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By email: HELEN.SKINNER@planninginspectorate.gov.uk

Dear Sir/Madam,

Appellant's Final Comments

Appeal by Watervale Property Ltd

Site Address: Land at the Corner of Fore Street and High Road, Eastcote

APP/APP/R5510/W/24/3345878

Thank you for your email of 18th July 2024, forwarding the LPA's Statement of Case (SoC) and third-party correspondence. This letter should be read in conjunction with the Appellant's SoC and Appendices, which contains specialist expert opinions on the various reasons for refusal.

Appellant's Final Comments on the Appellant's Grounds of Appeal

RR1- Flood Risk and Sequential Test

Paragraph 2.3 of the Council's SoC alleges "Officers should highlight that the Council has engaged in several rounds of pre-application discussions with the Appellant and consistent advice has been provided in respect of the land use principles, the sequential testing and the appropriate methodology". The Appellant engaged in a formal pre-application process for this scheme which took 12 months to receive a response. One would reasonably assume that the pre-application advice which took over a year to be received would include the appropriate commentary regarding flood risk. The Council appears to have pre-determined the application, before seeing the formal planning application and sequential test, stating "it is therefore deemed highly unlikely that the Applicant will be able to demonstrate that the proposal is necessary in this location". In the 12-months following submission of the sequential test, the Council did not raise concern with the scope of the sequential test, provide any further detailed policy feedback, or indicate that the Appellant had not agreed appropriate parameters. Over the 24-month period of discussion on this site, there was multiple emails between the various planning officers/managers, including exchanging of information from the Environment Agency regarding flood risk, but the LPA had not, until their SoC, raised issue with the Sequential Test Methodology, nor provided any detailed feedback until after making a decision.

In response to the Council's SoC, the Appellant's Sequential Test Specialist from ET Planning makes the following final comments:

Contact with the LPA

Firstly, Hillingdon SoC states in paragraph 2.18.2.20 that a pre-application was made in which Hillingdon Council were of the opinion that a sequential test could not be passed due to the fact, without any research or assessment being made to justify this opinion, that alternative options/sites for delivering an uplift in early childcare provision were available.



This shows the intent of Hillingdon Council and their position which has been to refuse the application without any assessment of whether a sequential assessment can be evidenced or not.

Hillingdon Council go on to state that within their pre-application response that the appellant should engage with the Council to establish agreed search parameters and seem to imply that these must be agreed prior to the completion of a sequential test. Paragraph 025 of the NPPG states that *"The Sequential Test needs to be applied to the whole local planning authority area to increase the possibilities of accommodating development which is not exposed to flood risk, both now and in the future."* In addition to this information Paragraph 027 of the NPPG stated that *"For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Plan policies."*

Therefore, there is no requirement within the NPPG that contact must first be made with the LPA to determine suitable search parameters. The only reference within the NPPG, and The Framework for that matter, is that if the appellant must contact the relevant authority if they seek to reduce the size of the search area due to the type of development proposed.

As this sequential test assessed the whole of the borough and did not seek to minimise the search area; there was no requirement to contact the LPA to agree on search area. Policy clearly dictates that it is for the applicant/Appellant to undertake the sequential test and for the Council to assess this "flexibly", and "realistically" as shown within the relevant case law set out below.

A suitable methodology, that has been justified within the amended sequential test, was carried forward in accordance with over 100 previous sequential tests that have been undertaken by ET Planning and Geosmart. This is discussed later within this document.



Changes made under this appeal

At multiple points within Hillingdon's SoC the Council state that "unreasonable behaviour" has occurred due to the changes that have been made to the sequential test following the refusal of the initial application.

The sequential test was amended in accordance with the comments raised by Hillingdon Council; it is not understood why amending this documentation in accordance with what Hillingdon Council requires is "unreasonable behaviour" by simply considering the feedback that has been given.

It is seen unjustified that the Council seeks to diminish the validity of such changes and the amended report by simply stating that "unreasonable behaviour" has occurred when this is not the case at all. The report has simply been amended in response to the Council's comments within the previous officer report.

As the description of development and the proposal itself has not changed within this appeal submission, it is the appellants view that the changes to the sequential test do not entail a "*substantial difference*" or a "*fundamental change*" to the application which enables it to not be assessed under this appeal, as per national government guidance.

In addition, paragraphs 2.23-2.24 of Hillingdon's SoC it is confirmed that the Council have no objection to the original sequential test being amended. It is recognised that it is subject to the discretion of the Inspector as to whether any additional information/documentation/plans can be accepted, and this is left in the capable hands of the Inspector to conclude.

It is clear that the methodology of the sequential test would not be agreed upon between the appellant and the Council and, thus, an assessment from the Inspectorate, is sought within this appeal.

Therefore, the Appellant argues that updating the sequential test is not a substantial change and that the appeal can be determined with this information being considered.



Methodology of the Test

Firstly, it is relevant to discuss the methodology of the test. The appellant seeks the opinion of the Inspectorate to determine whether the utilised methodology is acceptable. If this can be viewed to be acceptable, the findings within the report can then be assessed separately to ascertain whether the findings are suitable.

Generally regarding the methodology of a sequential test and its assessment by the local authority the recent and relevant case law is relevant in this instance.

1) Relevant Case Law

Firstly, drawing on *Tesco Stores Limited v Dundee City Council*, Mr Justice Holgate (Ref: Case No: AC-2023-LON-002327) emphasised the need for "*realism*" and "*flexibility*" on all sides when considering the question of "*appropriateness*" of alternate reasonably available sites. The need and/or demand for a specific type of proposal, and the resulting implications for location, mix of land uses, and any interdependence between them, were deemed to be relevant considerations.

Within paragraphs 93, 94 and 98, J Holgate encourages applicants and local authorities to utilise "*Flexibility and realism*" as the sequential approach and sequential test policy is not clear.

Furthermore, J Holgate states that whether a site is reasonably available is a matter of judgement for the decision-maker in line with the specific facts of each individual application. A flexible and realistic approach must be taken to understand the "*proposed development*" alongside what a "*reasonably available site*" is in reality and practice, and not simply its policy definition.

Therefore, the LPA and the appellant must have flexibility and practical in mind when they undertake and when they assess a sequential assessment relevant to the type of development proposed.



2) The Proposed Methodology of the Test

To summarise shortly, the test is subject to the below methodology to ascertain whether an alternate site is suitable for further assessment. Further assessment can then be made to determine whether the site is a possible alternate and reasonably available site.

- 1) The search is Borough Wide
- 2) Any Site in Flood Zone 3 is excluded
- 3) Any site with a higher overall risk of flooding (considering all forms of flooding) is excluded

To require further assessment:

- 4) Any allocation within the Hillingdon 5-year supply of deliverable housing sites (2022), Local Plan Part 1 (2012), Local Plan Part 2 (2020), London Strategic Housing Land Availability Assessment (2017), and The London Borough of Hillingdon Brownfield Land Register (2021) that is for a nursery at circa a 64-child capacity is considered to be a suitable site that requires further assessment;
- 5) OR, if a site is between 0.31 and 0.47 hectares it requires further assessment due to a similar site size.
- 6) OR, A search was made on the Hillingdon Website for applications within the last 5 years that constituted a change of use to a nursery. Any of these sites would require further assessment.

Any sites that met the above methodology will then be subject to further assessment to ascertain whether a nursery of a similar size could be erected on site. If a suitable site was found the test would have failed. This methodology is clearly highlighted between paragraphs 5.2-5.28 of the amended sequential test submitted alongside this appeal.



3) Biodiversity Sensory Nursery

Hillingdon Council state within paragraph 2.24 of their appeal statement that the appellant introduces a concept that a unique selling point of the development is that it includes biodiversity enhancement and is a sensory nursery. They then state that this is a restriction of the search of the sequential test which seeks to exclude certain brownfield sites from further assessment.

As clearly stated within the test and this document above, this element has **no relation to the search parameters**. Is a brownfield site of a suitable size, OR allocation, OR use was listed within the BLR it would have been subject to further assessment. If it was then, let's say, located within the middle of the town centre it may have been viewed that this is not a suitable alternative reasonably available location as it would not be possible to erect a sensory nursery in this location due to the specific circumstances of that individual site. This is a judgement made when assessing the site further and does not restrict the sites found or located via the methodology at all.

It is viewed that this assessment is fair, flexible, and practical. If an alternate site cannot accommodate the nursery as proposed, it is argued that in practice and reality it is not a viable alternative in accordance with the above case law findings and relevant to the "*type of development*" of that proposed.

Justification is provided for this within the planning package which clarifies the need for the required nursery. But again, it is imperative that this is not part of the search parameters this is simply a requirement of an alternative site subject of the type of development and need shown.

If it is viewed as part of the assessment of this appeal that there is a need for a nursery within the borough of this nature, then clearly sites can be discounted in regard to this fact as this is relevant to the type of development proposed and the facts of the case.



4) Size of the Site

It appears that Hillingdon Council has got confused and has concluded that the methodology is not restricted via site size. However, 5.13 of the amended sequential test clearly states *“Therefore, the site needs to be off a similar size to the subject site to ensure that a building can be erected which can accommodate these numbers alongside the facilities that go hand in hand with this”*. Thus, this is still part of the methodology of the amended test.

Hillingdon appear to not be happy with the justification that is given to evidence why this is required. To not repeat the amended sequential test and to summarise; as the proposal is for a nursery there is no set “units” (i.e., 10 dwellings/units) that are listed within the SHLAA, BLR or 5 year-supply document. Normally with a sequential test for 10 dwelling for example, the documentation can be filtered to ascertain suitable alternative sites via the units. With a nursery this is not possible.

The only way to restrict the search is to use the size of the site. The amended sequential test simply expands on this. If there is no restriction due to units (not possible) and none in regard to the size of the site. The sequential assessment would literally be assessing every single site allocation, piece of land for sale within the entire borough. This is of course not possible or reasonable when it is considered that a flexible and suitable approach should be taken by the LPA as well as the applicant/Appellant.

This test seeks to address sites of a similar size, sites with planning permission to change use to a nursery and sites that are allocated (if these existed).

5) Extending Existing sites, Utilising more than one Site, and Class E buildings.

Leading on from the above, these types of sites are not included within the search parameters and Hillingdon Council argue that they should be. If Hillingdon Council’s suggested methodology was actioned. It would include the following:

- 1) Every single allocation/plot of land irrelevant of its size within the whole borough



- 2) Every single existing nursery within the borough that could be extended
- 3) Every single Class E building within the entire borough.

This would be hundreds of thousands of potential sites that would be required to be assessed further to ascertain if one of them is suitable. This is not flexible or practical at all and it is requested that the relevant case law is adhered to, and the sequential test is assessed practically.

A flexible assessment again needs to be made regarding whether it is actually practical or possible in reality for the proposed development to be located on sites of this nature.

Firstly, the proposed development is for the erection of a nursery. **It is not to extend an existing nursery.** If this application was seeking to extend an existing nursery within the Flood Zone, a sequential assessment should then assess whether other existing nurseries outside of the Flood Zone could be extended instead to facilitate this. However, this is not the case with this submission.

Either way, a flexible and practical approach must be taken. This Appellant (person A) is seeking to build a nursery, and the purpose of the sequential test is to steer this development away from the Flood Zone if possible. To do this, the purpose of the test is to find an alternate site in relation to the proposed development that can, in theory, ensure that the development can be erected on that site instead of the appeal site.

Therefore, there must be flexibility, realism, and practicality (as per the above 2024 case law cited) as to whether an alternate site is suitable for the proposed development.

The purpose of a sequential test is to find a suitable **alternative** site to **“steer”** development away from the Flood Zones. It is not meant to be used as a tool to avoid development.

The sequential assessment is subject to the proposed development and is a tool to find out whether any alternate sites are available in relation to the proposed development. The Appellant cannot extend other people's nurseries (not in their ownership) for them.



It is not viable for the Appellant to purchase a whole nursery (and then there is no gain in provision), it is not viable/possible for the Appellant to extend an existing nursery. Therefore, these types of sites are not viable alternatives that are reasonably available to accommodate the proposed development.

When assessing existing Class E buildings, any buildings of a suitable size would have been located via the search parameters within the BLR, SHLAA which would have then been considered. Therefore, sites of this nature are considered. However, if no such sites are allocated, listed, or available for development on marketing sites they are deemed to not be available for development.

Otherwise, every single Class E building and its address within the whole borough would have to be found, located, and defined by the Appellant, and then assessed individually to ascertain whether they are suitable. That is a completely un-flexible and un-realistic expectation. The methodology assesses any sites of this nature that are within the relevant documentation or available on public forums. A search was even made for change of use applications within the last 5 years to locate buildings that could have or have an outstanding permission for a nursery use.

The Courts stated that multiple smaller sites can only be acceptable if they are a “series” and there is a relationship between the smaller sites. J Holgate states that *“This addresses the concern that a proposal should not automatically fail the sequential test because of the availability of multiple, disconnected sites across a local authority’s area”*.

The LPA and the Appellant must take a flexible and pragmatic approach when they undertake a sequential assessment relevant to the type of development proposed. The Appellant argues that this has been undertaken for the relevant type of development and the subject site.



6) What sites have been assessed?

Hillingdon Council question what sites have been assessed in paragraph 2.25 of their SoC. The sequential test is clear that all sites included within The London Borough of Hillingdon 5-year supply of deliverable housing sites (2022), Local Plan Part 1 (2012), Local Plan Part 2 (2020), London Strategic Housing Land Availability Assessment (2017), and The London Borough of Hillingdon Brownfield Land Register (2021) has been assessed.

This is the over 250 sites. It would be a pointless exercise to simply re-list these sites confirming that sites that are off a suitable size and that require further assessment. All the sites assessed within the amended sequential test are the sites within these documents and subject to the commercial land search that required further assessment in accordance with the methodology.

7) Data Sources

Hillingdon Council have agreed with the conclusions in paragraph 2.50 of their SoC, "*Officers are not aware of any Local Plan that seeks to allocate sufficient sites for this specific type of development.*". This is agreed. However, these are the only documents that show potential sites within the borough alongside planning applications and sites for sale on marketing sites publicly.

Therefore, every site of a suitable size has been assessed to determine whether it could be utilised to house a nursery instead of its residential use.

An assessment can only be made of the sites that are available via the search. A distinct effort has been made within the amended report to try and address this concern by seeking to find planning applications on the authorities search in relation to "nurseries" "nursery" etc to see if any change of use submissions and potential sites could be located.

If the Council considered that the data source is not suitable, the Appellant should be informed at an early stage.



The Appellant concludes that the test has been applied flexibly to assess the possibility of extending existing facilities even though this is a completely unviable and unpractical option in practice.

The Council also refers to the Datahub as a data source, this is simply a collection of data and statistics regarding planning submissions. There is no way/method to find alternate sites via these means.

The relevance of "need"

Hillingdon Council state that the information submitted separate from the sequential test regarding need is relevant to the sequential test.

The sequential test is a tool to ascertain whether alternate reasonably available sites can be found. If they are found, the proposal can be relocated.

The documentation put forward within the planning submission discussing the 'need' is a different planning matter, not relevant to the sequential test. This evidence simply justifies that the proposal is required within the borough in planning terms. Whether the Council feel that a nursery is "needed" or not, a sequential assessment still needs to be undertaken for alternate suitable sites.

A sequential test is required whether there is an identified need or not.

The only time "need" is required is when defining the type of development proposed. The justification submitted within this appeal clearly states that early year's provision is required, and that research has justified that a sensory nursery is required to meet the needs of local children at a time when national government wishes to expand childcare provision. If this need is viewed to be accepted within the overall planning assessment, this then influences the type of development that is required/proposed and, thus, the sites that can be considered to be reasonably available.



Summary

In summary, the Appellant argues that the Council has not acted in accordance with the latest High Court decisions on this matter. The Courts have determined a flexible and practical approach to sequential test is required. In this instance, the Council are using the Sequential test as a barrier to development. This conflicts with The Framework.

A flexible and suitable approach has been undertaken by the Appellant. No alternate sites have been located which could suitably accommodate the type of development proposed.

The Exception Test

Paragraph 2.73 of the Council's SoC states "The Council recognises the value of suitable day care facilities for pre-school children and notes that there is a general need". The Appellant is in agreement with the Council that there is a need for early year childcare provision and this proposal provides the ideal setting for a nursery. The Council's SoC paragraph 2.73 refers to the Planning Policy Officer's comments regarding the sequential test. The Appellant maintains that there is a need for nursery and early year childcare provision, and this should weigh significantly in favour of the proposed development as a sustainability benefit. The Government has committed: "Labour is determined to deliver not just more childcare, but better childcare and early education – for the best start to every life". This proposal is a 'ready to go' opportunity to deliver a purpose-built childcare in a verdant green setting, to provide the provide the best start in life for local children within walking distance of their homes.

Biodiversity

The Council's SoC pages 15-23 addresses biodiversity. The Appellant's Exception Test maintains the proposal preserves and enhances the green character of the area protecting the dense hedges and trees surrounding the site with a new tree planting scheme and a biodiversity enhancement project. The intensive green roofed single storey nursery preserves and protects the trees on the site and utilises the secluded location as part of the



amenity for the nursery. Once again, no feedback was received regarding any discrepancies in the 24 months of engagement with the Council on biodiversity. The Council did not include biodiversity/ecology/ lack of information as a reason for refusal and the Council is in effect adding a new reason for refusal in biodiversity and ecology.

Paragraph 2.90 states "further bat surveys were recommended but these do not appear to have been undertaken". The planning process can take years to reach an appeal decision, this logically means bat surveys are going to be out of date. Bat surveys (in particular emergence surveys) are often recommended to be re-done immediately before any works commence, given their seasonal migration, and this can be conditioned in the usual way. The Inspector will be aware that emergence surveys can only be carried out between May and September.

Paragraph 2.83 of the Council's SoC says "neither of the plans show the existing trees onsite (cross referenced with the arboriculture survey)". The ecology survey is valid and includes Appendix C, D and E providing appropriate detail of the monitoring survey and trees etc. It also includes a detailed landscaping plan in the Appendix B of the BNG Assessment.

Paragraph 2.79 states "The Council considers that the Appellant's presentation of BNG for the development does not properly reflect the wider biodiversity policy requirements". This is a very vague statement which does not provide any contrary evidence, and the Appellant maintains the extensive reports (Ecology, BNG, Arboricultural and Landscaping) submitted as part of the application are sufficient to demonstrate the biodiversity enhancement benefits.

Paragraph 2.86 states *"the BNG approach that is relied upon results in a reduction in area of natural habitat and open space predominantly necessary to accommodate the new built structure , play space, car parking and access areas. There will also be a reduction of the existing hedging"*. This statement is a misinterpretation of the ecology report survey. The ecology report concludes "A Biodiversity Net Gain Assessment demonstrates that the majority of habitats with higher ecological value within the site will be retained, including the tree line in the north and hedgerow in the south, which will be enhanced". The proposal includes improving defunct hedgerows by 135%. The report also demonstrates a 13.96% improvement in habitat units. The Ecology Report provides enhancement measures for each



wildlife species and the ecologist findings are clear “the proposed scheme provides an opportunity to significantly increase the ecological value of the site for wildlife and evidenced by the Biodiversity Net Gain (BNG) report, the proposals achieve an overall 13.96% net gain meeting the requirements of the NPPF”. The latest 2024 standard requires a 10% net gain, so it is still meeting the current legislative requirements.

It should be noted that this application was made before day one of mandatory BNG on 12 February 2024, and therefore the development is exempt from BNG. ([Biodiversity net gain: exempt developments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments)). The BNG calculations were carried out “in cognisance of the Biodiversity Net Gain; Good Practice Principles for Development Guidance and the British standards institutes. Full calculations were undertaken through the Defra Biodiversity Metric. The submitted BNG was prepared before the latest legislation and might not refer to the specific wording of the 2024 legislation i.e. referring specifically to a ‘30 years period’, but the Appellant is confident that it would meet this test and the wording ‘30-year period’ could simply be added. The Appellant was not privy to the Council’s new reason for refusal on biodiversity, until their statement of case was issued. The 2-weeks final comment stage is not enough time, or the appropriate time, to introduce new reasons for refusal. However, if the Inspector is minded that there needs to be further information provided to refer to the latest BNG 2024 legislation and to address the Council’s latest reason for refusal, this can be conditioned or provided as new evidence if preferred.

The Appellant maintains that there are extensive biodiversity benefits of this scheme. The Appellant sought to provide a biodiversity net gain report prior to submission, to demonstrate in a measurable way that there would be great benefit to biodiversity. The LPA has tried to introduce an entirely new reason for refusal in the contention that “the proposals will not result in protection of the existing habitat” in paragraph 2.118. It is clear from the submitted landscaping, aboricultural, ecology and biodiversity reports that the fundamental basis of the application is to provide a nursery in a unique setting by the river, set amongst the existing nature and the proposals enhance the overall ecological and aboricultural value of the site and ensure its preservation.



The Council's assertion that "the BNG proposals are limited to a small increase in trees at the expense of existing trees some of which have a reasonable prospect of supporting bats", is unfounded. The proposal protects trees, includes an extensive landscaping and biodiversity improvement scheme, and both ecologist and arboriculturist have provided their expert opinions to secure the future protection and enhancement of trees, hedgerows, habitats and species. This should be given significant weight in the decision-making process.

Significant Benefits to Local Economy / Job Creation

The Council agrees there will be benefit to the local economy through the provision of 25 jobs. But concludes once again, because of the sequential test, "there are alternative sites where such benefits could also be realised". The Appellant maintains "A sequential Test undertaken for the search area, covering the entire Council-wide area of London Borough of Hillingdon, indicates there are no alternative suitable sites which could accommodate the development as proposed (i.e. a sustainable environment friendly children's nursery near a river) at the proposed site which are at a lower risk of flooding and are considered to be available, deliverable, and developable as per the requirements of policy".

Making the Site Accessible to the Community

Paragraph 2.216 states "In practical terms, use of the site for a nursery would not make it completely accessible to the public, noting the sensitivities around ensuring that children are safe and that general public cannot just freely access the site without restriction". A childcare facility provides great benefits to the local community. The fact that the general public cannot freely access without restriction is not a known criteria for assessing its community value. For example, local village halls are often occupied by appointment and local community services are often bookable and not freely accessed without restriction. The Appellant's Statement of Case point was that the proposal brings back into use a private vacant plot of land (with no access to the community) into beneficial use for the community whilst enhancing its biodiversity by renewing and planting new trees; and landscaping. The proposal therefore enhances the character of the wider Conservation Area.



Maintenance and Protection of Protected Trees and Planting of New Trees, Plants and Hedging

Paragraph 2.218 of the Council's SoC states "The LPA has significant doubts that TPO trees T13 and T9 would be protected and retained in the long term". The appeal rebuttal statement prepared by the qualified Arboriculturalist provides conclusive evidence to confirm that RR5 is not justified by any contrary evidence and should be given no weight in the determination of this Appeal. The Council has no reason to have significant doubts when extensive Arboricultural specialist reports have been submitted confirming that both TPO trees will be protected and retained in the long term.

Paragraph 2.132 of the Council's SoC concludes "it is clear that the site as it exists already contributes to the wider sustainability benefits to the Community and the proposal would significantly undermine such benefits". The Appellant maintains the conclusions given in the Appellant's Statement of Case paragraph 7.47 to 7.52. It is maintained RR1 is without merit. Compelling justification and professional evidence have been provided to address specific concerns. The development satisfies the exception test providing significant sustainability benefits to the community, proposing a new education and childcare facility, extensive biodiversity enhancement and wider economic benefits. The sustainability benefits are considered to outweigh the low to medium level of flood risk, with a comprehensive package of mitigation measures in place. The Council has unreasonably disregarded the findings of professional reports and appeal stage rebuttals and have failed to substantiate their unfounded concerns. There is porosity of contrary evidence offered by the local authority to justify this reason for refusal.

RR2 – Open Space

The Appellants SoC makes the case for RR2 in paragraph 7.53-7.61. The Inspector should note that the Local Plan was updated in 2020 and this includes allocations of important 'green' and 'open' land in the borough. This provides a robust and up to date assessment which fulfils NPPF Paragraph 102. This site was not designated as valuable green space or



Metropolitan Open Land, Green Belt or similar. The site was also not situated within an areas of Deficiency in Eastcote in the specific 'Open Space Strategy' document, nor identified as an open space area. This strategy specifically designates open space areas and was considered in 2 extensive local policy making procedures, it was not deemed worthy of designation through plan making process.

The Council is misinterpreting the Appellants SoC in paragraph 2.137. The Appellant's SoC does not state in its RR2 section that the site has a perceived 'low value' and it is inaccurate to state "the Appellants SoC appears to contest that the site is open space". The Appellant seeks to utilise and enhance the value of its location. As concluded in the Appellant's Heritage Statement, "The public and passers-by will have little or no perception that the Nursery is on this site. The majority of the site will retain its open character. The proposal will make no significant change in character of the area: still retaining the character of a "high-quality suburb dominated by open spaces, extensive natural landscaping and trees".

As stated in the Appellants SoC, the site is screened from the public realm by protected trees and its visual amenity lies in its green setting with the protected trees and hedges. The proposal is for a 'green' building with an intensive green roof, set within an extensive landscaping scheme which improves the sites biodiversity. The protected trees are being preserved and enhanced and through the occupation of the site, local value of the trees and landscape will benefit from continual maintenance and will be secured for future generations.

The Council's Statement of Case paragraph 2.138 seeks to make the case that Appellant claims the development only occupies 11% of the site and contests... 'that the development would occupy significantly more of the site, physically occupying at least 50% of the site and impacting the site in its entirety'. The Appellant's SoC makes clear that the statement is referring to the percentage occupied by the single storey green roof building and the majority of the site is retained with extensive landscaping and trees, maintaining the amenity value to the local area.



RR3 – Highway Safety

The Council disregards the extensive professional transport reports submitted as part of the application and subsequent appeal response. Please refer to Paul Mews Technical Appeal note in Appendix 4 in the Appellant's SoC. It is maintained that the highway concerns are without merit and lack substance against the submitted evidence by the Appellant. The Paul Mews reports contain more than sufficient evidence to fully demonstrate that the proposal would not give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety. The reason for refusal is not justified by any contrary evidence. The Appellant's Transport Consultant, Paul Mews Associates Ltd makes the following final comments on the Council's SoC:

Interested Party Bianchi E:

"The existing transport survey should have been conducted at peak school traffic times. The availability of on-street parking stated in the report is not specific at which point this was undertaken if it was at maximum peak. This gives the survey a sense of complacency and is disingenuous to the reality of parking at peak times."

PMA comment: Parking surveys were undertaken from 0730 – 0930 and 1630-1830 in order to capture the busiest expected time of day for the proposed nursery. Full details of each 15 minute beat survey are provided within Appendix D of the submitted Transport Statement. The morning survey (specifically between 0845 – 0900) captures the typical morning peak for the schools.

London Borough of Hillingdon Statement of Case:

"2.143 Taking account of the low PTAL and on-plot car parking provision, it is considered very likely that most members of staff and parents/carers would drive to the site and upon arrival would either park or pick-up and drop-off on-street. The Appellant contends that having just 9no. car parking spaces on-plot is not an issue as sufficient car parking is available on-street. To demonstrate this the Appellant has undertaken a parking survey using the Lambeth Methodology. This measures the amount of kerb space available for use and counts the number of cars parked. The Appellant reports that there are 104no.



kerbside car parking spaces available for use. The busiest 15- minute period was found to be 08:45 to 09:00h when a total of 63no. cars were recorded as being parked. This identified an overall parking stress of 61%. If parking stress reaches 85% then parking along a road is said to have reached capacity. Based on there being sufficient kerb space to park 104no. cars, it is considered that capacity is reached when 88no. cars are parked. With 63no. cars counted as parked, there is space to cater for another 25no. cars before the 85% capacity is reached ($63 + 25 = 88$). Officers would highlight that some of these 25no. spaces could be up to 200 meters away (a 2 minute walk) from the site."

PMA comment: Staff will be recruited from the local area and will be encouraged to access the site via sustainable means through measures defined within the submitted Travel Plan. It is also expected that parents will be local to the nursery. A TRICS assessment has been undertaken as part of the submitted TS, which estimates that the peak hour for the nursery is expected to be between 08:00 and 09:00, with a total of 26 vehicle arrivals. A parking survey has been undertaken following the Lambeth Methodology, which indicates that during the peak 15 minute beat (08:45 – 09:00) there were 25 parking opportunities available locally within a two minute walking distance of the site until the parking stress reaches 85%. This on-street provision at the peak 15 minute is enough to cope with all but one of the expected number of vehicle arrivals, assuming a worst case scenario that all arrive within the 15 minute peak, as opposed to within the hour, as per the TRICS assessment. In reality the vehicles will arrive spread over the hour and will utilise the internal parking and drop-off opportunities before having to rely on on-street provision.

The Statement of Case states that "Officers would highlight that some of these 25no. spaces could be up to 200 meters away (a 2 minute walk) from the site". The Lambeth Methodology (Appendix C of the submitted TS) states that surveys should be undertaken to 200 metres.

London Borough of Hillingdon Statement of Case:

"2.144 The Appellant reports in their Transport Statement that, according to TRICS, the morning peak time for vehicular movements would be between 08:00 and 09:00h when there would be 26no. vehicular arrivals and 19no. departures. To test a worst- case scenario the Appellant has assumed that half of arrivals, equal to 13no., would arrive between 08:45 and 09:00h. Nine of these cars could park on- plot with 4no. being displaced on-street. However, this assumes that all 9no. spaces are vacant which is most unlikely as



these spaces would be occupied by staff. Instead, Officers consider it much more likely that cars would have to wait on the highway to enter, requiring that one car enters as one car leaves. Inevitably, this will increase traffic congestion to the detriment of highway safety conditions.”

PMA comment: Staff will be recruited from the local area and will be encouraged to access the site via sustainable means through measures defined within the submitted Travel Plan. Generally, staff at nurseries tend to be younger members of staff, with lower levels of car ownership. The above comment does not take into account the provision for children drop-off opportunities, as illustrated within Figure 4a of the submitted TS. There are nine parking spaces proposed, plus additional drop-off opportunities. Even if all nine parking spaces were fully occupied all 13 cars could park locally on street without reaching a parking stress of 85%. 25 cars would have to park locally on-street before the stress reaches 85%. Staff members will be on-hand to greet the parents of children being dropped off, which will facilitate the quick exchange of the child into the nursery and therefore reduce the time parents are dropping off within the site.

London Borough of Hillingdon Statement of Case:

“The Appellant’s Transport Note January 2023 paragraph 4.11 states “that trips to nurseries tend to be undertaken as part of a linked trip, proceeding to the parent / carers workplace, afterwards for example”. The Highway Authority is mindful of the real-world process, requiring parents/carers to find somewhere to park, helping the child get out of the car, retrieving the child’s day bag, locking the car and accompanying the child to the nursery. At the nursery the parent/carer must register their child and walk back to their car before continuing their journey to work. To determine the availability of parking on-street the Appellant has followed the Lambeth Methodology parking survey which generally covers an area of 200m (or a 2-minute walk) around the site. In the worst-case scenario, in traffic conditions worsened by road works or accidents, the Highway Authority anticipates that somebody travelling late to work, for example, would not consider a parking space 200m away from the nursery as a genuine offer. Instead to save time it is expected that they would seek to park as close to the nursery as possible, which may be in an errant and injudicious manner. Some of the 25no. car parking spaces available between 08:45 and 09:00h would be simply too far away to be considered a genuine parking opportunity.



Accordingly, in the worst-case scenario, the proposal does not mitigate against the associated highways safety risks by providing fit for purpose pick-up and drop-off facilities or off-site highway improvements to facilitate effective active travel to and from the site.”

PMA comment: The parking surveys have been undertaken in line with the widely accepted Lambeth Methodology. If the methodology required surveys to be undertaken on roads closer to the site the 200 metre walking distance would not be used.

London Borough of Hillingdon Statement of Case:

“The original planning application for this proposal generated a total of 60 objections from local residents. A recurrent issue raised was the presence of existing traffic and highway problems caused by parents/carers dropping off and picking up children attending Coteford Infant School and 4 Street Nursery nearby. These establishments are situated along Fore Street just 120 metres away from the application site. As already covered, the Lambeth Methodology for determining car parking supply is based on a catchment area of 200 meters, in which case the parents/guardians of children attending the proposed nursery would be competing against the parents/guardians of Cotewood Infant School and 4 Street Nursery for somewhere to park on a first come first served basis. This further worsens the worst-case scenario, ultimately to the detriment of highways safety conditions.”

PMA comment: The parking survey times were undertaken at the expected peak hours for the nursery, from 0730 – 0930 and 1630 – 1830 during the school term time (as per the Lambeth Methodology). The surveys include the AM peak for local schools. Demand from local schools is therefore taken into account within the surveys.

London Borough of Hillingdon Statement of Case:

“Based on the information submitted, the proposed development is considered to have an unacceptable impact on highway safety. The scheme is considered contrary to Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020), and Policies T2, T4 and T5 of the London Plan (2021) and should be refused in accordance with paragraph 115 of the National Planning Policy Framework (2023). Again, this weighs significantly against the scheme in terms of the planning balance”.



PMA: The proposed nursery will not have an adverse impact on road safety, emergency access, amenity or street scene, and have not led to unacceptable levels of additional overspill parking on the adjoining highway.

RR4 – Design and Impact

The Appellant maintains the expert opinion of Mr David Hickie regarding heritage and conservation - see the Appellant's Heritage Statement version 4.0 (original document No 20).

"No significant change to the overall character of the area which is that of a high-quality suburb dominated by open spaces, extensive natural landscaping and trees. No changes will be visible from the street-scene (with the exception of the new entrance replacing the existing harmful hoardings currently in the access location). The appearance of the Conservation Area will not be adversely affected. The access gateway will be tidied up and improved and the surrounding hedgerow will be improved. The public and passers-by will have little or no perception that the Nursery is on this site. The majority of the site will retain its open character and there will be no significant change in character of area - still retaining the character of a high-quality suburb dominated by open spaces, extensive natural landscaping and trees. The new landscaping proposals will be beneficial to the character and appearance of the Conservation Area. Mr Hickie concludes the proposal is beneficial to the Conservation Area. Therefore, it is clear if there is harm or perceived harm, it can only be at the lower end of 'less than substantial harm'. The Council has made no comment on the Appellant's Heritage report submitted as Appendix 20.

Paragraph 208 of the NPPF states that "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use". The many public benefits outlined in RR1 exception test and RR2, including significant sustainability benefits to the community, provision of a new highly sustainable local and much needed education and childcare facility, and extensive biodiversity enhancement creation of local jobs and wider economic benefits (including business rates) clearly outweigh any harm. The Council acknowledges the general need for



childcare facility, and the benefit of jobs. The Council has attempted to dismiss all professional supporting documents such as ecology, BNG, transport, heritage, arboriculture and landscaping without offering any contrary evidence. The Appellant has providing robust and compelling evidence through specialist reports, and professional and accredited opinion from highly qualified consultants all pointing to the fact that the proposal clearly has significant public benefits which outweigh the less than substantial harm at the lower end of the spectrum.

RR5 – Impact on Trees

It is submitted that the extensive Arboricultural reports, which were submitted as part of the application, demonstrate no adverse impact on the trees. The Arboricultural Appeal Response provided as Appendix 5 of the Appellant’s Statement of Case addresses the Council’s SoC concerns to RR5.

RR6 – Impact on Air Quality

The Appellant’s Case for Air Quality is outlined in the Appellants SoC Paragraphs 7.16-7.22 and in the specialist’s report in Appendix 7 of the Appellants SoC.

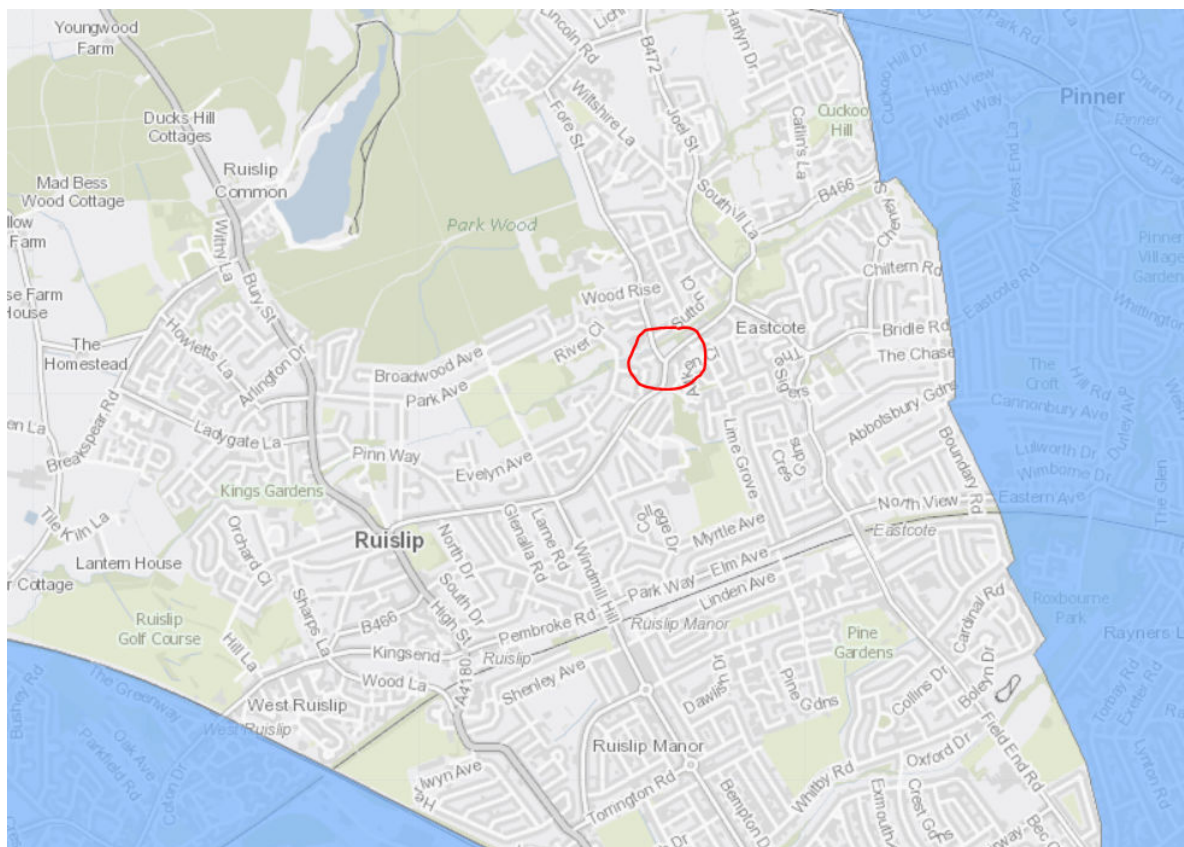
The Appellant is fully agreeable to securing mitigation and off set payment through either condition or section 106 agreement. The discrepancies seem to lie in the starting point for monetary damage costs calculations. The breakdown of the Council’s damage cost calculations are not provided, and the Appellant’s Air Quality consultant is not clear as how these calculations have been reached, therefore the monetary amount is disputed by the Appellant. The Council provides the Air Quality Officer’s comments in its Appendix 7 dated 30/01/2024 (which were not provided to the Appellant at the time in any attempt to narrow the differences). However, the Inspector will note that the Council’s Air Quality Officers tick the ‘condition’ box, indicating this is a matter which can be conditioned in the normal way. The Appellant notes the original air quality report was prepared in February 2023 and the Council Appendix 7 contains comments a year later in 2024. If they have differing opinion on



the air quality report provided, it was not brought to the Appellant's attention before a decision was reached.

It is noted that maps are provided in Appendix 4, but it is not clear where these maps have come from nor their status in relation to the approved local plan. The publicly available and approved proposals map and designations are in pdf form online and do not show air quality focus areas. The 2019 Action Area Map is of a whole borough scale provided in the Council's Soc Appendix 4 and not of an appropriate scale to show the application site.

The Appellant's Air Quality consultant maintains as per the Defra AQMA interactive map. It would appear that the site is not in an AQMA, and as such it would seem highly unlikely that it would be in a focus area, as they would usually be built on AQMA areas. Please see below the screenshot from the Defra website which has AQMAs highlighted in blue and the site location within the red ring illustrated. The Appellant's Air Quality Report uses the LAEI Tfl Focus Areas and DeFRA AQMA as is standard practice. Particularly, in case where the local Action Map in pdf form is of insufficient detail for assessment.



Defra mapping available online

Furthermore, paragraph 2.162 states “significantly, the GLA Air Quality Neutral 2023 guidance has not been used by the Appellant to calculate this reduced fee”. This is incorrect this guidance has been used by the Appellant and it is unclear why the Council think this is the case. However, it seems possibly, the Council and the Appellant could be inputting different data on benchmark trip rate area and have a different trip rate value. This needs to be clarified and could be negotiated, as suggested by the relevant officer, with an appropriately worded condition.

RR7 – Planning Obligations and Monitoring

The Appellant’s case for this ground is made under paragraph 7.24 of the Appellant’s SoC. The Appellant is agreeable to conditions regarding the Travel Plan and those suggested by the Air Quality Officer for any approval.

The Appellant is agreeable to a Section 106 Agreement for air quality mitigation measures or off set payment and a Heads of Terms document was submitted as part of this appeal. It is noted that the Council makes no comment on the Heads of Terms. A Section 106 Agreement draft is available, but the specific amount of payment for Air Quality has yet to be agreed with the Council. It is hoped that the Council will actively engage with the Appellant to agree a figure prior to a site visit.

3rd Party Correspondence

The Appellant has reviewed the 3rd Party Correspondence and considers that no new issues have been raised that have not already been discussed in this letter.

Conditions

It is suggested that the conditions suggested by the Council are excessive. The Appellant queries the following conditions 4, 5, 8, 9, 16 and 17 as follows:



Condition 4 is with regard to land contamination, and this has not been considered an issue to date and is unnecessary. The site has no historical industrial or contaminant uses.

Condition 5 relates to the submission of a detailed arboricultural statement, which has already been provided as part of the application submission and appeal. Adherence to the submitted reports should be adequate.

Condition 8 requires details of materials, which have already been provided as part of the application.

Condition 9 relates to landscaping details, much of which has already been provided as part of the application. It is suggested that perhaps this could be amended to a maintenance plan seeking adherence with the submitted landscaping report and plan.

Condition 16 refers to the word 'dwellings' and this reference needs to be changed.

Condition 17 relates to a new requirement for a final detailed Noise Survey, Management and Mitigation Plan. Noise has not been raised as an issue and is not considered relevant considering the proposal is for a daytime use.

Conclusion

The Appellant contends NPPF policy is met. The proposal provides an opportunity to provide much needed childcare and education facility, which secures extensive biodiversity enhancement and wider economic benefits. It is respectfully requested that the appeal be allowed and planning permission granted.

I would be grateful if this letter is passed to the Inspector and, I look forward to being advised of site visit arrangements should an accompanied visit be helpful.

