



STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY

APPEAL BY: Jockey Club Racecourses Limited

SITE: Sandown Park Racecourse, Portsmouth Road, Esher, Surrey, KT10 9AJ

LPA reference: 2019/0551

PINS reference: APP/K3605/W/20/3249790

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1.0 INTRODUCTION

- 1.1 An appeal has been submitted by the Jockey Club Racecourses Ltd (the Appellant) against the decision of Elmbridge Borough Council (the Council) to refuse planning permission on land at Sandown Park Racecourse for a development comprising sections of the site to replace/modify existing operational/associated facilities, and to provide up to 150 bedroom hotel (Use Class C1), family/community zone, residential development up to 318 units (Use Class C3) and to relocate existing day nursery (Use Class D1), all with car parking, access and related works following demolition of existing buildings and hardstanding (application made in outline, with appearance, landscaping, layout and scale reserved) and the widening of the southwest and east sections of the racecourse track including associated groundworks, re-positioning of fencing, alterations to existing internal access road from More Lane and new bell-mouth accesses serving the development (application made in full).
- 1.2 Officers reported the application to the meeting of the Planning Committee held on 1st October 2019 with a recommendation that planning permission should be granted. However, after reviewing the application and attending a site visit, Members of the Planning Committee resolved to refuse permission. The decision notice was issued on 3rd October 2019.

2.0 SITE AND SURROUNDS

- 2.1 A description of the appeal site and its surroundings has been agreed with the appellant at Section 3 the Statement of Common/Uncommon Ground but briefly, the Sandown Park Racecourse occupies approximately 66ha of land located to the north-east of Esher. The site is bound by Portsmouth Road (A307) to the south, Station Road to the east, Lower Green Road and a railway line to the north, and More Lane to the west.
- 2.2 A comprehensive list of the planning history relating to all of the individual areas to be developed can be found at Appendix 4 to the Statement of Common/Uncommon Ground, with commentary provided at Section 4 of the same document.
- 2.3 The consideration of this appeal is influenced by the following planning constraints:
 - Green Belt
 - Flood Zone 2
 - Within 8m of an ordinary watercourse
 - Surface water flooding, risk from low to high
 - Area of High Archaeological Potential
 - Esher Conservation Area
 - Listed Buildings
 - Priority Habitat
 - Tree Preservation Order EL:144
 - Veteran trees
 - Ancient woodland
 - Esher Air Quality Management Area
 - Potentially contaminated land
 - Historic landfill site
 - Adjacent to Network Rail land

- Adjacent to classified roads (Portsmouth Road, Station Road, High Street)
- Adjacent to a registered town or village green (Lower Green)
- Adjacent to district centre (Esher)
- Adjacent to secondary shopping frontage

3.0 DEVELOPMENT PROPOSALS

3.1 The Appellant submitted a hybrid planning application and this encompasses a total of twelve areas to be developed. The sites are split into two groups: the first group (Sites A-F) are for enhancement of the racecourse facilities, and the second group (Sites 1-5) would accommodate development which the Appellant says is necessary to enable the enhancements. With the exception of sites E1 and E2 and the proposed bell-mouth accesses (for which an application for full planning permission was made), the application was submitted in outline. On a site-by-site basis, the proposed development is described within Section 6 of the Statement of Common/Uncommon Ground.

4.0 DEVELOPMENT PLAN & OTHER PRINCIPAL MATERIAL CONSIDERATIONS

4.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, this appeal falls to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Core Strategy 2011 and the Development Management Plan 2015. The relevant development plan policies for consideration of the proposal are listed in Section 5 of the Statement of Common/Uncommon Ground.

4.2 In addition, the Design and Character Supplementary Planning Document 2012, the Developer Contributions Supplementary Planning Document 2012 and the Flood Risk Supplementary Planning Document 2016 are material considerations.

4.3 Since the decision notice was issued, the Authority Monitoring Report (AMR) 2018-19 has been published and demonstrates that the Council has a housing land supply of 3.13 years against its local housing need (as calculated using the standard methodology and incorporating a 20% buffer due to under-delivery over the preceding 3 years). The Written Ministerial Statement of 17th December 2015 is however clear that unmet housing need is “unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.”

5.0 OVERVIEW OF THE COUNCIL’S CASE

5.1 The application was refused by the Council’s Planning Committee at the meeting of 1st October 2019 for the following reasons:

- i. The proposed development represents inappropriate development in the Green Belt which would result in definitional harm and actual harm to the openness of the Green Belt and it is not considered that the very special circumstances required to clearly outweigh the harm to the Green Belt and any other harm, including impact on transport (highway and public transport capacity), air quality and insufficient affordable housing provision, have been

demonstrated in this case. The proposed development by reason of its prominent location would be detrimental to the character and openness of the Green Belt contrary to the requirements of the NPPF, Policies CS21 and CS25 of the Elmbridge Core Strategy 2011, Policies DM5, DM7 and DM17 of the Elmbridge Development Management Plan 2015.

- ii. It has not been demonstrated that the level of residential development and hotel proposed could be designed without resulting in an adverse impact on the character of the area, in conflict with Policies CS9 and CS17 of the Elmbridge Core Strategy 2011, Policies DM2 and DM12 of the Elmbridge Development Management Plan 2015, the Design and Character SPD 2012 and the NPPF.
- iii. In the absence of a completed legal agreement, the proposed development fails to secure the necessary contribution towards the affordable housing contrary to the requirements of Policy CS21 of the Elmbridge Core Strategy 2011 and the Developer Contributions SPD 2012.
- iv. Due to the lack of a legal agreement to secure a financial contribution towards the long-term management plan of Littleworth Common SNCI, the proposed development is likely to result in adverse impact on biodiversity contrary to the Policy CS15 of the Elmbridge Core Strategy 2011, Policy DM21 of the Development Management Plan 2015, the requirements of the NPPF 2019 and the Developer Contributions SPD 2012.
- v. Due to the lack of a legal agreement to secure a financial contribution towards the accessibility improvements at Esher Railway Station and monitoring fee associated with the Travel Plans, the proposed development would result in adverse highway and transport implications in the local area of Esher. As such, the proposed development is contrary to the aims of Policy CS25 of the Elmbridge Core Strategy 2011, the requirements of the NPPF 2019 and the Developer Contributions SPD 2012.

5.2 The Council accepts that the third, fourth and fifth reasons for refusal relate to matters which could be resolved by way of a suitably-worded legal agreement.

5.3 The Council will show that as a consequence of the conflicts of the development plan outlined in reasons 1 and 2, the scheme will conflict with the development plan taken as a whole.

5.4 Notwithstanding that the Council cannot show a five-year supply of housing land as against the standard methodology and the benefits of the scheme, the conflict with the Green Belt policy within the NPPF provides a clear reason for refusal. As such, the application of paragraph 11(d) NPPF, nor any other material consideration, justifies the departure from the development plan.

5.5 Accordingly, the Council will in due course invite the Inspector to withhold permission and dismiss the appeal.

6.0 THE COUNCIL'S CASE

The first reason for refusal

- 6.1 The application site falls entirely within the Green Belt.
- 6.2 Policy DM17 of the Development Management Plan 2015 states that, in order to uphold the fundamental aims of the Green Belt to prevent urban sprawl and to keep land within its designation permanently open, inappropriate development will not be approved unless the applicant can demonstrate very special circumstances that will clearly outweigh the harm.
- 6.3 Policy DM17 is consistent with national policy. As paragraph 143 of the NPPF explains, “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.” According to paragraph 144 of the NPPF, “substantial weight” should be afforded to any harm to the Green Belt, and “very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations.” It is now established that “any other harm” includes any planning harm, not simply harm to the Green Belt: see *Redhill Aerodrome Ltd v SSCLG* [2014] EWCA Civ. 1386.

The performance of the Green Belt and the effects of the proposed development

- 6.4 As stated in DM17 and paragraph 133 of the NPPF, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- 6.5 The Council will demonstrate that the site is located within a strategically-important band of open spaces that provide a narrow and fragmented barrier to the potential sprawl from the Greater London metropolitan area and the large built-up areas within Surrey. The proposed development would reduce the openness of the Green Belt and would result in sprawl, further advancing the built-form of London into Surrey and continuing the spread of development that has already been experienced through the coalescence of Molesey and Thames Ditton with Greater London.
- 6.6 Whilst it is acknowledged that the proposal includes areas of open space, and that some areas within the wider racecourse site would be untouched, the proposed development would substantially reduce the openness of the Green Belt. In this way, the fundamental aim of designating land as Green Belt would be irreversibly harmed.
- 6.7 Paragraph 134 of the NPPF states that the Green Belt serves five purposes. It is the Council's position that the proposed development would conflict with two of these:
- To check the unrestricted sprawl of large built-up areas
 - To prevent neighbouring towns merging into one another
- 6.8 The site is located on an area of land connected to the large built-up area of Greater London, preventing its outward sprawl on to open land. It is also considered that the proposed development would contribute towards the merging of the neighbouring settlements of Thames Ditton and Esher. It will be demonstrated that the site maintains a relatively open character and provides an important visual gap between the two

settlements. The Council will rely on Green Belt Reviews undertaken in 2016 and 2018 to demonstrate the contribution of this area to the integrity of the Green Belt. In addition, the Minor Amendments Boundary Review carried out on the Council's behalf concluded that this area of the Green Belt continues to perform strongly and recommended that it be increased along More Lane and Lower Green Road.

- 6.9 The Appellant argues (at paragraphs 8.13 to 8.22 of their Statement of Case) that Site 3 (identified as Sub-Area 70 within the Green Belt review 2018) does not perform as strongly as the Green Belt Reviews suggest. The Council will defend the characterisation of this site as important to the performance of the Green Belt and will additionally rely on evidence from an expert landscape architect (from Huskisson Brown Associates) to explain the contribution of Site 3 to the purposes and characteristics of the Green Belt.

The scheme is inappropriate development in the Green Belt

- 6.10 The Council will demonstrate that the proposal would constitute inappropriate development in the Green Belt.
- 6.11 The Council notes the Appellant's suggestion that the scheme comprises appropriate development in the Green Belt (as it is said to fall within paragraphs 145(b) and 145(g) of the NPPF). The Council will show that this submission is misconceived.
- 6.12 Paragraph 145(b) of the NPPF permits, inter alia, "appropriate facilities...for outdoor sport, outdoor recreation...". It is implicit within the officer's report to the Planning Committee (paragraph 9.7.3.2, footnote 29) that the works to enhance the racecourse's facilities could not benefit from this exception (particularly in relation to outdoor sport) as the focus is primarily on the performance of the horse and there is no physical exertion for racegoers. In addition, the enhancement works at Site A were considered to be a comprehensive re-development of the existing racecourse infrastructure, rather than provision anew. In any event, the distinction in relation to Site A is immaterial: firstly, both paragraphs 145(b) and 145(g) require that the development would not result in harm to openness; secondly, it is agreed that the development proposed for Site A would be appropriate.
- 6.13 The Council will show that only one site, being Site C (the family/community zone) would benefit from the exception allowed under paragraph 145(b).
- 6.14 The application was therefore primarily assessed against the exception set out in paragraph 145(g), which provides for "limited infilling or the partial or complete redevelopment of previously developed land...". This exception permits development which would not have a greater impact on the openness than the existing development, or, where a contribution towards meeting an identified affordable housing need would be made, which would not cause substantial harm to the openness of the Green Belt.
- 6.15 When assessed against these criteria, the Council will demonstrate that the development on each site (with the exception of Sites A, C, E1 and E2 and F) is inappropriate as set out within the table below:

Site B	Previously developed land; would have a greater impact on the openness of the Green Belt than the existing development
Site D	Engineering works so assessed against 146b) but would conflict with purpose 3 of designating land as Green Belt
Site 1	Previously developed land; would result in substantial harm to the openness of the Green Belt
Site 2	Previously developed land; would result in substantial harm to the openness of the Green Belt
Site 3	No applicable exception, additional conflict with purposes 1 and 2 (and to a lesser extent, 3) of designating land as Green Belt and significant harm to openness
Site 4	No applicable exception, additional conflict with purpose 3 of designating land as Green Belt and significant harm to openness
Site 5	Previously developed land; would have a greater impact on the openness of the Green Belt than the existing development

6.16 The Council accepts that the development proposed on Sites A, C, E1 and E2, and F would be appropriate.

6.17 As Holgate J held in ***R (Luton BC) v Central Bedfordshire Council*** [2014] EWHC 4325 (Admin), the NPPF does not require the decision maker to chop-up a mixed-use proposal into separate components and to apply the very special circumstances test separately in relation to each such component. The lawful approach is to determine the appeal scheme as a comprehensive whole. Applying this approach, the Council considers the scheme amounts to inappropriate development, notwithstanding that there are elements which are appropriate development.

The development would harm the openness of the Green Belt

6.18 The Council will rely on evidence from an expert landscape architect (from Huskisson Brown Associates) to explain the impact on the openness of the Green Belt which would arise from the scheme.

6.19 In its statement of case, the Appellant draws attention to the recent case of ***R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council*** [2020] UKSC 3. On the strength of this case, the Appellant has altered its assessment of the impact of the development proposed on the openness of the Green Belt and now disregards the visual impact of the proposals. However, the Supreme Court did not hold that visual impact could never be relevant to the consideration of openness. In this case, the Council will show that the visual impact of the proposed development should form part of the assessment of harm to openness. Moreover, the Council will show the visual dimension to the openness assessment in this case is so obviously material to the assessment of openness that a failure to address it here (as contended for by the Appellant) would amount to a clear error of law.

6.20 In accordance with paragraphs 143 and 144 of the NPPF, substantial weight should be attached to the harm by reason of inappropriateness and harm to the openness of the Green Belt arising from this proposal.

The development would give rise to other planning harm

6.21 In accordance with the **Redhill** case, “any other harm” should be considered together with the harm to the Green Belt. This harm may include harm which may not justify refusal of planning permission on its own terms (e.g. transport harm which does not meet the threshold of “severe”).

6.22 In accordance with this approach, the Council will show the impacts related to (i) highway and public transport capacity, (ii) air quality, (iii) insufficient contribution towards affordable housing and (iv) harm to the character of the area arising through the second reason for refusal, should be considered together with the harm to the Green Belt.

6.23 For the avoidance of doubt, the Council does not say that these harms (save for the harm to the character of the area) would give rise to a reason for refusal in and of themselves. This is a “permissible approach” to considering a development proposal in the Green Belt, see: **Mayor of London v SSCLG** [2020] EWHC 1176 (Admin) *per* Holgate J at [153].

(i) Highway and public transport capacity

6.24 The Council will demonstrate that there will be an adverse, residual, cumulative transport impact albeit not of a “severe” level, but material nonetheless, such that it must be considered in the planning balance at paragraphs 143-144 NPPF.

6.25 The NPPF at paragraph 109 advises that “*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*” However, when considering development within the Green Belt the NPPF is clear that “*any other harm*” (in addition to harm to the Green Belt) arising from the development must be weighed in the overall balance.

6.26 In that context, whilst the Council accept that there is no basis for concluding that the development proposals would lead to severe harm to the operation of the local highway and other parts of the transport network, the Council will show that, even accounting for the proposed mitigation, there would be a residual negative impact on highway capacity arising from the development.

6.27 An expert transport witness from Mayer Brown will appear for the Council to give evidence on the impact of the proposal on the level of harm on both the local highway and public transport networks.

6.28 It will be argued that the Transport Assessment submitted in support of the application only assess whether ‘severe’ harm would occur. Pre-application discussions were held between the applicant and the County Highway Authority (SCC), in which the requirements of the Transport Assessment were discussed and agreed. In relation to the impact assessment, SCC stated in their application response:

“it is also recognised that the micro simulation models require significant time and resources to build and run, and that they themselves (as is the case with all modelling) have faults. A balance has therefore been made by the CHA and it is considered that mitigation in the form of that laid out below will offer significant opportunities for

future occupiers to limit the impact of the development on the local highway network to a level that is not significant/severe”.

- 6.29 The operation of the local highway network and the vulnerability of this network to minor changes in traffic will be a particular focus of the Council’s evidence. During the consideration of the application, the Council consulted the County Highways Authority. The final consultation response noted that “Central Esher is a known congestion blackspot”. The officer noted that, given the existing traffic flows, the number of vehicles using Portsmouth Road, More Lane, Lower Green Road and Station Road, would be unlikely to increase significantly. There was an important qualification to this point, however: whilst the number of vehicles might not significantly increase, “due to the existing congested nature of the local highway network this does not necessarily mean that the impact will not be significant.”
- 6.30 The County Highways Authority concluded that “even a relatively small uplift in trip rates can result in a significant impact when applied to a network operating close to, or at, capacity as is the case within Central Esher.”
- 6.31 The Council will demonstrate with reference to studies undertaken by the Local Highway Authority therefore that there is congestion in the Local Network. As a network becomes more congested, it becomes more vulnerable to the impacts of minor changes in traffic. The Council will provide evidence with reference to desk top studies to show that some harm to the local network could occur bearing in mind its existing congested state.
- 6.32 The Council will then provide evidence to show that the sustainability of the appeal site has been considered in the context of addressing whether or not severe harm will occur. It is noted that in its response to the application, SCC stated in relation to the location of the site ‘In this respect it is considered Sandown Park is a very sustainable location’. However, it is noted that SCC does not have an index to calculate the relative sustainability of an area, and therefore the sustainability is based upon judgement and knowledge of an area. The Council will argue that, given the proximity of the site to a London Borough (approximately 3km) the TfL PTAL calculation provides a suitable indicator of the relative sustainability of the site to understand whether there is likely to be a material change in travel behaviour.
- 6.33 Using the TfL PTAL methodology, the PTAL for the site has been calculated and would have an average PTAL of 1b (on a scale from 0 (worst) to 6b (best)). As a comparison, the approved Guildford Station redevelopment (2018) was noted in the officer’s report as being in a ‘*highly sustainable location*’ (officers Report, page 167, paragraph 4). Using the same methodology, the PTAL for Guildford Station has been calculated and would have a PTAL of approximately 4.
- 6.34 For a further comparison, Surbiton Station (which is the next station towards London on the line from Esher) is within a London Borough and the PTAL for this area is 5 (WebCAT database). The Council will therefore demonstrate that the appeal proposals, whilst encouraging journeys to be made by means other than the private car, do not represent development in a location where the sustainability is of a level that it could materially provide a benefit to reduce existing traffic congestion.

6.35 The Council would welcome improvements to the accessibility of Esher Station. However, these proposals seek to address the accessibility of the rail station and not the capacity of the railway services. The Council will present evidence to demonstrate the level of congestion on the rail services stopping at Esher Station.

(ii) Air quality

6.36 The site is adjacent to an area which has been declared an Air Quality Management Area (AQMA) and is in addition located close to the Hinchley Wood and Hampton Court AQMAs. The Council's most recent air quality monitoring data (for 2018) shows a significant increase in Nitrogen Dioxide levels across Esher, and indeed two of the monitoring locations have exceeded the annual mean limit of 40 µg/m³.

6.37 By Policy DM5 of the Development Management Plan development proposals must avoid the introduction of additional sources of air pollution. It goes on to say that "permission will not be granted for proposals where there is a significant adverse impact upon the status of the Air Quality Management Area...". The Council does not contend that this threshold (of a "significant adverse impact") set out in policy would be reached.

6.38 The Council remains concerned that any increase in the number of visitors to the upgraded racecourse, as well as the planned increase in residents, would not "sustain and contribute towards compliance with relevant limit values" in accordance with paragraph 181 of the NPPF. That said, the Council acknowledges the mitigation measures proposed by the Appellant and does not intend to advance evidence from an air quality witness to defend this part of the first reason for refusal.

(iii) Insufficient contribution towards affordable housing

6.39 Policy CS21 requires that 40% of the gross number of dwellings must be supplied as on-site affordable housing on sites of 15 dwellings or more. Additionally, the policy states that where development is proposed on a greenfield site, at least 50% of the gross number of dwellings should be affordable. The appeal scheme proposes to develop residential units on a mix of previously developed land and greenfield sites and so appropriate provision would fall within this range.

6.40 The Appellant argues that providing the required affordable housing would render the development unviable, and sought to negotiate a lower provision. At the time the application was determined, the Appellant had agreed to provide 20%. In refusing the application, the Council concluded that this would be insufficient to comply with the development plan requirement.

6.41 The Council rely on evidence from a surveyor expert in providing assessments of this type (from BNP Paribas Real Estate). The case will be argued on two grounds.

6.41.1 Firstly, the Appellant's case rests on the flawed assumption that the cost of the proposed improvement works to the racecourse should be used as a benchmark against which the residual value of the scheme is compared. The Council does not accept this enabling works, cost-related approach is an appropriate basis on which to calculate the maximum viable amount of affordable housing which can be delivered in accordance with policy CS21 Core Strategy.

6.41.2 Secondly, the Council will argue that the Appellant has not adequately pursued other options for funding improvement works to their facility. The submitted financial viability documentation does not properly consider the extent to which the new or improved facilities will increase revenue streams, and nor does it consider other funding sources to supplement the residual land value generated by a policy-compliant development proposal.

6.42 The Council will therefore show the scheme conflicts with policy CS21.

(iv) The harm to the character and appearance of the area

6.43 The harm which arises via the breach of policies CS9, CS17 and DM2 as well as the Design and Character SPD, as explained within reason for refusal 2 below, should be considered together with the harm to the Green Belt.

The benefits do not clearly outweigh the harm to the Green Belt and any other harm

6.44 When considering the benefits of the proposal put forward by the Appellant, the benefits were taken into account both on an individual basis and cumulatively.

6.45 At the application stage, the Appellant set out what it considers to be a need to improve the racecourse facilities. It is unclear why the condition of the existing facilities has been allowed to degrade and the Council is strongly of the opinion that the Green Belt should not be substantially harmed in order to subsidise what is fundamentally a business looking for additional revenue streams. The Appellant advises that the development proposed will be sufficient to sustain the racecourse only for the next twenty years; this suggests that further inappropriate development may be required in the near future and therefore the scheme may potentially undermine the characteristic permanence of the Green Belt (contrary to the objectives of national policy at paragraph 133 of the NPPF). That said, the Council acknowledges the site's contribution to the local economy. Whilst the wishes of the Appellant to improve its offer could themselves attract only limited weight in the overall balance, it is noted that the racecourse is one of Esher's largest employers and that visitors to the events at the site spend a significant sum locally. The Appellant advises that if they cannot carry out the improvement works, the continued deterioration of the facilities would render operations on the site unsustainable. This would have a negative impact on the viability and vitality of Esher district centre and the Council does not challenge the Appellant's submissions in this regard. Overall, moderate weight is attached to the retention of viable operations on the site.

6.46 The Appellant also argues that there is a need to construct a new hotel on the site. The Council will draw attention to a previous permission granted on the site (application ref. 2008/0729, renewed under 2011/0811) for a hotel. The Appellant provided a convincing case for the construction of a hotel at that time, which hinged on the apparently urgent need for additional revenue. This hotel was never constructed, and so what became of the dire financial situation alleged at that time is unclear. The Council's planning policies promote hotel development, but not at the expense of all other considerations. It is acknowledged that there is evidence indicating a need for a hotel in Esher, but it has not been demonstrated that the proposed solution is the most appropriate way to meet that need. The Appellant cites lack of investor interest as a reason not to pursue construction of the consented hotel, but did not explore any changes

to design or layout (via Section 73 of the 1990 Act) which might have rendered the hotel a more attractive proposition to investors. In addition to considerations pertaining to the appropriateness of the hotel development within the Green Belt, the Council has additional concerns relating to the impact on this element of the proposal on the character and appearance of the area. On the basis that there is an extant consent which has not been built and that the hotel proposed in this instance would result in additional harm, the weight ascribed to the provision of a hotel within the planning balance is limited.

6.47 The Council does not dispute that it has an unmet need for housing or that this consideration can contribute towards a very special circumstances case. However, the Minister's Statement in 2015 makes clear that the Government does not expect unmet housing need (and, by necessary implication, the economic and social benefits associated with the provision of housing) to amount to very special circumstances justifying inappropriate development on the Green Belt. Moreover, the extent of the shortfall, the steps being made to make-up the shortfall and the strong contribution the site makes in its present form to the characteristics and purposes of the Green Belt all temper the weight to attach to the provision of housing through this scheme. Nevertheless, the Council has attached significant weight to the provision of market homes.

6.48 Whilst accepting the benefits of increased provision of housing, the Council laments the very low proportion of affordable units. The Council's policy is clear that between 40% and 50% of units provided (acknowledging that some of the residential development is located on previously developed land, and some is on greenfield) is expected to be provided as affordable housing. It is acknowledged that homes are to be provided purely to finance upgrades to the racecourse however, as described above, the Council will contest that this is a relevant consideration when evaluating whether the scheme complies with policy CS21. In addition, and without prejudice to the Council's case set out in paragraphs 6.39 to 6.42 above, the Council will contend that even if the 20% proposed was the maximum that could viably be provided, the weight afforded to this benefit would be moderate, at best. The contribution of 64 affordable dwellings (compared to the policy requirement of around 143 units at 45%) when compared to the Borough's annual need for 458 such dwellings is very modest. If, as suggested by the Appellant, the COVID-19 outbreak has a negative impact on the scheme's ability to provide affordable units, the weight to be afforded to this benefit would reduce further. It is further noted that up to eleven of the units would be set aside for households already accommodated on the site and employed by the appellant. These units would then make no contribution towards the Borough's need for affordable housing.

6.49 Without prejudice to the Council's case in respect of highway and public transport capacity, it is accepted that the site is adequately sustainable (in relation to conditions across the Borough taken as a whole). That said, it is a minimum requirement of both local and national policy that development should be directed to sustainable locations. Accordingly, the site's adequately sustainable location is not considered a particular benefit of the scheme, and no weight is attributed to it.

6.50 The weight to be afforded to the provision of the family/community zone, the replacement day nursery and the delivery of some ecological benefits remains limited for the reasons set out within the officer's report.

6.51 Limited weight is given to the improvements in integration between the train station and the racecourse. At the time the application was considered, the Council concluded that insufficient information had been advanced by the applicant to justify giving weight to this benefit, and it was further noted that many of the improvements had been requested by the County Highways Authority in order to make the development proposals acceptable in planning terms. Notwithstanding, the Council accepts that the proposed crossing facility on Station Road would represent a wider benefit rather than simply addressing the harm arising from the proposal.

6.52 No weight is given to the interpretation boards, again for the reasons set out within the officer's report.

6.53 During the Council's consideration of the application, the Appellant volunteered a financial contribution towards the restoration of a Grade II-listed building adjacent to Site 2: the Traveller's Rest. The Appellant has now withdrawn this offer and so no weight can be ascribed to any heritage benefits arising from the proposal. It is noted that a similar financial contribution towards the restoration was secured in relation to the 2008 permission for a hotel and so formed part of the balancing exercise then, but this contribution has not been paid.

6.54 The Socio-Economic Paper submitted by the appellant argues that the addition of residential development would have a beneficial impact on the Borough's economy. The Council will argue that the benefits advanced have been overstated: in reaching their conclusion that each new household would spend approximately £29,000 the appellant has failed to understand the use and destination of different types of spending by local residents. The Council will demonstrate that only a limited proportion of household expenditure is retained within the local catchment (and beyond that, the wider borough): accordingly, only limited weight can be afforded to this benefit.

The balancing exercise

6.55 Having identified the relevant harms and benefits arising from the proposal, the following table summarises the weight given to each of the benefits:

Benefits of the scheme	Weight afforded to the benefit			
	Significant	Moderate	Limited	None
The need for improved racecourse facilities		•		
The provision of a hotel			•	
Provision of market homes	•			
Provision of affordable housing		•		
Provision of the community zone			•	
Re-provision of the nursery			•	
Interpretation boards				•
Integration between the town centre and the railway station			•	
The site's sustainable location				•
Ecological improvements			•	
Heritage benefits				•
Spending by new residents			•	

6.56 Notwithstanding the significant weight attached to the provision of market homes to contribute towards the Borough's housing need, the Council concludes that this does not in itself, or in combination with any of the other benefits of the scheme, clearly outweigh the harms identified within the preceding paragraphs.

6.57 It follows that, in accordance with paragraph 144 of the NPPF, very special circumstances do not exist and therefore applying policy DM17 and paragraph 143 of the NPPF, the scheme "should not be approved".

The second reason for refusal

6.58 Policy CS9 of the Core Strategy requires that all new development will enhance local character. Policy CS17 states that new development is required to deliver high quality and inclusive sustainable design, which maximises the efficient use of urban land whilst responding to the positive features of individual locations, integrating sensitively with the locally distinctive townscape, landscape and heritage assets, and protecting the amenities of those within the area. In the Development Management Plan, Policy DM2 requires that "all development proposals must be based on an understanding of local character..." Policy DM12 advises that support will be given for developments that will protect, conserve and enhance the Borough's historic environment. Development within or affecting the setting of a conservation area must take account of the streetscape, plot and frontage sizes, materials and relationships between existing buildings and spaces. These policies are consistent with the importance the Government attaches to good design, as a "key aspect of sustainable development" see: paragraph 124 of the NPPF.

6.59 The Council seeks to make the most efficient and effective use of land (in accordance with Section 11 of the NPPF), whilst avoiding overriding harm to the valued character of the area. In relation to the proposal under consideration, the Council will argue that it has not been demonstrated that the quantum of development proposed could be accommodated without effecting harm on the character of the area.

6.60 It is acknowledged that the majority of the scheme has been submitted in outline, with scale, layout, appearance and landscaping all reserved for consideration at a later date. However, the decision maker must be satisfied that a satisfactory scheme could come forward for reserved matters approval at the quantum for which permission is sought. The Council is not satisfied that the illustrative material demonstrated that such a scheme was capable of coming forward.

6.61 The Appellant's Landscape/Townscape and Visual Appraisal submitted in support of the application suggests that "the main character and valuable fabric of the Racecourse is to be found along the well-treed boundaries" (paragraph 4.28). It will be demonstrated that it is these important features that are threatened most by the development proposals. The appraisal concludes that the overall townscape sensitivity of the Racecourse is Medium. The Council will challenge this assessment and demonstrate with a site specific appraisal the adverse landscape/townscape impact on the character of the surrounding area.

6.62 Concerns were raised in paragraph 9.8.2.10 of the officer's report in relation to Site 4. The indicative drawings submitted in relation to this site showed a building of between four and six storeys in height, much greater than the surrounding built form of up to three

storeys. It is considered that the height proposed would be excessive, and so if this site was to deliver the 72 units envisaged it would have to be done at a lower height and with a correspondingly greater footprint. In addition, the building shown fails to appropriately address Station Road, with its crescent form exacerbating the size of the building visible on approach from the southern section of Station Road and surface car parking area highly visible from the same viewpoint. The footprint indicated is already very large and the Council is not satisfied that further enlargement would be acceptable.

- 6.63 In relation to Site 3, the Landscape/Townscape and Visual acknowledges that development here would be very noticeable within the vicinity. Of course, being noticeable in itself is not harmful, but it is submitted by the Council that the proposal on this site would be fundamentally at odds with the character of Lower Green Road. This road is characterised by two-storey residential dwellings. The proposal is for nine apartment blocks of up to 3 storeys in height: not only would the height of these conflict with neighbouring development, but the buildings would have an oddly distant relationship with the road due to the considerable distance between the road and the buildings. The Appellant has shown planting on the indicative layout drawing for this site, but the reality is that the need for parking spaces (due to the number of residential units proposed on this site – 114) has led to this unfortunate arrangement, with the frontage of the site dominated by parking. Again, the Council acknowledges that layout and appearance are reserved matters, but the uniformity of the shape and size of the footprint, and the spacing between the blocks, as shown on the indicative drawings would do nothing to improve the impact of this development on the character of the area. The Landscape Statement of Case provided by EDP additionally acknowledges that there would be views of the site from More Lane, but the development indicated fails to address More Lane satisfactorily.
- 6.64 The proposal for Site 5 comprises four blocks of flats, accommodating up to 68 units in up to four storeys. It is noted that there are other large flatted developments in the area, most notably to the immediate north-east of the site. Whilst these are tall buildings relative to the existing Tollhouse, accommodation is restricted to two-storeys, with additional rooms within the roofspace. It is noted that the proposal under consideration would have its fourth-storeys set back from the front elevations, but it is not considered that this would be sufficient to overcome the dominance arising from the excessive height of these buildings. The dominance would be exacerbated by the siting well forward of the immediate building line to the north-east.
- 6.65 The proposed hotel would be constructed on Site B. At paragraph 9.8.2.14 of the officer's report, it is noted that the hotel "would be a dominant and imposing structure based on its indicative proportions" and that it would be "a prominent building, visible from many vantage points". It is not clear that the building envisaged, at six-storeys in height and in such a prominent position, would be achievable whilst respecting the character of the area.
- 6.66 The proposal for Site 1 comprises a single detached building, accommodating approximately fifteen residential units and adjoining the north-eastern boundary of the Esher conservation area. The main access to this development lies within the conservation area. Whilst the design of the proposed development is only indicative at this stage, it would result in the demolition of the existing single-storey stables and their replacement with a taller two-to-three storey building. It is considered that that the new building would appear as an overly dominating feature, visible from Esher Green above the surrounding

two-storey dwellings on More Lane and Tellisford. The potential loss of trees at the site boundary would also have a detrimental impact on the local landscape character and visual amenity. Whilst harm to the character of the area will be clearly demonstrated, the Council does not say that there will be specific, additional harm to the significance of any designated or non-designated heritage assets. The inclusion of policy DM12 in the reason for refusal was an error.

The third, fourth and fifth reasons for refusal

6.67 Without prejudice to its case that the level of affordable housing is firstly unacceptable in relation to the policy requirement and secondly does not provide (either solely or in combination) a satisfactory argument in favour of permitting the proposal, the Council notes that a legal agreement to secure the Appellant's offered affordable housing units was not completed by the time that the application was determined.

6.68 Without prejudice to its case that the development would result in harm to the capacity of the area's highway and public transport networks, the Council notes that a legal agreement to secure a financial contribution towards improvements to accessibility at Esher railway station and financial contributions towards the monitoring of travel plans was not completed by the time that the application was determined.

6.69 Additionally, a legal agreement to secure a financial contribution towards the management of Littleworth Common SNCI, without which the proposal would result in an adverse impact on biodiversity, had not been concluded.

6.70 The Council will work with the Appellant to produce mutually-agreeable heads of terms by the time of the case management conference, and a full and final draft will be made available before the inquiry. In the event that the agreement is not reached, the Council reserves its right to rely on additional evidence in order to fully substantiate these reasons for refusal.

6.71 Should the Inspector take a different view to the Council on reason for refusal 1 & 2, a legal agreement to secure these matters would still be necessary to make the development acceptable in planning terms.

The wording of Condition 17

6.72 In the Statement of Common/Uncommon Ground, the Appellant has indicated that they dispute the wording (albeit not the principle) of Condition 17 listed within the officer's report to the Planning Committee. The Appellant has included their suggested wording in Appendix 5 to the Statement of Common/Uncommon Ground and for the avoidance of doubt (and without prejudice to its case that permission should be refused), this amended wording is not agreed by the Council. The Appellant's alternative wording does not stipulate that the desirable internal levels can or will be met and the only specific noise levels referred to are in an informative stating that 'External noise levels should aim to meet 50dB or the lowest practicable levels'. This is not enforceable. The wording suggested also does not require that the scheme be carried out in accordance with the approved details, or that it is thereafter maintained. If the Appellant does aim to confirm with the relevant British Standard (BS8233: 2014) it is not clear why the condition would

be amended in this way. The Council will demonstrate that the imposition of the condition as amended by the Appellant would fail to meet the tests set out in paragraph 55 of the NPPF.

7.0 WITNESSES

7.1 The Council intends to call the following witnesses:

Specialism	Witness
Town Planning	Aline Hyde, Senior Planning Officer, Elmbridge Borough Council
Openness, Visual Impact and Character	David Webster, Senior Landscape Architect, Huskisson Brown Associates
Transport	Ian Mitchell, Head of Strategic Projects, Mayer Brown Ltd
Affordable Housing	Anthony Lee, Senior Director, BNP Paribas Real Estate UK

8.0 CONCLUSION

8.1 The scheme under consideration inescapably conflicts with the Development Plan when taken as a whole. Accordingly, by Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should be refused unless material considerations indicate otherwise. The scheme constitutes inappropriate development in the Green Belt and the material considerations pointing in favour of the scheme do not amount to very special circumstances which clearly outweigh the harm to the Green Belt and any other harm. Accordingly, the harm to the Green Belt amounts to a “clear reason” to refuse planning permission and therefore, the application of paragraph 11(d) NPPF nor any other material consideration, justifies the grant of permission in this instance.

8.2 The Council will accordingly invite the inspector to dismiss the appeal.

9.0 OTHER MATTERS

9.1 In accordance with guidance from the Planning Inspectorate and without prejudice to the Council’s case, a list of recommended conditions to be applied in the event that the Inspector is minded to allow the appeal has been provided at Appendix 5 to the Statement of Common/Uncommon Ground. These would be required, together with a legal agreement to secure the contributions outlined at section 6 above.

9.2 The Council also notes the Appellant’s costs application. The Council disputes that it has behaved unreasonably as alleged or at all, or that its conduct has resulted in wasted costs. Accordingly, the Council will robustly resist the Appellant’s costs application at the appropriate point in the inquiry timetable.

9.3 The Council acknowledges that the length of this Statement of Case exceeds the Planning Inspectorate Guidance. However, given that the Council’s decision differs from the recommendation within the officers’ report to Committee and to be fair to other parties,

the Council has taken this opportunity to set out its case in detail at an early stage, well in advance of the preparation of evidence.

10.0 DOCUMENTS TO BE REFERRED TO IN EVIDENCE

10.1 The Council will refer in its evidence to the documents identified in the statement above and other relevant documents including:

- Letters of representation
- Previous decision notices and officer reports
- Any other relevant appeal decisions or legal cases
- All documents which formed part of or accompanied the application

10.2 The Council reserves the right to refer to additional documents in response to the Appellant's case as developed in proofs of evidence.