



Appeal under Section 78 of the Town and Country Planning Act 1990

Proposed development at Sandown Race Course, Portsmouth
Road, Esher KT10 9AJ

Rebuttal Proof of Evidence of Anthony Lee PhD MRTPI MRICS

PINS Ref APP/K3605/W/20/3249790

LPA Ref: 2019/0551

3 November 2020

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1 Introduction

- 1.1 This rebuttal proof of evidence addresses paragraphs 2.2 and 2.3 of Mr Fell's proof of evidence, which deal with the Appellant's approach to viability. In these paragraphs, Mr Fell seeks to argue that the residual land value generated by the residential and hotel element of the Appeal Scheme should be benchmarked against the costs of improvement works to the racecourse facilities.
- 1.2 I deal with this central issue in Section 6 of my main proof of evidence. Mr Fell's approach seeks to argue that planning policies should be set aside in order to generate cross subsidy for investment into the Appellant's racecourse facilities.
- 1.3 This rebuttal proof of evidence provides two appeal decisions which analyse the approach the Appellant is promoting in this appeal.

2 Lord Wandsworth College

2.1 The Inspector's decision on an appeal¹ by Lord Wandsworth College against Hart District Council dated 20 December 2019 concerns a hybrid application for residential development . In this case, the Appellant sought to argue for a sub-policy level of affordable housing on the basis that it was seeking to maximise the value of the development land to fund works to its College buildings.

2.2 Paragraph 37 of the Inspector's decision notes that

*“thus the appellant’s rationale for offering a level of affordable housing below that required by the saved LP and the draft HLP was not based on a conventional viability argument. Rather, **the appellant considers that funding works at Gavin Hall would be a higher priority than providing a policy compliant level of affordable housing.** There was no suggestion that the works at Gavin Hall were in any way made necessary by the appeal scheme nor was the appellant able to identify any policy basis for this approach. I conclude that it has not been demonstrated that there is a justification for providing affordable housing below the level required by the adopted and emerging policies” (emphasis added).*

2.3 There are clear parallels with the appeal at Sandown Racecourse. Firstly, the Appellant argues that works to the racecourse are a higher priority than providing a policy compliant level of affordable housing. Secondly, there is no suggestion by the Appellant that the works to the racecourse are made necessary by the residential developments. Thirdly, the Appellant has not advanced a policy basis for their approach.

2.4 The Inspector's decision provides clear guidance that investment in private facilities (as proposed by the Appellant) is an insufficient justification for departing from Local Plan requirements for affordable housing.

¹ Reference APP/N1730/W/19/3235219

3 London Irish Training Ground

3.1 The second appeal decision which may assist the Inspector is the appeal² by London Irish Holdings Limited against Spelthorne Borough Council's decision to refuse planning permission at two linked sites.

3.2 The Inspector observes at paragraph 271 that:

"It is a fundamental plank of the Appellant's case that these 2 proposals are inextricably linked, with the proceeds from the proposed development of the Club's existing training ground at The Avenue being needed to enable the Club to develop the HGC site into a new training ground and rugby "Centre of Excellence".

3.3 The Appellant offered 10% affordable housing, which was significantly lower than Spelthorne Council's target of 40%. The Inspector notes at paragraph 402 that *"this is because the Appellant sees the affordable housing issue as a straightforward matter of economics and viability, stating that it simply does not have the resources to develop the Hazlewood site in the manner desired and also provide the amount of affordable housing sought by the Council"*. The Inspector notes that the Appellant argued that the costs of developing their new training facility of £14.647 million *"has to be covered by the sale of the land at The Avenue as it can draw on no additional sources of funding and it therefore needs to use the bulk of the proceeds from the development of The Avenue site to "enable" the Appeal B [the training facility] to proceed"*.

3.4 In his conclusion on this matter (see paragraphs 409 to 412), the Inspector indicates that he shares the Council's view that the Appellant was seeking to take a majority of *"development plan subsidy"* over-ridden by its own financial needs and preferences. He questions whether this is an appropriate use of public subsidy, given the pressing need in the borough for affordable housing. He concludes that the appeal schemes would deliver some public and community benefits but that *"the bulk of the benefits would flow to the Club itself"* and consequently *"the proposal would fail to provide an adequate amount of affordable housing and would therefore be at odds with policy SP2"*.

² Appeal A reference – APP/Z3635/A/10/2138983. Appeal B reference – APP/Z3635/A/10/2138982

4 Conclusions

- 4.1 In my proof of evidence, I draw attention to the discretion available to councils to permit developments with lower levels of affordable housing than those sought in adopted policies to enable developers to cross-fund other benefits. I note, however, that there is no policy basis that requires planning authorities to exercise this discretion.
- 4.2 In the two appeals I have referred to in the preceding sections, the planning authorities concerned were both faced with an identical situation to the Sandown proposal; residential schemes with levels of affordable housing below the policy requirement due to the needs of the appellants to fund their own facilities. In both cases, the inspectors concluded that there is no policy basis that required the planning authorities to take account of the cost of these works in the calculation of the maximum viable levels of affordable housing.
- 4.3 I therefore remain of the view that the Appellant's approach is flawed and that has led to a failure to provide the required affordable housing contribution.