

OPINION

Introduction

1. I am instructed on behalf of the Blackheath Cator Estate Residents Limited (“BCER”) to provide my opinion on a planning application made for the creation of a padel tennis facility with the erection of a new clubhouse at the Former Tennis Club, Blackheath Park, Blackheath SE3 0HB (“the Site”). The planning application has been made to the Royal Borough of Greenwich (“RBG”) and has reference number 25/0793/F.
2. I have reviewed the application materials, together with a draft letter of objection prepared by NTA Planning LLP on behalf of BCER, and a Peer Review of the Noise Impact Assessment Report prepared by Archo Consulting Ltd.
3. Based on the information I have seen, there are a number of areas where significant policy conflicts would appear to arise. Further, there is an absence of information to address various issues which in my opinion are material considerations in the determination of this application. For the purposes of this opinion, I have addressed these on a topic by topic basis.

Metropolitan Open Land

4. The Site lies within designated Metropolitan Open Land (“MOL”). By virtue of Policy G3 of the London Plan 2021 (“LP”), MOL has the same status as Green Belt and accordingly is to be protected against “inappropriate development” unless “very special circumstances” exist.

5. The RBG Core Strategy (“CS”) provides in Policy OS2 that MOL “will be maintained and its open character protected from inappropriate development”. OS2 goes on to identify uses which are “generally appropriate” within MOL, including “open air recreational uses, sports grounds and playing fields”. Policy OS(a) identifies that “small scale built development which has a primary function for a purpose ancillary and essential to an appropriate use as stated in Policy OS2 may be permitted providing” certain criteria are met.
6. The planning application (in particular, the covering letter) proceeds on the assumption that the proposal is not for inappropriate development in the MOL, suggesting that the LP and CS “confirm that sports, recreation and leisure uses are appropriate uses within MOL”.
7. This is not correct.
8. The LP applies national Green Belt policy to MOL. It identifies a function of MOL as providing outdoor sports facilities, but it does not generally identify sports, recreation and leisure uses as being appropriate. Nor does the CS: it is “open air” recreational uses which are generally appropriate. The National Planning Policy Framework (“NPPF”) makes clear that built development is generally inappropriate development in the Green Belt, and by application on MOL. Accordingly, sports facilities which are not open air, or which are not ancillary to open air facilities, are inappropriate development for the purposes of the LP, CS and NPPF.
9. The proposed development seems to me to clearly involve the construction of an indoor sports facility, in a permanent building. I cannot see how an alternative conclusion could be reached when considering the plans, since the proposed padel courts are to sit within a steel structure with sides and a roof. The structure presumably sits on foundations of some sort, and whilst roofing panels may be

made of lightweight material and retractable, the basic test of permanence clearly met for the structure as a whole.

10. Although the planning application form refers only to the proposed floorspace of clubhouse, it seems to me that this is an obvious error. The proposals clearly involve the construction of a building for the reasons set out above. The important procedural point which arises from the incorrect application form is that since the proposals are for more than 1,000 sq m of floorspace on MOL, they are referable to the Mayor of London as major development in the MOL: see Schedule 1, Part 3, Category 3D of the Town and Country Planning (Mayor of London) Order 2008.

11. It is striking that the planning application has not sought to argue any justification for inappropriate development in the MOL, but rather to suggest that the proposed use is supported by MOL policy. For the reasons I have summarised above, my clear view is that the application needs to be considered as being an application for inappropriate development, and therefore as being contrary to Policy OS2 of the CS. Given the centrality of MOL policy to the LP and CS, in my view the proposals should be regarded as a “departure” application.

12. It is of course the case that inappropriate development is, occasionally, permitted on MOL. However, national, London wide, and local policy requires that this is only in very special circumstances. I have not seen any argument as to why very special circumstances exist here.

Heritage

13. Sections 66 and 72 Planning (Listed Buildings and Conservation Areas) Act 1990 mean that a primary consideration in planning applications should be given to the preservation of conservation areas and listed buildings and their settings. For present purposes it is unnecessary to explore the legal duties in full. The basic point is that careful consideration needs to be given to potential impacts, and great weight given to any harm.

14. The applicant has acknowledged in their Heritage Statement that the Site lies within the setting of the Blackheath Park Conservation Area, and the Grade II listed 103 Blackheath Park.
15. The question of impacts on the setting of these heritage assets is for expert, not legal, judgement. However, having reviewed the Heritage Statement I would note:
- a. The Heritage Statement makes no reference to the structure which encloses the padel courts. I am unclear whether it has been taken into account in the assessment. On p 6, the Heritage Statement describes the proposals as being “in keeping with the character and function of the surrounding sports grounds”, which suggests that the assessment has been carried out on the basis that there is an absence of built form;
 - b. The Heritage Statement does not refer to any potential impacts from lighting. Whilst the impacts on significance of any noise from the proposed development is a matter of planning judgement, it at least needs to be considered;
 - c. The Heritage Statement does not refer to any potential noise impacts. Again, such impacts are clearly relevant to a judgement as to the impact on significance. This may include the noise from both the proposed use and any traffic impacts.
16. These material gaps in the Heritage Statement will, at the very least, need to be assessed by RBG in determining whether permission should be granted.

Highways

17. The application documents include a Transport Statement (“TS”). The assessment of highways impacts will require the exercise of professional judgements. However, it seems to me that the approach to trip generation in the TS is problematic. The TRICS database has been used to provide trip generation figures from a “per court” rate for two tennis clubs. Figures have only been provided for the AM and PM peaks.

18. The first obvious problem with this approach is that it does not take account of the different nature of padel court use. There may be more points to make but:

- a. The padel courts are covered and therefore playable in all weather;
- b. The padel courts are illuminated and therefore playable outside daylight hours. The TRICS data does not cover the proposed hours of operation of the development;
- c. The proposal is for a commercial facility rather than a members’ club, where the usage is inherently limited to the members.

19. The second obvious problem is clear from Appendix 4 of the TS, which includes the TRICS report. The data is derived from:

- a. A single day of survey data on a Tuesday in July 2008 in Guildford;
- b. A single day of survey data on a Wednesday in September 2009 in Carshalton (PTAL 2).

20. It is self-evident that this may not be representative of trip generation in Blackheath in 2025, or for all days of the week.

21. The third obvious problem is that the TS reports on the morning and evening weekday peaks. However, these do not reflect either the actual peaks in the TRICS data, or the likely peaks for the proposal. The actual peak trip generation in TRICS is 1.769 two way trips per court in the 1800-1900 hour, which was over the 60% higher than the 1700-1800 trip generation figure. There is no evidence that peak usage of the proposed development is likely to be during weekday rush hours, and the TRICS database suggests otherwise.
22. The fourth point is that the Framework Travel Plan provides both baseline and targeted mode shares, which allow consideration of the likely level of car usage. The TRICS data does not include mode share for comparability. The mode share targets have not been considered in calculating trip generation, despite being relied upon in the FTP. Applying mode share information can provide a simple arithmetical sense check as to whether TRICS data has been properly applied. Since it is arithmetic rather than matters of expertise, I have calculated the figures myself.
23. The Year 1 mode shares for cars are 36% for staff and 57% for “members” (i.e. players). Car passengers are accounted for separately. It is understood that courts will be booked on an hourly basis. It follows that in any given hour, there will be (at least) an arrival and a departure for each playing space which is in use. 32 players can play at any time (four players on 8 courts). It follows that, putting aside staff and anyone attending but not actually playing, if the facility was fully booked and the car mode share achieved, the peak hour would have 18 movements in, and 18 movements out, or 36 two-way movements. Staff vehicle movements would be in addition to these figures.
24. The “peak” in the TS is 9 two-way movements. This suggests that TS trip generation derived from TRICS has only accounted for 12.5% of the player movements should the courts operate at full capacity. Put another way, the “peak” movements in the TS suggest that a maximum of 8 players are playing in the busiest hours – i.e. only

four courts being used for singles. I do not consider this to be credible, since it would at the very least negate the purpose of building 8 courts.

25. In respect of parking provision, the position is also not credible. The TS assesses peak parking demand to be 10 spaces. Even assuming players were only to park once their court was available and the players before them had driven off, this would assume that the facility never has more than 17 players on site; even less if staff are also present, or players arrive before the player before them leaves. By contrast, consideration of the mode share assumptions would indicate that if there were two consecutive hours fully booked, and the arrivals parked their cars before the departures left, the parking demand would be 36 spaces, excluding staff or other visitors.

26. It is surprising that none of these “sense checks” of the output from TRICS have been applied in the TS. In my opinion, a reassessment of trip generation would be required to identify whether the highways impacts are acceptable, including whether the parking provision is sufficient.

Noise

27. I note that detailed criticisms are made in the Archo Consulting Ltd report, which clearly will need to be addressed by the applicant and RBG. I agree that the use of data from tennis courts seems inappropriate, for the reasons summarised by Archo. I note that in a recent appeal decision for a padel proposal in Formby (APP/M4320/W/23/3332119), the noise impacts were modelled on the basis of a data recorded at a padel court whilst play was going on. The Inspector found that, without mitigation, the use of a padel court within an existing tennis club was likely to cause disturbance to neighbouring occupiers, although was satisfied on the facts that the provision of an acoustic fence would sufficiently mitigate those impacts. These findings indicate that the use of tennis court data to assess padel impacts may be inappropriate.

Lighting

28. I note that the External Lighting Assessment does not assess the effects of the canopy, but instead assumes that the courts are not covered, as shown on the Proposed External Lighting Layout. This does not appear to provide a proper basis upon which to assess the impacts of the proposals.

Ecology

29. The Preliminary Ecological Appraisal indicates a potential bat interest at the Site, which has not been the subject of survey work. Unless the nature of the bat interest in the site is established through survey work, there is no proper basis for RBG to reach conclusions on the acceptability of the proposals including in relation to vegetation loss and lighting design. I also note that the proposals would result in a net loss of biodiversity, and that no provision is made for off site gains to meet the statutory requirement to secure 10% biodiversity net gain.

Conclusions

30. The first and fundamental issue for this planning application is that it is proposed on the basis that it is not inappropriate development on MOL. This is based on an erroneous reading of policy. Indoor sports facilities are inappropriate development on MOL, meaning that as a matter of policy they should be refused unless very special circumstances are demonstrated. No such circumstances have been put forward. In those circumstances, I do not consider that RBG could rationally conclude that the proposals accord with the development plan, at least on the evidence provided to date.

31. A further consequence of the MOL designation is that the application must be referred to the Mayor of London. It would be unlawful to grant planning permission unless such a referral was made: article 5(1) of the 2008 Order prohibits the grant of planning permission for referrable applications without a reference to the Mayor being made.

32. Aside from this issue, it seems to me that the application documents have significant shortcomings relating to various topics. I have summarised these above, noting that the ultimate assessment of policy compliance on these issues is a matter of planning judgement. However, as things stand, I do not consider that there is sufficient evidence to reach robust conclusions that these matters have been satisfactorily addressed in the application.

33. In those circumstances, and as things stand, there are compelling grounds for the refusal of planning permission.

Richard Turney KC

Landmark Chambers

6 May 2025