

WOKING BOROUGH COUNCIL

INQUIRIES UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

KINGFIELD ROAD	A	APP/A3655/W/20/3265969
EGLEY ROAD	B	APP/A3655/W/20/3265974

OPENING STATEMENT FOR THE LOCAL PLANNING AUTHORITY

1. This (brief) statement is not intended to do more than set the scene for the two appeals (against the refusal of planning permission) which are being concurrently heard by way of public inquiry. The inquiry will lead to a report and subsequent determination by the Secretary of State. The way in which that determination will be made is legally prescribed and is the same in the case of each appeal. The evidence in one appeal can, as appropriate, be taken into account in the other.
2. It is important to have and keep in mind the legal requirements for determination, not least because doing so tends to secure a proper focus on that which is relevant.
3. These are appeals under section 78 of the Town and Country Planning Act 1990 pursued, and only pursued by Goldev Woking Ltd.¹ The applications for planning permission were made by Goldev with Woking Football Club but the Club does not seek to pursue these appeals or, any longer, seek the planning permissions sought by the underlying

¹ The planning appeal forms are at CD 1.1 to 1.5. Please note the references to the Woking Football Club are wrong; the Club does not appeal or support the underlying applications.

applications. This does not disable pursuit of the appeals by Goldev but Goldev cannot call on or claim the support of Woking Football Club. Further, it is apparent that there can be no suggestion of the Woking Football Club not continuing if the application is dismissed.

4. The Secretary of State may allow or dismiss the appeals, reverse or vary any part of the decisions of the local planning authority and deal with the applications for planning permission as if made to the Secretary of State in the first instance. This statutory language is important as it reveals a number of matters.
5. First, the point in time when the determination is made is that moment when the Secretary of State takes his decision. Accordingly, we are necessarily concerned with the evidence as it then is. Second, the decision is that of the Secretary of State and in dealing with the applications the Secretary of State must, given the terms of section 70 of the 1990 Act, have regard to the provisions of the development plan, so far as material to the applications, any local finance considerations, so far as material to the application and any other material applications. (I have left out of the list 'a post examination draft neighbourhood development plan' as there is no such plan and 'any considerations relating to the use of the Welsh language' as there are no such considerations).
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where, as here regard is to be had to the development plan for the purpose of the determination that determination must accord with the development plan unless material considerations indicate otherwise.
7. Accordingly, it is necessary to define what constitutes the development plan for the purpose of these applications² and it is also necessary to define local finance considerations. The latter phrase is defined by

² The Borough Council's Statement of Cases, CD 1.8 (A) & 1.9 (B), have conveniently listed the relevant policies. The relevant development plan policies are from the South East Plan 2009, saved policy referable to Thames Basin Heaths NRM6, Woking Core Strategy policies as listed in 1.8 & 1.9, and Development Management Policies Development Plan Document, as likewise listed.

section 70(4) of the 1990 Act as a grant or other financial assistance that has been, or will or could be, provided to a relevant authority or sums that a relevant authority has received or will or could receive in payment of the Community Infrastructure Levy. (Relevant authority is defined to include a district council and a county council). I come to the definition of 'development plan' later.

8. It is useful at this stage to say a few words about Woking Borough Council. It is worth doing so because it may be suggested that the Council are committed to support these particular planning proposals. Such is not the case and, in any event, would be largely irrelevant. First, the decision maker is the Secretary of State, as reported to by his inspector. Second, the suggestion fails to understand the legal position that obtains.
9. The legal position is as follows. The Local Government Act 1972 provided for the creation of councils such as the Woking Borough Council. Other legislation provides for the creation of local planning authorities, local education authorities, local library authorities and so on. Local planning authorities are created by the Town and Country Planning Act 1990; see section 1. It so happens that the council of say a district is the district or local planning authority. (This is done because a council is a body corporate, able to sue and be sued).
10. It has been authoritatively held that the local planning authority of a council has distinctly different attributes from the council by itself or as any other authority. The relevant case is *R v Wrexham ex parte Wall* [2000] JPL 32. The report has been added to the core documents. It is the separation spoken to by Mr Justice Richards that enables a local planning authority properly and fairly to consider applications for planning permission made by the council for which it is the local planning authority.
11. It follows we have to be very careful to recognise that an important prior expression of view about the applications now before the Secretary of State was given by the local planning authority. Any suggested

expression of view by another part of the Council is by the by. Such expression was not that of a planning authority. It will be remembered that the only body required to consider the matter in the same way as the Secretary of State was the local planning authority, which finds expression through its committee. This means that to say an officer suggested this or that may be of interest but is not of great significance. The properly delegated committee is not merely entitled to make the decision but is statutorily required to make the decision.

12. The decisions find their most succinct expression through the reasons for refusal. In both cases the development plan, which is a statutorily defined expression, has been cited. Accordingly, it is worth our while identifying the development plan for the Secretary of State needs to know what constitutes the development plan.
13. The development plan is defined for us by section 38 of the 2004 Act as the development plan documents taken as a whole which have been adopted or approved and the neighbourhood plans which have been made. In each case they have to relate to the area.
14. The Woking Core Strategy was adopted in October 2012; it is part of the development plan. It is a key local development document providing the local strategic planning policy within which all other local development documents will be prepared. Accordingly, the Woking Core Strategy is a very important document, that is required, as a matter of law, in effect to prevail unless material considerations indicate otherwise. The Woking Development Management Policies Development Plan Document October 2016 is also part of the development plan and contains policies to help determine day to day planning applications.
15. Relevant parts of the development plan will need to be identified for each of the two appeals. The appeal referable to Kingfield has been labelled by some as 'A'. Accordingly, this document now turns to 'A'.

A

16. We are concerned with land south of Kingfield Road and east of Westfield Avenue, Surrey GU22 9PF. If one looks at a map it will be

noticed that those roads combine so as, having crossed the Hoe Stream, to lead through Claremont Avenue onto the Guildford Road, which having crossed the railway (as Victoria Way) enters the centre of Woking. The principal feature of the land at 'A' is the football stadium, the Kingfield Stadium, being Woking Football Club's ground.

17. The Football Club was founded in 1887 and has the distinction of having won the FA Amateur Cup in 1958. In 1974 the Football Association abolished the distinction between professional and amateur. The Club have also won the FA Trophy, being a cup presented by the FA as a trophy for non-league sides. The principal trophy for league sides presented by the FA being the FA Cup, always to be distinguished from the (abolished) FA Amateur Cup.

18. It is worth having these observations in mind especially when noting some comparisons (in the inquiry papers) to other football clubs, which were founded in very different circumstances, having very different locations and very different histories. (Any historian of football is alive to the great contribution to the professional game by northern industrial towns; the contrast to the amateur game with early winners of the FA Amateur Cup including (old school boy) sides such as the Old Malvernians and the Old Carthusians being stark).

19. It will frequently or invariably be the case that a football ground can be improved. This is no doubt welcomed by the players and spectators. However, the fact such potential improvement is, more or less, invariable carries a truth that ought to be noted. It is that football clubs continue in being, as will Woking Football Club whatever the outcome of appeal 'A' (or 'B').

20. The application seeks to demolish the existing stadium (and all other existing buildings) and to provide a stadium with retail hospitality and community space, independent retail floorspace, a medical centre, vehicle parking with 1,048 residential units together with other facilities or works.

21. The spatial strategy for Woking Borough provides for 4,964 net additional dwellings, i.e., residential units, between 2010 and 2027, see CS1 at page 29 of the Core Strategy. The Borough, on an east -west axis, see page 33, *ibid.*, runs from Byfleet and New Haw Railway Station in the east to a little beyond Brookwood Railway Station in the west. It is in that geographical and numerical context that the figure of 1,048 has to be seen. It should be noted that the site does not sit within the town centre of Woking, see page 129, app.3, *ibid.*

22. Inevitably, if one seeks to provide 1,048 dwellings in the location of appeal A one has to go up; one needs multiple storied buildings. One is forced by the numbers, not by design or suitability to neighbourhood, to go up. It is equally inevitable from the context of Woking Borough and the town centre of Woking that, speaking generally, such buildings may, if they fit anywhere in Woking, fit there, in the town centre but not elsewhere.

23. CS 10, page 63 of the Core Strategy reflects the policy to make provision for housing and its distribution across Woking Borough. As one would expect the largest element of provision is in the Woking Town Centre, which does not include the appeal site. Further, CS10 provides for a numerical distribution both numerically and by reference to density per hectare. Nowhere other than the Woking Town Centre approaches 4 figures for the number of dwellings to be provided. Furthermore, apart from West Byfleet District Centre and the Local Centres densities are not to exceed 50 dwellings per hectare. The appeal site (including the football ground) is more or less exactly 5 hectares.

24. The challenge for the Core Strategy was to plan and distribute development in a sustainable manner and ensure that each of its elements was well integrated functionally and physically to create a sustainable community for Woking; so says paragraph 3.4 of the Core Strategy, which will, of course, have been examined and adopted on that basis. It is no surprise to see the local planning authority determine that the proposed development would fail to respect and make a contribution to the street scenes and character of the area. This determination draws on height, bulk, mass, housing density and design.

All those matters are a clear consequence of failing to adhere to CS10, page 29, Core Strategy.

25. Moreover, CS21, page 102, Core Strategy, demands that proposals for new development should meet certain criteria. This includes respecting the street scene and making a positive contribution to it. Further, one has to pay due regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land. This does not mean picking out one building and asserting similarities to that which is proposed; one has to compare and contrast with adjoining buildings and land.
26. CS24, page 115, Core Strategy, demands that development has to provide a positive benefit in terms of landscape and townscape character and local distinctiveness. Existing character should be conserved and where possible enhanced. One has to respect the setting of and relationship between individual buildings. Townscape character needs to be conserved.
27. The preceding policies are important component parts of the development plan which should, unless material considerations indicate otherwise, provide for refusal of the application, underlying appeal 'A'. However, these development plan policies do not exhaust the matter. Policy DM10 is also part of the development plan. This policy, page 46, Development Management Policies, makes plain, amongst other things the need to be in keeping with the existing street scene.
28. The National Planning Policy Framework is not part of the development plan but, as the policy of HM Government, it is a material consideration. This policy framework demands the achievement of well designed places, which amongst other things are sympathetic to local character and history, including the surrounding built environment. There should be established a strong sense of place. We, therefore, have a material consideration which far from indicating otherwise than refusal supports refusal.

29. CS 11 of the Core Strategy, page 68, expects residential proposals to provide a mix of dwelling types and sizes to address local needs. The appropriate percentage of different housing types and sizes will depend on the established character and density of the neighbourhood and the viability of the scheme. The mix here proposed will require careful consideration but the expectation, given the great contrast between that which is proposed and the neighbourhood, is that the local planning authority's judgment, as expressed in the second reason for refusal, will be hard to displace.
30. As stated, the number of dwellings proposed inevitably produces height, mass and high density. Core Strategy policy CS 21 requires proposals for new development, as here, not merely to respect the street scene and character of the area but to achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or an overbearing effect due to bulk, proximity or outlook. It is no surprise to notice, therefore, the third reason for refusal by the local planning authority. It appears to be accepted, and indeed it is inevitable that it should be accepted, that there is a harmful impact in terms of loss of daylight. We should notice therefore the inevitable breach of CS 21 unless it can be properly said that the matter is insignificant. Such is thought improbable.
31. The policies, mentioned above, are potent obstacles in the way of the application for planning permission. The application is pursued on the back of a proposal for new football stadium. The stadium, as suggested the application, carries its own difficulties but no solution is offered by the application. It would have a capacity of nearly 10,000. Inevitably most would arrive by car. Inevitably the preference of the car borne is to park as close to the ground and as inexpensively as possible. A free parking space is invariably seen as preferable to a space for which one pays. (It is not a surprise that one has a Free Parking square on a Monopoly board; such a square is regarded as better than those squares that say pay a fine).
32. This means, as night follows day, that local residential roads in the vicinity of the stadium will be used for parking. The evidence about this

matter will require careful consideration. It must be remembered that car parking is important in all sorts of ways; it is clear it, i.e., car parking and pressure on car parking, affects residential and neighbourhood amenity.

33. Paragraph 102 of the National Planning Policy Framework says that patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places. The Core Strategy, CS 18, page 94, says that maximum car parking standards will be implemented provided it does not create new or exacerbate existing on-street car parking problems.
34. The impact of car parking and contests for parking spaces should not be understated. There is a common sense approach to be followed. Such an approach strongly suggests that there will be breaches of CS 18 and the relevant parts of the National Planning Policy Framework.
35. The fifth reason for refusal referred to an Executive Undertaking or the equivalent of a satisfactory section 106 agreement or obligation. This reason does not here require to be explored.
36. It follows that there are very serious matters to be considered in appeal 'A' and that it appears that the views of the local planning authority as formulated in the first four reasons for refusal are sound.

B

37. Appeal B takes us into the Green Belt to land south of Hoe Valley School and east of the railway at GU22 ONH. It is here proposed that there should be, amongst other things, a health club building, tennis court airdomes, 36 dwelling houses and ancillary works.
38. Chapter 13 of the National Planning Policy Framework is headed 'protecting green belt land'. It says that the Government attaches great importance to Green Belts. The fundamental aim, see paragraph 133, is to prevent urban sprawl by keeping land permanently open. It is accepted that what is here proposed is inappropriate development, which is, see paragraph 143, *ibid.*, 'by definition, harmful to the Green

Belt and should not be approved except in very special circumstances'. Paragraph 145 makes plain that, subject to inapplicable exceptions, new buildings are inappropriate in the Green Belt.

39. It is not immediately apparent why anything in this proposal should be regarded as a very special circumstance. The phrase 'very special circumstances' means exactly what it says: one looks at the circumstances and asks whether they, because one considers them all, are very special. If one arrives at that view there are further hurdles to be overcome because one must weigh those circumstances against the harm that would be caused.
40. A principal circumstance relied upon is a replacement private tennis club, which club is distinctly different from any lawn tennis club known or imagined by Sir John Betjeman, see, e.g., Pot Pourri from a Surrey garden (where Pam's brother although playing for Woking could not withstand Pam's wonderful backhand drive). This is a relocation not a creation, it is a private facility not a public facility and there is nothing to suggest that but for such relocation the private facility would close.
41. The letter from the Club suggests interest rather than commitment. Moreover, there is nothing to suggest the present facility fails to serve its membership well. It records itself as being a 'first class fitness destination' with 'second to none racquets facilities, a cutting edge gym, swimming pool and plenty of group exercise options'. If its facilities are second to none it appears difficult to contend that removing the Club is a very special circumstance capable in any shape or form of contributing to circumstances undermining the Green Belt.
42. There can be no doubt but that the proposed development would have a visual impact on the openness of the Green Belt, both spatially and visually. There would be permanent development with significant activity. There would be urban sprawl.
43. Other circumstances are suggested as very special circumstances. It is said to be the only way to provide Woking Football Club with a new stadium. This, of course, begs a question. It assumes Woking Football

Club both wants and needs a wholly new stadium. It also assumes a new or improved stadium could not be provided other than through the mechanisms of these two proposals. It also proceeds on the footing that a new stadium would otherwise have to be in the Green Belt. We will see whether there is any evidence to support this view but can notice that the Football Club is not at the moment in the Green Belt and that the Football Club does not support the application with there being no suggestion that the Woking Football Club is about to vanish into thin air.

44. Reference is made to the provision of housing as a very special circumstance but, in fact, the provision of housing rather than being special is a mundane feature of life in the Borough of Woking, with no deficiency in the required supply of housing.
45. Finally, the proposed alteration to the Green Belt boundary is nothing to the point. The alteration has yet, so to speak to be executed and it might be thought important that proper process be followed and if the alteration proceeds it does so on the basis it was put forward and considered at examination rather than a very different proposal.
46. In connection with this site there is a marked loss of trees. This is important and offends against both the development plan (Core Strategy, CS21 & DM2 of the Development Management Policies) and an important material consideration, namely section 12 of the National Planning Policy Framework.

Generally

47. It therefore follows that the view at this stage must be that the grounds of refusal appear well founded so that the appeals should be dismissed. The principal features of the inquiry have been identified by the Inspector and the reasons for refusal sit properly within those identified issues.

TIMOTHY STRAKER QC