

Planning Inspectorate

3D Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

London

Holmes House
4 Pear Place
London SE1 8BT

nexusplanning.co.uk

31 October 2024

Our Ref: 32404

Your Ref: APP/R5510/W/24/3348615

Dear Sir / Madam,

RE: Appellant's Final Comments in Relation to the Appeal at Northwood College Educational Foundation, Maxwell Road, Northwood, HA6 2YE.

This letter provides the Final Comments of the Appellant, The Girls Day School Trust following receipt of the Local Planning Authority's Appeal Statement. This Appeal is against Hillingdon Council's decision to attach planning Conditions to a Decision Notice approving an application pursuant to S73 of the Town and Country Planning Act, ref. 2082/APP/2023/516, that had the following descriptions:

"Variation of Condition 12 (All-Weather Pitch Hours of Use) and 13 (All Weather Pitch Restriction of Use) of planning permission ref. 2018/APP/2007/1411 dated 11-09-2007 (Removal of existing building and construction of new early years centre and relocation of all-weather sports surface playing field (approved Under planning application ref. 2082/APP/2003/1103) Including details of design and layout) to change the permitted operating hours and use of the all-weather pitch".

The disputed Condition relates to restricting the approved operating arrangements of the pitches to a period of 24 months.

These Final Comments relate to matters raised in the Local Planning Authority's Statement of Case, which was provided on the 17 October 2024, and does not seek to introduce new evidence, or rehearse the Appellant's Statement of Case.

The disputed references to the consent being for a temporary period are found within Conditions 8, 9 and 14 of the Decision Notice, ref. 2082/APP/2023/516, as set out below:

Condition 8

For a temporary period of 24 months from the date that this decision is issued, the all-weather playing surfaces shall only be used between the hours of:

London

Birmingham

Bristol

Manchester

Reading

- Monday to Friday: 09.00 - 21.00;
- Saturdays: 09.00 - 18:00;
- Sunday: 10.00 - 16.00; and
- No use on Bank Holidays.

REASON: To safeguard the amenity of the surrounding area in accordance with Policy DMHB 11 of the Hillingdon Local Plan: Part 2 (2020) and Policy D14 of the London Plan (2021).

Condition 9

For a temporary period of 24 months from the date that this decision is issued, the all-weather pitch shall be available for use by the wider community on a managed basis. Activities shall be supervised by a Coach or Club Member and no championships or tournaments shall be held at the application site.

REASON: To ensure that the development does not cause danger and inconvenience to users of the adjoining pavement and highway in accordance with Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020).

Condition 14

(i) Prior to operation of community use activities, a Community Use Agreement, prepared in consultation with Sport England, shall be submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement has been provided to the Local Planning Authority. The agreement shall apply to the indoor, outdoor and supporting facilities and include details of pricing policy, hours of use, access by non-educational establishment users, management responsibilities and a mechanism for review. For a temporary period of 24 months from the date that this decision is issued, the Community Use Agreement should allow community use of the facility during the following times:

- Monday to Friday: 09.00 - 21.00;
- Saturdays: 09.00 - 18:00;
- Sunday: 10.00 - 16.00; and
- No use on Bank Holidays.

(ii) Prior to operation of community use activities, a car parking management strategy which details how parking for community use of the facilities will be managed and catered for on site, shall be submitted to and agreed in writing by the Local Planning Authority.

The development shall not be used otherwise than in strict compliance with the approved documents.

REASON: To secure well managed safe community access to the sports facility/facilities, to ensure sufficient benefit to the development of sport and to accord with Policy S5 of the London Plan (2021). Also, to ensure the community use of the facility does not result in an unacceptable impact on the local highway network through an unacceptable increase in demand for on-street parking, in compliance with Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020).

Appellant's Statement of Case

The application as submitted was recommended for approval by the Council's officers subject to the completion of a legal agreement. For the avoidance of doubt, the application was for the permanent change in hours and use of the pitches. The Local Planning Authority issued a Draft Decision Notice in advance of a decision on the application by its Planning Committee. This did not include the addition of drafting to the affected Conditions restricting the consent to a temporary period of 24 months. A Copy of the Draft Decision Notice can be found on Pages 4 - 7 of the Committee Report in **Appendix A**.

The application was heard at Planning Committee on the 26 July 2023, where members resolved to approve the application, subject to the application being permitted for a temporary period of 24 months, as concerns were raised in relation to whether there would be regular engagement with the local community. The inclusion of the wording "*for a temporary period of 24 months from the date that this decision is issued*", was included within Conditions 8, 9 and 14 of the Decision Notice, as well as the S106 Agreement.

It is not clear to the Appellant what form of '*regular engagement with the local community*' the Committee had in mind, what planning policy justification was being relied upon to require this, or how limiting the period of planning permission for the use of the pitches would achieve it. For the avoidance of doubt, Northwood College takes its role within the community and engagement with its neighbours very seriously.

The application was approved on the 23 January 2024, following the completion of a legal agreement.

It is the Appellant's view that the Conditions attached to the approval limiting it to a temporary period of 24 months is unnecessary and unreasonable, and references to this temporary period should be removed from the Decision Notice. There is no justifiable reason why the changes that are the subject of the appeal application should not be permanent ones.

The reasons provided for the Conditions restricting the consent to a period of 24 months refer to highways and amenity impacts. This is different altogether to the purported aim to ensure regular engagement with the local community. Importantly, and as identified in the Council's Statement, neither the Council's Noise Officer or Highways Officer raised any objection to the proposals as originally proposed for a permanent permission, subject to other planning Conditions, which the Appellant agrees to. Neither specialist Officer (or indeed, the Planning Officer) considered that there was a technical justification to restrict the period to a temporary period. A Copy of these consultation responses can be found on Pages 16 – 18 of the Committee Report in **Appendix A**.

Appellant's Final Comments

The Local Planning Authority's case as set out in its Statement can be summarised as follows:

- The Local Planning Authority is entitled to issue temporary permissions;
- The Appellant had the opportunity to dispute the addition of a Condition restricting the permission for a temporary period following Committee;
- The Condition meets Test 1 (Necessary) due to highways safety and amenity impacts; and
- The Condition meets Test 6 (Reasonable in All Other Respects).

These Appellant's comments on these matters are set out in detail below.

S.72 of the Act allows the Local Authority to issue a temporary permission.

The Appellant recognises that the Local Planning Authority is entitled to issue temporary permissions, in principle. However, Conditions such as those imposed on this permission still need to meet the relevant tests. In this case, they clearly do not. The Local Planning Authority has not identified any transport or noise impacts that could justify the imposition of a temporary consent. On the contrary, the Council's technical noise and transport specialists are satisfied with the proposals.

The Council's Statement of Case was an opportunity to explain what its concerns are, and how the issuing of a temporary consent would resolve them. The Council hasn't done that, instead making the point that some local residents raised concerns about traffic and noise. That is not the same thing as there being actual, evidenced planning policy conflicts that need to be tested or remedied through the issue of a temporary consent.

The Appellant had the opportunity to dispute the addition of a Condition restricting the permission for a temporary period following Committee

Within Paragraph 2.2 of the Council's Statement of Case they note that following Planning Committee, the Appellant Team were provided the opportunity to contest the application being granted for a temporary period. As noted, the Appellant did not agree to the Condition, instead highlighted that the Council are entitled to apply Conditions where it is considered to meet the relevant tests. Within the Appellant's Statement of Case, we consider that these Conditions do not meet Tests 1 (Necessary) or 6 (Reasonable in All Other Respects) of National Planning Policy Guidance (NPPG), Paragraph 005 Reference ID: 21a-005-20190723.

The Council highlight that if the application was contested, it would have been reported back to Planning Committee for further consideration or refused. Clearly, that course of action would have brought forward considerable risk for the Appellant. It is not for an applicant to determine whether planning Conditions meet the relevant tests – it is for the Local Planning Authority. If an Appellant feel aggrieved by the imposition of planning Conditions, it has the right of appeal against them. The Appellant has exercised that right for the reasons set out in the Statement of Case.

The Condition meets Test 1 (Necessary) due to highways safety and amenity impacts

The Council state that the temporary permission is necessary and meets Test 1 of the NPPG, as "*Committee Members and residents consider it to be necessary, with particular reference to the harm caused in respect of highways safety Conditions and neighbouring residential amenity*". It is important to highlight that during the Planning Committee, members raised queries in relation to highways safety and amenity impacts; however, these points were disputed by the Council's Planning Officer, and it was stated that there were suitable mechanisms within the Conditions of the draft Decision Notice to protect highways safety and residential amenity.

Therefore, Committee Members did not request that the temporary permission was attached due to highways safety or residential amenity, instead it was attached to allow further engagement with the local community, as shown below (Page 4 of **Appendix B – Committee Meeting Minutes**).

"Members noted the importance of regular engagement with the local community and enquired whether this could be assured by way of Condition. It was confirmed that this was not something that could be Conditioned; however, it was suggested that temporary consent could resolve the issue. A temporary consent for a 24-month period was favoured by Members of the Committee".

As noted within the Appellant's Statement of Case, Conditions were attached to the draft Decision Notice which would allow continued engagement with the local community, including the submission of a Noise Mitigation and Management Plan (NMMP) – Condition 15. The NMMP would set out how the organisers of the sports at the school would operate in order to best reduce noise impacts during the evening hours, this would include engagement with the local community or a complaints procedure. It is therefore considered that Condition 15 satisfies the request of members for engagement with residents without the requirement for a temporary permission and therefore the provision of a temporary permission is not necessary to facilitate the development. For ease Condition 15 is set out below:

“Prior to the use of the all-weather playing surfaces during evening hours (6pm to 9pm), a Noise Mitigation and Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This plan shall detail a noise complaint procedure, including detail on how measures are implemented to resolve such complaints. Thereafter the all-weather playing surfaces shall only ever be used during evening hours in accordance with these details for as long as the development remains in existence”.

Notwithstanding this, these points on highways safety and residential amenity are explored further below.

Highways Safety

A Transport Statement by Vectos was submitted in support of the application, which concluded that the proposed use of the sport pitches would result in a minimum increase in traffic to/from Northwood College and that the predicted parking demand could be accommodated on the site with the exception of 1 vehicle for a short period and as there is on-street parking and local public car parks that would mean that there would be no implications arising from this. There would be a minimal impact on the local transport network and no transport related reason why the development cannot come forward. Therefore, the impact of the development proposals is not considered material or severe and as such there are no highways or transport reasons why the proposed development should not come forward and there is no justification for a time limited planning consent.

The Council's Highways Officers reviewed the proposals and confirmed on the 11 July 2023, that they had no 'in principle objections' to the proposal subject to the imposition of a Planning Obligation and Condition requiring the submission of a Car Parking Management Plan (Condition 14), Community Use Agreement (Condition 14) and Travel Plan (Schedule 2 of the S106 Agreement). In addition, they stated that there would not be a significant on-street parking taking account of the cumulative assessment undertaken and there would not be a notable detriment to highways congestion and road safety, thereby protecting residential amenity.

This acceptability of the scheme from a highway's perspective is further demonstrated within the Committee Meeting Minutes as outlined below:

*“Members raised further concerns regarding traffic and parking arrangements and sought clarification from officers. The Transport Planning and Development Manager confirmed that a transport assessment had been submitted. It was estimated that, in a worst-case scenario, up to one car would be displaced on to the street. **It was felt that the proposal would not have a significant impact on highway safety or on the road network.** 43 car parking spaces had been allocated and this was deemed to be sufficient as it was estimated that approximately 66% of visitors would travel by car - others would car share or walk, cycle etc. Parking on the Glen was unlikely to be convenient for users of the sports pitch. A Travel Plan would be secured by S106”.*

As stated within Paragraph 5.17 of the Appellant's Statement of Case, community users will be required to enter and exit in accordance with the Written Code of Conduct included as part of the lease agreement, which would be included within the Community Use Agreement (Condition 14). If there is evidence of non-compliance with the Written Code of Conduct, the School will issue non-compliance warning with the potential of cancelling the hire agreement if the Written Code of Conduct is not adhered to. In addition, a Car Parking Management Plan which requires details of how parking for community users of the facilities will be managed and catered for on site is secured via Condition (Condition 14). In addition, the S106 Agreement requires an updated Travel Plan to be submitted prior to operation to encourage the use of sustainable transport modes to further reduce the impact of the development on the highways network.

As a result, it was demonstrated through the submission of technical reports which were independently reviewed and validated by the Council's specialist Highways Officer and Planning Officer that *"there would be no transport related residential amenity impacts arising from the proposed use of the sport pitches"*. Therefore, there is no justification on transport related grounds for a temporary planning consent to be required and the planning consent should not be restricted by Conditions seeking to reduce the consent to be for a 24 month period.

Amenity Impacts

A Noise Impact Assessment (NIA) by KP Acoustics was submitted in support of the planning application, which concluded the noise emissions from the proposed increase in hours would be negligible when compared to the ambient noise level. Therefore, the proposed hours would result in noise falling in the 'none' effect category defined by IEMA Guidelines for Environmental Noise Impact Assessment.

The Council's Noise Officer assessed this report and agreed that the extended hours and community use of the established all-weather sports pitch would have a low noise nuisance risk. Notwithstanding this, it was suggested that a Condition was attached to the Decision Notice requiring the submission of a Noise Mitigation and Management Plan (NMMP) prior to commencement of the extended hours or community use.

The acceptability of the scheme from an amenity impact perspective is further demonstrated within the Council's Meeting Minutes (Page 4 of **Appendix B**):

*"In respect of noise, Members queried why the Noise Officer had considered the impact of the proposal to be negligible and raised concerns regarding decibel levels at the school and at the Glen. It was confirmed that a noise assessment had been completed by an external consultant and assessed internally. **Noise concerns were not considered to be a viable reason for refusal and would not be defensible at appeal.** A Noise Mitigation Management Plan was to be secured by Condition; this would be a mechanism by which residents could complain if necessary. It was agreed that Condition 15 would be expanded to include a noise complaint procedure".*

Paragraph 2.5 of the Council's Statement of Case states that *"whilst the LPA concluded that the impact on neighbouring residents would not be unacceptable, mitigation measures were considered necessary (as per Conditions 8, 9, 14 and 15) and in need of careful consideration and management"*, these Conditions are set out below:

- **Condition 8** outlines the hours of use of the sports facilities.
- **Condition 9** permits the use of the sports facilities for community users.
- **Condition 14** requires the submission of a Community Use Agreement and Car Parking Management Plan prior to operation of community use.

- **Condition 15** requires the submission of a Noise Mitigation and Management Plan prior to operation of community use.

It is important to reiterate that the Appellant agrees to these Conditions, as set out in the draft Decision Notice.

As noted above, Condition 15 requires the submission of a Noise Mitigation and Management Plan (NMMP) prior to operation of the community use. The NMMP shall detail a noise complaint procedure, including detail on how measures are implemented to resolve such complaints. Thereafter, the all-weather playing surfaces shall only ever be used during evening hours in accordance with these details for as long as the development remains in existence. Therefore, there is the suitable mechanism for engagement with the community throughout the operation of the pitches.

The Council's Noise Officer commented on the 17 April 2023 the following in regard to all-weather playing pitch use:

"It is an outside activity area operating during specified times during the day. Despite the reference to IEMA guidance, evidence-based guidance for this is sparse which makes assessment and regulation I would suggest rather unnecessary in the context of the low noise nuisance risk.

It is therefore considered that any noise management would if necessary be effected through operational control and this is typically how they would deal with complaints in the unlikely event that they were to arise".

In addition, the extended school and community use of the pitch would operate strictly within the amended time restrictions and would be carefully managed by the school. All community users would have to agree to a Written Code of Conduct before using the school facilities. If there is evidence of non-compliance with the Written Code of Conduct, the School will issue non-compliance warning with the potential of cancelling the hire agreement if the Written Code of Conduct is not adhered to. This would be secured by the Community Use Agreement, which is subject to Condition 14 of the Decision Notice.

As noted in Paragraph 5.6 and 5.7 of the Appellant's Statement of Case that the location and use of the all-weather pitch is well established and used regularly throughout the day. The School has never received any complaints in relation to community use or operation. In addition, no complaints or issues have been received from local residents or neighbours in relation to the school use of the pitch which has operated successfully since implementation in 2008.

It is therefore considered that Conditions 8, 9, 14 and 15 provide suitable measures in order to protect residential amenity, including a noise complaint procedure and engagement with residents. Therefore, there is no justification on amenity related grounds for a temporary planning consent to be required and the planning consent should not be restricted by Conditions seeking to reduce the consent to be for a 24 month period.

The Condition meets Test 6 (Reasonable in All Other Respects)

As noted in the Appellant's Statement of Case Paragraph: 005 Reference ID: 21a-005-20190723 of the National Planning Policy Guidance states that "Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness".

Paragraph 2.8 of the Council's Statement of Case states that "the LPA would highlight that the legal agreement was completed on 19 January 2024, this being 6 months after the application was recommended for approval at the Planning Committee Meeting on 26 July 2023, allowing more than sufficient time to address the point now raised at appeal".

It is important to highlight that the Appellant does not dispute the financial contribution, which is required to mitigate the air quality impacts generated by the increase usage of the site. Instead, it is noted that the Appellant is required to pay an Air Quality Contribution of £12,222 prior to commencement of development. Due to the monetary implications of the use being brought into operation, it is considered unreasonable to permit the use for a temporary period and therefore Conditions 8, 9 and 14 fail Test 6.

Other Material Considerations

As set out in Section 6 of the Appellant's Statement of Case, the proposal is also acceptable in terms of:

- Principle of development.
- Trees, landscaping and ecology; and
- Air quality.

Extending the hours of use and allowing external groups to use the all-weather pitch will provide significant health and wellbeing benefits to pupils as well as the local community enabling the facilities to be used more frequently and for longer periods. Demand for such facilities in the local area is evidenced by the number of groups who approach the school requesting to use the sports facilities for play, in line with Policy EM5 (Sport and Leisure) in Part 1 of the Local Plan (2012) and Policy S5 (Sports and Recreation Facilities) in the London Plan (2021). In addition, the proposals were supported by Sports England.

Third Party Representations

It is noted that only one third party representation was received as part of the Appeal, from the owner of 104 Myrtleside Close. It is important to highlight that this representation does not raise any comments in relation to the all-weather sports pitches or the proposed extension of hours and community use. Instead, the comment provides comments in relation to the existing nursery, which is not the subject of this Appeal and therefore not relevant.

Proposed Planning Conditions

The LPA have set out in Appendix 7 of their Statement of Case the proposed Conditions that should be attached to a Decision if the Inspectorate is minded to allow the Appeal and permission is granted. The Appellant has reviewed these Conditions and is agreeable to them.

S106 Agreement

An agreed and signed revised S106 Agreement can be found within [Appendix C](#), which removes reference to the application being permitted for a temporary period of 24 months.

Overall

We are grateful for the opportunity to respond to the points raised in the LPA's Statement of Case on behalf of the Appellant.

In summary, we consider that the addition of a temporary time period within Conditions 8, 9 and 14 fails Tests 1 (Necessary) and 6 (Reasonable in All Other Respects) as noted Paragraph: 003 Reference ID: 21a-003-20190723 of the NPPG and is considered unreasonable and should be omitted from the Decision Notice, ref. 2082/APP/2023/516.

The application was considered acceptable on a permanent basis by the officers, including specialist technical noise and highways officers and was recommended for approval at Planning Committee on the 26 July 2023. During the Committee meeting, members raised the importance of regular engagement with the local community and enquired whether this could be assured by way of Condition. It was confirmed that this was not something that could be Condition; however, it was suggested that temporary consent could resolve this issue. Therefore, the Planning Committee resolved to approve the application, subject to the amending Condition 8, 9 and 14 to ensure temporary consent was granted for a 24 month period. It is the Appellant's view, that the inclusion of Condition 15 (Noise Mitigation and Management Plan), allows a suitable mechanism for the Appellant to engage with the local residents, including any complaints that are received while in operation. Therefore, the provision of a temporary consent is not necessary, and it is requested that this is omitted from the Decision Notice.

The Local Planning Authority have stated that the temporary consent is necessary to protect highways safety and residential amenity. As set out within the Appellant's Statement of Case, the Local Planning Authority's Highways Officer and Noise Officer reviewed the application, and considered the proposals acceptable on a permanent basis subject to the submission of the following details prior to operation of the community uses:

- Community Use Agreement.
- Car Parking Management Plan.
- Travel Plan; and
- Noise Mitigation and Management Plan.

It is important to highlight that extending the hours of use and allowing external groups to use the all-weather pitch will provide significant health and wellbeing benefits to pupils, as well as the local community by enabling the facilities to be used more frequently and for longer periods of time. Demand for such facilities in the local area is evidenced by the number of groups who approach the school requesting to use the sports facilities for play. The proposal will provide significant public benefits and is supported by regional and local planning policies

Overall, for the reasons set out in this Final Comments Letter and the Appellant's Statement of Case, we would respectfully request that this Appeal is allowed, and that planning permission is granted on a permanent basis and reference to a temporary permission of 24 months is omitted from Conditions 8, 9 and 14, as set out in Section of the Appellant's Statement of Case.

Yours sincerely



Nexus Planning

Appendix A – A Copy of the Committee Report and Draft Decision Notice, ref. 2082/APP/2023/516

Appendix B – A Copy of the Hillingdon Council Major Planning Committee Meeting Minutes, 26 July 2023

Appendix C – A Copy of the Signed S106 Agreement, 18 October 2024

London

Birmingham

Bristol

Manchester

Reading