

**LAND AT READING GOLF CLUB, KIDMORE END ROAD, EMMER GREEN,
READING, RG4 8SQ**

ADVICE

INTRODUCTION & ISSUE

1. I am asked to advise Fairfax (Reading) Limited and Reading Golf Club Limited (“my Clients”) in connection with an application for outline planning permission at the above site for residential development.
2. In particular, my advice is sought as to whether the scheme conflicts with policy EN8 Reading Local Plan.

LEGAL APPROACH

3. There are a number of settled legal principles which should be born in mind when resolving this question:
 - a. By s.70(2) Town and Country Planning Act 1990, the Council must have regard to the provisions of the development plan and by s.38(6) Planning and Compulsory Purchase Act 2004, the Council must determine the application in accordance with the plan unless material considerations indicate otherwise.
 - b. For the purposes of applying those two statutory duties, the focus is on the wording of the policies themselves and not the supporting text. Whilst the supporting text may aid the interpretation of the policies, it does not amount to planning policy of itself and it cannot trump the policy or add new tests to those within the policy, see: ***R(Cherkley Campaign Ltd) v Mole Valley DC*** [2014] EWCA Civ 567 *per* Richards LJ at [16].
 - c. Additionally, to discharge the duties at s.70(2) of the 1990 Act and s.38(6) of the 2004 Act, the Council must understand the policies of the development plan, see: ***City of Edinburgh Council v Secretary of State for Scotland*** [1997] 1 WLR 1447 *per* Lord Clyde at p.1459

- d. There is a single, legally correct meaning of planning policy. Planning policy statements should be “interpreted objectively, in accordance with the language used, read always in its proper context”, see: ***Tesco Stores v Dundee City Council*** [2012] PTSR 983 *per* Lord Reed at [18].
- e. That “proper context” is provided by the “the overriding objectives of the development plan and the specific objectives to which the policy statement in question is directed” ***Hopkins Homes Ltd v Secretary of State for Communities and Local Government*** [2017] 1 WLR 1865 *per* Lord Gill at [72].
- f. Whilst the meaning of planning policy is a question of law, the weight to attach to any conflict with a policy is a question of planning judgment for the Council, see: ***Tesco Stores Ltd v Secretary of State for the Environment*** [1995] 1 WLR 759 *per* Lord Hoffmann at p. 780.

POLICY EN8

- 4. Policy EN8 is the counterpart to Policy EN7, which relates to local green spaces and public open spaces designated on the Proposals Map. By contrast, Policy EN8 relates to “undesigned open space”.
- 5. Para.4.2.31 says that that Policy EN8 applies to “all open space in the Borough” whether publicly or privately owned, save that designated by Policy EN7.
- 6. The policy establishes a presumption in favour of retention of open space but that may be rebutted in circumstances where:
 - a. Replacement open space, of a similar standard and function, can be provided at an accessible location nearby; or
 - b. Improvements to recreational facilities on remaining open space can be provided to a level sufficient to outweigh the loss of the open space.
- 7. The policy is silent on the weight to attach to the loss of undesigned open space. In my view, the weight to attach to the loss must be affected by the purpose for

which the land is presently used. If the land is not (and never has been) publicly accessible and serves no enduring recreational or amenity function, the weight to attach to its loss can only rationally be slight. In such a situation, it would take comparatively little to outweigh the presumption.

8. Para.4.2.30 explains that the purpose of the Policy is to protect land which provides “important recreational and amenity resources”. Given the Policy falls within a section of the Plan dealing with recreation and that Policy CC7 deals with character and appearance expressly, I do not consider “amenity” within Policy EN8 is targeted towards visual amenity. Rather, the word “amenity” in Policy EN8 is intended to capture land used for pastimes (sitting, reading, sunbathing, having a picnic etc) as well land as used for recreational activities (such as informal sports).

THE PROPOSAL

9. The planning application includes land already allocated for housing by Policy CA1b. My Clients’ approach to recreational and amenity space is comprehensive as follows:
 - a. **First**, there is the on-site provision of 3.62ha publicly accessible open space, 0.49 SUDS and planting, together with 3.4ha of private open space.
 - b. **Second**, there is a contribution of £250,000 towards 3G pitch provision in the locality, together with a £50,000 contribution towards the upgrade of the Emmer Green Playing Fields.
 - c. **Finally**, there is the proposal to offer 5ha of land within the control of the applicant for publicly accessible open space.

ADVICE

10. To my mind, Policy EN8 is clearly met by this proposal:

- a. **First**, it is important to consider the present and future situation. The land functioned as a private members' golf club. There was never any authorised access to the land by the general public; neither are there any recorded rights of way over the land. The golf club has since merged with another club and physically prevented access to the site, as it is legally entitled to do. Whilst the site plainly did perform an important recreational resource for its members, it did not provide a similar "recreational or amenity resource" for the general public. Given the members of the club now have their needs met by the newly merged club facilities elsewhere, there should be no sensible planning objection to the loss of the open space. It follows that the weight to attach to the loss of such land can only rationally be extremely limited, if any.
- b. **Second**, weighed against that very limited policy objection, is the significant benefit of the provision publicly accessible open space on site. That is in line with the objectives of the Reading Open Space Strategy (2007) to "*secure new public open space through the development process*".¹ By contrast to the present situation, that land truly will provide an "*important recreational or amenity resource*" if permission were to be granted and implemented. In my view, that surpasses the first basis on which the presumption can be rebutted by providing replacement open space "*of a similar standard and function*" because it will in fact be of a significantly superior standard and function, as it will be permitted to be used by the general public.
- c. **Third**, there is the contribution to the 3G pitch provision in the locality. This is a long-term ambition of Sports England. There is also the contribution to the upgrading of the Emmer Green playing fields. Again, these benefits align with the Reading Open Space Strategy objective to "*make improvements to the quality and facilities of existing public open space*".² These improvements for the public to use and enjoy cannot but be

¹ Executive Summary.

² Ibid.

said to outweigh the loss of open space which is not (and never was) accessible to the general public. That, to my mind, clearly meets the second basis on which the presumption can be rebutted, i.e. through improvements to recreational facilities nearby.

- d. **Fourth**, there is the provision of 5ha of public open space on adjacent land, to the north of the site, accessible by an existing public right of way. If it were not already clear, this final provision can place beyond rational argument that the objectives of Policy EN8 are met. Indeed, the public open space provision arising from granting planning permission and it being implemented would represent a significant public benefit locally.
11. The 5ha of public open space falls within the blue line but within the administrative area of South Oxfordshire District Council. In my view, this provision could be secured in a number of different ways:
- a. Either, via a planning obligation made between the landowner and South Oxfordshire District Council, who would be the enforcing authority pursuant to s.106 Town and Country Planning Act 1990. Reading Borough Council could be a party to that agreement if it wished to have a say in the management arrangements for the site. Such arrangements are not uncommon where, for example, a s.106 agreement is used to achieve an outcome which is not directly connected with a planning application before the Council. In ***Tadworth & Walton Residents' Association v Secretary of State for the Environment, Food and Rural Affairs*** [2015] EWHC 972 (Admin), the Court found that an inspector determining an application to de-register common land under s.16 Commons Act 2006, lawfully took-into-account a planning obligation offered by the landowner. By the terms of that obligation, the landowner contracted with the Council not to implement an extant grant of planning permission prior to the Council approving an ecological management plan and to pay the Council's reasonable costs in so doing. That enabled the common land inspector to be satisfied that there would be a nature conservation benefit arising from granting common land consent.
 - b. Alternatively, via an agreement with Reading Borough Council to which the provisions of s.33 Local Government (Miscellaneous Provisions) Act

1982 were expressed to apply. As the Council will know, by s.33(1)(b) of the 1982 Act, it may enforce the provisions of such an agreement on land outside its administrative area provided the agreement is not for the purpose of facilitating, or connected with, the development of that land. I am instructed that no development would be required to realise the provision of the 5ha publicly accessible site. The agreement would simply make the land publicly accessible. Of course, should development be required in future for the better on-going management of the land, that would form the basis of a stand-alone planning application to South Oxfordshire District Council.

12. The Council could lawfully resolve to grant planning permission in this instance, subject to my Client executing one or other of those legal agreements.

CONCLUSION

13. In my view, there is no sensible basis on which it could be said this scheme conflicts with Policy EN8. The past, present and (without this permission) future use of the land involves no public accessible element. The private recreational use has been re-provisioned elsewhere. By contrast, granting this planning permission provides an opportunity to deliver a number of the Council's open space objectives, expressed through the Strategy, a document expressly incorporated into the Local Plan. The open space provision and contribution offered by this scheme should carry significant positive weight. Given that, the presumption against loss is clearly rebutted by the on and off-site provision of public open space and Policy EN8 does not form a basis to refuse permission. Indeed, if the Council refused planning permission for this scheme on the basis of a conflict with Policy EN8, I would consider that to be unreasonable and expose the Council to a risk of costs at appeal.

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