

IN THE MATTER OF:

**THE PROPOSED REDEVELOPMENT OF THE LAMBS SQUASH CLUB, 1
LAMB'S PASSAGE, ISLINGTON, LONDON, EC1Y 8LE**

ADVICE

1. I am asked to advise the Lambs Action Team ("the LAT") in relation to a pending application for planning permission (No. P052310) made by Clan Real Estate (Lamb's Club) Limited ("the developers"), although this advice is equally applicable to the duplicate application No. P052334. The application for planning permission (No. P052310), which relates to the redevelopment of the existing Lambs Squash Club at 1 Lambs Passage, Islington, London EC1Y 8LE is expressed in the following terms:

Demolition of existing building and erection of 7 storey building plus basement to accommodate 83 residential units (Use class C3) and 564 sq.m of offices (Use Class B1) on part of ground floor with associated public realm and incidental works.

2. The application is presently awaiting determination by The London Borough of Islington, the local planning authority (the "LPA").
3. The site is currently the location of Lambs Squash Club, which operates 9 squash courts and other fitness and recreational facilities. It has a current membership of approximately 1200, of whom a significant proportion are active squash-playing members. If the application for

planning permission is granted in its current form, it will result in the demolition and loss of the squash club and its facilities.

4. The history of the application can be briefly summarised. A similar application for planning permission in relation to the same site was refused in May 2005. One of the grounds of refusal was the loss of sporting facility (reason for refusal 6):

6. The existing sports facilities on site contribute to the character and liveliness of the area and play an important role in the Borough and the wider area in the provision of indoor sports facilities. The proposal would therefore result in a loss of facilities contrary to Policies R18 and ST8 of Islington's Unitary Development Plan 2002. The proposal would also be contrary to policy 3D.5 of the London Plan 2002 and to PPG17.

5. Evidently, the original application was considered to be contrary to both development plan policy and central government guidance as set out in PPG17. The other reasons for refusal concerned unrelated issues.
6. The application which is the subject of this advice is, in essence, a re-submission of that original application with amendments to address and overcome the other reasons for refusal.
7. The application has received recommendation at officer level, and is awaiting determination by the relevant committee. The matter came before committee on 24 January 2006 when determination of the application was adjourned for the issue of the impact and relevance of PPG17 to be further considered and addressed.
8. It is against that background that I am specifically asked to advise upon the relevance of PPG17 to this application and the extent to which PPG17 is a material consideration.

9. I have been provided with a number of documents relevant to this application, including the following:

9.1. the reports of Pan Leisure dated November 2005 and February 2006, and letters from the author of the report dated 23 and 24 February 2006;

9.2. the report of Strategic Leisure Limited dated October 2005;

9.3. the letter from the developers dated 28 February 2006, together with attachments;

9.4. the letter from Howard Green, planning consultant on behalf of LAT dated 3 November 2005;

9.5. the letters from Sport England dated 3 November 2005 and 3 April 2006;

9.6. the letter from England Squash dated 23 January 2006 and 3 March 2006.

10. Each of these representations raises a number of matters and the purpose of this advice is not to summarise those representations and provide my opinion on the merits. Fundamentally, those are matters which the committee will have to weigh up and assess. The purpose of this advice is to focus on the requirements of PPG17, whether they have been complied with in this case and what the consequential impact is for this application.

11. My outline conclusions are as follows:

11.1. the developer has failed to comply with the clear guidance set out in PPG17, particularly:

- 11.1.1. the requirement for local consultation; and
 - 11.1.2. the requirement to demonstrate widespread support for the proposal
 - 11.2. against that background the developer has failed to demonstrate clearly that the protective policy against development should be overcome on the basis that the facility is surplus to requirements; and
 - 11.3. whilst the guidance in PPG17 is not absolute, the fact that the current UDP pre-dates the advice set out in PPG17 means that the guidance set out in PPG17 should be accorded significant weight.
12. The detailed analysis giving rise to these conclusions is set out below.

PPG17: context.

13. PPG17 (“Planning for open space, sport and recreation”) was published on 24 July 2002, very shortly after the formal adoption of the current Islington UDP. However, in very summary terms, PPG17 advises that local authorities “*should undertake robust assessments of the existing and future needs of their communities for open space, sports and recreational facilities*” (paragraph 1). Those assessments will then “*form the starting point for establishing an effective strategy for open space, sport and recreation at the local level ...*” (paragraph 4). The guidance goes on to give specific advice in paragraph 10 about the approach to be taken to existing sporting facilities. I will return to these issues in more detail later in this advice.
14. It is proper to observe that there had been a consultation process in relation to the draft PPG17. The consultation process commenced on 21

March 2001 (see letter from Mr. J. Channing, Head of Planning Division 1 DETR dated 21 March 2001).

15. Although, therefore, the final version of PPG17 had not been published prior to the adoption to the current Islington UDP, a fairly clear indication of the direction of government policy had been provided as early as the spring of 2001. The letter from Mr Channing expressed the government's intention "*to protect existing sport, open space and recreation facilities and create new ones*".
16. It is unclear to me to what extent this draft policy shift was considered during the emergence of the Islington UDP. What is clear, and appears not to be in dispute, is that the UDP contains no policy which specifically addresses the issue of existing sporting facilities (with the exception of open field playing spaces) as opposed to new facilities, despite the significance of this issue in the draft PPG17. It is also not in dispute that the LPA, in common with very many others, has not yet undertaken a local needs assessment/audit in compliance with PPG17 guidance.

PPG17: analysis.

17. PPG17 makes clear at the outset that it sets out policies "*needed to be taken into account by ... local planning authorities in the preparation of development plans (or their successors) [and policies which] ... may also be material to decisions on individual planning applications*".
18. Paragraph 1 of PPG17 states that:

To ensure effective planning for ... sport and recreation it is essential that the needs of the local communities are known. Local authorities should undertake robust assessments of the existing and future needs of their communities for ... sports and recreational facilities.

19. At the very outset, therefore, PPG17 emphasises the importance of determining the needs of local communities to ensure effective planning. This is emphasised later in the guidance, by reference to local consultation (see paragraph 10 for example). Moreover, it is consistent with other planning policy relating to the involvement of local communities in planning, as more recently embodied in PPS1, for example.

20. The emphasis is also set out in the Companion Guide to PPG17:

The main purpose of undertaking a local assessment is to plan positively, creatively and effectively to ensure that there is adequate provision of accessible, high quality greenspaces, civic spaces and sport and recreation facilities to meet the needs of local communities and visitors.

21. What is meant by “local communities” is not narrowly defined to include only local residents. On the contrary, paragraph 2 of PPG17 makes it abundantly clear that “the needs of those working in or visiting areas, as well as residents should be included” in such assessments of need.

22. The fact the policy makes specific reference to these different elements of the wider community (workers and visitors), involves the recognition that these separate elements may have different needs. The reference to those “working” in the area, in the context of a policy about sport and recreation, must inevitably involve some assessment of when those workers generally require access to a sport or recreation facility.

23. Furthermore, part 2 of the Companion Guide to PPG7 sets out the guiding principles and states as follows:

local needs are likely to vary considerably from one place to another, even within a single local authority area, according to

different socio-demographic and cultural characteristics of local communities and the number and types of visitors ...

...

the value of open spaces or sport and recreation facilities, irrespective of who owns them, depends primarily on two things: the extent to which they meet clearly identified local needs and the wider benefits they generate for people, wildlife, biodiversity and the wider environment

24. The clear point to be drawn from these statements is that the assessment of need depends upon the different socio-demographic groups using the facility and the type of visitor to the facility. Further, whether a facility is in private or public ownership is irrelevant insofar as the assessment of the value of the facility is concerned. Moreover, it matters not who uses a particular sporting facility, so long as that facility is meeting an identified local need.
25. Furthermore, paragraph 3 of PPG17 emphasises the need to undertake audits of existing open space, sports and recreational facilities etc. It is evident that such audits are not solely designed to identify sites which are surplus to requirements (see the discussion of paragraph 10 below). The emphasis is in fact much more positive: *“audits of quality will be particularly important as they allow local authorities to identify potential for increased use through better design, management and maintenance”*. The emphasis is on making better use of existing facilities.
26. Paragraph 5 of PPG17 sets out the clear importance of such assessments as a tool of good planning:

Good quality assessments and audits ... will provide vital tools for resolving the potential conflicts that arise between different uses and users of ... sports and recreation facilities. The Government

expects all authorities to carry out assessments of needs and audits ... in accordance with the paragraphs above”.

27. This advice feeds through into the policy set out in paragraph 10 of PPG17, under the heading “*Maintaining an adequate supply of open space and sports and recreational facilities*”:

Existing ... sports and recreational buildings should not be built on unless an assessment has been undertaken which has clearly shown that the ... buildings and land to be surplus to requirements ... In the absence of a robust and up-to-date assessment by a local authority, an applicant for planning permission may seek to demonstrate through an independent assessment that the land or buildings are surplus to requirements. Developers will need to consult the local community and demonstrate that their proposals are widely supported by them.

28. The decision making process inherent in this paragraph has been set out in flowchart form in the accompanying “*Companion Guide to PPG17*”. The flowchart is introduced in paragraph 3.1. of the Companion Guide:

PPG17 also sets out clear policy guidance for authorities when considering planning applications which involve the redevelopment of an existing space or facility. Diagram 1 summarises the approach to development control set out in PPG17 for such applications ...

29. The two significant questions in that process are as follows:

- 29.1. has the developer demonstrated through an independent assessment that the land or buildings are surplus to requirements? (Curiously, the flow chart anticipates no other answer than “yes”. It appears to me that this is an obvious error on the face of the diagram); and

- 29.2. are the developer's proposals widely supported by the local community?
30. It is only when both of these separate questions are answered in the affirmative that permission for redevelopment should be granted. They are essentially separate questions and regarded as such in the Companion Guide to PPG17.
31. A number of points arise from the above. They can be summarised as follows:
- 31.1. PPG17 emphasises that existing facilities are to be protected, save as specified by the policy.
- 31.2. The burden is on the person seeking to overcome this protective policy to demonstrate that the facility is clearly surplus to requirements.
- 31.3. Where a developer seeks to do so in the absence of a local needs assessment, they will need to:
- 31.3.1. do so by means of independent assessment; and
- 31.3.2. consult the local community (as broadly defined in paragraph 3 of PPG17); and
- 31.3.3. demonstrate the proposals are widely supported by the local community.
32. These last three requirements of (a) independent assessment (b) consultation and (c) support, are of particular importance. Their importance, given the emphasis from the very outset of PPG17, in my

opinion lies in their ability to feed into the issue of “need” i.e. they enable a decision maker to be satisfied whether or not there is need.

33. As to the issue of independent assessment, it is not the purpose of this advice to analyse in detail the assertions made in the reports prepared by Pan Leisure. I am aware that issue has been taken with a number of matters both methodological and factual within those reports.
34. For present purposes, I would merely draw attention to the Companion Guide to PPG17, which advises as follows:

3.2. Where a local authority has not undertaken its own assessment, paragraph 10 of PPG17 allows an applicant for planning permission to “seek to demonstrate through an independent assessment” that a particular site or area of land is surplus to requirements. In the interests of transparency and good practice, it will be desirable for any developer wishing to undertake such an assessment to agree the proposed methodology in advance with the relevant planning authority. It should keep the authority and the local community fully informed as the assessment proceeds. This should help both to avoid criticism and comply with the requirement in PPG17 that developers consult the local community and are able to demonstrate that their proposals are widely supported.

35. Any consideration of the independent assessment submitted by the developers will be influenced by whether or not that assessment is found to be in compliance with this guidance.
36. As to the requirements for consultation, I advise as follows. Consultation with the local community is a requirement of PPG17. It is a specific requirement, especially so when a developer is seeking to overcome the protective policy against redeveloping an existing sporting facility. The fundamental purpose of the consultative exercise is to assess the need

for the facility by reference to the local community. Whilst such a consultation exercise need not exclusively canvass the users of the facility in question, it is perhaps difficult to think of a better starting point when looking to assess the need for that facility. Evidently, these individual users are members of the local community (whether residents, workers or visitors). It is implicit that they use this particular facility (as opposed to any of the other facilities in the vicinity which are said to have spare capacity and/or equivalent facilities) for a particular reason. Consultation with such individuals may, or may not, shed light on the issue of the need for that facility. However, it is difficult to envisage how an assessment can clearly show that a facility is surplus to requirements if no such consultation has been undertaken. There appears to be no dispute that no such consultation exercise has been undertaken. Whether the reason advanced for the failure to undertake such an exercise stands up to scrutiny will be a matter for the decision maker to determine.

37. It is proper to observe that PPG17 is guidance only, and there is no absolute requirement for a consultation exercise. It is essentially a matter of weight for the decision maker to determine how significant the absence of local community consultation is in the circumstances of the particular case. In many cases, there will be an ill-defined or a patently absent constituency of users of a particular facility. It may not be in dispute that a particular facility has become redundant and that a local community consultation would be likewise a redundant exercise. It is a matter for the decision maker at the end of the day to judge whether there are good grounds for not undertaking a local community consultation in accordance with PPG17. However, it is difficult to escape the conclusion that a properly conducted community consultation exercise might have had a real impact on the assessment of need in this case.

38. Likewise, PPG17 requires the developer to demonstrate that the proposal is widely supported by the local community. Again, PPG17 is guidance only, and the weight to be attached to it is a matter for the

decision maker. However, the starting point must be that in the absence of a local community consultation the developer cannot begin to show compliance with this requirement. Had the developer shown that a consultation process revealed widespread support, the requirement would have been complied with. Alternatively, had the consultation process revealed objections based upon reasons unrelated to the planning merits, the developer might well have been in a position to argue that the weight to be attached to the absence of widespread support was significantly diminished. However, when no such consultation process has been embarked upon and the abundant response from the local community is objection to the proposal, it is difficult to see how the developer should reap the benefit of such approach in the face of clear policy and guidance to the contrary.

39. However, whatever the procedural failings, a key issue is whether the developer can clearly demonstrate that the existing facility is “*surplus to requirements*”. It is perhaps appropriate as a fair starting point to observe that the existing facility has a membership of in excess of 1000 individuals of whom a significant proportion are squash-playing members.
40. It is my opinion that the expression “*surplus to requirements*” relates to a finding that there is no assessed need in the local community for the particular facility. Any failure in the methodology or process of assessment is therefore likely to make a conclusion that a facility is surplus to requirements all the more difficult to sustain.
41. One of the primary contentions made by the developers is that any existing need for the current facility can be absorbed elsewhere at nearby squash courts. It is not the function of this advice to examine the evidence in relation to that issue – there are others who seek to perform that task. But it is important in the current context to examine how PPG17 deals with the issue of what is meant by “*surplus to requirements*”.

42. Paragraph 18 of PPG17 provides a fairly clear indication that it is not simply a function of the levels of usage and the quality of the facility:

Where recreation land and facilities are of poor quality or under-used, this should not be taken as necessarily indicating the absence of need in the area. Local authorities should seek opportunities to improve the value of existing facilities. Usage might be improved by better management or by capital to secure improvements.

43. Moreover, paragraph 12 provides the following insight:

Development of ... sports or recreational facilities may provide an opportunity for local authorities to remedy deficiencies in provision. For example, where a local authority has identified a surplus in one type of ... sports and recreational facility but a deficit in another type, planning conditions or obligations may be used to secure part of the development site for the type of ... recreational facility that is in deficit.

44. The point is simply that the policy set out in PPG17 does not envisage a narrow approach to the issue of need. Rather it emphasises the broader considerations that should to be looked at in determining whether a sports facility is surplus to requirements. Whilst the level of usage of facility might be one relevant consideration, and whether it can be functionally accommodated elsewhere might be another relevant consideration, those are not the only relevant considerations.

45. Indeed, if the policy wished such a narrow approach to be taken to the issue of need, it could simply have set the standard as being whether the assessed need can be accommodated elsewhere. However, that is patently not the test that is to be applied. The issue is one of whether the developer has clearly demonstrated that the facility is surplus to requirements, and a variety of considerations are relevant.

46. Having considered in detail the requirements of PPG17, the fundamental conclusions to be drawn are that the developer has failed to comply with those clear requirements. Failure to comply with the guidance does not necessarily mean that the application should be refused, albeit that the guidance indicates that that should be the outcome. The issue then turns on the weight to be attached to the guidance and, accordingly, the weight to be attached to the failure to comply. In order to assess that weight, it is essential to look at the broader context. This includes the matters set out above, including the fact that PPG17 is the latest statement of central government guidance and was the process of an extensive consultation process. It also requires regard to be had to the development plan.

The relevant development plan policies.

47. The development plan for present purposes comprises the London Plan and the Islington UDP.

The London Plan.

48. The London Plan was published on 10 February 2004. It therefore post-dates PPG17 by approximately 18 months. The relevant policy extracts for present purposes are as follows:

Policy 3D.5: Sports Facilities

The Mayor will work with strategic partners to promote and develop London sporting facilities. This will include the promotion of London as the home of the 2012 Olympic Games and Paralympics, focused on East London.

In reviewing UDPs, boroughs should identify sites for a range of sports facilities to meet local, sub-regional and wider needs ...

49. In addition, the explanatory notes contain the following extract:

Local and sub-regional sports and recreation facilities

3.239 London needs to develop a wide range of high quality but affordable sports facilities, which are accessible to all sections of the community, including disabled people. The boroughs' audits of existing provision and assessments of needs, required by PPG17, will ensure that new provision is focused in areas with the greatest need and co-ordinated across boundaries. Development of sports facilities in commercial schemes should be encouraged and made accessible to the local community where possible.

50. It is evident therefore that the guidance in PPG17 is reflected in the London Plan. However, there is no issue in this case that the audit of existing provision and assessment of needs envisaged by policy 3D.5 (and clearly set out in the explanatory notes as emanating from PPG17) have not been undertaken by the LPA in this case. Consideration of the relevant policies in the Islington UDP reveals the extent to which it is consistent with PPG17 and the London Plan.

The Islington UDP.

51. The most relevant policies in the current Islington UDP are as follows:

Policy ST8: *To provide good quality and safe facilities that are close to peoples homes.*

STRATEGIC POLICY: *To ensure that sufficient attractive and varied indoor facilities are available to enable a wide cross-section of the population to participate in sports, fitness and active leisure pursuits.*

Policy R1: *The Council will encourage new and improved facilities for leisure, culture and recreation in the borough, directing resources towards those areas and population groups that currently have least choice. It will encourage co-operation with both private and voluntary sectors as well as other boroughs, and will work closely with all providers to support dual and alternative uses of suitable buildings and spaces.*

Policy R17: *The Council supports the provision of additional facilities for indoor sports, fitness and active leisure pursuits. In particular it will seek a wider spread of opportunities across the borough, and will make full use of any links that might be available via home and education activities and by developing existing estate and school facilities. Whenever possible the Council will also examine the potential for joint action with local youth and other groups in sharing schemes or funding opportunities. In all cases it will aim to help develop facilities attractive to women and groups who participate least at present.*

Explanatory text, paragraph 7.4.3: *The Council is committed to increasing participation across the community and to encourage full use by people of all ages and both sexes. It acknowledges that multi-purpose centres cannot cater for all potential users, and that large scale facilities may in themselves be a deterrent. Because of this the Council will also seek facilities most likely to benefit those who do not currently participate.*

Policy R18: *The Council may seek agreements with private sector developers to provide suitably located sports facilities where these are accessible physically and financially to need groups in the local population and are complementary to existing facilities.*

52. The first issue to determine is whether the proposal is in accordance with the policies in the development plan. The point has already been made on behalf of LAT that the application is not consistent with these policies, but these are matters which are outside the strict ambit of this advice.
53. For present purposes, the important and obvious point is that the UDP contains no specific policy dealing directly with the status of “existing” sporting facilities within the borough. Moreover, there has been no assessment or audit of existing need.
54. The current UDP is therefore out of date and non-compliant with PPG17. The consequences are straightforward: the weight to be attached to the guidance in PPG17 in such circumstances is properly enhanced. Moreover, in my opinion, significant weight should be attached to that guidance where it is relevant to the issues in this case.

Conclusions.

55. I have already set out my conclusions above. As I have previously indicated the purpose of this advice is narrow in focus, but for the reasons set out above, the proper interpretation and application of the guidance set out in PPG17 has a fundamental relevance to the determination of the issues in this case. I hope that this advice is of some assistance in that regard.

13 April 2006

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