

Our Ref: DW:100086.0017

16 March 2022

By e-mail only: Philip.Elliott@Haringey.gov.uk

Mr Philip Elliott
London Borough of Haringey

Dear Mr Elliott

High Road West Hybrid Planning Application (reference HGY/2021/3175) (“the High Road West Application”)

We are instructed by Tottenham Hotspur Football Club (“THFC”). We write further to our letters dated 4 and 14 March 2022 and in response to the Officer’s Report to the 17 March 2022 Planning Sub-Committee (“the OR”).

We note that we have not yet received a response to the issues raised in our letter of 14 March regarding the failure of the Council to comply with the requirements of the Town and Country Planning Environmental Impact Assessment Regulations 2017.

The OR (including Appendix 3 and others subsequent updates) has failed to properly and fairly set out all the issues within THFC’s representations for members’ consideration and has failed to address the fundamental concerns raised. Furthermore, the reasoning in the OR perfectly illustrates the concerns which THFC and others have expressed in relation to the High Road West Application in respect of crowd flow safety, the assessment of the impact of the proposals in heritage terms, and numerous other material issues.

The concerns we have previously raised are not simply ones of planning judgment but matters of law. If the Council proceeds to determine the High Road West Application on the basis of the OR as currently drafted it will have fallen into legal error. The only way to avoid this is for the Council to withdraw the High Road West Application from consideration by the Planning Sub-Committee on 17th March, to properly consult upon the Crowd Flow Study, to allow our client (and other interested parties) time to properly consider the crowd flow information and for the Council to then respond to the numerous issues THFC have raised.

1. Crowd Flow & Safety

The very late provision of the Crowd Flow Study has meant that THFC, and other stakeholders including the emergency services, have been provided with very little time to properly consider the impact of the High Road West Application on the operation of the Tottenham Hotspur Stadium and in particular, the management of crowd flows associated with major events. As set out in our 14 March letter this is completely unsatisfactory given the importance of the issues, procedurally flawed and unlawful.

Criticism is made in the applicant's response to THFC's representations, that the THFC has not been willing to engage with the applicant or the Council on this matter. This is factually incorrect and wholly misleading. For completeness we would make the following points clear:

- THFC provided the Council with clear guidance on crowd flow requirements on 19 July 2016 to pass on to HRW bidding parties, which included the Applicant;
- The Applicant did not undertake nor seek to undertake any pre-application consultation with THFC regarding crowd flow issues;
- The Applicant did not provide any crowd flow modelling or assessment within the original High Road West Application documentation;
- THFC understands that the Applicant did not commission any analysis from consultants until a matter of days before the HRW Application was submitted¹;
- The first meeting took place on 29 November 2021 in response to THFC expressing its written concern that the Applicant had not consulted with it in respect of crowd flow issues;
- THFC submitted an initial holding representation highlighting the lack of any detailed crowd flow assessment on 20 December 2021 within the original consultation period on the application;
- A further meeting was held on 24 January 2022 with the Applicant but no formal crowd flow information or assessment was presented at either meeting. At the meeting on 24 January the Applicant advised that detailed information was to be provided in due course;
- The initial draft of the Crowd Flow Study was only provided to THFC on 8 February 2022 – a week later than the start of the re-consultation on the amendments to the application;
- The final complete Crowd Flow Study was only provided to THFC on 4 March 2022 – only three working days before the OR was published;
- The Council's independent review of the Crowd Flow Study, prepared by Dr Dickie was only published on 9 March and refers to other documents prepared for or by the applicant which have only been made available earlier today and which, quite understandably, THFC has not yet had the opportunity to review.

The OR dedicates just two paragraphs to crowd flow matters (9.27 and 9.28) where members are advised that any issues arising in respect of crowd flow safety can be secured by planning condition (albeit no such draft condition is set out for consideration). The OR fails to properly and fairly explain to members the real significance of the issue, the safety risks involved and the actual advice given to the Council by its own consultant, Dr Dickie.

In the limited time available THFC has commissioned its own advisors to review and comment upon the Crow Flow Study. We now attach as **Appendix 1** an initial response from Movement Strategies on behalf of THFC.

Movement Strategies identify a number of errors and omissions in the Crowd Flow Study and highlight a number of concerns including:

- The proposals will increase the crowd safety risk by introducing conflicting flows at the key junction of White Hart Lane and the High Road the road is constricted by counter-terrorism equipment.

¹ Email correspondence to Planning Officers from THFC, dated 21 October, flagged that there had been no engagement on the operation of the Stadium including crowd flow etc. and that there had been no meaningful engagement with the Club on the composition of the proposals whatsoever.

- The Crowd Flow Study has failed to properly reference and consider the information provided to the Council by THFC (prepared by Movement Strategies) to inform the procurement process in July 2016.
- The Crowd Flow Study does not sufficiently address all the demand scenarios that may reasonably be anticipated to occur on an event day, and therefore cannot conclude that the masterplan design is adequate.
- The Crowd Flow Study does not adequately address the event day crowd management requirements and the impact that the design proposals will have on wider Zone Ex crowd safety and operational flexibility.
- The crowd and queuing analysis presented in the document cannot be sufficiently sense-checked based on the content of the document alone, so it is not possible to verify the outcomes and resultant conclusions.
- There has been inadequate consideration of egress patterns for all event types, particularly concerts and other events with a “hard finish”.
- There has been inadequate consideration of the interim construction phase (over 10 years), which would affect the running of some 500 major events.
- There has been inadequate consideration of the impact of unplanned disruptions on the rail network, or other emergencies or incidents.
- The study makes no reference or assessment of the needs of those with mobility impairments (we note that neither the Crowd Flow Study nor the OR has considered this issue in the context of the Public Sector Equality Duty).
- The input assumptions are based on the 2015 Transport Assessment before the Stadium was opened – using actual recorded data associated with the new Stadium would be a more sound basis of assessment.
- No justification has been provided for the choice of flow rates and queuing density parameters.

Movement Strategies conclude that the Crowd Flow Study does not provide sufficient confidence that safe and efficient crowd flow operations can be provided both during the 10 year construction period and also in the permanent “end state”.

No information is provided within the Crowd Flow Study on the interaction between the proposals and the Major Event Day Local Area Management Plan that was agreed following extensive discussions between THFC, the Council and other stakeholders.

By way of one example to illustrate the lack of understanding underpinning the Crowd Flow Study, we would comment on the proposed removal of the northbound queue and entrance point to White Hart Lane Station on White Hart Lane. It is proposed that spectators will circulate on the Stadium North Podium and walk to and through Moselle Square to the northbound queue. There is inadequate footway to accommodate southbound pedestrians in this location and the proposals are simply incompatible with the current Hostile Vehicle Management Line in crowd safety terms.

The interaction between the High Road West Application and the current crowd flow operations associated with the Tottenham Hotspur Stadium give rise to very real practical, legal and financial considerations that have not been considered by officers in the OR.

There have been no discussions with the Applicant over basic issues such as legal rights of access across third party land, responsibility for additional barriers and stewarding or construction hoarding standards and maintenance.

As highlighted by Movement Strategies, the ultimate risk to THFC in the event that the applicant’s proposals do not work, is that the Tottenham Hotspur Stadium licence will be revoked or for example the capacity of the Stadium is reduced. In such circumstances, THFC would take advice on whether it would have an actionable claim against the Applicant

and the Council. Nowhere within the Crowd Flow Study or the OR is this risk acknowledged. In turn, no indication is provided in either document of any proposals to indemnify THFC in such circumstances or otherwise make any financial contribution towards any increased costs of crowd flow management as a result of the High Road West Application.

THFC also understands that its concerns regarding the failure to undertake proper consultation on the proposals are likewise shared by the Council's Head of Building Control in his capacity as chair of the Tottenham Hotspur Stadium Safety Advisory Group. THFC wrote to Mr McIver to set out its concerns and understands that he has recommended to officers that an emergency meeting of the SAG (involving all relevant stakeholder members) should take place to consider the Crowd Flow Study before the Council (in its capacity as local planning authority) determines the High Road West Application. This advice has been ignored.

This advice from the Council's own Head of Building Control is plainly a material consideration and needs to be made clear to members of the Planning Sub-Committee. It also illustrates the importance of the Council properly publicising and consulting upon the Crowd Flow Study in accordance with the requirements of the EIA Regulations.

In turn, the cursory treatment of crowd flow safety issues in the OR does not fully and fairly properly set out for members the actual advice given by the Council's own consultant Dr Dickie. It is clear that he shares many of the concerns raised by Movement Strategies.

In particular he makes three key conclusions that have not been accurately reported to members:

- a. The Crowd Flow Study has not been based on the correct data and in particular the Study has not been based on the provision of adequate queuing space values.
- b. The proposed strategy would not work in events involving a hard finish – such as concerts.
- c. The temporary arrangements during the construction period would not provide safe and effective management of pedestrian flows on event days – and that the proposal needs to be revisited using confirmed queuing numbers. (our emphasis)

None of these three conclusions have been made clear to members in the OR. In particular, the inadequacy of the temporary arrangements is extremely important given the predicted 10 year construction period. Over 10 years it is not unreasonable to assume that over 500 full capacity events could take place at the stadium, equating to 500 million spectator movements through this space. Dr Dickie's clear advice is that the current proposals would not provide safe or effective operations for all these events.

The OR also fails to address relevant planning policy requirements relating to pedestrian movements and crowd flows. Policy GG1 of the London Plan (Building strong and inclusive communities) requires streets and public spaces to be consistently planned for people to move around and spend time in comfort and safety... At this stage, it is not possible to determine whether crowd flows will allow this to take place. Similarly, no consideration has been given to Policy D11 (Safety, Security and resilience to emergency) of the London Plan, which requires safety aspects of design to be considered at the start of the design process, i.e. not deferred to a later date.

The approach adopted by the Council at paragraph 9.28 of the OR is unlawful as it seeks to leave to conditions a matter that is integral to the principle of development. First as set out above, paragraph 9.28 does not fully or accurately record the extent of the Council own crowd flow expert. Secondly 9.28 of the OR explicitly records further assessment is required:

“ The Study has been reviewed by the Council’s independent crowd flow expert who has found that further assessment needs to be undertaken to support the suggestion that both northbound platform and southbound platform queues can be accommodated within the proposed Moselle Square” (our emphasis)

The Council are required to determine these issues now. They cannot be left to a condition (the drafting of which has not yet been made publicly available) as it is unknown whether what the condition would be seeking to achieve is possible.

This is exactly the legal error that the Court of Appeal identified in R. (on the application of Hillingdon LBC) v Secretary of State for Transport [2021] P.T.S.R. 113. In that case the court were concerned with a condition that meant the original approval was valid only after investigations as to the archaeological impact of the works on the site were undertaken and if those investigations did not discover anything of archaeological significance. At [89] of the decision Lindblom LJ found that such a condition was legally flawed:

“89. In our judgment, applying the test set out above, such a condition would fall foul of the second and third basic requirements: (i) the condition is integral to the validity of the approval which is intended to confer a permit to conduct the development works, but at the time the condition is imposed the authority does not know whether the development works are to be " permitted " and therefore it cannot fairly and reasonably relate to it (second basic requirement); and (ii) it is irrational and unreasonable for an authority to be compelled to give what is intended to be a definitive approval to a request but also subject it to a condition that requires the authority to consider later whether the approval should have been granted in the first place (third basic requirement).”

Here, the suggestion in the OR is that a condition can be imposed which will seek further work to ascertain whether there are crowd flow issues, if that condition reveals that there are crowd flows issues then the permission would not be implementable. Such a condition would be unlawful for precisely the same reasons given in Hillingdon LBC.

The Council cannot proceed to grant planning permission until it is satisfied that it is in principle possible to address crowd flow issues and provide safe and effective crowd flow operations both during the 10 year construction phase and also in the end state. In light of the issues raised by Movement Strategies, the Council’s own expert Dr Dickie and the position of the Council’s Head of Building Control (and chair of the Stadium Safety Advisory Group), the Council is plainly not in a position to reach that conclusion.

2. Heritage impacts

The OR and the internal consultation response from the Conservation Officer illustrate very clearly why too much flexibility is proposed within the High Road West Application and highlight a number of inconsistencies in the way the application has been assessed.

Appendix 2 comprises a review of heritage aspects of the OR. Committee members should be aware that:

1. The OR does not accurately set out the several areas where the Conservation Officer does not agree with the Applicant’s assessment.
2. The OR completely omits any analysis or consideration of several heritage assets, including 9 locally listed buildings.

3. There are fundamental inconsistencies in the analysis between the OR and the Conservation Officer. Some heritage assets are assessed by the OR which the Conservation Officer did not assess at all. Some assessments differ.
4. Not once does the OR communicate the “*overwhelming impact*” on heritage assets identified by the Conservation Officer, or the several concerns regarding the maximum parameters.
5. It is not at all clear whether the OR assesses the maximum parameters or the illustrative scheme.

Because the officers drafting the OR have ignored several heritage assets and taken a different view to the Conservation Officer in places, it is impossible for the Committee to properly understand the degree of harm as required by statute and policy.

The Conservation Officer’s comments appear to conclude that there would be harm at the “mid range” of “less than substantial”. However, from the preceding paragraph it appears that this assessment is based on the illustrative scheme rather than maximum parameters (about which she had previously expressed strong concerns).

The NPPF (para. 203) requires a balanced judgement having regard to the scale and any harm to the significance of the heritage asset. “Great weight” must be given to any harm to designated assets however, a clear understanding of the degree of harm and public benefits (see below) are not at all clear from the OR.

Appendix 3 comprises an audit of the consultation response from the Conservation Officer. It highlights several fundamental errors in the judgements made and associated conclusions. This is perhaps not surprising, given the various inconsistencies between the application documents (including parameter plans and design codes) and the very significant variation between the illustrative scheme and proposed parameters. The following are of particular concern:

1. Reference to illustrative parameters which suggests confusion about what is being sought for approval and a reliance on the illustrative scheme rather than the maximum parameters.
2. An indication from the Conservation Officer that the inconsistencies between the parameters and design codes mean that it is very difficult to assess harm.
3. Significant inconsistencies in the approach taken compared to THFCs Goods Yard and Depot proposals.
4. Omissions of analysis on some key heritage assets including the Grade II* Dial House.
5. A conclusion of “*the mid-range of ‘less than substantial’*” in the illustrative “*most heritage-sympathetic configuration*”. No assessment has been provided of the worst-case maximum parameters and, based on the officer’s advice, it is impossible to tell what this would be.

We repeat the points made in our letter of 4 March which the OR has simply failed to address.

In light of the confusion in the OR and Conservation Officer's comments. We also now attach as **Appendix 4** a series of illustrations and showing views not included within the applicant's assessment and to demonstrate the potential difference in the scale of development between the illustrative scheme and the maximum parameters.

In respect of the public benefits put forward to weigh in the balance against the identified harm, we note that the summary set out at paragraph 13.51 of the OR is different to the summary reasons given in the opening section of the OR. In turn the OR does not accurately or fairly qualitatively or quantitatively assess these benefits for members.

For example, reference is made to "Delivery of a new library and learning centre" – but no reference is made to the fact that the applicant has only committed to a 500 sqm building (significantly smaller than contemplated in the adopted Masterplan). As set out in our earlier letter there is a significant difference in the weight that can be given to a 500 sqm building as opposed to a 3,500 sqm building.

In turn in respect of jobs paragraph 13.51 puts forward as a public benefit the "creation of 374 FTE jobs on-site, once complete". It is not explained to members that this actually represents a significant loss of existing jobs on site nor that the numbers are based on an inaccurate assessment of the worst case scenario as set out in our earlier letter.

The OR also includes generic unquantified "benefits" such as bio-diversity enhancements (a policy requirement), the development of local supply chains and the delivery of a high quality development. No guidance is given to members on the actual specific benefit that will be provided above and beyond normal necessary policy compliance.

The treatment of heritage matters in the OR gives rise to a number of additional legal errors to those already highlighted in our letter of 4 March. The inconsistency of approach between the assessment of the application and that taken to the THFC's Goods Yard and Depot principles offends the principle of consistency of decision making which constitutes a public law error; see for example *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6.

In turn the failure to accurately reflect the opinion of the Conservation Officer in the OR or provide reasons for departing from their opinion has the effect of significantly misleading the committee which legally flaws the OR; see for example *R v Selby DC ex parte Oxtou Farms* [1997] 4 WLUK 278.

3. Other matters

Only a cursory response has been provided by officers in respect of the matters raised in Appendix 3 of the OR to our letter of 4 March. No response has been provided on Design Matters (Section 6 of our 4 March letter) and officers have failed to properly grasp the legitimate serious concerns which were expressed. We respond to a number of specific matters not addressed below and this is by no means an exhaustive list.

Before doing so it is important to reiterate two key points of principle from our 4 March letter. First, we highlighted that the amount of flexibility sought by the applicant would make it extremely difficult for the Council to form a meaningful assessment on the impacts of the scheme. This concern has been proven to be well-founded by the OR. There is no consistency throughout the OR as to what level/nature/mix of development would be acceptable. The consequence of this is that the OR recommends approval of a scheme which is legally capable of delivering something entirely different to what has been (or may have been) deemed to be acceptable. This constitutes a legal error as the OR simultaneously has regard to immaterial considerations, fails to have regard to material

considerations and does not provide sufficient reasoning for why the Application is found to be acceptable.

Secondly, the OR has fallen into the legal error highlighted in *R. v Rochdale MBC Ex p. Milne (No.2)* [2001] Env. L.R. 22. The flexibility sought in the application is too great to allow the likely significant effects to be properly assessed, there are simply too many potential outcomes that need to be considered and have not been. The result is that the OR has failed to properly consider the likely significant effects of the Application.

Lack of certainty and commitment making it impossible to properly assess the impacts

In response to THFC's concerns about the lack of commitments to community facilities, officers have responded by saying the ES has considered a "worst case". However, the OR has not properly acknowledged that it cannot count anything more than the minimums proposed in weighing the overall planning and heritage balance. Page 2 of the OR refers to a huge range of between 7,225 sqm and 36,300 sqm of community and employment floorspace and cites the illustrative scheme delivering 17,600 sqm of community and employment floorspace. At the reserved matters stage, the Council will have no means of making the Applicant provide any more than the minimums and therefore that is what must be assessed and included in the planning balance. This has not been made clear to members of the Planning Sub-Committee.

Reference is made to health facilities provided alongside THFC stadium in Appendix 3 of the OR. However, this was provided as part of those proposals and in response to demand in the Northumberland Park area. No assessment has been undertaken in the Applicant's Environmental Statement in respect of whether that scheme is capable of meeting the health care needs for existing and future residents. Indeed, paragraph 14.7.29 of the applicants ES assumes that there is capacity rather than actually assessing it as follows:

'However, as outlined above the Cumulative Schemes will see the delivery of a new healthcare centre. It is therefore assumed that the increase in demand generated by the Proposed Development and Cumulative schemes can be accommodated within this new practice. On this basis, the overall magnitude of impact on the receptor is therefore assessed as negligible.' [Emphasis Added]

Composition of the Application scheme

As highlighted in our 4 March letter, the absence of any B2 and B8 floorspace in the scheme shows how little the applicant is committed to providing replacement accommodation for existing businesses on site. In the absence of B2 and B8 floorspace being listed in the description of development itself, planning permission would not be granted for these uses. We note that the Applicant has sought to amend the parameter plans to refer to these uses. However, without a revised description of development (which requires full re-consultation of the whole application), it is not possible for the Council to grant permission for these employment uses. Again, this needs to be made clear to members of the Planning Sub-Committee.

The OR at paragraphs 7.35 and 7.36 has regard to the provision of B2 and B8 floorspace as part of its reasoning for finding that the Application complies with the NT5 allocation and HRWMF. This is a clear legal error. If the policy compliance of the High Road West Application is dependent on the delivery of B2 and B8 floorspace then that floorspace must be deliverable. However, it is not as it is not included in the description of development and so could not be developed under any planning permission granted on the Application.

The importance of the description of development and the distinction between it and the conditions attached to it was succinctly stated by Hickinbottom J (as he then was) in Cotswold Grange County Park LLP v Secretary of State for Communities and Local Government [2014] EWHC 1138 (Admin), [2014] JPL 981 at [15]:

"... the grant identifies what can be done—what is permitted—so far as use of land is concerned; whereas conditions identify what cannot be done—what is forbidden."

The High Road West Application currently before the Council cannot grant permission for B2 or B8 use. Further, by relying on the provision of such uses in determining the High Road West Application the Council will have fallen into legal error by having regard to an immaterial consideration.

Compliance with the TAAP & HRWMF

We note that the conclusions of the OR (paragraph 30.1) acknowledge at least seven areas where there is non-compliance with the HRWMF but there is no preceding analysis to explain the degree of non-compliance and the justification for such departures.

Critically, there is no proper consideration of compliance with allocation NT5 of the Tottenham Area Action Plan in the OR, which forms part of the statutory development plan. Paragraph 3.27 onwards of our 4 March letter noted several areas of non-compliance including how the proposals do not include a new leisure destination for London, nor increase the quality and quantity of community facilities proportionate to population growth. The Council's response to THFC's consultation response also ignores these important omissions.

Assessment of the effects of the application

Similarly, officers have failed to respond to concerns in respect of the reliance on the illustrative scheme to assess housing density and open space requirements.

Indeed, the Committee Report appears to have factual errors in respect of housing density. Paragraph 7.42 and 30.6 of the OR reports a stated density figure of 341.7 U/Ha. However, this appears to be based on the gross site area (i.e. 2,929 units / 8.57 ha), and not the net site area, apparently ignoring the ratio of residential to any non-residential floorspace. This appears inconsistent with how the density of the illustrative scheme is described in the applicants Design and Access Statement; a figure of 337 U/Ha that is reported in paragraph 7.42 of the committee report. THFC calculate that the overall site density could be a much higher as set out in paragraph 4.4 of our 4 March letter.

4. Conclusion

The OR has failed to address the fundamental concerns raised in THFCs objection letters. Indeed, the reasoning in the OR exemplifies the concerns which THFC and others have expressed in relation to crowd flow safety, the unacceptable degree of flexibility sought (and related heritage and other concerns) and other material issues.

Again, we would urge you to confirm by return that the determination of the High Road West Application will be removed from the Planning Sub-Committee agenda for the meeting on 17 March and that the Crowd Flow Study will be formally publicised and consulted upon in accordance with the mandatory requirements of the EIA Regulations.

Yours sincerely

A handwritten signature in black ink, appearing to read "Richard Max & Co". The signature is written in a cursive, slightly stylized font.

RICHARD MAX & CO