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## Appeal Decisions

Inquiry held on 12 - 14 December 2017

Site visit made on 14 December 2017

**by H Baugh-Jones BA(Hons) DipLA MA CMLI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 10 January 2018**

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### **Appeal A Ref: APP/K3605/W/17/3174639**

#### **Land at Hurst Lane, East Molesey KT8 9DX**

- 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 Langham Homes (Hurst Lane) Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2016/2444, dated 25 July 2016, was refused by notice dated 31 January 2017.
  - The development proposed is the erection of 42 dwellings, relocation of 3 tennis courts, new public open space (mini-soccer pitch, outdoor gym and children's play area) and access off Hurst Lane.
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### **Appeal B Ref: APP/K3605/W/17/3183936**

#### **Land at Hurst Lane, East Molesey KT8 9DX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Langham Homes (Hurst Lane) Limited against Elmbridge Borough Council.
  - The application Ref 2017/1421 is dated 3 May 2017.
  - The proposal is development comprising 40 residential units with associated garaging, landscaping and amenity areas including mini-soccer pitch, outdoor gym and children's play area with new access from Hurst Lane, following the relocation of 3 tennis courts.
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## **Decisions**

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for development comprising 40 residential units with associated garaging, landscaping and amenity areas including mini-soccer pitch, outdoor gym and children's play area with new access from Hurst Lane, following the relocation of 3 tennis courts at Land at Hurst Lane, East Molesey KT8 9DX in accordance with the terms of the application, Ref 2017/1421, dated 3 May 2017, subject to the conditions set out in the Schedule to this decision.

## **Procedural Matters**

3. At the start of the Inquiry, I identified a number of discrepancies with the numbering and titling of the plans for both appeal schemes. The parties confirmed the plans to be taken into account and I have dealt with the appeal on that basis.

4. I made an unaccompanied site visit prior to the start of the Inquiry to familiarise myself with the site and its surroundings as well as an accompanied visit during the course of the Inquiry.
5. An executed Section 106 Agreement (S.106) was provided by the appellant at the Inquiry that includes obligations to come into effect in the event that planning permission is granted. These obligations would secure on-site affordable housing and public open space including the various sports and recreation facilities set out in the headings above. I will return to this matter later in my decision.
6. Whilst Appeal B resulted from the Council's failure to determine the application within the prescribed period, the Council has clearly set out within its case the reasons upon which it would have refused the application and the development plan policies it would have applied. These are the same as the reasons given and policies cited for the refusal of Appeal A.

### **Main Issues**

7. In light of all the submissions before me, the main issues are common to both appeal schemes and are:
  - the effect of the proposals on the provision of open space, sports and recreation facilities
  - their effects on the character and appearance of the area
  - their effects on the supply of housing

### **Reasons – Appeal Schemes A and B**

#### *Background*

8. The 'L' shaped appeal site is of some 1.99 hectares in size. Although formerly used as a cricket pitch, the site has been fenced off and is currently unused. It now comprises an area of rough grass with mature trees around the eastern, western and southern boundaries, a number of which are protected by a Tree Preservation Order (TPO). The site has a substantial frontage along Hurst Lane that runs parallel to the western boundary. It is surrounded on its other boundaries by built development including variously styled dwellings and a new school building to the east behind its associated playing fields that are immediately beyond the site's eastern boundary.
9. The building and car park of the Pavillion Club are located immediately to the north of the appeal site. This is a private sports facility and includes three tennis courts and a recreational area used by the Club, all of which fall within the appeal site. The site currently affords no public access.
10. The principal differences between the two appeal schemes are that with scheme B, there would be two fewer dwellings, a larger element of smaller dwellings and a larger area of open space. With both schemes the open space would comprise the replacement of the three existing private tennis courts with three new private courts, a padel court (also private), a mini-soccer pitch, informal grassed and woodland areas, an outdoor gym and a children's Local Area of Play (LAP).

### *Planning policy framework*

11. The development plan comprises the Elmbridge Core Strategy (2011) (CS) and Elmbridge Local Plan Development Management Plan (2015) (DMP).
12. As far as the CS is concerned, policy CS7 relates specifically to East and West Molesey, setting out that the Council will continue to recognise the diversity and distinction of neighbourhoods and plan in a way that takes account of natural, historic and cultural assets within and adjoining the area. The policy expects all new development to enhance the local character of the area.
13. Policy CS14 states that the Council will protect, enhance and manage a diverse network of accessible multi-functional green infrastructure by, amongst other things, continuing to give a high level of protection to and improving the Borough's green infrastructure assets. The policy also seeks to ensure that new development protects and enhances local landscape character, strategic views and key landmarks and takes account of their setting, intrinsic character and amenity value. The policy includes reference to Planning Policy Guidance 17 *Planning for Open Space, Sport and Recreation*. However, this expression of national policy has been replaced by the National Planning Policy Framework (the Framework).
14. St Paul's Church is located a short distance to the east of the appeal site and is identified as a landmark within the supporting text to policy CS14, which also explains that Elmbridge has a reasonable level of provision for most types of open space, sports and recreation facilities albeit that there are some localised deficiencies. In addition, the supporting text says that the Borough's green infrastructure network is highly valued by local people and plays a key role in contributing to the Borough's landscape setting and local identity.
15. Policy CS17 notes amongst other things that Elmbridge's unique environment is characterised by its green infrastructure and its distinctive town and village settlements. It requires new development to deliver high quality and inclusive sustainable design which should also maximise the efficient use of urban land, respond to the positive features of individual locations, integrate sensitively with the locally distinctive townscape, landscape and heritage assets and enhance the public realm and street scene.
16. DMP policy DM20 seeks to protect Local Green Space<sup>1</sup> from inappropriate development unless there are very special circumstances that would clearly outweigh the potential harm. DM20b sets out that other areas of open space<sup>2</sup>, sports and recreational buildings and land including playing fields should not be built on unless (i) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; (ii) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or (iii) the development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss. DM20b reflects the wording in paragraph 74 of the Framework. In addition, DM20c states that development within Strategic Views or affecting Key Landmarks will be permitted provided it has been well designed to take account of the setting, character and amenity value of the view or landmark.

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<sup>1</sup> To be designated within the Settlement ID Plans

<sup>2</sup> As defined in the Framework Glossary.

17. Although the appeal site is a substantial open area, it is not designated as Local Green Space for the purposes of DMP policy DM20. Nor is it subject to any other statutory designation with the exception of the TPO.

*The effect of the proposals on the provision of open space, sport and recreation facilities*

18. There is agreement between the parties that (i) the site's lawful use is for recreation; (ii) that it is open land for the purposes of policy DM20 and paragraph 74 of the Framework; and (iii) that there is an extant S.106 Agreement<sup>3</sup> dating from 2003 restricting the use of the land to recreation. However, notably in terms of the latter, there is nothing to positively require the land to be used for this purpose but the S.106 Agreement nonetheless precludes the land from being put to another use.
19. The 2003 S.106 Agreement exists to make a previous nearby development acceptable in planning terms and it should not therefore be lightly disregarded. Indeed, the Agreement is recognised as a material consideration by the appellant<sup>4</sup>. In addition, the Council referred to the Inspector's finding in a previous appeal<sup>5</sup> relating to the site, that the existence of the 2003 S.106 Agreement can be seen as indicative of the Council's desire to protect the site for recreational purposes.
20. However, the site has not been used for recreation for a number of years and from all that was put to the Inquiry, it seems to me that it is not likely to be in the foreseeable future. I heard evidence on behalf of East Molesey Cricket Club, which has made clear its interest in using the site and I have no reason to doubt that the Club is in need of a new facility or that it has the resources to take on the site. However, in the absence of any clear indication that the site owner would allow the site to be used for this purpose, I am not persuaded that this is a viable alternative proposition to the proposed development.
21. I recognise that no attempt has been made to discharge the 2003 S.106 Agreement by the relevant available planning mechanism. However, the proposal subject to the previous appeal and the two applications that have led to these current appeals clearly indicate the site owner's intention to develop the site, at least in part, for residential purposes.
22. The site owners are not obliged to do anything with the site and the Council has not sought to acquire it. Whilst none of this discounts a potential use of the whole site for recreation, there is no empirical evidence to provide certainty of this happening in the longer term. I am not therefore persuaded by the Council's argument that the site owner might at some future point decide to return the site to wholly recreational use either in the event that the appeal schemes are refused permission or for any other reason. Furthermore, even if the site was returned to recreational use, there is no guarantee that it would directly benefit the local community by being publicly accessible as opposed to being a private facility.
23. I accept that once the site has been developed, it will not be returned to any other use. However, not all of the site would be developed with housing; in scheme A, the area of public open space, discounting access roads and the

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<sup>3</sup> Core Document 1 (November 2017)

<sup>4</sup> Mr Bond during cross examination

<sup>5</sup> APP/K3605/A/11/2156394

- retained area of private tennis courts, would account for just under half of the site's area. In scheme B it would be a little over half. Taking the current situation into account, the fact of the matter is that apart from the private tennis courts, the site currently performs no recreational function at all for the local community. The appeal schemes would both result in opening up part of the site for public access and meet an identified need for a mini-soccer pitch<sup>6</sup>.
24. The test in the circumstances of these appeals is set out in Policy DM20b and the second bullet point of Framework paragraph 74, i.e. whether the loss of open space as a result of the development would be replaced by equivalent or better provision in quantitative and qualitative terms.
25. Quantitatively, with both appeal schemes there would be less open space than is currently the case. However, in my view, it is necessary to consider such a loss in the context of the current use of the site and its contribution to the local area. The site scored poorly when assessed as part of the Council's Local Green Space Designation Study (September 2016)<sup>7</sup> (LGSD Study). Accordingly it was not designated as Local Green Space and although I note the Council's evidence to the Inquiry that higher scores should have been given to the assessment against the various criteria, the situation of non-designation is what I must have regard to.
26. Quantitative and qualitative matters were considered by the Courts in *Turner v SSCLG (and others)*<sup>8</sup>, wherein it was considered that a judgement should be exercised based on a comparison of what is actually provided and used with what is proposed. Thus the approach is not a mechanistic one based on size before and after. This is the approach previously taken by the Council in relation to a proposal at Rydens Enterprise School and Sixth Form College<sup>9</sup> and the one I have taken in my consideration of these appeals.
27. There is no clear evidence of deficiency in terms of the current usability of the existing tennis courts. However, their proposed replacement courts would have improved surfacing and be floodlit thus providing increased availability of tennis and coaching opportunities. This would, in my view represent an overall benefit of the appeal schemes.
28. There would be a new padel court where there currently is not one. The Council recognised this as a benefit to overall sports and recreation provision<sup>10</sup>. Although this and the new tennis courts would remain in private club use, I consider the availability of access to good tennis and padel facilities would be a benefit to the club's members, many of whom are drawn from the local community. Accordingly, this would represent better facilities for these sports within the local community than is currently the case.
29. Of the open space that would have open unrestricted public access, the new mini-soccer pitch would assist in meeting an (agreed) identified shortfall. I accept that it would be a better all-round facility if changing rooms and WCs were provided but I am not persuaded on the basis of the absence of

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<sup>6</sup> Elmbridge Open Space and Recreation Assessment Final Report, October 2014 (Core Document 17, November 2017)

<sup>7</sup> Core Document 14 (November 2017)

<sup>8</sup> *George Turner v Secretary of State for Communities and Local Government and The Mayor of London and The Shell International Petroleum Company & Braeburn Estates Ltd Partnership and the London Borough of Lambeth* [2015] EWHC 375 (Admin)

<sup>9</sup> Core Document 15 (November 2017)

<sup>10</sup> Ms Heap during cross examination

- compelling evidence to the contrary, that the pitch would not be used for its intended purpose by organised teams or other groups. A water tap could be provided and secured by a suitably worded planning condition. Thus, I find no overall unacceptability in terms of what the mini-soccer pitch would provide.
30. The outdoor gym and children's play area would also add to the availability of such facilities in the local area. I accept that there are similar facilities nearby to the west within easy walking distance of the appeal site at Molesey Hurst Recreation Ground. However, for many people living in the residential areas to the north, south and east of the appeal site, the proposed facilities would be more conveniently located. Although there is no identified demand for such facilities, they would nonetheless provide choice in addition to greater convenience for some people and there is no compelling evidence to suggest that they would not be used.
31. In addition to the aforementioned formal sports and recreation facilities, the vision<sup>11</sup> for the rest of the open space explains that it would be laid out as a mixture of grass, wildflower meadows, trees and shrubs. These elements and their management would visually improve the site's appearance and result in a pleasing physical landscape structure whilst also benefitting biodiversity.
32. Having said all of that, there are significant differences in my view in terms of the open space outcomes of appeal schemes A and B. Scheme A includes a substantial building (plots 1-6) projecting towards Hurst Lane and the area around that building (i.e. to the south of the new access road) would be significantly constrained. Furthermore, the open space surrounding plots 1-6 would be greatly influenced by the presence of that building and appear more as a private area around it.
33. I therefore agree with the Council that the open space in front of the built development in appeal scheme A would function as little more than a foreground buffer between Hurst Lane and the dwellings beyond and that consequently, it would not be an enticing open space that would encourage its use. Accordingly, I am not convinced that appeal scheme A would provide a satisfactory amount of open space or that a substantial proportion of it would be attractive to potential users other than those occupying the residential development. Accordingly, appeal scheme A would conflict with policy DM20b and paragraph 74 of the Framework.
34. Appeal scheme B on the other hand excludes any built development beyond the approximate western elevation of the Pavillion Club building. This would create a clear visual and physical distinction between built form and open space. Moreover, the open space area to the south of the access road would be of sufficient size to be attractive to all, with a clear definition between public and private realm.
35. The benefits of opening up the site to the public and the provision of the various proposed publicly accessible facilities represent an improvement in the availability of such facilities in the area and appeal scheme B would thereby provide better facilities for open space, sport and recreation despite the overall quantitative loss of open space and thus accord with the objectives of policy DM20b and paragraph 74 of the Framework.

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<sup>11</sup> November 2017 Appendices to Mr Smith's Proof of Evidence



### *Character and appearance*

36. When looking from a number of viewpoints along Hurst Lane, the site is partially screened by the existing trees fronting the site. However, they do not completely block views and I agree that the depth of the site creates a sense of an expansive open area allowing views of boundary trees and the nearby prominent church spire. Both appeal schemes would result in a notable change to the overall sense of openness and there would be foreshortening of the views by varying degrees in each scheme.
37. In appeal scheme A, as I have already mentioned there would be a substantial building projecting towards Hurst Lane. Although it would still be set back from the road, it would be separated from the other proposed buildings by its access road and parking court. It would therefore be visually prominent and give the impression of a building sitting within an area of open space rather than appearing as an integral part of the proposed main built up part of the site.
38. I therefore consider that appeal scheme A would be visually discordant and out of character with the current openness of the site and also with the surrounding, more regimented pattern of development. It would therefore fail to integrate successfully into the local townscape.
39. In appeal scheme B, the residential buildings would not project further westwards than the pavilion building and the layout would generally accord with the prevailing pattern of built form sitting behind open areas when looking towards the site from Hurst Lane. The sequence of townscape elements in this specific location would therefore be satisfactorily maintained.
40. Having said that, appeal scheme B would still result in a significant reduction in the overall openness of the site. In my view, such openness is an important element in defining the character of this part of East Molesey along with the other open areas nearby. This is also the finding of the Inspector in 2013 and is set out in the Council's Design and Character Supplementary Planning Document Companion Guide: East and West Molesey (2012) (SPD)<sup>12</sup>.
41. The parties agree that the significance of the resulting change to the character of the area would be 'slight adverse' on the basis of the loss of the rear part of the site to built development. Both appeal schemes would therefore cause some harm to the area's character and appearance. In the case of appeal scheme B, for the reasons given above, this would not be as harmful as appeal scheme A. Nevertheless, neither scheme would accord with policies CS7, CS14 and CS17. No evidence was put to the Inquiry to suggest that these policies are inconsistent with the Framework and I have no reason to conclude otherwise.

### *Supply of housing*

42. It is common ground between the parties that the Council cannot demonstrate a five-year housing land supply (5 year HLS); the agreed figure being 3.16 years. Furthermore, the evidence shows that Elmbridge is one of the most difficult places to get onto the property ladder because house prices in the Borough are among the highest median in the country at double the national average and are rising steeply. The positive benefits of the provision of market and affordable housing are recognised by both parties.

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<sup>12</sup> Core Document 10 (November 2017)

43. Through its Land Availability Assessment (LAA)<sup>13</sup>, the Council recognises that the site could provide for a residential development of up to 44 dwellings and it is identified as an 'opportunity site' for development in years 6-10. Thus the site has been included in the ten-year HLS calculation, which is 5.83 years. In terms of affordable housing, only 86 affordable units were delivered in 2016 against the LAA annual need of 332 units per annum. This all paints a bleak picture in the context of the requirement to boost significantly the supply of housing set out in Framework paragraph 47.
44. Whilst I accept that inclusion of a site in the LAA creates no certainty of development coming forward on it, the proposed development would provide much need housing. Moreover, the Council has been exploring the release of Green Belt land for this purpose because of concerns that there is not sufficient land within the urban area to meet the Full Objectively Assessed Need for housing<sup>14</sup>. Clearly, this is a matter for the Local Plan process but it nonetheless stresses the importance of looking at non-Green Belt sites, where appropriate to ease the pressure on the need to release Green Belt land for development.
45. To conclude, notwithstanding that I have found deficiencies in relation to the other main issues in one or both schemes, the proposed developments would maximise the efficient use of urban land in accordance with policy CS17. Furthermore, the contribution to the supply of housing on a site that is well-located to access shops and services would accord with the relevant objectives of the development plan and with the Framework.

#### **Other Matters Relevant to Both Appeals**

46. The site is within the setting of the Grade II listed St Paul's Church and the proposed developments therefore have the potential to adversely affect the setting of this designated heritage asset. However, only the church spire is visible above the backdrop of trees on the western site boundary in views across the site from Hurst Lane and whilst it is a notable landmark, such views are filtered by the existing trees along the site's frontage. In addition, the Church sits within a dense urban area and is thus heavily influenced by this built-up context. Whilst the development of the site in both appeal schemes would alter the current views from Hurst Lane, the church spire would not be obscured and the visual appreciation of it would not be materially affected. I am satisfied that the setting of the church would not be altered in such a way as to diminish its significance.
47. The site was initially highlighted as being within Flood Zone 2, which would trigger the need for a sequential test as set out in Planning Practice Guidance (PPG). However, more detailed information from the Environment Agency<sup>15</sup> has confirmed that only the very southern edge of the site falls within an area of likely flooding. The remainder of the site is shown to be at low flood risk. In light of this information, I am satisfied that it is not necessary to apply the sequential test and that there would be no residual risk to fluvial flooding. No issues in relation to this matter were raised by the Council. In addition, a suitable drainage scheme would prevent the effects from pluvial flooding and is a matter that could be addressed by suitably worded drainage conditions in the event of planning permission being granted.

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<sup>13</sup> Appendix 7 of Core Document 12 (November 2017)

<sup>14</sup> See Core Document 19 (November 2017)

<sup>15</sup> See Appendix II of the Flood Risk Assessment prepared by Banners Gate, dated April 2017



48. In addition to the matters already covered under the main issues, interested parties have raised a number of other objections to the appeal schemes. These include the effects of additional traffic, harm to the roots of existing trees, including protected trees and pressure on local healthcare and schools. However no substantive evidence has been provided to support the claims made in relation to GP provision or school places and there are no objections from the Council in relation to either of these matters. I also note that no objections were raised by the local highway authority in relation to highway matters subject to appropriate planning conditions. In terms of existing trees, the submitted arboricultural information<sup>16</sup> sets out that neither of the proposed developments would result in harm to existing trees subject to the recommendations therein. This is a matter that could also be covered by condition.

### **Planning Obligations**

49. I have considered the obligations that would come into effect if permission is granted in light of the Framework, Planning Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).
50. The obligation in respect of the on-site provision of affordable housing is supported by CS policy CS21, which requires 50% of the gross number of dwellings to be affordable on greenfield sites. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. It therefore meets the tests set out in paragraph 204 of the Framework and accords with CIL Regulation 122.
51. The obligation in respect of on-site open space is necessary to ensure compliance with CS policy DM20. I am satisfied that this obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. It therefore meets the tests set out in paragraph 204 of the Framework and accords with CIL Regulation 122. Accordingly, I have taken the obligations into account in reaching my decision.

### **Planning Balance**

52. Paragraph 49 of the Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. As a result of the Council's HLS being below the 5 year threshold, relevant development plan policies for the supply of housing are out-of-date, thus triggering the operation of Framework paragraph 14.
53. The second strand of Framework paragraph 14 relates to decision taking. This says at its fourth bullet point that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework policies taken as a whole; or

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<sup>16</sup> Arboricultural Assessment & Method Statement by Barrell Tree Consultancy, dated 25 April 2017, Ref 15177-AAA-CA

specific Framework policies indicate development should be restricted. I turn now to the planning balance in relation to each appeal scheme.

#### *Appeal Scheme A*

54. There was a considerable amount of evidence put to the Inquiry in relation to whether Framework paragraph 74 is or is not a specific policy that indicates development should be restricted for the purposes of Framework paragraph 14 footnote 9. Notwithstanding this, the appellant contends that both appeal schemes accord with the development plan and the Framework. However, I have found on the first main issue, that the loss of open space resulting from appeal scheme A would not be replaced by equivalent or better provision in terms of quantity and quality and that it would therefore conflict with Framework paragraph 74.
55. Appeal scheme A's conflict with the development plan and the Framework in respect of the provision of open space, sport and recreation facilities is sufficient in my view to weigh very heavily against it. Also weighing against appeal scheme A is the conflict with the development plan in relation to the overall reduction in an open area of land. However, I moderate the weight to this conflict because the site is not protected for its openness by any statutory local or national designation and the effects would not be significant.
56. In terms of benefits, appeal scheme A would provide an economic boost during and after construction by providing employment and support for local businesses. There is no dispute between the parties that such economic benefits attract significant positive weight, and I agree.
57. On the social side, given the Council's HLS shortfall and the evidence on affordability in Elmbridge, the contribution that appeal scheme A would make to the availability of market and affordable housing represents a significant benefit that attracts very substantial weight. The scheme would accord with the Framework objective to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities.
58. Positive weight can also be given to the provision of new sports and recreation facilities. However, whilst the proposed facilities would provide greater local availability and choice, there is no compelling evidence that they are needed with the exception of the mini-soccer pitch. Moreover, I have found the amount of open space to be provided to be insufficient. The weight to be given to such benefits is therefore limited.
59. Turning now to environmental considerations, the appeal site is well-located to access shops and services given that Molesey local centre is about 500m away. There is also a regular bus service available from bus stops within easy walking distance of the site. The proposals would therefore be sustainably located and there is potential for occupants of the development to access work, shops and services by means other than the car. Environmental benefits would arise from the laying out and management of the open space and the resulting improvements to biodiversity. However, in terms of the latter, the unacceptable balance between built development and open space in the context of the current overall site area is such that I give only limited weight to the environmental benefits of the scheme.

60. Even if I considered Framework paragraph 74 not to be a specific policy that indicates development should be restricted and thus applied the Framework paragraph 14 tilted balance, although appeal scheme A demonstrates a number of benefits, it is my conclusion that the identified conflicts significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

#### *Appeal Scheme B*

61. I have found that appeal scheme B would not offend either Framework paragraph 74 or policy DM20b as it would provide a satisfactory balance of built form and open space and that the improvements to the open space and recreational facilities mitigate the effects of the loss of part of the open site.

62. Although I have identified that there would be harm to the character and appearance of the area, it would be less pronounced in comparison to appeal scheme A and the weight of the conflict with development plan policies CS7, CS14 and CS17 is limited.

63. Moreover, the scheme would make an important contribution to the provision of market and affordable housing in an area of clear need and with significant affordability issues, which carries very substantial weight. In my view, the contribution to housing is of such importance in Elmbridge that it outweighs the permanent loss of part of the currently open site given that I have found there to be an acceptable balance between built development and enhanced open space.

64. As with appeal scheme A, there would be other economic, social and environmental benefits. In terms of the latter, they would be greater than appeal scheme A and I therefore afford them greater weight.

65. Whilst I recognise that the development plan forms the starting point for my decision, having considered all relevant matters, I find that the various environmental, economic and social benefits of appeal scheme A comprise material considerations that are sufficient to outweigh the development plan in this case. The proposal would comprise sustainable development when assessed against the Framework as a whole.

#### **Conditions**

66. The Council put forward a number of conditions at the Inquiry that had been agreed with the appellant. However, mindful of the Framework tests in relation to planning conditions and what the PPG advises regarding their imposition, I raised a number of issues with the conditions as drafted. Those now imposed have been done so with the agreement of both main parties as to their precise wording.

67. In terms of Appeal B have imposed a condition specifying the relevant drawings as this provides certainty. I have given consideration to the need for a condition restricting certain permitted development rights. Whilst I do not consider the exceptional circumstances exist to restrict such rights to the extent suggested by the Council, I am mindful that roof additions and alterations could have a significant disharmonious effect on the overall design of the development and detract from the views towards the key landmarks of the church spire and the clock tower. I have therefore imposed a less onerous condition restricting permitted development rights. A condition relating to

- external facing materials of the buildings is necessary to ensure the appearance of the development is satisfactory. However, this does not need to be a pre-commencement condition.
68. A suite of related conditions requiring details, implementation and maintenance of hard and soft landscaping is necessary for the same reason and to ensure adequate surfacing is provided. The scope of the conditions is such that separate conditions relating to surfacing and lighting are not necessary. In order to ensure the ongoing contribution of existing trees to the local environment, conditions are necessary in relation to their protection.
69. In order to safeguard the water environment and in particular to ensure the development is not affected by flooding, a drainage condition is necessary. The submitted Flood Risk Assessment indicates the potential for sustainable drainage systems and the condition has been worded to reflect this. In the interests of pedestrian and highway safety, I have imposed a condition relating to the laying out of the junction of the service road and the highway and visibility splays. For similar reasons, I have imposed a condition relating to vehicle parking and turning areas.
70. A condition requiring the submission and adherence to a Construction Method Statement is necessary in order to protect the amenities of nearby residents. However, it is not necessary or reasonable to require the imposition of penalties for non-compliance given that the appellant would be in breach of the planning permission if not complying with the condition. A condition relating to bicycle parking is necessary in order to encourage sustainable modes of travel. An ecology condition is necessary to reflect the information in the submitted Ecological Assessment and to enhance local biodiversity.
71. Given the archaeological evidence, I have imposed conditions relating to a Scheme of Archaeological Investigation in the interests of the historic environment. In the interests of the local environment, a condition is imposed relating to contamination. However, I have imposed a much simplified version than suggested in the interests of brevity and to better reflect PPG. In order to ensure good design and to contain the padel and tennis courts, a condition is necessary in relation to fencing. Finally, I have imposed a condition relating to the provision of a water tap to ensure adequate facilities are provided for use of the mini-soccer pitch.
72. I have not imposed the suggested conditions relating to a car and cycle parking management plan or a housing management framework as these matters are adequately addressed within the mechanics of the planning obligations.

## **Conclusion**

73. I have found that Appeal A would fall contrary to the development plan and would not benefit from the presumption in favour of sustainable development enshrined in the Framework. Consequently, Appeal A does not succeed. I have found Appeal B to be in conflict with the development plan. However, in light of the housing supply situation, I regard the Framework as a material consideration of more weight. The harm the scheme would cause would not significantly and demonstrably outweigh the social, economic and overall environmental benefits of the scheme when assessed against the policies in the Framework, considered as a whole. On that basis, the scheme in Appeal B

benefits from the presumption in favour of sustainable development and Appeal B therefore succeeds.

*Hayden Baugh-Jones*

Inspector

Richborough Estates



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Michael Bedford, of Queens Counsel	Cornerstone Barristers Instructed by Catriona Herbert, Elmbridge Borough Council
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He called:

Ms Juliet Heap BA (Hons) MTP MRTPI	Fuller Long Planning Consultants
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Ms Catriona Herbert	Elmbridge Borough Council
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Mr Edward Chetwynd-Stapylton	Elmbridge Borough Council
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### FOR THE APPELLANT:

Mr Christopher Boyle, of Queens Counsel	Landmark Chambers
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He called:

Mr Andrew Smith BA (Hons) MSc CMLI	Fabrik Limited
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Mr Douglas Bond BA (Hons) MRTPI	Wolf Bond Planning
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### INTERESTED PERSONS:

Councillor Ernest Mallett	Surrey County Council (representing Molesey Residents Association)
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Mr Ian Kenny	Local resident (representing Molesey Community Action Group)
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Mr Brendan Lynch	East Molesey Cricket Club
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Councillor Tony Popham	Elmbridge Borough Council
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Mrs Victoria Gibson	Local resident
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Mr Barry Gibson	Local resident
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## **DOCUMENTS SUBMITTED AT THE INQUIRY**

### Documents submitted by the appellant

- AP1 Summary Proof of Evidence of Mr Smith
- AP2 Summary Proof of Evidence of Mr Bond
- AP3 Local Green Space Assessment
- AP4 Photomontage of Bloor Scheme Figure 2F by Define
- AP5 Open Space and Recreation Assessment plans, Figures 4.1 and 4.4 (related to Mr Bond's Proof Appendices Tab 17)
- AP6 Supplementary Townscape and Visual Appendices – Winter Views dated December 2017
- AP7 Appeal schemes A and B drawings
- AP8 Email correspondence from Mr Housden at Fields in Trust dated 22 November 2017
- AP9 Appellants Closing Submissions

### Documents submitted by the local planning authority

- LPA1 Council's Opening Statement
- LPA2 Extract from Atkins study related to Mr Bond's Proof Appendices Tab 17
- LPA3 Council's Closing Submissions

### Documents submitted by interested parties

- IP1 Statement of Councillor Mallett
- IP2 Statement of Mr Kenny
- IP3 Statement of Councillor Popham

### Other documents (submitted jointly by the main parties)

- ID1 Agreed Lists of planning conditions for each appeal scheme
- ID2 Official copy of register title (to accompany planning obligations)
- ID3 Executed planning Section 106 Agreements for each appeal scheme

## **SCHEDULE OF 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 Drawing No 15117 S301; Existing Site Survey Drawing No 15117 S302; Coloured Site Layout Drawing No 15117/C301; Proposed Site Plan Ground Level Drawing No 15117 P301 Rev E; Proposed Site Plan Roof Level Drawing No 15117 P302 Rev E; Coloured Street Elevation – Section A-C Drawing No 15117 C302; Coloured Street Elevation – Section D-E Drawing No 15117 C303; Proposed Street Scenes Elevations A, B, C Drawing No 15117 P303 Rev A; Proposed Street Scenes Elevations D, E Drawing No 15117 P304; Proposed Plans Plots 1-8 Drawing No 15117 P310 Rev A; Proposed Elevations plots 1-8 Drawing No 15117 P311 Rev A; Proposed Plans Plots 9 & 10 Drawing No 15117 P312; Proposed Elevations Plots 9 & 10 Drawing No 15117 P313; Proposed Plans Plots 11 & 12 Drawing No 15117 P314; Proposed Elevations Plots 11 & 12 Drawing No 15117 P315; Proposed Plans Plots 13 & 14 Drawing No 15117 P316; Proposed Elevations Plots 13 & 14 Drawing No 15117 P317; Proposed Plans Plots 15 & 16 Drawing No 15117 P318; Proposed Elevations Plots 15 & 16 Drawing No 15117 P319; Proposed Plans Plots 17 & 18 Drawing No 15117 P320; Proposed Elevations Plots 17 & 18 Drawing No 15117 P321; Proposed Plans Plots 19 7 20 Drawing No 15117 P322; Proposed Elevations Plots 19 & 20 Drawing No 15117 P323; Proposed Plans Plots 21-28 Drawing No 15117 P324; Proposed Elevations Plots 21-28 Drawing No 15117 P325; Proposed Plans & Elevations Plots 29 & 30 Drawing No 15117 P326; Proposed Plans & Elevations Plots 31 & 32 Drawing No 15117 P327; Proposed Plans Plots 33-40 Drawing No 15117 P328; Proposed Elevations Plots 33-40 Drawing No 15117 P329; Proposed Carports Plots 12, 13 & 14 Drawing No 15117 P330; Tree Protection Plan Drawing No 15117-BT6.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling with Schedule 2, Part 1, Classes B and C shall be carried out to any dwellinghouse hereby permitted.
- 4) No development above finished floor level of the dwellings hereby permitted shall take place until details / samples of all external facing materials of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The dwellings shall be constructed in accordance with the approved details / samples.
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
  - i) earthworks showing existing and proposed finished levels or contours;
  - ii) means of enclosure and retaining structures;
  - iii) boundary treatments;
  - iv) vehicle parking layouts;

- v) other vehicle and pedestrian access and circulation areas;
- vi) hard surfacing materials;
- vii) minor artefacts and structures e.g. furniture, play equipment, refuse or other storage units, signs, etc.;
- viii) lighting, floodlighting and CCTV;
- ix) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use or occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 6) Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.
- 7) Before the development is brought into use a schedule of landscape maintenance for a period of 5 years shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Maintenance shall be carried out in accordance with the approved schedule.
- 8) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees has been carried out in accordance with the Arboricultural Assessment & Method Statement by Barrell Tree Consultancy, dated 25 April 2017, Ref 15177-AAA-CA and Tree Protection Plan Drawing no. 15117-BT6. The scheme for the protection of retained trees shall be adhered to during construction works.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 9) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date the development is brought into use, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 10) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 11) No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition 7 shall have been submitted to and approved in writing by the local planning authority. This scheme shall be appropriate to the scale and duration of the works and shall include details of:

- i) induction of staff in awareness of arboricultural matters;
- ii) identification of individuals and their responsibilities;
- iii) timing and methods of site visiting and record keeping, including updates;
- iv) procedures for dealing with variations and incidents;
- v) the scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved in writing by the local planning authority.

The scheme of supervision shall be implemented as approved.

- 12) The development hereby permitted shall not be brought into use or occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and to the Land off Hurst Lane, East Molesey Flood Risk Assessment dated April 2017 ref 16002 FRA, and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters during and after construction;
  - ii) include details of drainage layout, long or cross sections of each drainage element, pipe sizes and invert and cover levels;
  - iii) include details of where any exceedance flows would run to;
  - iv) include a timetable for its implementation; and,
  - v) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) The development hereby permitted shall not be occupied or brought in to use until the junction between the proposed service road and the highway has been constructed in accordance with the details on drawing no. 15117 P301 Rev E. The junction shall thereafter be retained and no structure or erection exceeding 0.6 metres in height shall be placed within the sight lines referred to on drawing no. 15117 P301 Rev E.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;



- iii) storage of plant and materials used in constructing the development;
- iv) a programme of works;
- v) traffic management measures
- vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- vii) wheel washing facilities;
- viii) measures to control the emission of dust and dirt during construction;
- ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- x) delivery timings and demolition and construction working hours.
- xi) On site turning for construction vehicles
- xii) Construction vehicle routing
- xiii) Before and after construction condition surveys of the highway and arrangements for the repair of any damage caused as a result of construction works

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 15) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 15117 P301 Rev E for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 16) No development shall take place including any site clearance, earth moving or soil stripping until a Local Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
  - i. Description and evaluation of features to be managed and created including mitigation measures set out in the Ecological Assessment ref. CSA/2662/07;
  - ii. Numbers, locations and design of ecological enhancement features for bats, birds and stag beetles including within the approved buildings where appropriate;
  - iii. Management aims and objectives;
  - iv. Details of costed work schedules;
  - v. Monitoring and remedial measures.
- 17) No demolition/development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:
  - i) the programme and methodology of site investigation and recording;
  - ii) the programme for post investigation assessment;
  - iii) the provision to be made for analysis of the site investigation and recording;
  - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;

- v) the provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 18) No demolition/development shall take place other than in accordance with the Written Scheme of Archaeological Investigation approved under condition 17.
- 19) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 5 days of the report being completed and approved in writing by the local planning authority.
- 20) The development hereby permitted shall not be occupied or brought into use until space has been laid out within the site in accordance with drawing no. 15117 P301 Rev E for cars to be parked and for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 21) The development hereby permitted shall not be occupied or brought into use until details of fencing to be erected around the padel court and tennis courts have been submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before the development is occupied or brought into use and shall thereafter be retained.
- 22) Before the mini-soccer pitch hereby permitted is brought into use, a tap to provide potable water shall be installed in accordance with details of its type and location that shall have first been submitted to and approved in writing by the local planning authority. The water tap shall thereafter be retained.

End of conditions