

12 September 2006

LAMBS ACTION TEAM

CLOSING SUBMISSIONS

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

A. INTRODUCTION

These are the closing submissions of the Lambs Action Team (the “**LAT**”) in relation to the appeal for non-determination of Planning Application No. P05/2334.

In outline, our submissions can be set out as follows:

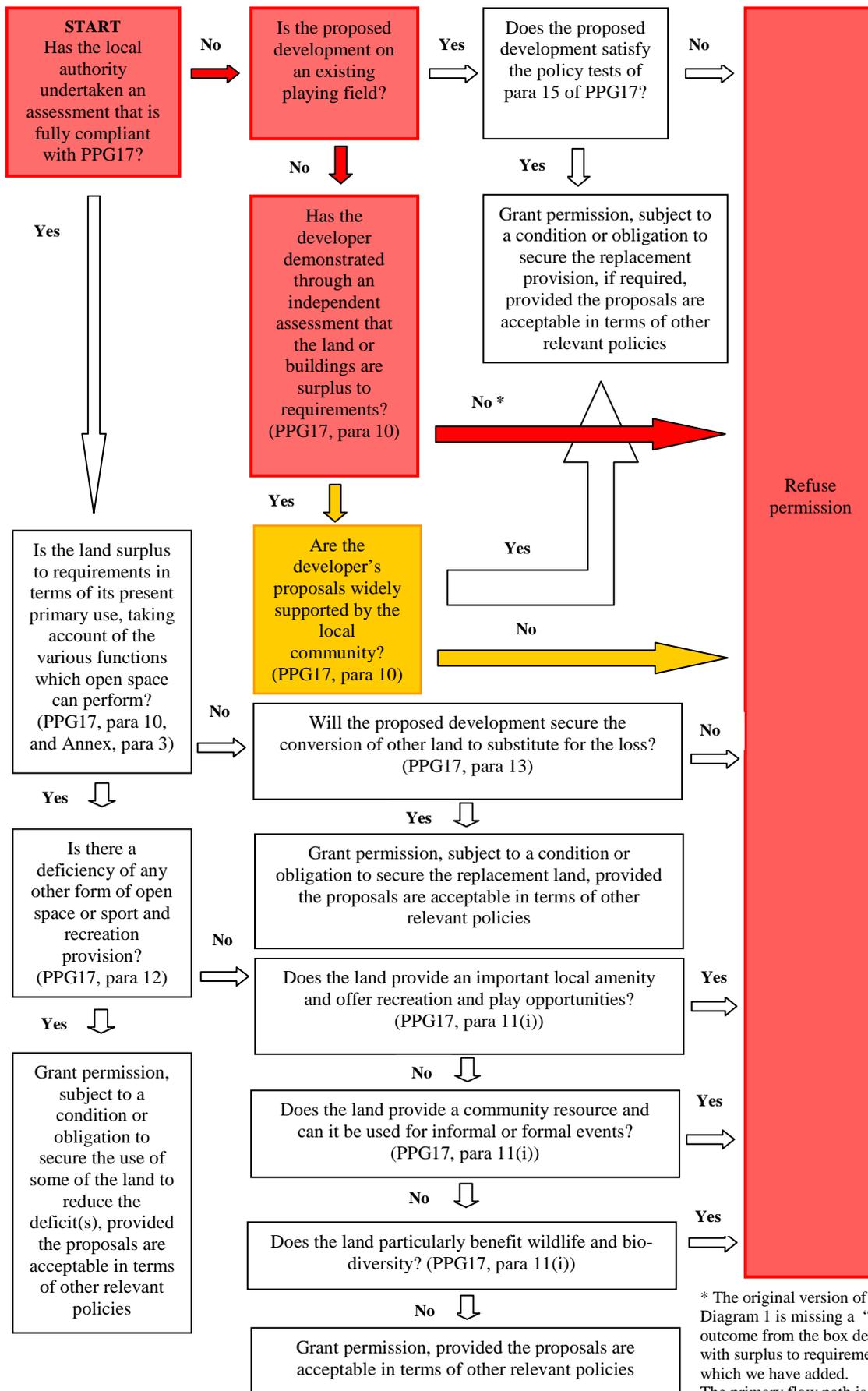
1. The proposed redevelopment is contrary to the Development Plan and in particular policies ST8, R17 and R23 of the Respondent’s Unitary Development Plan.
2. The proposed redevelopment is contrary to central government’s planning guidance, as set out in PPG17, and this guidance should be given significant weight as a material consideration in determining this appeal.
3. PPG17 protects existing sporting facilities unless an assessment has been undertaken which clearly demonstrates that such land and buildings are surplus to requirements. PPG17 defines those requirements to be the current and future needs of the residents, workers and visitors who form the local community.
4. Lambs Health and Fitness Club (“**Lambs**”) is the largest and highest quality squash club in London, intensively used by squash players and gym users alike, numbering over 1100 members. To suggest that such a unique built facility could be “surplus to requirements” is both contrary to PPG17 and to common sense.
5. The Appellant has not complied with PPG17: it has not provided an independent assessment that clearly demonstrates that the land and buildings comprising Lambs are surplus to requirements. The Appellant has not consulted with the local community and cannot demonstrate that its proposals are widely supported by them.
6. Even if you accept the Appellant’s arguments regarding the meaning of the surplus to requirements test in PPG17, a correct examination of the type and level of use of made of Lambs and its qualitative and quantitative benefits, as compared to feasible alternatives, demonstrates that this built facility is not surplus to requirements.
7. On the evidence of Ms. Hinson of Pan-Leisure, the Appellant has not carried out a PPG17-compliant assessment of the needs of the local community. In her responses on cross-examination, she accepted that the methodology used by Pan-Leisure did not make a proper assessment of the level of use made of the facility, that the usage data provided by the operator of Lambs was flawed, and that the effect of closing Lambs will be significantly increased demand for squash courts at other facilities in the area, which do not have the available capacity to meet such demand.
8. The Appellant has argued that it can be excused from complying with the obligation in PPG17 to consult the local community, because the views of the members of Lambs were made known through the planning process. This is clearly a justification after the fact of a failure to comply with a key element of PPG17.
9. Even if the users of Lambs could be expected to object to its redevelopment, there are circumstances in which the wider local community might support such a redevelopment, for example if other locally valued non-sporting facilities formed part of the redevelopment. As a direct result of its dismissive attitude towards the

LAT Closing Submissions

requirement to consult the local community, as stipulated by PPG17, the Appellant cannot show that its proposals are widely supported by any part of the local community. This is more than a merely technical breach of PPG17.

10. Diagram 1 set out in the Companion Guide to PPG17 follows on the next page of these Closing Submissions. From this diagram, it is plain that the obligation on a developer to demonstrate that the land and buildings are surplus to requirements is separate from the obligation to demonstrate wide support for the proposed redevelopment. Failure to comply with either obligation should lead to planning permission being refused. In this case, the Appellant has failed to demonstrate both that Lambs is surplus to requirements and that its redevelopment proposals are widely supported by the local community, and this appeal should be refused accordingly.
11. In addition to the points made above, these Closing Submissions will touch upon two other matters raised by the Appellant: what weight should be given in planning terms to the suggestion that Lambs is not economically viable and to the effect of the current lease terminating in September 2007.
12. In summary, the LAT's position is simple. Lambs is an existing, heavily used sport facility with unique, qualitative benefits to both its current users (who form part of the local community) and the wider public. It currently satisfies the needs of the local community in a way that no other facility in the area can match. Even using a simplistic, solely quantitative analysis, the level of use made of the facility cannot be absorbed elsewhere. In addition, the land and buildings that comprise the built facility (as distinct from the way in which it is currently operated) provide an invaluable resource for the future needs of the local community. The proposed redevelopment of Lambs is contrary to the Development Plan and Lambs is exactly the sort of sports facility that PPG17 was designed to protect.

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.

B. LAMBS CLUB

There are a number of important features which make Lambs a unique facility. These facts have not been disputed by the Appellant or the Respondent.

- Lambs is a major sports facility with a national reputation that is recognised by Sport England and England Squash.
- It has a large membership of more than 1100 at present and is the largest squash club in central London.
- It has nine squash courts – more than double the size of any other facility in the area – which are heavily used, particularly during weekday peak times.
- Lambs has a critical mass of squash players in terms of a range and depth of playing ability which makes regular play more rewarding and enables players to improve. Lambs has a large league structure with significantly more league boxes and players than any other facility in the vicinity.
- Lambs has three glass-backed courts with spectator facilities that can accommodate up to 300 people plus galleries over-looking the other courts. Such facilities are unique to any squash facility in London and enable exhibition matches to be held and team and individual competitions to be played.
- This sports facility has a long and historic association with the game of squash at the highest level, and with current professional players (both as coaches and as users of the club), which benefits the playing and wider community.

Far from being moribund, Lambs is a thriving sports facility, serving the needs of the local community in Islington and having the necessary breadth and depth of playing expertise to develop new talent, which is only possible when a critical mass of players are able congregate under one roof.

C. RELEVANT UDP POLICIES

1. In refusing planning permission for the Appellant's first application in March 2005, the planning officer then responsible for the application, 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.”

The Respondent has failed to advance any cogent argument as to why this statement no longer obtains, nor why it has reversed its position since then.

2. Permitting the demolition of an existing sports facility that provides a wide range of activities which are accessible without the use of a car would be directly contrary to

LAT Closing Submissions

Strategic Policy 8. UDP Policies R17, R18 and R23 make it clear that the Development Plan is supportive of sports facilities generally and promotes the provision of new facilities. It would be wholly inconsistent with the UDP to permit redevelopment without replacement of an existing sports facility where there are several UDP policies that support development of new facilities.

3. Strategic Policy ST8 (and, in particular, bullet points 1 and 4) requires the Respondent to “ensure” the provision or availability of sporting facilities. We submit that the proper interpretation is that this policy applies to both new and existing provision because the policy is not restricted only to new provision and, if there is any doubt, the policy should be interpreted in a manner consistent with PPG17. Therefore, under ST8 Lambs should be protected against the proposed redevelopment and planning permission should be refused.
4. Mr. Rosel, the current planning officer, accepted that this policy applied and that the appeal proposal would be contrary to this policy, save insofar as any sufficiency argument was made (i.e. there was sufficient provision to accommodate the loss of the facility). He further accepted that any such sufficiency would have to be demonstrated in clear terms in accordance with PPG17.

D. PPG17 – WEIGHT AND APPLICABLE PROVISIONS

1. PPG17 is a material consideration in determining this appeal. We submit that it, and the Companion Guide that accompanies it, should be given significant weight for a number of reasons:
 - (a) the Respondent’s UDP does not comply with PPG17, which was published a few weeks after the UDP was adopted (although drafts of PPG17 would have been available during the preparation of the UDP);
 - (b) there has been no local authority assessment of sporting needs in accordance with PPG17 and the Companion Guide;
 - (c) PPG17 contains at paragraph 10 specific provisions that are directly relevant to exactly the circumstances of this appeal;
 - (d) insofar as relevant policies of the UDP need to be interpreted, the Respondent has accepted that they should be interpreted in accordance with PPG17; and
 - (e) the present context is one of national and local concern about health, fitness and work-life balance.
2. The objective of PPG17 is to protect and enhance existing open space, sports and recreational facilities. The press release accompanying PPG17’s publication states that PPG17 provides strict planning policies to safeguard open space, sport and recreation, and gives robust guidelines for local authorities on the need to protect such resources. The Deputy Prime Minister said “we expect local authorities to plan effectively and to protect these valuable resources.” The Secretary of State for Culture, Media and Sport welcomed the new planning guidance saying: “We must have proper safeguards against moves ... which would be to the detriment of sport.”

LAT Closing Submissions

3. Central to the implementation of this objective is paragraph 10 of PPG17, the relevant sentences of which are set out below:

Existing open space, sports and recreational buildings and land should not be built on unless an assessment has been undertaken which has clearly shown the open space or 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.

4. PPG17 is a government policy with an explicit aim of protecting sporting facilities against loss. PPG17 sets a deliberately high threshold before a sporting facility can be demolished, on the basis that loss of a facility would be more the exception than the rule. It should be no surprise that Lambs, as the leading squash club in London, does not meet this test.
5. The phrase “surplus to requirements” should be given its ordinary and natural meaning in the context of the purpose of PPG17. Common synonyms for the phrase “surplus to requirements” include “redundant” “unnecessary” or “moribund,” none of which apply to Lambs. Surplus means exceeding what is needed or used and, in the context of PPG17, it is the 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.
6. The Appellant has sought to equate the phrase “surplus to requirements” with “usage that can be absorbed elsewhere.” The LAT contends that if PPG17 intended this interpretation it would have said so in plain English. The heading of paragraph 10 refers to maintaining an “adequate supply,” which a local authority could ensure in considering the extent to which need is met in its area on a detailed assessment. However, when the test is applied by a developer seeking planning permission to redevelop particular land and buildings, the issue must be whether that specific built facility is surplus to requirements. To argue otherwise is to argue for a first-come-first-served approach to planning which would serve neither the public interest nor result in an orderly planning system.
7. The fact that considerably more than a thousand people are members of Lambs must show conclusively that this sports facility contributes significantly towards meeting the current needs of the local community. As demonstrated by LAT and not disputed by other parties, Lambs is a unique facility in the area because it provides 9 squash courts, some with spectator facilities, as well as a large gym and fitness studio facilities which cater for a number of popular sporting activities. Lambs has a range of quantitative and qualitative benefits that are not matched by neighbouring facilities and which provide further potential to meet the future needs of the local community. Clearly, it is the objective of PPG17 to protect buildings that can meet current and future sporting needs, such as this one, from redevelopment.

E. THE APPELLANT AND SURPLUS TO REQUIREMENTS

1. The Appellant has not complied with the obligations on developers set out in paragraph 10 of PPG17. The Appellant has not provided an independent assessment that is compliant with PPG17 and the Companion Guide and that clearly demonstrates that the land and buildings comprising Lambs are surplus to requirements. The Appellant has not consulted with the local community and therefore has not carried out a PPG17-compliant assessment of the needs met by this existing sports facility.
2. The Appellant has advanced a number of contentions that seek to justify its failure to comply with PPG17 or to interpret PPG17 in a manner that serves its interests. We have suggested above that the interpretation of paragraph 10 of PPG17 advanced by the Appellant is wrong, but even if you accept that approach, the Appellant has not clearly demonstrated that Lambs is surplus to requirements or that its approach is compliant with PPG17 and the Companion Guide.

2.1 Assessment of Levels of Use

- (a) PPG17 and the Companion Guide require an assessment of the type and levels of use made by the local community of sporting facilities. The Companion Guide suggests that visits per person are the relevant measure of usage. The Appellant has made no attempt to assess levels of court usage or user-sessions, not at Lambs nor at the proposed alternative facilities.
- (b) In her evidence, Ms. Hinson stated that her instructions were to carry out a PPG17 compliant assessment and that consideration of usage of the facility fell within “performance” of the club. Even if you accept this interpretation, none of the Pan-Leisure reports nor the Pan-Leisure Proof of Evidence look at the levels of use made of squash courts or other facilities at Lambs.
- (c) The simple fact is that, at the times of day when people take their exercise, all the squash courts in the area, both at Lambs and the proposed alternative clubs, are in heavy use. This is evident from the LAT’s information and first-hand reports from users of the club and would be apparent from a visit to the facility at peak time. The obligation under PPG17 to demonstrate that the facility is surplus to requirements lies squarely on the developer, yet the Appellant has shown no data that contradicts the pattern of usage set out above.

2.2 Use of Membership Data in Place of Usage Data

- (a) The Appellant has sought to justify the argument that Lambs is surplus to requirements by using membership and membership availability instead of usage and spare capacity. This approach is not in accordance with PPG17 and the Companion Guide and leads to a false assessment of need and usage.
- (b) With regard to the figures obtained from Lambs’ current operator, Ms. Hinson stated in her evidence that statistics provided by a review of Lambs’ booking records were inconsistent and unsatisfactory. Nonetheless these have been relied upon by Pan-Leisure to substantiate figures provided by Lambs’ operator regarding the number of regular squash playing members. No

attempt has been made by the Appellant and its advisers to conduct a more rigorous assessment of membership numbers or of the usage of the facility made by those members. The Pan-Leisure reports can hardly therefore be considered an independent PPG17-compliant assessment of need.

- (c) The Appellant has sought to pick holes in the data and analysis provided by the LAT which shows the use made of the facilities at Lambs and the capacity of those facilities as compared to other clubs. Nonetheless, this data and analysis remains the only attempt by any party to provide information of the sort required by PPG17 and the Companion Guide. We do not have access to the booking sheets nor other information about the operation of Lambs, which the Appellant and its advisers did have and could have analysed in detail. Their failure to do such analysis, or to disclose its results, suggests that data from the booking sheets does not bear out their contention that Lambs is surplus to requirements.

2.3 Membership Figures at Other Clubs

- (a) With regard to the alternate clubs which the Appellant proposes can absorb the demand now served by Lambs, none of the clubs concerned offer squash-specific memberships and therefore the availability of memberships for playing squash must be entirely open to question. In several cases even a cursory analysis shows that new members would overload the capacity of courts at other clubs.
- (b) For example, Citypoint Club is quoted in Pan-Leisure's Proof of Evidence as having 500 memberships available, although the club has only 2 squash courts. The Appellant does not provide figures for that club's current squash playing membership, nor the club's theoretical upper limit of membership capacity, but even if not one of its current membership played squash, 500 extra members would overload the courts by a factor of 2, according to England Squash guidelines. These recommend no more than 125 members per court otherwise "members may find it difficult to book sufficient court time to justify their membership fees" (source: National Facilities Strategy for Squash in England, cited by the Appellant).
- (c) Ms. Hinson argued that clubs would be unlikely to exaggerate membership availability and take on excessive new members because this would lead to dissatisfaction through overcrowding. As a matter of commercial reality, LAT contends that few if any of the alternative clubs cited operate a hard and fast upper limit on memberships. They do this because there is a relatively high level of "churn" in the fitness industry and operators rely upon the fact that a certain number of customers are likely to cancel their memberships in any given period. The common practice among commercial fitness clubs is to take any paying customer who wishes to join, if necessary to the point of overcrowding, and then let churn take care of any capacity issues that arise.
- (d) The Pan-Leisure report dated November 2005, exhibits letters from other clubs suggesting that in total 400 memberships are available. These letters were obtained by the Appellant's agent (DP9) and the LAT contends that this calls into doubt whether these reports can really be considered an independent

assessment for the purposes of PPG17. In addition, the information provided in Pan-Leisure's Proof of Evidence (when the alternative available membership number was substantially raised) is apparently the result of telephone calls and emails, details or verifications of which have not been provided, so the quality of the data cannot be assessed.

- (e) Ms. Hinson stated in her evidence that the closure of Lambs would increase the number of people looking to book courts at other nearby facilities. She suggested that those who were accustomed to phoning for a court at 12pm, a week in advance, would just have to get used to phoning earlier to secure a court. This type of comment quite wilfully ignores the critical fact that in toto there would be fewer courts available to book, and irrespective of who booked the remaining courts, someone would have to lose out.
- (f) Therefore, on the Appellant's own evidence and using its own interpretation of "surplus to requirements" it has not demonstrated that the need currently met by Lambs can be absorbed elsewhere.

2.4 Peak versus Off-Peak Usage

- (a) The Appellant has sought to characterise the high level of usage of Lambs and of other facilities at peak times (which amount to about 6 hours per day) as being not particularly relevant to the question of whether Lambs is surplus to requirements. This is not compliant with the approach taken in the Companion Guide to PPG17 which suggests that assessment should be made of the types and levels of use made of facilities, including the times at which such facilities are used.
- (b) The Appellant's argument is that people seeking to play squash and facing a diminished supply will just have to rearrange their working hours to play squash at times other than lunchtime and early evening. Both the Appellant and the Respondent state that increased flexible working practices should enable this, without providing any assessment or evidence of whether the local working community is able, in fact, to be so flexible. The only evidence provided of actual usage demonstrates conclusively that people predominantly play squash and make use of the other facilities at Lambs and the alternative facilities during peak hours.
- (c) The Appellant has taken this argument to an unreasonable extreme, including squash court slots occurring at 4 a.m., for example, in its "total" capacity analysis. This suggests that people could rearrange their waking hours as well as their working hours to fit in a game of squash. By the same logic, London Underground might well alleviate overcrowding by suggesting that some people should just get used to travelling in to work at, say, 3p.m. and going home at, say, midnight.
- (d) Sports facilities, like many other service operations, have to be able to serve demand as it actually occurs, or they will lose custom. Therefore it is highly relevant to any assessment to look at the capacity and use made of sports facilities at peak demand times. The Appellant suggested that the analogy made by Sport England with the use of football pitches for Sunday league

games was false because these were fixed by institutions rather than individuals. In fact, the comparison is most relevant: you should no more permit redevelopment of a playing field because the people using it cannot play football during the working week, than you should permit redevelopment of a city-based indoor sports facility that is predominantly used during peak times in the working week.

2.5 Built Facility versus Management of Facility

- (a) PPG17 affords protection to the built facility and does not concern itself with how that facility is currently operated. The Appellant has sought to characterise aspects of how Lambs is currently run as being fundamental to why its loss is less important to the relevant local community than it otherwise might be (for example, the fact that no particular effort has been made in the past to reach out to local residents, schools or disadvantaged groups). These are all management decisions taken by an operator seeking to maximise profit and say nothing as to the value of the built facility for the community, now or in the future.
- (b) In contrast, the LAT has shown, through the production of letters from local schools and through a simple survey of the willingness to use Lambs at the weekend, that there is a clear interest in extending junior squash opportunities to local community pupils and in the use of Lambs at weekends, which would appeal more to local residents.
- (c) The Appellant has repeatedly drawn attention to the fact that Lambs, as it is currently operated, is a private members club. This has no relevance in planning terms, not least because both PPG17 and the Companion Guide protect the built facility rather than the way in which it is currently operated. Moreover, Lambs is not “private” in any negative sense because there are no restrictions on joining and, even in the case of the publicly owned, but privately operated Finsbury Leisure Centre, you have to join as a member if you wish to book courts which are in heavy demand.

2.6 Questionable Underlying Data

- (a) The operator of Lambs has a financial incentive to see planning permission granted, which has been confirmed by the Appellant in writing. These “overages” were available at the time at which the operator of Lambs provided information to Pan-Leisure. The Appellant has relied heavily on data provided by the operator Lambs, both as regards membership, usage, and viability.
- (b) As has been demonstrated by the LAT’s arguments and on the evidence of Ms. Hinson, the information provided by the operator has not been subjected to rigorous verification by Pan-Leisure. Nor has the underlying data been provided in Pan-Leisure’s reports, so that it could be subjected to independent assessment and verification.

2.7 Catchment Area

LAT Closing Submissions

- (a) The Appellant has put forward a list of alternative clubs, many of which are far beyond the practical catchment area of Lambs. LAT contends that a 10 minute walking time, taking Lambs as the epicentre, defines a reasonable geographic catchment area when considering alternate supply and this has been accepted by the Appellant in various reports.
- (b) Given Lambs' location (about 8-10 minutes from the nearest tube station and not especially well served by nearby local buses), walking will typically be the quickest transport method for most people for these local journeys. Given a raft of policies discouraging car use in central London, the drive times set out in Pan-Leisure's Proof of Evidence would seem to be entirely irrelevant.
- (c) There are 10 courts within a 10 minute walking time of Lambs (including 4 courts at Finsbury Leisure Centre, which is borderline for 10 minutes walking time). These are the courts that will be called upon to bear the brunt of displaced demand if the 9 courts at Lambs are closed.
- (d) The Appellant has suggested that LAT's data shows a number of survey respondents' travel time is considerably more than 10 minutes. This reflects Lambs very high quality as a squash club (particularly its depth of available players, teams and so forth), which draws particularly competitive standard players from a wider area, and rather underlines Lambs' significance on a London wide basis. We do not believe this additional catchment impacts the importance of Lambs in the local area it also serves.

2.8 Decline in Membership

- (a) The Appellant has suggested a long term decline in overall membership at Lambs (although followed by stabilisation for the past few years at about the current membership) directly leads to a linear decline in squash usage of the club. The relationship between overall membership and squash usage is, however, more complicated.
- (b) Since Lambs opened in 1979, three very large, predominantly fitness clubs (Holmes Place Barbican, Holmes Place Bunhill Row, and Citypoint) have opened in close proximity (<750m) to Lambs, but between them have added only a net 2 new squash courts in among their substantial fitness facilities. Relative to these newer and larger clubs, Lambs does not compete well for fitness clients seeking a smarter, more expensive environment.
- (c) However, there is no evidence that there has been a decline in squash usage at Lambs. If anything, the squash courts have become busier over time as Lambs has picked up enthusiastic squash players from other clubs in the London which have closed or reduced courts.

F. FAILURE TO CONSULT AND DEMONSTRATE WIDE SUPPORT

- 1. PPG17 requires that the developer consults with the local community, but by dint of some very self-serving arguments, the Appellant has concluded they should be exempt from this requirement. The LAT disagrees with this conclusion.

LAT Closing Submissions

2. PPG17 requires the developer to show that the local community widely supports its proposals for redevelopment. As a result of excusing itself from the obligation to consult the local community, the Appellant has neatly avoided dealing with the fact that its proposals do not have wide support amongst any section of the community concerned.
3. LAT accepts the point that it was unnecessary to consult the membership of Lambs to ascertain whether they support the Appellant's application to demolish Lambs without replacement.
4. The Appellant has argued it was also unnecessary to consult local residents, using the self-serving argument that as few local residents are also Lambs' members (taking into account the current management policies regarding how Lambs is run), what local residents think is unimportant. This wilfully ignores two critical points:
 - (a) it does not take into account how the Lambs facility might be run in future and therefore ignores PPG17. For example this could include greater engagement towards local residents through weekend opening, pay-and-play, schools outreach; and
 - (b) in most developments of this sort, something of substance is typically offered in order to alleviate the perceived loss of what is to be demolished. In this case, nothing of any substance is being offered, whether replacement sporting facilities or something else valued by the local community.
5. The Inspector asked the question "would local residents ever support the demolition of sports facility without replacement?" The answer is "quite possibly," if what replaced the sports facility was of greater value to local residents than what was lost. Let us say the proposed replacement building included day-care facilities, or a drop-in centre for old people. Local residents might well prefer a development incorporating such things, notwithstanding the loss of sporting facilities in their local area. However, the requirements of PPG17 are clear – if you do not consult the local community, you will never have any evidence of whether they do or do not support the redevelopment, and this cannot be in compliance with government policy.
6. There is general agreement that, given the way that Lambs is run today, with a focus on local workers rather than residents, the bulk of its membership is in fact local workers. PPG17 specifically identifies this group as being a core constituent whose needs should be taken into account.
7. In light of this important fact, the Appellant could have easily consulted local employers and employees as to whether they would support the proposed development. Insofar as the scheme is a mixed use one, offering improved facilities for local businesses and employers, some local employers and workers may well have supported the scheme notwithstanding the loss of sporting facilities. However, as with local residents, the Appellant seems to unilaterally have decided that they need not bother.
8. In the case of Lambs, however, because the Appellant has made only cursory efforts to ameliorate the loss to the local community (forty thousand pounds via a Section 106 agreement for local recreation), it could have no expectations of support among

the local resident or employment community. The situation is however one of the Appellant's making – it is their design, and their decision not to incorporate replacement sporting facilities or other facilities that might gain the support of the wider local community.

G. ECONOMIC VIABILITY AND THE FUTURE OF LAMBS

1. The Appellant has raised two arguments which we believe have no planning merit. The first is that Lambs has been operating at a deficit and is not economically viable. The second is that because the occupational lease is due to terminate at the end of September 2007, use of the building as a sports facility will inevitably cease and somehow this means the appeal should be granted. We believe that these arguments are neither correct in principle nor based on sustainable planning grounds.

2. Economic Viability of Lambs

2.1 The Appellant has argued that Lambs is not viable in its current form, and as a result should be released for a more lucrative land use, primarily residential.

2.2 Our understanding is that planning law and practice takes very limited account of pleas from applicants seeking change of use because of financial viability of the particular business currently using the premises. If this were not the case, it would simply be too easy for landowners to obtain change of use for more profitable land uses, simply through pleading the weak viability of their current commercial operations. One would expect planning authorities to refuse all such efforts to achieve a change of use based on such a transparently flawed argument.

2.3 Insofar as the Inspector may be minded to give weight to the arguments about the economic viability of Lambs, the Appellant has produced no actual proof that Lambs runs “at a deficit” or that the club is financially unviable. Instead the Appellant is simply relaying comments from the operator whose controlling shareholder, as noted above, is a party to an “overage” agreement whose value will be determined by the planning outcome, and who is seeking to generally exit his involvement in the operation of sports clubs.

2.4 The Appellant has not produced the any accounting information from the operator regarding Lambs. What accounts have been filed at Companies House for Fitness Exchange show the operator's group as a whole showing substantial net cash inflows from operations. Specific accounts for Lambs (which exist but have not been made available to anyone but potentially the Appellant) would have thrown light on questions such as :

(a) is the purported deficit £1 per annum or £1 million per annum?

(b) Does the fact that the operator pays an inflated rent of £200,000 (source: Land Registry) to the Appellant as Lambs' freeholder (reflecting the *hope* value in the purchase price the new freeholder paid under the sale-and-leaseback) impact on this deficit?

LAT Closing Submissions

- (c) Does the fact that the directors of the company which operates Lambs paid themselves in excess of £295,000 in the operator's latest financial year for which documents have been filed, impact on this deficit?
 - (d) Does the fact that office space within Lambs has been used as a head office to run a multi-club operation without, LAT believes, a corresponding allocated rental "credit", impact on this purported deficit?
- 2.5 Lambs has been in existence for about 27 years, and LAT understands that for most of this time, it was either largest or second largest financial contributor to the Fitness Exchange group, which at peak numbered about 15 clubs and which during the course of this inquiry has been sold to Fitness First for "in excess of £10 million."
- 2.6 While Lambs' contribution to the group (including contributions to group central costs and debt servicing) may have diminished more recently, LAT does not believe there has ever been a year when the gross inflow of cash from memberships and other sales generated directly at Lambs did not exceed the direct cash costs (primarily employment costs) of running Lambs.
- 2.7 LAT's own calculations and estimates (perforce garnered piecemeal with no official assistance whatsoever from the operator, but with considerable informal input from sympathetic staff) would suggest that Lambs does in fact meet a basic test of viability, which is namely that cash inflows from month to month exceed cash outflows. We would not presume to say that Lambs will ever be especially profitable, but nor we would accept that the club is commercially moribund.
- 2.8 The Appellant has sought to question the credibility of LAT's ability to acquire and run Lambs. However, we have only put forward a summary business plan in order to cast doubt upon the Appellant's contention that Lambs is not financially viable. In any event, it is not material to the planning process whether the current operation of Lambs is economically viable or not. A changed operating model in the future (for example, as a government registered 'community amateur sports club' where no VAT or business rates would be chargeable / payable), could have a profoundly positive affect on viability.

3. Future of the Operation of Lambs

- 3.1 During evidence the Appellant repeatedly intimated that the planning system and the Inspector should "bow to reality." The Appellant stated baldly that it will shut the club in September 2007 whatever happens. We find this a most surprising statement. It is a blatant attempt to force the Inspector's hand.
- 3.2 We contend that what happens after the lease terminates is not material to the appealed application, because the planning process deals strictly with whether it is correct to grant permission for change of use. As set out above, PPG17 protects the built facility and has regard to the future use of land and buildings.
- 3.3 Once the lease terminates, it is reasonable to assume that the Appellant would prefer to receive some rent rather than none and would be unlikely in the short term to find a more remunerative use of a purpose built squash club than its present use.

LAT Closing Submissions

- 3.4 It is worth noting that Lambs almost certainly was originally granted specific planning permission for the squash facility that was built, but as the Respondent cannot physically find the original planning permission, it has been deemed general D2. The developer is simply making mischief with this “planning windfall” and in practice the Applicant is unlikely to spend money converting the club into a dance hall, snooker club or even a pure fitness facility (given the good supply of superior fitness facilities nearby, which LAT accepts). Furthermore many of the walls separating the squash courts are load bearing, so any major change of use within D2 would be a costly exercise.
- 3.5 Mr. Simmonds in evidence suggested that the Appellant could demolish the facility after the lease terminates without a settled planning consent. However, there is a strong likelihood that after April 2007 new regulations will prohibit the demolition of sports facilities without planning permission. In addition, the Appellant is backed by a well known and well respected residential developer whose principal investor is the Duke of Buccleuch, one of Scotland’s largest landowners and well known for philanthropy. We believe Appellant is certain to wish to act with a careful eye towards its wider community reputation, in particular as regards its corporate and social responsibilities.
- 3.6 Notwithstanding threats to demolish or internally destroy the existing squash facility, common sense and experience suggests that most developers in practice cut their losses once it becomes plain that they will not obtain the change of use they seek through the planning system. Should the Inspector dismiss this appeal, we would not be surprised to see Lambs on the market, shorn of *hope* value in respect of residential change of use, and reflecting a settled and freshly confirmed D2 squash club use. LAT is aware of at least one major UK racquet and fitness club operator who has expressed serious interest in Lambs if it were to become available at the normal market price for such clubs.

H. CONCLUSION

LAT submits that:

- The Appellant has not made the case that Lambs is surplus to requirements.
- The Appellant has failed to demonstrate that the redevelopment of Lambs is widely supported by the local community.
- The Appellant has failed to consult the local community.

The appeal should be dismissed for each of these reasons.

If the Inspector dismisses this appeal, and confirms that Lambs’ current use should be protected by PPG17 (and other policies), he will have done a great public service not just to the affected local community in Islington, but to many other communities whose sport facilities up and down the country face similar threats from developers, and which without any doubt deserve the same protection as Lambs.