

REBUTTAL PROOF OF EVIDENCE

OF

ALINE HYDE

BA(Hons) MA MRTPI

APPEAL BY: Jockey Club Racecourses Limited

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

LPA reference: 2019/0551

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

November 2020

1. This Rebuttal Proof of Evidence addresses matters raised in the Proofs of Evidence of Ian Robert Clarke of Rapleys (JCR1/1) and William Gittus of Jockey Club Racecourses (JCR2/1) on behalf of the Appellant. I make this short rebuttal statement to respond to novel or newly articulated points in the evidence of Mr Clarke and Mr Gittus.

The evidence of Ian Robert Clarke

General issues

2. At paragraph 3.2 of his proof, Mr Clarke asserts that the Council's planning policies include "*aspiration for a new hotel at the racecourse*". This is not correct: Policy CS24 of the Core Strategy states that the Council will promote the provision of hotel accommodation in order to support tourist venues including Sandown and Claremont Landscape Gardens. The policy does not state, or otherwise suggest, that such a hotel would need to be located on the racecourse site.
3. At paragraph 6.3, Mr Clarke states his opinion that the exception set out at paragraph 145b) of the National Planning Policy Framework (NPPF), applies to the entirety of the proposal. I strongly disagree with this approach. This exception can only apply to the elements of the proposal which themselves relate to outdoor sport and recreation, these being the proposals on Site C. I do not accept that the residential or hotel development, the works to the operational facilities nor the engineering works to the track and car parks, could sensibly fall within this exception.
4. At Appendix 4, Mr Clarke assesses Sites 1-5 and B and D against the exception at paragraph 145g) of the NPPF. It is unclear which part of paragraph 145g) Mr Clarke relies upon. Mr Webster and I agree that the second part of paragraph 145g) (which relates to land developed for affordable housing, subject to the development not having a substantial impact on openness) is relevant when considering the appropriateness of the proposals on Sites 1 and 2. Mr Clarke seems to suggest, however, that this test might be applied to Sites B, D and 3 – 5 too on the basis that they would "*promote affordable housing elsewhere in the development*".
5. While I do not consider the application of 145g)ii) to be appropriate to the residential development on Sites 3-5, I am particularly perplexed by the suggestion that it should apply to the development on Sites B and D. Mr Clarke has not explained in what way the construction of a hotel, or works to rationalise the existing car park, could possibly contribute towards meeting the Borough's identified affordable housing need. In fact, the application is predicated on the basis that the residential development (including the affordable units) is required to realise the racecourse improvement works, which include the proposals on Sites B and D: not that the racecourse improvement works are necessary to deliver the affordable units.

6. Mr Clarke advises at paragraph 8.4 that the proposal *would “maximise the residential yield from the development”*. This is a surprising comment, given that the Appellant has previously argued that the residential development is the minimum necessary to secure the racecourse’s future. He also states within this paragraph that the delivery of affordable units on-site (presumably as opposed to their delivery at another location) is *“an added advantage”*. This is not the case: the expectation within Policy CS21 is that affordable units will be delivered on-site and the Council would entertain alternatives only in exceptional circumstances.

The alleged heritage benefits

7. At paragraph 8.6, Mr Clarke mentions heritage benefits arising from the proposal, and directs us to the Heritage Statement (JCR8) submitted with the Appellant’s evidence. At paragraph 3.2 of the Heritage Statement, it says that the officer’s report to Planning Committee (CD7.3) acknowledges that the development would result in a limited benefit to two listed buildings. At the time that the application was considered by the Planning Committee, a financial contribution to the Traveller’s Rest had been offered by the Appellant and an additional obligation relating to the listed boundary railings was also included (apparently without dispute) in the Heads of Terms for the legal agreement which were under discussion at that time. The Appellant has subsequently withdrawn their offer of a financial contribution and the obligation relating to the listed railings is no longer included in the legal agreement. As such, these alleged benefits no longer exist.
8. The Heritage Statement also mentions a minor improvement to the access to Site 1. The access is currently marked by a blank green gate of approximately 3m in height, and is considered to be a negative feature within the conservation area. The loss of this gate would be beneficial, although it is not clear that it would require the development proposed on Site 1 to come forward in order to achieve it.
9. It is also said that the proposal would result in an enhancement to the setting of the Grade II-listed Traveller’s Rest. As explained above, the offer of a financial contribution has been withdrawn. It is not considered that the proposal on Site 2 (closest to the listed building) would enhance the setting: indeed, the extensive development behind the Traveller’s Rest has the potential to harm the setting, though this did not form a reason for refusal and the Council does not rely on the potential for harm as part of its case.
10. It is the duty of a responsible landowner to ensure that the listed gates and railings are preserved. If they are under threat from vehicular movements and particularly those arising from the proposal, this is for the Jockey Club to manage and could in fact be said to be a harm arising from the development.
11. As I have explained in my proof of evidence, I give the interpretation boards no weight. The statement presents the provision of these as a heritage-specific benefit. This is wrong: the racecourse is not a heritage asset and is not recognised by the Council as a non-designated asset. Accordingly, the erection of the interpretation boards cannot be a heritage benefit.

12. Having considered the benefits alleged within the Heritage Statement, I consider that only the improvement to the access of Site 1 is a benefit and I consider that this should be given **very limited** weight in the planning balance.

The alleged air quality benefits

13. Turning to the new suggestion at Mr Clarke's para.8.3 that there would be air quality benefits arising from the scheme. As described in the Council's transport evidence, there is insufficient evidence to support the claimed modal shift and therefore the claimed air quality improvements will not materialise. Any potential improvements in relation to this development may be years away in any event. As such, I attach no weight to the air quality benefits claimed by Mr Clarke.

The alleged noise benefits

14. Turning to the new suggestion at Mr Clarke's para.8.7 of noise benefits. The Noise Statement (JCR7) provided by the Appellant has been reviewed. The details of a separate noise assessment mentioned in Section 3.2 (re-produced below) have not been provided:

'...a separate noise assessment of the impact of the go-kart track on the proposed residential properties (Sites 1 – 5) was carried out. This assessment showed that the noise impact on the sites will be no greater than that on existing residential properties in the area. As a result, there will be no restrictions on the operation of the go-kart track as a result of the proposed residential sites.'

15. Whilst it is accepted that noise complaints arising from the use of go-kart track have not resulted in any formal action being taken by the Council, the information provided in the Noise Statement is not sufficient to determine whether the replacement family/community zone would produce similar or any lesser impact when compared to the go-kart track. It cannot therefore be readily concluded that there would be a material benefit arising from the loss of the track. Accordingly, I attach no weight to the noise benefits claimed by Mr Clarke.

The planning balance

16. Having reviewed the evidence, I have re-considered the weight to be attached to the additional benefits identified in Mr Clarke's evidence and consider it appropriate to now attach very limited weight to the heritage benefits, whereas before I attached no weight. I consider that the alleged air quality and noise benefits have not been substantiated and so I attach no weight to these.

The evidence of William Gittus

17. At paragraph 17 of his proof, Mr Gittus refers to the recent refurbishment of two hospitality rooms within the Grandstand at a cost of £900,000. He does not explain how such a substantial sum of money became available for investment in these rooms, given the apparently poor financial performance of the racecourse for some years. In addition, this seems to be an extraordinarily large amount for the refurbishment of just two rooms and speaks to the Jockey Club's overall approach to this proposal. The documents regularly refer to "*excellence as standard*" (JCR Statement of Case page 9, paragraph 5.6 is just one example) and the Appellant has failed to consider whether a less-ambitious package of improvement measures could allow the racecourse to operate viably but would in turn reduce the amount of residential development required to fund it, and consequentially result in less harm to the Green Belt, character and appearance of the area and local transport network.
18. At paragraph 23, Mr Gittus extolls the benefits of the family/community zone to be located on Site C. It is worth noting that this area would not be available for use free-of-charge on race days, which must have some limiting effect on the weight to be given to the proposal's promotion of the enjoyment of racing. Mr Gittus refers to Appendix 7, which is ostensibly evidence to demonstrate the need for the family/community zone. The email presented at this appendix is without any context, but in any event the points made are far removed from the proposal under consideration: we are told that "*86% of parents wish that their children played outside more over the summer*". Mr Gittus does not explain how the proposed family/community zone relates to this finding. As I have identified at paragraph 70 of my proof, Esher does not have any existing deficiency in access to children's play provision.
19. At paragraph 23 of his evidence, Mr Gittus comments on the noise arising from the existing go-kart track and suggests that its loss would be a benefit. For the reasons stated in paragraphs 23 and 24 of this rebuttal, I disagree.
20. Appendix 3 to Mr Gittus' evidence presents data derived from customer research. On page 13, elements of the visitor experience are given a rating between 1 (low) and 10 (high) and we are told that anything below 9 is cause for concern. The lowest rating is for 'food and drink value' at 5.4, then 'seating' at 6.2 and 'food and drink choice' at 6.3. None of these would be affected by the proposal. The most influential elements of the visitor experience are apparently 'atmosphere' (8), 'entry' (8) and 'staff' (8) and again it is difficult to see how the proposal would affect these and lead to better retention of customers. I do not consider this data satisfactory to evidence the need for the racecourse improvement works.

Conclusion

21. The evidence of both Mr Clarke and Mr Gittus has been produced on the basis that there would be benefits arising from the improvement works to the racecourse. Whilst we disagree on the weight to be afforded to these benefits, I do not dispute that some exist. However, I do not accept that the expenditure of £36m (approx.) on the racecourse improvement works can be both a benefit and a justification for failing to deliver a policy-compliant number of affordable housing units. This can issue can be considered in one of two ways: either this expenditure (and the subsequent continued operation of the racecourse arising therefrom) is a benefit and the proposal would fail to comply with Policy CS21 (as in my analysis). Alternatively, the expenditure on the racecourse improvements justifies the development's failure to make a full policy-compliant contribution towards affordable housing, but if one takes this view the continued operation of the racecourse is not itself a benefit and would be neutral in the planning balance. The approach of Mr Clarke and Mr Gittus relies on double-counting of the expenditure and is presented as a benefit, but also as an excuse for failure to deliver sufficient affordable housing.

22. Returning to re-strike my planning balance in light of the new information in Mr Clarke and Mr Gittus' proofs, I remain of the view that very special circumstances do not exist which clearly outweigh the harm to the Green Belt and any other harm. I also conclude that, even if I am wrong about the development being inappropriate, I consider the collective harms do significantly and demonstrably outweigh the benefits. I therefore remain of the view that the scheme is contrary to the development plan and the advanced benefits do not justify granting consent.