



## Appeal Decision

Hearing held on 27 and 28 November 2025

Site visits made on 26 and 28 November 2025

by **R Major BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 January 2026

**Appeal Ref: APP/V0510/W/25/3372470**

**Land to the NW of Harlocks Farm, Stuntney, CB7 5TR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by One Love Tennis Community Interest Company against the decision of East Cambridgeshire District Council.
- The application Ref is 24/01076/FUL.
- The development is described as proposed development of four tennis courts (with external lighting), fencing, clubhouse, and associated parking, drainage, utilities and landscaping.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. On 16 December 2025, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework). Whilst broad changes to the structure of the Framework are proposed as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. It has therefore not been necessary to consult the parties on the changes, and in reaching my decision I have had regard to the Framework published in December 2024.
3. On 26 November 2025 I carried out a pre-hearing visit to view the site and its surroundings in darkness from the public highway. An accompanied site visit was undertaken after the hearing closed on 28 November 2025, during daylight hours.
4. Both parties sought to introduce late evidence at the hearing. In deciding whether to accept this late evidence I had regard to the Wheatcroft<sup>1</sup> and Holborn<sup>2</sup> principles, as well as the procedural guidance<sup>3</sup>.
5. The first item of late evidence the appellant sought to introduce was a written submission from their ecologist in response to the Council's Statement of Case. I did not accept this written submission given that the appellant would have an opportunity to address and respond to these matters during the discussions at the hearing.
6. The Council sought to introduce pre-application email correspondences between the main parties. In considering whether accepting these documents would cause any procedural unfairness, the appellant was given an opportunity to review and comment on them. The appellant raised no objection to the inclusion of these

<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

<sup>2</sup> Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

<sup>3</sup> Planning Inspectorate Procedural Guide: Planning Appeals – England

correspondences as late evidence and thus they were accepted on the basis that they would not lead to any unfairness.

7. Furthermore, the appellant also sought to include an email from the landowner in respect of the potential use of their car park as an overspill for the appeal proposal. Again, the Council were given an opportunity to review this submission and comment before any decision was made as to whether it should be accepted. The Council raised no objection to the inclusion of this email as late evidence and thus I also accepted the submission of this document on the basis that it would not lead to a substantive change to the proposal or any unfairness.
8. During the hearing the Council commented that they wish to remove paragraph 7.1 from the submitted Statement of Common Ground (SOCG), as it is not agreed that there is an identified unmet need for 11no. additional tennis courts in the district. Additionally, the Council also requested that the reference to a pedestrian access to Ben's Yard be removed from paragraph 5.4 of the SOCG.

### **Main Issues**

9. The main issues are:
  - the effect of the proposal on protected species, with particular regard to bats;
  - the effect of the proposal on the character and appearance of the surrounding area;
  - whether the proposed development provides adequate parking provision;
  - whether the appeal site is a suitable location for the proposed development, including its accessibility by sustainable modes of transport; and
  - whether the proposed development meets biodiversity net gain objectives.

### **Reasons**

#### *Protected Species*

10. The Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations) impose a duty on me to consider whether European Protected Species (EPS) would be affected by the development. All bat species are designated as EPS and are protected under the Habitat Regulations.
11. The Government Guidance '*Bats: advice for making decisions*' states surveys should be asked for if a development proposal is likely to negatively affect bats, or their roosting, foraging and commuting habitats. This guidance goes on to provide a list of scenarios where a survey is needed.
12. This list sets out where a development site includes or is close to trees that provide commuting, foraging or roosting opportunities; and where the development proposal includes lighting of green spaces close to habitats that bats tend to use. The guidance also advises that the absence of a record does not mean there are no bats, it could mean there is no survey data available for that location.
13. During the hearing, the Council claimed that whilst the presence of bats is unknown due to the lack of any survey submitted with the planning application, the rural hedgerow to the northwest and the woodland to the northeast, as well as a nearby

reservoir, together provide all the conditions of an ideal location for bats. The Council therefore claim that based on the surrounding characteristics of the area, it is likely bats may roost in the nearby trees and forage on the appeal site itself.

14. At the hearing the appellant stated that whilst they do not know if bats are present in this area, they would assume that they probably are.
15. As such, on the information before me and my observations on site, I cannot rule out that the adjacent hedge and woodland is potentially used as a habitat by bats. Consequently, I find that a bat survey, undertaken by a suitably qualified individual, is required to establish the level of risk to bats and to determine whether any further surveys and mitigation measures would be required. Without this information I am unable to form a judgement on the potential impact of the proposal on this EPS.
16. In coming to this view, I note the appellant's comments on the distance between the proposed floodlights and the rural hedgerow, and that the proposed lighting would adhere to the Institution of Lighting Professionals (ILP) standards. However, a detailed lighting assessment demonstrating the levels of light spillage from any floodlights has not been provided. The potential impact of the proposed lighting on the nearby hedgerow and woodland is therefore unclear at this stage.
17. I also note the appellant's comments on the lack of a clear instruction from the Council on the need for a bat survey prior to determination of the application and that this matter was not included as a reason for refusal on the previous application<sup>4</sup>. Whilst I acknowledge the appellant's frustrations, I must determine the appeal based on the information and evidence before me, which does not include a bat survey or a detailed lighting assessment.
18. The appellant suggests that the need for a bat survey and a detailed lighting assessment could be secured by planning conditions. However, Circular 06/2005: Biodiversity and Geological Conservation states that it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. This Circular goes on to state that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.
19. In this regard, the appellant claims that limited funding means that careful decisions needed to be made on where money should be spent at planning submission stage. The appellant states that if the appeal was allowed more funding would become available, which would enable any required bat surveys and lighting assessments to be carried out at that stage. However, this does not justify the lack of a bat survey. It is not an exceptional circumstance.
20. Consequently, given the characteristics of the surrounding area and likelihood of bats utilising the nearby vegetation, I find that it would not be appropriate to apply a condition requiring bat survey works to be carried out post decision, should the appeal be allowed.
21. As such, I can only conclude that there is insufficient information to adequately demonstrate that the proposed development would not cause harm to a protected

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<sup>4</sup> Council Ref: 23/00761

species (bats). The proposal would therefore conflict with the protected species aims within Policy ENV 7 of the East Cambridgeshire Local Plan (as amended 2023) (LP) which requires that applications for development that may affect biodiversity interests must be accompanied by sufficient information to allow potential impacts and possible mitigation measures to be assessed fully; and that where there is reason to suspect the presence of protected species, applications must be accompanied by a survey carried out by a qualified individual assessing their presence and, if present, the proposal must be sensitive to and make provision for their needs in accordance with the relevant protected legislation.

22. Furthermore, in the absence of a bat survey I cannot be sure the proposal accords with paragraph 193 (a) of the Framework, which states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
23. The proposal would also conflict with the provisions of the Framework where it states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects on the natural environment, and in doing so they should limit the impact of light pollution from artificial light on nature conservation.
24. In view of the above, given that bats are an EPS protected under the Habitat Regulations, and it is an offence to damage or destroy their breeding sites and resting places, I find the harm arising from the conflict with the above policies to be significant.

#### *Character and appearance*

25. In addition to the LP Policies included in the reason for refusal (ENV 1; ENV 2 and COM 4), it was agreed at the hearing that LP Policies ENV 9 and Growth 2 were also relevant to this main issue.
26. The appeal site is situated to the southeast of the settlement of Stuntney, and directly to the north of Harlock's Farm and Ben's Yard. The site therefore lies within a rural area characterised by the activities of farming and buildings with an agricultural appearance. Whilst the busy highway of the A142 to the south provides a reminder of this area's proximity to the City of Ely, worked fields, mature hedgerows with trees, pockets of small woodlands and the relatively flat topography, together underpin the distinctive character of this area of countryside.
27. The appeal site reflects these characteristics, consisting of a section of a flat green field, flanked on its northwestern boundary by a ditch and a mature hedgerow which includes a mix of evergreen and deciduous trees. This hedgerow extends from the southwest of the site and leads to a small woodland to the northeast, with this woodland again consisting of a mixture of evergreen and deciduous vegetation. Beyond the hedgerow to the northwest is a dog park, surrounded by post and rail timber fencing. To the southeast is an expanse of flat green fields enclosed by hedgerows.
28. Directly to the southwest, on the opposite side of a private tarmac access road, is the site of Harlock's Farm. This is an active farm consisting of a range of utilitarian farm buildings, some of which are substantial in size. I was informed at the hearing that as well as farming this site also has B2 and B8 uses, with planning permission recently granted to expand the extent of these industrial uses.

29. Beyond Harlock's Farm, and close to the highway of the A142, is Ben's Yard. This site obtained planning permission in 2020 for the demolition, erection and conversion of buildings to provide retail, leisure, food and drink uses, as well as a children's play area and car parking area. I observed on site that this development was operational and whilst relatively modern in appearance, its buildings retain an agricultural appearance.
30. In terms of views of the appeal site and the existing adjacent development, the mature hedgerows along the A142, as well as hedging along surrounding fields, provide screening from long distance views. However, closer to the appeal site, particularly to the west, the hedgerows along the A142 dissipate and this provides short to medium range views of the appeal site and the built development on Ben's Yard and Harlocks Farm from this busy road.
31. Whilst the existing mature hedgerow to the west does provide some screening of the appeal site, the A142 is raised slightly above providing an elevated view towards the site. Furthermore, a gap within this hedgerow, which allows for the access road to Harlocks Farm, also provides a glimpse of part of the undeveloped appeal site.
32. At the hearing the Council expressed concerns that the existing access road currently acts as a hard boundary between the development at Harlocks Farm and the fields beyond, with the proposal extending the built development beyond this boundary.
33. The appeal proposal would introduce development on the other side of this access road and therefore represents a form of encroachment into the field beyond. However, this access road is not prominently visible from public viewpoints along the A142 and therefore I do not find that it represents a clear visual boundary for the development to the south. Instead, the existing woodland to the north of the appeal site represents a more natural boundary between the built development to the south and the open countryside fields beyond.
34. Furthermore, the hard surfacing for the proposed car park and tennis courts would unlikely be visible from public vantage points, and the proposed green fence surrounding the courts would blend in with the surrounding trees and fields.
35. Also the existing hedgerow, which includes some evergreen trees and runs to the west of the appeal site, would provide sufficient screening of the modest sized clubhouse building and parked cars, from public views along the A142. Moreover, the existing adjacent development at Ben's Yard includes large, prominently positioned, car parking areas to the front and side. Thus, any parked vehicles that may be visible at the appeal site would not represent a visually uncommon feature in this area.
36. Additionally, given their likely slender design, the existing vegetational screening and the distance between the A142 and the appeal site, I find that the supporting structures for the floodlights would not be visually prominent or harmful to the appearance of the area.
37. Turning to the effect of the proposed floodlights when operational. The evidence before me in respect of their effect upon the surrounding area is limited as a light survey was not submitted to demonstrate the levels of artificial light and spillage that would emanate from them. Nonetheless, during my visit at night, I observed that the wider area is characterised by dark skies, facilitated by a lack of highway lighting. The mature hedgerows and trees, which flank large sections of the A142, also assist in obscuring views of any sources of external lighting in the area.

38. However, as mentioned earlier, close to the appeal site these mature roadside hedgerows significantly reduce to allow short to medium range views towards the appeal site from the A142. At night, I observed that the existing elements of external lighting spread across the adjacent developments at Harlocks Farm and Ben's Yard did represent visually prominent features from this section of the A142.
39. Nevertheless, whilst acknowledging that some artificial lighting is present on the adjacent site, I find the proposed 10no. floodlights would have a greater level of visual prominence due to their more concentrated arrangement around the proposed courts. They would also extend the elements of external lighting further back from the highway and introduce artificial lighting into an undeveloped field that does not currently emit any light pollution. I therefore find that the floodlights, when in use, would cause some harm to the character and appearance of the area.
40. However, given the existence of artificial lighting on the adjacent sites of Harlocks Farm and Ben's Yard; the limited views from which the proposed lights would be visible; and that the harmful visual impact would be limited to the night time only, overall I find the level of harm arising from the appeal proposal on the wider landscape, and the character and appearance of the area as a whole, would be moderate.
41. In coming to this view, I have had regard to the comments that additional external lighting, associated with a recent planning approval, will likely be installed at Harlocks Farm. However, I have limited information before me in respect of this additional lighting and how it would compare with the proposed floodlights.
42. In view of all the above, given that I have found the overall level of harm arising from the proposal on the character and appearance of the area to be moderate, it would not conflict with the relevant provisions of LP Policies COM 4 and Growth 2, where they together seek to ensure, amongst other things, that development does not have a significant adverse impact upon the character or the locality of the countryside.
43. However, the moderate level of harm to the character and appearance of the area I have identified would conflict with the higher bar of LP Policies ENV 1, ENV 2 and ENV 9, where they together seek to ensure, amongst other things, that development proposals protect, conserve and where possible enhance the unspoilt nature and tranquillity of the area; the nocturnal character of rural areas free from light pollution; preserve, enhance or enrich the character, appearance and quality of an area; reduce all forms of pollution and prevent an unacceptable impact arising from development on wider rural areas, including through light pollution. The proposal would also be contrary to the Framework where it requires planning decisions to limit the impact of light pollution from artificial light on intrinsically dark landscapes.

#### *Parking provision*

44. The parties agreed at the hearing that the provision of 16no. car parking spaces represents a significant shortfall in comparison to the level of car parking provision that would be required in accordance with LP Policy COM 8. However, both parties also agreed that due to the nature of the proposed use, a more bespoke approach to assessing the required level of parking provision was required.
45. As such, at the hearing the appellant suggested that parking provision between 16 – 20no. spaces was reasonable, as this represented 4 – 5no. spaces per tennis court. The Council suggested a figure somewhere between 25 – 30no. spaces would

be more appropriate. The Council also drew my attention to a lack of proposed accessible parking spaces.

46. In response the appellant suggested that the car parking layout could be re-arranged to accommodate up to 20no. spaces and provide accessible spaces, without encroaching into surrounding grassed areas. From the information before me it is unclear how up to 4no. additional spaces could be provided in the proposed car parking area. However, I accept that there would likely be scope to provide some accessible spaces, the provision of which could be secured by condition should the appeal be allowed.
47. The appellant also claimed that they would also be allowed to use the overflow car park associated with Ben's Yard if and when required. In support of this claim, and as late evidence, the appellant provided an email from the landowner.
48. Having read this email, whilst the landowner does appear to agree to the principle of the overflow car park at Ben's Yard being used during events that generated more than 16-20no. cars, they also state that there are "*lots of details to sort out regarding the management of this element but in principle it is a yes*".
49. As such, the final details of this are not agreed and, in any case, the weight I can give to an email as binding confirmation that the appellant will be able to use this car park at Ben's Yard is very limited. Furthermore, given that this existing car park is located outside the site red edge, and there is no blue edge, a condition to secure its use for the proposed development would not be reasonable or enforceable.
50. Nevertheless, having listened to both sides' arguments at the hearing, I find that given the type of use being proposed, it is not unreasonable to conclude that some members would car share. For example, there will likely be scenarios whereby members of the same household, or friends and family that live close to each other, would travel together in the same car to the appeal site.
51. As such, even in the scenario whereby there were 16no. players on the courts at any one time, as well as 2no. coaches, it is likely that some of these players may have shared a car or potentially accessed the site via another form of transport.
52. Nonetheless, I do however find that a problem will likely arise at the 'change over time', when members turning up to play within the next time slot find the car park is largely, or completely, occupied by cars of those currently playing. Whilst acknowledging that this would be for a temporary period only, the provision of only 16no. spaces does not allow much flexibility to accommodate this scenario. It is unclear where these arriving cars will park during this likely frequent situation.
53. Notwithstanding my concerns regarding the above issue, at the hearing the Council did acknowledge that their concerns in relation to provision of parking did not relate to a highway safety matter, as the site is accessed via a private road and located a significant distance from the public highway. Therefore, the Council commented that any highway issues arising from the under provision of parking would be on private land. Additionally, the Council also confirmed that any parking issues would not have an impact on the living conditions of any nearby residents.
54. Consequently, the Council stated that the harm arising from the under provision of car parking spaces ultimately related to the appeal site not being able to serve its own members and needs. As such, the Council confirmed that, in their opinion, the harm arising from the under provision of car parking would be limited.

55. In view of all the above, there was agreement at the hearing that the provision of 16no. car parking spaces is below the required level set out within the Council's parking standards. However, it was also acknowledged that a more bespoke approach to parking provision was required. Nevertheless, whilst I find that the provision of 16no. car parking spaces would likely be sufficient to accommodate members playing on the court, for the reasons given earlier, this figure would not provide sufficient parking provision, or much flexibility, at 'change over time' when members turn up in advance of the next session on court.
56. Overall, I therefore conclude that the provision of 16no. car parking spaces is not adequate for the proposed use and the proposal would conflict with the provisions of LP Policy COM 8, where it states that development proposals should provide adequate levels of car parking and make provisions broadly in accordance with the Council's parking standards.
57. Notwithstanding the above conflict however, in this case the harm would be to members of the tennis club, as opposed to any harm to highway safety or the living conditions of nearby residents. It would also only likely be for a temporary period of time at the beginning and end of sessions. As such, and in these circumstances, I find the overall harm arising from the under provision of car parking, and the conflict with the above policy, to be limited.

#### *Suitable location*

##### Need

58. The parties agreed at the hearing that the proposal relates to a community facility and therefore LP Policy COM 4 is applicable. The subtext (para 7.5.1) to this policy acknowledges that community facilities are essential to the social well-being of communities, and there is likely to be a need for new facilities over the Plan period as the population expands. It states that the Council will support the improvements to existing facilities and the development of new ones where there is a local need.
59. To that end, the appellant's tennis academy currently has over 150no. members and operates from tennis courts at King's Ely school. However, an email from the school (dated 14 June 2024), informing the appellant that the school's facilities will no longer be offered to the academy, has been submitted as an appendix with the appellant's appeal statement.
60. At the hearing I heard from the appellant that the school are currently allowing the academy to continue to operate from the school on a weekly rolling basis, but this could cease at any time. The appellant is therefore looking to establish a new permanent, long-term home for the academy and its members.
61. I note the Council has questioned how pressing this need is, given that the email provided dates from June 2024 and the academy is still currently operating from the school. However, I have no substantive reason to question the appellant's explanation of the existing arrangement and their requirements to find a long-term solution for the academy and its members.
62. In addition to the academy's own specific need to find a new home, the appellant has also submitted comments from the Lawn Tennis Association (LTA). The first letter from the LTA details that as of September 2023 there was a demand for 5.5no. additional tennis courts in this district. A more recent letter from the LTA, dated May 2025, details

that this figure has risen to 11no. tennis courts, based on the provision of 60no. players per floodlit tennis court.

63. The Council however question this evidence, stating that the LTA use high-level data to estimate need and demand for tennis courts. Furthermore, at the hearing the Council referred to their own evidence-based document entitled 'Outdoor Sport Facilities Strategy', which I was informed is dated 2020. The Council claim that this document does not identify a need for additional tennis courts in the district.
64. Whilst I acknowledge that the document referred to by the Council is five years-old and the evidence provided by the LTA is therefore more recent, in any case, this document was not submitted as part of the Council's evidence. I do not therefore have a copy of it, and this limits any weight I can give to this document which was referred to at the hearing in my determination of the appeal.
65. The Council also questioned why the appellant has not investigated all the existing tennis courts listed within this document as potential locations for the academy. As above, I do not have a copy of this document that would enable me to see the list of existing tennis courts within the district. Nevertheless, the appellant stated at the hearing that these existing facilities did not provide the 4no. courts needed by the academy and were either owned/used by schools or other tennis clubs.
66. In the case of tennis courts owned by schools, the appellant explained that this would not allow the flexibility of hours of use the academy needs, as any use would be restricted to out of school hours only. Furthermore, the appellant also stated courts owned by other tennis clubs would not be an option, as other clubs would not be willing to share facilities with a rival tennis academy. In the absence of this document detailing the existing tennis courts within the district, I found the appellant's explanation on their lack of suitability for the proposed development to be reasonable.
67. In view of the above, and based on the evidence before me, I conclude that the appellant has satisfactorily demonstrated a need for the proposed development.

#### Location

68. LP Policy Growth 2 sets out the locational strategy for the development plan. It seeks to focus the majority of growth at the market towns of Ely, Soham and Littleport, with more limited development in the villages which have a defined development envelope.
69. Outside the defined development envelopes, Policy Growth 2 states that development will be strictly controlled having regard to the need to protect the countryside and the setting of towns and villages. It then provides a list of categories for which development may be permitted as an exception, subject to there being no significant adverse impact on the character of the countryside and that other LP policies are satisfied. One such category in this list is outdoor recreation and leisure facilities, and it directs to Policy COM 4 for further consideration.
70. Similarly, LP Policy COM 4 states that proposals for new community facilities should be located within settlement boundaries wherever possible. It goes on to state that in exceptional circumstances facilities may be permitted in the countryside, where there is a lack of suitable and available land within settlements or where a rural location is required.
71. The parties agreed at the hearing that the appeal site is located outside any settlement boundary and that the proposed use would not require a rural location.

Consequently, for a proposal to accord with the locational requirement of LP Policy COM 4, there must be a lack of suitable and available land within settlements.

72. There was also no dispute that Policy COM 4 does not provide a description or definition as to what “suitable and available” means, or how it should be assessed. The parties therefore agreed that this was a matter for the decision maker to determine.
73. In terms of identifying suitable sites, the appellant states that there are no site allocations for the proposed use in the Local Plan. They therefore initially wrote to the Council and the Church Commissioners, who own land in north Ely, to gauge interest in accommodating land for a tennis facility. The Church Commissioners did not respond, and the Council replied to state that it did not have any suitable or available land for the proposed development.
74. The appellant then engaged in discussions with the Council to identify alternative sites for the proposed development. As a result of these discussions 13no. alternative sites within and on the edge of settlements were identified, and these formed the basis of the appellant’s Alternative Site Assessment (ASA).
75. The appellant wrote to the landowners of these 13no. sites to establish whether they had any interest in accommodating the proposed development. The appellant’s submissions state that only two responses were received, and both were negative.
76. The Council therefore acknowledged at the hearing that the 13no. alternative sites identified in the appellant’s ASA, submitted with the appeal, are not available and can therefore be excluded from the alternative site selection process.
77. However, the Council contend that the appellant’s site selection process was not robust and at the hearing suggested that other sites within or on the edge of settlements should have been assessed. The Council did however accept that they did not suggest or identify any other specific sites for the appellant to assess, beyond the 13no. within the submitted ASA.
78. I also heard from the appellant at the hearing that land within, or on the edge of, settlements was either allocated, consented or carried ‘hope value’ with the landowner for residential, commercial or retail development. The appellant therefore argued that on this basis land within, or on the edge of, settlements, beyond those already assessed as part of the submitted ASA, would not be “suitable or available” for the proposed use as a tennis facility.
79. In response, at the hearing the Council claimed there could potentially be a landowner willing to provide land at a reduced rate within or on the edge of a settlement. The Council therefore stated that all potential sites within, and on the edge of, settlements had not been fully investigated by the appellant.
80. While I recognise that there may always be an element of doubt that every stone has been turned, a line must be drawn somewhere. The position of that line is the difference between the parties on this issue.
81. In view of all the above, and having heard both parties’ arguments in respect of this matter, I find that, applying a reasonable and intelligent balance in the particular circumstances of this case, the appellant’s submitted ASA, which includes 13no. sites, to be proportionate and robust in respect of this development. As such, and with no further alternative sites within settlements put forward by the Council for

consideration, I find that the appellant has adequately demonstrated that there are no suitable and available sites within settlements for the proposed development.

Accessibility by sustainable modes of transport

82. In terms of access to the appeal site, both parties agreed at the hearing that the relevant policies in respect of this issue were LP Policies COM 4, COM 7 and ENV 2.
83. Whilst located outside of any settlement and therefore within the countryside, I observed that the site is located within walking distance of the settlement of Stuntney, via a continuous footway, and at the hearing the Council acknowledged that the settlement of Stuntney represents a sustainable location.
84. Furthermore, it was agreed by the parties that there is a continuous footway between the key settlement of Ely and Stuntney. Albeit, the Council drew my attention to the need for pedestrians to cross the busy A142, which has a speed limit of 50 mph, close to Quanea Drove.
85. It is therefore possible to walk from Ely to the appeal site along continuous footways. However, I find that the distance between the appeal site and Ely, as well as a lack of streetlighting and need to cross the A142, does not make this option particularly appealing during dark and adverse weather conditions.
86. To that effect, at the hearing both parties stated that in dark and adverse weather conditions walking between Ely and the appeal site would not be a “great” option. However, they both acknowledged that it was still an option, particularly in the summer months. I agree with the parties’ assessment on this matter.
87. With regard to cycling, I find that the appeal site is within cycling distance of Ely. However, there are no specific cycle lanes along the A142 and sections of this busy road are not lit. Consequently, I again find that cycling to and from Ely is an option, but most likely during daylight hours only.
88. An interested party drew my attention to a planned cycle lane to be installed between Ely and Stuntney, commenting that this would improve cycle connectivity between Ely and the appeal site. This interested party also commented that if allowed the proposed development would add weight to the case for this cycle lane to be extended beyond Stuntney. Whilst these points are acknowledged, I have not been provided with all the details of this proposed cycle lane and this therefore limits the weight I can attribute to it in my determination of this appeal.
89. I also heard that the appeal site would be served by a bus which stops at settlements including Ely, Stuntney, Soham, Fordham and New Market. I was informed this bus service runs every hour, between 05:30 and 20:30. The bus stops in Stuntney are located at the southern end of the settlement and are within a comfortable walking distance of the appeal site. I therefore find that the bus is a realistic option to access the appeal site for members that live within those settlements, or along this bus route.
90. The existing academy currently operates from King’s Ely School, which is located close to the centre of Ely. As part of their appeal submission the appellant has included a table which provides details of where members currently live and how they travel to the existing facilities.
91. This table shows that 53% of members live in Ely, with a combined total of 16% living in Littleport and Witchford. The remaining 31% of members reside elsewhere

within this district and beyond. As such, given this wide range of locations within which members reside, I find that any location for this proposed development would unlikely be accessible to all its members by sustainable modes of transport, including foot and cycle.

92. The table also demonstrates that even at the existing site within the key settlement of Ely, 87% of members currently drive, 10% walk and 3% cycle. As such, even with a location within a key settlement, this table shows that the majority of members currently drive to the facility. However, I do acknowledge the Council's view that the location of the appeal site would be less sustainable than the existing site, and thus it would not promote the use of sustainable transport.
93. Nevertheless, and as pointed out by the appellant, I also agree that any comparisons between the sustainability of the proposed and existing sites is not particularly relevant, as remaining at the existing site is not a long-term option for the academy. The assessment therefore needs to be made on the accessibility credentials of the appeal site, rather than its comparison to the existing site in Ely.
94. In view of all the above, whilst I find that walking and cycling to the appeal site from the key settlement of Ely by foot and cycle is an option, based on my observations this would not be a realistic option at certain times of the day and year. However, I find that the appeal site is sufficiently served by bus from a number of settlements, including the key settlement of Ely within which more than 50% of members live. I also find that the appeal site is well located by foot and cycle to the nearest settlement of Stuntney, which whilst acknowledging only has a small population, is considered to be a sustainable location by the Council.
95. As such, given my earlier observation that any location for this proposed development would unlikely be accessible to all its members by sustainable modes of transport, and having regard to paragraph 110 of the Framework, which requires decisions to take account that opportunities to maximise sustainable transport solutions will vary between urban and rural locations, I conclude that the development would be accessible by an appropriate range of sustainable transport modes.

#### Conclusion on suitable location

96. For the reasons given above, I have found that the appellant has satisfactorily demonstrated that there are no suitable and available sites within settlements for the proposed development. Furthermore, I find the appeal site would be accessible by an appropriate range of sustainable transport modes. In relation to these matters, I therefore conclude that the appeal site represents a suitable location for the proposed development.
97. Consequently, I find no conflict with the requirements of LP Policies Growth 2 and COM 4 where they permit outdoor recreation, leisure and community facilities in the countryside, where there is a lack of suitable and available land within settlements. I also find no conflict with the provisions of LP Policies COM 4, COM 7 and ENV 2 where they together seek to ensure, amongst other things, that development is designed to reduce the need to travel, particularly by car and should promote sustainable forms of transport appropriate to its particular location; has good access to public transport services; and is well located and accessible to its catchment population, including by foot and cycle.

### *Biodiversity Net Gain (BNG)*

98. Schedule 7A of the Town and Country Planning Act 1990 (as amended) (the Act) introduced a statutory framework for BNG, under which, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the Biodiversity Gain Condition (BGC), which requires that at least a 10% increase in biodiversity value is met.
99. The statutory framework for BNG has been designed as a post-permission matter where a Biodiversity Gain Plan (BGP) must be submitted to discharge the BGC and so development cannot commence until the BGP is approved. On this basis, the Planning Practice Guidance<sup>5</sup> (the PPG) indicates it would generally be inappropriate to refuse an application on the grounds that the biodiversity gain objective will not be met.
100. In this regard, the appellant has utilised the standardised BNG metric as a measure of the existing biodiversity value of the site and of the anticipated change in biodiversity units as a result of the proposal. The Council confirmed at the hearing that they agree with the existing baseline provided and that the proposal could technically progress to BGC stage.
101. However, the Council are concerned that the appellant's proposed post development BNG is not achievable on this site, and their lease of the appeal site may not cover the 30-year period for maintenance under paragraph 9 of Schedule 7A. The Council therefore drew my attention to the section of the PPG<sup>6</sup> which states that BNG is not just a post-permission matter, and that to ensure the biodiversity gain objective is met and the BGC can be discharged successfully, it is important that BNG is considered throughout the planning process.
102. Whilst acknowledging the Council's concerns, I find that the pre-development biodiversity value of a site is the critical step in establishing whether BNG would be delivered. Whilst the parties may disagree on whether the proposed post development BNG is achievable on this site, this, along with the time period for future maintenance, are issues which would need to be resolved at BGC stage when the appellant is required to submit a BGP.
103. In coming to this view, I appreciate the Council's position that on-site provision should be the starting point. However, even in the scenario whereby the 10% BNG cannot all be delivered on-site, under the Environment Act there are other options available to the appellant, such as off-site gains through the provision of off-site biodiversity and/or the purchasing of credits.
104. As such, I am satisfied that the scheme would be capable of meeting the mandatory requirements for a minimum of 10% BNG, in accordance with the statutory framework. It would be for the Council to consider the BGP and development may not begin until this is approved. Consequently, I am as satisfied as I can be, that the BGC is capable of being discharged.
105. I therefore conclude that the proposal would accord with LP Policy EN 7 and Policy NE.6 of the East Cambridgeshire District Council Natural Environment – Supplementary Planning Document (SPD) (2020). These policies together seek to ensure that development proposals provide appropriate mitigation measures, reinstatement or replacement of features and/or compensatory work that will

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<sup>5</sup> Paragraph: 019 Reference ID: 74-019-20240214

<sup>6</sup> Paragraph: 002 Reference ID: 74-002-20240214

enhance habitats on or off site where harm to environmental features and habitat is unavoidable; and provide measurable net gains for biodiversity.

106. Furthermore, the proposal would accord with the aims of Paragraph 187 of the Framework that requires planning decisions to contribute to and enhance the environment by, amongst other things, providing net gains for biodiversity. The proposal would also comply with the requirements of the Act.

### **Other Considerations**

107. The proposed development would provide social benefits through the provision of a permanent home for the tennis academy and its more than 150no. members. As detailed earlier, the need to find a new home has arisen from the academy's existing location being unavailable in the long-term. The appellant details that without finding a new home the academy would likely close down. It was also stated that whilst some members may be able to join other clubs, due to capacity issues, this would not be the case for all members, some of which would therefore likely have to give up playing tennis on a regular basis.

108. In addition, the provision of 4no. tennis courts would also assist in addressing the shortfall in tennis courts identified by the LTA in this district and enable the academy to grow its membership population to up to 240no. members. This would allow for more people to play tennis, and as pointed out by a number of interested parties, participating in sport provides a number of social, mental health and physical benefits.

109. I also heard at the hearing how the development would be funded by a community interest company to provide benefits to the community it serves, and how the academy not only provides specialist coaching and a place for its diverse range of members to play tennis, but also how it delivers a unique coaching programme for young and aspiring coaches. The appellant also detailed how the courts would be made available to non-members for 2-hours each day, free of charge.

110. I was also informed about how the academy is used by local schools and gives out free coaching lessons to SEND groups. I have therefore had due regard to the Public Sector Equality Duty (PSED) under the Equality Act 2010. Disability is a relevant protected characteristic to which the PSED applies. These rights are engaged in reaching my decision and I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key, and I will return to this matter in my planning balance.

111. In view of the above, and acknowledging all the letters of support received for the development, I attribute significant weight to the social benefits that would arise from the appeal proposal.

112. The development would also provide economic benefits during the construction phase and the appellant advised that the provision of 4no. courts would enable them to employ an additional coach in the future. The proposal would also increase footfall and potential expenditure at the adjacent leisure and retail uses. However, given the scale of the development, I attribute limited weight to these economic benefits.

113. The proposal would also be required to achieve at least 10% BNG, either on-site or off-site. Again, given the scale of the development I attribute limited weight to this environmental benefit.

## Planning Balance

114. I have found that the appeal site would be accessible by an appropriate range of sustainable transport modes, and the appellant has satisfactorily demonstrated that there are no suitable and available sites within settlements for the proposed development. I therefore find that in relation to these matters the appeal site represents a suitable location for the proposal. I also find that the development would be capable of meeting the mandatory requirements for a minimum of 10% BNG.
115. Nevertheless, for the reasons given, I have found that the proposal would result in a moderate level of harm to the character and appearance of the area, and some limited harm would arise from the under provision of car parking. However, I find the above-mentioned benefits of the appeal, and in particular the social benefits to which I have attributed significant weight, would outweigh these particular harms.
116. However, I have also concluded that there is insufficient information to adequately demonstrate that the proposed development would not cause harm to a protected species (bats). Given that bats are an EPS protected under the Habitat Regulations, I attribute significant weight to this harm and consider it to be decisive. I therefore conclude that when taken together the above-mentioned benefits do not outweigh the collective level of harm that would arise from the development as a whole.
117. In reaching this conclusion I have had regard to my duty to acknowledge the PSED's objective of advancing equality of opportunity between persons who share a relevant protected characteristic and those who do not. However, the cumulative harm arising from the proposal outweighs the benefits in terms of eliminating discrimination against persons with the protected characteristics of disability, as I find that there will likely be other opportunities for SEND groups to participate in tennis without causing the harms identified. I consider that it is therefore proportionate and necessary to dismiss the appeal.

## Conclusion

118. The proposal conflicts with the development plan taken as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above, and having regard to all matters raised, the appeal is dismissed.

*R Major*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Richard Seamark - MRTPI	Partner, Planning and Development – Cater Jonas LLP
Sebastien Scaux	Director 10is Academy

### FOR THE COUNCIL:

Sophie Brown - Licentiate MRTPI	Planning Team Leader
Richard Kay - BA(Hons), MA, DipTP	Climate Change and Natural Environment Manager

### INTERESTED PARTIES:

Nigel Wood

## **DOCUMENTS SUBMITTED AT THE HEARING**

Email correspondence between the main parties at pre-application stage

Email correspondence between the appellant and the landowner

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

List of amended planning conditions