

**Town and County Planning Act 1990  
Section 78 (As Amended)**

# **PLANNING STATEMENT OF COMMON GROUND**

**Prepared by:**

**Woolf Bond Planning LLP  
for Claygate House Investments Ltd &  
MJS Investments Ltd**

**and**

**Elmbridge Borough Council**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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**Land North of Raleigh Drive, Claygate**

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**PINS REF: APP/K3605/W/23/3334391  
LPA REF: 2023/0962  
WBP Ref: SB/7679**

**8<sup>th</sup> February 2024**

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## **EXECUTIVE SUMMARY**

- 1 This Statement of Common Ground relates to a Town and Country Planning Act 1990 Section 78 Planning Appeal lodged by Woolf Bond Planning LLP on behalf of Claygate House Investments Ltd and MJS Investments Ltd (“the Appellants”) against the decision of Elmbridge Borough Council (“EBC”) to refuse outline planning permission for the construction of up to 60 dwellings with associated landscaping and open space with access from Raleigh Drive. (Outline Application with Appearance, Landscaping, Layout and Scale Reserved). (LPA Ref: 2023/0962).
- 2 The Statement records the matters upon which the parties are agreed with the intention of leading to the preparation of more focused proofs of evidence thus saving time and resources at the inquiry.

### **Matters Agreed**

- 3 The Appellants and EBC agree upon the following matters:
  - a) The Appeal Site is within the Green Belt and the proposed development would comprise inappropriate development for the purpose of paragraphs 152 and 153 of the NPPF.
  - b) The Appeal Scheme is acceptable in highway terms both in terms of locational sustainability and (subject to acceptable planning obligations being secured) highway safety.
  - c) The Appeal Site is in a sustainable location, within walking and cycling distance from local services and facilities.
  - d) There are no flood or drainage objections to the Appeal Scheme. The sequential test has been passed.
  - e) The Appeal Site is not within a valued landscape. The Council has no objection to the Scheme on landscape and visual grounds (save in relation to Green Belt impacts).
  - f) The Appeal Scheme has no impact on designated or undesignated heritage assets.

- g) The proposed density would not conflict with the development plan's policies in respect of density.
  - h) The Appeal Scheme can secure an appropriate mix of dwelling types and tenures.
  - i) The Appeal Scheme delivers 50% affordable housing (subject to acceptable planning obligations being secured).
  - j) In principle, and subject to sufficient information being available, a condition or planning obligation could be used to secure 10% biodiversity net gain.
  - k) The parties have agreed that the Appellants will provide planning obligations in the form of a Section 106 Agreement.
  - l) EBC is a CIL Charging Authority and financial contributions will also be secured at the reserved matters stage once the amount of proposed floorspace is fixed.
  - m) Satisfactory completion of the Section 106 Agreement will ensure that if the Appeal is allowed and planning permission is granted, all of the financial contributions and other compliant obligations required to enable the proposed development to go ahead are in place and/or will be delivered at the appropriate times. This will resolve reasons for refusal 2 (unless that is addressed by condition), 3 and 4.
- 4 As a result of the matters agreed in paragraph (3) above, the forthcoming inquiry should therefore focus on the issues where there continues to be disagreement between the principal parties in relation to the following:
- a) The level of spatial harm to the openness of the Green Belt.
  - b) The level of visual harm to the openness of the Green Belt.
  - c) Whether, and if so, the extent to which the proposal conflicts with the purposes of Green Belt as set out in paragraph 143 of the NPPF.
  - d) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances for the purposes of paragraphs 152 and 153 of the NPPF.
  - e) Whether the development plan is up to date for the purposes of NPPF paragraph 11(c) and whether the proposal accords with the development plan.

- f) Whether the policies which are the most important for determining the appeal are out of date for the purposes of NPPF paragraph 11(d) and whether the tests under 11(d)(i) and (ii) are met.

## 1. INTRODUCTION

- 1.1. Preparation of this document follows discussions between Steven Brown of Woolf Bond Planning LLP, acting on behalf of the Appellants, and Jack Trendall, Principal Planning Officer, acting on behalf of EBC.
- 1.2. It is agreed that it would be helpful to seek agreement on relevant factual information before preparing proofs of evidence for the appeal. As requested by the Appeal Inspector, and as set out at paragraph 16 of the CMC Summary Note (2 Feb 2024), this 'Planning' Statement of Common Ground is to be supplemented by a Housing SoCG, covering housing land supply and affordable housing need/delivery.<sup>1</sup>
- 1.3. It is also agreed that there should be a common list of reference documents, and these are to be referenced as Core Documents ("CDs") to the Inquiry.

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<sup>1</sup> Including affordable housing

## **2. THE COUNCIL'S REASONS FOR REFUSAL**

2.1. The Appeal Scheme was refused planning permission by a decision notice dated 22<sup>nd</sup> September 2023. The reasons for refusal are as follows:

- 1) The proposed development 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 would conflict with the purposes of Green Belts. This harm would not be clearly outweighed by other considerations which would meet the bar for 'very special circumstances'. Consequently, the proposed development would be contrary to Policy DM17 of the Development Management Plan 2015 and the NPPF 2023.**
- 2) The proposed development, by reason of the on-site net loss of biodiversity which cannot be offset off-site, would result in harm to on-site ecology and biodiversity and would be contrary to Policy CS15 of the Core Strategy 2011 and the NPPF 2023.**
- 3) The proposed development, by reason of the absence of a completed legal agreement to secure on-site affordable housing, would fail to make a contribution to the provision of affordable housing in the Borough contrary to Policy CS21 of the Core Strategy 2011 and the NPPF 2023.**
- 4) The proposed development, by reason of the absence of a completed legal agreement to secure a 'Car Club' vehicle on-site and off-site highway improvements, would prejudice highway safety and cause inconvenience to other highway users and fail to promote sustainable transport. The proposed development would therefore be contrary to Policy CS25 of the Core Strategy 2011, Policy DM7 of the Development Management Plan 2015 and the NPPF 2023.**

### **3. DESCRIPTION OF THE APPEAL SITE AND SURROUNDING AREA**

#### **Context**

- 3.1. The Appeal Site is located within walking distance of the local services, being situated approximately 600 metres north of Claygate village centre and 1.4 kilometres southeast of Esher town centre, and therefore benefits from easy access to a variety of local amenities. These amenities include a number of schools, health care, retail, employment and leisure facilities.
- 3.2. There is also a good bus service in close proximity to the Site; bus route K3 runs between Esher and Roehampton Vale, with the nearest stop located approximately 230 metres south of the Site on Hare Lane. The frequency is around 3 buses/hour on weekdays and 2-3 buses/hour at weekends.
- 3.3. The Appeal Site's proximity to existing local centres, facilities and other such services demonstrates that the Site is sustainably located.

#### **The Appeal Site**

- 3.4. The Appeal Site comprises a 2.2ha privately-owned grass field and includes areas of previously developed land associated with the former offices at Claygate House, on the western side of Claygate, between Claygate and Esher (to the north-west). The Site includes a former tennis court and former bowling green associated with the previous use as part of the former Dairy Crest site to the west (now converted into residential apartments).
- 3.5. The Site is within the Green Belt at the northern end of Claygate. The Appeal Site is bound on three sides by existing residential development: to the south on Raleigh Drive, south and east on Rythe Road, and west at Esher Park Gardens on Littleworth Road.



- 3.6. The northern boundary of the Appeal Site is defined by mature hedgerow and trees.
- 3.7. There is an existing private pedestrian access point to the Site from the junction of Raleigh Drive, Loseberry Road and Rythe Road; this is proposed to be utilised as the access point for the proposed development.
- 3.8. The Site is not covered by any statutory designations for landscape character or quality.
- 3.9. The Site is not within any Conservation Areas or their setting. There are no Listed Buildings on the Site itself and the Site is not within the setting of any such buildings. No other designated or non-designated heritage assets have been identified on or within the vicinity of the Site.

## 4. APPEAL SCHEME DESCRIPTION

### General and Plans

4.1. The Appeal Scheme description is as follows:

***“Outline application for up to 60 dwellings, associated landscaping and open space with access from Raleigh Drive”***

4.2. Only the principle of developing the Site for up to 60 dwellings, and the means of access are to be determined as part of this Appeal.

4.3. Appearance, landscaping, layout and scale are reserved for subsequent determination.

4.4. The Appeal Scheme is set out on the following plans:

### The Scheme

- i. Site Location Plan No. 22071-S101C
- ii. Proposed Crossroads Access Arrangement Plan No. 170822-03 Rev D (Appendix C of Technical response to Surrey County Council dated 03/07/23 produced by Motion)

### Supporting Plans

- iii. Proposed Illustrative Masterplan No. 22071/SK08F
  - iv. Proposed Parameter Plan No. 22071/C03H
  - v. Illustrative Landscape Strategy – CSA/3230/106
  - vi. Coloured Sketch Elevations Plan – 22071/SK09A
- 4.5. The Plans at (i) and (ii) comprise the application plans for the purpose of determining the Appeal.
- 4.6. Plans (iii) to (vi) are submitted for illustrative purposes only but provide context for the assessment of the potential impact of the scheme upon the Site and character of the area.

4.7. A complete list of the Appeal Scheme plans and particulars is set out below:

Original Particulars

Location Plan – 22071/S101 Rev C  
Proposed Illustrative Masterplan – 22071/SK08F  
Proposed Parameter Plan – 22071/C03H  
Coloured Sketch Elevations Plan – 22071/SK09A  
Illustrative Landscape Strategy – CSA/3230/106  
Topographical Survey (Sheet 1 of 4) – 17176\_01 Rev A  
Topographical Survey (Sheet 2 of 4) – 17176\_01 Rev A  
Topographical Survey (Sheet 3 of 4) – 17176\_01 Rev A  
Topographical Survey (Sheet 4 of 4) – 17176\_01 Rev A  
Arboricultural Impact Assessment – Barton Hyett Associates (Nov 2022)  
Archaeology and Heritage Assessment – BSA Heritage (Feb 2023)  
Design & Access Statement – OSP (Dec 2022)  
Draft Heads of Terms – Woolf Bond Planning (March 2023)  
Ecological Impact Assessment – CSA Environmental (Dec 2022)  
Energy and Sustainability Statement – Love Design Studio (Dec 2022)  
Flood Risk Assessment Including preliminary Surface Water Drainage Strategy – Charles & Associates (March 2023)  
Landscape & Visual Impact Assessment and Green Belt Assessment – CSA Environmental (Nov 2022)  
Landscape and Ecology Management Plan – CSA Environmental (Nov 2022)  
Phase 1 Desk Study – Ground & Water (Dec 2022)  
Planning & Affordable Housing Statement – Woolf Bond Planning (March 2023)  
Flooding Sequential Test Statement – Woolf Bond Planning (March 2023)  
Statement of Community involvement – Woolf Bond Planning (Dec 2022)  
Transport Statement – Motion (Jan 2023)  
Travel Plan Statement - Motion (Jan 2023)

Further Submissions (during the p.app process)

Ecological Technical Note – CSA Environmental (dated July 2023)  
Technical Note: Response to Surrey County Council – Motion (July 2023)  
Applicant Response to SCC Highways Comments & Conditions – Motion (30 August 2023)

### **The Masterplan Approach**

- 4.8. The Illustrative Masterplan has been informed by a thorough contextual appraisal of the Site and its surroundings. This includes the various supporting technical reports.

### Residential Character Areas & Density

- 4.9. Whilst layout is a reserved matter, the Illustrative layout plans, together with the Design and Access Statement, explain the key design principles that a subsequent Reserved Matters application should reflect in order to respect the in-depth analysis of the Site and its surrounding context.
- 4.10. The Illustrative layout plan indicates the principles of the development's suburban structure; the proposed patterns of streets and spaces, the suburban grain, the location, arrangement and design of the principal development blocks and the green infrastructure that the new development will sit within. The Illustrative Masterplan provides for up to 60 dwellings including the provision of 50% (up to 30 no) affordable dwellings.
- 4.11. The development is set within a green infrastructure framework and landscaped areas are capable of creating opportunities for amenity, and formal and informal play, for new and existing residents of Claygate. The scheme also proposes tree planting, and the strengthening of ecological corridors along the Site's boundaries and retention of the majority of the existing trees and hedgerows.
- 4.12. The detailed scheme design would be assessed at the reserved matters stage.

### Dwelling Mix

- 4.13. The Scheme includes the provision of 50% affordable dwellings, which could result in up to 30 affordable homes. The Council acknowledges this is worthy of

substantial weight. The Appellants consider it should be accorded very substantial weight.

- 4.14. The Illustrative plans also shows how the Site could encompass principally a mixture of semi-detached and detached houses of two storeys and some three storey dwellings.

#### Flood Risk

- 4.15. The surface water drainage strategy demonstrates that the site on which residential development is indicated is located within flood zone 1.
- 4.16. It is agreed that the proposed development could be sited to not be at, or cause other properties to be at, adverse risk of flooding.
- 4.17. The Lead Local Flood Authority (“LLFA”) has raised no objection to the Appeal Scheme and considers it acceptable regarding Section 14 of the NPPF in its entirety, including in relation to the application of the sequential test. The Council has no objection on flood risk grounds.

#### Highways

- 4.18. The County Highway Authority (“CHA”) has considered the proposed development to be acceptable regarding locational sustainability and highway safety. As such, they have raised no objection to the proposed development.
- 4.19. Appendix C of the supporting *Technical Note: Response to Surrey County Council*, details how safe access to the Appeal Scheme can be facilitated. Moreover, the supporting Transport Statement details the wide range of facilities within the vicinity of the Appeal Site.
- 4.20. As long as acceptable highways mitigation is secured through the S106, the Council agrees that the Appeal Scheme is acceptable in highway terms.

Ecology

- 4.21. As long as acceptable mitigation for off-site biodiversity net gain is secured through a Grampian condition / S106, the Council agrees that the Appeal Scheme is acceptable in ecology terms.

## 5. RELEVANT PLANNING POLICY AND GUIDANCE

### General

- 5.1. Whilst the detailed policy position will be set out in evidence, this section summarises the planning policy position, against which the acceptability of the Appeal Scheme falls to be determined.
- 5.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications and appeals are to be determined in accordance with the Development Plan unless material considerations indicate otherwise. This represents the s.38(6) 'balance'.

### The Development Plan

- 5.3. At the local level, the Development Plan comprises the following:

Elmbridge Core Strategy (adopted July 2011); and  
Elmbridge Development Management Plan (adopted April 2015)

- 5.4. It is agreed that Policy CS2 does not meet the full objectively assessed needs for market and affordable housing for the purposes of the NPPF.
- 5.5. The CS is more than five years old, and in accordance with the requirements in paragraph 77 and footnote 42 of the NPPF, the housing requirement falls to be determined by the local housing need derived from the application of the standard method.

### Core Strategy

- 5.6. The Core Strategy was adopted in July 2011 and covers the period from 2011 to 2026.

- 5.7. Policy CS2 sets out an annual average of 225 dwellings equivalent to 3,375 additional dwellings over the period 2011 to 2026 in a sustainable way. A balance of new housing will be achieved with increased provision of affordable housing, smaller homes and housing designed to meet the needs of older people. For the purposes of assessing whether NPPF 11d is engaged, it is agreed that the appeal should include consideration of footnote 8, paragraphs 76, 77 and 226. It is further agreed that the Council has submitted a Plan for Examination, for the purposes of NPPF paragraph 226.
- 5.8. In locational terms, Claygate is identified as a smaller settlement with a 'large village' character with a dual role of two village centres as a commercial and a community/social centre. In terms of residential development, Policy CS11 sets out the need for small and affordable family units, as well as private sheltered accommodation.
- 5.9. Policies CS1 and CS2 set out the spatial approach to the distribution of the housing requirements identified in the Spatial Vision.
- 5.10. Applicable policy considerations from the CS comprise as follows:

**CS1 Spatial Strategy**

CS2 Housing Provision, Location and Distribution

**CS11 Claygate**

**CS15 Biodiversity**

CS17 Local Character, Density and Design

CS19 Housing Type and Size

**CS21 Affordable Housing**

**CS25 Travel and Accessibility**

**CS26 Flooding**

CS27 Sustainable Buildings

- 5.11. The policies identified in bold represent those considered by the parties to be the most important for determining the Appeal. The Council considers that all the above policies are up to date, save for Policy CS2 and CS27 which are out of date (which are not "most important policies" for the purposes of NPPF 11d).



- 5.12. The Appellants agree in relation to CS2 and CS27. The Appellants consider that the CS is out of date in relation to the housing requirement set out in the Spatial Vision and this means that Policies CS1, CS2 and CS11 are out of date (along with the associated settlement boundaries). The Appellants also consider that the settlement boundaries defined under Policy CS1 relate to the out of date housing requirements in the Spatial Vision; and are of themselves out of date by application of paragraph 11(d) of the NPPF and footnote 8.

Elmbridge Local Plan: Development Management Plan (“DMP”) (April 2015)

- 5.13. The DMP was adopted in April 2015 and implements the spatial policies from the CS. The DMP did not review the housing requirement under the CS or reconsider any amendments to the Green Belt to reflect a more up to date housing requirement.

- 5.14. The following DMP policies are considered relevant to this Appeal:

**DM1 Presumption in Favour of Sustainable Development**  
**DM7 Access and Parking**  
DM10 Housing  
**DM17 Green Belt (Development of New Buildings)**

- 5.15. The policies identified in bold represent those considered by the parties to be the most important for determining the Appeal. Both the Appellants and the Council consider that the 4 x DMP policies referenced above are up to date.

- 5.16. The Council considers that the most important policies for the determination of the appeal are up-to-date, considered as a whole and therefore NPPF 11d is not engaged on any separate basis from NPPF footnote 8. The Appellants disagree for the reasons expressed in relation to the CS.

Emerging Local Plan

- 5.17. The Council is preparing a new Local Plan, a Regulation 19 draft of which was submitted to the Secretary of State for Examination on the 10<sup>th</sup> August 2023.
- 5.18. The emerging Local Plan does not meet the full identified housing needs in the Borough across the Plan period and does not redraw the settlement and Green Belt boundaries to accommodate the future housing requirement needed in the Borough.
- 5.19. The Local Plan is not expected to be adopted by the time this appeal is due to be determined.
- 5.20. For the reasons set out above, and in accordance with the approach set out at paragraph 48 of the NPPF, the parties agree that limited weight can be attached to the provisions of the draft Local Plan. at the present time. It is agreed that the evidence base produced in connection with the draft plan remains a material consideration.

**6. LIST OF POSSIBLE CONDITIONS**

- 6.1. The refusal of the planning application by the Council means that a list of possible conditions was not prepared at the time of determination.
- 6.2. However, as part of this appeal process, the Council will take the lead on the preparation of conditions to be imposed should the Inspector be minded to allow the appeal, a number of which were proposed by statutory consultees during the application process, and the Appellants will work with the Council to agree these conditions in advance of the appeal inquiry.
- 6.3. The parties will work together to agree a suitable condition and/or planning obligation to secure 10% biodiversity net gain, including biodiversity net gain management / monitoring.

**7. DRAFT TERMS OF S106**

7.1. The Appellants are willing to enter into the appropriate planning obligation mechanism under the provisions of Section 106 of the Town and Country Planning Act 1990 to deliver:

50% Affordable housing provision on site

On-site and highway mitigation

On-site public open space

10% biodiversity net gain (unless it is agreed to be secured solely by condition).

7.2. The officer report sets out that contributions towards services including education, libraries, social care can be covered by Community Infrastructure Levy (CIL).

**8. CORE DOCUMENTS**

- 8.1. The Appellants and Council will compile a schedule of Core Documents.


**9. MATTERS NOT AGREED**

- 9.1. The level of spatial harm to the openness of the Green Belt.
- 9.2. The level of visual harm to the openness of the Green Belt.
- 9.3. Whether, and if so, the extent to which the proposal conflicts with the purposes of Green Belt as set out in paragraph 143 of the NPPF.
- 9.4. Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances for the purposes of paragraphs 152 and 153 of the NPPF.
- 9.5. Whether the development plan is up to date for the purposes of paragraph 11(c) of the NPPF, and whether the proposal accords with the development plan.
- 9.6. Whether the policies which are most important for determining the appeal are out of date for the purposes of NPPF paragraph 11(d) and whether the tests under 11d(i) and (ii) are met.


**10. SIGNATORIES**

10.1. This document is accepted as the agreed Planning Statement of Common Ground for the Appeal being considered under PINS Ref: APP/K3605/W/23/3334391

10.2. It has been duly signed by representatives of the Appellants (Claygate House Investments Ltd & MJS Investments Ltd) and Elmbridge Borough Council.

Signed:.....  on behalf of Claygate House Investments Ltd & MJS Investments Ltd.

NAME: Steven Brown BSc Hons DipTP MRTPI  
DATE: 8<sup>th</sup> February 2024

Signed:.....  ..... on behalf of Elmbridge Borough Council

NAME: Jack Trendall BA Hons MA  
DATE: 8<sup>th</sup> February 2024

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