



**Elmbridge Borough Council
Town & Country Planning Act 1990**

Appeal by Claygate House Investments Ltd & MJS Investments Ltd

Land North of Raleigh Drive, Claygate, Esher, Surrey, KT10 9DF

Planning Inspectorate's reference:

APP/K3605/W/23/3334391 (LPA's ref: 2023/0962)

STATEMENT OF CASE

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Appendix 1: 2023/0962 Officer Report and Decision Notice

1. INTRODUCTION

- 1.1. An appeal has been submitted by Claygate House Investments Ltd & MJS Investments Ltd (the Appellant) against the decision of Elmbridge Borough Council (the Council) to refuse planning permission for planning application 2023/0962 at Land North of Raleigh Drive, Claygate, Esher, Surrey, KT10 9DF.
- 1.2. The application was refused by officers under delegated authority on 22nd September 2023. A copy of the Decision notice and Officer report are attached in Appendix 1.

2. SITE AND SURROUNDINGS

- 2.1. A description of the appeal site and its surroundings is set out in the Officer's Report and will also be set out in the Statement of Common Ground.
- 2.2. The planning history is set out in Paragraph 4 on Page 4 of the Officer Report in Appendix 1 and the Statement of Common Ground.
- 2.3. The relevant planning constraints are listed in Paragraph 2 on Pages 2 and 3 of the Officer Report in Appendix 1.

3. DEVELOPMENT PROPOSAL

- 3.1. The proposal is in outline form for access only, with Appearance, Landscaping, Layout and Scale as reserved matters, for up to 60 residential dwellings. As such the exact number of dwellings, the layout, size and scale of the buildings and appearance would be determined at the detailed stage.
- 3.2. The proposal would include 50% of the residential units as affordable housing, the tenure and housing mix to be agreed as part of the Statement of Common Ground.
- 3.3. The description of the proposed development in relation to the appeal will be agreed in the Statement of Common Ground.

4. DEVELOPMENT PLAN & OTHER PRINCIPAL MATERIAL CONSIDERATIONS

- 4.1. The Local Planning Authority has statutory duties relating to the determination of the application which are set out in the following legislation:
 - Section 70 of The Town and Country Planning Act 1990.
 - Section 38(6) of The Planning and Compulsory Purchase Act 2004.
 - The Equality Act 2010.
- 4.2. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, this appeal falls to be determined in accordance with the

development plan unless material considerations indicate otherwise. For the purposes of this appeal the development plan comprises the Core Strategy 2011 and the Development Management Plan 2015, there are no matters relating to minerals so the Surrey Minerals Plan is not relevant. The relevant development plan policies for consideration of the proposal will be agreed through the Statement of Common Ground.

- 4.3. In addition, the Design and Character Supplementary Planning Document 2012, Parking Supplementary Planning Document 2020, the Development Contributions SPD 2021 and the Flood Risk Supplementary Planning Document 2016 are material considerations.

5. OVERVIEW OF THE COUNCIL'S CASE

- 5.1. Officers resolved to refuse planning permission under delegated authority on 22nd September 2023 for the reasons set out in the Decision notice in Appendix 1. These relate to harm to the Green Belt, harm to biodiversity, lack of a legal agreement to secure the on-site affordable housing and lack of a legal agreement to secure a 'Car Club' vehicle on-site and off-site highway improvements.
- 5.2. The Council will demonstrate through its evidence how the scheme conflicts with the development plan taken as a whole, for the given reasons for refusal.
- 5.3. The Council will therefore invite the Inspector to dismiss the appeal and refuse planning permission.

6. THE COUNCIL'S CASE

Reason for Refusal 1: Harm to the Green Belt

- 6.1. In relation to Reason for Refusal 1 the Council will demonstrate that the development would cause harm to the Green Belt contrary to Policy DM17 of the Development Management Plan 2015 and the NPPF 2023.
- 6.2. An assessment of the impact on the Green Belt is set out in the Planning Considerations (paragraphs 29 to 62) of the Officer Report in Appendix 1. The Council will demonstrate that the proposal would be inappropriate development within the Green Belt which would result in definitional harm, as well as spatial and visual harm to the openness of the Green Belt and in addition would conflict with the purposes of including land within the Green Belt. The Council will then demonstrate that the identified harm would not be clearly outweighed by other considerations and therefore 'very special circumstances' do not exist. The Council will therefore demonstrate that the development would be contrary to Policy DM17 of the Development Management Plan 2015 and the NPPF 2023.
- 6.3. The proposed development would be inappropriate development within the Green Belt as it would not meet any of the exceptions within paragraphs 154

and 155 of the NPPF (2023). Consequently, the proposal would result in definitional harm to the Green Belt and should not be approved except in very special circumstances as per paragraph 152 of the NPPF. This harm must be given substantial weight. This is an agreed position with the Appellant as per paragraph 6.6 of their Statement of Case and the Statement of Common Ground.

- 6.4. The Council will demonstrate that the proposed development would result in both spatial and visual harm to the openness of the Green Belt as a result of the likely impact of a development of up to 60 residential dwellings. Both the spatial harm and the visual harm to the Green Belt are required to be given substantial weight by paragraph 153 of the NPPF.
- 6.5. The site is considered to contribute towards the five purposes of including land within the Green Belt and consequently the proposed development would conflict with the purposes as a whole. The Council will demonstrate that whilst the degree to which the land contributes towards the purposes varies, as is the case for all parcels of Green Belt land, overall the land contributes positively towards the purposes of including land within the Green Belt.
- 6.6. The Council will demonstrate that 'very special circumstances' do not exist as the harm to the Green Belt, by reason of inappropriateness, and any other harm which includes spatial harm, visual harm and conflict with the purposes of Green Belt, is not clearly outweighed by other considerations.
- 6.7. The Green Belt evidence will demonstrate that the harm identified as a result of the proposed development is contrary to Policy DM17 of the Development Management Plan 2015 and the NPPF 2023 and substantial weight is given to this harm in the planning balance.
- 6.8. The Council will provide expert evidence on the impact on openness and visual impact of the proposal on the Green Belt and on the housing need within the Borough and 5 year housing land supply so far as it pertains to the 'very special circumstances' put forward by the Appellant. The evidence will include an appraisal of the proposal against the relevant parts of the NPPF and the Development Management Plan 2015. The evidence will also include the Green Belt Boundary Review 2016, the Green Belt Boundary Review 2018. The Council will refer to relevant case law and appeal decisions on the Green Belt.

Reason for Refusal 2: Biodiversity

- 6.9. The Council is in discussion with the Appellant in respect of the s106 agreement and the appropriate location for the delivery of BNG, given the terms of its Policy CS15 which requires that "where feasible [development] contributes to a net gain through the incorporation of biodiversity net features." This envisages on site delivery. At the present stage, the parties have not reached agreement on this. The Council will continue to work with the Appellant

to identify whether common ground can be reached on this issue ahead of the inquiry.

Reason for Refusal 3: Affordable Housing

- 6.10. The Council and Appellant are currently working together on a Section 106 agreement to secure 50% of the proposed residential units as affordable housing. Should agreement be reached and a satisfactory signed legal agreement be provided before or during the course of the inquiry the Council would be able to withdraw this reason for refusal. If a satisfactory signed legal agreement is not provided before or at the latest during the course of the inquiry then the Council will maintain this reason for refusal.
- 6.11. As set out in the Statement of Common Ground the policy requirement for 50% affordable housing is not in dispute and the appellant does not dispute the need for a Section 106 agreement to secure the affordable housing.

Reason for Refusal 4: 'Car Club' Vehicle and Highway Improvements

- 6.12. The Council and appellant are currently working together on a Section 106 agreement to secure the provision of an on-site 'Car Club' vehicle and off-site highway improvements. Should agreement be reached and a satisfactory signed legal agreement be provided before or during the course of the inquiry the Council would be able to withdraw this reason for refusal. If a satisfactory signed legal agreement is not provided before or at the latest during the course of the inquiry then the Council will maintain this reason for refusal.
- 6.13. As set out in the Statement of Common Ground the need for a 'Car Club' vehicle on-site and off-site highway improvements is not in dispute and the Appellant does not dispute the need for a Section 106 agreement to secure the above.

7. WITNESSES

- 7.1. The Council intends to call three witnesses to cover the following topic areas:
- Planning
 - Impact on openness and visual impact
 - Housing need and 5 year housing land supply

8. CONCLUSION

- 8.1. The Council will show that the impacts arising from the Appeal scheme give rise to a conflict with the Development Plan as a whole and with national planning policy set out within the NPPF.
- 8.2. The Council will show that the proposed development would result in harm to the Green Belt which is not clearly outweighed by other considerations, harm to biodiversity (subject to further discussions on this matter) and harm by reason of the lack of a Section 106 legal agreement to secure on-site affordable

housing, an on-site 'Car Club' vehicle and off-site highways improvements. The overall harm is not considered to be outweighed by the benefits of the proposal.

8.3. The Council will accordingly invite the Inspector to dismiss the appeal.

9. OTHER MATTERS

9.1. In accordance with guidance from the Planning Inspectorate and without prejudice to the Council's case, a list of recommended conditions to be applied in the event that the Inspector is minded to allow the appeal and will be provided in the Statement of Common Ground.

10. DOCUMENTS TO BE REFERRED TO IN EVIDENCE

10.1. The Council will refer in its evidence to the documents identified in the statement above and other relevant documents including:

- Letters of representation
- Decision Notice and Officer Report
- The National Planning Policy Framework
- The Development Plan Documents and Supplementary Planning Documents as detailed in the Officer Report in Appendix 1
- Green Belt Boundary Review 2016 by Arup and Green Belt Boundary Review 2018 by Arup
- Statutory and non-statutory consultee consultation responses
- All documents which formed part of or accompanied the application
- Any other relevant appeal decisions or case law.

10.2. The Council reserves the right to refer to additional documents in response to the Appellant's case as developed in proofs of evidence.