

This document represents the Twickenham Riverside Trust's response to the Authority's case for using s19(1) of ALA 1981.

1. Background

2. Open space has protection against compulsory purchase under ALA 1981. To avoid special parliamentary procedures, under s19 of ALA 1981 the Authority must show which exemptions within that section apply to enable a certificate to be granted. The exemptions being proposed by the Authority are (in respect of that part of the Existing Designated Open Space as comprises the Lost Open Space) section 19(1)(a) of ALA 1981 and (in respect of that part of the Existing Open Space as comprises the Retained Open Space) Section 19(1)(aa) of ALA 1981.

3. In this Section we are challenging the Authority's use of both s19(1)(a) and s19(1)(aa) for the reasons which we set out below.

4. Requirements of s19(1)(a) ALA 1981

5. Under s19(1)(a) the Secretary of State must be satisfied that:

6. *"there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the person in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attached to the land purchased."*

7. Under section 19(1)(aa) the Secretary of State must be satisfied that:

8. *"the land is being purchased in order to secure its preservation or improve its management"*.

9. Until 20 September 2021 (the month before it launched its CPO) the Authority had been intending (as detailed in its draft Statement of Reasons shared with the Authority's Finance, Policy and Resources Committee in 28 June 2021) to rely solely upon s19(1)(a) in order to acquire the Trust's open space and there was no indication that it would be relying upon section 19(1)(aa).

10. However crucially the legislation does not permit an acquiring authority to provide as suitable replacement open space land which, prior to the land exchange, was already public open space. The Authority, upon realising that it would be impossible for it to recycle previous open space as new open space in order to satisfy s19(1)(a), then decided to change tack by separating out the existing open space within the Gardens which would continue to be used as open space and re-brand it as Retained Open Space. This land was now to be acquired using a separate procedure - s19(1)(aa) – where no exchange land needs to be offered but the Authority must show that the open space is required to be acquired by compulsory purchase to secure its preservation or improve its management.

11. In order to achieve this (and importantly to ensure that the Exchange Land being provided was no less in area than the area being acquired under s19(1)(a) – difficult now that the Retained Open Space could not be included) the Authority changed the proposed exchange land that it was offering so that it now included a large area of additional land (running down Water Lane).

1. This is the land numbered 28 and (in part) 46 on the Authority's recently created Proposed Modifications CPO Plan and is described here as the "Water Lane Retail Walkway". This land now forms part of the Exchange Land. Tellingly (and as further detailed in Section III) the Water Lane Retail Walkway had not previously been mentioned to the Trust as potential open space and has never been offered to the Trust under its negotiations with the Trust regarding the re-provision of new open space to the Trust under a new lease. Nor was this walkway included in a Daylight/Sunlight Assessment of "outdoor community amenity spaces" that was submitted in support of the August 2021 Planning Application, which obviously predated the Authority's realisation it would not be able to solely rely on s19(1)(a).

2. **Objection to the Authority's use of s19(1)(a)**

3. When acquiring land under Section 19(1)(a) the legislation requires that the open space exchange land must:

(1) Be no less in area than the order land (***limb (i)***); and

(2) Be equally advantageous to the public (***limb (ii)***); and

(3) Subsequently vest in the persons in whom the acquired open space land was vested, and subject to the like rights, trusts and incidents as attach to the acquired open space land (***limb (iii)***).

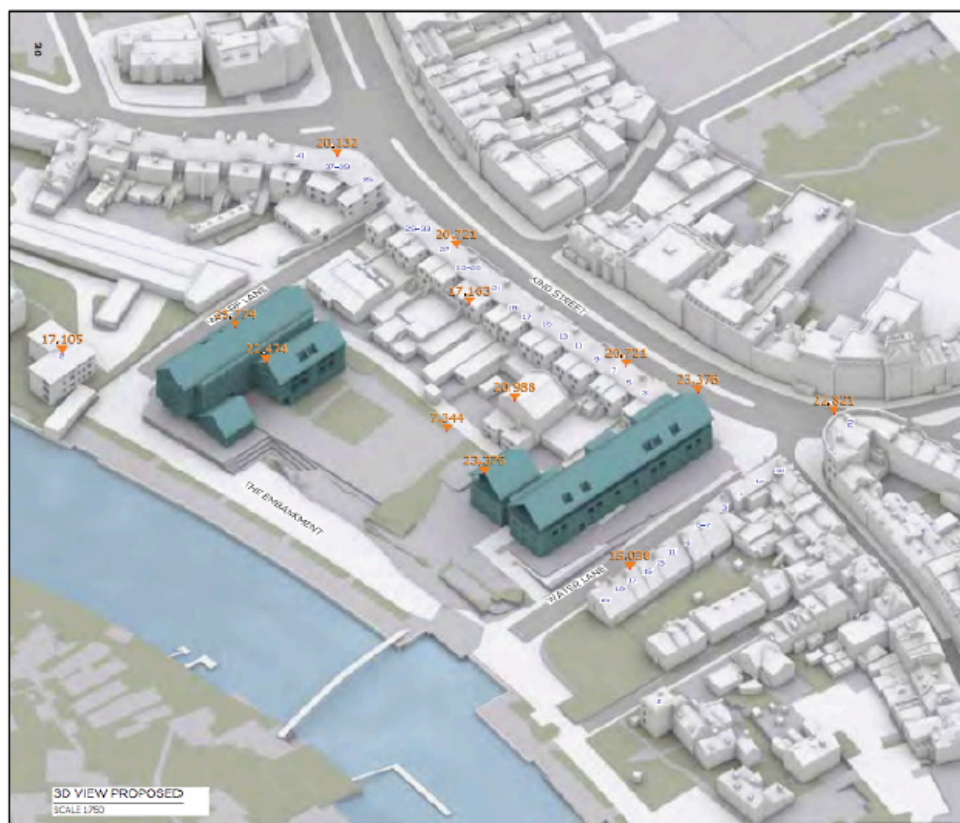
4. We will address each limb of this sub-section in turn.

Limb (i) - Is the Exchange Land no less in area than the Lost Open Space?

5. In its Statement of Case the Authority has provided measurement for the Lost Open Space of **1,336** sqm and for the Exchange Land of **1,815** sqm. At first glance this would appear to satisfy the first limb of the test (that the exchanged land must be no less in area than the area to be permanently acquired).

6. For the reasons given below, we strongly refute that assertion. Instead we contend that the Lost Open Space amounts to **1,486.9** sqm and that the Exchange Land proposed in return amounts to **1,217.2** sqm. Accordingly **269.7** sqm less Exchange Land is being offered by the Authority than Lost Open Space and therefore the Authority has failed to meet the requirements of this first limb of s19(1)(a). Please see the Table inserted at the end of this section on Limb (i) which shows the methodology of our calculations.

7. **(i) The Water Lane Retail Walkway is not open space**



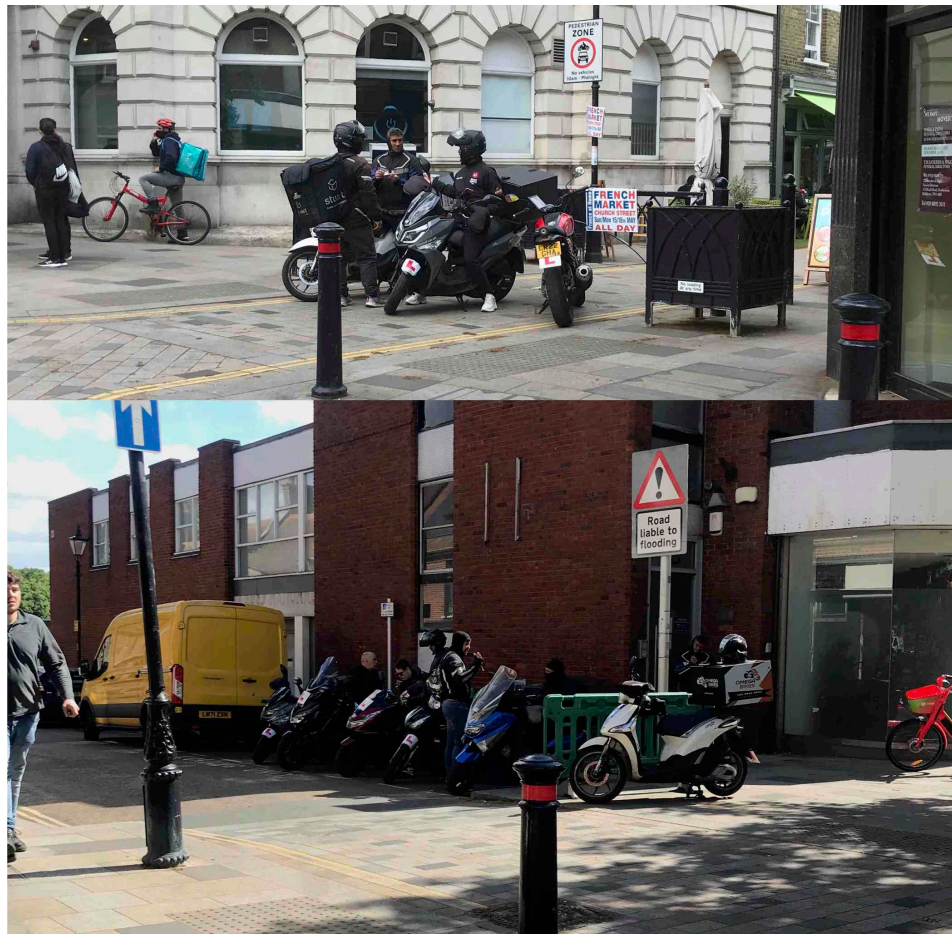
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PROPOSED

1. That part of the Exchange Land as constitutes the paved areas (and adjacent planting) running from King Street toward the river between the new residential block and the public highway (and buildings opposite) in Water Lane (ie the Water Lane Retail Walkway) is more akin to, and shares the same width and characteristics as, pedestrian public highway such as one finds throughout central Twickenham including in King Street, Heath Road and London Road.
2. Quite rightly none of these paved areas are listed as open space in any of the Authority's open space registers, or otherwise publicly stated to be open space. However by including the Water Lane Retail Walkway within the open space to be offered as part of the Exchange Land, the Authority is now seeking to make a singular exception.
3. We firmly believe that this area of pavement between shops and a two-way carriageway, and which narrows the closer it gets to the riverside, should not even qualify to be described as public open space. At its top end the Water Lane highway abuts and joins King Street – a major arterial route through the centre of Twickenham which is the main and most popular roadway used by drivers to travel between the neighbouring large towns of Richmond and Kingston. It is a constantly busy and noisy road with approximately 32,000 vehicular movements each day.
4. Even with c.100 parking places removed from the Embankment and with the Embankment road between Water Lane and Wharf Lane for the most part closed, the newly two-way Water Lane will nevertheless remain subject to a good deal of vehicular movement and commercial activity. The Water Lane Retail Walkway will be located directly across from a relocated (though only recently introduced) Loading Bay which currently serves the existing commercial premises and residential units in Church Street, King Street and Water Lane. The Scheme's Water Lane Loading Bay, relocated to the opposite side of the carriageway, will additionally serve the new retail premises and residential units to be built as part of the Scheme in Water Lane.
5. The Water Lane Retail Walkway will also sit directly adjacent to and opposite the vehicular movement of the burgeoning number of fast-food delivery motorcyclists who congregate outside the existing King St /Water Lane buildings. The drivers make use of the bench seating in this area, while their motorcycles line up either at the junction between (the pedestrianised and inaccessible to traffic) Church Street and Water Lane, or the existing Water Lane Loading Bay, or in the existing Water Lane motorcycle parking (to be reprovided by the Scheme in approximately the same location). Motorcycles also line up on the main carriageway, close to the cycle lane, directly in front of the existing buildings at the top of Water Lane/King St.
6. See below for the Servicing and Delivery Locations on the Authority's Scheme, and for photographs of how the area at the top of Water Lane/Church St, to include the existing Loading Bay (to be relocated to the opposite side of Water Lane on in the Scheme) is used by central Twickenham online delivery motorcyclists.

Figure 4-8 - Servicing and Delivery Locations



Transport Assessment Oct 2022 page 52 SERVICING AND DELIVERY



1. S19(4) of ALA 1981 provides the following definition of “open space”:
2. “any land laid out as a public garden, or used for the purpose of public recreation or land being a disused burial ground.’
3. The Water Lane Walkway is clearly not land laid out as a public garden.
4. Moreover we do not believe it can be construed as land used for the purpose of public recreation. Instead it is (just like the rest of the high street pavements and walkways in central Twickenham) simply a thoroughfare providing access to the new retail units in Water Lane and a means of access and egress between King Street and Twickenham riverside. It cannot meaningfully be described as open space providing public recreation.
5. The Authority’s Statement of Case (at paragraph 11.206) proffers that the Water Lane Walkway is ‘wide enough to have market stalls or al fresco dining experiences’. We disagree. The reality is that the walkway is simply not wide enough to support this (particularly if it is still to allow for pedestrian passage) except perhaps in a very limited way towards the top of Water Lane. Even then this area will be immediately next to the 32,000 daily vehicular movements that pass the top of Water Lane/King St.
6. This wider area towards the top of the Water Lane Retail Walkway already abuts an even wider area of existing retail walkway on the corner of Water Lane and King Street. This existing area is not used for market stalls (with the exception of the occasional single gazebo, invariably promoting or providing information on a single topic, rather than seeking to replicate the conducive retail atmosphere of ‘browsing’ that many markets seek to create) or al fresco dining and the reason for that is obvious – it is entirely unsuitable for such activity due to it being a retail walkway and there is very little amenity value in sitting next to constant road traffic, noise and fuel emissions.
7. Another important factor mitigating against the Water Lane Retail Walkway being capable of use as open space is its proximity to the new Water Lane Building. The Walkway sits immediately beneath a wide four-storey-tall retail and residential building which towers over the walkway for the entirety of its length. For large parts of the day (irrespective of the season) it will sit beneath the new building’s shadow.
8. And, of course, the Authority labelling the Water Lane Retail Walkway as “public open space” was always nothing more than a legal necessity resulting from its failure to take appropriate level specialist legal advice prior to publishing its Draft Statement of Reasons in June 2021 in which it relied exclusively on s19(1)(a). It was only in September 2021, a matter of weeks after the Authority had submitted its Planning Application, that it even thought to consider that this area merited designation as open space. When it was initially designed and included in the Scheme it was quite rightly never conceived as being amenity land or open space. And it was accordingly not offered to the Trust as part of the re-provision of open space that would be leased to us in the new Scheme.
9. Similarly when the Authority commissioned a daylight and sunlight report (dated 28 July 2021) from GIA Surveyors for its Scheme, that part of the report providing an “*overshadowing assessment for the external communal amenity areas*” completely ignored the Water Lane Retail Walkway and only

addressed the impact of overshadowing on the open space for the remainder of the Scheme (which topic we will come to later). This is the only daylight and sunlight report which has been submitted to the planning authority in support of the Scheme so it seems that no assessment has been made as to the potential impact of overshadowing of 'open space/amenity areas' in this Walkway area.

1. This is even though BRE guidance recommends that a report should be sought in respect of overshadowing of outdoor amenity space. It is obvious that the Authority did not include the Water Lane Retail Walkway in their overshadowing appraisal because, like us, they did not actually consider this area to be public open space until forced to do so following its realisation that it would not be able to make its case using s19(1)(a) unless it 'located' additional Exchange Land to compensate for the Lost Open Space.
2. According to the Authority's own measurements (see Map N) the Water Lane Retail Walkway measures 374.8 sqm and its adjoining pavement planting areas measure 36 sqm and 67 sqm respectively. In addition we have identified areas of stepped access within those areas designated as Exchange Land where no measurements have been provided but which we calculate to be approximately 20 sqm.
3. We consider the designation of each of these areas as Exchange Land as incorrect and so a commensurate reduction in the total square footage of the Exchange Land should be made. Please see the chart below for our calculation as to how this affects the overall measurement of Exchange Land.

- I. **(ii) The Wharf Lane Building Forecourt is not open space but rather replaces existing open space**



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1. As part of its Scheme the Authority is promoting as Future Designated Open Space an area of land which will sit between the northern façade of the Wharf Lane Building and the Service Road. This area is essentially a paved forecourt area leading to the rear entrances of the Wharf Lane Building, which can be considered neither public gardens nor land designated for use for public recreation. It will sit immediately beneath a five-storey building, will be located next to Wharf Lane and the Service Road, with the latter serving both (as is currently the case) the commercial and residential premises in King Street and (in the future) the new Water Lane retail/residential premises, as an alternative to the Water Lane Loading Bay.
2. This area forms most of the land shown as plot 87 on the Authority's Proposed Modifications CPO Plan and is described here as the 'Wharf Lane Building Forecourt'.
3. The servicing area at the rear of the opposite Iceland supermarket store is situated immediately in front of this area. The Iceland servicing area is frequently used as an outside storage area for significant amounts of waste recycling (contained in large metal carts which are collected daily by delivery vehicles). These collections usually take place during the morning with the carts accumulating during the day. The metal carts are found at both the rear and side of Iceland during its opening hours.



1. Significantly there are also three parking bays on the Service Road at its junction with Wharf Lane which are frequently used by the store's delivery trucks and for staff parking.
2. These vehicles make frequent trips throughout the day, amongst other things for local 'last mile' deliveries. The Wharf Lane Building Forecourt has been designated by the Authority as Future Designated Open Space in this area but the reality is that this is very unlikely to be used as such since it is neither a public garden nor is it an area having any use for public recreation.
3. Instead it is a piece of land squeezed between a five-storey building (which obscures any view from this area towards open space in the Scheme) and a commercial service road whose immediate aspect will be of Iceland's waste storage/service/delivery area and the other commercial buildings and activity at the rear of King Street and within the Service Road.
4. By contrast currently these areas are largely obscured (so as not to be visible from the Gardens) by a large amount of planting and green screening (including trees) which have been deliberately planted and cultivated to separate the working commercial activity and unsightliness at the rear of King Street from the public open space and activity within the Gardens. This 'green' screening creates an attractive and extremely effective backdrop when viewed from the rest of the Diamond Jubilee Gardens. It includes the two Indian bean trees (which flank either side of the elegant entrance to the Gardens) and the raised terrace planting leading from such entrance ways, all sitting beneath the majestic leafed canopy of the hornbeam trees that are also to be chopped down to enable the construction of the Wharf Lane Building.

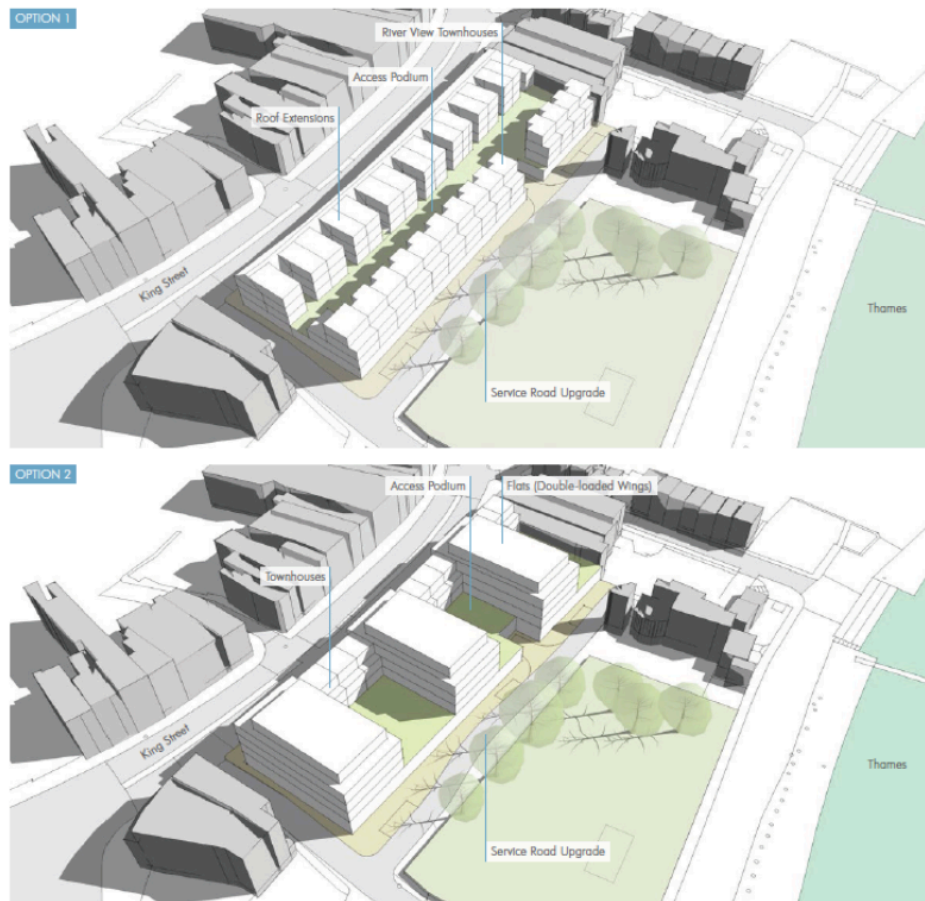


Wharf Lane/Service Road entrance to the Diamond Jubilee Gardens



View of the Service Road 'green screening'

1. The de-greening of this corner of the current open space (including the removal of the rare black poplar tree) will have a hugely detrimental effect on how the remainder of the proposed new open space will be enjoyed and experienced, not only because of the loss of green aspect but also because it will now open up the (previously screened) view towards these commercial areas. In addition (and worryingly) it will increase safety risks for users of such areas (particularly youngsters and the elderly travelling through the Wharf Lane Building Forecourt) since there will no longer be railings protecting them from the frequent daily manoeuvres of the various commercial vehicles using the Service Road.
2. Above and beyond its existing usage, this Service Road will also potentially be subject in the future to vehicular movements resulting from additional residential development of the rear of 3-33 King St. As detailed in Part III, when 3-33 King St was sold in 2016, the sales brochure showed 'concept schemes' (for which pre-planning application advice had been sought) for substantial residential development to the rear of the retail parade. See image below for King St Rear Residential Development concept schemes.



- I. The current owners of 3-33 King St have been undertaking a significant number of improvements to their investment in recent years (full replacement of residential windows to the frontage, repointing work to the front facade, incremental upgrading of retail frontages). Estate agent signs on the frontage are no longer permitted. A substantial and well-received piece of public art (see below) was very recently completed on the three-storey flank of the parade at Wharf Lane.



1. Currently, all the roof tiles from 3-33 King St are being removed and replaced with new ones (totalling some 60,000 tiles). There is also a planning application currently with the LPA for public realm improvements - the installation of new seating, bicycle stands and planting along the pavement abutting the public highway to the front of the parade. As and when the rear of the parade is substantially developed for new residential units, any planning application will accordingly be made in the context of a much upgraded/renewed building/public realm.
2. The Wharf Lane Building Forecourt measures approximately 120 sqm. It is agreed by both parties that the land in this area is currently public open space (planting beds within the Diamond Jubilee Gardens, containing trees as well as bushes and smaller plants). The Authority is also saying that within the Scheme this area will be Future Designated Open Space. We disagree since we do not believe that the use of this land under the Scheme is compatible with use as public open space.
3. Accordingly we consider that this area has wrongly been omitted from the land designated as Lost Open Space and that therefore a commensurate increase in the total square meterage of the Lost Open Space should be made. Please see the chart below for our calculation as to how this affects the overall measurement of Lost Open Space.
4. (iii) **the Terraced Jubilee Gardens must be excluded from the Exchange Land**
5. See below for a photograph of the Jubilee Gardens taken in August 2016. The area being discussed immediately below sits just to the right of the areas in the photograph, occupying a raised terraced, similar to that which can be seen in the far left of the photograph below (beyond the lamppost).



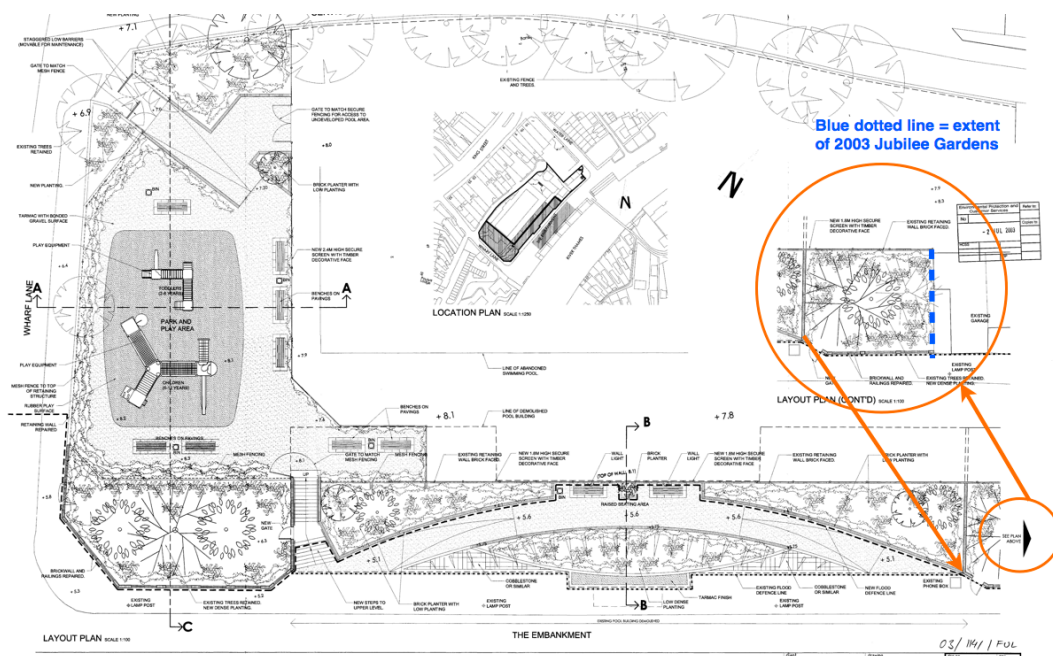


Photomontage showing location of raised landscaped area of Jubilee Gardens (area indicated with arrow)

1. The Authority has included within the Exchange Land an area of land (measuring approximately 100 sqm, and shown above) which is already public open space. As the Authority knows all too well (after its belated change of tack to a hybrid s19 approach in September 2021) ALA 1981 prohibits an acquiring authority from using other existing open space as part of its Exchange Land for existing open space. However, this is precisely what the Authority continues to do with this parcel of land.
2. The relevant land forms part of the 2005 Jubilee Gardens (as distinct from the 2012 Diamond Jubilee Gardens) and is a raised and terraced area of landscaping which provides visual amenity from both the raised Diamond Jubilee Gardens, the rest of the adjoining largely Embankment-level Jubilee Gardens and the wider Embankment area. Being a planted area, this raised section of Jubilee Gardens was not designed to be accessible to the public (although children do access it to play 'informally' there) but nonetheless, through its green visual amenity, is part of the overall open space enjoyed by them.
3. In its planning application the Authority identified the land as open space. Please see the 'Existing Open Space' plan below (from p61 of the LBRUT planning report from November 2022) which shows the relevant land (a square shaped area sitting adjacent to the south-east corner of the Diamond Jubilee Gardens) coloured medium green and described as 'softscape outside floodable area'.

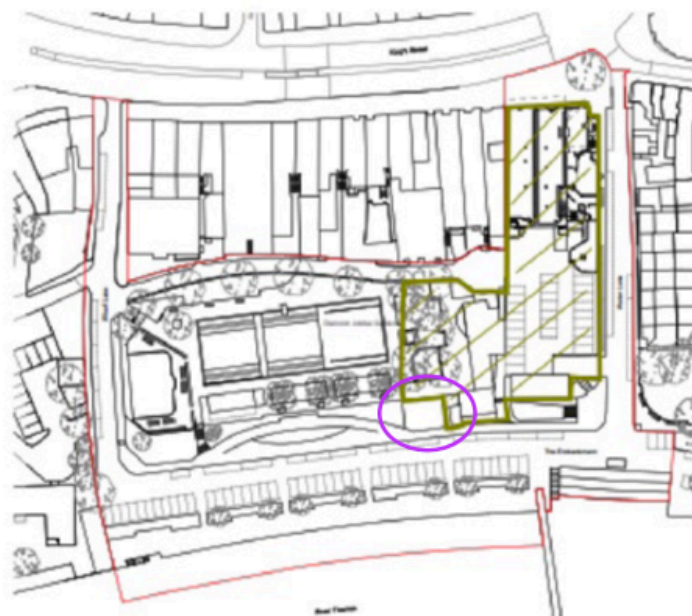


- I. The area was created as a raised/terraced landscaped open space in 2005 and formed part of the Jubilee Gardens (which was the first phase of open space at the derelict swimming site). Sections of the existing Jubilee Gardens were then incorporated into the larger, newly created Diamond Jubilee Gardens in 2012. Extracted below is the plan from the 2003 planning application for the Jubilee Gardens. The land in question (ringed in orange) sits outside the land demised to the Trust and is managed by the Authority.



- I. The land also sits outside the land designated as brownfield as defined in the November 2022 planning report (plan below).

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- 8.8 The hatched area contains:
- 1-1b King Street (2-3 storey buildings fronting King Street and Water Lane).
 - Hard standing car park associated to 1-1b King Street.
 - Substation to the south of the service road.
 - The former PC on the corner of Water Lane and The Embankment.
 - The former Bath House and land within the curtilage of this building (contained behind fencing).
- 8.9 The proposed Water Lane building is therefore sited wholly on brownfield land.

2. In recent correspondence Pinsent Masons (solicitors for the Authority) have stated, in relation to this land, that:
3. *"Part of Jubilee Gardens at Embankment level – we do not believe that this consistent with the meaning of the definition in section 19 of the ALA 1981 as it is not accessible to the public and not used for public recreation [the Trust's emphasis]. Therefore, we have not defined it as existing designated or functioning open space. We have taken a conservative approach to the inaccessible planted area to the south west of the Diamond Jubilee Gardens, including it as designated public open space because it is part of the Diamond Jubilee Gardens – but we also do not believe that this is consistent with the meaning of the definition in section 19 of the ALA 1981 and will note this further in our proofs of evidence."*
4. This interpretation seems to tally in some respects with the Authority's definition of 'Existing Designated Open Space' within the glossary to their Statement of Case (which definition we also dispute) where they define such land as *"the existing land used for public recreation (again our emphasis) on the Scheme Land, within the meaning of the definition in section 19 of the ALA 1981 as shown coloured green on Map A"*.

1. In both instances an abridged (and misleading) version of the definition of open space has been adopted to that which is used in the relevant legislation. As previously stated s19(4) of ALA 1981 defines “open space” as “any land laid out as a public garden, or used for the purpose of public recreation or land being a disused burial ground.’
2. So (1) the Authority has chosen to ignore the fact that ALA 1981 expressly stipulates that ‘*land laid out as public gardens*’ is to be included as open space and (2) the Authority is now also imputing into the legislation that land ‘*inaccessible to the public*’ should not be treated as open space even though this is stated nowhere in ALA 1981.
3. Moreover not only is the Authority’s interpretation inconsistent with ALA 1981 but it also goes against the definition of open space given in general statutory guidance and indeed the Acquiring Authority’s own previous submissions as to what it considers to constitute open space. The following definitions are quoted verbatim from the officer’s report made in November 2022 prior to the grant of planning permission for the Scheme:

(1) The NPFF definition – “ *all open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.*”

(2) The London Plan definition – “ *all land in London that is predominantly undeveloped other than by buildings or structures that are ancillary to the open space use. The definition covers the broad range of types of open space within London, whether in public or private ownership and whether public access is unrestricted, limited or restricted.*”

(3) The Local Plan definition – “ *Open Space: all land that is predominantly undeveloped other than by buildings or structures that are ancillary to the open space use. The definition covers a broad range of types of open spaces, whether in public or private ownership and whether public access is unrestricted, limited or restricted. Public Open Space - parks and similar land for public use, whether provided by the Council, or privately, where access for the public is secured by virtue of legal arrangements.*”

(4) The Authority’s own definition – As stated in the November 2022 planning report (para 8.35 – p61) – “ *the submission documents, for the purpose of this application, define open space as all open space of public value which offer important opportunities for sport and recreation and can act as a visual amenity. This is accepted and in line with the above definitions.*”

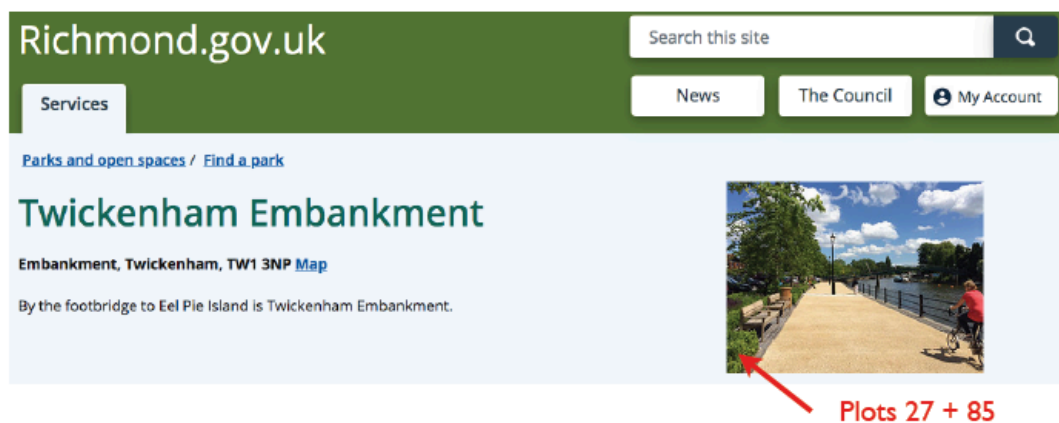
4. Obviously the submission documents here were those which were submitted by the Authority and so it would be inconsistent of them to argue now that open space which offers visual amenity should not be treated as open space.
5. Arguing that this part of the Jubilee Gardens is not actually open space is clearly an attempt by the Authority to (1) reduce the quantum of existing open space on the development site and (2) shore up its section 19(1)(a) case by inflating the amount of Exchange Land that is being offered, when it knows full well (having been apprised of this fact by the Trust in both March 2021 and September 2021) that existing open space cannot be given as Exchange Land.

1. The Authority's argument here seems misconceived and somewhat grasping at straws. There are many examples of open space being 'inaccessible' but which nevertheless constitutes open space by virtue of its location and the visual (and/or sensual) amenity that it contributes. Obvious example being flowerbeds and fountains. Also some areas of open space are fenced off for safety or preservation reasons. This does not mean that they cease to be open space that is laid out as a public garden or used for public recreation.
2. And of course the Authority's own Scheme has a number of areas (such as flowerbeds and other areas of planting) which are not intended to be physically accessed by the public but are identified nonetheless on the various Maps that accompany the Authority's Statement of Case as Future Designated/Functioning Open Space.
3. Part of the Authority's argument seems to be that the area in question lacks visual merit, describing the area as 'overgrown shrubland'. As previously stated this land was created as open space by the Authority pursuant to a planning permission applied for by the Authority and forms part of the Jubilee Gardens and for a long time was a more 'consciously' maintained area of landscaping. However relatively recently the Authority (who manage the area) have allowed it to grow more freely. Arguably this is not a bad thing - and consistent with the movement of re-wilding and encouraging biodiversity. However putting that argument to one side, we contend that it is unreasonable for the Authority to rely on its own landscape maintenance programme/planting choices in support of its case that the area is no longer open space.
4. As stated in the email from Pinsent Masons quoted above, the Authority will also be looking to argue at the Inquiry that a similar area of terraced landscaping in the south-west corner of the Diamond Jubilee Gardens (and as shown coloured medium green on the Authority's open space plan above) should also be excluded from the concept of existing open space.
5. This would constitute a further modification to the Order Land by the Authority in its continuing attempts to reduce land parcel by land parcel the quantum of Lost Open Space under s19(1)(a). It represents yet another last-minute change of course by the Authority which is completely at odds with the planning permission granted for the Jubilee Gardens (opened in 2005) and the Diamond Jubilee Gardens (opened in 2012) and the actual use and amenity of this area. It also flies in the face of the Authority's express requirement - as set out in the 125-year lease that it granted to the Trust just nine years ago - that the Diamond Jubilee Gardens are to be used for no other purpose than open space. Should we expect a breach of lease notice?
6. Nonetheless at this stage we address only the first relevant area of open space - the Terraced Jubilee Gardens. This area measures approximately 100 sqm. We consider it to be wrongly designated as Exchange Land (since it is already open space) and so a commensurate reduction in the total square footage of the Exchange Land should be made. The Authority's Map F Order Land should also be amended to show this area in White rather than in Green. Please see the chart below for our calculation as to how this affects the overall measurement of Exchange Land.

1. **(iv) the Lost Promenade Flowerbed on the Embankment should be included as Lost Open Space**



2. Currently the riverside Promenade at Embankment level is separated from the car parking and Embankment road by a series of attractive and well-maintained flowerbeds (including trees). Both the Promenade and flowerbeds are part of the existing open space at Twickenham Riverside. Indeed they are expressly promoted as part of the Borough's open space and parks on the Authority's website.



3. The flowerbeds are to be removed as part of the Scheme (coincidentally narrowing the promenade) and are to be replaced with alternative flowerbeds in different locations on the Embankment. However at least one of the flowerbeds that is being removed will not be replaced by open space. Instead the area in which it is located will now become part of the new turning circle for Wharf Lane (which is necessitated as a result of Wharf Lane becoming a two-way roadway). This flowerbed (which is shown as plot 85 on the Proposed Modifications CPO Plan) measures 30.9 sqm.
4. We understand (from recent correspondence) that the Authority will put forward an argument that this flowerbed forms part of the highway so essentially it can be dealt with as they see fit since public highway is incompatible with open space. With respect to this area we do not agree. The Lost

Promenade Flowerbed clearly functions as part of the public open space promoted by the Authority as riverside open space and has done so for many years.

1. Indeed the entire Embankment Promenade between Water Lane and Wharf Lane, to include the flowerbed in question, had been the subject of a 21-week, £1m+ renovation project it initiated in September 2013. The renovation was the culmination of a wider series of Promenade improvements that had already taken place on the Embankment Promenade between Water Lane and Church Lane. The Autumn 2013 renovations in the Water Lane to Wharf Lane section of the Promenade replicated those already undertaken between Water Lane and Church Lane to form a continuous and consistently landscaped area (to include, for example, the design of the Promenade's lampposts) of open space alongside the entirety of Twickenham's Embankment. The 2013 renovations also represent yet another example of the series of 'phased' enhancements/extensions of open space available to the public on Twickenham Embankment that have been taking place over the past 10+ years.
2. Accordingly we believe that this area (Plot 85) should be treated and designated as Lost Open Space and that the calculation of Lost Open Space should be adjusted accordingly. Please see the chart below for our calculation as to how this affects the overall measurement of Lost Open Space.

Amount of Open Space the subject of exchange under section 19(1)(a) ALA 1981 (disregarding equality of advantage)					
Lost Open Space (Authority's figure)	Lost Open Space (Trust's figure) - cumulative		Exchange Land (Authority's figure)	Exchange Land (Trust's figure) - cumulative	
1,336 sqm		1,336 sqm	1,815 sqm	excluding Water Lane Retail Walkway (shown marked 'R' on Map N and measuring 374.8 sqm)	1,440.2 sqm
1,336 sqm		1,336 sqm	1,815 sqm	excluding pavement planting between Water Lane and Water Lane Retail Walkway (shown marked 'U' on Map N and measuring 36 sqm)	1,404.2 sqm
1,336 sqm		1,336 sqm	1,815sqm	excluding pavement planting between Water Lane and Water Lane Retail Walkway (shown marked 'V' on Map N and measuring 67 sqm)	1337.2 sqm

1,336 sqm		1,336 sqm	1,815 sqm	excluding stepped areas on the upper parts between Water Lane and the Water Lane Retail Walkway where included by Authority as Excluded Land but where no measurements are given on Map N (and measuring approximately 20 sqm)	1,317.2 sqm
1,336 sqm		1,336 sqm	1,815 sqm	excluding terraced part of Jubilee Gardens (existing open space unlawfully proposed as Exchange Land shown on the Map F, and as being part of Plots 52 and 83 on the Authority's Open Space Plan, and measuring approximately 100 sqm)	1,217.2 sqm
1,336 sqm	including open space to be redeveloped as Wharf Lane Building Forecourt (shown as forming part of Plot 87 on the Proposed Modifications CPO Plan and measuring approximately 120 sqm)	1,456sqm	1,815 sqm		1,217.2 sqm
1,336 sqm	including embankment flowerbed to become Wharf Lane turning circle (shown as plot 85 on the Proposed Modifications CPO Plan and measuring 30.9 sqm)	1,486.9sqm	1,815 sqm		1,217.2 sqm

	<u>Total Lost Open Space</u>	<u>1,486.9 sqm</u>		<u>Total Exchange Land</u>	<u>1,217.2 sqm.</u>
				This represents a <u>shortfall of 269.7 sqm</u> below the threshold required to meet limb (i) of s19(1)(a) of ALA 1981	
				This is before any consideration is given to whether the remaining Exchange Land is of equally advantage to the Lost Open Space.	

Limb (ii) - the Exchange Land must be equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public.

1. The Public

Under sub-section (b) of Section 19(1)(a) the Exchange Land must be equally advantageous to the public. Paragraph 241 of the CPO Guidance addresses the question of what constitutes the 'public' for the purpose of satisfying this requirement. This states that *“the public’ means principally the section of the public which has hitherto benefitted from the order land and, more generally, the public at large.”*

2. The public that currently uses the Lost Open Space and the Retained Open Space (and that has hitherto benefitted from the order land) is a broad cross section of the public but in particular these areas are used by children of all ages (both in the play area and the wider Gardens where they play a variety of games and participate in various activities in a safe and open environment) and adults using the Gardens for quiet exercise and relaxation. Because of the different nature of the open space proposed by the Authority we do not believe that the needs of these members of the public will be properly met by the Scheme.
3. As set out elsewhere in this Statement the Gardens are currently used all year round for a large variety of uses, where individual sections are used in a safe and secure environment for different purposes by different community groups.
4. Because of their sports court like nature, the two sections of green all-weather surfaces which are flanked by the beech hedging are particularly popular for games such as paddle tennis, mini- football and badminton. They are also used for informal picnicking where toddlers and other young children can run around freely without concerns about the dangers of the river, bikes and other vehicles. These areas (and the wider Gardens) are also used daily by nursery school groups and carers with young children, both in the secure enclosed playground and more widely in the open space, including the sandpit.
1. The position of the benches and raised walls at the rear of the Gardens allow for carers (quite often grandparents) of children and others to sit back and relax in the knowledge that their charges cannot

get up to much mischief within the safe confines of the Gardens. Because the Gardens act as a series of outdoor rooms (of varying sizes) certain areas – in particular at the rear of the Gardens beneath the hornbeams - allow for relaxation and peaceful contemplation away from the sometimes more frenetic activity on other parts of the Gardens.

2. The larger paved all weather area is used for all manner of leisure activities. It is an ideal terrain for youngsters on scooters and training bikes. Some people will bring their own play equipment to the area, so you will sometimes see youngsters crawling through tunnels or jumping through hoops. Hopscotch, frisbees, remote control cars – it is all there to be enjoyed.
3. After school (and sometimes at lunchtime) older children like to kick around a football on this larger area. The two pétanque courts are also used for other pastimes including gym, martial arts practice, boxercise, zumba, tai chi and yoga. Sometimes this is an organised group activity of light exercise for more elderly citizens.
4. The point that we seek to make here is that the various members of the public who currently use the Gardens will not be able to use the replacement open space in the same way. The configuration of the proposed open space so that it designs in conflict with other riverside users (especially cyclists, pub drinkers and drivers) without preventative barriers to protect the public (and at the same time places the open space immediately next to the river), means that this section of the public are unlikely to want to use the new open space to the same degree and for the same purposes as they currently do.
5. And further consideration should be given to the fact that in our experience, many of the young families who visit and use the Gardens, do not live in accommodation with outdoor space. They are quite often locals (sometimes from an under-privileged background) who live in flats without gardens and appreciate and rely on the multi-functional and all year-round amenity that the Gardens provide.
6. The Diamond Jubilee Gardens are a unique community asset providing easily accessible and affordable open space to the people of Twickenham in a safe and beautiful setting. We feel strongly that the members of the public who currently enjoy this open space will, in open space terms, be disenfranchised by the open space being promoted by the Scheme.
7. **Equally advantageous**
In respect of the second limb (the requirement that the exchanged land must be equally advantageous to the acquired land) it is apparent that in the Statement of Case the Acquiring Authority is seeking to rely upon a comparison between (a) the open space that it is acquiring under *both* Section 19(1)(a) and 19(1)(aa) (ie both the Lost Open Space and the Retained Open Space) and (b) the entirety of the open space that it will be providing under the Scheme (and not just the Exchange Land).
8. The Trust's understanding (borne out by the wording in the legislation, the CPO Guidance - see paragraph 240 - and from advice given both by its legal counsel and specialist surveyor) is that when considering equality of advantage the Inspector must make a comparison between the Exchange Land and the 'Order Land'.
9. Under Section 19(1)(a) the only land against which one should be comparing the Order Land is the Exchange Land and nothing else. Therefore any other land that the Authority is proposing to use to

provide as open space in its Scheme (including the Retained Open Space and the Authority's existing land and highways) must be ignored in such assessment.

1. So in considering the Lost Open Space and Exchange Land the only question is whether the Exchange Land is equally advantageous to the public as the land to be lost. In answering this question, no reliance can be placed on the wider benefits of the Scheme or other pieces of land within the Scheme. As is set out in *Gadsden on Commons and Greens* (3rd edition) at 12-04; "in effect, while the confirmation of the CPO will have regard to the merits of the scheme as a whole (eg whether the public benefits arising from the proposed development outweigh the adverse impact of the owners and occupiers of land which will be compulsorily acquired) the Secretary of State's consideration under s19 will focus on the *merits of the exchange land*".
2. In the part of its Statement of Case in support of its Section 19(1)(a) application, the Authority frequently and consistently refers to the perceived advantages of open space which falls outside the Exchange Land (eg in paragraphs 8.34, 8.38 and 8.40) and does not seek to make the relevant distinctions (or seek to explain why it is not making the required comparison).
3. In addition the legislation requires the land against which the Exchange Land is compared to be the 'Order Land'. And the 'Order Land' in this circumstance is the open space being permanently acquired under s19(1)(a) - ie the Lost Open Space.
4. In a similar manner to the way that the Authority (as detailed above) has sought to incorporate the perceived advantages of land outside the Exchange Land (which the statute does not allow) it has taken similar liberties with the legislation when describing the Order Land being acquired. So rather than limit its comments to the perceived comparative disadvantages of the Lost Open Space, its Statement of Case is pepper-potted with references to other land which is completely outside the Lost Open Space/Order Land.
5. Indeed more often than not the land that the Authority refers to as being less advantageous is in fact its own land (and here we don't mean the Diamond Jubilee Gardens which they lease to the Trust but specifically the neighbouring land where they already own the unencumbered freehold).
6. Equality of advantage is expressly dealt with under paragraphs 8.31 to 8.42 of the Authority's Statement of Case. We set out below the issues that they have raised in support of their argument that the compulsory acquisition of the Lost Open Space and its replacement with the Exchange Land will provide more advantageous open space under s19(1)(a):
7. **Paragraph 8.31** refers to the wider Existing Designated Open Space (i.e. not the Lost Open Space) and "its surroundings" (i.e. not even existing open space in either the Designated or Functioning meaning of the Authority's Glossary), before going on to describe negative behaviour associated with the development site, the most serious of which relate to "its surroundings". These "surroundings" are (a) wholly owned by the Authority, (b) situated outside the Lost Open Space and (c) land for which no CPO is required.
8. The Authority is correct that there have been, and continue to be, instances of criminal damage/arson in the derelict pool buildings, one so serious that it resulted in a local charity, who had its offices in the Bath House, having to permanently relocate. The Trust is not aware

of any squatting per se. Young people gaining entry, or the occasional homeless person sheltering for a few days. But not actual squatting. Fly-tipping/littering is, however, a frequent occurrence in the (largely) disused car park running along Water Lane. Repeated representations by the Trust for the Authority to address this matter has led to a quicker response time from the Authority to reported incidents. However, it is an on-going issue, creating an air of dereliction when one enters Twickenham Riverside via Water Lane.

1. Perhaps as a direct consequence of the air of neglect along Water Lane, the hoardings around the derelict buildings and their walls have started to be covered more frequently/persistently in graffiti. The hoardings that face into the Diamond Jubilee Gardens, however, are largely left intact, with any infrequent instances being quickly addressed by the Authority.
2. On the Diamond Jubilee Gardens themselves, there have been, in over 10 years, just two instances of 'arson', both taking place on subsequent nights. In the first, a Christmas tree was set alight. The following night, two items of play ground equipment were damaged by fire. After this second incident, the Authority agreed to reduce the playground's hedge to match that of the playground's railings. The Trust had been requesting that this be done for several months as its height was limiting good all-round visibility. All of the lights in the playground were also not working at the date of the incident (see below for park lighting).
3. As for anti-social behaviour/littering/substance abuse, the Authority could be describing many open spaces under its care. With this in mind, a Trustee had a recent conversation with Park Guard, asking them to identify the 'hotspots' in the borough - the Guards immediately replied and were in complete agreement in identifying the nearby riverside Radnor Gardens (the cafe located within Radnor Gardens has recently had to close due to concerns regarding staff safety and repeated break-ins) and Richmond's Terrace Gardens on Richmond Hill. citing both spaces as being very dark.
4. Park Guard reported that Diamond Jubilee Gardens experience not dissimilar challenges as face parks and gardens throughout the borough, and that lighting is of primary importance in keeping away/limiting anti-social behaviour. Whilst the Lost Open Space is relatively well lit, benefitting from the recent repair of the playground lights and also the wall-mounted lighting on the cafe, the rest of the Diamond Jubilee Gardens sits largely in darkness, with 40 of its 47 lights not working. The Trust has been making repeated representations regarding their repair for almost two years. The Council's Parks and Facilities departments are aware and sympathetic but apparently there is not the necessary budget for their repair. The wider Gardens also experience the negative 'nighttime' impact of the dark spaces of the adjacent derelict pool buildings.
5. As can be seen above, the majority of the incidents mentioned in this paragraph refer to land that is wholly owned by the Authority, outside of the Lost Open Space and for which no CPO is required.
6. **Paragraph 8.32** describes the Existing Designated Space, but makes no distinction between the Lost Open Space and the Retained Open Space

1. **Paragraph 8.33** focuses on the negative impact of the Embankment-level car parking on views from the raised Existing Designated Space. The Embankment area in question lies outside of the Existing Designated Open Space and therefore also the Lost Open Space. If the Authority wishes to improve the view from the Order Land by removing the parked cars on the Embankment, it is entirely within its power to do so, and no CPO is required. Indeed, it gave itself permission to remove the parking from the Embankment over two years ago. The parked cars, however, remain.
2. **Paragraph 8.34** tackles the removal of derelict and unused buildings in order to improve accessibility/open up/enlarge the open space. Again, the derelict buildings are wholly owned by the Authority, lie outside of the Lost Open Space, the wider Existing Designated Open Space and no CPO is therefore required to remove them. Indeed, there was a 2017 Scheme that achieved all of the above, to include the additional benefit of a central accessible ramped access from the Embankment up into the Diamond Jubilee Gardens that did not require a CPO.
3. **Paragraph 8.35** addresses the widening of Water Lane to open up the riverside from the centre of Twickenham (wholly owned by the Authority; outside the Lost Open Space; no CPO required).

It also states that “*the Exchange Land is immediately adjacent to the Lost Open Space*” – which is clearly wrong and speaks to the confusion surround the Authority’s use of s19(1)(a).

4. **Paragraph 8.36** talks about the various events that could be held in the proposed Embankment Events Space. Whilst a small section of the tiered seating lies within the Trust’s demise, none of it lies within the Lost Open Space. Indeed, the entire Embankment-level Event Space and the majority of the associated seating lies within an area that is wholly owned by the Authority, outside the Lost Open Space and for which no CPO is required.
5. **Paragraph 8.37** refers to the perceived benefits of the Water Lane Retail Walkway (wholly owned by the Authority; outside the Lost Open Space; no CPO required)
6. **Paragraph 8.38** details the use of the future play area, Events Space and tiered seating, the locations of which will for the very most part not be in the Exchange Land. The exception to this are the two Lower Lawns of the terraced lawn area that we will address in the section below that compares Exchange Land with the Order Land most specifically.
7. **Paragraph 8.39** describes accessibility – which can be relatively simply addressed by removing the Authority’s hoarding around its derelict land and designing suitable and affordable access. Similarly, the riverside frontage of Diamond Jubilee Gardens could have accessible ramped access built between it and the lower level Embankment (in the area that currently contains the Jubilee Gardens). Indeed a 2017 Scheme that received planning consent did exactly that.
8. All of the above areas that can provide improvements to accessibility are wholly owned by Authority, lie outside the Lost Open Space (which already contains an accessible entrance from Wharf Lane and a stepped entrance from the Embankment) and for which no CPO is required.

1. **Paragraph 8.40** describes flooding. The Lost Open Space is largely unaffected, the Exchange Land less so. The vast majority of the features mentioned as being in Flood Risk Zone I in the Scheme are already located in Flood Risk Zone I.
2. **Paragraph 8.41** talks about the supposed improvements in biodiversity that the Scheme would bring. Many of the improvements pertain to land that is outside of the Lost Open Space, indeed outside of the Existing Designated Open Space and already wholly owned by the Authority and therefore no CPO is required. The Trust would also argue most strongly that the disbenefits (the felling, for example, of some 65 trees, requiring off-site planting in mitigation) of the Scheme far outweigh any introduction of, for example, natural grass (which could, of course, be reinstated on the Lost Open Space if the Authority was inclined to do the necessary groundworks).
3. **Paragraph 8.42** is the final point that the Authority raises. It again addresses anti-social behaviour caused by proximity to (Council-owned) vacant buildings and poor lighting (as to which the Authority - who are responsible for the management and lighting of the Diamond Jubilee Gardens – have failed to maintain 40 out of the 47 lights in the Gardens despite numerous requests by the Trust to address this. The Lost Open Space, ironically, contains all seven existing working lights.)
4. So the point that we seek to make here is that the Authority, in its Statement of Case, has failed to present or make a case that the Exchange Land will be equally advantageous to the Lost Open Space. It refers to various elements of the Scheme and, to a large extent, issues relating to the land that they already own, but it fails to respond to the legal framework within which it is required to work.
5. So as a starting point we wish to highlight and emphasize that the Authority's overall approach to s19(1)(a) is fundamentally flawed since they have (once again) ignored the legislative requirements upon which their case is meant to be based.
6. We set out immediately below some of the key reasons why the proposed Exchange Land is not considered to be as advantageous to the public as the Lost Open Space. This is intended to be a direct comparison between the two areas of land – as s19(1)(a) and supporting Guidance requires.
7. However, notwithstanding the above (and without prejudice to the contention that we make above), the Trust feels strongly that whichever areas of land need to be the subject of a comparison, the outcome will in each case be the same – that the revised open space will be demonstrably less advantageous than the existing open space. So we also set out in the subsequent section our comparative assessment of the relative advantages between the current open space at Twickenham Riverside and the proposed open space in the Scheme, rather than restricting it to the Lost Open Space and the Exchange Land.
8. There is inevitably an element of overlap between the two and we would ask that our arguments should be construed in that context. Also to the extent that the Inspector disagrees with our assertion set out above that certain parts of the proposed Exchange Land should be excluded from the Exchange Land (since we don't believe they qualify as open space) then in lieu we would argue that such areas are substantially less advantageous than the current open space.

1. **Comparison between the advantages conferred by Lost Open Space (Red Land) and the Exchange Land (Green Land)**
2. **(a) Flooding** – Based upon the flood maps provided as part of the Planning Application, it has been calculated that 929 square metres of the Green (Exchange) Land sits either within Flood Zone 2 or Flood Zone 3, which means that these areas have a significant risk of flooding. Just over 15%/c. 150sqm of the Red (Lost Open Space) Land sits within Flood Zone 2, with the rest being within (the lower-risk) Flood Zone 1.
3. As stated in the Authority's flood and open space strategies, there is a clear distinction between the areas above the 1-in-100 +35% flood level and the rest of the site. We are of the view that the locating of such a large proportion of the Exchange Land open space (leaving to one side the Water Lane Retail Walkway) in an area that is at significantly greater risk of flooding will have a potentially severe negative impact on the use and enjoyment of that space.
4. On that basis, the 929 square metres of Green Land within Flood Zones 2 and 3 should not be considered as equally advantageous as the Red Land.
5. **(b) Play area** - The Red Land includes the entirety of the enclosed children's playground. No such space is provided for on the Green Land. Whilst a new play area is proposed as part of the proposed development, it is located predominantly in the Orange (Retained Open Space) Land with only a small part in the Green Land, and therefore it cannot be considered when assessing equality of advantage conferred by the exchange of land under s19(1)(a).
6. Pertinently, when assessing equality of advantage, the 'public' means principally the section of the public which has hitherto benefitted from the compulsory purchase order land and, more generally, the public at large. With regard to the playground, it has clearly been young children and their parents and carers (to include, for example, local nursery groups who make use of both the playground and the All Weather Surface Lawn that form part of the Red Land on a daily basis during the week) who comprise the section of the public who currently benefit from such area. It is difficult to conceive how the provision of the Green Land will be equally advantageous to this group. It contains no playground and large parts of it (the area which runs alongside Water Lane) are relatively narrow, unsecure, and paved areas at various levels sitting between the retail units in the proposed development and the newly proposed two-way public highway in Water Lane.
7. **(c) Lawns** - The Red Land contains a substantial part of one of the Gardens' two All Weather Surface Lawns (or "artificial grass pitches" as the Authority describes them in para 8.52).
8. Not only is this area used by the nursery groups who also use the playground (as mentioned above), but by children of various ages, some of whose activities on the Red Land primarily take place outside of the Red Land's playground. The All Weather Surface is used extensively for ball games - football, rugby, tennis, cricket. None of these activities would be possible on the Lawn Terraces as contained within the Green Land.
9. In addition to more 'active' activities, the All Weather Surface Lawn within the Red Land is also used for more leisurely activities (sitting, picnicing etc). Parent groups, for example, assemble to share food/drinks, having brought portable tunnels and other toys with which to amuse the children.

Groups of young adults lounge in the area, enjoying takeaway food from the 50+ food/beverage outlets within a 200m radius of the Gardens. The hedges that flank the Lost Open Space's lawn turn it almost into an outdoor 'room', both containing and sheltering this leisure activity from other activity in the contiguous spaces (for example, the cafe and the petanque pitches) whilst still allowing the space to feel open and unoverlooked.

1. The Green Land also contains lawns, in a terraced arrangement, with steep slopes between the three separate spaces. However, it is difficult to conceive how these terraced lawns could offer comparable opportunities/amenity value for active play and leisure.
2. The two lower lawns of the Green Land's three-lawn arrangement are in close proximity, and largely open to (excepting the presence of a low wall running alongside Water Lane) the vehicular movement of the Eel Pie Island Service Area, the turning circle at the Embankment end of Water Lane, and the newly introduced two-way vehicular movement on Water Lane.
3. Not only does this vehicular movement directly adjacent to and largely at a level with the two Lower Lawns of the Green Land curtail the opportunities for 'free play'/ball games currently afforded by the Red Land, but it also presents potential safety issues (children straying into roads) that are not present on the Red Land, which is enclosed within the wider Diamond Jubilee Gardens and is entirely removed from any vehicular movement.
4. The Authority, in para 11.106 of its Statement of Case, compares the "incidental play" opportunities that have been "designed into" the Scheme's terraced lawns to those of the sloped lawns "frequently used by families in the nearby York House Gardens." The existing lawns in question are indeed frequently used by families - predominantly for ball games of all descriptions, though mainly football. They are also used for play with dogs, again with balls, or other objects that are thrown. The slopes are also substantial - allowing for running up and down, and rolling. They also function to 'contain' footballs within the playing area. The Green Land's sloped lawns offer very limited opportunities for "incidental play" that are currently "frequently" experienced by users of the York House Gardens sloped lawned area and therefore the comparison is entirely inappropriate.
5. However, as with the sloped lawned area in nearby York House Gardens, the Red Land's lawn (indeed large parts of the wider Diamond Jubilee Gardens, too) is similarly enclosed and removed from vehicular movement such that one is unaware one is but moments from Twickenham's busy high street.
6. The Green Land, in contrast, largely consists of the Water Lane Retail Walkway, intended to be an extension of the high street leading towards the river, and terraced lawns adjacent to the Eel Pie Island Service Area/Embankment Turning Area. The Green Land is an altogether less tranquil, more overlooked/overshadowed environment, subject to vehicular movement within direct view.
7. The Green Land's lawns are also 'sandwiched' between two of the 'Primary Pedestrian Routes' through the Scheme identified in the Authority's planning application. As well as the vehicular movement to the south and the east, there will therefore also be pedestrian movement directly adjacent to the north and the south. This compounds the negative impact of being 'sandwiched' between movement that users of the Green Land's terraced lawns will experience. It should be noted

that linear movement next to a space is experienced in an entirely different way to adjacent activity e.g. children playing with a ball nearby to where one is sitting is much different to sitting near to people/vehicles travelling back and forth along paths/roads. The latter is much more intrusive and less visually interesting, whilst the former is part of the visual stimulation of being in a public space.

1. The Authority's Statement of Case describes the Scheme's terraced lawns as a place for "natural play opportunities" (8.38) and "informal recreation, alfresco dining" (6.63.4) - presumably this latter on a 'pay-to-play' basis in tables/chairs provided by the adjoining cafe? - but otherwise scant mention is made of these lawns. This in itself is an indication of the reduced amenity value to the public of this part of the Green Land when compared to its equivalent within the Red Land, which is much more multi-functional with a broader cross-section of user groups.
2. **(d) Café** – the majority of Café Sunshine sits within the Red Land. It is a popular community café which employs differently abled staff. It also includes two toilets which are available for public use from 9am-5pm. Under the current lease arrangement between the Authority and the Trust, the Authority is responsible for running the café but the intention is that this will pass to the Trust in 2024, or when the current arrangements cease. The Green Land includes neither a café nor public toilets. Whilst a new café and toilets are proposed as part of the new development this must be ignored when assessing equality of advantage conferred by the exchange of land under s19(1)(a).
3. The many members of the public who frequent the café will not benefit from this facility through the provision of the Green Land as open space.
4. Additionally the Trust's potential loss of income from the café will have an adverse impact on its ability to subsidise its future events and activities, meaning that it is likely to have to charge the public for attending events without the means of subsidising this through income generated from the café.
5. **(e) Vehicular movement** – whilst this has already been addressed when assessing the respective lawn areas of the Red and the Green Land, it nevertheless merits reiterating that the entirety of the Red Land is both (a) enclosed and (b) inaccessible to traffic.
6. This renders the Red Land safe for members of the public of all ages to use the open space for its intended purpose. By contrast the Green Land is open with very few clear visible boundaries (excepting the low wall of the terraced lawn nearest to Water Lane) and with large parts of it (both in Water Lane and on the Embankment) adjacent to the public highway.
7. In addition, part of the Green Land is immediately next to the retained Embankment road that remains subject to vehicular rights of way for servicing, refuse and recycling.
8. Whilst this access route is intended to be controlled (7.00-10.00am) by way of demountable bollards, the vehicular rights will have a detrimental effect on the character and features of the land and this area can in no way be considered as equally advantageous as the Red Land..
9. It should be noted that the degree to which the Embankment road would need to be open would be subject to on-going assessment. Its 'opening hours' might need to be increased, for example. It might need to be made more available to a wider range of vehicles than is currently envisaged. Until it can be seen how this works in practice, it remains an 'unknown' that has the potential to materially

impact the amenity of this part of the Green Land. The Red Land, in contrast, is not subject to any uncertainty.

1. **(f) Events space** - the Green Land contains a small part of a wider Embankment-level Events Space. The Events Space sits entirely in flood zone 3 (with a high probability of flood risk) and is subject to vehicular rights of way (as detailed above). It also comprises large stepped areas rendering it an events space on differing levels.
2. This is being proposed in lieu of the amenity being provided by the Red Land.
3. It should be noted that not only is the lawned area of the Red Land frequently used to deliver events (in conjunction with the contiguous areas of the existing Gardens that lie outside of the Red Land), but that the Red Land's playground is also an extension of the Gardens' broader 'events space'. When there is an event on the Gardens, the playground provides an area where children play while waiting to attend, for example, a puppet show or while one parent/carer joins an entrance queue for an event with the illustrator Axel Scheffler. At a recent event (Easter Quiz and Activity Day), there was a facepainting tent set up on the Red Land. Rather than forming a queue, children's names were put on a list. As their slot approached, a call was put out in the children's playground for the following children to come to the Facepainting tent.
4. As referenced above, the existing Gardens do already function as an 'Events Space' across the combined Red Land and Orange (Retained Open Space) Land. This 'event space' (which has many other functions when not delivering events) is a large single level, accessible area which is neither in the flood zone nor subject to traffic.
5. The offer of that part of the proposed Events Space within the Green Land is therefore considered to be less advantageous than the Red Land that is already provided both considered as the Green Land in isolation and also as the Green Land as part of a wider proposed Events Space
6. The Green Land in this area therefore has limited/reduced functionality/amenity for hosting events when compared to its equivalent within the Red Land.
7. **(g) Lack of cohesion with existing open space** - The Red Land comprises a large rectangular area which sits immediately next to the Orange (Retained Open Space) Land. Together the Red Land and Orange Land form a large, roughly rectangular and cohesive area of open space which is of a size and form that is reflective of their use as public open gardens.
8. Once the Red Land is removed and replaced by the Green Land, the open space looks very different. The overall space provided by the Green Land will now include large swathes of paved areas and landscaping which travel the length of Water Lane to where it meets Kings Street - the Water Lane (Retail) Walkway.
9. This area (which was only labelled Exchange Land some three months after a previous June 2021 iteration of Exchange Land in which the Water Lane Walkway was not required to 'make up the s19(1)(a) numbers') is essentially public streetscaping/retail forecourts). It is accordingly a very different and poor substitute to the amenity and advantage provided by the Red Land (both alone and when considered alongside the Orange Land) as public gardens.

1. **(h) Proximity** – as indicated above, a significant part of the Green Land is the area that leads up alongside the proposed new retail units in Water Lane. This area is a relatively substantial distance from the riverside context enjoyed by the Red Land and in many respects is closer to being an adjunct to King Street/Church Street than to the open space provided by the existing riverside Gardens. In terms of proximity, it is not as advantageous.
2. **(i) Date of exchange** - The date upon which equality of advantage is to be assessed is the date of exchange. This is interpreted to mean that the Green Land must be set out for open space purposes before the existing open space is acquired. However it is noted that this may not be possible as it is likely that the Green Land will be required to facilitate the development. Whilst it is acknowledged that it might be permissible to allow for a delay in the provision of the Green Land if there is an overall advantage in doing so, no exchange land management plan has been produced by the Authority. In particular there is no plan which formally sets out the existing condition of the Green Land, the management aims in respect of its future use, the landscape and ecological quality and the maintenance actions and regimes necessary to achieve those aims. It is therefore difficult to confirm that the delay in the provision of the Green Land is compensated by other benefits.
3. **(j) Daylight/sunlight** - From our interpretation of the Twickenham Riverside Shadow Studies we are of the opinion that the Green Land will receive substantially less daylight and sunlight than the Red Land. This is particularly so given the proximity of the proposed Water Lane Building to the Green Land.

Comparison between the relative advantages of the existing open space at Twickenham Riverside and the open space proposed by the Scheme

4. Whilst it is important to restate that s19(1)(a) requires the parties to restrict their analysis to a comparison between the Lost Open Space (Red Land) and the Exchange Land (Green Land), we also think it is important for the Inspector to understand the overall impact that the Scheme's proposed open space will have when contrasted to the existing open space.
5. Accordingly this section reviews and summarises the overall merits of the existing open space comparative to those of the open space being promoted under the Scheme. We have deliberately categorised the benefits and disbenefits within themed sections, depending on the nature of the change to the open space that would be brought about by the Scheme.
6. **(1.) Safety and security impact of the proposed Open Space compared to the existing Open Space**
7. It is of paramount importance that the open space at Twickenham riverside can be enjoyed safely and securely by members of the public at all times, whatever their age. This is currently achieved across both the Existing Designated Open Space and Existing Functioning Open Space but many local people - who really understand the issues through years of experience of living, working and observing at Twickenham Riverside - have grave misgivings about the negative impact on safety and security arising from the Scheme.

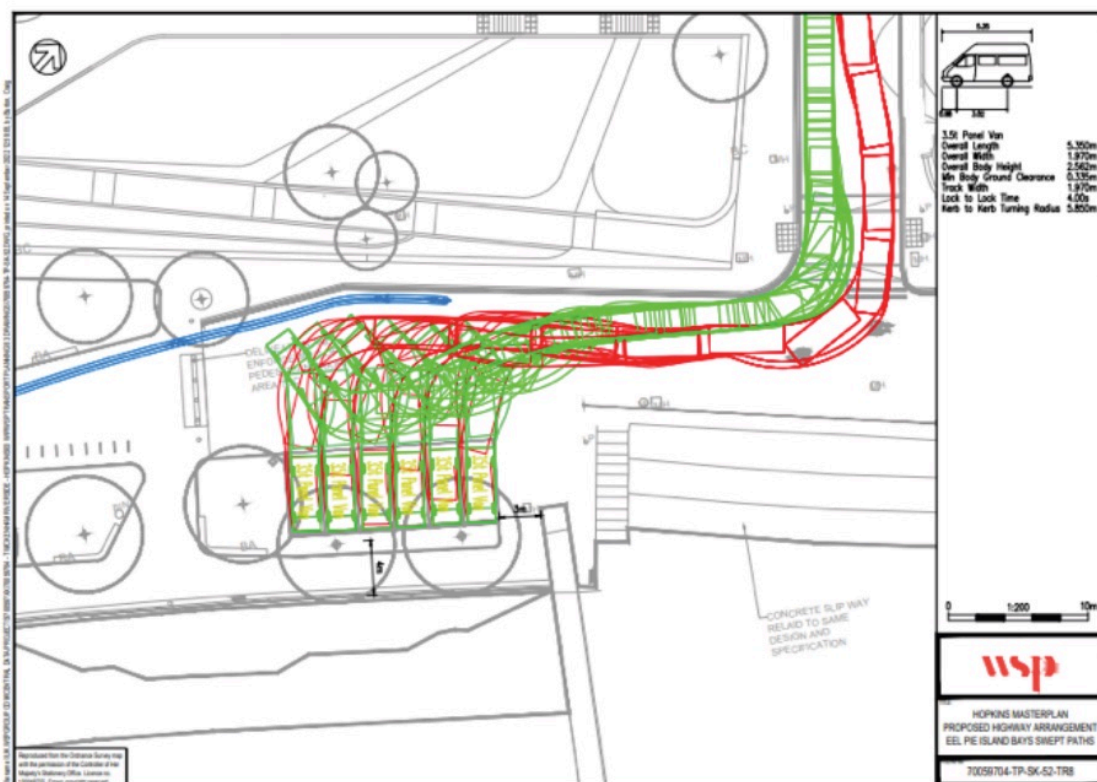
1. As detailed in a previous section above (comparing vehicular movement on the Red v. Green Land) there are many unknowns about both the usage of the proposed Embankment highway and questions surrounding the safety of vehicular movement at the bottom of both Water Lane and Wharf Lane where they meet the Embankment. The Authority's planning permission is heavily conditioned in this respect, with conditions required to be discharged ahead of any development.
2. We understand that there are local organisations who are objecting to the CPO who will be bringing these matters related to vehicular movement to the Inspector's attention in considerable detail.
3. We have strong reservations as to whether the vehicular movement as shown on the Scheme would remain unchanged with respect to what is currently proposed in the event of the Scheme being built.
4. Our concerns/observations are outlined below:
5. **(a) Vehicular Movement through the proposed Open Space**



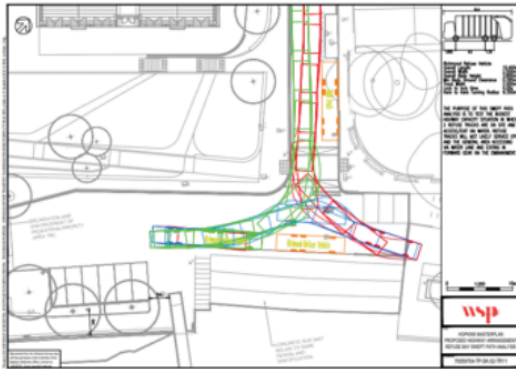
Appendix D Revised Stage I Road Safety Audit Oct 2022 page 22 EMBANKMENT ACCESS

6. There will be daily vehicular use of the public highway through the middle of the Future Functioning Open Space (and directly adjacent to the Future Designated Open Space) between 7am and 10am each morning. This will severely impact on the public's ability to safely enjoy this part of the open space at such times. There will be no freedom to allow youngsters (or anyone) to play/move freely within this area in any meaningful way for fear of a road traffic incident.
7. Additionally, the public will no longer be able to play sports, engage in activities or exercise in a way which is commensurate with the way that they currently use and enjoy the Existing Designated Open Space within the Diamond Jubilee Gardens, safely elevated as they are above the riverside public highway.

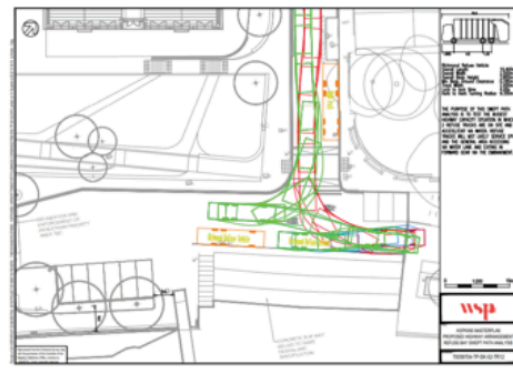
1. The Authority presumably (and wrongfully) makes an assumption that this area will not be very busy at such time, which both ignores the current use of the Diamond Jubilee Gardens each morning (for nursery children, for example) and (perhaps inadvertently) makes a telling assessment as to the public's likely appetite for recreation on the Embankment Events Space during such hours.
2. We would add that there is also a good deal of concern that in the future the hours of use of the Events Space highway are likely to be increased. Vehicular movement for any scheme at Twickenham Riverside has always been one of the most thorny issues to be resolved and that remains the case for this Scheme. The existing Embankment road has always been used by private and commercial vehicles for all manner of reasons and there is no escaping the fact that this Scheme is yet satisfactorily to address the vehicular needs of both commercial and residential occupiers.
3. **(b) Vehicular movement adjacent to the Proposed Open Space**



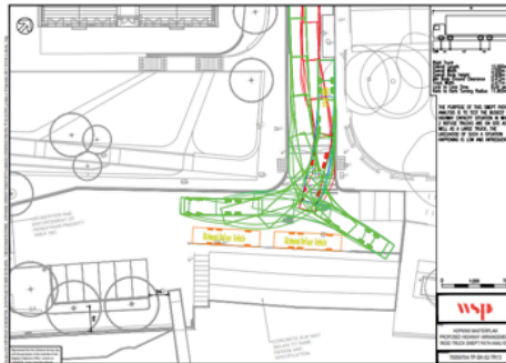
Appendix D Revised Stage I Road Safety Audit Oct 2022 page 24 EEL PIE ISLAND DELIVERY/LOADING BAYS SWEEP PATH



Appendix D Revised Stage I Road Safety Audit Oct 2022
page 21 WATER LANE SWEEP PATH



Appendix D Revised Stage I Road Safety Audit Oct 2022
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WATER LANE SWEEP PATH

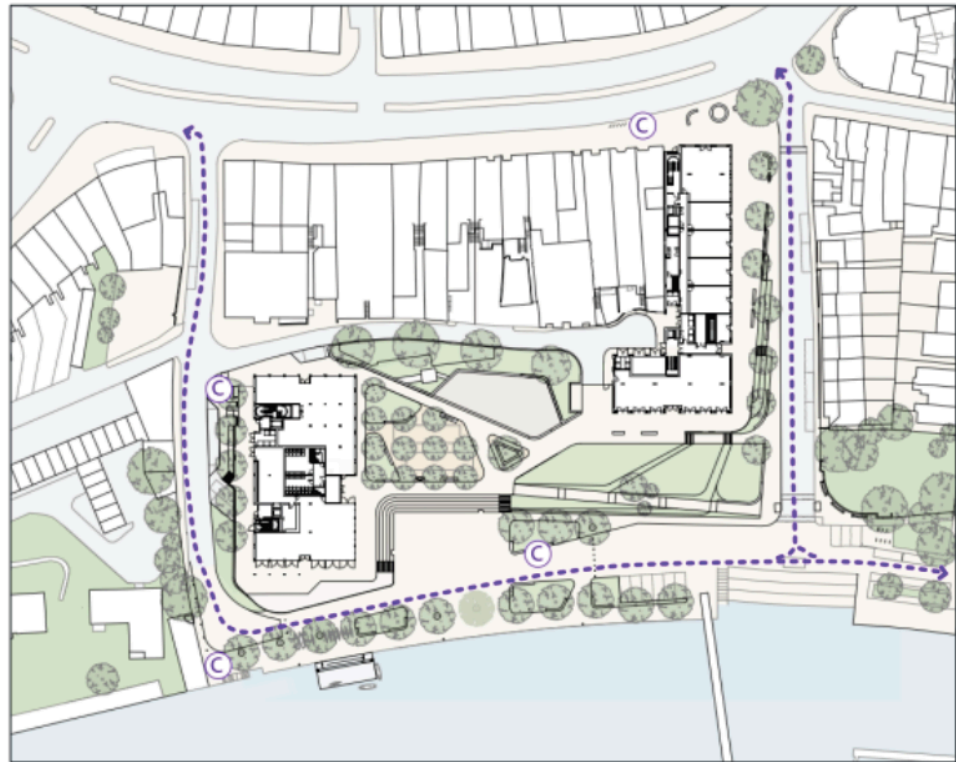
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1. For the same reasons as mentioned above, the proximity of the public highway on the Embankment and Wharf Lane/Water Lane turning circles to the Future Functioning Open Space on the Embankment will impact on the health and safety of the public (and particularly young children and the elderly) occupying these lower parts of the proposed Open Space.
2. Under the Scheme there will be vehicular movement at either end of the area of highway that is to be closed after 10am each morning, with the highway turning zone at Wharf Lane being admittedly considerably less busy than the Embankment turning circle. However, we also believe that the Authority is significantly underestimating the number of vehicles that will be turning around in the Water Lane area.
3. This movement will not only be adjacent to the proposed Open Space on the Embankment but also the proposed Open Space of the terraced lawns.

I. (c) Cycle route

Figure 4-4 - Cycle movement and access concept through the site (source: Hopkins)

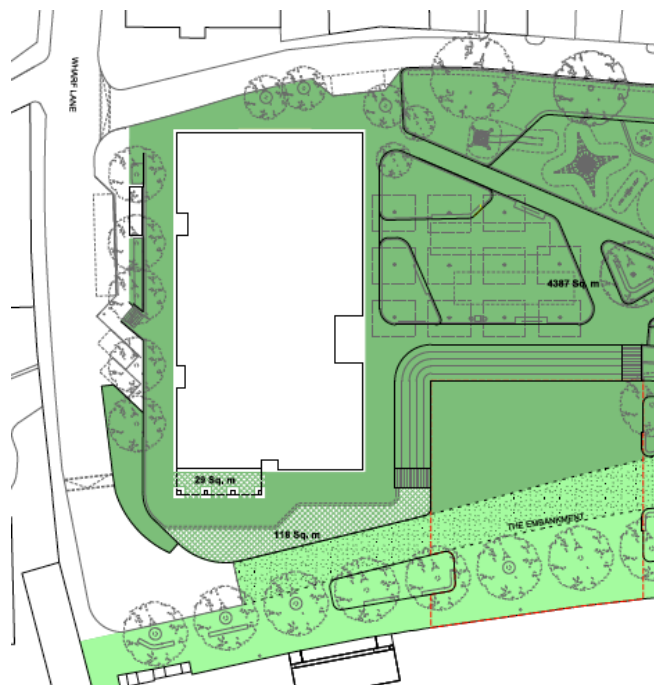


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Transport Assessment Oct 2022 page 44 CYCLE MOVEMENT

2. The introduction of a major cycle route bisecting the primary open space 'designs in' conflict between cyclists and pedestrians where none existed before. This is at odds with the current safe use of the open space.

3. (d) Public house v. public open space



1. The introduction of a pub at the centre of the open space introduces the likelihood of anti-social behaviour. The Statement of Case refers to the desire for natural surveillance of the open space. There will certainly be more need for it once one introduces, drinking, both formal and informal, to this area of the riverside
2. Twickenham neaby high street is part of the Twickenam Riverside Cumulative Impact Zone relating to the number of licensed premises already in the area. New alcohol licenses are not awarded unless a very good case can be made.
3. **(e) Lighting:** The Scheme promotes the introduction of lighting into the Future Open Space to improve night-time enjoyment and security: Whilst this is welcome, it begs the question why the Authority has chosen not to keep the current lighting functioning on the Diamond Jubilee Gardens despite both its contractual obligation to do so under the lease and repeated requests from the Trust to remedy this unsatisfactory state of affairs.
4. If the current lighting were to be appropriately maintained, it would extend the amenity value of the Existing Designated Open Space of the Diamond Jubilee Gardens year round, and also mitigate against any anti-social behaviour, as the Authority itself has acknowledged.
5. **(f) The amphitheatre (or stepped seating area)** is likely to be used as an informal drinking zone and presents a source of potential anti-social behaviour and conflict with other members of the public (see visual above).
6. **(g)** The scheme removes the safety and security provided by the **perimeter railings**: it is sufficiently unobtrusive not to obscure views towards the river but (with only two points of access) creates real peace of mind for parents that their young children can play freely - and with light supervision - without fear of running off into vehicles/cyclists/the river or falling into the unguarded amphitheatre seating or down the steep slippery grass slopes.
7. **(h)** The Scheme introduces particular challenges for anyone seeking to run formal events in the proposed Events Space in a safe manner, especially in **events held after dark** in the winter months (eg Halloween and Christmas).
8. **(2.) Ability to use open space for multi-functional use and amenity**
9. One of the major shortfalls of the open space promoted under the proposed Scheme is the decision to locate most of the flat open space at Embankment level, thus placing those who are intended to enjoy that area in conflict with other riverside users (predominantly cyclists). We understand the rationale is to create a single area of hardstanding that can be used as an Events Space (the original aspiration being to create some sort of 'Town Square') and we provide our thoughts elsewhere as to the shortcomings of placing the Events Space in this location. However by focusing so much on the need to have an Events Space, the Authority has failed adequately to address the functionality of this space outside the times when events are held.
10. For the vast majority of the time this open space (just like the Existing Designated Open Space within Diamond Jubilee Gardens) will not be used for events. So its primary purpose must surely be to function as public gardens and/or for the purposes of public recreation outside the limited occasions that it is used for hosting events. We feel the proposed Embankment open space and indeed the

terraced lawn areas fall short in achieving this goal, and they certainly pale in comparison to the multi-functionality of the current open space to be found with the Diamond Jubilee Gardens.

1. As detailed elsewhere the Existing Designated Open Space of Diamond Jubilee Gardens provides a number of safe areas of open space (of varying sizes) for both youngsters and adults to play/relax and enjoy a variety of games and activities, some less active than others. This will simply not be possible in the proposed 'Events Space' open space which, because of its reconfigured location amongst cyclists, walkers, pub users and vehicles, provides nowhere near the same quality or quantity of amenity for the public. For obvious reasons ball games will no longer be viable next to the river, nor on the lawned terraces, we would offer.
2. Moreover the loss of a large contiguous and coherent single level open space – including natural internal dividing hedgerows which create internal 'rooms' within the wider space, thus facilitating varying activities to take place in proximity to each other without putting different user groups into conflict – and its replacement with less coherent (e.g. not on a level, and situated around the corner of a 'high street' building) pockets of open space between commercial buildings, alongside a retail environment and adjacent to various forms of vehicular movement, will be incompatible with the current activities and of reduced amenity value when compared to that which is currently enjoyed by members of the public.
3. We would also point out that natural safety for members of the public is currently provided by the fact that the Diamond Jubilee Gardens only having two designated points of entry (but are otherwise protected by relatively inconspicuous railing) so parents are relaxed to let their children play freely in an open (yet secure) environment without fear of cyclists, the river, large vehicles (between 7 am and 10am), and two fully used public highways (with turning circles) at either end of the 70 metre strip of riverside open space. Please note that we also strongly believe that other well-designed points of entry could also be added to the existing Diamond Jubilee Gardens without necessarily impairing that security, both to the Gardens' frontage (as per the 2017 Scheme, putting accessible access at the centre, rather than confining it to the edges as is proposed by the Authority's Scheme) and also in the areas adjoining the Authority's derelict land.
4. **(3.) Ability to hold events in the proposed Events Space (broader comparison)**
5. The Authority has made several bold statements in its promotional material for the Scheme (including in its Statement of Case) regarding the type of events that will take place once the development has been built. The new Events Space will sit at Embankment level, constrained by the physical features of the Scheme (including the river and floodable areas) which we have already well documented elsewhere in this Statement. We believe that many of these aspirations are unrealistic and /or ill-thought out. Taking some of the examples given:
6. **Ice rink** (as referenced as a possible use in the planning report from November 2022). We do not understand how this would be feasible at all. The road which dissects the proposed open space needs opening every day (between 7am and 10am) and a commercial ice rink will need to be erected for several weeks to make commercial sense. Placing the rink in a floodable area/flood zone also make the proposition unfeasible. Once one adds the need for changing rooms and infrastructure the area would be insufficiently large to have all but the smallest of rinks.

1. For similar reasons the prospect of successfully holding a **fun fair**, except of the most limited kind (as can currently be accommodated on nearby Church St and remain in place over the course of a weekend) in this area (proposed in para 8.43 of the planning report) is far-fetched.
2. **Market** - the Authority has placed great stall in bringing markets to the new Events Space. We have reservations as to whether this is likely to work in practice or be an attractive option for prospective market holders. For most markets to be viable, access to vans and cars for product delivery/storage/refrigeration is essential. How is that going to be feasible within the proposed Scheme?
3. If a regular market is envisaged (akin to the Farmers' Market held every Saturday in Holly Road car park in central Twickenham) it is essential for traders that the market takes place on regular dates. This is going to be challenging at Twickenham riverside where the timing of markets will need to work around both predictable and unpredictable flooding events.
4. And, of course, it's unlikely that the market could take place on a big rugby day (where 80,000 people visiting Twickenham on at least a dozen weekends each year) since the market and pub won't want to compete with each other and share the outside space, and where typically a significant number of locals tend to avoid the centre of Twickenham because of traffic congestion (and so trade is effected).
5. Additionally (because the highway needs to be kept open between 7am and 10am each day) market traders won't be able to start to set up their stalls until 10am so that would most likely preclude the Farmers' Market (which tend to open early and finish by 1-2pm) and possibly others.
6. **Outdoor cinema/outdoor theatre** – The Authority are promoting the ampitheatre seating and events space as a suitable location for summertime outdoor cinema and theatre. This would be located immediately next door to the pub and its designated outdoor drinking and eating areas. How are the two meant to co-exist alongside each other?
7. Both are likely to be summertime events. A cinema or theatre experience is at odds with a terrace of drinkers (and possibly vice versa). This is not the case when the successful summertime outdoor cinema/theatre events are held in Twickenham riverside's York House Gardens. Or indeed in nearby Marble Hill House Park. Both of these locations, whilst there are residents in the broader area, are nevertheless not situated directly between/adjacent to residences.
8. We appreciate that the formal hours of use for the external 'pay-to-play' pub terrace are meant to end at 9pm but we would presume that (for the same reason – ie to protect the 'quiet enjoyment' of the residential occupiers of the Wharf Lane Building) the cinema/theatre experience would be subject to similar curfews. The planning conditions note limiting such events to no more than 12 a year, when the hours might be extended. However, there will still be an element of the two areas competing for the same hours of use (pre 9pm) - coincidentally whilst sitting under the vast shadow of the Wharf Lane Building.
9. As for bringing the big screen to riverside open space this is already successfully achieved each Summer in the Diamond Jubilee Gardens – without the noise and distraction of a competing neighbouring pub or the restrictions imposed by the need to respect the rights of residential occupiers immediately above (though in its use, we are mindful of the residents of the King St flats).

I. (4.) Loss of trees and hedgerows







1. We address in several places (and in more detail) elsewhere the impact that the loss of trees and hedgerows will have on the Existing Open Space. However in terms of equality of advantage the loss is as indisputable as it is upsetting. 66 healthy and established trees are to be felled to facilitate this Scheme, with just a single tree resolutely remaining as a powerful symbol of what will have been lost. Some new trees will be planted, but not as many as those that are lost, and even then the public will need to wait at least 30 years (and probably significantly longer) until such trees will have grown sufficiently to match the height and width of the canopy currently provided by each of the hornbeams which sit along the northern boundary of the Gardens.
2. In open space terms the trees and hedgerows serve multiple purposes:
3. (a) The trees provide a beautiful and verdant backdrop to the open space within the Gardens. The Authority proudly heralds the Wharf Lane Building as a suitable 'bookend' to Twickenham Riverside but ignores the fact that we already have several magnificent living 'bookends' that provide a much more fitting, healthy and beautiful destination at the end of a riverside journey from Richmond to Twickenham. Trees which they are proposing to chop down.
4. (b) In health terms through carbon-capture the trees help clean and improve the surrounding air quality - which is essential given the proximity of the open space to so much traffic and airplane pollution. By contrast the Wharf Lane Building will just add to such pollution.
5. (c) The trees help to cool the open space in summertime (and reduce the ambient temperature) by providing dappled shade, whilst allowing the prevailing breeze to filter across the open space (rather than being impeded by the Wharf Lane Building). The Wharf Lane and Water Lane buildings will only add to the heat through the impact of the 'urban heat island effect' and the various air-conditioning units, extractor units and similar infrastructure that will be installed as part of the development. With global warming increasing mean temperatures year on year in London, this takes an alarmingly short-sighted approach to tackling the climate crisis.
6. (d) Noise dampening quality of trees – bringing such large new buildings onto the riverside open space will inevitably amplify the noise in the public open space (particularly as the pub livens up during the afternoon and evening). As most garden-owning homeowners know, trees are remarkably good at dampening neighbourly noise. The existing open space already benefits from this through the protection provided by the hornbeams against the noise from the rear of the King Stret properties. The Scheme will remove this protection whilst at the same time increasing both the noise and the means of amplification to the new open space.
7. (e) They help promote a sense of well-being in those who occupy the Gardens, particularly those who do not have their own gardens or outdoor space. The mental health benefits of open space and in particular green spaces is well documented – and (as the pandemic taught us) increasingly important in such challenging times.
8. (f) The row of mature hornbeams creates an attractive and extremely effective screening (both visually and in terms of noise) from the rear of the commercial and residential premises in King

Street. Without them the aspect would be very different. If the Scheme goes ahead members of the public visiting the new open space will be faced with the prospect of the Wharf Lane Building to one side (obscuring the current views of the trees in the neighbouring Thames Eyot canopy), the Water Lane building to the other and the unscreened view of the rear of the King Street buildings at the rear. So the only pleasant view visible to the public will be those towards the riverside itself.

1. (g) The felling of so many trees will inevitably create a loss of habitat for the many birds and other creatures who depend on them.
2. (h) The felling of the avenue of 16 mature pleached plane trees. As detailed elsewhere the felling of these charming trees, which inhabit a prominent riverside location and flank each side of the pétanque courts, will be a significant loss. They were deliberately planted in the part of the Gardens which directly overlook the River Thames so as to provide welcome dappled shade (against lovely riverside views) throughout the spring, summer and autumn months for visitors to the Gardens. The proposed replacement pétanque trees will be younger and take many years to provide a similar size or canopy. They will also be planted in the shadow of an overbearing 5 storey building and we have real concerns as to how they will thrive with such limited access to sunshine. The enjoyment of dappled shade from these new trees will be less impactful, given that such shade will itself be overshadowed by the Wharf Lane Building.
3. (i) The felling of the rare black poplar tree at the entrance to the Gardens. This significant tree was planted by HRH Princess Alexandra in 2012, to commemorate the Queen's Diamond Jubilee and to celebrate the opening of the Gardens to the public. It is a much-loved community asset whose balsam scented leaves provide a sensory experience for visitors to the Gardens. Significantly it is a wonderful example of an endangered species; black poplars are the most endangered native timber tree in Britain with only 600 individual female examples (of which this is one) remaining in the wild.
4. The Authority has already acknowledged that it will not be putting back as many trees or hedgerows into the Scheme as already exist at Twickenham Riverside. This is detailed in the pre-planning officer's report from November 2022.
5. As a consequence the planning permission for the Scheme imposes the following conditions which need to be complied with in order to offset the loss of trees and hedgerows at Twickenham Riverside
6. (1) Payment of a financial contribution of £64,900.90 towards 'community planting'
7. (2) Payment of a financial contribution towards 'ecological enhancements' comprising 87 metres of new species rich native hedgerows
8. (3) Payment of a financial contribution towards the maintenance of the propagation of seed(s) to compensate for the felling of the black poplar
9. As stipulated in the Authority's planning report these financial contributions will help pay for the planting of trees and hedgerows elsewhere in the ward within which Twickenham Riverside sits. However, as the Authority concedes, none of this new planting will take place within the Scheme.

1. These conditions were imposed with the intention of making the Scheme compliant with planning policy. However the granting of planning permission did not require a s19(1)(a) assessment to be made regarding the impact that the removal of trees and hedgerows would have on the equality of advantage for the public open space. The fact that the Authority is unable adequately to replace the lost trees and hedgerows within its Scheme (and instead has to plant elsewhere) is a clear and obvious detriment comparative to the existing open space and represents a significant reduction in the quality of the open space to be provided by the Scheme.
2. **(5) Loss of sunshine and impact on overshadowing caused by the Wharf Lane Building**
3. It is Twickenham's great good fortune that the Existing Designated Open Space of Diamond Jubilee Gardens, and the wider open space of Twickenham riverside, enjoy such a sunny aspect. Whether through pure serendipity or (as we would prefer to think) the wisdom of earlier landowners and planners, in fair weather the raised Gardens are remarkably sun-drenched every day, throughout the year. Each morning as the sun emerges above the neighbouring Eel Pie Island, sunlight travels unimpeded across the Thames onto the open space of Twickenham's Riverside. As the day progresses, the sun moves from east to west across the river, above the adjacent trees forming the Thames Eyot canopy between Wharf Lane and nearby Cross Deep with sunlight to the Gardens still unobstructed, and settles each evening behind the buildings of King St.
4. In the absence of buildings along either side of Wharf Lane inhibiting the sunlight, throughout the year the Gardens enjoy long and often beautiful sunsets. Which is really quite special given how close the Gardens are to the built-up centre of Twickenham.
5. The Authority's plans will change this. Every year throughout the year the Authority's Future Designated Open Space will enjoy significantly less sunlight than the Existing Designated Open Space provided by the current Gardens. Why? Quite simply because the Authority has chosen to build a 21-metre tall and 43-metre wide edifice immediately between the afternoon/evening sun and the Future Designated Open Space, where none existed before. Of course, this will affect different parts of the Future Open Space, both Designated and Functioning, (and indeed other parts of the riverside) at different times of the day and year and we have sought to explain below how this might look. However it is indisputable that every year many hundreds of hours of riverside sunshine will be lost.



(above) the Wharf Lane Building being proposed for Twickenham riverside (Authority image)



(above, summer event at Diamond Jubilee Gardens)



(above) celebrating the Lunar New Year in late afternoon sunshine in the Diamond Jubilee Gardens 2.45pm on 21 January 2023.

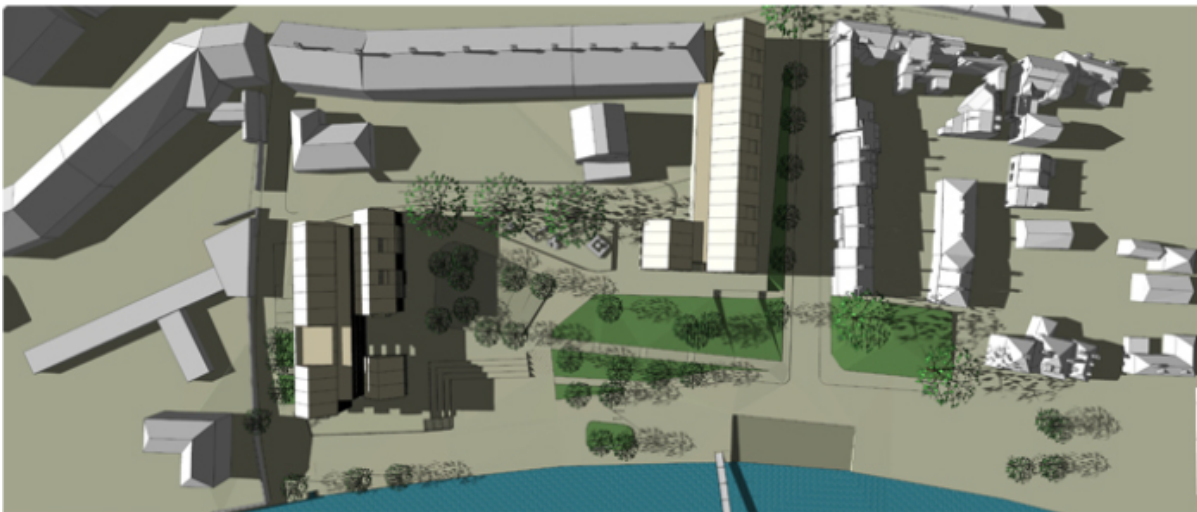
1. **COMPARATIVE SHADOW STUDY**

To demonstrate the adverse impact that the Wharf Lane Building will have on the sunlight enjoyed by the Future Open Space (both Designated and Functioning) we have had prepared a comparative shadow study based on the Authority's planning application. Set out below, this compares the effect on the Open Space of shadowing at different times of the day and year, with and without the Wharf Lane Building.

2. **Note:** the drawings for the scheme *without* the Wharf Lane Building also show the layout of the current Gardens. This is in order to demonstrate how sunlight falls on the Existing Designated Space that is located with the Diamond Jubilee Gardens. The drawings for the Authority's scheme *with* the Wharf Lane Building show the layout for the Future Open Space (both Designated and Functioning).

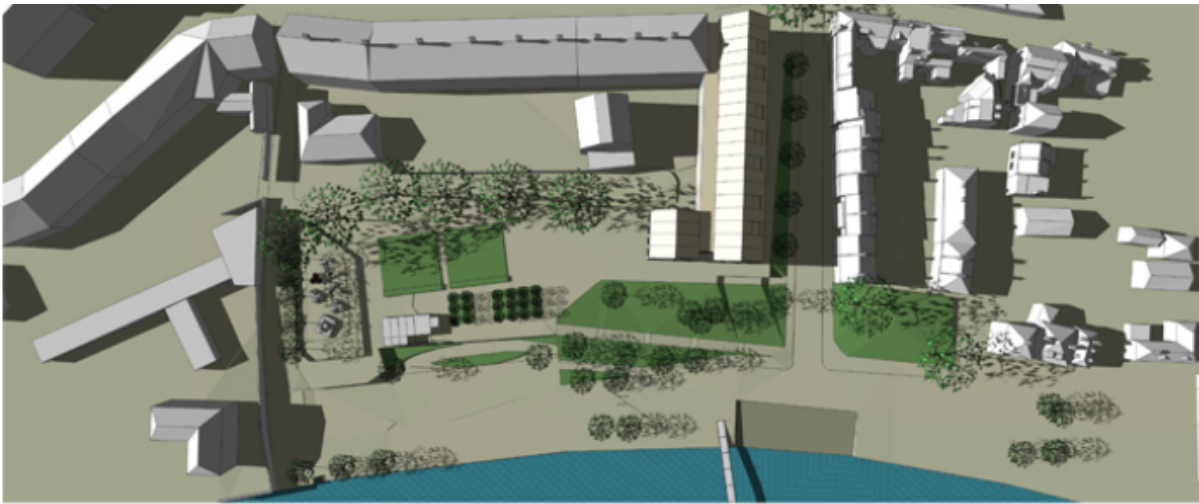
3. **21 MARCH**

As can be seen below, on 21 March each year (when the sun sets at 6.14pm) by 3pm most of the relocated petanque area, along with half of the terraced steps in the new Events Space, will be darkened by shadow. By contrast without the Wharf Lane Building there is no shadow.



Hopkins 2021 - with Wharf Lane Building

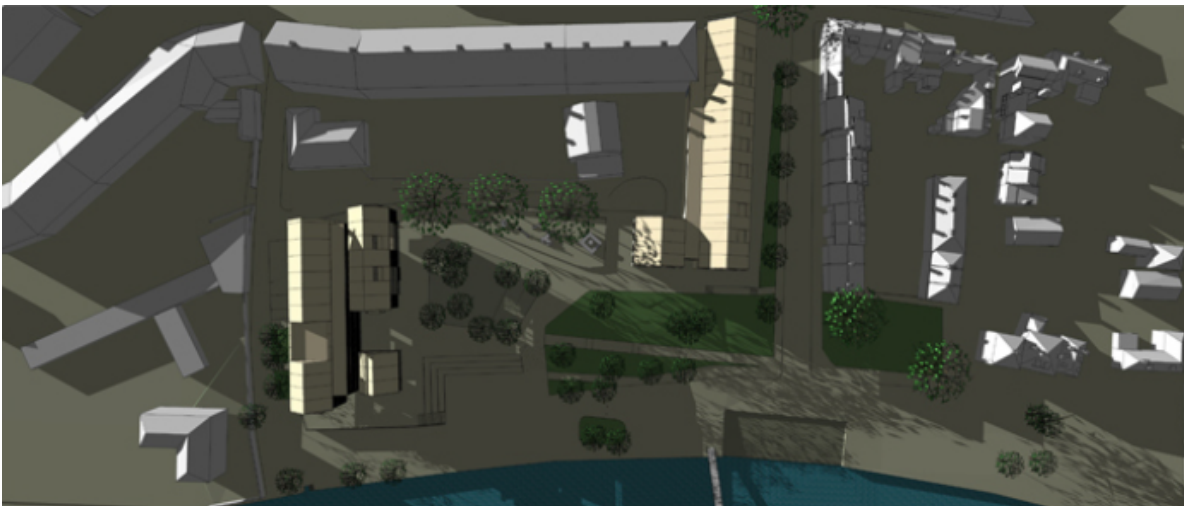
21 Mar 3pm GMT



Hopkins 2021 - no Wharf Lane Building

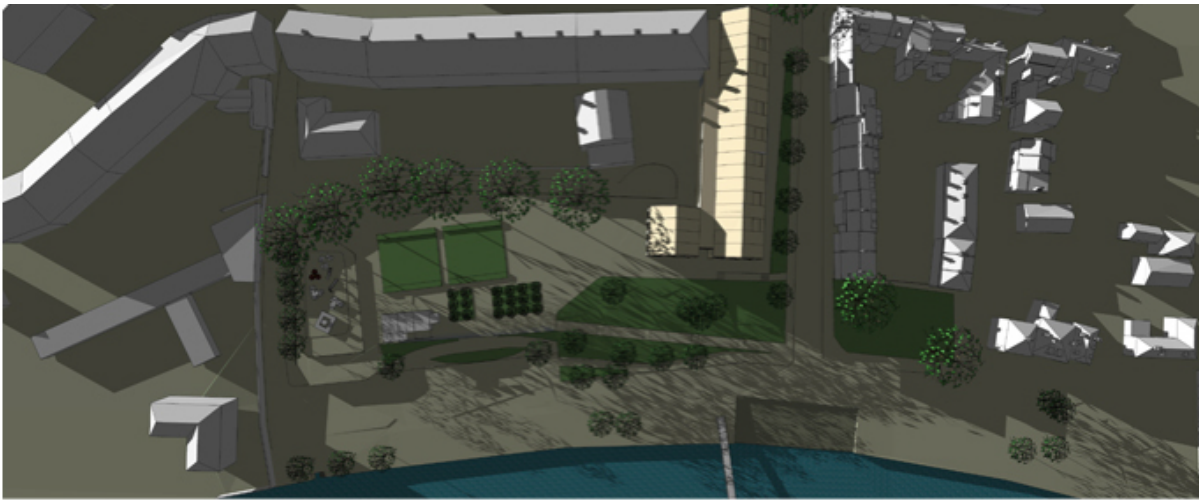
21 Mar 3pm GMT

- I. By 5pm the overshadowing position will be significantly worse, with a huge (approximately) 40-by-60 metre (over 25,000 square feet) shadow engulfing most of the Future Open Space (both Designated and Functioning), to include all of the proposed riverside Events Space, the Embankment promenade and significant parts of the Terraced Lawns. By contrast, without the Wharf Lane Building, at 5pm on 21 March both the existing Gardens and the Embankment Promenade enjoy virtually uninterrupted early evening sunlight.



Hopkins 2021 - with Wharf Lane Building

21 Mar 5pm GMT

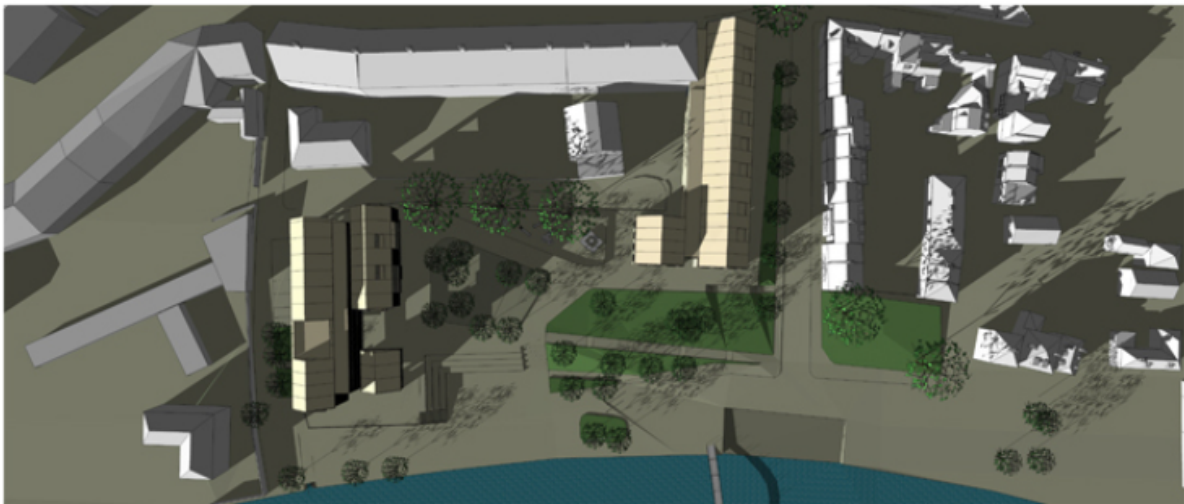


Hopkins 2021 - no Wharf Lane Building

21 Mar 5pm GMT

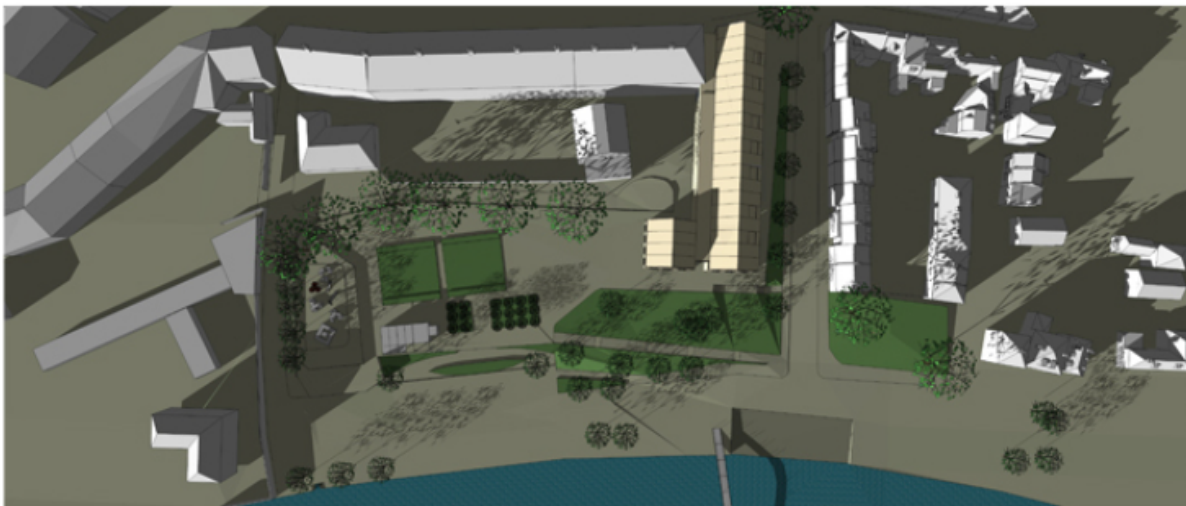
I. 21 DECEMBER

The Wharf Lane Building's negative shadowing impact is even more significant in December. On the 21 December (sunset 3.53pm), the shadows cast start to appear well before lunchtime. The petanque players' sunshine has gone by midday. By 1pm, a 40-by-40 metre shadow envelops the new children's playground. This is not the case with the existing playground and petanque pitches, which on a fair day remain bathed in sunlight.



Hopkins 2021 - with Wharf Lane Building

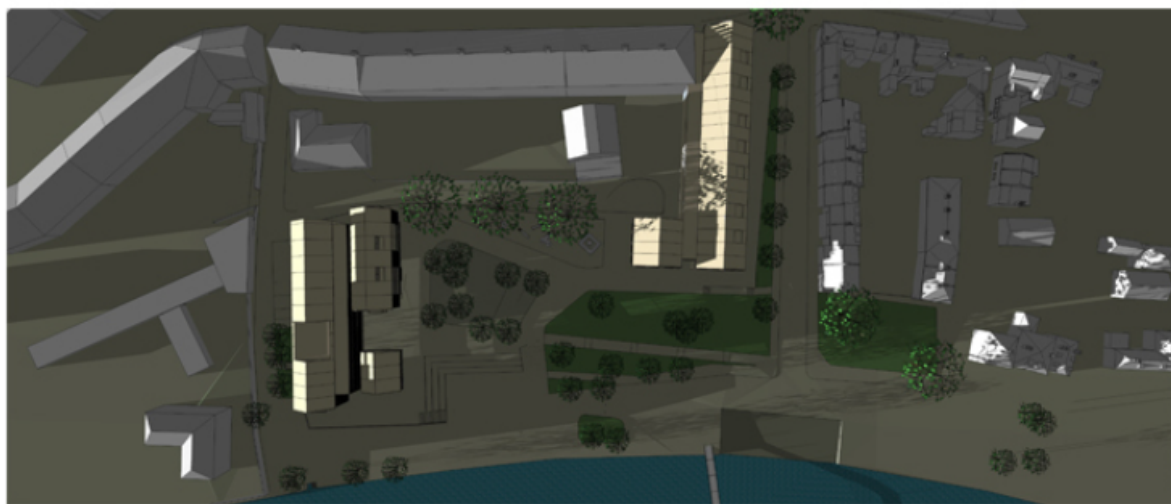
21 Dec 1pm GMT



Hopkins 2021 - no Wharf Lane Building

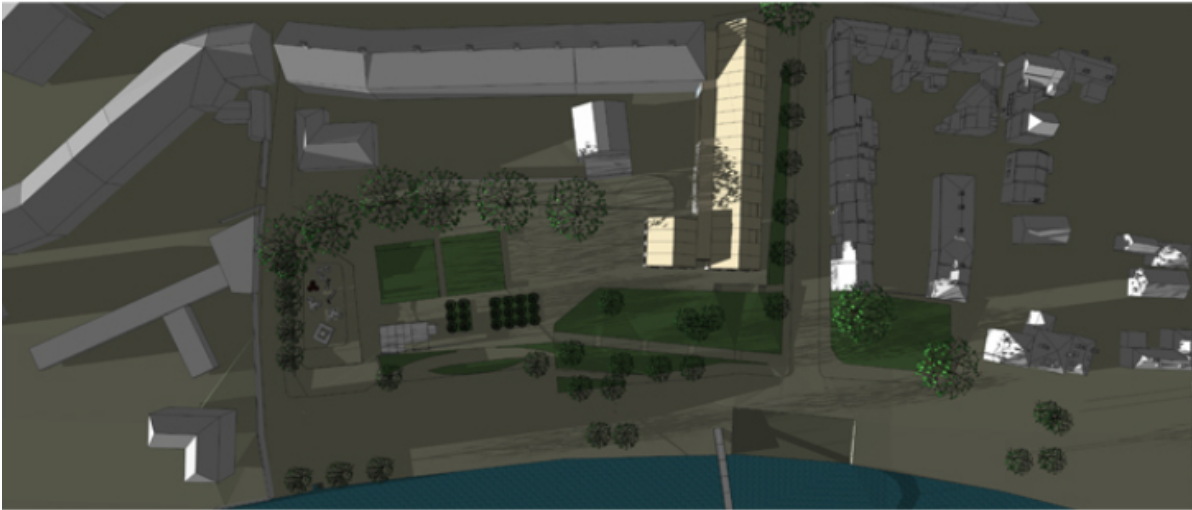
21 Dec 1pm GMT

- I. By 3pm, the Future Designated Open Space, extending all the way to Water Lane, is entirely in shadow. However, the Existing Designated Open Space of the Gardens remains largely bathed in sunshine at this time of day.



Hopkins 2021 - with Wharf Lane Building

21 Dec 3pm GMT



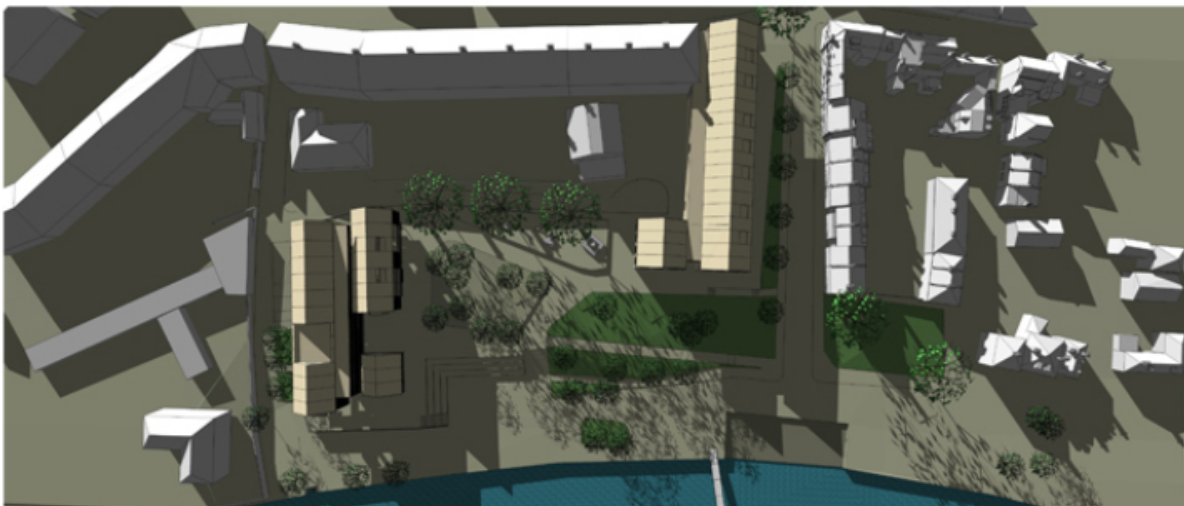
Hopkins 2021 - no Wharf Lane Building

21 Dec 3pm GMT

1. **21 JUNE**

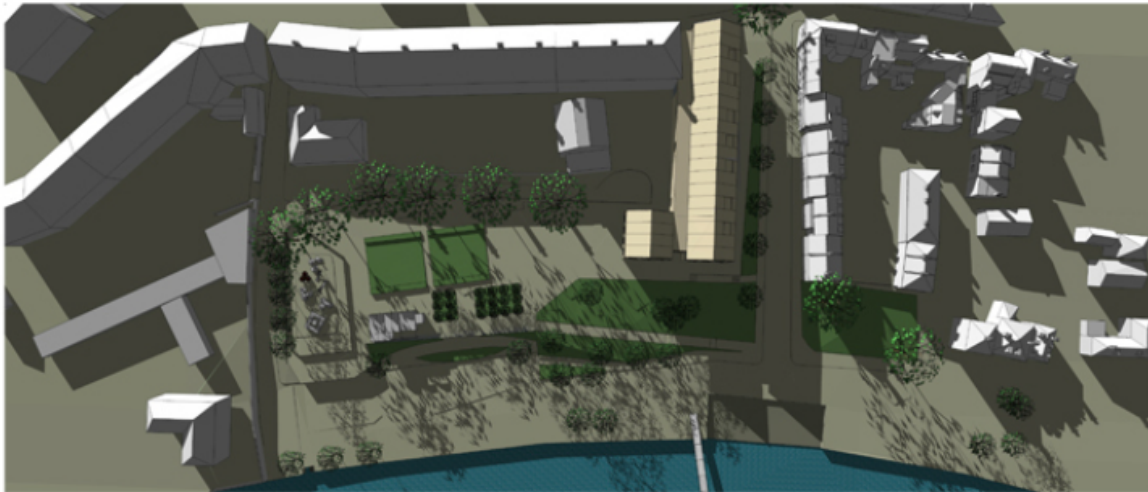
Overshadowing is not solely an issue in wintertime. On 21 June (sunset 9.21pm) the shadow cast by the Wharf Lane Building starts to grow in the early afternoon and by 7pm it covers half the proposed Events Space, to include the tiered seating.

2. By contrast, this is not so in the current Gardens and wider Embankment area where the public can continue to enjoy the last of a summer evening's sun (maybe watching Wimbledon at the Gardens' annual 'Big Screen' event?) until beyond 9 o'clock.



Hopkins 2021 - with Wharf Lane Building

21 Jun 7pm BST

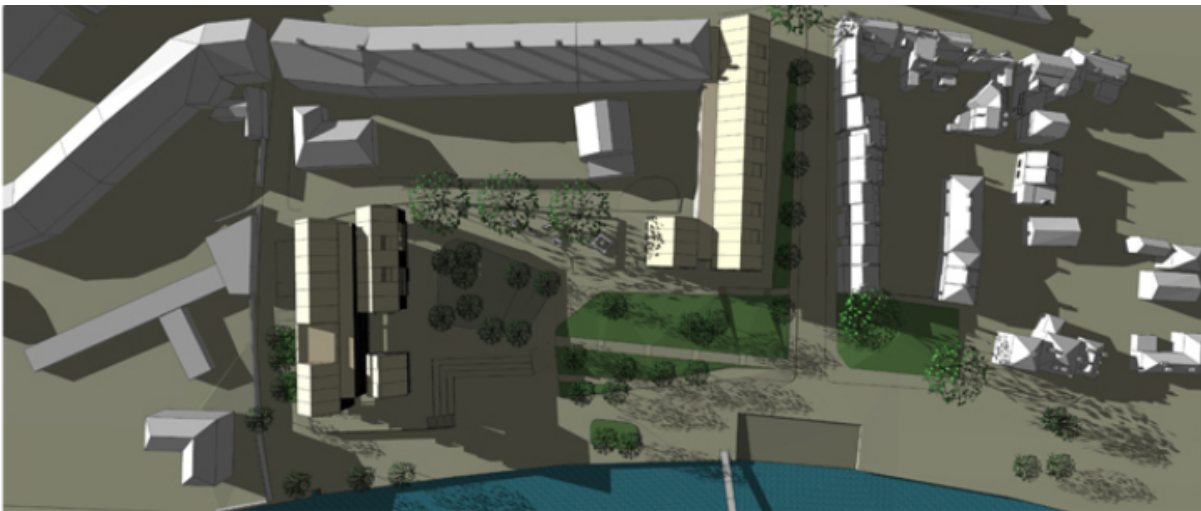


Hopkins 2021 - no Wharf Lane Building

21 Jun 7pm BST

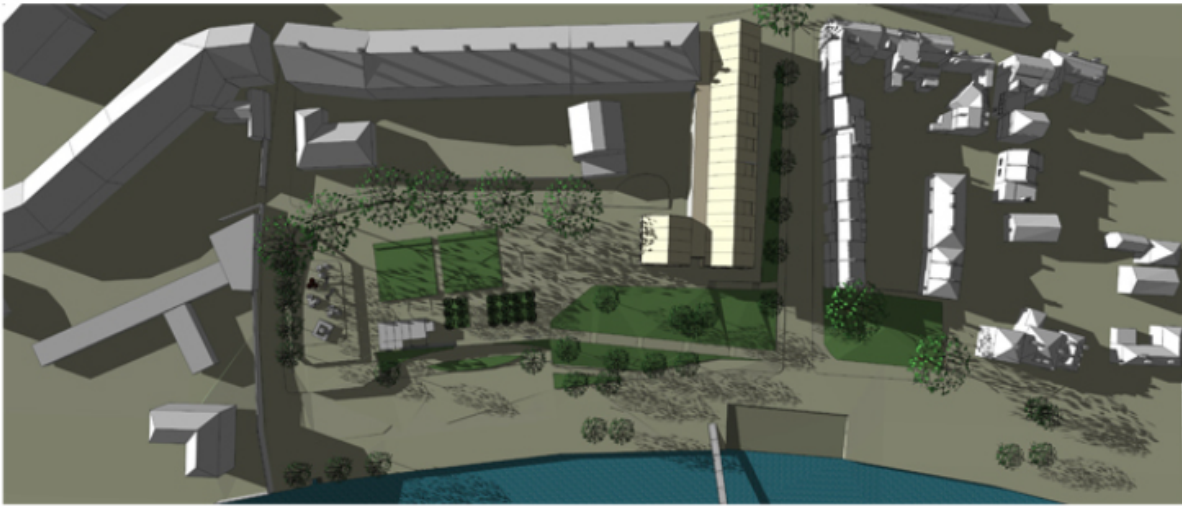
I. 21 SEPTEMBER

It's a similar story on September 21. By 5pm, a couple of hours before sunset (at 6.58pm), the Wharf Lane Building shadow shrouds virtually all of the Events Space and petanque pitches. This is in contrast to the Existing Open Space, which remains bathed in sunshine.



Hopkins 2021 - with Wharf Lane Building

21 Sep 5pm BST



Hopkins 2021 - no Wharf Lane Building

21 Sep 5pm BST

1. **THE AUTHORITY'S VISUALS SHOWING SUNLIGHT ON ITS SCHEME**

It has been noted by the Trust, and by other Objectors, that the Authority made a conscious decision not to use Accurate Visual Representations (AVRs) in support of its planning application, and therefore by extension its CPO.

2. Para 6.3 of the Authority's 'Heritage, Townscape and Visual Assessment' states: *"It was agreed with LBRuT that the CGIs (Computer Generated Images) did not need to be produced as Accurate Visual Representations (AVRs), which are verified for accuracy."*
3. This is in spite the Authority itself, going forward, seeking to make obligatory the submission of AVRs to accompany any planning applications for large scale or sensitively located developments.
4. The non-AVRs of the Wharf Lane Building in the Authority's planning application for the Scheme each show the customers of the Wharf Lane Building pub, for example, enjoying the sunlight - with long shadows - when in reality direct sunlight will not last beyond the early afternoon at best, and the shadows shown on the visual below, for example, would be cast around 7am on the summer's day indicated by the foliage on the trees.



1. There are many non-AVRs of the Wharf Lane Building and the Future Open Space published by the Authority in support of its Scheme. However, there are none showing the reality of afternoon/evening shadowing on the Future Open Space.
2. The non-AVR below, for example, shows the Lawned Terraces (based on looking at the angle of the shadows and the foliage indicating the time of year) at approximately 7am:



1. **Farewell Winter Gardens**

2. Whilst they provide all year-round amenity, for some people the Diamond Jubilee Gardens come into their own during the winter months. Somewhat uniquely in the Borough, the Gardens' two all-weather surfaces allow for unimpeded play and recreation throughout the cold, damp winter months when other local parks – where grass predominates – invariably become muddy, wet and slippery. Often you will see youngsters playing football on the Gardens after school, enjoying the last of the winter sunshine. The availability of sunlight to this open space outside the summer months activates these areas in a way that a shaded open space simply would not.
3. In many ways this existing open space is Twickenham's true Winter Gardens. When the days are shorter and the hours of sunshine more precious, the Gardens take advantage of their elevated position to escape the worst of winter's long shadows. Ironically the Authority's original Wharf Lane Building proposal (September 2019) included a "winter gardens" - essentially a covered open space between buildings - but this was discarded once the flood podium was introduced, creating the consequential need to create flood storage (compensating for that lost by the introduction of the Wharf Lane Building Podium on the Embankment) by widening Wharf Lane.



4. **Kept in the Dark?**

5. There is no shadow study which compares, at different times of the day and year, the sunlight enjoyed by the current open space against that which will be enjoyed by the replacement open space once the Wharf Lane Building has been built. We are aware that a comparative study was provided to the

Authority but for some reason it has not been shared with the public. Why is the public being kept in the dark?

1. The Authority did procure, and have made public, an internal daylight, and sunlight and overshadowing report (*prepared by GIA dated July 2021*) but crucially this is not a comparative study. It merely demonstrates that sunlight to the “outdoor community space” would exceed two hours on the March equinox (21st). This is the minimum required number of hours of outdoor sunlight as recommended by the Building Research Establishment (BRE) guidance on the subject. Effectively this guidance sets out the minimum amount of sunlight that the outdoor areas of a scheme need to achieve in order to be acceptable in planning terms. What it doesn’t do is calculate and evidence the amount of sunlight currently enjoyed by the open space and evaluate and quantify how much of this will then be lost as a result of the new scheme - something which the BRE guidance also recommends in such circumstances.
2. Prior to the grant of planning permission the only mention of the impact on sunlight on the open space throughout the planning officer’s 190 page report to the planning committee is a single short paragraph which refers to the scheme achieving 99% /100% of the amount of sunlight recommended by BRE and adds that sunlight in the summer will be ‘excellent’. And so whilst it is disappointing that this issue was not given more serious consideration by the planning committee, this is hardly surprising given the paucity of information provided to it in the planning officer’s report.
3. The following is an extract from the Authority’s daylight, sunlight and overshadowing report. Whilst most of the document deals with sunlight to the flats within the buildings, this is one of the few parts of the report where overshadowing of the external areas is mentioned:

3.3 OVERSHADOWING

The BRE guidance in respect of overshadowing of amenity spaces is set out in section 3.3 of the handbook. Here it states as follows:

“Sunlight in the spaces between buildings has an important impact on the overall appearance and ambiance of a development. It is valuable for a number of reasons, to:

- *provide attractive sunlit views (all year)*
- *make outdoor activities, like sitting out and children’s play more pleasant (mainly warmer months)*
- *encourage plant growth (mainly spring and summer)*
- *dry out the ground, reducing moss and slime (mainly in colder months)*
- *melt frost, ice and snow (in winter)*
- *dry clothes (all year)”*

Again, it must be acknowledged that in urban areas the availability of sunlight on the ground is a factor which is significantly controlled by the existing urban fabric around the site in question and so may have very little to do with the form of the development itself. Likewise there may be many other urban design, planning and site constraints which determine and run contrary to the best form, siting and location of a proposed development in terms of availability of sun on the ground.

1. So there is an acknowledgement by the Authority that lack of sunlight to 'spaces between buildings' can be detrimental for a number of specified reasons, most of which are specifically pertinent to the loss of sunlight that the Wharf Lane Building will bring about.
2. And of particular interest in the BRE guidance (which the Authority's report has chosen to include) is the statement that:
3. *"in urban areas the availability of sunlight on the ground is a factor which is significantly controlled by the existing urban fabric around the site in question and so may have very little to do with the form of the development itself".*
4. This statement appears to imply that any lack of sunlight to the proposed new open space will be caused by overshadowing from existing neighbouring buildings and will have *very little to do* with the Wharf Lane Building. The reality, of course, is that the overshadowing of the replacement open space will very much be to do with the Wharf Lane Building. As a consequence of the Authority's deliberate decision to construct this enormous building between the replacement open space and the afternoon/evening sun, it is depriving the riverside of many hundreds of hours of sunshine year in, year out; sunshine which the *existing urban fabric* at Twickenham riverside preserves and protects remarkably well.



5. *The view of the Wharf Lane Building from York House Gardens (image from Authority's planning application). The new open space will sit immediately in front of the building.*
6. **Shade not shadow**
7. Against the backdrop of such little information from the Authority regarding the effect of overshadowing, it is little wonder that at the planning hearing for the development a local architect (in support of the scheme) was able to pronounce confidently to the planning committee – with neither challenge nor embarrassment - that overshadowing 'will not be a problem' and that, in any event, the Wharf Lane Building will create welcome summertime shade.

1. This view is repeated in paragraph 11.210 of the Authority's Statement of Case: *"the petanque terrain often used by older people would benefit most from the shade provided by the Wharf Lane building to the western edge of the Scheme and the tree canopy"*. This entirely ignores the natural shade already provided to the existing pétanque area by the 16 pleached plane trees (see image below). Which form of shade do you think those older people would prefer?
2. We don't agree. And the view that the construction of the Wharf Lane Building will be a good thing because of the shade that it creates in summertime should not go unchallenged.
3. On the hottest of days of course we all need to avoid direct sunshine and appropriate shade is essential. And at the moment that is precisely what is already achieved through the shade provided by the many existing mature trees that adjoin or sit within the Gardens. Moreover the natural and dappled shade created by these trees is cooler, greener and healthier than any shade that could be created by the shadow of a building. The natural shade created by trees appeals to all of the senses; visually you can sit back, look up and enjoy the spectacle of iridescent leaves framed against a backdrop of blue skies; and close your eyes and you can hear the birdsong from the many residents of those trees whose habitat will soon be lost.
4. Instead we are expected to be grateful for the shade to be provided by a large unattractive building. A building which (through its residential and commercial air conditioning units and extractor fans) will pollute and damage the surrounding air rather than improve its quality - which the natural carbon capture of the soon-to-be-felled trees currently provides; a building which is likely to increase the heat in the new open space by stifling and blocking the prevailing westerly winds which currently cool the Gardens in summertime; and a building which each and every day will result in premature and half-visible sunsets for riverside visitors.
5. And of course the best thing about the natural shade created by trees is what they do in wintertime. By dropping their leaves in late autumn, the trees naturally allow for more sunlight to pervade into the open space during those months when it is needed most – and when shade is unwelcome. By contrast the building cannot shed a single brick to alleviate the miserable shadow that it creates.



(above) dappled shade on the pétanque area at Diamond Jubilee Gardens, 17 July 2022 at 4.41 pm (this avenue of pleached plane trees will be felled as part of the redevelopment)



(above) temporary shade at Diamond Jubilee Gardens against the magnificent backdrop of the Gardens' (soon to be felled) row of hornbeam trees.

1. **Health, wellbeing and the environment/biodiversity**
2. Apart from the visual amenity previously highlighted, the health benefits of direct sunshine are significant and well documented. For each of us exposure to sunlight triggers the hormone serotonin. This hormone is known for elevating our mood, creating calmness and increasing focus. By contrast where light levels decrease a different hormone - melatonin - is triggered. This is the hormone that makes us feel sleepy at the end of the day. Exposure to both the light of day and the dark of night helps to set our circadian rhythm. However if we don't get enough sun exposure, we miss out on the natural boost in serotonin levels that sunlight generates.
3. Low levels of serotonin are particularly associated with a higher risk of seasonal affective disorder (SAD). Sometimes known as 'winter depression' (because it is more apparent and more severe during the winter when sunshine is more difficult to come by) the symptoms of SAD can include a

persistent low mood, lethargy, lack of focus, feelings of despair and guilt and a loss of pleasure or interest in normal everyday activities.

1. The boost created by sunlight and serotonin is particularly helpful for the mental health of those affected by SAD and also for those who live with depression, anxiety, panic disorders and ADHD.
2. In addition sunlight provides us with our daily dose of vitamin D (essentially for stronger bones), protects against certain cancers, helps with certain skin conditions and improves our sleep.
3. Against this backdrop, from both a mental and physical health perspective, it is difficult to see how replacing popular sunlit open space with five storeys of private flats and a pub (which each year will block hundreds of hours of sunlight to the proposed replacement open space) makes any real sense. It also makes a mockery of the monetary value that the Authority has given to the increased social value that the scheme will purportedly create (and which they are using to justify the exorbitant use of over £20 million of public funds to underpin the shortfall in the cost of the development not covered by sales).
4. **(6.) Visual amenity I - Impact of overbearing buildings**
5. The visual impact that the Wharf Lane Building will have on the surrounding riverside open space cannot be ignored. It is difficult to imagine quite how large - and out of keeping with its surroundings - this building will be.
6. To help understand this, we recommend that you take a moment and walk to the centre of the Eel Pie Island footbridge. Turn around and look to your right and you will see the elegant 18th century tower of St Mary's Church, a beautiful riverside landmark which sits elevated amongst the neighbouring buildings. For the last 300 years the tower has been our tallest riverside structure. But not for much longer.



7. *(above) view of St Mary's Church, Twickenham from Eel Pie Island bridge.*

1. Now turn your gaze to your left (toward the far end of the Diamond Jubilee Gardens) and imagine a building significantly taller than the church tower. And considerably wider but with none of its charm nor sense of place. This will be the Wharf Lane Building. Measuring 21 metres in height and 43 metres in width, it will become the tallest building in the area, higher even than any building on the high street. Moreover for those standing at the riverside, its height will be exacerbated by its construction upon a newly built 2.5 metre high podium (necessary to take the building out of the flood zone- coincidentally and ironically the area where your new events space will sit). This means that when viewed from the embankment the building becomes a 6-storey edifice.



2. *(above) image from Authority's design and access statement (in support of planning application) showing proposed view of Wharf Lane Building from Eel Pie Island footbridge. Please note this image is from at least 2053 since it shows (according to the Authority's calculations) the canopies of the replacement trees as they will be in 30 years' times.*
3. Or – if you prefer a different perspective –take time to stand outside the new Holland and Barratt in King Street and look across Cross Deep to the redbrick building with the clock face above the pharmacy and gym. It's pretty tall but the Wharf Lane Building will be substantially higher.
4. So it's fair to say the Wharf Lane Building is big. Much too big. And equally disappointingly it has no public benefit - save for the public toilets which would replace the existing ones in the current (and soon to be discarded) Sunshine Café. As for the rest of the building, we suspect that nobody in Twickenham is crying out for another pub (and illogically the site is surrounded on all sides by controlled drinking zones imposed by the Authority), and the provision of 24 unaffordable private flats will be of benefit to very few local people. Indeed if recent borough precedent is anything to go by there is a very good chance that these flats (like at nearby Teddington Riverside (aka ex ITV studios) and Twickenham Gateway (aka Twickenham railway station)) will end up in foreign ownership for lucrative private short term lettings.

1. **(7.) Visual amenity 2 - Loss of view of open skies/removal of vista of Thames Eyot Canopy**
2. Quite apart from the impact that the Wharf Lane Building will have on shadowing, it will also have a devastating effect on the view from the Gardens of the large tree-lined open skies to the west of the site (above and beyond Wharf Lane). We consider these to be an important part of the overall aspect of the Gardens since the view to the west of the Gardens takes in a large number of mature trees, some relatively close, some several hundred feet away. Together we call these the Thames Eyot Canopy (since most of them sit within the grounds of Thames Eyot). They help to create a feeling of openness and green space on the western boundary of the Gardens. Sadly if the Wharf Lane Building is constructed none of this will be visible from the Authority's replacement open space since it will be entirely obstructed by the new building.



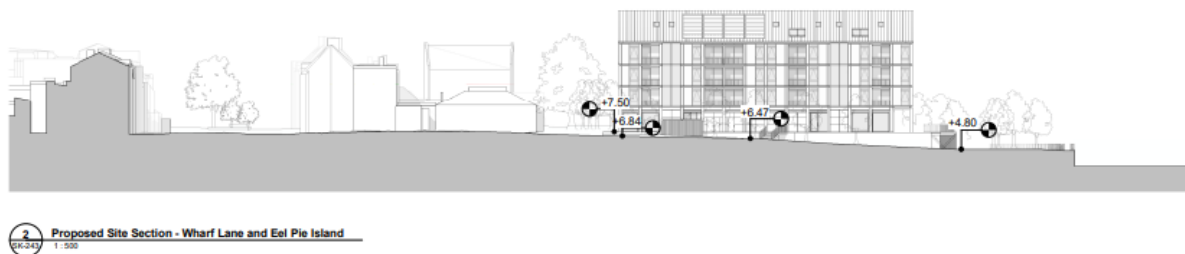
3. *(above) Diamond Jubilee Gardens – showing the Thames Eyot canopy as the backdrop (none of which will be visible from the new open space once the Wharf Lane Building is built).*



1. *(above) the outer half of the Wharf Lane Building (the iconic “bookend”) which will obliterate the view of the skyline, the Thames Eyot canopy and daily sunsets from most of the replacement open space. Tellingly the Oxford Dictionary defines open space as “not surrounded by anything; not closed in”. This building negates the possibility of true open space within the proposed scheme.*
2. And in open space terms, the importance of this view to the west is not only that you can see a variety of trees and that there is less shadow, it is the visual depth to the view – a more distant and interesting horizon with a broader and taller skyline – rather than the abrupt intervention of an oversized uninspiring brick building.
3. One of the principle arguments put forward by the Authority in support of the Wharf Lane Building is that they consider it an appropriate ‘bookend’ to the Scheme and to Twickenham riverside and that it is preferable to the view of the wall on the other side of Wharf Lane. We feel the public actually enjoys the aspect of the wonderful Victorian brick wall (and lampposts) in Water Lane – as it leads down to and connects with, the listed Victorian boathouse. Who decides that this should be considered less attractive than the panel brick façade of the uninspiring Wharf Lane Building?



1. (above – public enjoying view of the Thames Eyot Canopy 1960s)
2. **(8.) Impact of the Scheme facilitating further high rise development at Twickenham Riverside and impact on open space**
3. If the Wharf Lane Building is built the overshadowing of the open space caused by the Authority's scheme will be substantial and irreversible. However, and somewhat alarmingly, it is likely to get even worse. It is well known that the owners of the neighbouring King Street buildings (between Iceland and Boots) which sit to the north of the Gardens are looking to redevelop their buildings (including the areas to the back which overlook the Gardens) – with pre-planning discussions already having taken place with the Authority. We expect that they are delighted that the Authority has now granted planning consent for a 21-metre tall development immediately adjacent to their (significantly shorter) buildings.



4. (above) side elevation from planning application drawings showing height of Wharf Lane Building relative to nearby properties in King Street (the development of which are likely to follow a similar height and scale)
5. In planning terms the granting of consent for such a tall building (higher than any surrounding edifices) will set a precedent for further tall buildings in the area. And the most likely beneficiary of this will be the owners of the King Street buildings who can now increase the height and density of buildings

on their land in the knowledge that the local planning authority would now be hard pressed to object to it on the grounds of their size or height.

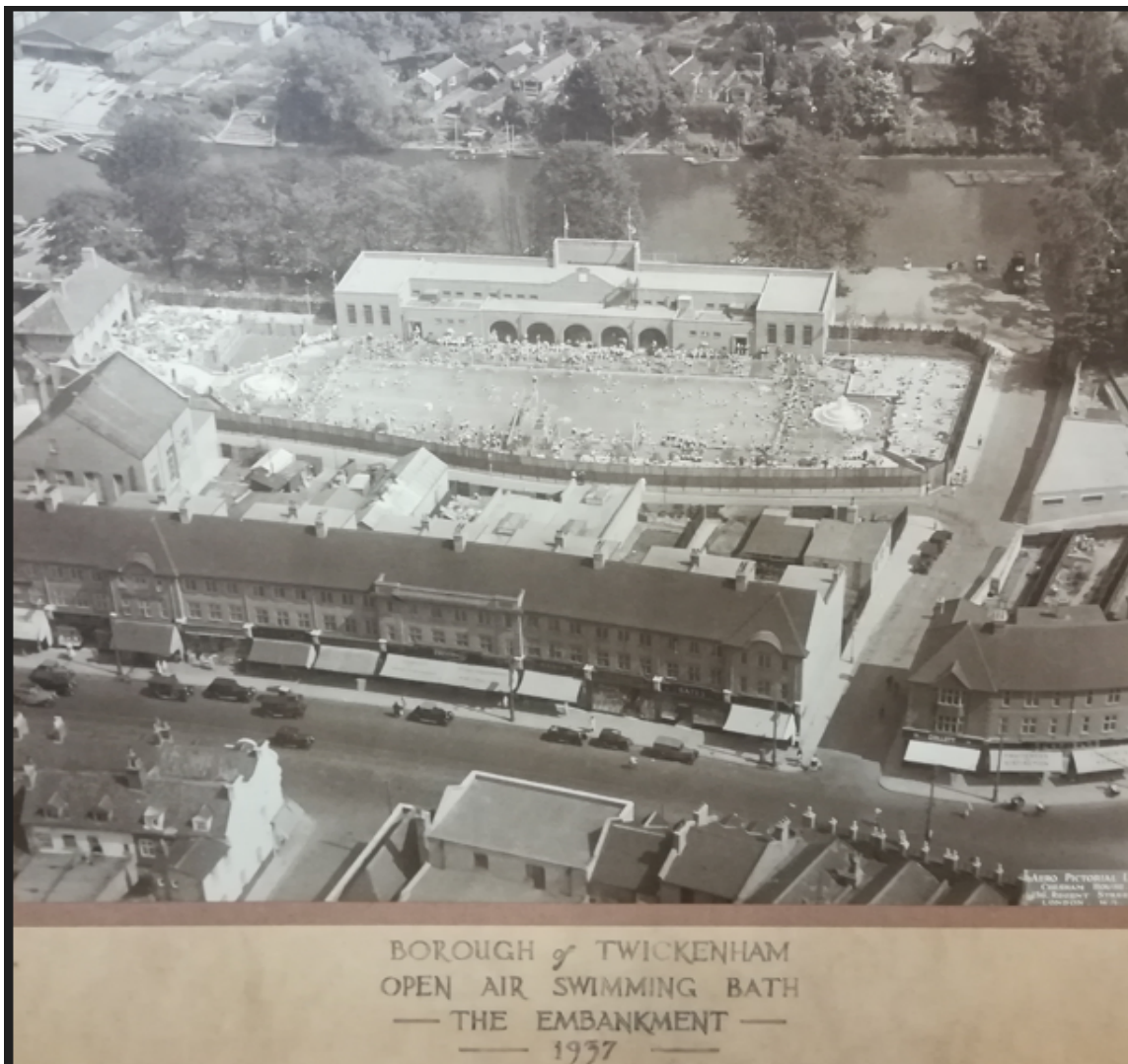
1. Whilst we don't currently have shadow studies for the impact that any such redevelopment might have, it is clear from the proximity of this site to the Gardens and its position relative to the afternoon sun, that at certain times of the day even more shadow would be cast over the public open space by such new buildings. Inevitably it would be the northerly parts of the open space that would be the most adversely affected. In particular the replacement children's playground (which is to be located right next to the King Street service road) would be detrimentally impacted. This just makes even more nonsensical the Authority's decision to move the playground from its current popular sunny and open position to a location (coincidentally sitting next to a turning circle for commercial vehicles) which will be subject to overshadowing both by the Wharf Lane Building and also (in all likelihood) by a secondary but similarly overbearing scheme.
2. And, of course, this will be significantly exacerbated by the impact that the felling of the mature hornbeams that currently sit between the Gardens and the rear of the King Street buildings will have on the enjoyment of the Gardens. These trees provide essential screening between the rear of the King Street buildings and the Gardens and any replacement trees will take many decades to achieve an equivalent effect.



3. *(above) the mature hornbeam trees of Diamond Jubilee Gardens providing natural screening from the commercial premises at the rear of King Street*



1. *(above) sandpit on the northern boundary of Diamond Jubilee Gardens showing dappled shade from the mature hornbeam trees, most of which are to be felled, and the 1930's heritage lido diving board (which is also to be removed) 4.36pm 17 July 2022*
2. **(9.) Lesson from history about overshadowing**
3. The Diamond Jubilee Gardens sit on a site which was previously occupied by the historic house and gardens known as Richmond House. In 1924 the house and gardens were acquired by the Authority subject to an obligation to use the land as public grounds and gardens. The house was subsequently demolished after which, following much public debate (including a petition from local residents), the decision was made to build public baths and an open-air swimming pool on the site. So it was that on 4 May 1935 Twickenham Baths (also known as Twickenham Lido) opened with much public fanfare to coincide with the Silver Jubilee of King George V.
4. And in designing the lido one thing that our local councilors seem to have understood 90 years ago, but apparently have failed to understand now, is the position of the afternoon sun relative to this riverside land. So it was that a deliberate decision was made to construct the taller buildings constituting the baths and changing rooms along the embankment frontage to the site (facing south) and to keep the western boundary clear of anything other than a modest wall. This meant that for the next 45 years all those people using the pool could enjoy it, bathed in sunlight long into the late afternoon and evening without fear of being put into the shade.



1. (above) Twickenham Lido 1937 - showing low retaining wall providing unimpeded sunlight via the western boundary of the site.
2. **Limb (iii) Subsequently vest in the persons in whom the acquired open space land was vested, and subject to the like rights, trusts and incidents as attached to the acquired open space land**
3. Under s19(1)(a), the Secretary of State must be satisfied that the “*land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased*”.
4. Clearly, there is no difficulty in vesting the Exchange Land in the freehold owner of the Lost Open Space since they are one and the same (the Authority). However, the Exchange Land must also be subject to the same rights, trusts and incidents as the Lost Open Space. There is no definition of “rights, trusts and incidents” in the Acquisition of Land Act 1981 (and neither is there a definition in the Planning Act 2008 where the same words appear in s131). There is also no consideration of the scope of the phase in any of the authorities dealing with s19.
5. However our view is that the literal meaning of the word “incidents” is very broad. It is defined in the dictionary as “a privilege, burden, or right attaching to an office, estate, or other holding”. We

consider the benefit or privilege of a 125-year lease should be seen as an “incident” attaching to the land. It therefore ought to be capable of being transferred to the Exchange Land for the statutory test in s19(1)(a) to be met. However, since the Trust and the Authority have been unable to agree any new lease for the Exchange Land, it is impossible for the Authority to ensure that the Exchange Land is subject to the same rights, trusts and incidents as the Lost Open Space. If the lease is an incident, it therefore fails to meet this part of the statutory test and the certificate should not be granted.

SECTION 19(1)(AA)

1. Requirements of s19(1)(aa) ALA 1981

2. Under Section 19(1)(aa) ALA 1981 the Secretary of State may approve the compulsory purchase of open space if satisfied that “the land is being purchased to secure its preservation or improve its management”.
3. The Authority is relying on the second limb of this section to acquire the Retained Open Space ie to “improve its management”.

4. Objection to the Authority’s use of s19(1)(aa)

5. Current management

6. The Retained Open Space measures (according to the Authority’s calculations) 1,428 sqm. It sits entirely within the Diamond Jubilee Gardens which were demised to the Trust by the Council under a 125-year lease dated 16 May 2014 (not considered sufficiently important in the Authority’s Statement of Case to merit a definition in its glossary but herein referred to as the “**Lease**”). The Retained Open Space is, roughly speaking, the right half of the demised premises, with the Lost Open Space being the remaining (left) half.
7. Under the terms of the Lease the Authority (as landlord) covenanted with the Trust for a period of 10 years (ending 15 May 2024) “to maintain the Property as Public Open Space and maintain responsibility for the repair and maintenance thereof including replacement as necessary of all structures surfaces buildings play equipment and planting and keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections) safe clean and tidy” (clause 4.2).
8. At the end of that 10-year period maintenance responsibility for the Gardens will pass to the Trust (as leaseholder) for the remainder of the term of the Lease.
9. However for the time being the Authority is (and has been since the Gardens were formally opened in June 2012) responsible for the maintenance of the Retained Open Space.

10. Purpose of s19(1)(aa)

11. Section 19(1)(aa) was not originally included in ALA 1981, but was added as a legislative amendment through the Planning and Compensation Act 1991. So for 10 years or so it was only possible to acquire open space by compulsory purchase if one could provide an equivalent amount of no less advantageous open space by way of replacement.

1. When one reads the relevant legislation, the statutory guidance (*the Guidance on Compulsory Purchase Process and the Crichel Down Rules, July 2019*) and pertinent commentaries on the subject, the reason for the introduction of this additional right seems pretty clear and uncontroversial.
2. As the CPO Guidance explains (at para 242): “in some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management”.
3. It goes on: “the land might be neglected or unsightly... perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities.”
4. So on the face of it, it seems a sensible (and balanced) piece of statutory intervention, allowing an acquiring authority to step in where open space is either at imminent risk of serious deterioration or of being lost altogether.
5. Since its introduction the use by local authorities in applying s19(1)(aa) has followed the same sentiment set out in the CPO Guidance:
6. (a) *The London Borough of Tower Hamlets (Blackwall Reach) Compulsory Purchase Order 2013* – in that case the relevant open space land had not been properly maintained.
7. (b) *The London Borough of Tower Hamlets (Millennium Green East) Compulsory Purchase Order 2019* – in that case the landowner of the relevant open space had not been able to adhere to its land covenants to ensure that a Green was suitably managed and maintained for public use.
8. (c) *The South Tees Development Corporation (Land at the former Redcar steel works, Redcar) Compulsory Purchase Order 2019* – in that case the relevant open space land was left largely unmanaged by the landowner and there was little safeguarding in place to ensure its continued availability and amenity.
9. So the Department for Levelling Up, Housing & Communities’ stated rationale behind the legislation and the application of it through each CPO since its inception, is consistent and sensible. And this seems right, since the use of compulsory purchase is a powerful statutory tool which should only be used, in limited cases and after careful consideration, in the circumstances prescribed by law. And such rights should never be exercised lightly nor in a manner which circumvents the legal requirements.
10. The Authority’s late decision to adopt s19(1)(aa) and the challenges caused
11. For the vast majority of the time that the Scheme has been under discussion the Authority has had no intention at all to acquire any part of the Existing Designated Open Space by using s19(1)(aa) “to secure its preservation or improve its management”.
12. Until 20 September 2021 (just a month before it formally launched its CPO) the Authority had been intending (as detailed in its draft Statement of Reasons shared with the Authority’s Finance, Policy and Resources Committee in 28 June 2021) to rely solely upon s19(1)(a) in order to acquire the Trust’s open space and there was no indication that it would be relying upon section 19(1)(aa).

1. However, as is made plain in the CPO Guidance (again in para 240) the legislation does not permit an acquiring authority to provide as suitable replacement open space land which, prior to the land exchange, was already public open space. The Authority, having been informed by the Trust in early September 2021 (as it had also been informed by the Trust in a meeting some 6 months prior in March 2021) that it would be impossible for it to recycle previous open space as new open space in order to satisfy s19(1)(a), and realising that there was simply not enough alternative new open space in its Scheme to reach the threshold required to satisfy s19(1)(a), had no other choice but to change tack. So it would now look to that part of the Gardens which would continue to be used as open space and re-brand it as Retained Open Space.
2. This land was now to be acquired using a separate procedure - s19(1)(aa) - where no exchange land needed to be offered - but where the Authority would now have to show that the open space to be acquired is needed to secure its preservation or improve its management.
3. This has caused the Authority two particularly difficult challenges:
4. (i) First - in order to satisfy the threshold requirements of s19(1)(a), it would now have to find a large amount of additional open space to replace the land that it had previously earmarked to fulfil that role. That has led to the inclusion of the Water Lane Retail Walkway and other unsuitable land implausibly having to be offered up as replacement 'open space' under s19(1)(a).
5. (ii) Secondly – in order to satisfy the requirements of s19(1)(aa) it has had to come up with a reason why it needs to CPO land that it already manages so as 'to improve its management'. And in doing so it will be looking to rely on a novel interpretation of the legislation which is totally at odds with existing legal orthodoxy and which, if successful, would set a dangerous legal precedent allowing local authorities across the country to CPO open space, whether private or public, wherever they consider that acquisition would enhance the external amenity of a larger development that it is promoting.
6. The Authority's use of s19(1)(aa)
7. The Authority sets out why it is relying on s19(1)(a) in paragraphs 8.51 to 8.57 of its Statement of Case:
8. **Paragraph 8.51** seeks to set out why it is relying on s19(1)(aa) "the Scheme (in part) seeks to comprehensively re-design the Modified Order Land and re-provide much improved open space. In relation to the Retained Open Space, this will improve its management as part of the overall scheme". It does not seek to explain why perceived 'improved open space' will improve its management.
9. **Paragraph 8.52** follow a similar vein "*under the Scheme (and included in the Modified Order) this area will be greatly enhanced and its management significantly improved.*" The rest of the paragraph describes the Retained Open Space, whilst also stating that the Scheme will in fact retain a larger area of Existing Designated Open Space. Once again this goes no further in explaining how management will be improved.
10. **Paragraph 8.53** states that "as a matter of fact the Scheme and its resultant benefits cannot be delivered without acquiring part of the Existing Designated Open Space which would be

Retained Open Space within the Scheme – the reconfiguration of the Future Designated Open Space requires the retention and reconfiguration of part of the Existing Designated Open Space. The acquisition is needed to facilitate the whole site solution and is an integral part of the compelling need for the Modified Order.” Essentially this states that Authority cannot build its Scheme without acquiring the Retained Open Space. This much is obvious, however stating it does not add anything to an understanding of how the Authority will improve the management of the Retained Open Space.

1. **Paragraph 8.54** states that *“the Existing Designated Open Space, by virtue of its configuration, lack of connection to the riverside and town centre and lack of overlooking lends itself to regular instances of anti- social behaviour, substance abuse and criminal behaviour. The configuration of the Future Designated Open Space (and ultimately the Future Functioning Open Space) will mean that the management of the space will be greatly improved.”* As has been stated elsewhere the Trust contests the assertion that the Existing Designated Open Space is the location of the majority of the perceived anti-social activity at Twickenham Riverside (which in any event we believe has been overstated, and is significantly less serious than in many other open spaces within the Borough). Most of such behaviour has arisen on the Authority’s own derelict land and buildings (where no CPO is required). In any event this really gets us no further in understanding how management will be improved under the new Scheme.
2. **Paragraph 8.55** is confusing, stating: *“Additionally if the Council was not to acquire that part of the Existing Designated Open Space which is to be retained by section 19(1)(aa), the Future Designated Open Space would be part owned and managed by the Trust and part owned and managed by the Council. Which would militate against coherent management”*. This seems to assume a world where the new Scheme is built (it refers to Future Designated Open Space) but where the Trust still has a lease. What is the area demised by this Lease? It can’t be the current demise since the Scheme would not have been capable of being built. So is this a situation where the Authority has successfully acquired the Lost Open Space under s19(1)(a) and a new lease has been granted. If so please would the Authority explain what area of the Future Designated Open Space would be owned by the Trust, and how and why management of the Retained Open Space would be improved.
3. **Paragraph 8.56** explains what will be built in the Retained Open Space will contain in the new Scheme. Once again there is no nexus to why and how management will be improved.
4. **Paragraph 8.57** states *“The Secretary of State has previously issued a notice of intent to issue a certificate under section 19(1)(aa) in respect of the Scheme. The proposals contained in the Section 19 Application (and/or the proposals subject to the Proposed Modifications) would provide significant improvements to the quality and amenity of the Retained Open (sic) which will clearly improve its management”*. So clearly, it would appear, that no explanation is needed.
5. And that’s it. There is no attempt to explain why s19(1)(aa) should be used in such a novel way. And tellingly it recites no legal precedent in support of its use of the legislation in this way. The paucity of supporting evidence or explanation is striking. We have patiently waited 16 months since we raised our detailed objections in November 2021 to the Authority’s s19 and CPO

Statement of Reasons, being particularly keen to understand the intricacies of the Authority's s19(1)(aa) case. Only to be met with this somewhat underwhelming response.

1. And at the heart of this the Authority seem to be three huge assumptions:
2. **Assumption 1** - that s19(1)(aa) actually allows for the legislation to be used in this way. For the reasons set out above and below we don't think it does. And the Authority has made scant attempt to explain why s19(1)(aa) allows for a CPO in these circumstances.
3. **Assumption 2** - that any physical reconfiguration, modification or improvement made to the open space will, de facto, improve its management. This sentiment is expressed throughout the above excerpts from the Authority's Statement of Case but no cogent reason is given as to why this should be the case. Essentially the argument seems to be "if we build what we consider to be improved open space, then it will be easier to manage." But as we explain below that is not always the case, and certainly not with this Scheme.
4. **Assumption 3** – that the changes being made to the open space by the Scheme will actually be an improvement on the existing open space (implicitly a necessary precursor to assumption 2). As we have set out for various reasons elsewhere we strongly believe that that is not the case.
5. The Trust's thoughts on, and objections to, the Authority's use of s19(1)(aa)
6. It is telling that the Authority changed its position on the relevant power in relation to the Retained Open Space and only relatively late in proceedings (in September 2021, having first formally indicated in writing to the Trust its intention to use CPO powers in October 2020, and having published its draft Statement of Reasons in June 2021) sought to rely on s19(1)(aa). This suggests most strongly an element of artificiality in the process. The CPO guidance in para 242 gives examples of how the power is envisaged to be used: to acquire open space which is privately owned and at risk of being lost or land which might be unsightly. In both cases, the compulsory purchase is predicated on the land being at some kind of existing disadvantage or jeopardy which the Authority needs to step in to remedy. That is not the case here.
7. The examples given in para 242 are the only ones given in the CPO Guidance, but in the Trust's view these examples suggest that for both limbs there needs to be a sense that the relevant open space is at some sort of risk where urgent action is required by the Authority to address that risk. So an order might be necessary to prevent loss of open space (by securing its preservation) or to prevent the deterioration or negative impact of poorly managed open space (by improving its management). However there is no indication that this section was ever intended to be used by an acquiring authority to acquire open space which is already properly managed.
8. Indeed the Authority is already the current manager of the Retained Open Space. It therefore cannot rely on its own standard of management as any reason to acquire the land. Instead, it is essentially trying to rely on the power conferred by s19(1)(aa) in order to get rid of the Trust's leasehold interest (if this is possible – please see below) so that they can reconfigure the space. In our view this is an abuse of this statutory power which was not designed simply to enable the early termination of a leasehold interest where such termination would not otherwise be possible.

1. The Authority argues (in paragraphs 8.51 and 8.52 of its Statement of Case) that by improving the open space in the Scheme it will, de facto, improve its management. The Trust contends that, regardless of the merits of the design and quality of the new Scheme (which the Trust certainly does question, by designing conflict into the new scheme - including the introduction of a pub, with a designated curfew hour, tiered steps for casual drinking immediately adjacent to a Controlled Drinking Zone and in close proximity to many take aways, with residential units above the pub having their own requirements for peaceful enjoyment, with cycle lanes and intermittent vehicular traffic passing through the shared open space/events space in a floodable area and with an events space now immediately adjacent to an often fast-moving river) the Authority will be ensuring that the management of the open space will in fact become more difficult as a result of the new Scheme when compared to the relatively straightforward management provided by the existing Designated Open Space.
2. The Authority seems to be taking a 'holistic' approach to the management of the open space within the Scheme, stating that it cannot deliver the broader scheme and its perceived benefits (including the new open space) without acquiring the Retained Open Space. When considering the use of Section 19(1)(aa) we contend that the Inspector should only be entitled to consider the benefits for the management of the Retained Open Space in isolation and not the benefits for any other parts of the Future Designated Open Space (including the Exchange Land and any other land which the Authority intends to include as open space). Accordingly any management improvements (such as there are any) for such extraneous areas should be disregarded.
3. In its Statement of Case the Authority alleges that the management of the Existing Designated Open Space will be improved because anti-social behaviour which has taken place on that land is less likely to take place under the new scheme through 'natural surveillance'. The Trust believes that this behaviour has been exaggerated and that in any event such anti-social activity as has occurred has predominantly been on the Authority's own land and only intermittently the Existing Designated Open Space. Indeed it is not unreasonable to suggest that some elements of the anti-social behaviour relied upon by the Authority have directly been brought about as a result of the convenient dereliction of its own land cultivated by the Authority whose management of such neighbouring areas has been poor.
4. In its Statement of Case the Authority seems to be stating that by having all the open space under the management of a single entity then this will improve its management. Whilst they don't say it, this possibly alludes to the fact that under the Lease in 2024 responsibility for the management of the Gardens will pass to the Trust, whilst responsibility for the remainder of the surrounding open space will remain with the Authority. We would firstly make the point that we have every confidence that going forward the Trust will be excellent managers and custodians of the Gardens for the remaining 115 years of its Lease. Secondly we would emphasize that the current configuration of the Gardens (a single level, contiguous self-contained area of secure open space) makes it a relatively easy area to maintain quite independently from the maintenance from any surrounding areas. And the thirdly the reality of the current situation is that responsibility for the management of various elements of Twickenham riverside (both within and outside the Gardens) falls to be performed by a number of

different departments and teams within Richmond Council in collaboration with (and to a material extent) co-ordinated by the Trust.

1. No written plan for the future management of the proposed open space has been put forward by the Authority explaining in any level of detail the improvements to the management of the open space that will result as a consequence of the compulsory acquisition of the Retained Open Space.
2. Furthermore, the Council's arguments that management will be improved are highly tenuous. They seem to rely on the land being part of an overall scheme and improved by an enhanced surrounding environment. Such arguments could be made in any compulsory purchase situation where the open space is part of a wider development. If the Secretary of State were to accept that such arguments amounted to management improvement, then any open space could be acquired under s. 19(1)(aa) without any real need. Again, this appears to be an abuse of the power and not what it was intended to achieve.
3. As specified in paragraph 242 of the CPO Guidance, where an acquiring authority seeks a certificate under Section 19(1)(aa), section 19(3)(b) of ALA 1981 cannot apply and accordingly the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. It is the Trust's belief and understanding that the Lease falls within such rights and incidents (see Limb(iii) of s19(1)(a) above) and therefore, unless terms for a new lease can be agreed, the Authority is unable to satisfy this statutory requirement since it cannot force the grant of a new lease on the Trust.
4. If upheld this unprecedented use of s19(1)(aa) will open floodgates for future CPOs of open space for schemes promoted by local authorities
5. (1) If the Secretary of State upholds the Authority's application under s19(1)(aa) on this Scheme then it will set a number of legal precedents (so far as the Trust is aware):
6. (2) It will be the first time that the legislation has been used by an acquiring authority to acquire perfectly well managed open space, whose management is not in need of improvement;
7. (3) It will be the first time that an acquiring authority has acquired land where the acquiring authority is itself responsible for the management of that land;
8. (4) It will be the first time that an acquiring authority has used this legislation to acquire land from an owner who is not at fault in any aspect of its ownership of its property;
9. (5) It will be the first time that an acquiring authority has used this legislation to acquire land owned by a Charitable Trust;
10. (6) It will be the first time that an acquiring authority has used this legislation to acquire land from a long leaseholder where the acquiring authority itself granted the relevant lease to the leaseholder only a relatively short period beforehand.
11. And perhaps the most compelling argument against upholding this application is the floodgates it would open by setting a legal precedent sanctioning the compulsory acquisition of perfectly well maintained open space across the country. Make no mistake, a successful use of s19(1)(aa) in the Twickenham Riverside CPO would create a developer's charter for the opportunistic acquisition of

open space for assimilation into a reconfigured open space in a neighbouring development. It would legitimise the compulsory acquisition of privately owned open space by a local authority for any prospective new scheme requiring additional open space, regardless of the quality or diligence of the current management of that space. The ramifications (in policy and practical terms) of such an outcome would be far reaching and for the most part unforeseeable. Does this application really merit such an outcome?

Twickenham Riverside Trust 9 May 2023