

31 May 2006

Matthew J. Rosel
Development Control Service
Environment and Regeneration Department
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BY EMAIL AND POST

Dear Mr. Rosel,

Re: Planning Application Nos. P052310 and P052334

This letter is written on behalf of the Lambs Action Team in reply to the letter and supporting document sent to Matthew Rosel by Ashurst on behalf of the Applicant in response to the objections submitted by the Lambs Action Team (the “**Response**”). We note that this letter is dated 15 May 2006, but understand that it was received by Mr. Rosel on Friday 19 May. This letter has been written and sent before seeing the recommendation of the Planning Officer regarding the revised Application, which is due to be published today.

This letter first addresses the points made in the Ashurst covering letter and then attaches a short list of further points that are considered sufficiently important in order to reply to the supporting document. In an effort to keep this letter as short as possible, we have not dealt with every point made in the Response but that does not mean that we accept the comments concerned. This response uses the same defined terms as the Submission by the Lambs Action Team dated 13 April 2006.

1. Paragraph 1 of the Response does not address the question of whether it would be consistent with UDP policies regarding promotion of new sporting facilities to permit the redevelopment of an existing and well-used sporting facility. The Lambs Action Team’s contention that the Application conflicts with certain policies in the UDP and the London Plan is supported by the planning officer’s report in respect of the initial application made by the Applicant on 21 February 2005. Nothing has changed in this regard since then. In addition, we attach a letter from the Planning Decision Unit of the Greater London Authority which supports the view that the original application was in breach of the London Plan.

2. We do not disagree with the assertions made in paragraph 2 of the Response regarding the legal status of planning policy guidance notes. However, it is the application of these legal principles to the matter in hand that needs to be addressed. Overall, the Response does not assist in deciding what weight should be given to PPG17 in determining this Application. For example, the Response does not address the point that PPG17 is particularly material in this case because it was published after the UDP was adopted and because the Council has not carried out a PPG17 assessment.
3. We do not agree that we have misinterpreted the general purpose and effect of PPG17. The Response only quotes the heading to paragraph 10 of PPG17 in stating that PPG17 aims to maintain an “adequate supply” of sports and recreational facilities. Helpfully, the *Carpets of Worth* case quoted in the Response confirms the approach taken by the Submission in establishing the purpose of PPG17:

“In my judgment it is legitimate to ... take into account the particular contemporaneous context in which a particular document was published.”

The relevant context is one of significant, national concern about the reduction in provision of sports facilities and the health of communities. In light of the statements made by the government at the time at which PPG17 was published, it is correct to state that the purpose of PPG17 is to protect and enhance existing sports facilities.
4. Paragraph 10 of PPG17 sets out a mechanism by which the “adequate supply” can be assessed and then preserved. In the absence of the local authority’s own assessment of need, it is not possible to determine whether there is an adequate supply of sports and recreational facilities in the area concerned. Paragraph 10 of PPG17 states that in those circumstances, the developer should be required (a) to demonstrate clearly that the facility concerned is surplus to requirements, (b) to consult with the local community and (c) to show that its proposals are widely supported by that community.
5. The Response states in paragraph 4 that since (in Ashurst’s view) the Lambs membership is not representative of the local community, the Council is entitled to “attach little weight, if any weight at all” to the requirement in paragraph 10 of PPG17 to consult the local community. However, in the last sentence of paragraph 4, the Response suggests that the views of the Lambs Action Team members (in other words, the Lambs membership) are material to the determination of the Application and that they have been consulted through the statutory planning process. This is both logically inconsistent and disingenuous.
6. The case law cited in support of paragraph 4 of the Response states that in deciding what weight to give material considerations, the local authority must have regard to the pertinent facts. The Response restates information supplied in the Pan-Leisure reports without considering the critical evaluation or alternative evidence supplied in

the Submission. For example, the statistic used, that 6% of the Lambs membership live in EC1, EC2 & EC4, implies but does not prove that the remaining 94% work in the same area and ignores the fact that PPG17 includes workers in the local community to be consulted. This does not help in establishing what weight should be given to PPG17.

7. In paragraph 5 of the Response, Rupert Warren's advice is simply restated without challenging the contrary analysis put forward in the Submission. PPG17 does not state that the obligation to consult the community is subordinate to the requirement to demonstrate that the facility is surplus to requirements. The case law cited does not justify ignoring the plain words of PPG17, no matter how flexibly it is interpreted.
8. The phrase "surplus to requirements" is applied in PPG17 both to the analysis by a local authority of the overall adequacy of sporting provision in its area and to the obligation on the developer to demonstrate that the facility concerned is surplus to requirements. In that context and given the true purpose of PPG17, it is entirely correct to say that since Lambs is used by its members, it cannot be surplus to requirements.
9. In the section headed "A critical assessment of the evidence" the Response has significantly misrepresented several points made in the Submission.
 - (a) The Submission does not limit its arguments to peak-time usage, but highlights this because it is an issue to which the Reports pay no attention. Any assessment of local needs must surely take account of when people use the facility concerned and the Reports fail to do so, which the Response recognises in paragraphs 1 and 3 of this section.
 - (b) The Reports and the Response assume, in effect, that patterns of usage *are flexible* in reaching their conclusions. Without any assessment of whether players would change their pattern of use, how can the surplus to requirements test be properly assessed? The Response leaps from saying that utilisation and absorption needs to be considered "in this light" to saying that the test is met, without having the information required to make that judgment.
 - (c) The Submission does not assume that bookings are equal to actual utilisation; see Section E, paragraph 1.9 of the Submission which expressly tackles the question of cancellations.
 - (d) The Response accepts the figure of 400 regular squash playing members of Lambs without addressing the alternative information provided in the Submission. It goes on to suggest that the regular members are likely to transfer their membership, thus ignoring the needs of those people that play

squash less frequently. This is typical of the narrow, self-serving and non-compliant approach taken by the Applicant in dealing with PPG17.

10. The Applicant invites the Council to place little weight on the requirement to consult the local community because of the “nature” of the membership of Lambs, of which they say only 6% live in the immediately surrounding area. Given that the area around Lambs is prime business real-estate, this should not come as a surprise. However, the local community referred to in PPG17, is not only residents but workers and visitors to the area, whose needs should be taken into account by the Council.
11. The points made in the Conclusion about the surplus to requirements test are not new, and the Council will need to establish for itself whether the Applicant is in compliance with PPG17 and the Companion Guide. There is no doubt in our mind that the procedural requirements of PPG17 have not been followed and that the needs of the wider local community have simply been ignored by the Applicant, rather than assessed in a compliant fashion.
12. The case of *Sosmo v Secretary of State 1983* is selectively quoted in the closing paragraph of the covering letter. This case states that the local authority is entitled to take account of the economic viability of proposals for redeveloping a site (which was already derelict in that case) but also that the authority may come to the conclusion that other relevant planning considerations are of greater weight than the site remaining derelict as a consequence of refusing planning permission. We have no doubt that the Council will not wish to be held hostage to any developer threatening to leave premises unused in order to obtain planning permission.

We hope that you find these comments useful and will have a chance to produce an addendum report before the Planning Committee meets on 8 June. If you have any questions, please do not hesitate to contact me or Nicole Schragger at Vinson & Elkins.

Kind regards

Yours sincerely

Charez Golvala

Further important points

1. The Companion Guide statements regarding replacement of existing sports facilities do refer to the facility being replaced by an equivalent facility in the same area, but the Applicant does not propose to replace the facility. The principle drawn from the Companion Guide that *relocation of use* will not be good planning and therefore the absorption test proposed by the Applicant is not in accordance with the guidance.
2. UDP Policy R23 does apply to Lambs because it provides public entertainment facilities: for exhibition matches, for watching competitive league matches, and for other events in the public bar. We have also explained why Lambs is a culturally significant venue for the game of squash.
3. The Response says that it is misleading to suggest that at least 1100 people use Lambs, but those are the figures stated in the Reports. To argue that the membership does not reflect utilisation rates without proof is another example of the cavalier attitude to facts demonstrated by the Applicant.
4. It is not reasonable to use the figure of 400 regular squash players because it is (a) contradicted by even the most basic analysis of the usage patterns at the club and readily available evidence; (b) provided by the current operator, which stands to gain from planning permission being granted.
5. The LAT has successfully challenged whether there is sufficient capacity at other facilities to cater for the requirements of the community in its study of the courts available at peak times. The Response accepts those conclusions by implication: “albeit both during and outside peak playing hours”.
6. The Response suggests that the booking sheets are not reliable but the Reports base their findings of fact on these sheets. The Applicant can’t have its cake and eat it.
7. The fact that squash players may regularly play each other does not change the utilisation figures. The Companion Guide recommends a visits-per-person approach and does not advise that you should ignore repeat visits by the same people. Why should one person playing three times a week represent less need than three people playing once a week?
8. The Response states baldly that being a private facility is relevant to the needs assessment, but does not explain how, why or with what authority.
9. The comments in the Response regarding the amendment of Diagram 1 are offensive and perverse. The LAT acknowledged putting the additional arrow on the chart to correct an obvious error in the only logical manner. Does the Applicant really suggest that there can only be one outcome to the question of whether the developer has demonstrated that the building is surplus to requirements?

10. The ODPM press release refers to recreational facilities in its second paragraph. We can only assume that the Applicant has not read it properly.
11. The Response comments on paragraph 11 PPG17 arguing that Lambs is not of a high quality but fails to address paragraph 18 of PPG17 which states that poor quality facilities should not be taken as necessarily indicating an absence of need, even though this sentence is quoted later in the text.
12. The Response, like the Reports and the Application itself, fail to realise that PPG17 protects the built facility for the current and future use that can be made of it by the local community.
13. The Response states that the requirement to consult the local community can be given little weight since it “only” comprises workers, but also suggests that the planning process has ensured that these people are consulted. Which is it? Further, the planning process should not be an acceptable substitute for the obligations placed on the developer by PPG17.
14. To suggest that it is the working community that “forms the basis of the needs assessment” carried out by Pan-Leisure is laughable. Pan-Leisure did not consult the Lambs membership or the working community in preparing the Reports, so how can they know what their needs are?
15. From talking to members of Lambs, people using the facilities include a facilities support worker in a neighbouring business, secretaries, single mothers and students. The suggestion that the average person could not afford the fees of any of the clubs in the area is unsupported by factual analysis. More importantly, the Applicant says that the demand can be absorbed elsewhere, but now accepts that in order to do so, members would be paying an increased fee; this hardly fits with their apparent concern for the socio-economically disadvantaged groups in the community.
16. The Response states that any national decline in squash “may be reflected” in the area around Lambs. In other words, they do not know what the needs are in this area because they have not carried out a proper assessment.
17. Pan-Leisure’s comment on the peak-time availability survey is either stupid or deliberately misleading. We were not trying to book courts, but to establish whether there was capacity to play at other clubs at the relevant times. The effect of members moving to other clubs would be to increase the number of people trying to book the same time periods, which our research suggests are already fully utilised by the existing membership of these clubs. Therefore there is insufficient capacity at other clubs to absorb the usage made of Lambs.