



The Planning Inspectorate

Report to the Council of the London Borough of Richmond upon Thames

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 4 February 2020

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REDETERMINATION REPORT ON THE PROPOSED MAIN MODIFICATIONS TO THE LONDON BOROUGH OF RICHMOND UPON THAMES LOCAL PLAN IN RESPECT OF (1) OTHER OPEN LAND OF TOWNSCAPE IMPORTANCE AT ST MICHAEL'S CONVENT, HAM COMMON; AND (2) THE LOCAL GREEN SPACE DESIGNATION AT UDNEY PARK PLAYING FIELDS, TEDDINGTON

Documents submitted for redetermination on 3 May 2019 (1) and 21 June 2019 (2)

No Examination hearings were deemed necessary

File ref: PINS/S5810/429/10

Glossary

The Act	The Planning and Compulsory Purchase Act 2004
The Framework	The National Planning Policy Framework (2012)
IR	The Original Inspector's Report
LDS	Local Development Scheme
LGS	Local Green Space
MM	Main Modification
NP	Neighbourhood Plan
OOLTI	Other Open Land of Townscape Importance
OSNI	Other Site of Nature Importance
The Plan	The Richmond Upon Thames Local Plan
SA	Sustainability Appraisal of the publication Local Plan
UPPF	Udney Park Playing Fields

Non-Technical Summary

The London Borough of Richmond upon Thames Local Plan was formally adopted by the Council in July 2018 but was then subject to two legal challenges – one in respect of the designation of a part of the garden of the former St Michael's Convent, Ham as Other Open Land of Townscape Importance (OOLTI) notwithstanding the previous Inspector's conclusion that it should not be so designated and the other because of the conclusion that the Udney Park Playing Fields, Teddington should not be designated as Local Green Space (LGS). The High Court made orders requiring both to be reconsidered.

Having reconsidered, I have recommended to the Council that the relevant part of the garden of the former St Michael's Convent, Ham should be included within the OOLTI designation, and that the Udney Park Playing Fields, Teddington warrant designation as LGS.

Introduction

1. The Plan was adopted on 3 July 2018.
2. After applications to the High Court for statutory review, under s.113 of the Act, in respect of that adoption, Court Orders quashed: (1) the designation of the St Michael's Convent site, part of site allocation SA 17, as OOLTI in respect of the southern part of the garden (south of, and including, the footpath running approximately west to east across said garden); and (2) paragraph 5.2.8 in the Plan which relates to the designation of Land at Udney Park Playing Fields, Teddington as LGS.
3. In relation to (1) above, the Court Order required the Council to publish this change to the OOLTI boundary as a MM (referred to hereafter as MM#1) to the submitted version of the Plan for public consultation, for a period of no less than six weeks. The Council duly complied with this requirement, and I deal with this matter, along with the relevant background, below.
4. The Council considers that an Addendum to the SA linked to the Plan is not necessary in the case of MM#1. It is said that the alteration to the OOLTI boundary is not likely to result in significant environmental effects as the change relates to a small area of land, and the Plan retains a significant OOLTI designation north of the footpath. I agree with that approach.
5. As far as (2) above is concerned, the Court Order required the Council to publish the Inspector's proposed change to paragraph 5.2.8, together with an explanation of its effect in removing the LGS designation from the UPPF, as a proposed MM (referred to hereafter as MM#2) to the Plan, for public consultation, for a period of six weeks.
6. Again, the Council carried out this procedure and alongside MM#2, the Council (correctly) published an Addendum to the SA. I move on to the results in more detail below.
7. My role, put very simply, is to decide whether MM#1 and/or MM#2 are necessary to make the Plan sound. Having read the submissions on both, and acknowledging the significant volume relating to MM#2, I took the view that the issues raised in relation to both were quite narrow, in the context of the Plan as a whole, and that it was not necessary to conduct any hearings because the written representations ably explained the positions of the various parties in relation to the MMs at issue.
8. However, I did make unaccompanied visits to both sites on the morning of 16 August 2019 when I took in the sites themselves, from the public realm, and the surrounding areas.
9. The original examination took place on the basis of the March 2012 version of the Framework. I am proceeding with the redetermination on the same basis because the February 2019 version of the Framework applies only to submissions made on or after 24 January 2019. Paragraph 182 (of the 2012 version) of the Framework makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy.

Assessment of Soundness

Main Issues

10. Taking account of all the representations, and the written evidence, the main issues to be considered are as follows:
 - In the case of (1) the main issue is whether MM#1 is necessary to make the submitted Plan sound; and
 - In the case of (2) the main issue is whether MM#2 is necessary to make the submitted Plan sound.

Whether MM#1 is necessary to make the Plan sound

11. It is necessary, as a preamble, to give some background to the situation in relation to MM#1, the Plan, and the St Michael's Convent site. As published, the Plan identified two coterminous designations on part of the site – OOLTI and OSNI - which were shown on a map within the Plan. The IR referred to amendments to the boundary of both designations. The change to the OSNI designation was subject to MM23 and as adopted, the Plan reflected the modified boundary to the OSNI required by the Inspector.
12. In relation to the OOLTI boundary, the Inspector opined in IR140: *Based upon the evidence provided, including my site inspection, the value of the gardens when assessed against the OOLTI criteria lies to the north of the former lawned areas and therefore should not include areas which lie open where more immediately adjacent to the buildings themselves and which are demarcated by an established footpath. The boundary should reflect this.*
13. However, the Inspector inadvertently failed to reflect that conclusion in the schedule of MMs appended to his report and as a result, the Plan, as adopted, does not respect the Inspector's intentions in relation to the OOLTI boundary on the site. All parties to the Court action agreed that this error amounted to a material error of law and the Court instructed that the designation as OOLTI on the southern part of the garden (south of, and including, the footpath running approximately west to east across the said garden), be quashed, and the proposed change published as a MM and consulted upon.
14. Following that consultation, an Inspector was to be appointed to consider whether, or not, to recommend a main modification to the OOLTI designation on the site, having regard to any representations made, as well as previous conclusions on the issue. Upon receipt of that recommendation, the Council is meant to make any necessary amendments to the Plan in respect of the OOLTI designation, and any consequential changes to its Policies Map, in order to reflect any recommended MM, and adopt these accordingly.
15. The intention of the Council from the outset has been to designate the original boundary of the site, as per the SA 17 allocation that forms part of the LP, as adopted, including the southern part of the garden (south of, and including, the footpath running approximately west to east across said garden), as part of the OOLTI designation.

16. In other words, the Council has been, and remains, of the view that the MM is not necessary to make the Plan sound and to underline that position, has pointed me to their justification and evidence base for OOLTI designation of gardens for the SA 17 St Michael's Convent site.
17. Paragraph 5.3.4 of the Plan as adopted which feeds into Policy LP 14 that deals with OOLTI sets out the criteria for OOLTI designation. In summary, OOLTI should be predominantly open or natural in character. To be designated as OOLTI, the land in question must make some contribution to local character and/or the street scene by virtue of its size, position and quality; it must offer value to local people for its presence and openness; it must provide immediate or longer views into and out of the site, including from surrounding properties; it must contribute to a network of green spaces and green infrastructure; or it must provide value for biodiversity and nature conservation. Paragraph 5.3.4 makes it explicit that the land at issue need not meet all the criteria to qualify.
18. I can appreciate that the southern part of the garden offers little value for biodiversity or nature conservation so I can readily understand the basis for the change to the OSNI boundary required by the previous Inspector. However, while I note what was said in IR140, I have formed the view that notwithstanding its proximity to existing buildings, the open character of the area south of and including the footpath makes a positive contribution to the setting of St Michael's Convent, a listed building, and the wider area.
19. Representations show that it is clearly valued by local people in its open state, and it provides for views into the site, particularly for residents of Martingales Close. This local support is borne out through the approach of Policies G1 (Open Spaces) and O6 (St Michael's Convent) that form part of the Ham & Petersham NP which was adopted by the Council on 22 January 2019, following a successful referendum result.
20. Notwithstanding the presence of the footpath, and the more sylvan character of the land on the northern side of it, the lawned areas to the south of the footpath are read as an obvious continuation of the land to the north of the footpath which my colleague Inspector, who dealt with a recent appeal relating to the construction of a pair of semi-detached cottages on that site (APP/L5810/W/18/3204846), opined clearly warranted designation as OOLTI.
21. Overall, I take the view that the designation of the southern part of the garden, including the footpath, as OOLTI is very clearly justified through the criteria outlined in paragraph 5.3.4 of the Plan. It therefore follows that MM#1, which would take the area in question out of the OOLTI designation, is not necessary to make the Plan, as submitted, sound.

Whether MM#2 is necessary to make the Plan sound

22. It is necessary to provide some background here too. The Teddington Society and the Friends of UPPF applied for the designation of UPPF as LGS in September 2016 and their application was dealt with as a pre-publication consultation response to the Plan. Following a decision made by the Council in December 2016, the UPPF were included as LGS in the Regulation 19 consultation on the Plan, alongside the Council's reasons for designation.

23. The examination of the Plan by the previous Inspector brought forward MM7 which made a change to paragraph 5.2.8 that, in effect, removed the proposed LGS designation from the UPPF. The rationale for this was explained in IR68 and of primary relevance, IR69.
24. IR69 says: *I have noted the volume of representation received in relation to the Udney Park Playing Fields. It is clear that a large section of the community supports the designation of the land as LGS, albeit this is not universal and I note the submissions to the contrary. Regardless of the particular development aspirations that may apply to the site, my focus is upon whether designation of the land as LGS can be justified. In light of the absence of robust analysis as to its value against the criteria of the Framework and how any judgments have been objectively assessed in relation to, for example, its beauty, historic significance, recreational value etc, the designation is not justified adequately. The land is close to the community but it is unclear how it 'serves' that community and submissions have been received which argue that the land is both special or, in the contrary, not special and the rationale for both is not developed beyond assertion. I am unable to conclude that the designation is justified at this time. The site will retain its existing designation as Other Open Land of Townscape Importance (OOLTI). As a simple point of fact, the absence of a LGS designation of itself does not mean the site is, or is not, suitable for development.*
25. In relation to the conclusions of the Court, it suffices to outline that it was decided, in *Jopling v Richmond upon Thames LBC & Anor* [2019] EWHC 190 (Admin), that the consultation process on MM7 has been '*manifestly unfair.....in particular towards those interested in supporting the designation*' and that as a result of that unfairness, the interests of the claimant had been '*substantially prejudiced*'. Moreover '*it is clearly shown that the outcome may have been different if he had a proper opportunity to take part in the consultation in the way that he should have been. Or to put it another way it is certainly conceivable that there would have been a different outcome*'.
26. Consequently, as outlined above, the Court instructed the Council to publish the Inspector's proposed change to LP paragraph 5.2.8, together with an explanation of its effect in removing the LGS designation from the UPPF, as a proposed MM to the LP, for public consultation, for a period of six weeks.
27. This the Council duly carried out, alongside an Addendum to the SA. I have received many responses to that consultation; some in favour of retaining the LGS designation, some opposing. I must observe though that many of the submissions cross over into the merits of a proposed development on the site of UPPF which is to be the subject of a Public Inquiry held by a different Inspector in November 2019 (APP/L5810/W/18/3205616). Those merits are not for me; I form my conclusions in the context of the task before me.
28. Essentially, I need to decide whether the LGS designation is justified, and in accord with national and local policy. If it is, then MM#2 is not necessary to make the submitted Plan sound but if it is not, then MM#2 will be required.
29. I begin my analysis with paragraphs 76 and 77 of the (2012 version of) the Framework.

30. The former sets the scene by explaining that: *Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space would therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs, and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.*
31. Paragraph 77 of the Framework continues: *The Local Green Space Designation will not be appropriate for most green areas or open space. The designation should only be used: where the green space is in reasonably close proximity to the community it serves; where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and where the green area concerned is local in character and is not an extensive tract of land.*
32. Following on from that advice, at least in part, paragraph 5.2.10 of the Plan as adopted, sets out a range of criteria to be taken into account when defining LGS namely: the site is submitted by the local community; there is no current planning permission which once implemented would undermine the merits of a LGS designation; the site is not allocated for development in the Local Plan; and the site is local in character and is not an extensive tract of land.
33. UPPF accords with all those criteria. The designation was suggested by the Teddington Society and the Friends of UPPF who can, in my view, be taken to represent the local community. There is no extant planning permission that would undermine the designation, and neither is the site part of an allocation.
34. Those representing the landowners have outlined that the UPPF are: *only valued insofar as it is an open space within the suburban context of the surrounding settlement, nothing more. However, as demonstrated by the Landscape and Visual Appraisal, the appreciation of that openness is very restricted, both by the lack of public accessibility, and by the enclosed nature of much of the boundary treatment.* To my mind that serves to confirm a conclusion that the UPPF are plainly local in character and cannot realistically be described as an extensive tract of land.
35. The designation would accord with the local policy criteria, therefore.
36. Turning back to national policy, and the approach of the Framework, there is nothing in the way the Teddington Society and the Friends of UPPF, or the Council, have approached the putative designation of UPPF as LGS that falls foul of paragraph 76.
37. In terms of paragraph 77, I would say first of all that the suggestion that LGS designation will not be appropriate for most green areas or open space is of no significant import given that paragraph 77 goes on to set out a range of circumstances in which the designation can be used.

38. In relation to the first of those criteria, the previous Inspector was satisfied that the UPPF are close to the community, and there is no real dispute about that. Points have been made about whether the UPPF can be said to 'serve' the local community when the site is privately owned, with access granted to a small number of specific groups occasionally, and only on a temporary basis.
39. This question was specifically addressed in the case of *Legard v London Borough of Kensington & Chelsea* [2018] EWHC 32 (Admin). The judgment makes clear that that paragraph 77 of the Framework does not impose any freestanding requirement that the area at issue must 'serve' the local community beyond being 'demonstrably special' or holding a 'particular significance'.
40. In other words, a lack of public access is no barrier to designation as LGS, provided the land at issue can be shown to be demonstrably special or holding a particular significance.
41. Turning then to the second criterion, there is abundance of evidence to show that the UPPF have historic significance: the site has associations with significant sporting figures, notably Sir Roger Bannister; the site was donated by Lord Beaverbrook, an important historical figure, in 1937; and while the memorial carrying their names may have gone, the War Memorial Pavilion was built in 1919 as a tribute to fallen fathers from Merchant Taylor's School. Furthermore, Udney Park itself was opened by Viscount Cave in 1922 and dedicated as a War Memorial.
42. The lack of public access is of course a limitation, but the UPPF, as the name suggests, are playing fields, and they do provide at least some recreational value. On top of that, while not particularly tranquil, there is evidence to show that there are many protected species of bat using at least parts of the site, and that the open space contributes as part of a corridor, within a wider ecological network.
43. Bringing those points together, there is more than enough evidence before me to show that the UPPF are demonstrably special to the local community and hold a particular significance.
44. As far as the final criterion is concerned, I have concluded above that the UPPF are local in character and not an extensive tract of land.
45. To summarise, it is abundantly clear that UPPF meet the criteria for LGS designation set out in paragraph 77 of the Framework, on the basis of the evidence before me. I recognise that this conclusion is the opposite of that reached by the previous Inspector, but it is clear from IR69 that I outline above, that the evidential background I am considering is different to that considered previously. Moreover, my conclusions have been formed in the context of the judgment of the Courts in the *Legard* case referred to above.
46. As a consequence of all that, I am of the firm view that designation of UPPF as LGS has been very clearly justified. MM#2 is not, therefore, necessary to make the Plan sound.

Assessment of Legal Compliance

47. My examination of the legal compliance of the elements of the Plan before me is summarised below.
48. Those parts of the Plan at issue here have been prepared in accordance with the Council's Local Development Scheme.
49. Consultation on the MMs was carried out in compliance with the Council's Statement of Community Involvement.
50. Sustainability Appraisal has been carried out, where necessary, and is adequate.
51. The limited aspects of the Plan I am charged with examining would have no significant effect on any European site.
52. The Plan as a whole includes policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.
53. The Plan overall is in general conformity with the spatial development strategy (The London Plan).
54. The Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.
55. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010.

Overall Conclusion and Recommendation

1. **MM#1 is not necessary to make the Plan sound and the extent of the OOLTI in relation to the St Michael's Convent site, part of site allocation SA 17, should be as per the submitted Plan.**
2. **MM#2 is not necessary to make the Plan sound and paragraph 5.2.8 that designates the UPPF as LGS should remain in the form set out in the submitted Plan.**

Paul Griffiths

INSPECTOR