

THURROCK BOROUGH COUNCIL

LANGDON HILLS GOLF AND COUNTRY CLUB

ADVICE

1. I have been asked to advise Thurrock Borough Council on the supplementary officer's report on an application for permission for a new "health-led community" on land at Langdon Hills Golf and Country Club. In particular, I have been asked to comment on the section of the report headed "Legal Implications".
2. I can confirm that this section sets out an accurate summary of the principles which should govern Member's consideration of the application. In particular:
 - a. Under section 38(6) Town and Country Planning Act 1990, applications should be determined in accordance with the development plan, "unless material considerations indicate otherwise". For the reasons set out in both the officer's February Report and the most recent report, the application is plainly in conflict with the Council's Core Strategy. For this reason alone, the proper starting point is that permission should be refused unless Members are able to identify "material considerations" which justify departure.
 - b. The application is also for inappropriate development in the Green Belt. Green Belt is one of the strongest policy protections found in planning law, and inappropriate development should only be permitted if there are "very special circumstances", i.e. if the benefits of the development clearly outweigh the harm to the Green Belt, and any other harm. The harm to the Green Belt which is identified in the officer's reports is significant, and national policy requires that this be given "substantial weight". In addition, the other proposed reasons identify further harm which must also be placed on the scales when considering whether "very special circumstances" exists. Both individually and cumulatively, this means there is a strong presumption against the proposal.
 - c. In order to grant permission, Members would need to identify benefits which were not only material, but were also significant enough to clearly outweigh the combined harm. If the benefit is only finely balanced, permission should be refused.
 - d. If Members disagree with a reason for refusal, in relation to each reason, they must state clearly on what basis and be able to point to cogent evidence which justifies that

decision. A decision based purely on anecdotal evidence, or opinion which is not backed up by evidence, would be vulnerable to challenge in the Courts

- e. In circumstances where the application is contrary to both the development plan and national policy on the protection of the Green Belt, and where a decision to grant permission would be contrary to the officer recommendation, Members would need to provide clear and cogent reasons for that decision. Failure to do so would provide a clear and firm basis for any objector to ask the Court to quash the grant of planning permission
 - f. The fact that, if Members do resolve to grant permission, the application would have to be referred to the Secretary of State is not a relevant consideration and should play no part in Members' reasoning.
3. If there are any questions arising from the above, those instructing should not hesitate to contact me.

PAUL BROWN Q.C.
25 May 2020

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