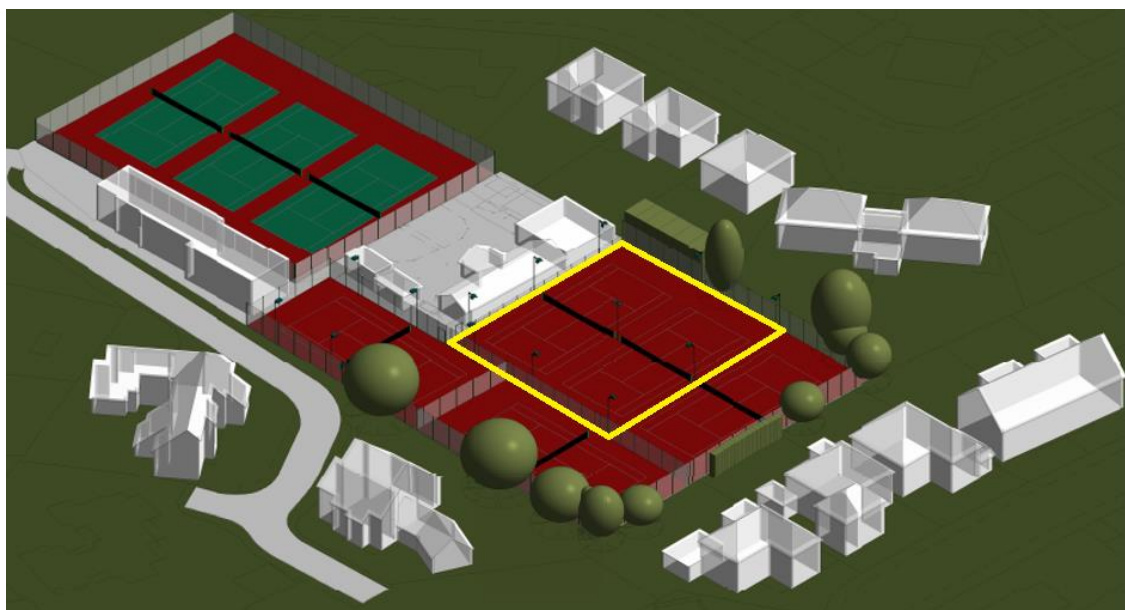
- 3.23 Demolition of existing shed, erection of pavilion and replacement hard and soft landscaping with shingled soakaway in terrace area. Permission granted 06.04.2021.

4.0 THE PROPOSED DEVELOPMENT

- 4.1 Having taken on board the shortcomings of the previous proposal (16/2877/FUL), the Applicant seeks to provide tennis court lighting in the form of just 10 no. floodlights on 9 columns, serving two of the existing all-weather tennis courts.
- 4.2 The proposals seek to maintain the existing court arrangements established at the Site. Accordingly, contrary to the previous proposals, it is not sought to re-orientate or increase the number of playing courts as part of this development.
- 4.3 The proposed floodlights serve courts 4 and 5 in the north-east corner of the Site. The courts sit parallel to one another; accordingly, the lighting scheme is able to be efficiently designed comprising just 9 columns (3 rows of 3 columns), each column serving a light with the exception of the very central column supporting two floodlights. The lighting columns would be sited on the inside of the existing chain link boundary fence.

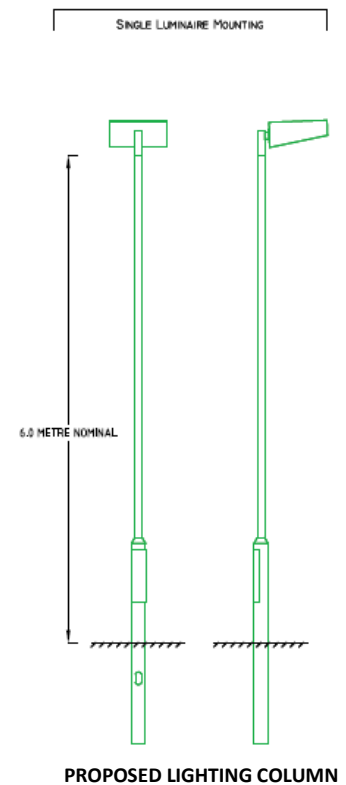


EXISTING AXONOMETRIC VIEW



PROPOSED AXONOMETRIC VIEW

- 4.4 The lighting has been designed to be Lawn Tennis Association (L.T.A) compliant; the 9, green painted, columns support lighting units mounted at a height of just 6m from the ground, and of a modern and energy efficient LED box type.
- 4.5 The lighting units comprise HiLux Match LED Slim Gen3 Deflectors, which ensure that the light from the units can be directed and avoids the potential for the back spill of light into adjoining properties.
- 4.6 Furthermore, the LED lighting element itself comprises low energy lighting, and allows computer designed optics, again to have better control of lighting output and the way it falls into the ground.
- 4.7 The lighting has been designed to minimise sky glow, light spill, and glare. Further information is provided within the lighting impact report, submitted herewith.
- 4.8 The proposed floodlights are to be used Monday to Sunday from mid to late afternoon (depending on the time of year) up to 10:30pm, although it is envisaged that the lights will only be in use during the darker months (October-March). The lights can be pre-programmed to ensure that they are switched off automatically when not in use.



5.0 PLANNING POLICY FRAMEWORK

5.1 The relevant planning policy/guidance comprises:

- a. National Planning Policy Framework (NPPF) (2021)
- b. The London Plan (2021)
- c. Richmond Local Plan (2018)
- d. East Sheen Village Plan Supplementary Planning Document (2015)
- e. Christchurch Conservation Area

5.2 In accordance with the Council's Proposals Map, the Site is located outside the Christchurch Conservation Area, but borders it.



PROPOSALS MAP EXTRACT (COURTS 4 AND 5 EDGED RED)

6.0 PLANNING ASSESSMENT

- 6.1 Having regard to the proposed development, the planning history at the Site and the policy framework, the material considerations are;
- a. Principle
 - b. Design and Character
 - c. Floodlighting
 - d. Residential Amenity
 - e. Ecology
 - f. Transport
 - g. Planning Benefits/ Balance

a. Principle

- 6.2 The recently updated NPPF (2021), paragraph 92 c) strongly promotes sporting facilities. It states that ***“Planning policies and decisions should aim to achieve healthy, inclusive and safe places which: enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.”***
- 6.3 The NPPF goes on to state, ***“To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sport venues, open spaces, cultural buildings, public houses and places of worship and other local services to enhance the sustainability of communities and residential environments”.***
- 6.4 The London Plan (2021), which has also been recently updated, reiterates the objectives of the NPPF. London Plan Policy S5 (Sports and Recreation Facilities) is particularly relevant and states that ***“sport and recreation facilities are important components of social infrastructure. Both formal and informal facilities should be provided, to encourage physical activity and deliver a range of social, health and wellbeing benefits to communities.”***
- 6.5 The policy goes on to state that ***“Development proposals for sport and recreation facilities should support the provision of sports lighting within reasonable hours, where there is an identified need for sports facilities, and lighting is required to increase their potential usage, unless the lighting gives rise to demonstratable harm to the local community or biodiversity.”***
- 6.6 At a local level, the Richmond Local Plan, particularly Policy LP 30 (Health and Wellbeing), is relevant and states ***“The Council promotes and supports healthy and active lifestyles and measures to reduce health inequalities”***
- 6.7 The policy goes on to state, ***“The Council will support development that results in a pattern of land uses and facilities that encourage, access to green infrastructure, including river corridors, local open spaces as well as leisure, recreation and play facilitates to encourage physical activity.”***
- 6.8 Policy LP 31 (Public Open Space, Play Space, Sport and Recreation) is of further relevance stating that ***“Playing fields and sports facilitates: applicants should assess the need and***

feasibility for onsite provision of new playing fields and ancillary support facilities in line with the borough's Play Pitch Strategy. "

- 6.9 Richmond's Play Pitch Strategy has 3 aims.
- i. To protect the existing supply of outdoor sports facilities and ancillary facilities from loss as a result of redevelopment*
 - ii. To enhance existing outdoor sports facilities and ancillary facilities through improving their quality, accessibility and management*
 - iii. To provide new playing pitches and ancillary facilities where necessary that are for purpose to meet demands for participation now and in the future.*
- 6.10 The strategy notes, with specific regard to tennis courts, that the ***"Increase in participation can be accommodated through providing additional courts that are floodlit."***
- 6.11 In addition to the above policy aspirations which strongly support the principle of the development, these are hugely challenging times for the sport and physical activity sector as the country deals with Coronavirus (Covid-19). **Sport England advise that it's priorities at this time, in support of the sector, is to ensure that the sector comes through this period in as strong a position as possible, and further, keeping the nation moving, doing everything they we can to encourage people to stay active wherever possible, which now is more important than ever.** To gain access to outdoor floodlit courts, local residents would need to travel much further afield, most likely by car given limited public transport links locally.
- 6.12 The Sheen Lawn Tennis Club was founded in 1921. The Club was improved in 1973 with the construction of the squash courts. The SLTSC is a private facility (as opposed to a publicly provided facility), and it is recognised that private sport facilities assist in meeting the wider sports and recreational needs of the borough as well as neighbouring boroughs. The club is open to the whole community as it is a Community Amateur Sports Club (CASC) which by operation of law is required to be entirely open to anyone who wishes to join. Also, by law, membership fees must be kept affordable within legal limits defined in the CASC legislation.
- 6.13 Sport England published a market segmentation tool in 2010 to support demand analysis of the percentage of local populations wishing to participate in outdoor sport. In the catchment area surrounding SW14 the dominant category was found to be sporty male professionals who had recently purchased a home (See profile data at Appendix 4). Although the Sport England tool is useful to evidence need, the Applicants confirm that there is now a very diverse group of both male and female professionals that require use of courts in evening hours throughout the year.
- 6.14 In addition to member play, the Club provides community opportunities and is seeking to increase these. The Club has links to several local schools that do not have tennis courts of their own and can use the Club as their "home" venue when playing matches against other schools. The Club's tennis coaches can provide some pro-bono coaching for young people unable to afford coaching fees, an initiative that could extend its reach into areas of the borough that have not traditionally accessed the Club.
- 6.15 The Club is working with the registered charity 'Bright Ideas for Tennis' to implement a disability tennis programme commencing in early July 2022. This will provide free tennis sessions for pupils from two local special needs schools who have severe and complex learning difficulties. However, many school sporting activities require floodlights if they are to be

played throughout the winter months in the UK. The provision of floodlights would greatly allow this initiative to be extended and developed.

- 6.16 The enhancement of the existing community and sports facility, through the provision of floodlighting, would significantly address the demands of different user groups. The works will increase levels of participation as well as strongly promote healthy and active lifestyles which is of clear benefit to the local and wider community and is supported by all tiers of planning policy.
- 6.17 The continued use of the facility as a tennis and squash club and the proposed enhancement should be strongly supported in principle. This is subject to the scheme's acceptability in terms of design and character, ecology, trees, transport and parking and neighbour amenity, which we consider in further detail below.

b. Design and Character

- 6.18 Policy LP1 of the Local Plan requires all development to be of high architectural and urban design quality. The high-quality character and heritage of the borough and its villages will need to be maintained and enhanced where opportunities arise. Development proposals will have to demonstrate a thorough understanding of the Site and how it relates to its existing context, including character and appearance, and take opportunities to improve the quality and character of buildings, spaces, and the local area.
- 6.19 The Site borders a small part of the Christchurch Conservation Area to the north, and over the years has become nestled within a predominantly residential, suburban and verdant context. Development must be compatible with local character, be of sustainable design and construction, make best use of land, public realm, and promote inclusive design. All proposals must also be assessed against the policies contained within a neighbourhood plan where applicable, and the advice set out in the relevant Village Planning Guidance and other SPDs relating to character and design.
- 6.20 Having regard to the existing character and appearance of the Site, and its setting, the design of the proposed floodlights is simple and unobtrusive. The 9 lighting columns are uniform in appearance, all 6m in height and painted dark green, matching the colours already utilised at the Club, and helping the columns to blend in with its verdant surroundings characterised by mature trees and hedgerows and its boundaries.
- 6.21 The proposed design is high quality, utilising premium products that employ the latest lighting technologies. The dark green painted and slender profiles of the columns, and the lighting units, will ensure that the columns will not be readily visible from the limited vantage points (i.e., some rear gardens of adjoining dwellings). The proposed floodlights would be far superior to the use of temporary floodlights, which would be the fallback.
- 6.22 Within the Site itself, the columns are befitting of the Site's use and character. There are existing floodlights serving one of the courts, and other sporting paraphernalia. Views from within the Site will also be unaffected by the proposed installation. The design is acceptable having regard to the above considerations.

c. Floodlighting

6.23 Policy L10 (Local Environmental Impacts, Pollution and Land Contamination) states “The Council will seek to ensure that artificial lighting in new developments do not lead to unacceptable impacts by requiring the following, where necessary:

1. An assessment of any new lighting and its impact upon any receptors
2. Mitigation measures, including the type and positioning of light sources
3. Promotion of good lighting design and use of new technologies”

6.24 In addition, Policy LP9 states that the following detailed criteria will be considered when assessing floodlighting:

1. The impacts on local character or historic integrity
2. The impact on amenity and living conditions
3. The impacts on biodiversity and wildlife
4. The benefits and impact of the provision of floodlighting on the wider community
5. The benefits and effects on the use and viability of the facility
6. That it meets an identified need as set out within the council’s playing pitch strategy

6.25 The applicants lighting engineers/designers have provided an assessment of the proposed lighting and its impact upon any receptors, including the type, and positioning of light sources. The submitted information further details the promotion of good lighting design and use of the latest technologies. We review each of the above 6 matters in turn below.

1. The impacts on local character or historic integrity

6.26 As set out under subsection 6b above (design and character), the design of the proposed floodlights is deliberately simple and unobtrusive. The 9 lighting columns are uniform in appearance, all 6m in height and painted dark green, matching the colours already utilised at the Club, and ensure the units blend in with the verdant setting characterised by mature trees and hedgerows.



AERIAL VIEW OF SITE

6.27 Given the low key and minimal profiles of the columns proposed, the proposed floodlights are considered to have no material impact on local character or the historic integrity of the area/ Conservation Area.

6.28 Whilst the Site is not within the Christchurch Conservation Area, it adjoins a short part of it along the northern boundary, and the Conservation Area has become established since the Club was founded. The area is predominantly characterised by semi-detached and detached dwelling houses of traditional design. As a tennis club since its foundation on this Site in 1921, the Club has areas of courts, nets, railings, lighting columns and associated sports/tennis paraphernalia. It is considered that the addition of the 9 columns to the northeast corner of the plot will be in keeping with the character and appearance of the Site and its immediate setting.

6.29 Beyond the immediate neighbours adjoining the Site and the entrance along the private road leading to the Site, the proposed columns will not be visible given the Site's 'backland' setting, and the abundance of mature trees and hedgerows which screen the Site from wider views.

2. *The impact on amenity and living conditions*

6.30 Given the nature of the proposal, it is considered that development has *the potential to* affect neighbouring amenity in two ways, namely a) **light** and b) **noise**. We assess each matter below.

a. Light

6.31 A lighting assessment has been commissioned and completed by SFPD Sports Facility Planning & Design LTSD and accompanies this application.

6.32 The reports concludes that good lighting practice is the provision of the right light, at the right times, in the right place, controlled by the right system. The invention of artificial light and its application in the external environment has done much to safeguard and enhance the night-time environment but if not properly controlled, light pollution can present problems. Obtrusive light is a form of pollution. Obtrusive light can be light through a window or light that impedes your view of the night sky or adversely affects the performance of an adjacent light installation. However, it can be substantially mitigated. The different forms of obtrusive light are: 'sky glow' the brightening of the night sky. This is the glare of a light source when viewed against a darker background; 'Light spill' the spilling of light beyond the boundary of the area being lit; and 'light intrusion'. All the above are forms of obstructive light which may cause nuisance to others, or adversely affect the fauna and flora as well as waste money and energy.

6.33 It is assumed the Site can be regarded as being located within an 'E3 Zone' – Suburban, this was confirmed to be the correction designation by the Council having regard to paragraph 75 of the officers delegated report under application 16/2877/FUL where it states "*The Council's Environmental Health Officer considers that the lighting report has been appropriately assessed within the E3 category*". Nonetheless, SFPD have provided two example lighting situations (E2 – Rural and E3 Suburban) for completeness, which adhere to the policies regarding lighting, as set out in the NPPF and the Clean Neighbourhoods and Environment Act (CNEA) 2005.

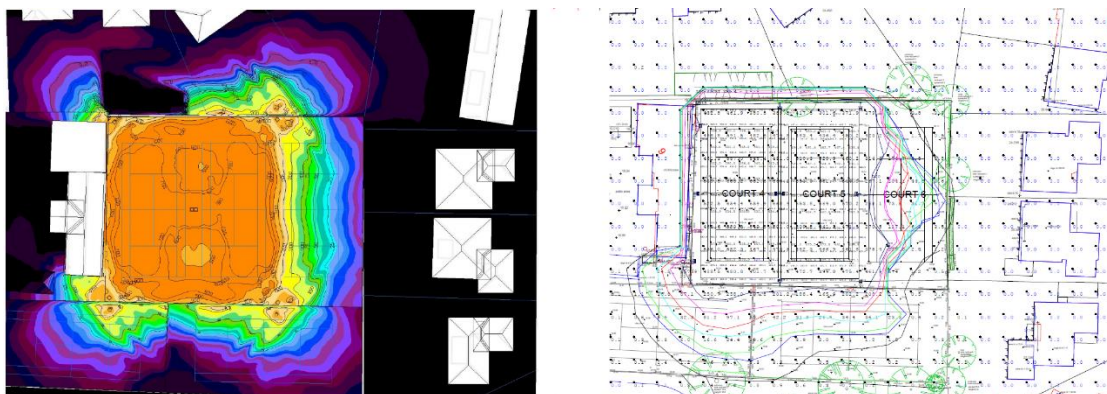
6.34 Example 1 is of a 15cm luminaire, and the expected maintained nearest observer position is 100m away. Based upon Table 4 in the accompanying report the geometric mean of diameter is 14.1cm, and the corresponding representative A_p is 0.016. This places it within the luminaire group $0.01 < A_p < 0.03m^2$ grouping. Reading down this column to E2, the pre-curfew maximum luminous intensity calculation is $2.5d$ where d from our case is 100m. The limiting intensity to the identified observer is therefore $2.5 \times 100 = 250$ cd.

6.35 Example 2 is within an E3 zone, the luminaire has a diameter of 44cm, and the realistic expected maintained nearest observer is 80m away. Based upon the table 4 in the accompanying report the geometric mean of diameter is 56.6cm, and the corresponding representative A_p is 0.251. This places it within the luminaire group $0.13 < A_p < 0.50 m^2$ grouping. Reading down this column to E3, the pre-curfew maximum luminous intensity calculation is $15d$ where from our case is 80m. The limiting intensity to the identified observer is therefore $15 \times 80 = 1,200$ cd.

- 6.36 The above technical analysis provided by SFPD equates to there being very limited back spill of light and the amenity impact on neighbours, particularly their adjoining gardens, is minimal.
- 6.37 In comparison, the Applicants instructed Match lighting consultancy to evaluate the impact on the surrounding properties of a temporary floodlighting installation on mobile telescopic units with power plug-in capability, which are instead currently allowed to be adopted on Site without the need for prior planning permission. This would be the 'fallback', should the Club not be able to realise a more permanent solution. See enclosed report prepared by Match.
- 6.38 In summary, the assessment concludes that there are several downsides of a temporary lighting installation when compared to the permanent one for which planning permission is sought, such as:
- Safety: in order to be stable, temporary units with telescopic poles require a wide base, to prevent them from falling under certain wind conditions as well as when accidentally hit.
 - Distribution: the number of temporary units should be minimised, and their positions carefully planned so to limit the potential interference and accidents with the players. One unit at the centre and four at the corners of the area spanning over the two tennis courts is deemed to be the best acceptable compromise.
 - Power density and uniformity: given it would not be safe nor practical having several temporary units around the playing area, a higher number of floodlights per moveable lighting pole, or the same number but more powerful floodlights would be required on each pole, in order to achieve the required illuminance and uniformity levels. For the same reason, the poles would be extended as high as possible (8m in this instance). This higher density of power and luminous flux has inevitably an impact on the surrounding areas.
 - Positioning: unlike a permanent installation where the lighting positions are fixed, the placement of any temporary lights would not be exact. The positioning of any non-permanently fixed lights may be altered or move over time. Even the slightest movement in any given direction could potentially cause greater light spillage into the adjacent gardens.
- 6.39 The lighting simulations by Match have been carried out with 5 poles locations and two types of luminaires:
- High power traditional metal halide floodlights, the same as those currently adopted on site.
 - Highly efficient modern LED floodlights, in double the number when compared to the metal halide units, so as to achieve an equivalent the required illuminance levels and uniformity.
- 6.40 The calculation results show that in both instances there is substantial spill of light on some of the surrounding properties, particularly those on the Mall to the north, given their closer proximity to the playing area. The screening effect of the solid fence screen and of the dense tall hedges immediately around the playing areas have been considered. However, the potential screening effect of the trees along the site ownership boundaries have not been modelled, as it would be largely affected by a number of factors, which could vary both seasonally and spatially along the boundaries, such as the heights of the trees, the density of the foliage at various heights and across different seasons, the impact of rain and wind, etc. It should be noted that the potential mitigation to the spill of light offered by trees is likely to be

stronger in the case of a permanent installation with poles at 6m than those on temporary units fully extended to 8m.

- 6.41 Match lighting consultants conclude that a fixed permanent installation on 6m tall poles, safely fixed to the ground and distributed in higher number around the tennis courts would therefore be a much better option than any fallback use of temporary installations on 8m tall poles, both in terms of visibility from and light spillage onto neighbouring properties, as well as in terms of energy efficiency, practicality, safety and aesthetics.



TEMPORARY LIGHTING SPILLAGE (LEFT) VS PROPOSED FIXED LIGHT (RIGHT)

The “Fallback”

- 6.42 It is worth noting at this juncture that full and proper regard should be had to the potential fallback in the event permission were to be refused. At paragraphs 3.13 to 3.15 above, we have referred to the Certificate of Lawful Development issued by the Council on 21 June 2011 pursuant to Section 192 of the Town and Country Planning Act 1990, which certified that the erection of temporary floodlights at the Club which would be taken down and stored when not in use, would be lawful without the need for planning permission.
- 6.43 The certificate was issued on the basis that the temporary lights would be 8m in height as set out in the application for the certificate. On the basis of the reasoning set out in the officers’ report there is nothing to suggest, however, that the indicated height of 8m was determinative on the issue of lawfulness or that the same decision would not have been reached had higher temporary floodlights been shown. The determinative factor was their temporary nature and not their height.
- 6.44 Section 192(4) of the 1990 Act states that: *“The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness”*. There have been no material changes of the sort mentioned in Section 192(4) and so the ability for the Club to lawfully erect such temporary floodlighting without obtaining planning permission must be conclusively presumed.
- 6.45 The above was endorsed by the Council in the context of its deliberations on application 16/2877/FUL where Members were informed by officers that the provision of such temporary lights would not be development requiring planning permission (see paragraph 3.14 above).

- 6.46 The ability for the Club to provide such temporary floodlighting across the whole of the Club on all courts without the need for planning permission or delivering any further mitigation is an important material consideration in the determination of this application as it represents a “fallback” option for the Club. Where a fallback exists in respect of any planning application for an alternative development (as is the case with the current application) it is appropriate and indeed necessary for the Council to properly take into account the fallback in reaching its decision. This has most notably been demonstrated in the Court of Appeal judgement in the case of *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 Lindblom LJ. If not properly taken into account as a material consideration, then this would be an error in law. (Relevant extract from the *Mansell V TMBC* case attached at Appendix 5)
- 6.47 Applying these principles to the current application, the Club clearly has an interest and desire in maximising the attractiveness of its facilities and its ability to provide tennis facilities to the community. The Club also has an interest in continuing to be a good neighbour in the community, and ensuring that its impacts are minimised, hence the reason for this application. However, if the current application is refused then the Club will naturally seek to provide moveable floodlighting at some or all of its tennis courts to achieve these aims.
- 6.48 It is well established that where the potential impacts of a fallback would be significantly more harmful than the development for which planning permission is sought then the fallback position attracts significant weight as a consideration in favour of the proposal (for example recent appeal decisions APP/R0660/D/19/3240413 (21 January 2020) paragraph 17 and APP/G2245/W/20/3260956 (13 April 2021) paragraph 49), attached as Appendix 6).
- 6.49 In respect of the Club’s current application the fallback must therefore be fully considered and assessed as part of the decision-making process.
- 6.50 It is important to note that in determining to refuse applications for previous floodlighting proposals at the Club:
- neither of the Planning Inspectors in their 1991 and 1998 decision letters had regard to any fallback position as a material consideration; and
 - that the officers’ report in respect of application 16/2877/FUL whilst noting the existence of the certificate of lawfulness did not present any proper comparative analysis of the impacts of the proposed development and the fallback, nor even specifically identified the temporary floodlight solution as a fallback at all, and hence as an important material consideration.
- 6.51 Whilst all of these previous decisions pre-dated the Court of Appeal decision in the 2017 *Mansell* case, in light of that decision it is now clear that in not carrying out a proper comparative analysis of the proposed development against the fallback those previous decisions failed properly to take into account an important material consideration which would have weighed significantly in favour of the proposed development.
- 6.52 This is of particular relevance because officers in respect of application 16/2877/FUL said in their report that “The planning assessment is one of balance” (Summary of Application and at paragraph 105 of that report) taking into account the acknowledged benefits of that scheme and weighing them against the impacts identified in the report.

6.53 The fact that the fallback was not properly assessed by the Inspectors at that stage means that a factor which would have weighed significantly in favour of the development was not properly taken into account in that decision.

b) Noise

6.54 A Noise Assessment produced by KP Acoustics accompanies this application. The assessment consisted of an environmental noise survey, manual noise measurements and a noise impact assessment. The assessments looked at the degree of acoustic impact upon the existing adjacent residential properties as a result of tennis play during the newly proposed evening hours during the darker months of the year.

6.55 The average ambient noise levels of the late evening period during which tennis play is proposed to take place post installation of the floodlights is used as a point of reference to determine the level of noise on nearby residential receivers. Due to the lower level of background noise generally expected during this time, comparing the calculated noise emissions of tennis play to the average ambient noise levels during is representative of the levels the adjacent residential properties will experience during the newly proposed hours of play.

6.56 Manual measurements were taken adjacent to court 4 (please see accompanying report) during a standard session of play. Play on other courts was also taking place during this time contributing to the total source emissions. The position and time were chosen to collect data on the closest court relative to the closest noise receiver as well as a representative level of noise emissions of the tennis club as a whole, at standard operation. Manual measurements were taken for one hour of activity, at 10m from the centre of the closest tennis court relative to the closest noise sensitive receiver.

6.57 KP Acoustics have advised that in their professional opinion the noise criteria should be based on the noise profile of the area at the receiver as per IMEA Guidelines for Environmental Noise Impact Assessment Version 1.2. (November 2014) in order to ensure that the amenity of the noise sensitive receiver is protected. Considering that the residential building receiver would be considered as Medium – Highly sensitive receiver, they have advised that the noise generated by the activities at the proposed two flood lit tennis courts should not change moderately or substantially compared to the current ambient noise of the area over the operating hours. Tennis play on the existing courts is expected to have no adverse impact on the amenity of nearby noise sensitive receivers.

6.58 It should be further noted that the lighting is proposed to serve just two courts. This would serve either singles or doubles matches and small group classes and coaching sessions will also take place on courts 4 and 5, however these sessions will be limited in numbers. Accordingly, the number of people using courts 4 and 5, and the associated level of activity at the Site overall, would be relatively low.

6.59 In previous applications for lighting at the Site, neighbouring residents have expressed concern relating to the potential for single events, which may cause greater disturbance than at normal times. This has been considered by the appointed noise consultants who consider that in this instance it is not relevant to include assessments of single events. The focus of their report assesses the increase in existing background noise levels at the closest receiver location during the courts extended evening hours of play, facilitated by the proposed installation of floodlights, as is required for planning. Assessing the level of 'single events' would not be

relevant as these are constant and could therefore be applicable during tennis play throughout any period of the day. This may be relevant for assessing the impact of the tennis courts as a whole but would not be for assessing the increase in existing background levels due to extending the opening hours.

6.60 The assessment, as stated above, has been undertaken fully and in accordance with all relevant standards. The result has indicated a 2dB increase in existing ambient noise levels at the receiver during the extended time frame, resulting in a negligible level of noise impact, as per the IMEA Guidelines.

6.61 The report concludes that the noise emissions of the tennis court during evening hours would be negligible when compared to the existing ambient noise level. The proposed floodlight installation would result in a low magnitude of noise impact and an indication of no adverse impact on the closest residential receiver.

6.62 More rigorous lighting requirements were brought into practice in line with the adoption of GN01/21 The Reduction of Obstructive Light which supersedes GN01/20 to reflect the changes in international guidance regarding obtrusive light as detailed in CIE 150; 2017 Guide on the Limitation of the Effects of Obtrusive Light from Outdoor Lighting Installations.

6.63 The proposed lighting fully complies with the latest requirements. When the previous application was submitted the lighting engineer referenced the GN01:2011 but this has since been updated twice.

6.64 The main and relevant changes are highlighted above and referenced below;

Definitions:

6.65 The term 'light trespass' has been dropped and the terms 'light nuisance' or 'light intrusion' is now used. The classification of environmental zones EO to E4 remains but the associated descriptions of lighting environment and related examples have been revised to align with the Dark Skies Association descriptions. This is to aid a more constant approach to assessing and classifying areas.

Planning Considerations:

6.66 GN01:2020 includes the considerations and requirements to be made regarding artificial lighting under the Clear Neighbourhoods and Environmental Act 2005, the National Planning Policy Framework (NPPF) 2019 as well as the government's lighting planning guidance.

Light Spill:

6.67 A further requirement has been introduced in the new GN that any spill light into an already lit area shall be managed. This is to ensure that it will not have an adverse effect on the task lighting performance requirements of the adjacent installation which may be a highway, car park or exterior work area etc. All assessment aspects concerning illuminance relate to all artificial lighting falling on the vertical or horizontal planes and not just that from a proposed installation. It is therefore of importance that the designer of a new installation undertakes a full existing baseline assessment of the existing lit environment to understand what, if any, additional spill light from their installation may be permitted. Of course, all good lighting design seeks to minimise any spill light and looks to just light the task areas required.

Luminance:

- 6.68 The CIE 150: 2017 approach now recognises that the limits for the luminous intensity of luminaires is dependent on the viewing distance between the observer and the bright luminaire and the projected area of the bright part of the luminaire in the direction of the observer. GNO1:2020 look to approach that advised in GIE 150:2017 but has also adopted the approach developed by the NSVV Nederlandse Stichting Voor Verlichtingskunde (the Dutch Foundation for Illumination). The GNO1:2021 approach now looks to a range of luminaire projection areas, the environmental zone within which the luminaire is located and provides a process to determine the maximum luminaire for both pre- and post-curfew times. The new approach also requires consideration to be made where a cluster of luminaires appear to the observer to be a single source. In such cases, the total is of all luminaires shall be considered and, a related limited intensity determined and applied to the group and not the individual luminaire

Installation Considerations:

- 6.69 Consideration and guidance regarding the choice of light source, luminaire distribution and mounting in order to mitigate obtrusive lighting effects are discussed. These factors include:
- The benefit of mounting height to reduce spill light as highlighted below.
 - The control of light output from the installed luminaire at angles between 85 and 100 to minimise skyglow effects.

3. The impacts on biodiversity and wildlife

- 6.70 Policy LP 15 (Biodiversity) states that “The Council will protect and enhance the borough’s biodiversity but not exclusively, the sites designated for their biodiversity and nature conservation value. Weighted priority in terms of their importance will be afforded to protected species and priority species and habitats.” Section B of the policy states “Where development would impact on species or a habitat, especially were identified in the relevant Biodiversity Action Plan at London or local level, or the Biodiversity Strategy for England, the potential harm should:

Firstly, be avoided (the applicant must demonstrate that there is no alternative site with less harmful impacts)

Secondly be adequately mitigated; or

As a last resort, appropriately compensated for.

- 6.71 The Site is not designated for biodiversity or nature conservation. Whilst there are no trees on the Site, neighbouring sites accommodate several trees and following a historical ecological assessment there exists the potential for bat presence.
- 6.72 A Preliminary Roost Assessment was undertaken by Arbtech Consulting Limited in July 2021. The Assessment confirmed that there were no habitats present within the Site boundary that may provide roosting opportunities for bats. However, tree ‘T1’, located directly adjacent to the north-west of the Site, was assessed to provide low potential to support roosting bats. Furthermore, peripheral vegetated habitats were assessed to provide some potential to support foraging and commuting bats, albeit limited. Given the above, it was advised that a Bat Activity Survey and Emergence Survey of Tree T1 be undertaken prior to the submission of a formal planning application.

- 6.73 Accordingly, the Bat Activity Survey and Emergence Survey were completed 7th September 2021, the results submitted herewith. In summary, the surveys concluded that no bats were seen emerging from the tree (T1) meaning that there is likely an absence of roosting bats within the tree and as such, there are not anticipated to be any impacts on bats as a result of the proposed works. In the unlikely event that bats are found during any stage of the development, work should stop immediately, and a qualified ecologist should be contacted to seek further advise. Arbtech advise to install one bat box on mature trees around the Sites boundaries as this will provide additional roosting habitats for bats. Bat boxes should be positioned 3 – 5m above ground level facing in a south or south westerly direction with a clear flight path to and from the entrance. SLTSC are happy to accept such an obligation secured by way of a planning condition of any forthcoming consent.
- 6.74 Additionally, any external lighting on the Site should use narrow spectrum light sources to lower the range of species affected by lighting, use light sources that emit minimal ultra-violet light and avoid white and blue wavelengths of the light spectrum to reduce insect attraction and where white light sources are required in order to manage the blue shortwave length content that should be of a warm/neutral colour temperature. This can be reflected in the lighting solution proposed.

4. The benefits and impact of the provision of floodlighting on the wider community

- 6.75 The Club has an extensive reach within the community and offers pro-bono coaching for young people unable to afford coaching fees which has allowed the club to extend its reach into areas of the borough that have not previously been able to access the Club. The Club intend to continue the scheme and expand it by developing partnerships with sponsors who may be able to fund scholarships.
- 6.76 In addition, the coaches have links to schools throughout the borough including schools that do not have tennis courts and use the Club as their ‘home’ venue when playing matches against other schools. If the Club has more floodlit, all-weather courts these Club partnerships can be extended and developed.
- 6.77 Sheen Lawn Tennis and Squash Club offers a range of activities for members of all ages including competitions, coaching, inter Club league tennis and squash tournaments as well as a range of social events. Historically, the Club has found it difficult to attract members of a working age as they were unable to provide court availability after working hours throughout the year. This has resulted in the tennis membership becoming heavily skewed with disproportionate numbers of junior and retired adult players. Like most other tennis clubs, Sheen Lawn Tennis and Squash Club has seen its adult membership increase in the past eighteen months whilst many people have worked from home. However, with the current imperative to get people back in the workplace the Club may be unable to retain these new members which is necessary for the future health of the facility.
- 6.78 The proposed works would improve access to the sporting facilities on offer, allowing a greater number of the local community to utilise the resource for health and wellbeing. The enhancement through the provision of floodlighting, strongly promotes healthy and active lifestyles which is of clear benefit to the local and wider community and is supported by all tiers of planning policy. It’s important to remember that tennis, along with golf and angling, was cited as a sport which can be played safely while keeping socially distanced from others. One of the first activities opened after Covid 19 lockdowns was outdoor tennis and the sport will remain valuable to the community in maintaining social, mental, and physical health.

- 6.79 As stated by the Lawn Tennis Association in May 2021: “We know how important it is for people to be active, and the particular role tennis can have in the physical and mental wellbeing of those that play it. By its very nature, tennis is a safe and naturally socially distant activity to take part in during the pandemic, whereby close person to person contact can be avoided”. Although we all hope that the worst of the Covid-19 pandemic is behind us, the more recent Omicron Variant and potential future variants, together with flu outbreaks, are greatest through the winter months and the provision of available outdoor socially distanced sporting activities will remain important and of great benefit to society at large.
- 6.80 According to ‘Health Benefits for Veteran (Senior) Tennis Players’ - from The British Journal of Sports Medicine, *“It is widely accepted that regular participation in tennis affords a host of mind-body health benefits for both young and veteran players. These health benefits are related to the general benefits of regular exercise participation including, but not limited to, higher aerobic capacities, lower resting heart rate and blood pressure responses, improved metabolic function, maintained or improved skeletal integrity, improved reaction time, and decreased stress reactivity.”*

5. *The benefits and effects on the use and viability of the facility*

- 6.81 The Club needs to retain and recruit new adult members who pay the highest-level membership fees and effectively finance the playing facilities for juniors and younger players. The proposed floodlighting would allow tennis courts to be used by these members into the evening, all year, not only in the summer months. Tennis is emphatically a year-round sport.

6. *That it meets an identified need as set out within the council’s playing pitch strategy*

- 6.82 As mentioned in the Council’s Playing Pitch Strategy, a general recommendation for all tennis courts in the borough is to *“Ensure appropriate ancillary provision at those Sites that are considered suitable.”* The specific ‘Recommended Action’ for SLTSC is to sustain court quality. The addition of floodlighting will ensure the quality of the pitches are sustained as we progress into winter months. Floodlit courts will provide a safer environment for all players, and their greater use will in turn allow the Club to re-invest in the facility, improving the overall quality of the facilities and the activities on offer in future.

LONDON BOROUGH OF RICHMOND UPON THAMES
PLAYING PITCH STRATEGY

Site ID	Site	Sport	Management	Current status	Recommended actions	Partners	Site hierarchy	Timescales ²⁰	Cost ²¹	Aim
72	Ham Common	Cricket	Council/Club	A standard quality square with eight grass wickets that is used to capacity at peak time by Ham & Petersham CC.	Review quality issues in an attempt to improve quality to good. Consider establishing long-term lease with Ham & Petersham CC.	ECB Club	Local site	S L	L L	Protect Enhance
73	Richmond Green	Cricket	Council	A standard quality square with ten grass wickets that is used to capacity at peak time.	Review quality issues in an attempt to improve quality to good.	ECB	Local site	S	L	Protect Enhance
74	Stag Brewery	Football	Private	Two good quality adult pitches that are used by Barnes Eagles FC for youth 11v11 demand. Actual spare capacity is discounted due to unsecure tenure as the site is proposed for development.	Mitigate any permanent loss through replacement provision of an equal or better quantity and quality given local shortfalls. Reconfigure pitches to better accommodate youth 11v11 demand.	FA	Local site	S	M / H	Protect
76	Suffolk Road Recreation Ground	Cricket	Council	A standalone NTP that is used by Barnes CC.	Retain for continued use and ensure quality remains sufficient.	ECB	Local site	L	L	Protect
78	Sheen Lawn Tennis and Squash Club	Tennis	Club	Eight good quality macadam courts, one of which is floodlit.	Sustain court quality.	LTA Club	Local site	L	L	Protect
84	Barnes Bowling Club	Bowls	Club	A standard quality green.	Retain green for continued use and explore options to improve quality	Bowls England Club	Local site	L	L	Protect Provide

RICHMOND PLAYING PITCH STRATEGY EXTRACT

- 6.83 In conclusion, the proposed floodlights meet all 6 criteria under Policy LP9.

d. Residential Amenity

- 6.84 The impact on residential amenity has been addressed above. Please see paragraphs 6.30 – 6.65.

e. Biodiversity

- 6.85 The impact on biodiversity has been addressed above. Please see paragraphs 6.66 – 6.70.

f. Transport and Parking

- 6.86 The NPPF 2021 advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 6.87 Policy LP44 promotes sustainable modes of transport and sustainable travel choices. LP45 details parking standards and states that parking should be provided to meet the needs of occupiers of development but also ensure that excessive on street parking demands is not created which could have an adverse impact on local highway/traffic conditions, street scene and impacts on making the best use of land.
- 6.88 The application Site is not located with a Controlled Parking Zone (CPZ) and has a relatively low PTAL. No off-street parking is provided, and it cannot reasonably be provided as part of the development proposals. However, the Site does provide 24 secure cycle spaces.
- 6.89 It should be noted that the SLTSC is principally a local amenity, with a local catchment, with a vast majority of its members attending Site by foot or by cycle. It is also a longstanding use within the area. Whilst some visitors do attend the Site by car, there is no parking available on Site, and visitors must find available spaces on street, within the surrounding highways.
- 6.90 Parklands Close is private road with on-street parking restrictions. Fife Road has a wide carriageway and the detached and semi-detached properties fronting Fife Road all generally benefit from ample provision of off-site parking. Accordingly, there is generally good parking availability on neighbouring roads, which are not controlled.
- 6.91 Notwithstanding the above, the proposed scheme would see a maintenance in the number of courts available for use at any one time, however the hours of use would be extended through the provision of the floodlights; through the extended play would involve just two of the eight tennis courts, in addition to the existing court number 8 which already benefits from fixed floodlighting.
- 6.92 Given that the purpose of the application is to principally extend the hours of play to two courts into the evening hours, rather than to increase the intensity of use at any one time, it is not considered that the development would result in any notable impact on local parking or highway conditions that would warrant refusal of the application. It should be further noted that none of the previous applications for floodlighting at the Site have been refused on transport grounds.

6.93 Therefore, it is concluded that the proposed development would not have an adverse impact in term of street scene or on-street parking, highway, and pedestrian safety.

g. Planning Benefits/Balance

6.94 The potential impacts of the proposed floodlights are limited to light nuisance, and the impact of noise through the proposed extended hours of play into the evening during winter months.

6.95 The lighting scheme has been utilised the latest available technology housed within lighting columns that are discreet and relatively low level. The lighting has been designed to ensure that glow and spillage are minimised, and that the impact on neighbouring gardens are avoided. The submitted contour plans within the lighting assessment confirm that the light impact of the development are minimal.

6.96 If the current application is refused, then the Club will plan to implement the “fallback” of introducing moveable floodlighting at some or all its tennis courts to achieve its aims. With the benefit of the Certificate of Lawfulness issued under application 11/0758/PS192, this fallback is a highly probable alternative. The fallback position has been assessed as part of this application, illustrating the comparable adverse visual impact of temporary floodlights to serve Courts 4 and 5, which the Club can use without the need for planning permission or additional mitigation. Whilst the provision of the temporary floodlights would allow the Club to deliver the same planning benefits as the proposed permanent solution sought, the submitted information clearly demonstrates that the fallback position utilising the temporary lights would be significantly more harmful than the proposed development and that this is a material planning factor which weighs heavily in favour of permission now being granted for the latest proposed development which has been carefully designed.

6.97 With regard to noise, a Noise Assessment accompanies the application which confirms that the noise generated by the activities at the proposed two flood lit tennis courts should not change moderately or substantially compared to the current ambient noise of the area over the operating hours. Tennis play on the existing courts is expected to have no adverse impact on the amenity of nearby noise sensitive receivers.

6.98 The impacts of the proposed development are relatively negligible.

6.99 Conversely, the NPPF strongly promotes sporting facilities which: enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. The London Plan further support sport and recreation facilities and advocates development proposals for sport and recreation facilities including provision of sports lighting within reasonable hours, where there is an identified need for sports facilities, and lighting is required to increase their potential usage.

6.100 In line with the above and the Council’s own strategy, the development will increase community participation in sport through providing additional courts that are floodlit.

6.101 Utilising Sports England’s market segmentation tool, and the Club’s own knowledge of the local area, there is a clear and identified demand for improved facilities, including those who are in full time employment and are keen to play healthy outdoor sports after their workday.

6.102 In summary, the works will increase levels of participation as well as promote healthy and active lifestyles. The proposed development would avoid the need for the Club to utilise moveable floodlights, which are not limited in terms of their hours of use or their potential additional light spillage. This fall-back alternative could result in adverse amenity impact to neighbouring residents, which the Club wishes to avoid. The continued and improved quality and function of the facility as a tennis and squash club, through provision of the proposed floodlights, demonstrably outweigh the limited perceived harm identified herein.

7.0 SUMMARY AND CONCLUSIONS

- 7.1 This statement supports a planning application made to the London Borough of Richmond Upon Thames for the installation of 10 no floodlights on 9 columns, supporting use of two tennis courts at Sheen Lawn Tennis and Squash Club.
- 7.2 An application was made in 2016 for ‘The re-orientation and resurfacing of three existing tennis courts to form two floodlit tennis courts and two mini tennis courts and associated fencing’. The application was refused on the basis that the harm would outweigh the benefits and primarily due to the LPA’s concern that the floodlights and extended hours of proposed play would be visually intrusive and result in noise that would give rise to significant adverse impacts on the amenity of neighbouring residents.
- 7.3 The current application does not seek to re-orientate or resurface any existing courts; the application seeks only to install flood lights. The proposed floodlights are of high quality, utilising the latest technology - the lighting units comprise HiLux Match LED Slim Gen3 Deflectors, which ensure that the light from the units can be directed and avoids the potential for the back spill of light into adjoining sites. The lighting has also been designed to minimise sky glow, light spill, and glare. The lights can be pre-programmed to ensure that they are switched off when not in use.
- 7.4 The accompanying lighting and noise report demonstrate the adverse impacts on neighbouring properties is negligible and are mitigated through good design. The fallback of utilising temporary lights, which has been assessed in detail and is an important material consideration which would create greater potential for neighbouring amenity harm. This material consideration weighs significantly in favour of the grant of permission for the proposed development.
- 7.5 This statement has outlined the clear benefits of the installation of the floodlights and in our view would clearly and demonstrably outweigh the negligible harm that may be caused. The proposed development would also avoid the need for the Club to utilise temporary moveable floodlights, which are not limited in terms of their hours of use.
- 7.6 The enhancement of the Club would address the needs of different user groups and increase levels of participation as well as strongly promote healthy and active lifestyles which is of clear benefit to the local and wider community.
- 7.7 Having been situated on the present site for over 100 years the continued use of the facility as a tennis and squash club and the proposed enhancement of the Club’s amenities for both new and existing members should be strongly supported.
- 7.8 For the reasons set out herein, we respectfully request the permission is granted.

APPENDICES

APPENDIX ONE

DECISION NOTICE 94/0571/FUL



London Borough of Richmond upon Thames

TOWN AND COUNTRY PLANNING ACT 1990

Reference No. 94/0571/FUL

Date: 14th July, 1994

Sheen Lawn Tennis & Squash
Club
1 Parklands Close
East Sheen
SW14 7EJ

WHEREAS in accordance with the provisions of the Town and Country Planning Act, 1990 and the Orders made thereunder you have made an application received on 7th March, 1994 and illustrated by plans for the permission of the Local Planning Authority to develop land situated at:

SHEEN LAWN TENNIS & SQUASH CLUB, 1 PARKLANDS CLOSE, EAST SHEEN
for
REPLACEMENT OF EXISTING 10 NO FLOODLIGHTS TO TENNIS COURT WITH 6 NO 6M HIGH FLOOD LIGHTS.

NOW THEREFORE WE THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES acting by the Council of the said Borough, the Local Planning Authority, HEREBY GIVE YOU NOTICE pursuant to the said Act and the Orders made thereunder that permission to develop the said land in accordance with the said application is hereby **GRANTED** subject to the following condition(s) and/or informative(s):

CONDITIONS:

AC01 DEVELOPMENT BEGUN WITHIN 5 YRS NS01 NON-STANDARD
NS02 NON-STANDARD

INFORMATIVES:

IF16 DAMAGE TO PUBLIC HIGHWAY IF30 NOISE CONTROL - BUILDING SITES
IF44 DECISION DRAWING NUMBERS IF70 BUILDING REGULATIONS REQUIRED

The full text of the condition(s) and/or informative(s) is shown on the attached sheet(s).

Planning and Building Control Division
Planning, Transport and Client Services
Civic Centre, 44 York Street
Twickenham, TW1 3BZ
Tel: 081 891 1411

Miriam Truman
HEAD OF PLANNING & BUILDING CONTROL
Signature.....

(SEE ATTACHED NOTES)

Sheen Lawn Tennis & Squash
Club
1 Parklands Close
East Sheen
SW14 7EJ

Reference No. 94/0571/FUL

The condition(s) and/or informative(s) applicable to this application are as follows:

CONDITIONS:

AC01 DEVELOPMENT BEGUN WITHIN 5 YRS

The development to which this permission relates must be begun not later than the expiration of five years beginning with the date of this permission.

REASON: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990.

NS01 Non Standard

The floodlights hereby approved shall not be used before 8am or after 10pm on any day.

REASON: To safeguard the amenities of the adjoining occupiers and the area generally.

NS02 Non Standard

The intensity of illumination from the floodlights shall not at any time exceed the lux values shown on the unnumbered photometric drawing received on 7 March 1994.

REASON: To safeguard the amenities of the adjoining occupiers and the area generally.

INFORMATIVES:

IF16 DAMAGE TO PUBLIC HIGHWAY

Care should be taken to ensure that no damage is caused to the public highway adjacent to the site during demolition and/or construction. The Council will seek to recover any expenses incurred in repairing or making good such damage from the parties responsible.

IF30 NOISE CONTROL - BUILDING SITES

Attention is drawn to the noise control provisions of the Control of Pollution Act 1974. Any enquiries for further information should be made to the Environmental Health Division, Pollution Team, Elmfield House, High Street, Teddington, TW11 8EJ (Tel: 01-943-3011).

IF44 DECISION DRAWING NUMBERS

For the avoidance of doubt the Drawing(s) No(s) to which this decision refers are as follows: unnumbered OS extract, L1, unnumbered elevation of floodlight and photometric drawing received on 7 March 1994

IF70 BUILDING REGULATIONS REQUIRED

The applicant is advised that the erection of new buildings or alterations to existing buildings should comply with the Building Regulations. This permission is NOT a consent under the Building Regulations for which a separate application should be made. For application forms and advice please contact the Building Control Section of the Planning, Transport and Client Services Department, Civic Centre, 44 York Street, Twickenham, TW1 3BZ. Tel no. 081 891 1411.

APPENDIX TWO

DECISION NOTICE 11/0758/PS192

Environment Directorate

Civic Centre, 44 York Street, Twickenham TW1 3BZ
tel: 020 8891 7300 text phone 020 8891 7120
fax: 020 8891 7789
email: envprotection@richmond.gov.uk
website: www.richmond.gov.uk



PLANNING

TOWN AND COUNTRY PLANNING ACT 1990: DECISION NOTICE SECTION 192

Mr C Northey
61 Sandycombe Road
Kew
TW9 2EP

Please contact: Planning Support

Please telephone: 0845 612 2660

Your ref:

Our ref:
DC/RIT/11/0758/PS192/PS192

Letter Printed: 21 June 2011

FOR DECISION DATED
21.06.2011

Dear Sir/Madam

Town and Country Planning Act 1990, Section 192 (as amended)
Town and Country Planning (General Development Procedure Order) 1995 Article 24

Applicant: Sheen Lawn Tennis Club**Agent:** Mr C Northey

WHEREAS in accordance with the provisions of the Town and Country Planning Act 1990 and the relevant Orders made thereunder, you have made an application received on **2 March 2011** for a **CERTIFICATE OF LAWFUL USE OR DEVELOPMENT** relating to:

Sheen Lawn Tennis And Squash Club, Parklands Close, East Sheen, London, SW14 7EH

for

Erection of temporary lights to be taken down and stored when not in use.

You are advised that the above works/use at the premises edged black on the plan attached to this Certificate were/was lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the reasons(s) given on the attached schedule:

Yours faithfully



Robert Angus
Development Control Manager

APPLICANT NAME Sheen Lawn Tennis Club Sheen Lawn Tennis And Squash ClubParklands CloseEast SheenLondonSW14 7EH	AGENT NAME Mr C Northey 61 Sandycombe RoadKewTW9 2EP
--	---

SITE:

Sheen Lawn Tennis And Squash Club, Parklands Close, East Sheen, London.

PROPOSAL:

Erection of temporary lights to be taken down and stored when not in use.

The reason(s) and/or informatives(s) applicable to this application are as follows:

SUMMARY OF CONDITIONS AND INFORMATIVES

CONDITIONS:

U40980 Not development

INFORMATIVES:

U54013 Drawing Numbers

PLEASE NOTE:

1. This certificate issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified taking place on the land described above was/would have been lawful on the specified date and thus was not/would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use/operations/matter described and to the land specified and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of the described use or operation is only conclusively presumed when there has been no material change, before the use of is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

SCHEDULE OF CONDITIONS AND INFORMATIVES TO APPLICATION 11/0758/PS192**DETAILED CONDITIONS**

U40980 Not development

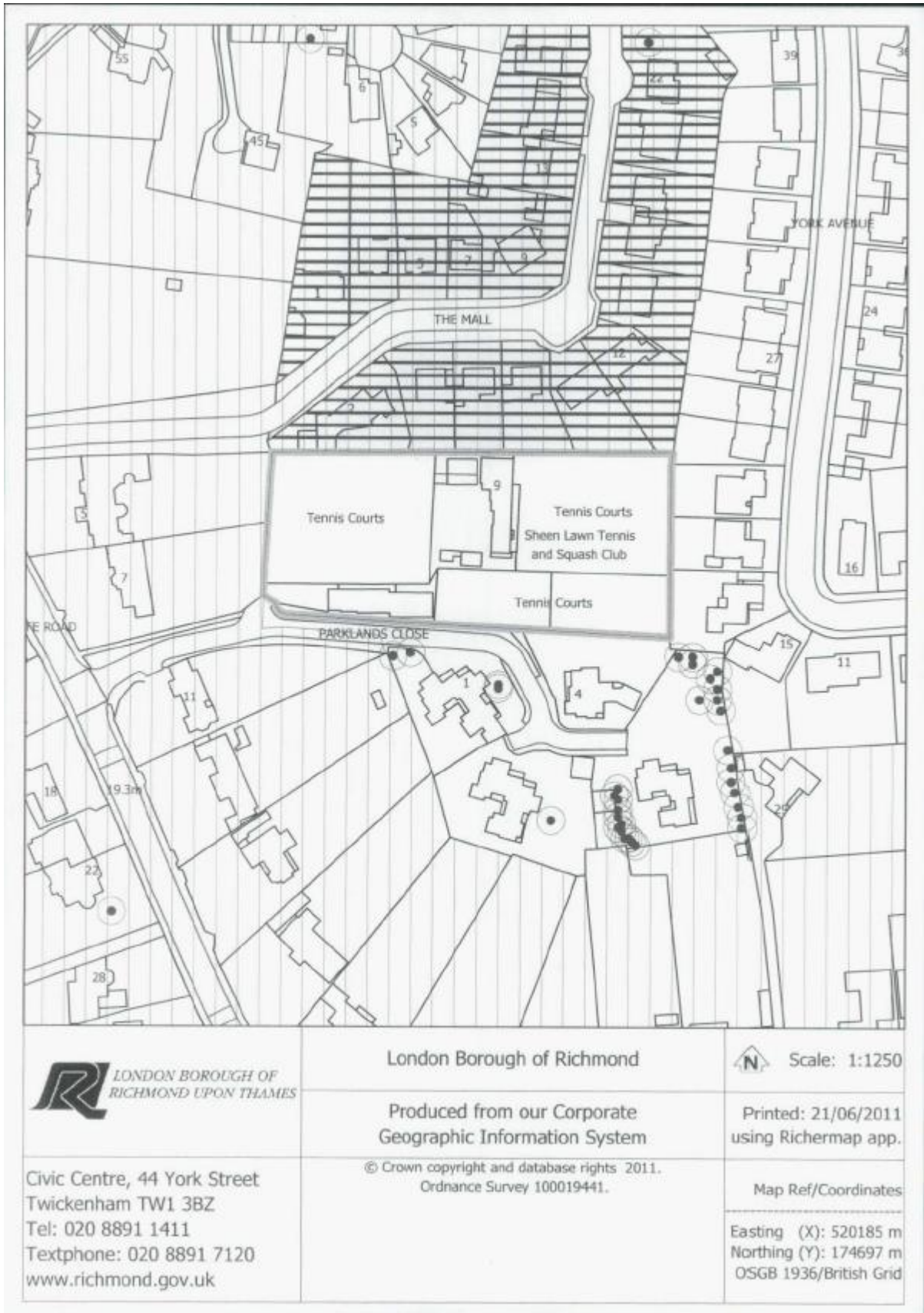
This proposal DOES NOT CONSTITUTE DEVELOPMENT within the meaning of the Town and Country Planning Act 1990, and therefore planning permission IS NOT REQUIRED.

DETAILED INFORMATIVES

U54013 Drawing Numbers

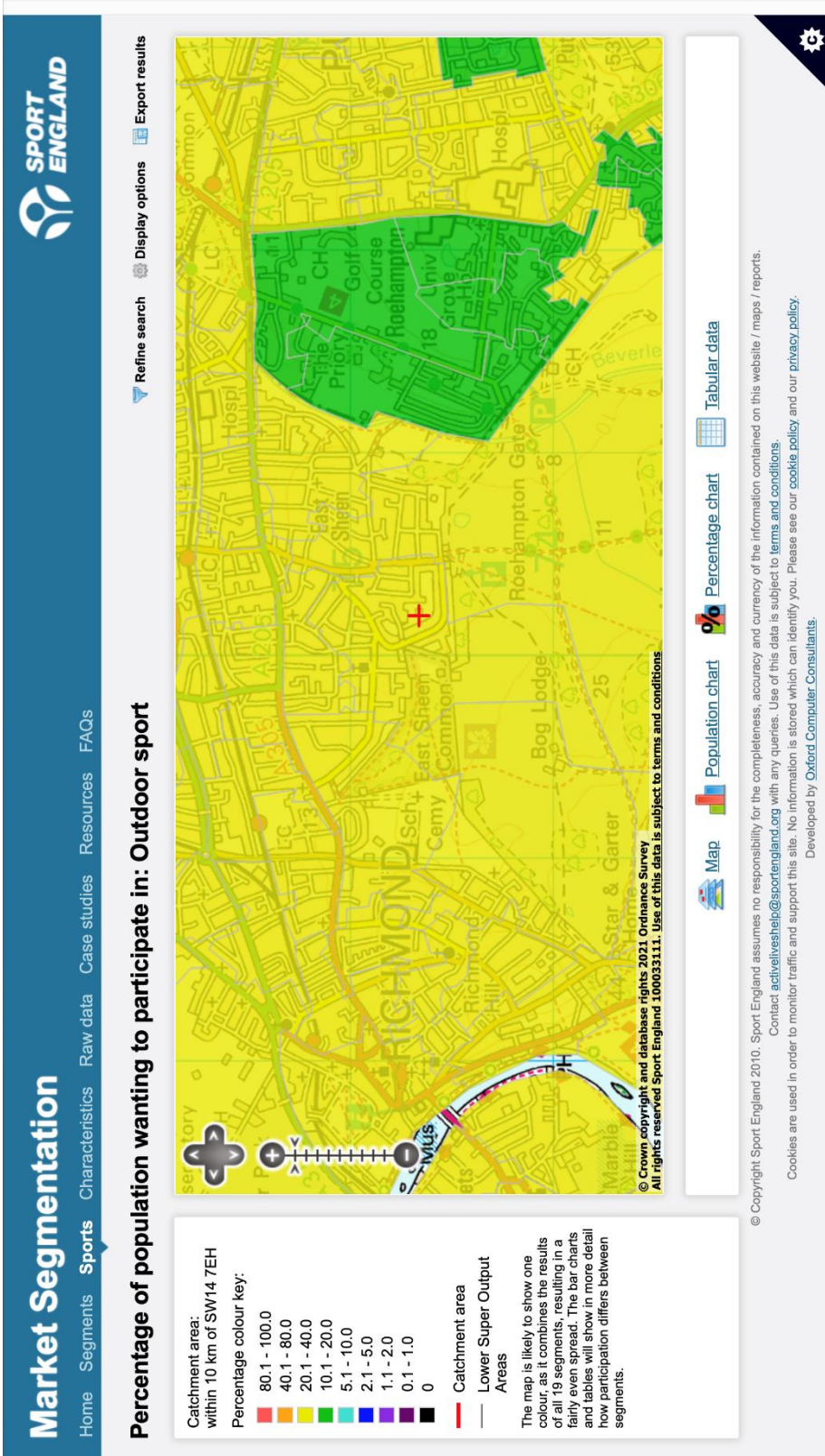
For the avoidance of doubt the Drawing(s) No(s) for this decision refers are as follows:- OS Sitemap, SLTC/FL01, Email-Subject: floodlights sheen, photo and diagram received 2nd March 2011 and Email-Subject: RE: Sheen Lawn Tennis and Squash Club received 10th June 2011.

END OF SCHEDULE OF CONDITIONS AND INFORMATIVES FOR APPLICATION 11/0758/PS192




APPENDIX THREE

SPORT ENGLAND MARKET SEGMENTATION TOOL – OUTDOOR SPORT DEMAND



APPENDIX FOUR

SPORT ENGLAND MARKET SEGMENTATION TOOL – DEMAND PROFILE



Market Segmentation

Home Segments Sports Characteristics Raw data Case studies Resources FAQs


Refine search Display options Export results


Dominant market segment by population

Catchment area:
within 10 km of SW14 7EH

- Ben - 1
- Jamie - 2
- Chloe - 3
- Leanne - 4
- Helena - 5
- Tim - 6
- Alison - 7
- Jackie - 8
- Kev - 9
- Paula - 10
- Philip - 11
- Elaine - 12
- Roger & Joy - 13
- Brenda - 14
- Terry - 15
- Norma - 16
- Ralph & Phyllis - 17
- Frank - 18
- Elsie & Arnold - 19

Catchment area





Tim

Settling Down Males

Sporty male professionals, buying a house and settling down with partner

9% of all adults; 18% of adult men

[View Tim's full profile](#)

Map

Population chart

Percentage chart

Tabular data

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APPENDIX FIVE

MANSELL V TONBRIDGE AND MALLING BOROUGH COUNCIL [2017] EWCA CIV 1314 LINDBLOM LJ
(EXTRACTS)

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R (Mansell) v Tonbridge & Malling BC (CA)

[2019] PTSR

Court of Appeal

A

Regina (Mansell) v Tonbridge and Malling Borough Council

[2017] EWCA Civ 1314

2017 July 4;
Sept 8

Sir Geoffrey Vos C, Lindblom, Hickinbottom I JJ

B

Planning — Development — Permitted development — Challenge to lawfulness of planning permission for residential development on site of existing barn and bungalow — Whether local planning authority erring in consideration of fallback position if permission refused — Whether misinterpreting scope of permitted development rights for change of use of agricultural building to dwelling houses — Whether erring in approach to sustainable development under national planning policy — Citation of authorities on presumption in favour of sustainable development — Respective roles of planning decision-makers and courts in planning cases — Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596), Sch 2, Pt 3, paras Q, Q.1(b) — National Planning Policy Framework (2012), para 14e

C

D

The local planning authority received an application for planning permission for proposed development involving the demolition of a 600 square metre barn and an associated bungalow and their replacement with four new dwellings. The planning officer's report recommended that permission be granted, advising that a realistic "fallback" position if permission were refused was that a less desirable development of four dwellings would still go ahead, involving converting part of the barn into three dwellings pursuant to permitted development rights under Class Q in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015¹ for the change of use of an agricultural building to dwelling houses, and building a further dwelling on the site of the bungalow in accordance with development plan policy. The report also advised that government emphasis on sustainable housing development in the National Planning Policy Framework² ("NPPF") was a material consideration. After considering the report the authority's planning committee granted planning permission. The claimant sought judicial review challenging the grant of planning permission on the grounds that the local authority, in reliance on the officer's report, had: (i) misinterpreted Class Q, in that the restriction in sub-paragraph Q.1(b), limiting the cumulative floor space of the existing building changing use to 450 square metres, applied to the total floor space of the agricultural building in question and not merely to the floor space actually changing use; (ii) wrongly concluded that there was a real prospect of the fallback position being implemented; and (iii) erred in its approach to sustainable development in circumstances where the "presumption in favour of sustainable development" in paragraph 14 of the NPPF was not operative, there being a five-year supply of deliverable housing sites and thus no warrant for disapplying the development plan. The judge dismissed the claim on all grounds.

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On the claimant's appeal—

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¹ Town and Country Planning (General Permitted Development) (England) Order 2015, Sch 2, Pt 3, paras Q, Q.1(b): see post, para 6.

² National Planning Policy Framework, para 14: see post, para 38.

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A in a building or buildings being in Class C3 use. Neither of those outcomes would necessarily be prevented by sub-paragraph Q.1(b).

20 Finally, there is nothing in the provisions of Class M and Class N, or in any other provision of the GPDO, to suggest a different understanding of Class Q. The provisions in sub-paragraphs M.1(c) and N.1(b) also contain the word “cumulative” in referring to the floor space “changing use”, not to the total floor space of the “existing building or buildings” in which the change of use is taking place. And in both Class M and Class N the draftsman has also included a provision—respectively in sub-paragraphs M.1(d) and N.1(c)—stating that “the development (together with any previous development under [the relevant class]) would result in more than 150 square metres of floor space in the building having changed use under [the relevant class]”. Although we are not deciding those questions, it seems to me that the same analysis would hold good for those provisions too.

21 In my view, therefore, the officer did not misrepresent the permitted development rights under Class Q in his advice to the committee on the “fallback position”. The provisions of Class Q were correctly interpreted and lawfully applied.

D *Was the council entitled to accept that there was a real prospect of the fallback development being implemented?*

22 Garnham J accepted that the council was entitled to conclude that there was a “realistic” fallback. In paras 36–37 he said:

E “36. In para 6.15 of the report the officer concluded that the fallback position was ‘realistic’. In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the council and the planning agent acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another, to develop the site. Alternative proposals had been advanced seeking the council’s likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.

F “37. It was not a precondition to the council’s consideration of the fallback option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site.”

23 The judge accepted the submission of Mr Juan Lopez for the council that the committee did not have to ignore fallback development that included elements for which planning permission would be required and had not yet been granted. He noted that “[the] building could be converted, so as to provide dwelling houses limited in floor space to 450 square metres, by the construction of internal walls without using the whole of the internal space of the barn”: para 40. And he went on to say, in para 41:

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“In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise that appropriate regard must be had to material planning considerations including the permitted development fallback position. Accordingly I reject the second element of the claimant’s challenge on ground 1.”

A

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24 Ms Graham Paul criticised the judge’s approach. She said it would enable permitted development rights under the GPDO to be relied on as a fallback even where there was no evidence that the landowner or developer would in fact resort to such development. The judge did not consider whether the council had satisfied itself that there was a “real prospect” of the fallback development being implemented: see the judgment of Sullivan LJ in *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] JPL 1326, para 21. The “real prospect”, submitted Ms Graham Paul, must relate to a particular fallback development contemplated by the landowner or developer, not merely some general concept of development that might be possible on the site. Only a specific fallback makes it possible for a comparison to be made between the planning merits of the development proposed and the fallback development. The relevance of a fallback depends on there being a “finding of an actually intended use as opposed to a mere legal or theoretical entitlement”: see the judgment of Mr Christopher Lockhart-Mummery QC, sitting as a deputy judge of the Queen’s Bench Division, in *R v Secretary of State for the Environment, Ex p PF Abern (London) Ltd* [1998] Env LR 189, 196.

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25 Ms Graham Paul said there was nothing before the council to show that either the East Malling Trust or Croudace Portland contemplated the site being developed in the way the officer described in his report. On the contrary, the conversion of the barn for residential use—as opposed to its demolition and replacement with new dwellings—seems to have been regarded as impracticable or uneconomic. The East Malling Trust’s planning consultant, Broadlands Planning Ltd, had submitted a “planning statement” to the council in December 2013, seeking the council’s advice before the submission of an application for planning permission. In that document two possible schemes for the site were referred to: para 26. Neither could have been achieved using permitted development rights. One involved the retention of the barn and its conversion to four dwelling houses, the other a “wholesale redevelopment of the site”, perhaps with the replacement of the bungalow, to create five new dwellings. In a letter to Broadlands Planning Ltd dated 30 January 2014 the council’s senior planning officer, Ms Holland, said she was “not convinced that the proposal would result in the building being converted, but rather [that] large portions would be removed and a new building created”. And the East Malling Trust’s marketing agent, Smiths Gore, in a letter to potential developers dated 27 February 2014, suggested it was “unlikely that a developer would contemplate the conversion of the Apple Store”. There was, said Ms Graham Paul, no other

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- A contemporaneous evidence to lend substance to the fallback scheme to which the officer referred in his report, and no evidence of the council trying to find out what, if anything, was actually contemplated. The evidence did not demonstrate a “real prospect”—as opposed to a merely “theoretical” prospect—of such a development being carried out. The judge should have recognised that the fallback development referred to in the officer’s report was not a material consideration.
- B 26 I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.
- 27 The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:
- C (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.
- (2) The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in the *Samuel Smith Old Brewery* case: see, in particular, paras 17–30 of Sullivan LJ’s judgment, with which Sir Anthony Clarke MR and Toulson LJ agreed; and the judgment of Supperstone J in *Kverndal v Hounslow London Borough Council* [2016] PTSR 330, paras 17 and 42–53. As Sullivan LJ said in the *Samuel Smith Old Brewery* case [2009] JPL 1326, in this context a “real” prospect is the antithesis of one that is “merely theoretical”: para 20. The basic principle is that “for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice”: para 21. Previous decisions at first instance, including *Ex p PF Ahern (London) Ltd* [1998] Env LR 189 and *Brentwood Borough Council v Secretary of State for the Environment* (1996) 72 P & CR 61 must be read with care in the light of that statement of the law and bearing in mind, as Sullivan LJ emphasised, “‘fallback’ cases tend to be very fact-specific”: para 21. The role of planning judgment is vital. And, at [2009] JPL 1326, para 22:
- F “[it] is important ... not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge’s response to the facts of the case before the court.”
- G (3) Therefore, when the court is considering whether a decision-maker has properly identified a “real prospect” of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.
- H

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28 In this case, in the circumstances as they were when the application for planning permission went before the committee, it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan, in particular policy CP14 of the core strategy. Not to have done so would have been a failure to have regard to a material consideration and thus an error of law.

29 That the East Malling Trust was intent upon achieving the greatest possible value from the redevelopment of the site for housing had by then been made quite plain. The “planning statement” of December 2013 had referred to two alternative proposals for the redevelopment of the site (para 26), pointing out that both “[the] redevelopment and replacement of [the] bungalow” and “[the] conversion of the existing storage and packing shed” were “permissible in principle”: para 35. The firm intention of the East Malling Trust to go ahead with a residential development was entirely clear at that stage.

30 In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality—whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer’s report to committee. It is reinforced by evidence before the court—in the witness statement of Mr Humphrey, the council’s director of planning, housing and environmental health, dated 18 March 2016 (in paras 6–24), in the witness statement of Mr Wilkinson, the land and sales manager of Croudace Portland, also dated 18 March 2016 (in paras 4–7), in the first witness statement of Ms Flanagan, the property and commercial director of the East Malling Trust, dated 17 March 2016 (in paras 4–6), and in Ms Flanagan’s second witness statement, dated 17 June 2016 (in paras 2–5).

31 As Ms Flanagan says (in para 2 of her second witness statement):

“At para 6 of my first witness statement, I state that there was no doubt that the Trust would consider alternatives to the preferred scheme. To further amplify, the trust (as a charitable body) is tasked with obtaining best value upon the disposal of its assets. A number of alternative uses were considered for the site, including industrial uses. However the board was aware that a residential scheme of some type would provide the best value for the application land, even were that to include a conversion of the existing agricultural building.”

Ms Flanagan goes on to refer to Smiths Gore’s letter of 27 February 2014 (in paras 4 and 5):

“4. ... This letter ... states that at that time [Smith Gore’s] opinion was that it was unlikely that a scheme of conversion would be contemplated by any developer. However, this letter pre-dated the permitted development rights that subsequently came into effect in April 2014. By the time the planning application had formally been submitted, these permitted development rights were in effect.”

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A “5. Had no other scheme proven accep` in planning terms, and if planning permission had been refused for the development the subject of the planning application, the trust would have built out a ‘permitted development’ scheme to the fullest extent possible in order to realise the highest value for the land, in order to thereafter seek disposal to a developer.”

B 32 That evidence is wholly unsurprising. And it confirms the East Malling Trust’s intentions as they were when the council made its decision to grant planning permission in January 2016, by which time the current provisions for “permitted development” under Class Q of the GPDO had come into effect. It states the East Malling Trust’s position as landowner at that stage—
C as opposed to the view expressed by an officer of the council, and an opinion by a marketing agent in a letter to developers, almost two years before. It is consistent with what was being said on behalf of the East Malling Trust in its dealings with the council from the outset—in effect, that the site was going to be redeveloped for housing even if this had to involve the conversion and change of use of the barn to residential use. It reflects the fiduciary duty of the trustees. And it bears out what the council’s officer said about the “fallback position” in his report to committee.
D

33 I do not see how it can be said that the officer’s assessment of the “fallback position”, which the committee adopted, offends any relevant principle in the case law—in particular the concept of a “real prospect” as explained by Sullivan LJ in the *Samuel Smith Old Brewery* case [2009] JPL 1326. It was, in my view, a faithful application of the principles in the authorities in the particular circumstances of this case. It also demonstrates
E common sense.

34 The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee. But the officer’s advice in paras 6.14–6.19 of
F his report was, I believe, impeccable. He was right to say, in para 6.14, that the “new permitted development rights”—under Class Q in the GPDO—would enable the barn to be converted into three residential units; in the same paragraph, that the building “could be physically adapted in certain ways that would allow for partial residential occupation”; and, in para 6.15, that the bungalow “could be replaced in accordance with policy CP14 with
G a new residential building provided that it was not materially larger than the existing building”. He was also right to say, therefore, that the site could be developed for “four residential units albeit of a different form and type to that proposed by this application”. All of this was factually correct, and represented what the council knew to be so. It did not overstate the position. It went no further than the least that could realistically be achieved by way of a fallback development—through the use of permitted development rights
H under Class Q and an application for planning permission complying with policy CP14.

35 The officer also guided the committee appropriately in what he said about the realism of the “fallback position”. At the end of para 6.15 of his report he said that the fallback development he had described was “a realistic fallback position in terms of how the site could be developed”. He was well

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aware of the need to take into account only a fallback development that was truly “realistic”, not merely “theoretical”. He came back, in para 6.16, to the question of “realistic ‘fallback’ positions”, again reminding the members that this was what had to be considered. He went on to acknowledge, rightly, that the council had to consider what could be achieved “using permitted development rights for alternative forms of development”. The context for this advice was that in his view, as he said in para 6.15, he was dealing with “a realistic fallback position”. He went on in para 6.17 to consider what “would” happen if a scheme taking advantage of permitted development rights came forward. And in para 6.18 his advice was that a redevelopment involving the conversion of “the entire barn for residential purposes, above the permitted development thresholds ... would wholly accord with adopted policy”. That was a legally sound planning judgment. The same may also be said of the officer’s conclusion in para 6.19, where he compared the proposal before the committee with the “more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights”.

36 In short, none of the advice given to the council’s committee on the “fallback position” can, in the particular circumstances of this case, be criticised. It was, I think, unimpeachable.

37 In my view, therefore, the council was entitled to accept that there was a “real prospect” of the fallback development being implemented, and to give the weight it evidently did to that fallback as a material consideration. In doing so, it made no error of law.

Was the judge right to conclude that the council did not misunderstand or misapply the “presumption in favour of sustainable development” in the NPPF?

38 Paragraph 14 of the NPPF states:

“At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.”

“For decision-taking this means:

“• approving development proposals that accord with the development plan without delay; and

“• where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

“—any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or

“—specific policies in [the NPPF] indicate development should be restricted.”

39 In the *East Staffordshire* case [2018] PTSR 88 this court stated its understanding of the policy for the “presumption in favour of sustainable development” in the NPPF, and how that presumption is intended to operate: see paras 34 and 35 of my judgment. In doing so, it approved the relevant parts of the judgment of Holgate J in *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 (in particular paras 126, 131, 136, and 140–143). Three simple points emerged: see para 35 of my judgment. The first and second of those three points need not be set out again

APPENDIX SIX

APPEAL DECISIONS APP/R0660/D/19/3240413 AND APP/G2245/W/20/3260956



The Planning Inspectorate

Appeal Decision

Site visit made on 21 January 2020

by **R E Walker BA Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Appeal Ref: APP/R0660/D/19/3240413

Green Lane Farm, Green Lane, Bollington SK10 5LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Cooper against the decision of Cheshire East Council.
 - The application Ref 19/2912M, dated 17 June 2019, was refused by notice dated 9 August 2019.
 - The development proposed is alterations and extensions to an existing dwelling - re-submission of application ref. 18/5585M.
-

Decision

1. The appeal is allowed and planning permission is granted for alterations and extensions to an existing dwelling - re-submission of application ref. 18/5585M at Green Lane Farm, Green Lane, Bollington SK10 5LG, in accordance with the terms of the planning application Ref 19/2912M, dated 17 June 2019, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; 3936_00_02 Rev A; 3936_00_01 Rev B; 3936_00_03 Rev A; 3936_00_13 Rev L; 3936_00_11 Rev J; 3936_00_12 Rev G.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Main Issues

2. The main issues in this appeal are:
 - whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt and the purposes of including land within it; and
 - if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

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Reasons

Inappropriate Development

3. Paragraph 145 of the Framework states that the construction of new buildings within the Green Belt is inappropriate development. However, it lists certain forms of development which are not regarded as inappropriate. This includes the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
4. This is generally reflected in Policy PG3 of the Cheshire East Local Plan Strategy 2010 - 2030 (CELP) adopted July 2017, which also provides a list of exceptions. In so far as they are relevant to this appeal, these are largely similar to the exceptions set out in the Framework.
5. There is no definition of disproportionate development within Policy PG3 or the Framework. However, the reasoning for saved Policy GC12 of the Macclesfield Borough Local Plan (MBLP) adopted January 2004 says that a proposal in the Green Belt will be considered to be 'disproportionate' if the development would result in an increased floorspace of more than 30% of the original dwelling.
6. There is no dispute between the main parties that due to the size of the proposed development, it would represent a disproportionate addition to the original dwelling, and I have no reason to disagree. Accordingly, the proposed development would comprise inappropriate development in the Green Belt. It would therefore be at odds with Policy PG3 of the CELP, Policy GC12 of the MBLP and paragraph 145 of the Framework in this regard.

Openness and Green Belt Purposes

7. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open. This openness is an essential characteristic of the Green Belt and has a spatial and visual aspect. I recognise that the appeal site is within an area characterised by long open views and the site makes a major contribution to this part of the Green Belt.
8. It is evident that the proposed extension would result in a loss of openness to the Green Belt, because of its size and scale when compared with the existing dwelling. The proposed development would be visible from Green Lane and to a lesser extent from Long Lane. Although the proposal would be seen in the context of the existing dwelling, in spatial terms, it would add built form where there presently is none. Whilst the extent of the loss of openness would be limited, it would still be material.
9. Green Belt purposes that appear to be served by the designation of the appeal site within the Green Belt include, amongst others, checking unrestricted sprawl and safeguarding the countryside from encroachment. Considering my findings on the visual and spatial aspect, the proposal would impact on the related Green Belt purposes.
10. I therefore conclude that the proposal would lead to a loss of Green Belt openness and would impact on the purposes of including the land within the Green Belt. Therefore, it would be contrary to the relevant Green Belt guidance within the Framework.

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Other Considerations

11. The appellant has drawn my attention to a planning permission and Lawful Development Certificate¹ in respect of a similar development to that proposed which could be implemented (the fallback position). One relates to alterations and extensions including the demolition of the outrigger, whilst the other relates to a single storey side and rear extension. The fallback position would differ from the appeal proposal in that it would create small gaps so as to not adjoin the various rear projections. Moreover, the fallback position is slightly larger than the proposal before me.
12. I recognise that the introduction of the parallel walls and gaps makes for an awkward arrangement in the fallback position which is unlikely to be as desirable as the appeal proposal. Moreover, such an arrangement would add to the costs and require additional building materials. However, the internal layout of the fallback position still appears to be able to function and it would provide substantial additional living accommodation. Moreover, given that an LDC and planning permission have been issued for the fallback position I consider it a strong possibility that they would be implemented were this appeal to fail.
13. The appeal site lies within an Area of Special County Value (ASCV) as set down in the MBLP. The proposal would amalgamate the fallback position, removing the awkward gaps and parallel walls to create a more integrated design. I recognise that these would only be fully appreciated in close views and, in quantum terms, the proposal would represent a sizeable extension. Nonetheless, it would be an improvement spatially, from the fallback position, in respect of the openness of the Green Belt. Moreover, it would also be an improvement visually, from the fallback position, in respect of the character and appearance of the host dwelling and surrounding ASCV.
14. I recognise that the appeal site lies on the edge of the Bollington Conservation Area (CA). As such, I have had regard to the special duty placed on decision makers in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. I note that the Council consider the proposal would not harm the character and appearance of the CA and I have no reason to disagree. Given my findings on the fallback position in comparison to the design of the appeal proposal, I am satisfied that it would preserve the character and appearance of the CA.

Planning Balance

15. The proposal would be inappropriate development in the Green Belt. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that harm. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
16. The proposal would result in disproportionate additions to the original building and so would comprise inappropriate development in the Green Belt. In addition, there are adverse impacts on openness and the Green Belt purpose.
17. However, I give significant weight to the potential fallback position which may be implemented. This would have a greater effect on openness and would be an inferior design compared to the appeal scheme.

¹ 17/5447M and 18/2556M

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18. I find that this other consideration is of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and effect on openness and Green Belt purpose. As a result, very special circumstances exist to justify inappropriate development in the Green Belt.
19. Although there would be conflict with the development plan, the balance of planning considerations in this case leads me to the view that the appeal should succeed.

Conditions

20. The Council has suggested conditions in the event of the appeal being allowed. These have been considered against the advice contained within the Planning Practice Guidance and I have amended the wording in the interests of clarity. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. A condition relating to materials is appropriate in the interests of the character and appearance of the area.

Conclusion

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

Robert Walker

INSPECTOR



The Planning Inspectorate

Appeal Decision

Inquiry held on 9 to 12 March 2021

Site visit made on 30 March 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th April 2021

Appeal Ref: APP/G2245/W/20/3260956

Salts Farm, Fawkham Road, Fawkham DA3 7BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Billings, Westoak Homes against the decision of Sevenoaks District Council.
 - The application Ref: 20/00882/OUT, dated 19 March 2020, was refused by notice dated 20 May 2020.
 - The development proposed is described as an outline planning application for the erection of 26 dwellings - All matters reserved for future consideration (apart from access).
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 26 dwellings - all matters reserved for future consideration (apart from access) at Salts Farm, Fawkham Road, Fawkham DA3 7BJ in accordance with the terms of the application, Ref: 20/00882/OUT, dated 19 March 2020 subject to the conditions in the attached schedule.

Preliminary and Procedural Matters

2. The application is in outline form with all matters reserved for future consideration apart from access. I have dealt with the appeal on this basis and I have treated any details not to be considered at this stage as being illustrative only. It was agreed by the main parties that an updated parameter plan (ref: DHA/14150/09) that was submitted with the appeal was for my consideration.
3. The Council withdrew its reasons for refusal concerning ancient woodland and biodiversity following the submission of additional information with the appeal. This information consisted of the updated parameter plan and an Ecological Assessment (October 2020). The Council also withdrew its reason for refusal in relation to drainage on the basis of a Drainage Technical Note (July 2020). As interested parties and consultees have also raised these matters, they remain considerations and so they are addressed in my decision.
4. The Council also stated that an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (S106 Agreement) would address its reason for refusal relating to the provision of affordable housing. The Inquiry proceeded on this basis and included the consideration of a final draft S106

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Agreement. A completed and executed version was submitted after the close of the Inquiry. The obligations contained in the S106 agreement relate to affordable housing provision. As such, the matters which remain in dispute between the main parties relate to the Metropolitan Green Belt (Green Belt).

5. The proposal has also been considered by the Secretary of State in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017). A screening direction has been issued which states that the proposal is not Environmental Impact Assessment development.

Main Issues

6. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and development plan policy, and the effect on the purposes of the Green Belt, and b) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Site and Surroundings

7. The appeal site lies in the Green Belt. It comprises an area of land that was formerly in use as an oil depot and for the parking of coaches and lorries. Many of the structures that related to this use have been dismantled. What is now found on the site is an area of hardstanding and loose stone, around which are some steel containers and the external storage of materials. There is also a modest sized single storey dilapidated building, as well as an area of scrubland towards the northern boundary of the site, and trees and vegetation. The site also benefits from planning permissions¹ for a care home, which the Council agreed at the Inquiry had been implemented. The works that have taken place on the site are the initial foundations and services.
8. There is a gated vehicular access on the Fawkham Road site frontage boundary, which is largely defined elsewhere by trees and vegetation. Along the eastern boundary of the site is a wooded chalk bank, which is designated ancient woodland. This contains an access track. The edge of the settlement of Hartley lies on the far side of the woodland. To the north of the site, there are trees and vegetation and then a railway line embankment, beyond which is the settlement of Longfield. Salts Farm Farmhouse lies to the south of the site.
9. Fawkham Road, as it extends further south from the site has a distinctly rural character, with occasional development that is interspersed with woodland and open fields. Fawkham Road Business Park, opposite the site, is a typical small scale rural enterprise consisting of the re-use of converted buildings. Adjacent to the business park is a pair of semi-detached dwellings with a farmhouse found behind. To the rear of the business park and these dwellings are expansive open fields. Orchard Farm lies between the business park and the railway line.

¹ Council refs: SE/14/00609/FUL. SE/17/00896/CONVAR

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Green Belt Planning Policy

10. The Framework confirms that the Government attaches great importance to Green Belts. The identified fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.
11. Policy LO1 of the Sevenoaks District Council, Local Development Framework Core Strategy (2011) (Core Strategy) states, amongst other matters, that development will only take place where it is compatible with policies for protecting the Green Belt. It is a matter of dispute between the main parties as to which policies for protecting the Green Belt Policy LO1 is referring. The appellant considers that it is referring to the policies of the former Local Plan that was in place when the Core Strategy was adopted, whilst the Council takes a broader view in terms of national planning policy. I share the Council's position as I see nothing in the reading of the policy that would restrict it only to the consideration of the policies of the former Local Plan. Indeed, precluding the deliberation of national planning policy under Policy LO1 would be somewhat at odds with the great importance that the Government attaches to the Green Belt.
12. Policy LO1 also deals with the distribution of development in the district with regard to that development will be focussed within the built confines of the existing settlements. It is not in dispute that the site lies outside these confines. The appellant drew my attention to that it lies close to Hartley, whilst the Council referred to the associated Core Strategy Policy LO7 which concerns development that is within settlements. The area of dispute between the main parties on this matter relates to the compatibility of these policies with those for the protection of the Green Belt, and the Inquiry continued on this basis.
13. Policy LO8 of the Core Strategy states that the extent of the Green Belt will be maintained. The appellant queried whether Policy LO8 was in fact a Green Belt policy on the basis that it concerns the countryside and the rural economy. As it seeks to maintain the extent of the Green Belt, it is a Green Belt policy. Where I find that Policy LO8 is of less relevance is where it lists the types of development that will be supported provided that it is compatible with policies for protecting the Green Belt. They relate to the rural economy and do not stretch as far as to include housing.
14. The appellant also referred to the lack of a Green Belt policy that affects the type of development proposed, under the Council's Allocations and Development Management Plan (2015) (ADMP). The Council pointed to the fact that the ADMP does not need to repeat the provisions of national planning policy, where this would suffice. I concur with the Council's view because the Framework is already prescriptive about how proposals affecting the Green Belt are to be considered.
15. With regard to the Council's draft Local Plan, the Inspector's Report found that it failed to fulfil the duty to cooperate and recommended that the plan should not be adopted. A number of other concerns were outlined, including in relation to the Green Belt. The Inspector's findings were the subject of Judicial Review proceedings by the Council, but were dismissed. In light of the Inspector's findings, the draft Local Plan attracts limited weight in my decision. This includes the proposed site allocations that the Council put forward and that were referred to at the Inquiry, including housing on the Fawkham

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Business Park site, because these were not considered by the Inspector. I deal with the associated evidence base as relevant later in my decision.

Inappropriate Development and Green Belt Purposes

16. Paragraph 145 of the Framework sets out that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, g) it involves limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would, under the second limb of this exception, not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
17. The main parties do not dispute that the vast majority of the site constitutes previously developed land. The area of scrubland lies within the curtilage of the developed land within the site and so it falls within the definition of previously developed land, as is set out in the Framework. It is also agreed between the main parties that it is the second limb of paragraph 145 g) that is the relevant part of this exception for my consideration because the proposal includes 40% provision of affordable housing. In this respect, the Council's Strategic Housing Market Assessment (2015) (SHMA) identifies an annual need of 422 households that require such housing.
18. An assessment of whether or not a development would cause substantial harm to the openness of the Green Belt necessitates a 'baseline' to be established to measure any harm against, based on the particular facts of a case. In my view, this includes what is currently on the site and what the site is used for. Due to the clearance of the buildings that have taken place and that it is no longer used for the storage of lorries and coaches, the site itself is largely open even though it is largely enclosed by vegetation along Fawkham Road, the wooded bank and the nearby railway embankment. The remaining building, the containers and external storage only cover a small proportion of the overall site.
19. The appellant considers that the baseline should comprise the last use. However, the use of the site for the parking of coaches and lorries was in 2011 and the associated coach and oil buildings and tanks were demolished in 2015. With the time that has subsequently passed since this use and the removal of these buildings and structures, I am not persuaded that its former state and use represents a reasonable starting position. It is not the existing use of the site because it is no longer in use for these purposes. The appellant also pointed to the care home permission, but the works that have taken place to implement this permission are of a limited nature and the care home building has not been constructed above ground level.
20. In relation to whether the oil depot and the use of the site for the parking of coaches and lorries, and the care home, represent fallback positions, it is for the proposal itself to be considered by way of whether it constitutes inappropriate development, rather than by comparing it to an alternative. The fallback positions are considered later in my decision.
21. The openness of the area is reflective of the dispersed pattern of development and the predominance of open fields, woodland and vegetation. The largely

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open form of the site contributes towards these openness qualities in terms of its role and function, with the limited amount of development that remains. Whilst the site lies fairly close to the built form of Hartley and Longfield, they lie outside the Green Belt boundaries.

22. The main parties agree that openness is open textured and a number of factors are capable of being relevant². The Planning Practice Guidance: Green Belt sets out that a judgment is required based on the circumstances of the case, citing such matters that have been identified by the courts. The relevant factors in this case are the spatial and visual implications of the proposal, and its locational context.
23. In this regard, the proposal would considerably alter the existing largely open form of the site by erecting 26 dwellings on it. Whilst I do not rely on the illustrative layouts that have been provided, the number of proposed dwellings would also likely result in a greater dispersal of built development on the site than is currently present. Added to this would be the site infrastructure such as an internal access route, driveways, parking, boundary treatments and the domestic paraphernalia that would come with the residential occupation of each dwelling.
24. The visual effects on openness would be less marked due to the screening afforded by vegetation around the boundaries with the wider Green Belt. Nevertheless, residential development above a single storey height would likely be appreciably visible from the immediate vicinity of the site along Fawkham Road and neighbouring land, and this visibility would also be apparent due to development extending across the site with the number of dwellings proposed.
25. The locational context would further exacerbate the adverse effect on openness. The railway line and the wooded bank provide a marked degree of separation between the openness and the built form of the adjoining settlements. This would be significantly diminished under the proposal with the incursion of the development onto the site and so the openness would also be harmed in this way. As such, I do not agree with the appellant that the site is separate to the wider Green Belt as regards openness. That function is carried out by the railway line and the wooded bank, and the site lies beyond these features.
26. I was also referred to a number of other planning decisions that concern openness. As I have set out above, such an assessment is dependent on the particular factors of the case and, hence, these decisions do not alter my view. The Council also put forward that due to the test of substantial harm, it is reasonable to consider openness as a distinct head of other harm beyond that which is already set out under this exception. However, this is already implicit in the exception because it already refers to openness and at what level it is to be treated. Accordingly, no further consideration of openness is required.
27. When these factors are taken together, the harm caused by the change to openness would be substantial and so the proposal would not accord with the exception under the second limb of paragraph 145 g). As a consequence, I conclude that in this regard it would constitute inappropriate development in the Green Belt.

² R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

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28. The appellant queried at the Inquiry whether it was the correct approach to deal with the purposes of the Green Belt separate from openness. This was due to the wording of paragraph 145 g), which does not mention the purposes, and my attention was also drawn to where other exceptions expressly refer to their consideration. Clearly, there is a synergy between openness and purposes, as they both concern protecting Green Belt land. The construction of paragraph 145 g) of the Framework does not, though, prevent the separate consideration of purposes and nor was any legal authority presented that would preclude such an approach. To consider both would seem to be consistent with the level of importance that the Government attaches to the Green Belt. As such, the purposes are for my consideration.
29. Of the five purposes that paragraph 134 of the Framework identifies that the Green Belt serves, it is c) to assist in safeguarding the countryside from encroachment that is in dispute between the main parties. None of the other Green Belt purposes are of particular relevance. It is not in a location where it would cause either the unrestricted sprawl of large built-up areas or neighbouring towns merging into one another. It lies some distance from the nearest historic town and nor can the site be said to be urban in the context of regeneration.
30. The site shares attributes with the countryside in that it is distinct from the built form of the settlements of Hartley and Longfield and as it now contains a limited amount of development. Countryside is not by definition devoid from development, but rather that it is more occasional. The site ably demonstrates this characteristic along Fawkham Road. It forms part of the countryside which is readily appreciated once this road passes under the railway and as the site is approached. It is more readily assimilated into the countryside than the settlements of Longfield and Hartley with the separation provided by the wooded bank and the railway line. As a result, the site contributes to the purpose to assist in safeguarding the countryside from encroachment.
31. With the increase of the amount of development that would result from the proposal in this location, it would result in the encroachment of development into the countryside. The presence of development would be beyond the built up areas of Longfield and Hartley. 'Bridging the gap' to the Fawkham Business Park or a redevelopment of it, does not change the conflict with this purpose.
32. The encroachment which might have previously occurred on the site has been significantly lessened by the dismantling of the buildings that has taken place, as well as the cessation of the historical use. Whether or not the proposal would constitute 'further' encroachment does not alter that, with the increase in the amount of development that would result from the proposal, it would cause encroachment.
33. The Green Belt Assessment Report: Methodology and Assessment (2017), that was used to inform the draft Local Plan preparation, carries limited weight. The parcel of land that the site lies within under the report is too broad to meaningfully inform how it performs against Green Belt purposes. The report acknowledges in its conclusions that it is only intended as an initial high level view. That it identifies the sub-area in the parcel along the eastern edge of Hartley where the site is found as weakly performing needs to be considered in this context. It lacks the more detailed Green Belt assessment that would be

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required in order for it to be more fully engaged in considering how the site performs against Green Belt purposes.

34. Thus, the proposal would conflict with the Green Belt purpose under paragraph 134 c) to assist in safeguarding the countryside from encroachment.
35. A small portion of land within the site falls outside of the definition of previously developed land under the Framework. This would be used to form a footpath link under the proposal. It would involve the formalisation of the existing access track through the woodland. With the nature of the anticipated works, this would constitute an engineering operation for the purposes of paragraph 146 of the Framework. The works would be modest in that they are envisaged to involve timber edging on the existing hardcore and a membrane with gravel infill. The footpath link would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Hence, this part of the proposal would not constitute inappropriate development.

Other Considerations

Housing Land Supply

36. As the Core Strategy is more than 5 years old, under paragraph 73 of the Framework, the Council are to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need. This amounts to 711 dwellings per year, as is accepted in the Council's Housing Delivery Test Action Plan (August 2020) (Action Plan). The Core Strategy included a much lower figure of 165 dwellings per year and so is not reflective of the up to date situation with regard to the extent of the local housing need.
37. The Action Plan also confirms that the Council cannot demonstrate a 5 year supply of deliverable housing sites. The supply is stated to be 2.6 years, which amounts to a deficit of 2,056 homes. Whilst the appellant considers that the supply situation is worse and that just 1.83 years can be demonstrated, even relying on the Council's published figures, the shortfall against the 5 year supply is severe.
38. There has also been an under delivery of housing in the Council area. The latest Housing Delivery Test (HDT) result published in January 2021 shows that a level of 70% delivery has been achieved. The appellant considers the delivery is at a lower level again, although this is on the basis of an approach that deviates from the method for calculating the HDT result. However, 70% is still substantially below the 95% level identified in paragraph 75 of the Framework, below which the authority is to prepare an action plan to assess the causes of under delivery and identify actions to increase delivery in future years.
39. The Council's grave position as regards providing sufficient housing is compounded by what are limited options for building within urban areas. The Strategic Housing Land Availability Assessment (2018) (SHLAA) identified only 21 sites within identified settlements that would yield a maximum 709 units. The remaining categorised sites that the SHLAA identified are all in the Green Belt. A significant proportion of the Council area is also protected by Area of Outstanding Natural Beauty designations. The site's largely previously

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developed land status and its proximity to nearby settlements is favourable for its development for housing in this regard.

40. With the current position of the draft Local Plan, there is a reliance on development management to remedy this detrimental situation. With regard to the proposal before me, it would make a worthy contribution of 26 dwellings to addressing the shortfall. There is also no substantive evidence before me that the proposal would not be deliverable. Indeed, up to the implementation of the care home permission, the site was on the Council's Brownfield Register. Under the Framework, land on the register is that which authorities consider to be appropriate for residential development³. Overall, the proposal would support the Government's objective of significantly boosting the supply of homes. This attracts very significant weight as a consideration in favour of the proposal.

Affordable Housing

41. As I have set out above, there is an affordable housing need of 422 homes per year. Affordability is a key issue identified by the SHMA and this is also reflected in the Supplementary Planning Document: Affordable Housing (2011) and the Consultation Draft version produced in December 2018, which both point to high house prices compared to local annual incomes and earnings. As a result, a not insignificant number of people are unable to afford their own home on the open market, and therefore, require assistance. This results in the high level of need for affordable housing.
42. Against this backdrop, the provision of affordable housing has run at an average rate of 32 homes per year over the 8 years up to 2019, with 18 new units completed in 2018/19. Clearly, there is an under delivery in affordable housing provision and the need is largely unmet. As the proposal would provide 40% affordable housing provision, it would assist in alleviating this shortage.
43. The level of provision is geared towards the proposal complying with Policy SP3 of the Core Strategy which concerns affordable housing. However, the provision of such housing is far more reaching in its effect because of the high level of need and as it would enable provision for those who would not be able to obtain general market housing. It would also contribute to a housing mix on the site. This also attracts very significant weight as a consideration in favour of the proposal.

Fallback Positions

44. For a fallback position to be a relevant consideration, the basic principle is that it must be a real prospect. It does not have to be probable or likely, as a possibility would suffice⁴. For the prospect to be real, there must be a greater than theoretical possibility that the development might take place.
45. With regard to the approved care home, as it is agreed by the main parties that the associated planning permission has been implemented, it is not constrained by a timescale associated with this development commencing.

³ Having regard to criteria in the Town and Country Planning (Brownfield Land Registers) Regulations 2017.

⁴ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

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46. The Council cast doubt on the possibility of this development taking place. This is on the basis of correspondence from the appellant stating that the approved care home would not meet the business requirements of operators and that the marketing had not yielded interest in relation to the current planning permission. The appellant, though, considers that if an operator could not be found, the approved building would be constructed and then retrofitted for an alternative residential use.
47. Such an approach would likely require planning permission. Paragraph 146 of the Framework identifies that the re-use of buildings provided that the buildings are of permanent and substantial construction is not inappropriate in the Green Belt provided they preserve openness and do not conflict with the purposes of including land within it. As a result, there is a route to the grant of permission under the Framework for the alternative use of the care home, if an operator cannot be found. In drawing these considerations together, there is a greater than theoretical possibility that the development might take place.
48. The approved care home would comprise one large building on the site with an expansive roof area. There would be a fairly large communal car park. Open space would be partly enclosed in a courtyard, and provision would also be made on the side nearest the railway line. With the size and singular form of the building in particular, it would have a greater impact on the openness of the Green Belt. The proposal would be unlikely to take such a dominant form because it would consist of a series of smaller buildings interspersed with spacing and gaps that is typically associated with such a residential development. Similarly, because of the size of the approved care home, the conflict with the Green Belt purpose to assist in safeguarding the countryside from encroachment would be more apparent than with the proposal.
49. Overall, I find that the care home would be significantly more harmful than the proposal in relation to the effect on the openness of the Green Belt, as well as the purpose. This fallback position attracts significant weight as a consideration in favour of the proposal.
50. I am less persuaded about the previous use of the site for an oil depot and the parking of lorries and coaches. This is due to the passage of time since the site was used for these purposes. I have limited substantive evidence before me that such a use for the site is still being sought in light of that the appellant has actively sought other uses, including the proposals that have come forward. It attracts limited weight as a consideration.

Character and Appearance

51. The site currently has a somewhat dilapidated appearance. The proposal would represent a visual betterment in this regard as the developable area of the site would approximate to where the site is most compromised in terms of its appearance. There is no substantive reason why the reserved matters could not deliver a scheme that in character and appearance terms would represent an improvement on the current state of the site. Beyond the site boundaries, such an improvement would be less apparent as the current state of the site is not easily visible. This attracts moderate weight as a consideration in favour of the proposal.

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Economic and Other Factors

52. The proposal would provide for employment and economic activity during construction. There would be the potential for skills development and the training of those that are involved at that stage. The spend of the future occupiers would also benefit the local economy through the usage of local services that supply household goods, leisure and transport. The weight to be attached to a specific proposal as regards supporting economic growth depends on its particular contribution within the broader ambit of where paragraph 80 of the Framework states that significant weight should be placed on the need to support economic growth and productivity. With the type and size of the development, economic considerations also attract moderate weight in favour of the proposal.
53. Other factors that have been put forward in its favour attract minimal weight. In relation to access and traffic generation, the benefits were predicated on the fallback position of the oil depot and the parking of lorries and coaches which, as I have set out above, is unlikely to resume. With regard to whether the proposal would have strong and defensible boundaries, as I have also set out earlier in my decision, there is already separation from the nearest settlements provided by the wooded bank and the railway line. Land decontamination and biodiversity measures would be required to bring the proposal forward and for it to be not unacceptable in these terms. The same applies in relation to the location of the site and the proposed footpath link into Longfield to access local services. Else, it would represent an unconnected area of residential development.

Other Matters

Accessibility to Services

54. The proposed footpath link would enable ready access to the nearest shops and services in the centre of Longfield, as well as to the railway station. They would be accessible from the site on foot within a 5 to 10 minute walk. The services include supermarkets, a post office, a bank, a chemist, and food and drink outlets. The railway station offers fairly frequent services to London Victoria and the Kent coast. A number of local bus services also operate from outside the station. The proposed footpath link would also negate the need for pedestrians to use a more circuitous and less safe route under the railway bridge on Fawkham Road.
55. Accessing these services via the proposed footpath link would require using a footbridge over the railway. This would be unlikely to dissuade most of the future occupiers because of the close proximity of the services. Indeed, existing residents to the south of the railway line already utilise this footbridge for access. I would accept, as was said by the Parish Council at the Inquiry, that future occupiers may be less inclined to use this route to carry out their full weekly shop. However, what is of more importance is whether the proposal would be in a suitable location so that it would encourage the use of modes of transport other than the car. I find this to be the case with the proposed footpath link and the proposal would be in a location that would be accessible to services.

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Ancient Woodland

56. No built development is proposed within 15 metres of the ancient woodland, in accordance with Natural England standing advice. The updated parameters plan shows the developable area in order that this position is maintained and the plan would inform the layout at the reserved matters stage. With regard to the use and management of the proposed woodland buffer, this is a matter which can be dealt with through a management strategy and measures to protect the ancient woodland, and which the main parties agree can be dealt with through the imposition of planning conditions. The Ecological Assessment indicates that such measures would involve new growth saplings, shrub species and chalk grassland. These would accord with the satisfactory management of the ancient woodland.
57. The proposed footpath link would pass through the ancient woodland. As it would follow the route of the existing access track, it would not be unacceptable in this regard, subject to a condition dealing with its details. On this basis, the proposal would not result in the loss or deterioration of the ancient woodland.

Protected Species

58. In addition to the ancient woodland, biodiversity matters also concern the impact on reptile habitat on the site, in relation to grass snake, slow worm and the common lizard. These are protected species under the Wildlife and Countryside Act 1981. There is a reasonable likelihood of protected species being affected based on the totality of ecological evidence that is before me, that has included surveys, as well as various assessments. The principal impact on the reptiles would concern the temporary loss of suitable habitat to the northern and eastern boundaries whilst works are underway and the permanent loss of habitat in areas of construction.
59. The translocation of the reptiles would take place into the woodland buffer, prior to construction. This would provide a similar sized area of enhanced habitat. Measures are proposed in relation to the vegetation, a pond and mosaic habitats, conservation management and features aimed at reptile use, such as log piles. These are matters which can be dealt with by way of planning conditions in relation to ecology mitigation and management. Therefore, the proposal would not have an adverse effect on protected species.

Drainage

60. The proposed means of surface water drainage would involve the use of Sustainable Urban Drainage techniques, with the intention of dealing with surface water at source so as not to increase the risk of flooding elsewhere. The Drainage Technical Note sets out the use of a swale and soakaways. The calculations now reflect the comments of the Lead Local Flood Risk Authority that were made during the planning application. This gives sufficient assurance that drainage is a matter that can be dealt with through planning conditions to minimise the risk of flooding. Thus, the proposal would not be unacceptable by way of drainage and flood risk.

Highway Safety

61. The proposal would involve the creation of a new vehicular access onto Fawkham Road. With the closure of the existing access, there would be a

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greater separation between the accesses into the site and the business park on the opposite side of the road. On the basis of the trip generation from 26 dwellings, there would be on average approximately 8 movements per hour during the 12 hour weekday period. The AM and PM peaks would be predicted to be 11 and 10 vehicles, respectively. Whilst Fawkham Road is fairly narrow, and is of a single width construction under the railway bridge, it would be able to accommodate this moderate level of traffic generation without an undue effect on highway safety. With regard to pedestrian safety, the proposed footpath link would negate the need for the future occupiers to attempt to utilise Fawkham Road where there is no footway. Overall, the proposal would not be unacceptable in highway safety terms.

Section 106 Agreement

62. The obligations in the Section 106 Agreement solely concern affordable housing. It binds the owner to covenants with the Council. The provision of no less than 10 affordable housing properties under the related obligation, as rounded to the nearest whole number, would accord with Policy SP3 of the Core Strategy. At the Inquiry, the Council confirmed that it utilises such a rounding approach in implementing this policy. Monitoring costs are included and are justified having regard to that local planning authorities can now recover their costs in this regard.
63. Having regard to the evidence before me on the established need for affordable housing, it has been demonstrated that the obligations are necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended, 2019). Accordingly, I have taken them into account in my decision.

Balancing Exercise

64. The proposal would constitute inappropriate development in the Green Belt because it would not accord with the exception that is set out in the second limb of paragraph 145 g) of the Framework. As a consequence, it would cause substantial harm to the openness of the Green Belt. It would also not accord with the Green Belt purpose to assist in safeguarding the countryside from encroachment.
65. Paragraph 144 of the Framework states that substantial weight is to be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Apart from the Green Belt, no other harm arises in this case.
66. Against this harm, it is necessary to balance the other considerations. In this case, these are very substantial. They relate to the contribution of the proposal to the Council's housing land supply deficit and deliverability, affordable housing provision, the fallback position of the approved care home, character and appearance betterment, and the economic benefits.
67. Drawing these factors together, I find that the other considerations clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

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68. As such, I conclude that the proposal would comply with Policies LO1 and LO8 of the Core Strategy because it is compatible with policies for protecting the Green Belt and as the general extent of the Green Belt is to be maintained. It would accord with the development plan as a whole and significant weight is given to the accordance with these policies. It would also comply with the Framework as regards protecting the Green Belt because very special circumstances exist.
69. The presumption in favour of sustainable development is set out in paragraph 11 of the Framework. Whilst the proposal accords with a development plan, it is not one that is up-to-date. The Core Strategy's housing requirement is not reflective of the current local housing need and as a consequence of the Council's position in relation to housing land supply and the HDT, footnote 7 of paragraph 11 d) applies in that the policies which are most important for determining the application are out-of-date. This includes Policies LO1 and LO8, as well as Policy SP3 in relation to affordable housing.
70. The main parties have agreed a longer list of most important policies through the Agreed Statement of Common Ground. However, this is a case where some of the "most important" policies as set out above are more important than others in determining the appeal because of the bearing they have on the decision to be made. I therefore give more weight to these policies when considering the overall "basket" of policies.
71. In these circumstances, paragraph 11 d) starts from a position of granting permission unless under i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out what these policies are and they include land designated as Green Belt. In this case, they do not provide a clear reason for refusing the development proposed because very special circumstances exist. I do not have cause to then consider paragraph d) ii because the outcome would be the same. The proposal therefore accords with the presumption in favour of sustainable development.
72. In relation to the balance under Section 38(6) of the Planning and Compulsory Purchase Act 2004, I have found that the proposal is in compliance with the development plan. There are no material considerations that indicate that the decision should be made other than in accordance with the development plan.

Conditions

73. I have imposed conditions which concern the statutory time limit and the reserved matters. In the interests of certainty, I have also imposed a condition concerning the approved plans that reflect that access is a matter before me, as is the parameter plan.
74. I have also imposed conditions in relation to land contamination in the interests of public health and pollution. Drainage conditions are also imposed in the interests of providing satisfactory drainage infrastructure and minimising flood risk, and protecting groundwater resources. A condition related to piling is also imposed in the interests of protecting groundwater and pollution control.
75. Conditions are imposed by way of the implementation of the approved access, visibility splays, highways related matters on-site and car parking, in the

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interests of highway safety and the free flow of traffic. A condition is imposed in relation to the construction phase for the same reason.

76. A condition related to cycle parking is imposed in the interests of promoting modes of transport other than the car, as well as for character and appearance reasons. A condition concerning the footpath/cycleway link is imposed in relation to safeguarding the ancient woodland, for character and appearance reasons and in the interests of promoting modes of transport other than the car. A condition concerning electric charging points to encourage the use of low emission vehicles is imposed in the interests of air quality and pollution control.
77. A condition is imposed in relation to an acoustic assessment for the purposes of providing suitable living conditions for the future occupiers of the proposal by way of noise from the railway line. A condition is imposed concerning the assessment of air quality in the interests of pollution control.
78. Conditions are also imposed in relation to ecological mitigation, management and monitoring in the interests of protecting biodiversity. Conditions are also imposed with regard to measures to protect the ancient woodland and the management and monitoring of the associated buffer, for safeguarding purposes. Conditions are also imposed concerning archaeological work in the interests of protecting this interest and in relation to the levels for the purposes of protecting the character and appearance of the area.
79. I have not imposed conditions by way of landscape works as landscaping is a reserved matter and, similarly, in relation to the numbers of storeys of the dwellings as scale is also a reserved matter. I have also not imposed a condition in relation to the number of dwellings as the operative part of the description of development already fixes the number for the purposes of this planning permission. Such conditions would not be necessary.
80. I have also not imposed a condition requiring the submission of further access details as they are already before me, and so I have conditioned their implementation. I have also included implementation clauses in a number of the conditions and also avoided duplication and sought to be more precise in the matters that the conditions deal with, as was discussed at the planning conditions round table session at the Inquiry on a topic by topic basis.

Conclusion

81. The potential harm to the Green Belt by reason of inappropriateness, and in relation to the conflict with one of the purposes of the Green Belt, is clearly outweighed by other considerations. Very special circumstances therefore exist to justify the proposal. Accordingly, the proposal is in accordance with the relevant policies of the development plan and the Framework, and the application of the policies in the Framework that relate to land designated as Green Belt do not provide a clear reason for refusing the development proposed. Having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

INSPECTOR

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