



Application Decision

Inquiry opened 8 February 2012

by **Martin Elliott BSc FIPROW**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 4 April 2012

Application Ref: COM 219

Eltham Common

Register Unit No: CL40

Commons Registration Authority: London Borough of Greenwich

- The application, dated 24 December 2010, is made under Article 12 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 (the 1967 Act) for consent to carry out restricted works on common land.
- The application is made by Pellings LLP on behalf of the London Borough of Greenwich.
- The works comprise:
 - the formation of a new hard surfaced playground (245 sq.m.)
 - the formation of a new Multi-Use games area (858 sq.m.)
 - the formation of a new soft landscaped play area (660 sq.m.)
 - the formation of new habitat areas (55 & 48 sq.m.)
 - the formation of a new approach path, tarmacadam surfaced (130 sq.m.)
 - the erection of new fencing (2.1m/2.7m high green weld mesh fencing & 1.5m high painted metal railings)
 - provision of habitat enhancement areas (138 sq.m.)

Decision

1. Consent is granted for the works in accordance with the application dated 24 December 2010 and the plans submitted with it. For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary Matters

2. I held a public local inquiry at Woolwich Town Hall on 8 and 9 February 2012. The inquiry was adjourned on 9 February 2012 and resumed on 20 February 2012. I carried out an unaccompanied site inspection of the application land, Eltham Common and the surrounding area on 7 February 2012. I carried out an accompanied site visit on 20 February 2012 when I observed the view from the top of Severndroog Castle. I did not carry out a further accompanied site visit in respect of the application land and none of the parties required me to do so.
3. In response to the notice of the application 19 letters of objection and 8 letters of support for the application were received by the Planning Inspectorate. Further letters of objection and support were received outside the time period specified in the notice of the application. However, these letters did not raise any new issues to those already contained in the original representations.

4. Dr Gray made the point that the applicant was legally represented and had all the resources available to publicly funded organisations whereas the objectors had to rely on their own resources. Whilst this may be the case, there is nothing to suggest that the objectors were not able to present their cases or that there has been any prejudice.
5. Dr Gray sought to submit a video to the inquiry but due to technical reasons it was not possible for the video to be viewed. Dr Gray described the content of the video, being a collection of photographs showing the various flora which could be viewed around the common. Although Dr Gray was unable to show the video there is nothing to indicate that his case will have been prejudiced.

Main Issues

6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application: -
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - b. the interests of the neighbourhood;
 - c. the public interest;¹ and
 - d. any other matter considered to be relevant.
7. Article 7 of the 1967 Act provides that a local authority may in any open space provide and maintain a variety of facilities for public recreation subject to a number of conditions. More specifically Article 7(1)(a)(vi) provides that a local authority may provide and maintain centres and other facilities (whether indoor or open air) for the use of clubs, societies or organisations whose objects or activities are wholly or mainly of a recreational, social or educational character. Article 7(1)(g) allows for the enclosure of land, in connection with any of the matters provided by Article 7, and for the preclusion of any person other than those permitted by the local authority. In exercising their powers a local authority must satisfy themselves that they have not unfairly restricted the space available to the public for recreation.
8. Article 12 provides that in the exercise of powers under Article 7, the local authority shall not without the consent of the Minister erect, or permit to be erected any building or other structure on any part of a common or enclose or permit any part to be permanently enclosed.
9. I have had regard to Defra's Common Land Consents Policy Guidance² in determining the application which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

¹Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

² Common Land Consents Policy Guidance (Department for Environment Food and Rural Affairs July 2009)

Reasons

Background issues

10. Christ Church, Church of England School is a small one form entry school with around 189 pupils on the roll. The school has occupied the site since 1857. There is currently a considerable shortfall in both teaching and non teaching accommodation. In respect of teaching and non teaching floor space there is a shortfall of some 664m². This falls below the Department for Education and Science guidelines Building Bulletin BB99 which sets out non-statutory area guidelines for primary school buildings. There is also a shortfall when compared to the BB99 guidelines in respect of the site and external areas of 2,660m² and a shortfall of 1860m² in the total area of play space.
11. Christ Church School currently uses the adjoining church hall and playground which provides essential facilities for the provision of the school's curriculum and its day to day needs. The current arrangement with the Church has enabled the school to cope with the shortfall but the use of the church hall raises a number of practical difficulties. The church hall is off site and children are required to be accompanied due to public access over the church property; this compromises the safety of pupils and staff on several occasions during the day. To deliver lunches, PE and games additional funding for extra staff is required to supervise and protect the children whilst off site; teaching time is lost due to the time taken to walk to the hall. Children are required to negotiate three flights of steps to access the hall in all weathers. The hall itself is approximately half the standard size of a school hall, in accordance with the BB99 guidance, for a one form entry school; the hall can only be used by half the pupils at any one time. The hall is in a poor condition, suffering from subsidence, and is not suitable for school use. In consequence of lease requirements the hall is unavailable for part of the week.
12. Resources for all subjects have to be kept in the classroom or sheds around the site. Small games equipment is destroyed by rodents and other items are damaged by damp. Office and administrative facilities are at a premium and music lessons are conducted in cloakrooms or a stock room. Teachers are required to go off site for their release and management time as facilities for staff are inadequate. There is only one toilet for almost 30 members of staff. Children with special needs are disadvantaged as there is no accommodation when outside agencies visit the school. After school clubs are limited due to the lack of space and, with adequate accommodation, the school could provide a breakfast club, after school facilities and classes for local adults.
13. On 7 December 2010 planning permission was granted for the construction of a new school building with the provision of a hard and soft play area, the construction of a dual use multi use games area (MUGA) and the construction of perimeter fencing and a surfaced footpath. The planning permission granted seeks to address existing shortfalls in accommodation by providing a new school hall and other essential facilities, including additional classroom space, kitchens, staff toilets and a medical room, and providing the requisite external play space. The provision of a surfaced path will also provide improved access to the school particularly for those with disabilities; it was said that the

- proposed footpath allows for the formation of a DDA³ compliant access to the school.
14. To meet the requirements for new floor space including the new school hall the permission granted would result in the hall being built on the existing school playground. Consequently external play space needs to be provided and for this reason an application under the 1967 Act, now subject of the inquiry, was made on 23 December 2010 for consent for the provision on Eltham Common of a MUGA, hard and soft play areas, the construction of perimeter fencing and a surfaced footpath.
 15. It was argued in opposition that inadequate consideration had been given to alternative options to address the difficulties experienced by the school.
 16. In 2006 a feasibility study was carried out which, amongst other things, considered the viability of an alternative site namely the Holbrook Yard site. A financial appraisal estimated the cost of a school on the site at £3.3 million. This was almost £2 million more than the proposal to develop the existing school with the provision of a hard and soft play area on the adjacent common estimated at £1.39 million.
 17. Although it is suggested that other options should have been considered, or were available, no evidence has been put before me of any viable alternatives. Mr Segarty advised that a Private Finance Initiative project had failed due to difficulties with access and high costs. There were also concerns as to the financial risk of a relatively small school trying to meet the 'mortgage' and service charges. As to a joint venture between the church and the school the issue of using public money for a building on private land was considered insurmountable. Difficulties also arose from the fact that the site is owned by three different bodies namely the school site held in trust by the governors by Southwark Diocesan Board of Education, the church on land owned by the Church of England and the hall on land owned by the Parochial Church Council.
 18. Other alternatives suggested were Adair House but the redevelopment of this site would require substantial demolition and remodelling work and at this time would be unaffordable. The site is currently on the market with bids being considered for the site to be used as a secondary school site. Blackheath Bluecoat School is some 2.4 km (1.5 miles) from Christ Church School and to move the school to this site would move the school from the community it currently serves. Furthermore, although the school is to close, the site will not stand empty until August 2014.
 19. It was pointed out that there were facilities at Shooters Hill Post 16 Campus which could be used. The Council identified that this comprised one MUGA, tennis courts and an outside basketball court. However, charges were made for the facilities which were in regular use by students and the Campus would not be able to offer the facilities on a regular basis. Further, given the age difference between the students at the Campus and those from Christ Church School the use by the school would raise important issues relating to supervision and child protection. I do not consider that the use of these facilities by Christ Church School is viable and in any event this would not address other accommodation difficulties experienced by the school.

³ The Disability Discrimination Act 1995 now encompassed in The Equality Act 2010

20. Consideration has been given to an exchange under Section 16 of the Commons Act 2006 so that the site of the proposed play area could be de-registered and thus be available for exclusive use of the school. An area of land formerly used as a putting green was identified as replacement land but, since this land was already held by the Council and was available to the public, the land did not meet the criteria for an exchange.
21. Having regard to all of the above there are no viable alternatives which will meet the needs of the school other than that proposed which necessitates an application under the 1967 Act.
22. Defra guidance recognises that some proposed works do not benefit the common but nevertheless may provide some public benefit or confer some wider benefit on the local community. It is stated that applications for such purposes are more likely to be successful under section 16 of the 2006 Act. However, the applicant in this case has considered the exchange of land but for the reasons identified at paragraph 20 above the land to have been used in exchange does not meet the relevant criteria. No evidence has been put before me of any other land which would be suitable in exchange if the application land were to be deregistered.
23. The approval of the application would bring substantial benefits to the school and will address significant deficiencies in accommodation, albeit that BB99 guidance will not be fully met. Given the benefits to the school there is clearly a public benefit in terms of the improvements in educational facilities. These benefits must be weighed against any disbenefits in relation to the interests of those identified at paragraph 7 a, b and c and any other relevant matters.

The interests of those occupying or having rights over the land

24. The public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925. There are no common rights registered in respect of the land.
25. The area of Eltham Common is 13 hectares and the proposed works will occupy some 1.53% of the total area of the common. Eltham Common and the application site fall within Oxleas Woodlands and the application land would occupy 0.15% of the woodlands. Access to the public, with the exception of the area covered by the proposed footpath will be restricted in accordance with the signed Management Agreement (paragraph 66 below). Christ Church School will have exclusive use of the enclosed area during the school hours of 8:00 a.m. to 5:00 p.m. Monday to Thursday and from 8:00 a.m. to 4:00 p.m. on Friday; this is during school term time other than any day the school is not open for normal education purposes. Access to the facilities outside these restricted times will be free of charge.
26. User surveys carried out in November 2009 and June 2010 at four points in Oxleas Woods indicate that the area subject to the application is the least used. The survey identified walking dogs, visiting the café, exercising and socialising were the principal activities. Although it may be the case that the application land is least used, for those who do use the land, in particular dog walkers who will be prevented from gaining access to the proposed facilities, there will be some loss of access. However, given the relatively small area occupied by the proposed works there remains a significant proportion of the common which will be available.

27. It is noted that during the winter months access to the application land to be enclosed will only be available in term time during the hours of darkness. However, this will not exclude the public from gaining access and making use of the land, noting my comments above as to the exclusion of dogs from the enclosed land. I heard evidence that this area was currently used during the hours of darkness for dog walking and it would appear that darkness does not prevent the use of the area.
28. It is noted that the restrictions on access to the area to be enclosed will be at times when children of school age will be at school and when working adults, with work patterns similar to school hours, will be at work. As such the demand to use the land will be less. However, access will be freely available at weekends, public and school holidays and when the school is closed on other occasions.
29. The proposed construction of a surfaced footpath leading from Shooters Hill Road will facilitate access to the common and the application land and will provide access for wheelchair users where none is currently available; the footpath will also be of benefit to those who are less mobile. Mr Beasley indicated that the facilities overall were likely to increase access to the common. It was also accepted by some of the objectors who gave evidence to the inquiry that the facilities provided by the works will encourage access to the common and I consider this will be the case. Whilst therefore there is an impact on access there are also benefits in terms of improved access particularly for those with disabilities and the likelihood that the facilities will encourage more widespread use of the common.
30. Looking at the evidence as a whole, the proposal will restrict access to part of the common to certain times, and exclude dog walkers. However, given that the remainder, and substantial proportion of the common, will remain available for public access I do not think that the loss of access to this area will be significant.

The interests of the neighbourhood

31. The applicant submitted that the neighbourhood is as shown on the plan at inquiry document 17. In general terms the neighbourhood is identified to extend northwards from Rochester Way, bounded on the west by Well Hall Road, the South Circular Road and Red Lion Lane, on the north western side by Herbert Road extending along the northern boundary through Shrewsbury Park and along the eastern side to the east of Shooters Hill Golf Course and Oxleas Wood. Dr Gray contended that the area to the west of Red Lion Lane to the South Circular Road was also part of the neighbourhood.
32. There is nothing to suggest that the area identified by the applicant, to include the area identified by Dr Gray, does not constitute the neighbourhood. No evidence was submitted to suggest otherwise.
33. The application will provide for a MUGA and an informal soft and hard play area. The Council advises that the development of the facilities will contribute to measures required to deliver key action points set out in the Green Space Strategy and Olympic legacy ambitions.
34. There is no established database or supply audit of MUGAs which sets out the same consistent information on the existing provision of MUGAs. Similarly there is no established standard methodology for the assessment of supply and

demand for local community facilities such as MUGAs. However, the applicant carried out a needs assessment study based on all currently available data. On this basis the applicant considered that there is a strong participation profile in the catchment of Eltham Common that would use and therefore support a case for MUGA provision.

35. It was further concluded that in Greenwich there is an unmet demand for 3 artificial grass pitches (AGP). It was considered that this demand could be partly met by the proposed works in providing for community use; in particular catering for small sided games across the two courts. The findings of a play study by the Council indicated a lack of play provision in the Shooters Hill Ward. The point was also made that there is a very limited supply and access to grass pitches up to one mile from the Eltham Common site and that the proposed facility would be the only recreational facility within half a mile of the common. It was concluded that there is a strong need for the development of a MUGA to support the strong participation profile in the catchments. The provision will also support the shortfall of AGPs, play provision and grass pitch facilities in the catchment area.
36. I note the reservations as to the viability of the needs assessment but some weight should be given to such an analysis. The needs assessment is based on currently available information and no other assessments have been carried out which might suggest that the findings are not correct. The evidence is that the MUGA could assist in providing a further opportunity for the playing of ball sports, recreational play and organised sports programmes. Further, the proposal will assist to some degree with the lack of play provision in Shooters Hill.
37. I have already acknowledged the existence of a MUGA at the Shooters Hill Post 16 Campus but use of these facilities is subject to a charge and the constraints arising from use by the school. These facilities are not comparable to those proposed.
38. It should be pointed out, as noted by the applicant, that the 1967 Act provides for facilities considered to be desirable. It is not necessary to demonstrate that any facility is necessary. It is accepted that there has been no public petition requesting provision of a MUGA and the motivation has come from the need to develop the School. However, whilst some of the correspondence is in a standardised form, there has been considerable public support for the proposal as a whole.
39. In my view the MUGA, and the other facilities to be provided in consequence of the application, will prove a useful facility for those in the neighbourhood. It is likely that once those in the neighbourhood learn about the facilities the facilities will be well used; this was accepted by both Mr Selwyn and Mr Baker. The facilities will compliment existing facilities in Oxleas Wood and Severndroog Castle once restored and made available to visitors. It may be, as suggested by Mr Selwyn, that there is greater pressure in Hackney for additional facilities than in Greenwich but nevertheless the facilities on Eltham Common will be of benefit to the neighbourhood.
40. The Applicant made the point that it was generally accepted that the interests of the neighbourhood include those of the school. In cross examination Mr Selwyn, Mr Baker, Mr Bater and Dr Gray acknowledged that this was the case. Further, Mr Bater, who sits on the Christ Church School admission appeals

panel, acknowledged that the current position at the school was unacceptable. Although the school has an admissions policy, Mr Segarty advised that the majority of pupils lived within a 5 minute walking distance from the school.

41. I have already concluded that the benefits to the school arising from the application will be substantial. Given that the majority of pupils live within 5 minutes walk of the school it is likely that many of the pupils will reside in the neighbourhood. As such the approval of the application will provide benefits to the neighbourhood by facilitating the improvements to the school.
42. It was suggested that the absence of any booking system might result in conflict between potential users of the MUGA such as to give rise to incidents of anti social behaviour. However, in the experience of Mr Beasley from other sites, any conflicts which arise are resolved amongst the participants. As regards the potential for vandalism Mr Beasley accepted that in some areas vandalism did occur but, in respect of the application land, there was no evidence of any such problems and there had been no recorded crime. Mr Segarty also said that the incidents of littering and antisocial behaviour in the area were very low.
43. As regards the effect of the proposal on a tranquil and sensitive area, the school already uses land adjacent to the common for outdoor recreation. Although the proposal will bring outdoor school activities to the common there is no evidence that the presence of MUGA will have any serious detrimental effect of the tranquillity of the common or degrade the experience of approaching Severndroog Castle from the North.
44. Mr Beasley indicated that the scheme would provide greater opportunity for the Parks' staff to engage with young people and their families. Reference was made to environmental walks led by Rangers. Given that the facilities are likely to be well used, and that the facilities will encourage wider use of the common, it was considered that there will be greater opportunity for engagement with the public and those from the neighbourhood. However, it was acknowledged that the ranger walks, which take place during the day between 10:00 am and 11:00 pm with participants coming from the 40 to 60 age group, provided limited opportunity to engage with younger people. Furthermore, it is difficult to gauge the extent to which engagement will increase and I am unable to attach any significant weight to this particular element.
45. Dr Gray contended that, in the context of the interest of the neighbourhood, some of the activities, including fetes, which take place on the application land would be severely restricted in future. I have already concluded that access to the area to be enclosed will be restricted at certain times but given the overall extent of the common I do not think any restrictions will be significant. There is nothing to suggest that the activities envisaged by Dr Gray could not take place on other parts of the common or indeed within the application land subject to the access restrictions. I have not heard any evidence from community groups which suggests that the ability to organise fetes will be severely restricted.
46. I have already considered the effects of the application on public access to the common (paragraphs 24 to 30). My conclusions in this respect are the same in respect of access by those from the neighbourhood.

The public interest

Nature conservation

47. The application site falls within the boundary of the Shooters Hill Woodlands Local Nature Reserve and part within a Site of Metropolitan Importance for Nature Conservation. The Oxleas Wood Site of Special Scientific Interest (SSSI) is located 430 metres south east of the application site. Although an ecological connectivity exists between the development site and the SSSI there is no evidence that the SSSI will be adversely impacted. Natural England in its consultation response acknowledges that the proposal does not affect the SSSI.
48. An ecological desk top study and an extended phase 1 Habitat Survey have been undertaken as part of the planning application. Evidence provided within the Ecological Impact Appraisal indicates that since the development site falls within the Local Nature Reserve it is considered that there will be a negative impact as a consequence of the proposed works. This will particularly be the case where the creation of hardstanding areas will result in the loss of the majority of the neutral grassland identified as amenity grassland; this habitat type is well represented within the surrounding landscape. However, the grassland is regularly mowed, has a low species diversity and offers little habitat for foraging animals or herpetofauna. In terms of birds, none of the species recorded in the vicinity rely on the grassland for nesting or foraging and the loss of this habitat will not be detrimental to these species. The evidence from the Ecological Impact Appraisal is that the loss of this area will not have a significant impact on the site ecology.
49. The proposals will require works to four trees, three being removed with limited canopy reduction to the remaining tree. All four trees are outside the application land. Of the three to be removed, a Scots Pine is to be removed to improve the school habitat area. The other two trees are conjoined and are to be removed in consequence one of the trees being in poor condition and overhanging the informal play area. The conjoined tree is not considered fit for retention after the removal of the other tree.
50. As part of the application it is proposed to develop new habitat areas of 55 sq.m. and 48 sq.m. These areas will be seeded with shade tolerant wildflower mixes requiring minimal management once established. New planting will be provided along the boundaries of the play areas on the woodland and in the grassland. Other measures will include selective thinning of dense scrub, coppicing of the woodland edge, creation of dead wood habitat piles. The habitat creation and enhancement measures will create a diverse woodland habitat and will enhance the site for a range of bird species. The proposals will enhance the site for a number of bat species by the planting of night scented plants which will attract moths and other flying insects which would provide a food resource for bats; a bat survey did not reveal the presence of any bats on the site.
51. Tree planting areas will be partly on undisturbed existing top soil and where tree planting is to be undertaken on landscaped areas and areas of soil deposition top soil would be placed during landscaping. Where possible top soil from the application land will be used although this may not be possible in all circumstances as the nutrient content might not be appropriate for the habitats to be created.

52. Although concerns have been raised as to the adequacy of the habitat surveys, being carried out during the winter, there is no evidence that had the survey been carried out at a different time of the year anything further of significance would have been identified. In cross examination Dr Gray accepted that in 30 years of taking photographs of the site he had not found any plant species of significance on the application site. There is no evidence before me which shows that the Ecological Impact Appraisal is inadequate such that it does not give a fair representation of the ecology of the site. Some weight should be given to the expert evidence provided by Miss Philpott.
53. As regards concerns as to the likelihood of any new planting becoming established the signed Management Agreement at clause 10 makes it clear that all habitats within the Community Area, which are designed as biodiversity enhancement measures, will be managed to ensure successful establishment and optimal biodiversity benefit.
54. It was suggested in opposition that, given the designation of the application land, it should be subject to a management plan to conserve and enhance the biodiversity of the area. Whilst Mr Beasley accepted that a management plan would enhance the biodiversity of the site he indicated that there was no resource for the development of such a plan or its implementation. I am required to consider the effect of the application on nature conservation. The current potential for improving the biodiversity of the site, notwithstanding the fact that this in the current circumstances is unlikely, is not for my consideration.
55. Overall the evidence is that whilst there will be a loss of the amenity grassland, when taking into account the habitat creation and enhancement proposals there will be a net, albeit in my view small, ecological benefit. It is accepted that the application land falls within a local nature reserve and a Site of Metropolitan Importance for Nature Conservation. However, noting the net ecological benefit, these designations do not preclude the development envisaged by the application.

Conservation of the landscape

56. The current site comprises amenity grassland with a tree lined western boundary and to the east the access road to a car park, this is bounded to the east by palisade fencing. The northern boundary of the site is formed by the existing mesh fencing up to 4 metres high which forms the boundary of the school. The existing fencing provides views of the playgrounds and school buildings.
57. The proposed boundary fencing will comprise 2.7 metre high green weld mesh fencing along the western boundary of the MUGA and 2.1 metre high green weld mesh fencing along the eastern boundary of the MUGA; fencing is to be to the appropriate British Standard. A hedge will be provided along the western boundary and the fencing will also be screened by the adjacent woodland. The southern boundary will be formed of 1.5 metre high metal railings. This fencing will be lower than the existing fencing around the school. There will be new planting along the eastern and southern boundaries which will provide for the habitat enhancement.
58. Whilst the proposed works will extend into the common, the proposed fencing is not inconsistent with fencing which already exists bounding the school and

other parts of the common. Given the type of fencing and the proposed habitat enhancement works around the perimeter, whilst there will be some detrimental impact on the immediate landscape, I do not consider that the proposed works will be significant. I do not accept that the site is in a prominent position as the area is, to some extent, surrounded by trees and is not visible from other parts of the common. The fencing will have no impact on the landscape of the remainder of the common.

59. I note that when the trees around Severndroog Castle are managed by crown reduction the proposed works may be more visible but, in my view, this will be to a very limited extent. I do not think that the presence of the fencing will detract from the overall and widespread views which are afforded from the top of the Castle. The site may also be visible to visitors of the Castle from the adjacent roadway. However, the landscape impact to visitors is in my view no different to the impact on other users of the common.

The protection of public rights of access

60. I have already considered the effect on access at paragraphs 24 to 30 above and have concluded that any loss of access will not be significant. Article 7(1)(g)(vi) of the 1967 Act requires that access to the space available to the public for recreation is not unfairly restricted. Nevertheless Article 7(1)(g) provides for the restriction to access. Although there are restrictions on access to the application land, given the small proportion of the common affected and the fact that access will be available in accordance with that set out in the Management Agreement I do not consider that access will be unfairly restricted. Mr Selwyn and Mr Baker accepted in cross examination that the arrangements as to access were acceptable. Dr Gray in his evidence stated that if the application was successful then conditions should be imposed such that access to the play areas should remain open and accessible to the public at all times outside of school use. This suggests to me that Dr Gray is of a view that the times set out in the Management Agreement (paragraph 25) are reasonable.

Archaeological remains and features of historic interest

61. The site is not designated as being of archaeological potential in the London Borough of Greenwich Unitary Development Plan. The Oxleas Woodlands Management Plan identifies areas of archaeological potential but the application site does not fall within any such areas. The objectors indicated that Eltham Common is also part of the Shooters Hill ridge which was identified by the former Countryside Commission in its 1988 document 'Strategic Guidance for Heritage Land in London' as heritage land. This was said to be due to its high landscape value with historic parks, ancient countryside and nature conservation value.
62. No evidence has been put before me to suggest that any archaeological remains and features of historic interest will be adversely affected by the proposed development.

Other relevant matters

Land designations

63. The land subject to the application is designated as Metropolitan Open Land. It is argued by some of the objectors that the proposed works are incompatible with these designations.
64. The designation as Metropolitan Open Land (MOL) was considered by the Planning Board on 25 November 2010 and the view was taken that the proposed development was acceptable in this respect. Some considerable weight should be given to the decision made by the Planning Authority; it is not my role to reconsider decisions made by the Planning Authority in respect of planning matters. In my view being mindful of the relevant policies identified in the Unitary Development Plan (UDP) the proposal is consistent with the type of development envisaged to be acceptable. The UDP specifically provides that, whilst the character of MOL should be safeguarded from built development, the use of the land for sports grounds and playing fields is considered to be appropriate. The designation as MOL does not preclude the provision of the proposed facilities and the 1967 Act envisages the provision of the facilities proposed by the application.
65. In relation to the UDP designation as an Area of Special Character of Metropolitan Importance, and the land being part of the Green Chain, these designations were also recognised in the report to the Planning Board. Again some significant weight should be given to the decision made by the Council having acknowledged the designation. There is nothing to indicate that the development is contrary to the policies contained in the UDP or prevents the development of facilities envisaged by the application. I revert to comments made above at paragraphs 63 which are equally applicable.

Management Agreement

66. The proposed development is subject to a Management Agreement between the Council and Christ Church School. The agreement signed on 20 February 2012 follows a number of drafts. The agreement specifies the times when the MUGA and the soft and hard play areas will be for the exclusive use of the school (paragraph 25 above). The school is to take out insurance in respect of the use of the area by the school with the Council providing public liability insurance in respect of use outside school hours and for its employees, contractors or agents. The school will be responsible for the locking the area at the beginning of the school day and ensuring it is open for use at the end of the school day. The school will be required to keep the area clear of rubbish at the beginning of each day and will be responsible for the emptying of litter bins, sweeping the area and carrying out minor repairs.
67. The Council will have the responsibility for the overall management of the site despite the school's obligations. The agreement provides for a management committee with an oversight of the operation and maintenance of the site. The committee will be made up of representatives from the Council, the school, SHWWP and two co-opted representatives from the local community or other interest groups. Where possible the co-opted representatives will include a Ward Councillor. A fund of £10,000, subject to an inflation related annual increase will be held by the Council for any major repairs. The school will make

- an annual contribution of £1,250, again subject to an annual increase, for maintenance and minor repairs.
68. The Management Agreement deals with issues as to the responsibilities for opening and closing the site and the costs for any ongoing maintenance. The £1,250 is based on a schedule of rates under contract conditions. There is no indication that this sum will be insufficient for ongoing maintenance and there will be a small saving in maintenance costs due to the reduction in the amount of grass cutting which will be required. There are no additional costs in respect of patrolling the site as this will continue on a regular basis. The agreement provides clear conditions as to the management and access to the site.
69. Mr Selwyn requested that the management agreement should include, for public security reasons, a condition that no planting should be allowed to grow so as to screen the activities within them. In my view there is no evidence that any planting, which is subject to planning condition 2 of the planning permission requiring detailed plans of the landscaping for approval by the Planning Authority, will obscure the enclosed area such as to pose a threat to security.
70. The SHWWP requested that in the event the application is approved that the Management Agreement includes conditions on works in particular with respect to trees and the disturbance to birds. The evidence of Miss Philpott is that any works would be conducted outside the bird nesting season. Bearing this in mind, and Section 1 of the Wildlife and Countryside Act 1981, which makes it an offence, amongst other things, to damage the nest of any wild bird while a nest is in use or being built, I do not consider it necessary to impose such a condition on the approval of the application.
71. In relation to conditions Dr Gray requested that the use of the area should remain open and free of charge. It is clear, as identified at paragraph 25 above that access will be open at times when the school is not in use. As regards any charges, whilst not identified in the Management Agreement, some weight should be given to the statement made by the Applicant in the public domain that use of the land will be free of charge. Furthermore, in exercising their powers under the 1967 Act a local authority must satisfy themselves that they have not unfairly restricted the space available to the public for recreation.
72. Concerns were raised that there may be future demands for lighting and for changing rooms. The point was made that approval of the application would set dangerous precedents with an effect on future users of the common. The Council advised that given the proximity of the works to the woodland they would not support any such future application particularly as there is a need to protect the natural environment and ecology and retain casual use by the community. It must be noted that any subsequent applications must be considered on their individual merits and I therefore do not accept that approval of the application will set any precedents. Given the commitment of the Council that such an application would not be accepted, and the fact that any additional works will require a further application, I do not consider it necessary for a condition to be included in the Management Agreement.

Petition

73. Dr Gray submitted a petition signed by 328 individuals in opposition to the application which was submitted to a full Council meeting on 27 July 2011. The objection is on the grounds that the designations of the land subject to the application precludes development and that the proposal would be intrusive, would not satisfy local demand for sport in the area, would destroy ecological habitats and is not sympathetic to the landscape. The petition also states that the undersigned are appalled at the proposal to incorporate MOL into the school site. I have difficulty in attaching weight to this petition as it is not clear to me that the signatories were fully apprised of the application and the impacts it would have on the land. The application land will not be incorporated into the school site although the application will result in certain restrictions as to access. Further, as accepted by Dr Gray the designation as MOL does not preclude development. Whilst he contended that the proposal would destroy ecological habitats, this was clarified as the potential for improvement to the site being removed. The evidence before me is that there will be a net benefit to the ecology. The petition does not provide the information on which an informed view can be taken.
74. It is noted that in addition to the representations made following the making of the application, both in support and in opposition to the application, there are 151 letters of support for the proposal and a further 20 in opposition. Although a number of these letters were of a 'round robin' style it is clear that there is also considerable support for the proposals. Overall whilst it is clear that there is opposition to the proposal there is also some support. Nevertheless I am required to consider the application on the basis of the relevant criteria and it is not necessary in approving an application to demonstrate overwhelming support for the application.

Consultation

75. It was suggested that there has been inadequate consultation in respect of the application. However, there is nothing to indicate that the statutory consultations were not carried out.

Oxleas Woodlands Management Plan

76. The Oxleas Woodlands Management Plan 2008 indicates that, in terms of sport and recreation, although the Woodlands provide plenty of scope for passive recreation, there is little scope for organised sport or recreation development within the site except on Falconwood Field. It is stated that developments elsewhere would be inappropriate to the character of the sites. Whilst this may be the case it was not disputed that it is the Council's objective to provide opportunities for recreational activity in Oxleas Woodlands. The reference in the management plan does not in my view preclude the provision of recreational facilities subject to the necessary tests being met.

London Fields

77. Dr Gray contended that, whilst I was invited to take note of the decision in respect of London Fields in Hackney (COM83), the circumstances in the current case were different. Mr Selwyn pointed out that in that case there had been strong local support. I agree that the circumstances do appear to differ, although in respect of the application before me there is also local support, but,

in any event, I am required to consider the application on its merits measured against the relevant criteria. I do not regard the decision in respect of London Fields to set a precedent but, whilst the Council have referred to an element of that decision, it does not appear to me that they rely on the decision as setting any precedent for the approval of the application.

Totteridge Common

78. Mr Selwyn, by reference to the approval of an application in respect of a primary school to fence off part of Totteridge Common, contended that there was a conflict of interest in the application by Greenwich Council insofar as the Council were the Education Authority and also responsible for managing the common. In the case of Totteridge Common the landowner was independent of the school concerned. Whilst I note this point I am required to consider the application on its merits. In any event, in respect of this matter, Mr Selwyn stated that if consent was given then this should be subject to a management agreement. A management agreement is in place (paragraphs 66 to 72) and, in view of this, the concerns of Mr Selwyn would appear to have been addressed.

Mercury Today

79. Dr Gray referred to correspondence to the Mercury Today in respect of the land. This does not raise any evidence which I can take into account.

The Saving of Shooters Hill

80. A leaflet seeking the sponsorship for the purchase of Castle Wood, which includes the application land, provides background as to the purchase. However, whilst the leaflet outlines the value of the estate I do not consider that it raises any issues which assist in determining the application.

Overall conclusions

81. Taking all of the above into account, the proposed works will impact on the access to the application land but this will not be significant. The 1967 Act expressly provides for the restrictions to access provided that access is not unfairly restricted. Access will be available in accordance with the signed Management Agreement and I do not consider that this constitutes an unfair restriction.
82. Although the evidence supporting the need for a MUGA, other than arising from the needs of the school, is not overly compelling the MUGA and the other play space will provide facilities for the inhabitants of the neighbourhood. The evidence is that these facilities will be used. The approval of the application will bring significant benefits to Christ Church School and given its location the application will provide benefits to the neighbourhood. There is also a public benefit in terms of the improvements in educational facilities.
83. As regards the effect on nature conservation, the habitat creation and enhancement proposals will provide a small net benefit. Whilst the proposed works will have an adverse impact on the immediate landscape, albeit not substantial, there will be no effect on the remainder of the common. There is no evidence that the proposed works will have an effect on any archaeological remains and features of historic interest.

84. Dr Gray makes the point, by reference to paragraph 3.4 of the Defra guidance (footnote 2), that the consent/approval process is in place to ensure that 'works take place on common land only when they maintain or improve the condition of the common or, exceptionally, where they confer some wider public benefit and are either temporary in duration or have no lasting impact'. However, whilst applications under other statutory regimes are subject to the same policy considerations set out in the guidance, this is only the case insofar that the considerations are compatible with the requirements of the specific legislation.
85. Article 7(1)(a)(ii) of the 1967 Act specifically provides for the provision and maintenance of open air facilities for any form of recreation. Article 7(1)(a)(vi) also provides for the provision of centres and other facilities for the use of clubs, societies or organisations whose objects or activities are wholly or mainly a recreational, social or educational character. The Act explicitly provides for the provision of the facilities envisaged. There is no requirement for such facilities to be of a temporary nature or for such works to improve the condition of the common.
86. Whilst there are disadvantages arising from the proposed works, the benefits to the neighbourhood, the benefits to the public in relation to the improvement in the nature conservation of the area and the improvements to educational facilities, on balance, outweigh those disadvantages. As such the application should be approved.

Conditions

87. The Council notes that the Management Agreement contains terms which the Council and the school have agreed. The Council suggests that those terms could clearly inform any conditions which it was considered necessary to impose on the grant of consent for the works.
88. Any conditions should be necessary, relevant, enforceable, precise, and reasonable. The Management Agreement, signed by Christ Church School and the Council on 20 February 2012, sets out clearly the arrangements for access to the area to be enclosed and the management of the area including the financial arrangements for maintenance. The Management Agreement is a requirement of Condition 7 of the Planning Permission granted on 7 December 2010. The Management Agreement addresses a number of concerns raised in opposition to the application. Given that the Management Agreement has been signed, and is a requirement of the Planning Permission, I do not consider it necessary for the agreement to inform any conditions as to the approval of the application. The Agreement is effective on its own without providing further conditions on the approval of the application.
89. I have already considered at paragraphs 69 to 72 above other conditions suggested by objectors and I refer to my observations in respect of these matters.
90. Taking all factors into consideration I do not consider it necessary to impose any conditions as to the approval of the application.

Conclusion

91. Having regard these, and all other matters raised at the inquiry and in the written representations, and to the interests set out in paragraph 6 above, being mindful of the 1967 Act, I conclude that the works, on balance, will not adversely affect the interests overall and that consent should be granted.

Martin Elliott

Inspector

APPEARANCES

For the Applicant:

Mr J Pereira	Of Counsel, instructed by the London Borough of Greenwich
who called	
Mr L Beasley	Assistant Manager, Parks and Open Spaces Section, Greenwich Council
Mr N Allen	Neil Allen Associates
Mr T Segarty	Head Teacher Christ Church School
Miss L Philpott	Middlemarch Environmental Ltd
Mr A Greenhalgh	Pellings LLP

In opposition to the application:

Mr B Selwyn	Open Spaces Society
Mr L Baker	Shooters Hill Woodlands Working Party
Dr B Gray	Objector also representing Severndroog Castle Building Preservation Trust
Mr I Bater	Objector
Mr K Hobday	Objector also representing The Greenwich Wildlife Advisory Group
Mrs S Bullivant	Objector also representing The Woolwich and District Antiquarian Society and Greenwich Wildlife Advisory Group
Mr A Bullivant	Objector also representing the Shooters Hill Local History Group

DOCUMENTS

- 1 Draft management agreement and explanatory note
- 2 Extract from Oxleas Woodlands Management Plan 2008
- 3 Location plan (extract of commons register)
- 4 Ecological Impact Appraisal, Middlemarch Environmental Ltd
- 5 Extract from Unitary Development Plan – Open Spaces, General policies and policy context
- 6 Report to Planning Board 25 November 2010
- 7 Needs Assessment Report
- 8 Extract from Oxleas Woodlands Management Plan 2008
- 9 The Saving of Shooters Hill
- 10 Shooters Hill Woodlands Working Party leaflet October 2011 and location plan
- 11 Proof of evidence of Mr B Selwyn
- 12 Statement of M L Baker
- 13 Statement of Mr I Bater
- 14 Submission of Mr K Hobday
- 15 Summary of evidence for Mrs S Bullivant
- 16 Summary of evidence for Mr A Bullivant
- 17 Plan of Neighbourhood
- 18 Notes for Inspector relating to Shooters Hill Post 16 Campus,

- Adair House and Blackheath Bluecoat School
- 19 Web page extracts, London Fields, Hackney
- 20 Correspondence 4 July 2011, 12 July 2011, Council Agenda and associated petition containing 328 signatures
- 21 Evidence of Dr B J Gray
- 22 Mercury Today news item 24 August 2011
- 23 Extract from Building Bulletin 99
- 24 Web page extract Shooters Hill Post 16 Campus
- 25 Statement of T Hale
- 26 Final Draft Management Agreement
- 27 Signed Management Agreement