



Appeal Decision

Hearing held on 9, 10 and 21 December 2020

Site visit made on 11 December 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2021

Appeal Ref: APP/G5180/W/20/3249202

Land at the former Hayes Bowls Club, West Common Road, Hayes, Bromley BR2 7BY

- 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 Michael Hirsch of Carebase Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/01794/FULL1, dated 7 May 2019, was refused by notice dated 4 October 2019.
 - The development proposed is: Change of use of the existing bowls pavilion to D1 (non-residential institution use), and erection of a 3 storey building plus basement to provide a 60 bed care home (Use Class C2), with associated outdoor and indoor amenities, parking spaces and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the existing bowls pavilion to D1 (non-residential institution use), and erection of a 3 storey building plus basement to provide a 60 bed care home (Use Class C2), with associated outdoor and indoor amenities, parking spaces and landscaping on land at the former Hayes Bowls Club, West Common Road, Hayes, Bromley BR2 7BY in accordance with the terms of the application reference DC/19/01794/FULL1, dated 7 May 2019, subject to the conditions set out in the schedule attached to this decision.

Application for costs

2. An application for a partial award of costs was made by Michael Hirsch of Carebase Limited against the Council of the London Borough of Bromley (LBB). This application is the subject of a separate decision.

Procedural Matters

3. The description of the proposed development was amended during the course of the application. This amendment was in relation to the use of the existing pavilion building, which would be retained as part of the proposed scheme. The description of the development above has, therefore, been taken from the decision notice. This description is also repeated in the signed and dated statement of common ground (SOCG).
4. Although a change of use of the pavilion building is sought in this case, no 'proposed' plans of the building were submitted with the planning application,

save for the historic layout plan illustrating its use as a bowls pavilion¹. At the hearing the appellant confirmed that no internal amendments are proposed to accommodate the proposed use.

5. The Council had refused the application suggesting that in the absence of an energy assessment the development would be contrary to certain policies of the development plan, which includes the London Plan March 2016 (LP) and the London Borough of Bromley Local Plan January 2019 (LBBLP), as well as the Mayor of London's Energy Assessment Guidance dated October 2018. In response to this particular matter the appellant provided the Energy and CO₂ Reduction Strategy dated January 2020. In its statement of case the Council has confirmed that following the receipt of the strategy, its concerns in this regard have been addressed. A condition has been suggested that would require compliance with the strategy.
6. Having regard to the above, I am satisfied that this matter is no longer a main issue in this case.
7. A unilateral undertaking (UU) was submitted during the appeal, but at the time of the hearing it had not been signed and dated. I subsequently received a signed UU dated 22 December 2020; I have determined the appeal on the basis of this version.
8. Although the lack of a health contribution is referred to in the fifth reason for refusal, the Council are now satisfied that the health contribution included within the UU is satisfactory. Whilst I will return to the provisions of the UU later in this decision, I am satisfied that the matter of the mitigation of the development's impact with regard to the provision of health facilities is no longer a main issue in this case.
9. A condition relating to the door in the rear (south facing) elevation of the pavilion building had not been suggested by any party or discussed during the hearing. After the close of the hearing the main parties were provided with the text of the condition and asked for their comments in this regard. I have had regard to the response received.
10. I visited the site and the surrounding area after the second day of the hearing. At the site itself I was accompanied by representatives from the Council, the appellant and interested parties. I was also able to view the site and immediate area from the balcony of flat No 9 of Burton Pynsent House (BPH). I also viewed the site and surrounding area from the viewpoints agreed on the site visit itinerary².

Main Issues

11. The main issues in this appeal are as follows:
 - i. Whether the location of the proposed development would be acceptable, having regard to the local and national planning policies on such matters as open space (including designated Urban Open Space), sports facilities, community facilities and social infrastructure, and

¹ The plan entitled 'Bowls Club Proposed Clubhouse', plan reference 117/BC/01 Revision B.

² HD19

- whether there is an identified need for the existing open space and sports facility;
- ii. The effect of the development on the character and appearance of the area, as well as the openness of the Urban Open Space and the residential environment;
 - iii. The effect of the development on the living conditions of nearby occupiers;
 - iv. Whether the location of the proposed development would be acceptable, having regard to access to it by sustainable transport modes as well as access to everyday services and facilities;
 - v. The effect of the development on the safe and efficient movement of vehicles and pedestrians within the site and on the surrounding highway network;
 - vi. Any benefits of the proposed development to be weighed in the planning balance, including any need for the provision of a care home.

Reasons

Location of the Proposed Development – Loss of Open Space/Urban Open Space, a Community Facility, Social Infrastructure and/or a Sports Facility

12. The appeal site adjoins BPH and its grounds, and shares an access off West Common Road (WCR) with BPH and the cricket ground. The buildings and grounds of Hayes School are to the north. The site itself is occupied by an overgrown bowls green, a pavilion and associated parking area.
13. The appellant suggests that since the bowling green was vacated by the former bowls club, it serves no recreation or sporting function and that it is not an available sport and community facility. He points to there being no reference to the appeal site in the Council's Open Space Sports and Recreation Assessment 2017 (OSSRA)³.
14. I acknowledge that the site is currently vacant, however I have not been advised of there having been any other use of the site since it was vacated by the bowls club. As such, whilst the site is not currently used, it is right to regard the site as an outdoor sports facility for the purposes of applying planning policy. Whether there is a need for this facility and the likelihood of it being used again as a bowling green (or for any other type of outdoor sports) is a matter considered in more detail later in this decision.
15. The scheme proposes a 60 bed care home within a 3 storey building, with associated outdoor space and parking. The new building and its garden area would more than cover the area occupied by the bowling green, and parking would be provided in the approximate location of the existing parking area. The scheme also proposes the retention of the existing pavilion building, which would accommodate a non-residential institution use.

³ HD05.

- Policy and Guidance

16. The appeal site, BPH, the cricket ground and Hayes School occupy an area identified in Policy 55 of the LBBLP as Urban Open Space (UOS). The supporting text of Policy 55 informs that UOS is of local significance and suggests that these areas provide important breaks within the built up area. It also suggests areas of UOS have a specific function within their locality, but not all have public access.
17. The Policy sets out three circumstances where proposals for built development will be permitted on UOS. These are, in short, where:
 - a) The development is related to the existing or allocated use;
 - b) The development is small scale and supports the outdoor recreational uses; or
 - c) Any replacement buildings do not exceed the site coverage of the existing development on the site.
18. The UOS designation in Policy 55 has the support of LP Policy 7.18 (Protecting Open Space and Addressing Deficiency), which informs that 'the loss of protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area'.
19. In addition to the above, as a sports facility the site as a whole would fall within the definition of social infrastructure, as defined in the supporting text of LP Policy 3.16 (Protection and Enhancement of Social Infrastructure). As such, this Policy and LBBLP Policy 20 (Community Facilities) are relevant in this case. Furthermore, as an existing sports facility, both LP Policy 3.19 (Sports Facilities) and LBBLP Policy 58 (Outdoor Sport, Recreation and Play) are relevant to the appeal site.
20. In general all of the above policies seek to protect and enhance the existing provision, but some advise on the circumstances where their loss would be acceptable. Paragraph 97 of the National Planning Policy Framework (the Framework) takes a similar approach, stating that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless one of three circumstances can be complied with. In this regard, criterion (a) of paragraph 97, as well as policies 20 and 58 of the LBBLP allow development where an assessment demonstrates that there is no longer a need for the land or buildings. Policy 3.16 of the LP states that proposals which would result in a loss of social infrastructure in areas of defined need for that type of social infrastructure without realistic proposals for re-provision should be resisted'.

- Loss of UOS/Open Space

21. As noted above, the appeal site is within an area identified in the LBBLP as UOS which is provided with a level of protection by Policy 55. As such, it falls within the definition in the LP of protected open space⁴ for the purposes of Policy 7.18, it being land that is subject to a local designation regardless of it being in private ownership where public access is restricted. Whilst I acknowledge that the UOS contains existing buildings, it also contains

⁴ The definition on page 420 of the LP.

significant areas of land that are void of built development, such as the appeal site (save for the pavilion building). These areas provide the visual break within the surrounding built up area that is described in the supporting text of Policy 55.

22. As the scheme proposes new development on land that is currently void of buildings, the proposal would result in the loss of protected open space, which is resisted by LP Policy 7.18. Furthermore, the scheme would not propose equivalent or better quality provision elsewhere within the local catchment area, as required by the Policy.
23. In addition to this, the development would not comply with any of the three circumstances stated in Policy 55 of the LBBLP where built development will be permitted on UOS. It would not be related to the existing outdoor bowling green use, it would not support the outdoor recreational use currently on site, and the new development would not replace existing development on site. It would not, therefore, be permitted by Policy 55.
24. At the hearing the appellant suggested that, even if compliance with one or more of the three criteria listed in Policy 55 is not achieved, the following part of the Policy would permit development where any benefits to the community resulting from the scheme would outweigh the loss of open space. The Policy states that '**subject to the clauses above**, where built development is involved; the Council will weigh any benefits being offered to the community.....against a proposed loss of open space'. The part of the Policy I have highlighted means that compliance with one of the three criteria is required before the balancing exercise is undertaken. The Policy clearly states that proposals for built development in UOS will be permitted **only** under the circumstances listed. Accordingly, the Policy would not permit development that does not comply with the criteria listed, even if any benefits to the community outweigh the loss of open space.
25. Paragraph 97 of the Framework also seeks to resist development on open space land. However, as I note above, it provides a list of three criteria where development might be permitted, which include an assessment that demonstrates that the land is surplus to requirements. As the open space in this case is a sports facility, and sports buildings and land are also subject to the provisions of paragraph 97, I have considered this matter later in this decision under the section on loss of the sports facility.
26. With regard to the extent of harm that results from conflict with LBBLP Policy 55 and LP Policy 7.18, I acknowledge the appellant's case with regard to the contribution the appeal site makes to this particular area of UOS and the effect the development would have on that contribution. Whilst these are matters I consider at relevant points later in this decision, my initial conclusion with regard to policies 55 and 7.18 is that these do not permit the development proposed in this case.
27. Notwithstanding this, the appellant provides a number of reasons why limited weight ought to be given to the UOS designation. I have dealt with each of these in turn as follows.
28. The appellant points to the local plan background evidence to support Policy 55 and suggests that this fails to refer to the appeal site and the wider UOS

within which it is located. As such, he suggests that this area of UOS is based on out of date evidence.

29. I have been provided with some of the background evidence submitted in support of the now adopted (January 2019) LBBLP, including the OSSRA⁵, the local plan background paper on Local Green Space (2016) (LGS)⁶ and the report to the Council's development control committee on the Review of Greenbelt, Metropolitan Open Land (MOL) and Urban Open Space Boundaries (2012) (the Review)⁷. I have also seen the local plan Inspector's report⁸ where at issue 7 she deals with the matter of the policies relating to valued environments, which includes Policy 55. In the section entitled 'Open and Natural Space'⁹ the Inspector considers the policies relating to Greenbelt, MOL and UOS together and, with regard to these designations, she specifically refers to the Review.
30. The area of UOS within which the appeal site is located may not have been assessed in the Review, but the Review did not assess all existing Greenbelt, MOL and UOS designations within the Borough. The Review was undertaken only to suggest amendments to the boundaries of these existing designations for inclusion in the local plan¹⁰. The local plan Inspector acknowledges this¹¹, but does not raise any concerns in this regard.
31. Whilst the UOS in this case may not have been included in the OSSRA, I note that this is an audit of 'publicly accessible open space'¹². At paragraph 2.16 it states that 'the omission of a site does not necessarily mean that it is not considered to be green space and that policies relating to it are not applicable (i.e. Green Belt, Metropolitan Open Land and Green Chain, Urban Open Space and in the emerging Local Plan Local Green Space)'.
32. In conclusion on the matter of valued environments (issue 7 of the report) the Inspector confirms that 'subject to the proposed MMs the policies relating to valued environments are justified, consistent with national policy and the London Plan and effective'¹³.
33. Having regard to the breadth of evidence and representations that would have been considered by the local plan Inspector, I have no reason to disagree with her conclusions with regard to Policy 55 and the UOS designation. I acknowledge that the area of UOS in this case was not specifically assessed in the Council's Local Plan background evidence. However, for the reasons given above I cannot agree with the appellant's suggestion, that the value of the UOS in this case is less than other areas of UOS within the Borough and that for this reason the weight attributed to any harm I identify that would result from conflict with Policy 55 ought to be limited.
34. That the UOS in this case was not put forward as an area of Local Green Space in the LGS would not reduce its value as an area of UOS, i.e. an area of local significance, fulfilling a specific function in the locality and providing an

⁵ HD05.

⁶ HD03.

⁷ HD13.

⁸ HD11 the Report on the Examination of the Bromley Local Plan dated 11 December 2018.

⁹ Paragraphs 82 to 87 of HD11.

¹⁰ Paragraph 1.1 of HD13.

¹¹ Paragraph 83 of HD11.

¹² Paragraph 1.13 of HD05.

¹³ Paragraph 90 of HD11.

important break within the built-up area . Neither would it reduce the weight attributed to any harm resulting from conflict with the UOS policy. It simply means that the protection afforded to Local Green Spaces would not apply to the appeal site. That the Local Green Space designation might well benefit from a greater degree of protection is of no consequence in this case. It is right to only considered the development in the context of the open space policy that is relevant to the appeal site, having regard to the distinct functions or qualities of the particular designation and the type of protection provided by the policy.

35. The appellant has drawn my attention to a 2018 decision¹⁴ for two appeals that were determined prior to the date of the local plan Inspector's report and the adoption of the LBBLP. These appeals relate to development on another area of UOS within the Borough. As with the case before me, the site had not been referred to in the OSSRA. Whilst I note the Inspector's criticism of the lack of a full assessment or review of the Council's open space designations as part of the background evidence for the now adopted LBBLP, I am mindful of the more recent local plan Inspector's decision and her conclusions in respect of the UOS designation and policy, which were arrived at having regard to the documents referred to in the 2018 decision.
36. Notwithstanding this, I note that in the 2018 decision the Inspector found conflict with the previous UOS development plan policy (Policy G8), but identified only limited harm resulting from that conflict, having considered matters that were particular to that site. For example, he did not consider the site to provide an important break within the built-up area and concluded that the development would result in limited harm to openness and the local residential environment. He also had regard to several other nearby breaks in the local built-up area, some of which had MOL and UOS designations. In dismissing the appeal the Inspector balanced the limited harm identified against a 'current pressing need to provide additional dwellings in the Borough'. Accordingly, the Inspector had regard to site specific matters and his conclusions result from the planning balance exercise.
37. Having regard to the above, my conclusions in respect of the value of the area of UOS in this case and the weight attributed to any harm resulting from conflict with policies 55 and 7.18 are not altered by this appeal decision.
38. To summarise so far on the matter of the loss of UOS/open space, the development would not be permitted by any of the criteria set out in LBBLP Policy 55 and would, therefore, conflict with this policy, as well as Policy 7.18 of the LP. Furthermore, I have been unable to identify any reason so far to reduce the weight I attribute to any harm that results from conflict with these policies.

- Loss of a Community Facility, Social Infrastructure and/or a Sports Facility

39. As confirmed earlier in this decision, for the purposes of planning policy the appeal site is regarded as an outdoor sports facility, as referred to in Policy 3.19 of the LP and Policy 58 of the LBBLP. Such facilities also fall within the definition of social infrastructure, which is the subject of Policy 3.16 of the LP and Policy 20 of the LBBLP. The existing outdoor bowls facility is also

¹⁴ Appeal reference APP/G5180/W/17/3174961 & APP/G5180/W/17/3179001 - Land at the junction of South Eden Park Road and Bucknall Way, Beckenham BR3 3LZ.

identified as being a use that is found within an area of UOS. The use can, therefore, be regarded as filling that specific function in this locality¹⁵, which is one of the purposes of the UOS designation. I have already noted that, in general, each of these policies seek to protect and enhance the existing provision.

40. The development proposes the change of use of the existing pavilion building and a new 3 storey building, with associated outdoor space and parking. The new building and its garden area would more than cover the area occupied by the bowling green, and parking would be provided in the approximate location of the existing parking area. The development would, therefore, result in the loss of the existing sports facility.
41. The loss of a sports facility might well be resisted by the policies listed above. However, Policy 3.16 of the LP and Policy 20 of the LBBLP seek to provide, protect and enhance **all** types of high quality social infrastructure. Paragraph 3.86 of the LP confirms that social infrastructure covers a wide range of facilities, including both sports facilities and facilities for health provision. In this regard, the scheme proposes a non residential institution use in the pavilion building, which the appellant advises would 'provide a dedicated community hub, which would include working directly with Dementia UK and to have an admiral nurse on site to support the local community and provide independent and free advice'. At the hearing it was confirmed that this use would be linked to the dementia care provided in the care home. The admiral nurse would work within the local community and provide support for the families of those who suffer with dementia, including families of the care home residents.
42. In addition, a 60 bed care home is proposed within a 3 storey building. The type of accommodation proposed is described in appendix C of the appellant's statement of case¹⁶, which confirms that the new building would provide a purpose built specialist facility for nursing, residential and dementia care. The level of care to be provided to residents would range from help with washing and dressing (residential care) to 'full nursing input from a nurse 24 hours a day for matters such as wound management, catheter care, blood monitoring and complex medication administration such as sub-cutaneous fluids, injections etc. (known as Nursing Care)'¹⁷.
43. Having regard to the medical care that would be provided within the new building and the pavilion, the scheme as a whole would provide a facility for health provision. Furthermore, having noted the type of accommodation proposed and the facilities this development would contain, I have no doubt that the development would provide high quality social infrastructure of the sort envisaged in policies 3.16 and 20. Accordingly, whilst I acknowledge that the development would result in the loss of a sports facility, which is resisted by Policy 3.16 of the LP and Policy 20 of the LBBLP, it would provide alternative high quality social infrastructure, which is also permitted by these policies.

¹⁵ Paragraph 5.2.23 of the LBBLP.

¹⁶ Witness statement of Nicola Coveney, managing director of Carebase Limited, which is Appendix C of the appellant's statement of case.

¹⁷ Paragraph 2.2 of Appendix C of the appellant's statement of case – the witness statement of Nicola Coveney, managing director of Carebase Limited.

44. In reaching the conclusion above I acknowledge that the provision of one type of social infrastructure might not necessarily justify the loss of another. Indeed, Policy 3.19 of the LP and 58 of the LBBLP resist the loss of sports facilities specifically. However, Policy 58 informs that the loss of such facilities will be resisted unless it can be demonstrated that they are surplus to requirements. Similarly, criteria a) of paragraph 79 of the Framework would also allow for development on sports land (and open space land) in these circumstances. In this regard it is the appellant's case that there is no longer a need for a bowling green at the appeal site.
45. The appellant refers to the local plan background paper, the OSSRA, which does not include the appeal site within its list of 20 bowling greens identified in the Borough. This omission does not, however, mean that the appeal site is not valued as an outdoor sports facility or that it does not benefit from the protection of policies 3.19 and 58.
46. Nevertheless, the OSSRA does not assist in identifying a particular shortfall or surplus in the number of bowling greens, or indeed any other type of sports facility in the Borough¹⁸. It does, however, confirm at paragraph 8.38 that most residents are within 15 minute drive of a bowling green, which is identified as the accessibility standard for this type of facility¹⁹. The Map 8.3 on page 135 of the assessment also shows that the bowling greens listed are located in the northern part of the Borough, and that there are a number close to the appeal site. Indeed, the appellant suggests that there are 29 other bowls clubs within a 5 mile radius of the appeal site²⁰. Whilst I note the Council's comments with regard to some of those suggested by the appellant, I do not agree that the 9 greens that are located outside of the Borough should be discounted; I have not been advised that residents from within the Borough are unable to use these greens.
47. As for an alternative outdoor sports use for the site, at the hearing the Council were unable to point me to another sport that could be accommodated on the existing facility, in particular one where there is currently a deficiency of facilities in the area. It was, however, suggested that there are deficiencies for particular sports facilities across the Borough. Notwithstanding this, Sport England suggest that their objection to the development might be overcome if the loss of the facility were mitigated through improvements to other bowls facilities in the area. I have dealt with the mitigation contribution later in this decision.
48. In addition to the above, the appellant points to the fact that the appeal site has been vacant for a period of around 4 years since it was last used by the former bowls club. The appellant has marketed the site and provided details of the marketing exercise. The site as a whole was placed on the market between October 2017 and November 2018 and, whilst this generated some interest in the site, the appellant advised that no party sought to use the site as a bowling green or as any other outdoor sports facility. I note from the table provided at the end of the witness statement of Adrian Tutchings²¹ that the majority of those interested primarily sought to use the pavilion, rather than the outdoor sports pitch. Indeed, following the potential letting of the

¹⁸ Paragraph 13.19 of the OSSRA – HD05.

¹⁹ Paragraph 8.25 of the OSSRA – HD05.

²⁰ Paragraph 4.18 of the appellant's planning statement dated August 2019.

²¹ Witness statement of Adrian Tutchings, which is Appendix E of the appellant's statement of case.

pavilion to the CASPA organisation, when only the bowling green and 6 parking spaces were advertised as being available, no interest was generated.

49. I have been provided with correspondence from 2016 regarding the interest shown by the residents of BPH in leasing the site²². Whilst I can see that their interest was rejected by Bespoke Senior Leisure at that time, at the hearing it was confirmed that no enquiries were made by the residents following the most recent marketing exercise.
50. I note the Council's concerns regarding the period of marketing, but can see that the site as a whole was on the market for in excess of 12 months, exceeding the 6 month period considered appropriate in the officer's report. Furthermore, whilst the Council suggests some shortcomings in the extent of marketing, I have not been made aware of a more appropriate means of marketing for such a facility. The appellant acknowledged that there has been a marked increase in the rental value of the site and that this contributed to the bowls club vacating the site. However, at the hearing Mr Tutchings suggested that the rent paid by the bowls club was particularly low and that the rental value advertised was realistic, particularly having regard to the parking spaces that would accompany the offer. Whilst I note the Council's concerns regarding the rental value, I have not been provided with evidence, such as comparison rental properties or an alternative valuation, that would lead me to conclude that the rental value is excessive.
51. Having regard to all of the above, I am satisfied that the appeal site has been appropriately marketed and that, despite this, there has been a lack of any interest in its use as a bowling green or as any other outdoor sports facility. It has not been demonstrated that there is a deficiency in the provision of bowling greens in the Borough and, in particular, in the vicinity of the appeal site. Furthermore, my attention has not been drawn to any particular deficiency in other outdoor sports facilities that might be accommodated on the site. In this regard, I am satisfied that it has, on balance, been demonstrated that this outdoor sports facility, being the specific function of this area of the designated UOS, is surplus to requirements.
52. On a final point on this matter, whilst I acknowledge the suggestion by interested parties that the permission granted for BPH prohibits the loss of the appeal site as a sports facility, I have not been provided with any substantiated evidence of any legal agreement or planning condition that would prohibit the development proposed.

- Conclusions on Location

53. As mentioned above, I have sufficient evidence to demonstrate that there is not an identified need for the existing outdoor sports facility at the appeal site. The loss of this facility as a result of the development proposed would not, therefore, conflict with LBBLP Policy 58 or paragraph 97 of the Framework. Furthermore, having regard to the lack of a demonstrated need for this outdoor sports facility, together with its replacement with an alternative form of high quality social infrastructure, the development would also comply with Policy 3.16 of the LP and Policy 20 of the LBBLP. I acknowledge that LP Policy 3.19 would not permit the loss of the sports facility, despite it being demonstrated that there is a lack of need. However,

²² HD07.

having regard to my conclusions in relation to the LP policy on social infrastructure, the definition of which includes sports facilities, any harm resulting from conflict with Policy 3.19 would be limited. I am also mindful of the bowls club financial contribution within the UU that is intended to benefit bowls clubs in the Borough. In this regard, I conclude that the location of the development would be acceptable, despite it resulting in the loss of an existing sports facility, which is otherwise defined as a community facility or social infrastructure.

54. Notwithstanding this, I have already concluded that the development would be in conflict with policies 7.18 of the LP and 55 of the LBBLP. In this regard, its location would not be acceptable as it would result in built development on an area of UOS. However, I have concluded that the specific function of this area of the designated UOS (i.e. an outdoor sports facility) is surplus to requirements. My findings in this regard have the effect of limiting the harm that would result from conflict with policies 7.18 and 55. I have considered the harm that would result from the loss of openness of this area of the UOS in the following section of this decision.

Openness, Character and Appearance

55. The appeal site is set back from WCR by some 150 metres and adjoins the fairly recent residential development of BPH. The site is also located behind a row of predominantly detached properties along Baston Road and Redgate Drive. The buildings occupying the Hayes School site are clustered close to the boundary of the school shared with the appeal site and the access drive. The grounds to the rear of BPH wrap around the southern and eastern boundary of the site. Otherwise the appeal site is a predominantly undeveloped parcel of land surrounded by built development.
56. I acknowledge that part of the primary purpose of UOS is to protect its open character and provide an important break within the built-up area. The appeal site achieves this purpose and I was able to appreciate its open character from within the site, as well as from the adjoining BPH and its grounds. However, during the site visit I noted that there are very few opportunities to appreciate the site's open character from public vantage points. Any views between the dwellings along Baston Road and Redgate Drive were glimpsed and, in general, were only of the hedge and tree line along the rear boundary of the dwellings.
57. Views of the site from WCR were mostly obstructed either by BPH or the buildings and enclosures within the Hayes School site. The most prominent view of the site was from the site entrance on WCR. From here I could not appreciate the open character of the site, particularly as only part of it was visible and framed by BPH and the mature tree line within the Hayes School site, along the boundary. In contrast to this, the expanse of the cricket ground to the front of the BPH and the playing fields within the school's grounds provide a real sense of openness, particularly when viewed alongside the built development on WCR. It is easy to conclude that such areas make a significant contribution to the UOS designation.
58. UOS is intended to make a significant contribution to the residential environment. The appeal site provides a break in development and possesses an open character. In this regard it does make a positive contribution to the

UOS designation. However, its contribution to the overall residential environment is tempered by reason of the limited public views of the site.

59. The scheme proposes the construction of a three storey L shaped building with basement. This would be separated from the existing pavilion by an enclosed garden. The associated parking and turning area would be located on the site of the existing hard surfaced parking area, and the site as a whole would be landscaped.
60. I acknowledge that the introduction of built development on undeveloped land would inevitably have a detrimental effect on the openness of the site. However, I note that the new building would not occupy the whole of the open space to the rear of BPH. A degree of separation and open space would be retained between the development and the dwellings along Baston Road and Redgate Drive. In view of this, it is unlikely that there would be prominent views of the development from these public vantage points; any views are likely to be disrupted by the mature tree and hedge line to the rear of the dwellings.
61. Furthermore, it is likely that the only prominent public view of the development would be from the site entrance on WCR. Even then it is likely that only the wing of the building closest to the pavilion would be visible, which itself would be set back within the appeal site. The wing closest to BPH and Hayes School would be screened by the mature tree line and vegetation on the school site.
62. Having regard to the above, whilst the development would cause detriment to the openness of the appeal site and this part of the UOS designation, the degree of harm caused to the residential environment would not be significant as views of the development would be limited from public vantage points.
63. Notwithstanding the above, the Council suggest that the position of the building, set off WCR, and the concealed nature of the entrance, behind BPH, is at odds with the pattern of development in the area. However, neither the cricket pavilion, BPH nor the Hayes School complex of buildings have a roadside frontage. Whilst all are accessed off WCR, they are all set off the highway and accessed via long private drives. The appeal scheme would be no exception to this.
64. Furthermore, I note that the wing of the building closest to the pavilion would have a shallow pitch, whilst the wing closest to BPH would have a split pitch. Both would be lower in height than BPH. Indeed the building overall would be comparable in scale to the nearby 2 and 3 storey buildings on the adjoining Hayes School site²³. I do not, therefore, find the scale or mass of the proposed building excessive.
65. With regard to the appearance of the development, whilst I acknowledge that it's modern design would not replicate that of BPH or the surrounding dwellings, there is variety in building styles in the surrounding area, particularly on the Hayes School site. The contrasting design is not, therefore, out of character in this area.

²³ As demonstrated on page 22 and 23 of the appellant's Architectural Statement dated 27 May 2020.

- Conclusions on Openness, Character and Appearance

66. Having regard to the findings above, I conclude that the development would have an acceptable effect on the character and the appearance of the surrounding area. For this reason the development would comply with LP Policy 7.4 (Local Character) and LBBLP Policy 37 (General Design of Development) that require a high quality and standard of design that, amongst other matters, is attractive to look at; has regard to the pattern and grain of the existing spaces; and complements the scale, proportion, form, layout and materials of adjacent buildings and areas.
67. As for the effect of development on the openness of the site and the UOS, I have already concluded that the development would conflict with the UOS designation policy (Policy 55) of the LBBLP. The development would have a detrimental effect on the open character of the site and would, therefore, cause harm in this regard. However, as public views of the development are likely to be limited and a degree of open space surrounding it would be maintained, the proposed scheme would cause only moderate harm to the openness of the UOS and the surrounding residential environment.

Living Conditions

- Outlook and Privacy

68. As noted above, the grounds of BPH, that wrap around the southern and eastern boundary of the site, would separate the development from the rear boundary of the properties along Baston Road and Redgate Drive. Having regard to the degree of separation, as well as the intervening mature tree and hedge line along the rear of these nearby properties, it is unlikely that the development would have an unacceptable effect on the outlook or privacy currently enjoyed by the occupiers of these dwellings.
69. The appeal site adjoins the complex of apartments occupying BPH. Most apartments have balconies and residents have access to shared areas of open space around the building, including the L shape area described above. A parking and turning area serving BPH also adjoins the western boundary of the appeal site. Residents of BPH, particularly those occupying flats in the northern half of the building, currently enjoy a fairly open outlook over the appeal site.
70. I was able to view the appeal site from flat No 9 within BPH, which is on the upper floors of the building and has windows and balconies (to the side on the north facing elevation and rear on the east facing elevation) that are amongst the closest to the appeal site.
71. The proposed building is designed in an L shape and the outside elevations would be positioned just beyond the northern and eastern hedge boundary of the current bowling green. It would, therefore, be separated from BPH by the secure garden that would serve the care home. The building would be particularly visible from BPH and is likely to be a prominent feature in the immediate surroundings, particularly when viewed from apartments in the northern part of the complex. Indeed, the scheme would result in a greater quantum of development than currently exists within the setting to the rear of BPH. However, the building would be more than 27 metres from the side

elevation of BPH and more than 38 metres from the rear elevation²⁴. Furthermore, it would be located in the periphery and not in the direct views from apartment No 9 and others in this part of BPH. Accordingly, while the development would affect the outlook from BPH, there would not be an unacceptable degree of harm caused in this regard.

72. With regard to the effect of the development on the privacy of the occupiers of BPH, I note that the new building would not have any elevations that would directly oppose those in BPH. As such, there would not be any direct views from windows in the care home into windows in the adjoining apartment complex. Any views would also be limited by reason of the degree of separation between the two buildings. Whilst I acknowledge that those arriving at the site, those using the care home's secure garden and those accessing the pavilion building would see some of the balconies and windows in BPH, any views of those visitors, employees or residents would be at a distance, at an obtuse angle, or screened by the site's enclosure. Any views from the site towards BPH and its grounds would not, therefore, cause an unacceptable degree of harm to the privacy of its occupiers.
73. There are no amendments proposed to the elevations of the pavilion and I note that all windows facing onto BPH and its grounds are high level. This is noted by the Inspector in the previous appeal decision²⁵ for the change of use of the pavilion to a dwelling. I agree with her conclusions in this regard, that there would be limited potential for overlooking of the grounds of BPH from these windows. However, the Inspector notes that the rear door of the pavilion is clearly glazed and concludes that, whilst a condition could be imposed to require obscure glazing, it would be unreasonable to prevent it from opening. As such she concludes that its use would cause harm to the living conditions of the occupiers of BPH due to a loss of privacy.
74. The door opens onto land that is garden area associated with BPH and I have not been advised that the appellant would have any control over that land. Indeed, the boundary of the appeal site is drawn tightly around the rear of the pavilion building and the plan provided during the hearing by the residents of BPH²⁶ illustrating the boundary of ownership is consistent with this. I also note that no access path is proposed from the rear door of the pavilion to any other part of the appeal site. For this reason, and having regard to the use for the building proposed in this appeal, I do not consider a condition prohibiting the use of the door (except in an emergency) to be unreasonable. Subject to this condition, and a requirement for obscure glazing, the presence of the door would not render the proposed use of the pavilion unacceptable by reason of a loss of privacy to the occupiers of BPH.
75. Whilst the activity within the pavilion may well differ from that generated by its use as a bowls pavilion, I have no reason to conclude that the proposed use would cause an unacceptable degree of harm to the privacy of residents of BPH.

²⁴ Measurements shown on page 29 of Architectural Statement dated 27 May 2020.

²⁵ Appeal reference APP/G5180/W/16/3160356 – Appendix 6 of the Council's hearing statement.

²⁶ HD08.

- Noise and Disturbance

76. The Council suggest that the development would generate a significant amount of employment related activity and that this would be on a 24 hour basis. When compared to the existing use of the site, the development would be a more intensive use that would have an adverse effect on the living conditions of nearby residents. This is also a matter raised by a significant number of local residents.
77. A detailed description of how the care home and the pavilion would operate was provided at the hearing and in the appellant's evidence²⁷. This evidence was from the appellant's managing director, Nicola Coveney, and is based on the appellant's experience of operating 14 other similar healthcare facilities. It was suggested that a care home of the size proposed would typically employ 60 full and part time staff and that most of the staff would change shifts at 0700 hours and 1900 hours. The arrival and departure of other medical practitioners, deliveries or other staff working at the site would generally occur during the daytime hours, as would friends and family visiting residents. It was confirmed that in general the site would not have a noisy environment as this would have a negative effect on the wellbeing of residents.
78. As for evening and night time activity, Ms Coveney explained during the hearing that residents' bed times would be early evening and that activity within the care home would be kept to a minimum during the evening and at night to prevent disturbance whilst residents are sleeping. Indeed, only 7 staff would be present on site for the night time shift.
79. As for the proposed use of the pavilion building, at the Hearing Ms Coveney suggested that this would provide office space and a consulting room for only 1 nurse for a limited number of days a week. Whilst the nurse would see patients or their families at the pavilion, they would also undertake visits in the community, away from the site.
80. The site is described as tranquil by many of the interested parties and I acknowledge that this might be an appropriate description of this vacant site at present. However, I must consider how the proposed development would compare with an active use of the site as an outdoor sports facility. I have not been advised of the likely visitor numbers or activity that this would generate. Nevertheless, having regard to the nature of such a use, I acknowledge that it is likely that the proposed development would generate an increase in activity at the site. I also acknowledge that such activity might occur at times of the day when an outdoor sports facility would not ordinarily be in use, such as in the early morning (i.e. during the 0700 hours shift change).
81. It is likely that vehicle and pedestrian activity would be greatest in the car park and around the main entrance to the building (in the elevation facing Hayes School). Whilst this area of the site would be adjacent to the rear boundary of properties along Baston Road, I note that these properties have the benefit of a long garden that would maintain a degree of separation between the dwellings and the parking area. Indeed, the Council refer to the

²⁷ Witness statement of Nicola Coveney, managing director of Carebase Limited, which is Appendix C of the appellant's statement of case.

distances separating the development and properties on Baston Road and Redgate Drive²⁸, suggesting that the scheme 'would not result in an adverse impact on residential amenities' in this regard. I have no reason to disagree with this conclusion.

82. Although those arriving or leaving the site would pass BPH, the main entrance and parking area would be in the furthest part of the site from the apartment complex and would be separated from it by the new building itself. Activity in the secure garden is unlikely to generate a significant level of noise as the appellant indicated that residents would react negatively to a noisy environment. Furthermore, having regard to the nature of the proposed use of the pavilion as an office and consultancy space for a medical practitioner, activity generated by this use would be contained within the building itself, is likely to be limited to the daytime hours, and is not likely to generate considerable noise or disturbance. For these reasons it is unlikely that activity within the pavilion or the care home garden would have an unacceptable effect on the residents of BPH, despite the proximity of the apartments and their shared garden to the development.
83. Both the Council and interested parties have expressed concern with regard to the likelihood of noise and disturbance at night time and the potential for a high number of emergency vehicles attending the site. Whilst I acknowledge that some of the residents in the care home might well be frail or very ill, Ms Coveney suggested that, in view of the level of nursing care that would be provided at the site, staff on site would deal with most medical emergencies that occur. She suggested that the need for emergency vehicles to visit the site would, therefore, be very limited. Based on the evidence before me, emergency vehicles are unlikely to be a cause of noise or disturbance in and around the site. Furthermore, having regard to the evening and night time environment described by the appellant, it is unlikely that noise generating activity would occur at these times (i.e. after the 1900 hours shift change and before the 0700 hours shift change).
84. In addition to this, whilst lighting on the site might be required at night, the appellant's evidence demonstrates the need to ensure that lighting would not disturb residents while they sleep. I acknowledge the concern raised by interested parties with regard to odours from the on-site kitchen, fumes from vehicles manoeuvring and idling in the car park, and noise from plant and machinery on site. However, I note the lack of objection to the development from the Council's environmental health officer. Notwithstanding this, the appellant has confirmed that all plant would be contained within the building. I was also given no reason to conclude that there would be instances of vehicles idling in the parking area. Again, I am mindful that the residents of the development would be particularly sensitive to disturbance of their environment. The control of external lighting, noise, odour and fumes on site would, therefore, be in the interests of the appellant. For this reason it is unlikely that the development would result in an adverse effect on nearby occupiers in this regard.
85. Overall, I acknowledge that the development would generate a greater level of activity on site and that this might generate a greater degree of noise and disturbance when the proposed use of the site is compared to its use as a

²⁸ Officer Report.

sports facility. However, having regard to my findings above, I conclude that any noise and disturbance generated is unlikely to result in an unacceptable degree of harm to the living conditions of nearby residents.

- Conclusion on Living Conditions

86. For the reasons given above, I conclude that the effect of the development on the living conditions of nearby occupiers would be acceptable. The proposal would, therefore, comply with Policy 37 of the LBBLP, which requires development to, amongst other matters, respect the amenity of occupiers of neighbouring buildings, provide healthy environments and ensure they are not harmed by inadequate privacy, or by noise and disturbance. Furthermore, the development would not conflict with LP Policy 7.4 which requires at criterion c that development is human in scale and ensures that people feel comfortable with their surroundings.

Location of the Development - Access by Sustainable Transport Modes

87. At the hearing it was agreed that the policies referred to in the Council's decision notice that are most relevant to this main issue are LP Policy 3.17 (Health and Social Care Facilities) and LBBLP Policy 11 (Specialist & Older Peoples Accommodation). Policy 3.17 relates to health and social care facilities and requires that these are located in places easily accessible by public transport, cycling and walking. Similarly, Policy 11 provides support for specialist housing where it is 'conveniently located for a range of local shops, services and public transport'. However, the policy informs that this should be 'appropriate to the mobility of the residents'.
88. Whilst the Council suggests that local shops and services are not easily accessed from the site, it is the appellant's case that, having regard to the type of facility proposed, there would be a reduced need for access to everyday services and facilities. Both at the hearing and in the statement of case the appellant suggested that, due to the fragility of residents and as many will suffer with dementia, the need for residents to leave the facility would be very limited. Residents would not be able to leave the site unless accompanied by a carer, and any trips from the site would be by private vehicle, regardless of the distance to be travelled or ease of access to more sustainable transport modes. Any services such as dental care, hairdresser or chiropody would be provided on site and a GP would visit the site on a weekly basis.
89. In addition to this, once at the site there would be a limited need for staff to access local services and facilities. The appellant suggested that, in the interest of continuity of care, staff would not be encouraged to leave the facility during a shift and all meals would be provided on site.
90. Based on the evidence before me, I agree with the appellant, that there would be limited need for residents and staff to have easy access to everyday services and facilities by sustainable transport modes as the vast majority of their everyday needs would be met on the site.
91. With regard to staff and visitors travelling to the site, the Council suggest that this location does not benefit from good transport links. It points to the appeal site's rating as between 1b and 2 on the Transport for London's scale

of public transport accessibility levels (PTAL), which is towards the lower part of the scale.

92. Whilst I acknowledge this, I note that the development type and PTAL matrix on page 108 of the LBBLP informs that development such as that proposed is acceptable in principle in a location with a level 1 and 2 PTAL. Added to this, the appellant has proposed a travel plan that it has implemented at other of its care home sites.
93. The bus stops on Baston Road were drawn to my attention. These are around 500 metres from the WCR entrance to the appeal site. Added to this is the distance from the site entrance to the building, which is around 180 metres. The Council suggests the frequency of the two bus services that can be accessed from these stops as 4 per hour and 1 per hour. The appellant suggests that these bus services provide good local connections, which is important as staff are likely to live in the local area²⁹. I was also able to see the railway station at Station Hill, which is within a local shopping area that is around 700 metres from the site entrance. The appellant suggests that both the bus stops and the railway station are within the maximum walking distance used by Transport for London for them to be considered accessible when calculating an area's PTAL.
94. The appeal site is within easy walking distance of both bus stops and a railway station, which itself is located adjacent to local shops, and I did not consider the gradient of the routes to these public transport links to be significant. Whilst I acknowledge that there is no footpath along a section of WRC, between the appeal site entrance and the junction of Warren Road with WCR, this stretch of some 150 metres is lit and overlooked by the row of dwellings along this route. I do not, therefore, find the identified public transport links any less accessible. The lack of a footpath within the site (along the access drive) would not in my view deter pedestrians from accessing the site. I was advised that the driveway is lit at night and traffic on the drive would only be limited to those accessing the site, BPH and the cricket ground.

- Conclusion on Location - Access by Sustainable Transport Modes

95. Having regard to the mobility of the future residents of the development and the provision that would be made for residents and staff on site, the need for a location convenient to local shops, services and public transport would be limited. As such, and having regard to the location of the appeal site, which I consider to have reasonable access to such services, the development would not conflict with the LBBLP Policy 11. Furthermore, having regard to the proximity of the development to bus and rail services, I am satisfied that the development would be in compliance with LP Policy 3.17. For these reasons, I conclude that the location of the proposed development would be acceptable, having regard to access to it by sustainable transport modes as well as access to everyday services and facilities by sustainable transport modes.

²⁹ Paragraphs 3.75 to 3.83 of the hearing statement of Ian Wharton, which is Appendix D of the appellant's statement of case.

Safe and Efficient Movement of Vehicles and Pedestrians

- Access Drive

96. The Council's fourth reason for refusal states that 'the proposal fails to fully demonstrate an acceptable access can be provided and maintained for the existing and future users'. When asked at the hearing to expand upon this, the Council confirmed that it has no concerns with regard to the access drive. Indeed, whilst the Council's Highway engineer mentions the driveway, no concerns or objections are raised in this regard. This is, however, a matter of concern for some interested parties.
97. The appellant confirms that the driveway has a width of between 4.1 metres and 4.8 metres, and suggests that this is sufficient to allow for two cars to pass along the whole length of the drive, and a car and large vehicle to pass at the widest parts of the drive. I note that this accords with the recommended carriageway widths shown in table 7.1 of Manual for Streets. Whilst I acknowledge that the drive would serve the development, BPH and the cricket ground, it is likely that there would be limited conflict with vehicles on the drive and, therefore, minimal incidents of vehicles reversing from the site onto the highway.
98. The appellant has acknowledged the lack of a footway on the drive, but it is suggested that in this case it would not be needed. The appellant points to the three criteria set out in Manual for Streets where it informs that shared surfaces are likely to work well³⁰. I agree with the appellant that in this case all three criteria are met. Furthermore, I have already noted that the driveway is lit at night.
99. Having regard to the evidence before me, whilst I acknowledge that the development would result in an increase in vehicle and pedestrian movement to and from the site, I have no reason to conclude that this would result in an unacceptable adverse effect on highway safety by reason of conflict with vehicles and/or pedestrians on the access drive. Furthermore, it is unlikely that the development would cause detriment to the safety of drivers or pedestrians using the driveway.

- Point of Access with WCR

100. I note that the existing arrangements, which include a gated access set off the highway, would be retained without amendment. Although no concerns regarding the point of access were raised by the Council in written evidence, at the hearing the Council suggest that WCR is a 'pinch point' at the point of access to the site, and that there would be conflict from vehicle movement to and from the site with traffic and parked vehicles on WCR. In this regard, at the site visit I noted that there are no parking restrictions close to the site entrance and acknowledge that there were a number of vehicles parked close to the point of access.
101. Whilst I note the Council's evidence at the hearing, it did not disagree with the appellant's suggestion that the vision splay at the access complies with that set out in Manual for Streets, that traffic speeds on WRC are low, and that a reduced speed limit of 20 MPH on this highway will be shortly

³⁰ Paragraph 7.2.14 of Manual for Streets and paragraph 3.66 of the hearing statement of Ian Wharton, which is Appendix D of the appellant's statement of case.

introduced. Indeed, the point of access to the site is not a matter referred to in the consultation response from the Council's highway engineer. I acknowledge that parked vehicles close to the entrance might interrupt drivers' view along WCR. However, the Council was unable to point to any technical evidence or objection from its highway engineer to support its case regarding the inadequacy of the site access. Furthermore, I have not been provided with evidence of any incidents of vehicle collisions or accidents involving pedestrians along this section of WCR. Accordingly, I have no reason to conclude that the development would be unacceptable as a result of additional pedestrian and vehicle traffic using the existing point of access to the site with WCR.

- Traffic Generation and Congestion

102. The Council criticises the appellant's calculation of trips generated by the development and suggests that, whilst the development would result in minor impact in traffic flows on the local highway network, WCR is often 'log jammed'. It is suggested that traffic generated by the development would conflict with vehicles of parents dropping off and picking up children at Hayes School. I note that these are points raised by many of the interested parties.
103. The appellant has provided an assessment of vehicle movements to and from the site that are likely to be generated by the development³¹. Traffic to and from the site is likely to peak just before and/or just after a shift change, when the appellant suggests that the vast majority of staff would arrive at or leave the site. This would be at a time outside of the morning and evening rush hour. As for visitors, at the hearing Ms Coveney confirmed that visiting times would not start until 1000 hours and that these would typically occur through the day, but not at meal times. As such, it is unlikely that visitors would travel to the site during the morning or evening rush hour. It is also unlikely that the peak flows of traffic to and from the site would conflict with the school generated traffic, which both the Council and interested parties highlight as a cause of congestion on WCR during the morning rush hour and at the end of the school day.
104. Despite the predicted times of peak traffic to and from the site, the appellant confirmed that the weekday peak hour periods were considered in the assessment as these are periods when existing traffic flows on the highway network are likely to be greatest. This approach in an assessment such as this is common and in most cases would demonstrate the worst case scenario.
105. Having regard to the above, I am satisfied that the additional traffic flows generated by the development would not cause detriment to the safe and efficient movement of vehicles and pedestrians on the adjoining highway network.
106. As for construction traffic, I note the suggested condition requiring the submission of details of a construction environmental management plan, that could include delivery times avoiding periods of congestion on WRC.

- Parking

107. The appellant has pointed to the lack of guidance in both the LP and the LBBLP on the appropriate number of on-site car parking spaces for a care

³¹ Table 5.1 of the hearing statement of Ian Wharton, which is Appendix D of the appellant's statement of case.

home. The parking standards suggested in the previous unitary development plan have, therefore, been used by the appellant to calculate that provision of between 15 and 30 spaces would be appropriate to serve the care home, with the addition of 1 to 2 spaces to serve the use proposed in the pavilion. The maximum of this total (32 parking spaces) is proposed at the site. Of these, I note the number of spaces that would be allocated for disabled people and for charging electric vehicles.

108. Notwithstanding the above, the appellant has undertaken a survey of the use of on-site parking at its Heathfield Court care home in Bexley³², which has a PTAL to match the appeal site and provides 66 beds. Although only 18 on-site parking spaces are provided at Heathfield Court, the maximum number of spaces used during the period of the survey was 12. It is, therefore, suggested that the calculation using the former unitary development plan parking standards results in an overestimation of the likely need for on-site parking for the proposed development.
109. Having regard to the evidence above, I can only conclude that the proposed parking provision would be more than sufficient to meet the needs of the development as a whole and that it is unlikely that the parking area would be used to capacity. Indeed, I note that the Council's highway engineer has considered the amount of parking provision, but has no concerns in this regard. Reference is, however, made in the consultation response to the provision of overflow parking for BPH.
110. In this regard, at the hearing it was clarified that residents of BPH have a right to use 6 parking spaces within the appeal site for their visitors. Whilst this was not disputed by the appellant, it is suggested that, having regard to the existing parking provision serving BPH, it is unlikely that all 6 parking spaces within the site would be regularly used by visitors to BPH. Indeed, I have had regard to the existing parking provision at BPH and note that it was not suggested that at present visitors to BPH make regular use of the parking provision at the appeal site. Whilst the 6 parking spaces would not be allocated, I have been given no reason to conclude that parking spaces for up to 6 vehicles visiting BPH would not be available at any time once the development is complete and in use. Accordingly, I am still of the view that on-site parking provision would be sufficient.
111. The Council suggest that parking requirements at the site would be greater as a result of the evening and early morning shift start times. However, at the hearing the Council confirmed that it had no objection with regard to the on-site parking provision and that the parking proposed was not inadequate. Despite this, the Council maintained its concerns regarding the inadequacy of the parking survey that had been undertaken on the nearby highway, as referred to in its fourth reason for refusal. However, having regard to the Council's position, that the development would provide adequate on-site parking, I have not considered the Council's concerns with regard to the parking survey.
112. Notwithstanding the above, I acknowledge that interested parties are concerned that the development would result in an increase demand for on-street parking in the vicinity of the appeal site. I particularly note their

³² Table 4.1, paragraphs 4.24 to 4.28 and Appendix E of the hearing statement of Ian Wharton, which is Appendix D of the appellant's statement of case.

concerns regarding parking associated with the school, and that the parking survey was undertaken at a time on-street parking was particularly low. I have no reason to doubt that the parking related to the school site causes an inconvenience to local residents and road users, or that highway safety might well be affected by this parking. However, the evidence before me does not lead me to conclude that the development would result in a need for on-street parking or exacerbate any existing problems in this regard.

– Pedestrian Safety

113. I note that pedestrian safety on WRC, in particular the section of this highway without a dedicated footway, is a matter of concern for some local residents. I also note the comments of the Council's highway engineer in this regard, although they were not expressed as an objection to the development. Notwithstanding this, I have concluded above that it is unlikely that the development would add to any existing on-street parking problems in the area, including the section of WCR that is without a footway. Added to this, I have also concluded that traffic generated by the development, including pedestrian traffic, would not peak during the morning or evening rush hour, or during the afternoon school closing time. In the absence of any substantiated evidence of detriment to the pedestrian environment, I am unable to conclude that the development would cause an unacceptable degree of harm to pedestrian safety on the local highway network, in particular during the existing periods of congestion on WCR that have been highlighted by the Council and interested parties.

- Conclusions on Safe and Efficient Movement of Vehicles and Pedestrians

114. For the reasons given above, I conclude that the development would be acceptable with regard to its effect on the safe and efficient movement of vehicles and pedestrians within the site and on the surrounding highway network. It would not, therefore, conflict with LBBLP Policy 30 (Road Safety), LP Policy 6.3 (Assessing the Effects of Development on Transport Capacity) and Paragraph 109 of the Framework, which do not permit development that would have a significant adverse effect on road safety, an unacceptable impact on highway safety, or an adverse effect on the safety of the transport network. Furthermore, whilst parking standards for the type of development proposed are not provided within either the LP or the LBBLP, having regard to the proposed on-site parking provision, I am satisfied that the development would not conflict with LBBLP Policy 30 (Parking) or LP Policy 6.13 (Parking) which require sufficient off-street parking provision up to a maximum standard, whilst ensuring adequate provision of, amongst other matters, parking for disabled people and for charging electric vehicles.

Need and Any Other Benefits of the Proposed Development

115. The appellant identifies the LBB as having the largest ageing population in London, which is set to increase by 20% in 2032. He points to the Council's Older Persons Accommodation Study (2016) that highlights a need to make quality care provision for this population. This is not disputed by the Council.
116. The appellant has also provided two assessments of the current supply of care home beds, which include the existing and future demand for such

accommodation. The first, submitted with the planning application³³ concentrates on provision and demand within a 5 mile radius of the appeal site and concludes that in 2018 there was an under supply of care home beds of some 1,166 and this under supply is likely to increase to 1,551 in 2023 and 1,981 in 2028, assuming bed supply remains the same. The second assessment³⁴ provided with the appeal looked at provision across the Borough. It refers to the findings of the Care Quality Commission, which suggests that LBB has a total provision of 1,397 registered beds across 34 residential and nursing homes. The appellant indicates that just 1,057 of the registered beds are en-suite bedrooms, and suggests that any provision that is not single occupancy and without an en-suite bathroom would not meet the benchmark in guidance provided by the Department of Health³⁵. The assessment of demand suggests that in 2020 2,083 beds were needed in the borough, and that this increases to a need for 2,366 beds in 2025 and 2,671 beds in 2030.

117. The appellant has acknowledged that planning permission has been granted in the Borough for an additional 102 en-suite bedrooms. Despite this, both assessments identify a significant shortfall of care home beds at present and predict an increase in that shortfall into the future.
118. The radius approach taken in the first assessment was criticised in the officer's report and at the hearing it was suggested that there was no reason to discount beds provided in care homes that provided 30 beds or less, as had been done in that assessment. Notwithstanding this, the Council confirmed that there was no dispute with regard to the figures presented by the appellant.
119. Even taking into account the beds currently in care homes that provided 30 or less, the shortfall demonstrated in the first assessment (within a 5 mile radius of the site) would have still been in the region of 599 in 2018, rising to some 1,981 in 2028, assuming supply remains the same. With regard to the second assessment, taking into account all registered care home beds (not just those with en-suite facility) and assuming that the 102 en-suite bedrooms that have the benefit of planning permission in the Borough would be available by 2025, there would still be a shortfall in the region of 867 registered beds. This would rise to a shortfall of some 1,172 registered beds in 2030, again assuming there is no other provision. I consider the shortfall, however it is presented, to be significant.
120. Added to this, the appellant has pointed to the current need for 47% of LBB's care home placements to be accommodated outside of the Borough³⁶. This is compared to a figure of 25% in Bexley³⁷ and 4% in Croydon. Again, this is not disputed by the Council.
121. Having regard to the evidence before me, it has been demonstrated that there is a significant need for care home provision both within the Borough and within a 5 mile radius of the appeal site. This need is only likely to be greater

³³ The Cushman and Wakefield Demographic Needs Analysis dated 16 April 2019.

³⁴ The witness statement of Nigel Newton Taylor, which is Appendix A of the appellant's statement of case.

³⁵ Part 3 of witness statement of Nigel Newton Taylor, which is Appendix A of the appellant's statement of case.

³⁶ Table on page 20 of the witness statement of Nigel Newton Taylor, which is Appendix A of the appellant's statement of case.

³⁷ Update of the table on page 20 of the witness statement of Nigel Newton Taylor given at the hearing.

in the future. The provision of 60 beds to the stock of registered care home beds would, therefore, be a significant benefit of the scheme.

122. With regard to the other suggested benefits, the proposed use of the pavilion building would contribute to healthcare provision in the community, which would benefit the community's health and social wellbeing. The Council acknowledges the number of full time jobs that would be created, amounting to 60 full time equivalent employment opportunities. The evidence indicates that many of the opportunities would be taken up by residents local to the area³⁸. This would be in addition to the jobs created during construction, although these would only be for the duration of the construction period. Nevertheless, the total employment resulting from the development would be a considerable economic benefit of the scheme.
123. At the hearing it was suggested that at the other appellant's care homes food that is prepared on site is sourced from local shops and that the same approach would be taken at this site. Furthermore, the appellant also indicated that such services as hairdressing and chiropody would also be sourced from the local area. These are further benefits of the scheme that would be felt by the local economy.

Housing Land Supply and Paragraph 11b of the Framework

124. The Council confirmed at the hearing that accommodation to be provided within care homes is included in the calculation of the Council's supply of housing land. It is common ground that the Council are unable to demonstrate that it has a 5 year supply of housing land, as required by paragraph 67 of the Framework. Whilst the appellant suggested that the current supply might be as low as 1.7 years, the figure agreed at the hearing by both parties was 3.31 years, which is nevertheless substantially below the requirement for a 5 year supply. It is, therefore, common ground that the provisions of paragraph 11 d) and footnote 7 are engaged.
125. I have concluded that the only policies that would stand in the way of the provision of 60 care home beds proposed in this case, and against which I have identified conflict, are LBBLP Policy 55 and LP Policy 7.18. Whilst I consider these policies to be in accordance with the Framework, as the Council cannot demonstrate a five year supply of deliverable housing sites, these policies are considered to be out-of-date for the purposes of paragraph 11(d). I must, therefore, weigh the benefits of the development proposed against its adverse impacts, assessing these against the policies in the Framework.
126. I have identified a considerable shortfall in care home accommodation at present and the likelihood of this increasing in the future. I have, therefore, identified the provision of 60 care home beds as a significant benefit of the scheme. Added to this are the considerable social and economic benefits, which include job creation and healthcare provision in the community. These benefits achieve two of the objectives of sustainable development as identified in the Framework.
127. Balanced against this, I have identified conflict with certain policies of the development plan that seek to protect open space. These policies have the

³⁸ Paragraph 4.4 of the witness statement of Nicola Coveney, managing director of Carebase Limited, which is Appendix C of the appellant's statement of case.

support of the Framework. However, I have only identified moderate harm resulting from this conflict, having regard to the effect of the development on the openness of the area of UOS and the surrounding residential environment.

128. In this case, whilst I have identified adverse impacts of the development, these do not significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole. In these circumstances paragraph 11 d) advises that planning permission should be granted. This is a material consideration in the determination of this appeal.

Other Matters

129. In addition to the considerable support for the development, there is also substantial objection. Many of the points raised have been considered already in this decision. I now consider the remaining matters that have been raised by interested parties.
130. With regard to the concern for the effect of the development on local wildlife, I have had regard to the preliminary ecological appraisal survey and the ecological mitigation plan that accompanied the application. These conclude that, subject to the implementation of recommended mitigation measures and enhancement, the development would not have an adverse effect on wildlife, protected species, or habitats. This conclusion is not disputed by the Council and both parties were in agreement with regard to the need for a condition requiring biodiversity mitigation and enhancement. I have no reason to reach a different conclusion on this matter. I also note the proposed landscaping scheme for the site and the minimal effect the development would have on existing trees.
131. I have no supporting evidence before me to suggest that the development would result in an adverse effect on the security of adjoining properties. Indeed, it is more likely that an active use of the site would deter any criminal activity. Whilst the officer's report confirms that the site is north of an area of archaeological significance, there is no suggestion that the development would have an adverse effect in this regard. The Council has not suggested that the site has been earmarked or designated as land to accommodate further playing fields for the adjoining school. Finally, the maintenance of the access to the site is a matter for the landowner and those with an interest in the land to address; it is not material to the determination of this appeal.

Planning Obligation

132. I have been provided with a compliance statement³⁹ which sets out the policy support for the planning obligations contained within the UU. Having regard to this, I am satisfied that the health contribution within the UU accords with the Planning Obligations Supplementary Planning Document dated December 2010. As such, the development would make the appropriate contribution towards health facilities in the area, in accordance with LBBLP Policy 26 (Health and Wellbeing).
133. Turning to the Bowls Club Contribution, my conclusions with regard to the loss of the outdoor sports facility are balanced, and were reached despite the recognised community benefits of such facilities and policy support for its

³⁹ HD09 - The Section 106 and CIL Regulations Compliance Statement.

retention. I am, therefore, satisfied that the contribution is necessary to make the development acceptable. Notwithstanding this, as the distribution of the contribution would be controlled by Bowls England and not the Council, there was some considerable discussion during the hearing regarding the mechanism for ensuring that it would benefit bowls clubs in the Borough. Having regard to the status of Bowls England and their purpose, I am satisfied that the contribution would be distributed where needed in the Borough, in accordance with the Bowls England letter dated 24 August 2020⁴⁰.

134. Overall, the contributions required by the UU would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with regulation 122 of The Community Infrastructure Levy Regulations 2010 as amended.

Conditions

135. The conditions set out in the accompanying schedule are based on those suggested by the main parties in appendix 3 of the SOCG. Where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance: Use of Planning Conditions. The pre-commencement conditions were also discussed and agreed by the parties during the hearing.
136. I have allowed the appeal on the basis that there is an identified need for the care home proposed. The condition limiting the use of the building is, therefore, necessary to ensure that the development would contribute towards the shortfall identified. For the sake of precision and for the avoidance of doubt I have used the description of the Class C2 use as provided in Class C2, Part C of Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). This would include both nursing care and dementia care, as referred to in the Council's suggested condition. I have not included the suggested age limit of residents as the appellant indicated that there may be a small number of those needing dementia care under the age of 65.
137. Having had regard to the Council's concerns in respect of the effect of the proposed use of the pavilion building on the living conditions of nearby residents, to my mind a condition limiting its use to the provision of medical or health services would be more effective in limiting any adverse effects than a condition limiting the hours of operation, as suggested by the parties. The limited use is likely to only occur during daytime hours and the condition would allow the Council to prevent other uses that fall within Class E, Part A, Article 3 of Schedule 2 of the UCO that might have a more harmful effect on nearby residents. A condition requiring obscure glazing and limiting the use of the rear door in the pavilion building is also necessary in the interests of the living conditions of residents of BPH.
138. A construction management plan that deals with both environmental and transport matters would be necessary to ensure the construction process would have a limited effect upon the safety of highway users and living conditions of neighbours.

⁴⁰ HD20 - Bowls England Letter dated 24 August 2020.

139. The protection and enhancement of the landscaping of this development together with details of hard landscaping, site levels and slab levels are essential in the interests of good design, the living conditions of nearby residents and preserving the contribution that is made by existing trees on site and near the site. For this reason the conditions relating to these matters are necessary. As is the requirement for details of sustainable drainage and means of hard surfacing, as well as the implementation of the Energy and CO2 Reduction Strategy, in the interest of the environment and to prevent flooding.
140. Completion of the parking, turning areas, cycle store, and bin store prior to the occupation of the development would be necessary to ensure there would be sufficient provision for the development's residents, staff and visitors.
141. Whilst I note the appellant's comments in respect of the need for suggested condition 17, I have had regard to the aspects of site security that the Metropolitan Police Service suggest should be considered in this type of development. I am, therefore, satisfied that the condition requiring details of measures to reduce the risk of crime is necessary in the interests of creating a safe and secure environment for residents, staff and visitors.
142. I have had regard to the biodiversity information already provided with the planning application, however details of how the recommendations in the preliminary ecological appraisal survey and the ecological mitigation plan are to be implemented on site are necessary to ensure both the mitigation and enhancement of biodiversity are achieved on site. A condition requiring the submission and implementation of these details would be in the interests of contributing to and enhancing the natural environment⁴¹. A condition requiring the submission and implementation of a final version of the travel plan is also necessary in the interests of minimising staff and visitor's reliance on less sustainable modes of transport.
143. The recommended condition 11 is not necessary as the erection of any external plant, equipment or machinery is likely to require the benefit of planning permission in any event. Similarly, details of materials are already provided within the approved drawings, negating the need for the suggested condition 8. I was not given any reason for the suggested condition 16 and cannot envisage a need for the car park to be managed, particularly as access to the site is controlled.

Planning Balance

144. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
145. I have found that the development fails to accord with the development plan as it would result in built development on an area of designated UOS. However, for the reasons given earlier in this decision I have concluded that the Framework's presumption in favour of sustainable development as defined in paragraph 11 d) applies in this case. This is a material consideration of

⁴¹ Paragraph 170 a) of the Framework.

sufficient weight in this case to indicate that the appeal should be determined otherwise than in accordance with the development plan.

Overall Conclusion

146. For the reasons given above, I conclude that the appeal should be allowed.

J Moss

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Bord BA(Hons) PGDip London Borough of Bromley

FOR THE APPELLANT:

Jonathan Clay	Barrister, Cornerstone Barristers
David Fletcher MRTPI	Director, Strutt and Parker
Ian Wharton MCIHT	Associate, Ardent Consulting Engineers
Nigel Newton Taylor MRICS	Director, Healthcare Property Consultants
Nicola Coveney	Managing Director, Carebase Limited
Mike Hirsch	Property Director, Carebase Limited
Ruth French RIBA	Associate, Ryder Architecture
Adrian Tutchings MRICS	Linays Commercial
Sav Patel MRTPI	Associate Director, Strutt and Parker

INTERESTED PERSONS:

Tom Whild MRTPI	Associate, Ken Parke Planning Consultants on behalf of residents of Burton Pynsent House
Nigel Springer	Observer
Mrs. Ayako Salamon	Observer
Alan Woolston	Observer
Tom Woolston	Observer
Andrew Costa	Observer
R. E. Russell	Observer

HEARING DOCUMENTS

- HD01 - Planning Obligations Supplementary Planning Guidance dated December 2010
- HD02 - Email chain from former Hayes Bowls Club – last email dated 16 September 2019
- HD03 – London Borough of Bromley Local Plan Background Paper – Local Green Space dated September 2016.
- HD04 – letter from former occupiers
- HD05 – London Borough of Bromley Open Space, Sport and Recreation Assessment dated 2017
- HD06 - Email from the appellant dated 3 October 2019 – change of description of the application.
- HD07 - Correspondence submitted by the residents of Burton Pynsent House.
- HD08 - Plan submitted by residents of Burton Pynsent House entitled 'Boundary Survey with Ordinance Survey Overlay' dated November 2016.
- HD09 - The Council's Section 106 and CIL Regulations Compliance Statement

- HD10 - Email from Adrian Tutchings dated 9 December 2020 – Additional information regarding the marketing exercise.
- HD11 - Report on the Examination of the Bromley Local Plan dated 11 December 2018.
- HD12 - London Borough of Bromley Submission Local Plan 2017 – Consultation Statement (Regulation 22 (c))
- HD13 - London Borough of Bromley Development Control Committee Report dated 28 June 2012 – Review of Green Belt, Metropolitan Open Land and Urban Open Space Boundaries.
- HD14 - London Borough of Bromley - Housing and Mixed Use Site Assessments 2017
- HD15 - London Borough of Bromley - Draft Local Plan Representations 1 to 20
- HD16 - Bromley Proposed Submission Draft Local Plan consultation 2016 - Summary of Responses June 2017 - Part 4 – contents
- HD17 - London Borough of Bromley - Draft Local Plan representation from Bespoke Senior Leisure Limited dated 15 November 2017
- HD18 - London Borough of Bromley - Draft Local Plan Bespoke Senior Leisure additional hearing statement.
- HD19 - Site Visit Itinerary.
- HD20 - Letter from Bowls England dated 24 August 2020.

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiry of three years from the date of this permission.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the following plans:
 - HAYES-RYD-00-ZZ-DR-A-1001-S2-P6
 - HAYES-RYD-ZZ-00-DR-A-1002-S2-P5
 - HAYES-RYD-ZZ-BA-DR-A-3001-S2-P7
 - HAYES-RYD-00-GF-DR-A-3002-S2-P7
 - HAYES-RYD-00-01-DR-A-3003-S2-P7
 - HAYES-RYD-00-02-DR-A-3004-S2-P7
 - HAYES-RYD-00-RF-DR-A-3005-S2-P7
 - HAYES-RYD-00-XX-DR-A-0402-S2-P1
 - HAYES-RYD-00-ZZ-DR-A-3601-S2-P1
 - HAYES-RYD-00-ZZ-DR-A-3602-S2-P1
 - HAYES-RYD-00-ZZ-DR-A-3801-S2-P1
 - 12300 - Landscape General Arrangement
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification, the building labelled A, B and C on the plan number RYD ZZ 00 DR A 1002 Revision P5 - Proposed Site Plan shall not be used for any purpose other than for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)) or as a nursing home.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification, the building labelled Existing Pavilion on the plan number RYD ZZ 00 DR A 1002 Revision P5 - Proposed Site Plan shall not be used for any purpose other than for the provision of medical or health services, principally to visiting members of the public.
5. No development shall commence until a scheme for the provision of sustainable urban drainage has been submitted to and approved in writing by the Local Planning Authority. The drainage shall be completed in accordance with the approved details prior to the occupation of the development and shall thereafter be retained as approved.
6. No development shall commence until details of the existing site levels and the proposed slab level of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
7. No development shall commence until such time as a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include:

- Dust mitigation and management measures;
- The location and operation of plant and wheel washing facilities;
- Measure to reduce construction noise;
- Hours of construction;
- Hours of delivery to the site ensuring these avoid the morning and evening rush hour and the end of the school day during term time;
- Full contact details for the site management office; and
- Details of construction traffic movements, which shall include:
 - Rationalise travel and traffic routes to and from the site, as well as within the site;
 - Measures to ensure safe pedestrian movement;
 - Parking areas for construction workers; and
 - A swept path drawings for the site entrance on West common Road.

The development shall be carried out in accordance with the approved CEMP.

8. Notwithstanding the submitted details, no development shall commence until details of biodiversity enhancement have been submitted to and approved in writing by the Local Planning Authority. The details could include, but are not limited to, bat and bird boxes and bricks; bee bricks; and measures for hedgehogs and badgers. The approved details shall be implemented and completed prior to the occupation of the development and shall thereafter be retained as approved.
9. No development shall commence until details for the protection during construction of all existing trees on site and adjoining the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
10. Notwithstanding the submitted details, no development shall commence until a scheme of all hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of:
 - all hard surfacing, which shall either be constructed using porous materials or shall drain to a permeable or porous area or surface within the site;
 - existing and proposed ground levels on the site;
 - all means of enclosure;
 - all existing trees, hedgerows and other planting, identifying those to be retained;
 - a planting specification to include numbers, density, size, species and positions of all new trees, shrubs and other plants; and

- a programme of implementation.
11. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 12. Prior to the occupation of the development hereby permitted all hard landscaping shall be completed in accordance with the approved details of hard landscaping.
 13. Prior to the occupation of the development hereby permitted the access, turning space and vehicle parking shall be laid out and completed in accordance with the approved details. These areas shall thereafter be retained in accordance with the approved details and shall not be used except for access, parking and manoeuvring of vehicles in connection with the development hereby permitted and visitors to BPH.
 14. Prior to the occupation of the development hereby permitted the refuse and recyclable materials storage area shall be completed in accordance with details that shall first have been submitted to and approved in writing by the Local planning Authority.
 15. Prior to the occupation of the development hereby permitted the cycle storage area shall be completed in accordance with details that shall first have been submitted to and approved in writing by the Local planning Authority.
 16. Notwithstanding the submitted details, prior to the occupation of the development hereby permitted a travel plan shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be occupied in accordance with the approved travel plan.
 17. Prior to the occupation of the building labelled Existing Pavilion on the plan number RYD ZZ 00 DR A 1002 Revision P5 - Proposed Site Plan, the door in the south facing elevation of this building shall be obscurely glazed in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Once installed the obscured glazing shall be retained thereafter and the door itself shall only be used in an emergency.
 18. The development hereby permitted shall be completed in accordance with the Energy and CO2 Reduction Strategy dated January 2020 and shall incorporate in particular the measures set out in section 3 and 5.2 of the strategy.

**** Conditions End ****