

21 August 2006

LAMBS ACTION TEAM

PROOF OF EVIDENCE

**TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY CLAN REAL ESTATE (LAMB'S CLUB) LIMITED
SITE AT 1 LAMB'S PASSAGE, LONDON, EC1Y 8LE**

PLANNING APPLICATION NO. P052334

SUMMARY

This document is the summary for the Proof of Evidence submitted by the Lambs Action Team in connection with the appeal by Clan Real Estate (Lamb's Club) Limited against Planning Application number P052334 (the "Appeal").

Planning Application No. P052334 was made by Clan Real Estate (Lamb's Club) Limited (the "**Appellant**"), at the same time as Planning Application No. P052310, and has been appealed for non-determination by the London Borough of Islington (the "**Council**"). The schedule of drawings and plans for the Appeal have been amended so that both planning applications are now in identical terms. The proposed redevelopment of No.1 Lamb's Passage, Islington, London EC1Y 8LE would mean the total loss of the sports facilities at Lambs Health & Fitness Club ("**Lambs**").

This Proof of Evidence is submitted by the Lambs Action Team which represents the users of Lambs Health & Fitness Club. Attached to this Summary and forming part of the Proof of Evidence are the objections to both applications made by the Lambs Action Team on 13 April 2006 (the "**Submission and Schedules**"). The arguments made in the Submission and Schedules are equally valid in respect of both applications and references to the Applicant in these attachments should be read as references to the Appellant in connection with the Appeal. *(Please note that the confusion of correct name of the Appellant arises from documents submitted on its behalf in which it is variously named as Clan Real Estate (Lamb's Passage) Limited and Clan Real Estate (Lambs) Limited.)* There follows a brief summary of our case.

1. The legal and planning framework

- 1.1 It has been accepted by the Appellant and its advisers and by the Council's planning team that the Government's national Planning Policy Guidance note 17: "Planning for Open Space, Sport and Recreation (2002)" is a material consideration for the determination of the Appeal.
- 1.2 The purpose of PPG17 is to protect and enhance existing open space, sports and recreational facilities. Paragraph 10 of PPG17 states that existing sports and recreational buildings and land should not be built on, unless an assessment has clearly shown 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 may seek to demonstrate through an independent assessment that the land or buildings are surplus to requirements.
- 1.3 The phrase "surplus to requirements" should be given its ordinary and natural meaning in the context of the purpose of PPG17. Surplus means exceeding what is needed or used and, in the context of PPG17, it is the current and future needs of the local community that are relevant. Therefore, only facilities which are not used by the local community or for which the local community does not have a current or future need can be considered to be surplus to requirements.
- 1.4 We do not agree with the Appellant and their advisers that "surplus to requirements" means that the use currently made of Lambs can be absorbed elsewhere in the

vicinity. This would be contrary to the objectives of PPG17 and also contradicts the Companion Guide to PPG17.

- 1.5 Paragraph 10 of PPG17 goes on to say that developers will need to consult the local community and demonstrate that their proposals are widely supported by them. These constitute two, separate and additional obligations on a developer.
- 1.6 In addition to the provisions of PPG17, support for refusing planning permission can be found in the Council's Unitary Development Plan and the London Plan. Strategic Policy 8 supports the provision of a wide-range of leisure activities that are accessible to all residents without needing to use a car. Policy R17 supports the provision of additional facilities for indoor sports and Policy R23 states that planning permission will not normally be granted where it would involve the loss of public entertainment or sites of cultural value. It would be wholly inconsistent with these policies to grant planning permission which would result in the loss of unique indoor sports facilities and a culturally important venue.

2. A critical assessment of the evidence

- 2.1 The sports and recreational facilities provided by Lambs are not surplus to requirements because they are currently used by at least 1100 people. Lambs is a unique facility in the area because it provides 9 squash courts which are intensively used by at least 600 members per week. Lambs also provides large gym and fitness studio facilities which cater for a number of popular sporting activities, including aerobics, yoga, pilates, boxing and karate. Lambs provides qualitative and quantitative benefits to the local community that are not matched by alternative facilities in the area.
- 2.2 The Submission and Schedules contain some very simple research and analysis of, amongst other things, the level of use made of Lambs by the local community of squash players and of the availability of courts at the clubs listed in the Appellant's assessment of needs. The Lambs Action Team have sought to follow the approach set out in the Companion Guide to PPG17, insofar as we can with limited resources. We believe that this information presents a compelling case that Lambs is not surplus to requirements by any measure.
- 2.3 The Appellant has submitted two reports from Pan-Leisure Consulting Limited in a belated attempt to comply with PPG17 (the "**Reports**"). The Reports are flawed in several material respects, which are dealt with in greater detail in the Submission and Schedules. In particular, the Reports fail to analyse correctly the facts on which they rely; do not follow the criteria and methodology set out in PPG17 and the Companion Guide in key respects; take account of factors that are irrelevant to the planning process and PPG17; and contain a number of errors and unjustifiable assumptions which undermine their credibility. You will be aware from the files on both applications that the Appellant's advisers responded to our Submission on 19 May 2006 with some criticism of these comments. We attach as part of this Proof of Evidence a letter sent by our advisers on 31 May 2006, replying to this response.
- 2.4 In breach of paragraph 10 of PPG17, the Appellant has not consulted the local community and cannot demonstrate that the local community widely supports its

proposals. The Reports seek to excuse this failure to consult on the basis that Lambs is a specialist facility that attracts a niche audience which is not accessible to those who are socially and economically disadvantaged. This argument is neither well-founded in fact nor in its interpretation of PPG17 and the Companion Guide. Lambs does not discriminate against any group becoming a member and is, in fact, amongst the cheapest facilities in the area. In any event, it is clear from the fact that more than 600 objections have been lodged regarding these planning applications that the local community does not support the Appellant's proposals.

2.5 The Appellant has submitted an opinion from a barrister which reaches certain conclusions on the law and facts applicable to the Appeal. For the reasons stated above, we disagree with his interpretation of PPG17, both as regards the surplus to requirements test and the subordinate nature of the other PPG17 obligations. In addition, his conclusions on the evidence are wrong since they are based on the Reports, the findings of which have been simply accepted without critical evaluation. The Lambs Action Team obtained the opinion of a barrister in response to the Appellant's opinion, which is attached as one of the Schedules to the Submission.

2.6 In refusing planning permission for the Appellant's first application, the planning officer then in charge, Kevin Henson, said:

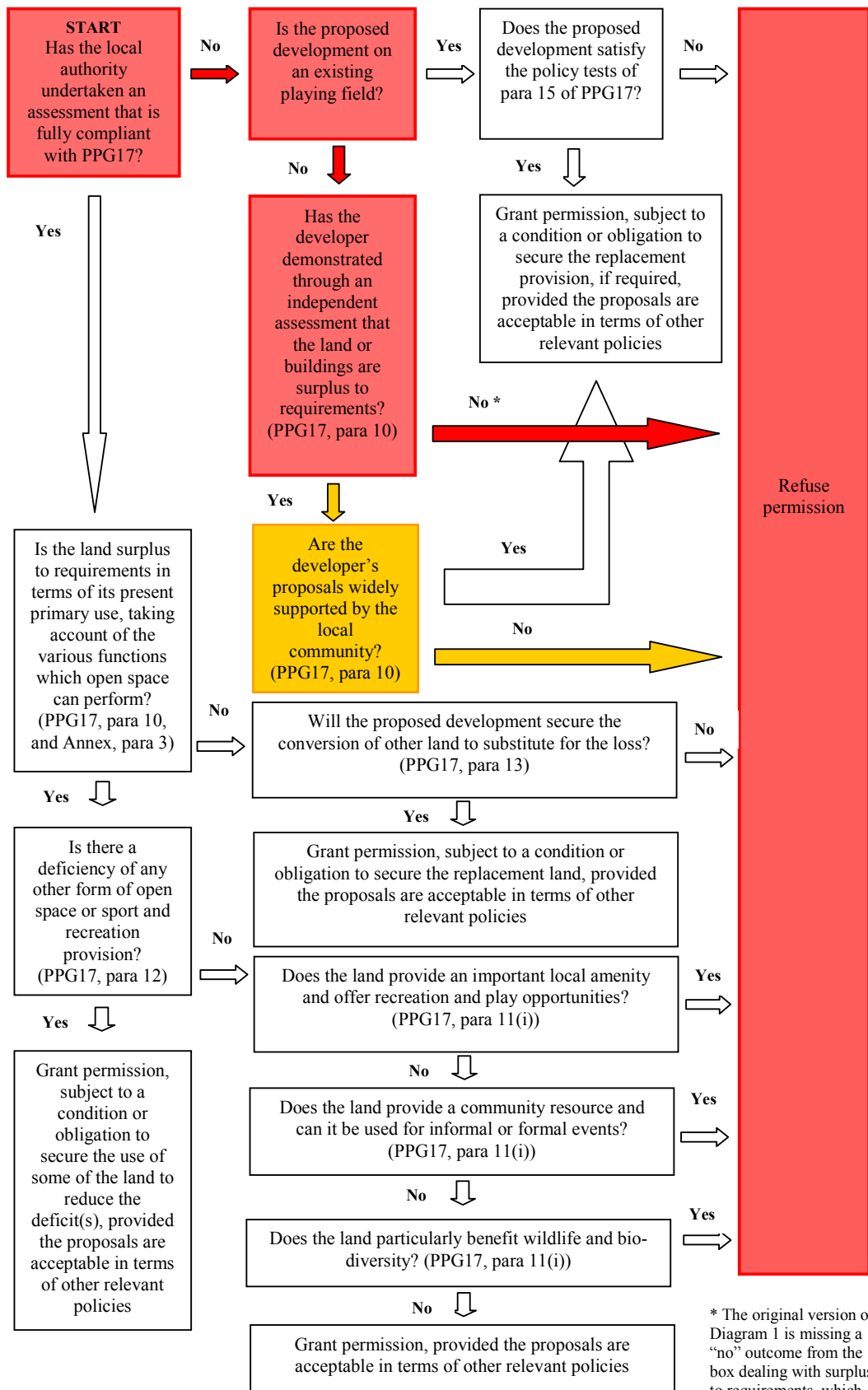
“The existing sports facilities on site contribute to the character and liveliness of the area and play an important role in the Borough and the wider area in the provision of indoor sports facilities. The proposal would therefore result in a loss of facilities contrary to Policies R18 and ST8 of Islington's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

2.7 Nothing has changed since this refusal and these remain cogent reasons for refusing the Appeal.

3. Conclusion

In conclusion, we would draw your attention to Diagram 1 contained in the Companion Guide to PPG17 which follows. This diagram summarises the approach to development control set out in PPG17 and makes clear how local authorities should consider planning applications which involve the redevelopment of an existing sports facility. As you can see from the high-lighted flow path, the correct determination of the Appeal would be to refuse planning permission.

Diagram 1: Redevelopment of an Existing Open Space or Sports/Recreation Facility



* The original version of Diagram 1 is missing a "no" outcome from the box dealing with surplus to requirements, which we have added. The primary flow path is shown in red and the secondary in amber.

INDEX OF ATTACHMENTS TO PROOF OF EVIDENCE

1. Lambs Action Team Objections to Planning Applications Nos. P052310 and P052334 dated 13 April 2006
2. Schedules to Objections to Planning Applications Nos. P052310 and P052334 dated 13 April 2006
3. Letter of Vinson & Elkins (on behalf of Lambs Action Team) in response to letter from Ashurst (on behalf of Appellant) dated 31 May 2006

Please note that the contact details on page 6 of the Submission have changed. If you have any questions regarding this Proof of Evidence, please contact either of the following:

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