

PINS Ref: APP/E3715/W/23/3322013
LPA Ref: R18/0186
Appeal by Brandon Estates Limited
Site Address: Coventry Stadium, Rugby Road, Coventry, CV8 3GP

Demolition of existing buildings and outline planning application (with matters of access, layout, scale, and appearance included) for residential development (Use Class C3) including means of access into the site from the Rugby Road, provision of open space and associated infrastructure and provision of sports pitch, erection of pavilion and formation of associated car park.

CLOSING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

The Parties:

Brandon Estates Ltd - The Appellant
Rugby Borough Council - the Council / the LPA
Save Coventry Speedway & Stox Campaign Group - SCS

We have used an electronic documents library. Where these submissions reference document page numbers, they are references to the page number of the electronic file rather than to internal page numbering (which is inconsistent).

Introduction

1. These closing submissions should please be read as following on from those in the Council's Opening Statement. Repetition is avoided in the interests of brevity. At the close in the inquiry the Council resiles from nothing said in opening. We will consider each Main Issue in turn.

Main Issue 1 - Whether the proposed development forms inappropriate development in the Green Belt ("the GB"), the effect on openness and GB purposes.

2. The key planning policy route-map and judgments are:
 - a. The Rugby Borough Local Plan 2011-2031 [CD8.2] ("the RLP") policy GP2 refers the reader to national GB policy.
 - b. The Brandon and Bretford Neighbourhood Plan [CD8.3] ("the NP") policy H2 supports redevelopment of previously developed land ("pdl") subject to there being no conflict with national GB policy.
 - c. NPPF paragraph ("¶") 149(g) provides that redevelopment of pdl is not inappropriate development if it would not have a greater impact on openness than the existing development.

- d. NPPF ¶149(b) & ¶150 support the use of the GB for outdoor sports and the provision of appropriate facilities for outdoor sports “as long as the facilities preserve the openness of the GB and do not conflict with the purposes of including land within it.”
3. The application of these policy tests calls for planning judgment. The Council regards the car park as being within the curtilage of the stadium and therefore the whole site is pdl. The Officer Report [CD06] (“the OR”) at p47-48, §5, placed much emphasis on the Comparative Coverage Plan Rev B [CD1.7] which it said shows 4.35 ha of existing built coverage, while what was proposed was 4.1 ha and at a smaller scale.
4. Mr Stephens at his ¶4.6 agrees with the analysis in the OR. That agreement is reflected in ¶3.2 of the Statement of Common Ground [CD14.1] (“SOCG”).
5. Mr Carter for SCS disagrees; he finds a substantial adverse impact on the openness of the GB. He puts a greater emphasis on the visual effect on openness than the Council, and notes that planning permission was previously refused for a Sunday Market on the car park on the GB openness grounds. His approach examines the footprint of built development and finds it will be 33% greater with the appeal scheme.
6. The inspector’s task is to consider both approaches and to reach her planning judgment. If that of Mr Carter is preferred, then the Appellant will have to demonstrate “very special circumstances” to bring the development within national (and therefore local) GB policy. This matter is not canvassed in the proofs of the Appellant or RBC.

Main Issue 2 - Whether the stadium is surplus to requirements having regard to national and local planning policies.

7. It is common ground that the loss of the stadium falls to be assessed against ¶199 of the NPPF (Eady in XX LPA) and that the wording of what is now ¶199a) has remained consistent since the first edition in 2012 and subsequently (the paragraph numbering has changed - ¶199 was ¶74 in 2012).
8. What is now a ¶199a) case was originally advanced in the Speedway and Stock Car Needs Assessment October 2018 [CD1.30] - see ¶1.3 - and it referenced the Sport England *Assessing Needs and Opportunities Guide* (“ANOG”) 2014 [CD15.1.4]. Framptons (the authors of the Assessment and the Appellant’s then planning agent)

concluded (¶5.10-11) that the then NPPF ¶97a) test was satisfied. The Council instructed WYG to independently review the application. WYG's report In September 2019 [CD15.1.2] concluded (¶6) that the ¶97a) test was not met but suggested that a "way forward" might include a consideration of ¶97b) or ¶97c). This conclusion was not disputed at the time by any of the parties and the original planning application did not seek to argue that the stadium was 'surplus' following this review.

9. In 2021 amended application documents and plans were submitted. There was no new or updated needs assessment. The Planning Statement [CD2.54] summarised the 'difficulties' hitherto with making out a sufficient case under ¶97a) (see ¶2.6-12) and instead switched strategy to making out a case under ¶97c) (see ¶2.12-14). However, ¶5.48 appears to keep a ¶97a) case alive as well as introducing one under ¶97c), while ¶6.28 addresses viability, ¶6.30 discounts ¶97b), ¶6.35 confirms that "an alternative sports provision" (i.e. ¶97c)) is "the only way means by which the policy requirement can be met".
10. It is quite clear, therefore, that the ¶97a) case / route was not being pursued. The final sentence of ¶6.36 show that the Appellant was putting all its ¶97 'eggs' into the ¶97c) 'basket'.
11. The Appellant's Statement of Case [CD11] expressly references ¶99c) (see ¶4.7). However, ¶4.17 references ¶99a) but in the context that "re-developing the stadium would not be advisable" based, no doubt, on the earlier assessment that it was not viable to do so (see also ¶4.21). Viability is not part of a ¶99a) assessment. It is a separate material consideration. The stadium might not be surplus to requirements, but it might not be viable to recommence speedway or stock-car racing. The two are separate and cover different main issues in this appeal.
12. However, in this inquiry the Appellant continues to rely on ¶99a) and the Council's evidence addresses it.
13. Under NPPF ¶99(a) the stadium site should not be built on unless the Appellant "clearly" shows it is surplus to requirements. One then looks to see if there is any authoritative guidance or further explanation as to what "surplus" means of how to assess it.
14. The Sport England *Assessing Needs and Opportunities Guide* ("ANOG") 2014 [CD15.1.4] is (Allen ¶4.2) a 'how to do' guide. It promotes a staged approach. Stage B looks at quantity, quality, accessibility and availability or provision. At ¶A9 we are

advised that NPPF ¶74 cases should be considered under the headings of the guide. Sport England plainly have expertise and experience when it comes to assessing need for sports facilities and they are the government's agency and are statutory and non-statutory consultees in planning matters.

15. Mr Eady is of the opinion that ANOG is only applicable to 'participation' assessments and not to 'spectator' facilities. Mr Allen and Sport England themselves say it is applicable in this case as it makes no sense to separate participation and spectating, particularly when as in this case, the riders are participating in what is essentially a 'spectator sport'. Mr Eady accepts (XX LPA) that the methodology of the ANOG guidance is appropriate in the absence of any bespoke 'spectator facility' guidance. That being the case, we submit that the following principles derived from ANOG must be relevant considerations in the 'surplus to requirement' assessment of the stadium:
 - a. (¶A16) the importance of the role of NGBs.
 - b. (¶A38) the importance of links with the local priorities set out in Neighbourhood Plans.
 - c. (¶B2) the need to consider the 'supply issues' of quantity, quality, accessibility, availability.
 - d. (¶B10) that the fact that a facility is not in current use does not itself indicate a lack of need.
 - e. (Box p33). The key aspects of 'quality' include its condition and fitness for purpose. Of course, it is necessary to be precise as to the initial purpose of a re-opened stadium.
 - f. (Box p37). Availability. In this case it was the owner's decision to cease the use of the stadium for sport. It is quite clear that the current owners have no intention at all in allowing such a use to resume - at least not until it's prospects of realising housing-land value have rescinded.
 - g. (B¶51-55) Demand. There is clear demand for Brandon Stadium set against the ANOG demand indicators - current demand, future demand, latent demand and displaced demand. Participation at the stadium is being restricted suppressing or displacing demand. Current demand is clear from the SCS evidence to the inquiry. The speedway and Stox calendars are able to be expanded should racing be able to resume to meet future and latent demand. It is inconceivable that if that happened, spectators would stay away. Indeed, the experience at Oxford [CD15.1.5] suggests that they would turn out in force.
 - h. (¶C2). The outcome of applying such principles in the context of an assessment under NPPF 98 & 99 is likely to be "a robust and up to date assessment of need". A failure to do so by the Appellant makes it's evidence less than robust.

- i. There is no mention at all in ANOG of “viability”. This suggests it is a separate material consideration to the ¶99 exercise.
16. So far as local plan policy [CD8.2] is concerned, policy HS4C means that the stadium site “should not be built on unless” one of 3 exceptions is made out. The first mirrors NPPF ¶99(a); the second does not apply on the facts of this case; the third largely mirrors NPPF ¶99(c) save that where the NPPF references “benefits” HS4C has “needs”.
17. Under NP [CD8.3] policy LF1 the loss of a community facility (which expressly includes the stadium) is only acceptable where it is no longer “needed” or “viable”.
18. What does “surplus to requirements” or “no longer needed” mean? We submit the position is reached where there is no “need” having considered supply and demand and consultation responses from relevant stakeholders such as sport governing bodies, promoters and the fan-base. In terms of Stox, the stadium had national importance. In terms of speedway it is now regionally significant both because of the former achievements of the Coventry Bees and because of the diminishing number of venues in the Midlands and the West Midlands in particular.
19. It is important to remember why racing did cease in 2016. The then owner had other business loans secured against the stadium. When these were called-in, the bank effectively forced the sale of the stadium. The current owners have shown no interest in resuming racing. They simply want to achieve the development value of the land. That is why they took advantage of the forced sale and purchased it. Mr Hopper’s assessment that offers to purchase the stadium were “below financial expectation” (¶5.70) shows a mastery of understatement.
20. We say that there is still a need/demand for speedway and stockcar racing. Locally this is manifested by the SCS campaign group’s endeavours over the years and certainly since 2018 when the planning application was made through to this inquiry spearheaded by Kings Counsel. All this would be very odd behaviour from a group of people if they did not hold a firm commitment to resurrecting the motorsport use of the site given the opportunity. Second, SCS has secured backers. We say Mr Hunter’s background in Stox, his deep pockets, his efforts to buy the stadium so that his son can win there as he did and his willingness to rent the stadium to Mr Ford who has a successful promotion background, is all further evidence as to the credibility of the local campaign to deliver should they be given the opportunity to do so. Plainly the SCS business plan is based on the best available evidence. The Appellant has not

allowed them onto the site itself to make any form of detailed assessment. But there are examples of recent re-opened speedway venues at Oxford and Workington which SCS has drawn on.

21. In the face of all this, the response of the Appellant is, effectively, “well, we won’t allow it”. In so far as “availability” is a factor to be considered (which it is - see ANOG), then the site is simply not available. We make two obvious points in response to this wholly unattractive position. First, that attitude should not be given significant weight even if it is genuinely (as opposed to tactically) the position. Second, once the Appellant realises that the planning system acts in the public interest not theirs, then they will seek to achieve a return on their investment within the constraints of the planning system and talk with motorsport promoters and enthusiasts. SCS would be at the front of the queue to speak with them. It is obvious that SCS should be given that chance before the stadium is declared to be “surplus to requirements” and planning permission granted for some other use.
22. But even the reason given by the Appellant for regarding the site as surplus does not withstand scrutiny. Mr Hooper (¶5.2) says there is no need to retain the stadium (it is therefore surplus) on basis of the “viability of speedway as a sport as a whole”.
23. Speedway is not on its knees. It may not be in as rude health as in its 1970s hey-days, but it is responding to contemporary challenges. There are positive indicators identified by Mr Allen (see his ¶4.24++):
 - a. It remains a professional sport with 3 functioning leagues all with sponsors.
 - b. Despite track closures, there is a new track at Workington and re-opened one at Oxford. The statement from Oxford [CD15.1.4] shows it is thriving - and that has not been gain-said by the Appellant.
 - c. Coventry Bees in a good place to reform under promoter Matt Ford (see CD 15.1.6 and his proof). BSPL confirmed this position in principle: “Coventry was, and remains, one of our most important venues, both as a league racing outfit, and also as an appropriate stadium for major events. Were it to become available again, there is absolutely no doubt that it would host top-level professional racing, and there is every expectation that it would again pull in some of the highest crowd numbers in the sport.” [CD10.7]
 - d. The Premiership League is in a stable condition.
 - e. Swindon closed under pressure from developers. But in any event, the Appellant’s agents are looking for a new site which must demonstrate their confidence in the sport as a whole.

- f. The Essex Arena case is not a true parallel.
 - g. The views of the sports' governing bodies are rightly optimistic and positive for the future.
24. The evidence of Mr Phillip Morris both in writing [CD16.4.2] and to the inquiry was, we submit, impressive. His experience of riding in, coaching and now leading and governing British speedway makes him “Mr Speedway” so far as this inquiry is concerned. His evidence is compelling. To borrow a metaphor from another sport, King’s Counsel for the Appellant ‘barely laid a glove on him’. It is clear speedway is not a dying sport. It is changing and adapting but still needs stadia in which to race. Adapting to new broadcast media, adapting to the challenges of climate change by promoting new fuels, resisting on-track betting, adapting as teams lose their home tracks through no fault of their own, navigating the perils of Covid without any real government support, celebrating the successful reopening at Oxford and hoping for the same at Brandon, developing youth and female participation and opportunities, building on the family-friendly and police-lite reputation of the sport, innovating in the face of rising costs, supporting and working with those like Mr Osborne who wants to deliver improved infrastructure in Swindon, sympathising with those at Wolverhampton who are turfed out by their landlords after 95 years, and working with those in difficulty such as at Belle Vue and Ipswich to secure record ticket sales.
25. In the event that the Appellant’s submission that ¶99 of the NPPF has no relevance to ‘spectator’ facilities like stadia, then there is an alternative policy analysis under ¶92 and 93:
- a. The stadium is a place which promotes social interaction (¶93a) and is a valued social recreational and cultural facility (¶93).
 - b. Planning decisions should “plan positively” for such facilities (¶93a) and “guard against” their unnecessary loss (¶933c) and retain them for the benefit of the community (¶93d)).
 - c. On the facts of this case. these policy outcomes can be secured if a similar approach to that in ¶99 is taken.
26. For all these reasons, it is clear that the stadium at Brandon is not surplus to requirements.

Main Issue 3 - Whether it is financially viable to reinstate the speedway stadium.

27. This issue does not go to NPPF 99(a), but does to NP policy LF1. In reality, it is more relevant to main issue 5 - do benefits outweigh the loss?
28. Upon reflection we do not believe that “re-instate the speedway stadium” is the correct question. Rather it should be “recommence use of the stadium for sport and recreation”. That is what SCS’s short-term plans amount to. This issue will be resolved on the evidence from the Appellant and SCS. We say that ¶99a) and LF1 both require the Appellant to demonstrate that what SCS proposes is not viable, rather than for SCS to show that it is. Further, we submit that assessing viability in this context is not an exact science. It requires a good deal of judgment. We note that the KKP Report [CD3.2] concluded that “assessing viability of speedway as a sport and at Brandon is challenging” (¶6.1 and ¶5.1).
29. Whether or not a proposal is “viable” will depend, *inter alia*, on:
 - a. The costs of bringing the site into a fit condition (physically). SCS are in difficulty here because the Appellant has declined to allow them access to the site in order to inspect its current condition. The Appellant’s evidence all goes to a ‘full restoration’ of the stadium when SCS has long been clear that this is not what it contemplates initially. What is proposed, so far as the stadium is concerned, is more akin to a ‘phased return’. Such an approach appears to be successful at Oxford. The Appellant has not explained convincingly why it could not be the same at Brandon.
 - b. The costs of operating / hosting events. Here SCS and its supporters are at least as knowledgeable and experienced as the Appellant.
 - c. The income likely to be generated by events. Again, SCS has knowledge and experience to draw on. It is reasonable to conclude that events are likely to be well attended and that the reopening of the iconic Brandon Stadium would be likely to attract sponsorship and broadcaster interest.
 - d. The return on investment required in the short, medium and long term. Mr Hunter is plainly ‘in it for the long haul’. His philanthropic approach suggests no real short-term pressure.
30. The omens for Brandon Stadium are thus promising. It certainly cannot be said that it is not viable or that there is no real prospect of viability being improved (policy LF1).
31. If the physical condition of the land is an obstacle to resuming racing, then it is pertinent to ask who is responsible for its deterioration? The answer is plain to see. The lack of proper site security was the cause of “nefarious” intruders causing

damage. This caused the Council to serve a notice and to prosecute for its breach. The Appellant was convicted. It lodged an appeal. But since the Appellant then also took steps to properly secure the site, which was after all the Council's purpose in serving the notice, the parties agreed to 'drop hands' - the appeal would not be pursued and the notice would be withdrawn. But that does not alter the fact that the Appellant was and remains convicted and was ordered to pay the Council's legal costs. We say that is highly relevant to the weight that should be given to any conclusion by the inspector that site restoration costs make resumption of racing unviable. We say it justifies very much reduced weight. This is not a matter of law or rationality. It is simply a matter of planning judgment. There is no express policy support for it, but that is and never has been a barrier to identifying and weighing material considerations in the planning balance. There is policy support for the principle - in ¶196 of the NPPF in the context of neglect to heritage assets. There is no reason why the same principle should not apply to the stadium whether or not it is a non-designated heritage asset as SCS advance.

32. Mr Hooper comments that the Council's resolution of 14/12/22 has not been progressed or further acted upon (his ¶5.71 & appx 10). That is not surprising. The Council expects to win the appeal and thereafter that the Appellant will either seek to realise a return for racing at the stadium or allow someone else to try by selling the land or granting a lease. In either case, the contract could contain provisions relating to the surrender of a lease of the buying-back of the land in the event that racing was not being carried out on the site for whatever reason. If racing cannot be made profitable or sustainable then the Appellant should enjoy the benefit of the redevelopment value of the site. But that time is not now. And now is not the time for the Council to be contemplating what action it might take or powers it might use in the event that the Appellant stubbornly refuses to engage with reality following the dismissal of this appeal.

Main Issue 4: Whether there is an identified need for the alternative sports provision proposed.

33. This issue is relevant to NPPF ¶99(c) and LP policy HS4C, 3rd exception.
34. What is proposed is a single, full size 3G pitch (with appropriate infrastructure such as fencing, lighting and shelters) and a clubhouse / pavilion of a minimum footprint of 350m² (condition 8) with parking.

35. The Council accepts that there is a current and continuing need for at least one 3G pitch in the Borough / sub-region.
36. The issue is whether this is the right place and scheme to meet that need. The views of strategic stakeholders is that it is not, or it is sub-optimal (see Allen ¶6.8++). The ideal location is urban rather than rural and co-located rather than isolated. It is a standalone proposal; there are no other grass pitches creating a hub. It is not on a school site which would optimise daytime use. There is some doubt whether local clubs are leading demand for it (Allen ¶6.12+). The Appellant makes much of the “interest” of Sky Blues in the Community to effectively ‘lead’ the project. But there is no agreement in principle and no real commitment to assuming the risks of the project. Two of the key club users identified by the Appellant are at the extreme edge of the defined catchment area and only fall within it on the basis of a 20 minute catchment replacing 5 miles [CD18.20].
37. The revised Rugby Playing Pitch Strategy is due to be published by the end of the year. This will set out an action plan for the future of 3G pitches in the Borough. The urban area is favoured by Sport England. Indeed, Brandon is not part of current discussions with stakeholders and will not form part of any future Action Plan (Allen XiC).
38. Against that, it is the case that Brandon is currently ‘the only show in town’. It meets need in the short term. The question is whether short term opportunity trumps longer term strategic planning. We say it is more important to get the provision in the right place - or at least not in the wrong place. This is critical in terms of long-term sustainability.
39. There is genuine doubt as to the long term sustainability of the proposal when users from the urban areas have opportunities to ‘move’ away from Brandon to new facilities closer to home and more convenient locationally. There is a real risk that Brandon 3G could become a ‘white elephant’ which would be the worst of all worlds - the stadium would be gone and the 3G pitch become a liability at worst or underused at best. The financial model relied on by the Appellant shows a deficit in year 1. SBitC have no commitment to assume responsibility for this deficit. This casts serious doubts over the viability of the 3G pitch proposal. It is vital that the planning obligation which provides for the provision and operation of the facilities places all the risk with the Appellant. The Council has not the resources nor the willingness to be the ‘step in’ / ‘operator of last resort’.

Main Issue 5: Whether the benefits of the alternative sports provision outweigh the loss of the former speedway use.

40. This issue goes to NPPF ¶99(c) and to LP policy HS4C, 3rd exception.
41. There is a preliminary issue - is redevelopment by housing and a 3G pitch facility development for “alternative sports and recreational provision”? Sport England believe not (see CD9.31, 2nd box). In 99c) we submit that the word “for” is important; ¶99c) does not say development “with” or “including” alternative sports and recreation provision. We submit that the development here is, as a matter of planning judgment, for housing development with a 3G pitch added. The provision of 3G pitch does not require the loss of the stadium. It is the housing that results in the loss of the stadium as the history of the redevelopment scheme here shows.
42. But otherwise Issue 5 presents a decision-taker with a straightforward planning judgment taking into account relevant considerations including:
 - a. The numbers of people / users involved. The Appellant points to the greater number of participants with a 3G pitch. But the Council points to the greater number of spectators with the stadium. We submit that ¶99c) does not indicate that ‘sports’ takes any precedent over ‘recreation’. Furthermore, the ‘balance’ here is not purely a numbers game.
 - b. The social value of the provision. The proposal here is to replace a scarce iconic stadium that has a national pedigree and heritage with a relatively more common ‘local’ 3G pitch.
 - c. The quality of provision. Obviously the stadium is in a sub-optimal condition at present; but the evidence is that it can be made fit for purpose.
 - d. The likely longevity of the provision. There are risks in either case.
 - e. What is likely to happen if the appeal is dismissed. In that event redevelopment for housing would be off the table for the foreseeable future until, at the very least, it had been shown to be truly surplus to requirements. The only proposers of recommencing use of the stadium for sport and recreation at present are SCS. The Appellant has shown no interest or expertise in doing so. Mr Hunter’s attempts to buy the site in 2017 and 2020 appear genuine and it has not been suggested otherwise by the Appellant. SCS (or anyone else) should be given the opportunity to bring the stadium back into use by the Appellant. A legal agreement between the two could protect the Appellant’s long-term commercial interest in the site should SCS fail - either

through an overage clause or a 'reverter' in the event the sporting use fails to persist.

43. The weight the Appellant seeks to give to the provision of the 3G pitch emphasises that it is to be provided under a Community Use Agreement. But there remain many uncertainties: who will be the parties to the agreement? How will the agreement be enforced? What happens if the 'Community User' needs to 'walk away'?
44. Hooper ¶4.4 concludes that stadium is not a community facility for the purposes of protection in LP policy H3. However, the stadium is expressly protected under NP policy LF1.
45. We submit that the answer to Main Issue 5 is plainly that the alternative 3G pitch sports provision does not outweigh the loss of the former speedway use.

Main Issue 6: Other benefits of the proposal including the delivery of new market and affordable housing.

46. The task here is to identify the benefits and the weight to be given to them in the planning balance.
47. If the site is to be redeveloped (see above) then as a previously developed rather than a greenfield site it would be more of a 'benefit' to do so.
48. The delivery of further market housing is a benefit. The Council's Housing Land Supply position was initially agreed at 5.6 years (SoCG ¶4.1). During the inquiry the annual update has been published [CD18.3] raising the supply to 6.1 years. But the Council does not contend the difference is material in terms of the weight that should be given to the benefit of delivering market housing. The development would therefore assist in boosting the supply of housing; although in circumstances where the local need is not pressing. Mr Stephens (¶5.4) gives this benefit moderate weight which we submit is appropriate; indeed it was accepted in EiC by Mr Hooper.
49. Although the housing mix (Hooper p37, Table 6.2) is not consistent with policy H1 it is acceptable in this rural location (SoCG ¶4.2). This matter is neutral in the planning balance.
50. Affordable housing. The plan-period affordable housing need in the Borough has not yet been met. The HEDNA 2022 shows an outstanding need. Again, the delivery in the

year 2022-23 has been identified during the course of the inquiry [CD18.13]. The 'Brandon' local need (see CD18.5) is not as great as the Appellant's had assumed and there is another local housing scheme delivering affordable housing. Having said that, any affordable housing delivery in the Borough is worthy of weight and Mr Stephens (¶5.5) gives the benefit of these 25 units significant weight. Mr Hooper gives it substantial weight.

51. Economic. CD3.6 quantifies the direct and indirect jobs in the construction phase and there is an update at Hooper ¶6.8 and appx 11. Mr Stephens (¶5.6) gives this benefit limited weight. Mr Hooper gives it substantial weight, but it is the 'net' economic benefit that needs to be taken into account if the inspector finds (as we submit) that a revitalised stadium is also able to contribute again to the local economy.
52. The Appellant claims as a benefit a reduction in noise and dust, and antisocial behaviour complaints (Hooper ¶7.28). However the data in appendix 6 shows that during the years of stadium operation there were numerically very few (2 dust and 1 noise on average a year). By contrast the empty stadium generated many more complaints of anti-social behaviour resulting from the Appellant's poor management of the site. Although the use of the 3G pitch could be controlled by condition, some neighbours are bound to complain! We submit this issue is broadly neutral in the planning balance.
53. There is no doubt that some BNG will be achieved that meets the current policy requirements. CD3.3 & CD3.4 suggest a habitat net gain of 33.87% and hedgerow net gain of 369.5% with an overall BNG net gain of 16.28%. However, that will all depend on the final scheme that is brought forward. We submit that at this stage Mr Stephens (¶5.9) is right to give this benefit limited weight.
54. The scheme would deliver more public open space than would strictly be required to make the development acceptable in planning terms. It would also be available to off-site residents, but there is no evidence that there is a particular local shortage of POS. The provision of POS is not therefore a benefit attracting more than minimal weight.

The overall planning balance.

55. The scheme would re-use PDL and comply with LP policy GP3 (SoCG ¶3.1).

56. The Appellant's LVIA findings and conclusions are largely uncontroversial. Any harms caused by the loss of trees can be compensated for by new planting (SoCG §6.0). This matter is therefore neutral in the planning balance.
57. But for the reasons given above the breaches of LP policy HS4C and NP policy LF1 mean that the proposed development ought to be regarded as being contrary to the development plan as a whole for the purposes of s38(6) of the 2004 Act.
58. We submit that there are not material considerations of sufficient weight to indicate a different outcome. Indeed, the development would be contrary to ¶99 (or ¶93) of the NPPF fortifying the development plan conclusion. The acknowledged benefits, particularly in terms of affordable housing, support to the local economy and the new 3G pitch do not, we submit, come close to outweighing the loss of the stadium.
59. The circumstances in which the benefits of the 3G pitch can properly be taken into account as a benefit in the planning balance needs careful consideration. If the Appellant succeeds in establishing that the stadium is surplus to requirements (¶99a) NPPF) then the 3G pitch is not needed to make the housing development acceptable in planning terms. It could not therefore be taken into account as a benefit. On the other hand, if the Appellant makes out a case under ¶99c) then the 3G pitch would be a requirement.

Conditions & Obligations

60. We do not anticipate and serious dispute on conditions.
61. The Appellant has agreed to all the planning obligation contributions requested (SoCG ¶10.2) and listed in the RBC [CD17.3] and WCC [CD17.2] CIL Compliance Statements. The inquiry has identified some drafting amendments to ensure compliance.
62. The Council has also sought changes to the 'step in' provisions in the event the Management Company of the 3G pitch fails. Plainly these terms need to give the Council the prospect of succeeding where the Management Company has failed.
63. The Council is no longer supporting a NHS 'funding gap' contribution. This has been the subject of separate legal submissions which, at ¶13 listed our criticisms of the NHST's case. Using the same headings, we now submit as follows:

- a. *It does not explain to what extent population growth is taken into account in funding passed on to the NHST by the CCG/ICB.* There is now some further clarity. Mr Gilks told the inquiry that ONS projections for local organic growth are a part of the formula used, but not growth resulting from in-migration by residents of new houses. The NHST has discounted the costs its claims (see the spreadsheet at CD18.7) by 20% on the basis that those qualifying for affordable housing on the appeal site are likely to be existing residents / patients of the NHST and therefore people for who funding is already received. Ms Casey did not demur from that proposition. But there remains a gap in the NHST's evidence in respect of those who will occupy the market housing. We are asked to believe that the answer is that we should assume that all will be new patients. That is just not credible. New households form all the time as family unit relationships form or break up. People move from the rented to home ownership sectors. A decision-taker cannot be expected to summon further discounts to the claimed £133,754 out of thin air in the absence of an evidence base particularly in cases where the impact claimed for is relatively novel and not well established by custom and practice.
- b. *It does not explain what funding it does receive to provide services to new residents during their first year of occupation.* It is apparent from the Leicester and Worcestershire cases that a key issue for Holgate J. was the lack of any analysis as to how much of the claimed contribution (here the £135,754) was in fact already covered by 'growth' assumptions in the ICB funding agreement. That issue has not been grappled with. Mr Gilks could not provide an answer to this question in XX. There is no doubt that part of the funding formula relates to growth, but there is no clarity on how much. At the end of the inquiry we are no better informed.
- c. *It does not explain why the annual negotiations for a block contract do / did not or could not take into account / address population growth when such negotiations are not precluded by the funding rules.* That the rules governing annual contract negotiations do not prohibit such an approach is beyond doubt - Holgate J. said so and Mr Gilks confirmed it in EiC. The reasons given in XX as to why the funding formula does not better reflect the reality 'on the ground' that there will be additional patients in additional houses remains unsatisfactory:
- (1) *The numbers are not capable of prediction.* This is plainly not correct. Ms Casey explained that all sorts of organisations do just that for a variety of reasons and that monitoring data is regularly collected and

reported, including to central government. There is no reason why and NHST or ICB should keep itself in ignorance.

- (2) *The ICB will not agree to funding on that basis.* That is a self-fulfilling prophecy. In any event, Mr Gilks confirmed in XX by Mr Goatley KC that the question had never been asked.

Paragraph 13 of our legal submissions also dealt with the situation in which any finding gap is demonstrated:

- d. *Why it was not able to project increases in population arising from new housing in its area as part of its negotiations with the CCG/ICB.* The answer appears to be that it is because it had no confidence that such an approach would be looked on favourably by the ICB. This is no answer.
 - e. *What it has done to address the systemic problems in the way national funding is distributed.* The answer is ‘not very much’. Apparently the case is being made to DoH that the existing model has difficulties / deficiencies, but the NHST will not ‘draw a line in the sand’ and bring matters to a head.
 - f. *Why it did not participate in the development plan-making process and seek to have the requirement for ‘funding gap’ contributions identified within the Local Plan.* There has been no explanation offered.
 - g. *Why individual development sites should address that problem.* Based on the ‘risk assessment’ the answer seems to be “because no one else is”. In EiC when being asked questions about “impacts”, Mr Gilks said “I can’t point to a worse outcome for an individual new resident” as a result of the funding gap. There is no infrastructure or expenditure (pooled or otherwise) identified by Mr Gilks on which the £133,754 would be spent to deliver the ‘outcomes’ for residents of the appeal site that can be monitored and assessed.
64. Mr Gilks confirmed in XX that the issue for him in respect of the ‘funding gap’ is all about “risk”. Previously, where NHSTs were funded on a model in which ‘money followed the patient’ there would not be and could not be a funding gap risk to the NHST of the nature now claimed. The risk, if it lay anywhere, lay with the ICBs or even the DoH. However, that model has changed. Now the ‘risk’ lies with the NHST. It is not happy. It seeks to transfer the risk elsewhere - to the development industry. In truth, its quarrel is with the funding model. There is, so far as this inquiry is aware, no impact assessment that indicates that central government is content with that situation. There is no planning policy guidance or joint guidance with the DoH (as there is with the DfE in respect of schools infrastructure). Mr Gilks confirmed that the NHST’s funding formula changed as a result of the pandemic. On that basis it can

change again to address any perceived short term 'gaps' which are wholly down to the funding formula methodology.

65. Finally, Holgate J. confirmed that if there is a gap, then its size needs to be identified and justified. For the reasons given above it has not been identified. Further, it assumes contracting staff at premium rates (column J of CD18.7). As Mr Gilks acknowledged in XX, if the NHST could be given 6 months' notice of new houses being occupied there would be no reason to do so. That is plainly possible as Ms Casey explained. If there is a funding gap, it is plainly not £133,754 and no other figure has been contended for until the new evidence submitted with the NHST's closing submissions which suggests a figure of £6.4m. This is frankly bizarre. Firstly it is new evidence which at this very later stage should not be accepted. Secondly, it casts doubt that the NHST has any real handle on what the 'funding gap' really is or on what basis it should be evidenced.

Conclusion

66. In the overall planning balance, the Council accepts the site is previously development land and complies with LP policy GP3 (SoCG ¶3.1). However, the breaches of LP policy HS4C and NP policy LF1 mean that the proposed development ought to be regarded as being contrary to the development plan as a whole for the purposes of s38(6) of the 2004 Act. The development would also be contrary to ¶199 (or ¶193) of the NPPF. In the Council's opinion the benefits of the development scheme do not collectively amount to material considerations that indicate a different outcome, so the appeal ought to be dismissed.
67. SCS and its supporters ought to be given the opportunity to bring back racing to the stadium site.

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