



Appeal Decision

Inquiry held on 26-29 November 2013 and 13-15 January 2014

Site visits made on 23 November 2013 and 14 January 2014

by **P E Dobsen MA (Oxon) DipTP FRGS**

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

Decision date: 26 February 2014

Appeal Ref: APP/E5330/A/13/2198251

Site of the former Huntsman Sports Club, 106 Manor Way, Blackheath, London SE3 9AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Derreb Ltd. against the Council of the London Borough of Greenwich.
 - The application (Ref: 10/2706/F), is dated 29 September 2010.
 - The development proposed is "residential development of 131 units – detached houses, terraced houses and apartments".
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Decision

1. The appeal is dismissed and planning permission for residential development of 131 units – detached houses, terraced houses and apartments - on the site of the former Huntsman Sports Club, 106 Manor Way, Blackheath, London SE3 9AN, is refused.

Description of development – number of dwellings proposed

2. Prior to the lodging of the appeal against non-determination, the application was revised on 2 occasions, as described in the planning statement of common ground [SCG1, Doc 4]. There is also a transport statement of common ground [SCG2, Doc 5]. The application before this Inquiry is for 131 dwellings, with a mix of houses and flats, and not 157 or 144 as originally and subsequently proposed, and as described in various background documents. The relevant application drawings and accompanying documents are listed in SCG1 and in the agreed list of planning conditions [Doc 7] in the event of a successful appeal.
3. Shortly before the latter part of the Inquiry, and in response to criticisms of the effect of the proposed development upon neighbouring dwellings at 83 and 83A Brooklands Park, the appellant submitted revised drawings¹ showing 2 alternative design options for the layout of the north-west corner of the site. The first of these would reduce somewhat the footprint and rear profile of the detached dwelling No. 1, and the second option would delete this dwelling altogether. In that case, the proposed number of dwellings would be reduced to 130. I was asked to consider these proposed amendments under the *Wheatcroft* procedure. I refer again to this matter below.

¹ Numbered CD208-CD211 in the appellant's list of core documents (and included also in Doc 18)

The appeal site and its surroundings

4. The appeal site is known locally as The Huntsman. Some 2.2 ha. in size and approximately rectangular in shape, it lies to the north of Weigall Road and west of Moorhead Way, within a predominantly residential part of the borough to the south west of Kidbrooke rail station.
5. Formerly a sports ground (football pitches) and part of the designated MOL (Metropolitan Open Land) in the area, it is now part of the Kidbrooke Development Area (KDA²), as described in the Council's Unitary Development Plan (UDP) written statement and proposals map, the KDA supplementary planning document (KDASPD) and the Kidbrooke Masterplan (KM).
6. A large swathe of land adjacent to the east, including the former Ferrier estate (now demolished) dating from the 1970s, is in the process of being redeveloped by Berkeley Homes in partnership with the Council to form the new Kidbrooke Village. At the time of this Inquiry, much of this large scale redevelopment was complete and occupied, with some new blocks containing up to a dozen storeys, and several areas of landscaped open space. Some vacant sites remain, including The Huntsman, and land immediately to the east of it, also east of Moorhead Way.
7. Adjacent to the north and west of the site lies the extensive Cator estate (now largely in numerous private ownerships, but originally owned and developed by the Cator family.) This comprises a considerable variety of low-rise residential development, including many detached and semi-detached 2 storey houses and some small blocks of flats, with access off a number of private, un-adopted roads. The estate forms a large part of the Blackheath Park Conservation Area (CA), from which The Huntsman is excluded.
8. Two of the Cator estate private roads, Manor Way and Brooklands Park, lie to the northwest and north of the site respectively. When still in use as a sports ground, The Huntsman had a vehicular access (the precursor of "the western access") connecting it with the right angled bend linking those two roads. Although long unused and gated off, that access remains physically in place and is proposed to be retained as part of the appeal scheme, but re-designed to accommodate all incoming and outgoing vehicle movements, plus pedestrians and cyclists. Thus it would be the development's principal vehicular access, instead of the 2 access points to the east (together comprising "the eastern access") onto Moorhead Way which would be for emergency vehicles only, plus pedestrians and cyclists. This eastern access would be closed to other vehicles by retractable street bollards, thereby precluding an east/west vehicular route through the development³.
9. Adjacent to the west of the site lies Manorbrook, a private road containing a number of detached and semi-detached dwellings, some with substantial curtilages, and of widely varying ages and types. There is also a substantial early Victorian grade 2 listed building at No.102 Manor Way. No.104 Manor Way, a recently completed (but at the end of the Inquiry not yet occupied) 4/5 storey block of 11 flats lies between No. 102 and the appeal site. Manorbrook forms a southerly projection of the Blackheath Park CA; thus the CA adjoins the appeal site on the whole of its western side.

² Within the KDA, the site is part of the Western Neighbourhood Area

³ The avoidance of a through route across the development is agreed to be desirable by all parties

10. There are 3 dwellings⁴ immediately to the north of the site, accessed via a narrow, shared private drive from Brooklands Park. These are not within the CA⁵, which however continues to the north of them and The Huntsman.
11. The appeal site is unused and has been so for several years. It is now largely overgrown with rank vegetation. An old sports pavilion upon it was demolished some years ago, and it contains no other significant structures. Owing to its former use as football pitches, there are no sizable trees in its central parts, but there are a number of mature trees in lines close to the northern and eastern site boundaries, the healthy specimens of which are proposed to be retained in the appeal scheme.

Planning policies and environmental statement etc.

12. The development plan comprises the London Plan (LP), adopted in 2011, and the saved policies (2009) of the Greenwich UDP. Both plans contain numerous policies of relevance to the proposed development (about 48 in each case, as listed in SCG1), if not necessarily to the main issues stated below.
13. At the time of this Inquiry the Council had prepared the submission version of its Core Strategy with Development Management Policies (CS). Once adopted, this plan will replace the UDP. I understand that an examination of the submission version was due to commence late in 2013, for completion some time in 2014. In the words of the SCG1, this version "has not yet been through examination and cannot be given determinative weight." I agree with that.
14. Relevant supplementary planning guidance documents associated with the LP and the UDP are listed in the SCGs.
15. The designation in the UDP of the KDA, and therefore the accompanying KDASPD (adopted 2008) and Masterplan (adopted 2009) are also agreed to be material considerations in the appeal.
16. The NPPF⁶ contains several policies and statements of relevance, which are also material considerations in the appeal. Among these, I note in particular the following: the core planning principles (para. 17); section 6, "delivering a wide choice of high quality homes"; section 7 "requiring good design" and, with respect to the Blackheath Park CA, section 12 "conserving and enhancing the historic environment".
17. The application was accompanied by an Environmental Statement (ES), which was subsequently updated. I am content that there is sufficient information in the ES to meet the requirements of the EIA regulations 2011.
18. Ever since its de-designation as MOL when the UDP was first adopted, there has been no serious objection in principle by any party to the residential development of The Huntsman. But the amount and built form of that development, including the question of vehicular access, gives rise to several main planning issues, as stated in the following section.

⁴ These are Nos. 83, 83A and 85 Brooklands Park. Nos. 83 and 83A are semi-detached, 2 storey dwellings. No. 85 is a modern bungalow

⁵ Their non-inclusion in the CA appears to have occurred as a result of a mapping error at the time of designation

⁶ The National Planning Policy Framework, published in March 2012

Main Issues

19. The issues refer mainly to how that development would relate to its surroundings, principally the remainder of the KDA to the east, and the Cator estate and Blackheath Park CA to the west. They also refer to the content of the development in terms of the number and mix of dwellings, and the proportion and overall provision of affordable housing.
20. The main issues in the appeal are whether, in the light of development plan and other local and national policies, the proposed development would: 1) fail to be properly integrated with the remainder of the Kidbrooke Development Area, by reason of having its principal vehicular access on the western, as opposed to the eastern side; 2) harm highways and pedestrian safety in the vicinity of the western access; 3) harm the character or appearance of the Blackheath Park CA, by reason of i] the proposed building heights, particularly on its western side near Manorbrook, and/or ii] the effect of vehicular traffic using the western access; 4) fail to make adequate provision for affordable housing; 5) represent an unacceptable under-development of the site; and 6) harm the residential amenities of Nos. 83 and 83A Brooklands Park, by reason of the overbearing proximity of the most north-westerly proposed dwelling(s).

Reasons – introduction – the parties

21. Although the Council did not determine the application within the appointed time, it subsequently indicated that it would have refused it for several separate reasons (as noted in SCG1). These are closely reflected in my definition of the main issues above.
22. The putative reasons for refusal are in general supported by the 3 Rule 6 parties: the Blackheath Cator Estate Residents (BCER), the Blackheath Society, and the Blackheath Park Conservation Group (BPCG). These are united in their view that the proposed development pays insufficient attention and respect to the long process of community involvement which culminated in the adoption of the UDP, the KDASPD and the KM. However, each of these parties takes a slightly different view of its merits or demerits, as do some of the private individuals who appeared at the Inquiry as objectors or who wrote previously to the Council. There are very few supporting representations in writing, and none were heard at the Inquiry.
23. The 2 SCGs indicate and distinguish between those issues which lie between the appellant and the Council, and those which lie between the appellant and the Rule 6 and other 3rd parties. In what follows, in the interests of brevity I do not identify or comment upon every point of disagreement between the various parties; these are comprehensively expressed in their closing submissions to the Inquiry. To anticipate some of my conclusions, I note that the appellant's case tends to emphasise the precise if necessarily limited policy wordings in the development plan, whereas those of the Council and the Rule 6 parties rely also upon the amplifying statements and other material in the KDASPD and Masterplan.

Issue 1 – integration of scheme with remainder of KDA

24. Given the general agreement that in order to preclude through traffic the proposed development should have only one and not two vehicular accesses, there was much debate at the Inquiry as to which side, west or east, would be preferable (or, more to the point, acceptable). Much of this debate focused on

- a trawl through the relevant policies and guidance, so as to establish which side (if any) was required or indicated by policy, or merely implied by it.
25. The principal access to and from the site would be to the west. But to my mind the reasons for this were never clearly explained by the appellant. In his Inquiry note dated 9 December 2013 [in Doc 18] Mr. Rust puts it thus: "The main reason for the choice of a western vehicular access... is that it provides direct connections for all modes of travel with established residential development providing physical, visual and a psychological integration with the surrounding area... and providing a suitable access for all car trips".
 26. However, it seems to me that that statement would apply at least equally to an eastern access. And, rejecting that explanation, Mr. Horton for the BPCG suggested that there could only be one real reason: the perceived commercial advantage (presumably in terms of development value, house prices and sales) in connecting the development with the attractively affluent and established Cator estate and the CA, rather than with the relatively new KDA. This plausible assertion was supported by the Council but neither explicitly accepted nor denied by the appellant.
 27. Without going into forensic detail, my own reading of the relevant policies and supplementary guidance generally supports that of the Council and the Rule 6 parties. Both Mr. Gittens for the Council and Mr. Holland for BPCG provide detailed accounts of the history and evolution of the KDA from its origins in the obsolescence and social failures of the old Ferrier estate through the early design parameters leading to the first planning permissions and implementation of the early phases; I agree with them that where the documentation touches upon The Huntsman, principal access from the east is indicated (or at least is to be inferred) in preference to access from the west, and hence, its closer integration and connection with the remainder of the Western Neighbourhood Area and the wider KDA than with the Cator estate.
 28. To back this up, I note too that several local residents and the 2 borough councillors at the Inquiry said that they had always understood from public meetings they attended that access to The Huntsman would be taken from the east, and not from the west through the Cator estate.
 29. One particular figure (Fig. 6.1, titled *Movement Infrastructure*) from the KDasPD was mentioned repeatedly. While this is indicative, and arguably open therefore to a degree of interpretation, it strongly suggests to me that the main access to The Huntsman should be from the east, and not from the west. In that western direction, only a pedestrian/cycle connection is shown in connection with a "gateway entrance point", and no "main" or even "indicative" vehicle connections.
 30. That said, UDP policy H4 *Kidbrooke Development Area* is not precisely prescriptive, which leads the appellant to suggest that it is equivocal or undecided about the matter. But that policy does not attempt to illustrate the access points to every site in the KDA. And other considerations also come into play. To my mind, foremost among them is the rather obvious point that an eastern access would provide direct connections, including for vehicles, with the main "hub" of the KDA, its commercial and social focal point, which has not yet been built but will be sited in the vicinity of the existing Kidbrooke rail station. By contrast, the western access would involve comparatively lengthy

and complicated connections with the hub, beginning with a somewhat rambling detour through the Cator estate.

31. By the same token, having its principal access to the east would better connect and integrate the development with the rest of the KDA, and not just with the hub.
32. In terms of the built environment too, the form of the proposed development, particularly in terms of its density, building heights, and its contemporary architectural style and external materials, would clearly appear to belong to the townscape of the KDA, and not to the contrastingly much older and generally much smaller and lower buildings of the Cator estate. In my view, those additional affinities with the KDA are a further reason why the main access should lie on the eastern side, and not on the western as is proposed.
33. And there is another side to the coin, more to do with practicality and impact than with policy. In my view, there are distinct disadvantages and drawbacks to a western access, which I discuss further under issues 2 and 3 below. These disadvantages would simply not arise from an eastern access.
34. In sum, I conclude on the first issue that the scheme as designed with its main vehicular access giving on the Cator estate in the west, would fail thereby to be properly integrated with the remainder of the KDA. There is no clear or compelling rationale for that, and it is not supported by the development plan or by any KDA planning documents, including the KDasPD. To my mind, this would be a major shortcoming or defect of the scheme, and it tells against a grant of planning permission.

Issue 2 – highways and pedestrian safety in vicinity of western access

35. There is also something inherently and rather obviously problematical about the proposed western access from the standpoint of highways and pedestrian safety.
36. This is the fact that the access would be located immediately adjacent to a narrow, acutely right angled bend in the 2 adjacent estate roads (Manor Way and Brooklands Park), a bend which, moreover, is also accessed almost directly by 2 other vehicular accesses - the long-established access to the 3 dwellings at Nos. 83, 83A and 85 Brooklands Park (from which some exiting vehicles have awkwardly and hazardously to reverse), and the very recently constructed but not yet regularly used access to the substantial new block of flats at 104 Manor Way.
37. These 3 separate accesses to different and unconnected groups of dwellings would all lie within a very short distance from each other on the eastern and southern sides of the bend. Therefore common sense alone might suggest that for reasons of highways and pedestrian safety it would be unwise to create what would be in effect a new access to a substantial new development of 131 dwellings in such close proximity to the 2 existing, with all 3 accesses located on the same side of a sharp bend in the highway.
38. Against these seemingly straightforward considerations and constraints, the appellant (Mr. Rust) points out some countervailing considerations: that a western access to The Huntsman existed and was in use for many years; that both Manor Way and Brooklands Park are lightly trafficked private estate roads, as described in SCG2; that visibility for vehicles approaching the bend from

either direction (but not beyond it) is fairly good; and that in any event drivers, unable to see what lies ahead around the bend, tend naturally to slow down significantly when approaching it, often to less than 20 mph.

39. From their opposing perspectives, both Mr. Rust and Mr. Carson (for BCER) as professional highways engineers also adduce technical evidence on the safety of the proposed access, with reference to the DCLG/DTP Manual for Streets. I have considered this carefully. I also visited the site on 2 occasions, on a Saturday and Tuesday in mid-morning, and observed both private cars and commercial and utility vehicles approaching the bend from both directions, and the behaviour of their drivers. I note too that the proposed access design – as shown in drawing 208144/17 rev G [Doc 9] – does not incorporate any crossing facilities on either road for pedestrians, although Mr. Rust’s handwritten addition to this shows the short and direct route they might take.
40. In the light of this technical evidence and my own observations, together with the representations of many local residents, I am not satisfied that the western access would be acceptably safe. Instead, I think it would pose significant risks particularly for pedestrians, including unaccompanied children, especially in conditions of poor visibility. In my judgement, there would be a significant risk of collisions or other accidents occurring, even at the relatively low traffic speeds normally typical of vehicles at these ends of Manor Way and Brooklands Park. This risk would be exacerbated and complicated by the close proximity of the 3 separate accesses, and the likelihood that large vehicles approaching from the north along Brooklands Park would have to cross to the opposite carriageway to access the junction. And it would be further exacerbated by any vehicles simply travelling too fast in either direction.
41. In sum, the creation of an unsafe access junction would be contrary to relevant development plan policies (UDP policies SM2, M1, M33) and guidance, and it is a further factor which tells against the western access and, hence, against approval of the appeal scheme.
42. It was suggested by BCER that it might be possible to resolve the question of the access simply by imposing a condition, to the effect that vehicular access to the scheme should only be provided to/from the east, rather than to/from the west. That, it was said, would obviate at a stroke all the inherent problems, as seen by the Council and objectors, of the western access. I have given this my due consideration. However, it seems to me that taking the main access from the east instead of from the west would involve a re-design of the scheme layout, and quite possibly a re-siting of some buildings in the north western part of the site, for which no application drawings exist. I have therefore ruled out BCER’s (doubtless well-meant) suggestion.
43. Under this heading I would only add that there has in the recent past (2010) been high court litigation between the appellant and BCER concerning the ownership and use of the old access to The Huntsman and other land adjacent, a related Cator estate legal covenant, and obstructions to the access. This history is complex and convoluted, but it may have some bearing on whether or not the proposed junction is actually deliverable (which Mr. Carson says is doubtful); however, I see no need to explore it further as I do not find it very relevant or helpful for the purpose of determining the appeal.

Issue 3 – impact of scheme on the Blackheath Park CA

44. The main characteristics of the CA are described in detail in the Blackheath Park Conservation Area Appraisal 2010. During my 2 site visits, I saw various parts of the CA, particularly those which lie close to the appeal site.
45. The third main planning issue has two distinctly separate aspects: the effect of the scheme's vehicular traffic on the character of the CA, and the effect of the proposed buildings (particularly the predominantly 4 storey townhouses in the western part of the site) on its setting and appearance, including in townscape views towards and from it.
46. The first of these is of particular concern to the 3 Rule 6 parties and to individual residents of the Cator estate, including those living on Manor Way and Brooklands Park. To recap, these are the 2 nearest estate roads, each of which, according to Mr. Rust's undisputed evidence, would take about half of the vehicles entering and exiting the appeal site.
47. The western access has not been used for several years. When last used, it was in connection with the use of The Huntsman as football fields, which was a low and intermittent traffic generator. Virtually all of the vehicular traffic associated with the appeal scheme would use that (re-designed) western access, and would traverse the private estate roads in the Cator estate before or after using the wider road network further afield.
48. According to the appellant⁷ the additional (development) traffic on each road is around 23 and 26 total trips for the am. and pm. peak hours respectively (an increase of 62-67%). In other words, the development would increase the frequency of traffic movements at the access from about one car every one and a half minutes to one car every minute in the morning peak, and from one car every one and a quarter minutes to one car every minute in the evening peak. This equates to 45 additional arrivals and departures in the morning peak hour and 51 in the evening peak hour. Other parties dispute these figures but to my mind they seem reasonably robust.
49. For their part, objectors describe and emphasise the tranquil character of the private and gated Cator estate roads at present, given the relatively small number of vehicles using them compared with the busy distributor roads (such as Lee Road) outside the estate to which they give access. My own site visits confirmed this quality of calm, almost cloistered tranquillity within the Cator estate, which owes much to the virtual absence of through traffic and to the low volume and intermittent nature of its traffic movements.
50. It seems to me that the effect of scheme traffic would be very noticeable on the nearest Cator estate roads, and could occasionally give rise to some noise and disturbance to residents, particularly around the morning and afternoon peak traffic times. Inevitably, this increase in traffic would tend to harm the tranquil character of the CA. However, while by no means negligible nor innocuous, the effect would not in my opinion be serious or severe.
51. I therefore agree with Dr. Edis (for the appellant) that it would not, in the words of para. 133 of the NPPF, "lead to substantial harm to, or total loss of significance of (the) heritage asset" (i.e. the Blackheath Park CA). Thus the advice in para. 134 of the NPPF applies, which is that the "less than substantial

⁷ Mr. Rust - in his rebuttal of Mr. Reid's evidence, para. 2.5 and table 2.2

- harm" to the CA should be weighed against the public benefits of the proposed development, which I take to be the beneficial re-use of the site and the provision of much needed new housing in the KDA.
52. I have reached a similar conclusion in respect of the second CA issue. This might be thought even more subjective in nature; just as some people heartily deplore any amount of traffic noise and disturbance while others are not particularly bothered by it, people's perceptions of architectural quality and built form differ markedly.
53. With its relatively high and in some cases bulky buildings (relative, that is, to most of the dwellings in the Cator estate) the appeal scheme would be highly visible from within the nearest parts of the estate, particularly from the eastern end of Manor Way, from Brooklands Park and from Manorbrook. Its contemporary architecture would contrast markedly with that of the Cator estate, as does that of the recently completed 4/5 storey block at 104 Manor Way, which has been designed in a broadly similar architectural style to that of flats in the appeal scheme.
54. The Council and Rule 6 parties point out that the KDASPD states (at para. 3.11, *Building heights*) that proposed building heights within the KDA should decrease from the hub towards the edge of the development – a transition which would both provide a legible environment and reinforce the hub as a landmark focal point. In that context, a local architect and objector, Mr. Watkins, produced for the Inquiry several 3D representations of the development's visual impact [e.g. Doc 16], although these were not deemed to be fully verifiable as true representations by Mr. Harvey, the scheme architect.
55. Apart from the question of building heights, it is evident to me that some local residents, in contemplating the juxtaposition of the proposed development with the adjacent CA, deplore what they regard as an inappropriate and jarring proximity of architectural scales and styles. Others however (albeit not present at the Inquiry) might appreciate the bold and clear contrasts it would provide between the urban and the suburban, and between new and relatively old built forms and townscapes.
56. My own quite simple view, in short, is that the development as a whole, like the rest of the KDA, would "read" as being very different from most of the Cator estate, and therefore not as part of it; however, nor would it overwhelm it at the rear of Manorbrook, or appear obtrusively over-dominant when seen from Manorbrook or other nearby parts of the CA. Thus it would not necessarily harm views into or out of the CA, or the setting of the CA.
57. Overall, I have concluded on this issue that the proposed development would not substantially harm the CA as a heritage asset, much less call into question the reasons for its designation. But nor would it do anything to enhance its character, appearance, or setting. Its character would be slightly harmed by the effect of traffic using the western access; and to that extent there would be some conflict with CA policies in the LP and UDP, and with the policies and advice on heritage assets in the NPPF.

Issue 4 – provision of affordable housing

58. The first deemed reason for refusal is as follows: *"The appellant has not accepted the principle of a post-construction review of the amount of affordable housing to be provided in the scheme. As such the affordable housing proposal*

is not in accordance with (policies 3.12 of the LP, policies H4 and H14 of the UDP, policy H3 of the CS) and the KDASPD”.

59. The pressing and ever-increasing need for substantial levels of affordable housing in London, including RB Greenwich, is well established. In Kidbrooke – an “area of intensification” in the LP – there is a particular need under UDP saved policy H4 to replace 1900 dwellings from the former Ferrier estate. This requirement is stated in the housing chapter of the KDASPD, which says at para. 4.3 that a minimum of 43% affordable housing will be provided across the KDA, with a minimum of 50% in “greenfield locations”.
60. The Huntsman is one such. UDP policy H4 reiterates the 50% requirement for the KDA. This is well above the borough wide target (stated in UDP para. 3.43) of 35% provision.
61. UDP policy H14 also sets out criteria for determining affordable housing provision, and its reasoned justification notes that while there is a presumption in favour of on site provision where this is viable, off-site provision or financial contributions towards affordable housing elsewhere may, exceptionally, be acceptable.
62. Relevant LP (2011) policies include policy 3.11 *Affordable housing targets* and policy 3.12 *Negotiating affordable housing on individual private residential and mixed use schemes*. The latter states that, in negotiating schemes, “the maximum reasonable amount” of affordable housing should be sought. Both policies refer to viability as a factor to be taken into account, both in setting borough-wide targets in development plans and in individual schemes.
63. By way of a planning obligation at the application stage, the appellant offered 34 (26% of 131) of the proposed dwellings as affordable units. The Council accepted that, as matters then stood, this was the maximum amount that could viably be provided having regard to the developer’s toolkit analysis carried out earlier in 2013; nevertheless, it would fall well short of the affordable housing provision expected by the relevant development plan and SPD policies, as outlined above.
64. Thus the Council says that permission for the scheme should not be granted in the absence of an affordable housing review mechanism. This, it argues, and particularly in the present context of rising land and house prices in London, should occur following the commencement of the development - the London Mayor’s Housing SPD (November 2012, post NPPF) envisages that such reviews (resulting in “contingent obligations”, SPD para. 4.4.40) can take place during delivery of a scheme, and there is nothing to prevent the principle being extended to reviews close to project completion.
65. It is agreed that the affordable housing component of the scheme should be provided through the mechanism of a unilateral planning obligation. The Council considers that this should comprise (as agreed by the appellant) a first stage affordable housing (and financial contributions) review, undertaken by the developer and submitted to and approved by the Council prior to implementation of the scheme; and also a second review, again to be undertaken by the developer and submitted to the Council within 3 months of the sale of 90% of the private dwellings for its approval prior to the occupation of 95% of them. This, it says, would not be asking the developer to provide affordable housing beyond the policy targets. It would also meet the

Community Infrastructure Levy (CIL) regulations, by virtue of being necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The Council notes that similar arrangements have been applied to a number of other large residential schemes in the borough.

66. The appellant does not accept the principle and timing of a second review as sought by the Council. Mr. Collins explains this by reference to his interpretation of the policies and guidance mentioned above, as well as to the RICS guidance, *Financial Viability in Planning* (August 2012). Nevertheless, the signed unilateral undertaking submitted soon after the Inquiry [Doc 6] includes provision for a maximum contribution of £1,550,000 towards offsite affordable housing, subject to the Inspector's (my) finding that such a sum is properly due. This undertaking supersedes the original unilateral undertaking dated 13 November 2013. It does not alter the offer in the obligation of 34 (26%) affordable dwellings on the appeal site itself.
67. Despite the appellant's objection to it, I support the Council's approach in this matter. There is legitimate scope within the terms of current development plan and SPD policy to conduct a post-implementation viability review, in order to determine the appropriate level of provision of affordable housing for The Huntsman site, both on site and as financial contributions off-site. However, this review cannot be finalised until some time after development commences, and that in turn cannot occur until after planning permission is granted; therefore I do not comment further upon the overall affordable housing offer in the revised unilateral planning obligation. It follows that, as matters currently stand (at the date of this decision), the proposed development may not make adequate provision for (on- and off-site) affordable housing, in line with development plan and SPD policies.

Issue 5 – whether the scheme represents an unacceptable under-development of the site

68. This issue is raised by the Council but, with the exception of the Blackheath Society, is not pursued by the Rule 6 or other 3rd parties. Noting that (largely for reasons of localised development impact) the proposed number of units in the scheme was twice revised downwards prior to the lodging of the appeal, the Council maintains that the scheme has also in part been driven by a Cator estate covenant from the 1950s which, it says, has resulted in too large a proportion of detached dwellings, as opposed to other types of houses and flats. This has resulted in a failure to achieve the maximum "residential output" of the site, and the best use of urban land, contrary to policy D1 of the UDP, policy 3.4 of the LP and policy DH1 of the emerging CS.
69. To support this position the Council's design advisor (Mr. K. Hughes) drew up a sketch scheme⁸ prior to the Inquiry intended to demonstrate that the site could readily accommodate 18 additional dwellings by replacing most of the detached houses with a mix of smaller terraced houses and flats. This, the Council maintains, need not compromise the scheme's provision of affordable housing.
70. The appellant rejects these criticisms. In a closely argued analysis of development plan and other relevant density policies⁹, Mr. Collins says that the

⁸ Mr. Gittens's proof, appendix 4.4

⁹ Including table 3.2 "Density Matrix" in the London Mayor's Housing SPD, November 2012

policies seek broadly to “optimise” rather than maximise the number of units from the scheme. Within the design process, this involved a careful consideration of the local context, and the need to regard the scheme as transitional in character between the more urban densities and built forms of the KDA to the east, and the more suburban characteristics of the Cator estate to the north and west. He concludes that the scheme’s proposed density of 65 d.p.h. accords with the requirements of UDP policy H9, the LP, and the emerging CS. And, given the salience of density measurements in this matter, it follows that the scheme does not represent an under-development of The Huntsman.

71. Although the various development plan and other density policies provide both flexibility and scope for interpretation, on this matter I tend on balance to agree with the appellant. To my mind, the scheme’s proposed density and unit mix would not clearly conflict with any development plan policy; in addition, there is some merit in regarding the scheme as being transitional in character between the KDA and the Cator estate. I therefore consider that it does not represent an unacceptable under-development of the site.

Issue 6 – effect on 83 and 83A Brooklands Park

72. One of the putative reasons for refusal refers to the effect of the development, specifically the 2 houses in the north-west corner of the site, upon the 2 semi-detached 2 storey dwellings at 83 and 83a Brooklands Park¹⁰, which are accessed via a narrow private drive just north of the bend linking Brooklands Park with Manor Way. Several habitable rooms at both the ground and first floors in those dwellings, particularly at No. 83A, face The Huntsman to the south.
73. During my accompanied site visit, I looked closely at the relationship between them and the siting and dimensions of the proposed dwellings, and the critical distances and angles of separation. I also visited No. 85 Brooklands Park, a bungalow further to the east which lies at the end of the drive, but I agree with the main parties that the residential amenity of that house would not be significantly harmed by any overbearing proximity from the nearest proposed buildings in that part of the appeal site.
74. With respect to Nos. 83 and 83A, the relationship is closely examined in both Mr. Gittens’s evidence for the Council, and by Mr. Harvey, who includes further analytical drawings (numbered Zsk3 and 4) in appendix 30 to his proof. Relevant distances of separation are not in dispute.
75. In short, I agree with the Council that the 2 nearest dwellings, numbered 1 and 2 on the application plans, together would have an unacceptably overbearing proximity to 83A Brooklands Park, in particular, although No. 83 would also be adversely affected albeit to a lesser extent. The main impact would arise from proposed house 1. It would be experienced by the residents particularly in the south-facing habitable rooms of Nos. 83 and 83A, and would significantly harm the residential amenity of those rooms. The effects would be caused in part by the narrowness of the access drive, which is one reason for the close proximity of the houses in question. In my judgement, it would not be mitigated by any retained trees just within the appeal site, particularly as branches from those

¹⁰ These appear to be late Victorian, but with later additions, including a recently completed extension to No. 83A which has no windows facing the appeal site

trees would probably need to be removed so as not to impinge upon the natural lighting to or the rear amenity space of the proposed dwellings.

76. The overbearing effects on Nos. 83 and 83a Brooklands Park would be contrary to relevant UDP design policies, as stated in the reason for refusal, and to one of the Framework's core principles (para. 17) "always to seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings".
77. As previously mentioned, the appellant tabled revised drawings [in Doc 18] showing 2 alternative schemes which would either reduce the size of proposed house 1, or omit it altogether from the scheme. In my opinion, the proposed reduction in size would not entirely overcome the problem of overbearing proximity. I agree however that the deletion of the dwelling would overcome the problem with respect to Nos. 83 and 83A Brooklands Park. Nevertheless, I am not minded to accept the relevant revised drawings under the *Wheatcroft* procedure because by themselves they would not make the scheme acceptable, given also the problems associated with a western access, which could only be resolved by a more thoroughgoing re-design of the scheme. In any revised application, both issues would need to be addressed.

Planning conditions and obligation

78. Doc 7 is a list of some 56 mainly agreed¹¹ planning conditions in the event of a successful appeal. I agree that many if not all of them (albeit with some combination and revised wordings in the interests of economy and conciseness) would be necessary to the grant of planning permission, but in view of my decision to dismiss the appeal I see no need to discuss them individually or in detail.
79. The appellant also submitted a unilateral planning obligation in support of the application, which was revised after the Inquiry in response to comments from the Council and 3rd parties and subsequently signed and executed [Doc 6].
80. Other than its arrangements for on-site and off-site affordable housing, the obligation's main provisions cover financial contributions by the developer towards various items of community infrastructure. These include: the Council's employment and skills initiative; its air quality action plan; education facilities; health facilities; social services; local community facilities; emergency services; public safety facilities; sports and leisure facilities; a cultural strategy; waste management; public transport improvements; and public open space. In view of my decision to dismiss the appeal on other grounds, I do not consider these provisions further.

Summary of conclusions on the main issues

81. Owing to the position of the principal access in the west, the proposed development would fail to be properly integrated with the remainder of the KDA (main issue 1). By bringing a significant volume of vehicular traffic to that long moribund point of access, it would also tend to some extent to harm the character of the nearby parts of the adjacent Blackheath Park CA (main issue 3ii). I also have serious concerns about the western access in terms of highways and pedestrian safety (main issue 2). In addition, the scheme would

¹¹ i.e. between the main parties

- harm the residential amenities of Nos. 83 and 83A Brooklands Park by reason of the overbearing proximity of the nearest new dwelling (main issue 6).
82. These harmful effects would conflict with relevant national and local planning policies, as stated in the putative reasons for refusal.
83. On the positive side of the planning balance the scheme would put this long-vacant site to beneficial use, and would make a significant contribution to the completion of the KDA, a major scheme of regeneration in this part of Greenwich. It would deliver 131 new dwellings there, including a proportion of affordable housing, together with a financial contribution towards off-site provision (main issue 4). The scheme would not represent an unacceptable under-development of the site (main issue 5). Nor would it significantly harm the appearance or setting of the Blackheath Park CA (main issue 3i).
84. Overall, I take a more sanguine view of the proposed development than does the Council, the Rule 6 parties, and other objectors. Nevertheless, I conclude that the appeal scheme has significant defects which on balance make it unacceptable. I therefore dismiss the appeal and refuse planning permission.
85. I have considered all the other matters raised at the Inquiry and in written representations, both at the application and the appeal stages, but there are none which alter or outweigh my conclusions on the main town planning issues.

Paul Dobsen

INSPECTOR

Paul Harpin
Mark James
Alex Grant

Borough Councillor
Borough Councillor

DOCUMENTS (tabled at the Inquiry and not listed under core documents)

- 1 Lists of persons present at the Inquiry
- 2 Letters of notification of the Inquiry
- 3 Written responses to Doc 2, and written statements at Inquiry by 3rd party objectors
- 4 Statement of Common Ground 1, final version (Planning matters)
- 5 Statement of Common Ground 2, final version (Transport matters)
- 6 Unilateral planning obligation submitted by the appellant, dated 4 February 2014 (completed shortly after the Inquiry)
- 7 List of 56 suggested planning conditions in the event of a successful appeal
- 8 List of core documents, final version (prepared by the appellant)
- 9 Drawing 208144/17/ rev G showing proposed access design, with Mr. Rust's handwritten indication of pedestrian crossing point, tabled by the appellant
- 10 3 legal judgments, tabled by the appellant in closing submissions
- 11 CD105 ground floor site layout, with locations and areas of play spaces added, tabled by the appellant
- 12 Greenwich UDP 2006 proposals map, tabled by the Council
- 13 Blackheath Park Conservation Area boundary plan, tabled by the Council
- 14 LPA cabinet committee report dated 13/5/08 re Kidbrooke SPD, tabled by the Council
- 15 LPA report re Borthwick Street Deptford development, tabled by the Council
- 16 Axonometric diagram of development and surroundings by Mr. Watkins, tabled by Mr. Hine for The Blackheath Society
- 17 Suggested amendments to planning conditions, tabled by BPCG
- 18 Bundle of revised drawings and other material dated 9 December 2013, submitted by the appellant

PLANS

- A The application plans (listed in Doc 8)