



St Quintin and Woodlands Neighbourhood Forum

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Alex Graham,
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Savills
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Dear Alex,

Land at Nursery Lane W10

Thank you for the presentation on Teams which you gave to me and Pat Healy (on 10th February) and for the discussion that we held. It was helpful to see the initial proposals from Northcare (Scotland) and to hear your additional comments in support of the Savills representation to RBKC of 20th December 2022.

It was a shame that Northcare were not able to join the session. As explained we remain puzzled as to why this company should have alighted on this site as being suitable for promotion by Savills as a location for a care home, given the 40 year history of unsuccessful attempts to develop this backland along with the Local Green Space designation now in place.

I hope that you have been able to convey to Northcare what we discussed online about the proposals by the Legards during 2014-18 to bring forward this site as a potential residential development. You said that your clients were fully aware of this history. We suggest that if they have not already done so, Northcare read through the judgment in *Legard, R (On the application Of) v The Royal Borough of Kensington and Chelsea (2018) EWHC 32 (Admin)*.

This long and detailed judgment by Mr Justice Dove sets out the sequence of events on the 2014-18 proposals. It addresses efforts by the StQW Neighbourhood Forum to resist a housing scheme which was seen locally as an ill-conceived overdevelopment of the site. The judge reviewed several hundred emails and letters that passed between the Forum and the Council over these years, and concluded that these reflected 'persistent' but legitimate campaigning by StQW and local residents. He also dismissed legal argument that the LGS designation should not have been recommended by the independent examiner of the draft neighbourhood plan made (see below and attached).

We will communicate these latest proposals from Northcare to our membership. But we currently feel that there could be a better long-term solution to provision of accommodation for the elderly on the site, as and when RBKC decide to refurbish and/or rebuild the existing sheltered housing at No.1 Nursery Lane.

You explained to us that a planning application for a care home on the Nursery Lane site could succeed by the applicants providing RBKC with evidence of '*very special circumstances*'. And that this happens relatively routinely in relation to release of Green Belt land. As we understand, the starting point under national planning policy is that any development on such land is seen as '*inappropriate*' but may be granted consent in cases where the potential harm '*is clearly outweighed by other considerations*'.

We recognise that there is a level of consensus amongst planning consultants and lawyers on makes for *'very special circumstances'* in a Green Belt setting, and that factors are based on appeal decisions in the past. We appreciate that provision of accommodation for the elderly can be one of these. But what qualify as *'very special circumstances'* on release of Green Belt or MOL (we suggest) may not apply in relation to the specific NPPF criteria for a LGS designation.

For example the level of 'harm' in relation Green Belt sites is often assessed in terms of loss of 'openness' and long distance views. The three sites designated as LGS in the StQW neighbourhood contribute to the 'openness' of an area long recognised as having an unusual 'suburban' character for inner London, in conservation/heritage and historical terms. These characteristics are set out in the StQW NP material and helped to justify the three LGS designations in the NP (which were supported by Historic England in the RBKC consultation on the draft neighbourhood plan)

But it is not merely 'openness' which was decisive in the LGS designations. It is also the historic significance of these backlands to the layout of this part of the Oxford Gardens/St Quintin CA. This factor would not often be a consideration in the assessment of 'harm' of loss of Green Belt land.

Similarly the part B criterion of land *'demonstrably special to a local community and holding a particular local significance'* was relevant to the conclusions reached by the independent examiner on the LGS proposals in the Draft Neighbourhood Plan. Significant participation of local residents was involved in evidencing *'demonstrably special'* to the Council and to the independent examiner.

As we mentioned in our discussion, the fact that the independent examiner's conclusions on LGS designations were challenged, unsuccessfully, in the High Court is a further reason why we feel that a high bar would now be set for evidence of *'very special circumstances'* in relation to the Nursery Lane site. This part of the judgment in the Legard case is attached. It found no error or failing in the Examiner's decisions, which were based on the relevant content of the StQW NP, submissions and oral evidence from Rolfe Judd, a public hearing, and a site visit at Nursery Lane.

Given such a court judgment on a planning matter, we question why either the local planning authority or the Inspector of the Draft Local Plan will easily be persuaded to re-open these issues?

We wish to be sure that your clients are fully aware of this background. As also discussed, we are not experts on the need for care home places in the Borough but have a good knowledge as local residents of what is available (and at what price range) in terms of private accommodation as well as that provided by RBKC and by various housing associations, charities and trusts. In terms of provision at the very local level, the Princess Louise Nursing Home is one street away from Nursery Lane and Alan Morkhill house within half a mile. Both provide care for those with dementia.

Pages 3-7 of the Savills representation of 20 December argue similar points as were made by Rolfe Judd in their responses to two rounds of consultation on the StQW Draft Neighbourhood Plan, and at the examination hearing in 2015. We do not see that the context and setting of the Nursery Lane site has changed since then. We therefore share the view of RBKC in its response to the Savill's representation, stating that *'there is no justification for revisiting the Neighbourhood Plan designation as part of the Local Plan examination process'*.

You explained to us that regardless of the examination process and its timetable, your clients wish to proceed in the coming weeks with pre-application consultation sessions on the proposals for a 72 bed care home on the site. You said that there would also be a third round of pre-application discussions with the RBKC Development Management team, seeking further Level 3 advice.

It is in the hands of your clients to decide how they wish to proceed. We would welcome a direct discussion with Northcare. We wrote to William Legard on November 9th 2022 (copy attached) and received a response on 15th November saying *The family have no future plans for the Nursery Lane site at this moment in time.* We noted the qualification to what he said.

Events since seem to have moved swiftly, given that we are now informed by yourselves that *The Legard family own the site although Northcare control it as we have a missive in place with an option to purchase subject to planning permission.* Significant work seems already to have been done on working up proposals for a care home. As and when an application is submitted, we will obtain a better picture on when Northcare first approached the RBKC planning department.

In the meantime, may we ask that you discuss with your clients whether it might be sensible to hold off on further pre-application consultation sessions with local residents (and with Dalgarno ward councillors) until the Planning Inspector has decided on which matters he/she wishes to see discussed at the Examination in Public? Nursery Lane may or may not feature at the EIP.

We make this request because so far this latest set of proposal for the land at Nursery Lane is emerging in the same way as took place in 2014. Detailed proposals surfaced for pre-application consultation with no prior dialogue with the neighbourhood forum, although we had many months previously contacted the Legards as landowners to say that a neighbourhood plan was underway.

Metropolis Property submitted a planning application in May 2015, and then withdrew it in July 2015 having been advised that it was likely to be refused. Planning consultants Rolfe Judd asked RBKC to explain what would have been the grounds for refusal, and Derek Taylor sent them the attached letter of 16th July 2015. You may have seen this letter in your researches of the planning history.

One of the grounds which RBKC identified for refusal was prematurity. We appreciate that National Planning Guidance makes clear that prematurity will only rarely qualify as a ground for refusal, but in this case RBKC planning officers concluded that *Given that the draft Neighbourhood Plan is now past its local planning authority publicity period, and awaiting examination, there is no doubt that the guidance in the last paragraph and in (b) allows for it to be refused on the basis of prematurity.*

We have not discussed with the Council the re-emergence of this question. But in 2023 the Draft Local Plan has completed its consultation at Regulation 18 and 19 stages and is now awaiting Examination. In 2015 the Nursery Gardens Action Group obtained a site-specific Counsel's Opinion from Essex Chambers, on this issue of prematurity in determining the Metropolis application. The resultant advice on refusal on prematurity grounds was reflected in objections from neighbours of the site at that time. RBKC planning officers should still have this Opinion on file.

In the period 2014-18 those property owners in the streets backing onto Nursery Lane suffered planning blight as a result of uncertainty over the future of the Nursery Lane land. **It seems unnecessary to recreate this situation in 2023, in advance of an imminent stage when a Planning Inspector may give a view on the submissions from Savills and a proposition for a care home, and on whether such an application is likely to meet the 'very special circumstances' that outweigh a LGS designation.**

Regards,

Henry Peterson, Chair StQW Neighbourhood Forum and St Helens Residents Association.

Chair, St Quintin and Woodlands Neighbourhood Forum

Cc Jonathan Wade, Head of Spatial Planning RBKC

StQW management committee members

Annex to letter to Savills

Extract from judgment of Mr Justice Dove on Legard, R (On the application Of) v The Royal Borough of Kensington and Chelsea (2018) EWHC 32 (Admin).

Ground 2: the correct interpretation of paragraph 77 of the Framework

The claimant's contention in relation of Ground 2 is articulated in two ways. Firstly, it is submitted that the Examiner misinterpreted paragraph 77 of the Framework when applying it to the site. The claimant's submission is that when the Framework sets out the three bullet points at paragraph 77, the first bullet point includes a requirement that the green space must be found to currently serve the community. It was the claimant's contention that the site did not at the time of the examination "serve" the local community in any way at all. They had no access to it and it had a very limited visual envelope.

As such therefore, on the basis of the claimant's interpretation of paragraph 77 of the Framework, the site could not fulfil the criteria. Secondly, the claimant contends that the reasons given by the Examiner are not adequate. They do not address the impact of the actual use of the land at the time involving skips, shipping containers, pallets, building materials and other debris dumped upon it. The Examiner failed to properly address these considerations or provide reasons in relation to them.

The defendant's response to this submission is that there is no separate and distinct test proposed by the use of the word "serves" in the first bullet point of paragraph 77. The bullet points are intended to be read and applied together and there will necessarily be an element of overlap between each of the bullet points. What the word "serves" is cross-referring to is how the green space serves the community by being "demonstrably special" in one of the ways illustrated in the non-exhaustive list of the second bullet point. Thus, the focus of the first bullet point is "close proximity", and the use of the word "serves" introduces the requirement that the green space is "demonstrably special" by reference to examples of qualities and characteristics which it may enjoy and which are of benefit to the community. The defendant submits that once paragraph 77 is understood in that way, the reasons provided by the Examiner are perfectly adequate.

Having considered these submissions, in my view the interpretation of paragraph 77 of the Framework suggested by the defendant's submissions and which was plainly deployed by the Examiner is the interpretation which is to be preferred. I can see no justification for having, in effect, a separate and free standing requirement that the land "serves" the local community, other than by being "demonstrably special" and holding "a particular significance" for the local community in the manner required by the second bullet point. In my view, read in the context of the policy as a whole, the word "serves" operates in this way, and I see no justification for reading it more widely to create a requirement that the open space "serves" the local community in a free standing manner beyond the question of being "demonstrably special" and holding "a particular local significance".

This interpretation is in my view, clearly more consistent with the purpose of the policy than the claimant's construction. Furthermore, as Mr Phillpot on behalf of the defendant pointed out, it also reflects the approach of the guidance which reflects the interrelationship and overlap of the bullet points of paragraph 77 when addressing the question of proximity and observing:

"the proximity of the Local Green Space to the community it serves will depend on local circumstances, including why the Green Area is seen as special, but it must be reasonably close".

I am unable therefore to accept the submission that the Examiner misinterpreted paragraph 77.

Having identified the correct interpretation of paragraph 77, I am equally not persuaded that the reasons provided by the Examiner were inadequate. Indeed, in my view the reasons provided by the Examiner arguably went beyond that which was necessarily required of him as a matter of law. That cannot, of course, amount to any criticism of them. Indeed, the fuller reasons make clear to the reader not only the opposing contentions which the Examiner had to address, but also make clear the findings which he reached against the background of those competing arguments.

Within the report the Examiner set out the qualities in terms of views, nature and conservation value and historical significance, all of which were relevant to the application of paragraph 77, and all of which explain his conclusion that he was satisfied the site was "demonstrably special" to the local community and held a particular significance for them. In reaching those conclusions it is clear that he took account of the present condition of the site insofar as its current use had impacted upon its visual amenity value. After taking account of those matters they did not deter him from his overall conclusion.

Having identified the qualities of the site which made it "demonstrably special" and of "particular local significance" for the local community that, in accordance with the interpretation of paragraph 77 as I have set out above, provided the manner in which it served the local community leaving, in terms of the first bullet point, only a judgment necessary as to whether or not the site was in proximity to that local community, a proposition which could not have seriously been contested. Thus I am satisfied that the Examiner's reasons were clear and adequate, and further that the conclusions which he reached were arrived at following a proper interpretation of paragraph 77 of the Framework.