

LAND AT SANDOWN PARK RACECOURSE, PORTSMOUTH ROAD, ESHER

PLANNING INSPECTORATE REFERENCE: APP/K3605/W/20/3249790

INQUIRY PURSUANT TO SECTION 78 TOWN AND COUNTRY PLANNING ACT 1990

OPENING SUBMISSIONS

ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. The essential question posed by this appeal, is whether the public interest in favour of preserving the Green Belt from inappropriate development, delivering much-needed affordable housing, protecting the character and appearance of the local area and avoiding harm to an already congested highway network, should be sacrificed in order to serve the interests of a private limited company.
2. The purpose of the planning system is to operate in the public interest, as articulated through planning policies; it is not intended to enhance private businesses.
3. It is the Council's case that granting planning permission in this instance would be contrary to the public interest. That is because this proposal: (i) represents large-scale inappropriate development in the Green Belt, which would harm its openness and purposes;¹ (ii) will harm to the character of the appearance of the area,² (iii) will fail to provide the minimum required affordable housing provision;³ (iv) will add to congestion of an already congested highway network⁴ and (v); will not deliver other benefits which clearly outweigh that harm.⁵
4. As such, this development accords neither with the development plan read as a whole, nor with the NPPF.⁶

¹ Webster PoE, para.3.131.

² Webster PoE, paras.10.15-10.18.

³ Lee PoE, paras.7.5 and 9.6.

⁴ Mitchell PoE, paras.3.59 & 3.63

⁵ Hyde PoE, para.111.

⁶ Hyde PoE, para.112.

The Proposal

5. The proposal is to undertake c. £36m worth of enhancement works to the Racecourse, all of which is within the Green Belt. These works include: (i) improvements to stables/hostel/canteen; (ii) Grandstand refurbishment; (iii) car parking rationalization and upgrades; (iv) the provision of a family/community zone; (v) track improvement works; (vi) refurbishment of staff houses, (vii) re-alignment of the access road and car park and (viii), alterations to the pedestrian entrance.⁷

6. To fund these improvements the Appellant proposes a series of developments. These are as follows:
 - a. Site B = 150 bed hotel in a 6-storey building.
 - b. Site 1 = 15 affordable units in a 3-storey building.
 - c. Site 2 = 49 affordable residential units in a 4-storey building.
 - d. Site 3 = 114 residential units in 3-storey buildings.
 - e. Site 4 = 72 residential units in a 6-storey building.
 - f. Site 5 = 68 residential units and a children's nursery in 4 and 2-storey buildings.

Green Belt

7. The Council's case is that those Sites, together Site D (Car Park Extension), are inappropriate development in the Green Belt. To varying degrees, they also will harm its openness and purposes.⁸ National policy requires that substantial weight must be attached to that harm, and provides that permission may not be granted unless other considerations, which amount to very special circumstances, clearly outweigh the harm to the Green Belt and any other harm (NPPF, para.144).

8. Should any part of the development be found to be inappropriate, then the policy test at paragraph 144 NPPF should be applied to the development as a whole, see: **R(Luton BC) v Central Bedfordshire Council** [2014] EWHC 4325 (Admin) (CD4.13) *per* Holgate J at [167].

⁷ CD 5.38 Viability Assessment, para.15, pp.27-28.

⁸ Cf. Policy DM17 Development Management Plan.

Character & Appearance

9. Consistent with paragraph 127 and 130 NPPF, the development plan takes a robust stance in favour of good design which is sympathetic to, and takes the opportunities to enhance, local character and the quality of the area. The Secretary of State attaches great importance to good design. By paragraph 124 NPPF we are told that the creation of high-quality buildings and places is **“fundamental to what the planning and development process should achieve”** and that **“[g]ood design is a key aspect of sustainable development ...”**.
10. One of the Objectives of the Core Strategy is to **“protect the unique character of the Borough, and to enhance the high quality of the built, historic and natural environment”**.⁹
11. That policy objective is integrated into the policies themselves. Within Esher, policy CS9 Core Strategy requires that **“all new development will be expected to enhance local character”**. By CS17 Core Strategy, all new development across the Borough is required to **“respond[...] to the positive features of individual locations [and] integrat[e] sensitively with the locally distinctive townscape”**. Policy DM2 Development Management Plan provides detailed guidance on how new development should **“preserve or enhance the character of the area”**. To assist with the application of these policies, the Council has adopted the Design & Character SPD and Companion Guide in April 2012.¹⁰
12. It is the Council’s case, that from every direction the scheme would fail to fulfil those development plan objectives:
 - a. **Approaching Esher from the east off the Scilly Isles**, the 6-storey **Site 4** building would be out of scale with its neighbours and would introduce a new and uncharacteristic skyline feature. The new pedestrian crossing, the loss of

⁹ Core Strategy p.15.

¹⁰ CD 3.2.

trees and the car park infrastructure, all readily appreciable from Station Road, would add to the uncharacteristic influence of the development.

- b. **Viewed from the south along the Portsmouth Road and High Street**, the 4 and 2-storey buildings at **Site 5** and the 6-storey hotel at **Site B**, would serve to terminate characteristic long views across the open Racecourse, to the Grandstand and to the treed northern boundary, including through the listed gate and railings. Moreover, the new buildings would reduce the role played by the Racecourse land in maintaining a separation between Esher, its railway station and Lower Green. The 4-storey building at **Site 2** would also be out-of-scale with its neighbours and introduce an uncharacteristically prominent and tall residential building behind the commercial frontage of the High Street.

- c. **Viewed from the west from higher ground within the Esher Conservation Area**, the taller elements of **Site 1** would be visible above the existing built-form along Esher Green and in-front of The Warren, a treed area of high ground recognized as a “Key Landmark”.¹¹ Leaving the Conservation Area and travelling down More Lane, the additional cars and coaches parked within the car-park extension and the 3-storey buildings of **Site 3** would become visible and urbanise the area.

- d. **Viewed from the north along Lower Green Road**, **Site 3** would introduce a very noticeable series of buildings, blocking the existing open views afforded in gaps in the vegetation across the open Racecourse. The buildings would be of a clearly different scale and pattern, to the surrounding “Garden Suburb”¹² character of the properties on Lower Green Road. Coupled with the road widening works required by the highway authority¹³ to afford extra parking bays along Lower Green Road, the effect to the north would be to introduce a prominent and uncharacteristic form of development.

¹¹ SoCG, para.3.33.

¹² Cf. CD 7.10, Character SPD Companion Guide para.3.51.

¹³ SoCG, Appendix 5 – Planning Conditions: Condition 27(a).

13. It is common ground that, with the exception of Site 3, the adverse effects from the sites predicted at Day 1 will not “*materially reduce over time*”.¹⁴ It is the Council’s case that the mitigation effects even at Site 3 would be minimal.

Affordable Housing

14. The Appellant has failed to follow the NPPF and PPG standardized approach to calculating residual land value. In particular, the Appellant has substituted benchmark land value for the cost of its own chosen improvement works. Had the correct policy approach been adopted and the existing use value of the land been used as the benchmark, the full affordable housing requirement could viably have been delivered.

15. In any event, the Appellant has failed to exhaust other options for raising the capital for the improvement works, in particular (i) by undertaking the development themselves with the assistance of a development manager or (ii), raising funds through a bond issue.

16. The Appellant’s approach is to prioritise its private objective to enhance its business, over the public objective to deliver a policy compliant level of affordable housing.¹⁵

Highways

17. The starting point here is the advice from the statutory consultee, Surrey County Council. It is their locally informed and expert view that “*Central Esher is a known congestion blackspot*” and that “*due to the existing congested nature of the local highway network this does not necessarily mean that the impact will not be significant*”, such 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*”.¹⁶ It is important to bear in mind, that the highways authority made that response in the full knowledge of the package of sustainable transport measures proposed with the appeal scheme.

¹⁴ Landscape SoCG para.3.2

¹⁵ Cf. Policy CS21 Core Strategy.

¹⁶ Mitchell PoE, para.3.56 – 3.57

18. The Council does not accept the Appellant's projected mode-shift is realistic, nor that the site is "highly sustainable". It is therefore the Council's case that the acknowledged uplift in traffic generation will cause harm to the gyratory and Scilly Isles junctions.¹⁷ This harm is not claimed to reach the level of "severe" but applying **Redhill Aerodrome v SSCLG** [2014] EWCA Civ 1386 (CD4.12) *per* Sullivan LJ at [32], should be added to the planning balance.

Planning Balance

19. In light of the above, the proposed development does not accord with the development plan, read as a whole, or the NPPF. Planning permission must be refused unless material considerations outweigh these conflicts.

20. The Council is not satisfied that the benefits relied upon by the Appellant outweigh the harm to the Green Belt or amount to very special circumstances.¹⁸ Nor do those benefits outweigh the conflict with the development plan even if the scheme were to be found to be not inappropriate development in the Green Belt.¹⁹

21. For the reasons we have given, we will in due course invite the Inspector to recommend that planning permission be withheld and the appeal dismissed.

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¹⁷ Mitchell PoE, para.3.59 & 3.63 and cf. Policy CS25 Core Strategy and DM7 Development Management Plan.

¹⁸ Hyde PoE, para.112.

¹⁹ Hyde PoE, para.113.

APPEARANCES FOR THE LOCAL PLANNING AUTHORITY

Dr Ashley Bowes (of Counsel) (instructed by Agnes Krofah, Law Practice Manager, Elmbridge Borough Council), he called:-

- Ian Mitchell BSc (Hon), MSc, CILT, (Mayer Brown Ltd) (Highways)
- David Webster, BSc (Hons), MSc, MA, CMLI (Huskisson Brown Associates) (Green Belt & Character and Appearance)
- Dr Anthony Lee, BSc (Hons), MSc (Econ), MA (TP) PhD, MRTPI, MRICS (Senior Director, BNP Paribas Real Estate) (Viability & Affordable Housing)
- Aline Hyde BA (Hons), MA, MRTPI (Senior Planning Policy Officer, Elmbridge Borough Council) (Planning Balance)