

JAL/385/12/6

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Ms Alison Dyson
Planning Inspectorate
The Square
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Room 3 O/P
Temple Quay House 2
Bristol
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Dear Ms Dyson,

Re: Sandown Park – Appeal (Reference - APP/K3605/W/20/3249790)
Appellant’s Reply to the Council’s Statement of Case

Introduction

1. This Reply is not responding to all points in the Council’s Statement of Case which are disputed by the Appellant but it is made in order to clarify certain issues on Green Belt policy and to put the Council on notice that the Appellant requests and requires the Council to make its case clear in relation to facts, matters and technical evidence as well as methodologies which it is to lead through expert witnesses or consultants in evidence at the forthcoming public inquiry. This includes in particular evidence in relation to highways, viability, landscape/green belt issues.

Green Belt Policy and the Tadcaster decision

2. The Council at para 6.19 of its Statement of Case asserts that, relying on the case of *R v Sam Smith Old Brewery (Tadcaster)* [2020] UKSC 3 (“the Tadcaster case”), the Appellant now ‘disregards the visual impact of the proposals’; the Appellant disputes this. This statement is a misunderstanding of the Appellant’s position. As stated in the Appellant’s Statement of Case at para 12.8, the Supreme Court’s decision in the Tadcaster case confirmed that the relevance given to visual considerations is a matter for professional judgment, not law. In this case spatial considerations relating to Green Belt openness are paramount and visual considerations relating to Green Belt openness should in the circumstances of the Green Belt here be given little or no weight.

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The need to disclose technical and other evidence at an early stage

3. As the members disagreed with the Council's officers, and as the Council's officers agreed with much of the evidence of the Appellant in respect of highways, viability and landscape and visual impacts, and did not dispute its facts, matters, data, methodology or approach in relation to any of these, there is no way of knowing the approach that the Council and its witnesses will take at the public inquiry other than what is contained in its Statement of Case. Much of the evidence to be considered is technical evidence requiring expert witness judgement based upon methodology which were previously agreed with officers or external consultants but is now disputed, it seems. It is to be noted from the Council's Statement of Case that the Council will not be producing any technical air quality evidence or disputing any of the technical air quality evidence submitted with the planning application, that the Council will not be alleging any harm to any matter of heritage significance and that reference to policy DM12 in the Reason for Refusal was in error (Ref: Council's Statement of Case Paras 6.38 and 6.66).
4. The Council's case is described in general terms in its Statement of Case, which was submitted after a 14-day extension to the original deadline, but no detail has been produced at any stage in relation to the issues to be pursued in evidence. They can be highly technical and if so require notice to be given of them so that in fairness the appellant is able to respond in its evidence to the case put by the Council. They can take up significant inquiry time, especially if insufficient notice is given of technical issues. It is neither fair nor reasonable that the Appellant may be forced to respond to technical evidence first disclosed in proofs of evidence. This includes in particular evidence in relation to highways, viability, landscape/green belt issues. The Inquiry Procedure Rules require notification of all documents to be disclosed and PINS Procedural Guide requires *full disclosure of the details of their case and the arguments being put forward* by Councils – see sections G10, G12, G13 and Annex J, in particular section J3. This is in particular if the case has not been disclosed in an officer report where the members disagreed with their professional officers and is not being relied upon by the Council in its case.
5. If the Council is to rely on technical evidence or introduce new facts, matters, arguments or methodology in its proofs of evidence, appendices or otherwise which has not been previously agreed in the Statement of Common Ground or *fully* disclosed, the Appellant here emphasises that it will make an application for costs for unreasonable behaviour, as already given the Council notice at the time of the submission of the appeal.
6. The Appellant asks that the Council discloses all such evidence and arguments at an early stage and seeks to narrow the issues between the parties on such matters. That time is now and not later. The Council should not wait to disclose its evidence until a ruling by the inspector at the Case Management Conference on 20th August 2020 as that would leave inadequate preparation time for the Appellant to respond fully and properly in its proofs of evidence, in particular given that this is during the peak holiday period.
7. The Appellant reserves its position with respect to any Reply it may wish to make concerning the further details requested.

Yours sincerely,

Jason Lowes

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Partner - Town Planning

Encl. R v Sam Smith Old Brewery (Tadcaster) [2020] UKSC
3 Cc. Ms Aline Hyde, Elmbridge Borough Council