

Email to: Michael Gove MP
Subject: LONDON BOROUGH OF MERTON PLANNING APPLICATION: 22/P2351
Date: Thu, 10 Nov 2022 15:25:15
From: RPWBRA <rpwbra@rpwbresidents.org.uk>



**RAYNES PARK AND WEST BARNES
RESIDENTS' ASSOCIATION**
SERVING THE COMMUNITY SINCE 1928

Rt Hon Michael Gove MP,
Secretary of State for Levelling Up, Housing and Communities
House of Commons
London
SW1A 0AA

Dear Mr Gove,

LONDON BOROUGH OF MERTON PLANNING APPLICATION: 22/P2351:
LAND AT THE FORMER LONDON ELECTRICITY SPORTS & SOCIAL ASSOCIATION
(LESSA) SPORTS GROUND, MEADOWVIEW ROAD, LONDON SW20 9EB

Our Residents' Association has some 1800 members and is over 90 years old. We have been fighting to keep the LESSA sports ground used for sports for over 20 years.

We are pleased that you have called in the intended decision by the Council's Planning Committee on 22nd September to approve this application. This was despite the strong rejection of the proposals by Sport England and the England & Wales Cricket Board (ECB). They supported the proposal by a consortium of adult and junior clubs and a mixed junior school to build a pavilion and use the land for sports, with extensive community use. They assess the proposal to be financially viable.

We append our detailed comment/objection to what was a third application by Bellway Homes to build 107 flats and houses on this ground, submitted to the Council on 24th August.

We believe that the applicants have always totally disregarded their obligations to keep the ground open for sports. They have refused the many applications from sporting bodies to use it, but have determined to keep it as a land bank until the resilience of local people has been worn down.

The application itself is a gross abuse of process.

It may help to give a brief summary of the complex history of the ground.

- LESSA closed the ground in September 2000. It had two full sized football pitches, an overlapping cricket pitch, four tarmac tennis courts, a pavilion, and a children's play area, with ample car parking.
- In June 2003 a Planning Inspector upheld the Council's decision to refuse an application by Barratts Homes Limited to build 111 apartments in 2,3 and 4 storey blocks

- Barratts sold the land to Doram Properties Limited which applied for permission in July 2008 to build 44 houses and low flats. The application was for the retention of 4.07 hectares of playing fields principally for junior sports, with two rugby/football pitches, a cricket ground and two pavilions, with 500 hours of community use. The application was refused by the Council, but a Planning Inspector upheld Doram's appeal in October 2009. He made it clear that this was an enabling development, and that the grant of permission for the housing was dependent on the remainder of the land being used for sports.
- Doram sold the land to Bellway in May 2010 which built the 44 units of accommodation and a tennis club. Bellway sold the properties on the assurance that the rest of the land would be retained as open space. Hence the road was called Meadowview Road.
- Ever since then Bellway has adamantly refused to discuss any sports use of the field, and instead just fenced it off. It also fenced off a children's play area that it was bound to allow the residents of the development to use. Our comment/objection gives full details of this.

The Council's Local Plan throughout has designated the site as Open Space, and states that *"Sporting or community use of the entire site will have to be proven as undeliverable before any other uses can be considered."* The burden was on Bellway to prove that the consortium's proposals were *"undeliverable"*, and not for the consortium to prove that they were. Given the views of Sports England, the Council fell into error in granting the provisional approval for development.

Bellway has made three applications to build on this ground. The first one has never been brought before the Committee. The second one for 107 flats and houses was refused at the Committee meeting on 16 June by 6 votes to 4.

The Council made no attempt to discuss the proposals of the consortium with it in furtherance of the Committee's refusal until just before the date of the hearing of the third application. Despite repeated requests to the Chief Executive, the Council has refused to discuss why not.

Instead, we have discovered through a Freedom of Information request that the Interim Head of Development Management and Building Control held a meeting with Bellway and their land agents, Savills, within 2 weeks on 30 June. He states that *"I met with the applicants Bellway, and the planning agents, Savills on Thursday 30th June 2022 to discuss how the previously refused application may be amended to address the decision made by the Planning Applications Committee on Thursday 16th June 2022. No notes were taken so the council does not hold any information in regard to the meeting"*.

The existence of this meeting was not, so far as we are aware, revealed in the Officer's report on the third application, nor otherwise.

We find it troubling that such a meeting took place, without minutes being taken, and without its existence being disclosed.

The second application had been refused on two grounds:

"The proposed residential development would result in the loss of open space. The harm caused is not considered to be outweighed by the planning benefit of the proposed development. The proposals would be contrary to policies G4 and S5 of the London Plan (2021), policy CS13 of the Merton Core Planning Strategy (2011) and policy DMO1 of the Merton Sites and Policies Plan (2014)".

There was a second reason given by officers (by way of an informative note to the applicants) for refusal. This was that the application was considered *"fundamentally contrary to the provisions of the Development*

Plan and the NPPF and there were not considered to be any solutions to resolve the conflict". That was definitive and conclusive.

The officer's report to Committee set out the first reason but not the second. This second reason was not drawn to the attention of the Committee as it should have been. It is impossible to see how the proposals in the third application comply with the decision already made.

Within two weeks of the official decision of the Council, and without appealing this decision, Bellway made a third application on 2 August. This had the same number of dwellings, 107, and varied from the refused decision in having one small multi use exercise area, which had the effect of course of cramming the buildings on a smaller area, and a proposed Section 106 commitment to give over £1 million pounds to the Council to improve other sports grounds.

This application was cynically made in the school holidays, deliberately, we say, to reduce the numbers of residents' objections from the 250 on the previous application. Even so, some 120 people did object by the 22 September.

It was surprising that the meeting was held so soon after the application was lodged, giving little time for public views to be ascertained.

A member of the consortium applied formally and in time to speak at the meeting. However, his application made to the correct Council officer, was not acted upon. He came to the meeting to speak, but was denied permission to do so. We have complained to the Chief Executive on his behalf, but no apology or explanation has been made. The committee members were therefore deprived of the opportunity to hear from a consortium member in person. Their decision was therefore made without the full openness of debate required.

The decision on the third application was made by a 6-4 vote in favour, with a slightly differing membership. Those voting in favour said expressly that they were doing so in order to provide more housing, and especially affordable housing. They did not attempt to follow the planning guidance. They took no account of the approval already given to build 456 flats on the nearby Tesco site, of which 143 are affordable. This is within the same ward boundaries.

We would urge you, Sir, to use your powers to reverse this decision.

John Elvidge,
Chairman

Raynes Park & West Barnes Residents' Association
The Residents' Pavilion
129 Grand Drive
LONDON
SW20 9LY



**RAYNES PARK AND WEST BARNES
RESIDENTS' ASSOCIATION**
SERVING THE COMMUNITY SINCE 1928

COMMENT ON PLANNING APPLICATION 22/P2351: OBJECTION

ON BEHALF OF THE RAYNES PARK AND WEST BARNES RESIDENTS' ASSOCIATION

23 August 2022

Land at the former LESSA sports field ground, Meadowview Road, Raynes Park, SW20 9EB

Case officer: Tim Lipscomb

Application type: Full Planning Permission

From: John Elvidge, Chairman,
The Raynes Park and West Barnes Residents' Association,
The Residents' Pavilion, 129 Grand Drive, SW20 9LY

REDEVELOPMENT OF PART OF FORMER LESSA SPORTS GROUND INVOLVING THE ERECTION OF 107 DWELLINGS (CLASS C3 USE) INCLUDING AFFORDABLE HOUSING, ASSOCIATED LANDSCAPING, EQUIPPED CHILDREN'S PLAY AREA, ASSOCIATED INFRASTRUCTURE INCLUDING FLOOD MITIGATION, INTERNAL ACCESS ROAD AND CAR PARKING, CONSTRUCTION OF 2 ALL-WEATHER TENNIS COURTS WITH ASSOCIATED FLOODLIGHTING, STORAGE COMPOUND AND CAR PARKING, 5-A-SIDE FOOTBALL PITCH, MULTI GAMES AREA (MUGA) AND OUTDOOR GYM

We wish to object strongly to this application.

It was registered on 2 August 2022 with a requirement for comments to be made by the end of August. This was during the school holidays when, as the applicant would have known, many residents wishing to object would have been on holiday and unable to comment in time.

Over 250 local residents had objected to the applicant's previous (second) application on the site: (21/P4063).

And it was made just 2 weeks after the formal refusal by the Council's Planning sub-Committee of that application.

That application was refused after a full discussion on the grounds that:

“The proposed residential development would result in the loss of open space. The harm caused is not considered to be outweighed by the planning benefit of the proposed development. The proposals would be contrary to policies G4 and S5 of the London Plan (2021), policy CS13 of the Merton Core Planning Strategy (2011) and policy DM 01 of the Merton Sites and Policies Plan (2014)”.

The present application does not, in our submission, begin to address the reason for refusal of the previous application (which, itself, was a second application, the first of which was held in abeyance).

It does not differ materially from the previous application in regard to the site itself, except for the addition of a small area of sports provision on the flood plain. It contains the same number of dwellings on a smaller, and therefore, denser ground plan.

The applicant’s representatives were present and spoke at the Committee meeting, and heard the concerns expressed by Members that the then application ignored the planning designation of the site, and the need to facilitate and encourage sporting use of the whole site.

The applicant has taken no account of the views of Members that the site is designated as Open Space, and that no time limit is set by that designation. It took no account either of the decision of the Planning Inspector in 2009/10 who allowed the building of 44 units on the clear basis that the rest of the ground should be retained entirely for sporting use, particularly for junior sports, and with generous provision for community use.

The applicant company has done nothing since the Committee hearing to engage at all with the sporting consortium interested in a long-term lease of the ground, and whose earlier attempts to discuss their proposals with the applicant were refused out of hand.

The applicant has not engaged in any discussion either with Sport England or the ECB about sporting use of the whole site.

Instead, it has rushed through yet another application on the same basis as before, ignoring the planning designation of the site, and the need to allow sporting use of it.

In our objection to the previous application, dated February 2022, we set out at length the history of the refusal of the company over many years to discuss proposals for sporting use made by a number of sporting bodies and a junior school.

We append that objection to this present one, as Appendix 1, and rely on the examples quoted therein. We also wish to restate and rely upon all the objections made in that comment in this present one.

We contend that we are correct in our view that the company has throughout shown complete contempt for the planning process under which they should operate, attempting instead to unjustly maximize their profit from the site, which they have already achieved. This hurried proposal is yet another example of this.

What the applicant is trying to do in this third application is to bribe the Council by offering further offsetting monies, up to £1.5 million, on other sports grounds owned by Merton. This would, apparently, be governed by a section 106 agreement.

But this process ignores the planning designation for this site which, to repeat, is that: "Sporting or community use of the whole site will have to be demonstrated as undeliverable before any other uses can be considered".

It is wholly impermissible, in our view, a negation of proper planning process, and illegal, for a developer to be allowed to depart wholly from an established planning designation, which does not allow building on a sports ground, by allowing it to offset that development by improvements to other sports grounds.

The Council is entitled and, in our view, is bound to decline to determine this application. We have seen a copy of the comment made to the Planning Officers by e-mail on 12 August 2022 by a local resident which sets out compellingly the legal basis for this submission. We gratefully adopt this reasoning.

For ease of reference, we append this comment as Appendix 2 to this objection, as part and parcel of our comment, only redacting the name and address of the local resident.

The reasons that this view is correct are in summary that this application is fundamentally the same as that of the previous application.

It is also an "overlapping" application within the legal definition of that term.

It also fails wholly to take account of the present decision, made as recently as 19 July, which definitively refused the previous application; and case law and planning guidance show that consistency in decision making is a highly material consideration in planning.

The present (third) application will take up yet more time for hard pressed Planning Officers, and is a clear attempt to undermine the resiliency of the local community. Repeated applications, on the same basis as those already refused on comprehensive grounds, should be discouraged, according to national guidance

If the applicant wishes to appeal the decision of the Council, it can do by appeal within 6 months of the decision. It has not, so far, done so.

It should not be allowed to twin track its options in this way.

APPENDIX 1



RAYNES PARK AND WEST BARNES RESIDENTS' ASSOCIATION SERVING THE COMMUNITY SINCE 1928

COMMENT ON PLANNING APPLICATION 21/P4063: OBJECTION

ON BEHALF OF THE RAYNES PARK AND WEST BARNES RESIDENTS' ASSOCIATION

Land at the former LESSA Sports Field Ground, Meadowview Road, Raynes Park, SW20 9EB

REDEVELOPMENT OF PART OF FORMER LESSA SPORTS GROUND INVOLVING THE ERECTION OF 107 DWELLINGS, INCLUDING AFFORDABLE HOUSING, ASSOCIATED LANDSCAPING, EQUIPPED CHILDRENS PLAY AREA, MULTI-USE GAMES AREA, OUTDOOR GYM AREA AND ASSOCIATED INFRASTRUCTURE, INCLUDING FLOOD MITIGATION, VEHICULAR ACCESS AND PARKING, PLUS THE ERECTION OF 2 ALL-WEATHER TENNIS COURTS WITH FLOODLIGHTING, STORAGE COMPOUND AND PARKING

We are a Residents' Association with 1800 members in our area.

We have fought to keep the LESSA sports ground in use for sport for over 20 years.

It is important that this application is considered in the light of the site's history.

1. Site history

LESSA closed the sports ground in September 2000. It contained two full sized football pitches, an overlapping cricket pitch, four tarmac tennis courts, a pavilion, and a children's play area, with parking for between 70 and 80 cars.

In 2002-3 we opposed a plan by Barratts Homes Limited to build 111 apartments in 2, 3 and 4 storey blocks on this land. The Council refused the application for outline planning permission on 17 October 2002, and a Planning Inspector refused the appeal entirely on 19 June 2003. We gave evidence to the Inquiry.

The land was then sold to a company called Doram Properties Limited. That company applied for planning permission on 4 July 2008 to build 44 units of accommodation. The application was for the

retention and re-use of 4.07 hectares of playing fields, providing two rugby/football pitches, a cricket ground, and tennis courts for community use, and the erection of two sports pavilions. The Planning Applications Committee refused the application formally on 20 February 2009, and Doram appealed.

A different Planning Inspector upheld the appeal and so granted approval on 1 October 2009. It is very important to note that the Inspector fully expected that the plan should be completed as a whole, and that the permission to build the housing was dependent on the rest of the ground being made available for community use. These requirements were set out in a section 106 Unilateral Undertaking.

The evidence before the Inspector was that King's College School wanted to use the ground for their junior pupils and that it would be made available to other community users for a minimum of 500 hours per annum. A tennis club and pavilion would be provided on part of the ground at the owner's expense. It was, in his words, "an enabling development." He ruled that:

"The proposal would provide high quality playing fields, tennis courts and pavilions, which, unlike the original facilities, would be available for use by local people".

The Inspector concluded that:

"the community, sporting and recreational benefits arising from the proposed development significantly outweigh the loss of a relatively small part of this disused and derelict sports ground".

Doram sold the entire site to Bellway on 20 May 2010 on this basis. It built the 44 units of accommodation which are now called Meadowview Road, and provided tennis courts and a pavilion for the Raynes Park Tennis Club. They also provided a small play area restricted to the children from the houses and flats.

Officers and members of the Planning Application Committee are urged to read the application for building Meadowview Road (08/P1869), and in particular the reasons given by the Inspector who granted permission on appeal, before considering the current application.

However, King's College School decided not to take up the option of a lease of the land, which was secured by the Unilateral Undertaking.

Some of the properties on Meadowview Road are in private ownership. When the new owners bought them, they received, so we have been told, assurances from Bellway that the balance of the land would be retained for sport.

Since that time, Bellway has done nothing more than maintain the hedges and mow the grass.

2. Policies

The site is listed in the Sites and Policies Plan and Policies Maps - 2014-2024 as Open Space.

This planning application should be refused because it is in contravention of the following policies:

2. i) The New Local Plan:

The London Borough of Merton's New Local Plan has been submitted to the Secretary of State and is undergoing the examination stage. Bellway's site is designated as RP6 and it is clearly designated as an open space:

The site location	
Impacts Listed Buildings or undesignated heritage assets	No
Impacts a Conservation Area	No
Impacts an Archaeological Priority Area	No
Impacts a Scheduled Ancient Monument	No
Impacts on flooding from all sources.	Yes, part of the site is within flood zone 3 and within a critical drainage area.
Is in a town centre	No
Is in an Opportunity Area	No
Impacts a designated open space	Yes, the site is designated as open space.
Impacts an ecology designation	No.
Public Transport Accessibility Level (PTAL)	PTAL 1, very poor access to public transport.

Ward: West Barnes
<p>Site description: The site comprises a fenced off field, accessible from Meadowview Close. Within the north east corner of the site lies a small playground that is closed off to general the public use and described as only being available for the use of the residents living on Meadowview Road</p> <p>To the north of the site are 44 homes along Meadowview Road and Raynes Park Tennis Club, built by 2013 as part of a single scheme which allowed the redevelopment of homes on open space if the development funded sports facilities. The site is surrounded by short terraces line of a formal street layout with some grass verges and street trees.</p> <p>The rear windows and gardens of terraced houses or flats overlook the site on the eastern, southern and western boundaries.</p>
Site area: 2.8ha
<p>Existing uses: The site is currently fenced off and a vacant field. The consultee's submission states that the field has been secured to prevent it falling to disrepair, that there is no interest in the site being used solely as sports fields and that the legal obligations relating to the previous planning permission (2009) which required the field to be offered as a sporting facility, maintained or provided as open space have all expired.</p>
<p>Site allocation: Sporting or community use of the entire site will have to be proven as undeliverable before any other uses can be considered.</p>
Site deliverability: Bellway Homes owners. Delivery 0-5 years
<p>Design and accessibility guidance: The landowner submitted a planning application for a mixture of new homes and tennis facilities to Merton Council in October 2020 (reference 20/P3237).</p> <p>The site has an extensive planning history. It was part of a larger site that was granted planning permission on appeal in 2009 for the redevelopment of the site to provide:</p> <ul style="list-style-type: none"> • 44 homes (along what is now Meadowview Road). • new tennis courts and clubhouse for the relocated Raynes Park Tennis Club – sports provision (on this site proposal) offered to Merton Council or Kings College School <p>Development of the site may provide opportunities for entire site sports use.</p> <p>Development proposals for sports use or other uses compatible with the designated open space should be actively demonstrated prior to any alternatives being taken forward.</p> <p>Development proposals must incorporate the recommendations of Merton's Strategic Flood Risk Assessment. Development proposals must ensure that the drainage on the site will have to be improved and addressing the likelihood of fluvial flooding and the critical drainage area.</p> <p>Development proposals should protect the amenity of surrounding residents.</p>

The description “vacant field” needs to be taken with a pinch of salt. This is Bellway’s description. It is only vacant because Bellway have turned down expressions of interest from local sporting groups. It is clear from the Local Plan that sporting use should be the priority for this site.

2. ii) The GLA London Plan (2021):

Policy G1 Green infrastructure

A London's network of green and open spaces, and green features in the built environment, should be protected and enhanced.

Policy G4 Open space

B Development proposals should:

- 1) not result in the loss of protected open space*
- 2) where possible create areas of publicly accessible open space, particularly in areas of deficiency.*

It is clear that 21/P4063 should be rejected since it would result in a loss of open space, whereas allowing the whole sports field to be used by local community groups would increase the public availability of open space required by G4 B 2). The use of existing sports fields is clearly expected, as shown in Policy S5 Sports and recreation facilities.

3. Sporting use of the field:

We disagree with the findings of the Sports Justification Report's (SJR) findings. We believe that the requirements of Paragraph 99 of the NPPF have not been met in the Report.

Paragraph 18 of the SJR states

"In relation to the emerging Local Plan the Second Consultation proposed site allocation for the site (Site RP6) was: "Sporting or community use of the whole site will have to be demonstrated as undeliverable before any other uses can be considered".

We do not believe that this has been demonstrated, as shown below.

As an Association we have asked Bellway on a number of occasions to meet sporting bodies and schools who wanted to use the land for sport. In particular, we put them in touch with Donhead School.

As early as 16 May 2014 Bellway's Chief Executive wrote to Stephen Hammond MP that:

"There are no further planning obligations on Bellway as owner to enter into arrangements with other organisations for the use of the Sports Fields. I can confirm that Bellway has fulfilled the obligations set down in the Planning Approval and Unilateral Undertaking and that the London Borough of Merton chose not to take up the option of taking a lease for the Sports Fields. In the circumstances I have asked the Regional Managing Director to contact the Headmaster at Donhead Preparatory School to discuss the situation".

The correspondence between the Headmaster of Donhead School and Bellway can be found at pages 90 to 92 of Appendix 5 of their Sports Justification Report.

The Headmaster wrote on 14 October 2014 to Mr Geoff France of Bellway Homes Ltd (South East) stating that:

“As you are aware for many months now I have expressed an interest in taking up a lease on the sports field at the old LESSA site in Raynes Park. That interest remains as strong as ever”.

He sets out the background and says that it is clear from the thrust of the Inspector’s comments

“...that the expectation of bringing the greater part of the site back into sporting use was THE justification for permitting the residential component. As the Inspector viewed it, this was the way the “enabling” concept would be met. Sadly - need I say - the current situation falls well short of what was approved by the Inspectorate... A very significant element of what was intended and approved has not been delivered. This could now be rectified”.

He wrote that Schedule 1 of the S106 (08/P1869) specified the basic terms of a lease namely for a period of 99 years at a peppercorn rent.

“There is now an opportunity to meet the intentions of the Planning Approval on the lines envisaged by the Officers’ Report to the PAC and the Inspectors Decision Letter. I, therefore, seek your agreement in principle to Donhead taking a long lease on the SFL for use by our pupils who are all under 14 and possible part share with another primary school. If a satisfactory lease could be agreed Donhead would lay out the sports pitches and construct a pavilion at our cost. The site is in a perfect location for us and would be developed by ourselves for our own sporting use, as well as for the use of other community junior sports groups. We are able to move on this immediately”.

Bellway’s Managing Director replied to this letter on 10 November 2014. He states that

“... there is no mechanism in the UU to cover the scenario that none of the three lease options are exercised. As it stands, there is no obligation on Bellway to enter into a lease arrangement with an alternative body for the use of the sports field for children and social/community groups. This is acknowledged in the Council’s Cabinet Report dated March 2010... In the event that Bellway decide to progress discussions with an alternative body to agree a lease for the use of some or all of the sports field land, a Deed of Variation to the UU would need to be negotiated with the Council.”

We believe that it was clear from this response to a viable scheme, which included the laying out of pitches and the provision of a pavilion, for sports for junior pupils from a well-established school, that Bellway then had no intention of allowing the whole of the balance of the land to be used for sports, as the Inspector intended.

On 12 December 2016 the Regional Director of Bellway Homes Ltd (South London Division) wrote to us that:

“we are under no further obligation to bring forward land for use as a sports field. We are fully aware of the interest in the sports field from other organisations who are willing to take over the management of the sports field. However, our intention is to seek a further release of the Sports Field Allocation for enabling development, in order to provide delivery of a high quality recreational/community use for the benefit of the local community. It is recognised that the Raynes Park and West Barnes Residents’ Association is a key stakeholder to any development of the site and will be contacted directly in early 2017 to ensure that the ideas of the Residents’ Association can be discussed and included in any early proposals of the site”.

We heard nothing from Bellway after that, and the Association was only made aware of their proposals (20/P3237) in August 2020 through a member of the Tennis Club. They have totally failed to consult us. They did not inform us of either of the marketing schemes they held in 2020, at the Council's behest. They put up no sign at all on the site telling people how to contact them, nor did they approach any schools or clubs in the area.

Despite their marketing exercises, Bellway has not complied with the terms of local plan RP6 and cannot demonstrate that sporting or community use of the whole site is undeliverable. Accordingly, no other use should be considered. Under the section of RP6 "Opportunities" the plan states that

"The site may have opportunities for whole site sports use. Use of the site for sports use or other uses compatible with the designated open space should be actively demonstrated prior to any alternatives being taken forward".

We submit that Bellway is bound to establish this before the Planning Committee can go on to consider in any way the merits of the application. It is, to use legal terms, a condition precedent which they must meet and have not met. Bellway needs to prove to the satisfaction of the Planning Officers and the Committee that there is a justification for the intended departure from Merton's Local Plan.

In response to the submission of application 20/P3237, in the short period since early August 2020, we have identified a number of sporting associations and a school which are keen to use the ground, all of which have made this clear to Bellway. Their proposals are commercially viable, and include the provision of a second pavilion on the ground, as the Inspector expected should happen. Had Bellway consulted us earlier, as it promised to do, and, we assume, deliberately decided not to do, we could have identified sporting partners much sooner.

The AJ Coaching Cricket Academy has offered to take a lease for at least 10 years at £20,000 per annum and to build a pavilion. It coaches 180 boys and girls each year. The offer was made to Bellway's agents Haslams Surveyors LLP by letter dated 14 September 2020, following a letter of interest dated 7 September 2020.

Bellway's agents, Nortoft, made a Sports Needs and Viability Report, dated October 2020 for 20/P3237 which stated at paragraph 113 that the Academy *"have been contacted"* to assess the viability of the scheme. We have been told by the Academy that no such contact was made.

The Wimbledon United Cricket Club made a detailed offer, setting out that they would finance the pavilion and re-lay the cricket pitch utilising lottery funding and providing the 50% balance of the costs from their own finance and sponsors. Paragraph 114 of the same Report dismisses this offer off hand as not *"a compliant viable bid"* when it has not been discussed with them.

Paragraph 122 of the same report is also inaccurate in stating that

"There were no viable, compliant bids from commercial operators, clubs, schools or other bodies to purchase, develop and operate the site as a whole".

The footnote to that paragraph is also wrong in stating that Haslams had received no reply as at 4.10.20 of any kind from the AJ Cricket Academy or Wimbledon United CC.

Willington School, a junior school in Wimbledon now in its 136th year and which has recently taken in girls for the first time, has expressed an interest in buying the ground and has instructed a surveyor, intending to use it for junior sports in the week, and would ground share with the Cricket Academy and the Cricket Club at weekends and in the school holidays. The school first registered an interest with Haslams on 16 September 2020, though this is not acknowledged in the Report.

We note that the Haslam Marketing Report for 20/P3237 states in paragraph 10.9 that the decision not to place a marketing (for sale/to let) board at the site was taken deliberately.

The two cricket clubs and Willington School have now formed a consortium which will provide the restoration of the pitches and the building of a pavilion, and mean that both juniors and adults can again enjoy sport and recreation. The scheme is fully costed. The scheme is stated in Bellway's more recent Sports Justification Report to be not viable and to take no account of the capital costs involved.

We understand that the three clubs submitted evidence to the Planning Officer strongly refuting this.

Old Emanuel Rugby Club are losing their ground off the A3, and need a new home from March 2022. They provide sport and recreation to about 250 local children, as well as adult teams. In their letter of objection, dated 7 December 2020, to Bellway's previous planning application, they set out in clear terms how they attempted to contact Haslams and Bellway on a number of occasions to discuss the potential purchase or lease of the ground, but neither of them "*returned a single telephone call*". They conclude that

"the marketing of the LESSA site by Bellway and Haslams was neither meaningful or indeed genuine, but instead was a sham intended to support a later planning application by demonstrating that there was no viable purchaser of the LESSA site. This view is supported by the unrealistic price and other terms under which the LESSA site was marketing by Haslams".

They add that the suggestion at paragraph 47 of the Report that they had been consulted simply did not happen.

While the Old Emanuel Rugby Club has now leased an alternative ground owned by Merton (together with the Wimbledon Club), their comments about 20P3237 are still of high significance as showing Bellway's disregard for the need to explore fully any suggestions for sports use.

All these approaches needed to be explored fully by Bellway and found to be genuinely "undeliverable" before they can properly lodge a planning application. It has failed entirely to show that the offers made were not "viable".

Paragraphs 7 and 27 of Nortoft's Sports Needs and Viability Report for 20/P3237 state that

"No viable and compliant potential clubs or other users were identified in either the first NGB/Council led consultation, nor the second landowner led marketing consultation. Indeed, the NGBs specifically advised off-site investment into other priority sports locations, in line with the Action Plan of Merton Council's adopted PPS."

"It is noted that there has been no sports use of the site for well over 5 years, as aerial photo (Google) evidence shows no use between 2010 and the present day, and possibly no formal use since about 2004. The site is owned by Bellway and has been fenced off since 2011, for safety and management needs. There was at that time no planning or other legal need for the site to be used for sport, see below in relation to the section on the site's 2009 planning consent and the linked s106 agreement (2010)."

These are highly misleading statements. The only reason why there has been no sports use on the field is that Bellway have prevented it. As shown above, there are currently several sports groups interested in the site as well as those who, in the past ten years have asked to use the site but been turned away. It is unclear what makes a sports club's proposals "*viable and compliant*" but Bellway clearly do not want any sports on the field as it would prevent them realising more profit.

The inspector gave permission to build Meadowview Road as an enabling development to allow the sports field to be brought into use. The fencing was solely erected by Bellway to further their long-term plans to disregard the inspector's decision and ultimately to build on the field.

Merton's Planning department's decision to survey local sporting groups is to be applauded as a way to get the facts about the various approaches made to Bellway and the responses received. The results of the survey, together with copies of correspondence can be seen in Appendix 5 of the Sports Justification Report for 21/P4063.

The results of the LBM survey do not seem to appear to be published on Planning Explorer, either for 20P3237 or 21/P4063. It is therefore to be hoped that the information in Appendix 5 of the Sports Justification Report is a full and accurate account of the correspondence and discussions between the sporting groups and Bellway, Haslams and Nortoft.

As well as several versions of the Nortoft "Sports Need and Viability Report" referred to above, another document a "Sports Justification Report", also produced by Nortoft, was submitted in November 2021 to 20/P3237.

This "Sports Justification Report" (SJR) has also been submitted for the current planning application (21/P4063). It repeats, yet again, that

"...there are no deliverable or viable schemes which could deliver community or club sport on all of the site..." (para 20, page 7).

Bellway seem to define "deliverable and viable" to suit themselves, i.e. it would only be "viable" if they could make as much profit from leasing, selling or renting to sports groups as from selling 107 dwellings.

This paragraph from the SJR (para 16, page 6):

"The conclusion of the assessment process is that there is no viable or deliverable scheme which would result in the entire site being used for sports and recreation use by a club or community group, or a consortium of such organisations. Even if there had been a bid with sufficient capital funds available, the site would still not have been made available for public open space but instead would have to be subject to development. This development would need to include the provision of

a pavilion/clubhouse or at minimum a toilet building, car parking, security fencing, likely high ball strike nets, and possibly floodlights. This development may not have been acceptable in planning terms, not least because of the existing residential use adjoining. Furthermore, those that might use the site for pitch based sports are primarily male and aged under 45 years."

contains many controversial statements:

- i) The sporting groups mentioned previously have shown how they intend to finance their proposals.
- ii) The sporting groups can allow the public to use their facilities, as was previously intended in the original 08/P1869 application.
- iii) Application 08/P1869 included building of a pavilion on the field. Bellway reneged on their obligation to do this.
- iv) The sporting groups will apply for planning permission to build security fencing, nets, floodlighting in the usual way.
- v) The comment about field users being "primarily male and aged under 45 years" is bizarre. Girls' and women's cricket is becoming more and more popular and the need for coaching and match facilities is increasing. The sporting groups intend to use the field for children's sports, including girls, as is made clear in the email sent from Ali Jaffer (AJ Coaching Cricket Academy, 15/02/2021) to Duncan Jenkinson (E&WCB). Willington in a mixed school giving girls and boys equal access to sports. AJ Coaching Cricket Academy (AJCCA) is also mixed.
- vi) The proposals from AJCCA would be of considerable benefit to the local community, as outlined in their letter to Haslams (14/09/2020):

"AJ Coaching has grown considerably since it was established in 2009 and now supports the sporting and social development of over 180 boys and girls each year from Wimbledon, Raynes Park and the surrounding area. We run winter, spring and summer coaching programmes, school holiday training camps, friendly matches against local clubs and have six age groups participating in the Surrey junior league."

AJ Coaching also say they want to offer winter sports like Hockey, Netball, Basketball, Tennis to the community from September to April, thus ensuring the community benefits throughout the year.

Paragraph 20 of the SJR (page 7) is similarly misleading

"It is clear that although retaining all of the site for football, rugby or cricket may provide some new, but limited, sports opportunities, doing so would only have a relatively limited impact on Merton's own targets to increase levels of physical activity, health and wellbeing in the Raynes Park area of the borough. More important is the fact that, despite a marketing exercise running from September 2019 to October 2021, there are no deliverable or viable schemes which could deliver community or club sport on all of the site, and therefore this element of the PPS policy test has been fully explored."

Phrases such as "it is clear" are just attempts to muddy the water. If the proposals from Willington School, AJCCA and Wimbledon Utd CC consortium were adopted, hundreds of young people and adults would benefit from the fresh air, exercise and fun of practising and playing sport on the field.

The final point of the SJR's conclusion (para 22, page 7; and similar wording in para 242, page 64) states:

“Consenting the proposed mixed use development would secure on-site and off-site investment into sport and recreation, of about £1,000,000, plus a significant area of new high quality public open space. Refusal would mean the site stays as it is – a private fenced off area with the opportunity lost for much needed new housing and lost opportunities for sport.”

Once again this is disingenuous: Bellway can, and should have, leased or rented the fenced off area to local sporting groups. They have also failed to build a sports pavilion on the field, as they were bound to do according to 08/P1869. Dangling a £1,000,000 carrot at the council cannot hide the fact that Bellway had a moral duty and responsibility to let the field be used for sport from 2010 onwards, which they failed to do.

We find the manner in which those wishing to use the site have been treated demeaning, for example Haslams' Chris Newman's remarks to the Headmaster of Willington School

“After that correspondence I got a rude email from Chris Newman and then I spoke with Chris on the phone and he told me that they would never sell it to us and would rather sit on the site if they couldn't get planning. To be honest I found Chris' manner threatening and intimidatory” (page 72 of the SJR Appendices)

We feel it is unnecessary to dissect every paragraph of the SJR in order to make the point, on behalf of our residents, that the field should only be used for sports.

We would submit that all the evidence shows that Bellway has sat on the land for the past ten years, without making any attempt to find sporting partners in clear contempt for the views of the Planning Inspector, and the needs of Merton children for extra sports facilities. Bellway clearly hopes that the lapse of time will enable it to make a further undeserved profit from the site.

IF THE PLANNING APPLICATION COMES BEFORE THE PLANNING APPLICATIONS COMMITTEE IT SHOULD BE TURNED DOWN SINCE BELLWAY HAS NOT SHOWN THAT SPORT CANNOT CONTINUE TO BE PLAYED THERE, AS THE INSPECTOR INTENDED.

4. This application (21/P4063) and its predecessors (20/P3237 and 08/P1869)

Bellway made a previous application (20/P3237), and it is not clear whether this is still being pursued in any event, or whether the present application replaces it. It is noteworthy, however, that the previous application was only for 89 dwellings, and that this has now increased to 107. We can only suppose that this is another way in which Bellway hopes to maximise its profit.

SPORT ENGLAND had originally not opposed that planning application, but were clearly not made aware by the applicants of the many expressions of interest. When we notified Sport England of the real position, they agreed to consult the governing bodies for cricket and rugby, and CHANGED THEIR POSITION TO ONE OF OPPOSITION.

We understand that the sporting bodies will also be strongly opposing the present application.

In the Planning Statement for 20/P3237, paragraph 5.8 states misleadingly that

“It is clear that the site’s potential use is for “club or community use”, and so not for commercial leisure use. This excludes consideration of commercial operators at the site, e.g. 5-a-side football cages, adventure golf, or a private school’s sports ground. It is also clear that the land use to be tested is for “sporting use”, e.g. by a sports club or a community group wanting a sports site. It is not for general community use, e.g. a community centre without a dominant sporting use.”

The intention of the Meadowview Road development (08/P1869) was to allow children’s sports provided by a private school (Doram led Merton Council and the Planning Inspectorate to believe that KCS would be that provider); since there was no problem leasing the field to a private school then, why is Bellway now trying to create one? Five hundred hours of community use per year was also included in this provision, thus increasing its usage by local residents.

Bellway continues to have a duty to find an alternative organisation to use the field for children’s sports.

It is important to note paragraphs 12 and 13 in the s106 agreement for 08/P1869:

12 Restriction on the use of and buildings on the Sports Field Land

Doram undertakes to the Council:

- 12.1 Not to use or cause or permit the Sports Field Land to be used other than for playing football rugby cricket and other open field sports
- 12.2 Not to erect or cause or permit to be erected any building on the Sports Field Land other than:
 - 12.2.1 the Pavilion in the location and of the dimensions and design authorised by the Planning Permission (including any necessary approvals required pursuant thereto); and
 - 12.2.2 any addition to the Pavilion or building replacing the Pavilion (which may not be in the same location or of the same dimensions or design as the Pavilion) for which planning permission shall have been granted and in the location and of the dimensions and design authorised by such planning permission
- 12.3 Not to use or cause or permit the Pavilion to be used other than for sports changing rooms and for social and community uses
- 12.4 Save as is provided in Clause 12.2 not to erect or cause or permit to be erected any other structure or erection on the Sports Field Land except any such structure or erection which may be ancillary and incidental to the use of the Sports Field Land for the uses referred to in Clause 12.1 (and for the avoidance of doubt the erection of ball netting shall be deemed to be ancillary and incidental to the use of the Sports Field Land for the uses referred to in Clause 12.1)

23 JUN 2009

13 User

Planning Development C1

- 13.1 Not to use or cause or permit the Sports Field Land to be used other than for playing football rugby cricket and other open field sports by children under the age of 14.
- 13.2 Not to use or cause or permit the Pavilion to be used other than for sports changing rooms and for social and community uses

It is therefore clear that Bellway have no right to put any residential properties on this site.

The original Sports Needs and Viability Report for 20/P3237 quoted the Playing Pitch Strategy showing that there is a need for more Youth 11v11 and 9v9 football pitches for boys. This site is suitable for such provision and equally suited to other sports, such junior cricket, for both girls and boys.

There is also a growing awareness of the importance of sport for physical and mental health; it is especially important to foster the enjoyment of sports in childhood. Therefore, it is likely that the estimated number of pitches needed shown in the PPS is an underestimate. Given also the recent increase in publicity for women's football, cricket and rugby which is likely to continue, the PPS has also probably underestimated the need for pitches for these girls' sports.

We submit that the planning application is in conflict with Policy DM 01 Open Space of Merton's Sites and Policies Plan July 2014 and Policy CS13 of the Core Strategy July 2011 and also the Merton Open Space Study of 2010/11 on the grounds that, despite the Sports Justification Report, there is clear evidence that local sporting groups can make good use of the whole of this site. We believe that both 20/P3237 and 21/P4063 will also be in conflict with the New Local Plan, due to be adopted later this year.

5. Other comments:

We reiterate our objection to any building on this site, other than the long-overdue sports pavilion. However, we would like to address the following issues: flooding, transport, type of housing, play areas and other facilities.

5. i) Potential for flooding:

Whenever there are heavy rainfall events, e.g. on 12/07/2021, water pours down the footpath from Meadowview Road and floods into Westway; flooding also occurs in Greenway. The existing stormwater attenuation tank and granular fill trench and access to them are clearly insufficient and Bellway should resolve this problem. The excess rainfall overflows into the main sewers which is when the flooding occurs.

When the houses were built, there was flooding in the rear gardens. In order to remedy this, the underlying stream was re-rerouted, and this has resulted in a constant flow of water into the sewer.

Some mitigation measures were included in the 08/P1689 application that Bellway have never been put in place:

- i) a green roof on the Briers House flats;
- ii) a swale to the North of the gardens of the Greenway properties, near the junction with Westway (Flood Risk Plan 04 (08/P1689))

Westway and Greenway residents know that the water table is not far below the surface and that it only needs a day or so of rain in winter or spring for their gardens to be saturated. It is therefore unsurprising that they are worried about the effect of extra hard surfacing resulting from this proposed development and feel that the proposed SUDS will be insufficient.

When the Flood Risk Assessments of the Meadowview Road application (08/P1869) and the current application are compared, it will be seen that the boundary of the 1 in 100 years +35% flood zone is different. This is because the Environment Agency have updated their plans and must now be using different methodologies. Given that we are seeing more frequent severe weather events due to climate change, it seems odd that far less of the field now falls within the 1 in 100 years +35% flood zone.

We note that the Applicant's Flood Risk Assessment is a highly detailed document, citing the National Planning Policy Framework, DEFRA Guidance and referencing Environment Agency (EA) data. However, as such, it is a purely theoretical "desk top" study and is deficient in its omission of any local knowledge or the actual experience of residents nearby.

Why did not the Applicant seek to remedy this deficiency by consulting with local residents?

As shown in Parts 05 to 09 of the Applicant's Assessment, many local residents, particularly those living close to the Applicant's site, have homes with a significant risk of flooding. This is particularly true for those residents in Brook Close, Westway and Westway Close, parts of Greenway and Linkway and the northern section of Wests Barnes Lane.

Paragraph 5.13 of the Applicant's Assessment states, "According to the Level 2 SFRA produced by AECOM in January 2017, there are a few recorded flooding incidents located to the south and west of the Site. No historic flooding records are shown on Site".

This demonstrates that the data upon which the Assessment is based is deficient in local knowledge. Our Association, which was formed in 1928, was partly instigated due to local concerns over flooding and has a written record of a major event on 6 August 1981. This is now becoming a more regular occurrence. Most recently, there have been two rain storm events causing local flooding, in July 2021 and January 2022.

On these recent occasions, heavy surface water run-off from Meadowview Road pours down the footpath/cycle-track into Westway, causing the sewers to overflow into the local road network, flooding into gardens and threatening homes. Whether the run-off from Meadowview Road is caused by inadequate design, poor construction or lack of maintenance is not clear. What is clear is that a significant source of surface water pouring into Westway emanates from the Applicant's site.

The risk of local flooding is so concerning that Thames Water is taking steps to address the problem. This commenced with a “Road Show” in order alert residents and garner local knowledge. This event took place in Raynes Park on 12 January 2022.

We note that, paragraphs 4.7 – 4.10 of the Assessment refer to the design of the existing sewer networks serving Meadowview Road, without any consideration of whether this design has actually proved to be fit for purpose.

Our experience, described as above, is that this is not the case.

We also note that properties in Meadowview Road have problems with ground water within their gardens, which have resulted in post-completion modifications to the existing surface water drainage system. This matter is omitted from the Applicant’s Assessment.

Additionally, the local water course, the Pyl Brook, runs in a culvert just 80m from the Applicant’s Site. However, the EA is unsure of its underground route, as evidenced by recent letters sent by the EA to residents who live close to it. Again, this uncertainty is not addressed within the Applicant’s Assessment.

We note that the Applicant’s outline design for its Drainage Strategy is principally a repeat of the existing design for Meadowview Road. As such, it runs the risk of exacerbating the inadequacies that are already evident.

For the above reasons, we do not consider that the Applicant’s Flood Risk Assessment properly addresses local concerns, either in terms of its theoretical basis or proposed drainage strategy. Based on our practical experience and historical records, we therefore consider that the Applicant’s proposals will increase the flooding risk for residents.

5. ii) Transport:

The London Plan (2021) states in Policy H1 Increasing housing supply that

a) sites with existing or planned public transport access levels (PTALs) 3-6 or which are located within 800m distance of a station^{34A} or town centre boundary³⁵

are most suitable for residential development. TfL’s PTAL map shows that the majority of the site is PTAL 1.

This low PTAL suggests that there will be more car-usage than predicted by the developers. This will impact on traffic flow in Grand Drive, in particular at local congestion points, such as the junction with Bushey Road.

5. iii) Type of housing:

The proposed density of housing on this site seems greater than that of the surrounding areas. The present application achieves a greater density than the previous one, by the building of a number of 4 storey blocks, which would be totally out of keeping with the surrounding area of Grand Drive, Westway and Greenway. They would also be taller than the houses and Briers House flats on Meadowview Road.

The proposed houses are designed with steep roofs, so it is likely that in future, owners may wish to add loft rooms which will a) increase housing density and b) create problems of privacy by overlooking neighbouring gardens.

There is confusion in the documentation about how the houses will be heated. Paragraph 1.10 of the Air Quality Assessment contradicts the Energy Statement (para 7.9)

“1.10 The proposed development will not include an energy centre. It is anticipated that all properties will be served with individual gas fired boilers and these would be low NOx with a rating of less than 40 mg NOx/kWh...”

“7.9 Air source heat has been selected to provide space heating to the development, they are a very efficient and effective source of providing space heating and hot water. In addition, a significant reduction in CO2 emissions can be achieved with the air source heat pump”

We understand that, from 2023, developers will not be allowed to build new homes with gas boilers: <https://www.building.co.uk/news/gas-boiler-ban-in-new-builds-by-2023/5109121.article>. We therefore presume that the Energy Statement is correct. However, given the area available and the amount of infrastructure that will be needed, we feel that GSHPs would also be of use, especially for the apartment blocks.

5. iv) Play area and other facilities

Section 1.6 of the Planning Statement states:

“...A new equipped children’s play area will be provided available for new and existing residents to use. Outdoor gym equipment and a trim trail will also be provided to encourage health and activity.”

Does “for use by existing and new residents” imply that the facilities would only be for residents of Meadowview Road and the new development or does it mean that any West Barnes resident would be able to use them? If the former, then the wider West Barnes community would not gain at all from the development and therefore this planning application should be refused. Paragraphs 3.14 and 5.29 are similarly unclear:

“5.29 The proposals offer new public open space, and incorporates this open space along with play areas, landscaped features, new on-site sport and recreation (tennis, trim trail, outdoor gym)... It safeguards the existing playground and provides a new equipped play area for existing and new residents to use. It is therefore considered that the proposals meet the overriding provisions of adopted Policy CS13 which supports proposals for new and improved facilities.”

When the Meadowview Road development went to appeal, it was stated that the children’s play area and landscaped area would be available for the wider community – not just for residents, as

shown in the appellant's Appeal Statement and the inspector's Decision Notice:

5.4.4. While the appeal scheme would result in a nett loss of approximately 0.603 ha of the site (13% of the total open area as defined in Schedule 2 of the UDP), a smaller, but newly-accessible public open space would be arguably of much greater community value. It would provide not only high-quality open sports facilities, but also areas of informal recreation, a children's playground and a pedestrian/cycling route between Westway and Grand Drive. This is in marked contrast to the site's current function which is essentially as a passive visual amenity.

15. By comparison, the proposal would provide open public access to and through the site for the first time, substantially upgraded sport and recreation facilities to which an element of community use would be guaranteed and wider use of the landscaped amenity area and the children's playground. I consider that the improved recreational provision with increased public access would satisfy the requirements of Policy L7, criterion (ii).

The references in the documentation to a MUGA are also vague. There seem to be no details of who would be able to use it (residents of the development or the wider community who do not live on this site)? Who would manage and maintain the MUGA? How would local teams book it for matches? This does not appear to have been properly thought through.

Clearly clarification about the play areas and MUGA would be needed if the application were to be granted. The London Borough of Merton would need to get a legal undertaking from Bellway that public access would be allowed in perpetuity, with a guarantee that the land and equipment would be properly maintained by Bellway. By "public" we mean open to all residents in the area, not restricted to those living in Meadowview Rd or in the new development. This point is made in [21P4063 Comments LBM Social and Green Infrastructure 24.01.2022.pdf](#)

These are just some of the many reasons why the Raynes Park and West Barnes Residents' Association object to this planning application on behalf of local residents. We urge the Planning Application Committee to refuse application 21/P4063.

John Elvidge (Chairman)

11 February 2022

**The Raynes Park and West Barnes Residents' Association,
The Residents' Pavilion, 129 Grand Drive, SW20 9LY.**

APPENDIX 2

From: (Details Redacted)

Sent: 12 August 2022 11:21

To: 'planning.representations@merton.gov.uk' <planning.representations@merton.gov.uk>

Cc: 'aidan.mundy@merton.gov.uk' <aidan.mundy@merton.gov.uk>; 'simon.mcgrath@merton.gov.uk' <simon.mcgrath@merton.gov.uk>; 'thomas.barlow@merton.gov.uk' <thomas.barlow@merton.gov.uk>; 'sheriann.bhim@merton.gov.uk' <sheriann.bhim@merton.gov.uk>; 'michael.butcher@merton.gov.uk' <michael.butcher@merton.gov.uk>; 'edward.foley@merton.gov.uk' <edward.foley@merton.gov.uk>; 'susie.hicks@merton.gov.uk' <susie.hicks@merton.gov.uk>; 'dan.johnston@merton.gov.uk' <dan.johnston@merton.gov.uk>; 'gill.manly@merton.gov.uk' <gill.manly@merton.gov.uk>; 'martin.whelton@merton.gov.uk' <martin.whelton@merton.gov.uk>; 'caroline.charles@merton.gov.uk' <caroline.charles@merton.gov.uk>; 'kirsten.galea@merton.gov.uk' <kirsten.galea@merton.gov.uk>; 'nick.mclean@merton.gov.uk' <nick.mclean@merton.gov.uk>; 'stephen.mercer@merton.gov.uk' <stephen.mercer@merton.gov.uk>; 'stuart.neaverson@merton.gov.uk' <stuart.neaverson@merton.gov.uk>; 'matthew.willis@merton.gov.uk' <matthew.willis@merton.gov.uk>

Subject: 22/P2351 Land at the Former Lessa Sports Ground Meadowview Road Raynes Park SW20 9EB

Application Number: 22/P2351

Site Address: Land at the Former Lessa Sports Ground Meadowview Road Raynes Park SW20 9EB

Case Officer: Tim Lipscomb

Application Type: Full Planning Permission

Development Type: Development Monitoring Information Not needed

Proposal: REDEVELOPMENT OF PART OF FORMER LESSA SPORTS GROUND INVOLVING THE ERECTION OF 107 DWELLINGS (CLASS C3 USE) INCLUDING AFFORDABLE HOUSING, ASSOCIATED LANDSCAPING, EQUIPPED CHILDREN'S PLAY AREA, ASSOCIATED INFRASTRUCTURE INCLUDING FLOOD MITIGATION, INTERNAL ACCESS ROAD AND CAR PARKING. CONSTRUCTION OF 2 ALL-WEATHER TENNIS COURTS WITH ASSOCIATED FLOODLIGHTING, STORAGE COMPOUND AND CAR PARKING, 5-A-SIDE FOOTBALL PITCH, MULTI-USE GAMES AREA (MUGA) PITCH AND OUTDOOR GYM

Submission by (Details Redacted)

Bellway Homes has submitted its latest planning application for Land at the Former Lessa Sports Ground, Meadowview Road (22/P2351). It was registered by Merton Council on 2 August and is currently open for comments until 31 August 2022. We received notification of this new planning application on 10 August 2022.

The substance of my objection, to be detailed below, is that firstly 22/P2351 is fundamentally the same as 21/P4063 which has just been rejected by the council. This was a definitive judgement, in which the council said that the plan was absolutely at odds with the Development Plan and National Planning Policy Framework. The council stated that this conflict was irresolvable.

Secondly, because 22/P2351 is substantially the same as 21/P4063, it is an overlapping application, as defined under section 70B of the Town and Country Planning Act 1990, as amended by section 43 of the

Planning and Compulsory purchase Act 2004. Even though the council has registered the application it still has the legal right to decline to determine 22/P2351, thereby rejecting it.

The following sets out the argument that this is an overlapping application through a consideration of the judgement to refuse 21/P4063, Bellway's previous application, the possibility of using section 70A of the aforesaid act as a means to decline to determine 22/P2351, before recommending that the council should decline to determine it under section 70B.

Prior to considering the details of the argument, it is important to note that consistency in planning decisions is essential, which I will deal with first, and both developers and decision-makers need to be mindful of the fact that previous decisions might need to be taken into account by those determining subsequent applications for planning permission. This is a case in which the definitive refusal of a prior application is of absolute relevance to this latest application by Bellway.

Consistency in Planning Application Decision-Making

Established case law demonstrates that previous planning decisions are material considerations when assessing any subsequent planning application. The principle of consistency was set out by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137: "One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency...Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."

Two recent High Court decisions have underlined the need for consistency in decision-making and the need for clear, substantive reasons where inconsistencies arise.

In *R (Midcounties Co-Operative Limited) v Forest of Dean District Council* [2017] EWHC 2050, the Co-Op challenged the granting of planning permission for an Aldi store, citing the refusal of a similar application. The court quashed permission on the basis that the council had made inconsistent decisions without a reasonable basis for doing so.

According to the judgement (paragraph 107): "The fact is that there is no reference in the Defendant's reasons to the earlier refusal or the reasons for that refusal...Although the authorities demonstrate that a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision-making...it cannot be said that the Defendant in any way grappled with the earlier reason for refusal based on retail impact and harm to the viability of the town centre."

In the second case, *Baroness Cumberlege v Secretary of State for Communities & Local Government* [2017] EWHC 2057, planning permission granted by the secretary of state for a housing development was quashed after he had failed to take into account a decision taken by his own department a mere 10 weeks earlier.

In the judgement, Howell QC stated (paragraph 100) that: "There is a public interest in securing reasonable consistency in the exercise of administrative discretions that may mean that it is unreasonable for a decision-maker not to take into account other decisions that may bear in some respect on the decision to be made. There is no exhaustive list of the matters in respect of which a previous decision may be relevant. That must inevitably depend on the circumstances."

The refusal of planning application 21/P4063 has a critical bearing on 22/2351 and the reasons for this refusal must be taken into account and definitively addressed in its determination.

Refusal Reasons for Planning Application 21/P4063

The previous application for this site (21/P4063) has only just been refused by the council on 19 July 2022, according to the council's website. This rejection highlighted four specific policies, with which the application was in conflict, with regard to open space: "The proposed residential development would result in the loss of open space. The harm caused is not considered to be outweighed by the planning benefits of the proposed development. The proposals would be contrary to policies G4 and S5 of the London Plan (2021), policy CS13 of the Merton Core Planning Strategy (2011) and policy DM O1 of the Merton Sites and Policies Plan (2014)."

In addition to the loss of open space, the council considered the application "to be fundamentally contrary to the provisions of the Development Plan" and the National Planning Policy Framework. The council also said that "there were not considered to be any solutions to resolve this conflict".

This is a definitive judgement. Not only did this plan conflict with policies on open space and sports facilities, but it was also entirely antithetical to planning policies contained within two more planning documents, to such an extent that the conflict between planning application 21/P4063 and current planning policies was irresolvable. This is not a judgement that says to Bellway there is a possibility a revised plan with a few minor amendments would be acceptable; it is a conclusive rejection.

Differences between Planning Applications 22/P2351 and 21/P4063

Despite this conclusive judgement, Bellway has submitted another planning application – 22/P2351 – for the same piece of land, an application which is substantially the same as the one just rejected. I find it hard to believe that this latest application could possibly have resolved a conflict for which there were no solutions, especially when the plan was registered on 2 August 2022, only two weeks after the official refusal date recorded on the council's website. The number of houses, their types and the housing layout have not changed from one plan to the other and 22/P2351 only differs in the following aspects:

- The provision of a GEN2 5-a-side and multi-sports pitch alongside the MUGA
- A proposed building/land 500mm land raising abutting the GEN-2 sports pitch and the south-west corner of the housing estate
- A proposed 500mm flood wall with sports fence attached between the GEN-2 sports pitch and the MUGA.

I do not think that these changes are substantive; adding an extra sports pitch, raising the land in one small area and installing a 500mm flood wall will do nothing to alter the fundamental conflict, for which there were no solutions, between the previous plan, 21/P4063, and the planning framework and policies, as set out in the council's judgement.

In addressing this new application, and the fact that it is substantially the same as a previously refused application, the council must be mindful of the need for consistency in its planning decisions, as I have outlined above. The plan ought to be rejected on the grounds that such a rejection would be entirely consistent with its previous decision.

Power to Decline to Determine Applications

There are other options available to the council to reject this application. On the basis that nothing fundamental has changed from the rejected application (21/P4063) and this latest one (22/P2351), I think that the council should exercise its power to decline to determine this subsequent application, as laid out in section 43 of the Planning and Compulsory Purchase Act 2004, amending the Town and Country Planning Act 1990, sections 70A and 70B. One of the aims of this power is the inhibition of “the use of repeated applications that are submitted with the intention of, over time, reducing opposition to undesirable developments”, according to Circular 08/2005. It is clear that this is Bellway’s aim in submitting this latest application.

Section 70A

Section 70A(8) gives the local planning authority the sole discretion to decide whether planning applications are the same or substantially the same. In the last two years, there have been three planning applications submitted by Bellway Homes for the Lessa Sports Ground site. 20/P3237 was registered on 16 November 2020 and comments requested but it seems that no decision was made and it was superseded by 21/P4063, registered on 17 January 2022, which was eventually refused this summer. Under section 70A(4) the local authority can decline to determine subsequent applications if “(a) in that period the local planning authority have refused more than one similar application, and (b) there has been no appeal to the Secretary of State against any such refusal”. The period in question is two years and, as there have been three applications in this period, the council could decide that 20/P3237 is sufficiently similar to 21/P4063 and 22/P2351 to decline to determine the latest application.

Section 70B

There is, however, another reason why the planning authority can decline to determine 22/P2351. This is because this application can be construed as an overlapping application. As such it falls under the authority of 70B of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. Overlapping applications are also referred to as ‘tactical’ or ‘twin-tracked’ applications. According to LexisNexis, a global provider of legal and regulatory intelligence, a tactical or ‘twin-tracked’ planning application “refers to the process of submitting more than one planning application to a local planning authority at the same time or within a short period of one another, seeking identical or similar forms of development for the same piece of land”. The purpose of such a tactic is to enable developers “to maximise their chances of a satisfactory planning permission being granted quickly, particularly where the application is complex or sensitive”. The commercial law firm, Bevan Brittan, has noted on its website that the intention of twin tracking was “to force the Planning Authority to approve one of the applications in order to avoid the resources and costs involved as part of an appeal”.

Clearly this application is a complex and sensitive one that is undesirable on a number of levels. Equally clearly, Bellway Homes is trying to push this application through when opposition might be lessened by the fact that August is the height of summer and many people might be on holiday and will therefore not have the time to submit yet another detailed objection to yet another planning application. Bellway is waging an attritional campaign against the local residents in the hope that opposition will eventually be overcome.

Under section 70B, the planning authority can reject such twin-tracked or overlapping applications. According to the Act, a “local planning authority may decline to determine an application for planning permission for the development of any land which is made at a time when” a similar application has been refused by the local planning authority “and the time within which an appeal could be made to the Secretary of State under section 78 has not expired”. The time in which an appeal can be made is six months from the date on the local planning authority’s decision letter. We are clearly still within this six months period, whether we date it from the day the Planning Applications Committee considered the application (16 June 2022) or from the refusal date on the council’s website (19 July 2022).

As with section 70A(8), under section 70B(5), it is up to the local planning authority to decide whether the planning applications are the same or substantially the same. As I have already argued the housing developments from 21/P4063 to 22/P2351 do not differ at all and there are only some minor changes around the disposition of the sports fields. Bellway has not appealed to the Secretary of State against the refusal of 21/P4063, although there is still time to do so. That it has not done so and has submitted a further application means that 22/P2351 is an overlapping application and that it should be rejected by the planning authority under section 70B(4) of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

Conclusion

In the light of the following facts:

- 22/P2351 is substantially the same as the previously refused 21/P4063;
- we are still in the appeal period for the rejected planning application;
- 22/P2351 is an overlapping application, according to the amended Town and Country Planning Act 1990;
- and the council has the power to decline to determine planning applications;

Merton Council should exercise its power to decline to determine planning application 22/P2351 as an overlapping application, as is its right under section 70B(4) of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

By doing so, it will be acting in accordance with its previous decision to refuse 21/P4063 and complying with the principle of consistency, as set out in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137.

(Details Redacted)