

Appeal Ref: APP/A2280/W/22/33119625
LPA Ref: MC/21/2225
APPEAL BY Esquire Developments Limited
SITE AT Land East of Seymour Road and North of London Road, Rainham

and

Appeal Ref: APP/A2280/W/22/3310119
LPA Ref: MC/21/3125
APPEAL BY Bellway Homes Limited
SITE AT Land North of Moor Street, Rainham

ADDENDUM TO STATEMENTS OF CASE ON BEHALF OF MEDWAY COUNCIL

Introduction

1. This Addendum Statement of Case is submitted on behalf of Medway Council ('the Council') in relation to the two appeals by Esquire Developments Limited and Bellway Homes Limited ('the Appellants') against the decisions of the Council to refuse planning permission for the reasons set out in the decision notices dated 21st October 2022 and 24th October 2022 respectively ("the decision notices"). The two appeals were co-joined and are due to be heard in an eight-day planning inquiry currently programmed to commence on 25th April 2023.
2. A full summary of the Council's initial cases was set out in two statements of case submitted to the Planning Inspectorate and served on the Appellants on 13th February 2023.
3. A case management conference was held on 20th February 2023.
4. Shortly after the case management conference the parties were informed that the first Inspector was unable to sit during the agreed inquiry dates, and that the Planning Inspectorate was making enquiries to appoint an alternative inspector. As of 23rd March 2023, no alternative inspector had been identified. In the circumstances, the deadline for proofs of evidence was pushed back one week from 28th March 2023 to 4th April 2023.
5. On 28th March 2023 the Council confirmed to the Planning Inspectorate that it would withdraw its objections to both of the appeal schemes. This addendum has been drafted to explain the reasons for the Council's change of position.

Highway Impacts – change in circumstances

6. The Council's highways objection in each appeal was two-fold. First, the impact on the operation of the road network, and second, the impact on highway safety.
7. The Council, as it is obliged to do, has kept its case under continual review following the refusals. This has included, for example, confirming in the original statements of case that it would not be advancing its objection in relation to residential amenity policy BNE2 as was initially included in the reasons for refusal.
8. Two recent developments have caused the Council to further review its position since the statements of case and, ultimately, has led it to withdraw its objection to the appeal schemes.
9. First, on 17th March 2023, planning permission was granted following a s.78 appeal in neighbouring Swale Borough Council for a residential development within close vicinity of the appeal sites (Appeal Ref: 3301685, Land off Otterham Quay Lane, Upchurch, Kent). The issue of highway safety, operational performance and congestion of the road network was considered at §§56-59 of the Inspector's decision. In that case, the Inspector rejected Medway Council's contention (who attended the hearing as an interested party) that an increase of demand, however marginal, on the already-congested A2 network meant that "residual cumulative impacts on the road network would be severe" (NPPF §111).
10. This approach follows the outcome of the Orchard Kennels decision (Appeal Ref: 3274932) dated 25th April 2022, where a similar argument in respect of the A2 had been rejected.
11. The Council notes that the evidence base in each appeal was different (in particular, in that no assessment using the Medway Aimsun Model ("MAM") was completed for the Upchurch scheme). The Council also remains concerned about the degree of congestion on the A2, which further (even relatively small) developments in the area are likely to exacerbate. However, the Council recognises that the recent appeal decisions have a material impact on the prospects in the present appeal, particularly in light of the current housing land supply position.

12. Second, a principal aspect of both the Council’s highway capacity and highway safety case related to the diversionary impact (colloquially known as ‘rat running’) on unsuitable residential roads in the vicinity of the A2, such as High Dewar Road and Solomon Road. As was explained in the committee reports, the diversionary impact was apparent from the select link analysis derived from the MAM as set out in Sweco’s July 2022 report (relied upon by all parties in these appeals).
13. In preparation for the Inquiry the Council commissioned Sweco to carry out further clarificatory analysis of the MAM transport modelling. In particular, the Council commissioned additional work quantifying the absolute number of vehicles which would use alternative routes to the A2. The Council has been liaising with Sweco as to the impact of this further analysis on its primary case.
14. The clarificatory analysis by Sweco, received in mid-March 2023, indicated that, although there was likely to be a diversionary impact from the A2 in the “with development” scenarios (consistent with the select link analysis in their July 2022 report), this is likely to be offset by trips already in the baseline (i.e. which exist in the “without development” scenario) taking alternative routes. The result being that the MAM indicates that, in absolute terms, there would likely to be a negligible change in the number of vehicles using roads of concern to the Council, such as High Dewar and Solomon Road.
15. The Council has quite properly considered its position in the light of this latest and further analysis. It considers that it is no longer in a position to continue to reasonably advance a case of a material increase in rat-running along the roads of concern as a result of the appeal developments.
16. In the light of the above, the Council has considered its position in relation to its overall highways objection and has decided to withdraw its objection to the appeals.

Heritage Impacts – the Council’s position

17. As is clear from the decision notices, and as was set out in the Council’s original statements of case, the Council’s objection to the appeal schemes turned on the highway impacts of the proposal.

18. Although – as is common ground - both appeal schemes would have an adverse impact on the significance of designated heritage assets in the area, the Council accept that the public benefits of the schemes would outweigh the heritage harm notwithstanding the great weight that must be given to the conservation of the significance of designated heritage assets.¹ This has been the Council’s position throughout these proceedings, as is evidenced by the committee reports, decision notices and statements of case.
19. Although there remains (relatively limited) disagreement between the parties concerning the degree of “less than substantial” harm to some of the designated heritage assets (such disagreement being set out in the Heritage Statement of Common Ground), in light of the Council’s withdrawal of objections to the appeal schemes, it does not intend to call evidence on this issue.

Conclusion

20. Given that the Council’s case has always been reliant upon maintaining the highways objection as the basis for recommending refusal of the applications, in the light of recent changes in circumstances, the Council considers that it is no longer in a position to reasonably resist the appeals.
21. The Council will attend the upcoming Inquiry and will be ready to assist the Inspector in the determination of the appeals. It will also continue to work with the Appellants to agree updated Statements of Common Ground. However, given that it is no longer pursuing objections to the appeal schemes, it does not currently intend to submit proofs of evidence or call any witnesses (save to the extent that it is necessary to do so in order to address issues such as conditions and s.106 agreements).

30 March 2023

¹ Both pursuant to s.66 Planning (Listed Buildings and Conservation Areas) Act 1990 and NPPF, para 199