



---

## Appeal Decision

Site visit made on 1<sup>st</sup> February 2022

**by Megan Thomas Q.C. Barrister-at-Law**

**an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities**

**Decision date: 15<sup>th</sup> March 2022**

---

**Appeal Ref: APP/D5120/W/21/3276915**

**Chislehurst and Sidcup Grammar School, Hurst Road, Sidcup DA15 9AG**

- 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 Chislehurst and Sidcup Grammar against the decision of the London Borough of Bexley.
  - The application Ref.20/02516/FUL, dated 5 October 2020, was refused by notice dated 14 December 2020.
  - The development proposed is a "new sports hall and relocation of existing PE store and groundman hut".
- 

### Decision

1. The appeal is allowed and planning permission is granted for a new sports hall and relocation of existing PE store and groundman hut at Chislehurst and Sidcup Grammar School, Hurst Road, Sidcup DA15 9AG in accordance with the application Ref.20/02516/FUL, dated 5 October 2020, subject to the conditions in the Schedule at the end of this decision letter.

### Main Issues

2. The appeal site is within Metropolitan Open Land ("MOL") to which Green Belt policy in the National Planning Policy Framework ("the Framework") applies. The main issues in the appeal are
  - (i) Whether the proposed development is inappropriate development in the MOL,
  - (ii) The effect of the proposed development on the openness of the MOL,
  - (iii) The effect of the proposed development on the character and appearance of the area,
  - (iv) The effect of the proposed development on the existing school playing fields,
  - (v) The effect of the proposed development on the living conditions of the occupants of 41-49 Hurst Road in relation to outlook, and
  - (vi) If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations, so as to amount to the very special circumstances required to justify it.

## **Reasons**

3. The appeal site is part of the land and buildings of the Chislehurst and Sidcup Grammar School. It is situated north of Hurst Road in Sidcup within a predominantly residential area. To the east of the school site is Hurtsmere School, to the west is Sidcup Leisure Centre and to the north is land associated with Rose Bruford and Holy Trinity Lamorbey Church of England School.
4. The Grammar School site is within MOL and is designated as Educational Buildings and Playing Fields in the Bexley Unitary Development Plan. It has a large playing field on its west side, four hardcourts along the north section of the school grounds and a playing field on its east, and in the north east, an all-weather pitch shared with the neighbouring school. It also has an indoor gymnasium.
5. The proposed development is for the demolition of a groundsmans/PE storage building, the construction of a new sports hall and the construction of a replacement groundsmans/PE storage building. The latter building would be erected in the north of the site on part of a playing field, close to two existing buildings. It would be single storey with a flattish roof and would be very broadly 11m in length and 8.5m wide. The proposed sports hall would be about 10m tall, 20m wide and 40m long and would be built on the majority of the footprint of the demolished groundsmans' building in the south part of the school grounds immediately west of a roadway which allows circulation in and around some of the school buildings. To its immediate east would be the western playing field which would be large enough to accommodate a 90m x 55m rugby pitch (with run off area).
6. The new sports building would accommodate a four-court hall capable of housing basketball, netball, volleyball, badminton, kourtbball and handball. It would have changing rooms.

### *Whether the development is inappropriate development in MOL*

7. None of the parties has directed me to any other policy document which details what is meant by 'inappropriate development' within MOL beyond the Framework. In such circumstances it is reasonable to use the Framework to define the nature of the proposal in this case, even though it technically applies to Green Belt and not MOL.
8. Paragraph 147 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt. The construction of new buildings in the Green Belt is inappropriate unless they fall within certain exceptions set out at paragraph 149. Certain other forms of development are also not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it (see paragraph 150). None of these exceptions applies to the new sports hall. However, in relation to the groundsmans' building, paragraph 149(d) is relevant. The replacement of a building provided the new building is in the same use and not materially larger than the one it replaces is not inappropriate development. The new groundsmans' building would be, very broadly, a similar size and volume to the one being replaced and fulfils 149(d).

Consequently, I conclude that the proposed replacement groundsman's building is not inappropriate development, however, the proposed sports hall is inappropriate development in the Green Belt.

9. Green Belt, and by analogy MOL, is a policy serving five purposes which are set out in paragraph 138 of the Framework. The new sports hall would not conflict with any of those five purposes. It would not result in unrestricted sprawl of a large built-up area, it would not result in neighbouring towns merging into one another, it would not encroach into the countryside, it would not harm the setting and special character of an historic town and urban regeneration and the recycling of derelict and other urban land is not at issue here.
10. Notwithstanding the lack of conflict with MOL purposes, the new sports hall is inappropriate development and by definition harmful to the MOL and substantial weight must be given to that harm in the decision-making process.

#### *Openness*

11. Given that I have found the replacement groundsman building to be not inappropriate development in the MOL, I do not proceed to consider its impact on openness in line with the judgement in *R. (Lee Valley Regional Park Authority) v. Epping Forest District Council* [2016] EWCA Civ 404.
12. Turning to the proposed sports hall, it is correct to bear in mind that one essential characteristic of the MOL is its openness and the location proposed for the new hall is, other than the groundsman's building, free from development. I will deal with its visual impact under the character and appearance section below. However, the very large size and mass of the proposed hall has a significant adverse impact on the openness of the MOL and I consider that substantial weight should be attached to that harm to openness. Whilst the proposed building is arguably fulfilling an educational need (which I consider below) that does not overcome the fundamental point that the proposal would result in the material erosion of MOL openness.

#### *Character and Appearance*

13. Turning first to the proposed replacement groundsman's building, its height, scale and proposed materials are not excessive or incongruous for a storage building found on a school campus. It would be a modest development and its new location would cause little visual intrusion. It would not harm the character or appearance of the area.
14. The sports hall would be large and rectangular with little articulation, but it has to fulfil a function which, to a large degree, dictates its shape and volume. The materials used would be red brick with grey cladding and would not be out of place on a school site. The proposed location of the sports hall is on the western playing field itself, but as it would be situated close to the nucleus of school buildings some of which rise to 3 storeys, it would appear as part of the group of institutional-like buildings and would harmonise with them. It would not be at odds with the character of the school site. From the west, it would generally be seen against the backdrop of other school buildings but from other directions an appreciation of its bulk could not be avoided. It would restrict views from the access road westwards until one was clear of the northern end of the hall. However, whilst it would have some undesirable local impacts,

overall, it would not harm the institutional character of the site or harm the appearance of the area.

*Loss of Playing Field*

15. The Council consider that the proposed hall would result in a harmful loss of existing playing field without reasonable justification or mitigation. Sport England consider that there is reasonable justification or mitigation for the loss and confirm their view that the benefits to sport offered by the proposed sports hall would outweigh the impact on the playing field, especially given that the school are willing to enter into a community use agreement, extending the benefits to the wider community. I note this view of Sport England and agree with it. In coming to that view I have borne in mind that the new groundsman's building also results in some playing field loss even though that area of the site is a reasonably enclosed part of the school's recreational space.
16. Notwithstanding the loss of some of the playing field, the submitted plan shows pitch markings demonstrating that the 90x55m rugby pitch would be retained as existing. The pitch allows the field to be used for different sports and training, and is not affected by the siting of the proposed sports hall. The sports hall would therefore provide enhanced indoor sports on the wider site, rather than affecting the current sports offer. As such, the existing open playing fields would not be unduly affected by the proposal.
17. London Plan policy S5 dealing with Sport and Recreation takes a balanced approach to loss, indicating amongst other things that existing sports and recreational land (including playing fields) and facilities for sports and recreation should be retained unless the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current use. Below I have come to the view that it does.
18. On this issue, I conclude that the loss of existing open playing field has reasonable justification and mitigation and is not a compelling reason for refusing planning permission.

*Living conditions of Occupants of 41-49 Hurst Road*

19. The rear gardens of 41-49 Hurst Road back onto the Grammar School grounds. The southern and western elevations and part of the roof of the proposed sports hall would be, to differing degrees, visible from the dwellings and from their gardens. Whilst the building would be large and high, the separation distances between the rear elevations of the dwellings and the new hall would be generous and there would be no undue sense of enclosure or material loss of outlook. There are also mature trees on the common boundary which would filter views through to the hall. When in their gardens, occupants are likely to be aware of the hall but the existing boundary treatments are typically high leaving only the upper parts of the hall likely to be visible. I had the benefit on my site visit of access to one of the rear gardens and my observations from that visit support the view I have since formed.
20. On this issue, I conclude that the living conditions of the occupants of 41-49 Hurst Road would not be unacceptably harmed by reason of loss of outlook, when in their houses or their gardens.

## **Other Matters**

21. I have considered other matters raised in representations by interested parties. I am content that the ecological work undertaken by the Appellant demonstrates that due consideration has been given to any protected species on or near to the appeal site. There are opportunities for ecological enhancement and there are planning conditions ensuring that the development is sensitive to ecological interests. An arboricultural assessment has been prepared confirming all the existing trees on site would be retained, some pruning would occur and recognised standards of care would be taken when construction works might affect trees. I am content that the assessment is reasonable and accurate and, with the imposition of conditions, trees would not be damaged. No overlooking or loss of privacy issues arise given the lack of windows in the sports hall.
22. In respect of parking associated with the community use, the community use agreement must address parking associated with that use and so the Council has control over that aspect of the use. There could be some low level noise, traffic noise, disturbance and/or light pollution during out-of-school hours which has not been present before, however, given the screening between the school site and the neighbouring gardens, and the locations of rear elevations of dwellings, I do not consider that those impacts would warrant refusal of the planning permission in this case. In addition to that a condition requires an acoustic assessment of the development to be undertaken including assessing any potential noise breakout from the use of the sports hall and any fixed external plant and equipment. This would encompass potential noise during school and out-of-school hours. Appropriate mitigation measures are required to be taken.

## **Consideration of potential 'Very Special Circumstances'**

23. Both local and London-wide development plan policy require that proposals that amount to 'inappropriate development' in MOL, as is the case here, should be refused in the absence of clearly demonstrated very special circumstances. The Appellant considers that there are a number of material considerations amounting to very special circumstances which justify the proposal. I consider each of these in turn before coming to an overall conclusion on very special circumstances.
- (i) educational need
24. In order to teach PE/sport on a year round basis and to a variety of pupils of different ages, it is, amongst other things, necessary to have indoor sport and exercise facilities when the weather prevents outdoor sport. There is an existing gymnasium at the school and an arrangement to use the nearby Sidcup Leisure Centre. In respect of the gymnasium, it is marked out for one badminton court and is undersized for competitive ball sports including basketball. There is no formal seated teaching space. Badminton cannot be effectively taught at the school, not just because there is only a single court but also because at just over 4.5m, the height of the gym does not allow for the full flight of the shuttlecock. The gymnasium also has ceiling mounted equipment which further reduces its effectiveness for badminton.

25. Local interschool home fixtures for indoor competitive sport mainly have to be arranged as away fixtures. Where the school is involved in national interschool competition, offsite arrangements have to be made for home fixtures. The new sports hall would provide usable courts for basketball, netball, volleyball, badminton, kourtbball and handball. For example, indoor netball interschool fixtures could be confidently offered.
26. Turning to the Sidcup Leisure Centre, this is situated close to the appeal site and contains a 4-court sports hall. However, it takes time to walk classes over and back to that facility and register them on-site. That can reduce actual activity time to about 30 minutes out of the hour-long lesson time. Furthermore, when pupils are off-site in school time, there are additional safeguarding and security issues which are otherwise avoidable. Furthermore, the Leisure Centre's 4-court sports hall does not have netball or handball markings. It is not readily available to the School as it is used for a number of other public activities such as martial arts classes, group exercise classes, table tennis, soft play, badminton and yoga classes so there is no guarantee that other classes and sessions will not be running when the indoor PE sessions for the School are required. Taking all these factors into account, I have concluded that the School cannot reasonably rely on the Leisure Centre as a substitute for provision of its indoor sporting needs.
27. From the evidence I have concluded that the school needs the proposed larger hall in order to be able to offer a reasonable PE curriculum.

(ii) Use by the Community

28. The proposal would meet the various existing needs of the school, but also provide capacity and facilities for the local community via a community use agreement. Moreover, these facilities would meet various club, national or international standards. A Community Use Agreement can be secured via a planning condition. The intention is to permit community use outside school hours. The details of the Agreement must be approved by the local planning authority. It would be a tangible benefit to the community, whether the users be private or public bodies, clubs, families or individuals, to have access to these additional sporting facilities.

(iii) lack of alternative sites

29. In this case, where the proposal would result in harm to MOL which has a heightened level of protection through planning policy, I consider it appropriate to address other possible alternative sport/activity facilities/locations for the facility that others have suggested. I have noted and considered possible alternative places on the campus which might house a sports hall or be part of a redevelopment. On the evidence before me and from my site visit, none of these appear to me to be realistic or better locations for the new hall than is before me in this appeal.
30. I have considered Sidcup Leisure Centre above and decided that it does not provide an appropriate alternative facility to the proposed on-site sports hall for the Grammar School. Other places suggested are Holy Trinity Church Hall, Sidcup Youth Centre, Lamorbey Residents Association Pavilion and Hurst Community Centre. However, none of these represent realistic alternatives to the 4 court sports hall that is proposed. Putting aside the need to travel to those places and the disadvantages in doing so, many offer just a room or hall



with no sport pitch markings. I have come to the view, on the evidence before me, that there is no realistic alternative that could offer the holistic sports provision of the proposed sports hall.

### **Harm and Other Considerations**

31. I have identified a number of adverse impacts resulting from the proposed development. There would be harm by definition from the sports hall being inappropriate development in MOL. Substantial weight attaches to that harm. Similarly, I have found there would be harm from the loss of openness caused by the sports hall and substantial weight attaches to that harm. I have not identified any other material harm subject to the imposition of appropriate conditions.
32. To counter the harms there are other considerations, namely, the ability to meet educational need to which I attach substantial weight, the provision of community use of the facilities to which I also attach substantial weight, and the lack of genuine alternatives for providing the educational needs, to which I attach moderate weight. I find that these other considerations taken together clearly outweigh the harms that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

### **Conclusions and The Planning Balance**

33. The proposed sports hall is inappropriate development in the MOL, however, the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify it.
34. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires 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 made in accordance with the plan unless material considerations indicate otherwise. The development plan for Bexley includes the London Plan 2021, the Bexley Core Strategy (2012) and the saved policies of the Bexley Unitary Development Plan (adopted 2004).
35. It is my view, following careful consideration of the evidence, that the proposal in this case would accord with policies G2 and G3 of the London Plan 2021 and policies CS01 and CS17 of the Bexley Core Strategy, as, although the development is for the most part inappropriate development it has passed the Framework Green Belt test of very special circumstances. It would also accord with policy S5 of the London Plan in particular S5(C)(3). It would not conflict with design policies D3, D5 and D8 of the London Plan or policy ENV39 of the UDP. (Policy ENV19 of the UDP is cited by the Council but is a policy that does not apply to MOL land.) It would also not conflict with policy CS01 of the Core Strategy or saved policy ENV39 of the UDP in relation to the protection those policies give to the living conditions of neighbours. Accordingly, I conclude that the proposed development would accord with the adopted development plan for the area when considered as a whole and that there are no material considerations which indicate a decision should be made otherwise than in accordance with it.

## **Conditions**

36. The Appellant and the Council suggested a number of conditions in the event that the appeal might be successful. Those which are pre-commencement conditions have the approval of the Appellant. I have considered conditions in the light of advice in national planning practice guidance. I have imposed a condition tying the development to the submitted plans for the avoidance of doubt. In order to preserve the appearance of the area there is a condition ensuring that the materials used are those specified on the plans. There are conditions ensuring that mitigation set out in the Preliminary Ecological Appraisal is implemented, that any lighting is sensitive to bats and ensuring protection for nesting birds. These are necessary to protect the biodiversity interest of the site.
37. In order to protect trees I have imposed a condition requiring an arboricultural method statement to be approved and implemented. I have also imposed a condition requiring an acoustic assessment to be undertaken and for it to detail appropriate noise mitigation measures. It would have to be approved in writing by the Local Planning Authority and implemented by the developer. It is needed to ensure that any noise from the sports hall building does not unacceptably harm living conditions of neighbours.

## **Overall Conclusion**

38. Having taken into account all representations made, for the reasons given above, I allow the appeal.

*Megan Thomas Q.C.*

**INSPECTOR**

## **Schedule of Planning Conditions**

1. The development hereby permitted shall be begun not later than three (3) years beginning with the date on which the permission is granted.
2. The development hereby permitted shall be completed in all respects strictly in accordance with the following plans and documents:
  - Arboricultural Impact Assessment (13442\_R02)
  - Preliminary Ecological Appraisal and Bat Roost Assessment (13442\_R01)
  - CHSGSH-IWD-XX-XX-DR-A-2100-P01
  - CHSGSH-IWD-XX-XX-DR-A-2400-P1



- CHSGSH-IWD-XX-XX-DR-A-2401-P01
  - CHSGSH-IWD-XX-XX-DR-A-2402-P01
  - CHSGSH-IWD-XX-XX-DR-A-2500-P01
  - CHSGSH-IWD-XX-XX-DR-A-2510-P01
  - CHSGSH-IWD-XX-XX-DR-A-2520-P01
  - CSGSSH-IWD-XX-XX-DR-A-2550-P01
3. The materials and finishes shall be as indicated within the submitted application and in accordance with the approved plans. The scheme shall be carried out in full accordance with those details, as approved and thereafter retained as such.
  4. No works pertaining to the construction of the Sports Hall (excluding the demolition of the groundsman's building) shall commence until a community use agreement (including car parking and access arrangements) prepared in consultation with Sport England has been submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement has been provided to the Local Planning Authority. The agreement shall apply to the sports hall and on-site car parking and include details of pricing policy, hours of use, access by non-educational establishment users, non-members, management responsibilities, and a mechanism for review. The development shall not be used otherwise than in strict compliance with the approved agreement.
  5. Prior to the commencement of development, a detailed Sensitive Lighting Strategy in relation to bats identified in the Ecological Report prepared by Tyler Grange accompanying the application shall be submitted to and approved in writing by the Local Planning Authority. All works shall then proceed in accordance with the approved strategy unless otherwise agreed in writing.
  6. All works shall be undertaken outside of nesting bird season (March to August inclusive) and in the instance a birds nest is discovered, by creating a suitable buffer from disturbance (typically a 5m radius) that is only removed when the nest is no longer in use.
  7. Prior to the commencement of development an acoustic assessment of the development shall be undertaken (by a suitably qualified acoustician) and submitted for approval in writing by the Local Planning Authority. The assessment shall include details of potential noise breakout from the use of the sports hall and detail appropriate noise mitigation measures as deemed necessary to protect neighbouring amenity. It shall also include an assessment of noise impacts associated with any fixed external plant and equipment in accordance with BS4142:2014+A1:2019. The cumulative noise rating levels from all fixed plant shall be at least 5dB below the representative background level when measured at any nearby residential façade. The scheme

approved by the Local Planning Authority shall be implemented before the use is occupied and shall be maintained at all times.

8. Prior to the commencement of development including demolition, an Arboricultural Method Statement in accordance with BS5837:2012, including tree protection measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved Statement and existing trees identified in Arboricultural Impact Assessment (13442\_R02, Tyler Grange, 9/10/20) as to be retained shall be protected in accordance with the measures outlined in the approved Statement.
9. The development hereby permitted shall be carried out in accordance with the mitigation measures suggested within the Preliminary Ecological Appraisal and Preliminary Bat Roost Assessment (13442\_R01, Tyler Grange, 9/10/20).