



Wandsworth Council

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Our ref: ECS/
Your ref:
Date: 14 June 2021

The Planning Inspectorate
FAO: Mrs Margoum
Commons Team
3A Temple Quay House
Temple Quay
Bristol
BS1 6PN

sent by email to
commonlandcasework@planninginspectorate.gov.uk

Dear Mrs Margoum,

Proposed Works on Tooting Bec Common COM/3263104

Thank you for your emails of 28th and 29th April 2021 in reference to the Council's application for consent to improve the buildings and outdoor sports pitch area at Tooting Triangle, Tooting Bec Common, SW12 under Article 12 of the Schedule to the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 (MHLG 1967).

Thank you also for the attachments containing the emails and survey questionnaire responses that you received in response to the Council's response to the objections raised earlier in the year in response to the Council's Notice of Intention to seek this consent.

I have read the 27 emails and 120 responses to the survey, including 15 confirming support for the proposed development, and have, as previously and as far as possible, tried to identify common themes/concerns to assist in compiling a full and informed response.

Before seeking to address the concerns expressed by the respondents, I refer back to the brief history of this proposed development of the existing facilities at Tooting Triangle provided in the Council's previous response.

Wandsworth is a borough of playing pitch deficit and under considerable pressure to provide more facilities to meet the ever-growing demand for both matches and training as noted in the Assessment Report to the Playing Pitch Strategy 2014-2024. The Playing Pitch Strategy and the Playing Pitch Assessment can be found at: [Local Plan evidence - Wandsworth Borough Council](#) in the section headed: Green Infrastructure. Amongst the 15 key findings identified for football are:

- That 11 sites in the borough are overplayed which is considered to be inevitable given that some of the pitches are on open common land thereby attracting considerable informal use,
- In general a decrease in senior men's football but an increase in youth, girl's and women's football,
- 14 clubs express latent demand for access to more pitches to accommodate current demand and 31 clubs report plans to increase the numbers of teams they could provide,
- Very little actual spare capacity (surplus provision) and where spare capacity is expressed it is likely to be retained as a matter of (good) practice to allow pitches to rest and rotate,
- Modelling ideally suggests a need for an additional 4, full size 3G artificial grass pitches and a 60x40m 3G pitch. It goes on to note that whilst this is supported through consultation with clubs it is recognised that space and public funding is limited, so any move towards achieving this aspiration is only likely through redevelopment of existing sites and private sector funding.

As noted in the previous response the proposed improvement of the facilities at Tooting Triangle would make a significant contribution to addressing the deficit in a way that setting out additional pitches on open grass areas, either on Tooting Common or other open spaces cannot do. Whilst many of the respondents have referred to the "community" being disadvantaged as a result of this proposal they refer in the main, and understandably to the local community. The proposed facility is intended for use by all sectors of the community, including young and old of all genders and all abilities with varying degrees of fitness wishing to keep fit and active. The Council therefore considers it likely that the proposed facility will provide positive improvement opportunities for a sizeable proportion of the local community who are currently disadvantaged as a direct result of insufficient opportunity within the borough currently to participate in sport and physical activity.

A number of the respondents ask why the Council is seeking to provide the proposed facilities through a private company and not providing them directly. The Council's view is that this is the most cost effective and, in current circumstances only, way of providing much needed improved facilities for people of all ages and abilities to have the opportunity to actively participate in sport and physical exercise in a safe and secure environment. As is well known, all Councils including Wandsworth, have had to reduce their budgets significantly in recent years while at the same time having to continue to provide the core, statutory services: social services, education, waste management etc. Councils in general have limited sources of funding/income: local council tax, the rate support grant and income derived from non-statutory services such as parking, sports pitch hire, venue hire, etc. By partnering with a private sector operator, in this case TFC Leisure Ltd. a company which has a long standing and successful record of providing similar facilities in south west London during the last 30 years, the Council will be able, if the proposed development project is approved, to provide for an unmet demand at no cost to the council tax payer and will gain an annual revenue generating a minimum of £295,000 over the 25 years of the proposed term all the time retaining ownership of the improved facilities which will return to the Council at the end of the contract period, or sooner if circumstances cause the contract to be terminated early for any reason.

I reiterate that by providing the brief history of the Tooting Triangle project, the Council seeks to demonstrate its long standing commitment to its residents to provide, through

an open democratic process, improved facilities and opportunities for sport and other recreation in an appropriate and sustainable way. I further reiterate that since 2012 it has considered options and opportunities through the same open democratic process, contrary to a number of concerns expressed in the representations at a lack of consultation, a lack of transparency and in particular “hiding” the identity of TFC Leisure Ltd; the operator of the proposed facilities.

In relation to the assertions and accusations of a lack of consultation and information, in particular relating to residents of Lambeth, the Council notes that on the two occasions during the process when it was required to publicly advertise its intentions:

- its intention to dispose of the land etc. by means of a lease (to TFC Leisure Ltd.) in 2016 and
- the Notice of Intention to apply for consent under Article 12 of MHLG 1967 to carry out works at Tooting Triangle,

The Council placed the public notices in editions of the South London Press instead of its usual newspaper outlet; the Wandsworth Times. The Council used the South London Press following advice that its coverage into Lambeth was, and is, far better than the Wandsworth Times’ coverage. In both instances, in addition to the publication of the Notices the Council displayed copies of the Notices at the site and in the case of this application at 3 other locations on the Common, including at the north eastern entrance/access to the Triangle field.

The majority of the most recent responses appear to be confirming the respondents’ previously stated objections to the proposed development with additional comments and questions relating to the Council’s previous response.

As previously I have endeavoured to bring these together under appropriate headings and provide the Council’s response, to add to its’ previous response, in the following paragraphs.

1 Common Land:

Includes concerns at loss of common land and what is, and is not, permitted in terms of development, enclosure, charging for use of facilities etc. and loss of grassland and loss of freely accessible open space. Such concerns are expressed in a significant proportion of the representations.

The Council confirms its previously stated views that its proposals for the development and the ongoing management and maintenance of the facilities are in accordance with the provisions of the MHLG 1967 Act and recognises that it is for the Planning Inspectorate/Inspector to grant or deny approval of its application having duly considered the relative benefits and detriments of the proposals.

The Council stands by its previous statement; that it considers that it has paid due attention to the provisions and intentions of Article 7 and that the proposed works and resulting enclosure of open space do not *“unfairly restrict the space available to the public for recreation in the open air in any open space”* – all the more so as the Council notes that the public will continue to be able to access the facilities once the proposed development is completed. I confirm that access to the toilets and refreshment facility, both new facilities to be provided by TFC as an integral part of the proposed development, will be free of charge to all; both users of the facilities and users of/visitors to the wider Commons. Access to the sports facilities and “stay and play” will generally

but not exclusively, be by payment of the relevant fee. TFC's commitment to providing stay and play facilities at the least equivalent (in hours per week) to that most recently provided by the Council will be written into the Service Contract. They have confirmed that in the case of the proposed "stay and play" provision they assess applications for free use dependent on the applicant receiving Universal Credit and that, once the site is approved by Ofsted, they will also accept Child Care vouchers. Access arrangements to the Balham Amateur Boxing Club, that will continue to operate from the (extended) built facility, will continue in the same or a similar form to current arrangements.

The Council's reference to "lease or licence" in its previous response is questioned on the assertion that Article 8 refers only to powers to "licence" or "let" with no mention of "lease" – the Council's legal and property management advice is that letting and leasing are the same process; that you "let" a property by granting a "lease" of it.

Further, the Council's intention to let the facilities to a company which would provide charged for services was challenged by reference to a Judicial Review judgement R (on the application of Muir) v Wandsworth Borough Council 2017. The Council contends that the proposed use of the facilities in that case (Wandsworth Common); nursery provision for a limited and defined number of nursery places, was significantly different to the proposed use of the facilities at Tooting Triangle, provision of indoor and outdoor sporting facilities which, the Council contends, is in accord with "public recreation" which the court ruled had to be the purpose of any proposed "letting", and that the decision in Muir was not based on the fact that the Tenant was a commercial company.

The Council has the power under Article 10 (a) of the MHGL 1967 to make such reasonable charges as they think fit for the use and enjoyment of the facility and under paragraph 10 (b) to authorise any person to whom the facility is let to also make such charges

The reference to whether use of the facility is "Public Recreation"; Article 7 (1) (a) (v) and (vi) empowers the Council to provide and maintain indoor facilities for any form of recreation whatsoever and the use of the facility by clubs societies and organisations of a social recreational and educational character; so the fact that club members use the facility for training does not constitute an exclusion of the public.

2 Access to and availability of the proposed facilities:

Previously expressed concerns/statements that the proposed outdoor sports pitches and associated indoor facilities will be for the sole, or predominant use, of one football club, and that an agreement has already been reached with one club, to the implied disadvantage/detriment of many/any other potential users continue to be made.

The Council refers to and confirms its previous response and TFC's statements that *"We have not entered into any commercial agreements with any sporting organisations and do not intend to enter into any exclusive arrangements"*

"We will be operating the same system as we operate at our centres in the London Boroughs of Hammersmith and Fulham, Richmond and Hounslow where we have an online booking system available to all", and

"the sports opportunities available at the facility will be very much demand led and will include football, netball, mini-tennis, mini-cricket and tag rugby, all in line with the opportunities provided at the other centres that we operate".

Updating, adding to, the previous response TFC confirm that they will introduce their 1 in 10 programme which they run at the existing centres in partnership with local schools and charities.

The programme has the sole aim of providing sporting opportunities to those children with fewer opportunities to participate in sport by providing 1 free place for every 10 children attending their school sports programme and providing Schools Sports Partnership competitions free of charge. Free and subsidised sessions are evaluated in conjunction with the schools and pupils entitled to free school meals are prioritised for inclusion in the programme.

TFC further confirm that sports provided at their centres, for boys and girls, include football, netball, cricket, tennis, padel tennis and hockey all of which they intend to incorporate into their sports programme at the Triangle, and

Breakfast clubs, after school clubs, pre-school clubs, and holiday clubs together with their free use for state schools offer will form part of their extensive community sports programme.

TFC's statement is endorsed as appropriate by the Council particularly as regards to the 1:10 programme as the Council looks to build social value on the site.

3 Concern at potential harm to local ecosystem, no proper consideration of effects on fauna and flora, bats, birds, invertebrates, trees, shrubs etc:

The Council refers to, and confirms, its previous responses to concerns expressed about detrimental effects on these matters (the ecosystem) and submits the following paragraphs in response to the most recent responses:

i) Acid Grassland:

The previous response stands as the acid grassland present on the Triangle field is approximately 150 metres from the proposed development (site). This is not considered to be in close enough proximity to result in any direct or indirect impacts on this habitat from the approved works. Additionally, Condition 4 of the planning approval (ref: 2019/4206) requires the further submission, for approval, of a Construction Environment Management Plan (CEMP). This will allow the Council to understand if any proposed details of construction may have any (currently unforeseen) adverse impacts which can then be prevented or mitigated for appropriately to prevent harm to this habitat.

i) Foraging Species:

There is no evidence that any foraging species will be adversely affected by this proposal. The use of this location by bats to forage is discussed elsewhere. The Bat Habitat Assessment report by Furesfen March 2019 makes clear reference to foraging birds in the immediate surrounds. Therefore Condition 4 of planning approval (ref: 2019/4206) requires the further submission for approval of a Construction Environment Management Plan (CEMP). This will allow the Council to understand if any proposed details of construction may have any (currently unforeseen) adverse impacts on foraging birds during construction.

Quite rightly, conditions were attached to the granted planning permission (ref:2019/4206) to ensure that the scheme can be built in accordance with the submitted plans and places a further obligation on the applicant to prevent harm to biodiversity throughout construction and further still, seeks post construction commitments to ensure that the proposals will have been appropriately delivered to prevent harm to and to

actively benefit biodiversity: Condition 4 requires the submission for approval of a Construction Environment Management Plan (CEMP) to ensure that construction methodologies and on-site staff awareness and training will prevent inadvertent harm to priority species. It would be expected to contain a clear approach to timing of works to ensure that any nesting birds will not be adversely impacted.

As has been previously explained the loss of the trees and the ivy in this specific location on the Common are not of significance when considered at the site wide level; we do not deny that ivy has a role to play in supporting invertebrates across the whole of Tooting Common but there are significant areas of ivy cover of greater significance elsewhere.

ii) Effects of lighting on insects:

Specific impacts of LED on insects have been studied in mainland Europe but this is not applicable to Tooting Common, where the climatic conditions are different, as are the suite of species to be found on the habitats here. To inform our assessment of the impacts of the submitted plans on this issue, in relation to the granted planning permission (ref:2019/4206) we referred to a range of published documents from specialist organisations. Most notably, Buglife in conjunction with the Institute of Lighting Professionals published a Review of the Impact of Artificial Light on Invertebrates in 2011 which concluded that “further research is required to fully understand the Impacts of artificial lighting on invertebrates” and this remains the case. Without such further published research there is no evidence available to guide the need for any further measures or alternative approaches

iii) Priority species – bats:

The Council refers to, and confirms, its previous responses to concerns expressed about bats and bat related matters and submits the following paragraphs in response to the most recent responses:

a) Failure to take account of the significant increase in the use of floodlights, indicated to be in the order of 38 additional hours per week between September and May:

The Council notes that bats hibernate between November and March so will not be adversely affected during that period unless there are exceptional periods of warm dry weather which may cause them to break hibernation to forage. Between September and November and then March to May are the times when bats might be adversely affected by any increase in artificial light levels; intensity, duration and changes to wavelengths. It is for this reason that Condition 5; attached to the Planning permission (ref:2019/4206) requires at all times that “ Any and all sports pitch floodlights, should be turned off by no later than 21.00. Any additional external lighting (except emergency lights) should be on a timer and be turned off no later than 22:00 (to allow staff safe egress from the premises) or on a motion sensor activation. Floodlighting may not be used between 15th May and 15th September each year”. These are measures specifically implemented to prevent harm to protected and priority species (in particular bats). The prohibition on use of floodlights between May and September is to ensure that bats can forage and commute unaffected by artificial lighting during the time of the year when they are most active and indeed when sufficient natural light should be available to facilitate safe sports activity.

Further, the Lighting Assessment Ecology Report by Furesfen Dec 2019 states clearly in chapter 2.1 that the existing floodlights were in operation when the survey work to inform this report was undertaken. This allowed the current lighting to be measured, facilitating a comparison with the proposed lighting to be understood. This in turn

informs the understanding of whether the impacts on foraging bats from the proposed (and now permitted ref: 2019/4206) lighting in future situation will be the same, better or worse than currently when the lights are in operation. The impacts of lighting upon bats are immediate so the current levels of use are irrelevant in understanding the matter at hand.

Fundamentally two matters are pertinent:

- i) Are bats present? The information clearly answers that bats are present in the Triangle Field of the Common but that there are no suitable features for bats to use for roosting in or near the proposed development. There is clear evidence that the preferred foraging area for bats on this part of Tooting Common is around Triangle Wood a minimum of 300m to the east of the proposals and over the canopy of the oak tree grove to the south-west of the Triangle field.
- ii) Will changes to lighting adversely impact any bats present (in this case, foraging)? The information clearly answers that the changes to lighting proposed and additionally the Conditions attached to planning permission 2019/4206 will not result in any adverse impacts on bat activity. In fact it is anticipated that bats activity may increase as a direct result of reduced lighting spill onto grass areas, clear regulatory framework on timings during times of the year when bats are active, reduce glare / reflected light, and more responsive lamps.

b) The timing and quality of the bat surveys and bat reports submitted to inform the planning application:

The author of both the reports, Alison Fure, is a full member of the professional body the Chartered Institute of Ecology and Environmental Management CIEEM. She is a Class 2 Bat Licence holder (Natural England licence number 2015-10381-CLS-CLS) and is well-respected authority on bats and in particular on the impacts of lighting on bats, having authored several published papers on this matter. She is a consultant to the authors of the industry best practice document "Guidance Note 08/18 Bats and artificial lighting in the UK Bats and the Built Environment series" published by Bat Conservation Trust and Institution of Lighting Professionals.

"Bat Surveys for Professional Ecologists, Good Practice Guidelines 3rd edition" (Collins 2016) published by Bat Conservation Trust sets out the industry standards for bat surveys including those to inform planning decisions. All survey methods were undertaken in accordance with this guidance and in line with The Bat Worker's Manual (Mitchell-Jones and McLeish 2004)

The Bat Habitat Assessment report by Furesfen March 2019 is stipulated to be valid for one year again in accordance with industry best practice. Chapter 2.5 stipulates the limitations associated with the survey. Given the findings of this survey along with the results of other relevant biodiversity evidence the report was deemed fit for purpose to inform the planning permission (ref: 2019/4206) and this report was valid at the time the planning application was assessed.

Whilst the planning permission decision notice is dated May 2020 the Bat Habitat Assessment report was reviewed and commented on, by Enable's Development and Biodiversity Manager, in November 2019, within the one year time frame.

Enable's Development and Biodiversity Manager, who reviewed and commented on the bat reports has also provided the majority of the information and responses to the various concerns expressed potential damage/detriment to the ecosystem of this part of the Common; its effects on flora and fauna. She is a widely respected professional ecologist who has worked in Wandsworth for more than 23 years during which time she has led/guided developments in the management and maintenance of the council's green spaces to protect and improve biodiversity.

c) Suggestion of a strong likelihood in the Covid lockdown that bats have increased their presence on the Common:

There is no evidence to suggest that the Covid lockdown period has caused bat activity to increase on London's urban greenspaces, indeed the opposite may well be true. Unlike rural areas where the cessation of travel and the restriction to one daily outdoor exercise visit resulted in reduced human activity, this was not the case in urban areas. There was a huge significant increase in human activity as the 327,451 residents of Wandsworth and a significant proportion of the 328,244 residents of Lambeth (those living close to the Common) were only permitted to undertake daily exercise locally, many choosing to use our greenspaces. There have been substantial and well documented adverse impacts to priority habitats across Tooting Common as a direct result of this increased localised human activity, with "knock on" effects anticipated for many species' groups. The erosion of ground flora and the compaction of soils has reduced habitat available to invertebrate communities which in turn is expected to result in reduced feeding opportunities for bats.

d) Further comment on the rejected application for floodlights by the Streatham and Clapham High School, that the Council's previous response failed to address the bat corridors running along the two railway lines on either side of the (proposed) development:

The circumstances in relation to matters at Streatham & Clapham High School (SCHS) are not pertinent to this application. Each proposal is assessed on a case by case basis and using relevant evidence. The SCHS is located some 400m from this site to the south west and is in close proximity to parts of the common where the evidence demonstrates that bats will be adversely affected.

In relation to this proposal under current consideration The Bat Habitat Assessment report by Furesfen March 2019 clearly states that "commuting habitat is present parallel to the railway line to the north" and so it has considered the impact of the proposals on this feature used by bats and this is demonstrated in "table 3" of that report.

e) Potential damaging impact on bat population by noise disturbance:

The most recently published, and relevant DEFRA research on the issue of noise impacts on biodiversity concluded "*the major finding is that a strong evidence base does not exist regarding the potential impact of anthropogenic noise on non-marine UK priority species or species of principle importance*"

iv) General:

Conditions were attached to the granted planning permission (ref:2019/4206) to ensure that the scheme can be built in accordance with the submitted plans and places a further obligation on the applicant to prevent harm to biodiversity throughout construction and further still, seeks post construction commitments to ensure that the proposals will have been appropriately delivered to prevent harm to and to actively

benefit biodiversity: Condition 4 requires the submission for approval of a Construction Environment Management Plan (CEMP) to ensure that construction methodologies and on-site staff awareness and training will prevent inadvertent harm to priority species. The would be expected to contain a clear approach to timing of works to ensure that any nesting birds will not be adversely impacted.

As has been previously explained the loss of the trees and the ivy in this specific location on the Common are not of significance when considered at the site wide level; we do not deny that ivy has a role to play in supporting invertebrates across the whole of Tooting Common but there are significant areas of ivy cover of greater significance elsewhere.

4 Inadequate consideration of the potential impact of additional traffic on local streets:

The Council refers to and confirms its previous responses which, it notes, a number of the respondents describe as naïve, disingenuous or a refusal to acknowledge what, it is claimed, will be a huge problem citing the Council's reference to the extension of the ULEZ later in the year as an indication of the Council's expectation that people are expected to be coming from further afield. The Council's comment that the extension of planned extension of the ULEZ as likely to have a significant impact on the numbers of vehicle journeys undertaken reflects its belief that there will be a further reduction in the numbers of private cars (vehicles) registered in London, noting that the total numbers of cars private cars registered in London, and the number of new registration each year (in London) have fallen every year since 2016. In 2020 there were 2,648,000 cars registered in London, down from 2,668,000 in 2016 with 107,300 new registrations down from 173,100 in 2016. Whilst the pandemic may well have affected the numbers for 2020 it is noted that numbers in both categories have fallen in each of the years since 2016. The Council recognises the concerns expressed and confirms that it will work with TFC, local residents and others to minimise any impact.

5 Potentially detrimental effect on the peaceful and tranquil nature of the surrounding area caused by excessive noise generated by activities at the proposed facility:

Concerns expressed in the previous responses are repeated and the Council's responses as to how such detriment will be minimised are questioned.

Referring to the Council's assertions that behaviour, in general, will be monitored and sanctions imposed as and when appropriate a number of respondents ask if the requirement for the operator (TFC) to monitor behaviour in and around the facility and the Council's ability to ensure that effective actions are taken when necessary are specified in the terms and conditions of the draft lease and or draft contract.

A copy of the draft Heads of Terms for the proposed lease, with commercially sensitive information redacted, and copies of the initial tender documents are provided for information. The Council points out that the tender documents relate to the initial/original proposals and that there have been a number of changes since then, including a revised brief to restrict proposals for the outdoor playing/sports pitch area to the existing footprint and the inclusion of the former One O'Clock centre buildings and enclosed outside area in the development proposals.

The Council confirms its previous responses and notes that TFC have established protocols regarding acceptable behaviour and customer complaints and comments procedures and further confirms that processes and procedures for dealing with

behaviours that are detrimental to neighbours and the neighbourhood will be identified, agreed, and adopted in the Contract Conditions.

6 Further comments on Councillor Humphries' roles as Chairman of the Planning Committee and a member of the Board of Enable Leisure and Culture:

The Council refers to and confirms its previous response and its view that there is no conflict of interest, as suggested. Enable will monitor how the proposed facility interacts with the wider common as the Council's manager of its parks and open spaces and will report/share any concerns it may have with TFC and the Council and neighbours and users of the common.

Ultimately it will be for the Council's Environment and Community Services and Valuation and Management Services Departments to take appropriate actions, including if appropriate recommending the early termination of the contract, in the event of any breaches of the lease or the contract.

7 Comments that the area is prone to flooding and concerns that the proposed development will exacerbate this:

The Council refers to and confirms its previous responses and provides the following, additional information. The 10 Year Management and Maintenance Plan for the Tooting Commons, which can be found at <https://www.wandsworth.gov.uk/leisure-and-culture/parks-and-open-spaces/parks-management-plans/> recognises that there are several key capital projects that may alleviate some aspects of flooding across the Common and work is underway to deliver this action.

Additionally, a suite of localised actions are currently being drafted for delivery from winter 2021 to alleviate more localised incidents of surface water flooding across the Common with a view to ensuring that areas can be returned to use more rapidly after heavy and continuous rainfall

In summary, the Council has now considered all of the many and various views expressed to the Planning Inspectorate and by this response document seeks to address these.

I look forward to hearing from you in due course. If, in the meantime, you have any questions, or require any further information on this matter please contact Simon Cooper-Grundy at scooper-grundy@enablelc.org

Yours sincerely,



Joanna Shearer
Leisure and Culture Contract Manager