

**Proposed development of Sandown Park Racecourse**  
**Closing Submissions**  
**on Behalf of the Appellant, Jockey Club Racecourses**  
**by**  
**John Steel QC**

1. The proposed development the subject of this appeal is a one-off opportunity that is unlikely to come forward again in the foreseeable future. Going well beyond the test required by planning policy, the evidence presented by the Appellant has demonstrated beyond any reasonable doubt that despite substantial investment, continued maintenance and repair over many years by the Appellant<sup>1</sup>, Sandown Park Racecourse is in urgent need of significant upgrading and restoration<sup>2</sup>. The evidence has also demonstrated that the grant of planning permission would halt and reverse the decline of Sandown, causing it to be transformed into a first-class high-quality flagship racecourse again, of the quality found at some of the best racecourses and leisure venues in Great Britain.
2. The main issues before the public inquiry are not whether any of the upgrading and restoration development requiring planning permission should be prevented, as this is not in dispute except in relation to the relatively confined issue whether the laying of grasscrete on part of Area D should be prevented, it seems. It is whether the planning system should support the restoration of Sandown through the grant of planning permission for the proposed facilitating development, given that there is no other way that Sandown's urgent and necessary transformation would take place.
3. In these submissions I do not refer specifically to the objections of the 3<sup>rd</sup> parties or the Rule 6 party. It is not in any way to suggest they have not been taken into account as they clearly have been. They have been considered in the evidence of the Appellant and considered in writing these submissions.
4. I also ask that my opening submissions are taken into account and attached to these submissions. They contain a number of matters which are not repeated here.
5. It is the Appellant's case that the public interest has too much to lose if the proposed scheme does not go ahead. This is not just the importance of the preservation and creation of hundreds of jobs, or of the other benefits to the Elmbridge area, nor merely the implementation of development plan policy, or of the national importance of Sandown as a racecourse, all of which are relevant and of significant weight. It is that it should not be forgotten or understated that the long-term preservation of the Green Belt in this location as well as its use for outdoor sport and outdoor recreation as well as its openness is best

---

<sup>1</sup> CD6.47 Part 1 Appx5 §8 and Gittus evidence

<sup>2</sup> CD6.63, Gittus evidence JCR2/1, Rebuttal JCR2/5 appendix R1, planning application and OR references below

preserved by the grant of the planning permission sought. I mentioned this in my opening submissions. It is a point of significant environmental and development plan and government planning policy importance; it has great weight, to be added to the benefits of economic and social importance. The Appellant is the owner, occupier and guardian of the racecourse, thereby the guardian of the 66 ha of Green Belt land at Sandown. It has been since 1994. The use of the land as a racecourse has maintained the planning objective of openness and use of the land for outdoor sports and recreation since the 1880s, well before the inception of Metropolitan Green Belts by Abercrombie in the 1940s. As long as the racecourse is thriving and secure economically, the Green Belt comprising the racecourse will also be secure. The opposite is also true. The two go hand in hand. To this factor, great weight should be attached.

6. The planning system exists to regulate the development and use of land in the public interest. It is not to prevent development which is in accordance with planning policy from come forward; the NPPF is clear, the purpose of the planning system is to contribute to the achievement of sustainable development, to support growth, innovation and improved productivity, support strong, vibrant and healthy communities ensuring a sufficient number and range of homes, to support sustainable development which would bring overall economic, social and environmental benefits, to meet not prevent the development needs of the area, including those in this case of Sandown racecourse. Subject to meeting Green Belt policy, this includes supporting development for housing in the Green Belt in the way proposed. When recommending that planning permission should be granted for the package of proposals in the development scheme, the officers of Elmbridge Borough Council recognised that government and development plan policy permits what is clearly an opportunity for the planning system to support this exceptionally important initiative, not as an exception to policy but within policy. They did not rely upon the development all being appropriate development in the Green Belt: they concluded that there was inappropriate development in the Green Belt and further recognised that very special circumstances existed in this case which clearly outweighed Green Belt and other harm<sup>3</sup>. That shows the strength of the case in terms of the weight to be given to the Very Special Circumstances which were demonstrated to them and which are now before the Secretary of State.
7. As stated in evidence by Mr William Gittus, Group Property Director of the Jockey Club, the initiative for the package of proposals was not from the appellant, but from the Council, who encouraged the Appellant to bring forward a long-term Masterplan proposal to enhance and sustain the racecourse for the foreseeable future<sup>4</sup>. This Masterplan<sup>5</sup> contained a package of proposals and included the restoration, refurbishment and upgrading of the grandstand, which does not require planning permission, together with other on-site development to create a high quality racecourse, leisure, recreation and events venue, of significant benefit to the Elmbridge Area, but importantly includes development of land in the Green Belt in the Appellant's ownership and occupation within the racecourse for housing, the proceeds of sale of which would be secured by legal agreement to fund the whole of the restoration scheme for which planning permission is sought as well as the refurbishment of the grandstand and ancillary areas. All the racecourse lies in the Green Belt so the choices for locating facilitating

---

<sup>3</sup> This is shorthand for the policy test in NPPF §143, 144, and officers' conclusion OR (CD7.3) §9.11.4

<sup>4</sup> Gittus (JCR 2/1) §14

<sup>5</sup> CD6.48

development are limited to Green Belt land. There is no option but to develop Green Belt land if the project bringing a step change to Sandown is to take place.

8. As recorded by officers<sup>6</sup>: The Appellant's vision is that the economic returns facilitated by the residential development, to restore the grandstand and other essential development on the racecourse site, would secure the racecourse's future for at least the next 20 years. The Appellant has demonstrated that there is a pressing need major restoration works to be carried out to the existing facilities at Sandown in order to secure its long-term viability. The consequence of not carrying out the works would ultimately result in further decline and deterioration of the racecourse and its associated facilities as they could not be carried out in isolation, which would threaten the venue's future viability. Operations on site would no longer be sustainable and would result in the loss of many permanent and temporary jobs. It would also result in a loss of business for the suppliers of Sandown Park, much of those being based in the local area of Elmbridge. However, beyond this, the loss of the viability of Sandown Park would also remove over 250,000 visitors (per year), and their expenditure, from Esher. Indirectly, the decline of activities at Sandown Park would potentially adversely affect the viability of Esher town centre.
9. Those are the conclusions of the independent officers, not mine or those of the Appellant. I shall be referring to the officer's report and quoting from it on a number of occasions. They are best placed to have reached an independent assessment of the proposals against planning policy. The members are of course elected and they have the right to depart from the recommendation of officers, but the senior planning officers' report and recommendation should be given substantial weight, as they were involved since the masterplan's inception, and particularly if the conclusions drawn involve the application of facts to planning policies, as here, where professional planning officers have that qualification and experience, especially in relation to the balancing of issues and interpretation and implementation of local as well as national planning policy.
10. The officers also concluded<sup>7</sup> that it has been demonstrated that Sandown Park Racecourse is a key part of the local economy. It is considered, they stated, that the loss of the economic benefits would result in a significant downturn of the local economy. On this basis, they stated, significant weight is attached to the need for the retention of the viable operations at the Site.
11. The Appellants warmly endorse those conclusions as they not only accord with their own, but they result from the tested evidence at this public inquiry. The case for the Appellant has been thoroughly tested during the course of this 11 day public inquiry and there is no doubt that if planning permission is granted, it could never be said by any person or body that any relevant matter has not been fully considered and interrogated.
12. Despite the apparent divergence of the cases of the principal parties when the submitted evidence was read before its commencement, there has been a significant narrowing of the positions taken by the Council and the Appellant on a number of important issues which the decision-maker should focus upon. The conclusion which is able to be reached is that there is no doubt that when these issues are considered, particularly in respect of the alternative way

---

<sup>6</sup> Officer Report to Committee (CD7.3) p81 §9.9.1.1.5

<sup>7</sup> CD 7.3 p82 §9.9.1.1.7

in which the Appellant puts its case on VSC (very special circumstances) assuming inappropriate development the Green Belt, the benefits in favour of the transformation of the Racecourse are overwhelming and clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, that very special circumstances exist, that the appeal should be allowed, and that planning permission should be granted.

13. The issues which are agreed and those which remain in dispute between the principal parties will be considered during the course of these final submissions. They will not cover all the matters which have been raised during the course of the inquiry which have been multiple and diverse and to answer these I rely upon the evidence of the Appellant and answers given in cross-examination as well as concessions by witnesses of the Council. What is clear is that in order for Sandown Park Racecourse to be secure with respect to its future, substantial upgrading works are required to achieve a step change, that these are needed to be carried out urgently in order to prevent further deterioration of its infrastructure and to bring it back into the position it used to command as a high quality sporting and recreational venue, and that the only way that these would take place is if the appeal is allowed and planning permission granted.
14. The buildings at Sandown have deteriorated significantly and continue to do so. They have reached a point where urgent rebuilding and restoration works are required to bring them up to even a reasonable standard. That is not able reasonably to be disputed on the evidence. This is in order to compete effectively with other racecourses and discretionary spend at leisure and recreational venues elsewhere. For this a high-quality transformation of the facilities is required, as Mr Gittus made clear in his evidence. This includes not only those works included in the proposed schedule of works and costs<sup>8</sup>, but others subsequently too, including the upgrading of the Eclipse building, the moving of the horse walk to the saddling enclosure to the front of the Eclipse building and renewal of other major plant and machinery over time. As was made clear by Mr Gittus<sup>9</sup> in evidence and in the written evidence of Mr Gordon Balharrie<sup>10</sup>, the highly experienced partner of Lesley Clark Construction Consultants with particular expertise in racecourse development and refurbishment<sup>11</sup>, only that which is essential has been included in the proposed schedule of works and costs the subject of the proposed scheme before the inquiry. This would be the minimum sufficient to obtain a transformation of the quality of the racecourse, to meet the objective of halting its decline and increasing revenue substantially but would only be able to be carried out subsequently with increased revenue and receipts. He also added that based on the survey works undertaken by building surveyors and his experience of such matters as a quantity surveyor visiting Sandown over an extensive period, all the refurbishment and interventions being proposed to refurbish or replace the racecourse buildings are necessary, otherwise the facility will continue to deteriorate and potentially become unusable. In any event, the cost of carrying out the refurbishment works will increase over time as the buildings deteriorate and more works become necessary to carry out, he said.

---

<sup>8</sup> CD 6.63

<sup>9</sup> Gittus JCR 2/1 §18 and elsewhere in p/e, rebuttal as well as in cross-examination

<sup>10</sup> Gittus Rebuttal evidence JCR 2/5 Appendix R1

<sup>11</sup> which should also be given full weight as his evidence was open to be tested in cross examination had a request been made.

15. As made clear by Mr Gittus in his evidence and as has been made clear on numerous occasions in discussion with Council officers<sup>12</sup>, if the package of proposals is not granted planning permission, the development will not go ahead. This statement was not challenged effectively or indeed at all. There are insufficient resources to do this and the Appellant cannot take on any more debt for major capital projects for the foreseeable future<sup>13</sup>. This is not a decision solely of the Board, as he made clear, but a requirement of the banks who fund the debt. As he stated in his proof of evidence<sup>14</sup>, Sandown has run at marginal profitability over a number of years requiring support from other operations. The COVID19 crisis has caused a significantly greater loss of to date £90 million in revenue which will take years to recover from, its current debt amounting to some £110 million, there is no spare money available for major capital projects such as that proposed at Sandown and there will not be any for at least the next 10 years and probably more. The Appellants, recognising the importance of this evidence, wrote the Council (copied to PINS) inviting them to state whether they wish to cross examine the accounts evidence in detail as the Appellant would be willing to call specialist expert witness with knowledge of the JCR accounts to answer questions to assist the inquiry. It was stated that such a witness was not required. None of the Appellant's evidence on affordability was challenged effectively, including in the evidence of Dr. Lee who asserted, not based on any expert financial knowledge, experience or factual knowledge, that the Appellant was able to carry out the development itself with a development manager appointed by them, or alternatively to raise the finance through a bond and by increasing debt.
16. The inability of the Appellant to increase further debt was not challenged by any cogent evidence of Dr. Lee, was mere assertion in his evidence without any knowledge of the circumstances, as he admitted in cross-examination, his total knowledge being that there was a bond issued and that it was at first, he said, at a 7.5% interest rate and that it had recently been rolled over. That was the sum total of his knowledge. He referred to the Cheltenham Racecourse bond, which Mr Gittus made clear in cross-examination was totally different as Sandown and Cheltenham cannot be compared, Cheltenham with its 4 day Festival being a significant money earner for JCR, unlike Sandown. He explained that the bond in any event would raise the debt level, that the bond would have to be paid down in instalments or be called when debt levels could be high thereby presenting a significant risk, which was in any event out of the question as the lending banks had forbidden JCR to increase its debt for capital projects. Further, that it would break the bank consortium's terms and covenant. In the circumstances of a case where this had been clear for many months prior to the public inquiry, was made clear in the planning application and had been fully investigated by officers<sup>15</sup>, to make an assertion now, not based upon any knowledge of the circumstances, cannot carry any weight. I return to this later below.
17. The Eclipse building, costing some £3.5 million to upgrade, was excluded from the initial planning application costings and proposals after discussion with officers as it was concluded that it was arguably above the minimum that was necessary to bring about a transformation of the racecourse facilities and in any event would lead to an excess of built development on site<sup>16</sup>. There were other upgrading proposals considered, including a lesser quality upgrading

---

<sup>12</sup> Gittus evidence JCR 2/1 §48

<sup>13</sup> Gittus evidence JCR 2/1 §42

<sup>14</sup> Gittus evidence JCR 2/1 §44

<sup>15</sup>

<sup>16</sup> Gittus evidence and OR (CD7.3) p 87 §9.9.2.2.10

which would not result in a significant saving (circa 5% on those areas requiring restoration as opposed to rebuilding) and would not produce the quality of offer required to obtain the objective of obtaining a high quality racecourse generating a significant increase in additional revenue. As was explained in evidence by Mr Gittus on the basis of advice in discussions with Mr Balharrie as well as using his own Professional experience of such matters, the cost of stripping out and replacement of M & E (mechanical and electrical) equipment is the vast majority of the cost of any refurbishment, especially that which is to take place at Sandown. Once that has been carried out, the remainder of the refurbishment which is the making good, finishes and furnishings produces a comparatively small differential cost saving from the cost of a high quality finish with high quality furnishings compared to that which would be carried out for a lower quality but merely 'adequate' restoration and refurbishment. Hence the minimal difference in cost. As the whole basis of future revenue is based upon a refurbishment to produce a high-quality environment throughout the racecourse, given the comparatively small saving it would be a false economy to seek a lower cost alternative.

18. Prior to the making of a planning application, extensive discussions were held between the Appellants and the officers of the Local Planning Authority<sup>17</sup>. The officers before being convinced of the ability to support the development proposals, among other matters sought details of the financial position of the Appellant<sup>18</sup>. They encouraged a Masterplan to be prepared in relation to the development as a whole and for a fully justified and integrated package of proposals to be submitted. This was worked on by the appellant with officers in 2018/19 and culminated in the officers being supportive of the proposals after testing and interrogation of matters to be included in the planning application. The unqualified officer recommendation for approval to the Planning Committee at a special meeting was arrived at by them as a result of an in-depth consideration of the proposals over many months and was the subject of a detailed 116-page officer report with input by appointed external consultants and consultees, including Surrey CC Highways.
19. The application included extensive details and justification of the need for the upgrading works to the racecourse, the minimisation of the upgrading works required to include only those which were essential, the agreement of the schedule, costs and viability considerations with external consultants, the minimisation of the housing which was required to facilitate the development, all matters in relation to affordable housing including the provision of 20% affordable housing, the type, quantity and locations for proposed housing and the hotel, the extent of built development including housing in each proposed location or Site, the design parameters including access, height and indicative layouts, the type of housing whether flatted, market or affordable housing, the landscape and townscape impact, arboricultural impact and renewal, viability, environmental, heritage, ecological and indicative landscaping and design. In addition, Surrey County Council highways held extensive discussions with the applicant's highways and transportation consultants, TPP, who had submitted a transport assessment to EA standard, and reached agreement on all matters including traffic generation, traffic distribution, traffic impact, mitigation measures and highway, transportation and sustainability improvements. Planning policy including all development plan considerations were considered in depth and it was concluded<sup>19</sup> that the identified harm

---

<sup>17</sup> Gittus p/e JCR 2/1 §38

<sup>18</sup> Gittus evidence and OR (CD7.3) p 86 §9.9.2.2.7

<sup>19</sup> OR – Officer Report - (CD 7.3) p96 §9.11.4 and 9.11.5

to the Green Belt and any other harm was clearly outweighed by the cumulative benefits of the proposal such that very special circumstances required to justify development in the Green Belt do exist, and that therefore the development proposals will be in accordance with the development plan and national policy. They further concluded that as the council cannot demonstrate a 5-year housing land supply, paragraph 11(d) of NPPF is engaged and that the development is in accordance with paragraph 11(d) of NPPF. There is clear evidence that there is clear interest by housebuilders in developing the sites, as set out in Mr Clarke's rebuttal evidence.<sup>20</sup>

20. It is important to note that the package of proposals before the Secretary of State is identical in form and substance to that before the officers when they made their recommendation for approval, with only minor amendments to conditions and obligations. The only principal differences in the conditions and obligations proposed by the developer since the planning application was made and upon which agreement was first reached with officers, is in relation to the following:

- a. the withdrawal of the contribution to restoration of the Grade 2 listed 'Travellers Rest' (as it is contended by the Appellant that this would not comply with Regulation 122 of the CIL Regulations as the proposed development would have no adverse impact upon the building or its significance, only positive enhancement to its setting<sup>21</sup>);
- b. the agreement of the amount for the production of a LEMP in relation to Littleworth Common<sup>22</sup>;
- c. the agreement of the method of delivery of affordable housing the subject of the UU (Unilateral Undertaking)<sup>23</sup>, albeit the 20% figure is not agreed, hence the UU not s106 agreement; and
- d. withdrawal of the agreement concerning road widening of a section of Lower Green Road where cars are currently parked on the pavement, costed at £500,000, which, although it may be desirable, the evidence is that it does not meet the 6 tests for conditions included in paragraph 55 of NPPF: it is unnecessary<sup>24</sup> as the impact from the development would be imperceptible (an addition of one vehicle per 3 minutes in the peak hr worst case<sup>25</sup>), is seeking an extraneous benefit and therefore not relevant planning or to the development to be permitted, imprecise and uncertain as there is no scheme proposed, and unreasonable in all other respects, especially as an alternative lesser TM (traffic management) chicane or single yellow line scheme is likely to be better, safer (as it would be likely to reduce speeds not increase them) and significantly less costly, if thought necessary. Further, in the event that such a requirement was a planning obligation, it would not meet the test required by CIL Regulation 122 for such reasons.

---

<sup>20</sup> JCR 1/4 p6 para 5.12

<sup>21</sup> See Appellant's Heritage Statement JCR/8 para 2.4

<sup>22</sup> S106 Agreement CD8.15 cl 6.1 and Schedule 1

<sup>23</sup> CD8.16

<sup>24</sup> Mike Lewin (Transport Consultant for the Appellant) Appx to p/e JCR 5/3 para 2.3.3

<sup>25</sup> TA (CD7.1) p20/21 Tables 5.6 and 5.9 – additional 21vph in AM peak at 2027 – see too para 5.4.6

21. The authority was aware from previous evidence which had been explored and accepted in 2008 when the planning permission<sup>26</sup> for the hotel at the racecourse was granted, that Sandown was requiring investment to sustain future racing and that although it would survive in the short term without the hotel proposal future, investment to sustain its future was required<sup>27</sup>. That has been proven to be correct. As Mr Gittus made clear in his evidence, there was no market found for a hotel in that location at the back of the racecourse operational area next to the equine boxes and lorry/horsebox park, which on the evidence before the inquiry would be a budget hotel in any event. Sandown has continued to operate and is 'just-about-managing' and is at a tipping point<sup>28</sup> but it has also continued gradually to decline, as previously stated. As he said in oral evidence, the marginal surplus from existing facilities (which he stated to be approximately 2%) has not been sufficient for the level of capital repairs, improvements and replacements required without external funding and support, such as for the Bendigo hospitality area. This is not a new point brought up recently; it is as stated and recorded by officers in 2008 in the officer report concerning the hotel development at Sandown<sup>29</sup>. As Mr Gittus said in answer to Inspector Prentis on Day 7 of the public inquiry, Sandown may be able to continue in the short or even medium term but in the long-term economic reality is that it may be unable to continue.
22. The costs of, need for and degree of refurbishment were accepted by officers previously but queried at the public inquiry for the first time since the decision of members to refuse planning permission. The absence of need for the scheme was not the subject of the reasons for refusal<sup>30</sup>, not raised as a point or mentioned in the Council's Statement of Case and raised only within two very general sweeping statements found in the proof of evidence of Mrs Hyde<sup>31</sup>, the planning witness for the Council, who put forward no evidence to substantiate her allegations. In evidence in cross-examination she queried whether the amount spent on the Bendigo area seemed high for a stop-gap measure and whether the existing furniture could be reused after the grandstand had been refurbished to a high quality (points which were explained and rebutted in evidence in chief by Mr Gittus).
23. The degree of weight that should be given to the Council's querying of the evidence of need for the upgrading works is demonstrated by the fact that Mrs Hyde not only put forward no evidence to support her bare assertions, but admitted in cross-examination that she had not consulted any fellow officer about these matters even though they were responsible for the consideration of the planning application over many months, had not sought any further information from a consultant or the Appellant, and except for a visit which was nothing to do with this case, had not even been inside any of the racecourse buildings in order to investigate whether her bare assertions and allegations were well-founded. She also made criticisms of other aspects of the development including the Family/Community Zone without seeking any further information.
24. It is clear that the Council and Mrs Hyde totally failed to put forward any evidence to dispute the need for the development. They should have accepted the conclusions of their fellow

---

<sup>26</sup> CD7.16

<sup>27</sup> 2008 OR, para 37 (CD7.16)

<sup>28</sup> Gittus p/e JCR2/1 para 17

<sup>29</sup> 2008 OR para 39 (CD7.16)

<sup>30</sup> Which should be full and in accordance with DMPO Article 35

<sup>31</sup> Hyde proof of evidence paras 14, 19



officers, which had been comprehensively considered and reached during the pre- and post-application process unless there was good reason not to do so, which here there was not.<sup>32</sup> There is no dispute that Sandown's buildings require renewal and/or extensive refurbishment and upgrading, that stopgap improvements including the Bendigo room in 2019 and that continuation of patch-and-mend repairs and decoration on an ad hoc approach cannot continue indefinitely. Many of the buildings require redevelopment as they fail to meet modern standards, including the Sandown Lodge, or have also reached end-of-life including the stables and the veterinary equine testing facilities in Site 1.

The minimisation of impact and maximisation of benefits

25. The whole of the development site lies in the Green Belt. There is therefore no opportunity for the Appellant to develop land in its ownership and occupation at Sandown which lies outside the Green Belt. When the sites for development were chosen, the use of PDL was maximised, benefits maximised as able and visual and other impacts minimised, including impact on the Green Belt.
26. Housing development, for which there is a very great need in the area, has been proposed in sustainable locations on the periphery of the racecourse, the mix is to meet existing needs and affordable housing maximised which would deliver the minimum upgrading works required. Economic benefits are substantial and would be a significant boost for the local economy, especially as a consequence of the hotel development and the upgrading of the racecourse facilities. The high-quality 3.3ha<sup>33</sup> extensive Family/Community Zone on Area C is innovative, to increase inclusivity of families with children of all ages and integrate the racecourse into the local community to a significantly greater extent than currently, by providing a high-quality facility free to young residents and their parents, including a cycle track and soft play areas. The opportunity has been taken significantly to improve the facilities and to overcome where possible existing impacts on the area and make the development even more sustainable.
27. This includes rationalising the car parks both operationally and visually, materially improving the townscape on the Portsmouth Road frontage, reducing substantially the impact of raceday traffic on the area with benefits to local residents and Esher Town Centre – a source of substantial complaints, enhancing the landscaping on the site, improving access for mobility impaired and disabled persons throughout the racecourse buildings and site – highly important to improve inclusivity for all users and visitors, improving accessibility to the Town Centre and Station from the racecourse.
28. It also includes opening up views across the racecourse from More Lane, rationalising the haphazardly scattered built development on Site C, making the whole of the existing racecourse development site and existing employees subject to a Travel Plan, introducing a LEMP over the whole racecourse site with biodiversity benefits and gain. The proposed package of developments, as will be seen, includes a significant proportion of Previously Developed Land, PDL. This is some 85% excluding Sites D and E. Furthermore, as recognised

---

<sup>32</sup> OR (CD7.3) § 9.9.1.1.5

<sup>33</sup> DAS CD6.49 p32

by officers and is a highly relevant factor, much of the development is appropriate development in the Green Belt.

29. As stated previously, it would safeguard the future of the racecourse and thereby the Green Belt in this location, perhaps in terms of public benefit, as important a material consideration and as any.

The Proposed Hotel

30. The Appellant is seeking planning permission for a c150 bed hotel on Site B. There is development policy support for hotel to support the tourist venues of Sandown Park Racecourse and Claremont Landscape Gardens<sup>34</sup>. It is common ground that the best location for such a hotel to support Sandown would be on the racecourse itself and operationally best if adjacent to the grandstand overlooking the racecourse<sup>35</sup>. It is also common ground that the site is PDL (previously developed land).
31. Mr Gittus's evidence is that a high-quality development of the racecourse requires a high-quality hotel (upper 3 star/4 star) and not a budget hotel as the latter would not meet racecourse requirements customer expectations and market requirements nor generate sufficient revenue as it would not overlook the racecourse. This is also explained in the evidence of Georgina Liggins, Development Manager for Accor hotel group in an email<sup>36</sup> where she states that the positioning of the hotel adjacent to the grandstand is important to enable the hotel integrate into the racecourse offering (sporting events, conferencing space and hospitality areas), contributing to the place-making of Sandown Park Racecourse within Esher and Surrey. She said that guests will expect views over the racecourse with this positioning, enhancing the appeal of staying in a "racecourse" hotel. She said this situation will also allow the hotel to benefit from excellent access to Esher town centre, providing a link for hotel guests and visitors to the town like to move between the racecourse and town centre easily. Although sought to be challenged in cross examination, there is no evidence called or put before the inquiry which disputes her evidence.
32. Agreeing with the evidence of Mr Clarke on planning and Mr Lewin on transportation, it was accepted by officers that the racecourse is located at the edge of the town centre, that (quoting from policy CS9 explanatory text) the new hotel development will generate additional jobs in the area, bring additional customers to support the town centre and that a comprehensive approach to parking and traffic issues will bring benefits the town centre and visitors to the racecourse<sup>37</sup>. It was also stated<sup>38</sup> that hotel accommodation has not kept pace with the growth in visitor attractions, that this limits potential tourism growth which could provide employment opportunities and play a more significant role in the local economy, and that Elmbridge is therefore seeking to deliver an increase in bed spaces and increase in the mix of hotels.

---

<sup>34</sup> Policy CS 9 and policy CS 24 (CD 1.1)

<sup>35</sup> Cross-examination Mrs Aline Hyde (planning officer witness for the Council)

<sup>36</sup> Gittus Rebuttal evidence JCR 2/5 appendix R2

<sup>37</sup> OR (CD 7.3) p 82 §9.9.1.2.1

<sup>38</sup> OR (CD 7.3) p 82 §9.9.1.2.2

33. Referring to the Surrey Hotel Futures Study (2015), the officers state<sup>39</sup> that the document confirms that “there is potential for hotel to be developed at Kempton Park and Sandown Park racecourses to cater for local corporate demand, residential conferences and weddings and leisure breaks and weekends”, and that the study identified types of locations where new hotels can most realistically, productively and acceptably be located in the county, one of which is “established leisure sites, such as golf courses, racecourses and visitor attractions, where hotels can attract local corporate demand and residential conferences during the week and which may have established generators weakened demand in terms of weddings, events and leisure visits”. They further state that the study concludes that there is significant potential and need for hotel development in all parts of the county and demonstrates the new hotel provision is vital to support the future growth of the county’s economy and capitalise on its leisure and conference tourism potential. One of the principal considerations of the upgrade facilities proposed, including the high quality hotel, is for Sandown to compete with high quality racecourses in Great Britain and abroad in order, for the benefit of British horseracing, high quality facilities are available for owners, trainers and racegoers who demand such accommodation and to keep and increase the number of horses in training in Great Britain with racing facilities and racecourses of a high standard.
34. Officers also accepted the evidence in the “Esher hotel market analysis” paper of Savills which confirmed the demand for a hotel and included a letter from Hilton indicating their potential interest to the proposed facility. The officers concluded that “Based on the local policies and the more recent evidence in the form of the Surrey Hotel Futures Study, there is a clear policy support for a provision of a hotel at Sandown Racecourse, and demonstrated need for a hotel in Surrey and more specifically leisure and visitor attractions, such as racecourses.<sup>40</sup> That has now been supplemented by the letter from Georgina Liggins of Accor<sup>41</sup>.
35. The extant planning permission granted in 2008 failed to be developed for reasons contained in evidence before the inquiry and explained in evidence by Mr Gittus<sup>42</sup>. As was explained by Mr Clarke in cross-examination, it is unlikely that it would be built out as it is a budget hotel. It would be located in a sub optimal location on the site at the back of the operational area and it would not suit Appellant requirements. Furthermore, it would have significant operational problems next to the new stables and equine testing area as well as being adjacent to the lorry and horse box parking and unloading area. It was accepted that it is not a fallback. This gives rise to the following consequences.
36. As it is not likely to be built out, the need recognised in the development plan for a hotel in the Esher area would remain unsatisfied and, as stated by Mr Clarke in evidence<sup>43</sup>, there is no evidence of any other hotel site which is allocated, being proposed or suggested in the Esher area. It is therefore of significant relevance and weight that the proposed hotel would satisfy such need. As Mr Clarke stated, it would also be able to attract tourists and visitors to Claremont Landscaped Gardens as these are adjacent to the south side of Esher town centre.

---

<sup>39</sup> OR (CD 7.3) p 82 §9.9.1.2.3

<sup>40</sup> OR (CD 7.3) p 83 §9.9.1.2.7

<sup>41</sup> Gittus Rebuttal evidence JCR 2/5 appendix R2

<sup>42</sup> CD6.47 Part 1 Appx5

<sup>43</sup> Re-examination of Robert Clarke

37. The estimate for new jobs has been given in evidence as 100+ based on evidence obtained from a range of hotel operators<sup>44</sup> as well as Mr Gittus's own experience in relation to hotel developments at other racecourses. In addition to this, the hotel would assist the local economy through engagement of local suppliers and services. It would also encourage racecourse customers to stay longer in the area with potential additional benefits in terms of additional revenue to the Esher town centre. Significant weight should be given to the provision of a hotel on the Racecourse on Site B as proposed.
38. The fact planning permission has been granted for a hotel, of the size and on the location in question, is of itself a relevant planning consideration to which positive weight should be attached in any event whether or not it is likely to be built out. This is in particular in relation to the impact of the 2008 consented building on townscape character, in visual terms and on openness of the Green Belt, all relevant to the proposed development of the affordable housing building on Site 2.
39. It is agreed that the planning permission under the terms of the section 106 agreement would be nullified if planning permission is granted.<sup>45</sup>

#### The other racecourse facilities proposed

40. The planning applications for other racecourse facilities which require to be renewed and or upgraded and for which planning permission is required have not been discussed in any detail at the inquiry as they have not been controversial. They include the rebuilding of the stables/equine veterinary facilities on Site 1, the racing staff accommodation and hostel on Site 2, the track improvement works on Sites E1 and E2, the car park and entrance Site F works on Portsmouth Road, and the pedestrian entrance arrival from Portsmouth Road. The total cost of these facilities is over £11.5 million<sup>46</sup>. Substantial benefit would occur to equine health and safety and to racing staff as a result of their renewal, as well as benefits to the environment and townscape as a result of the enhancement to the Portsmouth Road entrance and main frontage of the racecourse.

#### Noise, Air Quality and other impacts alleged and of relevance

41. There is no evidence of 'other harm' put forward by the Council. These have been considered by officers and do not tell against the development. This includes overlooking<sup>47</sup> and other matters raised by third parties.
42. In respect of arboriculture, noise and AQ, reports are before the Secretary of State in respect of each of these matters.

#### Development Plan Policy - Elmbridge Core Strategy

---

<sup>44</sup> Robert Clarke evidence, based on research by Rapleys (Angus Irvine), confirming the evidence of Mr Gittus – summary proof of evidence JCR 2/2 §6 and CD 3.54 Table 6 – adjusted to conform to evidence obtained in 2020

<sup>45</sup> CD 8.15, clause 6.3 and Schedule 2 §3.1

<sup>46</sup> CD 6.63

<sup>47</sup> Clarke JCR 1/3 Appendix 11

Policy CS9 – Esher

43. The most relevant policy with respect to development proposed in Esher is policy CS 9<sup>48</sup>. The whole of the policy is relevant and fully supportive of the proposal, which the proposals meet in full. Even based upon the evidence of the Council, and that of Mrs Hyde in cross examination, it is highly supportive. As the policy is the principal policy concerning development within Esher, it should be examined in some detail. In this section I am quoting from the policy then commenting:

- a. “Esher will continue to fulfil a diverse range of important roles in the centre for residential, employment, leisure, recreational and tourism uses”. The development would accord with this.
- b. “Additional residential development will be provided across the area, primarily through redevelopment of previously developed land, taking account of relative flood risk”. This supports the principle of residential development on the site in locational terms. The utilisation of the use of encouraged. The use of the word ‘primarily’ is important; it does not mean ‘exclusively’.
- c. “All new development will be expected to enhance local character. Special attention will need to be given to areas of high heritage value including... Esher Conservation Areas”. This would be achieved, and policy met. It was accepted by Mr Webster in cross examination that this is possible in particular in relation to the hotel on Site B, and high-quality architectural design of buildings and landscaping can be achieved through reserved matters assessment and controls. The case concerning Reason for Refusal 2 (alleged adverse impact on the character of the area) is considered below under Policy DM2.
- d. “Esher has relatively good accessibility and higher density residential/mixed use developments could be appropriate within and around the town centre, provided they take account of its historic context support the town centres vitality and viability, contributing to the diversity of uses available to local people”. This is an acceptance of the sustainability of the proposals and the acceptability of higher density residential development on sites 1 and 2 in particular. Account has been taken of the development historic context and has been found to have no harm to heritage interests. The development would bring heritage benefits and enhancement. The officers report accepts that it would support the town centres vitality and viability, and it would contribute to the diversity of uses available to local people.
- e. “Restaurants and cafés contribute to the character of Esher and its evening activity. However, these uses do need to be controlled, in order that its function as a retail centre during the daytime is not threatened”. Unlike the previous hotel planning permission, a restaurant is included within the new hotel proposal and it is accepted by officers that this would be acceptable. It would have a positive impact as it would increase the diversity of uses available to local people and contribute to the character Esher and its evening activity and economy. It would enhance the vitality and viability of the town centre, as found by officers, and not detract from it. It would not threaten the daytime retail centre.

---

<sup>48</sup> CD 1.1 p 42

- f. “The Council will work in partnership with landowners and Surrey County Council to implement appropriate measures that could address traffic congestion to the town centre and reduce the negative impact of lorry movements through residential areas”. The proposed development would reduce congestion on race days as explained by Mr Lewin in his evidence. The rationalisation of the car parks and entrances would significantly improve the flow of traffic into the car parks and therefore with management of the traffic would materially reduce one of the main objections to the proposed development. This is a major benefit to which significant weight should be given.
- g. “The Council will also promote improved access within the area for pedestrians and cyclists and public transport users”. The proposed development includes measures which would be fully in accordance with this policy and would bring significant benefits to the area especially for persons who are mobility impaired, increase pedestrian usage through the travel plan and improvements to the pedestrian access to the town centre as well as to the station from the racecourse, of benefit to all users of the highways improved.
- h. “The Council will continue to work in partnership with Surrey County Council in order to take a coherent approach to on and off-street parking”. The parking will be rationalised and as now will be available for town centre users as well as commuters thereby assisting both the town centre v+v and also the use of more sustainable modes including bus, taxi and rail.
- i. “The Council will promote the provision of hotel accommodation in order to support the tourist venues at Sandown Park Racecourse and Claremont landscape Gardens (see CS 24 – hotels and tourism)”. As stated above, this policy specifically refers to Sandown Park Racecourse and is best met by the proposed hotel being located on site in the optimum location. If the proposal does not go ahead, as stated above, this policy and that in policy CS 24 will not be met. As to CS 24 – see below.

#### Policy CS 15 – biodiversity

44. Policy CS15 is fully met as the biodiversity of both development on the site as well as on Littleworth Common would be enhanced as a result of the proposals. See the ecology statement<sup>49</sup> which concludes that on-site management through a LEMP and the production of a management plan for Littleworth Common. This would result in an overall enhancement for biodiversity across the masterplan (i.e. appeal) site, that the enhancements secured through the LEMP will aid in achieving the objectives of the “Biodiversity and Planning in Surrey” (2018) and the formal 10-year management plan for the SNCI of Littleworth Common presents an opportunity to not only mitigate any impacts that may arise from development at sites 4 and 5. It significantly enhances it through bringing existing habitats back into favourable management and through creating habitats, for which the SNCI is designated, which have ceased to be present due to vegetation succession.

#### Policy CS 16 – social and community infrastructure

---

<sup>49</sup> JCR 9

45. Policy CS16 is to ensure the provision of accessible and sustainable social and community infrastructure and promote its mixed use. Policy DM 9 of the Development Management Plan seeks to encourage new development for social and community facilities provided that it meets identified local need, is in a sustainable location that is safe and accessible to the local community, that it will accord with the character and amenity of the area particularly in residential areas, and that it achieves a high quality of design, allows flexible use, provides inclusive access for all and that the level of parking provision and the effect on traffic movement and safety are acceptable. The policy would be met in full by the proposed development.
46. The racecourse facilities as a whole will meet this policy, as will the individual sites, as accessibility for mobility impaired persons will be significantly improved throughout the racecourse. It is also relevant in relation to the replacement day nursery proposal on Site 5 and the Family/Community Zone on Site C. The proposals will bring about significant improvements to these facilities too, including for children of all age groups and improved accessibility for mobility impaired persons here, including disabled children, as stated in the evidence of Mr Gittus and Mr Clarke. It is a Jockey Club ambition and aim to improve all its racecourses in this respect and to introduce such facilities at all its racecourses.
47. The proposal for the replacement day nursery would be of significant advantage to the local community in that it will be a purpose-built high-quality facility in a safe location and excellent environment, and unlike the present former Toll House, away from incompatible uses and traffic. All the development management policy criteria will be met. Its provision is strongly supported by the existing user and occupier, Bright Horizons, of the nursery, which operates from an inadequate split site, with the Toll House building immediately adjacent to the Portsmouth Road of a less than ideal size and shape and the other in a converted dwellinghouse, with various external play areas which are clearly not purpose-built and grouped together haphazardly. It will also create more jobs as a result. The new proposals would bring about substantial enhancement of the facilities and benefit to all the children who would use it.
48. The Council through Mrs Hyde on the one hand argue that the nursery is not needed and on the other hand require a temporary facility in the event that it is developed and demolished until replaced. This undertaking is not sought by the tenant, there is no requirement for it and it was not a reason for refusal. It would not pass the tests in CIL Regulation 122. However, it does disclose that there is evidence of need for the continuation of the nursery.
49. The Family/Community Zone is to be an exciting, innovative new facility of high quality, catering for all age groups from toddler to young teenager and their parents to use on racedays. It is proposed in the centre of the racecourse to take the place of the current development on Site C. The buildings on Area C are currently dispersed and the proposals are to consolidate them into a single built structure of high quality with provision for indoor soft play and café adjacent to the proposed outdoor soft play and other areas for children of all ages, together with the conversion of the go-kart track into a cycle track for children up to young teenager age groups. It is bound to be very popular, as Mr Gittus said.
50. The Council during the inquiry disputed the need for the Family/Community Zone. That was on the basis of a comparison with existing facilities in Esher and based on the Elmbridge Open

Space and Recreation Assessment 2014<sup>50</sup>. The assessment concludes that in respect of children's play provision there is no access deficiency to children's play provision in Esher and at the subarea is above the quantitative standard of 0.76 m<sup>2</sup> of formal children's play provision per child. On that basis, it was concluded that there was no need for the proposed facility. That is entirely to miss the point and purpose of the facility being proposed. This is an innovative high quality proposal for racegoers and to encourage them to bring their families. To make racing more inclusive and popular with the whole family and not just parents and young adults. The test of necessity in such a case is whether the development proposed would be reasonably required to meet the objectives of the proposals, which it clearly would be. It is not a proposal for a public park or formal ordinary children's play area (these being the two matters referred to on pages 9 and 83 of the Assessment document). But shortly, the Arup assessment and document does not begin to consider the need for a Family Zone with respect to racecourses and is therefore of limited if any relevance. Its relevance to the CUA (Community Use Agreement) is considered below.

51. Mr Gittus made clear in his evidence, both in evidence in chief and also in cross examination, that the Family/Community Zone is an element of critical importance to the scheme and a key part of Sandown Park's long-term strategy where Sandown would lead the way. It is an innovative element of the scheme proposals that the Jockey Club wishes to roll out across its racecourses to attract families into the sport and to make them more inclusive. It is to attract younger members of families, and persuade them to conclude that a trip to Sandown with their parents is fun and enjoyable.
52. It is also required for the long-term importance to the sport of horseracing and its viability. Mr Gittus explained that it would be industry-leading, create a purpose built supervised alcohol free and betting-free zone where children under 18 would be able to be introduced to racing in a safe specific children's area where they could be entertained for a long period of the day and not get bored. Unlike other sports, racing takes place for most of the day. For this a wide variety of facilities is required to be provided, including for younger and older children to prevent them getting bored. For younger children a soft play area both internally and externally would be provided which is supervised, specifically designed to be of high quality so that children are able to play in a safe environment with trained staff, and for the cycle track to be available for older children including up to teenager years. For parents there would be a café and a viewing area on a bank adjacent to the track.
53. He pointed out that it would be one of a number of family leisure opportunities in the Elmbridge area and enhance the cluster of significant tourist attractions including, as stated in the Elmbridge Core Strategy<sup>51</sup>, Sandown Park Racecourse and Claremont Landscape Gardens, with Hampton Court Palace, Chessington World of Adventures, Thorpe Park and Wisley Gardens lying just outside the Borough boundary. Sandown would become a family tourist destination in its own right and add to the cluster of high-quality family tourist destinations in this area of the south-east of England.
54. The rejection by the Council of giving weight to the provision of the Family/Community Zone on the basis of the Elmbridge Open Space Recreation Assessment 2014 is unwarranted, not

---

<sup>50</sup> CD 3.53

<sup>51</sup> CD 1.1 p77 §7.54



only in relation to racegoers on race days but also as it would be a clear attraction to members of the local community during the rest of the year. Elmbridge and in particular Esher includes areas of high income and low deprivation residential areas. However, Elmbridge but more importantly Esher also includes the opposite. It was pointed out in evidence that the child density in the area to the north of Esher known as Lower Green is relatively high<sup>52</sup>. The Indices of Multiple Deprivation demonstrate that the largest residential area closest to the proposed Family/Community Zone facility is thought to be to the north of More Lane and the railway. This area is within the highest 20% of most deprived areas in the South East<sup>53</sup>.

55. As pointed out in Atkins assessment<sup>54</sup>, the people who live in the least deprived areas are more likely than those in the most deprived areas to take part in active sport or recreation as the level of disposable income is available to spend on sport and leisure activities is likely to be higher for those living in areas which are least deprived whilst those living in more deprived areas or living in social rented housing are more likely to have local environments that are less conducive to active recreational formal sports. Having a high quality, safe and supervised facility for children of all age groups to young teenager, including soft play, cycling, adventure and games area, with all the external areas available at no cost to Elmbridge residents, and for the play areas inside the café building available at a discounted price for residents, must be not only be highly attractive facility but a very significant benefit to the local community where there is no comparable facility in the Elmbridge area for children. It will be of particular benefit to those families who are the most deprived in economic and social terms and those who live close to the facility, as well as those with disabilities. It would be wholly different and complimentary to not only the very much smaller soft play facility which is within part of the Golf Club and which caters for toddlers aged 0 to 3, but also to the Lower Green play area which was compared in evidence by Mr Gittus and stated by him to be wholly different, unsupervised and of significantly lower quality as well as being without a cycle track.
56. The only proper conclusion to reach on the evidence is that the provision of the Family/Community Zone is undoubtedly necessary for the objective of the proposal to be realised and a very significant public benefit which is likely to be highly popular not only with racegoers but with local residents with young families. It was, as Mr Gittus and Mr Clarke stated, strongly supported by the Council's director of leisure services at pre-application stage. That support is strongly deserved and the Council's failure to give proper recognition to the benefits of the proposal can and should be corrected by the Secretary of State. It is a significant public benefit which should be given significant weight.

#### Policy CS 17 – Local Character, Density and Design

57. Policy CS 17 is complied with as the proposals do not harm and enhance local character. As accepted in cross-examination by Mr Webster, the character of the area is varied and some parts of the area immediately adjacent to the racecourse, including Site 2 adjacent to the Town Centre, Site 3 adjacent to More Lane and Site 5 on Portsmouth Road, have modern development in close proximity, Site 2 St Andrew's House (within the area of the designated

---

<sup>52</sup> CD 3.53 p32 §3.20 and figure 3.4

<sup>53</sup> CD 3.53 p32 §3.26 and figure 3.5

<sup>54</sup> CD 3.53 p32 §3.25

Town Centre), and the others with flatted large villas in close proximity, with the character of More Lane has changed significantly over the last 10 years and continuing to change with new large flatted villa development taking place, for example at 61 More Lane.

58. None of the other parts of the policy CS 17 are relevant, as confirmed by Mrs Hyde in cross examination. This includes no objection to proposed densities, which is relevant to sites 1 and 2 in particular as well as the flatted villa development shown in the DAS<sup>55</sup>. The policy will be met fully by the proposed development. It was further accepted by Mr Webster in cross examination that the Council would be able to control design and landscaping at the reserved matters stage so as to achieve high quality design.
59. The development Sites will be considered below in relation to their impact on local character. To be noted is the point that the policy also states that innovative contemporary design that embraces sustainability and improves local character will be supported – this is particularly relevant to the design of the new hotel on Site B, which is agreed can be an enhancement to the streetscene and townscape, becoming with the grandstand a landmark building immediately to the east of the entrance to Esher Town Centre.

#### Housing Land Supply

60. Allied to the need for affordable housing is the need in government policy for at least a five-year land supply<sup>56</sup>. Without General Market housing coming forward, there is no likelihood of affordable housing coming forward and being delivered to meet the very substantial shortfall in affordable housing considered below. It is a government requirement that every council should meet need for housing and it is the government's objective to significantly boost the supply of homes. It is especially important the planning policies and decisions avoid homes being built at low densities and to ensure that developments make optimal use of the potential of each site where there is an existing or anticipated shortage of land to meet identified housing needs<sup>57</sup>.
61. A shortfall in housing land supply can be a very special circumstance, however it is unlikely to warrant the grant of planning permission by itself<sup>58</sup>. The housing supply in Esher is substantially below the requirement of government and should give the Secretary of State significant concern that is not being met. If a development proposal comes forward which justifies release of land in the Green Belt but also brings with it, as here, substantial public benefits, it is in the public interest to release that land. It is accepted by the Council that the housing land supply situation is as set out in the Council's Statement of Case<sup>59</sup> and the evidence of Mrs Hyde<sup>60</sup> and also that of Mr Clarke<sup>61</sup>.

---

<sup>55</sup> CD6.49

<sup>56</sup> NPPF Para 73

<sup>57</sup> NPPF para 123

<sup>58</sup> *R (Lee Valley Regional Park Authority) v Broxbourne Borough Council* [2015] EW 8185 (admin)

<sup>59</sup> EBC SOC § 6.47 and Mrs Hyde evidence

<sup>60</sup> EBC 4/1 §44 – 64 and

<sup>61</sup>

62. It is common ground, therefore, that there is a significant housing shortfall, that the Council can demonstrate a land supply of only 3.13 years, that there are particular difficulties and constraints in Elmbridge which are unlikely to be overcome in the near future, that the difficulties of the supply of housing are substantial, in particular of large sites such as that in this case and it is expressly acknowledged by Mrs Hyde in her evidence that “the development opportunities on the scale proposed by the Appellant are few and far between”<sup>62</sup>. Significant weight is given by the Council to the lack of housing and the insufficiency of housing land supply. It is not appropriate to withdraw some way from this as Mrs Hyde seeks to do in her evidence<sup>63</sup>. It is also relevant and a factor that should be given significant weight in itself is that the mix of housing proposed meets the need for small units.

Policy CS 21 – affordable housing and viability

63. Policy CS 21 – affordable housing, must now be read in the context of NPPF 2019. As the Core Strategy was adopted in 2011, prior to the first version of NPPF in 2012, it did not take NPPF into account. Policy within NPPF is permissive and not restrictive, as is clear from paragraph 11 as well as a reading of the Framework as a whole. Insofar as policy CS21 is restrictive, it is therefore out of date, not in accordance with government policy and should not be followed.
64. NPPF paragraph 57 should be read not restrictively but permissively. The point taken by the Council and Dr. Lee in relation to policy CS 21 and NPPF is that there is a requirement, in fact Dr. Lee went so far as to say it was a prescriptive requirement never able to be departed from, requiring the standard approach in PPG to be followed in relation to all viability assessments for housing whatever the circumstances, including where the circumstances were never considered in the PPG, such as the present case. This is wholly wrong and contrary to the purpose, intent and meaning of the word “reflect” in NPPF para 57 last sentence.
65. From a reading of NPPF as a whole, as well as concluding that the meaning of the word “reflect” in para 57 does not mean “slavishly follow and not depart from”, it is open to a planning authority (and Secretary of State on appeal) in appropriate non-standard cases, as accepted by officers of the Council here, not to apply the standard approach in PPG but to *reflect* the approach in PPG with respect to viability assessments and, as Mr Fell for the Appellant explained, mirror its methodology to calculate the extent to which a development is able to provide a minimum amount of affordable housing as well as the recognised significant planning and public benefits, especially in circumstances involving non-standard housing development cases and where no guidance in relation to such case or cases is given.
66. Such a case includes the present one where the development is to provide recognised significant planning and public benefits by use of funds generated from residential development, where the provision of the full percentage provision of affordable housing in the local plan for standard housing developments would cause the development not to go ahead and consequently where neither the significant planning and public benefits would be delivered nor the affordable housing, and where the developer and the Council agree that the minimum affordable housing is nevertheless to be provided. This is termed “facilitating development” as it is to be distinguished from “enabling development” which is a planning

---

<sup>62</sup> Hyde EBC 4/1 §54

<sup>63</sup> Hyde EBC 4/1 §55

term used in relation to heritage cases. It is also relevant to note that in NPPF 57 it is recognised that the weight to be given to a viability assessment is a matter for the decision-maker, having regard to all the circumstances of the case.

67. Applying the approach which is in the evidence, and whose arithmetic and all inputs from the schedule of costs and refurbishment are agreed, the conclusion is reached that whatever the amounts considered to be required to affect the upgrading and refurbishment of Sandown, whether those referred to in Dr. Lee's evidence or Mr Fell's, the development would not go ahead as the Jockey Club is unable to increase its debt but must decrease it over a number of years in the future, which will be no easy matter given the marginal profitability of the organisation and other organisations running racecourses. This was explained fully by Mr Gittus in evidence and, as stated above, accepted by officers who investigated the matter fully at the application stage<sup>64</sup>.
68. In the statement of Case, the Council alleged that the Appellant has not adequately pursued other options for funding improvement works to their facility and suggested that the submitted financial viability documentation does not properly consider the extent to which the new or improved facilities will increase revenue streams, nor does it consider other funding sources to supplement the residual land value generated by a policy-compliant development proposal. Both of these matters had been considered previously in detail including discussions with officers concerning how the proposal could be funded. They were also fully rebutted in the evidence of Mr Gittus. His evidence contained an exhaustive analysis and details of potential sources of funding<sup>65</sup> which have been investigated by the Appellant including grants from government, local authority and other sources. It was never challenged by the Council or any other person or body at the inquiry that any of these other than a loan would be able to provide funding.
69. As stated above, it was made clear to officers and at the inquiry that a loan would not be possible to obtain given the extent of debt of the Jockey Club, and the arrangement with its banks and the covenant would be breached, as explained by Mr Gittus the information provided was wholly transparent and full, including all details of the accounts. A specialist witness was offered and able to be called to explain any further matters in detail if requested, but none was requested, as stated above. It is clear from the evidence of the Mr Gittus that the Jockey Club cannot raise any further finance and will not be able to do so in the foreseeable future, Even Ignoring the Covid 19 crisis which has caused a significantly greater loss of, to date, £90 million in revenue to JCI which will take years to recover from.
70. Referring to the recent RCA evidence <sup>66</sup> , Mr Gittus explained that the return on investment across all racecourses is very low at only 3.35%, i.e. far less than corporate trading companies and organisations would ever expect and less than the amount that money could be borrowed at. He explained, referring to the RCA evidence, that racecourses as a whole are in a net debt position and do not make significant profits, that GB racecourses are under fierce competition from abroad to retain owners, that the average prize money in GB is the least of all average prize money per race of all comparative countries and in particular the nearest France and

---

<sup>64</sup> See OR (CD 7.3) §9.9.2.2.1 to 9.2.2.14

<sup>65</sup> Gittus evidence and JCR 2/3 Appendix 8

<sup>66</sup> Gittus JC are 2/3 appendix 5

Ireland, and that the Jockey Club was no exception in having a very small margin between profit and loss given its turnover. As he explained, with Sandown's profitability at 2%, it was highly marginal, has run at marginal profitability over a number of years requiring subsidy from other operations<sup>67</sup>, and its profitability is inherently lower than that of many other racecourses as it is a large racecourse with larger facilities, therefore the costs of running it are comparatively high compared with smaller racecourses as the costs of opening it for race days with smaller numbers of racegoers is proportionately larger given the fixed costs that will be incurred.

71. The use of revenue from the new or improved facilities is not available for debt repayments of capital and interest on new loans but is to be used to fund future improvements, maintenance and repairs required to be carried out over time in the future. The proposed upgrading was the minimum that was required to transform Sandown. This included the upgrading of Eclipse building as well as other works to the racecourse, as stated above.
72. Dr. Lee put forward two new suggestions in his evidence as to how funding could be obtained by the Appellant. The first was self-funding of the development with a development manager, the second was raising a bond. He went so far as to rely upon the prediction by Savills of future house prices and drew the conclusion that any self-development would be low risk. As Mr Gittus explained, both are out of the question – they offer no basis upon which the Secretary of State can place weight. Dr. Lee's suggestions were surprising, to say the least. He gave evidence as an expert witness called on behalf of the Council at a major public inquiry, has impressive credentials and is a senior director and head of UK Development Consultancy at PNP Paribas Real Estate, 1 of the U.K.'s leading real estate consultancies<sup>68</sup>. However, he accepted in cross examination that he had no expert knowledge in relation to either suggestion, had contacted no expert or indeed any person to discuss such matters and had no details or knowledge of either in relation to racecourses or generally other than that of a non-expert. Already managed to reduce was evidence he found on the Internet which referred to the Cheltenham bond as having been carried out, that the interest rate was 7 ½% and had been rolled over recently by a number of bondholders. Beyond this he was unable to give any further facts.
73. Mr Gittus explained that the Jockey Club was a charter organisation and was non-profitmaking, with all profits made being reinvested into supporting the sport of horseracing in Great Britain. It was accused of being a private organisation to make profits and therefore should be treated as such. Unlike a private company, he explained, it has no shareholders which can profit from its activities by risking their investment, is unable to make profits which are distributed other than back into horseracing, and was unable to take risks as shareholders or private equity funders do by investing in a development company or housebuilder. As such it was akin to a charity and is unable to take risks judged to be excessive not by the Council, not by even the Secretary of State but in every such case by the Jockey Club trustees who themselves like charity trustees cannot draw income other than by way of reasonable expenses. The inability to take risks includes in relation to the financing and undertaking of major development requiring substantial capital resources, by way of self-development of the residential development Sites in this case.

---

<sup>67</sup> Gittus evidence JC are 2/1 §44

<sup>68</sup> Lee evidence EBC 3/4 Harrow 1.2

74. As Mr Gittus explained, it is the requirement of the trustees of every non-profit making organisation or charity to avoid exposing the organisation's assets, beneficiaries or reputation to undue risk and not to overcommit the organisation<sup>69</sup>. The Jockey Club is such an organisation with so-called "Members" who are in effect trustees of the Jockey Club's assets, as explained in the information submitted by Mr Gittus<sup>70</sup>. The racecourses and training gallops are the Jockey Club's only assets. In the event of the Jockey Club having to sell assets due to financial difficulties they may find themselves in, the only way to obtain liquid finance would be the sale of its assets, to the detriment of British horseracing and the horseracing industry, as explained by Mr Gittus. There no reasonable way that this should be forced on the Appellant. For this reason alone, the raising of increased debt and taking substantial risks are out of the question.
75. As Mr Gittus said, if as is proposed the first site to be developed is Site 3, the development appraisal included in Dr. Lee's evidence<sup>71</sup> showed that even this development would require a construction cost of £22.8 million which would have to be found by way of loan by the developer (not the development manager who took on no risk whatsoever) and then carried by the developer until release of the flats for sale. This could be over a year later when the market could have turned dramatically, as has happened in the past. In addition, Site 1 will have to be developed at the same time as Site 3 and in accordance with the section 106 UU all the affordable units must be made available for occupation before 165 open market units are occupied<sup>72</sup>. The cost of development of Site 4 and Site 2 are together over £21 million. It is suggested that the Jockey Club carry such amounts and that there are merely low risks involved even though it is not a developer and has no experience in housing development. The total cost of the development of the 5 sites is over £67 million, on Dr. Lee's own figures. The risk would be not low but significant, as Mr Gittus said and as Mr Fell said, unprompted, in his further evidence. It is clear that the Appellant's decision not to go down the self-development route was entirely justified. To give evidence to a major public inquiry as an expert witness that there was no risk in self-financing the development was not only without foundation, not only poor evidence but was not worthy an expert witness, in particular with the credentials of Dr. Lee.
76. The other proposal by Dr. Lee was the raising of a bond and he said in evidence that the interest at 7 ½% could be carried by the Jockey Club could be carried by the Jockey Club without difficulty and that the bond has been successfully rolled over recently. The reasons given above, this was merely an assertion and cannot be considered to be expert witness evidence putting forward a bond as an appropriate means of raising finance in this case. As stated by Mr Gittus, the situation at Cheltenham Racecourse is entirely different to that at Sandown which is incomparable to the ability to raise a bond Cheltenham. In any event the problem is not only the payment of interest, but the payment back of capital and if there is no accepted rollover of the bond, the whole of the bond could be called placing the Jockey Club in serious financial difficulties. In addition, the banks are not permitting an increase in the loans of the Jockey Club and they must be significantly reduced over the next few years which

---

<sup>69</sup> see the clear advice contained in CD 8.9 concerning the legal duty of trustees and their legal approach to risk management NB applicable to non-profit making organisations as well as charities – see heading on 1st page.

<sup>70</sup> CD 8.13

<sup>71</sup> EBC 3/3

<sup>72</sup> UU (CD 8.16) clause 2.1, 2.2

will be challenging, as Mr Gittus stated. No loans for major capital projects such as that at Sandown are being permitted in the foreseeable future by the banks as a result. One is able also to draw attention to the fact that other forms of loans have been considered previously by the Appellant as well as the raising of finance by crowdfunding<sup>73</sup>, both of which had been rejected by the Jockey Club for good reason.

77. In addition to Mr Gittus's evidence, Mr Fell made a number of points in answer to questions in cross examination and in his submitted note<sup>74</sup> he explained further why the self-development route would be wholly inadvisable and of excessive risk. Dr Lee's response took the matter no further.
78. There are two further points to make clear in relation to the affordable housing and the Council's evidence. The first is that as no affordable housing will be provided if the development as a whole does not go ahead. It is therefore a clear bonus and benefit of the development that 64 units of affordable housing will be produced in the event of planning permission being granted.
79. The second is that, as stated in the Council's statement of case<sup>75</sup> and confirmed in evidence by Mrs Hyde, "For the avoidance of doubt, the Council does not say that these harms [including insufficient contribution towards affordable housing) would give rise to a reason for refusal in and of themselves. It therefore follows that, as she agreed in cross examination, if the only outstanding matter is the failure to achieve 45% affordable housing, this should not of itself be a reason for refusal as it is clearly considered by the Council that the benefits of the development are so significant that they would outweigh this failure to accord with policy.
80. It is also highly relevant that in the event of planning permission being granted, there is a review mechanism in place which will take place in due course and there is the opportunity at such stage for the affordable housing percentage to be increased. This is guaranteed by legal agreement in the UU<sup>76</sup>.
81. The need for affordable housing is substantial, as agreed by Mrs Hyde. As the officer report made clear <sup>77</sup>, putting the level of affordable housing need in context, over the last 7 monitoring years (2011/12 – 2017/18) on average 264 homes per annum have been added to the housing stock in Elmbridge. Therefore, to meet the affordable housing need of 332 dwellings per annum, the entirety of all new residential development has occurred per annum since 2011/12 would need to be affordable plus an additional 68 units per annum. The Borough has the 9<sup>th</sup> highest average (mean) house price across the entirety of England in 2016/17. This results in the Borough having 1 of the worst levels of affordability in the country coupled with and undersupply of affordable homes. The Council's latest monitoring information (August 2018) shows in the last reporting year (2017/18), 28 new affordable housing units were completed; a 92% shortfall against the annualised need. Based on the above evidence, there is an acute identified need for affordable housing in the Borough. In 2018/19, 56 new affordable housing units were completed. This was all agreed by Mrs Hyde.

---

<sup>73</sup> JCR 2/3 appendix 8 item 36

<sup>74</sup> CD8.18

<sup>75</sup> SOC EBC para 6.23

<sup>76</sup> CD 8.16 clause 5, Schedule 1, paragraph 3

<sup>77</sup> CD 7.3 §9.9.2.2.5 – 9.9.2.2.7

82. The conclusion to be reached is that only way of obtaining a material contribution to the affordable housing deficit and a larger contribution than that which has been produced in the last 2 years of monitoring is by the grant of planning permission. In addition to the above, the development has the substantial benefits and advantage that all the affordable housing units would be on site unlike in other housing developments such as at 61 More Lane, located on previously developed land immediately adjacent to the town centre in a highly sustainable location, produced in accordance with the UU obligation at an early stage of the development and of a mix which meets the need in the area for small units of accommodation. All these are substantial benefits which should be given substantial weight.

Policy CS 24 – hotels and tourism

83. Policy CS24 supports sustainable growth of tourism in the area and to ensure that it remains a strong element of the Borough's economy. It supports the improvement of the quality of existing visitor attractions (which must include the racecourse as it is expressly mentioned in paragraph 7.54) thereby supporting the principle of the development as a whole, subject to Green Belt policy considerations. The policy also promotes all new hotel development on PDL within or adjacent to town and district centres or visitor attractions. As stated by Mr Clarke in evidence, the development is on PDL, it is adjacent to the town/district centre of Esher and is within the visitor attraction of Sandown Park Racecourse and adjacent to the Grandstand where such policy compliance is maximised.

Policy CS25 – Travel and Accessibility

84. the proposal will be in accordance with this policy which is to promote improvements to sustainable travel, and accessibility to services, through a variety of measures set out in the policy. This includes implementing travel plans which in this case will be for the racecourse as a whole as well as for each individual development, causing significant benefit over and above mitigation. In addition, as stated above the development will bring about significant benefits for users of the highway, in particular persons who are mobility impaired. This will also be a consequence of the upgrading of the facilities of the racecourse itself.
85. The proposed development is on each one of the sites in a sustainable location. Sites 1 and 2 are adjacent to the town centre and opposite a part of the town centre extending further east to include St Andrews House on Portsmouth Road. Site 5 is within walking distance of the town centre, as are Site 3 and 4. All the sites are within walking and cycling distance of Esher Railway Station. All the above is in the evidence of Mr Lewin<sup>78</sup> which is to be preferred to that of Mr Mitchell.
86. The impact upon highways is said to be an "other harm" to be taken into account but not of itself to be a reason for refusal. It therefore is by definition to be given limited weight unless the harm is significant. There is no evidence that this is the case. It is common ground that all

---

<sup>78</sup> JCR 5/1 – 5 and evidence at roundtable session



the accesses proposed as non-reserved matters are acceptable and in accordance with standards, that the development would not cause an unacceptable impact on highway safety and the residual cumulative impact on the road network would not be severe<sup>79</sup>, therefore the development should not be prevented or refused on highways grounds. As demonstrated by Mr Lewin and agreed with Surrey County Council, the worst case position is wholly acceptable.

87. The measures proposed to improve access and car parking at the Racecourse will significantly improve the flow of traffic into the racecourse which will significantly reduce, if not totally eliminate, queuing on Portsmouth Road, in Esher town centre and More Lane on race and event days. This is a very significant benefit from the proposed development in highways terms.
88. With regards to hotel and residential traffic, the extremely small increases in traffic, if they occur, based on the Transport Assessment trip generation<sup>80</sup> would have no noticeable impact on the road network. This conclusion is based on the Transport Assessment trip generation that significantly overestimates the hotel and residential traffic generation because it uses Census data to predict the mode split of residents. Census data only records work trips which are much more likely to be car driver trips than shorter journeys such as those to school which would have a higher walk mode split. The Census data gives a walk mode split of just 6% whereas in practice 79% cent of all journeys shorter than one mile (1,600m) are walking trips. All of the sites are within walking distance of Esher town centre, Esher Station, primary schools, secondary schools and other local facilities.
89. Even based on the worst-case Transport Assessment analysis and assuming no modal shift as a result of the measures to improve sustainable transport modes the residential and hotel development would have no noticeable impact on the road network. Indeed, as a result of the Racecourse improvements there will be significant benefits on race and event days through reduced congestion. There would, as a result of the other proposed measures to encourage sustainable transport, also be safety benefits to pedestrians, bus passengers and those accessing Esher Station.
90. Mr Mitchell makes a number of assertions but provides no technical evidence based on quantification of the effect of development traffic on any junction or link and does not provide any estimation of queue lengths which are able to be assessed and considered objectively. His evidence is devoid of technical assessment except in relation to walking distances which Mr Lewin rebuts in his evidence<sup>81</sup>. It cannot be concluded that merely because in very general terms small increases in traffic can cause a disproportionate amount of queueing that all or any development generating traffic into a congested area, however minor the increased generation would be, is unacceptable as all developments would be likely to be refused permission in such an event if they occurred in congested areas, which are found in most cities including in and around London and Surrey, as Mr Lewin said. It is clear that Surrey County Council took into account the objections made upon this basis and rejected them. That is also the evidence of Mr Lewin which should be accepted.

---

<sup>79</sup> NPPF 109

<sup>80</sup> CD 5.45 Tables 5.9 – 5.11 pages 21 – 22

<sup>81</sup> JCR 5/5

91. There is no basis for any finding of harm as a result of the evidence of Mr Mitchell or any of the 3<sup>rd</sup> parties. The opposite is true, as the proposed development would be not only able to be mitigated sufficiently but also bring about significant improvements and enhancements to the local highways system in Esher for all users, in particular by diminishing queueing on the highway on race days.

#### Economic Benefits

92. There are substantial and varied economic benefits arising from the proposed Masterplan scheme. This was recognised by officers. They can be summarised as follows.

##### On-site jobs

- Maintenance and retention of the racecourse jobs (110FTE) and temporary events and conference jobs (73FTE jobs) – total 183 FTE jobs secured<sup>82</sup>
- Creation of employment through the hotel, minimum 100 FTE jobs created <sup>83</sup> (only 21 FTE<sup>84</sup> if 109 bed budget hotel with the 2008 planning permission<sup>85</sup> with no restaurant or services)
- Creation and retention of employment through the construction of the whole proposal, and the residential element alone will generate up to 986 direct, indirect and induced jobs<sup>86</sup>
- Increased nursery jobs <sup>87</sup>

##### Off-site jobs

- Maintenance and retention of the racecourse supply chain – 480 suppliers, 277 of which are in Elmbridge and neighbouring postcodes<sup>88</sup>
- Creation of supply chain through the hotel<sup>89</sup>

##### Expenditure

- Maintenance and retention of existing expenditure to local economy, equating to a direct economic impact of over £6.4m and a gross value added impact of around £3.4m<sup>90</sup>
- New expenditure by residents of 318 apartments. £9.4m per annum, which can be spent locally and capable of benefitting the local area<sup>91</sup>. Zonal analysis is much wider from distribution of Esher, the application sites are well located to the centre (CS24 p77)
- New expenditure by visitors to the hotel<sup>92</sup> (CS24 – 7.53-7.57)

---

<sup>82</sup> JCR 2/1 – WAG Proof – Paragraph 11, 13, SOC1/22 Socio-Economic Paper – Paragraph 3.1

<sup>83</sup> JCR 2/2 – WAG Summary – Paragraph 6

<sup>84</sup> CD 3.54 Section 6 p36

<sup>85</sup> CD7.16

<sup>86</sup> SOC1/22 – Socio-Economic Paper – Paragraph 6.5,

<sup>87</sup> CD6.57 – Bright Horizons Letter

<sup>88</sup> JCR 2/1 – WAG Proof – Paragraph 11, 13, SOC1/22 Socio-Economic Paper – Paragraph 4.1

<sup>89</sup> SOC1/22 – Socio-Economic Paper – Paragraph 4.4

<sup>90</sup> JCR 2/1 – WAG Proof – Paragraph 11, 13

<sup>91</sup> SOC1/22 – Socio-Economic Paper – Paragraph 4.6-4.11

<sup>92</sup> SOC1/22 – Socio-Economic Paper – Paragraph 5.7

Horse-racing industry

- Any revenue generated as a result of the improvements will be put back into Sandown, to the public benefit and the benefit of British Horseracing<sup>93</sup>.

93. In total, this would be a significant boost the local economy, creating new jobs, increasing expenditure, creating new supply chains with the new hotel as well as securing the continuation of existing jobs and supply chains.

Elmbridge Local Plan – Development Management Plan

Policy DM 2– design and amenity

94. Reason for Refusal 2 alleges that 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. This is a relatively narrow reason for refusal when examined and does not go to the principle of development but to a subjective conclusion by the members that the proposed development is not possible to carry out without impact on the character of the area. When the members came to this conclusion, they did so on the basis of the planning application evidence alone. The officers disagreed with this conclusion as they found the development satisfactory and in accordance with policy.

95. Each of the sites was considered in detail in cross examination. Material issues in relation to the sites are now considered, including some general points in relation to the approach of the witnesses to the evidence before making some general comments concerning the character of the area within which the development would take place and the impact of the development upon both its character and visually. It was accepted by Mr Webster in cross examination that the information before the inquiry was sufficient to carry out both a landscape and townscape visual assessment and a visual impact assessment. However, it is to be recalled a much of his evidence was that of a planning expert witness and he admitted in cross examination that he had no such expertise. All that evidence is therefore required to be ignored in the assessment of the case of the Council.

96. Much of the base character of the racecourse is agreed, albeit that the impact assessment is not agreed. I comment upon this later. It is important to record the extent of the agreement reached in cross examination of Mr Webster as this is the basis of the consideration of impact of the development areas for the Secretary of State to consider.

97. The character of the racecourse is agreed to be as a racecourse. It has a character of its own, different to each one of the other character areas in Elmbridge considered in the Council's Landscape Character Assessments<sup>94</sup> as well as being of materially different character to the other areas even within the same character areas UW6 and UW6A within which it lies. It is as a result less sensitive to change than any of the other areas within Elmbridge considered in the character assessment reports, which include Littleworth Common and Thames Ditton

---

<sup>93</sup> JCR 2/1 – WAG Proof – Paragraph 11, SOC1/3 – JCR Statement of Case – Paragraph 2.2

<sup>94</sup> CD3.19 part 1 of 2 and CD3.25 part 1

Common to the east. Arup accept in their report<sup>95</sup> that the Landscape Unit of UW6-A is less sensitive to development in the West where the landscape is less distinct, displays fewer characteristics representative of wider landscape character and is in poor condition. They distinguish it from the landscape of Littleworth Common. Having regard to the characteristics of the racecourse, the human and urban influences within it, its fragmentation with detractors, the conclusion of Mr Connelly<sup>96</sup> that it is at most of medium landscape susceptibility and moderate landscape sensitivity is correct and should be adopted.

98. It is also to be noted that Sites 3 and 4 have been expressly excluded from Landscape Character Area 6 and it is accepted by Mr Webster that their landscape character is different from that of the rest of the racecourse being peripheral to it (he described Site 3 as periurban), with built development upon Site 3 and on two sides of Site 4, with part being PDL. It was accepted by Mr Webster as well as Mrs Hyde in cross examination that none of the landscape being considered is valued landscape, as well as none being designated or sensitive, other than views from the Conservation Area to the west which, as stated above, Mr Webster downgraded to minor impact with acceptance of enhancement by removal of the tall metal gate at the entrance to Site 1 and opening up the views of the Warren.
99. The racecourse is an area of 66 ha but is enclosed visually for most of its perimeter and views of the racecourse are not possible to any material extent from other than its immediate area within, at most, 200 m at any point. It is surrounded on 3 sides by roads and urban development (all but the central part of Station Road to the east), with residential development to its west and north, commercial development adjacent to Site 4 and the mixed use town centre adjacent to Sites 1 and 2. It is agreed to be of semi-urban character and affected by human influences and detractors throughout the area of the racecourse, including by the large grandstand and Eclipse building, and by the development in the centre of the racecourse. This includes a number of scattered low-level buildings and structures in and around Site C, a go-kart track, golf course, driving range and clubhouse together with a café and small toddlers soft play area, extensive car parks and hardstanding, walls, fencing, a reservoir and some 8 to 10 km of white rails and fencing around and across the racecourse, together with other paraphernalia including steeplechase jumps and hurdles. There are also racecourse maintenance compounds and a large maintenance building on the northern side, with a row of houses within site 3 on the northern side. The grandstand and Eclipse building stand on the highest part of the racecourse, apart from the Warren which contains a dry ski slope. These are dominant structures and are visible throughout the racecourse, from Portsmouth Road and glimpsed from a few locations on More Lane and through trees and vegetation on the Lower Green Road boundary.
100. Importantly in terms of conclusions concerning its visual enclosure, the racecourse is surrounded for most of its perimeter either by built development or by vegetation and trees and a 1.8 m to 2 m high close boarded fence which does not permit views across the racecourse except if a viewer in a few locations only stands adjacent to it and peers over the top. Even then, for example from a short length on Portsmouth Road next to the former Toll House, there is no uninterrupted view across the racecourse but a view of car parks, small buildings and structures, racing fencing and other paraphernalia. There are short glimpsed

---

<sup>95</sup> CD3.25 part 1 p 22 Table 6

<sup>96</sup> LTVA (CD 5.52) §4.7, 4.29

views of the racecourse including a small framed view of a narrow part of the racecourse from the top of More Lane which is interrupted by signage, vegetation and structures, and some glimpsed views from Lower Green Lane over short distances and through vegetation. From the rest of More Lane moving northwards there is no clear view of the racecourse and none across its whole length.

101. The proposals will materially improve the current appreciation of the Green Belt as they include opening up views of up to 1100 m from west to east from Moore Lane across the racecourse to its eastern boundary as a result of constructing a slatted fence which, for equine safety reasons of horses and jockeys when racing not having car headlights shining in their eyes, would preclude views of Site 3 with a new slatted fence over part of its length of about 200m. The view from Portsmouth Road of the racecourse is again not open and uninterrupted but, to the west of the close boarded fencing, is through iron railings adjacent to the eastern gate or over a hedge and rail with mature trees on the boundary and across a car and coach park, through trees within much of the central car park, with views towards the grandstand and Eclipse building lying on rising ground and towards the centre of the racecourse, with low-rise buildings, fencing, Portakabins and hedges preventing uninterrupted views towards the northern boundary.<sup>97</sup>
102. There are no landscape designations affecting any of the development and other than the gate and entrance to Site 1 from More Lane, The Warren ancient woodland and the immediate setting of the listed gates on Portsmouth Road, no part of the development areas or any part of the racecourse lies within any designated or sensitive area in landscape or townscape terms. None of the development interrupts any key views in the development plan. It was further confirmed by Mr Connelly<sup>98</sup> that none of the key views across the Conservation Area were towards any proposed buildings within Site 1 which would be visible from Esher Green<sup>99</sup>. In addition, the removal of the gate at the entrance to Site 1 from More Lane at the Gateway location to Esher Green was accepted by Mr Webster to be an enhancement which he had not recognised in his evidence.
103. It became clear during the giving of his evidence that Mr Webster considered that any built development that was able to be seen even to a minor extent would be considered by him to an adverse impact or effect on landscape character. It is inevitable that any development proposal would result in change to the existing built form and landscape and these proposals are no different. It cannot be concluded sensibly that every change is adverse. He grossly overstated the magnitude of change as well as the sensitivity of the landscape and receptors. His assessment was over-sensitive to change of this semi-urban location which had no landscape or heritage designations. In respect of the site closest to the Conservation Area, namely Site 1, he downgraded to minor adverse as a result of seeing and considering his evidence in the light of the wireline evidence produced by Mr Connelly, which was agreed by him as being representative<sup>100</sup>. Much of Mr Webster's assessment concerned views within the racecourse site which is wholly private land, with no public rights of access or public rights-of-

---

<sup>97</sup> see e.g. JCR 3/5 photo viewpoint EDP 11

<sup>98</sup> Evidence in re-examination

<sup>99</sup> Esher Conservation Area Townscape Analysis Map (CD 7.10) p 40

<sup>100</sup> JCR 3/5 wireline images

way across it and where he agreed that the receptors would be racegoers or visitors with low sensitivity and has for the influences of detractors referred to earlier.

104. This over-estimation of adverse effects became patently apparent when he confirmed in cross examination that the consequences of his assessment for the Sandown development proposals were at the highest level of adverse effect his methodology permitted, and would have been no higher if the sites on the racecourse land were an Area of Outstanding Natural Beauty, National Park, World Heritage Site, or Registered Park and Garden. The impact on landscape character and visual impact that his methodology and application generated was clearly excessive and did not withstand scrutiny, but he failed to downgrade any of those effects either in cross examination or even in re-examination after due consideration. The conclusion to be reached is that the Council's evidence on landscape and townscape impact as well as that of visual impact was in error and should not be followed.

105. Table 4<sup>101</sup> in Mr Webster's proof of evidence - summary of landscape/townscape effects, following on from Table 8 demonstrated this beyond doubt. Substantial adverse effects were described in Table 8 as "where the proposal will cause a very significant deterioration in the landscape resource or visual appearance". This is, as Mr Connelly stated, and excessively critical conclusion to reach in relation to sites 3, 4 and 5. Mr Connelly's approach is to be commended and preferred. It was carefully considered over different seasons and months, it was the subject of a carefully constructed LTVA, his evidence in the inquiry was measured, objective and careful and it was accepted by the officers at the time of the officer report being written as well as in discussions previously. His conclusions in his rebuttal to Mr Webster<sup>102</sup> set out his summary of visual effects representative viewpoints applying, but not accepting Mr Webster's methodology, at most conclude moderate adverse. His own conclusions, which are to be preferred are found at Table EDP 1 in the same document at pages 7/8. The highest impact is that of moderate/minor in relation to site 3 and the view looking south from the area of open space south of the railway bridge at the junction of More Lane and Lower Green Road where, in the background, can be seen the built development of the grandstand and, in winter, the Eclipse Building.

106. The conclusion of Mr Connelly in respect of landscape/townscape effects after consideration of Mr Webster's evidence is found in his rebuttal where he states<sup>103</sup> that there is no material adverse impact on landscape or townscape character, the sensitivity of the racecourse as a whole is medium, that the majority of the sites proposed for development are considered to have a lower sensitivity the medium, the overall effects are no grey to the moderate/minor, with any adverse effects very geographically limited and not considered to change the character of the immediate urban context. Further, beneficial effects arise from the proposals, as set out in his rebuttal evidence<sup>104</sup>.

107. In relation to visual impact, Mr Connelly concluded<sup>105</sup> that there is no material adverse impact on receptors at any location and that all but 3 of the impacts are below moderate with four photoviewpoints having adverse and beneficial impacts. It is to be recalled that Mr Webster

---

<sup>101</sup> Webster evidence EBC 1/1 para 8.62 p 52 of 68

<sup>102</sup> JCR ¾ p 9 Table EDP 2 right again to bury 5 now into baskets your dogs go baskets then

<sup>103</sup> Connelly JCR 3/4 p8 para 4.22

<sup>104</sup> JCR 3/4 §4.19, 4.22

<sup>105</sup> JCR 3/4 §4.28

accepted that the new high-quality hotel with landscaping in Site F would be able to be an enhancement of the street scene and townscape when viewed from Portsmouth Road compared to the existing functional south side of the grandstand and poorly landscape car park and coach park. In addition, views across the racecourse will be able to be opened up by the accesses onto Site 3 and Site 5, and site 4 would be at a key gateway to Esher.

108. If Mr Connelly's assessment is accepted, which on the evidence it should clearly be, no harm to landscape character, visual impact or to the character of the area would be caused as a result of any of the development proposed and reason for refusal 2 should be dismissed.

Policy DM 7 – access and parking

109. This has been considered above in relation to highways and transport considerations. The policy of Mr Lewin demonstrates that the policy will be met in full with significant benefits in particular in relation to the provision of on-site parking for the racecourse users and visitors as well as the provision of off-site parking available for users of the town centre. On race days, as stated above, there will be significant benefits.

Policy DM 12 – heritage

110. This policy has been fully considered and would be met by the development. The initial inclusion in reason for refusal 2 of policy DM 12 resulting in "other harm not amounting to a reason for refusal" was removed by the Council at or about the time of the issuing of their Statement of Case. The statement on heritage of the Appellant's makes it clear that there would be enhancement to designated heritage assets<sup>106</sup>.

Policy DM 17 and NPPF – Green Belt considerations

111. The case of the Appellant is that all the development is appropriate development when considered as a package. That is open to the Secretary of State to conclude having regard to the wording of the policies in NPPF and the facts and circumstances of the development.
112. The starting point is that a significant part of the proposed development is accepted to be appropriate development by the Council either now, at the time of the issuing of the Statement of Case or in the officer report to committee. It is stated by the Council that the development on sites A, C, E1 and E2 and F is appropriate development<sup>107</sup>. That was confirmed in evidence by Mrs Hyde. At the time of the officer report, the development on Site 1 was also considered to be appropriate development<sup>108</sup>.

---

<sup>106</sup> JCR/8 §2.4

<sup>107</sup> EBC SOC para 6.15 and the 6.16.

<sup>108</sup> OR (CD 7.3) 9.7.3.6

113. The policy predates that of the 2019 version of NPPF and is materially different to that of the 2012 version in respect of green belt policy<sup>109</sup>. The 2019 version introduces significantly more flexibility in relation to paragraphs 145(b) and (g) exceptions to inappropriate development in the Green Belt concerning the construction of new buildings. Policy DM 17 should be considered against para 145 (b) and not the materially different earlier version. Government policy takes precedence over local policy in terms of weight to be given to it as a material consideration that would overcome any non-compliance with development plan policy and for it to be departed from. This includes the word “ancillary” appearing in DM 17, which cannot be taken as a restriction as it would contradict the flexibility found in NPPF 145 (b).
114. In order that there is no doubt as to the matter, if the development does not come within NPPF 145 and or 146 exceptions, it is accepted by the Appellant that the development of the relevant Sites which are not appropriate development would be inappropriate development in the Green Belt. It is therefore important to consider the NPPF 145 and 146 exceptions; very special circumstances will then be considered assuming the development to be inappropriate without prejudice to the Appellant’s case that it is all appropriate development when considered as a package.
115. It is clearly open to the Secretary of State on the facts of a case to consider the development as a whole, as a package, as well as consider the development Sites individually. That is the import of the *Luton BC* case<sup>110</sup> which was discussed during the course of the inquiry. It is a matter for his discretion. As concluded in that case, accepting the submissions of Counsel for the defendant Council, Miss Sheikh, that the Council was entitled to assess the overall harm resulting from the development and entitled to strike planning balance as it did, and rejecting the claimant’s case, the judge held (para 167) that the NPPF does not *require* the planning authority the top of a mixed-use proposal into separate components and to apply the VSC test separately in relation to each such component. (My italics). The judge did not hold that the Secretary of State had no discretion, as claimed by the Council’s advocate, Dr Bowes. That is to misinterpret the case.
116. Here, it is open on the facts for the Secretary of State to conclude that the proposed development should be considered as a package and that this causes the development as a whole to be appropriate development in the Green Belt, as a matter of fact and degree:
- a. all the development is situated in a single area of land (the racecourse) which is owned and occupied by the Appellant;

---

<sup>109</sup> See and compare NPPF 2012 para 89 with NPPF 2019 para 145 – relevant extracts as follows:

NPPF 2012 §89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are: ...● provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;

NPPF 2019 §145: A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are: ... b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

<sup>110</sup> see *R (Luton BC) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin) – (CD 4.13) at page 47 paragraphs 164 (iii), 166 and 167.



- b. the existing use of the land is for or in connection with outdoor sport and outdoor recreation i.e. its use as a racecourse, as well as other uses on Site C which are also for or in connection with outdoor sport and outdoor recreation;
- c. the objective of the package of proposals is to secure the continuation of that use for the foreseeable future;
- d. that objective is wholly in accordance with Green Belt policy and assists in securing the long-term openness and active use of the Green Belt for appropriate Green Belt uses as well as its purposes;
- e. all the proposed built development would facilitate this objective, secured by legal agreement
- f. the facilities proposed preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

117. Applying the above to the policy in NPPF 145(b) when looked at as a package, the proposed development would fall within the exception there set out.

118. This approach equally applies to NPPF 145(g)<sup>111</sup>. It is open to the Secretary of State consider that the development should be considered as a package and that causes the development as a whole to be appropriate development in the Green Belt, as a matter of fact and degree:

- a. In the case of Site 4, this constitutes limited infilling;
- b. in respect of the development as a whole, when viewed as a package it comprises the partial or complete redevelopment of previously developed land, whether redundant or in continuing use;
- c. when viewed as a whole, it would not cause substantial harm to the openness of the Green Belt;
- d. when viewed as a whole, it would contribute to meeting very substantial identified affordable housing need within the area of the LPA;
- e. the overall need is able to be met in one or more residential buildings within the development package, which is located on-site and secured by legal agreement;
- f. No affordable housing would come forward and be delivered in the absence of the development coming forward as a package.

119. To be clear, when the development sites proposed for housing are considered individually, except in relation to Site 3 and the PDL criterion, the above criteria would also apply and be met as a matter of fact and degree but if there is any doubt as to this, the development should be considered as a package too.

120. Applying the above to the policy in NPPF 145(g) when looked at as a package, the proposed development would fall within the exception there set out.

121. The development of (part of) Site D – the improvement of drainage and the laying of grasscrete in part of the area used as a car park for racing and other events in the centre of the racecourse – comprises engineering operations which are underground or under the surface. They would not be noticeable and there is no evidence to suggest that there would

---

111

be a material change or visible or other impact on Green Belt policy compared with the existing use of the land as a car park. This development comes within NPPF 146<sup>112</sup>:

- a. The proposed development comprises engineering operations;
- b. it would preserve the openness of the Green Belt;
- c. it would not conflict with the purposes of including land within the Green Belt (para 134).

122. Applying the above to the policy in NPPF 146, the proposed development of Site D would fall within the exception there set out for engineering operations.

123. A significant proportion of the development sites are PDL, excluding site D and site E, namely some 85%. This is a high proportion to be used for development, wholly in accordance with government sustainability policy. The Council in its Statement of Case considered that site 5 was PDL. It transpired that nearly 2.66% or 250 m<sup>2</sup> of a former part of a garden of a residential dwelling now in use for commercial purposes as the nursery because the council to take this out of their conclusion prior to the inquiry that it was PDL and to assert the opposite. There is no justification for this reversal of position. This area of land within a site of 0.94 ha is de minimis in the circumstances and should be rejected. The Council's over-pedantic approach to the assessment of these matters ignores reality. In fact, it also ignores the "matter of fact and degree" approach to assessment of such matters in planning, and there is no reason why the Secretary of State should conclude otherwise in relation to site 5.

#### Openness of the Green Belt

124. The evidence demonstrates that both visual and spatial considerations in relation to the openness of the Green Belt demonstrate that it is preserved by the proposed development. The evidence of Mr Connelly considered the visual effects of the appeal proposals on the openness of the Green Belt.<sup>113</sup> The evidence of Mr Clarke considered the spatial considerations relevant to openness.

#### Green Belt Openness – visual effects

125. The Council relies upon the evidence of Mr Webster and that of Arup contained in the Green Belt Boundary Review. In the same way as has been submitted above, Mr Webster<sup>114</sup> applied over strict and oversensitive approach to consideration of Green Belt openness. For example, he relied upon the "expansive views of the racecourse extending across the entire site, particularly near the More Lane entrance"<sup>115</sup>. This is not merely a gross exaggeration but incorrect as was demonstrated in cross examination. He accepted that views of the racecourse are largely screened by a closed board timber fence<sup>116</sup> but relied on what he

---

<sup>112</sup> Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are: ... b) engineering operations.

<sup>113</sup> JCR 3/1 §3.18 to 3.26

<sup>114</sup> EBC 1/1 §3.9 et seq

<sup>115</sup> EBC 1/1 §3.17

<sup>116</sup> Webster cross examination and e.g. EBC 1/1 §3.17

terms the “perception of openness”<sup>117</sup> beyond and behind the fence, the trees and vegetation surrounding the racecourse which, with a receptor unable to see the openness – his case was that it could be imagined even if not experienced by the receptor. When tested in cross examination for example in relation to Site 4, it was found to be a concept without weight. It is also an exaggeration as a matter of fact where Mr Webster claimed in his assessment that “By simply walking around the site perimeter it becomes very clear that there are multiple views into and across the site”<sup>118</sup>. If the assessment is based upon these errors, it is not surprising that the result of the assessment is also in error.

126. Mr Connelly rebuts the evidence to Mr Webster where he explains that the perception of openness here in a visual sense does not exist to any material extent, in particular due to the fact that there are no public rights-of-way within the racecourse and the perception of open character of the racecourse can only be appreciated from limited locations within the public domain. None of the views, which are glimpsed and partial views, are key views in the Esher Design and Character Assessment SPD<sup>119</sup> and the only identified key view, from the grandstand, will be barely affected by any of the proposed development. As Mr Connelly explains, perception of an areas openness or lack of openness is relevant cannot be given weight if unable to be seen, experienced and informed by a receptors imagination of what may lie behind a visual barrier such as that of a close boarded fence of vegetation as here stop perception in terms of landscape assessment is obtained as a result of the experience of the landscape not, as Mr Webster relies upon, the imagine perception by receptors external to the racecourse. Essentially, from publicly accessible areas, receptors are not conscious to any material extent of the openness of the racecourse.
127. The views across the racecourse from the Portsmouth Road and More Lane would not cause the visual ‘gap’ across the racecourse to be materially diminished by proposed development. As shown in the wireline photoviewpoint taken from Portsmouth Road <sup>120</sup>, the proposed hotel on Site B would appear in the foreground adjacent to the grandstand but as the ground is rising the northern boundary is not visible where the hotel would be located. Further to the east the hotel would be seen against the built form of the grandstand and the Eclipse building which are higher both in terms of ground level and also roof height. The hotel will be seen against rising ground and would not foreshorten the views across the racecourse. When viewed from further to the west on Portsmouth Road<sup>121</sup> across the car park, the views of the northern boundary are foreshortened not by the hotel but by landscaping and trees in the car park as well as signage, including gate pillars and other structures and features in the car park. The conclusion to be reached is that the openness of the landscape would not be significantly affected by the hotel development and the visual gap would remain to the right of the hotel as far as the northern boundary, preserving views across the racecourse, with paraphernalia, fencing, other structures and signage in the middle ground and view.
128. The view of Site 3 from More Lane looking north would be curtailed by the close boarded fence and vegetation including that to be planted around the perimeter of Site 3. The glimpsed view from the entrance to the racecourse at the southern end of More Lane would

---

<sup>117</sup> EBC 1/1 §3.17, 3.22, 3.25, 3.26, 3. 44, and 3.45

<sup>118</sup> EBC 1/1 §3.22

<sup>119</sup> CD 3.2

<sup>120</sup> Photoviewpoint EDP 11 in JCR 3/5 wirelines

<sup>121</sup> Photo viewpoint EDP 7 in the LTVA (CD 5.52) at the end of the document

remain, with built development seen against and in conjunction with the well-treed northern boundary and against built development visible on Lower Green Road. when proceeding northwards down Lower Green Road as well as from within the racecourse site, the site 3 development would be read as a continuation eastwards of the modern villas on More Lane at its northern end, no higher than the villas and likely to be of the same modern idiom based on the DAS. The proposed development in Site 3 would take the place of existing development and extend further eastwards. The gap would remain and at its closest point not diminished at 480 m.

Green Belt Openness – spatial effects

129. In spatial terms, it is important to have regard to the context of the proposed development. It is all to take place within the urban area of Esher and all to take place on urban or periurban sites. In such circumstances spatial considerations of the site should have regard to adjacent development and its proportions as well as the proportions of the site in area within which the development is to take place. It is also relevant to consider whether the site is at the periphery of an open area, and periurban, as Mr Webster volunteered.
130. The size of the racecourse and area within which the development is being proposed is a large area of 66 ha and at its closest point is 480 m across. Neither of those parameters will be affected to any material extent – the racecourse will remain with its existing openness almost unaffected as a result of the development. In volumetric terms, the increase over the existing development volume and floorspace might be significant when considered on some sites proposed, but this can be misleading when applied to considerations of openness as the sites need to be considered in their context. There is no volumetric test in policy, as was agreed by Mrs Hyde, nor is there a floorspace test. Importantly and tellingly, the Council has identified no harm to result from the volumetric and floorspace increases – these on their own are of no significance. It is the context which is of importance. Other relevant points are made in Mr Clarke’s rebuttal evidence which should be referred to.
131. It is also of importance to note that of the 66 ha of the racecourse site very little of the open area of the racecourse and therefore the Green Belt is affected by the development proposed. Sites A, C, E and F are appropriate development, with Site 1 considered appropriate by the officers. Sites 1, 2, A, B, and F are in or adjacent to the operational area with built development including large buildings on or adjacent to them; site 5 is used for car and coach parking for the racecourse, has buildings on it in commercial use and is adjacent to large residential buildings (Cheltonian Place) which extend about twice the distance of Site 5 into the racecourse; Site 4 is adjacent on two sides to commercial buildings, with a material part PDL used for car and larger vehicle parking, and is spatially outside the rest of the racecourse. This leaves Site 3. This is a site with a line of detached built development including a large operational building on it which extends across about half of the E-W extent of the site (see the figure-ground plan on DAS p11), beyond the internal perimeter road. It is considered by the Council and their consultants to lie outside the area of the racecourse open land in Area UW6 in the Elmbridge LCA<sup>122</sup>. This is also the case concerning Site 4 – it lies out CA UW6; it too, like Area 3, is spatially divorced from the open area of the racecourse.

---

<sup>122</sup> CD3.19 p89

132. Every case must of course be determined on its own basis. It is relevant that the racecourse is highly fragmented with built development scattered around it including at its centre and with built development of similar form and height to that proposed on Site 3 lying almost immediately adjacent on More Lane. The same is true with development on Site 5 and Site 2. The development on Site 4 would necessarily be higher than adjacent development if it is to perform a Gateway site function behind the Café Rouge building at the gateway to Esher, as supported in the Esher Character Assessment SPD<sup>123</sup>.

Conflict with Green Belt Purposes

133. Mrs Hyde was called to give evidence for the Council on matters relating to conflict with purposes of the greenbelt as Mr Webster had no qualifications or expertise in planning. His evidence in this respect can be given no weight, as he accepted in cross examination. In cross examination Mrs Hyde confined her and the Council's case to three of the proposed development Sites as set out in the EBC Statement of Case<sup>124</sup>. These are Site D (in relation to purpose 3 – safeguarding the countryside from encroachment), Site 3 (conflict with purposes 1 and 2 – unrestricted sprawl of large built up areas and preventing neighbouring towns merging into one another and to a lesser extent 3) and Site 4 (purpose 3). The others do not therefore conflict with Green Belt purposes, namely Sites B, 1, 2, and 5. Mrs Hyde also confirmed that she was relying upon the Arup analysis in relation to such matters found in the Elmbridge Greenbelt boundary review<sup>125</sup>. It therefore follows that if in relation to any of these matters the Arup analysis does not stand up to scrutiny, the conclusion must be that there would be no conflict with greenbelt purposes of any of the development proposed.
134. I first consider Site D and Site 4 and the alleged infringement of purpose 3 in relation to countryside. If it does not come within this definition, the purpose will not be infringed for either site.
135. In respect of development of Site D for engineering work, it is clear that the racecourse as a whole is semi-urban land. It is within the urban area of Esher and surrounded on 3 sides by development. The existing land use of site D is for car parking and that will not change consequent upon development. There is no evidence of a significant increase in the use of site D as it is used currently on major race days and also for other events but there is no evidence that is likely significantly to change. It is seen as highly important for income generation as well as reputation of the racecourse at Sandown that the development would take place.
136. Site 4 is a site which Arup identified as weakly meeting the purposes assessment criteria and making a less important contribution to the wider strategic Green Belt. It was recommended for further consideration and for release<sup>126</sup>.

---

<sup>123</sup> CD 3.2 part 2 p6

<sup>124</sup> Table p8 following paragraph 6.15

<sup>125</sup> In particular CD 3.8 and CD 3.9

<sup>126</sup> CD 3.9 Table 10 page 32 (site 69) and see also page 108/109 – site RSA 35 – in December 2018 "Supplementary Work"

137. The development of either Site D or Site 4 would not cause harm to purpose 3 (or) namely to assist in safeguarding the countryside from encroachment. The key definition of “countryside” in Purpose 3 stated by Arup that a “functional” definition may be the most appropriate, namely centred on pastoral and primary land uses, not a broader definition which took “countryside” to mean any open land<sup>127</sup>. It also states that a Green Belt Assessment is not an assessment of landscape quality, there are elements of landscape assessment assist in assessing the Green Belt (for example, in identifying potential new boundaries of differentiating between areas of unspoiled countryside or semi-rural areas). Applying this to the site in question here, it is clear that the function of the land is as a racecourse and not as open countryside or semirural areas but as semi-urban land. There is no legitimate way in which the 3<sup>rd</sup> Green Belt purpose would be infringed in this case.
138. In addition, Arup in the 2018 Supplementary Work<sup>128</sup> considered site SA-69 (site 4 but excluding the PDL car park area to its south-west) to perform weekly in relation to purpose to, with a score of 1, and purpose 2 with a score of 2. If as will be considered below, it is not right to regard it has country side and infringing purpose 3, the score would be 0 not 2. If it is the case that junction of Lower Green Road and Station Road is not part of Greater London built up area then Purpose 2 would score 0. Applying the criterion of scores in the December 2018 Supplement to Work<sup>129</sup>, there is no reason to prevent its release in any event.
139. There remains Site 3. This is an important site which is a key underpinning the viability of the scheme as a whole, as is clear from the viability assessment. If this is not released, the scheme will fail. It is therefore necessary carefully to consider whether the site performs a greenbelt function, as alleged. It is agreed<sup>130</sup> that the Arup methodology requires Lower Green Road to be part of the Large Built-Up area of Greater London built-up area for Purpose 1 to be infringed<sup>131</sup>, and for Lower Green Road to be in the settlement of Greater London Built-up area and for More Lane to be within Esher and a different settlement to Lower Green Road for Purpose 2 to be infringed<sup>132</sup>.
140. Neither of these would be the case. Map 4.5<sup>133</sup> (large built-up areas considered in purpose 1 assessment) shows Thames Ditton (with Weston Green added in 2018) to be in a different area to Esher. The Built-up areas considered in purpose 1 assessment are referred to in Table 4.1. This does not include Esher but does include the various areas within Thames Ditton (with Weston Green added in 2018). As recognised in the development plan, the areas within Thames Ditton are distinct and separate residential neighbourhoods – see policy CS 8<sup>134</sup>. There is no indication that this policy applies to Esher and in fact it is included in a wholly separate policy and the development plan – policy CS 9. It is therefore not possible to consider the Greater London area of Thames Ditton as including Esher.

---

<sup>127</sup> see EBC Green Belt Boundary Review, main report, March 2016, CD3.8 p23

<sup>128</sup> CD 3.9

<sup>129</sup> CD 3.9 p18 Table 1

<sup>130</sup> cross examination of Mrs Hyde

<sup>131</sup> CD 3.8 Table 4.1

<sup>132</sup> CD 3.8 Table 4.3

<sup>133</sup> CD 3.8 Main P40

<sup>134</sup> CD 1.1

141. As Arup use development boundaries as a criterion, and as Esher has different policies<sup>135</sup> in the development plan to Thames Ditton (including Weston Green, added to the list in Table 4.3 in 2018) Lower Green Road, which is in Esher, it cannot be included within the same settlement as this is a criterion set by the consultants<sup>136</sup>. Arup states that non-Green Belt settlements in Elmbridge were identified through the appropriate local development plans. If this is done then the identification of areas in Esher for the purpose identification of settlements must follow the local development plan boundary for such settlements there listed. As Esher is clearly in a different settlement to Thames Ditton and Weston Green for development plan purposes, the criteria cannot therefore apply. It cannot be included within Purpose to assessment.
142. Site SA-70 in the Arup December 2018 Supplement to Work is about twice the size of Site 3 (2.26 ha versus 1.19 ha), adjoins the built development to its east on Lower Green Road east of The Green open space with More Lane development, and does not have any gap to the south of The Green on Lower Green. It therefore causes coalescence of the development on Lower Green Road. The sites are not materially different, in those circumstances.
143. The report for site SA-70 refers to the sub area being perceptually and functionally at the edge of the large built-up area of Greater London (Weston Green). If this is not accepted by the Secretary of State on the evidence, the score would not be “pass” but a “fail” under criterion (a). It would therefore score 0 under the purpose 1 criteria. Furthermore, under criterion (b), the subarea is not, as claimed, perceptually connected to the large built-up area of Greater London, it does not prevent sprawl onto open land and is even more small-scale than that tested by Arup in site SA-70 without proximity to development as site SA-70 would have.
144. Under purpose to assessment, site SA-70 is not within a narrow gap between Greater London (Lower Green) in Esher. This is for the 1<sup>st</sup> time that Lower Green is put forward as a settlement in its own right, and this does not occur anywhere in any of the reports. It is not a separate settlement and is part of Esher. Again, the small-scale of site SA-70 is referred to where site 3 is half its size and therefore it would perform weekly it does not maintain a degree of physical separation between 2 settlements and therefore scored be 0 for purpose 2. It does not provide a gap between residential properties on Lower Green Road and Moor Lane as there are already properties to the west of site 3 close to Moor Lane which would be redeveloped. It would not reduce the perceived and actual distance between 2 settlements and would not result in any separate settlements merging. It was made patently clear by Mrs Hyde that More Lane was definitely within Esher. This is confirmed in the Design and Character SPD too<sup>137</sup>. It is absurd to think that the bifurcated open area to junction with some grass on it would cause there to be a merging of 2 settlements when they are all in development plan area and policy (an Arup criterion), perceptual and visual as well as physical and spatial terms within the same settlement. If SA-70 plays a role in preventing perceptual merging due to the strong visual link to the racecourse, as claimed, that certainly

---

<sup>135</sup> Policy CS 8 versus Policy CD 9

<sup>136</sup> CD8 para 4.4.2 2nd paragraph above table 4.3

<sup>137</sup> CD3.2 Diagram p6 – More Lane and Lower Green Road both clearly lie in Esher as well as in Policy CS9 in the Core Strategy CD1.1

would be the case with the new development which would be part of the racecourse and seen as such and not part of Lower Green Road.

145. The 25 m gap between the Lodge buildings where the greenbelt is shown to continue to its west to the west of Lower Green Road would not be in any way affected even perceptually by the development of site 3.
146. Purpose 3 in relation to site 3 is weekly met with a score of 2. However, it is contended that the school should be 0 for the reasons given above that it is not in the countryside and does not infringe purpose 3.
147. The reports are yet to be tested in the Examination in Public and are subject to objections, including during the forthcoming regulation 19 consultation and have no status or weight for development control purposes. They are to be given no weight in policy terms. It is therefore open to the Appellant to challenge them at this inquiry. There is no reason why the Appellant should be prevented by reason of the methodology and criteria employed from developing any of the sites considered forming part of the package of proposals.
148. The conclusion drawn after detailed examination in cross examination of the evidence of Mrs Hyde and Mr Clarke is that the presumptions made in the Arup analysis applying their own criteria and methodology do not stand up to scrutiny in the case of the 3 sites and therefore there is no conflict with greenbelt purposes for site D, site 4 or site 3.

#### Very Special Circumstances

149. The requirement to consider VSC arises in the event that the development, or any part of it, is considered to be inappropriate development in the Green Belt. Even if not appropriate development, as claimed, much of the development is appropriate and the arguments put forward that the proposals should be considered as a package, that the package of proposals, secured by legal agreement would deliver transformational improvements to the racecourse of significant public benefit, that they are (more than merely) 'in connection with' the existing use of the Green Belt land i.e. as a racecourse, that the use as a racecourse is for outdoor sport and outdoor recreation, and that the use would be secured for the foreseeable future in such use and thereby secure the future of this part of the Green Belt, are all important matters to consider in relation to whether there are VSCs and to be given significant or great weight. The package's use of PDL (85% of the development land), the use of an infill site for development, the absence or minimal impact on openness and the accordance with the purposes of the Green Belt, are all significant points of importance and great weight to weigh in the balance in favour of the development package pointing towards VSCs existing.
150. Even if there is impact on openness of the Green Belt, and even if there is conflict found to occur to the purposes the Green Belt, the absence of any harm or any significant harm to the Green Belt openness and its purposes is of itself a conclusion of significant weight. Even if accepted, the Council's evidence and submissions have not demonstrated that *harm* to the Green Belt would occur, given the context of the sites and the semi urban racecourse. Other than the 'by definition' harm, there is no evidence that there would be significant harm to openness or to any Green Belt purposes being infringed. This point has added weight given



the high proportion of PDL utilised and the fact that much of the development is accepted to be appropriate development in the Green Belt. The VSC balance that is required to be undertaken by the decision maker is therefore heavily weighted in favour of the benefits.

151. This is a rare case where there are without doubt many and varied significant benefits of the scheme of great weight which individually and cumulatively amount to Very Special Circumstances. These are set out in the evidence of Mr Clarke on behalf of the Appellant and Mrs Hyde on behalf of the Council. For convenience, they are set out in the tables below.
152. The significant shift of position of the Council from the position of officers in the Officer Report to that of Miss Hyde is apparent and unwarranted, especially given the lack of evidence to support the changes. If there is no good reason for the substantial changes of position, it is submitted that the Secretary of State should consider the position concluded, after full and detailed consideration of the planning application in the officer report, to carry substantially more weight. To that should be added the significant weight which should be afforded to economic benefits of the scheme, not weighed in the balance by officers. This is a material factor in favour of the scheme.

**Very Special Circumstances – Comparison of Council Officers’ Report, Council and Appellant Positions**

	<b>LPA Position – October 2019 (Officers’ Report) CD7.3</b>			
	Significant	Moderate	Limited	None
Need for improved racecourse facilities	•			
Provision for a hotel	•			
Economic Benefits	Not Assessed			
Provision of market homes	•			
Provision of affordable housing	•			
Provision of the family/community Zone			•	
Integration between the town centre and the railway station				•
The site’s sustainable location		•		
Landscape / Arboricultural benefits	Not Assessed			
Ecological benefits			•	
Heritage benefits			•	
Re-provision of nursery			•	
Interpretation boards				•
Spending by New Residents		Not	Assessed	

	<b>LPA Position – EBC 4/1 Para 106</b>			
	Significant	Moderate	Limited	None
Need for improved racecourse facilities		•		
Provision for a hotel			•	
Economic Benefits	Not Assessed – solely spending by new residents – see below			
Provision of market homes	•			
Provision of affordable housing		•		
Provision of the family/community Zone			•	
Re-Provision of a Nursery			•	
Interpretation Boards				•
Integration between the town centre and the railway station			•	
The site's sustainable location			•	
Landscape / Arboricultural benefits	Not Assessed			
Ecological improvements			•	
Heritage benefits (Amended at public inquiry)			•	
Spending by Local Residents			•	

	<b>Appellant's Position – JCR 1/3 Appendix 9</b>			
	Significant	Moderate	Limited	None
Need for improved racecourse facilities	•			
Provision for a hotel	•			
Economic Benefits (incl spending by new residents)	•			
Provision of market homes	•			
Provision of affordable housing	•			
Provision of the family/community Zone	•			
Integration between the town centre and the railway station	•			
The site's sustainable location	•			
Landscape / Arboricultural benefits	•			
Ecological benefits	•			
Heritage benefits (Amended at public inquiry )			•	
Re-provision of nursery		•		
Interpretation boards			•	

153. The site clearly is a highly sustainable location, applying development plan policy and the words of the development plan CS 9, in accordance with the agreement of Surrey County Council that the site is sustainable, and the application of the determination of the Inspector in respect of 61 More Ln in a recent decision letter<sup>138</sup>. The sites are within walking distance of all relevant services, schools and public transport and far more sustainable than many sites which have and are currently proposed for development in Elmbridge. This conclusion

<sup>138</sup> CD 8.4 para 19 applying NPPF 103 by implied reference.

clearly shows that they are highly sustainable sites and the development as a whole would be highly sustainable. This in itself is capable of being and is a very special circumstance.

154. What is apparent by way of contrast is the substantial differences of Mrs Hyde from the conclusions arrived at by her fellow officers on the benefits of the scheme and the weight to be afforded to those after careful and detailed consideration by them over many months of discussions with the appellant. They had the great advantage over her in terms of their understanding of the evidence, which was obtained through the pre-application process and subsequently, seeking further information subsequently on a number of matters, including the need for and funding of the scheme and the need for the hotel. In any event, it was open to the Council after the decision by members to seek further information, but this was not done. Mrs Hyde did not contact the Appellants in order to seek further information, or even contact fellow officers, she admitted. She made what amounted to a cursory inspection of the appeal site and buildings externally only but reached adverse conclusions on the need for the scheme refurbishment, one of the most relevant aspects of the proposals.
155. Despite it being alleged in objections at the planning application stage by local residents, the officers rightly gave no weight to the allegation that it was a private scheme for the benefit of a private developer. It is not the case, as said in evidence, that the developer seeks private benefits for its shareholders (this is legally forbidden under the terms of its charter) or seeks other than public benefit in putting all its profits into horseracing (again under its charter as its 'key rule' and objects). The continued failure for the Council to accept this during the public inquiry demonstrates the inability of the Council to accept even the most obvious of facts if such facts appear to the Council not to support its case. In any event, it is the public benefits which would result from the scheme proposals which are of relevance, and which the Appellant, in its position as a guardian of horseracing in Great Britain, would bring.
156. The Council relied upon the evidence of Dr Lee which included wild suggestions of self-development and funding of the development via a bond, the Council called a landscape architect to give planning evidence who had no expertise in planning and whose evidence could be given no weight, called a highway expert witness who presented no technical evidence to support his conclusions, and in its Statement of Case adjusted the benefits of the scheme from those of the officers without good reason. It is clear that the Council drew conclusions on the evidence which were unjustified when weighing up the evidence and performing the balancing exercise. There is no justification for altering the fully justified conclusions of the officers in their report concerning very special circumstances. This is found at table 7 on page 92 of their report and gives significant weight to four major factors:
- i. The need for improved racecourse facilities;
  - ii. the provision of a hotel;
  - iii. the contribution towards meeting housing need;
  - iv. the contribution towards the affordable housing;

Based on these 4 factors the officers concluded that very special circumstances existed. Their conclusion at the culmination of their report<sup>139</sup> was to draw a balance of harm against benefits which they had considered, including harm by reason of inappropriateness in relation to sites

---

<sup>139</sup> OR (CD 7.3) §9.11.4

B, D and site to as well as Sites 3, 4 and 5. They concluded that, assessing the scheme as a single proposal, it was inappropriate development but that it was considered to be at its lower level, as 6/12 sites were considered to be appropriate development within the Green Belt<sup>140</sup>.

157. It therefore follows that if any of the benefits put forward by the Appellant's are accepted in their table as being of greater weight and if any of the sites should be considered to be appropriate development which the council has considered to be inappropriate in accordance with the "package" approach set out above then the case is even more strongly in favour of very special circumstances existing which clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal. In such circumstances the development would be in accordance with the development plan and government policy, that the appeal should be allowed, and planning permission granted.

158. That is the conclusion of the Appellant which is urged upon the Secretary of State.

159. The appellant commends to the Secretary of State his decision in the appeal by Seashell Trust, 160 Stanley Rd, Cheadle Hume, Stockport dated 22 April 2020 <sup>141</sup>. The common factor is that the Stockport decision, like this planning application at Sandown, is not a planning application for housing development but one to facilitate development of a scheme bringing forward substantial planning benefits not otherwise able to be funded. In that decision a balancing exercise was carried out by the decision-maker in relation to development for a (factually different) proposal in the Green Belt where housing development was proposed as part of the development proposals in order to cross fund the cost of the development. It was also in an area of inadequate land supply and where an assessment of viability was carried out to determine the minimum affordable housing that could be delivered by the scheme. Conditional planning permission was granted. The approach to decision-making set out in the decision letter (especially DL paras 27 – 40 and IR 626 – 633) is commended to the Secretary of State. When applied to the facts of the current appeal and planning application, planning permission should be granted.

**John Steel QC**

**39 Essex Chambers**

**London WC2A 1DD**

**1<sup>st</sup> December 2020**

---

<sup>140</sup> OR (CD 7.3) §9.7.4.3. 37 pages

<sup>141</sup> Application ref: DC/060928 and appeal reference: APP/C4235/W/18/3205559 dated 22 April 2020