



Ministry of Housing,
Communities &
Local Government

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Our ref: APP/K3605/W/20/3249790
Your ref: 2019/0551

12 May 2021

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY JOCKEY CLUB RACECOURSES LTD
LAND AT SANDOWN PARK RACECOURSE, PORTSMOUTH ROAD, ESHER
APPLICATION REF: 2019/0551**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Prentis BA BPI MRTPI, who held a public local inquiry between 16 November and 1 December 2020 into your client's appeal against the decision of Elmbridge Borough Council to refuse your client's application for planning permission for: hybrid planning application for the redevelopment of sections of Sandown Park Racecourse involving: outline application for development/redevelopment of sections of the site to replace/ modify existing operational/associated facilities, and to provide up to 150 bedroom hotel (Use Class C1), family/community zone, residential development up to 318 units (Use Class C3) and to relocate existing day nursery (Use Class D1), all with car parking, access and related works following demolition of existing buildings and hardstanding (for access only); and full application for the widening of the southwest and east sections of the racecourse track including associated groundworks, re-positioning of fencing, alterations to existing internal access road from More Lane and new bellmouth accesses serving the development, ref. 2019/0551, dated 18 June 2019 (see paragraph 6 of this letter below).
2. On 15 June 2020, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Having taken account of the Inspector's comments at IR9, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The application was initially submitted on 22 February 2019 incorporating ownership Certificate A. Subsequently, a revised planning application form was submitted on 18 June 2019 incorporating ownership Certificate B, notice having been served on an owner of part of the site (IR3).

Matters arising since the close of the inquiry

7. On 6 January 2021 the Secretary of State received a letter from Dominic Raab MP attaching representations made on behalf of Save Esher Green Belt and Esher Residents' Association. The Secretary of State is satisfied that the issues raised have been considered, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
8. An application for a partial award of costs was made by Jockey Club Racecourses Ltd against Elmbridge Borough Council (IR1). This application will be the subject of a separate decision letter.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Elmbridge Core Strategy (2011) (CS) and the Elmbridge Development Management Plan (2015) (DMP). The Secretary of State considers that relevant development plan policies include those set out at IR16-22.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Design and Character Supplementary Planning Document (SPD) together with a Companion Guide: Esher and The Developer Contributions SPD (IR23). A Green Belt Boundary Review (GBBR) forms part of the evidence base for the emerging Local Plan review and is relevant to this appeal as referred to at IR297-305.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or

their settings or any features of special architectural or historic interest which they may possess.

13. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Main issues

Green Belt

14. The Secretary of State has given consideration to the Inspector's analysis (IR297-305) of site character and contribution to Green Belt purposes. For the reasons given there, he agrees with the Inspector that Sandown Park racecourse as a whole contributes to Green Belt purposes 1, 2 and 3 as set out in paragraph 134 of the Framework (IR305).
15. The Secretary of State has considered the Inspector's analysis of the extent to which the appeal proposals could be regarded as facilities for outdoor sport and/or recreation (IR306-IR313). While he agrees with the Inspector's reasoning and conclusions on this matter, as set out at IR306, he further agrees that it makes little practical difference which approach is taken because it is necessary to consider the effect on openness in any event (IR306). Given that the Secretary of State also agrees with the Inspector's findings on openness and purposes, discussed below, he agrees that this matter is not important to the overall assessment.
16. For the reasons given in IR314-315, the Secretary of State agrees with the Inspector that the appropriate way to analyse these proposals in terms of Green Belt policy is to look at the sites individually first, before drawing higher level conclusions about the scheme as a whole.
17. For the reasons given at IR316-317, the Secretary of State agrees with the Inspector that sites A, C, E1, E2 and F would not amount to inappropriate development.
18. With regard to Site B (Hotel), the Secretary of State agrees with the Inspector for the reasons given at IR318-322, that the proposals would amount to inappropriate development and would result in substantial harm to the openness of the Green Belt (IR322), bringing it into conflict with policy CS24 (IR462).
19. In respect of Site D (works to car park), he further agrees with the Inspector for the reasons given at IR323-326 that the proposals would fail to preserve openness and would therefore be inappropriate development (IR325) and that more intensive use for car parking would have an urbanising effect that would conflict with one of the purposes of including land in the Green Belt (IR326).
20. For the reasons given at IR327-332, the Secretary of State agrees with the Inspector that residential sites 1 and 2 would each result in substantial harm to the openness of the Green Belt, and would therefore amount to inappropriate development (IR328 and IR332).
21. With regard to residential site 3, the Secretary of State agrees with the Inspector for the reasons given at IR333-343 that the proposals would amount to inappropriate development (IR333), would cause substantial harm to the openness of the Green Belt

(IR339), and would cause significant conflict with the purposes of including land in the Green Belt, in particular with purposes 1, 2 and 3 (IR343).

22. For the reasons given at IR344-349, the Secretary of State agrees with the Inspector that the proposals for residential site 4 would amount to inappropriate development (IR344), would result in substantial harm to the openness of the Green Belt (IR348), and would amount to a conflict with purpose 3 (IR349).
23. With regard to residential site 5, the Secretary of State agrees with the Inspector for the reasons given at IR350-353 that it should be regarded as previously developed land for the purposes of the Framework (IR350), but that the proposals would lead to substantial harm to the openness of the Green Belt, and would, therefore, amount to inappropriate development (IR353).
24. The Secretary of State agrees with the Inspector at IR354 that the new view from More Lane is a minor consideration which does not materially alter his overall conclusions on Green Belt matters.
25. Overall, the Secretary of State agrees with the inspector at IR356 that viewed in the round, the appeal proposals as a whole would amount to inappropriate development, would also result in substantial harm to openness and would represent a significant conflict with the purposes of including land in the Green Belt. He attaches substantial weight to this harm.

Character & Appearance

26. The Secretary of State notes that the Council raised no objections in terms of character and appearance in relation to Sites A, C, E1, E2 and F, and like the Inspector he sees no reason to disagree with that position. He further agrees that the racecourse as a whole can best be characterised as managed open space containing some buildings and features primarily associated with its function as a racecourse (IR358).
27. He agrees with the Inspector for the reasons given at IR363-365 that, subject to appropriate detailed design and sympathetic use of materials and landscaping, which could be secured at reserved matters stage, the proposals for residential sites 1 and 2 would not be harmful to the character and appearance of the area. He considers the remaining sites below.
28. For the reasons given at IR359-361, the Secretary of State agrees with the Inspector that the proposed hotel on Site B would be harmful to the distinctive character and appearance of the area (IR359), and that it would remove the ability to appreciate the distinctive end profile of the Grandstand, such that its role as a landmark building would be much diminished (IR360). He further agrees with the Inspector that while no doubt the car park works would improve surfacing and planting, Site F would still have the character and appearance of an extensive surface car park; and that the car park works would be relatively minor matters compared with the significantly harmful impact of the proposed hotel (IR361).
29. The Secretary of State agrees, for the reasons given at IR362, that more intensive use for car parking on Site D would have an urbanising effect that would be harmful to the character and appearance of the area.
30. With regard to residential site 3, the Secretary of State agrees with the Inspector for the reasons given at IR366-369 that the proposals would introduce an intensive form of

urban development and would cause significant harm to the existing character of the northern boundary (IR367). He further agrees that the scale and intensive urban character of some of the proposed flats would be out of keeping with, and harmful to, the character and appearance of Lower Green Road (IR368).

31. For the reasons given at IR370-372, the Secretary of State agrees with the Inspector that the proposals for residential site 4 would bring about a fundamental change by introducing a tall and intensive form of urban development (IR371), and that the scale and intensive urban character of the proposals for Site 4 would be harmful to the character and appearance of an area that is sensitive in landscape terms (IR372).
32. In respect of residential site 5, the Secretary of State agrees with the Inspector for the reasons given at IR373-375 that the height, scale and closely spaced nature of the proposed blocks would be out of character with the surroundings, and that this would be harmful to the character and appearance of the area (IR374).
33. Overall, for the reasons given above and in IR376-381, the Secretary of State agrees with the Inspector at IR381 that the proposals would be harmful to the character and appearance of the area, and that they would not integrate sensitively with locally distinctive townscape and landscape, nor would they deliver high quality design or enhance local character. The development would therefore be in conflict with CS Policies CS9 and CS17. It would also conflict with DMP Policy DM2 which seeks to preserve or enhance the character of the area. Like the Inspector, the Secretary of State attaches significant weight to this matter.

Housing and Affordable Housing

34. The Secretary of State notes that the Council cannot demonstrate a five year supply of housing sites (IR430). He agrees with the Inspector for the reasons given at IR429-430 that the proposals would accord with Policy CS19, and with DMP Policy DM10, and that significant weight should attach to the contribution to housing land supply, including the provision of smaller units.
35. For the reasons given in IR382-391, the Secretary of State agrees with the approach the Inspector has taken to benchmark land value, and weighing in the balance public benefits which flow from facilities which are, in effect, funded by limiting the amount of affordable housing that would otherwise be required (IR388). He agrees that when the PPG approach is taken, it is clear that the housing sites could deliver 45% affordable housing. He further agrees that the proposed 20% affordable housing is well below the policy requirement, resulting in conflict with the policy (IR389). Like the Inspector, he does not agree with the appellant's suggestion that Policy CS21 is out of date or otherwise not in accordance with the Framework (IR390).
36. Overall he agrees with the Inspector at IR431 that the benefits attached to the affordable housing should carry only moderate weight. For the reasons given in IR432, the Secretary of State agrees with the Inspector that moderate weight should be attached to the economic benefits related to housing.

Transport

37. For the reasons given at IR392-395, the Secretary of State agrees with the Inspector that increases on network links would be low and unlikely to be noticeable (IR392). While there would be an unquantified benefit relating to improvements in the flow of traffic onto

the racecourse, the Secretary of State agrees with the Inspector that there would be a harmful increase in congestion overall, albeit this is unquantified (IR394-5). He further agrees, for the reasons given in IR396-401 and IR407 that safe and suitable access to the various sites could be achieved, that the proposals would not result in any severe impacts on the road network (IR407), and that there are no highway safety issues that weigh against the proposals (IR397). In terms of opportunities for sustainable transport, he further agrees that residential sites 1 and 2 would be well placed for access to services and facilities (IR398), and that residential sites 3, 4 and 5 would be reasonably well connected and that occupiers would have a choice of means of transport (IR401).

38. For the reasons given at IR402-406, the Secretary of State agrees with the Inspector's analysis and conclusions regarding measures to improve the options for sustainable transport. Overall, he agrees with the inspector for the reasons given in IR407-409 that the transport measures would do no more than mitigate the transport impacts of the proposals, and that transport should therefore be regarded as a neutral factor in the planning balance.

Other benefits

39. While the proposals would result in improvements to the racecourse, the Secretary of State agrees with the Inspector for the reasons given at IR410-415 that these benefits would primarily flow to the appellant company (IR414), but that there would be some public benefits in the form of recreational and economic benefits (IR415). He further agrees with the Inspector for the reasons given in IR416-425 that only limited weight should be attached to the public benefit of the racecourse improvement (IR425).

40. For the reasons given in IR426-428, the Secretary of State agrees with the inspector that the proposed hotel would meet a need identified in the CS and would be likely to generate around 50 to 75 jobs, with further economic benefits in the hotel supply chain and spending by hotel residents. He further agrees that the proposal would accord with DMP Policy DM11, and like the Inspector he attaches significant weight to the benefits associated with the hotel. However, in the light of his overall conclusion on very special circumstances (paragraph 51 of this letter), he agrees with the Inspector's conclusion at IR462 that the proposals as a whole would conflict with Policy CS24.

Other matters

41. For the reasons given at IR433-440, the Secretary of State agrees with the Inspector that only limited weight should be attached to the community benefit of the family/community zone (IR435), that the potential for new tree planting and landscape works would not represent a further benefit of the proposals (IR436) and that limited weight should attach to the potential for biodiversity net gain (IR439-40).

42. The Secretary of State agrees with the Inspector for the reasons given in IR441-447 that the historic environment is a neutral factor in the planning balance (IR445), the delivery of a new day nursery carries only limited weight as a positive benefit of the proposals (IR446), and that none of the suggested benefits discussed in IR447 add materially to the case for, or against, the appeal.

43. The Secretary of State agrees with the Inspector for the reasons given in IR448-454 that flood risk, the living conditions of neighbouring residents, air quality, noise, community infrastructure and the claimed existence of unregistered common land do not add materially to the case for or against the appeal (IR454).

44. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017. As set out in IR468, he agrees with the Inspector that he would be required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives, should he consider that the appeal should be allowed and planning permission granted. Those sites are Southwest London Waterbodies Special Protection Area (SPA), Richmond Park Special Area of Conservation (SAC), Thames Basin Heaths SPA and Wimbledon Common SAC. The Secretary of State agrees with the assessment and findings in Annex D of the IR. However, he does not consider that carrying out an Appropriate Assessment would overcome his reasons for dismissing this appeal, and has therefore not proceeded to make an Appropriate Assessment in his role as the Competent Authority on this matter.

Planning conditions

45. The Secretary of State has given consideration to the Inspector's analysis at IR282-291 and IR405-406, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

46. Having had regard to the Inspector's analysis at IR6-8, IR403-404 and IR434, the planning obligation dated 1 December 2020, the Unilateral Undertaking of the same date, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR8 that, with the exception of the obligations relating to Esher Station and the Community Use Agreement, the obligation and undertaking comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation and undertaking overcome his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

47. For the reasons given above, and in the light of his conclusion in paragraph 51 of this letter, the Secretary of State considers that the appeal scheme is not in accordance with policies CS1, CS9, CS17, CS21, CS24, DM2 and DM17 of the development plan. He further agrees, for the reasons given at IR461-4, with the Inspector's conclusion that the proposal is not in accordance with the development plan overall (IR464). He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

48. As the Council lack a five-year housing land supply, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

49. Harms include the harm arising from inappropriate development in the Green Belt plus the impact on openness and conflict with the purposes of the Green Belt which attracts substantial weight. The harm to character and appearance carries significant weight.
50. Benefits include the hotel and contribution to housing land supply including the provision of smaller units, which each carry significant weight in favour of the proposals. The affordable housing and the economic benefits related to housing each carry moderate weight. Limited weight is given to the public benefits of the racecourse improvements, the family/community zone, ecological enhancements, and the re-provision of a day nursery.
51. The Secretary of State considers that the benefits of the scheme set out above would not clearly outweigh the harm to the Green Belt and the harm to the character and appearance of the area. He therefore concludes that the very special circumstances required to justify inappropriate development in the Green Belt do not exist, contrary to policy DM17 and paragraph 143 of the Framework. He further concludes that the proposals would be contrary to Policy CS1 which states that the Green Belt will continue to be a key determinant in shaping development patterns and that new development will be directed towards previously developed land within the existing built-up areas.
52. In the light of his conclusion on very special circumstances, he further concludes that the application of policies in the Framework that protect areas or assets of particular importance does provide a clear reason for refusing this development. Therefore, the tilted balance does not apply.
53. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.
54. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

55. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the hybrid planning application for the redevelopment of sections of Sandown Park Racecourse involving: Outline application for development/redevelopment of sections of the site to replace/ modify existing operational/associated facilities, and to provide up to 150 bedroom hotel (Use Class C1), family/community zone, residential development up to 318 units (Use Class C3) and to relocate existing day nursery (Use Class D1), all with car parking, access and related works following demolition of existing buildings and hardstanding (for access only); and Full application for the widening of the southwest and east sections of the racecourse track including associated groundworks, re-positioning of fencing, alterations to existing internal access road from More Lane and new bellmouth accesses serving the development ref. 2019/0551, dated 18 June 2019.

Right to challenge the decision

56. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for

leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

57. A copy of this letter has been sent to Elmbridge Borough Council and Sandown Park Appeal Group and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch

This decision was made by the Secretary of State and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Dominic Raab MP on behalf of Save Esher Green Belt and Esher Residents' Association	6 January 2021



Report to the Secretary of State

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Date 10 February 2021

TOWN AND COUNTRY PLANNING ACT 1990
ELMBRIDGE BOROUGH COUNCIL
APPLICATION BY JOCKEY CLUB RACECOURSES LTD
REGARDING
SANDOWN PARK RACECOURSE

Inquiry opened on 16 November 2020

Sandown Park Racecourse, Portsmouth Road, Esher

File Ref: APP/K3605/W/20/3249790

File Ref: APP/K3605/W/20/3249790**Sandown Park Racecourse, Portsmouth Road, Esher**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission (part outline/part full).
- The appeal is made by Jockey Club Racecourses Ltd against the decision of Elmbridge Borough Council.
- The application Ref 2019/0551, dated 18 June 2019, was refused by notice dated 3 October 2019.
- The development proposed is:
Hybrid planning application for the redevelopment of Sandown Park Racecourse involving: Outline application for development/redevelopment of sections of the site to replace/modify existing operational/associated facilities, and to provide up to 150 bedroom hotel (Use Class C1), family/community zone, residential development up to 318 units (Use Class C3) and to relocate existing day nursery (Use Class D1), all with car parking, access and related works following demolition of existing buildings and hardstanding (for access only).
Full application for the widening of the southwest and east sections of the racecourse track including associated groundworks, re-positioning of fencing, alterations to existing internal access road from More Lane and new bellmouth accesses serving the development.

Summary of Recommendation: That the appeal be dismissed**CONTENTS**

	<i>Page</i>
Preliminary matters	2
The site and surroundings	3
Planning policy	5
The proposals	7
Agreed matters	9
The case for the appellants – Jockey Club Racecourses Ltd	10
The case for the local planning authority – Elmbridge Borough Council	40
The case for the Rule 6 party – Sandown Park Appeal Group	66
Other parties who appeared at the Inquiry	68
Written representations	70
Conditions	70
Inspector's conclusions	73
Recommendation	110
Annex A – Appearances	111
Annex B – Abbreviations used in the report	112
Annex C – Documents	113
Annex D – Information to inform the Secretary of State's Habitats Regulations Assessment	134
Annex E - Conditions	138

PRELIMINARY MATTERS

1. At the Inquiry, an application for costs was made by Jockey Club Racecourses Ltd against Elmbridge Borough Council. That application is the subject of a separate report.
2. The Inquiry sat for 11 days between 16 November and 1 December 2020. My visit to the site and surrounding area was carried out on 30 November 2020. By agreement with the parties, the visit was mostly unaccompanied although an appropriate member of staff (unconnected with the Inquiry team) was present to enable me to gain safe access to the Grandstand and the Eclipse building at the racecourse. I also visited a residential property backing onto the racecourse, with the householder present solely to enable me to gain access to the back garden.
3. The application was initially submitted on 22 February 2019 incorporating ownership Certificate A. Subsequently, a revised planning application form was submitted on 18 June 2019 incorporating ownership Certificate B, notice having been served on an owner of part of the site. I have recorded the later date in the heading above. The application was submitted as a hybrid, comprising a full application for works to the racecourse and vehicular accesses and an outline application for other elements of the proposals.
4. In respect of the outline elements, only the means of access is to be determined at this stage. Layout, scale, external appearance and landscaping are reserved matters. Nevertheless, the Design and Access Statement and parameter plans provide information about the general layout and scale of development, including indicative landscaping. It is intended that the reserved matters would be generally in accordance with these documents. A planning condition to this effect has been suggested. I have therefore had regard to these documents in making my assessments and recommendation.
5. The appeal was recovered for determination by the Secretary of State because it relates to proposals for significant development in the Green Belt.
6. A section 106 Agreement between the appellant, the Council and Surrey County Council was submitted at the Inquiry (the Agreement). The main provisions may be summarised as follows:
 - a financial contribution to mitigate impacts on Littleworth Common, which is a Site of Nature Conservation Interest (SNCI);
 - arrangements to ensure that the funds resulting from the sale of the residential land are applied to the racecourse improvement works;
 - a financial contribution to improvement works at Esher Railway Station;
 - a financial contribution to auditing travel plans; and
 - arrangements for community use of recreation facilities to be provided as part of the proposals.

Other matters covered in the Agreement include obligations on the Council and Surrey County Council to apply the financial contributions as envisaged in the Agreement and arrangements to bind land occupied by a golf centre as if the operator had been an original party.

7. A unilateral undertaking (UU) was also submitted at the Inquiry. This would provide for 20% of the residential units to be delivered as affordable housing, together with arrangements for phasing. The UU provides for up to three viability reviews which could result in additional affordable housing, or an affordable housing contribution, in the event that viability improves. In addition, the UU would ensure that an existing day nursery would not be demolished until work starts on Site 5 and that no more than 65% of the market housing would be occupied before a replacement day nursery is operational.
8. The Council submitted a Community Infrastructure Levy (CIL) Regulations compliance statement¹ which sets out its reasons for concluding that the various obligations would meet Regulation 122. The amount of affordable housing was a controversial matter and the Council also had concerns about the phasing of the affordable housing and the delivery of the replacement day nursery. These matters are discussed below. Nevertheless, the Council did not dispute that the obligations would meet the relevant tests. Other than the obligations relating to Esher Station and the Community Use Agreement, which are discussed further below, I agree that the obligations meet the relevant tests and I have taken them into account accordingly.
9. The application was accompanied by an Environmental Statement (ES). I have taken the environmental information into consideration in my assessment and recommendation.
10. The Sandown Park Appeal Group was given Rule 6 status and appeared at the Inquiry.

THE SITE AND SURROUNDINGS

11. The site and surroundings are described more fully in the Statement of Common Ground². Sandown Park racecourse extends to around 66 hectares (ha), located north east of the centre of Esher and south west of Esher railway station. It is bounded by Lower Green Road to the north, More Lane to the west, Portsmouth Road (the A307) to the south and Station Road to the east. The main access is from Portsmouth Road and there is an entrance from More Lane which gives access to facilities in the central part of the racecourse.
12. The Grandstand and Eclipse building are located on the southern side of the racetrack. These facilities are also used for conferences and other events on non-race days. Operational facilities, including stables, paddocks, staff accommodation and car parking are located between the Grandstand and Portsmouth Road. The Warren (located to the south west of the Grandstand) is an elevated and wooded area which contains a dry ski slope and other leisure facilities. The Warren is designated as ancient woodland and has been identified as a landmark. Within the centre of the racetrack there is a golf centre, including a golf course and a driving range, and a karting circuit with associated buildings and parking areas. Other features of the site include a day nursery adjacent to Portsmouth Road and staff housing on the north western side of the racetrack.

¹ CD8.17

² Statement of Common Ground of 17 June 2020

13. There are residential areas to the south and residential properties fronting More Lane to the west. To the north there are houses fronting Lower Green Road and a railway embankment. Esher district centre, which contains a wide range of shops and services, adjoins the south west corner of the racecourse. There are bus services along Portsmouth Road, More Lane and at Esher Green. The railway station provides rail services to London Waterloo, Weybridge and Woking (amongst other destinations).
14. The location plan (CD5.4) submitted with the application identifies the red line boundaries of those sites within the racecourse which are the subject of the appeal proposals:
- Site A – an area of 2.2ha including stable blocks, a pre-parade ring, saddling enclosures, parking and horsebox unloading areas and a two storey building providing hostel accommodation known as Sandown Park Lodge.
 - Site B – an open hard surfaced area of 0.3ha to the east of the Grandstand used for parking.
 - Site C – an area of 3.3ha in the centre of the racetrack including a karting circuit and associated buildings, accessed from More Lane.
 - Site D – an open area of 3.5ha, part of which is a hard surfaced car park. The rest is grassed and is used for overflow parking on race days and for some other events. Access is from More Lane.
 - Sites E1 and E2 – grassed areas of 0.46ha and 0.22ha respectively, lying on the inside of the bends at the north east and south west corners of the racetrack.
 - Site F – an open area of 3.68ha adjacent to Portsmouth Road and wrapping around Site B. It is the main visitor car park for race days and major event days. The southern part is surfaced and laid out in rows for parking. The boundary to Portsmouth Road includes Grade II listed gates, walls and railings.
 - Site 1 – an area of 0.24ha containing stable blocks located between the Warren and the backs of properties fronting Esher Green. Access is from More Lane and a small part of the site is within the Esher Conservation Area. There are various listed buildings nearby in the vicinity of Esher Green.
 - Site 2 – an area of 0.46ha adjacent to Portsmouth Road and Esher district centre, comprising stable blocks and hard surfaced parking areas associated with Sandown Park Lodge. There is pedestrian access from Portsmouth Road and vehicular access is via the main entrance to the racecourse. The Travellers Rest shelter is an adjoining Grade II listed building within the pavement of Portsmouth Road. Sandown House is a Grade II listed building on the opposite side of the road.
 - Site 3 – an area of 1.76ha to the north west of the racetrack, including two semi-detached pairs of bungalows and two semi-detached pairs of houses (8 units in total) used for staff housing. To the east of these dwellings are open areas of allotments and compounds. The site is

crossed by a watercourse and parts of it are in flood zone 2. Land between the watercourse and Lower Green Road is an open area with several large trees and other vegetation.

- Site 4 – an open area of 0.57ha at the south east corner of the racecourse, with a frontage to Station Road. There is a car park to the former Café Rouge (which was vacant at the time of my visit) to the south and commercial buildings to the west.
 - Site 5 – an area of 0.99ha, the western part of which is part of a larger hard surfaced area used as overflow car parking on race days. Access is via the main entrance to the racecourse. The eastern part includes a children's day nursery, which occupies the locally listed Toll House and a detached dwelling. There is a Grade II listed coal tax post attached to the Toll House. There are several mature trees within the site.
15. Sandown Park was laid out in 1875 and is one of 14 racecourses owned by the Jockey Club. The racecourse has an extensive planning history which is described in the Statement of Common Ground. This shows how the racecourse facilities have been added to over many years. The planning history includes two planning permissions for a hotel on Site 2 in 2009 and 2011. There is a certificate confirming that the second of these has been implemented and therefore remains extant. However, works do not appear to have progressed far and there is little to be seen on site.

PLANNING POLICY

16. The development plan includes the Elmbridge Core Strategy (2011) (CS) and the Elmbridge Development Management Plan (2015) (DMP)³. The Council is currently working on a new development plan but no party sought to rely on any emerging policies at the Inquiry.

Elmbridge Core Strategy

17. I consider that the CS policies that are most important for the purposes of this appeal are as follows. Policy CS1 sets out a spatial strategy which is intended to accommodate growth in the most sustainable way. It states that protecting the Green Belt and other open spaces will continue to be a key determinant in shaping settlement patterns. Esher is defined as a suburban settlement area. Policy CS9 states that Esher will continue to fulfil a diverse range of important roles as a centre for residential, employment, leisure, recreational and tourism uses. Amongst other matters, the policy states that Esher has relatively good accessibility and higher density residential/mixed use developments could be appropriate around the town centre. It also states that the Council will promote the provision of hotel accommodation in order to support the tourist venues at Sandown Park Racecourse and Claremont Landscape Gardens.
18. Policy CS15 seeks to ensure that new development does not result in a net loss of biodiversity and, where feasible, contributes to a net gain through the incorporation of biodiversity features. Policy CS16 seeks to resist the loss of social and community facilities unless particular circumstances apply as set out in the policy. Policy CS17 states that new development will be required to

³ CD1.1 and CD1.2

deliver high quality and inclusive sustainable design which, amongst other matters, integrates sensitively with locally distinctive townscape, landscape and heritage assets. Policy CS19 seeks to secure a range of housing types and sizes across the Borough.

19. For housing sites of 15 or more dwellings, Policy CS21 requires that, on a greenfield site, 50% of the dwellings should be affordable. Elsewhere, 40% should be affordable. Policy CS24 states that, to support the sustainable growth of tourism in the area, the Council will promote all new hotel development on previously developed land within or adjacent to town and district centres or visitor attractions. Policy CS25 seeks to promote improvements to sustainable travel, including by directing new development that generates a high number of trips to previously developed land in sustainable locations within the urban area. Policy CS26 seeks to reduce the risk of flooding.

Elmbridge Development Management Plan

20. I consider that the DMP policies that are most important for the purposes of this appeal are as follows. Policy DM2 states that new development should achieve high quality design, taking account of local character, including any specific local designations, amongst other factors set out in the policy. Policy DM5 deals with pollution. It seeks to avoid harm to living standards from noise and states that development proposals should not have a significant adverse effect on Air Quality Management Areas. Policy DM7 deals with access and parking. It states that there should be safe and convenient access from the highway for pedestrians, cyclists and motorists and that proposals should minimise the impact of traffic nuisance, particularly in residential areas and other sensitive areas.
21. Policy DM9 states that new development for social and community facilities will be encouraged, subject to criteria that are set out in the policy. Policy DM10 requires a mix of housing types and sizes to meet local housing need whilst reflecting the character of the area. Policy DM11 gives encouragement to development that supports sustainable economic growth, including existing business sectors, and the vitality and viability of town and district centres. Policy DM12 states that planning permission will be granted for developments that protect, conserve and enhance the Borough's historic environment, having regard to heritage designations and locally listed buildings.
22. Policy DM17 states that inappropriate development in the Green Belt will not be approved unless the applicant can demonstrate very special circumstances that will clearly outweigh the harm. Built development for outdoor sport and recreation will need to demonstrate that the building's function is ancillary and appropriate to the use and that it would not be practical to re-use or adapt any existing buildings. Policy DM21 states that all new development will be expected to preserve, manage and where possible enhance existing habitats, protected species and biodiversity features. Development affecting locally designated sites (such as Littleworth Common SNCI) will not be permitted if it would result in significant harm to the nature conservation value of the site.

Supplementary Planning Documents

23. The Council has adopted the Design and Character Supplementary Planning Document (SPD) together with a Companion Guide: Esher⁴. Together, these documents set out a character summary for the area and provide design guidance. The Developer Contributions SPD includes guidance on CIL and planning obligations.

THE PROPOSALS

24. Sandown Park is a jump and flat racing venue which hosts 25 horse racing fixtures, attracting around 120,000 visitors annually. In addition, racecourse facilities are used for around 300 non-racing events, such as conferences, weddings, banqueting and public exhibitions, attracting around 118,000 to 128,000 visitors per annum⁵. The appellant states that proposals are put forward as a package to address a number of challenges facing the long term success of the racecourse. These are said to include ageing infrastructure (requiring significant spending on maintenance), maintaining a competitive racing programme, keeping pace with future needs of users and visitors and improving the visitor experience to retain existing customers and attract new audiences.
25. The proposed improvements to the racecourse include:
- redeveloping the stables and providing new stable staff accommodation/facilities;
 - enhancements to the paddock;
 - racetrack widening;
 - a rationalised site-wide parking strategy;
 - refurbishment of the 45 year old Grandstand;
 - an on-site hotel; and
 - improved frontages to racecourse entrance and car parks.
26. The proposals also include a new family zone, with a café, indoor/outdoor play facilities and a children's cycle track and re-provision of a children's day nursery. Up to 318 residential units are proposed, intended as facilitating development. Through the mechanism of the Agreement, the land receipts from the residential land would be directed to the racecourse improvement works. The refurbishment works to the Grandstand do not themselves require planning permission and thus are not within the proposals for which planning permission is sought.
27. The full (detailed) elements of the proposals relate to racetrack widening on two bends (Sites E1 and E2) and bellmouth accesses serving the various development sites. The outline elements of the proposals are:

⁴ CD3.2, parts 1 and 2

⁵ CD6.50 (Planning Statement), paragraphs 3.3 and 3.4. JCR2/1 gives a figure of 157,000 spectator attendees at paragraph 11

- Site A – redevelopment of the stables, paddock area, pre-parade ring and horse box parking area with replacement facilities including two-storey race day staff hostel accommodation (20 bedrooms);
 - Site B – a six storey hotel of up to 150 bedrooms;
 - Site C - demolition of existing buildings and remodelling of the existing kart track to accommodate a family/community zone comprising outdoor recreational areas, cycle track, indoor soft play and ancillary café;
 - Site D – improvement of the car parking area through installing grasscrete surfacing;
 - Site F - amendments to the layout of the car parking area through soft and hard landscaping, including relocation of the existing broadcasting compound and turnstiles/kiosk;
 - Site 1 – up to 15 residential units (one and two bedroom) in a building of one, two and three storeys;
 - Site 2 – up to 49 residential units (one, two and three bedroom) in a building of two, three and four storeys with car parking covered by a landscaped deck;
 - Site 3 – up to 114 residential units (one and two bedroom) in nine buildings of one, two and three storeys;
 - Site 4 – up to 72 residential units (studio, two and three bedroom) in a building of crescent form of four, five and six storeys with roof terraces;
 - Site 5 – up to 68 residential units (one, two and three bedroom) in buildings of three and four storeys, retention of Toll House for use in connection with the residential development and a two storey children’s nursery with associated amenity space.
28. The changes in footprint, floor area and volume for those sites where significant new buildings are proposed are set out in Table 1. The costs for the racecourse improvements that would be funded from land receipts are set out in Table 2.

Table 1 – changes in footprint, floor area and volume

Site	Baseline condition			Proposed development		
	Footprint (m ²)	Floor area (m ²)	Volume (m ³)	Footprint (m ²)	Floor area (m ²)	Volume (m ³)
A	1,899	1,927	4,800	2,500	2,900	8,900
B	0	0	0	1,700	6,997	27,950
C	1,065	1,065	3,000	700	700	2,500
1	540	540	2,200	660	1,200	5,300
2	469	932	2,800	3,400	6,336	18,110
3	199	586	1,750	4,050	9,450	33,750

4	0	0	0	1,500	8,454	30,050
5	323	397	1,200	2,150	5,743	18,150
<p><i>Note – the footprint, floor area and volume of the existing Sandown Park Lodge have been excluded from the figures for Site A and included in Site 2 on the basis that the building is located on the boundary. All figures are taken from the appellant’s amended Green Belt Statement⁶. They were not disputed by any party at the Inquiry.</i></p>						

Table 2 – racecourse improvement works

Summary of works	Cost (£million)
Stables	6.9
Stable lads’ hostel/canteen	2.8
Grandstand refurbishment	16.2
Car parking in middle of course	1.2
Family/community zone	5.8
Track improvements	0.9
Staff house refurbishment	0.1
Re-align access road and car park	0.9
Pedestrian entrance arrival	1.0
Total	35.8
<p><i>Note – costs have been rounded from the MWA estimates which are set out in CD6.63. These are below the appellant’s estimates in the same document. However, the total of the MWA estimates is £35.8 million which was the figure agreed between the Council and the appellant in the Statement of Common Ground on Viability</i></p>	

AGREED MATTERS

29. The Council and the appellant agreed a statement of common ground (SoCG). In addition to matters such as site description, relevant policies, planning history and suggested planning conditions, the following matters are agreed:

- the proposals for Sites A, C, E1, E2 and F would not be inappropriate development in the Green Belt;
- the proposals for Sites A, C, D, E1, E2 and F would not result in any adverse visual impacts in the wider area;

⁶ CD6.51, appendix 2, table 1

- no objection is raised (in terms of character and appearance) to the principle of blocks of flats on Site 5;
 - no objection is raised (in terms of character and appearance) to the indicative layout for Site A;
 - the proposals for Sites A, B, C, D, E1 and E2 would not in principle have a harmful impact on heritage assets;
 - the proposed access works for Site 1 would preserve the character of the Esher Conservation Area;
 - subject to detailed design, it is likely that the proposals for Site 3 would have a minimal impact on the settings of locally listed buildings;
 - the retention of the Toll House at Site 5 is welcomed;
 - race day and exhibition day travel plans would improve the safety of road users including pedestrians; and
 - notwithstanding the loss of car parking spaces, there would be sufficient parking to meet maximum demand and to comply with standards.
30. The Council and the appellant also agreed a SoCG in relation to viability. This covered the inputs to the financial viability assessment for the 20% affordable housing appraisal. At the Inquiry it became apparent that the differences between the parties related solely to the approach to benchmark land value. There was no dispute regarding the inputs or methodology for any of the financial viability models before the Inquiry.

THE CASE FOR THE APPELLANT – JOCKEY CLUB RACECOURSES LTD⁷

31. Sandown Park racecourse is a nationally important sporting venue. The proposals would bring about major upgrading of its facilities, to transform it into a high-quality racecourse able to compete with the best and to halt its decline. The current facilities are deteriorating and in urgent need of major restoration. British horse racing is a major industry, employing over 17,000 full time equivalent employees and contributing £1.1bn each year to the UK economy. In 2019, over 3.5 million people attended British racecourses making racing the second most popular spectator sport after football. Sandown plays a key part in British horse racing, staging world-famous Group 1 races such as the Eclipse.
32. To compete effectively in an international sport, it is necessary to have high quality facilities. For example, not just the Grandstand but also the general environment of the racecourse must be of high quality. Facilities for racing staff and equine welfare are currently well below the standards found at leading racecourses in the UK and Europe. A new hotel on the racecourse is required to increase the attraction of Sandown Park and match that offered at other sporting locations. The hotel should be located adjacent to the Grandstand for operational reasons and so that the attractiveness of the hotel will be enhanced by views over the racecourse.

⁷ This is a summary. The full closing submissions are at CD8.30. The full opening submissions, which are to be read together with the closing submissions, are at CD8.1

33. In addition to racing, Sandown Park operates as an events venue throughout the year, utilising buildings which would otherwise be underused. Some 20% of its income is derived from non-racing activities. However, the suites, halls and exhibition areas are looking tired and water leaks penetrate the building. The interiors, lifts, toilets and mechanical and electrical systems all require significant upgrading for this to be an attractive venue for events such as trade fairs, product launches and weddings.
34. It is an objective of the Jockey Club that racing should become fully inclusive. The proposals would improve facilities for families, for people of all ages and for those with impaired mobility. The family/community zone is necessary to make Sandown Park significantly more attractive to families with children of all ages, including teenagers. On race days, it would allow young children to be in a safe environment away from bars selling alcohol and betting areas. It would be located in the centre of the course where parents could watch the racing from a mound adjacent to the track, or from inside the new high-quality café. On non-race days the family/community zone would be of great benefit to residents of Esher, with access to the facilities secured by a community use agreement.
35. Despite substantial investment and maintenance over many years, the racecourse is now in urgent need of significant upgrading and restoration⁸. The grant of planning permission would reverse the decline of Sandown Park, transforming it into a flagship racecourse of the quality found at some of the best racecourses and leisure venues in Great Britain. The main issue before the Inquiry is whether the planning system should support the restoration of the racecourse through the proposed facilitating development. There is no other way that the urgent need for transformation can be met. With the exception of the proposed installation of grasscrete at Site D, the improvement works themselves are not in dispute.
36. The public interest has too much to lose if the proposed scheme does not go ahead. The use of the land as a racecourse has maintained the planning objective of openness and provided facilities for outdoor sports and recreation since the 1880s. As long as the racecourse is thriving, this part of the Green Belt will also be secure. This is a point of significant environmental and planning policy importance to which great weight should be attached, in addition to the preservation and creation of hundreds of jobs, the implementation of development plan policy and the national importance of Sandown Park as a racecourse.
37. The planning system exists to regulate the development and use of land in the public interest, not to prevent development which is in accordance with planning policy. The Framework makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. This means meeting the development needs of the area, including those of Sandown Park racecourse. Subject to compliance with Green Belt policy, this includes supporting development for housing in the way proposed. The officers' report recognised that government and development plan policy enable the planning system to support this exceptionally important initiative. Council officers recommended that permission should be granted, not as an exception to policy

⁸ CD6.63, JCR2/1, JCR2/5 appendix R1

but within policy. Whilst they concluded that there would be inappropriate development in the Green Belt, they recognised that very special circumstances exist⁹. That illustrates the weight to be given to the very special circumstances that are now before the Secretary of State.

38. The Council encouraged the appellant to bring forward a long term masterplan to enhance and sustain the racecourse for the foreseeable future¹⁰. The masterplan¹¹ includes development of Green Belt land within the racecourse for housing. The Agreement would ensure that the proceeds of sale would fund the whole of the restoration scheme for which planning permission is sought, as well as the refurbishment of the Grandstand. If the proposed step change to Sandown Park is to take place, there is no alternative to locating facilitating development on Green Belt land because all of the racecourse lies in the Green Belt.
39. The appellant's vision is that the facilitating development would secure the future of the racecourse for at least the next 20 years. There is a pressing need for major restoration works to be carried out and these works cannot be carried out in isolation. The consequence of not carrying out the works would be further decline and deterioration of the racecourse and its associated facilities, threatening future viability. This 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, many of whom are based in the local area, and remove over 250,000 visitors per year from Esher. This would potentially adversely affect the viability of Esher district centre.
40. These are the conclusions of the independent Council officers¹², who were best placed to reach an independent assessment of the proposals. Elected members had the right to depart from that recommendation. However, in this case substantial weight should be given to the officers' report because they were involved from the inception of the masterplan. Moreover, the professional officers have qualifications and experience relevant to the balancing of issues and the interpretation of local/national planning policy. The officers considered that the racecourse is a key part of the local economy, loss of which would result in a significant economic downturn¹³. They concluded that significant weight should be attached to the need to retain viable operations. The appellant warmly endorses those conclusions. Moreover, they are consistent with the evidence that has been tested at this Inquiry.
41. If, contrary to the appellant's position, the proposals are found to be inappropriate development, then the benefits flowing from the transformation of the racecourse would be overwhelming and would clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm. It follows that very special circumstances exist and that the appeal should be allowed.

⁹ The Framework, paragraphs 143 and 144 and CD7.3, paragraph 9.11.4

¹⁰ JCR2/1, paragraph 14

¹¹ CD6.48

¹² CD7.3, page 81, paragraph 9.9.1.1.5

¹³ CD7.3, page 82, paragraph 9.9.1.1.7

42. It cannot reasonably be disputed that the racecourse buildings have deteriorated significantly, reaching a point where urgent rebuilding and restoration works are required in order to compete effectively with other racecourses and recreational venues. The Council has produced no contrary evidence. The schedule of works and costs does not encompass all the works that are intended. Other works, including works to the Eclipse building, would be required subsequently. As explained by Mr Gittus¹⁴ (Group Property Director of the Jockey Club) and in the written evidence of Mr Balharrie¹⁵ (a construction consultant with particular expertise in racecourse refurbishment) only that which is essential to bring about a transformation of the quality of the racecourse has been included in the schedule of proposed works and costs which is the subject of the appeal proposals. Increased revenue would enable other works to be carried out subsequently. Mr Balharrie advised that all the works being proposed to refurbish or replace the racecourse buildings are necessary, otherwise the facilities will continue to deteriorate and will potentially become unusable. Moreover, the cost of carrying out the refurbishment works would increase over time as the buildings deteriorate.
43. Mr Gittus made clear that if the package of proposals is not granted planning permission, then the transformational works will not go ahead. The racecourse has run at marginal profitability over a number of years. The appellant currently has debt amounting to some £110 million and it cannot take on any more debt for major capital projects for the foreseeable future¹⁶. This is not just a decision of the Board, it is a requirement of the banks who fund the debt. Moreover, the Covid-19 crisis has resulted in lost revenue of some £90 million (to date) from which will take years to recover. The appellant offered to call an expert witness with specialist knowledge of the accounts to answer questions on these matters but the Council did not think that was necessary. None of the appellant's evidence on affordability was challenged effectively at the Inquiry.
44. Dr Lee (the Council's viability witness) asserted that the appellant could raise finance through a bond issue or carry out the development itself. Those assertions were made without expert financial knowledge or experience. Dr Lee referred to a bond issued by Cheltenham racecourse. Mr Gittus explained that Cheltenham racecourse, which has a four day festival, is a significant money earner and is not comparable with Sandown Park. In any event, a bond issue would raise the overall level of debt, introduce new risks and break the bank consortium's terms and covenant. In circumstances where the position has been clear to Council officers for many months prior to the Inquiry, Dr Lee's assertion cannot carry any weight.
45. The upgrading of the Eclipse building would cost some £3.5 million. Following discussions with Council officers, these works were excluded from the planning application costings and proposals. Arguably they would be more than the minimum needed to achieve transformational change. In any event, they would have led to an excess of built development.

¹⁴ CD6.63 and JCR2/1, paragraph 18

¹⁵ JCR2/5, appendix R1

¹⁶ JCR 2/1, paragraphs 42, 44 and 48

46. Consideration was given to a lesser quality of upgrading. However, much of the cost of refurbishing the Grandstand relates to stripping out and replacing mechanical and electrical equipment. Once that has been done, there is only limited opportunity for savings on making good, finishes and furnishings. For those areas that are to be refurbished, the difference between high quality finishes and furnishings and a merely adequate restoration would result in a potential saving of only around 5%. That would be a false economy because the whole basis of the proposals is to generate more revenue by creating a high quality environment throughout the racecourse.
47. There were extensive pre-application discussions with Council officers¹⁷. The officers sought details of the appellant's financial position¹⁸ and encouraged the preparation of a masterplan for the site as a whole. Work continued on an integrated package of proposals in 2018/19. Ultimately, the officers recommended approval of the proposals in a lengthy and detailed report, which included inputs from external consultants and consultees, including the highway authority.
48. The application was supported by extensive details of the improvement works required, including costs and viability considerations. This showed that the facilitating development would be the minimum required and that 20% affordable housing was the most that could be provided. The design parameters for each site were established, including access, height, indicative layouts and landscaping. Reports were provided covering townscape, arboriculture, heritage and ecological matters. The ES included air quality and transport assessments. The appellant's transport consultants reached agreement with the highway authority on traffic generation, distribution, impact and mitigation measures, including improvements to sustainable transport options.
49. The officers' report considered the relevant planning policies in depth and concluded that harm to the Green Belt would be clearly outweighed by the cumulative benefits of the proposals¹⁹. Accordingly, the report found that very special circumstances would exist and that the proposals would be in accordance with the development plan and national policy. The report also concluded that paragraph 11(d) of the Framework is engaged because the Council cannot demonstrate a five year housing land supply and that the proposals would be in accordance with that paragraph. There is clear evidence of interest by housebuilders in developing the sites²⁰.
50. The appeal proposals are identical to those before the Council officers when they made their recommendation for approval. There have been only minor changes to some suggested conditions and planning obligations, as follows:
 - a contribution to restoration of the Grade II listed Travellers Rest is not now thought to be necessary because the proposals would enhance the setting of the listed building, rather than causing harm²¹;

¹⁷ JCR2/1, paragraph 38

¹⁸ CD7.3, page 86, paragraph 9.9.2.2.7

¹⁹ CD7.3, page 96, paragraphs 9.11.4 and 9.11.5

²⁰ JCR1/4, paragraph 5.12

²¹ JCR8, paragraph 2.4

- the amount of the Littleworth Common contribution has been agreed;
 - the method of delivery of affordable housing is agreed (although the amount of affordable housing is not agreed); and
 - it is no longer agreed that the transport improvements should include road widening at Lower Green Road.
51. The Lower Green Road works have been costed at £500,000 although there was no scheme before the Inquiry. The impact of the appeal proposals would be, in the worst case, an addition of one vehicle per 3 minutes in the peak hour²². This would be imperceptible. The highway authority is seeking an extraneous benefit that would be unnecessary and not relevant to planning or to the development to be permitted. It would also be imprecise and uncertain as there is no scheme. Moreover it would be unreasonable in that alternative traffic management measures are likely to be better, safer and less costly.
52. The Council has been aware of the need for investment to sustain future racing at Sandown Park since 2008, when it granted planning permission for a hotel at the racecourse²³. However, as Mr Gittus explained, there was no market for a hotel at the back of the operational area next to the lorry/horsebox park. The racecourse has continued to operate and is just about managing but it has continued to decline and is now at a tipping point²⁴. The marginal surplus from the existing facilities (which Mr Gittus stated to be approximately 2%) has not been sufficient for the level of capital repairs, improvements and replacements required without external funding and support. As Mr Gittus said in answer to a question from the Inspector, Sandown Park may be able to continue in the short, or even medium, term but in the long term the economic reality is that it may be unable to continue²⁵.
53. Although Council officers had previously accepted the need for refurbishment, including the extent and cost of the works, this was queried for the first time at the Inquiry. This matter had not been raised in the Council's Statement of Case and there were only two very general statements in the proof of evidence of Mrs Hyde (the Council's planning witness)²⁶. During her evidence, Mrs Hyde queried whether the amount spent previously on the Bendigo area was high for a stop-gap measure and whether the existing furniture could be reused after the Grandstand had been refurbished. Mr Gittus rebutted these points in his evidence. Moreover, Mrs Hyde put forward no evidence to support these assertions and accepted that she had not consulted the officers who had been responsible for the application. Nor had she sought information from the

²² CD5.45, ES technical appendix 7.1, pages 20 and 21, tables 5.6 and 5.9 – additional 21 vehicles in AM peak at 2027

²³ CD7.17, officers' report, paragraph 37

²⁴ JCR2/1, paragraph 17

²⁵ Inspector's note – in answer to my questions, Mr Gittus said that, if the appeal proposals do not go ahead, in the short/medium term the appellant would not be able to fund the investment needed to get the racecourse back to where the Jockey Club would like it. In the longer term, the objective would be to keep it running, although the economic reality may prevent the Jockey Club from being able to do so.

²⁶ EBC4/1, paragraphs 14 and 19

appellant or inspected the inside of the racecourse buildings. Mrs Hyde also criticised the family/community zone without seeking any further information.

54. The Council did not put forward any evidence to dispute the need for the development. In the absence of evidence, it should have followed the views of the officers who had considered the proposals at the pre-application and application stages²⁷. There is no dispute that the racecourse buildings require renewal and/or extensive refurbishment. Stop-gap improvements cannot continue indefinitely. Many of the buildings fail to meet modern standards, or have reached the end of their useful life, including the stables and the veterinary equine testing facilities in Site 1.

The minimisation of impact and maximisation of benefits

55. The appellant does not own any land at Sandown Park outside the Green Belt. When the sites for development were chosen, the use of previously developed land was maximised. Visual impacts and impacts on the Green Belt were minimised. Housing development is proposed in sustainable locations on the periphery of the racecourse. The mix would meet existing needs and affordable housing would be maximised. There would be substantial economic benefits, especially as a result of the hotel and the upgrading of the racecourse facilities. The 3.3ha family/community zone²⁸ would further inclusivity and help to integrate the racecourse into the local community by providing a high quality facility free to young residents and their parents.
56. The proposals would improve racecourse facilities and reduce existing impacts where possible. The car parks would be improved, both visually and operationally, substantially reducing the impact of race day traffic on the area. The proposals would improve access for mobility impaired and disabled persons throughout the site and would improve accessibility to the town centre and railway station from the racecourse. Views across the racecourse from More Lane would be opened up. Scattered built development on Site C would be rationalised. There would be a travel plan and a landscape and ecological management plan. The proposals include a significant proportion of previously developed land and much of the development would be appropriate in Green Belt terms.

The hotel

57. The hotel would form part of a package of improvements designed to enable the racecourse to compete with racecourses elsewhere, by making high quality facilities available for owners, trainers and racegoers. The CS promotes hotel development to support the tourist venues of Sandown Park racecourse and Claremont Landscape Gardens²⁹. The Council accepted that the best location for such a hotel to support Sandown Park would be on the racecourse itself³⁰. It is agreed that Site B is previously developed land.

²⁷ CD7.3, paragraph 9.9.1.1.5

²⁸ CD6.49, page 32

²⁹ CD1.1, policies CS9 and CS24

³⁰ Inspector's note – accepted by Mrs Hyde in answer to questions from Mr Steel

58. Mr Gittus explained that the proposals require a high quality hotel because a budget hotel would not meet customer expectations or generate sufficient revenue. Sandown Park must compete with racecourses in France and Ireland to attract sufficient racehorse owners. The written evidence of Ms Liggins³¹ (Development Manager for the Accor hotel group) stated that positioning the hotel adjacent to the Grandstand would be important to enable it to integrate with sporting events, conferencing space and hospitality areas. Accor envisage the hotel being upper 3 star/4 star. Ms Liggins also advised that hotel guests would expect to have views over the racecourse. This would enhance the appeal of staying in a racecourse hotel. Moreover, the location would allow the hotel to benefit from access to Esher town centre. There was no contrary evidence before the Inquiry.
59. The officers' report accepted that the proposed hotel would generate additional jobs in the area and bring additional customers to support the town centre. It was also stated that hotel accommodation has not kept pace with the growth in visitor attractions, a factor that limits potential tourism growth, and that Elmbridge is therefore seeking to deliver an increase in hotel bed spaces. The report refers to the Surrey Hotel Futures Study (2015) which confirms that there is potential for hotel development at Kempton Park and Sandown Park racecourses. The locations identified as suitable for hotel development in Surrey include:
- "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 of weekend demand in terms of weddings, events and leisure visits"*
- The officers' report notes that the study concludes that there is significant potential and need for hotel development in all parts of the county. It goes on to conclude that there is clear policy support for the provision of a hotel at Sandown Park racecourse³².
60. The hotel planning permission granted in 2008 has not been built out. Being located at the back of the operational area, it could at best be a budget hotel. This would not achieve the appellant's objectives. Moreover, there would be significant operational problems from being next to the stables and the lorry and horse box unloading area. The appellant accepts that the extant permission is not likely to be built out and does not therefore represent a fallback. Mr Clarke stated that there is no evidence of any other hotel site which is allocated or being proposed in Elmbridge. It follows that, without the appeal proposal, the need for a hotel identified in the development plan would remain unsatisfied. The proposed hotel would also be well placed to serve visitors to Claremont Landscaped Gardens.
61. The appellant estimates that the hotel would generate at least 100 jobs (full time equivalent) based on information from hotel operators³³. In addition, the

³¹ JCR 2/5 appendix R2

³² CD 7.3, page 82, paragraphs 9.9.1.2.1 to 9.9.1.2.7

³³ Inspector's note – CD3.54, table 6 suggests 75 jobs for an 'upscale' hotel of 150 bedrooms. Mr Gittus' summary proof (JCR2/2) suggests at least 100 jobs. In his oral evidence Mr Clarke

hotel would purchase supplies and services in the local economy and encourage racecourse customers to stay longer in the area, with potential additional spending in Esher. Significant weight should be given to the provision of a hotel on Site B as proposed.

62. Even though the extant permission is unlikely to be built out, the fact that the permission was granted is relevant to the Green Belt and townscape character assessments for Site 2. If the appeal is allowed the extant hotel permission would be nullified under the terms of the Agreement.

The other racecourse facilities proposed

63. Other facilities proposed include rebuilding the stables and equine veterinary facilities, racing staff accommodation, track improvement works, car park and entrance works and the pedestrian entrance from Portsmouth Road. These matters were not controversial and were not discussed in any detail. The total cost of these facilities would be over £11.5 million³⁴. They would bring substantial benefits in terms of equine health, benefits for racing staff and townscape improvements on the Portsmouth Road frontage.

Noise, air quality and other alleged impacts

64. There is no evidence of other harm as put forward by the Council. These matters have been considered by officers and do not weigh against the development. This includes overlooking³⁵ and other matters raised by third parties. There are reports before the Secretary of State in respect of arboriculture, noise and air quality.

Development plan policy - Elmbridge Core Strategy³⁶

Policy CS9 – Esher

65. Policy CS9 is the principal policy concerning development within Esher and the most relevant policy for this appeal. The whole of the policy is relevant and it is fully supportive of the proposal. The proposals meet Policy CS9 in full:
- *"Esher will continue to fulfil a diverse range of important roles in the centre for residential, employment, leisure, recreational and tourism uses".* The proposals accord with this.
 - *"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 use of previously developed land is supported but there is no requirement for development to be exclusively on such land.
 - *"All new development will be expected to enhance local character. Special attention will need to be given to areas of high heritage value*

stated that Mr Irvine (of Rapleys) had spoken to various operators and this exercise had verified Mr Gittus' estimate.

³⁴ CD6.63

³⁵ JCR 1/3, appendix 11

³⁶ CD1.1

including... Esher Conservation Areas". The Council accepted that this could be met, in particular in relation to the hotel, and that high quality architectural design and landscaping could be achieved through the control of reserved matters.

- *"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 and support the town centre's vitality and viability, contributing to the diversity of uses available to local people". This supports the provision of higher density residential development on Sites 1 and 2 and the sustainability of the proposals in general. Account has been taken of the historic context and there would be heritage benefits. The officers' report accepts that these proposals would support the vitality and viability of Esher.*
- *"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". The proposed hotel would include a restaurant, which officers found to be acceptable. It would increase the diversity of uses available to local people and enhance the vitality and viability of Esher.*
- *"The Council will work in partnership with landowners and Surrey County Council to implement appropriate measures that could address traffic congestion in the town centre and reduce the negative impact of lorry movements through residential areas". Mr Lewin (the appellant's transport witness) explained that the proposed works to the entrances and car parks would improve the flow of traffic into the racecourse and reduce congestion on race days. This would be a major benefit to which significant weight should be given.*
- *"The Council will also promote improved access within the area for pedestrians and cyclists and public transport users". The proposed transport measures would be fully in accordance with this policy. Improvements to pedestrian access from the town centre and the railway station would benefit all highway users, especially persons who are mobility impaired.*
- *"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 racecourse parking would be rationalised and (as now) would be available for town centre users and commuters, thereby supporting the vitality and viability of Esher and the use of rail services.*
- *"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 CS24 – hotels and tourism)". As discussed above, this policy refers specifically to Sandown Park and is best met by the appeal proposals.*

Policy CS15 – biodiversity

66. The ecology statement³⁷ concludes that biodiversity enhancements could be achieved across the racecourse site, in accordance with “Biodiversity and Planning in Surrey” (2018). These would be secured through a Landscape and Ecology Management Plan. The Agreement would provide funding for preparing and (in part) implementing a 10 year management plan for Littleworth Common SNCI. Not only would this mitigate any impacts that may arise from development at Sites 4 and 5, it would enhance biodiversity through bringing existing habitats back into favourable management and through re-creating habitats which have ceased to be present due to vegetation succession.

Policy CS16 – social and community infrastructure

67. Policy CS16 is to ensure the provision of accessible and sustainable social and community infrastructure and promote its mixed use. The proposals would meet this policy as accessibility for mobility impaired persons would be significantly improved throughout the racecourse. The policy is also relevant to the replacement day nursery and the family/community zone. The proposals would bring about significant improvements to these facilities, for children of all age groups and for mobility impaired persons.
68. The replacement day nursery would be a purpose built facility in a safe location away from incompatible uses and traffic. The nursery currently operates from a split site, comprising the Toll House (adjacent to Portsmouth Road) and a converted dwelling. The existing operator is strongly supportive of the proposals³⁸ which would bring about substantial enhancement of the facilities, create more jobs and benefit the children who would use it. The Council questions the need for the facility and, on the other hand, seeks provision of a temporary facility until such time as the new nursery is ready. This new requirement was not a reason for refusal. It is not necessary and would not accord with the tests in the CIL Regulations. Nevertheless, it shows that there is a need for the continuation of the nursery.
69. The family/community zone would be in the centre of the racecourse, taking the place of the existing buildings on Site C. These dispersed buildings would be replaced by a single high quality building with provision for indoor soft play and a café adjacent to the proposed outdoor soft play and other areas for children. The go-kart track would be converted to a cycle track for children. This would be an exciting, innovative facility catering for all age groups from toddler to young teenagers. At the Inquiry, the Council disputed the need for these facilities on the basis that the Elmbridge Open Space and Recreation Assessment 2014³⁹ found that there is no access deficiency to children’s play provision in Esher. That misses the point that the purpose of the facility is to make racing more inclusive and popular with families. This is not a proposal for a public park or an ordinary children’s play area. The assessment relied on by the Council does not consider the need for a family zone with respect to racecourses. It is of limited relevance.

³⁷ JCR9

³⁸ CD6.57

³⁹ CD3.53

70. As explained by Mr Gittus, the family/community zone is a key part of the appellant's long term strategy. It is an approach that the appellant wishes to roll out across its racecourses to attract families. This is of long term importance to the sport of horse racing. The creation of a supervised zone, away from alcohol and betting, would enable children to be introduced to racing in a safe area where they could be entertained for long periods of the day. A wide variety of facilities is required to achieve this. Supervised soft play areas (indoors and outdoors) would be provided for younger children. The cycle track would be available for older children. For parents, there would be a café and a viewing area on a bank adjacent to the track. Sandown Park would become a family tourist destination in its own right, enhancing a cluster of family leisure opportunities in the wider area, which includes Hampton Court Palace, Chessington World of Adventures, Thorpe Park and Wisley Gardens.
71. The family/community zone would be an attraction for the local community on non-race days. Child density in Lower Green, to the north of Esher, is relatively high⁴⁰. The largest residential area close to the new facility is to the north of the railway. The Indices of Multiple Deprivation demonstrate that this area is within the highest 20% of most deprived areas in the South East⁴¹. Those living in such areas are likely to have less disposable income to spend on sport and leisure activities. The outdoor elements of the family/community zone would be freely available to local residents and the indoor soft play area would be available at a discounted price through the community use agreement. This would be a very significant benefit to the local community, particularly to those families who are the most deprived in economic and social terms. There is no comparable facility catering for children of all age groups in the Elmbridge area. The soft play facility within part of the golf clubhouse is smaller, and only caters for ages 0 to 3. Mr Gittus commented that the Lower Green play area is of significantly lower quality, unsupervised and without a cycle track.
72. The provision of the family/community zone was strongly supported by the Council's director of leisure services at pre-application stage. That support was well deserved. The zone is necessary for the objectives of the appeal proposals to be realised. It would be a significant public benefit and should be given significant weight.

Policy CS17 – local character, density and design

73. This policy would be complied with as the proposals would enhance local character. Mr Webster (the Council's landscape witness) agreed that the character of the area is varied. There is modern development at St Andrew's House (opposite Site 2) and the character of More Lane has changed significantly over the last ten years with the introduction of large flatted developments. It will continue to change with a flatted villa development at No 61 More Lane. Mr Webster agreed that the Council would be able to control design and landscaping at the reserved matters stage, so as to achieve high quality design.
74. Policy CS17 supports innovative contemporary design that embraces sustainability and improves local character. This is relevant to the proposed

⁴⁰ CD3.53, paragraph 3.20 and figure 3.4

⁴¹ CD3.53, paragraph 3.26 and figure 3.5

hotel which, together with the Grandstand, would become a landmark building immediately to the east of the entrance to Esher town centre. None of the other parts of the policy would be breached. In particular, there is no objection to the proposed density of development.

Housing land supply

75. The Framework sets out the need for at least a five year supply of housing land. It is the government's objective to significantly boost the supply of homes. Every council should meet the need for housing. Where there is a shortage of land to meet housing needs it is especially important to ensure that developments make optimal use of the potential of each site⁴². It is common ground that the Council has a land supply of only 3.13 years and that there is a significant housing shortfall⁴³. This should be a matter of concern. Moreover, there are particular constraints in Elmbridge which are unlikely to be overcome in the near future. Mrs Hyde acknowledged in her evidence that development opportunities on the scale proposed here are few and far between⁴⁴.
76. Although a shortfall in housing land supply can be a very special circumstance it is unlikely to warrant the grant of planning permission by itself⁴⁵. However, where (as here) a development proposal comes forward which justifies release of land in the Green Belt and brings substantial public benefits, it is in the public interest to release that land. The Council gave substantial weight to the need for housing. It was not appropriate for Mrs Hyde to seek to withdraw from this in her evidence⁴⁶. It is also important to note that the proposed housing mix would meet the need for small units.

Policy CS21 – affordable housing and viability

77. The CS was adopted in 2011, prior to the first version of the Framework in 2012. It must now be read in the context of the current Framework (2019). Dr Lee (the Council's affordable housing witness) took a prescriptive approach to Policy CS21, arguing that it requires the standard approach in Planning Practice Guidance to be followed in relation to all viability assessments for housing whatever the circumstances. That is the wrong approach. Policy within the Framework is permissive and not restrictive. This is clear from paragraph 11, as well as from a reading of the Framework as a whole. Insofar as policy CS21 is restrictive, it is out of date, not in accordance with government policy and should not be followed.
78. Paragraph 57 of the Framework states that viability assessments should reflect the recommended approach in national planning guidance. The word "*reflect*" does not mean "*slavishly follow and not depart from*". The Framework is not intended to be inflexible. Reading the Framework as a whole, it is open to a decision maker not to apply the standard approach in appropriate non-standard cases. As Mr Fell (the appellant's viability witness) explained, a viability

⁴² The Framework, paragraphs 73 and 123

⁴³ The Council's Statement of Case, paragraph 6.47 and EBC4/1, paragraphs 44 to 64

⁴⁴ EBC4/1, paragraph 54

⁴⁵ CD4.14, R (*Lee Valley Regional Park Authority*) v *Broxbourne Borough Council* [2015] EWHC 185 (admin)

⁴⁶ EBC4/1, paragraph 55

assessment can reflect the approach in Planning Practice Guidance by mirroring its methodology to calculate the extent to which a development is able to provide a minimum amount of affordable housing, as well as other significant public benefits. This is especially the case for non-standard housing developments where there is no specific guidance.

79. In this case the proposals would provide significant planning and public benefits by use of funds generated from residential development. This is termed "*facilitating development*". It is to be distinguished from "*enabling development*" which is a planning term used in relation to heritage cases. Applying the agreed inputs to the viability modelling, it is clear that provision of the full amount of affordable housing sought for standard housing developments would cause this development not to go ahead. The planning and public benefits would not be achieved and there would be no affordable housing. This position was accepted in the officers' report⁴⁷.
80. The Council alleged that the appellant has not adequately pursued other options for funding the racecourse improvement works. These matters had previously been considered in pre-application discussions with Council officers. Mr Gittus provided an exhaustive analysis of potential sources of funding which have been investigated, including grants from government, local authorities and other sources⁴⁸. At the Inquiry there was no suggestion that funding could be achieved by anything other than a loan. As stated above, it would not be possible to obtain a loan given the extent of debt the Jockey Club already has. It is clear from the evidence of Mr Gittus that the Jockey Club cannot raise any further finance and will not be able to do so in the foreseeable future. This would be so even without the impact of Covid-19.
81. Mr Gittus explained that the return on investment across all racecourses is very low, at only 3.35%⁴⁹. This is less than the rate at which money could be borrowed. Racecourses in Great Britain are under fierce competition from abroad to retain owners and the average prize money per race here is less than in other countries. Sandown Park has run at marginal profitability (2%) over a number of years, requiring subsidy from other operations⁵⁰. It is a large racecourse with large facilities, therefore the costs of running it are comparatively high and its profitability is lower than that of other smaller racecourses. The revenue from the improved facilities would not be available for repayments and interest on new loans. It would be used to fund improvements, maintenance and repairs required in the future, including the upgrading of the Eclipse building.
82. Dr Lee suggested two alternative sources of funding – increasing returns through taking on the role of the developer and issuing a bond. These suggestions were surprising. Despite being called as an expert witness with impressive credentials, he accepted that he had no expert knowledge in relation to either suggestion, either in relation to racecourses or more generally. Nor had he contacted any experts in these matters. The only evidence he produced

⁴⁷ CD 7.3, paragraphs 9.9.2.2.1 to 9.2.2.14

⁴⁸ JCR 2/3, appendix 8

⁴⁹ JCR2/3, appendix 5

⁵⁰ JCR2/1, paragraph 44

was information found on the internet about a bond issued for Cheltenham racecourse.

83. Mr Gittus explained that the Jockey Club is governed by a Royal Charter, under which all profits are reinvested to support horse racing. Unlike a private company, it has no shareholders who can profit from its activities. As such it is akin to a charity. The Jockey Club "Members" are, in effect, trustees of the club's assets⁵¹. The trustees of every non-profit making organisation or charity must avoid exposing the organisation's assets, beneficiaries or reputation to undue risk⁵². If the Jockey Club had to sell assets (such as racecourses or training gallops) as a result of getting into financial difficulties, that would be to the detriment of British horse racing. The inability to take excessive risks would include the financing and undertaking of development requiring substantial capital resources, such as the residential sites in this case.
84. Site 3 would be the first to be developed, with a construction cost of some £22.8 million. Site 1 would have to be developed at the same time as Site 3 and (to meet the terms of the UU) all the affordable units would have to be ready for occupation before 165 open market units were occupied. The total development cost of the five sites would be over £67 million. Development costs would need to be funded by borrowing and carried by the developer until release of the flats for sale, by which time market conditions may have changed. If the Jockey Club (with no experience in housebuilding) were to take on the role of developer, the risks would be significant. Dr Lee's evidence, that there would be no risk in self-financing the development, was without foundation and was not worthy of an expert witness. Mr Fell also made a number of points explaining why the self-development route would be excessively risky. Dr Lee's response took the matter no further⁵³.
85. With regard to Dr Lee's suggestion of raising a bond, Mr Gittus gave evidence that the situation at Cheltenham racecourse is entirely different from that at Sandown Park. Moreover, in addition to the payment of interest, there would be a need to repay capital. There is a risk that the bond could be called, placing the Jockey Club in serious financial difficulties. In any event, a bond would add to the total amount of debt which would not be allowed by the banks, as discussed above.
86. There are three further points to make in response to the Council's evidence. First, if the development as a whole does not go ahead then no affordable housing would be provided. The delivery of 64 units of affordable housing would therefore be a clear benefit of the proposals. Second, as stated in the Council's statement of case, the harms listed in the first reason for refusal (which include insufficient contribution towards affordable housing) would not of themselves give rise to a reason for refusal⁵⁴. Mrs Hyde accepted that if the only outstanding matter was the failure to achieve 45% affordable housing, this should not of itself be a reason for refusal. Third, the UU would make provision

⁵¹ CD8.13

⁵² CD8.9 concerning the legal duty of trustees to risk management (applicable to non-profit making organisations as well as charities)

⁵³ CD8.18 (Mr Fell) and CD8.27 (Dr Lee)

⁵⁴ The Council's Statement of Case, paragraph 6.23

for a review mechanism⁵⁵ which would provide an opportunity for affordable housing to be increased should circumstances allow.

87. The officers' report made clear that the need for affordable housing is substantial⁵⁶. Over the last seven monitoring years an average of 264 homes per annum (in total) have been added to the housing stock in Elmbridge. This is 68 dwellings less than the affordable housing need of 332 dwellings per annum. In 2016/17 Elmbridge had the 9th highest average house prices in England. It has one of the worst levels of affordability in the country. The Council's latest monitoring information (August 2018) shows that in 2017/18 just 28 new affordable housing units were completed, a 92% shortfall against the annualised need. As agreed by Mrs Hyde, there is an acute need for affordable housing in Elmbridge⁵⁷.
88. In conclusion, the appeal proposals represent the only way of making a material contribution to the affordable housing deficit. Unlike some other housing developments (such as No 61 More Lane) that contribution would be made on site. It would be located on previously developed land in a highly sustainable location adjacent to the town centre. The housing mix would meet a need for smaller units and the UU would secure delivery at an early stage. All of these are substantial benefits which should be given substantial weight.

Policy CS24 – hotels and tourism

89. Policy CS24 supports the sustainable growth of tourism to ensure that it remains a strong element of the Borough's economy. It also supports the improvement of the quality of existing visitor attractions, including the racecourse. The policy therefore supports the principle of the development as a whole, subject to Green Belt considerations. The policy promotes all new hotel development on previously developed land within, or adjacent to, town and district centres or visitor attractions. The proposed hotel would be on previously developed land, within the visitor attraction of Sandown Park racecourse, adjacent to the town/district centre of Esher. Compliance with the policy would therefore be maximised.

Policy CS25 – travel and accessibility

90. The proposals would accord with this policy which promotes improvements to sustainable travel and accessibility to services. Travel plans would be implemented for each individual development and for the racecourse as a whole. The racecourse improvements and the off-site highway works would bring about significant benefits, in particular for persons who are mobility impaired. This is an important objective for the Jockey Club. These would be significant benefits over and above mitigation. Sites 1 and 2 would be adjacent to the town centre and Sites 3, 4 and 5 would be within walking distance. All the sites are within walking and cycling distance of Esher railway station⁵⁸.

⁵⁵ CD8.16, clause 5 and schedule 1, paragraph 3

⁵⁶ CD7.3, paragraphs 9.9.2.2.5 to 9.9.2.2.7

⁵⁷ Inspector's note – Mrs Hyde accepted that there is an acute need in answer to questions from Mr Steel

⁵⁸ JCR5/1 to 5/5 and evidence at round table session

91. Mr Mitchell (the Council's transport witness) argued that the impact on the highway network would be "*other harm*" which should be taken into account, although not itself a reason for refusal. It follows that it should be given limited weight unless the harm is significant. However, it is common ground that the accesses accord with standards, that there would not be an unacceptable impact on highway safety and that the residual cumulative impact on the road network would not be severe. In these circumstances the Framework indicates that development should not be prevented or refused on highways grounds⁵⁹.
92. The trip generation factors used in the transport assessment will have significantly overestimated hotel and residential traffic because they predict the mode split using Census journey to work data. This will have increased the proportion of car trips. For example, Census data gives a mode split for walking of 6%, whereas in practice 79% of all journeys shorter than one mile are walking trips. The figures in the transport assessment therefore represent a worst-case scenario. They show that increases in peak hour traffic at Lower Green Road, Station Road, Portsmouth Road and More Lane would generally be in the range 2% to 3%. These increases would be extremely small and would have no noticeable impact on the road network⁶⁰.
93. The measures proposed to improve access and car parking would significantly improve the flow of traffic into the racecourse, thereby significantly reducing traffic queuing on Portsmouth Road, in Esher town centre and More Lane on race and event days⁶¹. This would be a very significant benefit in highways terms. Other measures to encourage sustainable transport would result in safety benefits for pedestrians, bus passengers and those accessing Esher station.
94. The evidence of Mr Mitchell provides no quantification of the effects of development traffic on any junction or link. His only technical assessment related to walking distances. This was rebutted by Mr Lewin⁶² (the appellant's transport witness). In general terms, small increases in traffic can cause a disproportionate amount of queueing in a congested area. However, it does not follow that any development that adds traffic, however little, to a congested area is unacceptable. On that approach almost all developments in congested urban areas, such as those around London and Surrey, would be refused planning permission. The highway authority took account of the objections made on this basis and rejected them. The evidence of Mr Lewin should be accepted.
95. There is no basis for any finding of harm as a result of the evidence of Mr Mitchell, or any of the interested parties. The proposals would not only provide appropriate mitigation, they would also bring about significant improvements and enhancements for all users of the local highway network, in particular by diminishing queueing on the highway on race days.

⁵⁹ The Framework, paragraph 109

⁶⁰ CD5.45, pages 21 to 22, tables 5.9 to 5.11

⁶¹ Inspector's note – at the transport round table session Mr Lewin commented that improvements would result from removing the existing ticket kiosk and creating two full traffic lanes into the site. Ticket checks would in future take place 250m into the site, reducing tailbacks onto the highway. There would also be widening at the More Lane access.

⁶² JCR5/5

Economic benefits

96. The substantial economic benefits of the appeal proposals, which were recognised in the officers' report, may be summarised as follows:

Jobs on site

- retention of existing racecourse jobs (110 full time equivalent (FTE)) and temporary events and conference jobs (73 FTE) totalling 183 FTE jobs⁶³;
- a minimum of 100 FTE jobs created at the hotel⁶⁴ (this would be only 21 FTE⁶⁵ if a budget hotel with no restaurant or services was built pursuant to the 2008 planning permission);
- construction employment, with the residential element alone generating up to 986 direct, indirect and induced jobs⁶⁶; and
- increased employment at the day nursery⁶⁷.

Jobs off site

- retention of the racecourse supply chain (480 suppliers, 277 of which are in Elmbridge and neighbouring postcodes)⁶⁸; and
- creation of a supply chain through the hotel⁶⁹.

Expenditure

- retention of existing expenditure in the local economy, equating to a direct economic impact of over £6.4 million and a gross value added impact of around £3 million⁷⁰;
- expenditure by new residents of £9.4 million per annum, which can be spent locally⁷¹ (noting that the application sites are located close to the centre of Esher); and
- new expenditure by visitors to the hotel⁷².

Any revenue generated by the improvements would be put back into Sandown Park, to the public benefit and the benefit of British horse racing⁷³. Overall the proposals would be a significant boost to the local economy, increasing expenditure, creating new jobs and new supply chains as well as securing the

⁶³ JCR2/1, paragraphs 11 and 13 and Statement of Case 1/22 Socio-Economic Paper, paragraph 3.1

⁶⁴ JCR 2/2, paragraph 6

⁶⁵ CD 3.54, page 36, section 6

⁶⁶ Statement of Case 1/22 Socio-Economic Paper, paragraph 6.5

⁶⁷ CD6.57

⁶⁸ JCR2/1, paragraphs 11 and 13 and Statement of Case 1/22 Socio-Economic Paper, paragraph 4.1

⁶⁹ Statement of Case 1/22 Socio-Economic Paper, paragraph 4.4

⁷⁰ JCR 2/1, paragraphs 11 and 13

⁷¹ Statement of Case 1/22 Socio-Economic Paper, paragraphs 4.6 to 4.11

⁷² Statement of Case 1/22 Socio-Economic Paper, paragraph 5.7

⁷³ JCR2/1, paragraph 11 and Statement of Case 1/3, paragraph 2.2

continuation of existing jobs and supply chains. Neither the officers' report nor the Council's evidence took account of the full range of economic benefits.

Development plan policy - Elmbridge Development Management Plan⁷⁴

Policy DM2– design and amenity

97. 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. The officers' report found the proposals to be satisfactory. Members disagreed and came to a subjective conclusion on the basis of the information included with the planning application. Mr Webster accepted that there was sufficient information before the Inquiry to carry out a landscape/townscape assessment and a visual impact assessment. However, much of his evidence was that of a planning expert witness. He admitted in cross examination that he had no such expertise. All that evidence must therefore be given minimal weight.
98. It is important to record the agreement on the character of the racecourse that was reached in cross examination of Mr Webster as this is the baseline for consideration of the individual development sites. The character is agreed to be that of a racecourse. This is different from other areas considered in the Landscape Character Assessments⁷⁵. It is also materially different from other parts of character areas UW6 and UW6-A within which the racecourse lies. As a result it is less sensitive to change than any of the other areas considered in the character assessment reports. The Arup report⁷⁶ accepts that 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. Mr Connolley (the appellant's landscape witness) had regard to the human and urban influences within the racecourse and its fragmentation. He concluded that it is of medium landscape susceptibility (at best) and moderate landscape sensitivity⁷⁷.
99. Sites 3 and 4 have been excluded from landscape character area 6. Mr Webster accepted that their landscape character is different from the rest of the racecourse. There is built development on Site 3 and on two sides of Site 4. The Council accepted that none of the landscape being considered is valued landscape, nor is it designated or sensitive other than in views from Esher Conservation Area. Mr Webster accepted that removal of the tall metal gates at the entrance to Site 1 (within the Conservation Area) would be an enhancement. In the light of the wireline evidence produced by Mr Connolley he reduced his assessment of impact at this location to minor.
100. The racecourse is surrounded by roads and urban development on three sides. Views of it are only obtained from the immediate area, within 200m at most. There is residential development to the north and west, commercial development adjacent to Site 4 and mixed uses in the town centre adjacent to Sites 1 and 2. It is agreed to be of semi-urban character, affected by human

⁷⁴ CD1.2

⁷⁵ CD3.19, part 1 of 2 and CD3.25

⁷⁶ CD3.25, part 1, page 22, table 6

⁷⁷ CD5.52, part 1, paragraph 4.7 and 4.29

influences and detractors. The large Grandstand and Eclipse buildings stand on relatively high ground. These are dominant structures, visible throughout the racecourse and from Portsmouth Road. There are also glimpsed views of the top of the Grandstand from a few locations on More Lane and from the Lower Green Road boundary. In the centre of the racecourse there are a number of scattered low-level buildings, a go-kart track and a golf course, driving range and clubhouse. Other features of the racecourse include car parks, a reservoir, maintenance compounds, 8 to 10km of white rails and other paraphernalia including steeplechase jumps.

101. It is important to note that the racecourse is surrounded for most of its perimeter either by built development or by trees, vegetation and a 1.8m to 2m high close boarded fence. The fencing does not permit views other than in a few places, where some viewers may be able to see over it. Any such views are not uninterrupted. For example, views from Portsmouth Road near the Toll House include car parks, small buildings and racing paraphernalia. Further west on Portsmouth Road views are interrupted by boundary railings or hedges and by trees along the boundary and within the car park. The northern boundary of the racecourse is not seen in views towards the Grandstand due to rising ground levels, low-rise buildings and other features⁷⁸. Views from the top of More Lane are interrupted by signage, vegetation and structures. Moving northwards there is no clear view of the racecourse from the rest of More Lane. There are some glimpsed views through vegetation from Lower Green Road.
102. The proposals include a slatted fence along around 200m of More Lane. This would be designed to prevent car headlights affecting racehorses. It would also have the effect of limiting views of Site 3. However, it would improve appreciation of the Green Belt through opening up views over the racecourse of up to 1100m from west to east.
103. There are no landscape designations affecting the site, other than at the Warren, which contains ancient woodland. No part of the development interrupts any key views identified in the development plan and none of the key Conservation Area views in the vicinity of Esher Green would be affected⁷⁹. It became apparent that Mr Webster considered that any visible built development would have an adverse effect on landscape character. However, it is inevitable that development will cause change and it cannot be concluded that every change is adverse. Mr Webster's assessment was over-sensitive to change in this semi-urban location. He grossly overstated the magnitude of change, as well as the sensitivity of the landscape and receptors. As noted above, he reduced his assessment of impact at Site 1 in the light of the wireline evidence produced by Mr Connolley⁸⁰. Much of Mr Webster's assessment concerned views within the racecourse which is wholly private land. He agreed that the visual receptors here would be racegoers or other visitors with low sensitivity.
104. Mr Webster confirmed that the consequences of his assessment for the appeal proposals were the highest level of adverse effect that his methodology permitted. They would have been no higher if the appeal site had been in an

⁷⁸ JCR3/5, photo viewpoint EDP 11

⁷⁹ CD7.10, part 1 of 2, page 40, Esher Conservation Area Townscape Analysis Map

⁸⁰ JCR3/5

Area of Outstanding Natural Beauty or a National Park. His assessments were clearly excessive but he failed to downgrade them either in cross-examination or even in re-examination. This is demonstrated by Tables 4 and 8 of his evidence⁸¹. His method describes substantial adverse effects as "*where the proposal will cause a very significant deterioration in the landscape resource or visual appearance*". Mr Connolley stated that this is an excessively critical conclusion to reach in relation to Sites 3, 4 and 5. The Council's evidence on landscape/townscape impact and visual impact was in error and should not be followed.

105. Mr Connolley's evidence was based on a carefully considered landscape and townscape visual assessment. His evidence at the Inquiry was measured and objective. His rebuttal evidence summarised the visual effects applying (but not accepting) Mr Webster's methodology as moderate adverse at most. His own conclusions are that the highest impact is moderate/minor in relation to Site 3 and the view looking south from the junction of More Lane and Lower Green Road⁸². In the latter view the Grandstand can be seen in the background and, in winter, the Eclipse building. Mr Connolley's approach is to be commended and preferred.
106. Having considered Mr Webster's evidence, Mr Connolley's rebuttal set out his conclusions in respect of landscape/townscape effects. He found that there would be no material adverse impact on landscape or townscape character, that the sensitivity of the racecourse as a whole is medium and that the majority of the sites proposed for development have a lower sensitivity. In his view, the overall effects would be no greater than moderate/minor and any adverse effects would be geographically limited and would not change the character of the immediate urban context. Moreover there would be beneficial effects⁸³.
107. In relation to visual impacts, Mr Connolley concluded that there would be no material adverse impact on receptors at any location. All but three of the impacts would be below moderate. Mr Webster accepted that the new hotel and improvements to the car park could enhance the townscape as seen from Portsmouth Road. There would be new accesses to Sites 3 and 5 that would open up views across the racecourse. Site 4 would be at a key gateway to Esher. Overall, Mr Connolley's assessments should be accepted. The proposals would not result in harm to landscape character, visual impact or to the character of the area. Reason for refusal 2 should therefore be dismissed.

Policy DM7 – access and parking

108. This matter has been covered above. The evidence of Mr Lewin demonstrates that the policy would be met in full. There would be significant benefits on race days resulting from improvements to the car parking. Parking would continue to be available for those visiting the town centre at other times.

⁸¹ EBC1/1, paragraph 8.62

⁸² JCR3/4, tables EDP1 and EDP2

⁸³ JCR3/4, paragraphs 4.19 and 4.22

Policy DM12 – heritage

109. The policy has been fully considered. The inclusion of this policy in reason for refusal 2 was removed by the Council. The appellant's heritage statement identifies enhancements to heritage assets⁸⁴.

Policy DM17 and the Framework – Green Belt

110. The appellant's case is that the proposals as a whole, considered as a package, are appropriate development. That conclusion is open to the Secretary of State having regard to the Framework and the facts of this case. The appellant's evidence also considers very special circumstances in the event that the development may be found to be inappropriate. However, this evidence is without prejudice to the primary case. The starting point is that a significant part of the proposals is (or has previously been) accepted as not inappropriate. The Council accepts that the proposed development on Sites A, C, E1, E2 and F would be appropriate development⁸⁵. The officers' report also found the proposals for Site 1 to be appropriate⁸⁶.

111. Policy DM17 pre-dates the Framework (2019) which is materially different from the Framework (2012).

Paragraph 89 of the Framework (2012):

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

Paragraph 145 of the Framework (2019):

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

112. The Framework (2019) introduces significantly more flexibility in relation to paragraphs 145(b) and (g). Policy DM17 should be considered against paragraph 145(b) and not the materially different earlier version. Where there is conflict with local policy, more recent government policy takes precedence in terms of the weight to be attached. This includes the word "*ancillary*" in DM17 which cannot be taken as a restriction as that would contradict the flexibility found in 145(b).

113. It is open to the Secretary of State to consider the development as a package, as well as considering the sites individually. It is a matter for his discretion. In

⁸⁴ JCR8, paragraph 2.4

⁸⁵ The Council's statement of case, paragraph 6.16

⁸⁶ CD7.3, paragraph 9.7.3.6

the *Luton*⁸⁷ case it was found that the Framework does not require the planning authority to chop up a mixed-use proposal into separate components and to apply the very special circumstances test separately in relation to each such component. The judge held that the defendant Council was entitled to assess the overall harm resulting from the development and to strike the planning balance as it did. The judge did not hold that the Secretary of State has no discretion, as claimed by the Council's advocate in this case.

114. In the present case the Secretary of State can conclude, as a matter of fact and degree, 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:

- all the development is situated in a single area of land which is owned and occupied by the appellant;
- the existing use of the land is for, or in connection with, outdoor sport and outdoor recreation (use as a racecourse as well as sport/recreation uses on Site C);
- the objective of the package of proposals is to secure the continuation of that use for the foreseeable future;
- 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 uses as well as supporting its purposes;
- all the proposed built development would facilitate this objective, as secured by the legal agreement; and
- the facilities proposed would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.

Applying the above to the policy in paragraph 145(b) of the Framework (2019), the proposed development would fall within that exception when looked at as a package.

115. This approach applies equally to paragraph 145(g). The Secretary of State can conclude that the development should be considered as a package and that, as a matter of fact and degree, it would be appropriate development:

- Site 4 constitutes limited infilling;
- viewed as a whole, it would comprise the partial or complete redevelopment of previously developed land, whether redundant or in continuing use;
- viewed as a whole, it would not cause substantial harm to the openness of the Green Belt;
- viewed as a whole, it would contribute to meeting very substantial affordable housing need within Elmbridge;

⁸⁷ CD4.13 R(*Luton BC*) v *Central Bedfordshire Council* [2014] EWHC 4325 (Admin), page 47, paragraphs 164(iii), 166 and 167

- the affordable housing units would be on site and would be secured by the UU; and
- no affordable housing would be delivered in the absence of the development coming forward as a package.

116. The above criteria would also be met when the proposed housing sites are considered individually, except in relation to Site 3 and the previously developed land criterion. However, if there is any doubt as to this, the proposals should be considered as a package. When looked at as a package, the proposals fall within the exception in paragraph 145(g) of the Framework.
117. The proposals for Site D involve improvements to drainage and laying grasscrete in an area that is already used for parking. These would be engineering operations beneath the surface. They would not be noticeable and there is no evidence of a visual or other change compared to the existing use. The works would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. The proposals for Site D fall within the exception for engineering operations in paragraph 146 of the Framework.
118. Some 85% of the area of the development sites (excluding Sites D and E) are previously developed land. This is a significant proportion and is in accordance with government policy on sustainable development. The Council's statement of case accepted that Site 5 is previously developed. At the Inquiry, the Council sought to argue the opposite by reference to around 250sqm of former residential garden land which is now used by the nursery. The area concerned is only about 2.6% of the area of Site 5. This was an unjustified and pedantic approach which ignored the "*fact and degree*" approach to the assessment of such matters in planning.

Openness of the Green Belt – visual effects

119. The evidence of Mr Connolley considered visual effects on openness. The Council relied on the evidence of Mr Webster and on the Green Belt Boundary Review. Mr Webster applied an over-sensitive approach, for example referring to "*expansive views of the racecourse extending across the entire site, particularly near the More Lane entrance*"⁸⁸. This is incorrect. In cross-examination Mr Webster accepted that views of the racecourse are largely screened by a timber fence. He relied on the "*perception of openness*"⁸⁹ which, he said, could be imagined even if not experienced. This was a concept without weight. It was an exaggeration for him to claim that "*by simply walking around the site perimeter it becomes very clear that there are multiple views into and across the site*"⁹⁰. As Mr Webster's assessment was based on these errors, it is not surprising that the results are also in error.
120. Mr Connolley explained that there are no public rights of way within the racecourse and that its open character can only be appreciated from limited locations within the public domain. These glimpsed views are not identified as

⁸⁸ EBC1/1, paragraph 3.17

⁸⁹ EBC1/1, paragraphs 3.17, 3.22, 3.25, 3.26, 3.44 and 3.45

⁹⁰ EBC1/1, paragraph 3.22

key views in the Esher Design and Character Assessment SPD⁹¹. The key view from the Grandstand would be barely affected. The perception of the openness of an area can only be given weight if it can be seen and experienced by a receptor. In terms of landscape assessment, perception is a result of actual experience of the landscape, not an imagined perception. From publicly accessible areas, receptors are not conscious to any material extent of the openness of the racecourse.

121. The visual gap across the racecourse, as seen from Portsmouth Road, would not be materially diminished. The proposed hotel would appear in the foreground next to the Grandstand⁹². It would not foreshorten views across the racecourse because the northern boundary is not visible at this point due to the topography. From further to the east, the hotel would be seen against the built form of the Grandstand and the Eclipse building. These buildings would be higher in terms of ground level and roof height. From further west on Portsmouth Road⁹³, views of the northern boundary are foreshortened by landscaping and trees in the car park, signage, gate pillars and other features. In conclusion, the openness of the landscape would not be significantly affected by the hotel. To the east of the hotel the visual gap would remain as far as the northern boundary, albeit with fencing, signage and other paraphernalia in the view.
122. The view of Site 3 from More Lane would be curtailed by fencing and proposed planting. There would be a glimpsed view from the More Lane entrance, where the proposed buildings would be seen in conjunction with the well-treed northern boundary of the racecourse and buildings on Lower Green Road. Travelling north along More Lane, and from within the racecourse, the new buildings would be read as a continuation of the modern villas on More Lane. The new buildings would be no higher and of a similar modern idiom. The proposed development on Site 3 would replace existing buildings.

Openness of the Green Belt – spatial effects

123. The proposals would take place on sites within the urban area of Esher. In these circumstances consideration of spatial effects should have regard to site context, including the proportions of neighbouring development. It is also relevant to consider whether a site is at the periphery of an open area, or "*peri-urban*", as Mr Webster volunteered. The racecourse is an extensive area of 66ha and is 480m across. Those parameters would not be materially affected. The existing openness of the racecourse would be almost unaffected by the proposals. There may be some significant increases in development volume and floor space on some sites. However, this can be misleading when applied to considerations of openness as the sites need to be considered in their context. Mrs Hyde agreed that there is no volumetric test in policy. Importantly, the Council has identified no harm resulting from volumetric and floor space increases. These are of no significance on their own. It is the context which is of importance.

⁹¹ CD3.2

⁹² JCR3/5, wirelines, photo viewpoint EDP 11

⁹³ CD5.52, photo viewpoint EDP 7 (at the end of the document)

124. The proposals would have very little impact on the open area of the racecourse. Sites 1, 2, A, B, and F are in the operational area with built development on or adjacent to them. Site 3 contains a line of built development occupying about half of the east/west extent of the site located beyond the internal perimeter road⁹⁴. It was excluded from the open racecourse land identified as landscape character area UW6⁹⁵. Site 4 is partly previously developed land used for vehicle parking. There is built form on two sides. It is divorced from the open area of the racecourse and, like Site 3, was excluded from landscape character area UW6. Part of Site 5 is used for car/coach parking and there are also buildings in commercial use as a day nursery. It is adjoined by large residential buildings at Cheltonian Place which extend about twice as far back from Portsmouth Road as Site 5.
125. The racecourse is highly fragmented by built development, including at its centre. There is adjacent built development on More Lane of similar height and form to the proposals for Site 3. The same applies to Sites 2 and 5. Site 1 is barely seen because it is enclosed by built form and the Warren. The proposals for Site 4 would necessarily be higher than adjacent development, to perform a gateway function at the entrance to Esher as supported in the Esher Character Assessment SPD⁹⁶.

Conflict with Green Belt purposes

126. Evidence on this matter was given by Mrs Hyde because Mr Webster had no qualifications or expertise in planning. The Council's case⁹⁷ was confined to three sites:
- Site D in relation to purpose 3 (safeguarding the countryside from encroachment);
 - Site 3 in relation to purposes 1 and 2 (unrestricted sprawl of large built up areas and preventing neighbouring towns merging into one another) and to a lesser extent purpose 3; and
 - Site 4 in relation to purpose 3.

The Council did not identify conflict with Green Belt purposes in respect of Sites B, 1, 2, and 5. Mrs Hyde relied on the Arup assessments in the Elmbridge Greenbelt Boundary Review⁹⁸. It follows that if those assessments do not stand up to scrutiny the conclusion will be that there is no conflict with Green Belt purposes.

127. In relation to purpose 3, it is necessary to consider whether Sites D and 4 come within the definition of countryside. Arup stated that a "*functional*" definition centred on pastoral and primary land uses may be the most appropriate, rather than a broader definition which took "*countryside*" to mean any open land⁹⁹. Applying this to Sites D and 4, it is clear that the function of the land is as a

⁹⁴ CD6.49, part 1, figure-ground plan on page 11

⁹⁵ CD3.19, page 89

⁹⁶ CD3.2, part 2, page 6

⁹⁷ Council's Statement of Case, table following paragraph 6.15

⁹⁸ CD3.8 and CD3.9

⁹⁹ CD3.8, part 1 of 3, page 23

racecourse, not as open countryside. It is semi-urban land. As such there is no way in which purpose 3 could be infringed.

128. Site SA-69 identified in Arup's 2018 Supplementary Work equates to appeal scheme Site 4, excluding that part used as a car park. It was found to perform weakly in relation to purpose 2 (with a score of 1)¹⁰⁰. For purpose 3 there was a score of 2. However, if Site 4 is not regarded as countryside, the score for purpose 3 would be 0. If the junction of Portsmouth Road and Station Road is not part of the built-up area of Greater London, then Purpose 2 would also score 0. Applying the criteria in the 2018 Supplementary Work¹⁰¹ there would be no reason to prevent its release in any event.
129. Site 3 is an important site underpinning the viability of the scheme as a whole. Mrs Hyde agreed that for purpose 1 to be infringed, the Arup methodology requires Lower Green Road to be part of the large built-up area of Greater London¹⁰². For purpose 2 to be infringed, the Arup methodology requires Lower Green Road to be in the Greater London built-up area and for More Lane to be within Esher¹⁰³.
130. Neither of these would be the case. Map 4.5 shows Thames Ditton (with Weston Green added to the list in Table 4.3 in 2018) to be in a different area to Esher¹⁰⁴. Table 4.1 sets out the large built-up areas considered in the purpose 1 assessment. This does not include Esher but does include the various areas within Thames Ditton. The development plan recognises that the areas within Thames Ditton are distinct and separate residential neighbourhoods (Policy CS8¹⁰⁵). Esher is not included in this policy. It is covered by a wholly separate policy (Policy CS9). It is therefore not possible to consider the Greater London area of Thames Ditton as including Esher.
131. In the development plan Esher and Thames Ditton (including Weston Green) have different policies. Lower Green Road is part of Esher. Arup used the development plan boundaries as a criterion for defining settlements¹⁰⁶. If this is done, the identification of settlements in Esher must follow the relevant development plan boundaries. As Esher is clearly in a different settlement from Thames Ditton and Weston Green for development plan purposes, the criteria cannot therefore apply. It cannot be included within a purpose 2 assessment.
132. Site SA-70 in Arup's 2018 Supplementary Work encompasses appeal scheme Site 3. In fact SA-70 is around twice the size of Site 3, extending further to the east. It adjoins development on Lower Green Road to the east and it adjoins development on More Lane to the west. It therefore causes coalescence of the development on Lower Green Road. 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, then it would score 0 under the purpose 1 criteria. Moreover, appeal Site 3 is materially different from

¹⁰⁰ CD3.9, Annex Report 1C: Sub Area Pro-Formas (SA-49 to SA-71)

¹⁰¹ CD3.9, Methodology and Assessment, page 18, table 1

¹⁰² CD3.8, Main Report, table 4.1

¹⁰³ CD3.8, Main Report, table 4.3

¹⁰⁴ CD3.8, Main Report, page 40 - large built-up areas considered in purpose 1 assessment

¹⁰⁵ CS1.1

¹⁰⁶ CD3.8, Main Report, paragraph 4.4.2 and second paragraph above table 4.3

SA-70, being considerably smaller. It does not have the same proximity to adjoining development and is not perceptually connected to the large built-up area of Greater London. Consequently, it does not prevent sprawl onto open land.

133. Arup's purpose 2 assessment for SA-70 describes it as a narrow gap between Greater London (Lower Green) and Esher. This is the first time that Lower Green has been put forward as a settlement in its own right. In fact it is part of Esher and not a separate settlement. Appeal Site 3 does not maintain physical separation between settlements. Nor does it provide a gap between properties on Lower Green Road and More Lane because it already contains residential properties that would be redeveloped. The proposals would not reduce the perceived or actual distance between two settlements and would not result in any separate settlements merging. The site should score 0 for purpose 2.
134. Mrs Hyde confirmed that More Lane is part of Esher. This is also confirmed in the Design and Character SPD¹⁰⁷. It is absurd to suggest that the proposals would cause merging when it is clear that Lower Green Road is perceptually and spatially within Esher as well. Moreover, Lower Green Road is part of Esher in development plan terms. Arup suggests that Site SA-70 plays a role in preventing perceptual merging due to the strong visual link to the racecourse. If that were so, it would also be the case with the proposed development which would be seen as part of the racecourse and not part of Lower Green Road.
135. There is a 25m gap between two lodge buildings fronting More Lane, where the Green Belt to the east connects with further areas of Green Belt to the west. The proposals for Site 3 would not affect this gap in any way. Arup found that Site SA-70 meets purpose 3 weakly, with a score of 2. However, for the reasons given above, it is contended that the site is not countryside so purpose 3 would not be infringed and the score should be 0.
136. The Arup reports have yet to be tested in the Local Plan process. They are subject to objections and have no status or weight for development control purposes or in policy terms. The appellant should not be prevented from developing the appeal sites because of the methodology that was used by Arup. Following detailed examination of the evidence of Mrs Hyde and Mr Clarke (the appellant's planning witness) at the Inquiry, it can be seen that the presumptions made by Arup do not stand up to scrutiny in relation to Sites D, 3 and 4. The proposals would not therefore result in any conflict with Green Belt purposes.

Very special circumstances

137. The requirement to consider very special circumstances arises in the event that (contrary to the appellant's case) the development, or any part of it, is found to be inappropriate development in the Green Belt. If that were the case, the following matters should be given great weight in assessing the case for very special circumstances:
- much of the development is agreed to be appropriate;

¹⁰⁷ CD3.2, Companion Guide, diagram on page 6

- the package of proposals would deliver transformational improvements to the racecourse;
- the package of proposals would be in connection with the existing use which is for outdoor sport and recreation;
- the package would secure the future of the existing uses, thereby securing the Green Belt;
- 85% of the development land would be previously developed;
- an infill site would be used; and
- there would be minimal impact on openness and no harm to the purposes of the Green Belt.

138. Even if it is concluded that there would be an impact on openness and some conflict with purposes, the absence of significant harm in these respects is of itself a conclusion of significant weight. The Council has not demonstrated that there would be harm, other than "*by definition*" harm, to the Green Belt given the semi-urban nature of the racecourse and the context of the sites. This point has added weight due to the high proportion of previously developed land used and the fact that much of the development is accepted to be appropriate. The very special circumstances balance is therefore heavily weighted in favour of the benefits.

139. There are many and varied benefits of great weight which individually and cumulatively amount to very special circumstances, as described in the evidence of Mr Clarke and Mrs Hyde¹⁰⁸. There has been a significant shift in the Council's position between the officers' report and the Inquiry. This change is unwarranted and is not supported by evidence. The full and detailed conclusions in the officers' report should carry greater weight. Moreover, significant weight should be attached to economic benefits that were not weighed in the balance by officers.

140. The appeal site is in a highly sustainable location. This is shown by the wording of Policy CS9, the comments of Surrey County Council and the findings of the Inspector in the appeal decision at No 61 More Lane¹⁰⁹. The sites are all within walking distance of services, schools and public transport. They are far more sustainable than many sites proposed for development in Elmbridge. The development as a whole would be highly sustainable. This in itself is a very special circumstance.

141. Mrs Hyde arrived at conclusions on scheme benefits that were substantially different from those of her fellow officers. Those officers had the benefit of many months of discussions with the appellant through the pre-application process. Subsequently, they sought further information on the need for the scheme, on funding and on the need for the hotel. In contrast, Mrs Hyde did not seek further information from the appellant, nor did she speak to her fellow officers. Mrs Hyde reached adverse conclusions on the need for refurbishment

¹⁰⁸ Inspector's note – there is a summary table of the respective positions on the various benefits at page 41 of the appellant's closing submissions (CD8.30)

¹⁰⁹ CD8.4, paragraph 19 of the Inspector's decision

on the basis of a cursory inspection of the appeal site. The buildings were only viewed externally. The need for refurbishment is clearly urgent and substantial, as shown by the evidence of Mr Gittus. The evidence of Mrs Hyde and Dr Lee did not demonstrate that the benefits of refurbishment should be downgraded.

142. There was no justification for downgrading the benefit of the hotel from significant to limited, given the lack of alternative sites for a hotel in Elmbridge. There was also no justification for downgrading the benefit of affordable housing, given the acute need and limited delivery in recent years. Affordable housing can only be delivered alongside market housing. Other significant benefits of the proposals include securing existing jobs, the community use agreement relating to the family/community zone, integration between the railway station and the town centre, landscape and tree planting, an improved frontage to Portsmouth Road and a hotel that would be a landmark building. These would all be significant benefits.
143. Some local residents alleged that this would be a private scheme for the benefit of a private developer. However, the appellant does not seek private benefits for shareholders. That would be legally forbidden under the terms of its charter, which requires that all profits are put back into horse racing. Throughout the Inquiry, the Council failed to grasp that obvious fact. It is the public benefits resulting from the scheme proposals, which the appellant would bring in its position as a guardian of horse racing in Great Britain, that are of relevance to this appeal.
144. The Council relied on viability evidence which included wild suggestions of self-development. The Council called a landscape architect with no planning expertise to give planning evidence and a highway witness who presented no technical evidence. The Council's statement of case adjusted the benefits of the scheme compared with those of the officers' report 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 conclusions of the officers' report, in relation to very special circumstances, which gave significant weight to four factors¹¹⁰:
- the need for improved racecourse facilities;
 - the provision of a hotel;
 - the contribution towards meeting housing need; and
 - the contribution towards affordable housing.
145. On this basis it was concluded that very special circumstances existed. The conclusion of the report balanced harm against the benefits¹¹¹. The report found harm by reason of inappropriateness in relation to Sites B, D, 2, 3, 4 and 5. Assessing the scheme as a whole, it was found to be inappropriate development. The scale of the identified harm was considered to be at its lower level because 6 out of the 12 sites were considered (individually) to be appropriate.

¹¹⁰ CD7.3, page 92, table 7

¹¹¹ CD7.3, paragraph 9.11.4

146. It follows that if any of the benefits put forward by the appellant are found to have greater weight and/or if any of Sites B, D, 2, 3, 4 and 5 are found to represent appropriate development, then the case is even more strongly in favour of very special circumstances existing. Those circumstances would clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposals. In such circumstances the development would be in accordance with the development plan and government policy and planning permission should be granted.
147. That is the conclusion of the appellant which is urged upon the Secretary of State.
148. The appellant draws attention to a decision of the Secretary of State on an appeal in Stockport. That proposal included housing to facilitate development of a scheme bringing forward substantial planning benefits that were not able to be funded otherwise. An assessment of viability was carried out to determine the minimum affordable housing that could be delivered. The decision maker carried out a balancing exercise for a proposal in the Green Belt where housing development was proposed in order to cross-fund the cost of the development. Conditional planning permission was granted. The approach to decision making set out in the decision letter is commended to the Secretary of State¹¹². When applied to the facts of this current appeal, that approach indicates that planning permission should be granted.

THE CASE FOR THE LOCAL PLANNING AUTHORITY – ELMBRIDGE BOROUGH COUNCIL¹¹³

Introduction

149. Allowing this appeal would erode public confidence in the planning system. It would lend credence to the notion that the planning system may be wrought to serve private interests, at the expense of the community's local vision. The appeal scheme would indeed deliver some public benefits. However, there is not a single development proposal which would not deliver at least some economic and social benefits. Our system is better than that. Our small island demands a more sophisticated land-use response to competing economic, social and environmental demands. The administrative discretion to grant or refuse planning permission must be operated in the interest of the whole community, expressed through the promulgation and application of planning policy. These submissions follow the main issues identified by the Inspector.

The effect of the proposal on the Green Belt

Approach to inappropriate development generally

150. The development of Sites 1 to 5 and B would have a substantial adverse effect on the openness of the Green Belt, in both spatial and visual terms. The appellant accepts that "Sites 1, 2, 3, 4, 5 & B will introduce, through the

¹¹² CD4.18, paragraphs 27 to 40 of the decision letter and paragraphs 626 to 633 of the Inspector's report

¹¹³ This is a summary of the full submissions which are at CD8.29

proposed development, larger footprints and volumetric areas"¹¹⁴. In addition, the development of Sites 3, 4 and D would harm Green Belt purposes.

151. The Council's case is that, judged overall, the scheme amounts to inappropriate development against which local and national policy are firmly set. As such it is harmful by definition. Whilst it is accepted that the proposals for Sites A, C, E1, E2 and F would not be inappropriate development, the assessment must be against the scheme as a whole. It follows that if any part of the proposal is found to be inappropriate, the development should not be approved unless very special circumstances are advanced which clearly outweigh the harm to the Green Belt and any other harm.

152. The appellant's submission that *Luton*¹¹⁵ established only that it was legally permissible for a decision maker to treat a mixed-use scheme as a whole was wrong. The judge found:

"... The NPPF does not require the planning authority to chop up a mixed use proposal into separate components and to apply the very special circumstances test separately in relation to each such component. No authority was cited to support that interpretation and I do not think that it is justifiable on the language used in paragraph 88 of the NPPF"

That was a clear finding on the meaning of the Framework. The interpretation of planning policy is a matter of law for the Courts, not a question of judgment for a decision maker. It follows that this interpretation is binding on the Secretary of State. To approach the appeal scheme on any other basis would give rise to an error of law and therefore a high risk of legal challenge.

Is the scheme not-inappropriate development as a whole?

153. The appellant advances two arguments on which the proposals are said to be not-inappropriate development judged as a whole:

- under paragraph 145(b) of the Framework it is said that the whole scheme is a facility for outdoor sport or outdoor recreation (and the facilities preserve the openness of the Green Belt and do not conflict with purposes); or
- under paragraph 145(g) it is said that the scheme amounts to the redevelopment of previously developed land and contributes to meeting an identified need for affordable housing (without causing substantial harm to the openness of the Green Belt).

Both arguments are hopeless in their application to this scheme.

Is the appeal scheme a facility for outdoor sport or outdoor recreation within paragraph 145(b)?

154. DMP Policy DM17 provides further policy guidance on the application of this Green Belt exemption. It explains that to be a facility for outdoor sport or outdoor recreation, the facility must be "*ancillary*". Mr Clarke (the appellant's

¹¹⁴ JCR1/4, paragraph 3.6

¹¹⁵ CD4.13 R(*Luton BC*) v *Central Bedfordshire Council* [2014] EWHC 4325 (Admin), paragraph 167 quoted below

planning witness) accepted that Sites 1 to 5 and B were not ancillary to the racecourse and thereby did not comply with DM17¹¹⁶. Once developed, there would be no enduring relationship between Sites 1 to 5 and B and the racecourse. They would be in separate ownership and would not function as part of the racecourse.

155. Even ignoring DM17, paragraph 145(b) of the Framework states that the facilities must be "*for outdoor sport, outdoor recreation...*". The housing and hotel would be sold to, and occupied by, others. They could not possibly be facilities for outdoor sport or recreation. The words "*in connection with*" were relied on by Mr Clarke. These words were added to deal with the lacuna in the Framework (2012) which meant that changes of use to an appropriate use in the Green Belt would be inappropriate development¹¹⁷. The differences in wording between the 2012 and 2019 versions of the Framework are not relevant here.
156. Reading paragraph 145(b) syntactically, the words "*in connection with*" refer to the use of the "*appropriate facility*", but that "*appropriate facility*" must be "*for*" outdoor sport or outdoor recreation. On that correct interpretation, it cannot be said that the hotel and the housing sites are facilities for outdoor sport or recreation. Mr Clarke was therefore right to accept that Sites 1 to 5 and B could not be facilities for outdoor sport or outdoor recreation. He expressly retracted his evidence that paragraph 145(b) applies to the appeal scheme as a whole because it could not capture the hotel or the housing sites¹¹⁸.
157. It was not sustainable to suggest that DMP Policy DM17 is inconsistent with the Framework. This point arose for the first time in the re-examination of Mr Clarke. It was not in the evidence and the Council was deprived of the opportunity to deal with it in evidence. However, there was no substantive unfairness because the point is so hopeless. The requirement in DM17 for the proposals be "*ancillary*" is plainly consistent with the wording of paragraph 145(b) which provides that, whilst the facilities may be "*in connection with*" the use of the land, they must also be "*for*" (as in "*ancillary*" to) the use of the land for outdoor sport or recreation. Taken to its natural conclusion, the appellant's approach would lead to the absurd result that a market housing scheme in the Green Belt could be not-inappropriate development, simply because it made a financial contribution to a sports club (assuming no harm to Green Belt openness or purposes).
158. Mr Clarke was right to concede that 145(b) does not apply in this case. However, the point was resurrected in re-examination when Mr Clarke appeared to retract his concession. It was suggested that the concession had been obtained unfairly because the point had not been raised before. That suggestion is strongly rejected because:

¹¹⁶ Inspector's note – in answer to questions from Dr Bowes, Mr Clarke accepted that Sites 1 to 5 and B would not be ancillary and would not comply with DM17

¹¹⁷ CD8.26, part 3 *Timmins v Gedling BC* [2015] EWCA Civ 10 at paragraphs 29 to 35

¹¹⁸ Inspector's note – In answer to Dr Bowes, Mr Clarke said *to the extent that "in connection with" is not to be related to housing [pause] to the housing aspect and the hotel aspect [pause] then clearly it wouldn't apply*. It is arguable whether this did amount to a retraction of his evidence. Whether or not there was a retraction, I am satisfied that there is sufficient information before the Secretary of State for this matter to be properly considered.

- Mrs Hyde expressly said in her rebuttal proof that paragraph 145(b) could not apply to the scheme as a whole because the hotel and houses were not facilities for outdoor sports or recreation¹¹⁹;
- the first time that the appellant suggested that paragraph 145(b) applied to the whole development was Mr Clarke's proof¹²⁰. The Council responded at the earliest opportunity to make plain that the point was firmly in issue; and
- the decision notice identified conflict with DM17 so Mr Clarke must have considered that policy.

159. Mr Clarke had fair warning of the Council's position in relation to paragraph 145(b) of the Framework and DMP Policy DM17. He had ample opportunity to discuss the matter with his advocate and professional team. In any event, Mr Clarke is an experienced witness. If he felt he was taken by surprise by a point in cross-examination he could have asked for more time or his advocate could have intervened. The allegation of unfairness is totally unmerited.

160. It was not credible for Mr Clarke to suggest that the hotel and Sites 1 to 5 would be ancillary to the racecourse because the "*occupiers would have the opportunity to use the racecourse*". That suggestion was ultimately withdrawn when challenged and he said that it did not accord with his "*planning*" understanding of the term "*ancillary*" but rather what he volunteered was a "*real world sense of the word*".

161. Paragraph 145(b) cannot apply to the scheme as a whole.

Is the appeal scheme within paragraph 145(g) of the Framework?

162. The scheme falls at the first hurdle. On Mr Clarke's own evidence, the appeal scheme does not involve land which is previously developed because 15% of the land to be developed is not previously developed¹²¹. Mr Clarke agreed that paragraphs 144 and 145 are closed lists and that a proposal must fit wholly within an exception in order to be considered not inappropriate. On the undisputed evidence before the Inquiry, the scheme as a whole does not involve the re-use of previously developed land so paragraph 145(g) cannot apply.

163. It appeared to be suggested in re-examination that paragraph 145(g) could be approached as a matter of fact and degree. That approach is wrong for these reasons:

- 15% is not *de minimis* and cannot legally be ignored. By comparison, the appellant asks for significant weight to be attached to 20% affordable housing. It would be irrational to conclude that this is a proposal for previously developed land.
- The scheme is not solely for the purpose of contributing to affordable housing. Mr Clarke suggested that the words "*contribute to*" meant that one could have a 100% market housing scheme on previously developed

¹¹⁹ EBC4/3, paragraph 3

¹²⁰ JCR1/1, paragraph 6.3

¹²¹ JCR1/3, appendix 4

land in the Green Belt, which would be not inappropriate development provided it did not have a substantial impact on openness and made a policy compliant contribution towards affordable housing. The natural conclusion of this approach is that any contribution (however small) would bring a scheme within paragraph 145(g). That would be an absurd result which shows that Mr Clarke's construction is wrong.

- As outlined below, the scheme as a whole would cause substantial harm to both the spatial and visual openness of the Green Belt.

Approach to openness

164. Openness means "*the state of being free from built development, the absence of buildings – as distinct from the absence of built development*".¹²² The assessment of openness is not limited to a simple volumetric or spatial assessment but is capable of also including the comparative visual impact of a proposal¹²³. Whether a decision maker is obliged to have regard to visual impact when assessing the impact on openness of a particular proposal is a matter of planning judgment (see *Samuel Smith*)¹²⁴.
165. In *Samuel Smith*, Lord Carnwath JSC expressly rejected the approach of Green J in *Timmins*¹²⁵ that "*it was wrong in principle to arrive at a specific conclusion as to openness by reference to visual impact*". The correct legal test is whether the visual impacts on openness, in a given case, are "*so obviously material as to require direct consideration*"¹²⁶. Accordingly, in *Samuel Smith*, the council did not err in law by failing to consider the visual impact of a quarry extension because the visual impact would be so limited as not to be obviously material. By contrast, the Inspector in *Turner* was right to have regard to the visual impact on openness when replacing a mobile home and storage yard with a residential bungalow.
166. The visual impacts in this case are so obviously material as to require direct consideration. A failure to consider these substantial visual impacts in the assessment of the impact on openness would be irrational. Mr Clarke accepted this but said that limited weight should be attached to visual impacts because the scheme was not largely visible. However, he accepted that in relation to visual impact on openness, he relied on the expertise of Mr Connolley (the appellant's landscape witness).

The Green Belt context

167. The Green Belt Boundary Review work undertaken by Arup¹²⁷, although not part of the development plan, is an important material consideration. It was undertaken by a national consultancy applying a logical methodology and should be afforded substantial weight. However, it was prepared to inform the plan making process and should be read in that context. The question here is

¹²² CD4.2 *R(Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404, paragraph 7

¹²³ CD4.3 *Turner v SSCLG* [2016] EWCA Civ 466, paragraphs 13 to 16

¹²⁴ CD4.11 *R(Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC3, paragraph 39

¹²⁵ CD8.26, part 3 *Timmins v Gedling BC* [2014] EWHC 654 (Admin)

¹²⁶ CD4.11 *Samuel Smith*, paragraph 32

¹²⁷ CD3.8 and CD3.9

whether very special circumstances exist which clearly outweigh the harm to the Green Belt and any other harm. That is a stricter test than the plan-making test¹²⁸, so recommendations about sites for "*further consideration*" need to be judged with great care when read across to a development management context.

168. The March 2016 Review found the site to fall within Strategic Area A, which is a "*narrow but essential arc of Green Belt preventing the sprawl of Greater London built-up area and its coalescence with towns in Surrey*"¹²⁹. Strategic Area A performs strongly against purposes 1 and 2. It also performs against purpose 3, albeit weakly.

169. At a more local level, the appeal site is closely aligned with Local Area 52¹³⁰. This reveals that the appeal site is of critical importance to the purposes of the Green Belt because:

- It functions moderately to check the unrestricted sprawl of the Greater London built-up area:
 - the parcel is at the edge of a large built-up area of Thames Ditton (which forms part of the Greater London built-up area); and
 - the boundary of Lower Green Road, the properties on its northern side and the railway line are a durable and permanent boundary.
- It functions strongly/very strongly in preventing neighbouring towns from merging into one another and the Greater London area:
 - the land parcel forms part of an essential gap between Greater London and Esher;
 - it has an open character and provides an important visual gap between Greater London and Esher, such that development in the land parcel would be likely to lead to their coalescence; and
 - the Design and Character SPD Companion Guide notes that the racecourse separates Esher from the railway station and Lower Green. More Lane and Lower Green are in separate character areas¹³¹. The Arup Sensitivity Study (2019) notes that the racecourse contributes to the perceived gap between settlements and acts as a buffer between Esher and the railway¹³².
- It still functions to safeguard the countryside from encroachment, albeit relatively weakly. Whilst the racecourse is managed private open space, it still displays a high level of openness.

170. In 2018 Arup refined the conclusions of the 2016 Review in respect of sub-areas within the Local Areas previously assessed. Two sub-areas were relevant to the appeal, SA-70 (appeal Site 3) and RSA-35/SA-69 (appeal Site 4). Site 3 was

¹²⁸ CD4.13 *Luton v Central Bedfordshire* [2015] EWCA Civ 537

¹²⁹ CD3.8, Annex Report 1 – Strategic Area Assessment Pro-formas, Strategic Area A

¹³⁰ CD3.8, Annex Report 2 – Local Area Assessment Pro-formas, Local Area 52

¹³¹ CD3.2, part 2 of 2, pages 4 and 6

¹³² CD3.25, part 2 of 2, table 32

considered to perform strongly against purposes and 1 and 2 (scoring full marks for purpose 2) and less strongly against purpose 3. It was described as an area of *"semi urban character"* which *"plays an important role in maintaining the physical integrity of the Green Belt"*, preventing the merging of Esher with Greater London. Development on this site would promote ribbon development in a sensitive area of the Green Belt and harm its wider performance¹³³. It was not recommended for further consideration. Although Site 3 is smaller than SA-70, that makes no difference. Arup noted in respect of the wider Local Area 52 that any development within the land parcel would be likely to result in merging¹³⁴.

171. Site 4 was found to perform weakly for purposes 2 and 3, although it was noted that release would result in a weaker Green Belt boundary¹³⁵. Following its own work in June 2019, the Council will promote extensions of the Green Belt boundary to encompass More Lane to its western side, Lower Green Road to its northern side and Station Road to the north of Site 4. Whilst Site 4 had been recommended for further consideration by Arup, it has not been suggested for removal by the Council.

Site B - hotel

172. The Council agrees with the appellant that the open boundary on the Portsmouth Road frontage offers *"a sense of openness"*¹³⁶. Mr Connolley accepted that there is currently a readily appreciable lack of buildings to the east of the Grandstand. The proposals would introduce a six storey building with a volume of 27,950m³ to a site which is now a surface level car park. The appellant concedes that there would be *"an increase in built form within the site ... development of the site would restrict views of the northern boundary to a degree"*¹³⁷ and that the new building would be a visible and identifiable element within the view¹³⁸. Mr Gittus explained that the location had been chosen to be visible to passing trade¹³⁹ and Mr Connolley accepted that, in winter, there may also be in-combination views with Site 5.
173. Mr Webster explained that the hotel would appear as a seven storey building when viewed from Portsmouth Road because the land slopes down from the Grandstand¹⁴⁰. Mr Connolley had to accept that there would be a greater visual appreciation of built form. He said this was inevitable when proposing development of this scale where there currently is none¹⁴¹. The officers' report found that the hotel would result in a significant adverse impact on the spatial and visual dimensions of openness¹⁴². Although the hotel would be on previously

¹³³ CD3.9, Methodology and Assessment, page 55 and CD3.9 Annex Report 1C: Sub-Area Pro-Formas (SA-49 to SA-71)

¹³⁴ CD3.8, part 3 of 3, PDF page 164

¹³⁵ CD3.9, Methodology and Assessment, pages 108 to 109 and CD3.9 Annex Report 1C: Sub-Area Pro-Formas (SA-49 to SA-71)

¹³⁶ CD5.50, part 4 of 4, plan EDP2

¹³⁷ CD5.50, part 1 of 4, page 16, table EDP2.3

¹³⁸ CD5.52, part 1 of 2, appendix EDP6, Site B

¹³⁹ JCR2/1, paragraph 22

¹⁴⁰ EBC1/1, paragraph 3.32

¹⁴¹ Inspector's note – these points were accepted by Mr Connolley in answer to questions from Dr Bowes

¹⁴² CD7.3, paragraph 9.7.3.13

developed land, it cannot rationally be concluded that it would not have a greater impact on the openness of the Green Belt than the existing development, such as to fall within paragraph 145(g). The change would be significant in both spatial and visual terms. This element of the proposals therefore amounts to inappropriate development with significant effects on the openness of the Green Belt.

Site D – car park

174. Part of the site is used as a car park for the golf course. Only 0.5ha of this 3.5ha site is previously developed land. It is proposed that 57% of the site would be laid with hardstanding in the form of grasscrete to serve as overflow car parking¹⁴³. The parameter plan shows the whole area as car parking and the illustrative layout shows the detailed extensions¹⁴⁴. Mr Webster explained that the works themselves, and the greater use of the area, would urbanise the site¹⁴⁵. Mr Gittus accepted that the area would be available for use more often because, at present, it is sometimes too waterlogged to use for parking. The extent of additional use was unclear. However, it seems unlikely that the appellants would invest £1.3 million¹⁴⁶ in Site D if it did not envisage the area being used materially more than it is now.
175. Mr Clarke accepted that, to the extent it would be in greater use, Site D would be under a greater urban influence than now. This would undermine the function of safeguarding the countryside from encroachment¹⁴⁷ and would not be consistent with the purposes of the Green Belt. The proposals do not therefore fall within paragraph 146(b) of the Framework.

Site 1 – 15 affordable units in a three storey building

176. The site is previously developed land comprising single storey stables around a split level yard. The volume of built development would increase from 2,200m³ to 5,300m³ (an increase of 141%)¹⁴⁸. The existing buildings are not visible from the public realm but the proposed buildings would be seen through the More Lane entrance and through a gap between the Wheatsheaf public house and houses on Esher Green. Mr Connolley accepted that, in those views, the site would appear "*more built-up than it is now*"¹⁴⁹. Taking together the spatial uplift and the perceptual increase in built form, the effect would be a substantial impact on openness. Notwithstanding the previously developed nature of the site and the proposal for 100% affordable housing, the development would be inappropriate in the Green Belt because it would not fall within the second indent of paragraph 145(g) of the Framework.

Site 2 – 49 affordable residential units in a four storey building

177. Viewed from Esher High Street, the lack of built form across most of the site is evident, although single storey stables to the west of the site and the Sandown

¹⁴³ JCR1/3, appendix 4

¹⁴⁴ CD6.7

¹⁴⁵ EBC1/1, paragraph 3.36

¹⁴⁶ CD6.63 and CD5.38, page 28

¹⁴⁷ EBC1/1, paragraph 3.121

¹⁴⁸ EBC1/1, paragraph 3.43

¹⁴⁹ Inspector's note – this was agreed by Mr Connolley in answer to questions from Dr Bowes

Lodge building in the centre are visible. There would be a substantial increase in built volume, from 2,800m³ to 18,100m³. The existing line of mature trees would be removed and replaced with a four storey building along the Portsmouth Road frontage, resulting in a substantial visual impact. The officers' report noted that the building would be very apparent and would have a significant impact on the visual dimension of the Green Belt¹⁵⁰. Mr Webster said that the proposals would introduce an additional block of linear development to Portsmouth Road, where previously there was none¹⁵¹.

178. Mr Connolley accepted that the visual appreciation of built form would be greater than it is at the moment. Taking account of the spatial increases in footprint, volume and floor area and the increased visual appreciation of built form, it is clear that the impact on openness would be substantial. Like Site 1, notwithstanding the previously developed nature of the site and the proposal for 100% affordable housing, the development would be inappropriate in the Green Belt because it would not fall within the second indent of paragraph 145(g) of the Framework.

179. Compared with the extant hotel permission, the proposals for Site 2 would be set further forward and would extend across the whole site frontage. The appellant accepted that the visual impact would be greater. In any event, Mr Clarke agreed that the extant permission could not be considered as a fallback because there was no more than a theoretical possibility of it being built out¹⁵². Consequently it is of no relevance to the appeal.

Site 3 – 114 residential units in three storey buildings

180. The site comprises a maintenance compound, allotment gardens and staff accommodation. Only 0.43ha (24%) of this 1.76ha site is previously developed. The appellant accepted that, if the site is judged individually, it would not fall within paragraph 145(g) of the Framework even before openness is considered. The present built volume is 1,750m³. The proposal to introduce three storey apartment blocks across the site would increase the built volume to 33,750m³, a 1,828% increase¹⁵³. Mr Clarke agreed that this would be a substantial increase in built form.

181. The visual effects would also be substantial. The appellant accepted that the Lower Green Road/More Lane junction affords some sense of openness in filtered views into the racecourse¹⁵⁴. There are also open views from the southern end of More Lane and at the access from Lower Green Road¹⁵⁵. The appellant accepted that the proposals would "*introduce new built form in views from higher ground within the racecourse*" and would introduce an "*immediately obvious feature of the urban scene*" when viewed from More Lane¹⁵⁶. Overall, it

¹⁵⁰ CD7.3, paragraph 9.7.3.8

¹⁵¹ EBC1/1, paragraph 3.59

¹⁵² Inspector's note – this was agreed by Mr Clarke in answer to questions from Dr Bowes

¹⁵³ EBC1/1, paragraph 3.66 and CD6.51, table 1

¹⁵⁴ CD5.50, part 4 of 4, plan EDP2

¹⁵⁵ EBC1/3, appendix 12, viewpoint 5

¹⁵⁶ CD5.52, part 1 of 2, appendix EDP6, Site 3

was accepted (when the application was submitted) that the proposals would have a greater impact on openness than that of the existing built context¹⁵⁷.

182. In cross-examination, Mr Connolley agreed that built form would be more obvious in views from More Lane. Moreover, there would be a substantial loss of trees, which he agreed would increase inter-visibility between Lower Green Road and the proposed development¹⁵⁸. The officers report found that the proposal would result in a significant adverse impact in terms of the spatial and visual dimension of openness. When the application was submitted the appellant was right to say that "*the proposals are considered inappropriate in landscape and visual terms*"¹⁵⁹. The appellant's subsequent change of heart resulted from a misreading of the *Samuel Smith* case. For the reasons discussed above, it would be irrational to exclude consideration of visual effects in this case. On the appellant's own evidence, the visual effects would be high adverse on completion of the development¹⁶⁰.

Purpose 1 - to check the unrestricted sprawl of large built-up areas

183. Land to the north of the racecourse is the end point of continuous development which originates from Greater London. The mere fact that it is not within the administrative boundary of Greater London is not determinative, as Mr Clarke agreed. Moreover, the presence of some green spaces does not stop the perception of sprawl. The small scale, and limited visibility, of the existing properties on Site 3 means that the site still functions to prevent sprawl. The more prominent development proposed would create a new southern boundary to the built-up area of Greater London along the perimeter of the racecourse¹⁶¹, giving rise to a clear perception of southwards sprawl.

Purpose 2 - to prevent neighbouring towns merging into one another

184. Both the Design and Character SPD and the Arup work in 2019 found it appropriate to draw a boundary between the northern part of the racecourse and Lower Green Road. The SPD places More Lane and Lower Green in different character areas and notes that the racecourse separates Esher from its railway station and Lower Green. The Landscape Sensitivity Study (2019)¹⁶² placed Sites 3 and 4 in landscape unit UW6-A. The northern boundary of the character area was the northern boundary of the racecourse. The Study noted that the large scale of the racecourse contributes to the perceived gap between settlements and acts as a buffer between Esher and the south-west main line. The appellant made much of the fact that Lower Green Road is part of the settlement of Esher, but that is not determinative of the coalescence issue.
185. There is limited visual perception of Lower Green either from Portsmouth Road or from the Conservation Area at Esher Green. As noted above, there are some views of Site 3 from the southern end of More Lane but the existing buildings are not prominent. The modern flatted development on the west side of More

¹⁵⁷ CD5.50, page 17, table EDP2.3

¹⁵⁸ CD5.52, appendix EDP4, Site 3 and EBC1/1, paragraph 3.67

¹⁵⁹ CD5.50, table EDP2.3

¹⁶⁰ CD5.52, appendix EDP6, Site 3.

¹⁶¹ EBC1/1, paragraph 3.106

¹⁶² CD3.25 (part 2 of 2), page 171

Lane extends as far north as The Eclipse. Beyond this point there is a break in the built form providing a transition between development at More Lane and Lower Green. There is then a gap between two Gatehouses, which marks a clearly perceptible break between the Greater London built-up area to the north and Surrey to the south. Arup found that Site 3 performs strongly in terms of purposes 1 and 2. This is reinforced by the more recent proposal to extend the Green Belt boundary to the northern side of Lower Green Road¹⁶³.

186. Mr Webster explained that the proposals would erode the essential gap, resulting in the inevitable coalescence of built-up areas¹⁶⁴. There would indeed be coalescence, both through the reduced gap between the Grandstand and built form at Lower Green Road and perceptually. That would be consistent with the Arup 2018 Supplementary Work which found that removal of Site 3 from the Green Belt would harm the performance of the wider Green Belt and physically reduce the perceived and actual distance between settlements, resulting in their merging¹⁶⁵. Mr Connolley accepted that, if Lower Green and the southern boundary of Esher were indeed different for the consideration of Green Belt purposes, there would be a degree of perceived coalescence.

Purpose 3 - safeguard the countryside

187. In considering purpose 3, Arup assessed the extent to which land was under urban influence or displayed a rural character¹⁶⁶. Local Area 52 scored 2 out of 5 because it had less than 15% built form. Mr Clarke accepted that it was appropriate to adopt the test of "*the degree to which the land was free from urban influence*" when considering purpose 3. He also had to accept that, post development, Site 3 would be under a greater urban influence than it is now. Accordingly, there would be conflict with purpose 3.
188. In summary, the proposals for Site 3 would amount to inappropriate development. They would also cause significant harm to the openness of the Green Belt and to the purposes of including land within it.

Site 4 – 72 residential units in a six storey building

189. In the application documents, the site was described as not being previously developed¹⁶⁷. The appellant now says that 0.09ha of this 0.57ha site is previously developed¹⁶⁸ (having been used for parking) but accepts it is free from buildings. The absence of built form is evident to users of Portsmouth Road, Station Road and Littleworth Common, notwithstanding the fencing and sporadic trees along the road frontage. More generally, the absence of built form (other than the former Café Rouge) on either side of Portsmouth Road is appreciable from the Scilly Isles roundabout as one approaches the junction with Station Road. A six storey building with a volume of 30,050m³ is proposed.

¹⁶³ CD3.10

¹⁶⁴ EBC1/1, paragraphs 3.115 and 3.116

¹⁶⁵ CD3.9 Annex Report 1C: Sub-Area Proformas (SA-49 to SA-71)

¹⁶⁶ CD3.8 (part 1 of 3), page 44

¹⁶⁷ CD5.51, appendix 2, table 1,

¹⁶⁸ JCR1/3, appendix 4

Mr Clarke accepted that this would amount to a substantial increase in footprint, floor space and volume¹⁶⁹.

190. There would also be a substantial visual impact. The appellant accepted that the taller elements of the proposed building would be seen from the racecourse and that it would be very apparent as a skyline feature as seen from Littleworth Common and from the Portsmouth Road/Station Road junction. Even in the medium/long term, it would remain visible above the existing built form¹⁷⁰. Mr Connolley accepted that the visual appreciation of built form in public views would be considerably greater than it is now. That is consistent with the officers' report which found that the impact on the openness of the Green Belt in spatial and visual terms would be significant¹⁷¹.
191. It is not surprising that the appellant originally accepted that development here would be inappropriate¹⁷². On any view, the proposals would have a considerably greater impact on the openness of the Green Belt than the present situation. They cannot, therefore, fall within paragraph 145(g) in any event. Moreover, they would not relate to previously developed land and would not represent limited infilling. Viewed from Station Road, only one side is developed and 72 units cannot be described as limited in this context. The proposals would amount to inappropriate development.
192. There would also be harm to purpose 3. The land was found to have a semi-urban character, providing a transition from urban to the more open racecourse beyond¹⁷³. Although it was found to meet purpose 3 weakly, the Council is not proposing that it be released from the Green Belt. The proposal would reduce the contribution it makes to safeguarding the countryside from encroachment. Mr Clarke accepted that the site would be under a greater urban influence than it is now.

Site 5 – 68 residential units and a children's nursery in 4 and 2 storey buildings

193. There are long views over the racecourse from Portsmouth Road above the fence on the site frontage. The current lack of built form is appreciable, particularly in winter. The existing buildings, other than the Toll House, would be demolished. The built volume would increase by 1,412% from 1,200m³ to 18,150m³. There would be four buildings (each of four storeys) parallel to Portsmouth Road, a two storey building set back into the site and a new, wide bellmouth site access.
194. The appellant conceded that the proposals would be a visible and identifiable element within the view and would reduce the length of road from where views to the northern boundary of the racecourse could be obtained¹⁷⁴. Built form would be visible through the new access, framing the view. The effects would also be felt within the racecourse where views would be opened up by the

¹⁶⁹ Inspector's note – this was agreed by Mr Clarke in answer to my question

¹⁷⁰ CD5.52, appendix EDP6, Site 4

¹⁷¹ CD7.3, paragraph 9.7.3.23

¹⁷² CD5.51, appendix 2, table 1

¹⁷³ CD3.9 Annex Report 1C: Sub-Area Proformas (SA-49 to SA-71)

¹⁷⁴ CD5.52, appendix EDP6, Site 5

planned removal of trees¹⁷⁵. Mr Connolley accepted that the visual appreciation of buildings would be greater than it is now and the officers' report concluded that the effect on both spatial and visual dimensions of openness would be substantial¹⁷⁶.

195. Even if the site is accepted to be previously developed, despite around 250m² not being previously developed, it cannot sensibly be said that these proposals would not have a greater impact on the openness of the Green Belt. The proposals would not fall within any of the exemptions and would therefore amount to inappropriate development.

Overall conclusions on Green Belt

196. The proposals for Sites B, D and 1 to 5 would amount to inappropriate development within the Green Belt, which would cause harm to its openness and purposes. In accordance with paragraph 144 of the Framework substantial weight must be attached to this harm. Very special circumstances must exist which clearly outweigh this harm, and any other harm, in order to avoid a conflict with DMP Policy DM17 and the Framework.

The effect on the character and appearance of the area

Policy approach

197. The development plan takes a robust stance in favour of good design which is sympathetic to, and takes the opportunities to enhance, the local character and quality of an area. The Framework attaches great importance to design, stating that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development¹⁷⁷.
198. One of the objectives of the CS is to protect the unique character of the Borough and to enhance the high quality of the built, historic and natural environment. CS Policy CS9 states that all new development will be expected to enhance local character. Policy CS17 requires that new development responds to the positive features of individual locations and integrates sensitively with the locally distinctive townscape. DMP Policy DM2 provides detailed guidance on how new development should preserve or enhance the character of the area. To assist with the application of these policies the Council has adopted the Design and Character SPD and Companion Guide. The proposals would undermine the character and appearance of the area from every angle.

Approaching Esher from London

199. The junction of Portsmouth Road and Station Road is identified in the Design and Character SDP Companion Guide as a Key Gateway where particular care needs to be paid to the scale and form of development. Visitors would be greeted by a six storey flatted development at Site 4. This would be of a considerably greater scale than its neighbours, contrary to the advice in the

¹⁷⁵ EBC1/1, paragraph 3.87

¹⁷⁶ CD7.3, paragraph 9.7.3.9

¹⁷⁷ The Framework, paragraphs 124, 127 and 130

SPD¹⁷⁸. It would create a new skyline feature for viewers at Littleworth Common, as well as being visible from within the racecourse. There would be a loss of trees along Station Road and the southern boundary. New planting would take many years to mature and, even on maturity, the taller elements of the new building would be clearly visible. Mr Connolley accepted that car park infrastructure and a new pedestrian crossing along Station Road would be urbanising features.

200. The Landscape/Townscape Visual Appraisal (LTVA) identified landscape principles for the site which included "*setting back the proposed development from Station Road*"¹⁷⁹. Contrary to this principle, the tallest, most prominent element of the proposal would be immediately adjacent to Station Road. Notwithstanding the proposed replacement planting the LTVA found that the visual effects would not diminish over time.
201. Mr Connolley suggested that a gateway building would be appropriate on Site 4. However, he agreed that the notation used for a Key Gateway in the SPD refers to the road junction¹⁸⁰. In fact the proposals would reduce the significance of the corner site (which is occupied by the former Café Rouge) which marks the gateway, by introducing a taller element to the rear. If anything, the scheme would herald the arrival into Station Road and not Esher. In any event, there is no requirement in the SPD that a Key Gateway be marked by a gateway building.

Entering Esher

202. The Landscape and Townscape Visual Appraisal (LTVA) states that the Toll House (within Site 5) plays a key role in the approach to Esher on Portsmouth Road¹⁸¹. Mr Webster considered that the proposals for Site 5 would substantially reduce the open undeveloped character of this key approach, with four storey buildings appearing above Cheltonian Place and the Toll House. He said that, viewed obliquely, the impression would be of a single block of built form. There are no other four storey buildings along this section of Portsmouth Road and the proposed buildings would be out of scale. This effect would be apparent along Portsmouth Road, including when viewed through the listed railings heading east out of Esher.
203. Mr Connolley accepted that these proposals would continue the pattern of ribbon development along Portsmouth Road. Removal of trees within Site 5 would open up views from within the racecourse. Any new planting would take many years to mature. The LTVA found that the visual effects would not reduce over time, notwithstanding the opportunities for new planting.

Passing the entrance to the racecourse

204. Mr Webster found that the proposed hotel would be an imposing structure, terminating long views across open land which contribute positively to the character of the area. It would be visible from Portsmouth Road, including

¹⁷⁸ CD3.2, part 2 of 2, page 9 and EBC1/1, paragraph 8.49

¹⁷⁹ CD5.52, part 1 of 2, paragraph 6.5, pages 30 to 31

¹⁸⁰ Inspector's note – this was agreed by Mr Connolley in answer to my questions regarding the map on page 6 of the Companion Guide (CD3.2, part 2 of 2)

¹⁸¹ CD5.52, paragraph 7.13

through the listed railings where views of the Grandstand would be obscured¹⁸². The Grandstand is noted as a local landmark in the Companion Guide SPD¹⁸³. Indeed, Mr Connolley accepted that the function of the Grandstand as a local landmark would be reduced in some views from Portsmouth Road. That cuts against the landscape design principles established in the LTVA to “*maintain the approach to Esher on the Portsmouth Road, particularly where open views are possible through the old gates to the racecourse*”¹⁸⁴. Together with the proposals for Site 5, the hotel would reduce the width of views over the racecourse from Portsmouth Road.

Entering Esher High Street

205. The treed boundary, and the appreciable open space behind it, would be replaced by frontage development at Site 2. The Companion Guide SPD notes the rarity of residential buildings higher than three storeys¹⁸⁵. However, the development would, in parts, be higher than three storeys. Mr Webster explained that the built form would be substantial and would be out of scale with the adjacent commercial buildings, changing the sense of arrival into Esher and harming the character of the area. The decision to set the building back from the existing alignment of the shopping parade would make these effects more apparent. Proposed boundary planting would be cramped and close to the new façade, reducing the likelihood of its retention¹⁸⁶. Mr Connolley accepted that the proposals for Sites 4, 5, B and 2 would together serve to change the nature of the approach into Esher.

Leaving Esher High Street and turning into the conservation area

206. The Companion Guide SPD identifies Esher Green as another Key Gateway. The Warren is identified as a local landmark. Site 1 is adjacent to character area ESH05 in the SPD where the issues noted include replacing housing at larger scale and an increasing presence of flatted development. The SPD identifies an opportunity to take account of the established scale and grain. Contrary to that guidance, the three storey proposal for Site 1 would be of greater scale than the surrounding built form. It would be visible from Esher Green and through the proposed access at the Key Gateway, affecting views to the Warren.

207. The Conservation Area Appraisal describes Esher Green as retaining “*much of the character of a rural village green, in contrast to the densely developed town centre to the south ... most of the surrounding buildings are relatively small scale, accentuating the size of the Green*”¹⁸⁷. The proposed apartment building would be in an elevated position behind much smaller detached dwellings. Mr Webster considered that it would be distinctly out of character. The appellant accepted that the building would remain visible over time, notwithstanding the effect of new planting¹⁸⁸. Mr Connolley agreed that he had underscored the sensitivity of receptors in this location. Having regard to the Conservation Area

¹⁸² EBC1/1, paragraphs 8.30 and 8.31

¹⁸³ CD3.2, part 2 of 2, pages 5 and 6

¹⁸⁴ CD5.52, part 1 of 2, page 31, paragraph 6.5

¹⁸⁵ CD3.2, part 2 of 2, page 7, paragraph 3.7

¹⁸⁶ EBC1/1, paragraphs 8.40 to 8.44

¹⁸⁷ CD7.10, page 13

¹⁸⁸ CD5.52, appendix EDP6, Site 1

location, a medium sensitivity was more appropriate than the low/medium sensitivity he had attributed.

Leaving the conservation area and travelling north down More Lane

208. From More Lane there are views over the racecourse to the treed northern boundary¹⁸⁹. On Site D some 12,900m² of greenfield land would be lost to grasscrete. Parked cars would detract from the open character of the view and would have an urbanising effect. Mr Webster considers that this would cause slight harm. However, he also identified very noticeable views of development at Site 3 which would be of a very different scale and pattern to the existing houses facing Lower Green Road. Site 3 would take on a distinctly urban character.

Leaving More Lane and turning right into Lower Green Road

209. Lower Green Road is in the ESH06 character area of the Companion Guide SPD, which describes the houses as having a Garden Suburb quality due to their "cottage scale, tall chimneys and eaves half dormers"¹⁹⁰. Site 3 is not in character area ESH06 but is in its landscape setting as identified in the recent Landscape Sensitivity Study¹⁹¹. Mr Connolley accepted that the proposals would introduce a significant amount of built form within that setting.

210. The access to Site 3 would be from ESH06. The LTVA found that the proposed buildings would be very noticeable through the introduction of some prominent elements and differences to the existing scale and pattern of development¹⁹². Mr Connolley accepted that the proposals would not have a Garden Suburb character. It follows that they would not reflect the character of Lower Green Road. That different character would be apparent in filtered views from the public realm of Lower Green Road.

211. Although the Companion Guide SDP states that higher density may be appropriate, the case study example it refers to involved replacement of a single dwelling within the parameters of footprint and height envelope. Mr Connolley agreed that the proposals for Site 3 would not fall within the footprint or height envelope of the existing buildings on that site. These proposals would not be consistent with what the SPD contemplated as an opportunity for increasing density.

212. The highway authority is seeking mitigation works, including widening Lower Green Road to the east of the proposed access. If the suggested condition were found to meet the policy tests for conditions, the widening would result in the loss of vegetation and an urbanising effect.

213. The appellant relied on an appeal decision relating to a proposal for a three storey building containing 17 flats at No 61 More Lane¹⁹³. Mr Webster said that this did not change his evidence because the More Lane proposal was much smaller in scale and in a less prominent position. Moreover, the Inspector found

¹⁸⁹ EBC1/3, appendix 12, viewpoint 5

¹⁹⁰ CD3.2, part 2 of 2, paragraph 3.51

¹⁹¹ CD3.25

¹⁹² CD5.52, paragraph 7.11

¹⁹³ CD8.4, paragraphs 11 to 13

that the scheme would preserve the spacious feel and verdant character of the street scene. This would not be the case at Site 3. Mr Connolley accepted that No 61 More Lane is not in the Green Belt and has existing buildings that fill the width of the plots. He also agreed that the proposed building would be considerably less prominent than the proposals for Site 3 and would have a clear visual relationship with the railway embankment. For all these reasons the decision at No 61 More Lane is not comparable to the appeal scheme and should not weigh in its favour.

Overall conclusions on character and appearance

214. The appeal scheme cannot be said to preserve or enhance local character, respond to the positive features of individual locations or integrate sensitively with the locally distinctive townscape. The proposals therefore conflict with CS Policies CS9 and CS17 and with DMP Policy DM2. These policies conform to national policy and the harm would be geographically widespread. Mrs Hyde was therefore right to attach significant weight to that conflict.

Affordable housing

Approach

215. For residential schemes of 15 units or more CS Policy CS21 requires 40% of the dwellings to be affordable, or 50% on greenfield sites, subject to viability. There is a blend of greenfield and previously developed land in this case and the Council considers that 45% would be an appropriate proportion. The argument comes down to two points:

- whether it is appropriate to use the cost of the racecourse enhancement works as the benchmark land value or whether the existing use value of the land should be used as required by Planning Practice Guidance (PPG); and
- whether the appellant has exhausted all other routes to generate the capital required to undertake the enhancement works.

Methodology

216. CS21 requires provision for affordable housing to be made on site for all schemes, where viable. Mr Clarke accepted the Council's view that 45% would be an appropriate blended rate. He also agreed that the Developer Contributions SPD (July 2020) aids the application of CS21. The SPD provides that all viability appraisals should "*observe guidance set out in the ... Standardised inputs to viability assessment set out in the Planning Practice Guidance – please see Reference ID: 10-010-20180724 Paragraphs 010 – 020*"¹⁹⁴. Paragraph 57 of the Framework makes the same point. Applying the SPD, a proposal which failed to follow the PPG approach would be in conflict with CS21.

217. This seemingly uncontroversial proposition was not accepted by Mr Clarke, who suggested that provided a developer had literally "*observed*" the PPG, but ultimately did something different, that would be sufficient. That response was plainly wrong.

¹⁹⁴ CD3.49, paragraph 4.59

218. The PPG sets out the government's recommended approach. It states that "*any viability assessment should follow the government's recommend approach to assessing viability*". Following the standard methodology, viability is determined by considering the residual land value compared to the benchmark value. The benchmark value is to be derived from the existing use value (EUV) (plus a premium to incentivise sale) or, exceptionally, an alternative use value which complies with planning policy requirements and for which there is a market demand¹⁹⁵.
219. Rather than using EUV, the appellant took the cost of the racecourse improvement works (around £36 million) as a benchmark. The viability assessment acknowledges that it has departed from the standard approach¹⁹⁶. Mr Fell (the appellant's witness on affordable housing) accepted that he had not followed the standard approach in the PPG and that there was nothing in the development plan, the Framework, the PPG or any other policy document which authorised his approach. The candid explanation offered by Mr Clarke was "*because PPG does not capture what we want to do on site*"¹⁹⁷.
220. By adopting this unconventional approach, the appellant argued that anything beyond 20% affordable housing would not be viable. However, Dr Lee demonstrated that, if the standard approach were adopted, the residual land value would be sufficient to provide 45% affordable housing¹⁹⁸. That evidence was not disputed by Mr Fell.
221. The appellant's approach amounts to the prioritisation of its own private venture over the policy objectives of the development plan. The appellant goes a step further, claiming that the provision of affordable housing below policy requirements is, nevertheless, a significant benefit of the scheme. Every element of that argument is misconceived. There is no policy which suggests that racecourses should be prioritised over objectives of the development plan (and/or national policy) such as meeting the need for affordable housing. Whilst the racecourse does support some public benefits, Mrs Hyde's evidence was that these should carry only moderate weight.

Relevant appeal decisions

222. A decision relating to London Irish RFC bears some resemblance to this appeal. The club proposed a new ground, subsidized by 194 residential units and a care home. Only 10% affordable housing was proposed, whereas the policy requirement was 50%. The Inspector framed the issue as whether it was appropriate to divert a "*public subsidy*" away from affordable housing to provide the new club facilities. The Inspector noted that, whilst the scheme would provide some public and community benefits, the bulk of the benefits would flow to the club itself. He found a conflict with the development plan requirement to provide affordable housing. The Secretary of State agreed with that analysis, finding that there was no specific development plan support for the proposal,

¹⁹⁵ CD2.4, ID 10-010-20180724, ID 10-013-20190509 and ID 10-017-20190509

¹⁹⁶ CD5.38, part 1 of 2, page 27, paragraph 15

¹⁹⁷ Inspector's note – stated by Mr Clarke in answer to questions from Dr Bowes

¹⁹⁸ EBC3/1, paragraphs 7.3 to 7.4. With 50% affordable housing Dr Lee calculated a surplus of £17 million above the benchmark land value

nor was there any heritage asset to be protected or preserved by the enabling works. The primary purpose was to support the club¹⁹⁹.

223. A decision relating to Lord Wandsworth College considered the provision of affordable housing below the policy requirement. The rationale was that funding works to a building within the college used for performing arts was a higher priority. The Inspector found the works were not made necessary by the appeal scheme, nor was the appellant able to point to any policy basis for the approach. Accordingly, the Inspector found that there was a breach of the affordable housing policies because inadequate provision had been made²⁰⁰.

224. Applying the reasoning of those cases, Mr Fell confirmed that in this case:

- there is no heritage asset which would be protected or preserved by the housing proposals;
- the racecourse improvement works are not made necessary by the housing proposals, and
- there is no development plan support for the racecourse improvement works.

225. The appellant relied on a decision in Stockport. However, that case is clearly distinguishable. The appellant was a registered charity providing education for children and young people with severe mental and physical disabilities²⁰¹. A charity is a legally defined organisation, subject to the control of the Charity Commission. It is legally meaningless to say something is "*akin*" to a charity. Neither the appellant (Jockey Club Racecourses Ltd) nor the Jockey Club itself is a registered charity. The Jockey Club may be established by Royal Charter but it has no duty to act for the general public benefit or to answer to a regulator. Whilst the appellant may be a not-for-profit organisation, in that respect it is no different to a private members' club. Unsurprisingly, Mr Clarke would not be drawn on whether the appellant makes the same contribution to the public benefit as the charity in the Stockport decision. Clearly there is no sensible comparison.

226. Other factors that distinguish the Stockport decision from the present appeal are:

- the appellant had borrowed money and undertaken fundraising before seeking to subsidise its project by way of a below-policy level of affordable housing;
- the appellant had contributed 10% more affordable housing than here; and
- the conflict with affordable housing policy was acknowledged and dealt with in the planning balance.

¹⁹⁹ EBC3/5, Inspector's report paragraphs 409 and 412 and Secretary of State's decision letter paragraphs 20 and 21

²⁰⁰ ECB3/6, paragraph 37

²⁰¹ CD4.18, paragraph 23 of the Inspector's report

227. Here the appellant contends that the proposals comply with the affordable housing policy. The proper approach is to acknowledge that the shortfall in affordable housing gives rise to a conflict with CS21 to which substantial weight should be attached. That harm should then be dealt with transparently in the planning balance.

Other sources to make up the shortfall

228. There is no reason for rejecting two obvious measures to make up the funding shortfall, such that a policy compliant level of affordable housing could be achieved. Dr Lee explained that the residual land value of a policy compliant scheme (£20 million) would be available to the appellant, leaving only £14.9 million to be raised from other sources²⁰².

The self-development option

229. Sale of the development land to a third party would lead to significant leakage of value (£17.15 million with 50% affordable housing) due to the developer's profit, finance charges and other costs. Employing a development manager would secure a much higher retained profit. Allowing for the development manager's fee and a contingency for risk, the profit would be unlikely to fall below £35.2m²⁰³. The appellant did not dispute that evidence, instead arguing that this was not an appropriate course of action for a not-for-profit organisation. However, Mr Gittus accepted that:

- the appellant is not a charity and thus does not need to follow guidance issued by the Charity Commission;
- even if that guidance were applied (by analogy) there is no prohibition on undertaking a housing project;
- whilst he maintained that the level of risk would conflict with the Jockey Club's obligations as trustees, no legal advice had been sought to inform that view; and
- whilst he referred to comments of development managers he had consulted, their views were not before the Inquiry.

230. Mr Fell accepted the propositions within Dr Lee's evidence. Then, in cross-examination, he put forward a large amount of technical detail that had not been foreshadowed in the evidence. Dr Lee's subsequent note explained why the points raised were hopeless²⁰⁴. He commented that the development manager role could be far more than a mere project manager and could deliver a large and complex scheme. The deposit that would be paid by a registered provider of affordable housing would remove a large element of risk at the outset. Any developer purchasing the site would need to provide collateral to the lender. In the event of default the lender would take the land. The

²⁰² EBC3/1, paragraph 7.6

²⁰³ EBC3/1, paragraphs 8.3, 8.4 and 8.7 and EBC3/3, appendix 3

²⁰⁴ Inspector's note – in answer to questions from Dr Bowes, Mr Fell introduced some technical points that had not been before the Inquiry until then. To assist the Inquiry he summarised those points in a note (CD8.18). Dr Lee made a written response before the end of the Inquiry (CD8.27).

appellant's risk would be confined to the development sites. Other assets, such as racecourses or training facilities, would not be put at risk.

The bond issue option

231. Dr Lee's evidence showed that there is precedent for funding racecourse improvements in this way. On the basis of the appellant's disclosed profits, the necessary amount could easily be serviced²⁰⁵. Mr Gittus asserted that a bond issue (as at Cheltenham) would not be viable at Sandown Park because there was a greater emotional connection to Cheltenham. However, he had not even asked potential investors about the level of interest here. Mr Gittus also suggested that there are bank covenants preventing further borrowing but these were not before the inquiry. If there are such covenants, they merely demonstrate that the appellant has incurred debt elsewhere and has exceeded a commercial level of exposure when it comes to Sandown Park. That is no justification for demanding the sacrificing of public policy objectives.

Overall conclusions on affordable housing

232. Either of the options discussed above would deliver sufficient profit to fund the racecourse improvement works. The reasons for rejecting these options are wholly unconvincing. Accordingly, it cannot be said the affordable housing provided is the maximum viable amount. The proposed 20% affordable housing is nowhere near the agreed blended policy requirement of 45% for this part greenfield/part previously developed site.

233. Putting all that to one side, there is no planning policy justification for not following the PPG methodology. Mrs Hyde was therefore entitled to attach significant weight to the failure to provide the maximum viable amount of affordable housing.

Impact on the highway network

234. The Council's case is two-fold:

- the acknowledged increase in traffic would not meet the threshold of "severe", such as to justify refusal by itself but would, nevertheless, cause harm to an already congested local network; and
- the claimed sustainability benefits of the scheme have been overstated.

Congestion

235. Surrey County Council is the highway authority and statutory consultee. Its advice was that:

Central Esher is a known congestion hotspot.....due to the existing congested nature of the local highway network this does not necessarily mean that the impact will not be significant.....even a relatively small uplift in trip rates can result in a significant impact when applied to a network operating close to, or at, capacity as is the case within Central Esher²⁰⁶

²⁰⁵ EBC3/1, paragraphs 8.8 to 8.11

²⁰⁶ EBC2/1, paragraphs 3.56 to 3.57

That response was made in the full knowledge of the package of sustainable transport measures proposed with the appeal scheme.

236. The uplift in vehicles per hour would be relatively small but would affect a network that is already congested:

- Lower Green Road (+21 AM peak and +19 PM peak);
- Station Road (+22 AM peak and +19 PM peak);
- Portsmouth Road/Esher High Street (+53 AM peak and +44 PM peak); and
- More Lane (+19 AM peak and +21 PM peak)²⁰⁷.

237. The agreed traffic flows show that this would place an additional 72 vehicles onto the gyratory²⁰⁸. Even this minor delay would cause harm to the Esher gyratory and Scilly Isles junctions²⁰⁹. Applying the approach in *Redhill Aerodrome*²¹⁰ (consistent with the Secretary of State's approach in the Bishops Stortford appeal decision²¹¹) this harm should be included in the planning balance and afforded moderate weight²¹².

Claimed sustainability benefits

238. The appellant relies on a high mode shift away from car use. However, the site has an average public transport accessibility level (PTAL) score of 1b (on a scale from 0 to 6b). Compared to other developments with much higher PTAL scores, it cannot be said that this site is "very sustainable"²¹³. Whilst it is acknowledged that PTAL is a method used by Transport for London, the appeal site is a mere 3km from Greater London. In any event, consideration of transport options bears out the conclusions drawn from applying PTAL scores:

- There is no proposal to increase the frequency of bus services. At present, only the High Street bus stops have a high frequency of services and there is a considerable walking distance from some of the proposed development sites to those stops. Sites 3, 4 and 5, which are 850m to 1,200m from the High Street bus stops, are well over the mean walking distance. Bus travel had only a 2% mode share in the Census data. Taken together these factors undermine the appellant's claim that there is significant potential to encourage bus travel²¹⁴.
- Over 55% of the dwellings would be 1km or more from the railway station. Sites 1 and 2 would be over the 1,010m mean walking distance to a station. In any event, there is no proposal to improve the capacity of the trains. Between 0702 and 0800 there is standing room only. It is

²⁰⁷ CD5.45, table 5.9, page 21

²⁰⁸ SOC1/16, figure 7 - 2027 PM peak traffic flows with development

²⁰⁹ EBC2/1, paragraphs 3.59 and 3.63

²¹⁰ CD4.12 *Redhill Aerodrome v SSCLG* [2014] EWCA Civ 1386, paragraph 32

²¹¹ EBC2/3, appendix A, paragraph 20 of the Secretary of State's decision letter

²¹² EBC4/1, paragraph 109

²¹³ EBC2/1, paragraphs 3.15 and 3.18

²¹⁴ EBC2/1, paragraphs 3.27 and 3.28, figure 3.6 on page 13 and table 3.3 on page 17

therefore unjustified to say that there would be a positive impact on rail usage²¹⁵.

- Cycling is not projected to be a major mode of travel because the appellant only envisages an additional 10 cycling trips.

239. The appeal decision at No 61 More Lane concerned a much smaller scheme, which was not "*significant development*". The Inspector was not considering the question of whether the site was sustainably located under paragraph 103 of the Framework. His observations were made in the context of a refusal based on parking pressure and he reached no conclusion that the location is "*highly sustainable*". This decision does not help the appellant's case.

240. Overall, Mrs Hyde was right to attach only limited weight to the location of the site.

Other economic, social and environmental considerations

Preservation of the racecourse as an employer and tourist venue

241. Loss of the racecourse would give rise to planning harms through the loss of jobs, suppliers and around 250,000 visitors per year to Esher, some of whom spend money in the district centre. The preservation of the racecourse would therefore be a planning benefit. However, it has not been shown that the proposals are the "*minimum required to arrest the decline of Sandown*" as claimed. Mr Gittus accepted that there was no quantitative evidence to show the effect of less extensive works on long term viability. Dr Lee's evidence that providing 40% affordable housing would deliver a surplus of £22.9 million was not challenged. However, the appellant had not even modelled what could be done for that amount.

242. Moreover, the proposals do not appear to be sustainable. Further substantial sums would be required, including over £3 million for refurbishing the Eclipse building²¹⁶. There was no projected income before the Inquiry to show how the improved racecourse facilities might fund these further works. Mr Gittus' evidence that the scope of the planning application is that which is "*essential and needed at the current time*" was revealing. He could not be certain that the appeal scheme would arrest the decline of Sandown Park²¹⁷. Consequently, the potential for further applications for facilitating development cannot be ruled out.

243. In any event, whilst CS Policy CS24 supports improving the quality of existing visitor attractions, it states that this is to be done without compromising the objectives of the Green Belt. It follows that upgrading facilities whilst causing harm to the Green Belt should not carry significant weight in the planning balance. Finally, the appellant has double-counted the benefit of the racecourse improvement works. It has used them to justify providing only 20% affordable

²¹⁵ EBC2/1, paragraphs 3.31 to 3.38, figure 3.7 on page 15 and table 3.3 on page 17

²¹⁶ JCR2/1, paragraph 19 and JCR2/5, appendix R1

²¹⁷ Inspector's note – in answer to questions from Dr Bowes, Mr Gittus said that the works covered by the application are those that are essential now. Regarding the possibility that the income generated by the improvement works would not cover future refurbishments, he commented that nothing is 100% certain.

housing and has then relied on the same works to demonstrate a separate benefit which is claimed to be of significant weight. Mrs Hyde was therefore right to question the sustainability of this proposal. Only moderate weight should be attached to the contribution the appeal scheme will make to sustaining the racecourse.

The hotel

244. Taking together the expression of interest from Accor and the Employment Density Guide, a midscale/upscale hotel would generate 50 to 75 jobs²¹⁸. Mr Gittus and Mr Clarke alluded to expressions of interest from Marriot and Intercontinental, suggesting a higher number of jobs, but that evidence was not before the Inquiry.
245. CS Policy CS9 supports the provision of hotel accommodation in Esher but there is no requirement for such provision to be on the racecourse or in the Green Belt. Nor is it required to be high quality. The objectives of CS9 could be met in a less harmful way. It is material to take into account whether a benefit could be achieved with less harm to the Green Belt²¹⁹. In this case the extant hotel permission would cause less harm to openness than the proposals for Site B²²⁰. These considerations temper the weight to be attached to the benefits associated with the hotel. Mrs Hyde was right to attach only limited weight.

Contribution to housing land supply

246. It is accepted that the Council cannot demonstrate a five year supply against the standard method. However, that is not surprising because the standard method takes no account of the substantial policy and environmental constraints on delivering homes in Elmbridge. Nevertheless, the Council is taking steps to meet the shortfall through an Action Plan and the preparation of a new Local Plan²²¹. In any event, Government policy is clear that the single issue of unmet housing need is unlikely to outweigh harm to the Green Belt²²². It follows that the economic and social benefits which typically flow from providing a housing scheme (in the context of a housing shortfall) must also be unlikely to amount to very special circumstances. Consequently, the following are unlikely to amount to very special circumstances collectively:

- construction jobs;
- increased spending in the local economy by future residents;
- Council tax receipts/CIL receipts;
- delivery of homes in a sustainable location; and
- a policy compliant affordable housing contribution.

247. There is no evidence from housebuilders that the proposed housing sites would come forward within five years to assist with the shortfall. That inevitably

²¹⁸ CD3.54, section 6

²¹⁹ CD8.26, part 5 *Hayden-Cook v SSCLG* [2010] EWHC 2551 (Admin), paragraph 23

²²⁰ EBC4/1, paragraphs 32, 39 and 40

²²¹ EBC4/1, paragraphs 48 to 52

²²² Written Ministerial Statement 2 July 2013

affects the weight to be attached to this factor. Ms Hyde fairly gave significant weight to the contribution to housing land supply but was right not to afford substantial weight.

Contribution to affordable housing

248. The Council's primary case is that there would be no benefit at all because the 20% affordable housing proposed is substantially below the blended policy requirement of 45%. That would be a substantial dis-benefit. Even if that case is not accepted, only moderate weight should be given. The 64 units would be just 19.2% of the annual need, on a site which could deliver much more. The sites chosen for affordable housing are furthest from the railway station and there is no evidence from affordable housing providers that they would take on the units²²³.

Location of the site

249. Mr Mitchell showed that the sustainability benefits have been overstated. In substantial parts of the site, residents would not be able to access public transport within average walking distances. In any event, the sustainable location of the site is a local and national policy requirement²²⁴. Rather than being a benefit, it is a neutral factor in the planning balance. Mrs Hyde was right to afford it only limited weight. The weight to be attached to this provision is therefore limited.

Family/community zone

250. Esher benefits from an excess of open space in relation to the quantitative standard. Whilst Mr Clarke drew attention to child densities and local deprivation, those factors were expressly taken into account by the authors of the open space assessment when arriving at the qualitative judgment that there was an excess of provision²²⁵. Moreover, the facility would not be open to the general public on race days.

Replacement day nursery

251. The Council accepts that there is an unmet need for childcare provision and that a purpose-built nursery could offer a high quality environment. However, Mr Clarke accepted that there was no evidence before the Inquiry regarding capacity or jobs as compared with the existing situation. The benefit is therefore limited.

Ecological enhancements

252. It is accepted that ecological benefits could be achieved within the site through a management plan. However, no management plan or biodiversity calculator was before the Inquiry. The details are vague. The weight to be attached to this benefit is therefore limited. The contribution for Littleworth Common should also carry limited weight. Whilst there would be a benefit in creating a management

²²³ EBC4/1, paragraphs 61 and 63

²²⁴ Policy CS25 and paragraph 103 of the Framework

²²⁵ CD3.53, paragraph 3.1 on page 29 and page 83

plan, the extent to which the £20,000 for implementation would act as mitigation (rather than as a benefit) cannot be known at this stage.

Integration between the district centre and the railway station

253. The proposed pedestrian crossing is a requirement of the highway authority. It removes an objection which would otherwise weigh against the scheme. Mr Clarke accepted that it was primarily a mitigation measure. Mrs Hyde attached limited weight to this factor.

Heritage

254. The appellant's heritage evidence described the improvements as minor²²⁶. When this evidence was put to Mr Clarke, he conceded that significant weight was not appropriate. Mrs Hyde was right to say that very limited weight should be attached to these benefits.

Air quality and noise

255. Mr Clarke accepted that the claimed air quality benefit turned on the extent of mode shift. The Council disputes that there would be a significant mode shift. Whilst there have been noise complaints relating to the go-kart track, no environmental health action has been taken and there is no comparative evidence to demonstrate that the family/community zone would be any less noisy²²⁷. These matters should carry no weight.

Landscape and trees

256. Mr Clarke accepted that any effects would be primarily mitigatory. Only limited weight can be attached to the mere fulfilment of normal development control policies.

Do other considerations clearly outweigh the harm?

257. It is the Council's case that the economic, social and environmental considerations advanced by the appellant in favour of the scheme do not clearly outweigh the substantial harm to the purposes and openness of the Green Belt, the harm to the character and appearance of the area, the inadequate affordable housing provision and the harm to the local highway network. By definition, they cannot therefore be "*very special circumstances*".

258. In large part, the claimed benefits would be the mere fulfilment of development plan policies. Such matters cannot amount to very special circumstances, even if they were to have clearly outweighed the harm. To be very special, the circumstances must "*go beyond satisfaction of the normal ... development control policies*"²²⁸. The appellant seemed to suggest that this was no more than could be done whilst complying with Regulation 122 of the CIL regulations. This is wrong because an element of a planning obligation could be necessary under

²²⁶ JCR/8, paragraph 4.2

²²⁷ EBC4/3, paragraphs 13 and 15

²²⁸ CD4.14 *R(Lee Valley Regional Park Authority) v Broxbourne BC* [2015] EWHC 185 (Admin), paragraph 71

Regulation 122 "*because it provided a countervailing benefit to set against [a] disadvantage*"²²⁹.

259. It follows that very special circumstances do not exist to justify inappropriate development and the proposals would therefore conflict with paragraph 143 of the Framework and DMP Policy DM17.

Conclusion

260. The development conflicts with CS Policies CS9, CS17, CS21 and CS25 and DMP Policies DM2, DM5, DM7 and DM17. The Council's evidence is that the scheme would therefore conflict with the development plan as a whole²³⁰. The shortfall in the supply of housing against the standard method engages the tilted balance at paragraph 11(d) of the Framework. However, in this case the application of the Green Belt policies in the Framework provides a clear reason for refusing the development proposed.

261. Even if the scheme were found to be not inappropriate, it is the Council's case that the harm to the character and appearance of the area, combined with the failure to make adequate provision for affordable housing and the harm to the highway network, would significantly and demonstrably outweigh the benefits. It follows that as neither the application of paragraph 11(d), nor any other material consideration, indicates that the application should be determined otherwise than in accordance with the development plan, permission must be refused.

262. The Council therefore respectfully invites the Inspector to recommend to the Secretary of State that planning permission be withheld for this poorly thought through, self-serving and harmful scheme.

THE CASE FOR THE RULE 6 PARTY – THE SANDOWN PARK APPEAL GROUP²³¹

263. The Sandown Park Appeal Group (SPAG) brought a degree of reality to matters that the appellant would have preferred to keep conceptual. The appellant's reliance on achieving a mode shift in travel patterns was one example of a conceptual aspiration that was challenged. The appellant had assumed that the new residents would walk or use public transport, theoretically mitigating any impacts on the transport network. Evidence provided by SPAG demonstrated that existing travel patterns do not support the credibility of this assumption. In reality, the proposals would generate significant additional traffic that would compound traffic congestion in Esher, causing demonstrable harm to the highway network.

264. The appellant tested the bounds of credibility by proposing monumental built form of six and seven storeys in the Green Belt. As if to deny the inevitable prominence of these structures, no attempt was made to address the reality of their visual impact. The most outrageous of the proposals were interchangeably described as "landmark" or "gateway" contributions to the townscape whilst (at

²²⁹ CD8.26, part 2 *R(Working Title Films Ltd) v Westminster CC* [2016] EWHC 1855 (Admin), paragraph 25

²³⁰ EBC4/1, paragraph 112

²³¹ The full closing submissions are at CD8.28. Mr Whicheloe's comments on the visualisations were made orally when he gave his evidence in chief.

- the same time) being capable of disappearing into the landscape altogether. It seemed to depend on where the viewer happened to be standing.
265. The only rendered images of the proposed buildings that were before the Inquiry were produced by SPAG. This was done to show the reality of what is actually being proposed here. The appellant criticised the attempt to show real buildings and questioned the accuracy of the images. It is therefore ironic that the wireframe outlines they produced just a week before the Inquiry served only to validate the work done by SPAG.
266. The visualisations for Site 3 show the effect of nine substantial closely-packed blocks. Although they would be below the skyline, they would create a static barrier-like intrusion into what is currently a soft distant view. Seen in perspective, the buildings would appear joined up, creating the impression of an impregnable wall around 300m in length. They would be located right next to the track, looking like a residential Grandstand. They would be highly visible from More Lane and in views across the racecourse.
267. The visualisation for Site 4 shows the effect of a 90m long block, most of which would be of six storeys. It would not be located at the "gateway" junction. Moreover, the plan form would turn its back on the junction rather than addressing it in any way. Site 5 is currently a well treed site that conveys a sense of space behind the frontage, contributing to the openness of the Green Belt. The visualisation shows how, seen in perspective, the four proposed buildings would coalesce into a continuous wall of development some 130m in length. The buildings would seem to crowd and press onto Portsmouth Road.
268. At present there are open and extensive views over the racecourse from Portsmouth Road. These provide relief from the built up nature of central Esher. The Grandstand is seen in these views. With its simple and abstract forms and a distinctive suspended roof, it represented the state of the art when it was built. It is an open structure, designed to facilitate spectator sport and very much part of the racecourse. It is still a very elegant building. The visualisation for Site B shows how the proposed hotel would destroy this view, completely obscuring the iconic profile of the Grandstand. Seen in perspective from Portsmouth Road, the hotel would loom larger than the Grandstand. In no sense would it appear as a sensitive extension. The overall impact would be monstrous, like putting a block of flats on the white cliffs of Dover.
269. SPAG questioned the application of the concept of very special circumstances. The appellant sought to advance personal financial circumstances as material to the planning merits of the case. SPAG contends that the appellant's financial circumstances are not a relevant planning consideration. Moreover, any development proposed on the basis that it would support investment at Sandown Park should relate to the character and use of the land. The development proposed has no connection with the racecourse. The proposals offer no very special circumstances beyond benefits to the horse racing community.
270. In conclusion, SPAG submits that the proposals would amount to inappropriate development in the Green Belt, harmful to its permanence and openness. No exceptional considerations have been demonstrated. Sandown Park delivers a significant contribution as Green Belt, beyond any landscape designation and beyond its boundaries.

OTHER PARTIES WHO APPEARED AT THE INQUIRY

Save Esher Greenbelt and Esher Residents Association²³²

271. Linda Stotesbury, a local resident, spoke on behalf of both organisations. The Jockey Club does not have the support of the local community. Over 680 residents submitted letters of objection to the planning application. Of the 84 letters in support of the scheme, only six were from the local KT10 postcode. The Green Belt is a precious national asset and the people of Elmbridge feel very protective of it. Four to six storey buildings would have a detrimental effect on the openness of the site. There are no such buildings anywhere in Esher. The racecourse is clearly visible from surrounding roads and the open spaces and trees are important to the community and to the character of the town. New trees would not mitigate the impact for a very long time. The plans are only indicative, so the townscape impact cannot be properly assessed, but residents would not be able to object to bulk and massing at the reserved matters stage.
272. Residents are shocked by the approach to affordable housing. The vast majority of the residential units would be expensive private apartments overlooking the racecourse. Some £36 million that should have supported affordable housing would be used to upgrade a private stadium. That is wrong from a planning perspective. It is also morally wrong. The proposed community benefits are primarily designed to support the appellant's business on race days. These facilities are neither wanted nor needed. Lower Green has a playground and there is a soft play centre at the golf course. Teenage children would have little interest in a playground or cycle track.
273. Whether or not the sport of horse racing is thought to be in the national interest, doing up the facilities of a private company does not meet the test of very special circumstances. If part of the Green Belt must be given up, it should be for something genuinely special that would benefit the community. The officers' report was fundamentally flawed and gave far too much weight to improved racecourse facilities. British racing is a £1 billion business and the Jockey Club had a turnover of £214 million in 2018. When they say they have a profit of only £4.5 million, that is after they have spent underlying profits on prize money and after they have made capital improvements to racecourses. Under the Royal Charter, the Jockey Club is required to reinvest any profits into racing so it is unsurprising that the net profit quoted is low. The appellant threatens that, if consent is not given, then Sandown Park will decline. However, they also say that it is a nationally important sporting venue, so it seems unlikely that they would let it close.
274. Surrey County Council is wrong to think that there would be no effect on traffic congestion. All the new residents would have cars, as would most of the hotel guests. Displacing 690 cars from the Portsmouth Road car park to Site D would cause traffic chaos as well as visual harm. Site D is a grassy field and is only used as a car park a few times each year, such as a handful of the bigger race days, four evening concerts in July and the VW festival. Site D would become a car park for all events, some 300 each year, with access from More Lane. Local roads are busy, difficult and dangerous due to parked cars. They are impassable at school pick up time. The Esher Green junction and single lane railway bridge

²³² This is a summary of the full representations which are at CD8.12

on Lower Green Road are particularly dangerous. Air pollution has not been properly considered. The proposals would involve the loss of woodland which helps to improve air quality and reduce flooding.

275. In conclusion, the proposals would cause a great deal of harm to the Green Belt, damage to the character of Esher, increased traffic congestion and increased air pollution. They would fail to provide benefits which outweigh the harm. Provision for affordable housing would be woefully insufficient because of the expense of private facilities for horse racing. The vast majority of local residents would not use these facilities, which the Jockey Club could and should pay for themselves. There are no very special circumstances and the community believes that the Councillors were right to refuse planning permission.

Roger Marsden

276. Mr Marsden is a resident of Lower Green Road. Historically there were three greens at Lower Green Road. The greens at the junction with More Lane and to the east of the proposed access to Site 3 are registered as common land. Historic mapping demonstrates that part of Site 3, which lies between the watercourse and Lower Green Road, was also common land. It has never been built on in over 1,000 years. There is good evidence that it was omitted from the registration process for common land in error. In the future it may be possible to correct that error by making an application to register the land unless it has been built on first. The Commons Registration Act 2006 was intended to allow the correction of errors and omissions from registrations made under the 1965 Act. Unregistered common land is protected elsewhere and this land requires the same level of protection as Esher Green. Ownership of common land is a separate question from rights to common land. The appellant argues that these matters are not relevant to the planning merits of the appeal but they have not justified why that should be the case.
277. The appellant's previously developed land map uses a "candy stripe" notation to indicate that part of Sites 3 and 4 is previously developed. This is highly misleading. The actual amount and location of previously developed land should be shown. At Site 3 this would make clear that the unregistered common land is in the front line of containing the urban sprawl of Greater London. The nine blocks of flats at Site 3 would be very closely spaced, resulting in a cramped form of development right up against the rails of the racecourse. The urban sprawl would cross the unregistered common land and extend into the Green Belt. Only a tiny proportion of Site 4 is previously developed and it is a travesty to suggest that this is a previously developed site. Site 4 is in a particularly sensitive location next to Ditton Common and Littleworth Common.

Councillor Simon Waugh

278. Councillor Waugh is a member of the Council's planning committee. It was surprising that only outline proposals were submitted. More detail could reasonably have been expected. This would have demonstrated the harmful impact. Upgrading racecourse facilities should generate additional revenue, so it ought to be possible to raise finance for the improvements. Limited weight should therefore be attached to this factor. Unmet housing need does not outweigh protection of the Green Belt. Moreover, the scheme does not provide a policy compliant level of affordable housing. There would be harm to the Green Belt and appellant has not shown that there are very special circumstances. The

application was rejected unanimously by the planning committee and the Secretary of State is asked to support that decision.

WRITTEN REPRESENTATIONS

279. There were around 180 written representations on the appeal²³³. These raised a wide range of issues, many of which have been discussed above. Other concerns identified included:

- overshadowing and overlooking in relation to residential properties at Warren Close (next to Site 2) and Cheltonian Place (next to Site 5);
- harm to Esher Conservation Area and locally listed buildings;
- impact on wildlife within the racecourse;
- effect on community services such as schools and health services;
- highway safety, including at the access to Site 1 and at a bend at the northern end of More Lane; and
- flood risk at Lower Green Road.

280. There were two letters of support, one referring to the need to modernise the racecourse and the other commenting that the proposals would enhance the golf club and benefit the community and the economy.

281. The officers' report records that, at application stage, there were 671 letters of objection (from 523 addresses) and 85 letters of support (from 83 addresses). Almost all of the objectors were from the local area whilst most of the supporters were from outside the Borough of Elmbridge. The issues raised were broadly the same as those raised at the Inquiry and in the written representations on the appeal.

CONDITIONS

282. The suggested conditions were discussed during the Inquiry. The final schedule of suggested conditions²³⁴ was largely agreed between the Council and the appellant, other than condition 27 (transport improvements) which is discussed more fully in the transport section of this report. The suggested conditions were not disputed by other parties. I have considered them in the light of the Planning Practice Guidance. I have made some detailed changes in the interests of clarity but, other than the matters discussed below, the substance of the conditions in Annex E is the same as the suggested conditions²³⁵. Some of the conditions require matters to be approved before development commences. This is where conditions address impacts arising during construction and/or affect the design of the development. The appellant has agreed to the pre-commencement conditions²³⁶.

²³³ This is the total number of representations, including some instances where parties sent more than one representation

²³⁴ CD8.10

²³⁵ The numbering is different because it was agreed to merge, delete or re-order some conditions

²³⁶ CD8.20

283. Suggested condition 22 sought submission of an air quality appraisal of proposed transport improvements. However, the condition would be impractical because the various measures would be spread over a wide area. Moreover, as the condition would not result in any tangible outcome, it is not necessary. I have not included it in the recommended conditions.
284. Suggested condition 27 (condition 25 in Annex E) covers various transport improvements. For reasons discussed in the transport section of this report, I consider that item (a) relating to widening Lower Green Road and part of item (j) relating to footway improvements at Portsmouth Road and Station Road, do not meet the tests for conditions. I have deleted these items from the recommended condition.
285. Suggested condition 35 was requested by Thames Water and sought to ensure that a development phasing plan be agreed with that body, with a view to avoiding problems with water capacity. However, if the appeal were to succeed, Thames Water would have a statutory duty to provide a water supply to the development. It would not be reasonable to delay development for which planning permission had been granted to suit the requirements of the statutory provider. I have not included it in the recommended conditions.
286. Conditions 1 to 4 impose the normal requirements relating to timing and reserved matters, adapted for this hybrid application. Condition 5 requires the full element of the application to be carried out in accordance with the plans, in the interests of clarity and certainty. Condition 6 requires the outline element to be generally in accordance with the illustrative layouts and parameters plans, to ensure that the details are consistent with the effects that have been assessed. The recommended wording would allow for any detailed consideration of siting, heights and massing that may be needed to achieve a satisfactory design and relationship with adjoining development.
287. Condition 7 requires approval of a Construction Transport Management Plan in the interests of amenity and highway safety. I have deleted a suggested reference to vehicle routing as a condition cannot control the use of the highway. Conditions 8, 9, 10 and 11 relate to trees, requiring a pre-commencement meeting, details of how trees will be protected during construction, verification of monitoring and supervision during the construction period and details of proposed tree planting. They are needed to manage risks to existing trees, and secure appropriate new planting, in the interests of the character and appearance of the area. Condition 12 requires approval of a Construction Environmental Management Plan (Ancient Woodland) for sites adjacent to the Warren. It is needed to avoid harm to ancient woodland and veteran trees.
288. Conditions 13, 14 and 15 relate to archaeology, requiring written schemes of investigation to be approved for the various sites, together with further impact assessments for some sites. They are needed to protect the archaeological potential of the site. Condition 16 requires approval of Noise Impact Assessments for the residential sites in the interests of providing acceptable living conditions for future occupiers. Condition 17 requires approval of passive ventilation schemes for the residential sites adjacent to Portsmouth Road in the interests of providing acceptable living conditions for future occupiers with regard to air quality.

289. Condition 18 requires approval of details of measures to ensure that noise standards are met for future occupiers of the residential units. Condition 19 requires approval of details of fixed plant and air handling equipment in the interests of protecting the living conditions of future occupiers. Condition 20 requires the approval of external lighting in the interests of providing acceptable living conditions for future occupiers and in the interests of protected species and biodiversity. Condition 21 requires approval of Construction Environmental Management Plans in the interests of protecting living conditions and managing pollution risks during construction.
290. Condition 22 requires approval of a Landscape and Ecological Management Plan in the interests of biodiversity and protected species. Condition 23 sets out measures relating to contaminated land in the interests of managing risks of pollution. Condition 24 requires approval of a surface water drainage scheme in the interests of sustainable development and managing flood risk. Condition 25 would secure the delivery of a package of transport measures which are necessary in the interests of sustainable transport and to mitigate the transport impacts of the scheme.
291. Condition 26 requires approval of a scheme to provide a secure living environment in the interests of community safety. Condition 27 provides for delivery of the proposed new and improved accesses in the interests of highway safety. Conditions 28 to 32 relate to transport. They require approval of car and cycle parking, an Event Management Plan, a Travel Plan, a scheme for electric vehicle charging points and Car Parking Management Plans. Together, these conditions are needed in the interests of sustainable transport and to manage impacts on the highway network.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets [n] refer to earlier paragraphs in this report

292. Taking into account the oral and written evidence, the Secretary of State's reasons for calling in the application and my observations on site, the main considerations are:

- a) the effect of the proposals on the Green Belt, including any effects on openness and the purposes of including land within the Green Belt;
- b) the effect of the proposals on the character and appearance of the area;
- c) whether the proposals would make sufficient provision for affordable housing, having regard to viability;
- d) the effect of the proposals on transport networks and the extent to which they would support the objective of promoting sustainable transport;
- e) the nature and extent of any economic, social and environmental benefits which would result from the proposals; and
- f) if the proposals, or any part of them, are found to amount to inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations such as to provide the very special circumstances required to justify development in the Green Belt.

Policy context

293. The development plan includes the Elmbridge Core Strategy (2001) (CS) and the Elmbridge Development Management Plan (2015) (DMP) . The Council is currently working on a new development plan but no party sought to rely on any emerging policies at the Inquiry. [16]

294. I consider that the CS polices that are most important for the purposes of this appeal are as follows:

- CS1 - Spatial strategy
- CS9 - Esher
- CS15 - Biodiversity
- CS16 - Social and community infrastructure
- CS17 - Local character, density and design
- CS19 - Housing type and size
- CS21 - Affordable housing
- CS24 - Hotels and tourism
- CS25 - Travel and accessibility
- CS26 - Flooding [17 – 19]

295. I consider that the DMP policies that are most important for the purposes of this appeal are as follows:

- DM2 - Design and amenity
- DM5 - Pollution
- DM7 - Access and parking
- DM9 - Social and community facilities
- DM10 - Housing
- DM11 - Employment
- DM12 - Heritage
- DM17 - Green Belt (development of new buildings)
- DM21 - Nature conservation and biodiversity [20 - 22]

296. The Council has adopted the Design and Character Supplementary Planning Document (SPD) together with a Companion Guide: Esher. Together, these documents set out a character summary for the area and provide design guidance. The Developer Contributions SPD includes guidance on Community Infrastructure Levy (CIL) and planning obligations. [23]

The effect of the proposals on the Green Belt, including any effects on openness and the purposes of including land within the Green Belt

Site character and Green Belt purposes

297. Sandown Park racecourse extends to around 66ha of predominantly open land located between Esher, to the south, and Lower Green Road and a railway line to the north. All of it is in the Green Belt. The Council and the appellant both adopted the term "*semi-urban*" to describe the site. This term was also used by Arup in a Green Belt Boundary Review (GBBR) carried out on behalf of the Council. However, from my observations on site, I do not think that this description fully captures the particular character of Sandown Park. The racecourse includes extensive areas of flat or gently sloping grassland. Two large buildings, the Grandstand and the Eclipse building, overlook the south west corner of the racetrack. To the south of the Grandstand is a complex of lower scale buildings and there are car parking areas adjacent to Portsmouth Road. There are further low rise buildings and structures associated with recreational facilities together with minor structures required for horse racing, such as railings and jumps. In my view, the site as a whole can best be characterised as managed open space containing some buildings and features primarily associated with its function as a racecourse. [11, 12, 125, 170]

298. The GBBR is part of the evidence base for the emerging Local Plan. It has yet to be tested through the Local Plan process and it has no status as policy or guidance. Nevertheless, it is relevant evidence which can be taken into account alongside other evidence before the Inquiry. Moreover, in my view it is important evidence because it helps to set the site-specific analysis which follows in a strategic context. Sandown Park lies within Strategic Area A as defined in the GBBR. This is described as:

"part of a narrow and fragmented band of Green Belt which closely abuts the very edge of south-west London. This strategically important arc of green spaces can be traced from Heathrow Airport through to Epsom and provides a narrow break between the built form of outer London and the Surrey towns of Ashford, Sunbury-on-Thames (Spelthorne), Walton-on-Thames/Hersham, Esher and Claygate (Elmbridge)."

The GBBR found that Strategic Area A is part of a narrow but essential arc of Green Belt preventing the sprawl of the Greater London built-up area and its coalescence with towns in Surrey. At this strategic level, it was considered to meet Green Belt purpose 1 (checking unrestricted sprawl) and purpose 2 (preventing towns merging) very strongly, whilst meeting purpose 3 (safeguarding the countryside) weakly. [136, 167, 168]

299. The GBBR includes a finer grained analysis of local areas, with Local Area 52 comprising Sandown Park. It concluded that this Area performs strongly in terms of preventing neighbouring towns from merging, forming part of an essential gap between Greater London and Esher and providing an important visual gap between the two settlements. The Area was found to be connected with the large built-up area of Greater London and to perform moderately in terms of preventing the outward sprawl of Greater London. It was noted that:

"The boundary between the land parcel and the built-up area of Thames Ditton is durable and permanent, consisting of a railway line and the Lower Green Road".

The Area was found to perform relatively weakly in terms of safeguarding the countryside from encroachment. This was on the basis that it comprised managed private open space with a number of buildings and hard standings dispersed across the site, albeit with a high level of openness. [169]

300. The appellant challenged the findings of the GBBR, contending that spatially, perceptually and in planning policy terms, Lower Green Road is part of Esher. On that basis, it was argued that development at the appeal site could not lead to sprawl or merging. The appellant drew attention to the narrowness of the gap between development at More Lane (which was agreed to be part of Esher) and Lower Green Road. The spatial relationship between Esher and the built-up area of Greater London is shown on Map 4.5 of the GBBR. Lower Green Road can clearly be seen on the southern edge of a spur of development that extends south west from Thames Ditton, which is part of the Greater London built-up area. Esher is shown as a distinct settlement, separated from the Greater London built-up area by Green Belt. [129 – 131, 134, 135, 183, 185]

301. The gap at More Lane is just 25m in width. To my mind, the narrowness of this gap illustrates the fragmented nature of the Green Belt within Strategic Area A. Other instances of narrow gaps between settlements can be seen on Map 4.5. Perceptually, the gap is more of a feature when seen in reality than it looks on a two dimensional plan. This is because the gap is framed by two lodge buildings which define an axial view from Lower Green Road into an open parkland landscape west of More Lane. More generally, in perceptual terms, the built form of Lower Green Road is not readily apparent in views from Portsmouth Road or from Esher Green. Houses on Lower Green Road can be made out in views from the southern end of More Lane and in views from within the racecourse. However, they are not prominent in such views and they tend to

merge into a soft distant view. In the reverse views, Esher is not readily apparent from Lower Green Road. [185, 266]

302. In relation to purpose 2, the GBBR states that non-Green Belt settlements were identified through the development plan and in discussion with the Council. CS Policy CS8 is an area-specific policy covering Thames Ditton and Weston Green whilst CS9 covers Esher. The plan accompanying CS9 includes the northern boundary of the racecourse and adjoining development at Lower Green Road. The appellant considers this to be a determinative point, demonstrating that Lower Green Road must be regarded as part of Esher. On that approach the question of merging would not arise. [130, 131]
303. I disagree for two reasons. First, the GBBR does not say that development plan policies were the sole reason for determining the settlement boundaries. It says that discussions with the Council also had a role. Second, it must be kept in mind that Green Belt is a strategic spatial policy. To my mind, the actual geographical extent of the Greater London built-up area (as shown on Map 4.5) is the most important consideration for the purposes of this appeal. My overall assessment is that, both spatially and perceptually, Lower Green Road can properly be regarded as part of the Greater London built-up area. To the extent that there is any inconsistency between the detail of the GBBR (which has no status as policy) and CS8/CS9, that is not sufficient to alter my conclusion.
304. The appellant highlights commentary within the GBBR which discusses an approach to defining "*countryside*" that has been taken in other reviews. On this basis, the appellant contended that none of the appeal site could be countryside in the terms of purpose 3. However, the criterion used in the GBBR for the purpose 3 assessments is set out at Table 4.5. Local Area 52 was scored 2 out of 5 against purpose 3 on the basis that it has less than 15% coverage with built form. This assessment included the description "*semi-urban*" which I have not adopted for the reasons given above. Nevertheless, it is clear that the GBBR assessment took account of the extent to which Local Area 52 contains built form. The conclusion was that the area does perform a countryside function, albeit relatively weakly. In my view, that conclusion is consistent with my own characterisation of the site as managed open space containing some buildings and features primarily associated with its function as a racecourse. [127, 187]
305. It is not my role to comment on the overall soundness (or otherwise) of the GBBR. That will be a matter for the examination of the emerging Local Plan in due course. However, I consider that the GBBR does include evidence which is relevant to this appeal. Having regard to that evidence, together with the other evidence before the Inquiry, I conclude that Sandown Park racecourse as a whole contributes to Green Belt purposes 1, 2 and 3 as set out in paragraph 134 of the National Planning Policy Framework (the Framework).

Appropriate facilities for outdoor sport and recreation

306. The Framework states that the construction of new buildings in the Green Belt will be inappropriate development unless one of the exceptions set out in paragraph 145 applies. The exception in paragraph 145(b) is:

"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"

The extent to which the appeal proposals could be regarded as facilities for outdoor sport and/or recreation was a controversial matter at the Inquiry. Given my findings on openness and purposes, which are discussed below, this point is not important to my overall assessment. Nevertheless, mindful that the Secretary of State may conclude differently on openness and purposes, it is appropriate for me to report on this matter.

307. The appellant argued that the appeal proposals comprise a package designed to achieve the single purpose of bringing about the refurbishment of racecourse facilities to secure the continuation of horse racing in the long term. Consequently, it was suggested that all elements of the proposals should be regarded as appropriate facilities within the terms of 145(b). Particular emphasis was placed on the words "*in connection with the existing use of land or a change of use*". The wording of the Framework (2019) was contrasted with corresponding wording in paragraph 89 of the Framework (2012):

"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"

It was submitted that the 2019 version introduces considerably more flexibility. On this basis, it was also argued that DMP Policy DM17 is not consistent with the Framework (2019) insofar as it refers to the need for facilities to be "*ancillary*". [111 – 114]

Sites 1 to 5 – proposed housing

308. The housing sites currently form part of a single area of land which is owned and occupied by the appellant for the purposes of outdoor sport and recreation. However, the proposals would sever that link. On the appellant's business plan, the housing sites would be sold to housebuilders and/or affordable housing providers at an early stage to generate a capital sum that would fund racecourse improvements. Thereafter, there would be no continuing link between the housing sites and the future occupiers, other than the fact that some future occupiers may have views over the racecourse and some may choose to visit it. [114, 155, 160]
309. Reading paragraph 145(b) as a whole and in context, the words "*in connection with the existing use of land or a change of use*" do not obviate the requirement for the facilities to be "*for*" outdoor sport and/or recreation. In my view the facts of this case do not establish sufficient linkage between the proposed housing and horse racing for the housing to be regarded as an appropriate facility for outdoor sport and/or recreation. It follows that the housing would not fall within the exception contained in paragraph 145(b). [112, 156]
310. DMP Policy DM17 concerns development of new buildings in the Green Belt. It includes the following:

"Built development for outdoor sport, recreation and cemeteries will need to demonstrate that the building's function is ancillary and appropriate to the use and that it would not be practical to re-use or adapt any existing buildings on the site".

The DMP was adopted in 2015 and thus pre-dates the Framework (2019). However, I do not think that has any consequence for this case because DM17 is consistent with my reading of the current version of the Framework. The housing would not have any meaningful link with the racecourse other than a purely financial link at the outset of the development. Plainly the housing would be neither ancillary nor appropriate to the use of the land as a racecourse. The housing element would therefore conflict with DM17. [112, 154, 157]

Site B – proposed hotel

311. The hotel site would be developed and operated by a hotel operator. Unlike the housing, it would make no direct contribution to the racecourse improvement works under the terms of the s106 Agreement dated 1 December 2020 (the Agreement). The appellant regards the hotel as important because it is seen as part of a package of improvements designed to make the racecourse more attractive to race horse owners, trainers and racegoers generally. Positioning the hotel next to the Grandstand would enable it to integrate with sporting events as well as non-sporting events (such as conferences) that take place there. [57, 58]
312. The ownership and management of the hotel would be separate from that of the racecourse. There are just 25 race fixtures each year. It follows that, for most of the year, the hotel would be occupied by people visiting for other reasons. Guests may be attracted by the ambiance of a racecourse hotel. It may be that some guests would be attending conferences, product launches or weddings held at Sandown Park. However, those activities would not amount to outdoor sport and/or recreation. Looking at the likely function of the hotel in the round, I do not think that there would be sufficient linkage between the proposed hotel and horse racing for the hotel to be regarded as an appropriate facility for outdoor sport and/or recreation. It follows that the hotel would not fall within the exception contained in paragraph 145(b). Like the housing, it would conflict with DMP Policy DM17. [154 to 156, 158]

Sites A, C, D, E1, E2 and F – other facilities

313. I consider that the proposals for the operational area at Site A, the recreation facilities at Site C, the car park works at Sites D and F and the racetrack widening at Sites E1 and E2 would fall within paragraph 145(b). The Council assessed Site A against paragraph 145(g) (redevelopment of previously developed land) and Sites D, E1, E2 and F against paragraph 146(b) (engineering operations). In fact it makes little practical difference which approach is taken because it is necessary to consider the effect on openness in any event.

Approach to application of paragraph 145(g) and Green Belt policy generally

314. Paragraph 145(g) allows for limited infilling or the partial or complete redevelopment of previously developed land, subject to criteria contained in the paragraph. The appellant argued that the proposals should be considered as a package. Reference was made to the *Luton* case in support of this argument. However, *Luton* was concerned (amongst other matters) with whether a decision maker is obliged to “*chop up*” a mixed use development to apply the very special circumstances test. That is an entirely separate stage of the Green Belt assessment. In my view *Luton* has little (if any) relevance to the application

of paragraph 145(g). In any event, on the appellant's approach to *Luton*, the decision maker has the discretion to decide whether or not it is appropriate to "chop up" a mixed use proposal. [113 to 115]

315. As noted above, all the sites are currently within a single area of ownership and occupation. The proposals are conceived as a package and the Agreement would require the land receipts from the housing sites to be applied to the racecourse improvement works. However, the proposals cover 12 development sites that are widely distributed across the expanse of Sandown Park racecourse. The 12 sites are physically distinct, although some sites adjoin another site. The sites are varied in terms of their use, character and appearance. They also vary widely in the extent to which they comprise previously developed land. Finally, there is great variation in the scale and nature of development envisaged for each of the sites. Consequently, I consider that the appropriate way to analyse these proposals in terms of Green Belt policy is to look at the sites individually first, before drawing higher level conclusions about the scheme as a whole. [115, 151]

The Sites that were not in dispute – A, C, E1, E2 and F

316. The proposed operational facilities at Site A would replace existing facilities of similar character in this location. Although the appellant's figures indicate an increase in footprint, floor space and volume of buildings, those figures exclude Sandown Park Lodge as part of the baseline, on the basis that it is on the boundary of Site 2. The greater part of Sandown Park Lodge (which would be demolished) is actually within Site A. If due allowance is made for Sandown Park Lodge, it seems likely that any increase in footprint, floor space and volume here would be modest. Siting and height would be controlled through the parameter plans and at reserved matters stage. In my view the proposals for Site A would not have a greater impact on openness than the existing development. They would not amount to inappropriate development. The conclusion is the same whether Site A is considered under 145(b) or 145(g). [28, 151]
317. The proposals at Site C would be facilities for outdoor recreation, within paragraph 145(b). The new building would replace existing buildings, resulting in a reduction in the footprint, floor space and volume of buildings such that openness would be preserved. It would not amount to inappropriate development. No new buildings are proposed at Sites E1, E2 and F (other than the relocation of a small kiosk at Site F). Neither the racetrack widening and drainage works, nor the car park works at Site F, would harm openness. They would not amount to inappropriate development. The conclusion is the same whether these sites are considered under 145(b) or 146(b) (engineering operations). [28, 151]

Site B – hotel

318. Site B is currently an open area of hardstanding. It adjoins the Grandstand but there are no buildings on the site itself. The proposed hotel would be six storeys in height although, due to the sloping nature of the ground, it would look taller from some angles. For the reasons given above I do not think that the hotel would fall within paragraph 145(b). Given that none of the other exceptions in paragraph 145 apply, this new building would amount to inappropriate development. [173]

319. The concept of openness was discussed in *Turner* where it was found that:

"The concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by Mr Rudd. The word "openness" is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents". (paragraph 14)

In this case, I consider that both spatial considerations, which include (but are not limited to) changes in footprint, floor space and volume, and matters relating to visual impact are relevant to consideration of Site B and indeed to all of the disputed sites. [164]

320. The proposals are for 6,997m² of hotel floor space resulting in a built volume of 27,950m³. Currently, Site B is not at all built up. The proposals would result in a substantial new building, such that Site B would become very built up indeed, with a dense and tall form of development. The appellant stressed the context of Site B, which includes the adjoining Grandstand. Although the Grandstand is slightly taller than the hotel would be, its form is not comparable. The Grandstand is an open structure with a suspended roof whereas the indicative layout shows that the hotel would be a rectangular block. Moreover, the other three sides of the hotel would have a completely open aspect. It would be sited on rising ground, close to the racetrack, so as to provide views for hotel guests. The context would therefore emphasise, rather than diminish, the impact of built form on openness. Whilst it is right to point out that the hotel would not impinge on the 480m gap across the centre of the racecourse, that is but one aspect of the openness of Sandown Park as a whole. [28, 123, 124, 268]

321. Turning to visual considerations, there are currently extensive open views over the racecourse from Portsmouth Road, providing a contrast with the built up nature of central Esher. Whilst the treed northern boundary is not seen in all of these views because of the topography, although it can be appreciated in others, the spacious character is still very apparent. That character is not materially diminished by the presence of some trees and boundary features. The hotel would have a six storey elevation around 70m in length facing Portsmouth Road. This would be a substantial increase in built form which would significantly affect the open views over the racecourse. It would be possible to introduce more planting in the car park to filter views to some degree, but it is unrealistic to think that a building of this scale would not remain very visible. Moreover, there would be a commercial imperative for the hotel to be visible to passing trade. In any event, further planting in the car park would itself reduce the ability to experience the openness of the racecourse from Portsmouth Road. [121, 172, 173, 268]

322. I conclude that the proposals for Site B would amount to inappropriate development and would result in substantial harm to the openness of the Green Belt.

Site D – works to car park

323. Site D comprises an open area of 3.5ha, most of which is gently sloping grassland within the centre of the racetrack. About 0.5ha is hard surfaced, providing parking for the golf course. The proposals would add around 1.5ha of hard surfacing, mostly in the form of a reinforced grass system (such as grasscrete). The appellant argues that the area is already used for parking and that these would be engineering operations, beneath the surface of the land, that would not be noticeable. [117, 174]
324. However, the works would affect the way the land is used. At present there are times when the grassland cannot be used for parking because it is waterlogged. I have no reason to doubt the evidence of a local resident who stated that the grassy areas are only used a few times a year, for a handful of the bigger race days and other events. Bearing in mind the significant scale and cost of the proposed works, it is reasonable to infer that the appellant anticipates that the area would be used more regularly in future. Moreover, the proposals as a whole would displace around 690 parking spaces from existing car parks at Portsmouth Road, which would be likely to increase the demand for parking at Site D. [274]
325. The evidence indicates that the proposals would be likely to result in site D being used for car parking significantly more frequently, and to a greater extent, than it is now. The presence of an increased number of parked vehicles, albeit intermittent, would not preserve openness. Whether the proposals are considered under paragraph 145(b) or 146(b) the outcome is the same. The proposals would fail to preserve openness and would therefore be inappropriate development.
326. For the reasons given above, I consider that the racecourse as a whole contributes to Green Belt purpose 3 (safeguarding the countryside from encroachment) as a managed open space containing some buildings and other features. Within that broad description, Site D is typical of the most open parts of the racecourse. More intensive use for car parking would have an urbanising effect that would conflict with one of the purposes of including land in the Green Belt. [127, 175]

Site 1 – 15 affordable residential units

327. Site 1 comprises stable blocks arranged around a yard. The proposals would result in a material increase in footprint, from 540m² to 660m². Moreover, the replacement of single storey development with a building rising to three storeys would result in significantly greater increases in height, floor space and volume. There would be a volumetric increase of around 141% from 2,200m³ to 5,300m³. As a result, the site would be considerably more built up than it is now. [28, 124, 176]
328. There would be a limited view of the proposed building through the access from More Lane and the upper parts could be glimpsed from Esher Green through a gap in the frontage development. Consequently, as seen from More Lane and Esher Green, there would be only a limited impact on the perception of built form to the rear of the existing frontage development. The proposals for Site 1 would use previously developed land and would contribute to meeting an identified need for affordable housing. Nevertheless, I consider that the

significant increases in height and built volume would result in substantial harm to the openness of the Green Belt, such that the proposals would not fall within paragraph 145(g)(second indent) of the Framework. They would therefore amount to inappropriate development. [103, 125, 176]

Site 2 – 49 affordable residential units

329. Site 2 comprises an area of 0.46ha adjacent to Portsmouth Road and Esher district centre, most of which is open hard surfaced parking associated with Sandown Park Lodge. Table 1 identifies an existing built footprint of 469m² and a floor area of 932m². However, as noted above, those figures include Sandown Park Lodge which is mainly in Site A. Allowing for Sandown Park Lodge, only a small amount of footprint, floor space and volume is attributable to the few stables within the site. Site 2 is separated from the gap across the central part of the racecourse by intervening buildings. Nevertheless, it contributes to the openness of the Green Belt due to the limited built form it contains. The proposals are for 6,336m² of floor area with a volume of 18,100m³ contained within a three and four storey building. As a result the site would become very built up, with continuous development along the frontage to Portsmouth Road, compared with the baseline condition in which there is little by way of built form. [28, 177]
330. Much of the site frontage is enclosed by a line of trees, although Sandown Park Lodge is visible. Whilst the mainly undeveloped nature of the site can be appreciated from Portsmouth Road, it is not currently a strong feature of the street scene due to the boundary planting. The proposal is for a continuous linear block around 120m in length. The appellant draws attention to development of similar scale, both adjoining and on the opposite side of Portsmouth Road. However, the presence of built form on sites which are not in the Green Belt seems to me to be of less importance to the assessment of Site 2 (in Green Belt terms) than a comparison of the site as it is now and as it would be if developed as proposed. In visual terms, the site would become much more urbanised and would read as an extension to Esher district centre. [124, 125, 178]
331. There is an extant planning permission for a hotel on Site 2. However, at the Inquiry it was agreed that this permission is unlikely to be built out and does not therefore constitute a fallback position in relation to this appeal. [60, 62, 179]
332. The proposals for Site 2 would use previously developed land and would contribute to meeting an identified need for affordable housing. Nevertheless, I consider that the significant increase in height and built volume proposed would result in substantial harm to the openness of the Green Belt, such that the proposals would not fall within paragraph 145(g)(second indent) of the Framework. They would therefore amount to inappropriate development.

Site 3 – 114 residential units

333. Site 3 is an area of 1.76ha to the north of the racetrack, divided by a watercourse running approximately east/west. The land between the watercourse and Lower Green Road is crossed by an access but otherwise is an undeveloped open area containing several large trees and other vegetation. Facing the racetrack there are two semi-detached pairs of bungalows and two

semi-detached pairs of houses, (8 units in total), used for staff housing. To the east of these dwellings there are open areas of allotments and compounds. Only around 24% of the site is previously developed. Looked at as a whole, I do not think that Site 3 comprises previously developed land for the purposes of the Framework. The proposals are for new buildings in the Green Belt which would not benefit from the exception in paragraph 145(g). They would not fall within any of the other exceptions set out in the Framework and, consequently, would amount to inappropriate development. [180]

334. The proposals would increase the height of development from one and two storeys to mainly three storeys. The footprint of built development would increase from 199m² to 4,050m², the floor area from 586m² to 9,450m² and the volume from 1,750m³ to 33,750m³. These would be very substantial increases, with the proposed volume (for example) being around 19 times the existing. The east/west extent of the proposed residential blocks would be around 300m, considerably more than the existing dwellings. The appellant drew attention to development at More Lane which was said to be of similar height and form and argued that Site 3 was excluded from the open area of the racecourse identified as landscape character area UW6 in the Surrey Landscape Character Assessment. Those are points that may be pertinent to the visual aspects of openness (which are discussed below) but to my mind they are of limited relevance to the spatial assessment. [28, 124, 125, 180]
335. Turning to the visual aspects of openness, the nine blocks would appear closely spaced. From most angles they would create the impression of a continuous band of development. They would line the northern edge of the racetrack and it can reasonably be assumed that the detailed design (although not before the Inquiry) would seek to maximise views. In any event, the height and proximity of the blocks to the racetrack would make them highly visible in views across the racecourse, including in views from More Lane. As noted above, the existing houses at Lower Green Road can be made out in views from the southern end of More Lane and in views from within the racecourse. However, they are not prominent in such views and they tend to merge into a soft distant view. The proposals would have a markedly greater impact on openness because they would be taller, closely spaced and with a much greater east/west extent. [181, 266]
336. The appellant referred to the view from More Lane as a "*glimpsed view*" and suggested that the proposals would be seen as a continuation of the modern villas at More Lane. However, I consider that the height and scale of the proposals would make them prominent in views from the More Lane access. Moreover, the height of the proposed flats would be such that they would be seen from the west side of More Lane, notwithstanding the presence of boundary fencing. I note that there is modern development on the west side of More Lane, running approximately north/south. This development is not in the Green Belt. It is set well back from the road frontage and is separated from the racecourse by More Lane itself. Moreover, the proposals would introduce a band of development with a strong east/west alignment, closely linked to the line of the racetrack. Rather than being seen as a continuation of development at More Lane, this would appear as a wholly new element of the townscape. Whilst I note that Site 3 was not included in landscape character area UW6, it does not follow that the site is unimportant in Green Belt terms. [122]

337. The appellant sought to play down the importance of views from within the racecourse on the basis that it is a private space. I appreciate that in the methodology of landscape and visual impact assessments people attending sporting events are not generally regarded as sensitive receptors. Even so, there are sweeping views over the racecourse from the Grandstand and from the approach to the golf course and other recreational facilities. I have no doubt that the openness of the Green Belt is experienced by visitors to Sandown Park and, in my view, this should be taken into account. For the reasons given above, I consider that the proposals for Site 3 would have significant impact on openness, as experienced in such views. [103, 120]
338. There are filtered views into the racecourse from the junction of More Lane with Lower Green Road in which openness can be appreciated. The westernmost of the proposed blocks would largely obscure such views. At present the houses within Site 3 are largely separated from Lower Green Road by trees and other vegetation. Much of the intervening vegetation would be removed to create parking for the proposed flats. The presence of parked vehicles would reduce the openness of the site and the works would also open up views of the proposed flats from Lower Green Road. [181, 182]
339. In making the above assessments I have taken into account the potential for new planting, which could be secured at reserved matters stage, to provide some filtering of views of new development. Drawing together the spatial and visual considerations, I consider that Site 3 as a whole would become very built up as a result of the appeal proposals. This may be contrasted with the baseline condition in which there is some low-intensity built form in a relatively small part of the site. In my view the proposals would cause substantial harm to the openness of the Green Belt.

Site 3 – effect on the purposes of including land in the Green Belt

340. Site 3 adjoins Lower Green Road which, as discussed above, is on the southern edge of a spur of development that extends south west from Thames Ditton which is part of the built-up area of Greater London. The GBBR found that the boundary between Local Area 52 (the racecourse) and the built-up area of Thames Ditton is durable and permanent, consisting of a railway line and Lower Green Road. I consider that the proposals for Site 3 would breach that boundary in a significant and harmful way. At present, the few dwellings within the racecourse are separated from Lower Green Road by the wooded area north of the watercourse. The proposals would result in that area being developed for parking, which would increase the visibility of the new flats from Lower Green Road. In effect, the boundary of the built-up area would move southwards into the Green Belt. That would amount to a significant conflict with purpose 1, which is to check the unrestricted sprawl of large built-up areas. [170, 183, 277]
341. For the reasons discussed above, I consider that, both spatially and perceptually, Lower Green Road can properly be regarded as part of the Greater London built-up area. More Lane is part of the built-up area of Esher. The effect of the appeal proposals would be to make Site 3 part of the built-up area of Greater London. The existing gap on More Lane (framed by the two lodge buildings described above) would not be directly affected but it would be made less relevant because the new southern edge of the built-up area of Greater

London would have moved about 100m further south²³⁷. The combined effect of the loss of the wooded area north of the watercourse and the introduction of development on the northern edge of the racetrack would be to erode the separation between Esher and Greater London that currently exists. That would amount to a significant conflict with purpose 2, which is to prevent neighbouring towns merging into one another. [133, 135, 170, 185, 186]

342. Site 3 has a different character from the more open parts of the racecourse included in landscape character area UW6. Nevertheless, the well treed northern boundary of the racecourse, including Site 3, is important to the character of the racecourse as a whole. The proposals would have a significant urbanising effect. Although the flats would not break the skyline in longer views, the current predominance of trees and vegetation in those views would be replaced by closely spaced blocks of flats. I consider that would amount to a significant conflict with purpose 3, which is to assist in safeguarding the countryside from encroachment. [135, 187]

Conclusions on Site 3

343. I conclude that the proposals for Site 3 would amount to inappropriate development in the Green Belt. There would also be substantial harm to openness and significant conflict with the purposes of including land in the Green Belt, in particular with purposes 1, 2 and 3.

Site 4 – 72 residential units

344. Site 4 comprises an open area of 0.57ha at the south east corner of the racecourse with a frontage to Station Road. There is a car park to the former Café Rouge to the south and commercial buildings to the west. Part of the site has been used for parking but most of it is undeveloped. There are no buildings. Looked at as a whole, I do not think that Site 4 comprises previously developed land for the purposes of the Framework. Moreover, the scale and intensity of development proposed here, with some 72 flats in a block rising to six storeys, would not represent limited infilling. Indeed, I do not consider that this is an infill site at all, given that there is open land on two sides. The proposals are for new buildings in the Green Belt which would not benefit from the exception in paragraph 145(g). They would not fall within any of the other exceptions set out in the Framework and, consequently, they would amount to inappropriate development. [191, 277]
345. The proposals would introduce a built footprint of 1,500m², residential floor area of 8,454m² and a built volume of 30,050m³. Given that there are currently no buildings on the site, this would be a substantial increase in footprint, floor area and volume. Much of the rest of the site would be given over to car parking and there would be limited space around the building. This would be an intensive form of development. [28, 189]
346. The appellant argued that the site is divorced from the more open, central part of the racecourse and that it was excluded from landscape character area UW6. Whilst that may be so, it does not alter the fact that the undeveloped nature of Site 4 still makes a contribution to the openness of the Green Belt. The GBBR

²³⁷ This can be seen on the indicative layout for Site 3 (CD5.32)

supplementary work suggested that the site could be considered for potential release from the Green Belt. However, there is no evidence that the Council has any intention of releasing the site and, in any event, this appeal falls to be determined against the adopted development plan. [124, 128, 192]

347. The appellant also suggested that a tall building is required in this location to perform a gateway function, having regard to the Esher Character Assessment SPD. However, the SPD does not require a landmark building in this (or any other) location. The glossary to the SPD sets out a variety of ways in which a point of entry may be marked, including by works within the highway. In any event, the gateway is at the junction of Station Road and Portsmouth Road. Site 4 is not at that gateway location and the plan form proposed would not address the gateway. In my view, the SPD adds nothing to the case for the appeal scheme. [125, 201, 267]
348. In visual terms, the undeveloped nature of Site 4 is apparent in views from Littleworth Common, notwithstanding that the ground level of the site is screened by fencing and vegetation. The proposed four, five and six storey building would be around 90m in length. It would be highly visible as a skyline feature in views from Portsmouth Road and from parts of the common to the south of Portsmouth Road. There would be limited scope for planting within the site. Drawing together the spatial and visual considerations, I consider that Site 4 would become intensely built up as a result of the proposals, whereas at present it is not at all built up. That would result in substantial harm to the openness of the Green Belt. [190, 191]
349. I note that the GBBR found that Site 4 performs weakly in terms of purpose 3 (safeguarding the countryside from encroachment) and I saw that it is visually enclosed by fencing and planting. However, it does not follow that the site performs no function in relation to purpose 3. The proposals would have an urbanising effect, both in relation to the site itself and in relation to other parts of the Green Belt (such as Littleworth Common and the racecourse) from which it would be seen. In my view that would amount to a conflict with purpose 3. [128, 192]

Site 5 – 68 residential units and a children's nursery

350. Site 5 comprises an area of 0.99ha with a frontage to Portsmouth Road, the western part of which is part of a larger hard surfaced area used as overflow car parking on race days. The eastern part includes a children's day nursery, which occupies the locally listed Toll House and a detached dwelling. There are several mature trees within the site. A small part of Site 5 would not (on its own) fall within the definition of previously developed land. However, looking at Site 5 as a whole, I consider that it should be regarded as previously developed land for the purposes of the Framework. [118, 195]
351. The two storey detached dwelling and an extension to the single storey Toll House would be demolished. The proposed flats would be arranged in four blocks of four storeys facing Portsmouth Road and there would be a two storey building for the nursery. There would be net increases in built footprint (from 323m² to 2,150m²), floor area (from 397m² to 5,743m²) and volume (from 1,200m³ to 18,150m³). These would be substantial increases in footprint, floor area and volume with the proposed built volume (for example) being around 15 times the existing. The appellant argued that there is adjoining built form of

equivalent scale at Cheltonian Place. However, I regard the presence of built form on adjoining land that is not in the Green Belt as less important to the assessment for Site 5 than a comparison between how built up the site is now and how built up it would be if developed as proposed. [28, 124, 125, 193]

352. Despite the presence of fencing along the frontage to Site 5, the openness of the racecourse can be appreciated in views across the site from the south side of Portsmouth Road. The four blocks of flats would be located behind trees along the site frontage that could be retained. This would help to integrate the development into its surroundings to some extent. However, there would be limited scope for planting within the site due to the extent of buildings and car parking. As seen in oblique views along the road, the blocks would tend to merge into a continuous run of built form around 130m in length. The height and scale of development would be readily apparent, notwithstanding the scope for new planting to supplement the retained trees. [194, 267]
353. Having regard to spatial and visual aspects, I consider that Site 5 would become fully built up as a result of the proposals. Currently, there is only a limited amount of built form, which is confined to a relatively small part of the site. This would amount to substantial harm to the openness of the Green Belt. Consequently, although this is previously developed land, the proposals would not benefit from the exception in paragraph 145(g) of the Framework. They would not benefit from any of the other exceptions and would, therefore, amount to inappropriate development.

New view from More Lane

354. The appellant proposes to introduce a form of slatted fencing on the boundary to More Lane, which would provide a view across the racecourse from west to east. Whilst this would allow the openness of the site to be better appreciated in this location, it would not change the actual openness of racecourse. Compared to the substantial harm to openness identified above this is, to my mind, a minor consideration. It does not materially alter my overall conclusions on Green Belt matters. [102]

Conclusions on Green Belt

355. I conclude that the proposals for Sites A, C, E1, E2 and F would not amount to inappropriate development. However, the proposals for Site B (hotel), Site D (car park works) and Sites 1, 2, 3, 4 and 5 (residential) would amount to inappropriate development. The proposals for Site B and Sites 1 to 5 would, in each case, result in substantial harm to the openness of the Green Belt. The proposals for Site D would fail to preserve openness. The proposals for Site 3 would also result in significant conflict with the purposes of including land in the Green Belt, in particular with purposes 1, 2 and 3. The proposals for Sites D and 4 would also conflict with purpose 3.
356. Viewed in the round, I consider that the appeal proposals as a whole would amount to inappropriate development. They would also result in substantial harm to openness and would represent a significant conflict with the purposes of including land in the Green Belt. In accordance with paragraph 144 of the Framework, substantial weight is to be given to any harm to the Green Belt. I return to the question of very special circumstances, and the application of relevant policies, later in this report.

The effect of the proposals on the character and appearance of the area

357. The racecourse is not subject to any landscape designations, other than at the Warren which contains ancient woodland. Nor did any party at the Inquiry argue that it should be regarded as a valued landscape in the terms of the Framework. The Surrey Landscape Character Assessment placed the racecourse in landscape character area UW6. The landscape type UW is used to denote significant green spaces within urban areas. The Elmbridge Borough Landscape Sensitivity Study placed the racecourse in landscape unit UW6-A, which it found to have a moderate-high landscape sensitivity. The study noted that landscape unit UW6-A is less sensitive to development in the west (in effect the racecourse) where the landscape was found to be less distinct and in poorer condition than in some other parts of the unit, such as Littleworth Common. As discussed above, I consider that the racecourse as a whole can best be characterised as managed open space containing some buildings and features primarily associated with its function as a racecourse. That characterisation is broadly consistent with the landscape studies. [98, 99, 103]
358. The major built elements of the appeal proposals were submitted in outline, supported by a Design and Access Statement (DAS), parameter plans and indicative layouts. I have had regard to these documents and have taken into account that details of external appearance and landscaping would be controlled at reserved matters stage. The Council raised no objections in terms of character and appearance in relation to Sites A, C, E1, E2 and F. I see no reason to disagree. [4]

Site B – hotel

359. There are extensive open views of the racecourse from Portsmouth Road. These contrast with the built up nature of the adjoining district centre and make an important contribution to local distinctiveness. The proposed hotel would present a six storey elevation, around 70m in length, significantly reducing the open aspect that currently exists. In my opinion that would be harmful to the distinctive character and appearance of the area. [204, 268]
360. The Grandstand is a prominent feature of the racecourse. I agree with the assessment of the Sandown Park Appeal Group in this regard, that it is an elegant structure, composed of simple and abstract forms with a distinctive suspended roof. It is instantly recognisable as a feature of the racecourse and is identified in the Design and Character SPD Companion Guide as a landmark. Although the hotel would not be quite as tall as the Grandstand, when seen in perspective from Portsmouth Road it would appear taller and bulkier. It would not be seen as a sensitive extension. Moreover, the hotel would remove the ability to appreciate the distinctive end profile of the Grandstand, such that its role as a landmark building would be much diminished. [204, 268]
361. The appellant suggested that the new hotel could itself become a landmark building. Attention was also drawn to the potential for visual improvements as a result of works to the car park at Site F. However, the parameter plans show that the hotel would be a large rectangular building, more or less filling the rectangular site that it would occupy. There is no evidence that the concerns identified above would be addressed to any great extent at detailed design stage. No doubt the car park works would improve surfacing and planting, but Site F would still have the character and appearance of an extensive surface car

park. To my mind the car park works would be relatively minor matters compared with the significantly harmful impact of the proposed hotel. [107]

Site D – works to car park

362. As discussed above, Site D is typical of the most open parts of the racecourse. The works themselves would, in the main, comprise a reinforced grass system which would have limited visual impact. However, the works would enable the area to be used more frequently. More intensive use for car parking would have an urbanising effect that would be harmful to the character and appearance of the area. [174, 175, 208]

Site 1

363. Site 1 is enclosed between the higher ground of the Warren and development within Esher Conservation Area fronting Esher Green. The proposed flats would be glimpsed through the access from More Lane. There would also be a limited view of the upper parts of the block from Esher Green through a gap next to the Wheatsheaf public house. However the frontage development, and the backdrop of trees at the Warren, would remain as the predominant elements in the view. Subject to appropriate detailed design and sympathetic use of materials, which could be secured at reserved matters stage, the proposals would not be harmful to the character and appearance of the area. [103, 207]

Site 2

364. I have concluded above that, whilst the mainly undeveloped nature of Site 2 can be appreciated from Portsmouth Road, it is not currently a strong feature of the street scene due to the boundary planting. I have also commented that in visual terms the site would become more urbanised as a result of the proposals and would read as an extension to Esher district centre. Those conclusions related to openness and Green Belt matters. It does not necessarily follow that there would also be harm in terms of character and appearance. The Design and Character SPD Companion Guide identifies that there are few residential buildings over three storeys in Esher. However, in this case two of the three taller elements would be set back from the Portsmouth Road elevation such that they would not be seen from street level. I do not think that the proposed massing would appear out of scale in this location. [205]

365. The Council criticised the proposals on the basis that the front elevation would not follow the building line of adjoining commercial premises. To my mind, the set back from that building line would recognise the change from commercial to residential land use and would allow space for planting between the proposed flats and the footway. I recognise that there would be a change from the current open character but, given the location of the site adjacent to the district centre, that change would not necessarily be harmful in visual terms. Subject to appropriate detailed design and sympathetic use of materials and landscaping (which could be secured at reserved matters stage) the proposals would not be harmful to the character and appearance of the area. [205]

Site 3

366. As noted above, Site 3 has a different character from the more open parts of the racecourse that were included in landscape character area UW6. Nevertheless, the well treed northern boundary of the racecourse is important

to the character of the racecourse as a whole and the existing dwellings are not prominent. This can be seen from More Lane and from within the racecourse itself. The appellant sought to play down the importance of views from More Lane on the basis that such views may be affected by signage, vegetation and other structures. However, these features do not prevent the current character of the northern boundary from being appreciated, nor would they mitigate the impact of the proposals. Moreover the height of the proposed flats is such that they would be seen above the boundary fence from the west side of More Lane, not just at the site entrance. [101, 208]

367. The proposals for Site 3 would introduce substantial and closely spaced blocks of flats, lining about 300m of the northern edge of the racetrack. This would be an intensive form of urban development. Although the flats would not completely obscure the treed backdrop, they would fundamentally change the character of views in which the trees now predominate. The detailed design of the flats was not before the Inquiry. Nevertheless, it is reasonable to assume that the design would take advantage of the views of the racecourse. It seems unlikely that there would be planting (other than at low level) between the flats and the racetrack. In any event, there would be limited space for such planting. Overall, the proposals would cause significant harm to the existing character of the northern boundary. [266]
368. The houses at Lower Green Road are described in the Design and Character SPD Companion Guide as having a garden suburb quality due to their cottage scale (amongst other features). I agree with that characterisation. Lower Green Road is visually enclosed by trees to the south of the road and there is limited inter-visibility with the racecourse. Access to the proposed flats would be from Lower Green Road. The creation of a new access and extensive parking areas would open up views of the new flats which would be of a wholly different scale and character to the existing houses. I consider that the scale and intensive urban character of the proposed flats would be out of keeping with, and harmful to, the character and appearance of Lower Green Road. [209, 210]
369. Attention was drawn to an appeal decision at No 61 More Lane. Insofar as that decision deals with matters of character and appearance, the facts are entirely different from those of this appeal. That appeal concerned redevelopment, outside the Green Belt, of a smaller site in a less prominent position where existing dwellings already filled the width of the plot. [213]

Site 4

370. There is currently fencing and planting along the frontage to Station Road which limits short range views into the site. The approach to Esher along Portsmouth Road passes through Littleworth Common, which the Elmbridge Borough Landscape Sensitivity Study found to be the more sensitive part of landscape unit UW6-A. The study noted that Littleworth Common is registered common land, consisting of parkland and deciduous woodland, which plays an important role in the setting of surrounding settlement edges. The undeveloped nature of Site 4 is apparent in views from Littleworth Common, including from Portsmouth Road and land to the south, notwithstanding that the ground level of the site is screened. [98]
371. The proposed four, five and six storey building would be highly visible as a skyline feature in views from Portsmouth Road and from the common to the

south. Although there is some built development on the north side of Portsmouth Road (west of Station Road), there is nothing of comparable scale to the proposed flats. It is the woodland character of Littleworth Common that is the dominant feature here. The proposal would bring about a fundamental change by introducing a tall and intensive form of urban development. The tallest element would be very close to Station Road. Existing trees would be removed and there would be limited space for new planting. The proposed building would dominate views in both directions along Station Road. It would also be highly visible from within the racecourse, being located close to the south east corner of the racetrack. [199, 200]

372. For the reasons discussed above, the identification of the Station Road/ Portsmouth Road junction as a gateway in the Design and Character SPD Companion Guide does not add to the case for the appeal. I consider that the scale and intensive urban character of the proposals for Site 4 would be harmful to the character and appearance of an area that is sensitive in landscape terms.

Site 5

373. The approach to Esher along Portsmouth Road from the east has a generally open and verdant character. Whilst there is a ribbon of frontage development on the north side, between Station Road and the Toll House, Site 5 itself contains numerous trees and limited built form. The openness of the racecourse can be appreciated in views across the site from the south side of Portsmouth Road. West of Site 5 the views open up further, as described above. The south side of the road is bordered by woodland within Littleworth Common. Although this gives way to way to housing opposite Site 5, the houses here do not front the main road and are set back behind a line of mature trees. [202, 267]
374. The proposed flats would be set back so as to retain most of the trees along the site frontage. As noted above, this would help integrate the development into its surroundings to some extent. However, when seen in oblique views along the road, the four storey blocks would tend to merge into a continuous run of built form around 130m in length. Notwithstanding the scope for new planting to supplement the retained trees, I consider that the height, scale and closely spaced nature of the proposed blocks would be out of character with the surroundings. This would be harmful to the character and appearance of the area. [202, 203, 267]
375. There would be a loss of trees within the site. The scope for new planting to the north of the flats would be limited by the extensive area of surface parking in this location. No doubt the detailed design of the flats and landscaping would take advantage of the view northwards over the racecourse, so it seems unlikely that tall or dense planting would be introduced here. The proposals would be readily apparent from within the racecourse. [203]

Conclusions on character and appearance

376. The landscape character of the racecourse is that of a managed open space containing some buildings and features, primarily associated with its use as a racecourse. As such, it is less sensitive to change than more natural environments. The racecourse is surrounded by urban areas. However, although some buildings are seen, the presence of the nearby urban areas is not strongly felt. The treed northern boundary is a particularly important feature but there

are also trees along the eastern and southern boundaries. The proposals would introduce intensive forms of development at, or close to, the edge of the racetrack at Sites 3, 4, 5 and B (the hotel). The combined effect would change the character of the racecourse as a whole from that of a managed open space bounded largely by trees to a space more tightly bounded by urban development. Notwithstanding the moderate sensitivity of the racecourse, in my view that change would be both significant and harmful due to the combined scale and physical extent of the proposals.

377. The landscape character of Littleworth Common as woodland and parkland is less subject to urban influences than the racecourse. It is more sensitive to development. I consider that the tall and intensive form of development proposed at Site 4 would cause significant harm in this sensitive landscape context.

378. Turning to visual impacts, I consider that the following would be most significant:

- loss of open views over the racecourse from Portsmouth Road, including reduced ability to experience the Grandstand as a local landmark;
- harm to views of the treed northern boundary of the racecourse; and
- harm to views from Littleworth Common.

379. There would also be harm to the character and appearance of Lower Green Road (in relation to Site 3), Portsmouth Road (Site 5) and the western part of the racecourse (Site D). I have taken account of potential benefits, in particular works to the car parks at Site F. I consider that these are minor compared with the extent and range of harm identified above. The proposals for Sites 1 and 2 would not cause harm. They would be broadly neutral in terms of character and appearance.

380. I have taken account of the Landscape and Townscape Visual Appraisal submitted with the application. However, for the reasons given above, I consider that this tends to understate both landscape and visual impacts. [105 to 107]

381. My overall assessment is that the proposals would be harmful to the character and appearance of the area. They would not integrate sensitively with locally distinctive townscape and landscape, nor would they deliver high quality design or enhance local character. The development would therefore be in conflict with CS Policies CS9 and CS17. It would also conflict with DMP Policy DM2 which seeks to preserve or enhance the character of the area. Having regard to the extent and range of harms identified, I attach significant weight to this matter.

Whether the proposals would make sufficient provision for affordable housing, having regard to viability

382. For residential developments of 15 or more dwellings CS Policy CS21 requires 40% of the dwellings to be delivered as affordable housing. On greenfield sites 50% is required. In all cases the requirement is subject to viability. The proposals include some land which is previously developed and some which is not. The Council and the appellant agreed that a blended figure of 45% would represent a policy compliant level of provision. I agree. The proposals would

deliver only 20% affordable housing so, unless justified by viability considerations, this provision would conflict with Policy CS21. [215]

383. The Council and the appellant agreed a Statement of Common Ground (SoCG) in relation to viability which covered the inputs to the financial viability assessment for the appellant's 20% affordable housing appraisal. At the Inquiry it became apparent that the differences between the parties related solely to the approach to benchmark land value. There was no dispute regarding the other inputs or methodology for any of the financial viability models. [30]
384. Dr Lee (the Council's witness on affordable housing) provided a viability appraisal applying the approach to benchmark land value set out in the Planning Practice Guidance (PPG), together with the agreed inputs, to a scheme with 50% affordable housing. (This was more than the blended figure of 45% subsequently agreed). This calculation did not make any allowance for the housing sites to provide funding for racecourse improvements. On that basis, Dr Lee's evidence was that the proposals would generate a surplus over the benchmark land value in excess of £17 million and would therefore be viable. Although the approach to racecourse improvements was not agreed, the appellant did not dispute the calculation. I therefore conclude that, if there were no cross-subsidy of the racecourse improvements, the housing sites could deliver 45% affordable housing. [220]
385. The appellant submitted that the proposals are designed as a package specifically to deliver the racecourse improvements. The housing was described as "*facilitating development*" to distinguish it from enabling development that is sometimes referred to in heritage cases. Mr Fell (the appellant's witness on affordable housing) took the cost of the racecourse improvement works as a benchmark that had to be achieved. The appellant argued that this was a permissible approach which "*reflected*" the standard approach in the PPG (in accordance with paragraph 57 of the Framework) albeit not following it slavishly. If that were the correct approach, then the evidence shows that the proposals could not fund the racecourse improvements and 45% affordable housing. [79, 219]
386. The Council has adopted a Developer Contributions SPD which is intended to assist in implementation of CS21. The SPD states that viability appraisals should observe the guidance on viability assessments contained in the PPG. That guidance includes the following:
- "To define land value for any viability assessment, a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner."*
- Significantly, there is no provision for setting the benchmark land value by reference to the cost of implementing some other project that an applicant may wish to fund from a housing scheme. [216]
387. My attention was drawn to appeal decisions which dealt with "*facilitating development*". Inevitably, those decisions turned on facts that were specific to the cases in question. However, I note that the Inspector who reported to the Secretary of State on appeal decisions relating to *London Irish RFC* referred to the appellant's approach as diverting a public subsidy away from affordable housing to providing sports facilities (in that case a new rugby ground). That

seems to me to be broadly comparable to the situation here, although the planning merits were of course fact-specific. In the *Stockport* appeal decision, the Inspector and the Secretary of State accepted a level of affordable housing below the policy requirement in circumstances where the scheme would facilitate the provision of education facilities. [148, 222, 225]

388. These decisions show that it can be appropriate for a decision maker to weigh in the balance public benefits which flow from facilities that are, in effect, funded by limiting the amount of affordable housing that would otherwise be required. However, in neither case did the decision maker find that benefits funded in this way would accord with the relevant affordable housing policies. The conflict with those policies was acknowledged and weighed in the balance along with the public benefits. That is the approach I take in this report. [226, 227]
389. At the Inquiry, Mr Fell accepted that there was nothing in the development plan, the Framework, the PPG or any other policy document that supported his approach to benchmark land value. In my view, the appellant's approach to benchmark land value neither observed nor reflected the PPG approach. It took a wholly different approach that was contrary to the Council's SPD and the Framework. When the PPG approach is taken, it is clear that the housing sites could deliver 45% affordable housing in accordance with CS21. The proposed 20% affordable housing is well below the policy requirement, resulting in conflict with the policy. [78, 219]
390. The adoption of the CS pre-dates the Framework. However, consistent with the Framework, it seeks to meet the need for affordable housing. It also allows for flexibility, to the extent that viability considerations are to be taken into account. I do not agree with the appellant's suggestion that Policy CS21 is out of date, or otherwise not in accordance with the Framework. [77]
391. The proposals would deliver 64 units of affordable housing, secured by the unilateral undertaking (UU). I return to the weight to be attached to the provision of affordable housing later in this report. [86]

The effect of the proposals on transport networks and the extent to which they would support the objective of promoting sustainable transport

Network impacts

392. The Environmental Statement (ES) included a transport assessment (TA) which set out the trip generation and distribution for the proposed development. The increase in peak hour traffic attributable to the development was calculated for Lower Green Road, Station Road, Portsmouth Road and More Lane. The increases were found to be generally around 2% to 3%. The scope of the TA had been agreed with the highway authority and the Council accepted these figures. No alternative trip generation figures were put before the Inquiry. I agree that the increases on network links would be low and unlikely to be noticeable. [92, 94]
393. The Council and others drew attention to existing levels of congestion, particularly in relation to the Esher traffic gyratory system, but also at other locations. The highway authority had advised that central Esher is a known congestion blackspot and that:

"... even a relatively small uplift in trip rates can result in a significant impact when applied to a network operating close to, or at, capacity as is the case within central Esher."

The Council did not suggest that the impact on the road network would be severe, as referred to in paragraph 109 of the Framework. Rather, it was argued that there would be harm due to increased congestion that should be accounted for in the overall planning balance. [94, 235 to 237, 263, 274]

394. The impact on queuing in the gyratory system was not modelled in the TA, or by any other party. Nevertheless, I have no reason to doubt the evidence of the highway authority and local residents that the district centre is indeed very congested at times. Moreover, I accept the advice of the highway authority that even a small uplift can cause a significant impact on a network that is already congested. I conclude that the proposals would lead to increased congestion in central Esher which would be harmful, albeit unquantified.
395. It is necessary to take account of the proposals for Site F, which would improve the flow of traffic onto the racecourse. That is likely to reduce the effect of race traffic tailing back onto Portsmouth Road. Whilst that would be a benefit, it is unquantified. Moreover, the benefit would mainly be experienced on race days (around 25 each year) whereas the increased congestion would occur throughout the year. Consequently, this does not alter my conclusion that there would be a harmful increase in congestion overall. [93]

Highway safety

396. Local residents raised concerns about highway safety, in particular at the junction where Esher Green joins the gyratory system, at the access to Site 1 and at a bend where the northern end of More Lane turns into Lower Green Road. The proposals would have no direct impact on the gyratory and the increased number of vehicles would be low. The proposals for the access to Site 1 include improvements to visibility splays. The proposed access to Site 3 would be further east than the existing access to Lower Green Road, moving it away from the bend and allowing for appropriate visibility splays. [91]
397. Details of visibility splays have been provided for all new and improved junctions. These could be secured by conditions. There are no technical objections from the highway authority and the Council has raised no objection in terms of highway safety. I conclude that safe and suitable access to the various sites could be achieved and that there are no highway safety issues that weigh against the proposals. [234]

Opportunities for sustainable transport

398. Policy CS9 states that Esher has relatively good accessibility and that higher density residential and mixed use developments could be appropriate within and around the town centre. Sites 1 and 2 are on the edge of the centre and would be well placed for access to services and facilities. The High Street bus stops have a relatively high frequency of service and would be close to Sites 1 and 2. Sites 3, 4 and 5 would be further from these stops (850m to 1,200m) but in each case there are bus stops within 400m that would provide a public transport option. [17, 90, 238]

399. Sites 3, 4 and 5 would be within a convenient walking distance from Esher station which has frequent rail services to London and other towns. Sites 1 and 2 would be over the 1,010m mean walking distance to stations. However, in this respect, they would be similarly placed to other parts of central Esher which CS9 considers to be suitable for higher density development. There is a flat, direct walking route to the station along Portsmouth Road and Station Road and walking to the station would be a viable option for most rail travellers. The Council's concerns regarding the capacity of rail services were not pursued with much force at the Inquiry. There is evidence that peak hour services towards London have standing room only. Whilst that is not ideal, it is commonplace on London commuter services. There is no evidence that rail services would not have the capacity to accommodate the small number of additional passengers generated by the appeal proposals. [238]
400. The Council sought to rely on the public transport accessibility level (PTAL) methodology. PTAL was developed by Transport for London for use in London. In my view it is not appropriate to apply PTAL in Surrey where public transport infrastructure and transport conditions generally are likely to be very different. I attach little weight to this evidence. [238]
401. An appeal decision relating to a proposal for flats at No 61 More Lane noted that there would be bus and train services available to future occupiers within convenient reach of the site. The Inspector concluded that the site was reasonably well connected and that occupiers of the new flats would have a choice of means of transport other than the private car. That proposal was for just 17 flats so the Inspector had no need to apply paragraph 103 of the Framework, which states that significant development should be focused on locations which are or can be made sustainable. Nevertheless, the Inspector's finding in relation to bus and train services is relevant to Site 3 which is close to No 61 More Lane. I agree that Site 3 would be reasonably well connected and that occupiers of the new flats would have a choice of means of transport. Moreover, although the appeal decision is not relevant to Sites 4 and 5, I come to the same conclusion in relation to those sites for the reasons discussed above. [213, 239]

Transport measures

402. The proposals include measures to improve the options for sustainable transport. These would be secured through conditions or (where indicated) the Agreement. I consider that the following would contribute in some way to supporting the objective of promoting sustainable transport:
- *Improvements to bus stops at More Lane, Esher Green, Lower Green Road and Portsmouth Road and new bus stops at the Portsmouth Road/Station Road junction:* although bus use is currently low, features such as shelters, accessible kerbs, lighting and real time information would improve conditions for passengers, encouraging bus use for some residents.
 - *Lighting and surface improvements to the footway from Lower Green Road to Esher railway station:* these would enhance the ability to access the station on foot, including during poor weather and in the hours of darkness.

- *Informal pedestrian crossings at Portsmouth Road, Station Road and More Lane*: these would improve conditions for walking in the locality, particularly for those with limited mobility.
- *Travel plans, travel plan audit contribution (secured by the Agreement), event management plans and car park management plans*: these would assist in influencing transport choices for new residents and visitors to events at Sandown Park.
- *Electric vehicle charging points for new residential units*: these would support the move towards greater use of electric vehicles by new residents.

403. The Agreement would make provision for a contribution to improvements at Esher station. The improvements are expected to include step-free access. The Council suggested that new residents may be expected to have a range of abilities and the works would assist those who may have restricted mobility. However, at the Inquiry it emerged that there is no scheme for Esher station. The rationale is that the contribution of £300,000 would support a bid to Network Rail's "Access for all" scheme. The project cost is estimated to be £4 to £5 million and currently there is no bidding competition²³⁸.
404. The objective of improving accessibility is commendable and consistent with the Framework. However, the tests set out in the Community Infrastructure Levy (CIL) Regulations are clear. Given the absence of a scheme or a bidding round to apply to, there is great uncertainty as to the benefits and deliverability of the project. Consequently, the contribution cannot be said to be necessary. Moreover, any access deficiencies there may be at the station already exist. They are not a consequence of the appeal proposals. Finally, the proposals would add only a small number of rail passengers so the amount of the contribution appears disproportionate. In my view the contribution does not meet the tests set out in Regulation 122 and consequently I have not taken it into account.
405. Suggested condition 27 (condition 25 in Annex E) included a requirement to widen Lower Green Road between Nos 58 and 130 (to the east of Site 3). The objective is to remove pavement parking by providing parking bays in a widened highway. This would be a substantial project, costed at £500,000. However, there was no scheme before the Inquiry. I consider that it would be inappropriate to require, by condition, significant highway works in circumstances where the transport and environmental effects of those works are completely unknown. Moreover, there is no evidence that the widening project is necessary to mitigate any impact arising from the proposals, which would generate only a small increase in traffic on Lower Green Road. This requirement does not meet the tests for conditions and I have not included it in Annex E. [51]
406. Suggested condition 27 also required an assessment to be made of the pedestrian route between Sites 2, 4 and 5 and for some improvements to be made. The route in question comprises the footways to Portsmouth Road and Station Road. The route exists now and there is nothing to prevent its use by

²³⁸ See email from Surrey County Council at CD8.5

future residents, alongside other highway users. It appears to be part of the public highway which would normally be maintained by the highway authority. There is no evidence that this requirement is necessary. I have not included it in Annex E although I have retained reference to bus stops as discussed above.

Conclusions on transport

407. The proposals would provide safe and suitable accesses to the various development sites and would not result in any severe impacts on the road network. They would, however, result in increased congestion in central Esher. A package of transport measures has been proposed which could be secured by conditions and/or the Agreement. I have concluded that some of the proposed measures would not meet the relevant tests for conditions and planning obligations and, accordingly, I have not taken these into account. Nevertheless, I consider that the other measures would, together, support the objectives of sustainable transport.
408. In my view this would be a relatively modest package of transport measures. It would not, for example, bring about any increases in the capacity or frequency of public transport services. Nevertheless, I consider that the measures would provide sufficient mitigation for the transport impacts of the proposals. Subject to these measures, the proposals would accord with Policy CS25 which seeks to promote improvements to sustainable travel and with Policy DM7 which states that there should be safe and convenient access from the highway for pedestrians, cyclists and motorists. They would also accord with policies in the Framework relating to sustainable transport. [140, 238]
409. Whilst the mitigation measures would be available to the community at large, the impact of traffic congestion in central Esher would also affect the whole community. My overall assessment is that the transport measures would do no more than mitigate the transport impacts of the proposals. Transport should therefore be regarded as a neutral factor in the planning balance.

The nature and extent of any economic, social and environmental benefits which would result from the proposals

Racecourse improvements

410. Sandown Park racecourse was laid out in 1875 and is one of 14 racecourses owned by the Jockey Club. The appellant argues that it is necessary to have high quality facilities to compete effectively in an international sport. The intention is to transform Sandown Park into a flagship racecourse. In addition to horse racing, Sandown Park operates as an events venue and some 20% of revenue is derived from non-racing activities. The application was supported by surveys detailing the condition of the various buildings, including issues relating to water penetration of the Grandstand roof and the fact that mechanical and electrical systems within the Grandstand are nearing the end of their economic life. This technical material was not disputed at the Inquiry. The appellant considers that the interiors are looking tired and need a significant upgrade for this to be an attractive venue. [15, 32, 33, 35]
411. The proposed racecourse improvements include:
- redeveloping the stables and providing new stable staff accommodation/facilities;

- enhancements to the paddock;
- racetrack widening;
- a rationalised site-wide parking strategy;
- refurbishment of the 45 year old Grandstand; and
- improved frontages to the racecourse entrance and car parks.

The proposals also include a new family/community zone, with a café, indoor/outdoor play facilities and a children's cycle track. This is intended to improve facilities for families with children, in order to make racing a more inclusive activity. [25, 26, 34]

Would the racecourse improvement works represent a public benefit?

412. The appellant contended that the improvement works would secure the future of the racecourse for at least the next 20 years. However, SPAG and Save Esher Greenbelt/Esher Residents Association argued that it would be wrong, in principle, for the refurbishment of the appellant's privately owned operational assets to be regarded as a public benefit. The Jockey Club does not have shareholders and operates under a Royal Charter which requires any profits to be reinvested to support horse racing in Great Britain. However, that does not alter the fact that the racecourse is a privately owned venue used for spectator sport on a commercial basis. [83, 143, 225, 269, 272, 273]
413. In large part, the improvement works would upgrade, refurbish or replace operational assets that already exist. The agreed estimated cost for the works is around £36 million. Of that, around £16 million (or about 44%) would be spent on the Grandstand, including the replacement of mechanical and electrical systems and refurbishing to a higher standard the internal spaces used by racegoers and those attending non-racing events. By contrast, the track improvements would account for around £0.9 million (about 2.5% of the total). [28]
414. Ordinarily, such works would be funded by the owner of the assets involved, drawing on whatever revenues and/or commercial funding may be available. That cannot happen here for two reasons. First, the appellant company already has extensive borrowings and the banks will not permit more. Second, the rate of return on the proposed investment in improvement works would be below the rate at which borrowing could be obtained. In short, the proposals would enable the appellant to upgrade operational assets in a way that it could not do on a commercial basis. Moreover, the main purpose of the improvements is to enable Sandown Park racecourse to compete more effectively with other racecourses, in order to attract race horse owners, trainers and spectators. I therefore consider that the benefits of the racecourse improvement would primarily be benefits flowing to the appellant company. [80, 81]
415. However, in my view there would also be some public benefits. I consider that the main public benefits would be, first, that horse racing is a popular spectator sport at a national level and Sandown Park provides a recreational resource for racegoers. Second, the existing operations make an important economic contribution. Racing and other events provide around 183 full-time equivalent jobs and the racecourse supply chain includes around 480 suppliers, 277 of

which are in Elmbridge or surrounding postcodes. The direct economic impact is estimated to be £6.4 million per year. I consider that sustaining those existing recreational and economic benefits is capable of representing a public benefit. [31, 96]

The weight to be attached to the public benefits

416. The proposals would bring about little change to the recreational resource that already exists. Improved drainage to parts of the racetrack would be likely to reduce the number of days that are lost due to poor ground conditions and the family zone would make the racecourse more attractive to families with children. Nevertheless, Sandown Park would continue to be, as it is now, a venue that offers flat and jump racing on around 25 days per year. No doubt racegoers would appreciate the improved environment of the racecourse and its facilities, including the family/community zone. However, in my view that would not represent an additional public benefit of any great significance. [24]
417. If horse racing at Sandown Park were to cease, there would be a loss of the recreational and economic benefits that currently exist. However, there is no evidence that racing here is likely to cease in the short or medium term in the event that the appeal is dismissed. That is not the way the case for the appellant was put. Rather, it was argued that without the improvements there is a risk that deterioration of the racecourse facilities would pose a threat to future viability. The building condition reports do not suggest that the facilities are unsafe or likely to become unusable. This was consistent with what I saw on my visit. The racecourse is operating at a profit, albeit a small profit. More generally, Sandown Park has the advantages of offering a good number of race days per year, for flat and jump racing, in an accessible location on the edge of Greater London. [39, 81]
418. There was no evidence before the Inquiry to show how a given level of racecourse improvements would generate any particular level of attendance and revenue in the future. Indeed, I doubt it would be possible to carry out such an exercise in any precise way because there are many variables in play. For example, revenues 10 to 15 years from now are likely to be affected by wider social and economic trends in how people choose to spend their leisure time and disposable income, and the availability of alternative leisure attractions, both racing and non-racing.
419. The appellant asserted that the additional revenue generated by the current package of improvements would be enough to fund future capital works. These would include upgrading the Eclipse building, at a cost of over £3 million. At the same time, it was argued that future revenue would not be enough to make repayments on new loans to fund the works that are currently proposed. In my view it is not possible to be so precise. There is considerable uncertainty as to whether the improvements would be sufficient to secure the future of the racecourse in the longer term. Alternatively, the upgraded facilities may improve revenues by a greater amount, such that they could have contributed to funding the improvement works without the need for so much facilitating development. [81, 242]
420. It is right to acknowledge that, without the racecourse improvements, there is a long term risk to future viability. However, given the range of factors that could affect the long term viability of racecourses such as Sandown Park, I do not

think that the level of that long term risk can be quantified further on the evidence before the Inquiry. There was little evidence before the Inquiry on the options that would be available to the appellant in the event that the appeal is dismissed.

421. Policy CS24 supports the improvement of existing visitor attractions where this would improve their viability. However, this is to be done without harming the Green Belt²³⁹. For the reasons given above I consider that this package of proposals would cause substantial harm to the Green Belt. It follows that CS24 does not add to the weight to be attached to racecourse improvements.
422. The Council's evidence on alternative sources of funding does not alter my conclusions. Ultimately it would be a matter for the appellant to decide whether a bond issue or a self-development option would be realistic approaches. On the evidence before me, I consider that these are unlikely to be realistic due to the level of additional debt and financial risk they would entail. In any event, such approaches would not obviate the need for facilitating development in the Green Belt. [82 to 85, 229 to 231]
423. With regard to the appeal decisions before the Inquiry, I consider that the circumstances of this appeal have some broad similarities to the *London Irish RFC* appeal decisions. In that case funds from a housing scheme were to be used to develop a new sports ground. The Secretary of State agreed with the Inspector that the primary purpose behind the two appeals was to provide significant benefits to the Club itself, rather than public benefits. However, no two cases are the same and the outcome there is not determinative of what the outcome should be here. [222]

Green Belt

424. It was argued that allowing the appeal would secure the future of a use which serves to preserve the openness of the Green Belt. However, for the reasons given above, there is no reason to think that the racecourse is at risk of closure in the short to medium term whatever the outcome of the appeal. In any event, if racing were to cease in the longer term then alternative uses would be considered in accordance with the development plan at that time. I do not consider that this factor adds to the case for the appeal. [36]

Conclusion on racecourse improvements

425. The benefits of the racecourse improvements would primarily be benefits to the appellant company, rather than public benefits. Even so, the improvements would bring some public benefits in terms of maintaining a recreational resource and employment/economic activity associated with existing racecourse operations. There would be little change to the essential nature of the recreational resource that currently exists. If the appeal is dismissed, there is no reason to think that the racecourse is at risk of closure in the short to medium term. There is uncertainty about the longer term, which will depend on

²³⁹ The text of CS24 refers to the "*objectives of PPG2*" which has since been replaced by the Framework. However, like PPG2, the Framework seeks to protect the Green Belt. I do not think that this materially alters the way the policy should be applied for the purposes of this appeal.

broader social and economic trends. There is considerable uncertainty regarding the extent to which the proposed improvements would themselves secure the future of racing in the longer term. Drawing all this together, I attach only limited weight to the public benefit of the racecourse improvements.

Hotel

426. The CS identifies a need for additional hotel accommodation in Esher to support tourism and employment. Policy CS24 promotes hotel accommodation on previously developed land within or adjacent to town and district centres in locations that are accessible to public transport. I consider that the proposed hotel would be adjacent to Esher district centre and accessible to public transport, such that it would gain some support from Policy CS24. The Council argued that the need for a hotel could be met in a less harmful way outside the Green Belt. However, in my view it is still necessary to weigh the economic benefits associated with the proposed hotel in the planning balance. [59, 245]
427. There was a written expression of interest from Accor, a hotel operator, indicating that an upper 3 star/4 star hotel would be appropriate in this location. Accor identified benefits to the hotel operator of a location next to the Grandstand, overlooking the racecourse. Such a location would also benefit the racecourse through the opportunity for integration with events (racing and non-racing) at the Grandstand. The evidence on job densities indicated that a mid-scale/upscale hotel would generate 50 to 75 jobs. The appellant suggested that more jobs could be generated on the basis of reported discussions with other hotel operators. However, given that the operator is not known, I consider that the published evidence on job densities provides the best evidence at this outline stage. [58, 61, 96, 244]
428. I have no doubt that the proposed location would prove attractive to potential hotel operators. The proposed hotel would meet a need identified in the CS and would be likely to generate around 50 to 75 jobs. There would be further economic benefits in the hotel supply chain and spending by hotel residents. It would accord with DMP Policy DM11 which encourages employment development that supports existing business sectors (in this case hospitality) and the vitality and viability of district centres. I attach significant weight to the benefits associated with the hotel.

Housing land supply

429. All of the proposed units would be flats with an emphasis on one and two bedroom units. The officers' report notes that there is a pressing need for the delivery of smaller units and that the proposed mix would contribute to meeting the identified housing need. The proposals would therefore accord with Policy CS19, which seeks a range of housing types and sizes across the Borough, and with DMP Policy DM10 which promotes house types that make efficient use of land and meet the most up to date measure of housing need.
430. The Council accepted that it cannot demonstrate a five year supply of housing sites based on the standard method. However, it pointed out that Government policy states that unmet housing need is unlikely to outweigh harm to the Green Belt and that, logically, economic/social benefits typically associated with housing should also not outweigh such harm. Whilst I take account of the generality of the policy statement, it does not remove the need for unmet

housing need to be considered, together with other benefits, and weighed in the balance against the harm to the Green Belt that has been identified in this case. Mindful that the Framework seeks to boost significantly the supply of housing land, I attach significant weight to the contribution to housing land supply, including the provision of smaller units. [75, 76, 246]

Affordable housing

431. The Council submitted that the failure to provide the level of affordable housing required by the development plan represented harm, rather than any sort of a benefit. I agree with the Council that the housing sites could deliver 45% affordable housing (the agreed blended policy compliant level) if it were not required to cross-subsidise racecourse improvements. Moreover, the offer of 20% affordable housing is well below the policy requirement. Nevertheless, there is a great need for affordable housing in Elmbridge. The proposals would deliver 64 affordable units that would not otherwise be delivered. Whilst I regard that as a benefit, the weight to be attached is tempered by the failure to provide a policy compliant level of affordable housing. I attach moderate weight to this factor. [87, 88, 248]

Economic benefits - housing

432. The housing sites would generate an estimated 986 direct, indirect and induced jobs during the construction phase. Jobs created during the construction phase would be temporary. The expenditure by new residents is estimated to be £9.4 million per year. Overall, I attach moderate weight to the economic benefits related to housing. [96, 246]

Family/community zone

433. Insofar as the family/community zone would make watching horse racing more popular with families, I regard that as part of the package of racecourse improvements discussed above and I have taken that benefit into account under that heading. In this section I consider the potential for benefits to the community at large on non-race days.

434. The Agreement makes provision for a community use agreement to be approved by the Council. Heads of terms are included at schedule 6 of the Agreement. The Council's CIL Regulations statement states that this obligation would be necessary to maximise the use of the facility by local residents. However, there is no evidence that this obligation is necessary. It is not required to mitigate any impact of the proposals. In this part of the racecourse the proposals would merely replace one recreational facility (a karting track) with another. Moreover, the heads of terms attached to the Agreement do not commit any party to anything of substance. The obligation is merely an agreement to agree something at a later date. This obligation does not meet the requirements of the CIL Regulations and I have not taken it into account. [142]

435. That said, I see no reason to doubt that these facilities would indeed be made available for use on non-race days. Having created new facilities for indoor and outdoor play there would be no advantage to the appellant in leaving the area unused for most of the time. The extent to which the various facilities would be offered on a charged (or free) basis would be a matter for the operator. The appellant drew attention to socio-economic data relating to the area north of the

railway line which (it was suggested) demonstrated a need for the facilities. However, the Council pointed out that this data had already been factored into an open space assessment which found there was no shortage of play facilities and open space in this part of Elmbridge. I see no reason to doubt that evidence and I attach only limited weight to the community benefit of the family/community zone. [69 to 72, 250]

Trees and landscape

436. Landscaping would be a reserved matter. I have had regard to the arboricultural report submitted with the application and to the indicative layouts which give some indication of the potential for landscaping. Whilst the appellant draws attention to the fact that a large number of trees would be planted, that is unsurprising given the scale of development proposed. As discussed above, I have identified that the proposals would cause significant harm to the treed northern boundary of the racecourse. I have also identified that there would be limited scope for planting at Site 4 and in parts of Sites 3 and 5. Overall, the potential for new tree planting and landscape works would do no more than reduce the harm to the landscape character that I have identified. In my view it would not represent a further benefit of the proposals.

Ecology and nature conservation

437. Evidence has been provided to inform the Secretary of State's Habitats Regulations Assessment in relation to protected sites at Southwest London Waterbodies Special Protection Area (SPA), Richmond Park Special Area of Conservation (SAC), Thames Basin Heaths SPA and Wimbledon Common SAC. This is covered in more detail in Annex D. For the reasons set out there, the conclusion is that there is not likely to be a significant effect on any of these sites.
438. The Agreement would make provision for a financial contribution to the preparation of a management plan for Littleworth Common Site of Nature Conservation Interest. The contribution would also allow for some management measures to be implemented. The measures themselves would be identified in the plan. I am satisfied that the obligation is necessary to mitigate the effects of additional recreational pressure arising from the appeal scheme, notwithstanding the absence of detail about the measures themselves. This is because the range and nature of measures typically used in plans of this sort is well understood. I consider that the proposals would accord with DMP Policy DM21 which seeks to protect designated sites of biodiversity importance. However, there is no evidence that the unspecified measures would do any more than mitigate the impacts of the appeal proposals. [66, 252]
439. Local residents raised concerns about the effect on wildlife within the racecourse. The application was supported by surveys of habitats and species present within the site and appropriate mitigation measures were identified. The ecology report identified opportunities for biodiversity enhancements within the racecourse site. However, there was little detail of any measures and no quantification of biodiversity net gain. Consequently, there is no evidence that the measures would do any more than mitigate the impacts of the appeal proposals. [66, 252]

440. I conclude that the proposals would accord with Policy CS15, which seeks to ensure that new development does not result in a net loss of biodiversity and, where feasible, contributes to a net gain through the incorporation of biodiversity features. I agree that there is the potential for biodiversity net gain but, in the absence of evidence, I attach only limited weight to this factor as a benefit of the proposals.

Historic environment

441. The access to Site 1 would be within Esher Conservation Area and there would be glimpsed views of the proposed buildings from the Conservation Area through the access and from Esher Green. For the reasons given above, I do not think that the effect would be harmful. The proposals at Site 1 would involve the removal of some gates at the More Lane access. In my view this is too small a matter to amount to a material effect. I consider that the proposals would not harm the character and appearance of the Conservation Area. The character and appearance would therefore be preserved, although not enhanced.
442. The archaeological and heritage assessment identified 11 Grade II listed buildings close to the racecourse that required further assessment of potential effects on their significance arising from development in their respective settings. The significance of the listed buildings is set out in the assessment and was not disputed at the Inquiry. The gates and railings to the racecourse are a boundary feature facing Portsmouth Road. Whilst the background would change in the ways described above, this would not affect the ability to experience the listed structure. The Travellers Rest shelter, a post by the Toll House and the White Lady Milestone are all roadside features. Insofar as setting contributes to their significance, it is their relationship to Portsmouth Road that is important. This would be unaffected. Myrtle Cottages also face Portsmouth Road and the racecourse is not important to their setting.
443. Sandown House stands opposite Site 2. It faces Portsmouth Road and is contained within its own curtilage. Although the street scene would change as a result of the proposals for Site 2, this would have no impact on the significance of the listed building. There are also listed buildings around Esher Green²⁴⁰. The appeal site is not important to the settings of these buildings. I conclude that there would be no harm to the settings of the listed buildings. In each case the setting would be preserved and there would be no harm to heritage significance. I have not identified any instances in which the ability to experience any designated asset would be enhanced.
444. The Toll House is a locally listed (non-designated) heritage asset. The removal of a later addition to the Toll House would be neither harmful nor beneficial. Like the other roadside features, it is the direct relationship with Portsmouth Road that is important to the ability to experience the asset. Although the street scene would change, the ability to experience the asset would not be harmed. The Council and the appellant agreed that there would not be a material impact on locally listed buildings at Lower Green Road. I agree. [29]

²⁴⁰ Orangery to Esher Place, Garden Reach Cottage, Garden walls with gateway to Esher Place, Encott, Cobblestones

445. I conclude that the proposals would not cause harm in relation to the historic environment. They would accord with DMP Policy DM12 which seeks to protect conservation areas, the settings of listed buildings and locally listed buildings. They would accord with the policies of the Framework relating to the historic environment. However, I have not identified any material enhancements to the historic environment so this is a neutral factor in the planning balance.

Day nursery

446. There is an existing day nursery that operates from two buildings within Site 5, the Toll House and a converted dwelling. Part of the Toll House and the dwelling would be demolished and a new day nursery would be built elsewhere on Site 5. The delivery of the new facility would be secured by the UU. No doubt the creation of a purpose built facility would provide some operational improvements. I consider that the proposals would accord with Policy CS16, which seeks to resist the loss of social and community facilities unless an alternative facility is provided in a location with an equal level of accessibility. They would also accord with DMP Policy DM9, which supports development for social and community facilities. However, there is no evidence that either the capacity of the nursery, or the employment associated with it, would be increased. Accordingly, I attach only limited weight to this factor as a positive benefit of the proposals. [251]

Other suggested benefits

447. The appellant argued that enhanced integration between the town and the railway station would be a benefit. However, any such enhancement would arise from transport measures that I have already taken into account so, on my assessment, this would not represent a further benefit. The appellant also referred to "*the sustainable location of the site*" as a benefit. Paragraph 103 of the Framework requires that significant development should be focussed on locations that are or can be made sustainable. Policy CS25 has similar objectives. I have concluded above that, subject to the transport measures, the proposal would accord with Policy CS25 and the Framework in relation to transport. Whilst the proposals are policy compliant in this respect, on my analysis that is an absence of harm rather than an additional benefit. Finally, the appellant sought to rely on the provision of some interpretation boards as a benefit (albeit of limited weight). In my view that is simply too small a matter to carry material weight in this appeal. I conclude that none of the suggested benefits discussed in this paragraph add materially to the case for, or against, the appeal. [140, 142, 249]

Other matters

Flood risk

448. Local residents raised concerns about flood risk in respect of Site 3, where the proposals would involve culverting a watercourse. The application was accompanied by a flood risk assessment, which identified that small areas of Site 3 are at risk of surface water flooding. The assessment stated that the proposals would provide an opportunity for improvement of the existing surface water management. It concluded that, if sustainable drainage methods are used to attenuate surface water during storm events, the risk of increasing flood risk to or from the development would be small. These conclusions were accepted

by Surrey County Council (the local lead flooding authority) and by the Council. Details of a surface water drainage scheme could be controlled by a condition. Subject to such a condition, I consider that flood risks could be adequately managed and the proposals would accord with Policy CS26. There is no evidence that any improvement would amount to a material benefit to the wider area so this is a neutral factor in the planning balance.

Living conditions of neighbouring residents

449. Residents have raised concerns about the potential for overshadowing, visual intrusion and overlooking at Warren Close (next to Site 2) and Cheltonian Place (next to Site 5). With regard to Warren Close, I note that the four storey element of the proposals for Site 2, as shown on the indicative layout, would be prominent as seen from the back of No 2A (the most affected property). However, the four storey element would not be directly behind No 2A and it would be set well into the site. There are also variations in ground levels which would reduce the impact. Moreover, the detailed design of the scheme, including matters such as the location of windows and the design of any balconies, would be controlled at reserved matters stage. Subject to appropriate detailed design, I do not consider that the visual impact, the effect on natural light or the effect of overlooking would be so great as to be harmful to living conditions.
450. With regard to Cheltonian Place, I note that the flank elevation of the easternmost of the proposed blocks would be relatively close to the adjoining building. I consider that there would be potential for an overbearing visual impact and/or harmful loss of light at this point if every part of the new building was as high as the "up to four storeys" indicated on the parameters plan. However, it would be necessary to obtain approval for the detailed design at reserved matters stage. Whilst the suggested conditions would require the reserved matters to be generally in accordance with the illustrative layouts and parameters plans, that would not take away the need for a more detailed consideration of siting and massing at that stage. This could include stepping down towards the boundary. Matters such as the location of windows and the design of any balconies would also be controlled at reserved matters stage. I consider that the need for approval of reserved matters would provide appropriate protection for the living conditions of neighbouring residents.

Air quality and noise

451. Air quality was assessed in the ES, which identified the potential for adverse effects resulting from dust during construction. The ES found that, with mitigation through a Construction Environmental Management Plan, the effects would not be significant. The plan could be secured by a condition. Conditions are also recommended relating to passive ventilation for dwellings adjacent to Portsmouth Road, noise standards for residential units and control of noise from fixed plant and air handling equipment. I consider that, together, these conditions would provide satisfactory mitigation in relation to air quality and noise. Subject to these conditions the proposals would accord with DMP Policy DM5, which requires appropriate mitigation in relation to air quality and noise impacts.

Effect on community infrastructure

452. Residents have raised concerns regarding the effect of the proposal on the capacity of community infrastructure, such as schools and health services. This concern was addressed in the officers' report, which noted that the proposed development would be liable for CIL which could be used towards improvements to local infrastructure, including the provision of GP surgeries or school places²⁴¹.

Common land

453. A local resident argued that part of Site 3 had been omitted from the registration of common land at Lower Green Road due to an error. However, common land registration is dealt with under other legislation. [276]

Conclusion on other matters

454. I conclude that flood risk, the living conditions of neighbouring residents, air quality, noise, community infrastructure and the claimed existence of unregistered common land do not add materially to the case for or against the appeal.

Public Sector Equality Duty

455. There was no formal equalities impact assessment before the Inquiry. However, the evidence included matters pertinent to equalities. In particular, the transport measures would include improvements to bus stops, pedestrian crossings and a pedestrian route to Esher station that would improve accessibility for persons with a disability and persons with limited mobility. This would be a positive impact in that it would advance equality of opportunity for persons sharing relevant protected characteristics. No party at the Inquiry identified any negative impacts in terms of equalities.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations such as to provide the very special circumstances required to justify development in the Green Belt

456. I have concluded above that the appeal proposals as a whole would amount to inappropriate development in the Green Belt. They would also result in substantial harm to openness and would represent a significant conflict with the purposes of including land in the Green Belt. In accordance with paragraph 144 of the Framework, substantial weight is to be given to any harm to the Green Belt. I have also concluded that the proposals would be harmful to the character and appearance of the area. Having regard to the extent and range of harm identified, I attach significant weight to this factor.

457. On the other hand, I have identified a number of other considerations which are to be weighed against the harms. I attach significant weight to the contribution that the proposals would make to housing land supply, including the provision of smaller units. I also attach significant weight to the proposed hotel which would meet a need identified in the CS and bring economic benefits.

²⁴¹ CD7.3, section 9.10

458. I attach moderate weight to the provision of affordable housing and the economic benefits associated with the provision of housing generally. For the reasons given above, I attach only limited weight to the racecourse improvements, the family/community zone, ecological enhancements and the re-provision of a day nursery. I consider that transport, historic environment and various other matters identified above would be neutral factors that would not weigh one way or the other in the balance.
459. My overall assessment is that in this case the other considerations would not clearly outweigh the harm to the Green Belt and the harm to the character and appearance of the area. The very special circumstances required to justify inappropriate development in the Green Belt do not exist.
460. The proposals would therefore be contrary to DMP Policy DM17, which seeks to protect the Green Belt from inappropriate development, and with Policy CS1 which states that the Green Belt will continue to be a key determinant in shaping development patterns and that new development will be directed towards previously developed land within the existing built-up areas.

Conclusions

Conclusion on the development plan

461. For the reasons given above I consider that the proposals would conflict with the following policies of the CS and DMP:
- CS1 - Spatial strategy;
 - CS9 – Esher;
 - CS17 - Local character, density and design;
 - CS21 - Affordable housing;
 - CS24 - Hotels and tourism;
 - DM2 – Design and amenity; and
 - DM17 – Green Belt.
462. In respect of Policy CS24 (hotels and tourism) I have found that the hotel element of the appeal proposals gains some support from the policy. However, the policy states that improving the quality of existing visitor attractions (in this case the racecourse) is to be achieved without compromising the objectives of Green Belt. In view of my conclusions on Green Belt, I consider that the proposals as a whole would conflict with Policy CS24.
463. For the reasons given above I consider that the proposals would not conflict with the following policies of the CS and DMP:
- CS15 – Biodiversity;
 - CS16 – Social and community infrastructure;
 - CS19 – Housing type and size;
 - CS25 - Travel and accessibility;

- CS26 – Flooding;
- DM5 – Pollution;
- DM7 - Access and parking;
- DM9 - Social and community facilities;
- DM10 – Housing;
- DM11 – Employment;
- DM12 – Heritage; and
- DM21 - Nature conservation and biodiversity.

464. Although the proposals would accord with a range of policies, I attach greater importance to the conflict with policies relating to spatial strategy, Green Belt, affordable housing and the character and appearance of the area. This is because of the fundamental nature of the policies on spatial strategy and Green Belt and also because of the high degree of harm to the Green Belt and the character and appearance of the area that I have identified. My overall assessment is that the proposals conflict with the development plan as a whole.

Consideration of paragraph 11 of the Framework

465. The Council cannot demonstrate a five year supply of housing sites. This means that the approach to decision making set out in paragraph 11(d) of the Framework (sometimes referred to as the tilted balance) is engaged. However, the application of policies in the Framework that protect the Green Belt provide a clear reason for refusing the development proposed. Consequently, having regard to paragraph 11(d) and the associated footnote 6, the tilted balance does not apply in this case.

Other considerations and the planning balance

466. The proposals would conflict with the development plan as a whole. It is necessary to consider whether there are any other considerations that indicate that the appeal should be allowed, notwithstanding that conflict. The other considerations in this case are the same (and carry the same weight) as those described above in the discussion of very special circumstances. Those considerations do not indicate a decision other than in accordance with the development plan. The appeal should therefore be dismissed.

RECOMMENDATION

467. I recommend that the appeal be dismissed.

468. If the Secretary of State, having undertaken an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (as amended), considers that the appeal should be allowed and planning permission granted, I recommend that the conditions set out in Annex E should be imposed.

David Prentis

Inspector

ANNEX A – APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Dr Ashley Bowes, of Counsel	instructed by the Solicitor to the Council
He called	
Ian Mitchell	Head of Strategic Projects, Mayer Brown Ltd
BSc(Hons) MSc CILT	
David Webster	Senior Landscape Architect, Huskisson Brown Associates
BSc(Hons) MSc MA, CMLI	
Dr Anthony Lee	Senior Director, BNP Paribas Real Estate UK
PhD MRTPI	
Aline Hyde	Senior Planning Officer, Elmbridge Borough Council
BA(Hons) MA MRTPI	

FOR THE APPELLANT:

John Steel QC	Instructed by Robert Clarke of Rapleys LLP
He called	
Michael Lewin	Director, Transport Planning Practice
BSc(Hons) MICE MIHT	
CEng	
William Gittus	Property Director, The Jockey Club
BSc(Hons) MRICS	
Ben Connolley	Principal Landscape Architect, EDP
BSc(Hons) PG DipLA	
CMLI	
Nicholas Fell	Partner, Rapleys LLP
LLB(Hons) PGDip MRICS	
Robert Clarke	Senior Partner, Rapleys LLP
BA(Hons) DipTP MSc	
MRTPI	

SANDOWN PARK APPEAL GROUP

Peter Whicheloe RIBA
Huw Thomas MRICS

INTERESTED PERSONS:

Linda Stotesbury MRICS	Save Esher Green Belt and Esher Residents Association
Roger Marsden	Local resident
Cllr Simon Waugh	Member of Elmbridge Borough Council

ANNEX B – ABBREVIATIONS USED IN THE REPORT

Agreement	The section 106 Agreement dated 1 December 2020
CIL	Community Infrastructure Levy
CS	Elmbridge Core Strategy
DAS	Design and Access Statement
DMP	Elmbridge Development Management Plan
ES	Environmental Statement
EUV	Existing use value
Framework	National Planning Policy Framework
FTE	Full time equivalent
GBBR	Green Belt Boundary Review
Ha	Hectares
LTVA	Landscape/Townscape Visual Appraisal
PPG	Planning Practice Guidance
PTAL	Public transport accessibility level
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SNCI	Site of Nature Conservation Interest
SPA	Special Protection Area
SPAG	Sandown Park Appeal Group
SPD	Supplementary Planning Document
TA	Transport Assessment
UU	The unilateral undertaking dated 1 December 2020

ANNEX C – DOCUMENTS

Statements of Common Ground

Statement of Common Ground dated 17 June 2020

Statement of Common Ground – Appendix 1 - Site Location Plan

Statement of Common Ground – Appendix 2 – Core Documents List

Statement of Common Ground – Appendix 3 – Site and Surroundings Plan

Statement of Common Ground – Appendix 4 – Planning History Schedules

Statement of Common Ground – Appendix 5 – Planning Conditions Schedule (Superseded)

Statement of Common Ground – Appendix 5 – Planning Conditions Schedule (Updated)

Matters in Dispute agreed between the appellant and the Council – 5 August 2020

Viability Statement of Common Ground – 30 October 2020

Proofs of Evidence

<i>The appellant's evidence</i>	
JCR1/1	Proof of evidence of Robert Clarke
JCR1/2	Summary proof of evidence of Robert Clarke
JCR1/3	Appendices to proof of evidence of Robert Clarke
JCR1/4	Rebuttal proof of evidence of Robert Clarke
JCR2/1	Proof of evidence of William Gittus
JCR2/2	Summary proof of evidence of William Gittus
JCR2/3	Appendices to proof of evidence of William Gittus
JCR2/4	Rebuttal proof of evidence of William Gittus
JCR2/5	Appendices to rebuttal proof of evidence of William Gittus
JCR2/6	Addendum to proof of evidence of William Gittus
JCR3/1	Proof of evidence of Ben Connolley
JCR3/2	Summary proof of evidence of Ben Connolley
JCR3/3	Plans, key views and appendices volume 3 of proof of evidence of Ben Connolley
JCR3/4	Rebuttal proof of evidence of Ben Connolley

JCR3/5	Rebuttal proof of evidence of Ben Connolley in respect of Peter Whicheloe's proof of evidence
JCR4/1	Proof of evidence of Nicholas Fell
JCR4/2	Summary proof of evidence of Nicholas Fell
JCR5/1	Proof of evidence of Michael Lewin
JCR5/2	Summary proof of evidence of Michael Lewin
JCR5/3	Appendices to proof of evidence of Michael Lewin
JCR5/4	Addendum to proof of evidence of Michael Lewin
JCR5/5	Rebuttal proof of evidence of Michael Lewin
JCR6	Air Quality Statement by Redmore Environment
JCR7	Noise Statement by Sharps Redmore
JCR8	Heritage Statement by EDP
JCR9	Ecology Statement by Tyler Grange
JCR10	Arboriculture Statement by Tyler Grange
JCR11/1	Draft s106 Agreement (JCR draft 5, November 2020)
JCR11/2	Littleworth Common plan for s106
JCR11/3	Phasing plan for s106
JCR11/4	Draft unilateral undertaking (5 November 2020)
<i>The Council's evidence</i>	
EBC1/1	Proof of evidence of David Webster
EBC1/2	Summary proof of evidence of David Webster
EBC1/3	Appendices to proof of evidence of David Webster
EBC2/1	Proof of evidence of Ian Mitchell
EBC2/2	Summary proof of evidence of Ian Mitchell
EBC2/3	Appendices to proof of evidence of Ian Mitchell
EBC3/1	Proof of evidence of Anthony Lee
EBC3/2	Summary proof of evidence of Anthony Lee
EBC3/3	Appendices to proof of evidence of Anthony Lee
EBC3/4	Rebuttal proof of evidence of Anthony Lee
EBC3/5	Appendix 1 to rebuttal proof of evidence of Anthony Lee

EBC3/6	Appendix 2 to rebuttal proof of evidence of Anthony Lee
EBC4/1	Proof of evidence of Aline Hyde
EBC4/2	Summary proof of evidence of Aline Hyde
EBC4/3	Appendices to proof of evidence of Aline Hyde
<i>Sandown Park Appeal Group's evidence</i>	
	Proof of evidence of Sandown Park Appeal Group (submitted 19 October 2020)
	Proof of evidence of Sandown Park Appeal Group (received 5 November 2020)

Documents submitted at the Inquiry

CD8.1	Opening submissions for the appellant
CD8.2	Opening submissions for the Council
CD8.3	Opening submissions for Sandown Park Appeal Group
CD8.4	Appeal decision at No 61 More Lane
CD8.5	Email from Surrey County Council on highway contributions 29 October 2020
CD8.6	David Webster's inquiry notes
CD8.7	Aline Hyde's inquiry notes
CD8.8	Email from Rapleys on Littleworth Common contribution
CD8.9	Advice to charities and non-profit organisations on risk management
CD8.10	Schedule of suggested conditions 20 November 2020
CD8.11	Written submission of Prof Rob Imrie 22 November 2020
CD8.12	Note of submissions of Linda Stotesbury
CD8.13	Email from Stuart Clark regarding the Jockey Club
CD8.14	Guidance for Landscape and Visual Impact Assessment (extract)
CD8.15	Draft s106 Agreement 26 November 2020
CD8.16	Draft Unilateral Undertaking 26 November 2020
CD8.17	The Council's CIL Regulation 122 Statement
CD8.18	Additional note by Nicholas Fell

CD8.19	Correction to appendix 2 of the Green Belt Statement (CD6.51)
CD8.20	Appellant's agreement to pre-commencement conditions
CD8.21	National Planning Policy Framework (2012)
CD8.22	Procedural Guide to Planning Appeals – England (November 2020)
CD8.23	Note by Ian Mitchell on No 61 More Lane appeal decision
CD8.24	Part 1 – application for costs by the appellant
CD8.24	Part 2 – annex 1 to application for costs by the appellant – letter from Rapleys of 31 July 2020
CD8.24	Part 3 – annex 2 to application for costs by the appellant – Inspector's note of the case management conference
CD8.25	Part 1 – the Council's response to the costs application
CD8.25	Part 2 – attachment to the Council's response to the costs application - Local Government Act 1972, s250(5)
CD8.25	Part 3 – attachment to the Council's response to the costs application - Email from Wakako Hirose to Paul Falconer of 2 June 2020
CD8.26	Part 1 – <i>Fox Land</i>
CD8.26	Part 2 – <i>Working Title</i>
CD8.26	Part 3 - <i>Timmins</i>
CD8.26	Part 4 - <i>Chelmsford</i>
CD8.26	Part 5 – <i>Hayden-Cook</i>
CD8.26	Part 6 - <i>Luton</i>
CD8.26	Part 7 – Charities Act 2011 (extract)
CD8.26	Part 8 – Written Ministerial Statement (2013)
CD8.27	Note by Dr Lee in response to note by Mr Fell (CD8.18)
CD8.28	Closing submissions for Sandown Park Appeal Group
CD8.29	Closing submissions for the Council
CD8.30	Closing submissions for the appellant
CD8.31	S106 Agreement dated 1 December 2020
CD8.32	Unilateral Undertaking dated 1 December 2020

SOC: Statements of Case		
Document Reference	Document Title	Document Reference/Details
The Appellant		
SOC1/1	Main Statement of Case	25 March 2020, by Rapleys
SOC1/2	Main Statement of Case Appendix 1	Site Location Plan
SOC1/3	Main Statement of Case Appendix 2 (Part 1 of 7)	JCR Statement of Case Main Document by Jockey Club Racecourses
SOC1/4	Main Statement of Case Appendix 2 (Part 2 of 7)	JCR Statement of Case Appendix 1 Annual Structural Survey by Capita 2019
SOC1/5	Main Statement of Case Appendix 2 (Part 3 of 7)	JCR Statement of Case Appendix 2 (Part 1 of 2) Building Condition Report by Rapleys 2020
SOC1/6	Main Statement of Case Appendix 2 (Part 4 of 7)	JCR Statement of Case Appendix 2 (Part 2 of 2) M&E Condition Survey by D Stanley Consulting 2020
SOC1/7	Main Statement of Case Appendix 2 (Part 5 of 7)	JCR Statement of Case Appendix 3 Extracts of Guide to Safety of Sports Ground 2018
SOC1/8	Main Statement of Case Appendix 2 (Part 6 of 7)	JCR Statement of Case Appendix 4 Twickenham West Stand Refurbishment
SOC1/9	Main Statement of Case Appendix 2 (Part 7 of 7)	JCR Statement of Case Appendix 5 Pictorial Example of Enhancements
SOC1/10	Main Statement of Case Appendix 3	Landscape Statement of Case by EDP
SOC1/11	Main Statement of Case Appendix 4	Architectural Design Assessment by PRC
SOC1/12	Main Statement of Case Appendix 5	Heritage Statement of Case, by EDP
SOC1/13	Main Statement of Case Appendix 6	Financial Viability Statement of Case, By Rapleys LLP
SOC1/14	Main Statement of Case Appendix 7 (Part 1 of 3)	Transport Statement of Case by TPP – Main Document
SOC1/15	Main Statement of Case Appendix 7 (Part 2 of 3)	Transport Statement of Case Figures 1
SOC1/16	Main Statement of Case Appendix 7 (Part 3 of 3)	Transport Statement of Case Figures 2
SOC1/17	Main Statement of Case Appendix 8	Air Quality Statement of Case by Redmore Environmental
SOC1/18	Main Statement of Case Appendix 9	Ecology Statement of Case by Tyler Grange
SOC1/19	Main Statement of Case Appendix 10	Arboriculture Statement of Case by Tyler Grange
SOC1/20	Main Statement of Case Appendix 11	Noise Statement of Case by Sharps Redmore
SOC1/21	Main Statement of Case Appendix 12	Representations to the Emerging Local Plan
SOC1/22	Main Statement of Case Appendix 13	Socio-Economic Paper
SOC1/23	Main Statement of Case Appendix 14	Planning Obligation Paper

Elmbridge Borough Council		
SOC2/1	Statement of Case of Local Planning Authority	June 2020
Rule 6 Party		
SOC3/1	Sandown Park Appeal Group Statement of Case	July 2020

CD1: The Development Plan			
Core Document Ref	Document Title	Document Reference/Details	Author
CD1.1	Elmbridge Core Strategy	2011	Elmbridge Borough Council
CD1.2	Elmbridge Development Management Plan	2015	Elmbridge Borough Council
CD1.3	The Surrey Transport Plan:LTP3	2012	Surrey County Council

CD2: National Planning Policy and Guidance			
Core Document Ref	Document Title	Document Reference/Details	Author
CD2.1	National Planning Policy Framework	February 2019	Ministry of Housing, Communities & Local Government
CD2.2	Planning Practice Guidance – Green Belt	Paragraph: 001 Reference ID: 64-001-20190722 (Revision date: 22 July 2019)	Ministry of Housing, Communities & Local Government
CD2.3	Planning Practice Guidance – Enhancing and Conserving the Historic Environment	Paragraph: 007 Reference ID: 18a-007-20190723 Revision date: 23 07 2019 Paragraph: 018 Reference ID: 18a-018-20190723 Revision date: 23 07 2019	Ministry of Housing, Communities & Local Government
CD2.4	Planning Practice Guidance – Viability	Paragraph: 010 Reference ID: 10-010-20180724 Revision date: 24 07 2018 Paragraph 013 Reference ID 10-013-20190509 Revision date: 09 05 2019	Ministry of Housing, Communities & Local Government
CD2.5	Section 106 Affordable Housing Requirements: Review and Appeal	April 2013	Department for Communities and Local Government

CD3: Other Relevant Policy, Guidance and Evidence Base Documents			
Core Document Ref	Document Title	Document Reference/Details	Author
CD3.1	Elmbridge Borough Council Housing Delivery Action Plan	February 2019	Elmbridge Borough Council
CD3.2	Design and Character Supplementary Planning Document and Companion Guide: Esher	2012	Elmbridge Borough Council
CD3.3	Developer Contributions Supplementary Planning Document	February 2012	Elmbridge Borough Council
CD3.4	Elmbridge Strategic Flood Risk Assessment	2015	AECOM
CD3.5	Elmbridge Strategic Flood Risk Assessment replacing the 2015 Flood Risk Assessment	February 2019 (replacing 2015 version)	AECOM
CD3.6	Non-statutory Technical Standards for Sustainable Drainage System	March 2015	Department for Environment, Food and Rural Affairs
CD3.7	Flood Risk SPD	May 2016	Elmbridge Borough Council
CD3.8	Green Belt Boundary Review A – Main Report B – Annex Strategic Areas C – Annex Local Areas	March 2016	Arup on behalf of Elmbridge Borough Council
CD3.9	Green Belt Boundary Review A – Sub Division Report B – Sub Division Annex 1C	December 2018	Arup on behalf of Elmbridge Borough Council
CD3.10	Green Belt Boundary Review	June 2019	Elmbridge Borough Council
CD3.11	Absolute Constraints Update	August 2019	Elmbridge Borough Council
CD3.12	Strategic Housing Market Assessment for Kingston upon Thames and North	June 2016	Cobweb Consulting on behalf of Elmbridge Borough Council, Epsom

	East Surrey Authorities		Borough Council, The Royal Borough of Kingston Upon Thames and Mole Valley District Council
CD3.13	Authority Monitoring Report 2018/19		Elmbridge Borough Council
CD3.14	Land Availability Assessment	September 2018	Elmbridge Borough Council
CD3.15	BS8233:2014 (Guidance on sound insulation and noise reduction for buildings)	2014	British Standards Institution
CD3.16	A Guide for Electric Vehicle Infrastructure	2015	BEAMA
CD3.17	Guidelines for Landscape and Visual Impact Assessment, Third Edition	2013	Landscape Institute and Institute of Environmental Management and Assessment
CD3.18	Landscape and seascape character assessments/ An Approach to Landscape Character Assessment	2014	Natural England and Department for Environment, Food & Rural Affairs
CD3.19	The Surrey Landscape Character Assessment: Elmbridge Borough	2015	HDA on behalf of Surrey County Council
CD3.20	Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (GPA 3)	2017	Historic England
CD3.21	Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision-Taking in the Historic Environment (GPA 2)	2015	Historic England
CD3.22	The RICS Guidance Note: Financial Viability in Planning (First Edition)	August 2012	RICS

CD3.23	Viability Testing Local Plans: Advice for Planning Practitioners	June 2012	Local Housing Delivery Group (Harman Report)
CD3.24	Elmbridge Economic Strategy 2019 – 2023	Undated	Elmbridge Borough Council
CD3.25	Elmbridge Borough Landscape Sensitivity Study Final Report	January 2019	Arup
CD3.26	Elmbridge Borough Strategic Views Study Final Report	January 2019	Arup
CD3.27	The Air Quality Strategy for England, Scotland, Wales and Northern Ireland	July 2007	DEFRA
CD3.28	Guidance on the Assessment of Dust from Demolition and Construction V1.1	2016	IAQM
CD3.29	Land-Use Planning & Development Control: Planning for Air Quality	2017	IAQM
CD3.30	Local Air Quality Management (TG16)	2018	DEFRA
CD3.31	Air Quality Action Plan for Elmbridge Council	2011	Elmbridge Borough Council
CD3.32	Historic England Advice Note 1: Conservation Area Designation, Appraisal and Management	2019	Historic England
CD3.33	BS4142:2014 Method for rating and assessing industrial and commercial sound	2014	British Standard
CD3.34	Guidelines for Community Noise	1999	World Health Organisation
CD3.35	ProPG: Planning and Noise Professional Practice Guidance on Planning & Noise new residential development	May 2017	The Institute of Acoustics
CD3.36	The British Standard 5837 (2012) Trees in relation to design, demolition and	2012	British Standard

	constructions - Recommendations		
CD3.37	Biodiversity and Planning In Surrey	March 2019	Surrey Nature Partnership
CD3.38	How Far Do People Walk? Presented at the PTRC Transport Practitioners' Meeting London	July 2015	WYG
CD3.39	Planning for Walking	April 2015	The Chartered Institution of Highways and Transportation
CD3.40	The 2011 Census Data 'Method of Travel to Work' for Elmbridge 013 Middle Layer Super Output Area	3 May 2017	NOMIS
CD3.41	Vehicular and Cycle Parking Guidance	January 2018	Surrey County Council
CD3.42	Implementation reforms to the leasehold system in England: Summary of consultation responses and government response ref: ISBN 978-1-4098-5483-8	June 2019	Ministry of Housing, Communities & Local Government
CD3.43	Economic Impact of British Racing	2013	British Horseracing Authority and Deloitte
CD3.44	Guide to Sports Safety Sixth Edition	2018	Sports Grounds Safety Authority
CD3.45	Elmbridge Local Plan: Development Contributions Supplementary Planning Document – Draft for Consultation	Published for consultation in January 2020	Elmbridge Borough Council
CD3.46	The Future of Surrey's Landscape and Woodlands	1997	Surrey County Council
CD3.47	Surrey Hotel Futures Study 2015	August 2015	Surrey County Council
CD3.48	Elmbridge Borough Council Housing Delivery Test Action Plan	July 2020	Elmbridge Borough Council

CD3.49	Elmbridge Development Contribution SPD	Adopted July 2020	Elmbridge Borough Council
CD3.50	Section 444 (5) of the Education Act 1996	1996	
CD3.51	Community Infrastructure Levy Regulations 2010	2010 and as amended	
CD3.52	RICS Practice Statement: Financial Viability in Planning – Conduct and Report	1 st Edition May 2019	RICS
CD3.53	Open Space and Recreational Assessment	October 2014	ATKINS
CD3.54	Employment Density Guide 3 rd Edition	November 2015	Homes & Community Agency

CD4: Relevant Appeal Decisions/ Judgements

Core Document Ref	Document Title	Document Reference/Details	Author
CD4.1	Appeal Decision at Seghill Caravan Park, Seghill, Cramlington, Northumberland NE23 7TL	Appeal Ref: APP/P2935/A/14/3000634	
CD4.2	R (Lee Valley Regional Park Authority) v Epping Forest DC and Valley Grown Nurseries Ltd	Judgement handed down – 22 April 2016 [2016] EWCA Civ 404	Lord Justice Treacy Lord Justice Underhill Lord Justice Lindblom Royal Courts of Justice
CD4.3	Turner v SSCLG	Judgement handed down – 18 May 2016 [2016] EWCA Civ 466	Lord Justice Arden Lord Justice Floyd Lord Justice Sales Royal Courts of Justice
CD4.4	R (Boot) v Elmbridge Borough Council 2017	Judgement handed down – 16 January 2017 [2017] EWHC 12 (Admin)	The Honourable Mr Justice Supperstone Royal Courts of Justice
CD4.5	Europa Oil and Gas v SSCLG 2013	Judgement handed down – 25 July 2013 [2013] EWHC 2643 (Admin)	Mr Justice Ouseley Royal Courts of Justice

CD4.6	R (Samuel Smith Old Brewery) v North Yorkshire County Council	Judgement handed down - 7 March 2017 [2017] EWHC 442 (Admin)	Mr Justice Hickinbottom Royal Courts of Justice
CD4.7	Goodman v SSCLG	Judgement handed down – 27 April 2017	Mr Justice Holgate Royal Courts of Justice
CD4.8	Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage and National Trust	Judgement handed down – 18 February 2017 [2014] EWCA Civ 137	Lord Justice Maurice Kay Lord Justice Sullivan Lady Justice Rafferty Royal Courts of Justice
CD4.9	Forest of Dean DC v Secretary of State for Communities and Local Government	Judgement handed down 20 December 2013 [2013] EWHC 4052 (Admin)	Mr Justice Lindblom Royal Courts of Justice
CD4.10	South Lakeland District Council v Secretary of State for the Environment	Judgement handed down – 30 January 1992 [1992] 2 A.C. 141	
CD4.11	R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)	Judgement given on – 5 February 2020 [2020] UKSC 3 On appeal from: [2018] EWCA Civ 489	Lady Hale, Lord Carnwath, Lord Hodge, Lord Kitchin, Lord Sales The Supreme Court
CD4.12	Redhill Aerodrome Ltd v SSCLG	[2014] EWCA Civ. 1386	
CD4.13	R (Luton BC) v Central Bedfordshire Council	[2014] EWHC 4325 (Admin)	
CD4.14	R (Lee Valley Regional Park Authority) v Broxbourne Borough Council	[2015] EWHC 185 (Admin)	
CD4.15	Turner	[2015] EWHC 2728 (Admin)	
CD4.16	Rugby Football Union v SSCLG	[2001] EWHC 927 (Admin)	
CD4.17	R (Wildie) v Wakefield Metropolitan BC	[2013] EWHC 2769 (Admin)	

CD4.18	Secretary of State Recovered Appeal Decision at 160 Stanley Road, Cheadle Hulme, Stockport	Appeal Allowed – 22 April 2020 Appeal Ref: APP/C4235/W/18/3205559	
CD4.19	Secretary of State Recovered Appeal Decision at Oxford Brookes University, Wheatley Campus, Wheatley, Oxford, OX33 1HX	Appeal Allowed – 23 April 2020 Appeal ref: APP/Q3115/W/19/3230827	
CD4.20	Mayor of London v SSCLG	[2020] EWHC 1176 (Admin)	Mr Justice Holgate Royal Courts of Justice

CD5: Application Documents and Plans (those which have not been superseded are shaded yellow)			
Core Document Reference	Document Title	Document Reference/Details	Author
CD5.1	Application Form, signed and dated incorporating Ownership Certificate A (SUPERSEDED)	22 February 2019	Rapleys LLP
CD5.2	CIL additional information form	21 February 2019	Jockey Club Racecourses Ltd
CD5.3	Application Cover Letter	22 February 2019	Rapleys LLP
CD5.4	Location Plan	PL_001 (Size A1)	PRC
CD5.5	Site 1: Mews Site Access	30918/AC/026_REV A (Size A3)	TPP
CD5.6	Site 3: Villas Site Access	30918/AC/028_REV A (Size A3)	TPP
CD5.7	Site 4: Crescent Site Access	30918/AC/029_REV A (Size A3)	TPP
CD5.8	Site 5: Villas Site Access	30918/AC/030_REV A (Size A3)	TPP
CD5.9	East Bend Enabling Works & Earthworks	1463/001_REV PL1 (Track Widening – East Section) (Size A1)	PSD
CD5.10	East Bend Indicative Drainage & Irrigation Layout (WITHDRAWN)	1466/002_REV PL1	PSD

CD5.11	Winning Post Bend and Enabling Works	1463/003_REV PL1 (Track Widening – SW section) (Size A1)	PSD
CD5.12	Winning Post Bend Indicative Drainage & Irrigation Layout (WITHDRAWN)	1463/004_REV PL1 (Size A1)	PSD
CD5.13	Winning Post Bend Proposed Road Realignment	1463/005_REV PL1 (Track Widening – SW section) (Size A1)	PSD
CD5.14	Winning Post Bent Isopachyte 1/3	1463/006A_REV PL3 (Track Widening – SW section) (Size A1)	PSD
CD5.15	Winning Post Bent Isopachyte 2/3	1463/006B_REV PL3 (Track Widening – SW section) (Size A1)	PSD
CD5.16	Winning Post Bent Isopachyte 3/3	1463/006C_REV PL3 (Track Widening – SW section) (Size A1)	PSD
CD5.17	Winning Post Bend Proposed Sections	1463/007_REV PL1 Track Widening – SW section) (Size A1)	PSD
CD5.18	Winning Post Bend and East Pend Soakaway Detail and Typical Drainage Details	1463/008_REV PL1 (Track Widening Soakaway Detail and Typical Drainage Details) (Size A1)	PSD
CD5.19	Location Plan for Inner Extension Areas	1463/009_REV PL1 (Location Plan for Inner Extension Areas) (Size A3)	PSD
CD5.20	Site 1 Parameter Plan	PL_101 (Size A3)	PRC
CD5.21	Site 2 Parameter Plan	PL_102 (Size A1)	PRC
CD5.22	Site 3 Parameter Plan	PL_103 (Size A1)	PRC
CD5.23	Site 4 Parameter Plan	PL_104 (Size A3)	PRC
CD5.24	Site 5 Parameter Plan	PL_105 (Size A3)	PRC
CD5.25	Site A Parameter Plan	PL_106 (Size A1)	PRC
CD5.26	Site B Parameter Plan	PL_107 (Size A3)	PRC
CD5.27	Site C Parameter Plan	PL_108 (Size A1)	PRC
CD5.28	Site D Parameter Plan	PL_109 (Size A1)	PRC
CD5.29	Site F Parameter Plan	PL_110 (Size A1)	PRC
CD5.30	Site 1 Indicative Layout	PL_201 (Size A3)	PRC
CD5.31	Site 2 Indicative Layout	PL_202 (Size A1)	PRC
CD5.32	Site 3 Indicative Layout	PL_203 (Size A1)	PRC
CD5.33	Site 4 Indicative Layout (SUPERSEDED)	PL_204 (Size A3)	PRC
CD5.34	Site 4 Indicative Layout	PL_204_REV A (A3)	PRC

CD5.35	Site 5 Indicative Layout	PL_205 (Size A3)	PRC
CD5.36	Site A Indicative Layout	PL_206 (Size A1)	PRC
CD5.37	Accommodation Schedule	18 February 2019	PRC
CD5.38	Affordable Housing Financial Viability Assessment	Report Ref: AAMJ/18-01839 (21 February 2019)	Rapleys
CD5.39	Archaeological and Heritage Assessment	Report Ref: edp5237_r004d	EDP
CD5.40	Assessment of Drainage and Flood Risk for Outline Planning Applications	Report Ref: 2661/OPA Version F3 (February 2019)	Hafren Water
CD5.41	Design and Access Statement (SUPERSEDED)	February 2019	PRC
CD5.42	Environmental Noise Report	19 February 2019	Sharps Redmore
CD5.43	Environmental Statement	Report Ref: SRS/385/12/6 (19 February 2019)	Rapleys
CD5.44	Environmental Statement – Non-Technical Summary	Report Ref: SRS/385/12/6 (19 February 2019)	Rapleys
CD5.45	Environmental Statement – Appendix 7.1 Transport Assessment	February 2019	TPP
CD5.46	Environmental Statement – Appendix 7.2 Outline Construction Environmental Management Plan	January 2019	Blue Sky Building
CD5.47	Environmental Statement – Appendix 7.3 Draft Travel Plans (Residential, Racecourse and Hotel)	February 2019	TPP
CD5.48	Environmental Statement – Appendix 8.1 Air Quality	-	Redmore Environmental/Rapleys
CD5.49	Final Outline Site Waste Management Statement	20 February 2019	Rapleys
CD5.50	Green Belt Review	Report Ref: edp5237_r003g (February 2019)	EDP

CD5.51	Green Belt Statement (SUPERSEDED)	Report Ref: JAL/385/12/6 (22 February 2019)	Rapleys
CD5.52	Landscape/Townscape and Visual Appraisal	Report Ref: edp5237_r002c (February 2018)	EDP
CD5.53	Lighting Impact Assessment of Existing Exterior Lighting Installations at Sandown Racecourse	19 February 2019	GW Lighting Consultancy
CD5.54	Masterplan Document (SUPERSEDED)	February 2019	PRC
CD5.55	Phase 1 Geotechnical Environmental Desk Study Report	Report No. 18.10.006 (October 2018)	Listers Geotechnics
CD5.56	Planning Statement (SUPERSEDED)	Report Ref: CB/385/12/6 (22 February 2019)	Rapleys
CD5.57	Preliminary Arboricultural Impact Assessment	Report Ref: 11932_R02a_JP_LP (15 February 2019)	Tyler Grange
CD5.58	Preliminary Ecological Appraisal and Preliminary Bat Roost Assessment	Report Ref: 11932_R01g_NJ_JW (18 February 2019)	Tyler Grange
CD5.59	Shadow Habitats Regulations Screening Assessment	Report Ref: 11932_R03b_NJ_JW (18 February 2019)	Tyler Grange
CD5.60	Sustainability and Energy Statement	Report Ref: 2018.181 (February 2019)	Element Sustainability
CD5.61	Statement of Community Involvement (SUPERSEDED)	Report Ref: 385/12/6 (22 February 2019)	Rapleys
CD5.62	Utilities Assessment	Report Ref: WIE15367-100-R-1-2-2-Utilities (22 January 2019)	Waterman

CD6: Additional information submitted after validation (those which have not been superseded are shaded yellow)

Core Document Reference	Document Title	Document Reference/Details	Author
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CD6.1	Letter to Case Officer in response to Surrey County Council's Environmental Statement Review	5 April 2019	Rapleys
CD6.2	Site A Indicative Layout (with the outline of the existing building for information)	PL_206_REV A (Size A1)	PRC
CD6.3	Cover Letter to Case Officer	12 July 2019	Rapleys
CD6.4	Application Form, signed and dated, incorporating Ownership Certificate B	18 June 2019	Rapleys
CD6.5	Site B Indicative Layout	PL_207 (Size A3) (original application plan as submitted)	PRC
CD6.6	Site C Indicative Zoning Layout	PL_208 (Size A1) (original application plan as submitted)	PRC
CD6.7	Site D Indicative Zoning Layout	PL_209 (Size A1) (original application plan as submitted)	PRC
CD6.8	Site F Indicative Zoning Layout	PL_210 (Size A1) (original application plan as submitted)	PRC
CD6.9	Site 1 Topographical Survey	PL_501 (Size A3)	PRC
CD6.10	Site 2 Topographical Survey	PL_502 (Size A1)	PRC
CD6.11	Site 3 Topographical Survey	PL_503 (Size A1)	PRC
CD6.12	Site 4 Topographical Survey	PL_504 (Size A3)	PRC
CD6.13	Site 5 Topographical Survey	PL_505 (Size A3)	PRC
CD6.14	Site A Topographical Survey	PL_506 (Size A1)	PRC
CD6.15	Site B Topographical Survey	PL_507 (Size A3)	PRC
CD6.16	Site C Topographical Survey	PL_508 (Size A1)	PRC
CD6.17	Site D Topographical Survey	PL_509 (Size A1)	PRC
CD6.18	Site F Topographical Survey	PL_510 (Size A1)	PRC
CD6.19	Site 1 Existing OS	PL_401 (Size A3)	PRC

CD6.20	Site 2 Existing OS	Site 2 Existing OS PL_402 (Size A1)	PRC
CD6.21	Site 3 Existing OS	PL_403 (Size A1)	PRC
CD6.22	Site 4 Existing OS	PL_404 (SizeA3)	PRC
CD6.23	Site 5 Existing OS (SUPERSEDED)	PL_405 (Size A3)	PRC
CD6.24	Site 5 Existing OS	PL_405 REV_A (Size A3)	PRC
CD6.25	Site A Existing OS	PL_406 (Size A1)	PRC
CD6.26	Site B Existing OS	PL_407 (Size A3)	PRC
CD6.27	Site C Existing OS	PL_408 (Size A1)	PRC
CD6.28	Site D Existing OS	PL_409 (Size A1)	PRC
CD6.29JCR	Site F Existing OS	PL_410 (Size A1)	PRC
CD6.30	Site 1 Indicative Section	PL_301 (Size A1)	PRC
CD6.31	Site 2 Indicative Section	PL_302 (Size A1)	PRC
CD6.32	Site 3 Indicative Section	PL_303 (Size A1)	PRC
CD6.33	Site 4 Indicative Section	PL_304 (Size A1)	PRC
CD6.34	Site 5 Indicative Section	PL_305 (Size A1)	PRC
CD6.35	Site B Indicative Section	PL_307 (Size A1)	PRC
CD6.36	Site 1 Existing Block Elevations	PL_601 (Size A1)	PRC
CD6.37	Site 2 Existing Block Elevations	PL_602 (Size A1)	PRC
CD6.38	Site 3 Existing Block Elevations	PL_603 (Size A1)	PRC
CD6.39	Site 5 Existing Block Elevations	PL_605 (Size A1)	PRC
CD6.40	Site A Existing Block Elevations Sheet 1 of 3	PL_606_1 (Size A1)	PRC
CD6.41	Site A Existing Block Elevations Sheet 2 of 3	PL_606_2 (Size A1)	PRC
CD6.42	Site A Existing Block Elevations Sheet 3 of 3	PL_606_3 (Size A1)	PRC
CD6.43	Sites B & F Existing Block Elevations	PL_607 (Size A1)	PRC
CD6.44	Sites C & D Existing Block Elevations Sheet 1 of 2	PL_608_1 (Size A1)	PRC
CD6.45	Sites C & D Existing Block Elevations Sheet 2 of 2	PL_608_2 (Size A1)	PRC
CD6.46	Bat and Great Crested Newt Survey Report	Report Ref: 11932_R05_NJ_MM (31 May 2019)	Tyler Grange

CD6.47	Post-Consultation Supplemental Statement	July 2019 Ref: 385/12/6	Rapleys
CD6.48	Masterplan (AMENDED)	July 2019	PRC
CD6.49	Design and Access Statement (AMENDED)	July 2019	PRC
CD6.50	Planning Statement (AMENDED)	12 July 2019 Ref: CB/385/12/6	Rapleys
CD6.51	Green Belt Statement (AMENDED)	12 July 2019 Ref: JAL/385/12/6	Rapleys
CD6.52	Statement of Community Involvement (AMENDED)	July 2019	Rapleys
CD6.53	Email to Case Officer in respect of revised Planning Practice Guidance on Green Belt (22 July 2019)	13 August 2019	Rapleys
CD6.54	Transport Note – sustainable transport connections	11 September 2019	TPP
CD6.55	Measures Proposed to Improve Connections between Esher Station, Sandown Park Racecourse and Esher Town Centre	30918/AC/045_REV A (Size A3) (11 September 2019)	TPP
CD6.56	The Pedestrian Pound: The Business Case for Better Streets and Places	2018 Updated Edition	Just Economics on behalf of Living Streets
CD6.57	Bright Horizons Nursery Operator Letter	10 September 2019	Bright Horizons
CD6.58	Note and accompanying Appendix 1 on Need for Early Years Childcare Places in Elmbridge Borough Council	September 2019	Rapleys
CD6.59*	Counsel's Advice on behalf of Save Esher Greenbelt	29 September 2019	Richard Harwood QC, 39 Essex Chambers
CD6.60*	Counsel's Advice on behalf of Daytona Motorsport Management Ltd	29 September 2019	Richard Harwood QC, 39 Essex Chambers

CD6.61	Appellant's QC Advice in respect of RHQC Advice on behalf of Save Esher Greenbelt	1 October 2019	John Steel QC, 39 Essex Chambers
CD6.62	Appellant's QC Advice in respect of RHQC Advice on behalf of Daytona Motorsport Management Ltd	1 October 2019	John Steel QC, 39 Essex Chambers
CD6.63	MWA's Position on the Build Costs	June 2019	Leslie Clark and MWA
CD6.64	Email to Case Officer – Thames Water	14 March 2019	Rapleys

CD7: Other Documents (this does not include consultation responses).			
Core Document Reference	Document Title	Document Reference/Details	Author
CD7.1	Validation Letter	1 March 2019	Elmbridge Borough Council
CD7.2	Decision Notice	3 October 2019	Elmbridge Borough Council
CD7.3	Special Planning Committee Report for 1 October 2019	23 September 2019 (despatched)	Elmbridge Borough Council
CD7.4	Special Planning Committee Update Sheet	1 October 2019	Elmbridge Borough Council
CD7.5	Special Planning Committee Draft Minutes	8 October 2019 (published)	Elmbridge Borough Council
CD7.6	Review of Applicant Submitted Viability Position with appendices 1 a-f and 2	April 2019 Ref: DSP19029KO	Dixon Searle Partnership
CD7.7	Viability Review Update with 2 appendices	10 June 2019 Ref: DSP19029KO (F1)	Dixon Searle Partnership
CD7.8	Viability Review Update #2	24 June 2019 Ref: DSP19029KO (F1)	Dixon Searle Partnership
CD7.9	Elmbridge Retail Assessment A – Main Report B – Plans & Appendices C – Household Survey Results	April 2016	Bilfinger GVA

CD7.10	Esher Conservation Area Character Appraisal and Management Proposals 2008	October 2008	Elmbridge Borough Council
CD7.11	Tree Preservation Order EL:19/55	Confirmed on 10 January 2020	Elmbridge Borough Council
CD7.12	Visual Representation of Development Proposals (Landscape Institute Technical Guidance Note 06/19)	17 September 2019	Landscape Institute
CD7.13	Revised Description of Development – LPA Confirmation	16 July 2019	Elmbridge Borough Council/Rapleys LLP
CD7.14	Counsel's Advice on behalf of Save Esher Greenbelt	29 September 2019	Richard Harwood QC, 39 Essex Chambers
CD7.15	Counsel's Advice on behalf of Daytona Motorsport Management Ltd	29 September 2019	Richard Harwood QC, 39 Essex Chambers
CD7.16	Decision notice for hotel application (ref:2008/0729)	9 January 2009	Elmbridge Borough Council
CD7.17	Officers Report for hotel application (ref: 2008/0729)		Elmbridge Borough Council
CD7.18	The proposed hotel street elevation and comparative heights drawing (ref: 0626.02.09A) for the application (2008/0729)		
CD7.19	The proposed hotel Landscape Masterplan Option 2 (ref: HED.670.100.007B) for the application (2008/0729)		
CD7.20	The proposed hotel Section A-A Alternative Boundary treatments (ref: HED.670.100.008B) for the application 2008/0729)	-	

ANNEX D – INFORMATION TO INFORM THE SECRETARY OF STATE’S HABITATS REGULATIONS ASSESSMENT

Introduction

The application relates to Sandown Park racecourse in the Borough of Elmbridge. The application was a hybrid, with some full elements and some outline elements. The full elements of the proposals relate to racetrack widening on two bends (sites E1 and E2) and bellmouth accesses serving the various development sites. The outline elements of the proposals are:

- Site A – redevelopment of the stables, paddock area, pre-parade ring and horse box parking area with replacement facilities including two-storey race day staff hostel accommodation (20 bedrooms);
- Site B – a six storey hotel of around 150 bedrooms;
- Site C - demolition of existing buildings and remodelling of the existing kart track to accommodate a family/community zone comprising outdoor recreational areas, cycle track, indoor soft play and ancillary café;
- Site D – improvement of the car parking area through installing grasscrete surfacing;
- Site F - amendments to layout of the car parking area through soft and hard landscaping, including relocation of the existing broadcasting compound and turnstiles/kiosk;
- Site 1 – up to 15 residential units (one and two bedroom) in a building of one, two and three storeys;
- Site 2 – up to 49 residential units (one, two and three bedroom) in a building of two, three and four storeys with car parking covered by a landscaped deck;
- Site 3 – up to 114 residential units (one and two bedroom) in 9 buildings of one, two and three storeys;
- Site 4 – up to 72 residential units (studio, two and three bedroom) in a building of crescent form of four, five and six storeys with roof terraces;
- Site 5 – up to 68 residential units (one, two and three bedroom) in buildings of three and four storeys, retention of Toll House for use in connection with the residential development and a two storey children’s nursery with associated amenity space.

The land aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known as the Nature Directives) were transposed into UK law through the Conservation of Habitats and Species Regulations 2017 (as amended) (the 2017 Regulations). Other regulations dealt with offshore marine habitats.

On 1 January 2021 the 2017 Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (the 2019 Regulations). The obligations of a competent authority in the 2017 Regulations for the protection of sites or species have not changed. A competent authority is a public body, statutory undertaker, minister or department of government, or anyone holding public office. This Annex has been prepared in accordance with the 2019 Regulations.

Where a plan or project is likely to result in a significant effect on a site forming part of the national site network, either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the site in view of the network objectives.

Project location

Sandown Park racecourse extends to around 66 hectares located north east of the centre of Esher and south west of Esher railway station. It is bounded by Lower Green Road to the north, More Lane to the west, Portsmouth Road (the A307) to the south and Station Road to the east. The main access is from Portsmouth Road and there is an entrance from More Lane which gives access to facilities in the central part of the racecourse. The Grandstand and Eclipse building are located on the southern side of the racetrack. Operational facilities, including stables, paddocks, staff accommodation and car parking are located between the Grandstand and Portsmouth Road. Within the centre of the racetrack there is a golf centre, including a golf course and a driving range, and a karting circuit with associated buildings and parking areas. The proposed developments would take place on 12 land parcels located in various parts of the racecourse.

Sites considered

The following national network sites are present in the vicinity of Sandown Park:

- The Southwest London Waterbodies Special Protection Area (SPA) is 2.6km north west of the site. The interest features are populations of European importance of overwintering migratory birds.
- The Richmond Park Special Area of Conservation (SAC) is 6.5km north east of the site. The interest features include the presence of stag beetle and that this is a site of national importance for invertebrates associated with the decaying timber of ancient trees.
- Thames Basin Heaths SPA is 8km south west of the site. The interest features are populations of European importance of Dartford warbler, nightjar and woodlark.
- Wimbledon Common SAC is 8.5km north east of the site. The primary reasons for selection were the presence of stag beetle and that this is a site of national importance for invertebrates associated with the decaying timber of ancient trees. In addition, Annex I habitats (Northern Atlantic wet heaths and European dry heaths) are present as qualifying features.

HRA implications of the project

Given the distance to the nearest national network site (2.6km) no direct impacts are considered likely as a result of the development. Through consultation with Natural England (NE) the appellant established that the scope of the impact pathways to be considered was limited to potential impacts from increases in recreational pressure

on designated sites from new residents associated with the proposed 318 residential dwellings and the 150 room hotel.

Assessment of likely significant effects

Southwest London Waterbodies SPA

The SPA comprises a network of waterbodies at varying distances from the site. At the nearest waterbodies public access is restricted, in one case to members of a local bird club and in another to members of a sailing club. There is no access to a third waterbody. Consequently, NE has agreed with the appellant that there is unlikely to be a significant effect on the qualifying features of the SPA through increased recreational disturbance. An AA is not required.

Richmond Park SAC and Wimbledon Common SAC

The sites are designated for stag beetle which is found within deadwood habitats. This species is not considered to be adversely affected by recreational pressure. The heathland habitat at Wimbledon Common may be adversely affected by recreational pressure through trampling. However, the SAC is subject to management to limit impacts on the interest feature. Moreover it is at some distance from the appeal site. Consequently, NE has agreed with the appellant that there is unlikely to be a significant effect on the qualifying features of the SACs through increased recreational disturbance. An AA is not required in either case.

Thames Basin Heaths SPA

The qualifying features of the SPA (Dartford warbler, nightjar and woodlark) are known to be adversely affected by increases in recreational disturbance. The SPA has in place a well-established mitigation strategy based on the results of visitor surveys. The zone of influence for residential developments (such as this) of over 50 dwellings is 5km to 7km. As the appeal site is 8km from the SPA it is outside the zone of influence. Consequently, NE has agreed with the appellant that there is unlikely to be a significant effect on the qualifying features of the SPA through increased recreational disturbance. An AA is not required.

Natural England's advice

Natural England has commented as follows:

Natural England is satisfied that, on the basis of the objective information provided, it can be excluded that the proposed plan or project will have a significant effect on Thames Basin Heaths SPA, Richmond Park SAC and Wimbledon Common SAC, either individually or in combination with other plans or projects.

*A phone conversation was held between Natural England and Tyler Grange on 11th December. The species for which the SPA has been designated, namely Gadwall (*Anas strepera*) and Shoveler (*Anas clypeata*), may be sensitive to additional recreational disturbance. During the call it was noted that Knight and Bessborough Reservoir, the closest area of SPA, as well as Island Barn and Queen Elizabeth II reservoirs, which may reasonably be considered supporting habitat, currently have very limited or no public access. As such, Natural England is satisfied that the*

proposed development is not likely to have a significant effect on South-West London Waterbodies SPA.

HRA conclusions

These conclusions represent my summary and assessment of the evidence presented to me. This is not an Appropriate Assessment. That will be a matter for the Secretary of State to undertake as the competent authority.

The appellant has identified those national network sites that could potentially be affected by the proposals. There is no potential for direct impacts and the only impact pathway that has been identified is increased recreational pressure from new residents. Drawing on relevant evidence, and in consultation with NE, the appellant has concluded that there is unlikely to be a significant effect on any of the sites.

This conclusion was not challenged by any party at the Inquiry and I see no reason to take a different view. I note that the conclusion is not contingent on any mitigation measures. It would be reasonable to conclude that the proposals are not likely to have a significant effect on any national network site, either alone or in combination with other plans or projects. If that conclusion is reached it would not be necessary to carry out an AA.

Appendix

Relevant documents submitted by the appellant:

CD5.59 Sandown Park Racecourse, Esher – Shadow Habitats Regulations Screening Assessment (18 February 2019) by Tyler Grange

Letter from Natural England dated 9 January 2019 – at Appendix 2 to CD5.59

ANNEX E – CONDITIONS

- 1) The development described in the full element of the hybrid application (as shown on the plans listed in Condition 5) hereby permitted shall begin before the expiration of three years from the date of this permission.
- 2) Plans and particulars of the (i) layout, (ii) scale, (iii) external appearance of the buildings, and (iv) the landscaping of the site (in relation to the development described in the outline element of the hybrid application) (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any work on the site is commenced and shall thereafter be carried out as approved.
- 3) Application for the approval of all reserved matters referred to in Condition 2 above shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 4) The development described in the outline element of the hybrid application hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 5) The development described in the full element of the hybrid application hereby permitted shall be carried out in strict accordance with the following list of approved plans:
 - PL-001 Location Plan received on 25/02/2019
 - 30918/AC/026 Rev A - Access Plan (Site 1 Mews Site Access)
 - 30918/AC/028 Rev A - Access Plan (Site 3 Villas Site Access)
 - 30918/AC/029 Rev A - Access Plan (Site 4 Crescent Site Access)
 - 30918/AC/030 Rev A - Access Plan (Site 5 Villas Site Access)
 - 30918/AC/031 Rev A - Sites A and 2 access
 - 30918/AC/032 Rev A - Sites C and D access
 - 1463/001 Rev PL1 - Track Widening (East Section) Enabling Works & Earth Works
 - 1463/003 Rev PL1 - Winning Post Bend and Enabling Works
 - 1463/005 Rev PL1 - Winning Post Bend Proposed Road Realignment
 - 1463/006A Rev PL3 - Winning Post Bend Isopachyte 1/3
 - 1463/006B Rev PL3 - Winning Post Bend Isopachyte 2/3
 - 1463/006C Rev PL3 - Winning Post Bend Isopachyte 3/3
 - 1463/007 Rev PL1 - Winning Post Bend Proposed Sections
 - 1463/008 Rev PL1 - Winning Post Bend and East Bend Soakaway Detail and Typical Drainage Details
 - 1463/009 Rev PL1 - Track Widening (Location Plan for Inner Extension Areas)
- 6) The development described in the outline element of the hybrid application shall be carried out generally in accordance with the submitted illustrative layout plans (drawing numbers 11071/PL_201 to 210) and the heights and ground levels specified on the parameter plans (drawing numbers

11071/PL_101 to 108) subject to any detailed consideration of siting, heights and massing which is required to achieve a satisfactory design and relationship with adjoining development.

- 7) No development on each Site (as shown on the approved location plan PL-001) shall commence until a Construction Transport Management Plan for that Site, to include details of:
- a) parking for vehicles of site personnel, operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials;
 - d) programme of works (including measures for traffic management);
 - e) provision of boundary hoarding behind any visibility zones;
 - f) measures to prevent the deposit of materials on the highway;
 - g) arrangements for undertaking condition surveys of the highway before and after construction;
 - h) no HGV movements to or from the site shall take place between the hours of 07:30 and 09:30 and 15:00 and 17:00 nor shall the contractor permit any HGVs associated with the development at the site to be laid up, waiting, in local residential roads during these times; and
 - i) on-site turning for construction vehicles
- has been submitted to and approved in writing by the local planning authority. The approved Construction Transport Management Plan for each Site shall be adhered to throughout the construction period for that Site.
- 8) No development including groundworks and demolition on each Site shall take place and no equipment, machinery or materials shall be brought onto that Site for the purposes of the development until a pre-commencement meeting has been held on that Site attended by a suitably qualified arboriculturist, a representative from the local planning authority and the site manager/foreman to ensure that all tree protection measures for the relevant Site have been installed in accordance with all documentation submitted and approved to comply with Condition 9.
- 9) No development including groundworks and demolition on each Site (as shown on the approved location plan PL-001) shall take place until all supporting arboricultural information for that Site has been submitted to and approved in writing by the local planning authority. This shall include details of:
- a) existing trees and hedges to be retained in the form of a Tree Survey and Arboricultural Impact Assessment, in line with BS5837:2012;
 - b) measures to be taken to protect existing trees and hedges (within and adjacent to the Site) during construction, demolition and delivery/storage of materials and machinery, including a Tree Protection Plan;
 - c) location and installation of services/utilities/drainage, including services to automated gates;

- d) methods of demolition within root protection areas (as defined in BS 5837:2012) of retained trees;
- e) details of construction and installations including methodologies within root protection areas that may impact on retained trees;
- f) full specification for the construction of any roads, parking areas, driveways and hard surfacing where these would be within a root protection area, including details of no dig specification and extent of the areas to be constructed using no dig surfacing;
- g) levels and cross sections where no dig surfacing is proposed within any root protection area;
- h) all arboricultural site monitoring and supervision required for the duration of the development;
- i) methods to improve the rooting environment for retained and proposed trees and landscaping with special attention to ancient and veteran trees; and
- j) foundation designs and any other proposals involving below ground excavation inside root protection areas or that may impact on root protection areas.

The relevant part of the development shall thereafter be implemented in strict accordance with the approved details. The approved tree protection measures shall be maintained for the course of the development works.

No retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998:2010 (tree work) and in accordance with any approved supplied arboricultural information. If any retained tree, hedge or hedgerow is removed, uprooted or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season.

- 10) The completion schedule/report of all arboricultural site supervision and monitoring submitted and approved in compliance with condition 9, shall be submitted for the written approval of the local planning authority within 20 working days of the substantial completion of the development within each Site hereby approved. This shall include evidence of compliance through supervision and monitoring of the agreed activities by a suitably qualified arboriculturist, as well as any additional arboricultural measures considered necessary. If any such additional arboricultural measures are needed, they shall be implemented in full in accordance with the approved details.
- 11) No development including groundworks and demolition on each Site (as shown on the approved location plan PL-001) shall take place until full details of all proposed tree planting for that Site have been submitted to and approved in writing by the local planning authority. Details are to include species, sizes, locations, planting pit design, supports and guards or other protective measures to be used. Details shall also include planting times and maintenance schedules for aftercare to ensure good establishment. If within a period of 5 years from the date of the planting of any tree, that tree, or any planted in replacement for it, is removed,

- uprooted or destroyed or dies, another tree of same size and species shall be planted at the same place, in the next available planting season. The relevant part of the development shall be completed in accordance with the approved details.
- 12) Prior to the commencement of any development on Site 1 and Site A hereby permitted, a Construction Environmental Management Plan (Ancient Woodland) for that Site shall be submitted to and approved in writing by the local planning authority. The Construction Environmental Management Plan (Ancient Woodland) shall include measures to avoid damage to nearby ancient woodland and veteran trees, including measures to control dust and potentially polluted run-off from the Site. No materials, machinery or work shall encroach onto the root protection areas of the ancient woodland or the veteran trees, either before, during or after construction. The approved Construction Environmental Management Plan (Ancient Woodland) for each Site shall be adhered to throughout the demolition and construction period for that Site.
 - 13) No development shall take place on Site 1 until the implementation of a programme of archaeological monitoring for Site 1 has been secured, to be conducted in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. Development on Site 1 described in the full element of the hybrid application is not covered by this condition.
 - 14) No development shall take place on Sites 2, 3, 4 or 5 until the implementation of a programme of archaeological work for each Site has been secured, to be conducted in accordance with a written scheme of investigation for that Site which has been submitted to and approved, in writing, by the local planning authority. Development on Sites 2, 3, 4 and 5 described in the full element of the hybrid application is not covered by this condition.
 - 15) As part of any Reserved Matters/detailed application relating to Sites A, B, C, D and F, an Archaeological Impact Assessment for the relevant Site/Sites shall be submitted to and approved in writing by the local planning authority. The Archaeological Impact Assessment shall assess the archaeological potential of the Site/Sites and include details of any programme of archaeological work that may be required. Any pre-commencement archaeological work identified by the Assessment shall be carried out in full prior to commencement. Thereafter, development shall be carried out in accordance with the approved Archaeological Impact Assessment. Development on Sites A, B, C, D and F described in the full element of the hybrid application is not covered by this condition.
 - 16) Part A - Prior to the commencement of any development on Sites B, 1, 2, 3, 4 and 5 (as shown on the approved location plan PL-001) hereby permitted, a Noise Impact Assessment for that Site shall be submitted to and approved in writing by the local planning authority. The Noise Impact Assessment for that Site shall identify that all existing and future sources of noise, including the hotel facilities, outdoor amenity space and nursery, are fully considered, understood and quantified, that all nearby noise sensitive and other relevant receptors have been identified and that the impact on the receptor has been established with reference to relevant acceptability

criteria. The Assessment must also include the location, design and outside appearance of the buildings and landscaping of the Site.

Part B - Prior to first occupation, a post-completion noise assessment to demonstrate that the finished development (with mitigation) achieves the specified criteria shall be submitted to and approved in writing by the local planning authority. The mitigation measures shall be permanently retained thereafter.

- 17) Part A - Prior to the commencement of the development on Site 2 and Site 5 hereby permitted (as shown on the approved location plan PL-001), details of a passive ventilation scheme for the relevant Site, to provide fresh air to habitable rooms for the residential units facing Portsmouth Road, shall be submitted to and approved in writing by the local planning authority. The approved mitigation scheme for the relevant Site shall be implemented in its entirety before any of the units on that Site are occupied.

Part B - Following the implementation of the approved ventilation scheme and prior to the first occupation of Site 2 and Site 5, a post-completion noise assessment to demonstrate that the approved scheme has been fully and correctly implemented shall be submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be maintained in accordance with the approved details.

- 18) Prior to the commencement of any development on each Site (as shown on the approved location plan PL-001), a scheme to demonstrate that the external noise levels within the curtilage and within the residential units will meet the guideline values for outdoor amenity space, bedrooms and living space (as appropriate) as specified within BS8233:2014, Guidance on Sound Insulation and Noise Reduction for Buildings, or as may be amended or updated, shall be submitted to and approved in writing by the local planning authority. The report shall include details of noise attenuation measures required to meet the standard for internal and external noise levels, as defined in table 4 of BS8233:2014 (including glazing and ventilation details). The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to the occupation of the premises and be retained thereafter.

- 19) Part A - Prior to the commencement of any development on each Site (as shown on the approved location plan PL-001), a detailed scheme for that Site including siting and positioning of any fixed plant, machinery, air-moving extraction or filtration, refrigeration equipment, air conditioning units or the like to be used on the premises, shall be submitted to and approved in writing by the local planning authority. The approved scheme for the relevant Site shall then be implemented in full in accordance with the approved details.

Part B - Prior to the first occupation of any part of the development, a detailed noise assessment shall be carried out by a suitably qualified acoustic consultant/engineer in accordance with BS4142:2014 *Methods for rating and assessing industrial and commercial sound*. The detailed noise assessment shall include details of any noise mitigation measures considered necessary. The detailed noise assessment report shall be submitted to and approved in writing by the local planning authority. In the

event that noise mitigation measures are necessary, these shall be implemented in full as approved prior to occupation and thereafter maintained in accordance with that approval.

- 20) Prior to the commencement of any development on each Site (as shown on the approved location plan PL-001), an external lighting scheme for that Site shall be submitted to and approved in writing by the local planning authority. The lighting scheme shall identify how existing lighting and installation of any additional artificial lighting is to be orientated and shielded or otherwise designed and positioned, such that the light emitted from them does not cause light nuisance to habitable rooms or to light-sensitive protected species. The lighting scheme shall refer to national guidance and identify the type of lighting to be installed, height of any columns, any shielding and lux mapping showing light spillage levels received at ground level around the development. The lighting shall comply with the recommendations of the Bat Conservation Trust's document *Bats and Lighting in the UK - Bats and The Built Environment Series*. The scheme shall be implemented and thereafter retained and maintained as approved.
- 21) Prior to the commencement of any development on each Site (as shown on the approved location plan PL-001) a Construction Environmental Management Plan for that Site shall be submitted to and approved in writing by the local planning authority as specified in the submitted Outline Construction Environmental Management Plan, dated January 2019. The Construction Environmental Management Plan shall include:
- a) procedures for maintaining good public relations including complaint management, public consultation and liaison;
 - b) arrangements for liaison with the Council's Environmental Health Pollution Team;
 - c) all works and ancillary operations which are audible at the site boundary, or at such other place as may be approved by the local planning authority, shall be carried out only between the following hours: 08:00 and 18:00 on Mondays to Fridays, 08:00 and 13:00 on Saturdays; and at no time on Sundays and Bank Holidays;
 - d) details of the hours at which deliveries to and removal of plant, equipment, machinery and waste from the site shall take place;
 - e) mitigation measures as defined in BS 5228: Parts 1 and 2: 2009 (Amended 2014) *Code of Practice for Noise and Vibration Control Construction on Construction and Open Sites* shall be used to minimise noise disturbance from construction works (including piling and excavation);
 - f) procedures for emergency deviation of the agreed working hours;
 - g) control measures for dust and other air-borne pollutants;
 - h) measures for controlling the use of site lighting whether required for safe working or for security purposes; and
 - i) community liaison arrangements.

The approved Construction Environmental Management Plan for each Site shall be adhered to throughout the demolition and construction period for that Site.

- 22) No development on each Site (as shown on the approved location plan PL-001) shall commence until a detailed Landscape and Ecological Management Plan (LEMP) for that Site has been submitted to and approved in writing by the local planning authority. The LEMP shall include details of the following:
- a) description and evaluation of features to be managed and created including measures to compensate for proposed loss of habitat;
 - b) quantified information relating to impact avoidance, mitigation, compensation and enhancement measures for protected species, including provision integral to the design of the new development;
 - c) aims and objectives of management;
 - d) appropriate management options to achieve aims and objectives;
 - e) prescriptions for management actions;
 - f) preparation of a work schedule for securing biodiversity enhancements in perpetuity;
 - g) details of the body or organisation responsible for implementation of the LEMP;
 - h) ongoing monitoring and remedial measures; and
 - i) details of legal/funding mechanisms.

Development shall be carried out in accordance with the approved LEMP and shall thereafter be retained as such.

- 23) No development shall be commenced on each Site (as shown on the approved location plan PL-001) until step (a) below has been completed for that Site by a competent person. Furthermore, there shall be no occupation of any part of the Site by any end user prior to meeting the terms of this condition in full.

a) Site investigation, method statement and remediation

(i) A written site-specific investigation plan using the information obtained from the preliminary investigation (Listers Geo, Report no 18.10.006 October 2018), providing details of the investigation for soil, gas and controlled waters where appropriate, shall be submitted to and approved in writing by the local planning authority.

(ii) The site investigation shall be undertaken in accordance with the approved scheme. The results of the site investigation, a refined conceptual model and a risk assessment of any contamination found shall be submitted to and approved in writing by the local planning authority.

(iii) A written Remediation Method Statement, with Verification Plan, detailing any remediation requirements shall be submitted to and approved in writing by the local planning authority.

b) Development in accordance with the method statement

The development of the Site shall be carried out in accordance with the approved Method Statement, and any addenda submitted by the developer and approved in writing by the local planning authority. Any post remediation monitoring identified in the Method statement shall be installed by the developer within the timescales identified in the Method Statement and maintained and operated for as long as identified by the Method Statement.

c) Unsuspected contamination

If, during development, contamination not previously identified is found to be present at the Site then no further development shall be carried out until the developer has submitted, and had approved by the local planning authority, a written addendum to the Method Statement detailing how the unsuspected contamination shall be dealt with.

d) Piling

Development approved by this permission shall not commence unless a Foundation Works Risk Assessment for piling foundations (if piling is to be used on site) has been submitted to and approved in writing by the local planning authority. The piling shall be undertaken only in accordance with the method outlined in the approved Foundation Works Risk Assessment.

e) Imported material

Clean, uncontaminated rock, soil, brick rubble, crushed concrete or ceramics only shall be permitted as infill material. The developer shall not import any material until a sampling programme, including appropriate import criteria for the proposed end use and frequency of sampling, has been submitted to and approved in writing by the local planning authority. The developer shall carry out the approved sampling programme to check that all imported material conforms to the agreed criteria. Where the permitted end use is residential, the sampling programme shall also include samples taken from the imported material after final placement. Written confirmation of the suitability of all imported materials shall be provided to the local planning authority as part of step (f). This shall include both the results of the sampling programme and also details of the origin, transport, final deposition and any temporary stockpiling of the imported materials.

f) Completion of remediation and verification report

Upon completion of the remediation detailed in the Method Statement, and before occupation of any part of any Site by any end user, a written Verification Report shall be submitted to and approved in writing by the local planning authority providing verification that the required works regarding decontamination and installation of post remediation monitoring, have been carried out in accordance with the agreed Method Statement and any addenda thereto.

- 24) No development on each Site (as shown on the approved location plan PL-001) shall commence until details of the design of a surface water drainage scheme for that Site have been submitted to and approved in writing by the local planning authority. The design shall satisfy the Sustainable Drainage Systems (SuDS) Hierarchy and be compliant with the

national Non-Statutory Technical Standards for SuDS, the National Planning Policy Framework and the Ministerial Statement on SuDS. The drainage details shall include:

- a) the results of infiltration testing completed in accordance with BRE Digest: 365 and confirmation of groundwater levels;
- b) evidence that the proposed solution will effectively manage the 1 in 30 and 1 in 100 (+40% allowance for climate change) storm events, during all stages of the development (associated discharge rates and storage volumes shall be provided using a greenfield discharge rate for the positively drained area of that site only);
- c) detailed drainage design drawings and calculations to include a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features such as silt traps and inspection chambers;
- d) confirmation that any existing drainage infrastructure within each site phase will be incorporated or diverted as part of the surface water drainage design;
- e) a plan showing exceedance flows (during rainfall greater than design events or during blockage) and how property on and off site will be protected;
- f) details of management responsibilities and maintenance regimes for the drainage system and any other arrangements to secure the operation and maintenance of the scheme throughout its lifetime; and
- g) details of how the drainage system will be protected during construction and how run-off (including any pollutants) from the development site will be managed before the drainage system is operational.

Development shall be carried out in accordance with the approved details and shall thereafter be permanently retained as such.

Prior to the first occupation of each Site, a verification report carried out by a suitably qualified drainage engineer shall be submitted to and approved in writing by the local planning authority. The verification report shall demonstrate that the drainage system has been constructed in accordance with the agreed scheme (detailing any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

- 25) No development on each Site (as shown on the approved location plan PL-001) shall be occupied or opened for trading unless and until the following facilities have been provided in accordance with a scheme to be submitted to and approved in writing by the local planning authority for:
 - (a) Sites 1 and 3 - The improvement of bus stops located at More Lane, to include Real Time Passenger Information Systems, access for all compatible kerbing, shelters, lighting and power.

- (b) Sites 1 and 2 - The improvement of bus stops located at Esher Green to include Real Time Passenger Information Systems, access for all compatible kerbing, shelters, lighting and power.
 - (c) Sites A, B, C and 5 - The improvement of bus stops located at Portsmouth Road to include Real Time Passenger Information Systems, access for all compatible kerbing, shelters, lighting and power.
 - (d) Site 3 - The improvement of the bus stops located at Lower Green Road to include access for all compatible kerbing.
 - (e) Site 3 - Additional lighting and resurfacing along the footway access to Esher Railway Station from the Lower Green Road bridge to Platform 4 of the railway station.
 - (f) Site F - Provision of informal pedestrian crossing points and central refuges on either side of the right hand turn lane of the primary access to the site from Portsmouth Road.
 - (g) Sites 1, 2, 3, 4, 5, A and B - Provision of a crossing point that is accessible for all between Station Road and Esher Railway Station.
 - (h) Sites 1 and C - improvements to the More Lane footway on the site side that leads to the existing bus stop opposite 19 More Lane, to include informal crossing point.
 - (k) Sites 4 and 5 – New bus stops near the junction of Station Road and Portsmouth Road.
- 26) No development above the slab level for each Site shall take place until details of how the development is to meet the requirements of 'secured by design' for that Site have been submitted to and approved in writing by the local planning authority. Development shall be undertaken in accordance with the approved details for the relevant Site and permanently retained as such thereafter.
- 27) Site 1 shall not be occupied unless and until the proposed access to More Lane has been constructed and provided with visibility zones in accordance with drawing number 30918/AC/026_REV A.
- Site 3 shall not be occupied unless and until the existing access from Lower Green Road has been closed and any footway/verge and kerblines reinstated and the proposed new access to Lower Green Road has been constructed and provided with visibility zones in accordance with drawing number 30918/AC/028_REV A.
- Site 4 shall not be occupied unless and until the existing access from Station Road has been closed and any footway/verge and kerblines reinstated and the proposed new access to Station Road has been constructed and provided with visibility zones in accordance with drawing number 30918/AC/029_REV A.
- Site 5 shall not be occupied unless and until the proposed new access to Portsmouth Road has been constructed and provided with visibility zones in accordance with drawing number 30918/AC/030_REV A.
- Sites C and D shall not be opened for trading/occupation unless and until the proposed modified access to More Lane has been constructed and

provided with visibility zones in accordance with drawing number 30918/AC/032 REV_A .

Site A and Site 2 shall not be occupied unless and until the modified internal access road linking to the access to Portsmouth Road has been constructed and provided with visibility zones in accordance with drawing number 30918/AC/031 REV_A.

All the above shall be implemented in accordance with the approved details and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.

- 28) No development on each Site (as shown on the approved location plan PL-001) shall be occupied or opened for trading unless and until space has been laid out within that Site in accordance with a scheme that has been submitted to and approved in writing by the local planning authority for vehicles and cycles to be parked and for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave that Site in forward gear. Thereafter the parking and loading and unloading/turning areas shall be retained and maintained for their designated purposes. All cycle parking shall be covered and lit.
- 29) Prior to the occupation/first use of any of the developments at Sites A, B, C, D and F (as shown on the approved location plan PL-001) an Event Management Plan shall be submitted to and approved in writing by the local planning authority. The Event Management Plan shall include the following details:
- (a) traffic management provision for all accesses to Sandown Park racecourse;
 - (b) measures to encourage visitors to Sandown Park racecourse to park in designated locations and measures to discourage parking on local streets that may result in increased highway safety or capacity risks;
 - (c) a definition of what constitutes an Event and associated trigger points for the implementation of the Event Management Plan;
 - (d) communication methods and processes for relevant stakeholders including local residents, the local planning authority and the highway authority; and
 - (e) measures to encourage sustainable transport to and from the site during Events.

Development shall be carried out and thereafter operated in accordance with the approved Event Management Plan.

- 30) Prior to the occupation of the development hereby permitted a Travel Plan shall be submitted to and approved by the local planning authority. The Travel Plan shall be in general accordance with the Sandown Park Racecourse Draft Residential Travel Plan, the Sandown Park Draft Racecourse Travel Plan and the Sandown Park Draft Hotel Travel Plan.
- Development shall be carried out and operated in accordance with the approved Travel Plan.
- 31) Development at Sites 1, 2, 3, 4, and 5 (as shown on the approved location plan PL-001) shall not be occupied unless and until each of the dwellings

are provided with a fast charge socket for electric vehicle charging in accordance with a scheme for the relevant Site that has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and shall thereafter be permanently retained as such.

- 32) Prior to the occupation of any of Sites 1, 2, 3, 4, and 5 (as shown on the approved location plan PL-001) a Car Parking Management Plan for the relevant Site shall be submitted to and approved in writing by the local planning authority. The Car Parking Management Plan shall be implemented as approved on occupation of the development and shall be permanently maintained thereafter.

End of schedule of conditions



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.