



Appeal Decision

Site visit made on 26 February 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 8TH MAY 2024

Appeal Ref: APP/H5960/C/22/3305470

Rosslyn Park Rugby Football Club, Priory Lane, LONDON, SW15 5JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Rosslyn Park Football Club against an enforcement notice issued by London Borough of Wandsworth.
- The notice was issued on 7 July 2022.
- The breach of planning control as alleged in the notice is: 'Without planning permission and within the past four years the unauthorised installation of: 1. A container unit used as a 'dark-kitchen' for the preparation of fast-food online orders and deliveries located to the south of the playing fields shown in the location marked "1" on attached Plan 2; 2. A prefabricated building used to store gym equipment located to the north of the main club building shown in the location marked "2" on attached Plan 2; 3. A prefabricated building with marquee-style roof, leased as a private gym located to the east of the main club building shown in the location marked "3" on attached Plan 2; and 4. Four container units used for storage, located to the west of the main club building shown in the location marked "4" on attached Plan 2 collectively referred to in this Notice as the "Unauthorised Development".
- The requirements of the notice are: 1. Cease the unauthorised use of the dark-kitchen; 2. Remove from the Property: - the container unit used as a 'dark-kitchen' for the preparation of fast-food online orders and deliveries located to the south of the playing fields shown in the location marked "1" on attached Plan 2 - the prefabricated building used to store gym equipment located to the north of the main club building shown in the location marked "2" on attached Plan 2 - the prefabricated building with marquee-style roof, leased as a private gym located to the east of the main club building shown in the location marked "3" on attached Plan 2 - the four container units used for storage, located to the west of the main club building shown in the location marked "4" on attached Plan 2; 3. Remove from the site all debris arising from compliance with steps 1 and 2 above.
- The period for compliance with the requirement is: six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. The allegation attacks operational development, which is consistent with the four year immunity period cited in the Council's reasons for issuing the notice. The requirements, however, also include a stipulation that the *use* of the 'dark-kitchen' ceases. Removal of the 'dark-kitchen' container unit has the effect of ceasing the use of the dark kitchen and so I shall delete requirement 1 so that the requirements are consistent with the allegation. This would not result in any injustice to either party.

Preliminary Matters

2. The appellant, who is professionally represented, makes no ground (c) appeal that the matters alleged do not represent a breach of planning control. The Council has explained its basis for determining that the structures attacked by the notice represent operational development and I have no reason to disagree on the evidence before me. As such, although the appellant makes reference within their ground (a) representations to structures attacked by the notice not being a 'building', I treat this as meaning they might not be a 'building' in layman's terms, rather than as a hidden ground (c) appeal.
3. Equally, while there is reference in representations to the private/open gym building having been in place for more than four years, this would appear to be as at the date of the representations, rather than as at the date of the notice. Accordingly, there is no hidden ground (d) appeal.
4. The Council adopted the Wandsworth Local Plan 2023-2038 ('LP') during the course of the appeal and the parties were given an opportunity to make updated policy representations. The appellant was also sent copies of case law judgments relied upon by the Council and given an opportunity for comment.

The appeal on ground (a) and the deemed planning application (DPA)

5. The appellant has confirmed that the 'dark-kitchen' has been removed from the site and that they do not wish to include this in the DPA. Accordingly, the main issues below relate to the structures attacked by the three other parts of the allegation ('DPA development').

Main Issues

6. The appeal site is located within Metropolitan Open Land ('MOL') which is protected from inappropriate development in accordance with national planning policy tests in the National Planning Policy Framework 2023 ('the Framework') that apply to the Green Belt¹. The main issues are then:
 - Whether the DPA development represents inappropriate development in the MOL;
 - Whether it complies with development plan policy related to responding to the Climate Crisis;
 - The effect on the character and appearance of the area;
 - The effect on the availability of on-street parking in the area;
 - The effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance; and
 - If the DPA development represents inappropriate development in the MOL, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the DPA development.

¹ Per Policy G3 of the London Plan 2021 ('the London Plan')

Reasons

Background and site context

7. The appeal site is home to a long-standing rugby club which is operated on a not-for-profit community basis. It serves multiple adult rugby teams including, but not limited to, one semi-professional side, the London Broncos rugby league team and one women's team, along with a large youth programme. Community outreach include extensive work with local schools, charities and other local organisations.
8. The site is located at the northern end of an area of MOL. Much of the land in this area of MOL is open, such as the Roehampton Club golf course to the south, but there are clusters of built form also. Residential development sits close to the eastern and western boundaries of the appeal site, falling outside of the MOL. Development on the appeal site pre-dating the enforcement notice includes spectator stands, floodlights, clubhouse, and car parking area, with the majority of built form to the west of the site around the club house.
9. As to the DPA structures the first of these is a 'gym store' which is a marquee-style structure used to store gym equipment in connection with rugby training, located to the north of the main clubhouse. The second is referred to by the appellant as an 'open gym' and is comprised of shipping containers, along with a marquee-style canopied roof. This is situated east of the main clubhouse. Finally are four storage containers used to store a variety of equipment used in connection with the rugby club and rugby club events. These are located in the car park along the western boundary of the site.

Whether inappropriate development

MOL Policy context

10. London Plan Policy G3 states that MOL is afforded the same status and level of protection as Green Belt, stipulating that MOL should be protected from inappropriate development in accordance with policy tests in the Framework applying to Green Belt, and that London boroughs should seek to enhance the quality and range of uses of MOL. Policy LP53 of the LP indicates that areas of open space, including MOL, will be protected, enhanced and made more accessible.
11. The Framework at paragraph 142 states that the fundamental aim of Green Belt policy (so by extension MOL) is to keep land permanently open. It goes on to outline at paragraphs 152 and 153 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight must be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless harm to the Green Belt by reason of inappropriateness, and any other resultant harm, is clearly outweighed by other considerations. MOL is afforded the same protection as Green Belt referenced in this policy wording.
12. Paragraph 154 then explains that construction of new buildings is inappropriate development in the Green Belt (and so in MOL) subject to specified exceptions. The appellant argues that the gym store, open gym and storage containers fall within the exception at paragraph 154(b). This states that '*the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation...as long as the facilities preserve the*

openness of the Green Belt and do not conflict with the purposes of including land within it' will not represent inappropriate development.

Paragraph 154(b) exception

13. To fall within the paragraph 154(b) exception, each DPA structure must: (i) be a building; (ii) be for outdoor sport or recreation; (iii) be 'appropriate' for its intended purpose (iv) preserve the openness of the MOL; and (iv) not conflict with the purposes of including land within the MOL. I shall therefore consider each structure against these tests in turn.

(i) Whether a building

14. As outlined above, the gym store, storage containers and 'open gym' are all objects which, in line with the Council's assessment as to size, permanence and degree of physical attachment, meet with the case law tests for a building as a matter of fact and degree.

(ii) Whether for outdoor sport or recreation

15. The gym store is used to store gym equipment apparently used in connection with rugby training and associated strength and conditioning training, and so in this way is used for outdoor sport. The storage containers are used for a variety of storage uses connected to the rugby club and use of the clubhouse and so have a use related to the outdoor sport use of the site.
16. As regards the 'open gym', the appellant submitted that the use of this amounts to use for outdoor sport or recreation for two reasons. Firstly, it is the appellant's view that because some of the activities related to this gym are in the open air, the structure represents a facility for outdoor sport or recreation. Secondly, the appellant submits that the gym is used by playing members of the club as part of their training for outdoor sports and so in this way is used in connection with the existing outdoor sport use of the land.
17. On the first point, if the 'open gym' structure was used solely to store gym equipment which was only put into use on the all-weather sports surface, there might have been a basis for finding that the open gym represented a facility for outdoor recreation. However, as I saw from my site inspection, and noted from various appeal representations, gym classes appear to take place under cover of the open gym structure, at least some of the time. This use is not therefore for outdoor sport or recreation.
18. As to the second point, if the 'open gym' was solely used by playing members of the club as part of their training for outdoor sport, it could be argued that this was a use for outdoor sport. However, it is apparent that the 'outdoor gym' is also used by visiting members of the public. I therefore find on the evidence before me that it is not a facility for outdoor sport.
19. The Council has though suggested that, if I am minded to grant planning permission for the open gym, I could impose a condition limiting hours of use by visiting members of the public. It is possible therefore in theory to sufficiently control the operation of the open gym in this way so as to adequately minimise public use such as to render this a facility in connection with the existing use of the land for outdoor sport. The open gym could therefore, if appropriately conditioned, accord with this criterion.

(iii) Whether appropriate facilities

20. The gym store and storage container units are of a size and form appropriate to their purposes and are located conveniently for these uses. They therefore represent appropriate facilities. The outdoor gym (subject to a condition as outlined) is also appropriate in size, form and location to the purpose of providing gym facilities connected with the outdoor sport use of the appeal site.

(iv) Whether the facilities preserve the openness of the MOL

21. As to openness, the paragraph 154(b) exception means that some buildings representing 'appropriate facilities' for outdoor sport or recreation will be deemed to preserve openness, and others will not. The Council has cited case law² related to the assessment of openness which I have applied in my assessment, including in terms of the spatial and visual aspects of openness and taking account of how built up the area was prior to, and is after, the relevant development.
22. The appellant has submitted a Metropolitan Open Land Assessment Report dated October 2022 ('MOL Report') which assesses the effect on openness. It is argued that the DPA structures preserve openness on the basis that these are close to a cluster of existing structures and do not impact the openness of the large sports surface, from which openness is primarily derived.
23. As to the open gym, its open-fronted canopy design detracts to a limited degree from the industrial and substantial form of the storage containers used in its design. Nonetheless, it introduces significant built volume into the more open part of the appeal site which was previously a part of the open sports pitch area, away from the main cluster of buildings to the west. Although the sports pitch is large, it is not of sufficient size to absorb this large structure without affecting openness as the footprint of the building is not insignificant relative to the size of the pitch area.
24. The open gym is set back close to the southern boundary of the site, but it is visible from the pavement to the north as a large structure obstructing the view through towards trees behind. The presence of the large advertising billboard and taller residential buildings outside the MOL and pre-existing single storey structures do not negate its visual impact. I note the view expressed in the MOL Report that the open gym has a 'strongly temporary, playfield pavilion character' and 'benefits the sense of openness' by reinforcing 'the sense of the site as a playing field with an activity pavilion'. However, this structure is not comparable to, for example, spectator stands which have a very obvious association with outdoor sport. Drawing these matters together, I find as a matter of fact and degree that the open gym has an adverse effect on openness in both spatial and visual terms.
25. With respect to the gym store, whilst this introduces built volume where there previously was none, its marquee-style design and materials lend the structure a lightweight appearance. It is positioned forward of the main clubhouse building towards the road to the north and so is visible from the road. It is though located in a part of the site that is already noticeably built up and so

² *SSCLG & Others v Redhill Aerodrome Ltd* [2014] EWCA Civ 1386; *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council* [2020] UKSC 3; *Europa Oil and Gas Limited v SSCLG* [2013] EWHC 2643 (Admin); *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

does not materially alter the extent of built up development. I find then that the gym store does not adversely impact upon openness.

26. Turning to the storage containers, these are positioned to the far west of the site against a high wall. They are not visually prominent but can be glimpsed from public viewpoints in Woking Close. Their obviously industrial design and materials mean they have a solid form albeit that each is small in footprint and volume. Cumulatively they add to the built volume in this part of the site but in the context of their being located in a very built-up part of the MOL, and not being prominent in public views, they do not cause harm to openness.
27. Finally, the appellant submits that the Council's assessment was that structures attacked by the notice only *in combination* have an adverse effect on openness. Whilst the notice refers to the combined 'quantum' of development harming openness, this does not mean that the Council found the structures to individually have no adverse effect on openness, which is reflected in the assessment made in the Officer's Report.

(iv) Whether conflict with MOL purposes

28. The addition of the open gym into the previously largely open sports pitch area of the site creates a sense of built-up sprawl, in conflict with the purpose set out at paragraph 143(a) of the Framework. As the gym store and storage containers are located in a very built-up part of the MOL, I do not find that they infringe upon any of the relevant purposes identified in the Framework.

Conclusion on whether inappropriate development

29. I find then that the storage containers and gym store do not represent inappropriate development in the MOL and do not conflict with development plan or national policy related to inappropriate development on MOL. The open gym does though represent inappropriate development for the reasons outlined and there is conflict in this way with London Plan policy G3 and the cross-referenced Framework policy, and with Policy LP53 of the Local Plan which seek to protect MOL and guard against inappropriate development in the MOL.

Policy related to responding to the Climate Crisis

30. Policy LP10 of the Local Plan stipulates that developments are required to achieve high standards of sustainable design and construction to mitigate against the effects of climate change. This includes, per Policy LP10 A, the use of sustainable construction methods including use of sustainably sourced and recycled materials and incorporating green walls and roofs wherever possible. Part B of this policy details that new non-residential buildings over 100 sqm will be required to meet BREEAM 'Outstanding' standard, unless it can be demonstrated that this would not be technically feasible. Part C then goes on to stipulate that development including reuse of existing buildings should achieve the maximum feasible reductions in carbon emissions.
31. The appellant submits that the DPA structures have a low carbon footprint, with reference made to shipping containers having been recycled, with benefits in terms of embodied carbon and as a durable form of construction. The fact that the DPA structures are prefabricated is cited as having benefits in terms of construction time, cost and waste. Minimal electricity requirements are also referred to, with comment made that the nature of the open gym use means that there is little use for heaters.

32. The appellant highlights that only the open gym exceeds the Policy LP10 B 100sqm threshold, and that the LP10 B requirement need not be met if demonstrated that this would not be technically feasible. Whilst I note the appellant's comment that the open unsealed form of construction of the open gym means that these requirements should not be rigidly applied in this case, I have no detailed information as to the technical feasibility of the BREEAM standard in relation to the open gym structure.
33. There is no substantive evidence either to suggest that efforts have been made to seek to achieve the maximum feasible reductions in carbon emissions. The use of apparently recycled shipping containers results in some level of compliance with Policy LP10 A, but it is not clear whether the appellant seeks to argue that the gym store is a recycled structure.
34. Drawing these matters together, whilst there is some limited evidence of compliance with policy related to responding to the Climate Crisis, on the available evidence, I am unable to find as regards any of the DPA structures sufficient information to indicate compliance with this policy. There is thus a conflict with Policy LP10 of the Local Plan for the reasons outlined.

Character and appearance

35. The appeal site sits adjacent to residential buildings to the east and west of the site, with the Woking Close development to the west being of significantly greater scale than the DPA development. The appeal site has its own distinct character as an outdoor sports venue and clear public views of the site are primarily of the built up western part of the site, where the large billboard is a dominant visual presence.
36. While the western part of the site was previously significantly built up prior to the DPA development, the addition of the gym store forward of the club house building introduces a structure which does not integrate with the design and materials of the clubhouse building and also brings built development closer to the road.
37. The open gym, although in a significantly less prominent position in views from the road, is of significant size and is clearly visible from public vantage points from the pavement. From here, it sits clearly visible in the background as further built form where there would previously have been a clearer line of sight towards the open pitch and trees behind, resulting in a notable sense of sprawl.
38. The storage containers sit alongside pre-existing similar containers which are time-barred from enforcement action. The DPA containers are not apparent in views from the road to the north but are visible above the wall from Woking Close. They are though fairly small scale and in the context of this part of the site being very built up, they do not result in any material visual harm.
39. The open gym and gym store cause harm to the character and appearance of the area, albeit at a relatively low level. This results in conflict with Policy LP53 of the Local Plan which indicates that new development on public and private green infrastructure or open space including MOL will only be permitted where it does not harm the character, appearance or function of the green infrastructure or open space, and that cumulative impacts are to be taken into account in the assessment.

Parking

40. The storage containers and the gym store result in a loss of potential parking space at the appeal site but do not create any additional parking demand. The open gym creates some additional demand for parking, with timings of demand likely to be staggered throughout the day and with classes currently limited to twelve participants.
41. A Transport Note dated 18 August 2022 has been submitted in support of the appeal. This indicates that of the 67 outdoor gym users surveyed, all those who drive to the site indicated that they were always able to secure a parking space on site. The site is located in a location with good public transport accessibility (PTAL 4) and the appellant's evidence also indicates that only around 20% of those surveyed usually travel to the outdoor gym by car.
42. I have no detailed information in relation to the pre-existing pressures upon parking at the appeal site, and I note the various demands cited by the Council. However, bearing in mind that parking demand from the outdoor gym would be fairly limited and spread throughout the day, and given also the accessibility of the site, it seems unlikely that this use would cause undue pressure on on-street parking availability. There is no conflict then with Local Plan Policies LP49 and LP50 which encourage use of sustainable forms of transport and guard against undue additional strain on the transport system.

Living conditions

43. There is no substantive evidence to indicate that the use of the storage containers or gym store results in any material noise and disturbance to neighbouring residents particularly bearing in mind the ambient road noise and noise from use of the sports ground and related facilities. The Council's primary concern in this regard is that the operation of the open gym results in noise and disturbance to neighbouring residents.
44. The appellant submits a Noise Assessment dated October 2022 in relation to the use of the outdoor gym which concludes that noise levels from this use are within comfortable limits so as to not result in harm to neighbouring residents. Whilst I acknowledge the distance to neighbouring properties, along with the ambient noise conditions, in my view early morning noise from an identifiable source such as the open gym, would be likely to disturb neighbouring residents in Woking Close particularly in summer months when windows might be open. Operating hours and permissible noise levels could though be controlled by condition and so I find no material harm from the open gym development in this regard, if appropriately conditioned.
45. I therefore find that, provided appropriate conditions were imposed, there would be no material harm to the living conditions of neighbouring residents with regard to noise and disturbance, and so appropriate compliance with Local Plan Policy LP2 which seeks to protect the amenity of existing occupiers.

Other considerations

46. Inappropriate development on MOL should only be permitted if the harm by virtue of inappropriateness and any other harm is *clearly* outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. I have found that the open gym represents

inappropriate development and I shall therefore proceed to consider other considerations in support of this development.

47. I did not find that the gym store or storage containers represented inappropriate development in the MOL. I have though found some limited harm from these structures as regards local policy related to the Climate Crisis and as regards character and appearance impacts. I therefore also assess below the submissions in support of these structures.
48. Facilities at Rosslyn Park are of significant benefit to the surrounding community as a high quality sporting ground in an area where well-maintained sporting grounds for community use are apparently in short supply. I have taken account of the recently launched community programme and efforts seeking to engage with the local community. The appellant's significant work in maximising use of the sports facilities at the appeal site, including for community use, in an accessible location accords with the aims of Policy LP54 of the Local Plan related to supporting multiple uses, co-location of facilities, enhanced public access and accessible locations in proposals for new, or improvements to existing sports facilities and indoor recreation and leisure developments.
49. I note also the progress made to create a thriving club in a difficult economic climate and in the aftermath of the pandemic, with examples cited of other clubs having gone into administration. In this regard, I acknowledge also the financial burden on the club to repay the debt incurred from the development of the all-weather pitch and that in the modern era, it is not possible to function as a rugby club that only operates on match days. The appellant outlines that the rugby club provides full or part-time work for over 110 people and submits that loss of the DPA structures would put the future of the club and these employees at risk.
50. As regards the storage containers, the appellant submits that these are needed for rugby club equipment, ground upkeep machinery and for storage of various items related to rugby club events, outlining that storage within the club house is saturated. The gym store is used for storage of strength and conditioning and rugby training equipment which apparently is used on pitch on an almost daily basis and again cannot be feasibly accommodated in the club house.
51. With respect to the open gym, the appellant indicates that it is essential for a rugby club competing at national level to provide strength and conditioning training. It is submitted that as the club did not have the finances to construct its own gym, the arrangement was made with the operator of the open gym for members of the public to use this facility when not in use by the club. The open gym apparently assists in providing additional revenue for the rugby club, as well as bringing in new supporters.
52. Users of the open gym and supporters of the rugby club emphasise the benefits from the outdoor gym in terms of an inclusive environment including outdoor exercise, resulting in significant boosts to mental health and social benefits, along with reduced strain on the NHS; contributions to the local economy through patronage of local establishments; providing jobs for gym workers; and the offering of specific children's classes with benefits to their emotional and physical wellbeing.

53. Looking then at each of these matters, I fully acknowledge the significant benefit of the club to the local community. Whilst I note financial difficulties cited, I have no detailed evidence in relation to this, nor setting out the potential impact of the loss of the DPA structures in this regard. Similarly, there is no substantive evidence to suggest removal of the DPA structures would put the future of the club or continued employment at risk.
54. As to the open gym specifically, I can appreciate that this is a useful facility for sports players training and playing at Rosslyn Park albeit that currently many of its operative hours appear to be in use for members of the public. I acknowledge that it provides an additional revenue stream for the club, although I have no detail in relation to this or how necessary this is for the club's financial stability. I appreciate though also the notable benefits to members of the public as cited by users and supporters of the open gym.

Planning Balance – outdoor gym

55. The open gym adversely affects the openness of the MOL and so represents inappropriate development in the MOL, which is by definition harmful. A fairly low degree of harm also results from limitations in relation to the compliance with Climate Crisis policies and in terms of impacts on the character and appearance of the area. As detailed above, inappropriate development on MOL should only be permitted if the harm by virtue of inappropriateness and any other harm is *clearly* outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
56. In my view although the identified benefits offer notable weight in favour of the outdoor gym, on the evidence before me, even taken together these would not *clearly* outweigh the harm resulting from inappropriateness, to which I am required to give substantial weight, along with the other harm identified. The very special circumstances necessary to justify inappropriate development on MOL do not exist.

Planning Balance – storage containers and gym store

57. The storage containers and gym store do not represent inappropriate development in the MOL but cause a relatively minor level of harm as regards considerations related to the Climate Crisis and of character and appearance. These structures are though of importance to the practical operation of the rugby club and support is received for this sort of development at a community sports club per Policy LP54 of the LP. In my view, this outweighs the limited harm identified and the planning balance therefore favours granting of planning permission for these elements.

Other Matters

58. The notice refers to a lack of information related to fire safety standards. The appellant produced a Fire Safety Strategy report during the appeal process which indicates adequate adherence to fire safety standards subject to measures to extend the clubhouse fire alarm system to the gym store. Since this could be dealt with by condition, this is a neutral matter. Similarly, any additional refuse requirements resulting from the outdoor gym use also could be dealt with by condition and has not weighed against this development.
59. Neither party has expressed a view that the DPA development would impact on the setting of the Barnes Common Conservation Area. In my view, the visual

separation and existing built development on site would prevent any harm in this regard from the gym store or storage containers. The appellant emphasises attempts to engage with the Council and criticises its handling of the enforcement process, but this is not a matter for me in this appeal.

Conclusion on ground (a) and the DPA

60. The outdoor gym aspect of the DPA development does not accord with the development plan, read as a whole, and there are no material considerations to indicate a decision otherwise than in accordance with the plan. For the reasons given and taking account of all other matters raised, the ground (a) appeal fails as regards the open gym and planning permission is refused in respect of this.
61. I find though that the storage containers and gym store do accord with the development plan, read as a whole. For the reasons explained, the ground (a) appeal succeeds so far as it relates to these structures and planning permission will be granted for these. The requirements in the notice relating to these structures will remain but the appellant can rely on s180 of the 1990 Act which provides that the notice will cease to have effect so far as inconsistent with the DPA planning permission. As detailed above, it will be necessary to impose a condition related to fire safety in respect of the gym store. Since the gym store has already been constructed, this includes provision for this to be removed if this condition is not complied with.

The appeal on ground (f)

62. This ground of appeal is that the requirements of the notice exceed what is necessary. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice requires removal of the structures enforced against suggests that its purpose is to remedy the breach of planning control by restoring the land to its previous condition.
63. The appellant submits under this ground that removal of the 'dark kitchen' would be sufficient to remedy the harms outlined in the notice on the basis that the other structures enforced against do not result in any harm. I found though in my assessment under ground (a) that the open gym does result in material harm. No other arguments are put forward under this ground and in my view there is no obvious alternative which would achieve the purposes of the notice at less cost and inconvenience. The appeal on ground (f) fails.

Time for compliance

64. Although the appellant did not submit a ground (g) appeal, in my view it is appropriate to extend the period for compliance. This is on the basis that, although the six month compliance period stated in the notice would be adequate to enable removal of physical structures, there are practical consequences flowing from such removal and so it would be reasonable to extend the compliance period on this basis. A period of 9 months would in my view strike the right balance between bringing ongoing harm to an end and enabling practical arrangements to be made. I shall therefore use my S176(1) powers to vary the notice and do not consider any injustice to result from this.

Overall Conclusion

65. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the prefabricated building used to store gym equipment located to the north of the main club building shown in the location marked "2" on Plan 2 attached to the notice, and four container units used for storage, located to the west of the main club building shown in the location marked "4" on Plan 2 attached to the notice. However otherwise I will uphold the notice with a correction and variation and refuse to grant planning permission in respect of the container unit used as a 'dark-kitchen' for the preparation of fast-food online orders and deliveries located to the south of the playing fields shown in the location marked "1" on Plan 2 attached to the notice, and the prefabricated building with marquee-style roof, leased as a private gym located to the east of the main club building shown in the location marked "3" on Plan 2 attached to the notice. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Formal Decision

66. It is directed that the enforcement notice is corrected and varied by:

- In paragraph 5 deletion of the wording '1. Cease the unauthorised use of the dark-kitchen;'; renumbering of subparagraph '2.' as '1.'; and renumbering subparagraph '3.' as '2.'; and
- In paragraph 6 deletion of the wording 'six months' and substitution of 'nine months'

67. Subject to the correction and variation, the appeal is allowed insofar as it relates to the prefabricated building used to store gym equipment located to the north of the main club building shown in the location marked "2" on Plan 2 attached to the notice and four container units used for storage, located to the west of the main club building shown in the location marked "4" on Plan 2 attached to the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the prefabricated building used to store gym equipment located to the north of the main club building shown in the location marked "2" on Plan 2 attached to the notice and four container units used for storage, located to the west of the main club building shown in the location marked "4" on Plan 2 attached to the notice at Rosslyn Park Rugby Football Club, Priory Lane, LONDON, SW15 5JH and subject to the following condition:

- 1) The prefabricated building used to store gym equipment located to the north of the main club building shown in the location marked "2" on Plan 2 attached to the notice (hereafter the 'Gym Store') shall be removed from the site within 6 months of the date of failure to meet any one of the requirements set out in (i) to (v) below:
 - (i) within 3 months of the date of this decision a Fire Safety Scheme in the form of an independent fire strategy produced by a third party suitably qualified assessor detailing how the Gym Store will function in terms of fire alarm systems, and associated management and maintenance plans, shall have been submitted for the written approval

- of the local planning authority and the said scheme shall include a timetable for its implementation.
- (ii) within 6 months of the date of this decision the Fire Safety Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Fire Safety Scheme shall have been approved by the Secretary of State.
 - (iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
68. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the container unit used as a 'dark-kitchen' for the preparation of fast-food online orders and deliveries located to the south of the playing fields shown in the location marked "1" on Plan 2 attached to the notice and the prefabricated building with marquee-style roof, leased as a private gym located to the east of the main club building shown in the location marked "3" on Plan 2 attached to the notice and planning permission is refused in respect of the container unit used as a 'dark-kitchen' for the preparation of fast-food online orders and deliveries located to the south of the playing fields shown in the location marked "1" on Plan 2 attached to the notice and the prefabricated building with marquee-style roof, leased as a private gym located to the east of the main club building shown in the location marked "3" on Plan 2 attached to the notice at Rosslyn Park Rugby Football Club, Priory Lane, LONDON, SW15 5JH on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond

INSPECTOR