

## **TOWN & COUNTRY PLANNING ACT 1990**

**APPEAL BY MESSRS SMITH, G&K GROUNDWORKS LTD & ACT  
ROADWAYS LTD**

**LAND EAST OF MANOR TRADING ESTATE**

## **APPEAL STATEMENT OF CASE**

SPL Ref: 16.3839  
PI Ref: to be assigned  
LPA Ref: 21/0532/OUT

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## **1.0 EXPLANATORY COMMENTS**

1.1. This appeal relates to the decision of Castle Point Borough Council (The Local Planning Authority or LPA) to refuse outline planning permission for 68 Residential Units, Three Class E (Commercial, Business and Service) Units, One B2 (General Industrial) Unit and Two B8 (Storage and Distribution) Units with Associated Access, Parking, Amenity Space, Strategic Landscaping and Noise Attenuation. Restoration and Improvement of Existing Estate Roads and Infrastructure.

1.2. Access was to be determined, but with Appearance, Landscaping, Layout and Scale reserved.

1.3. The LPA's reasons for refusal are set out in a Decision Notice dated 10 May 2022, reference 21/0532/OUT.

1.4. There are five reason(s) for refusal which are summarised as follows.

### **Reason 1**

1.5. Inappropriate development in the Green Belt.

### **Reason 2**

1.6. Impact upon safeguarded waste disposal site (scrap metal yard)

### **Reason 3**

1.7. Noise impact of the scrap yard upon future occupiers of the proposed commercial and residential development

### **Reason 4**

1.8. Noise impact of the scrap yard upon occupiers of existing premises to the west, through assumed noise reflection from the proposed acoustic barrier.

### **Reason 5**

1.9. Inadequate vehicle parking for the proposed commercial units

1.10. The appellant has produced a draft Statement of Common Ground (SOCG) for agreement with the LPA which is submitted with the bundle of appeal documents.

- 1.11. The SOCG is complete in relation to the recommended headings i.e. Description of the Site; Description of the Area; Relevant Planning History; Development Plan; List of Possible Conditions; Draft Terms of S106 Obligations; Agreed Matters; Disagreed Matters.
- 1.12. The SOCG will be completed in cooperation with the LPA as soon as possible. The contents of the SOCG are not repeated here, though it provides meaningful context for the appellant's case.
- 1.13. Included with the subject planning application was a comprehensive Planning, Design and Access Statement (PDAS). The PDAS remains central to the appellant's case and should be read in conjunction with this Appeal Statement of Case. The PDAS contents are not repeated unnecessarily.
- 1.14. The subject application was amended during its period of consideration. The appeal bundle provides a Schedule of Planning Application documents detailing which documents remain current, and those which have been superseded. All documents, whether current or superseded are included in the appeal bundle.

## **2.0 THE APPELLANT'S CASE**

- 2.1. The appellant has agreed that the proposal constitutes inappropriate development in the Green Belt, requiring a demonstration of very special circumstances (VSCs) that clearly outweigh the harm due to inappropriateness and any other harm.
- 2.2. The VSCs are spelt out in the PDAS and SOCG. The appellant will expand upon the VSC's in evidence.
- 2.3. The appellant will set out the LPA's strategic failure to formulate and adopt a cogent, reliable, and up to date development plan, having achieved this only once in its administrative history in 1998 (24 years ago).
- 2.4. The appellant will set out the LPA's endemic long-term undersupply of housing which is at an all-time critical low.
- 2.5. The appellant will observe the LPA's endemic long-term undersupply of affordable housing which principally relies upon the strategic provision of major housing sites. The absence of one, begets, absence of the other.
- 2.6. The absence of a development plan affects those in affordable housing need, more than any. Such persons are normally the least capable of speaking out about the failure of the planning system to meet their needs.
- 2.7. The appellant will present the merits of a housing proposal containing a 50% content of affordable housing aligned to the LPA's demographic need.
- 2.8. The appellant will demonstrate commercial interest in the proposal through a Registered Housing Landlord development partner.
- 2.9. The appellant will set out the LPA's current lack of progress in formulating a new Local Plan. This will be tempered with a factual observation on the historic lack of political will to deliver a development plan of any kind.
- 2.10. It will be concluded that the LPA cannot deliver a new Local Plan, capable of providing deliverable strategic housing and commercial development in a responsible manner, within the reasonable timeframe of the appeal proposal.
- 2.11. The appellant will highlight the LPA's recognition that the Manor Trading Estate has deteriorated environmentally over many years, particularly in relation to its network of privately owned access roads.

- 2.12. The appellant will note that despite an aspiration for environmental improvement and investment in infrastructure at MTE, the LPA has no delivery mechanism for such critically needed improvements.
- 2.13. The appellant will observe that MTE is the only industrial facility on the mainland, with no opportunity for growth or inward investment. This leading to poor quality operators, lack of pride and development by lowest common denominator. Businesses seeking to improve whether qualitatively or quantitatively move elsewhere, and typically out of the Borough.
- 2.14. The appellant will demonstrate, through a series of documented meetings with the LPA, and ongoing resolve, that the circumstances to deliver the much needed infrastructure improvements, have for the first time, been assembled and made reliable in the current appeal proposal.
- 2.15. The appellant will note the LPA's dismissive attitude to this remarkable achievement in the officer's report.
- 2.16. The appellant will present positive feedback from owners and tenants on the MTE received at a public meeting conducted by the appellant supporting the proposed infrastructure improvements deliverable through the appeal proposal.
- 2.17. The appellant will produce a S106 UU or Agreement, if the LPA are willing, to deliver the infrastructure improvements in a timely manner.
- 2.18. The appellant will similarly ensure that construction traffic is routed through MTE to preserve the amenity of Hesten Lodge and Robert Drake County Primary School during construction. This being a request made at a meeting with school governors.
- 2.19. The appellant will produce Title Deeds showing the encroachment of Hesten Lodge upon the appellant's land. The appellant will further demonstrate the attempts made to reconcile this trespass, and its consequences for Hesten Lodge if not formally resolved.
- 2.20. It will be concluded that Hesten Lodge cannot operate whatsoever, without cooperation with the appellant who controls the access and significant areas of the trespass land.

- 2.21. Without prejudice, the appellant will confirm the offer to transfer the trespass land or provide rights over thereof to enable Hesten Lodge to continue operating without restraint and with the future benefit of use secured in perpetuity. The appellant will secure these benefits through a S106 UU.
- 2.22. In the SOCG, the appellant has already produced evidence on vehicle parking which demonstrates that the proposed commercial units will be provided for in accordance with the LPA's adopted parking standards. Reason for refusal 5 only appears to have arising out of the appellant not updating the application forms, following a revision to the Master Plan. This created a contradiction between the illustrated floor plans and the apparent parking provision. The matter is resolved in the SOCG.
- 2.23. Should the LPA not agree the matter is resolved, the appellant will produce expert evidence on the parking proposals demonstrating how they meet the LPA's adopted standard.
- 2.24. The appellant will set out the licensing and planning history of the scrap yard. The appellant will further observe the correlation (or not) between licensing, planning and what actually happens on the ground. The appellant will describe the historic behaviour of the scrap operators, against the licence, how scrap is handled, the boundaries maintained (or not) and whether this represents a reasonable baseline position for assessment of impacts.
- 2.25. The appellant will correlate the above with the Waste Planning Authority's (WPAs) identification of a safeguarded waste disposal site. The appellant will identify any factors which suggest that the scrap yard has been given freedoms which ought reasonably have been constrained, to provide a more limited baseline.
- 2.26. The appellant will adduce expert acoustic evidence on the existing and proposed noise environments.
- 2.27. The appellant will observe that most, if not all, of the existing noise sensitive receptors will be provided with an improved noise environment as a result of the proposed development. It will be noted that the LPA did not acknowledge this fact and indeed have explicitly stated the opposite in the officer's report.

- 2.28. It will be noted that the LPA did not consult a noise expert in their dismissal of the appellants updated Noise Exposure Assessment of 6 April 2022. Despite the improved design and noise mitigation work that was undertaken, the WPA failed to assess this and the LPA did not insist. Hence the final consultation response from the WPA is simply a non-expert regurgitation of the earlier response by a Planning Officer, without analysis of the new information.
- 2.29. Both the WPA and LPA fail to acknowledge significant improvements to the noise environments of existing receptors.
- 2.30. Both the WPA and LPA fail to appreciate that proposed occupiers of commercial units will enjoy a better noise environment than currently experienced by the existing occupiers.
- 2.31. The appellant's acoustic experts will opine that the net change in noise exposure, being improved in some areas and sub-optimal in others, is reasonable taken as a whole.
- 2.32. Where the LPA/WPA has formed opinions that are not fact based, or not supported by the facts, the appellant will consider seeking a costs application limited to those specific areas.
- 2.33. Notwithstanding the above, the appellant hopes to seek resolution of these factual matters through the SOCG.
- 2.34. The appellant will describe the improvements to the safety and amenity of access to the primary school through provision of a dedicated short stay parking facility and crossing point in Church Road.
- 2.35. The appellant will temper their evidence having regard to the advocacy of the LPA's presenting officer who provided a significantly contrasting approach to relevant considerations on a comparable case which relied on VSCs in the Green Belt.
- 2.36. It will be shown that notwithstanding the presenting officer's support for the latter scheme, the balance of VSC against inappropriate development was far inferior to the current appeal case. The appellant will say that, in this, the LPA has shown inconsistency, being dismissive and disregarding of the appellant's VSC in the current case. The appellant will ask that the weighting of the positive contributory elements to the current case be fairly adjusted much more strongly in favour of granting planning permission.



- 2.37. The appellant will stress that the circumstances that make the whole development possible are unique, and present only at this point in time. They coincide with an all time low in the LPA's ability to make and implement planning strategies for this and future generations. Both these factors act in harmony towards an eminently desirable and publicly desirable end.
- 2.38. It will be concluded that the safeguarded waste facility will not suffer impacts when operated reasonably within its planning, licensing and legal guidelines. The appeal proposal is a once in a lifetime opportunity to reasonably mitigate the safeguarded facility, retaining it in operation and yet encouraging its future good behaviour. Any inconsistencies in its administrative behaviour are capable of reasonable tempering without threatening its viability.
- 2.39. Moreover, the appeal scheme is of a sufficient scale to enable the investment in acoustic mitigation, normally economically unfeasible in piecemeal proposals.
- 2.40. It will be concluded that the net change in noise environment would be positive overall notwithstanding localised variations. Significant weight will be given to the improvement to all existing noise receptors.
- 2.41. The appellant will conclude that the proposal represents sustainable development; that any harm due to loss of openness, and any other harm will be clearly outweighed by the VSCs taken together.
- 2.42. The appellant will impress upon the Inquiry the unique conjunction of factors in the current appeal and the context for decision making, which together imbue a sense of urgency to permit this sustainable development without delay. The likes of the appeal proposal may not come together again within the lifetimes of the residents and industrialist who need both market and affordable housing, improved environments, and better workplaces.
- 2.43. The appellant will ask that planning permission be granted in the terms applied for and subject to the S106 Agreement as set out.