



Appeal Decision

Inquiry Held between 20 June and 3 July 2023

Site visit made on 23 June 2023

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2023

Appeal Ref: APP/G5180/W/23/3315293

Former Sports Ground, Worsley Bridge Road, Beckenham BR3 1RL

- 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 Caerus Developments against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/05503/FULL1, dated 10 November 2021, was refused by notice dated 27 July 2022.
 - The development proposed is demolition of all existing buildings on site and redevelopment to provide residential development comprising a mix of dwellinghouses and apartment blocks (part 3 and part 5 storeys in height), including provision of affordable housing, alongside the provision of public open space fronting Worsley Bridge Road, onsite play space and areas for public sports facilities, associated landscaping, car parking and ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Amended plans were submitted with the appeal which were not before the Council when it made its decision. The amended plans alter the fenestration to the east and west elevations of the apartment blocks and propose coppice planting instead of woodland planting along the west boundary of the site. The Council carried out a consultation exercise on the amended plans. I will take into account the responses received to that consultation in my decision. I shall base my decision on the amended plans, and I am satisfied that no party would be prejudiced by my doing so.
3. Following the Council's decision and before the Inquiry opened, the main parties reached agreement on the matters which were subject to reasons for refusal 5, 6 and 7, namely sunlight and daylight, the requirements of Building Regulation M4(3), car parking provision and biodiversity. Consequently, the Council did not defend those reasons at the Inquiry. A planning obligation was submitted which addresses the eighth reason for refusal.

Application for costs

4. At the Inquiry an application for costs was made by Caerus Developments against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Main Issues

5. The main issues in the appeal are:

- i) whether or not the proposal would be inappropriate development on Metropolitan Open Land;
- ii) the effect of the proposal on the purposes and openness of the Metropolitan Open Land;
- iii) the effect of the proposal on open space, sports and recreational facilities;
- iv) the effect of the proposal on the character and appearance of the area;
- v) whether or not the affordable housing provision would accord with planning policy; and
- vi) whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify the proposal.

Reasons

Background and Planning Policy

- 6. The site consists of a disused former sports ground which previously provided football pitches. There is a small pavilion building on the site which accommodates changing rooms and a bar, together with a small car park. The site has not been in use since 2014. Prior to that it was used by local football clubs. The site is enclosed and not accessible to the public.
- 7. The development plan for the area consists of the London Plan (2021) (LP) and the London Borough of Bromley Local Plan (2019) (BLP). The site forms part of a designation of Metropolitan Open Land (MOL) in the BLP. The MOL also covers an adjacent school playing field, the Crystal Palace FC training ground, Kent County Cricket Club and other open land which is mainly in recreational use. The latter facilities are to the south of Worsley Bridge Road.
- 8. Policy G3 of the LP states that MOL is afforded the same status and level of protection as Green Belt and that it should be protected from inappropriate development in accordance with the national planning policy tests that apply to the Green Belt.
- 9. There is agreement between the parties that the Council cannot demonstrate a 5-year supply of deliverable housing sites. On this basis, and in accordance with footnote 8 of the National Planning Policy Framework (the Framework), the policies which are most important for determining the application are deemed to be out-of-date and paragraph 11(d) of the Framework is engaged. Because MOL is a policy in the LP and is not referred to in footnote 7 of the Framework, the presumption in favour of sustainable development in paragraph 11(d) applies.

Whether the development would be inappropriate

- 10. The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate. This consideration also applies to MOL. There is no dispute between the parties that the development would be

inappropriate within the MOL. The Framework states that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. The Framework further states that substantial weight should be given to any harm.

11. The proposed residential part of the development would occupy about half of the site, with the remainder being given over to tennis and padel courts, other open space including play facilities as well as access roads. The Framework makes provision for appropriate facilities for outdoor sport and recreation to not be inappropriate as long as openness is preserved and there is no conflict with the purposes of the designation. Irrespective of whether or not the proposed sports facilities and open space would fall within this exception, they form an integral part of the development as a whole, which would be inappropriate. I give substantial weight to this harm.

Effects on the MOL

12. The site is enclosed by a high hedge along Worsley Bridge Road and a pair of solid gates at the site entrance. Residential areas, together with an area of allotments adjoin the eastern and northern boundaries. To the west is the school playing field. I noted on my visit that there is a localised drop in levels between the site and the playing field and that the fencing and hedging which separates the two is at the lower level. There are open railings along the northern boundary of the school playing field with Meadowview Road, which afford clear views from that road across the playing field to the site. The development would be clearly visible from Meadowview Road and would intrude into the openness of the site.
13. Although the high hedging on Worsley Bridge Road continues across the frontage of the school playing field, the proposed apartment blocks would be clearly visible above the hedge because of their height. Against the backdrop of the predominantly 2 storey housing on Meadowview Road, Meadow Close and Greycot Road, the height and bulk of the apartment blocks would clearly have a visual effect on openness.
14. It is proposed to reduce the height of the hedge along the site frontage to 1.5m. This, together with the formation of a second means of access into the site, would open up the site so that the development would be visible from Worsley Bridge Road. Although the front part of the site, which would be occupied by the sports facilities would remain open the development on the rear part would have a significant effect in terms of reducing openness.
15. The only existing development on the site is the pavilion building and associated parking area together with a lighting column. It is the lack of development on the site that gives it its openness. The development would clearly erode that openness both visually and spatially.
16. I turn now to the purposes of the MOL. The LP states, in paragraph 8.3.1 that MOL is strategic open land within the urban area and that it plays an important role in London's green infrastructure. One of the functions of MOL is providing for sporting and leisure use. Policy G3 part B of the LP sets out criteria for designation of extensions to the MOL. Three of those criteria are relevant to the site.

17. First, land should contribute to the physical structure of London by being clearly distinguishable from the built-up area. The site is contiguous with large areas of open space, most of which are in use for sports and recreation purposes, and which are designated as MOL. The Crystal Palace FC Academy ground is to the south of Worsley Bridge Road and Kent County Cricket Club is to the east of Copers Cope Road.
18. Within the Crystal Palace facility there is a large building with a curved roof structure which provides an indoor training facility. There are also other buildings and structures associated with the sports uses in the area. Although the Crystal Palace indoor training facility has a significant effect on openness, the sports buildings in the area generally do not and the sports and recreation facilities in the area are clearly open. These, including the appeal site contrast with the adjacent built-up areas and contribute to the physical structure of London. By eroding the open area, the development would compromise this purpose of the MOL designation.
19. The second criterion in Policy G3 part B is that the land includes open air facilities, especially for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London. Prior to 2002 the site was a sports ground for Segas, a company that operated across south-east London. Between 2002 and 2014 it was used by various local football clubs but it is clear that in the past it has served significant parts of London. The development would provide tennis and padel courts in place of the football pitches that would be lost. I shall examine the effects on the sports facilities later in this decision.
20. The fourth criterion of the policy is that the land forms a part of a strategic corridor, node or link in the network of green infrastructure. The site forms part of the South-East London Green Chain. This designation is made in the BLP and is recognised in the LP as being important to London's open space network. The Green Chain consists of footpaths and the open spaces that they link. There is no public accessibility to the site and the proposal would not affect the Green Chain Walk. Nonetheless this designation bolsters the value of the site in terms of providing for recreation as well as biodiversity.
21. While I will go on to consider the effects of the proposal in terms of sports provision, it is clear that the first purpose of the MOL in terms of the open space contributing to the structure of London would be harmed.
22. I conclude, for these reasons that the development would unacceptably harm the openness of the MOL both visually and spatially, and one of the purposes for which it was designated. I give further substantial weight to these harms.

Effect on open space, sports and recreational facilities

23. The site has not been used for sports since 2014, but when it was last in use it accommodated two senior football pitches¹ together with a pavilion. Although works would be necessary to reinstate the playing pitches, in planning policy terms the existing sports facility would be lost. This would be replaced by the proposed three tennis courts and three padel courts.
24. The relevant development plan policies are Policy S5C of the LP and Policy 58 of the BLP. Those policies resist the loss of sports facilities unless they have

¹ Ms Edwards proof paragraph 5.3

been identified as being surplus to requirements, or equivalent replacement provision is made elsewhere, or alternative provision is made, the benefits of which outweigh the loss. These requirements are essentially the same as those in paragraph 99 of the Framework.

Whether the site is surplus to requirements

25. Paragraph 98 of the Framework requires robust and up-to-date assessments of the need for sports facilities including any deficits or surpluses. The Council has commissioned such an assessment in the form of its Playing Pitch Supply & Demand Report (PPSDR). The document dated March 2023 is an interim document in the sense that it appraises supply and demand in order to inform the development of a playing pitch strategy.
26. The appellant has pointed out that five Council-owned recreation grounds which have former sports pitches² have not been included in the PPSDR. The reasons for their exclusion have not been explained other than that this was an error. Investment would be needed to reinstate the lapsed playing pitches on those sites but nonetheless they provide clear potential for football pitch or other sports provision. The Council agreed that the assessment of supply in the PPSDR is flawed on the basis that those sites were omitted.
27. On the basis of facilities that are currently available for football, the PPSDR finds that there is a shortfall of adult and youth 9v9 match equivalent sessions and that a shortfall is set to be created on other pitch types³. Notwithstanding the uncertainty arising from the omission of the Council-owned sites in the PPSDR, there is a shortfall, rather than a surplus of football pitch provision that is currently available.
28. The appellant's Open Space Assessment shows that there is sufficient provision to meet demand, and that in the north-western part of the borough, there is an excess of open space provision in general terms. This assessment does not demonstrate that there is any surplus of provision of football pitches in the borough.
29. Although not a requirement of planning policy, the appellant has carried out marketing exercises. These have resulted in significant levels of interest from sports clubs in acquiring the site. Twenty offers were made following the initial marketing from February 2021 and there were seven expressions of interest following the renewed marketing, four of which were for use by football clubs. These have been discounted by the appellant for various reasons but nevertheless support the findings of the PPSDR on need.
30. There is a layer of clinker underlying the former sports pitches which has been highlighted as an issue in reinstating the pitches. The initial marketing information indicated a cost of £2 million for remediation of contamination from this source, but this evidently did not deter the expressions of interest from local sports clubs. Subsequently, in the STRI report, which was made available for the updated marketing exercise, the estimated cost was substantially reduced to £193,000. Again, this figure did not seem to deter parties in expressing interest.

² Parkfield, Glen trammon, Grassmeade, Stanhope and Croydon Road

³ Adult, youth 11v11, and mini pitches

31. The layer of clinker is reported⁴ to be between 0.2m and 0.7m below the ground surface. The Council's report by Atkins shows that the chemicals that are present in the soil would not pose any unacceptable health risk to users of the sports pitches. However, the STRI report identifies a potential risk to ground maintenance staff using equipment to penetrate the soil for decompaction purposes. The risk could be mitigated either through working practices to minimise the depth of penetration or through importation of a layer of topsoil. It is the latter which would incur the cost referred to in the STRI report.
32. I saw on my visit that the pavilion building has been vandalised and requires repair. The appellant has also shown that the changing room accommodation needs to be upgraded. Having regard to the level of interest that has been expressed by sports clubs for use of the site, it has not been demonstrated that the costs involved in reinstating the pitches and providing suitable changing room accommodation would affect the viability of sports use, however.
33. For the above reasons it has been shown that there is a need for use of the site for football pitches and it is not surplus to requirements. The proposal would not meet the exception in paragraph 99(a) of the Framework, or the corresponding parts of Policy S5C of the LP and Policy 58 of the BLP.

Whether equivalent replacement provision would be made

34. The appellant has undertaken in the submitted planning obligation to provide an off-site playing fields contribution of £570,099. This has been calculated using Sport England benchmarks for provision of an adult football pitch and changing room building. The obligation states that the contribution is to be spent on reinstatement or upgrading of sports pitches at identified locations, or alternatively other outdoor sports facilities that the Council considers appropriate.
35. This undertaking is made unilaterally, and the Council has not indicated where or how the contribution would be used. The Council considers that the contribution would not comply with the Community Infrastructure Levy (CIL) Regulations 2010.
36. The intended use of the contribution to reinstate or upgrade sports pitches would not amount to provision of a new facility such that this would replace the pitches that would be lost through the development. For these reasons, the off-site playing fields contribution would not meet the requirement of paragraph 99(b) of the Framework, Policy 58(b) of the BLP, or Policy S5C(2) of the LP.
37. Furthermore, the Council would not be bound by the obligation and there would therefore be uncertainty as to how the contribution would be used. Therefore, any provision to compensate for the pitches that would be lost would be uncertain. Because the project on which the contribution would be spent is not identified, this obligation would not be directly related to the development, and it would not meet one of the tests in the CIL Regulations. I shall return to this point later in my decision.

⁴ Wilson Bailey and STRI reports

Whether alternative provision would provide benefits that would outweigh the loss

38. The development would provide three full-size tennis courts and three padel courts, all of which would be floodlit, together with a changing room facility. The appellant has entered into a contract with a company⁵ which operates a Tennis for Free scheme. This scheme enables its members to use tennis facilities subject to a low-cost subscription⁶. A community use agreement could be secured by planning condition. These measures would enable community access to these facilities in a part of the borough that is identified in the PPSDR as lacking in tennis facilities. The proposals would also provide facilities for padel, which is a rapidly growing sport.
39. These proposed facilities would provide alternative sports provision to the former football pitches that would be lost. Paragraph 99(c) of the Framework allows for such development provided that the benefits clearly outweigh the loss of the current or former use.
40. The proposed tennis and padel facilities would enable more intensive sports use than football pitches. They would be floodlit, enabling evening use and shorter periods of use by a greater number of participants. However, the reinstatement of football pitches could allow for a variety of configurations of pitches, including the possibility of a single pitch for rugby union or rugby league. The site therefore offers flexibility to accommodate a range of sports and playing pitches.
41. The Council also considers that the site could provide a cricket facility. Kent County Cricket Club has continued to express its interest in acquiring the site and using it for recreational cricket and appeared at the Inquiry. The appellant has shown that this would require ball-strike netting of up to 14m in height which would need to be positioned about 23m to 30m from the rear of the nearest houses on Greycot Road and about 13.5m from the site boundary with the rear gardens of those properties. Such a structure would require planning permission and its acceptability or otherwise could only be determined through this process. For these reasons, although I acknowledge the doubt that has been raised by the appellant, it has not been demonstrated conclusively that the site could not feasibly be used for cricket.
42. Sport England's guidance on loss of playing fields⁷ sets out five exceptions to its policy of opposing development that would lead to the loss of playing fields, which align with those in paragraph 99 of the Framework. Exception 5 corresponds to paragraph 99(c) of the Framework.
43. Paragraph 75 of the Sport England guidance states that loss of an area of playing field to an alternative sports facility would be unacceptable if it would materially reduce the capability and flexibility of the playing field to provide for a range of sports and playing pitches. Paragraph 76 considers that greater intensity of use (in relation to artificial grass pitches or multi-use games areas) is not preferred over natural grass pitches because this does not offer the same flexibility to accommodate changes in demand. The guidance therefore indicates that the greater intensity of use of the tennis and padel facilities in

⁵ Parklangley

⁶ Currently £25 per year for a family with no additional charge for court bookings, offering members a maximum 5 hours playing time per week

⁷ Sport England: Playing fields policy and guidance (March 2018)

- comparison to the flexibility offered by the grass playing pitch provision would not amount to a net benefit.
44. The PPSDR suggests that there is insufficient capacity for tennis on existing club-based courts and specific capacity issues at five clubs. For non-club courts there is significant demand and capacity is likely to be limited. The geographic distribution of facilities shows a lack of these in the north-western part of the borough where the site is situated.
 45. Padel is a new and fast-developing sport. The PPSDR identifies that there are currently only two courts in Bromley. The proposal would be of benefit in adding to capacity for both of these sports. Because use by the community could be secured, this would be particularly beneficial.
 46. Bus services pass the site and Lower Sydenham railway station is close by. A new pedestrian crossing would be provided on Worsley Bridge Road to improve access to the site for pedestrians. The site offers a good level of accessibility by modes other than the car and would be suitable in this respect for an alternative sports facility.
 47. While there would be clear benefits from the tennis and padel provision, these would not outweigh the loss of the grass sports pitches which offer flexibility in sports provision to reflect need. The playing field is an important resource, particularly given its location within the urban area, where it is easily accessible to a significant population. It is also MOL, and sports use is one of the purposes for designation as MOL.
 48. I have already found that the off-site playing fields contribution would not comply with the CIL Regulations because it would not be directly related to the development. I cannot take this into account in my decision, and therefore the suggested improvements to, or upgrading of, existing pitches does not represent a benefit that can be weighed against the loss of the existing football pitches.
 49. However, even if the off-site playing fields contribution were to be secured and used for its intended purposes, this, combined with the proposed tennis and padel courts would not be sufficient to outweigh the loss of the playing field.
 50. For these reasons, the proposal would not accord with paragraph 99(c) of the Framework. Neither would the proposal accord with Policy 58 of the BLP or with Policy S5C of the LP which have similar requirements.

Policy 20

51. The Council's reason for refusal refers to Policy 20 of the BLP which resists the loss of community facilities. The appellant disputes the relevance of this policy, on the grounds that the site has been disused for 9 years and when it was last in use there was no secured community access.
52. The policy states that community facilities include recreation and sports facilities. However, it is unlikely that the previous use of the site by Segas and then by local clubs amounted to community use, because access to the facility would have been limited to employees of Segas or club members and would not have been available to the community in general.

53. For these reasons, although it is likely that there was previously some use by members of the local community, the site did not provide a community facility and Policy 20 of the BLP is not relevant.

The Off-Site Playing Fields Contribution

54. I have found that the obligation to provide the off-site playing fields contribution would not be directly related to the development and cannot be taken into account. It is also the case that the obligation is not necessary to allow the development to accord with planning policy.
55. For these reasons, the tests in Regulation 122 of the CIL Regulations would not be met. Accordingly, I have not taken this obligation into account in my decision.

Conclusion on open space, sports and recreational facilities

56. I have found that the benefits in terms of proposed sports provision are not sufficient to outweigh the loss of the playing field. For the reasons given I conclude that the proposed development would be unacceptably harmful to open space, sports and recreational facilities and I give very significant weight to this harm.

Character and Appearance

57. Policy D3 of the LP requires optimisation of site capacity through the design-led approach. The policy explains that this means ensuring that development is of the most appropriate form and land use for the site. Part A of the policy requires the design-led approach to be used to determine the most appropriate form of development that responds to a site's context and capacity for growth. Policy D4 of the LP sets out measures to deliver good design. Policy 4 of the BLP requires a high standard of design that enhances the quality of local places with respect *inter alia* to local character and physical context. Policy 37(b) of the BLP requires proposals to positively contribute to the existing street scene and/or landscape and to respect landscape features.
58. The site is an open playing field, which is adjacent to a school playing field and other land in sports use and the openness and purpose of the site form part of the character of the local area and the physical context. The residential development would not be the most appropriate land use for the site, for the reasons given above. It would be visually intrusive in the context of its open character and its contribution to the townscape. Because the site is a playing field, in planning policy terms it does not have capacity to accept growth in residential development. For these reasons, the proposal would not accord with Policies D3 and D4 of the LP and Policies 4 and 37 of the BLP.
59. Turning to the character of built development in the area, the immediately adjacent residential area consists in the main of 2 storey houses and maisonettes. There are blocks of flats of 3 storeys on Copers Cope Road and up to 4 storeys at Hackington Crescent, both to the south of the site. To the west there are 3 storey blocks at Montana Gardens. The flatted development in this area is generally quite modest in scale and its height does not differ significantly from the predominantly 2 storey development in the area.
60. The area around Lower Sydenham railway station, has a different character in that it includes residential and commercial uses and much taller development.

At the former Maybrey and Dylan works there is recently constructed high rise residential development of up to 9 storeys. Further development is underway at Dylan phase 2 which will be up to 11 storeys. These towers are clearly visible from the site, and they form part of the visual context. However, although close by they are within an area that can be distinguished from the immediate surroundings of the site.

61. Within the wider area there are also three 10 storey blocks of flats at Porchester Mead. These are some distance to the south-east of the site but are clearly visible from Worsley Bridge Road. These blocks are an exception to the prevailing character of 2 storey dwellings.
62. In terms of their scale and massing, the apartment blocks would be significantly larger than the adjacent dwellings. However, there would be a transition in scale with 2 storey houses adjacent to the site boundaries and the apartment blocks stepping up from 3 to 5 storeys towards the centre of the site. The apartment buildings would be taller than other flatted development in the immediate area, but not excessively so. Because they would be set back from Worsley Bridge Road behind an open area, and given that they would be spaced apart, they would not appear cramped or over-developed. For these reasons I find that the scale and massing of the apartment buildings would be acceptable in the context of the nearby built development.
63. The site would be opened up whereby a new access would be created, and footpaths would be provided around the tennis and padel facilities and the children's play areas. The landscaping provision and seating would complement these routes. The hedge and trees along the road frontage would be retained and new tree planting would be provided within the site, notably along its east and west boundaries. Lawned areas would be provided between the play areas and the apartments which would provide a transition between public and private space. The houses and apartment buildings would front directly onto the new street to be created within the site. I find all of these aspects of the design to be of suitably good quality. The fenestration design was amended in the plans submitted with the appeal, but I do not find that this would unacceptably affect the design. In my view the proposed design of the houses and apartments would be of suitably good quality.
64. I have found that the development would be in keeping with the character of built development in the area and that its design quality would be good. However, it remains the case that the development would be fundamentally out of character with the existing site and its wider open setting, because it would be inappropriate and intrusive. I conclude overall that the development would unacceptably harm the character and appearance of the area and I give significant weight to this harm.

Affordable Housing Viability

65. The strategic target for affordable housing across London is set out in Policy H4 of the LP. This target is for 50 per cent of all new homes delivered across London to be genuinely affordable. The policy requires major developments to provide affordable housing in accordance with the threshold approach, which is set out in Policy H5.
66. That policy sets the threshold initially at a minimum of 35%. This threshold is not fixed, and part C of the policy sets out further requirements. There are

four criteria in that part of the policy which, if met mean that there is no need for a viability assessment to be provided. If this is the case, applications follow a Fast Track route. Otherwise, a viability assessment is required in order to show that affordable housing provision is maximised.

67. The proposed development would provide 52% of dwellings as affordable housing, or 50% if measured by habitable rooms. The proposal is therefore well in excess of the minimum threshold. No viability assessment has been provided.
68. A registered provider⁸ of affordable housing and a company providing a sales and marketing service⁹ have entered into a contract to purchase the site, subject to planning permission being granted. Their intention is to apply for funding from the Greater London Authority (GLA) to provide 100% affordable homes on the site.¹⁰ The GLA has confirmed that, subject to a formal bid, and subject to planning permission being granted, the project meets the criteria for funding and the relevant design standards. Although not certain, there is a reasonable prospect that all of the proposed housing would be affordable.
69. The third criterion of Policy H5C requires applications to meet other relevant policy requirements and obligations to the satisfaction of the borough and the mayor where relevant. This policy allows for judgement by the decision maker as to whether any policy conflict is relevant in each case. I have found that the proposal would conflict with policies that require retention of playing fields and those that deal with character and appearance.
70. These are key policy requirements and are relevant to consideration of the proportion of affordable housing that should be provided. The question as to whether Policy H5C(3) is met goes to the weight that should be given to the affordable housing provision in the balance.
71. Guidance on the application of Policy H5 is provided in the Mayor's Affordable Housing and Viability Supplementary Planning Guidance (SPG). There was discussion at the Inquiry as to a suggested 50% cap on affordable housing provision given in the SPG. Such a cap, if generally applied, would not be consistent with the strategic target for affordable housing as stated in Policy H4. The SPG refers¹¹ to a maximum of 50% affordable housing but this is in the context of proposals that do not meet the 35% threshold, rather than proposals which do not meet other relevant policy requirements. The SPG also refers to a 50% cap in viability review mechanisms. The circumstances referred to in footnote 10 of the SPG do not apply in this proposal.
72. I have found that the development would not accord with relevant planning policies. On this basis under Policy H5C(3) a viability assessment would be necessary.
73. While it has not been demonstrated that the proposed affordable housing provision is the maximum that would be viable, this would significantly exceed the threshold and would be higher than the strategic target. There is also a clear intention to seek 100% affordable housing provision and actions have been taken to achieve this. In these circumstances little would be achieved by

⁸ Square Roots Registered Provider Ltd

⁹ London Square

¹⁰ London shared ownership homes

¹¹ In footnote 10

a viability assessment, and I do not find that the absence of a viability assessment weighs against the benefit that would arise from the proposed affordable housing. While there would be conflict with Policy H5C(3) of the LP, I give limited weight to this conflict.

Other Considerations

Housing Land Supply

74. I have noted above that the Council cannot demonstrate a five-year supply of deliverable housing sites. The parties differ on the extent of the shortfall, with the appellant claiming that the supply stands at 2.65 years and the Council stating that it is 3.83 years.
75. The Council's most recent assessment of its 5-year housing land supply (5YHLS) is in its Housing Trajectory (2021). The base date of the assessment is 1 April 2021 and the 5YHLS is calculated up to 31 March 2026. The LP was adopted in March 2021 and sets a housing requirement for Bromley of 774 dwellings per annum (dpa). It is agreed that the 5YHLS calculation should be based on this requirement figure. The plan period runs from 2019 and there was a shortfall in housing provision in the first 2 years of the plan period, from 2019 to 2021 when the plan was adopted. The parties differ on the methodology for calculating that shortfall.
76. Monitoring of housing delivery over the first 2 years of the plan period was against the requirement in the 2016 London Plan as this was the adopted plan at the time. The Housing Delivery Test (HDT) results were based on that monitoring. The Government made adjustment to the HDT figures to allow for the effects of the pandemic in terms of housing delivery.
77. The Planning Practice Guidance (PPG)¹² states that the level of deficit or shortfall will need to be calculated from the base date of the adopted plan. On this basis, completions in 2019/20 and 2020/21 need to be measured against the LP requirement of 774 dpa.
78. While it is fair to say that the pandemic is likely to have affected housing delivery, and this affected the HDT results, this does not alter the requirement in national policy to calculate the shortfall from the base date of the plan. Measured against the annual requirement of 774 dpa, the shortfall is 687 dwellings which gives a 5-year requirement including a 5% buffer of 4,785 dwellings.
79. The Council has included windfall delivery from small sites of less than 0.25ha in the third to fifth years of the supply.
80. Policy H2 of the LP requires boroughs to pro-actively support well-designed new homes on small sites in order to achieve targets which are set out in Table 4.2 of the LP. The target for Bromley is 3,790 dwellings over a 10-year period, or an average of 379 dpa. Paragraph 4.2.3 of the LP explains that the targets are informed by the 2017 London Strategic Housing Land Availability Assessment (SHLAA), they are based on trends in completions on small sites and the estimated capacity for additional supply from intensification. That paragraph states that the small sites target can be taken to amount to a

¹² 68-031-20190722

- reliable source of windfall sites which contributes to anticipated supply and so provides the compelling evidence in this respect required by the Framework.
81. The appellant has used actual rates of delivery on small sites over the period 2011-2020 which average 302 dpa. This assessment takes into account past fluctuations in the economic cycle but also reflects past low levels of delivery. Nonetheless it has the advantage of using empirical evidence.
 82. There will inevitably be uncertainties in the Council's assessment of supply from small sites. The target to be achieved under Policy H2 of the LP is over 10 years and there will likely be fluctuations in delivery rates over that period. However, paragraph 4.2.3 of the LP supports the use of the target in calculating supply from small windfall sites. Accordingly, this aspect of the Council's calculation is justified.
 83. Two large sites have been included in the supply, which are disputed by the appellant. These include 143 dwellings at South Eden Park Road and 90 dwellings at Dylon phase 2. Annex 2 of the Framework states that all sites with detailed permission should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years.
 84. The development at South Eden Park Road is expected by the Council to be delivered by 31 March 2026. All pre-commencement conditions have been discharged. The appellant has referred to rates of construction on other sites, but site-specific circumstances will differ, and the rates achieved on other sites does not necessarily mean that the expected rate of delivery would not be achieved on this site.
 85. At Dylon phase 2 construction is underway and when the development was commenced in March 2023 the developer issued a press release stating that the sales launch would be in spring 2023 with the first apartments ready to move into in summer 2024. The press release states that the build programme will take place over 3 years. This clearly indicates the developer's intention, and it has not been demonstrated that this is unrealistic. I am not convinced that the two disputed large sites should be excluded from the 5-year supply.
 86. I have found that the 5-year supply should be calculated on the basis that the shortfall is calculated from 2019. This gives a 5-year requirement including a 5% buffer of 4,785 dwellings and an annual requirement of 957 dpa. I have found similarly to the Council that the supply is 3,235 dwellings. This gives a supply of 3.38 years.
 87. This level of shortfall is very significant in that it is well below the 5-year requirement in national policy and indicative of serious problems facing people wishing to access housing in Bromley.
 88. The proposal would help to address this shortage by providing 46 market dwellings and 49 affordable dwellings. They would have good accessibility by non-car modes to a range of services and facilities and employment opportunities.
 89. Having regard to the contribution that would be made to housing supply and the good level of accessibility, I give significant weight to the benefit provided by the 46 market homes.

Affordable Housing Need

90. The most up-to-date assessment of affordable housing need in the borough was carried out in the Strategic Housing Market Assessment (2014) (SHMA). This assessment is dated but identified that 1,404 affordable homes were needed per annum over the 20 years from 2011. This figure takes no account of constraints such as Green Belt and MOL in meeting the need. It is clearly well in excess of the 774 dpa in total for the borough identified in the LP and it is clear that the need identified in the SHMA will not realistically be met.
91. The gross number of affordable homes delivered, excluding Right to Buy losses over the 12 years since 2011 is 1,748, which is only a small fraction of the need identified in the SHMA. Nonetheless, to put this into perspective, the proportion of affordable housing that has been provided over the past decade is 27%, or 26% if Right to Buy sales are taken into account. Policy 2 of the BLP requires 35% affordable housing on schemes of 11 units or more. The overall proportion of affordable housing provision must be viewed in the context that there is no policy requirement for this on smaller schemes.
92. That said, the proportion relates to total housing delivery which has fallen significantly behind requirements. It is also significantly below the LP strategic target of 50%. Evidence of the acute need for affordable housing in Bromley is provided by the 2,774 households on the housing register, which is a significant increase from the 1,634 households on the register in 2020. Representations of support for the provision of new affordable housing were submitted by residents of south-east London who are currently in unsuitable accommodation and finding it hard to access suitable family housing.
93. The severity of the lack of affordable housing in Bromley is illustrated by the median house price to income ratio of 13.96, which is higher than the London-wide average of 12.54 and well above the national average of 7.37. The Council fairly accepted that the lack of affordable housing in the borough can be described as a crisis.¹³ In light of this, I give substantial weight to the benefit of the proposed affordable housing provision.

Other benefits

94. I have concluded that, although the tennis and padel courts would be a benefit, these would not outweigh the loss of the pre-existing sports pitches and that there would be a net harm in this respect.
95. Policy S4 of the LP requires provision of playspace of at least 10 sqm per child. The Council advises that the requirement arising from the development would be 577 sqm. The proposed play space at 1,320 sqm would be more than double that requirement. The proposal would also be beneficial in facilitating public access around the sports and play facilities, together with a new pedestrian crossing on Worsley Bridge Road. Allotments would also be provided.
96. These facilities would be next to residential areas at Montana Gardens and Greycot Road which are identified on the policies map of the BLP as being deficient in public open space. Taken together, these open space facilities would be of significant benefit, and I give significant weight to this benefit.

¹³ Mr Johnson in cross-examination

97. The development would also be of economic benefit during construction through provision of employment, and benefits to companies that supply materials. There would be expenditure from the occupiers of the development and employment would be provided by the sports facilities. The Council would benefit from Council tax revenue. Taking into account the temporary nature of some of these aspects, I give moderate weight to this benefit.
98. The development would provide for biodiversity net gain of 30% for habitat units and 150% for hedgerow units. The existing site comprises grassland, scrub vegetation, and trees which are assessed as being in poor condition. The frontage hedge is assessed as being in moderate condition. The additional planting would clearly secure improvement over the longer term and additional measures are proposed which could enhance opportunities for fauna. I give moderate weight to this benefit.
99. The buried clinker on the site does not cause any existing issue with regard to contamination. Remediation of any contamination may be necessary as part of the development if this were to be approved, in order to ensure the safety of occupiers and users of the site. However, this does not represent a benefit to which any weight can be given.

Whether there are Very Special Circumstances

100. I have concluded that the development would be inappropriate in MOL and have given substantial weight to this harm. I have found harm to the openness and purposes of the MOL and have given further substantial weight to this harm. I have also given significant weight to the harm to the character and appearance of the area.
101. I have further concluded that the proposal would be harmful in terms of the loss of the existing sports facility and that this harm would not be outweighed by the on-site tennis and padel provision or by the overall proposed package of sports measures. I have given overall very significant weight to this harm.
102. On the other hand, I have given significant weight to the market housing and substantial weight to the affordable housing. I have given further significant and moderate weights to the other identified benefits. The weights that I have given to the benefits are not sufficient to outweigh the harm to the MOL and other identified harms. Therefore, the harm to the MOL and the other harm identified would not be clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the proposal. For these reasons the development would not accord with Policy G3 of LP and Policy 50 of BLP which resist inappropriate development on MOL unless there are very special circumstances that outweigh the harm.

Planning Balance

103. Because there is not a five-year housing land supply, the policies which are most important for determining the application are deemed to be out-of-date. While the MOL policies refer to national policy on Green Belt, MOL is not a policy that is specified in footnote 7 of the Framework. In these circumstances, paragraph 11(d) of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

104. The protection of open space, sports and recreational land is a key policy of the Framework which carries significant weight in the balance. The relevant development plan policies which resist the loss of sports facilities are consistent with the Framework and should similarly carry weight even though they are deemed out-of-date.
105. Policies which resist inappropriate development on MOL require consideration of proposals in accordance with national policy in the Framework. MOL is an important designation and this, together with the alignment of those policies with national policy gives them weight as key components of the development plan. Accordingly, notwithstanding that they are deemed out-of-date, they should nonetheless carry some weight in the balance. The proposal would not accord with the development plan as a whole.
106. Taking into account the conflicts with the relevant development plan policies I find that the adverse impacts of the proposal in terms of loss of MOL, loss of sports pitches and harm to the character and appearance of the area would significantly and demonstrably outweigh the identified benefits of the proposal when assessed against the policies in the Framework as a whole.

Planning Obligation

107. I have found that the unilateral undertaking to pay the off-site playing fields contribution would not meet the tests in the CIL Regulations. The obligation also provides for a carbon offsetting contribution, a mechanism to secure provision of the proposed affordable housing, and a car club. Transfer of the tennis courts and padel courts to a tennis court operator would be secured by a unilateral undertaking. Because I am dismissing the appeal for other reasons, there is no need for me to consider the planning obligation further.

Conclusion

108. For the reasons given I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson, of Counsel, instructed by the Head of Law, London Borough of Bromley

He called

Ben Johnson BA (Hons) DipTP	Head of Planning Policy and Strategy, London Borough of Bromley
Ian Drew BSc MA	Urban Design Officer, London Borough of Bromley
Jo Edwards BA (Hons) MRTPI	Planning Manager, Sport England
David Bord BA (Hons) PG(Dip) MRTPI	Principal Planning Officer, London Borough of Bromley

Conditions and Planning Obligations session

Paul Courtine	Solicitor, London Borough of Bromley
Catherine Lockton	Case Officer, London Borough of Bromley

FOR THE APPELLANT:

Christopher Young, of Kings Counsel, and Odette Chalaby, instructed by Tom Elder of Caerus Developments

They called

Barbara Richardson FRICS	Managing Director, Square Roots Registered Provider Ltd
Annie Gingell BSc (Hons) MSc MRTPI	Tetlow King Planning
Ben Pycroft BA (Hons) DipTP MRTPI	Director, Emery Planning
Nick Beard RIBA	Architect
Marcus Wilshire ARB MRTPI FRSA	Architect and town planner
Richard Grady	Director, Consult QRD Ltd
Jonathan Murch MATCP MRTPI	DaviesMurch

Conditions and Planning Obligations session

Andrew Morgan	Solicitor, DAC Beachcroft
Tom Elder	Caerus Developments

INTERESTED PARTY:

Simon Storey	Chief Executive, Kent County Cricket Club
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DOCUMENTS SUBMITTED AT THE INQUIRY

- ID01 Opening statement on behalf of the appellant
- ID02 Opening statement on behalf of the Local Planning Authority
- ID03 Definition of 'social cleansing'
- ID04 Photograph of fencing at Sydenham High School
- ID05 Map, aerial photographs and photographs of recreation and sports grounds
- ID06 E-mail correspondence between Council officers and with Sport England regarding recreation and sports grounds
- ID07 Extract from committee report and decision for application ref. 20/00325/OUT
- ID08 Plan showing distances of houses and gardens on Greycot Road from proposed apartment block
- ID09 Plan showing distances of houses and gardens on Greycot Road from net required for cricket on site
- ID10 Map extract from committee report for application ref. 20/00325/OUT
- ID11 Section 106 agreement
- ID12 Section 106 round-table agenda items
- ID13 CIL Compliance statement
- ID14 List of conditions
- ID15 Contract relating to the sale and purchase of the sports area
- ID16 Closing Statement on behalf of the Local Planning Authority
- IP17 Closing submissions made on behalf of the appellant