



HOUSE OF COMMONS

LONDON SW1A 0AA

Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

2 June 2020

**Representation for the Planning Appeal ref: APP/P5870/W/20/3250891. Erection of a part one, part two storey building creating a Special Educational Needs (SEN) school (Use Class D1), modification of existing access from Headley Avenue, provision of areas of hard playing space, a multi-use games area (MUGA), car parking, cycle parking and hard and soft landscaping works and other associated works.**

The Planning Inspectorate has invited representations on a planning appeal following a non-determination by Sutton London Borough Council for a SEN school in the constituency of Carshalton and Wallington. As the Member of Parliament covering this area, I am acutely aware of the sensitivities behind the development proposals. I have been contacted by many residents in Beddington regarding their concerns and have received a considerable number of petition signatures opposing the development location.

It is my understanding that the application was appealed to the Planning Inspectorate as a non-determination on 10 April 2020. Nevertheless, the London Borough of Sutton Council planning committee met on 28 May 2020 to determine the application in order to decide whether officers would be supporting or opposing the appeal. The planning committee voted to refuse planning permission and oppose the appeal.

I consider the appeal application to be inappropriate for the area proposed and not compliant with key planning policies in the following areas:

- Significant concerns regarding access and the impact to the local highways and parking infrastructure in the construction phase;
- Substantial increase in traffic, impact on parking infrastructure and access concerns once built;
- Assessment of need and the weight of impact;
- Unacceptable increase in air, light and noise pollution in a residential area;
- Unjustified loss of open and green space;
- Significant impact on local biodiversity;
- Potential increased risk of flooding to the development and neighbouring properties;
- Potential archaeological significance of the site;
- Unsound building design and impact on residential amenity;
- Potential impact of development on vulnerable children, and;
- The inappropriate and unsound handling of the application by the local authority.

Serving the people of Carshalton and Wallington

Tel: 020 7219 5862

E-mail: [info@elliotcolburn.co.uk](mailto:info@elliotcolburn.co.uk)



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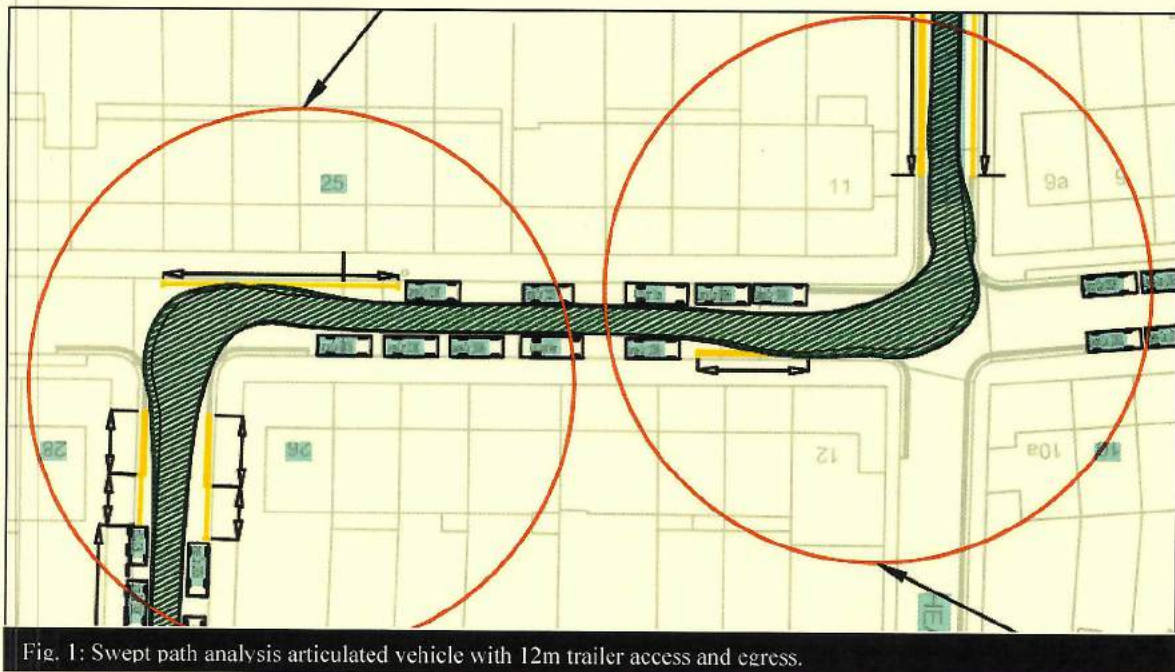
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### Significant concerns regarding access and the impact to the local highways and parking infrastructure in the construction phase

The construction phase of the proposed development is anticipated to operate for sixty weeks (approximately a year and two months) if there are no delays. A maximum workforce of eighty personnel will be present at the site at any one time. It is anticipated that the site hours will be from 07.30 until 17.30 during the normal working week with possible weekend activity.

General access to the site is from Headley Avenue, which is to be accessed from Stafford Way via The Chase, Capel Avenue and Godalming Avenue. The small residential roads with on-street parking are not suitable for construction vehicle traffic from HGVs. Sutton Council themselves highlight: "the limitations of the narrow residential roads in terms of their ability to handle construction traffic".<sup>1</sup>

Whilst an effort has been made by the applicant to downsize the construction vehicles since the original construction access plan, the swept path analysis shows that the revised vehicles will come into contact with the kerbs



Although no footpath overhang is anticipated in the revised construction logistics plan, overhang cannot be ruled out when the plans clearly show contact with the kerbs. It is also not entirely clear within the Construction Logistics Plan whether the larger vehicles (16.5m articulated vehicle and 12.3m crane) have been completely removed from the plans: "The proposal has been revised to utilise smaller vehicles wherever practical to reduce disruption."<sup>2</sup> It's possible that this wording grants the appellant the ability to use the larger vehicles.

<sup>1</sup> Robert De Castro recommendation note, 18 May 2020

<sup>2</sup> Construction Logistics and Traffic Management Plan April 2020, pg. 11



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Construction traffic will need to enter via the Stafford Road and the Chase. To make this possible, the pedestrian traffic island will need to be removed. This presents a serious hazard for pedestrian safety when crossing the road during the construction period (approximately a year and two months). More so when considering there is already a substantial amount of pedestrian school traffic in the area from High View, Wilson's, Harris Academy and St Elphege's (even Google streetview shows the use of the pedestrian island by school children).

London Plan Policy 6.12c includes an expectation that developments can improve conditions for pedestrians, as well as others: "Proposals should show, overall, a net benefit across these criteria when taken as a whole". Removing the pedestrian refuge island, therefore, contravenes this policy of the London Plan by increasing safety risks for pedestrians.

Additionally, the Robert West Technical Response to the construction logistics plan suggests that "turning manoeuvres from Stafford Road onto The Chase performed from the right turn lane" will also need to be employed by construction traffic to navigate along the construction route.<sup>3</sup> The construction traffic will likely need to block oncoming traffic on Stafford Road, and use the right lane, particularly during busy periods, in order to manoeuvre into The Chase, creating a serious safety concern for road-users (including cyclists) and pedestrians on the junction. Sutton Council also share this concern, as demonstrated by one council officer: "I am concerned that all of the turns need to be made from the live traffic lane and not the right turn lane."<sup>4</sup> This contravenes Highway Code rule 80, which states that, when turning right, vehicles should not cut the corner.<sup>5</sup>

There is evidence to suggest that highways safety concerns are legitimate for this area and development proposals. Traffic collisions have been a common occurrence at the Stafford Road/The Chase junction, with fourteen collisions there over the past ten years; five of them involving pedestrians and four involving children.<sup>6</sup>

The Chief Executive of Sutton Council, Helen Bailey, reinforced the concerns regarding traffic passing through the estate in a letter to Morrisons supermarket on 10 June 2019. The letter was part of an attempt made by the appellant and Sutton Council to negotiate access to Sheen Way via a commercial estate in Waddon, currently under the lease of Morrisons supermarket; a preferred access route for the appeal site through a commercial estate rather than a residential estate. In the letter, Helen Bailey states: "Access to the site is through narrow residential streets which will present significant risk to local residents, especially children." This shocking admission from the Chief Executive demonstrates clearly that the Council are fully aware of the traffic safety implications of the appeal proposals.

The issue of access is clearly the "elephant in the room" regarding this appeal. The biggest safety concern for the appeal proposals is the question of whether there is ability for construction and operational traffic to safely navigate through the narrow, residential access route. Despite this demonstrable and very real concern, raised by the Council, the appellant and opposers, it is unclear

<sup>3</sup> Robert West Technical Response to the construction logistics plan, para. 1.3

<sup>4</sup> Robert De Castro recommendation note, 18 May 2020

<sup>5</sup> <https://www.nidirect.gov.uk/articles/highway-code-rules-159-203>

<sup>6</sup> <https://www.crashmap.co.uk/Search>



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why the negotiations for more suitable access deteriorated between Morrisons and Sutton Council/the appellant. If there was greater transparency with regards to this contentious issue, there may have been more successful stakeholder negotiations to improve the soundness of the proposals. Without that information, it cannot be confirmed whether enough consideration was given to the Morrisons access proposal or whether this attempt was purely a gesture.

Policy 36a of the Sutton Local plan requires development proposals to be “assessed for their impact on the highway.” Despite this, no route testing has been conducted by the appellant for the construction phase of the proposed development. For proposals that will so clearly present safety concerns with very little room for mistakes, there is little evidence from the appellant that the construction phase can be conducted safely. A route test should be conducted before this proposal should be determined.

It is clear from the Chief Executive’s comments, the Robert West Technical Response and the Highways officer comments that the construction phase of this development has been judged by the relevant local stakeholders as being high impact. Permission should not be granted for a development that so openly contravenes local and London-wide planning policy with regards to highways safety.

There is also limited information provided on the number of vehicles movements that will take place during the construction phase. Although the appellant has provided detailed information on the number of expected vehicle and pedestrian movements once the site is constructed and operational, it isn’t clear how many movements will occur during the entirety of the construction phase. Guidelines for the Environmental Assessment of Road Traffic (Institute for Environmental Assessment) state that if HGV traffic increases above 30%, separate traffic environmental assessments should be undertaken. It cannot be accurately understood whether HGV traffic will increase above the 30% threshold during the construction period. The development proposal therefore contravenes Guidelines for the Environmental Assessment of Road Traffic as well as other relevant Local and London planning policies.

Further, the development construction phase will also have significant impact on local highways parking, resulting in Traffic Regulation Orders in the form of parking restrictions to aid the flow of construction traffic through the access roads. A total of 28 residential parking spaces and a pedestrian island will be removed during the construction phase. Some kerb space will also be partially-adopted to allow parking and ensure room is available for passing construction traffic (contravening Highway Code rule 244 which states that drivers must not partially or wholly park on the pavement in London).

The London Borough of Sutton Council is currently undergoing consultations into their new parking strategy. Many of the proposals under the strategy have received negative backlash from the community due to the removal of spaces and introduction of permit parking. Removing 28 residential parking spaces in a small area of the borough will do nothing to help the situation. The Council has agreed that “parking stress in the area is high”<sup>7</sup> and is supported by the stress assessments conducted on behalf of the appellant.

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<sup>7</sup> Robert De Castro recommendation note, 18 May 2020



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A parking impact assessment has been undertaken, based on parking beat survey data collected in 2018. These parking surveys are normally considered to have a validity of 18 months where TMOs are required. Therefore, the data is already out of date. This is even more concerning when considering the changes in travel patterns resulting from the COVID-19 pandemic, which may have long-term impacts on work patterns for local residents. Sutton Council has suggested that it might conduct its own “confirmatory parking beat surveys prior to commencement and require further amendments to the TTMOs in the event that the late 2018 parking beat surveys are found to be less representative of current daytime resident parking behaviour.”<sup>8</sup> This is a clear suggestion that the parking beat survey data is out-of-date and cannot be used to accurately assess current and future parking needs on the roads surrounding the appeal site.

Only 56 parking spaces have been allocated initially on the site, despite up to eighty personnel working on site. Although the appellant will encourage the use of public transport, the appeal site falls within a 1b PTAL category, which means it has some of the worst transport connections in London.<sup>9</sup> Commuting to the site in private car may be the only realistic option for many construction personnel who need to transport tools with them (particularly during a post-COVID work environment where public transport is discouraged). The true scale of this can only be understood if further information is released about the expected way in which construction will take place. For example, it is likely that freelance or self employed construction workers will more likely travel independently and require parking on site, in comparison to the primary construction company’s employees who may store tools on site.

The Department for Transport’s statutory guidance on traffic management enforcement states: “The Secretary of State recommends that enforcement authorities consult locally on their parking policies when they appraise them. They should seek the views of people and businesses with a range of different parking needs as well as taking into account the views of the police.”<sup>10</sup> Considering the appellant’s proposals will significantly reduce on-street parking during the construction phase, Sutton Council should also be consulting residents and businesses surrounding the appeal site on the specific issue of Traffic Regulation Orders.

In summary, the appeal proposals create significant concerns with regards to access, highways and parking, which contravene local, regional and national planning policy. The harm caused by this does not outweigh the need for the proposals (further information on this is set out later in this representation). It is understood that the access and highways issues were the primary concern when the application was refused at planning committee. These concerns are well-known by all the relevant stakeholders for this appeal. This issue alone has enough weight to deem the proposals unsound.

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<sup>8</sup> Robert De Castro recommendation note, 18 May 2020

<sup>9</sup> <http://content.tfl.gov.uk/connectivity-assessment-guide.pdf>

<sup>10</sup> Traffic Management Act 2004 The Secretary of State’s Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, para. 6.3



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### **Substantial increase in traffic, impact on parking infrastructure and access concerns once built**

Whilst there are significant safety concerns regarding the impact of the site construction traffic on the locality, there also exists concerns regarding the impact of traffic to and from the facility once built and in operation.

The school will accommodate 53 pupils for primary school (KS1/ 2), 150 pupils for secondary school (KS3/ 4) and 43 in further education (Post 16). No facility for accommodating private car drop-offs / pick-ups has been included in the site plan. As a SEN school, it is expected that the majority of students will be transport via mini-bus. However, analysis of the current Carew Manor students demonstrates that 36% of pupils travel to and from school by car (either as a single passenger, or car sharing), or by public transport and walking. There is no provision within the plans to accommodate those travelling by car (which could be up to 88 students if the percentage of current possible car travelling students was copied over to Sheen Way).

The provisions within the appeal proposals are not sufficient to safely accommodate so many vehicles for dropping off and collecting vulnerable SEN students. Although departure times may be "staggered" to ease congestion, the Transport Assessment demonstrates that the vast majority of students are collected within a short period of time. In the afternoon, 88% of all pupils are collected and depart from the site within a 20- minute period, although minibuses and cars were observed to arrive and cumulate at the site for a 30 minute period prior to the classes finish time. With this in mind, it is not realistic to expect the highway network to cope with such a large influx of vehicle movements during a small period, particularly when combined with the current High View Primary school traffic.

The Sutton Local Plan is clear on development for educational purposes. Policy 20e states: "In assessing applications for further and higher education uses, the council will ensure that such developments are sensitive to their surroundings, take into account the impact on the mix of uses in the area, be in areas of good public transport accessibility and seek to protect residential uses and the local environment." The current Carew Academy site is located within a grade 2 PTAL site, which means it has better public transport connections than the appeal site. It can't be ruled out that a greater percentage of students will travel by car to the appeal site for this reason.

Key Performance Indicator 14 of the London Plan also states that developments should "achieve a reduced reliance on the private car and a more sustainable modal split for journeys". The location of the site does not promote sustainable transport as it sits within a low public transport connection area which is lower than the current Carew Academy. Therefore, there is arguably a larger reliance upon private cars and the appeal development is not compliant with the London Plan and Local Plan.

Sutton Council has already deemed this site inappropriate due to the access traffic; not just because the abovementioned construction issue. On 22 August 1990, Sutton Council granted planning permission for a temporary nursey on Sheen Way playing fields. In the decision document, reasons for granting the application with certain conditions were given: "To reflect the narrow access road which would be unacceptable to serve a permanent development."<sup>11</sup>

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<sup>11</sup> Sutton Council Planning Committee decision document, 22 August 1990 (8922/05/06/B/1)



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This is yet another self-admission by Sutton Council that this site is inappropriate for a substantial increase in permanent traffic through the narrow, residential roads. Thereby, clearly contravening Policy 36a of the London Plan and Policy 29g of the Sutton Local Plan.

There are also omissions from the information provided in the Transport Assessment to accurately analyse the full impact of the traffic generated by the proposed development. For example, no information is given about the number of predicted deliveries to the school on each day (for maintenance, food, etc). Bearing in mind, as above, should HGV traffic movements rise above 30%, a separate traffic environmental assessments should be undertaken.<sup>12</sup> These movements should be taken into account and without them, it cannot be judged whether the development abides by the guidelines and Policy 36a of the London Plan and Policy 29g of the Sutton Local Plan.

Furthermore, although not apparent within the planning application documents, the development site might also host ad hoc community events, as the current Carew Manor does. Although difficult to predict, no allowance has been factored into the transport assessment or modelling to take into the impact of these ad hoc events on the local highway and parking infrastructure.

### **Assessment of need and the weight of impact**

The appellant argues that the need for a new SEN school outweighs the impact of the development (particularly with regards to access and highways) on the neighbouring residential area. The current Carew Academy is described as “not fit for purpose” by the appellant and policies within the London Plan, Local Plan and NPPF are highlighted to demonstrate the policy-based need for the development to be given approval. These policies and arguments are underpinned by the 2011 joint ministerial statement which awards a presumption in favour of the development of state-funded schools.

There is no contention over the need for Sutton Council to provide more school places, as part of its responsibilities under the Education Act 2011. However, this argument is not relevant for determining the proposed appeal development. The Futures Academy will not be a new SEN school but rather a replacement one for Carew Academy. The current student population of Carew Academy is 220.<sup>13</sup> The maximum capacity of Carew Academy is 246 students.<sup>14</sup> The maximum capacity of the proposed Futures Academy is 246 students.

Even if the student population at Carew Academy was to increase by the same rate as the population of young people in Sutton, there would still be capacity for further admissions by 2027. However, this is not to downplay the limitations of Carew Manor. It is well documented that the listed building status of the school restricts certain upgrades needed to the building (such as the inclusion of lifts to support physically disabled students). Nevertheless, the current performance of Carew Academy has

<sup>12</sup> <http://programmeofficers.co.uk/Cuadrilla2018/CD8/CD8.3.pdf>

<sup>13</sup> <https://www.compare-school-performance.service.gov.uk/school/139722/carew-academy/absence-and-pupil-population>

<sup>14</sup> <https://carewacademy.org/wp-content/uploads/2020/03/Admissions-Procedure-CAREW-2020-21.pdf>



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been rated as Outstanding by OFSTED in every measure, with not a single mention of the limitations of the building in their January 2020 report.<sup>15</sup>

It's right that the current and future students of Carew Academy have access to appropriate education facilities. But, Sheen Way playing fields is not the appropriate site (for the Carew students, the High View students or the local residents). There is no evidence to suggest that Carew Academy will not be able to provide adequate education to SEN students should the Sheen Way proposals be refused whilst a more appropriate site is located. The proposals for Sheen Way do not provide greater capacity, and there currently isn't urgent capacity issues at the Outstanding-performing Carew Academy. There is no reason to rush through a shoe-horned school into the inappropriate Sheen Way playing fields. The need for the proposals does not outweigh the harm they will cause.

Further, although the Sheen Way playing fields site was allocated for development within the Sutton Local Plan, there is no evidence to demonstrate that there isn't a more appropriate site for the development. None of the other sites supposedly considered for a new SEN school were assessed as part of the application process. The appellant should now work with Sutton Council to establish a more appropriate site for a new SEN school by first re-visiting some of the other sites considered.

### **Unacceptable increase in air and light pollution in a residential area**

Tackling pollution has become a priority for both local and national governments over recent years. It's estimated that nearly 9,500 people die each year in London because of air pollution<sup>16</sup> and in response, the Government has adopted a Clean Air Strategy, the Mayor of London has adopted a Clean Air Action Plan, and Sutton Council has updated their Local Air Quality Action Plan.

Policy 15 of the NPPF also reinforces this and states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of soil, air, water or noise pollution.

Despite the awareness of air pollution, its impact on local health and the planning policies regarding this, the proposed site of the Futures Academy on the Sheen Way playing fields records higher pollutant figures than the current Carew Manor site, with over 12% increase in NOx.<sup>17</sup> As well as the higher estimated pollution figures when comparing the two sites, there are further concerns about the appellant's air pollution assessments.

Firstly, in the Air Quality Impact Assessment, it is noticeable that there appears to be an omission of an "air quality neutral assessment" for the appeal site with regards to traffic emissions once operational. Policy 34f of the Local Plan states; "All development proposals should be at least 'air quality neutral' with respect to particulates (PM10s) and nitrogen oxides (NOx)" Only an air quality neutral assessment for the building and construction phases have been conducted. The reason for

<sup>15</sup> <https://reports.ofsted.gov.uk/provider/25/139722>

<sup>16</sup> <https://www.theguardian.com/environment/2015/jul/15/nearly-9500-people-die-each-year-in-london-because-of-air-pollution-study>

<sup>17</sup> <https://uk-air.defra.gov.uk/data/laqm-background-maps?year=2015>





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this omission is because: “there is no benchmark to assess this against.”<sup>18</sup> It is unclear why the current traffic emission levels for the appeal site and surrounding areas could not be used as a benchmark to assess this against. Without further investigation, the proposals contravene Policy 34f of the Local Plan.

Secondly, it appears that the traffic air quality monitoring prediction, as part of the “air quality assessment”, was not conducted on the roads where traffic will be flowing down once operational. The cumulative impact of the appeal proposals is not limited to the site of the proposed development, but also include the residential roads surrounding it. It is unclear why the roads in which vehicles will access the development were not included in the assessment. Road transport is the main source of air pollution in Sutton, according to the council’s own air quality plan. Only by assessing these roads can the full extent of the air pollution impact be understood.

Paragraph 103 of the NPPF places importance on the need to develop areas with good public transport connections that will not produce excess traffic and emissions to improve air quality. And yet, the appeal site is based in a low PTAL area, which only encourage further vehicle emissions rather than the use of public transport. Despite the greater reliance on private vehicles to access the appeal site once operational as well as during construction, there has not been an adequate assessment of the impact of traffic emissions.

Thirdly, the air pollution measurements themselves aren’t accurate calculations. The air pollution figures included in the Air Quality Impact Assessment are based on Defra predicted figures from 2015-2017. No up-to-date emission measurements have been taken from the appeal site on Sheen Way playing fields.

Furthermore, in the Air Quality Baseline and Feasibility Study, the appellant states that the nearest industrial site with significant emissions to air is the Beddington Farmlands Landfill. No mention of the current Beddington Incinerator (Energy Recovery Facility) features within the application documents. Located approximately 2.4km from the appeal site, the Beddington Incinerator emits 300,000 Tonnes of CO<sub>2</sub> per year, 330 tonnes of Oxides of Nitrogen, and 11 tonnes of particulates, into the local atmosphere. The incinerator is not even fully operational, yet, and the reports by Viridor show that emissions limits have been exceeded on several occasions, as well as some reports for days missing due to faulty equipment or unspecified reason.

Finally, railway lines can produce a significant amount of particulate pollution. The Sutton and Mole Valley railway line borders the appeal site, in between Wallington and Waddon, with over a dozen trains passing by every hour during normal working hours. The Air Quality Baseline and Feasibility Study refers to pollution from railways but only appears to consider nitrogen dioxide pollution. Particulate pollution from railways is omitted. Despite this, studies have shown that particulate matter pollution is a concern with regards to railways and there is evidence to show that the concentration of particulates reduce with distance from the railway line. The proposed Futures Academy site is located on the border of a busy London railway line. Particulate matter pollution will be higher than the current Carew Manor site. However, the full extent of the impact cannot be assessed because the evidence has not been collected by the appellant.

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<sup>18</sup> Air Quality Impact Assessment 2019, para. 6.3



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There are also various concerns regarding the light pollution generated from the appeal proposals. Sutton Local Plan Policy 34 Environmental Protection states: "All development proposals should incorporate measures to minimise the intrusiveness of artificial lighting and thus the potential adverse impacts on residential amenity, the character and appearance of the historic environment, public safety, protected wildlife and quality of life."

The appellant themselves recognise that the development's lighting could have impacts on the ecology of the area: "Inappropriate lighting of trees during the operational phase could cause minor loss of commuting habitat for birds and bats."<sup>19</sup>

As well as being rejected on the absolute basis of light pollution in an ecologically important area, the appeal should also be dismissed on the basis that the documentation provided does not sufficiently quantify the impact of that accepted pollution. The appellant has omitted significant detail on the impact of the development's artificial lighting on numerous properties bordering Sheen Way playing fields. No apparent assessment of the impact of light egress onto the properties on Sheen Way, Godalming Avenue and Headley Avenue, have been submitted as part of the application documentation. No accurate judgement can be made regarding the specific impact of the proposed lighting at a more granular level.

Paragraph 180c of the NPPF states that developments should "limit the impact of light pollution from artificial light on local amenity". However, due to the lack of sufficient assessments conducted by the appellant, there is no benchmark to assess the impact of light pollution on the neighbouring residential properties.

Further, when assessing the potential cumulative impacts of the appeal development, there are similar significant concerns regarding light pollution. The numerous vehicle movements to and from the development site during and after construction will result in disturbance to the properties along each of the access routes.

### **Unjustified loss of open and green space**

Sheen Way playing fields make up part of the 518 hectares of what Sutton Council describe as open space. Policy 25 of the Sutton Local Plan states that: "The council will seek to retain the existing level of open space in the borough by: supporting improvements, enhancements, and management that improve both quality and access to existing green spaces." Likewise, Policy 7.18 of the London Plan makes it clear that the Mayor of London supports the protection of open spaces.

Para. 97 of the NPPF also places significance on these areas, stating that development should only occur on these areas if the land is surplus to requirement; equivalent facilities are provided in its place, or; the recreational benefit of the development outweighs the loss of the space.

The appellant, however, has not demonstrated that the proposals satisfy the conditions within the NPPF for open space development. Further, the development contravenes Policy 25 of the Local Plan and policy 7.18 of the London Plan, with regards to replacing adequate equivalent or better

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<sup>19</sup> Ecological Impact Assessment, para. 5.2.1



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provisions. Policy 5e of the Sutton Local Plan suggest that the development of the Beddington Farmlands will create new open and green space in the borough, possibly to offset the loss from Sheen Way. However, the development of the Beddington Farmlands is currently behind schedule with no confirmed completion date. Currently, the area is still very much wasteland (as a result of the former landfill on the site and current waste incinerator facility adjacent to it). This supposedly new green space is also at least 45 minutes walking distance from Sheen Way, so of little benefit to compensate the residents on the estate for the loss of Sheen Way playing fields. In order to access this, local residents will likely have to drive to the Farmlands or other nearby spaces (bear in mind the low PTAL grade of the area); adding further cumulative emission impacts to this application.

The Planning Statement by the appellant appears to suggest that the need for a special educational needs school outweighs and takes priority over the Open Spaces (25) policies within the Local Plan. Despite this, there exists no hierarchy of dominance with regards to the appeal site and the Local Plan open space policies. Further, the allocation of the site in the Local Plan is until 2025<sup>20</sup> only. Considering the construction of the development will last over a year, the development will likely only be operational up to three years before the allocation expires. Therefore, for all intents and purposes, the application and all of the cumulative impacts are for a short-term development. The Local Plan expires in 2031, long after the expiration of the Sheen Way allocation. By any rational interpretation and judgement, the policies within the plan with no expiration until the conclusion of the Plan (including Open Spaces) have greater weight than the temporary policy which allocates Sheen Way playing fields for the appeal proposals. Allocating a site for development within a Local Plan does not give it immunity from complying with the planning policies set out within that Plan or other national and regional planning policies.

The NPPF, paragraph 96, also places importance on local authority provision of open spaces for sport and physical activity to promote health and wellbeing. Particularly in a post-Covid world, the importance of large open spaces is more important for health and fitness than ever before. Obesity among the borough's adults is above the London and England averages and paragraph 3.40 states that local authorities should plan to ensure there are facilities to promote healthy living and prevent obesity. Further, the London Plan places importance on building upon the legacy of the London 2012 Olympics by enhancing open space provision.

Removing valuable open space for recreational fitness purposes, therefore, only hinders the ability for local people to access facilities to exercises in and help prevent obesity. Thereby, the appeal proposal contravenes NPPF and local planning policies that place focus on tackling the UK's obesity crisis, promoting healthy lives, as well as concreting over the legacy of 2012, undermining efforts to tackle COVID-19 and protect the NHS.

The Sheen Way playing fields are also classified as an Urban Green Space within the Local Plan. The Local Plan suggests that any development on green space should maintain the setting and visual amenity that it provides. Paragraph 99 of the NPPF states that the purpose of local authorities designating land as green space is to "protect green areas of particular importance to them". The green space in which the appeal site is located is of particular importance, from a recreational as well as ecological point of view. The proposals, therefore, contravene these elements of the Local Plan and NPPF.

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<sup>20</sup> Sutton Local Plan 2018, Policy 20d

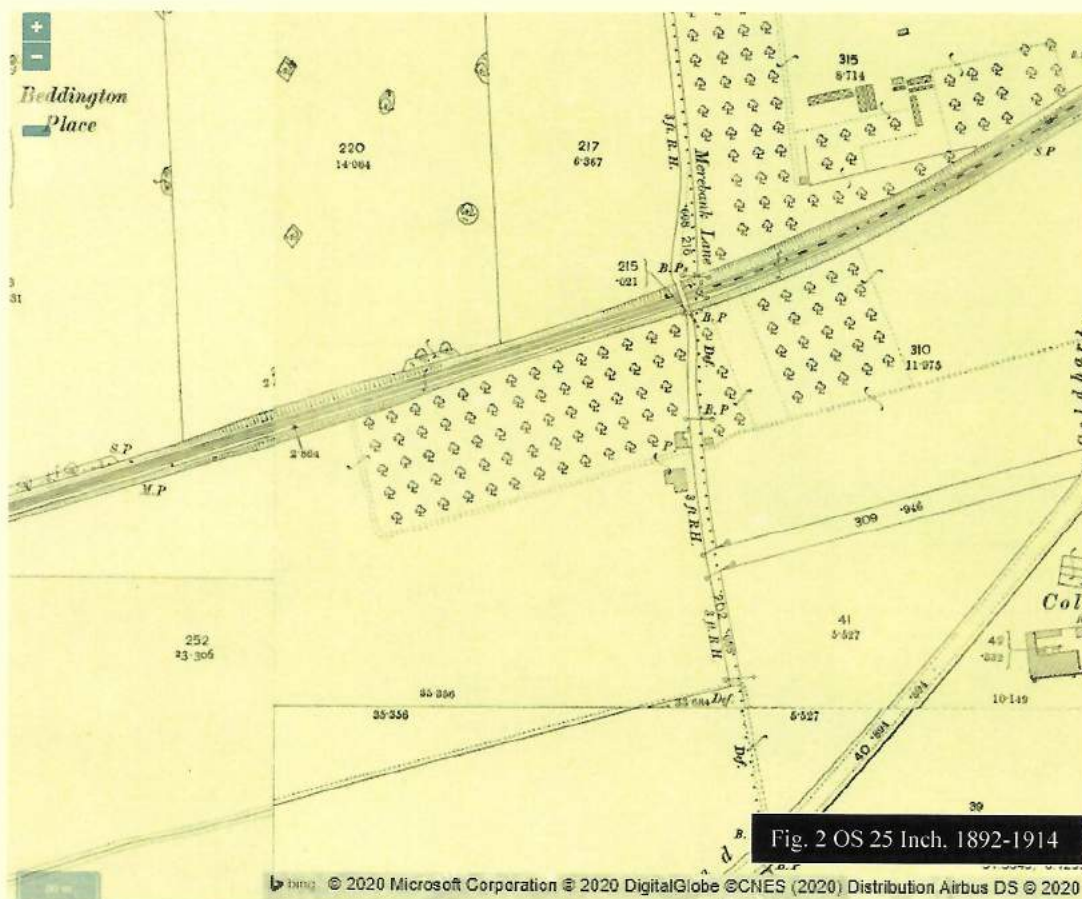


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Further, a Public Health England report on improving health inequalities and access to green spaces states that all people should be able to access natural green space “of at least two hectares in size, no more than 300m (five minutes’ walk) from home.”<sup>21</sup> With the exception of Sheen Way playing fields, there is no other green space of at least two hectares within 300m that can be accessed within a five minute walk. The appeal proposals, therefore, would contravene the recommendation of Public Health England.

Finally, there are reports to suggest that a covenant is placed upon the land that is now the Sheen Way playing fields. According to the agreement, no buildings shall be erected on the land agreed to be sold except a pavilion or other building used in connection with a playing field. This building covenant shows that this land was never intended to be built on (except perhaps for a sports pavilion). It has a long history of being a green space and, as far back as the 1890s, was listed on maps as being such, as well as allotments and sports fields in the early 20<sup>th</sup> Century (see Fig: 2 and 3).



<sup>21</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/357411/Review8\\_Green\\_spaces\\_health\\_inequalities.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/357411/Review8_Green_spaces_health_inequalities.pdf)



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**Significant impact on local biodiversity**

As a large green space, the loss of Sheen Way playing fields would naturally have significant impacts on the local ecosystem and biodiversity, if planning permission were to be granted for the appeal proposal.

Protecting and growing local biodiversity is a key priority locally for Sutton Council, with two of the Local Plan objectives dedicated to this. Objective 5 states: "To use the Green Belt, Metropolitan Open Land, the parks and other open spaces to protect the open feel of the borough and its biodiversity." And, Objective 19 states: "To protect and enhance the borough's biodiversity."

The London Plan shares similar objectives: "Development Proposals should: wherever possible, make a positive contribution to the protection, enhancement, creation and management of biodiversity."<sup>22</sup>

<sup>22</sup> London Plan (2016), Policy 7.19c



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This is reinforced by the NPPF, which states: “if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.”

As part of the application, the appellant commissioned a habitat assessment to ensure the proposals were compliant with local and national planning policy. Habitats within the land were classified and the presence, or potential presence, of certain protected and / or notable species of flora and fauna were identified.

A Ground-Level Bat Roost Assessment was undertaken on 21 November 2018. The conservation of bat populations is heavily promoted within local and national policy, as well as in legislation. A national study between 1978 and 1993 estimated a 70% reduction in the population of the two common pipistrelle species. However, evidence from a national survey in 2003 suggests that for certain species, this trend may finally be in reverse. All bats and their roosts are protected under Schedule 5 of the Wildlife and Countryside Act 1981. This legislation has been supplemented and amended by the Countryside and Rights of Way Act 2000. All species of bat and their roosts are also given protection under Schedule 2 of the Conservation (Natural Habitats &c) Regulations 1994.

The bat study concluded that the area is of site value to foraging and commuting bats. Trees on the site “are of a size and age conducive to supporting a bat roost” whilst others were heavily ivy covered and “could conceal suitable roost features and provide roosting opportunity.”<sup>23</sup> Furthermore, four different species of bats have been recorded within 1km of the site.

The bat survey, however, is not thorough enough to rule out the presence of bats on the proposed development site. The survey was conducted on just one occasion in November, when bats are in their hibernation phase and activity outside of roosts is rare.<sup>24</sup> Moreover, the ivy-covered trees may well have hidden roosts not recorded in the survey. Evidence suggests that the site and nearby area have experienced bat activity with the survey itself stating that “the scattered oak trees along the railway may provide some foraging opportunity to light tolerant bat species such as pipistrelles”, which are one of the bat species that have been recorded within 1km of the site.

A key objective of the Sutton Biodiversity Action Plan, Species Action Plan (2010) is: “To maintain, enhance and extend suitable roosting, breeding and hibernation habitat for all species of bats.” Should the appeal be allowed and permission granted, it is likely that this development will hinder Sutton’s biodiversity objectives and local plan policies, as well as potentially contravening legislation.

There are records of Slow Worm and Common Lizard within 1km of the site, too. All species of UK reptile are protected against reckless or intentional killing or injuring under The Wildlife and Countryside Act 1981 (as amended). The habitats survey concluded that the area is of site value to reptiles in the local area and includes areas of habitat potential for slow worms.<sup>25</sup>

Despite the habitats survey concluding that the site has value to breeding birds, it omits that the site is a targeting area for brown hairstreak butterflies (a priority species protected under Schedule 5 of

<sup>23</sup> Sutton Biodiversity Action Plan, Species Action Plan 2010, para. 4.3.7

<sup>24</sup> <https://www.bats.org.uk/about-bats/a-year-in-the-life-of-a-bat>

<sup>25</sup> Sutton Biodiversity Action Plan, Species Action Plan 2010, para. 4.3.5



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the 1981 Wildlife and Countryside Act) and a potential area for lapwings (which feature on the Red List of Conservation Concern).

The Sheen Way playing fields also falls within a designated Green Corridor. Policy 26a of the Local Plan places great importance on protecting Green Corridors, with Policy 26d setting out specific reasons to not grant planning permission on such land: "The council will not grant planning permission for development within a Green Corridor where there would be a significant damaging impact to the corridor, unless the need for and benefits of the development clearly outweigh the harm and where development can demonstrate no net loss for biodiversity by providing mitigation and/ or compensation measures."

The London Plan also states that London's biodiversity is dependent on green corridors and that they should be protected and enhanced.<sup>26</sup> Despite this, there is not sufficient evidence to suggest that the benefit of the development proposal will outweigh the impact of it on the ecology of Sheen Way and the surrounding area.

**Potential increased risk of flooding to the development and neighbouring properties**

The site is located within Flood Zone 1 and requires a flood risk assessment and appropriate Sustainable Urban Drainage System measures, as per the Local Plan allocation.

Despite the lower risk flood zone, the appeal site falls within a High Risk surface water flooding area.



<sup>26</sup> London Plan 2016, para. 7.62



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The appellant's planning statement states: "the extent of the flooding is expected to be at a level of 46.7 AOD, and it is recommended that floor levels be set at 47.00 AOD or higher." It is noticeable that the properties on Godalming Avenue, bordering the appeal site, also fall within a high risk area. By increasing the AOD of the development proposals, there is potential for the neighbouring properties on Godalming Avenue to be impacted.

Paragraph 163 of the NPPF is clear: "When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere." Policy 32 of Sutton's Local Plan reinforces this and states that proposed developments should avoid or minimise all sources of flood risk to people and property, without increasing flood risk elsewhere as the development could pose further flood risks to neighbouring properties. With the information provided by the appellant so far, it cannot be ruled out that the development will increase flooding in neighbouring properties and, therefore contravenes policy 163 of the NPPF and policy 32 of the Local Plan.

To further mitigate the surface water flood issue, the appellant is proposing infiltration as their surface water discharge method. Underground cellular structure, permeable paving and infiltration trenches are proposed as the primary SuDS features for managing runoff volumes for the two site sub-catchments.

However, the Flood Risk Officer at Sutton Council (as lead local flooding authority) advised that the entire building and hardstanding area for the proposed site was not factored into the MicroDrainage calculations.<sup>27</sup> The Flood Risk Assessment and Drainage Strategy states that the proposed building and hardstanding area equates to 1.03ha. The two modelled sub-catchments equate to 0.993ha. Further, the exceedance flow routes for the site need to be added to the drainage strategy drawing to further demonstrate how water will be directed away from the buildings.

There is not adequate information, therefore, to sufficiently judge whether the appellant's strategy will successfully mitigate surface flooding issues. The appeal proposals do not satisfy flooding policies within the London Plan, Local Plan and NPPF.

**Unsound building design and impact on residential amenity**

The appeal proposals create substantial concerns regarding the design of the development. The appeal site is based within a green space surrounded by a residential estate and will change the characteristics of the site permanently.

Policy 7.6 of the London Plan states that buildings and structures should (amongst other requirements):

*"A) be of the highest architectural quality, B) be of a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm, C) comprises details and materials that complement, not necessarily replicate, the local architectural character,*

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<sup>27</sup> Sutton Planning Committee Report, para. 5.189





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*D) not cause unacceptable harm to the amenity of surrounding land, E) incorporate best practice in resource management and climate change mitigation and adaptation, F) provide high quality indoor and outdoor spaces, G) provides different activities and land uses I optimise the potential of sites."*

The distance between the appeal site and neighbouring properties is an issue of concern. As outlined by the Design Review Panel (DRP): "The southern boundary adjacent to the back gardens of the Godalming Avenue homes seems very tight."<sup>28</sup> And it's also clear from the Planning Committee report that the building will be seen from residential properties to the south and west of the site.<sup>29</sup> With this in mind, the appeal site does not comply with the Policy 7.6 of the London Plan.

Paragraph 130 of the NPPF states that: "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents." The car park, in particular, does not match the characteristics of the local area, with the DRP describing it as a "sea of tarmac". Despite this issue being raised with the appellant, no action will be taken to resolve this concern and it therefore contravenes the NPPF.

### **Potential archaeological significance of the site**

NPPF section 16 and Policy 7.8 of the London Plan (2011) make the conservation of archaeological interest a material planning consideration. NPPF paragraph 189 states that applicants should provide an archaeological assessment if their development could affect a heritage asset of archaeological interest.

In their representation to Sutton London Borough Council, Historic England outline the archaeological importance of the appeal site: "The submitted archaeological desk-based assessment (Archaeology South East, February 2019) demonstrates that there is potential for prehistoric and Roman remains to survive on the site, and that the proposed development will have a significant impact on archaeological remains."<sup>30</sup>

Furthermore, there are two records noted from the desk-based archaeological evaluation of the site, of prehistoric tools found on the appeal sites, as well a potential third item not include in the appellant's emulation.<sup>31</sup> Moreover, in the nearby area, an old Roman road is also present within metres of the east of the appeal site, too.

<sup>28</sup> Design Review Panel report, para. 3.2

<sup>29</sup> Sutton Planning Committee Report, para. 5.89

<sup>30</sup> Historic England, representation to Sutton London Borough Council, August 2019

<sup>31</sup>[https://www.mola.org.uk/sites/default/files/downloads/The%20archaeology%20of%20Greater%20London%20an%20assessment%20of%20archaeological%20evidence%20for%20human%20presence%20in%20the%20area%20now%20covered%20by%20Greater%20London\\_Part1.pdf](https://www.mola.org.uk/sites/default/files/downloads/The%20archaeology%20of%20Greater%20London%20an%20assessment%20of%20archaeological%20evidence%20for%20human%20presence%20in%20the%20area%20now%20covered%20by%20Greater%20London_Part1.pdf)



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These findings aren't surprising considering the appeal site falls within an Archaeological Priority Area<sup>32</sup> within one of the most archaeologically interesting boroughs in London.<sup>33</sup> There are numerous archaeological remains that are recorded within the same priority area as the appeal site, as well as bordering it in Croydon, including the famous Waddon Caves and human remains from the Saxon age, just metres from the appeal site.

Both Historic England and the applicant's archaeological surveyor, Archaeology South East, recommend field evaluations to be conducted as well as the desk-based evaluation to investigate the archaeological importance of the site further. Despite this, it is not clear whether further work has been conducted to establish this.

Given that the development proposals include the wholesale removal of the topsoil in the relevant area, it inevitably follows that any items of historical importance within it will be disturbed or potentially damaged during the transfer. In addition, the movement of the topsoil will also immediately destroy any information which could be gleaned from the distribution of any finds in the soil. All of the relevant planning policy documents highlight the importance of treating sites of potential archaeological significance with caution. In particular, multiple policies stress the importance of the preservation of potential archaeological finds in situ which would be rendered instantly impossible at the point topsoil was moved.

Policy 30a of the Sutton Local Plan makes it clear that the council will conserve and enhance the Borough's historic environment, including "undesigned archaeological remains".<sup>34</sup> Para. 7.1.11 of the London Plan also states that "developments will be expected to avoid or minimise harm to significant archaeological assets."

Furthermore, as already touched upon, part of the development site falls within an archaeological priority area. Policy 30k of the Sutton Local Plan states that the council:

*"must require the necessary level of investigation and recording for development proposals that affect, or have the potential to affect Sutton's archaeological heritage. Remains of archaeological importance, whether scheduled or not, should be protected in situ, or if this is not possible, excavated and removed as directed by the Greater London Archaeological Advisory Service."<sup>35</sup>*

The NPPF reinforces this and states: "Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation."<sup>36</sup>

Despite recommendations in the appellant's archaeological report and in Historic England's representation to the application, no follow-up field investigations have been conducted to ensure that the potential archaeological heritage of the site won't be impacted by the development.

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<sup>32</sup> <https://historicengland.org.uk/content/docs/planning/apa-sutton-pdf/>

<sup>33</sup> Sutton Local Plan 2018, Policy 30.2

<sup>34</sup> Sutton Local Plan 2018, pg. 101

<sup>35</sup> Sutton Local Plan 2018, pg. 102

<sup>36</sup> NPPF 2019, Para. 189



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There is also no evidence that the appellant consulted the Greater London Archaeological Advisory Service, as required in Policy 30k (ii) of the Local Plan.

Should the appeal be granted and permission given, the proposed development will clearly contravene policies regarding archaeological and historical heritage preservation within the Sutton Local Plan, London Plan and NPPF.

### **Potential impact of development on vulnerable children**

The impact of the appeal development is not something that is unique to the residents who live in the residential estate surrounding the Sheen Way playing fields. The site is also highly inappropriate for the potential future students of Futures Academy with risks that could impact those who attend, particularly those who are vulnerable.

The current students of Carew Academy include those with a wide range of ability levels and additional learning needs, including complex needs, and those with hearing and communication limitations. It is noted in the Environmental Noise Assessment that students with hearing and communication limitations require a low Ambient Noise Level of 30 dBA LAeq. However, the noise assessment report goes on to suggest that the mean LAeq at the position closest to the sports pitches is 55 dB. This exceeds the low ambient noise level limits for students with communication limitations.

One such example of a group who may be impacted the most by this are those with neurological disabilities, such as autism, who are often very sensitive to specific types of noise. For example, autistic children may find certain background sounds, which other people ignore or block out, such as traffic and trains, unbearably loud or distracting. This can cause anxiety or even physical pain.<sup>37</sup> Placing a new school within metres of a busy railway line, accessed by travelling down congested residential roads by another school, might trigger aural discomfort for some autistic students at the proposed school (particularly when compared with the tranquil setting of the current school, in Carew Manor, opposite Beddington Park).

Understandably, a lot of attention has been dedicated to the impact of the proposed appeal development on local residents as well as the future Futures Academy students. However, there is another group who will be impacted by the development: the students of High View Primary School. The school is located on The Chase and accommodates fourteen classes and a nursery.

The Chase already struggles with school traffic for the primary school. If several hundred additional traffic movements are added to this for Futures Academy, there will be a significant highways safety impact, as well as air pollution, for the students at the current school. Sutton Council has a statutory responsibility to ensure that there are satisfactory educational facilities for their residents, including the current young people at High View. By attempting to squeeze a new school within close proximity of High View, the appellant's proposals risk a potential failure upon the local authority to

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<sup>37</sup> <https://www.autism.org.uk/about/family-life/in-the-home/environment.aspx>



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discharge their responsibilities under the Education Act 2011 to both the current students of High View and potential future students of Futures Academy.

### **The inappropriate and unsound handling of the application by the local authority**

Although not a key consideration for the Planning Inspectorate when determining this appeal, the handling of this planning application by the local authority is an important contextual point. The planning application for the development proposals had been progressing between the now appellants and the local planning authority since mid-2019.

Despite known issues regarding access arrangements, there appeared to be little indication publicly that the application was to be appealed as a non-determination. Further, the first public statement on the non-determination came not from Sutton Council's official channels but rather the Twitter account of the Sutton Liberal Democrats. The Conservative and Independent groups on Sutton Council were not informed about the non-determination prior to this – nor were the residents of the Sheen Way estate. This would suggest that the Council had acted unprofessionally and, from a planning perspective, unsoundly, by leaking the information to a certain political group before disseminating officially.

The appeal was submitted on 10 April. The Sutton Liberal Democrats "tweeted" the news of the non-determination (used as an attack on the Conservative Party) on 12 May, prompting other Sutton Council political groups to reach out to planning officers for more information.

This inappropriate behaviour was only reinforced further by the release of a statement by a Sutton Council planning officer which set out the timeline of communication between the then-applicant and the Council.<sup>38</sup> Despite the detail in the document, it is unclear how and why the relationship between the Council and applicant broke down over the contentious access issue. Sutton Council failed to discharge their responsibilities as the local planning authority. This proposal should have been determined locally.

This is not the only practice by the local authority that should be queried with regards to this application. The Council's planning portal has not been regularly updated (for example, one planning document submitted in August 2019 did not appear until May 2020). Further, despite the delay in determining the application, which caused the application to be appealed, there was also a delay in determining the application afterwards, too. The planning committee met virtually to refuse permission on Thursday 28 May – just three working days before the Council are to submit their representation to the Planning Inspectorate. This is hardly enough time to prepare a fully comprehensive representation.

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<sup>38</sup> Robert De Castro recommendation note, 18 May 2020



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Taken altogether, this representation demonstrates why the appeal proposals are unsound. The development contravenes key planning policies locally, regionally and nationally. In particular, the issues regarding access and highways impacts clearly outweigh the need for a replacement SEN school at this time. I recommend that the appeal be refused and hope the appellant will work with Sutton Council further to find an appropriate alternative site for the Futures Academy.

Many thanks

A handwritten signature in black ink, appearing to read 'Elliot Colburn', with a long horizontal flourish extending to the right.

Elliot Colburn

Member of Parliament for Carshalton and Wallington