



Appeal Decision

Hearing Held on 14 September 2021 and 2 & 3 March 2022

Site visit made on 4 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Appeal Ref: APP/C5690/W/20/3254911

Willow Tree Riding Establishment, Ronver Road, London SE12 0NL

- 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 Austringer Estates Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/111719, dated 29 March 2019, was refused by notice dated 28 February 2020.
 - The development proposed is described as Demolition of existing stables and construction of new equestrian facilities to include stalls, a barn shelter, tack building, reception/office, and a perimeter track for riding, together with use of existing access onto Ronver Road and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development description and establishment name in the banner heading above is taken from the Statement of Common Ground (SoCG). There is disagreement between the main parties about whether the lawful existing equestrian facility extends to the whole appeal site.
3. The appellant is of the view the existing lawful use extends to the whole appeal site. The Council's view is that it is limited to a central section of approximately 2 hectares referenced by a previous Inspector as being occupied by a former operator. The creation of new paddock areas at that time (also within this appeal site) were outside Willow Tree Riding Establishment¹. That decision is over 7 years old and the existing trees on that area have matured significantly. There are no signs of an intervening equestrian use taking place outside the 2 hectares referred to.
4. Parts of the fencing defining the existing paddocks are still evident and vegetation within and around the paddocks is primarily grassland with some ruderal plants. Outside those paddocks and north, south and west of existing structures, much of the land is heavily treed, and the western bund has steep levels. Two buildings on the wider site, based upon their repair and vegetation cover, have not been used for a considerable number of years.

¹ Paragraphs 9 and 10 of Ref. APP/C5690/A/13/2205776.

5. While they may not be of an age protected by the Area Tree Preservation Order (TPO), the age, height and extent of trees and the fencing provide a strong indication that sizeable areas have not been used for an equestrian use for a considerable number of years, if ever, including the area labelled as 'open field' at the north of the site². Much of this field was surveyed as being broadleaved woodland in the Ecological Impact Assessment (EcIA). These areas could not be readily used without considerable work, whether or not they are within the same planning unit for this application.
6. Based upon what I heard, what I saw and the evidence before me, the lawful existing equestrian use does not seem to extend to the whole site. Therefore, I have considered the development as set out in the SoCG but with a change of use of part of the appeal site.
7. Since the appeal was lodged, the London Plan (2021) (the London Plan) was published on 2 March 2021 (replacing the London Plan (2016)), and the revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. The Grove Park Neighbourhood Plan (2021) (the NP) was agreed at referendum on 27 August 2021, so the plan comes into force as part of the statutory development plan, reflecting section 38(3A) of the Planning & Compulsory Purchase Act. The Council and the appellant have had the opportunity to comment upon the implications of these, which I have considered in determining this appeal.
8. The Council did not express an objection in respect of flood risk or biodiversity. However, having regard to matters raised by interested parties and the evidence before me, I sought the views of the Council and the appellant on these matters and have taken these into account in determining this appeal. This is reflected in the main issues below. A submission primarily in respect of biodiversity, was sent to the parties in advance of the first day of the hearing by the Baring Trust (Refs TW1 – TW5) and I accepted a letter to the Baring Trust at the hearing in respect of heritage matters (TW6). The Council and the appellant had sight of these documents and were allowed the opportunity to comment upon them during the hearing.
9. The Council's notification of the resumption of the hearing was initially not sent out to all those who made representations. The Council subsequently sent a letter notifying of the date and time of the resumption. However, it did not give 14 days' notice. At the Hearing the main parties agreed there would not be a significant risk of prejudice if the Hearing were to remain open until 14 days after the Council's further notification was sent. During this time no interested parties stated they wished to appear at a further resumption. However, views were submitted, which I allowed the Council and the appellant the opportunity to comment upon, and I have taken these into account.

Applications for costs

10. Following the closure of the Hearing applications for costs were made by Austringer Estates Ltd, the Council of the London Borough of Lewisham and the Baring Trust in accordance with an agreed timetable. The application by Austringer Estates Ltd was made against the Council of the London Borough of Lewisham and the Baring Trust. The Council of the London Borough of

² Plan/drawing MB220107-01-0 Rev A.

Lewisham and the Baring Trust made applications against Austringer Estates Ltd. These are the subject of separate Decisions.

Main Issues

11. The main issues are:

- whether or not the proposed development would be inappropriate development on Metropolitan Open Land (MOL);
- the effect of the proposed development upon the character and appearance of the area, including upon protected trees;
- the effect of the proposed development upon biodiversity;
- the effect of the proposed development upon the living conditions of the occupiers of No 77 Ronver Road, with particular reference to outlook;
- the effect of the proposed development upon highway safety; and,
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

12. The appeal site comprises over 5 hectares of land running parallel to the Hither Green railway sidings, designated as MOL. Policy CSP12 of the Lewisham Local Development Framework Core Strategy (2011) (the CS) states that MOL should be protected in accordance with the principles of PPG2 and the London Plan. Policy G3 of the London Plan affords MOL the same status and level of protection as Green Belt, protecting it from inappropriate development in accordance with national planning policy tests for the Green Belt. Policy GI1 of the NP seeks to protect Gove Park's Green Spaces in accordance with national policies and the development plan.
13. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. The appellant is of the view the development falls within the exceptions in paragraph 149 b) and d) of the Framework, so does not constitute inappropriate development. It was also put to me by the Council that the proposal falls to be considered under paragraph 149g), to which the appellant did not object.
14. Paragraph 149d) states an exception is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Based upon table 1 in the appellant's letter³, there would be a 6 cubic metre volume decrease in buildings. This does not consider two small shed buildings to be removed, understood to have been in some historic storage function, but not surveyed due to their state of repair. From what I saw given the structures that remain, while they have been largely subsumed by vegetation, their removal would improve openness by a small amount.

³ PWA Planning dated 2 February 2022.

15. Taken together, in themselves, notwithstanding their height, the new buildings are not physically materially larger than those they would replace. The term 'building' should be read as not excluding more than one building, providing they can sensibly be considered together in comparison with what is to replace them. Based upon what I heard, overall, the new buildings would be similar in function to those they are proposed to replace. However, it was put to me that the development should be assessed as a whole against the exceptions, which would be consistent with the aims of MOL. There is no evidence before me that this would be an incorrect approach.
16. The exception to inappropriate development at paragraph 149b) does not preclude the change of use of land to outdoor sport and recreation, as long it preserves the openness and does not conflict with the purposes of including land within MOL. Paragraph 149g) lists an exception as the partial or complete redevelopment of previously developed land provided it does not have a greater impact on the openness than the existing development, similar to 150e). My findings on openness will dictate whether the development meets exceptions under paragraph 149b) or 149g) of the Framework.
17. The existing main stable block has a maximum height of approximately 3.66m, with other existing buildings to be replaced of heights between approximately 2.25m and 2.89m. The proposed buildings all have a maximum height of approximately 3.50m or above with the barn shelter at maximum of approximately 4.19m. The development would remove outlier buildings and bring buildings into a more centralised area with a marked reduction in floorspace. However, their height, arrangement and spread around the new larger car park and track, the location of the barn shelter, and increased prominence, results in an adverse effect upon the visual openness of MOL.
18. Some existing fencing would be removed around existing paddock areas, and new fencing erected which would enclose each side of the track and five new paddock areas. The development would result in a considerably greater length of fencing at the site. While fencing could be erected under permitted development rights⁴, it is part and parcel of the proposals before me. It could be designed to be of a height and construction to limit its effect upon openness. However, taking this into account, the increase in fencing results in a much greater extent of development and enclosure of the site.
19. It was put to me that if the track were created through a no dig method with natural materials, despite being within the development description, it would not constitute operational development. While I have concerns as to whether the track could be created in this way in the areas at higher risk of surface water flooding, I have considered the proposals on this basis. The picnic area would be an informal area of benches or tables and the feeding stations comprise containers, so neither would comprise operational development.
20. The parking area would be a made surface markedly larger than the existing and the much greater extent of fencing around the track and paddocks would seem to spread into other areas that do not have a lawful equestrian use. This would result in a significant urbanising effect and spatial harm to openness of MOL. There would also be further paraphernalia such as that to meet the nutritional needs of animals, that would also adversely affect openness.

⁴ Class A, Part 2, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended).

21. The adverse effects upon visual and spatial openness means the development would not meet the exceptions in 149b) or 149g) of the Framework. This would not necessarily conflict with the functions of MOL in Policy G3(B) of the London Plan for the designation of new areas of MOL. However, it would conflict with the principle set out in paragraph 8.31 of the supporting text which states MOL protects and enhances the open environment. At the hearing the appellant clarified they do not advance that the clearance of trees and vegetation should be considered to improve the openness of MOL as suggested in their appeal statement⁵. The extent of the harm to openness means the development conflicts with the purposes of including land within MOL under paragraph 138a) of the Framework insofar as the development would both have the appearance of and physically encroach within the MOL.
22. The railway embankment, land levels from the south circular, trees on the network rail land to the south and neighbouring residential properties, limits the visibility of the appeal site from some directions. However, the harmful impact upon openness would be visible from within the site, the site entrance, and a number of properties on Rayford Avenue and Ronver Road. While the visibility of it may reduce in time as vegetation matures, this is likely to take a significant number of years to be effective, especially given the amount of vegetation to be removed and new planting. Moreover, given the height of the new buildings, the more open visibility from the site entrance, and the visibility from neighbouring properties, in my view the planting would not overcome all of the visual harm to openness.
23. For the reasons set out above, the development would be inappropriate development on MOL. Therefore, it would conflict with Policy CSP 12 of the CS which states that MOL should be protected from inappropriate development to ensure there is no adverse effect upon its amenity and enjoyment in accordance with the principles of the London Plan. The development would conflict with Policy G3 of the London Plan insofar as this confirms MOL is afforded the same status and level of protection as Green Belt, which should be protected from inappropriate development in accordance with national policy tests for the Green Belt. The Framework confirms that openness is an essential characteristic of Green Belt (applicable to MOL) and that development which would be inappropriate development is, by definition, harmful.

Character and appearance (including protected trees)

24. The site comprises primarily land under tree and scrub, grassland, with modest buildings, designated as Urban Green Space, part of a Green Corridor and Site of Importance to Nature Conservation (SINC). While of little architectural merit, the low profile and compact layout of the existing courtyard and northern outlier buildings, and vegetated parking area within a treed backdrop have an informal feel. Their layout and height mean they appear as modest and low key elements of the appeal site. Notwithstanding their disrepair, some evidence of vandalism and sporadic fly-tipping, the verdant and wooded nature of the appeal site means it positively contributes to the character and appearance of the area.
25. The Council raises no objection to the design of the new buildings, and I see no reason to disagree. In this regard the development is compliant with some objectives of Policy CSP 15 of the CS and Policy 30 of the Development

⁵ 5.18 of the Statement of Case on behalf of the Appellant (PWA Planning, June 2020).

Management Local Plan (2014) (the DMLP). However, the greater height, formalised layout, new fencing, larger car park area, and loss of vegetation beyond that required for safety and Japanese Knotweed removal, would have a significant urbanising effect. There might be some detrimental change and succession of habitats if the development does not take place. This would be part mitigated if the appellant were to re-commence an equestrian use of parts of the site. However, whether this occurs, or the site remains vacant, woodland habitat would continue to grow and mature.

26. The development would result in the loss of a significant number of trees due to the new buildings, track, fencing, car park, picnic area and hay cropping areas. I note many may post-date the TPO and only a relatively limited number of protected trees are to be removed. The most recent AIA clarifies removal would amount to either 4 or 5 individual trees and 14 groups and parts of groups. Four groups and two individual trees for removal are listed as not protected. The removals are generally categories C, and U with a limited lifespan, and the appellant suggests only one 'significant' tree would be lost. However, the collections and groups of trees and other vegetation to be removed make a significant positive contribution to the character and appearance of the appeal site and the area.
27. I questioned how many additional trees might need to be removed due to the association with equine disorders, but this could not be confirmed. Oaks, Sycamore and Prunus Family trees feature a number of times in groups close to the track and paddocks in Appendix 1 of the AIA⁶. This casts doubt as to whether some additional tree removal may be necessary, exacerbating the harm. It was put to me that horses that may browse track side trees similar to pruning effects, provided tree trunks are a sufficient distance. However, a number of new trees would be very close to the track, and in thin bands. This gives me concerns some would be damaged in a way detrimentally influencing their future health, growth, form, and landscape mitigation properties.
28. The development layout, loss of trees and group severance would highly formalise large areas of the site and harm the positive value of the groups and their contribution to the area. Appendix 6 of the Landscape Proof of Evidence (LPoE) and Landscape Statement (LS) suggests from the 20 viewpoints listed there are no landscape effects from most, from one it would be negligible, and from six it would be minor or moderately beneficial after year one of the landscaping, as a worst case scenario. I do not agree with these conclusions. Even accounting for the need to remove trees for safety reasons and Japanese Knotweed removal under a fall-back position, the larger parking area, tree loss, and more prominent buildings would result in harmful effects from the viewpoints focussed towards the prominent site entrance area (1 -7).
29. I also fail to see how the development could result in no negative effects from around viewpoint 16 in the short and medium term given the visibility through the Northbrook Park trees. Viewpoints 8 and 9 are from the highway so do not demonstrate the effects at the rear of residential properties, which represent a number of close proximity receptors. Notwithstanding the proposed landscaping, my view is there would be negative effects from these locations for several years.

⁶ Arboricultural Impact Assessment (dated January 2022) by Arbor-Eco Consultancy and Arboricultural Report by Martin Dobson Associates (20 January 2021).

30. It was put to me that the point at which the landscaping proposals would result in an appreciable benefit to the landscape would be 3 – 5 years, although this would be mostly from within the site. The size of trees to be removed, prominence of the new buildings, the large size of the hay cropping and formalised grazing areas, the narrowness of new tree cover on part of the eastern side of the appeal site, and the significant length of track and fencing close to the boundary with Northbrook Park, suggests it would be difficult to mitigate the harm from the development even in the longer-term.
31. I was informed that realising the 'Major beneficial' effects to Trees and Shrubbery/Scrubland in paragraph 5.9 of the LPoE would take 5 years. However, in the context of the considerable vegetation removal, based upon what I saw and heard and the evidence before me, I simply cannot agree that around 5 years from planting there would be positive effects of anywhere near the magnitude described. This is due to the nature of the development, the visibility and sensitivity of the amount, size, and age of trees to be removed, and the location and specification of planting. The development might adhere to some of the principles in the National Design Guide. However, my view is there would still be overall residual harm at 5 years, and any benefits overall would take a considerable number of years to result, if at all.
32. I see no substantive reason why the TPO would not be enforced or that there are insufficient resources to determine applications. The administrative burden upon the LPA of dealing with applications for trees and unlawful removal do not significantly weigh in favour of the scheme. There would be some visual benefits from removal of fly-tipping, however, this would be limited. Whether or not guidance suggests the current TPO should be reviewed, it is acknowledged many smaller trees are not protected by the TPO. Ash dieback is described as present in many saplings. However, the full number and distribution of infected trees are not fully explained. Given this and the Council's advice that such trees should generally sought to be retained for as long as possible, this matter attracts limited weight.
33. Suitably worded planning conditions could secure tree protection and mitigation during construction works, as well as planting and management. However, any visual and landscape benefits including through the improved management of protected trees, new planting and management would take a considerable number of years to result, and I am unable to conclude an overall benefit would result from the proposals as a whole.
34. The visual effects of the development would have little influence if any on National Level NCA Inner London 112 character area, the wider Lewisham townscape, or the objectives of the Lewisham Characterisation Study (2019). However, harm would be visible from within the site, the entrance and many dwellings that line the western side of Ronver Road and Rayford Avenue, the service road rear properties on Rayford Avenue, and from parts of Northbrook Park. Therefore, I am of the view the development would not add to the overall quality of the area or provide sufficiently effective landscaping in sympathy to local character as sought by Framework paragraphs 130 a) – c).
35. For the reasons set out above the development would be harmful to the character and appearance of the area, including to protected trees. It would conflict with Policy CSP12 of the CS which expects development to protect the character and amenity of the area, including through protecting trees,

preventing the loss of trees of amenity value, and protecting the character of open spaces. It would also conflict with paragraph 174 of the Framework, insofar as this seeks to protect and enhance the natural environment.

36. I do not find a conflict with Policy 25 of the DMLP, as the appellant has provided evidence and tree planting details to meet its technical requirements. However, this does not overcome or mitigate the harm I have found.

Biodiversity

37. The appeal site is part of the Hither Green Sidings SINC. Its mosaic of habitats includes buildings, hardstandings, paddocks, deciduous woodland, tall ruderal plants, scrub, and semi-improved grassland. The Ecological Impact Assessment (2018) (EcIA) concluded breeding birds and a low population of viviparous lizards were present within the site, but there was deemed to be a likely absence of stag beetles and great crested newts. Surveys identified several passes of foraging and commuting bats (July 2019), but none emerged from buildings and surveyed trees had a low or negligible potential as roosts.
38. The committee report (February 2020) advised at that time, reptile (July 2018), bat (July 2019) and bird surveys (July 2018) were on the cusp of validity due to their age. However, the Council does not raise an objection on biodiversity matters. An update to the appellant's Preliminary Ecological Appraisal (dated 20 July 2020) concluded that detailed surveys should be undertaken in 2021 including a Botanical Survey, Invertebrate Survey, Breeding Bird Survey, Reptile Presence/Absence Survey, Bat Emergence and Transect Surveys. The surveys have not been undertaken.
39. CIEEM⁷ advice I was provided with advises surveys of 18 months to 3 years old may need a professional ecologist to undertake a site visit, an update of the desk study information and then a review of their validity, based on listed scenarios. I have been provided with an updated site survey only⁸. It is not clear if the conclusion that no further protected species surveys were necessary was due to the suitability of the habitat or the time of year. However, the Council and appellant agreed these could be secured by a Grampian planning condition. Having regard to the CIEEM guidance and the update information, based upon what I heard, I can be satisfied at this time, new protected species surveys are not necessary for me to determine this appeal.
40. Interested parties have concerns in respect omissions of Botanical and Invertebrate Surveys, citing examples of what are suggested to be some rare invertebrates being reported. I am also informed that submitted surveys were undertaken too late in the year to see species that flourish in the Spring and Summer. There is contention as to the presence of wet woodland at the appeal site. One of the appellant's updated walkover surveys states the diversity of species suggests it is not present⁹. While I noted some water, limited reedbeds and wetland tree species, I cannot conclude wet woodland is present.
41. Further surveys had been recommended to fully identify protected and priority habitats and species on the site and enable a more thorough Biodiversity Impact Assessment (BIA) to take place. However, at this time the Council and

⁷ Chartered Institute of Ecology & Environmental Management Advice Note: On the lifespan of ecological reports and surveys (April 2019).

⁸ Statement on Ecology by Rachel Hacking (January 2022).

⁹ P. 4 of the Ecological Conditions Update Letter by Kingfisher Ecology (20 July 2020).

the appellant were of the view that little may have changed on the site. Having heard all that I did, while noting the contrary views from interested parties, on balance, it is likely I have sufficient information to understand the ecological baseline, value, and implications of the development.

42. It is likely that whether the use of the site takes place under a fall-back position or remains vacant, there would be succession and maturing of some habitats such as the woodland. While this may reduce habitat diversity it would still provide beneficial habitats which the BIA currently identifies as being of a type of medium distinctiveness.
43. The long-term habitat creation, enhancement and management set out in the appellant's BIA¹⁰ advises through the variety of habitats and resulting mosaic, it has the potential to achieve a Biodiversity Net Gain of 0.64% in accordance with the DEFRA 2.0 Metric after around 30 years, improving the SINC status¹¹. In the meantime, there would be harm to biodiversity. However, I was informed that the DEFRA 2.0 Metric is superseded and not the most accurate tool for habitat establishment, as the full value of the mosaic and habitat structure may not be reflected in the metric calculation. It also does not quantify the proposed protected species mitigation measures.
44. The plan in the BIA¹² shows that the Urban Mosaic habitat to be created would be on an area which the landscape proposals shown for tree planting, providing important component of landscape mitigation. Therefore, the urban mosaic habitat delivery units would not take place on this area, reducing its contribution to the calculation of gain. Despite my concerns, I was assured the new wet woodland could be created while ensuring the track is useable.
45. Despite all of the foregoing, based upon what I heard, subject to new species and habitat surveys, a Biodiversity Method Statement, a new BIA, a new landscaping scheme and new planting schedule, could be submitted to ensure a greater biodiversity gain than suggested in the current BIA. The planning conditions could also secure a long term landscape and ecological management plan, a Biodiversity Monitoring Strategy, biodiversity sensitive lighting, an Ecological Construction Plan, restrictions upon the timing of certain vegetation and building removal. Subject to these the development could be made consistent with the aims of the Natural Environment & Rural Communities Act 2006 and criteria (i) and (ii) of Policies GI1(2) and GI2 of the NP.
46. The evidence suggests the net gain might be limited and take a considerable number of years to result, and in the meantime, there would be harmful effects. However, the development plan and Framework do not specify a time period or quantity of gain, and I was told the provisions of the Environment Act 2021 relating to biodiversity net gain are not yet mandatory.
47. For the reasons set out above, the development would result in long-term net gains to biodiversity. Therefore, it would not conflict with the aims of Policy CSP12 of the CS which requires that biodiversity is preserved and enhanced. In the short and medium term there would be a conflict with Policy G6 of the London Plan with respect to the protection of the SINCS. However, in the longer term it would meet this objective and ensure an improvement of the site

¹⁰ Biodiversity Impact Assessment (dated May 2021) by Kingfisher Ecology Ltd.

¹¹ P. 19 of the BIA.

¹² Plan/drawing Ref. L-P1H-09042021-Proposed.

quality and a biodiversity net gain. On this basis the development would also not conflict with the aims of paragraphs 179 and 180 of the Framework, which require that biodiversity is protected and enhanced.

Living conditions

48. The existing close boarded fence of between approximately 1.8m and 2m creates a sense of containment to the rear garden of No 77. The existing appeal site building is not unduly visible given its limited height and location on lower land. Their size and proximity mean the existing trees limit the existing outlook somewhat, although their natural appearance and structure ensures a filtered effect that has seasonal variations. Any tree removal would have some beneficial effect upon outlook.
49. The new tack and store building would run at an angle to the entirety of the side and part of the rear of the garden, with an eaves height of approximately 2.66m and ridge height of 3.5m at between approximately 3m – 6.24m away. However, it was clear from my visit the garden is elevated above much of the land upon which the new building would be located. When using the garden, the occupiers of No 77 would have some limited visibility of the new building above the existing fence. In time its visibility could be reduced somewhat by new planting.
50. On-balance, the height and proximity of the building, and removal of trees would mean that the proposals would not feel unduly dominant. Overall, they would have a neutral effect upon the outlook and would not result in harmful living conditions to the occupiers of No 77. Therefore, the proposed development would not conflict with Policy CSP15 of the CS or Policy DM30 of the DMLP. Amongst other things these require development exhibits a high standard of design that is sensitive to local context. It would also not conflict with paragraph 130f) of the Framework which requires that development ensures a high standard of amenity.

Highway Safety

51. The existing site could accommodate up to 40 horses. It is accessed from the Ronver Road entrance with vehicles driving onto an informal parking area that could accommodate 9 cars. While I note the Council's concerns in respect of previous vehicular trip information and outputs from the TRICS system, the reduction in horse numbers from this proposal suggests vehicular trip generation would be unlikely to be any greater than within the scope of a lawful use. Therefore, it would not be likely to result in a greater potential of harm to highway safety from movement numbers.
52. Policy T6 of the London Plan states car free parking should be the starting point for all development in all places well-served by public transport, and development elsewhere is required to provide the minimum level of parking. Within this PTAL 2 rated area access to public transport is limited. The appellant's assumption of every member of staff and every customer arriving in pairs, does not seem entirely realistic as it would seem inevitable that some customers will arrive individually. There will also be spectators at times. Having regard to the scope for use of public transport and cycling through measures in a Travel Plan, the numbers of staff, the capacity of the centre, throughput and cross-over of visitors and sessions, the Council has not demonstrated there would be an over-provision of car parking.

53. The new parking area would allow the parking of 19 cars. Event parking management measures, cycle parking provision, showers and lockers could be secured by suitably worded planning conditions. On this basis I am satisfied the proposals would be consistent with the objectives limiting car use, encouraging sustainable transport modes, ensuring on-street parking is not increased, and not resulting in conditions prejudicial to highway safety. Therefore, it would not conflict with Policy T6 of the London Plan.
54. The appellant has demonstrated that cars, including with trailers, refuse vehicles and trucks up to 10m in length could turn within the site to leave in a forward gear. The parking area can adequately cater for delivery, collection, and emergency vehicles. Furthermore, such vehicles would number approximately 3 per fortnight, so could be managed to ensure access at specified time periods, secured by a suitably worded planning condition.
55. The existing approximately 5m wide access is sufficient to allow a car and larger vehicle to pass in opposite directions. While the pedestrian access gate, and the 5.5m wide access suggested by the Council, could be provided on Ronver Road, given the few larger vehicles or trailers that would be likely to access the site, a wider vehicular access is not necessary to make the development acceptable. A 1m wide path would not be sufficient to cater for all users such as those using wheelchairs. However, increasing this to approximately 2m wide while integrating waste storage would be achievable without significantly prejudicing the ability of vehicles to manoeuvre.
56. For the reasons set out above the proposed development would not result in harm to highway safety. It would not conflict with Policy CSP14 of the CS or Policy DM29 of the DMLP. Amongst other things these require that access and safety of pedestrians and cyclists is promoted, cycle parking is secured, travel plans are prepared, and a managed approach to car parking is adopted, consistent with the London Plan. The development would also not conflict with paragraph 111 of the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Considerations

57. Opposing views were put to me in respect of the fall-back position, and the appellant's intended likely future use of the site. I am informed the existing facilities are substandard¹³, although the reason for it being vacant for some time is because the appellant has pursued redevelopment of the site, meaning only short-term leases could be offered. Were this appeal to fail the appellant assures me the site would be operated as an equestrian facility¹⁴. Despite some buildings being described as dilapidated¹⁵, based upon what I heard there is a greater than theoretical possibility, and indeed a reasonable likelihood of the site being brought back into some form of equestrian use. This is attributed moderate weight.
58. There would be a significant reduction in the number of horses despite approximately doubling the size of the area used for equestrian purposes. The

¹³ 5.52 of the Statement of Case on behalf of the Appellant (PWA Planning, June 2020)

¹⁴ Letter from Austringer Capital, 25 January 2022.

¹⁵ Paragraph 3.42 of the Landscape Proof of Evidence by Pegasus Group (16 June 2021) and the Landscape Statement by Pegasus Group (28 June 2021).

development would improve and modernise facilities, including being better adapted for those with disabilities. However, I am not persuaded based upon the limited evidence advanced, that there is a significant shortage of such equestrian facilities. On balance, the weight to be attributed to such matters and the associated policy support is limited. The economic benefit through construction is likely to be a significant temporary benefit, and on-going employment and spend in the local economy is likely to be a moderate benefit.

59. Although the track would not be built development, so long as it did not breach the TPO, within the areas of an existing lawful use, the track could be created without the need for any consent. The fencing would benefit from permitted development rights. However, these would require a significant amount of work and investment. I have not been provided with a scheme or costings for the works suggesting there is an intent to undertake the works and change the use of the land outside the existing facility. The appellant's submissions do not persuade me either element would be pursued if this appeal fails. Therefore, these attract limited weight.
60. Run-off would be limited using a porous asphalt-like material on the parking area¹⁶ and there is sufficient area within the site to ensure that the development would not increase flood risk to other people and property. I am informed the development would result in a betterment to run-off through improved drainage infrastructure secured by a suitably worded planning condition, including to secure greenfield run-off rates¹⁷, compliant with Policies SI12 and SI13 of the London Plan. Based upon what I heard and the evidence before me with respect to matters such as the site layout, landscaping, and biodiversity, any betterment is likely to be modest. I attribute this matter limited weight in favour of the development.
61. Based upon the evidence before me subject to the conditions outlined there is likely to be some biodiversity net gain. However, at best this is likely to be a relatively limited gain. Landscape, arboricultural and ecological management are not required under the existing lawful use of the site. The evidence suggests the benefits in respect of these matters are likely only to be limited. Overall, in combination I attribute these matters limited weight in favour of the scheme. The new buildings would be of an appropriate design, which I regard as a neutral matter.
62. A considerable amount of landscape evidence has been provided and there might be some landscape benefits to individual and groups of trees and new planting. However, I cannot be certain there would be any beneficial effects to the landscape and the character and appearance of the appeal site and area in the longer term. I have found overall harm in this regard, which attracts moderate weight against the scheme.
63. While there is some flying tipping evident it appears sporadic and limited in overall tonnage. There is no evidence that demonstrates this development is necessary for its removal to take place. Similar could be said for the Japanese Knotweed. It is not clear why the development would have any benefits in respect of anti-social behaviour or why these could not be secured without this development. These matters attract limited weight.

¹⁶ Paragraph 3.30 of the Landscape Proof of Evidence by Pegasus Group (16 June 2021) and the Landscape Statement by Pegasus Group (28 June 2021).

¹⁷ Table 6 of the Surface Water Drainage Study by Ambiental (December 2018).

64. There might be opportunities for public access, although in my view the extent of the track, paddock areas, the gradient of the bund, and location of trees and planting would appear to make such access challenging. The appellant advises fulfilling the objectives of Policies GI1a and GI2 (iii) and (iv), and the strategy in Figure 8 of the NP is dependent upon further detailed design, feasibility studies and a delivery plan, none of which have been published. Therefore, while noting the aims of initiatives such as the Green Chain project and the Railway Children Urban National Park Vision, at the present time the benefits of public access suggested as part of this appeal scheme attract little weight.
65. The improved parking arrangements and accessibility matters are attributed limited weight in favour of the scheme. I see no substantive evidence of harm from trees to daylight at No 77 and based upon my visit I cannot conclude they result in unsatisfactory living conditions. Therefore, their removal is attributed little weight. The absence of harm to the occupiers of No 77 in respect of outlook is a neutral matter. Based upon the evidence before me and what I heard, if I were to agree that the development is compliant with policies in respect of matters such as the living conditions of other neighbouring occupiers and air pollution, these would be neutral matters. As it relates to a different proposal with what based upon the plans before me is the addition of only one building, with no fenced track, the findings of the Inspector for the previous appeal in respect of the effect upon MOL attract little weight.

Other Matters

66. I heard evidence in respect of the effect of the development upon non-designated heritage assets. The Baring Trust is of the view the appeal site forms part of non-designated heritage asset (the Railway Children Embankments) as part of the railway corridor between Grove Park and Hither Green around which the author E Nesbit lived between 1894 – 1899, before her book *The Railway Children* was published (1906). The appellant's position is that the appeal site does not have the requisite historic associative value or intrinsic heritage interest to be a heritage asset. As I am dismissing this appeal for other substantive reasons, and the appellant has not put to me the development would result in a benefit to the heritage asset, I have not considered this matter in any further detail.
67. I heard evidence in respect of whether or not the proposed development represents an appropriate form of development having regard to policies concerned with flood risk. Part of the site is at medium and high risk of surface water flooding, at depths of between 300mm and 900mm. There were opposing views from the appellant and interested parties in respect of whether the development met the sequential test outside and within the site. As I am dismissing this appeal for other substantive reasons, it is not necessary for me to consider this matter further. However, were I to have found the development meets the sequential test, this would be a neutral matter.

Planning Balance & Conclusion

68. The appeal scheme would be inappropriate development that would, by definition, harm MOL, and would result in harm to the openness of MOL. In accordance with the development plan and the principles of the Framework, substantial weight should be to be given to harm to MOL. The development would also be harmful to the character and appearance of the area, which

given the harm I have found on-balance, is a matter that attracts moderate weight against the scheme.

69. Overall, I find that the other considerations in this case, do not clearly outweigh the harm to MOL which attracts substantial weight and the other harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. For these reasons, the development conflicts with Policy G3 of the London Plan, Policy CSP12 of the CS and Policy DM15 of the DMP, and paragraphs 137, 147 and 148 of the Framework. These seek to seek to preserve the openness of MOL and protect MOL from inappropriate development unless very special circumstances exist.
70. The proposed development would be contrary to the development plan and the National Planning Policy Framework as a whole, and there are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Killian Garvey, Barrister (Kings Chambers)

Mr Suhail Rekhad (Attendee on behalf of the appellant)

Mr Y Bux (Director of Austringer Estates)

Mr Graeme Thorpe (Associate, PWA Planning)

Mrs Rachael Leather (Planner, PWA Planning)

Mr Toan Chau (Director – Cora IHT)

Mr Andrew Cook (Executive Director – Pegasus Group)

Mr Marco Bartolini (Arboricultural Consultant – Arbor-Eco Consultancy)

Mrs Gail Stoton (Pegasus Group)

Dr Rachel Hacking (Rachel Hacking Ecology)

Mr Matthew Cheeseman (RSK Group)

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gwion Lewis, QC (Landmark Chambers wis)

Mr James Hughes (Lewisham Council – Team Leader) BA (Hons), MPlan, MRTPI

Miss Georgia McBirney (Lewisham Council – Planning Officer) BA (Hons), MA,
Licentiate Member of RTPI

Mrs Valerie Harris (Lewisham Council – Tree Officer) BSc, Dip Landscape Design,
CMLI

Ms Catherine Patterson (Lewisham Council – Highways Officer) MSc

Miss Eszter Wainwright-Deri (Lewisham Council – Ecological Regeneration
Manager) MSc, PHD

INTERESTED PERSONS:

Dr Paul Stookes (Richard Buxton Solicitors, on behalf of the Baring Trust)

Councillor Liam Curran (Lewisham Council)

Mr Stephen Kenny (on behalf of the Baring Trust)

Mr Gary Grant (Ecologist, on behalf of the Baring Trust)

Councillor Suzannah Clarke (Grove Park Ward Member – Lewisham Council)

Mr Barry O'Donovan (Vice Chair of Grove Park Neighbourhood Forum)

Councillor Mark Ingleby (Chair of Friends of Grove Park Nature Reserve)

Miss Chloe Williams

Mr Paul de Zylva (Chairman of Quaggy Waterways Action Group)

Mike Keogh (Chair of Lewisham Biodiversity Partnership)

DOCUMENTS SUBMITTED AT THE HEARING

TW1: Baring Trust Submissions – dated 6.9.21;

TW2: Annex A: Baring Trust Representations 22.6.19;

TW3: Annex B: Google plan of locality;

TW4: Annex C: Decision Letter APP/C5690/A/13/2205776;

TW5: Statement by Gary Grant CEnv, FCIEEM (dated 3 September 2021);

TW6: Letter from The Edith Nesbitt Society dated 1 March 2022.

Chartered Institute of Ecology & Environmental Management Advice Note: On the lifespan of ecological reports and surveys (April 2019).