

In relation to housing, I would also like to point out that the Council only updated its Monitoring Report on Housing AFTER the final consultation on the Local Plan. Yet the earlier version was referred to in its response to a specific query re SA24 and was provided alongside other materials on its website. The version added a month or so ago had an allocation for SA24 of 500 to 600 units; the earlier version everyone was invited to comment upon as part of the evidence base had an allocation of under half that number. On being probed, the Council stated the rationale for the change (ignoring for one moment the procedural inadequacies) was that the developer had told it it could achieve the higher number. No independent investigation or otherwise. Of all the acceptable and supportable substantive reasons for determining a higher allocation, for a planning department to simply say 'this is what the developer told me' is staggering, but sadly not surprising here.

In relation to the SA24 hearing, I vehemently hope the 'need for a secondary school' will explore all pertinent issues in relation to the taking of that decision, including (i) whether it is legal and sound to reverse the primary school provision previously allocated to the site in view of current data on primary school admissions (released this week) and (ii) irrespective of the need for a secondary school in the Borough, whether this site remains appropriate to house a large secondary school in light of the particular circumstances of the site and the consequent impact on the local area and local stakeholders.

For detailed discussion on these, I would invite you to read my representations made previously (attached again for reference) - the Council (a) hid these away in a schedule to their summary provided to the inspector and (ii) erroneously stated that the Local Plan is not the appropriate place to consider these issues. This is PRECISELY the forum for consideration of these issues.

As noted, I will be attending both personally and on occasions on behalf of Mortlake Brewery Community Group. It is possible that a representative from the Environmental Law Foundation will also attend with me.

Local Green Space (LGS) application - further statements

I have reviewed in detail the Council's very recent response to the LGS application made in relation to the playing fields on the site of SA24.

Before I comment on specific procedural and substantive issues relevant to the Council's recent responses, there is a worrying emerging reality that the Council is in cahoots with the acquirer of the land to allow the developer to build over the (OOLTI designated) playing fields in return for the developer accepting a secondary school on the site that was not on the developer's radar when it acquired the site. This arrangement is intended to by-pass all planning laws and due process. You will have noted the volume of responses and strength of feeling of the community in the Local Plan responses - I very much hope that the Local Plan examination will offer the opportunity, within the context of the Local Plan, for the inspector to probe and address this issue.

Two initial points of process on the LGS application to draw to your attention before I move on to substantive points:

1. The Council only gave the slightest indication that it would no longer be protecting the playing fields in the FINAL draft of the local plan made available for consultation. Not in either of the first two drafts consulted upon. So there was no earlier opportunity for us to raise this with the Council or seek earlier protection. Until then, the community was assured by the present of the 2011 planning brief for the site and the OOLTI designation that the Council would protect the land as it had previously undertaken to do so.
2. An application for LGS designation was made within a month of the community becoming aware of the Council's apparent u-turn on the playing fields. The Council planning department advised me by email that it wouldn't be able to consider this issue and would instead refer it to the planning inspector. I queried whether it

might not be best (in accordance with stated best practice) to address the issue and produce an addendum in order that the inspector need not review a local plan which contained an uncertainty that would materially affect a material part of the Local Plan. The Council refused. Only when the inspector asked the Council to respond to representations did the Council review the application. It is those responses contained in the following document to which I am responding below:

https://www.richmond.gov.uk/services/planning/planning_policy/local_plan/local_plan_review/local_plan_examination/examination_documents

To pick up briefly on the reasons for declining the application:

1. The site is not allocated for development within the Local Plan.

The playing fields are not allocated for development within the Local Plan, even though the broader SA24 will be if the Local Plan is adopted in its present form. To the contrary, the Local Plan expressly endorses the existing 2011 adopted planning brief for the site. That planning brief expressly seeks to protect the playing fields, which are also subject to existing OOLTI protection which would limit development. So to grant an LGS for the playing fields would be entirely consistent with the brief and therefore the Local Plan - which in general terms also seeks to protect greenfield sites and advocate building on brownfield sites (in line with NPPF and London Plan requirements).

Furthermore, although RBC is somewhat behind the curve when compared to other local authorities in that it has yet to publish guidance encouraging communities to make requests for inclusion in Local Plans and Neighbourhood Plans, those authorities that have done so include an exception in relation to this criteria which states '*unless it can be shown that the Local Green Space could be incorporated within the site as part of the allocated development.*' As there is a supplementary planning brief which shows exactly how the green space is intended to be incorporated within the allocated development, this criterion should be deemed satisfied.

Secondly, in any event, the Local Plan expressly endorses the existing 2011 planning brief for the site. That planning brief sought to protect the playing fields. So to grant an LGS for the playing fields would be entirely consistent with the brief and therefore the Local Plan. Furthermore, because of the points of process raised above (i.e. the Council's u-turn was only introduced in the final round of consultation) the Council must not be able to rely on its own shortcomings and change of position to the detriment of those who had a legitimate expectation that the Council would continue to support the protect of the playing fields through the earlier versions of the local plan which endorsed the 2011 planning brief.

2. OOLTI designation provides sufficient protection

The maxim *res ipsa locitur* speaks volumes here. The Council indicates that the existing OOLTI designation offers meaningful protection of the playing fields. Yet on the other hand says that LGS should not be granted as it would prevent the Council from taking steps to allow the removal of the playing fields. If the Council really believed that the OOLTI designation would be sufficient to prevent development of the type the community is concerned will be allowed, it would not be frustrating this application. It is plain from the developer's emerging plans - which show a large secondary school and housing being built on the grass playing fields - that the OOLTI exceptions are not intended to be used in the sense intended by OOLTI (e.g. minor changes to an existing sports hut) but instead to usurp the protection intended entirely. And it is for precisely that reason that the local community DOES require the LGS protection that we have long understood from the Council would provide appropriate protection and can no longer rely solely on OOLTI. The inspector is invited to reach his own conclusions as to why the Council might be taking this position - but the fact it has imposed a large secondary school on the developer in a manner inconsistent with the existing planning brief may well have a lot to do with it.

3. Frustration of development

Again, it is barely conceivable that this is being raised as an argument, and this point has, in NPPF requirement terms, been addressed at point 1 above. The whole purpose of the LGS designation being introduced by the NPPF is to allow local communities to protect tracts of land from development. That is the purpose of any such designation: to ensure that something remains in its current state. To suggest that an application for a planning designation intended to protect against development should fail because it might protect against development is baffling. What would, in fact, run contrary to the purpose of the NPPF would be to uphold that a proposed development could be used to impede an LGS application: if the developer were to put in an early application, before this issues has been resolved, that would be a frustration of planning laws. I hope this won't occur - but would invite the inspector to be alert to it.

I hope the above further statements are clear and are limited to matters which have come to light only since the original LGS representations were made, but please do not hesitate to contact me should you have any questions. This is a really solid application and is nearly as close as one could hope to get to falling squarely

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within every requirement of the NPPF: that's exactly why the Council saw fit to fullest extent allowed by law in 2011 when undertaking to protect it, and exactly why it deserves the fullest protection it can be given under current laws, i.e. LGS.

Thanks again for your time

Best regards

Max Millington.

Summary of representations

1. National Planning Policy Framework and Sustainability Appraisal Report	
A	Non-compliance with National Planning Policy Framework: playing fields
B	Non-compliance with National Planning Policy Framework: secondary school
C	Sustainability Appraisal Report inadequate as regards SA 24; incompatible with EU directive
2. Requirement for a large secondary school on the Site	
A	Will not allow overarching aims for the Site and the 2011 adopted planning brief to be implemented.
B	Will have a disproportionate impact on the local community
C	Inadequate consideration of consequences of such a requirement
D	Procedural irregularity: failure to consult in same degree of detail as 2011 adopted planning brief
E	Need for a secondary school on the Site not made out as a matter of law or fact, including failure to comply legally
3. Housing	
	Local Plan to clarify expectations for residential units based on 2011 development brief findings, so as to ensure competing uses for the site are not jeopardised
4. Playing fields 'reprovision'	
A	Re-provision on Site not feasible; removal would be inconsistent with strategic objectives of the Local Plan
B	Removal of trees the subject of an extant tree preservation order
C	Removal would be prohibited following designation (application pending) as a Local Green Space

Rep 1A - Non-compliance with National Planning Policy Framework: re-provision of playing fields

Draft Local Plan provisions:

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) refers to 'the retention and/or reprovision and upgrading of the playing field'.

Issue: 'Reprovision' is undefined. However, any strategy which removes the playing fields from the Site altogether would be inconsistent with the requirements and policies of the National Planning Policy Framework.

Detail: The playing fields represent a significant portion of the site, measuring approximately two hectares. For reference, refer to page 5 of the following site marketing document (copyright acknowledged):

<https://www.geraldeve.com/wp-content/uploads/2015/08/Stag-Brewery-Mortlake-Brochure.pdf>

They house two playing fields. Those playing fields are enjoyed by many local residents and sports groups (such as Barnes Eagles) for sports activities, as well as affording residents an attractive green space. Other organisations also use the space during the week: for instance, they are used by the local primary school (Thomson House) which does not have a playing field and by the police to train dogs.

The playing fields have been a green space, special for many reasons, for as long as any local residents can remember.

At the north-western, north-eastern and southern boundaries of the playing fields a number of trees. Those trees are, I understand, the subject of a tree preservation order, details of which can be provided on request by Mortlake Brewery Community Group.

As well as being used by local residents, the playing fields are also home to a wide variety of animals, including foxes, parakeets and storks.

Indeed, such is the importance of the playing fields to the Site and the local area, that the Council saw fit, after a full statutory consultation process, to protect them for generations to come when adopting the 2011 APB.

The Draft Local Plan, in seeking to include 'reprovision', could be construed as reversing that protection. The Council has offered no explanation for the basis on which that would be consistent with the requirements of the NPPF, or the overarching principles stated in the Draft Local Plan.

Local Green Space designation

In order to formalise that protection, an application has been made by letter dated on or about 14 February 2017 to designate the playing fields as a Local Green Space pursuant to the National Planning Policy Framework. There appears to be a *prima facie* strong case for the playing fields to receive that designation, for the reasons set out in the letter.

As per section 1.1.5 of the Draft Local Plan, and at paragraph 76 of the NPPF, councils must take into account the National Planning Policy Framework when formulating the Local Plan; by designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.

As such, if that application is successful, as it is expected to be, it would not be possible to re-provide for the playing fields elsewhere. The reference to 'and/or re-provision' must be deleted (or made subject to the pending Local Green Space application) to avoid direct conflict with the requirements of the NPPF.

Community engagement

Para. 150 of the NPPF provides that, '*Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities.*'

It continues, at para. 155 of the NPPF '*Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area, including those contained in any neighbourhood plans that have been made.*'

The NPPF finally goes on to state, at para. 157, '*Crucially, Local Plans should ... be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations.*'

The Council has failed to engage with, and take in to due (if any) account, the clearly expressed views of the local community. Not only do the Council's consultation materials offer no evidence as to community support for the proposal to remove or re-provision the playing fields, they disregard:

- (i) the conclusions of the statutory consultation process which resulted in the adoption of the 2011 APB, which was that the playing fields should be retained and protected; and
- (ii) frequently and strongly expressed views by residents of properties adjacent to the playing fields and local representative groups, such as the Mortlake Brewery Community Group.

Furthermore, I understand (but have not verified) that Barnes Eagles football club and Sport England feel strongly on this issue, but have not been approached by the Council for consultation.

Impact on environment: impact on air quality

Para. 154 of the NPPF requires Local Plans to be aspirational but realistic. They should address the spatial implications of economic, social and environmental change. Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.

It continues to state, at para. 156, that '*Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to develop..*

climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.'

Para. 157 states, 'Crucially, Local Plans should:

- plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework;
- allocate sites to promote development and flexible use of land, bringing forward new land where necessary, and provide detail on form, scale, access and quantum of development where appropriate;
- identify land where development would be inappropriate, for instance because of its environmental or historic significance; and
- contain a clear strategy for enhancing the natural, built and historic environment, and sup

Para. 109 states that, '*The planning system should contribute to and enhance the natural and local environment by ... preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.*'

Further, at para. 110, it states: '*In preparing plans to meet development needs, the aim should be to minimise pollution and other adverse effects on the local and natural environment. Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework.*'

The playing fields are situated immediately adjacent to the Lower Richmond Road. Recent studies showed that this particular area, especially at Chalker's Corner (approx. 0.3km away), suffers from being one of the worst areas in London for air pollution.

Furthermore, it was identified as being a Council 'Air Quality Focus Area', such was the acknowledged poor level of air pollution and the potential for improvement.

The proposed 'reprovision' of the playing fields is strongly at odds with the Council's duties under the NPPF for two reasons. First, it by removing the playing fields, and the trees on that part of the Site, there will be a removal of the vegetation that mitigates the harmful effects of vehicular transport. Furthermore, and more significantly, the Council plans are widely expected to propose the establishment of a secondary school which will inevitably bring a further 1,400 people daily along this stretch of road and consequently slow other traffic in the area.

Does the Council seriously intend to site a secondary school for the Borough's children, and its staff, to both of whom they owe a duty of care, in the midst of a known pollution hotspot, which will become materially worse, when other options exist? If they do so, they do so with blood on their hands and a stream of litigation to follow for years to come, for which the Council, and individual Councillors, will be held responsible. But for present purposes, to do so would be an incontrovertible breach of para. 109 of the NPPF.

Impact on environment: failure to protect green space / impact on natural environment

The aforementioned provisions of paragraphs 154, 156, 157, 109 and 110 are equally of relevant here.

Furthermore, para. 100 of the NPPF states that:

'The planning system should contribute to and enhance the natural and local environment by:

- *protecting and enhancing valued landscapes, geological conservation interests and soils;*
- *recognising the wider benefits of ecosystem services;*
- *minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;...'*

Para. 111 then states that, '*Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land.'*

The playing fields are a greenfield site, and of high environmental importance. Planning policy must not seek to require development of such a site.

Further, to do so would prejudice the local eco-systems, which interact with those of the river just c.100m away.

To the contrary, the Local Plan should be actively seeking to promote the conservation of such sites. Accordingly, the Draft Local Plan should be amended to expressly provide for the protection of the playing fields.

Rep 1B - Non-compliance with National Planning Policy Framework: impact of requiring six-form entry, plus sixth form, secondary school

"Secondary Educational Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that 'The provision of an on-site new 6-form entry secondary school, plus sixth form, will be required'. It also states that 'Appropriate uses, in addition to educational, include...'.

Bullet point 4 below that box goes on to state that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council's School Place Planning Strategy. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

"Other Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) provides for 'a new village heart and centre for Mortlake'. It goes on to provide for a variety of intended uses, including residential, employment, health, community and social infrastructure facilities, sport and leisure uses. It also indicates that 'high quality open spaces and public realm' should be incorporated.

Bullet point 1 below the that box states 'The Council has produced and adopted a development brief in 2011 for the site, which sets out the vision for redevelopment and provides guidance on the site's characteristics, constraints, land use and development opportunities.'

Issue:

In providing for the requirement of a new six-form entry, plus sixth form, secondary school to be included on the Site, due account has not been taken of the requirements and policies comprised in the National Planning Policy Framework.

Detail:

The 2011 APB contemplated the provision, in the location set out in Appendix A thereto, of a two-form entry primary school. The Draft Local Plan, directly and indirectly through reference to the Council's School Place Planning Strategy and the Mortlake Village Planning Guidance SPD, seeks to replace that primary school (without consultation) with a secondary school.

A detailed consultation process, on the back of a myriad of studies, preceded the adoption of the 2011 APB. The 2011 APB therefore represented the considered views of experts and key stakeholders: whilst its conclusions were not shared by all, it represented a balanced view of what would create a deliverable, desirable and sustainable new village heart for Mortlake. That process expressly concluded that a primary school was to be preferred over a secondary school. It also took into account the need for some new residential allocation to make the project viable – albeit on a substantially low density basis – and included a variety of uses of the type included in the Other Uses set out in the Draft Local Plan.

This was the Council's and local stakeholders' collective vision as to what would deliver the primary objective just five years ago. Inherent in that exercise, and the selection and allocation of the Other Uses, was and is a recognition (i) that the site is of a finite size – allowing more space for one use will inevitably restrict available space for another use – and (ii) that those selections and allocations will have consequences in other areas, beyond site allocations, which must properly be taken into account. The 2011 APB therefore included a range of uses representing a considered compromise.

For further discussion of these choices and their consequences, please refer to representations 2 A to D.

The Draft Local Plan, in stark contrast to the 2011 APB, now seeks to adopt the Secondary Educational Purposes alongside (and to the inevitable detriment of) the Other Uses. It appears, however, to retain the same overriding objective.

Community engagement

Para. 150 of the NPPF provides that, '*Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities.*'

It continues, at para. 155 of the NPPF '*Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area, including those contained in any neighbourhood plans that have been made.*'

The NPPF finally goes on to state, at para. 157, '*Crucially, Local Plans should ... be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations.*'

The Council has failed to engage with, and take in to due (if any) account, the clearly expressed views of the local community. Not only do the Council's consultation materials offer no evidence as to community support for the proposal to require the Site to house a large secondary school and to remove or re-provision the playing fields, they disregard:

- (i) the conclusions of the statutory consultation process which resulted in the adoption of the 2011 APB, which was that a primary school should be preferred to a secondary school and that the playing fields should be retained and protected – they also reflected broad support for the Other Uses which would be jeopardised by the requirement for a large secondary school; and
- (ii) frequently and strongly expressed views by residents of properties adjacent to the Site and local representative groups, such as the Mortlake Brewery Community Group.

Material impediment to achieving sustainable development

Para. 151 of the NPPF provides that, '*Local Plans must be prepared with the objective of contributing to the achievement of sustainable development. To this end, they should be consistent with the principles and policies set out in this Framework, including the presumption in favour of sustainable development.*'

Para. 152. goes on to state, '*Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered.*'

The Other Uses comprised in the 2011 APB represent the culmination of detailed analyses of what could realistically be sustained on the Site for the benefit of local stakeholders. Documentation relating to the adoption of the plan provides many example of this. To select a few, it provided for:

- the construction of new housing (including affordable housing);
- new businesses of a type in-keeping with the local area and thus the creation of new jobs – especially relevant in view of the job losses stemming from the closure of the brewery;
- the provision of retail, leisure (including a new boat museum) and other commercial development;
- the provision of infrastructure for transport (including a potential relocation of Mortlake bus interchange) and the enhancement of the River Thames borders;
- a requirement for appropriate provision of local infrastructure and facilities (including a new primary school); and
- the protection of and enhancement of existing green spaces and landscape, such as Mortlake Green and the playing fields.

These all correspond to the strategic priorities contemplated by para. 156 of the NPPF and combine economic, social and environmental gains, with a view to providing a new village heart for Mortlake.

A draft site allocations plan was formulated (set out at Appendix A to the 2011 APB) to demonstrate how these competing demands could all be accommodated.

The Council, through the Draft Local Plan, now seeks to tear up that NPPF-compliant plan entirely by seeking to include, and even prioritise, the Secondary Educational Uses on the Site.

To be clear: this is not a 'minor tweak' which could be accommodated within the 2011 APB which was consulted upon: an area of the site allocated to accommodate 400 primary school children and staff will be replaced – somewhere on the Site - by buildings required to house 1,400 secondary school children and staff. This could effectively render redundant the entire scheme promulgated by the 2011 APB, which the Local Plan otherwise purports to safeguard. And other aspects will inevitably suffer. The Council has offered no evidence to the contrary. Indeed, the Council has offered no evidence of having properly considered the consequences of promoting the Secondary Educational Uses on sustainable development of the area at all.

The clear consequence of this is that the Other Uses will inevitably, and disproportionately, be prejudiced.

And, significantly, the plan will no longer be compliance with the requirements of paragraphs 151, 152 and 156 of the NPPF.

Draft Local Plan is insufficiently clear

Para. 154 requires that '*Local Plans should be aspirational but realistic. They should address the spatial implications of economic, social and environmental change. Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.*'

Allied to the considerations set out under 'Material impediment to achieving sustainable development' set out above, the Council seeks in the Draft Local Plan:

- (i) on the one hand, to require that the Secondary Education Uses be incorporated; yet
- (ii) on the other hand, to provide an over-arching aim of creating a new village heart for Mortlake through promoting a multi-use site incorporating the Other Uses and safeguarding the 2011 APB conclusions.

For the reasons set out in other representations, it is firstly highly doubtful that this can be successfully achieved at all, and second offers no guidance to a decision maker as to how this could or should be achieved in a development proposal.

It is entirely unrealistic. It becomes all the more unrealistic when the consequences of a requirement for a secondary school are considered further: these are subject to further studies and analyses which will, one suspects, demonstrate firstly that a secondary school is not in fact or law 'clearly' required on the Site (as the Draft Local Plan suggests) and second that including it will, when considered in tandem with the new housing required to make the development viable, result in legal /safe recommended levels of air pollution being exceeded and/or Local Green Space designations and/or tree preservation orders being breached.

The requirement for a secondary school on the Site must be struck out.

Preference for secondary school over primary school

There is nothing in the NPPF which requires the Council to prioritise secondary education over sustainable development, or primary education.

To the contrary – express mention is made (at para. 38) to ensuring that in large-scale developments, such as the present one '*Where practical, ... key facilities such as primary schools and local shops should be located within walking distance of most properties.*' The Council is expressly seeking to remove the primary school, required by the 2011 APB, from the Site.

Inappropriate use of additional development plan documents

Para. 153 states '*Each local planning authority should produce a Local Plan for its area. This can be reviewed in whole or in part to respond flexibly to changing circumstances. Any*

additional development plan documents should only be used where clearly justified. Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.'

The School Planning Place Strategy, referenced in the Mortlake Village Plan and the Draft Local Plan, *de facto* constitutes an additional development plan document. That is the document through which the Cabinet of the Council, purported to take the decision in 2015, without consultation, to replace the viable scheme including a primary school, with the scheme containing a secondary school (and possibly very little else).

The need to usurp the existing scheme set out in the 2011 APB (itself a supplementary planning document) with a secondary education requirement is far from clearly made out for the reasons discussed at length in representations 2E to G.

Without undermining any one of those points, it is worth noting that:

- (i) that decision focussed solely on supply and demand needs for the eastern part of the Borough, *not* the suitability, viability or sustainability of the Site as the right place to satisfy the perceived shortfall – it also expressly acknowledged the need to undertake further studies as pre-conditions to the Site being accepted as the correct site for a secondary school, none of which I am aware have to date taken place;
- (ii) contrary to para. 158, no proportionate evidence base of the impact of that decision was made, not least on the Other Uses; and
- (iii) that decision, alongside some twelve other matters under consideration, appears from the minutes to have been taken in just seventeen minutes, suggesting procedural irregularities, or at least a failure to take due account of all relevant factors and/or giving undue weight to an irrelevant or immaterial factor.

The above-referenced documents must therefore be disregarded in formulating planning policy, save to the (very limited) extent they offer evidence of a matter that is itself worthy of consideration in due course (but not for the purpose of the Local Plan).

Impact on environment: impact on air quality

Para. 154 of the NPPF requires Local Plans to be aspirational but realistic. They should address the spatial implications of economic, social and environmental change. Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.

It continues to state, at para. 156, that 'Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to develop.. climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.'

Para. 157 states, 'Crucially, Local Plans should:

- plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework;
- allocate sites to promote development and flexible use of land, bringing forward new land where necessary, and provide detail on form, scale, access and quantum of development where appropriate;
- identify land where development would be inappropriate, for instance because of its environmental or historic significance; and
- contain a clear strategy for enhancing the natural, built and historic environment, and sup

Para. 109 states that, '*The planning system should contribute to and enhance the natural and local environment by ... preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.*'

Further, at para. 110, it states: '*In preparing plans to meet development needs, the aim should be to minimise pollution and other adverse effects on the local and natural environment. Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework.*'

The Site borders, for the full extent of its southern end, the Lower Richmond Road. Recent studies showed that this particular area, especially at Chalker's Corner (approx. 0.3km away from the south-western point of the Site), suffers from being one of the worst areas in London for air pollution.

Furthermore, it was identified as being a Council 'Air Quality Focus Area', such was the poor level of air pollution and the potential for improvement.

The proposed requirement for the Secondary Educational Purposes is strongly at odds with the Council's duties under the NPPF for two reasons. First, by removing the playing fields, and the trees on that part of the Site, there will be a removal of the vegetation that mitigates the harmful effects of vehicular transport. Furthermore, and more significantly, the Council plans are widely expected to propose the establishment of a secondary school which will inevitable bring a further 1,400 people daily along this stretch of road. There is no way to accommodate this number of daily visitors to the Site without materially and prejudicially impacting air quality levels at a site which is already incontrovertibly one of the worst in London.

Impact on playing fields

For specific discussion around the impact of the inclusion of a secondary school on the site of the playing fields, please refer to separate representation 1A.

Rep 1C - Sustainability Appraisal Report shortcomings

Issue:

The table at pages 107 to 109 of the Sustainability Appraisal Report in relation to SA 24 (i) omits to consider certain points of material importance; (ii) relies in certain regards on irrelevant issues and (iii) attributes an incorrect weighting to the positive and negative factors under consideration. This also provides strong evidence that the Council has failed to comply with European Directive 2001/42/EC.

Detail:

Row 3 - travel - the brewery has already ceased operations so there is no positive here, and the combination of a new school, housing and businesses will have a material and negative impact on traffic and public transport

Row 4 - climate change mitigation - the increased traffic referred to above will materially and negatively impact emissions

Row 6 - biodiversity - if any part of the playing field and/or trees are removed, this will be a negative

Row 7 - landscape and townscape - if a large secondary school is required, this will be a negative

Row 8 - parks and open spaces - if any part of the playing fields are to be removed, this will be a material negative

The summary of assessment at the foot of the table should be updated accordingly, to include references to negative impact on environment and parks and open spaces and negative impact a large secondary school would have on availability of land for other uses.

Non-compliance with EU law – environmental assessment

Planning authorities, such as the Council, must also undertake an SEA in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 which implement the European Directive 2001/42/EC on 'the assessment of effects of certain plans and programmes on the environment' (the 'strategic environmental assessment' directive or SEA Directive) in England.

The Directive describes the objective of SEA as to "provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans... with a view to promoting sustainable development".

For the reasons set out in these representations, in particular that the proposals in SA 24 as regards (i) a new large secondary school and (ii) removal of the playing fields, as well as any proposal to increase the residential housing allocation, will inevitably take the Lower Richmond Road and environs above legal and/or recommended safe levels of noxious gas emissions. The Council has failed to demonstrate – or even properly acknowledge – the impact of this or how (if even possible) it would be mitigated.

Rep 2A - Requirement for secondary educational use renders overriding objective and other uses very difficult, if not impossible, to achieve.

Draft Local Plan provisions:

"Secondary Educational Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that 'The provision of an on-site new 6-form entry secondary school, plus sixth form, will be required'. It also states that 'Appropriate uses, in addition to educational, include...'.

Bullet point 4 below that box goes on to state that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council's School Place Planning Strategy. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

"Other Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) provides for 'a new village heart and centre for Mortlake'. It goes on to provide for a variety of intended uses, including residential, employment, health, community and social infrastructure facilities, sport and leisure uses. It also indicates that 'high quality open spaces and public realm' should be incorporated.

Bullet point 1 below the that box states 'The Council has produced and adopted a development brief in 2011 for the site, which sets out the vision for redevelopment and provides guidance on the site's characteristics, constraints, land use and development opportunities.'

Issue: To give effect to the Secondary Educational Uses on the site will render the Other Uses impossible to implement. This includes the stated overriding objective for the site, which has since 2010 been to create a new village heart for Mortlake. It cannot be the intention of applicable planning legislation and policies for one single use – opposed by local stakeholders – to have 'backdoor' primacy in this way: the entire exercise would be futile and all references to the Other Uses would be redundant. The Council has yet to produce any plan or study showing the feasibility of the Other Uses if the Secondary Educational Uses are pursued. The Draft Local Plan text should be amended as set out in the following section of these representations.

Detail: The 2011 APB contemplated the provision, in the location set out in Appendix A thereto, of a two-form entry primary school. The Draft Local Plan, directly and indirectly through reference to the Council's School Place Planning Strategy and the Mortlake Village Planning Guidance SPD, seeks to replace that primary school (without consultation) with a secondary school.

A detailed consultation process, on the back of a myriad of studies, preceded the adoption of the 2011 APB. The 2011 APB therefore represented the considered views of experts and key stakeholders: whilst its conclusions were not shared by all, it represented a balanced view of what would create a deliverable, desirable and sustainable new village heart for Mortlake. That process expressly concluded that a primary school was to be preferred over a secondary school. It also took into account the need for some new residential allocation to

make the project viable – albeit on a substantially low density basis – and included a variety of uses of the type included in the Other Uses set out in the Draft Local Plan.

This was the Council's and local stakeholders' collective vision as to what would deliver the primary objective just five years ago. Inherent in that exercise, and the selection and allocation of the Other Uses, was and is a recognition (i) that the site is of a finite size – allowing more space for one use will inevitably restrict available space for another use – and (ii) that those selections and allocations will have consequences in other areas, beyond site allocations, which must properly be taken into account. The 2011 APB therefore included a range of uses representing a considered compromise.

The Draft Local Plan, in stark contrast to the 2011 APB, now seeks to adopt the Secondary Educational Purposes alongside the Other Uses. It appears, however, to retain the same overriding objective.

In order to deliver that overriding objective, it appears inconceivable that the Secondary Educational Purposes could be included, and even be given priority over the Other Uses (as appears to be the case by stating this the Secondary Educational Purpose 'will be required' and that the Other Uses are, 'in addition to educational').

In assessing this, one must look at the characteristics of a six-form entry, plus sixth form, secondary school, and then consider the impact that will have. (Something the Council appears to have failed to do).

First, in terms of numbers. I would estimate circa 1,300 pupils, being seven years multiplied by 30 pupils multiplied by six forms. Teaching staff, specialist staff – such as music and sports, canteen staff, management, contractors and maintenance staff - would typically be expected to amount to between 60 and 200. That means one must be looking at around 1,350 to 1,500 people attending the site on a daily basis – possibly more, for instance visiting school children attending for sports events.

By way of context, the village of Mortlake presently has approximately 2,000 residents I am told. So this would be a huge impact on existing daily people flows.

One must also consider the size of the site allocation for such a school. This is not set in stone. I attended a school of marginally fewer pupils (c.1,080), with a site size bigger than the entire Site. If the Council were to construct a school based on educational norm design standards for the most compact school contemplated – and do taxpayers and the electorate really want to settle for the bare minimum in the Borough, or should we be aiming higher? – that would require a site size of about 1.5 to 2 hectares. But that disregards parking space and spaces for buses and other transport to park and turn around. So the true site requirement will be significantly bigger – a minimum of 2.5 to 3 hectares would seem reasonable.

The overall Site amounts to 8.6 hectares, of which significantly less is built upon and should thus provide the maximum footprint for any new development. In contrast, a primary school built on the same basis and of the type contemplated by the 2011 APB would require 0.5 to 0.75 hectares.

So the space available for allocation to elements critical to a sustainable development (housing (including affordable), commercial, social, green spaces) would need to shrink by a minimum of 2 hectares. Or by a third. And probably more in practice.

The relevance of this is very simple: including a six-form entry, plus sixth form, secondary school on the site will have a significant, and potentially fatal, impact on the deliverability of the overriding objective for the site and the Other Uses which local stakeholders value have repeatedly, over many years, asked the Council to commit to include in the Local Plan.

Will the housing requirements be decreased commensurately? From 390 dwellings approved at the time of the 2011 consultation (or 200 to 300 as per the Council's latest Authority Monitoring Report on Housing 2014/15, page 18), to say 100 now, of which 40 to 50 affordable? That would hardly be consistent with national and London planning guidance.

Finally, and taking a step back, the stated overriding objective is to deliver a new village heart for Mortlake. It forms part of the Village Plan. No village would surely ever be planned to incorporate a school of the size of school of this nature and size. The Local Plan for Mortlake simply cannot conceivably be delivered in its present form if the Council retains the six-form entry, and sixth form, secondary school.

If you were to ask the man on the Clapham omnibus what they would want to see in a village, be that in terms of what a village requires to be desirable, to function sustainably, or to be attractive – they surely would not opt for a secondary school, let alone one of this size. The Draft Local Plan speaks of vibrancy: what is vibrant about an enclosed, private concrete jungle, that will be closed evenings and weekends, serving pupils who commute in from outside of the local area?

This must not be allowed to proceed.

If it were the Council's intention no longer to pursue the objective of a new village heart for Mortlake incorporating the Other Uses, the Council would be duty bound to have consulted from the start on that basis to enable due representations to be made - and the proposal to be overturned on any one of a number of bases. The Draft Local Plan therefore additionally suffers from procedural inadequacies in this regard.

Rep 2B - Primacy of secondary educational use over other uses: disproportionate impact

Draft Local Plan provisions:

"Secondary Educational Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that 'The provision of an on-site new 6-form entry secondary school, plus sixth form, will be required'. It also states that 'Appropriate uses, in addition to educational, include...'.

Bullet point 4 below that box goes on to state that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council's School Place Planning Strategy. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

"Other Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) provides for 'a new village heart and centre for Mortlake'. It goes on to provide for a variety of intended uses, including residential, employment, health, community and social infrastructure facilities, sport and leisure uses. It also indicates that 'high quality open spaces and public realm' should be incorporated.

Bullet point 1 below the that box states 'The Council has produced and adopted a development brief in 2011 for the site, which sets out the vision for redevelopment and provides guidance on the site's characteristics, constraints, land use and development opportunities.'

Issue: By seeking to promote the Secondary Educational Uses as it does, the Draft Local Plan disproportionately seeks to deliver one design feature / use over all others, to the disproportionate detriment of those other uses, to the extent it impacts delivery of the overriding objective for the site as stated in the 2011 APB and the present Draft Local Plan: to create a new village heart for Mortlake.

Detail: The 2011 APB contemplated the provision, in the location set out in Appendix A thereto, of a two-form entry primary school. The Draft Local Plan, directly and indirectly through reference to the Council's School Place Planning Strategy and the Mortlake Village Planning Guidance SPD, seeks to replace that primary school (without consultation) with a secondary school.

A detailed consultation process, on the back of a myriad of studies, preceded the adoption of the 2011 APB. The 2011 APB therefore represented the considered views of experts and key stakeholders: whilst its conclusions were not shared by all, it represented a balanced view of what would create a deliverable, desirable and sustainable new village heart for Mortlake. That process expressly concluded that a primary school was to be preferred over a secondary school. It also took into account the need for some new residential allocation to make the project viable – albeit on a substantially low density basis – and included a variety of uses of the type included in the Other Uses set out in the Draft Local Plan.

This was the Council's and local stakeholders' collective vision as to what would deliver the primary objective just five years ago. Inherent in that exercise, and the selection and allocation of the Other Uses, was and is a recognition (i) that the site is of a finite size – allowing more space for one use will inevitably restrict available space for another use – and (ii) that those selections and allocations will have consequences in other areas, beyond site allocations, which must properly be taken into account. The 2011 APB therefore included a range of uses representing a considered compromise.

The Draft Local Plan, in stark contrast to the 2011 APB, now seeks to adopt the Secondary Educational Purposes alongside the Other Uses. It appears, however, to retain the same overriding objective.

In order to deliver that overriding objective, it appears inconceivable that the Secondary Educational Purposes could be included, and even be given priority over the Other Uses (as appears to be the case by stating this the Secondary Educational Purpose 'will be required' and that the Other Uses are, 'in addition to educational').

In assessing this, one must look at the characteristics of a six-form entry, plus sixth form, secondary school, and then consider the impact that will have. (Something the Council appears to have failed to do).

First, in terms of numbers. I would estimate circa 1,300 pupils, being seven years multiplied by 30 pupils multiplied by six forms. Teaching staff, specialist staff – such as music and sports, canteen staff, management, contractors and maintenance staff - would typically be expected to amount to between 60 and 200. That means one must be looking at around 1,350 to 1,500 people attending the site on a daily basis – possibly more, for instance visiting school children attending for sports events.

By way of context, the village of Mortlake presently has approximately 2,000 residents I am told. So this would be a huge impact on existing daily people flows.

One must also consider the size of the site allocation for such a school. This is not set in stone. I attended a school of marginally fewer pupils (c.1,080), with a site size bigger than the entire Site. If the Council were to construct a school based on educational norm design standards for the most compact school contemplated – and do taxpayers and the electorate really want to settle for the bare minimum in the Borough, or should we be aiming higher? – that would require a site size of about 1.5 to 2 hectares. But that disregards parking space and spaces for buses and other transport to park and turn around. So the true site requirement will be significantly bigger – a minimum range of 2.5 to 3.5 hectares could be envisaged.

The overall Site amounts to 8.6 hectares, of which significantly less is built upon and should thus provide the maximum footprint for any new development. In contrast, a primary school built on the same basis and of the type contemplated by the 2011 APB would require 0.5 to 0.75 hectares.

So the space available for allocation to elements critical to a sustainable development (housing (including affordable), commercial, social, green spaces) would need to shrink by a minimum of 2 hectares. Or by a third. And probably more in practice.

The relevance of this is very simple: including a six-form entry, plus sixth form, secondary school on the site will have a significant, and potentially fatal, impact on the deliverability of the overriding objective for the site and the Other Uses which local stakeholders value and have repeatedly, over many years, asked the Council to commit to include in the Local Plan. In other words, the inclusion of this particular use is entirely disproportionate in that it will not enable any other benefits from the opportunity to be delivered.

As mentioned above, the 2011 APB also considered the consequences of the site allocations. One reason for including a primary school rather than a secondary school on the site would doubtless have been because of its smaller space. But it was more than that: there was a recognition that having to accommodate an additional 1,000 people on, and coming to and from, the site (approximately 1,400 as opposed to 400 with a primary school) on a daily basis was simply not feasible. The site is of finite size. Local spaces and facilities are of a limited size and capacity.

Finally, and taking a step back, the stated overriding objective is to deliver a new village heart for Mortlake. It forms part of the Village Plan. No village would surely ever be planned to incorporate a school of the size of school of this nature and size. The Local Plan for Mortlake simply cannot conceivably be delivered in its present form if the Council retains the six-form entry, and sixth form, secondary school, such is its size and impact on the site. If you were to ask the man on the Clapham omnibus what they would want to see in a village, be that in terms of what a village requires to be desirable, to function sustainably, or to be attractive – they surely would not opt for a secondary school, let alone one of this size. The Draft Local Plan speaks of vibrancy: what is vibrant about an enclosed, private concrete jungle, that will be closed evenings and weekends, serving pupils from outside of the local area?

Thus, to allow the Draft Local Plan to be approved in its present form, would disproportionately prejudice the delivery of any other uses, disproportionately prejudice the local stakeholders seeking to benefit from those other uses; and would disproportionately impact the lives of local stakeholders. All because, in formulating the Draft Local Plan and School Place Planning Strategy, disproportionate weight has been placed on the need for the Secondary Educational Uses in the area and the appropriateness of the Site to meet that need.

And in any event, if it were the Council's intention no longer to pursue the objective of a new village heart for Mortlake incorporating the Other Uses, the Council would be duty bound to have consulted from the start on that basis to enable due representations to be made - and the proposal to be overturned on any one of a number of bases. The Draft Local Plan therefore additionally suffers from procedural inadequacies in this regard.

Rep 2C - Primacy of secondary educational use over other uses: failure to consider consequences

Draft Local Plan provisions:

"Secondary Educational Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that 'The provision of an on-site new 6-form entry secondary school, plus sixth form, will be required'. It also states that 'Appropriate uses, in addition to educational, include...'.

Bullet point 4 below that box goes on to state that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council's School Place Planning Strategy. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

"Other Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) provides for 'a new village heart and centre for Mortlake'. It goes on to provide for a variety of intended uses, including residential, employment, health, community and social infrastructure facilities, sport and leisure uses. It also indicates that 'high quality open spaces and public realm' should be incorporated.

Bullet point 1 below the that box states 'The Council has produced and adopted a development brief in 2011 for the site, which sets out the vision for redevelopment and provides guidance on the site's characteristics, constraints, land use and development opportunities.'

Issue: By seeking to promote the Secondary Educational Uses as it does, the Draft Local Plan will have a material impact on the deliverability of the Local Plan, on the sustainability of the development and the wider area, and on the local community. These consequences have not been duly considered by the Council. Or, if they have been considered, an undue importance has been attributed to the need for a secondary school over the consequences of that allocation, leading to an unreasonable, or irrational, decision to continue to promote it.

Detail: The 2011 APB contemplated the provision, in the location set out in Appendix A thereto, of a two-form entry primary school. The Draft Local Plan, directly and indirectly through reference to the Council's School Place Planning Strategy and the Mortlake Village Planning Guidance SPD, seeks to replace that primary school (without consultation) with a secondary school.

A detailed consultation process, on the back of a myriad of studies, preceded the adoption of the 2011 APB. The 2011 APB therefore represented the considered views of experts and key stakeholders: whilst its conclusions were not shared by all, it represented a balanced view of what would create a deliverable, desirable and sustainable new village heart for Mortlake. That process expressly concluded that a primary school was to be preferred over a secondary school. It also took into account the need for some new residential allocation to make the project viable – albeit on a substantially low density basis – and included a variety of uses of the type included in the Other Uses set out in the Draft Local Plan.

This was the Council's and local stakeholders' collective vision as to what would deliver the primary objective just five years ago. Inherent in that exercise, and the selection and allocation of the Other Uses, was and is a recognition (i) that the site is of a finite size – allowing more space for one use will inevitably restrict available space for another use – and (ii) that those selections and allocations will have consequences in other areas, beyond site allocations, which must properly be taken into account. The 2011 APB therefore included a range of uses representing a considered compromise.

The Draft Local Plan, in stark contrast to the 2011 APB, now seeks to adopt the Secondary Educational Purposes alongside the Other Uses. It appears, however, to retain the same overriding objective.

In order to deliver that overriding objective, it appears inconceivable that the Secondary Educational Purposes could be included, and even be given priority over the Other Uses (as appears to be the case by stating this the Secondary Educational Purpose 'will be required' and that the Other Uses are, 'in addition to educational').

In assessing this, one must look at the characteristics of a six-form entry, plus sixth form, secondary school, and then consider the impact that will have. (Something the Council appears to have failed to do).

First, in terms of numbers. I would estimate circa 1,300 pupils, being seven years multiplied by 30 pupils multiplied by six forms. Teaching staff, specialist staff – such as music and sports, canteen staff, management, contractors and maintenance staff - would typically be expected to amount to between 60 and 200. That means one must be looking at around 1,350 to 1,500 people attending the site on a daily basis – possibly more, for instance visiting school children attending for sports events.

By way of context, the village of Mortlake presently has approximately 2,000 residents I am told. So this would be a huge impact on existing daily people flows.

One must also consider the size of the site allocation for such a school. This is not set in stone. I attended a school of marginally fewer pupils (c.1,080), with a site size bigger than the entire Site. If the Council were to construct a school based on educational norm design standards for the most compact school contemplated – and do taxpayers and the electorate really want to settle for the bare minimum in the Borough, or should we be aiming higher? – that would require a site size of about 1.5 to 2 hectares. But that disregards parking space and spaces for buses and other transport to park and turn around. So the true site requirement will be significantly bigger – a minimum range of 2.5 to 3.5 hectares could be envisaged.

The overall Site amounts to 8.6 hectares, of which significantly less is built upon and should thus provide the maximum footprint for any new development. In contrast, a primary school built on the same basis and of the type contemplated by the 2011 APB would require 0.5 to 0.75 hectares.

So the space available for allocation to elements critical to a sustainable development (housing (including affordable), commercial, social, green spaces) would need to shrink by a minimum of 2 hectares. Or by a third. And probably more in practice.

Impact on Other Uses

The relevance of this is simple: including a six-form entry, plus sixth form, secondary school on the site will have a significant, and potentially fatal, impact on the deliverability of the overriding objective for the site and the Other Uses which local stakeholders value and have repeatedly, over many years, asked the Council to commit to include in the Local Plan.

Traffic: impact on environment

As mentioned above, a secondary school will bring approximately 1,000 more people per day to the immediate vicinity of the Site, compared to the primary school proposal. Or 1,400 more people per day generally. And that takes no account of the increased number of residents moving around as a consequence of new dwellings.

The Site is situated immediately adjacent to the Lower Richmond Road. For reference, refer to page 5 of the following site marketing document (copyright acknowledged) – that is the road running immediately to the south of the site:

<https://www.geraldeve.com/wp-content/uploads/2015/08/Stag-Brewery-Mortlake-Brochure.pdf>

Recent studies showed that this particular area, especially at Chalker's Corner (approx. 0.3km away), suffers from being one of the worst areas in London for air pollution. There is ample local data to support this. I understand it exceeds legal or recommended safe limits in relation to the presence of noxious gases.

Furthermore, it was identified as being a Council 'Air Quality Focus Area', such was the acknowledged poor level of air pollution and the potential for improvement.

The issue is particularly acute because of the geographical layout of the Site: it is bordered to the north by the river, to the west by Chalker's Corner junction and to the south, approximately 100 meters south of the Lower Richmond Road, by the railway line (which has no tunnel or vehicular bridge). To the east the Lower Richmond Road continues (as Mortlake High Street), as a single-lane highway running through the main Mortlake commercial area.

To cite the Council's Second Implementation Plan: "*The River Thames to the North and the Royal Parks to the South act as barriers to through routes in the Borough, and as a result, high volumes of traffic are being channelled onto a small number of local roads. In particular, the transport network is a particular barrier in the north of the Borough adversely affecting the areas of Sheen, Mortlake and Barnes. Also the River and rail lines cause further difficulties. The severance to local communities caused by the A205 South Circular, the River Thames and railway lines is already a significant issue.*"

This means that traffic flows are concentrated in a small area and are consequently very slow at all but the most off-peak times. A school would create traffic flows at already-congested peak times.

Whilst clever initiatives may help – such as a tunnel under (or bridges over) the railway line and changing road lay-outs – these will represent improvements to an already inadequate situation but will barely touch on rendering the area suitable for a further thousand daily visitors at the same time.

And to think about the impact on other road-users or including additional crossings on the road to allow people to access the station *en masse* at rush hour...It would be chaos

Expert reports should be commissioned to ascertain whether legal or recommended safe limits will be breached: if so, this project simply cannot proceed as currently contemplated.

Does the Council seriously intend to site a secondary school for the Borough's children, and its staff, to both of whom they owe a duty of care, in the midst of a known pollution hotspot, which will become materially worse, when other options exist?

There are also already two nursery schools immediately bordering the Site on the Lower Richmond Road: the Council must not knowingly, or recklessly, allow the health of children aged from newborn to 5 years to be harmed in this way.

To do so would be an incontrovertible breach of para. 109 of the NPPF. They would also be doing so with blood on their hands and a stream of litigation to follow for years to come, for which the Council, and individual Councillors, will be held responsible. .

Traffic: impact on journeys

As explained above, traffic levels are already barely tolerable along the Lower Richmond Road, but more widely along Mortlake High Street, Sheen High Street, at Chalker's Corner, on the A316 and the South Circular. At peak times, it grinds to a standstill.

At a purely local level, it is extremely difficult to exit Williams Lane on to the Lower Richmond Road at peak times. It will become more or less impossible, and unsafe, with additional traffic movements.

It is already a Council priority to improve transport in Mortlake (again as per the Council's Second Implementation Plan) : "*Reducing the need to travel but to make all areas of the Borough and particularly areas of relative disadvantage (Castlenau, Ham, Hampton Nursery Lands, Heathfield, Mortlake and Whitton) accessible by safe, convenient and sustainable transport for all people, including those with disabilities.*"

Whilst clever initiatives may help – such as a tunnel under (or bridges over) the railway line and changing road lay-outs – these will represent improvements to an already inadequate situation but will barely touch on rendering the area suitable for a further thousand daily visitors at the same time.

Plus, even if some visitors travel by rail, (i) there is already zero capacity on peak time railway journeys through Mortlake Railway Station, disregarding the impact of any new residential housing and (ii) people will still need to cross roads to get to the school.

There will be no space for a bus lane, so the well-used 419 will become subject to material delays or need to be re-routed – but there is no obvious place to re-route it.

Further, it is likely that improving flows in one place or direction will negatively impact flows in another place or direction. Can the Council really justify negatively impacting congestion on key London roads such as the South Circular and A316, increasing vehicular emissions elsewhere?

Has TfL approved this plan, or even contemplated a way in which it might be feasible and committed to the requisite additional expenditure?

Extra congestion will also jeopardize access for emergency vehicles.

I am all for solutions. But there is no way that any reasonable Council, apprised of all these consequences, and making appropriate investigations, could take the decision to put a sixth-form entry, plus sixth form, secondary school on the Site. It just will not work. By solving one problem – a perceived need for secondary education facilities – it will be creating many, many more problems, some with profound and lasting consequences on Mortlake and its inhabitants.

Representation 2D - Changes in the Draft Local Plan affecting the 2011 APB must be consulted upon, in the same way the 2011 APB itself was consulted upon prior to adoption.

Draft Local Plan provisions:

"Secondary Educational Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that 'The provision of an on-site new 6-form entry secondary school, plus sixth form, will be required'. It also states that 'Appropriate uses, in addition to educational, include....'.

Bullet point 4 below that box goes on to state that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council's School Place Planning Strategy. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

2011 APB

Bullet point 1 below that box states 'The Council has produced and adopted a development brief in 2011 for the site, which sets out the vision for redevelopment and provides guidance on the site's characteristics, constraints, land use and development opportunities.'

Issue: The 2011 APB was formulated on the back of a detailed and thorough consultation process. That process determined that a primary school was an appropriate use of the site in all the circumstances, should the site ever become available. It went on to recommend an appropriate site allocation and position. Participants of the 2011 APB process expressly discounted the appropriateness of a secondary school on the site. A change to the 2011 APB, of such material significance – both specifically to overturn a point on which a conclusion has been reached in the 2011 APB and on the overall site plan - must be consulted upon in the same way as the original 2011 APB before it can take effect: failure to do so would undermine the consultation process to such an extent as to render it futile and undermine principles of natural justice, as well as the legitimate expectation of the community to expect a full and proper detailed consultation.

Detail: The 2011 APB contemplated the provision, in the location and of the size set out in Appendix A thereto, of a two-form entry primary school.

A detailed consultation process, on the back of myriad studies, preceded the adoption of the 2011 APB. The 2011 APB therefore represented the considered views of experts and key stakeholders: whilst its conclusions were not shared by all, it represented a balanced view of what would create a deliverable, desirable and sustainable new village heart for Mortlake. That process expressly concluded that a primary school was to be preferred over a secondary school. It also took into account the need for some new residential allocation to make the project viable – albeit on a substantially low density basis – and included a variety of other uses set out in the Draft Local Plan.

This was the Council's and local stakeholders' collective vision as to what would deliver the primary objective just five years ago. Inherent in that exercise, and the selection and allocation of the non-educational uses, was and is a recognition (i) that the site is of a finite size – allowing more space for one use will inevitably restrict available space for another use

– and (ii) that those selections and allocations will have consequences in other areas, beyond site allocations, which must properly be taken into account. The 2011 APB therefore included a range of uses representing a considered compromise.

The Draft Local Plan, in stark contrast to the 2011 APB, now seeks to adopt the Secondary Educational Purposes alongside the other uses it recommends. Moreover, it does so in a manner which purports to give precedence to the Secondary Educational Purposes.

This is not simply a case of swapping one word: primary for secondary. The changes expressly overturn the conclusions of the 2011 APB on a specific point of material importance to participating stakeholders – sufficiently material that the summary of views collated during the process make express reference to the inclusion of a primary school in place of a secondary school.

Further, when one considers the consequences of including the Secondary Educational Uses on the site, one must quickly conclude that the entire Draft Local Plan is unachievable and unsustainable by reason of its inclusion. Please refer to my representations 2A to 2C for further explanation in this regard. And yet the Council purports to make this decision without any consultation of the type conducted in producing the 2011 APB, which the Draft Local Plan otherwise seeks to uphold.

This, it must be said, runs contrary to the Council's own stated approach in January 2016, where I was personally advised by a planning officer that: "*The report to Cabinet stated that the planning brief, adopted in July 2011, was subject to full statutory consultation with local residents and all requisite stakeholders in 2009 and 2010. Cabinet agreed at its meeting in October 2015 an updated School Place Planning Strategy and it highlighted the implications for educational needs in the borough, in particular for the Stag Brewery site. However, the Cabinet decision has not amended the agreed planning brief, and if the Council were to update/review the brief, a public consultation would need to be carried out.*

This seems eminently sensible. But is not, on my reading of the legislation and supporting materials, the correct interpretation. In principle, the Local Plan can override a supplemental planning brief. The reason this can be allowed to pass, is because the legislation contemplates that the Local Plan will be developed in accordance with the acts and the National Planning Policy Framework, which necessitate the impact of the Local Plan to be worked through in great detail, on the basis of sustainable plans, and with the benefit of proportionate evidence. None of these are available at present: this is simply a 'pie-in-the-sky' addition to address a perceived shortfall in secondary education places.

So the conclusion must be one of two things: Either:

(i) the Council is right – and there must be a detailed consultation at local level, with proper evidence, to amend the 2011 APB, and until this takes place the Local Plan must be expressed to be subject to the outcome of that exercise; or

(ii) as I think is the better reading of the various legislation, to include provision of a secondary school on the Site in the Local Plan requires consultation and formulation in accordance with the acts and the National Planning Policy Framework, which necessitate the impact of the Local Plan to be worked through in great detail, on the basis of sustainable plans, and with the benefit of proportionate evidence. The supplementary planning brief, or

amendments to the existing 2011 APB, would then be done within the framework of the adopted Local Plan. But the Local Plan cannot legally be adopted in its present form as a result of the matters stated above.

Any purported exercise of powers by the Council to the contrary, would be *ultra vires*.

Rep 2E – The statement that ‘There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council’s School Place Planning Strategy.’ is unsupported, and unsupportable, in fact and law.

Draft local plan provisions

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that 'The provision of an on-site new 6-form entry secondary school, plus sixth form, will be required'.

Bullet point 4 below that box goes on to state that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council’s School Place Planning Strategy'. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

The 2011 APD contemplated the provision, in the location set out in Appendix A to the brief, of a two-form entry primary school. The Draft Local Plan, directly and indirectly through reference to the Council's School Place Planning Strategy and the Mortlake Village Planning Guidance SPD, seeks to replace that primary school with a secondary school.

Issue: The statement that 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council’s School Place Planning Strategy' is unsupported. This is the case, in particular, because the Council's School Place Planning Strategy makes and relies on errors of fact and law which are being inappropriately 'rubber-stamped' into a statutory planning document. In contrast, there remains a demonstrable need in this area for primary education provision.

Detail: The Draft Local Plan does not set out on the basis on which the words 'need' or 'in this area' are to be construed. There are a number of ways to assess these terms.

However, I think it is common ground with the Council that an 'area' in this context is the Borough and accordingly the 'need' is for the Council to discharge its duties under Section 14 of [the Education Act 1996](#), as amended, which provides to the effect that the Council has a duty to provide sufficient places or primary and secondary education for its residents. Subsection 2 states that, "*The schools available for an area shall not be regarded as sufficient for the purposes of subsection (1) unless they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education*"..

I shall return to the requirements of Section 14, and what they do and do not require properly to be taken into account. However, the first point to note is that the Local Plan should more explicitly state what the Council intends to say: i.e. 'The Council considers there is a need ... in the Borough and, in accordance with the conclusions of the Council's School Place Planning Strategy, the Council has determined that SA24 is the optimal location for it.'

There consequently becomes two issues:

- (a) firstly, is there in fact and law a requirement for a six-form entry, plus sixth form, school in the Borough; and

(b) second, is the Council's determination that SA24 is the optimal location for it a reasonable one, which it is entitled to reach in the performance of its duties. Accordingly, there are both procedural and substantive issues at stake.

Question 1: is there in fact and law a requirement for a six-form entry, plus sixth form, school in the Borough?

The Council seeks to rely on its own School Place Planning Strategy, and in particular the studies which underpin it, to demonstrate this.

GENERAL:

The Borough, or the 'eastern side of the Borough'?

The School Place Planning Strategy is focussed on the 'eastern half of the Borough'. There is no legal basis for this, and the Education Act 1996 most certainly does not make any distinction. The requirement is to make appropriate provision in the Borough.

And, leaving aside the legal technicalities, the Council has explained that the distinction is required to enable pupils not to have to live 'up to six miles' from their school (see paragraph 26 of the School Place Planning Strategy). Six miles! This is entirely arbitrary and unwarranted. In almost all other authorities across the country, six miles would be considered an average journey; in rural parts, it would be considered a short journey. And this in a borough with frequent (if over-crowded) public transport. A pupil living in Mortlake could get to a school in Twickenham in 15 to 25 minutes, depending on exact starting and finishing points.

This approach significantly undermines the validity of the conclusion that there is a need, as the Cabinet, in adopting the School Place Planning Strategy on which they 'clear need' is predicated, has failed to accurately identify the scope of the Council's legal duty; furthermore, in so doing, it has taken into account irrelevant factors in reaching its decision.

There is a clear case for judicial review should the Council not reverse its decision.

PROVISION OF SCHOOL PLACES:

Provision in the Borough – impact of new schools

The School Planning Place Strategy calculated future provision in the Borough as at a date no more recent than its adoption at the Cabinet meeting of October 2015. In so doing, it made certain assumptions. Since the date of that document, certain developments have occurred which have increased available provision. This includes the following sites – further information on which is set out in representations being made separately on behalf of the Mortlake Brewery Community Group: St. Richard Reynold's Catholic College; Turing School; Richmond Upon Thames College.

Provision in the Borough – opportunity to expand existing sites

The School Place Planning Strategy recognised (at paragraph 27) that Christ's, Grey Court and Richmond Park Academy could be permanently expanded by a form entry each. The School Place Planning Strategy therefore explicitly stated that these options should each be explored.

The Cabinet, in reaching the decision to exploit the Site to meet an anticipated shortfall in supply, expressly determined that further studies on meeting demand from expanding existing sites must first be taken. This is also consistent with the resolution (at paragraph 6) to update the School Planning Place Strategy annually. Yet there is no evidence that either of these recommendations has occurred.

Accordingly, the principal evidence on which the Council seeks to rely to establish the 'clear need' is outdated and subject to extant conditions. The Local Plan, as a minimum, must acknowledge that these conditions must be explored before the Site can be allocated to secondary school use.

Provision in the Borough – impact of alternative sources

The Education Act 1996 does not specify how the obligation placed on the Council must be met. To the contrary, my understanding is that neighbouring authorities have concluded that it may be satisfied through provision of places in a neighbouring borough. And that is eminently sensible: a neighbouring borough may in fact be closer to a pupil than a distant school in the same Borough. It may also be cost efficient. And the school in the neighbouring borough may be of a higher standard than, or offer facilities of a type not offered by, a school in its own borough.

The School Planning Place Strategy paid lip-service to this possibility in stating (at paragraph 29) that '*In assessing further demand, though, it is vital that account be taken of new or planned secondary school provision in neighbouring local authority areas, most particularly Hounslow.*'

Despite this, it would appear that the Council's figures in the School Planning Place Strategy did not take such provision into account – or, as with the possibility of expanding existing sites, contemplated that exploring these options should be a condition to the Stag Brewery site being allocated to secondary education use. This is particularly relevant here, where I understand the Mortlake Brewery Community Group's own investigations have revealed an abundance of secondary provision just one mile away from the Site.

The Local Plan, as a minimum, must acknowledge that these conditions must be explored before the Site can be allocated to secondary school use.

DEMAND FOR SCHOOL PLACES:

Pupil number requirements in the Borough

The Council has used certain demographic data to calculate demand for school places in the Borough. Whilst that is not contested per se, I would make the following comments.

Firstly, if more recent data is available, it should be used in place of the old data.

Second, it should be adjusted to take account of pertinent assumptions where they may differ from the relevant assumptions underpinning the data otherwise being relied upon. This should be:

- to take account of the impact of 'Brexit', in particular in the Borough which is home to a disproportionately large number of foreign nationals, many of whom are engaged in

the financial services sector and will relocate to the Eurozone during the forecast period. The recent Richmond Park bi-election is testament to this.

- to take account of the higher than average proportion of parents who elect to educate their children in the private sector or out of the Borough, including at grammar schools;

Third, demand needs to correlate temporally with supply. That is to say, a projected need in fifteen years' time should not necessitate the provision now, to the extent that provision is not yet readily available but might realistically be expected to become available in due course.

Demand in Eastern part of the Borough – Richmond Park Academy

In any event, the conclusion in the School Place Planning Strategy that there is insufficient demand in the Eastern part of the Borough appears unsubstantiated, or at least places too great emphasis on transient factors. The School Place Planning Strategy references, as part of its anticipated requirements for the medium to long term, growth in demand for Richmond Park Academy. That is predicated on improving standards.

First, it is unclear that a recent, short term increase in performance should be used as the basis for long-term planning for the Borough – especially given the disproportionate effect that such an analysis would have on the development of the site. Secondly, it must be imprudent to assume a continued upward trajectory of performance at one school, without make a similar conclusion in relation to other schools? And thirdly, it cannot be appropriate to determine demand in one part of the Borough on the basis of one or more other schools being under-performing: the Council's focus should be on ensuring existing facilities are fit for purpose, which doubtless it will seek to do during the currency of the Local Plan.

REPLACING PRIMARY SCHOOL SITE ALLOCATION WITH SECONDARY SCHOOL SITE ALLOCATION:

Has the need for a primary school disappeared or does the law require a need for a secondary school to take precedence over the need for a primary school?

In short, no. The 2011 APB, which the Draft Local Plan otherwise endorses, states that the Council will recommend that a two-form entry primary school be incorporated within any development plans. The secondary school proposed by the Draft Local Plan replaces that primary school, which the Council determined was required only five years earlier.

As such, in order that the Draft Local Plan is not misleading to a material extent, it must make comment on either (i) the need for a primary school having disappeared or (ii) the need for a primary school being greater than the need for a secondary school.

On the first point, this clearly is not the case. The Council's own School Planning Place Strategy notes, at paragraph 5: '*... more places will be required to meet longer-term forecast demand, particularly in the primary phase.*' From a personal perspective, for my local primary school, Thomson House, which is situated in very close proximity to the site, there was in the last academic year a 330 meter catchment area – and that catchment area is shrinking year-on-year as siblings with priority pass through the school. It is the most over-

subscribed school in the Borough according to the Council's own figures! So clearly the requirement for a primary school currently remains.

And with a further 200-plus residences to be constructed on the site, that primary school need will only grow.

Furthermore, when one considers the typical demographic of the likely residents, they are significantly more likely to be either a young family with children of primary school age, or a couple planning a family, than a family of secondary school age. The developer's plans will no doubt support this - but by way of anecdotal evidence, of the 17 houses on the Trinity Mews Development adjacent to the site purchased from the developer in 2011/2012, eight fell into the primary school category; not a single one fell into the secondary school category.

Further, in contrast to secondary school education, where a comparatively high proportion of children of secondary school age are privately educated or attend out-of-Borough grammar schools, a much higher proportion of primary school children in the Borough attend primary schools in the Borough. The Council offers no data for this. However, primary school heads in the Borough will I am sure attest to this and, again speaking for families in the Trinity Mews development, this is certainly the case.

On the second point, in addition to the highly relevant argument made in the paragraph above which indicates the immediate local need for a primary school is higher than the immediate local need for a secondary school, there is no requirement in the Education Act, or as far as I'm aware otherwise, for a secondary education need to take precedence over a primary education need. Accordingly, there is no basis for the Council to reverse its own recommendation for a primary school with a secondary school, irrespective of relative need.

The Council has therefore either (i) given undue weight to one factor it considered over another factor it considered, or (ii) failed to take into account a relevant factor in its decision-making process, or (iii) has made an erroneous assessment.

Question 2: is the Council's determination that SA24 is the only or optimal location for a six-form entry secondary school, plus sixth form, a reasonable one, which it is entitled to reach within the exercise of its functions.

It is abundantly clear from the Cabinet meeting minutes – as brief as they are – that a conclusion was reached that, absent further provision, demand in the Borough (or at least, the Eastern part of the Borough) would exceed supply during the relevant period.

What is rather less clear is how that (i) in the view of the Cabinet, translates into a properly taken decision that the Site, already the subject of a detailed supplementary planning document, must feature a six-form entry, plus sixth form, secondary school, subject to further investigation to the detriment of all other competing needs for the Site and (ii) moreover, the basis on which the Council planning department appears to have rubber-stamped that conclusion without any further scrutiny or regard being had to relevant planning laws.

Part I: How does a determination (questionable, for the reasons stated in question 1 above) that there is a shortfall in secondary places over the planning period translate into a properly taken decision that the Site, already the subject of a detailed supplementary planning document, must feature a six-form entry, plus sixth form, secondary school?

Consideration of the requirement

The Cabinet minutes (at para. 3.14) jump to the conclusion that '*a new secondary school, providing at least six forms of entry, will be needed in the eastern half of the borough by September 2019.*' The data underpinning this are not readily available. But, even if we disregard the short-comings in arriving at the number of places required, there remain two issues:

(i) it may be semantics, but this should presumably read 'one or more schools with an aggregate of at least six forms of entry, will be needed...'. The significant importance of this is that two, or even three new schools could fill the same gap – but critically, they would require less space and have a less significant impact on the environments in which they are situated and the ability to use that space to meet other, equally valuable, needs, such as housing, employment, social benefits and environmental protection. In other words, it shares the burden around. But it may also allow better, more apt sites to be found, more proximate to future pupils' homes, thereby minimising travel time, which seems to be the real driver here. And, critically, we have no idea whether or not this is the case – although one would imagine it to be – because the remit of the Education Funding Agency (per paragraph 3.15 of the Cabinet meeting minutes) was to find a site to accommodate a '*six-form entry secondary free school*' - noting that no mention was made of a sixth-form being required; and

(ii) the focus remains on an arbitrary division of the eastern part of the Borough. This is important and is discussed above. But moreover, it creates a parameter in the search for suitable sites that is unwarranted in law and is artificial in nature: it has to be better for a pupil living just in the eastern part of the borough to attend a school just in the western part of the Borough, or one where good transport links exist, than it is one in the far eastern side of the Borough, or one where transport renders it inaccessible.

Consideration of supply options

For the reasons that follow, it is clear that alternative options to meet demand have either (i) been noted, and parked pending further analyses or (ii) not been properly assessed.

Supply options: expansion and neighbouring Boroughs

As noted in Question 1 above, the Council expressly noted that other options may be available to meet the anticipated gap. This included (i) expansion of existing sites and (ii) consultation with neighbouring authorities. There is no evidence that these options have in fact been pursued.

Supply options: Alternative sites

The School Planning Place Strategy offers no evidence of a consideration of alternative sites for the location of a secondary school when determining that the Site is the only location for a new school of this size. It simply states that, '*In attempting to secure sites for proposed and possible free schools, both primary and secondary, within the borough, the Education Funding Agency has undertaken extensive searches.*' This is frankly incredible, and represents a material error in the decision-making process: how does one hope to make an

informed decision of significant importance, without gathering all the evidence sensibly required to make that decision?

It is imperative that a current feasibility study be conducted prior to taking a decision of this magnitude in a local plan.

Initial studies by the Mortlake Brewery Community Group have identified a number of sites, details of which have been made available to the Council. One of those sites, *prima facie*, appears hugely promising, offering the following advantages over the Site:

- materially bigger and capable of expansion;
- vast open spaces adjacent to that site;
- purpose-built athletics facilities adjacent to that site;
- readily accessible by car, bus and train and;
- (I understand) already Council-owned.

These options should have been properly investigated by the Cabinet in determining whether or not to adopt the updated School Place Planning Strategy. They must now be investigated before inclusion in the Local Plan.

Identification of the Stag Brewery site

Paragraph 3.16 of the Cabinet meeting minutes refers to a summary of the 'justification for [that] identification' at paragraphs 26 to 29 of the School Place Planning Strategy.

One might presume that the School Place Planning Strategy would shed some light on how the decision to recommend the Stag Brewery was taken. It might talk about:

- Deliverability;
- Compliance with other legal and planning obligations;
- Sustainability, including in accordance with the National Planning Policy Framework;
- Consequences of making the determination on the 2011 APB;
- Consequences of making the determination on the local community whom the decision affects – on residents, on sports groups using the playing fields, on Thomson House school, adopted planning brief; and/or
- Consequences of making the determination on the remainder of the School Place Planning Strategy: such a decision will necessarily impact the requirement for provision at another site.

All relevant factors in taking a decision of this magnitude. And factors one would expect the Council to be minded to demonstrate to the community – which had participated in large numbers in the 2011 APB process which the Council meeting sought to override – had been considered in great depth, and that that due process was being followed.

So what light does the School Place Planning Strategy cast on this. It says:

'To meet medium-term increased demand, it is essential that a new six-form entry school is established on the Stag Brewery site.'

And that is it. No discussion. One might think that, despite scant information being contained in the minutes, there was nonetheless a lively debate around these material

issues. But then one reads the minutes. The entire meeting lasted just seventeen minutes. To take a decision of huge importance to the lives of the local community. And seventeen minutes was the length of the entire meeting: in those seventeen minutes, decisions were also taken on some twelve other agenda items. The evidence of procedural impropriety is there for all to see.

Consideration of impact / consequences of making a site allocation

As noted above, there is no evidence of consideration of the matters referred to under 'Identification of the Stag Brewery site' above.

Consideration of deliverability of the provision of a secondary school

As noted above, there is no evidence of consideration of the matters referred to under 'Identification of the Stag Brewery site' above.

Was the decision properly taken as a matter of law?

In brief, no.

A. Illegality

The Cabinet of the Council, by purporting to make a planning decision outside the remit of the Local Plan (a process contemplated by the National Planning Policy Framework) and diametrically opposed to an adopted supplementary planning brief, has made a jurisdictional error. It had no jurisdiction to make such a determination.

B. Unreasonableness / irrationality

There is a case for the Council to answer as to whether, by determining to place a secondary school in the heart of an area which suffers from illegal or above recommended safe levels of emissions of noxious gases, and which will only become worse as a result of the decision and the development, the Cabinet made a decision so unreasonable that no reasonable authority could ever have come to it.

C. Irrelevant / relevant matters

Quite clearly, the Cabinet:

- failed to consider properly the presence of alternative sites, including to accommodate smaller schools which in aggregate could meet the same demand;
- failed to consider the deliverability of the proposal;
- failed to consider the sustainability of the proposal, including as required by the National Planning Policy Framework;
- failed to consider the proposal in light of the legal and statutory framework for planning decisions;
- failed to consider the consequences of the decision; and
- placed undue consideration on 'the eastern part of the Borough', rather than the Borough as contemplated by the Education Act, and arbitrarily considered a 6-mile travel distance to be significant.

The decision-maker in reaching its decision took into account irrelevant matters and/or failed to consider relevant matters

D. Procedural irregularity

By purporting to take a decision on a matter properly the subject of planning law, including a number of statutes and subordinate legislation and guidance, the Cabinet has acted ultra vires.

By purporting to take a decision on a matter properly the subject of a Local Plan, which requires a consultation exercise to adopt, the Cabinet has acted ultra vires and failed to follow due procedure.

By failing to consult on a material amendment to a matter which underpinned a supplementary planning document, in relation to which the Council is required by creature of statute to consult, the Council has failed to follow due procedure; this may also create legitimate expectation that the Council would consult, to the same degree, in relation to such a material amendment.

By acting arbitrarily, and without furnishing reasons for its decision, as evidenced by spending no more than seventeen minutes (and probably significantly less) in making a determination of significant local importance, the Cabinet has not followed due process and/or has failed to observe the principles of natural justice.

Part B: Leaving aside the deficiencies in the Cabinet's own decision-making process identified above, has the Council (acting through its planning department) acted appropriately?

Factual matrix

The Council planning department is internally responsible for formulating the Village Plan and Local Plan. The Local Plan in particular is a creature of statute provided for in the National Planning Policy Framework. That sets out certain procedural requirements to be complied with in the path towards adoption of a plan, as well as a number of requirements with which the Local Plan must comply.

The exercise of these functions, and the adoption of a Local Plan, should be effected in accordance with general legal principles relevant to decision-taking and exercise of powers by government bodies. Failure to comply is challengeable by judicial review; furthermore, the Local Plan process itself provides for review by the Inspector, to whom these representations are being made.

Approval of the School Place Planning Strategy and incorporation into the Local Plan

We have no visibility on the process by which the Council arrived at its decision to directly incorporate the conclusion of the Cabinet meeting into the plans enunciated in the initial scoping consultation held in January 2016.

I was unable to find any evidence that they key issues raised in Part A in relation to the replacement of a primary school with a secondary school, had been considered, challenged,

developed or updated. In addition to making a formal representation in the scoping round responses, I followed up directly with the Council planning department, who advised:

'The School Place Planning Strategy provides an important evidence base for the Local Plan and the review of the Council's planning policies. The change in educational need and the priority for a secondary school on the Stag Brewery site, as opposed to a primary school, needs to be taken account of in the Council's Local Plan and in particular for the Stag Brewery site allocation.'

That response confirmed my fears: the planning department, in formulating the Local Plan, was willing to rubber-stamp the (frankly, error-strewn) decision-making process undertaken by the Cabinet in adopting the School Place Planning Strategy. No evidence of scrutiny. No evidence of rectifying the deficiencies inherent in that decision, that is to say no consideration of:

- Deliverability;
- Compliance with other legal and planning obligations;
- Sustainability, including in accordance with the National Planning Policy Framework;
- Consequences of making the determination on the 2011 APB;
- Consequences of making the determination on the local community whom the decision affects – on residents, on sports groups using the playing fields such as Barnes Eagles, on Thomson House school, adopted planning brief,

other than to the extent set out in the Sustainability Appraisal Report, which is itself inadequate for the reasons set out in representation 1C.

Even if the Cabinet as a matter of education policy planning was entitled to reach a finding that flies in the face of natural justice and planning law, it is entirely inappropriate for a planning department to do so in the context of a statutory process entailing a full consultation. There is simply no analysis of proportionate evidence of the type required by the National Planning Policy Framework, despite persistent calls from local residents to consider this.

The Council has nonetheless persisted with this approach by including in the Draft Local Plan the statement, 'There is a clear need for a new 6-form of entry secondary school, plus a sixth form, in this area as set out in the Council's School Place Planning Strategy. Therefore, the Council expects any redevelopment proposal to allow for the provision of this school.'

A final point to note on this: the School Place Planning Strategy does not even make any reference to a requirement for a sixth form! So not only has the Draft Local Plan relied erroneously upon an erroneous conclusion of a procedurally inadequate Cabinet meeting, it has unilaterally determined to attribute to that document, in a document of statutory importance, a conclusion it did not reach.

Requirement for detailed consultation on the amendments

The Council planning department has advised that, "... the Cabinet decision has not amended the agreed planning brief, and if the Council were to update/revise the brief, a public consultation would need to be carried out".

But this is not necessarily strictly true, if the changes were to be brought about through the medium of the Local Plan, as that would appear in and of itself to create the framework within which any changes to the 2011 APB and the Village Plan would need to be assessed. As such, inclusion in the Local Plan would effectively preclude the merits of a further detailed consultation round at that stage on these points of material significance.

It cannot have been parliament's intention that a detailed consultation process could be usurped or effectively repealed through a back-door general consultation process: the community has a legitimate expectation that a consultation process of equal focus on the key issues, and opportunity to make representations, would follow.

Having attended a meeting of the Mortlake Brewery Community Group on 6 February 2017, I can attest that the local community as a whole had no idea what was proposed by the Council, in stark contrast to the high degree of engagement which accompanied the 2011 APB process.

To re-cap, the 2011 APB followed a round of representations made on the back of four detailed land usage proposals on which the community was asked to comment. The consultation process comprised (i) an evening event in December 2009; (ii) an exhibition held between 4-6 November 2010; and (iii) a Public meeting on 9th December 2010, which was attended by approximately 130 people.

Has a comparable process been run here? No. Neither the Council nor the developer has offered any vision – oral or pictorial - for the Site, despite such a material change being proposed. The very first opportunity that the community will have to evaluate and comment on the proposal will take place (unless delayed further) in March 2017 - conveniently just after the deadline for responses to the Local Plan, which will (unless I am mistaken) in material part entrench the secondary school and re-provision of the playing fields, if accepted in its present form.

This simply cannot be right, it is an abuse of process to further an ill made-out requirement for a secondary school on the Site and it defeats the legitimate expectation of the community, and myself having been promised a further round of consultation.

It is not consultation if the purpose and scope of the consultation are so materially curtailed – that consultation would itself be subject to challenge.

Was the decision properly taken as a matter of law?

Again, in brief, no.

A. Unreasonableness / irrationality

By resolving for planning purposes to rubber stamp a decision of the Cabinet taken in October 2015 on a matter of education policy, without independent scrutiny, or updating, or search for independent or supporting evidence of any kind, nor consideration of whether that Cabinet decision was appropriately taken, the planning department has taken a decision or exercised its powers in a manner which is so unreasonable that no reasonable authority could ever have done so.

Further, there is a case for the Council to answer as to whether, by determining to place a secondary school in the heart of an area which suffers from illegal or above recommended safe levels of emissions of noxious gases, and which will only become worse as a result of the decision and the development, the Council made a decision so unreasonable that no reasonable authority could ever have come to it.

C. Irrelevant / relevant matters

Quite clearly, the Council:

- failed to consider properly the presence of alternative sites, including to accommodate smaller schools which in aggregate could meet the same demand;
- failed to consider the deliverability of the proposal;
- failed to consider the sustainability of the proposal, including as required by the National Planning Policy Framework;
- failed to consider the proposal in light of the legal and statutory framework for planning decisions;
- failed to consider the consequences of the decision; and
- placed undue consideration on 'the eastern part of the Borough', rather than the Borough as contemplated by the Education Act, and arbitrarily considered a 6-mile travel distance to be significant; and
- critically, placed undue consideration on the School Place Planning Policy, to the detriment of all other manner of evidence and consideration of pertinent issues and indeed the relevance of the School Place Planning Strategy to the statutory need to formulate a Local Plan.

The decision-maker in reaching its decision took into account irrelevant matters and/or failed to consider relevant matters

D. Procedural irregularity

By adopting a decision of another Council body without any consideration of its relevance to the statutory need to formulate a Local Plan, which requires a consultation exercise to adopt, the Council has failed to appropriately formulate a viable Local Plan at any stage.

By failing to consult on a material amendment to a matter which underpinned a supplementary planning document, in relation to which the Council is required by creature of statute to consult, the Council has failed to follow due procedure; this may also create legitimate expectation that the Council would consult, to the same degree, in relation to such a material amendment.

By failing to offer up any reasons for its decision, other than over-reliance on the School Place Planning Strategy, in making a determination of significant local importance, the Council has not followed due process and/or has failed to observe the principles of natural justice.

E. Legitimate expectation

By failing to give the community, and myself in particular, a full, detailed consultation process akin to the one run in adopting the 2011 APB, and expressly promised to me, the Council has reneged on a matter of legitimate expectation to the community, and myself.

Rep 3: Plans for housing insufficiently detailed

Draft Local Plan provisions:

"Residential Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) states that

'The Council will support the comprehensive redevelopment of this site. An appropriate mix of uses, particularly at ground floor levels, should deliver a new village heart and centre for Mortlake. ... Appropriate uses ... include residential (including affordable housing)...'

'The provision of residential uses (including affordable housing), will ensure that the new village heart becomes a vibrant centre for new communities.'

'Guidance on design and local character for the area is also set out in the Mortlake Village Planning Guidance SPD'

"Other Uses"

The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) provides for 'a new village heart and centre for Mortlake'. It goes on to provide for a variety of intended uses, including education, employment, health, community and social infrastructure facilities, sport and leisure uses. It also indicates that 'high quality open spaces and public realm' should be incorporated.

Bullet point 1 below the that box states 'The Council has produced and adopted a development brief in 2011 for the site, which sets out the vision for redevelopment and provides guidance on the site's characteristics, constraints, land use and development opportunities.'

Issue: Notwithstanding formal adoption at Local Plan level of the 2011 APB in this regard, the Council is invited to provide clarity to the developer on the nature and density of residential housing which it will consider appropriate, based on the consultation exercise and conclusions which gave rise to the 2011 APB, but taking into account the proposed revision to require provision of a large secondary school and sixth form. Allocation to Residential Uses must not undermine the commitment to delivery of the Other Uses.

Detail: The 2011 APB contemplated the provision, in the locations set out in Appendix A thereto, a variety of residential provision, with indicative acceptable densities.

A detailed consultation process, on the back of a myriad of studies, preceded the adoption of the 2011 APB. The 2011 APB therefore represented the considered views of experts and key stakeholders: whilst its conclusions were not shared by all, it represented a balanced view of what would create a deliverable, desirable and sustainable new village heart for Mortlake. That process expressly concluded that the scheme should generally be low density, rising to medium density towards the middle of the Site.

The plan appended to the 2011 APB '*indicates maximum heights that would generally be acceptable on the site and these reflect the planning benefits being sought. A mix of heights across the site will be required to reflect and relate to the existing urban grain and scale. Housing on the north western zone should be lower density with heights up to 3 storeys*

relating to existing residential and of generally 3-4 stories around the playing fields and create a new street emulating the character of buildings of townscape merit on the Lower Richmond Road. [This could also refer to the Trinity Mews Development now in place.] ...If taller buildings are necessary to ensure a viable scheme higher building could be located at the core of the site, generally where the larger and higher existing buildings are located, and that height and scale diminish towards the perimeter of the site or along the Riverside.' This position must be maintained.

Whilst it stopped short of stipulating a number of dwellings that would be appropriate, in the Council questionnaire which proceeded it, the community came down heavily in favour of the mixed-use, lower density residential scheme of, from recollection, 390 dwellings. The Council has removed this document from its website since the commencement of the consultation process. The Council has, however, in its Council's latest Authority Monitoring Report on Housing (2014/15, page 18), provided for a range of 200 to 300 new dwellings.

The Council is invited to re-affirm in the Local Plan that, save as follows, planning applications for the Site should propose no more than 200 to 300 dwellings (and certainly no more than 390). The Council acknowledged this in its responses to representations made in relation to the draft Local Plan made available in summer 2016.

That number should be subject to downward revision should the Council persist with the idea of a secondary school of c. 1,400 people instead of a primary school of c. 400 people. The Council should be explicit on this point in the Local Plan.

To the extent any deviation is otherwise considered appropriate, it should be demonstrably justified with reference to a change in law since the 2011 APB was adopted; the status quo previously consulted upon should generally be preserved.

In any event, the Other Uses favoured by the community must not be disproportionately disadvantaged by any decision to increase the Residential Uses or secondary education uses.

Finally, and taking a step back, the stated overriding objective is to deliver a new village heart for Mortlake. It forms part of the Village Plan. A village of the type the community demonstrably wishes to construct is not one overshadowed by high-density, sky-scrappers.

Rep 4A – The ‘reprovision’ of the playing fields on the Site is not feasible and failure to achieve ‘reprovision’ would breach the Local Plan’s stated Strategic Objectives

Issue: The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) refers to ‘the retention and/or reprovision and upgrading of the playing field’. ‘Reprovision’ is undefined. However, absent plans for the Site, it appears almost inconceivable that two playing fields (or one if just one is moved) could be provided elsewhere on the site. If so, that would be inconsistent with the self-stated strategic objectives for the plan.

Detail: The playing fields represent a significant portion of the site, measuring approximately two hectares. For reference, refer to page 5 of the following site marketing document (copyright acknowledged):

<https://www.geraldeve.com/wp-content/uploads/2015/08/Stag-Brewery-Mortlake-Brochure.pdf>

They house two playing fields. Those playing fields are enjoyed by many local residents for sports activities and sports groups (such as Barnes Eagles), as well as affording residents an attractive green space. Other organisations also use the space during the week: for instance, they are used by the local primary school (Thomson House) which does not have a playing field and by the police to train dogs.

The playing fields have been a green space for as long as any local residents can remember.

Indeed, such is the importance of the playing fields to the Site and the local area, that the Council saw fit, after a full statutory consultation process, to protect them for generations to come when adopting the 2011 APB.

However, without consultation, the Council now seeks in the Draft Local Plan to remove the protection afforded to this green space, by providing for it to be re-provided elsewhere. This proposal was not present in earlier drafts of the Local Plan and it is unclear at whose request the proposal has been included: it is certainly not at the request of local residents and users of the facility.

In exercising its functions in the context of planning decisions, the Council must take into account the availability of green space and the need to protect it. It should also take into account the views of residents and other users of the site.

By failing to identify an alternative location on the Site for the playing fields (or one, if only one is to be re-provided) the Council has not discharged this duty.

Further, failure to ensure that these spaces are protected is inconsistent with the Strategic Objectives set out in section 2.3 of the Draft Local Plan. In particular, the following provisions are relevant:

Protecting Local Character

1. ‘Maintain and enhance the borough’s attractive villages, including the unique, distinctive and recognisable local characters of the different village areas and their sub-areas’: the

playing fields are distinctive in character and mark a step-change in scenery when passing along the Lower Richmond Road.

2. ‘Protect and, where possible, enhance the environment including historic assets; retain and improve the character and appearance of established residential areas, and ensure new development and public spaces are of high quality design’: removal of the playing field and trees would not enhance the environment.
3. ‘Protect and improve the borough’s parks and open spaces to provide a high quality environment for local communities and provide a balance between areas for quiet enjoyment and wildlife and areas to be used for sports, games and recreation’: as per point 2.
5. ‘Protect and enhance the borough’s biodiversity, including trees and landscape, both within open spaces but also within the built environment and along wildlife corridors.’: as per point 2.

A Sustainable Future

3. ‘Optimise the use of land and resources by ensuring new development takes place on previously developed land, reusing existing buildings and encouraging remediation and reuse of contaminated land.’: any new development of greenfield sites, such as the playing fields, would not be consistent with this.
4. ‘Reduce or mitigate environmental impacts and pollution levels (such as air, noise, light, odour, fumes water and soil) and encourage improvements in air quality, particularly along major roads and areas that already exceed acceptable air quality standards.’: replacing green open space with a use that will add vehicular traffic to an area which already suffers from unsafe emissions levels, some of the highest in the Borough, is clearly at odds with this.
5. ‘Ensure local environmental impacts of development are not detrimental to the health, safety and the amenity of existing and new users or occupiers of a development or the surrounding area.’: removing the green space would negatively impact the amenity of local residents and users of the space, and may for the reasons set out above negatively impact health.
11. ‘Create attractive and pleasant environments and spaces that promote active and healthy lifestyles, including recognising their benefits to residents’ social life and their economic benefits to the borough’s centres.’: removing green space used for sports is not conducive to achieving this objective.

Accordingly, the reference to ‘and/or re-provision’ must be deleted and the playing fields should be expressly be afforded the protection which the 2011 APB sought to afford the playing fields.

Rep 4B – The ‘reprovision’ of the playing fields is not possible in light of existing tree preservation orders

Issue: The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) refers to ‘the retention and/or reprovision and upgrading of the playing field’. ‘Reprovision’ is undefined. Re-provision would likely entail the removal of trees which, I understand, are the subject of a tree preservation order.

Detail: The playing fields represent a significant portion of the site, measuring approximately two hectares. For reference, refer to page 5 of the following site marketing document (copyright acknowledged):

<https://www.geraldeve.com/wp-content/uploads/2015/08/Stag-Brewery-Mortlake-Brochure.pdf>

They house two playing fields and have at the north-western, north-eastern and southern boundaries a number of trees. Those trees are, I understand, the subject of a tree preservation order, details of which can be provided on request by Mortlake Brewery Community Group.

If re-provision of the playing fields would result in the removal of those trees, that would (absent an applicable exception) be a breach of the preservation order.

The Draft Local Plan must not promote a proposal that would constitute a breach of law; nor should it promote a proposal that is impossible to deliver.

Accordingly, the reference to ‘and/or re-provision’ must be deleted and the presence of the tree preservation order should be expressly acknowledged.

Rep 4C – The ‘reprovision’ of the playing fields on the Site would cause a pending application for a designated Local Green Space, if granted, to be prematurely overridden

Issue: The box at the start of SA24 (Stag Brewery, Lower Richmond Road, Mortlake) refers to ‘the retention and/or reprovision and upgrading of the playing field’. ‘Reprovision’ is undefined. The playing fields are the subject of a pending application for designation as a Local Green Space. If afforded that designation, as I believe it should be, re-provision of the playing fields would not be permitted.

Detail: The playing fields represent a significant portion of the site, measuring approximately two hectares. For reference, refer to page 5 of the following site marketing document (copyright acknowledged):

<https://www.geraldeve.com/wp-content/uploads/2015/08/Stag-Brewery-Mortlake-Brochure.pdf>

They house two playing fields. Those playing fields are enjoyed by many local residents for sports activities and sports groups (such as Barnes Eagles), as well as affording residents an attractive green space. Other organisations also use the space during the week: for instance, they are used by the local primary school (Thomson House) which does not have a playing field and by the police to train dogs.

The playing fields have been a green space, special for many reasons, for as long as any local residents can remember.

Indeed, such is the importance of the playing fields to the Site and the local area, that the Council saw fit, after a full statutory consultation process, to protect them for generations to come when adopting the 2011 APB.

In order to formalise that protection, an application has been made by letter dated on or about 15 February 2017 to designate the playing fields as a Local Green Space pursuant to the National Planning Policy Framework. There appears to be a *prima facie* strong case for the playing fields to receive that designation, for the reasons set out in the letter.

As per section 1.1.5 of the Draft Local Plan, councils must take into account the National Planning Policy Framework when formulating the Local Plan.

If that application is successful, as it is expected to be, it would not be possible to re-provide for the playing fields elsewhere.

Accordingly, the reference to ‘and/or re-provision’ must be deleted (or made subject to the pending Local Green Space application) and the playing fields should in any event be expressly be afforded the protection which the 2011 APB sought to afford the playing fields.

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