

FAIRFAX (READING) LTD
READING GOLF CLUB LTD

IN THE MATTER OF A PLANNING APPLICATION TO DEVELOP LAND AT READING GOLF CLUB,
KIDMORE END ROAD, EMMER GREEN, READING RG4 8SQ.

OPINION

1. I am instructed on behalf of Fairfax (Reading) Ltd. Its planning application for permission to develop land at Reading Golf Course with 257 dwellings is about to be reported to Reading Borough Council's planning committee. Fairfax's agents, Pegasus Planning Group, have been engaged with planning officers at the Council with a view to resolving outstanding issues.
2. One such issue, upon which my opinion is sought, concerns the correct interpretation and application of policy EN8 in the adopted Reading Borough Local Plan (adopted 2019).
3. Policy EN8 provides (emphasis added):

"There will be a presumption in favour of retention of undesignated open space, which will include allotments. Development should not result in the loss of or jeopardise use and enjoyment of undesignated open space. Development may be permitted where it is clearly demonstrated that replacement open space, to a similar standard, can be provided at an accessible location close by, or that improvements to recreational facilities on remaining open space can be provided to a level sufficient to outweigh the loss of the open space. The quality of existing open space should not be eroded by insensitive development on adjoining land".

4. The supporting text to the policy includes the following:

"4.2.31 Where a development proposal involves losing open space that is not specifically designated, appropriate replacement space should be provided where it is easily accessible to the people most affected. Alternatively, compensating improvements could be made to existing open space in the area. Undesignated open spaces within or adjacent to Conservation Areas or the setting of heritage assets are particularly valuable."

5. The interpretation of development plan policy is a matter of law. However, as Lindblom LJ reminded us in *Gladman v SSHCLG* [2021] EWCA Civ 104 at [32]:

“The court’s approach to the interpretation of planning policy is well established. It does not need to be enlarged or refined here. I would emphasise two basic and well-known principles:

(1) Policy is not statute, and ought not to be construed as if it were. As Lord Carnwath observed in *Hopkins Homes Ltd.* (at paragraph 24), not all planning policies lend themselves to a rigorous judicial analysis. Where they do require interpretation, this should be done objectively in accordance with the language used, read in its proper context (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] P.T.S.R. 983 , at paragraphs 19, 21 and 35). A sensible approach should be adopted in seeking the true sense of the policy in question. The courts should not encourage unmeritorious claims based on intricate arguments about the meaning of policy. They should resist the over-complication of concepts that are basically simple (see *East Staffordshire Borough Council* , at paragraph 50).

(2) The interpretation of policy is a quite different exercise from judging its lawful application (see *Hopkins Homes Ltd.* , at paragraph 26). Construing policy is, in the end, a task for the court, but the application of policy is for the decision-maker and may be challenged only on public law principles, and not on the planning merits (see *East Staffordshire Borough Council* , at paragraph 9). Subject to the limits of rationality, it is for the decision-maker to judge the matters to be taken into account in applying planning policy (see the judgment of Lord Carnwath in *R. (on the application of Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] P.T.S.R. 221 , at paragraphs 30 to 32, and 39).”

6. Applying that approach to policy EN8, in my opinion a decision-taker (such as a local planning authority determining a planning application) needs to proceed as follows:
- a. Will the development proposed in an application:
 - (1) Result in the loss of undesignated open space? or
 - (2) Put in jeopardy the use and enjoyment of undesignated open space?
 - b. If the answer to these questions is “no”, then policy EN8 has no relevance.
 - c. If the answer to question a is “yes”, then in order to come within the policy:
 - (1) Replacement open space, of a similar standard and function, should be provided at an accessible location close by; **OR**

- (2) Improvements to recreational facilities on remaining open space should be provided to a level sufficient to outweigh the loss of the open space.
7. Although the policy is phrased in terms of ‘replacement’ OR ‘improvement’ it is obvious that in a particular case a combination of ‘replacement’ AND ‘improvement’ would be capable of satisfying the requirements of the policy. To interpret it otherwise would not be “sensible” and would ignore the “true sense” of the policy (see Lindblom LJ in Gladman above).
8. It is perfectly clear (and common sense) that the aim of the policy is to ensure that the post-development position is, overall, no worse than pre-development. However, the policy does not require ‘like for like’ replacement of undesignated open space in quantitative and qualitative terms (although it would be satisfied if that was provided). Where undesignated open space is lost to development (or its use / enjoyment is put in jeopardy) then the loss needs to be replaced / compensated for by new or enhanced existing provision.
9. In judging whether the new provision ‘package’ proposed is satisfactory, the decision-maker will have regard to:
- a. Quantitative matters - such as the area of space lost compared to the area provided; but as important -
 - b. Qualitative matters - such as physical improvements to recreational facilities or enhanced public access to land which previously could only be enjoyed visually.
10. An issue has arisen with the planning officers as to where any replacement open space should be provided? Policy EN8 provides the answer: it should be “at an accessible location close by”. The inclusion of the words “close by” means that it need not be provided on the development site itself (although it could be). Although whether or not the replacement space is “close by” is a matter of planning judgment.
11. In this case I am instructed that the area of undesignated open space to be ‘lost’ to the development is about 11.4ha of a former / disused golf course. The members of the golf club have a new course to play on elsewhere. What is in issue

here is the effect on local visual amenity by the loss of this part of the former golf course to housing development. The golf course was not and is not accessible to local residents for public recreation.

12. It is proposed that in compensation for the impact on local visual amenity, the public (ie non-residents of the new development) will have access to new on-site public open space provision. Fairfax also offers a £250,000 contribution towards 3G pitch provision in the locality which has been an as yet unfulfilled ambition of Sport England. A £50,000 contribution towards the Council's ambition for improvements at the Emmer Green Playing Fields is also offered. If these two locations are judged to be "accessible locations nearby", then these matters can also be taken into account in the policy EN8 balance. If they are not, then they can be taken into account in the overall planning balance - perhaps to address any 'shortfall' in the EN8 balance.
13. The application of policy EN8 on the facts of this case therefore requires the decision-taker to consider what has been 'lost' (the former golf course as an inaccessible local visual amenity) and to reach a judgment as to whether what is being proposed (on site and off-site accessible open space) is (in the words of policy EN8) "sufficient to outweigh the loss". The judgment of Pegasus on behalf of Fairfax is that it is. This is not a matter of law for me, but I can say that in my experience I would be astonished if an inspector on appeal came to any different judgment.
14. One further matter arises. In the event that the replacement space is not judged to be adequate in quantitative terms, Fairfax is able and willing to offer further space that is "close by". However, this land lies within the neighbouring administrative district of South Oxfordshire. I am instructed that the planning officers at the Council have expressed some nervousness or reluctance to agree that replacement land for policy EN8 purposes can be in a neighbouring district.
15. It is well understood that good planning is not to be constrained by administrative boundaries. In plan-making cross boundary issues are important matters. In decision-taking material adverse effects (for example traffic congestion or noise) do not become immaterial simply because they arise on the other side of an administrative boundary. There is absolutely no reason why mitigation or

compensation cannot be taken into account or effected across boundaries (indeed this happens commonly with SANGS and will increasingly do so to ensure nitrogen neutrality from development having the potential to adversely affect SPAs).

16. Ensuring cross boundary mitigation is delivered can give rise to the need for careful drafting and negotiating of planning obligations and conditions - but these matters should not be allowed to stand in the way of or frustrate good planning. In this case, it would be perfectly possible for a planning obligation to be agreed which allows Reading Borough Council to be the 'enforcing' authority even in respect of land in South Oxfordshire if that is thought to be the optimum outcome.
17. For the moment, nothing further occurs.

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OPINION

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4 July 2021
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