Rebuttal in Relation to the Proof of Evidence of Jeffrey Field

Patrick Michael Grincell BSc MA MRICS MRTP

Town & Country Planning Act 1990, Section 78

Appeal by Cascina Ltd

Land at Seething Wells Filter Beds, Portsmouth Road, Surbiton, Kingston-upon-Thames, Surrey

Appeal Reference: APP/Z5630/A/13/2197943

LPA Reference: 11/16502/FUL
1. **Introduction**

1.1 I have prepared this document in response to the Proof of Evidence prepared by Mr Jeffrey Field of Jones Lang LaSalle on behalf of the Royal Borough of Kingston-upon-Thames Council ("RBKT"). There are many areas of disagreement, and areas of Mr Field’s proof that I regard to have flawed and incorrect analysis of the planning case and merits of the appeal proposals. My proof of evidence already sets out clearly what I consider to be the planning case and merits of the appeal proposal, and this addresses the majority of Mr Field’s arguments.

1.2 However, at his section 7 Mr Field attempts to analyse the Landscape and Visual Assessment work submitted in support of the appeal proposal. This is a specialist area and I am not aware of Mr Field's qualifications in this regard. For my part, I have not sought to address Mr Field’s comments on this matter, rather deferring to David Allen who is a highly qualified and experienced landscape professional and better able to comment on an informed basis on the matters arising.

1.3 Mr Field makes the point in his paragraph 2.9 that he has worked closely with RBKT Officers since his instruction in July 2013. However, if this is the case, I question why Mr Field has sought to depart in a significant number of key areas from both the reason for refusal and the Statement of Common Ground (SoCG) agreed with RBKT. It is also the case that Mr Field’s opinions on the majority of his points are at odds with the well considered professional opinions of RBKT officers and the GLA that were formed during the lengthy and testing consideration of the application proposals.

1.4 In the following paragraphs, I have addressed a number of points of rebuttal, which I believe will assist the Inspector at this stage of the Inquiry process.

2. **What are ‘appropriate’ and ‘inappropriate’ land uses**

2.1 One of the key aspects of Mr Field’s evidence that I disagree with is what he considers to be ‘appropriate’ and ‘inappropriate’ development in Metropolitan Open Land (MOL) policy terms. He particularly refers to this in his paragraphs 1.12, 5.34, 5.35 and Table 1.
2.2 I consider that Mr Field's analysis is flawed and runs against the professional judgment applied by both the officers of RBKT and the Greater London Authority. His Table 1 offers a summary of how Mr Field has incorrectly approached what he considers to be 'appropriate' and 'inappropriate' land uses. I have reworked his Table 1 to highlight this point and it is attached as Appendix A to this Rebuttal. However, before explaining my approach, I have responded to the points Mr Field makes specifically about some of the uses within the appeal proposals.

Leisure Marina

2.3 At his paragraph 1.12, Mr Field first makes specific reference to the inappropriateness of the proposed leisure marina. I disagree with Mr Field here, but importantly, so did the RBKT Officers and the GLA. It is also the case that Mr Field appears to contradict himself at paragraph 1.12 where he accepts that marinas can be appropriate development in MOL, but surprisingly just not in this case.

2.4 The RBKT Committee Report noted at paragraphs 106 and 108 that the marina constituted an 'open recreational use' as defined by policy OL4, which is clearly an appropriate use in MOL. Paragraph 108 went on to state that the marina (and associated lock gate) would facilitate the provision of outdoor sport and recreation, as supported by Core Strategy Policy DM5 and Policy RL of the Thames Landscape Strategy, which encourages the provision of off-channel marinas.

2.5 The GLA in the Stage 1 Report concludes at paragraph 43 that the leisure marina can on balance be considered to be appropriate development.

2.6 The leisure marina within the scheme was not included within the reason for refusal. Furthermore, the Council accepts in the SoCG that it will not be detrimental to other River users (paragraph 7.11).

2.7 It is my opinion, supported by the considered opinions of RBKT Officers and the GLA, and in accordance with policy, that the proposed leisure marina would represent appropriate development in MOL.


Lock Gate

2.8 Again Mr Field appears to contradict himself with regards to the lock gate. At no point does he describe it as ‘inappropriate development’ with the text of his proof, and indeed at paragraph 6.36 he states, “the introduction of a lock gate will not, of itself, alter the open character of the site”. However, he then states at paragraph 7.78 that the lock gate will have a detrimental impact on riverside views, and he then includes it as inappropriate in his Table 2. Mr Fields views on this aspect of the proposals are somewhat unclear as a result.

2.9 Although it has already been covered in my proof I feel it is important to reiterate the support of the Council and the GLA with regards to the lock gate. At paragraph 7.11 of the SoCG it was agreed that the lock gate would not have a detrimental impact on other river users. Similarly, the Committee Report states that it constitutes an ‘open or recreation use’ in line with Policy OL4 (paragraph 106). The Stage 1 and 2 reports from the GLA further confirm this view and the appropriateness of the lock gate, at paragraphs 43 (Stage 1) and 16 (Stage 2).

Flood Cell

2.10 Mr Field appears to consider that the Flood Cell represents inappropriate development, as detailed in his Table 2. Little explanation is provided to justify this, and his only reference to the Flood Cell specifically is at paragraph 1.25 where he states that he considers it to be of very limited benefit and not contributing to the ‘very special circumstances’ case. He emphasises this thought at paragraphs 8.37 – 8.46. In this section of his proof he focuses on the requirement through local policy for flood mitigation measures on this site, and therefore that this would be a component of any development on the site and is not ‘very special’ in regard to the proposals put forward by the appellant. Again his argument appears confused. He is first stating that the flood cell in inappropriate, and then contradicts this by stating that flood mitigation is required by policy and therefore appropriate on this site.

2.11 This aspect of the proposal does not form part of the reason for refusal and has been supported by Council Officers and the GLA through the application process. The GLA state clearly at paragraph 41 of the Stage 1 Report that, “the flood cell has no impact on the openness of the MOL and is therefore appropriate development”.


The wider development

2.12 In moving on to look at Mr Field’s comments in his paragraphs 5.34, 5.35 and his Table 1, I again disagree with his assessment of which aspects of the proposal represent ‘inappropriate’ development in MOL policy terms. My point of view is supported by the RBKT Officer’s Report, which stated at paragraph 108:

“The site is within MOL, the essential attribute if which is its openness. The proposed public open space, nature reserve, marina and river ferry crossing would all constitute ‘open or recreational uses’ and are considered to comply with the above policies. The opening up of the riverside walk, with a ferry link to the opposite side of the river, is particularly welcome and supported by Core Strategy policy and the London Plan. It is considered that the marina (and associated lock gate) would facilitate the provision of outdoor sport and recreation, as supported by Core Strategy Policy DM5 and Policy RL of the Thames Landscape Strategy, which encourages the provision of off-channel marinas. Also the Heritage and Education Centre is also considered appropriate, as the proposal would make use of an existing building (the Pump House), and facilitate the restoration of the building of townscape merit.”

2.13 The conclusions of the GLA Stage 2 report are also very relevant here, with paragraph 16 stating:

“The Stage 1 report set out that the nature reserve, publically accessible open space, extension to the riverside walk, heritage and education centre, flood water storage cell, ferry drop-off/pick up point and leisure marina/lock gate are considered as appropriate development subject to the impact on the bat population being acceptable…”

2.14 On the basis of both mine and this wider professional opinion, I have reworked Mr Field’s Table 1 and set this out at Appendix A. I have highlighted where a category is not applicable, for example buildings for agriculture and forestry. I have also categorised the elements of the appeal proposal correctly, such as the Landscaped decked car park, and then added in three areas that Mr Field chose to omit, namely the new open space, the preservation of the heritage assets and the River ferry crossing. I have then reappraised the scoring in accordance with my assessment, which is supported by the professional opinions of RBKT Officers and the GLA and relevant planning policy.
2.15 It is clear from my revised analysis that of the 12 elements of the proposal identified, 10 represent ‘appropriate’ development in MOL policy terms. Only two aspects of the proposal should be classed as ‘inappropriate’ development in MOL policy terms. These are the restaurant and residential uses, both of which are essential to enable the proposal and which are justified by the very special circumstances, which I set out in detail within my Proof of Evidence.

2.16 Significantly, this revised assessment is not only my opinion, but also that of RBKT Officers and the GLA, who reached this view after lengthy and considered assessment of the appeal proposals.

3. Openness

3.1 In his paragraphs 1.14 to 1.20 and in his section 6 Mr Field deals with openness. He accepts that many aspects of the proposal, in particular the lock gate, the new public open space, the nature reserve and the reuse of the former pump house would not adversely affect the openness of the site. However, he contends that other elements, namely the residential, marina, restaurant and vehicular access will have an adverse impact on the openness of the MOL.

3.2 Again, I disagree with Mr Field and draw support for my opinion from both the RBKT Officer Report and from the GLA, where the body of professional opinion is very much contrary to the views of Mr Field. I expand further on this below.

Past decisions and policy justifications

3.3 In paragraph 6.2, Mr Field makes reference to the previous decisions and policy justifications relating to the site. As set out in my Evidence, I am aware of the planning history and previous decisions relating to past development proposals. Indeed, these decisions were a significant consideration in the design development for the appeal scheme. However, the appeal scheme is an entirely different proposal from anything previously put forward and should be considered on its own merits. Each proposed development and planning appeal must be considered on a case by case basis.
3.4 In this regard also, the proposed development responds to the policy designations for the site and deliver on many of the policy aspirations that are sought by the Core Strategy. This was acknowledged by RBKT Officers in their Committee Report (as evidenced by Paragraph 108 repeated above) and also by the GLA within the Stage 1 and Stage 2 Reports.

Residential

3.5 At his paragraphs 6.16 to 6.23, Mr Field contends that the residential pontoon will become the main feature in the landscape that will ‘fundamentally and permanently adversely effect the openness of the appeal site’. This matter is dealt with by David Allen and I defer to his expertise in this regard. I also note that Mr van Bruggen considers that the design of the housing is compact and occupies a small element of the site. This allows for views through and over the development from Portsmouth Road towards the river and the open areas opposite.

Restaurant

3.6 Mr Field goes on in his paragraphs 6.30 to conclude that the restaurant will contribute to the reduction of the open character of the appeal site. Again, I defer to David Allen’s expert opinion on this matter and he has covered this in his rebuttal.

Vehicular access

3.7 On the point of vehicular access, Mr Field contends that the proposed increase in activity will result in a detrimental impact on the openness of the area. However, transport and access were not raised within the reason for refusal and the opening up of the site to public access is a feature that was supported by RBKT Officers and the GLA. Portsmouth Road, which lies directly adjacent to the appeal site, is already a well trafficked urban highway. The proposals envisage utilising the existing point of access to the site, so whilst there will be additional activity from visitors benefiting from access to the various aspects of the proposals, it will not have the significant urbanising effect that Mr Field allege at paragraph 6.33 and 6.44 of his evidence.
**Nature reserve**

3.8 In the conclusions to his section 6, Mr Field questions the extent, quality and benefit of the proposed nature reserve and areas capable of supporting wildlife. These matters are dealt with in detail by Tim Goodwin and David Allen in their evidence, so I will not repeat points here. However, I disagree with Mr Field’s recalculation of the relevant site area, which I assess under a separate sub-heading 3.10 below.

3.9 In addition, Mr Field makes reference to the complaint made to the Advertising Standards Agency (ASA) by the Friends of Seething Wells in relation to a reference made in a summary briefing document regarding the percentage of the nature reserve. Whilst I do not consider this to be a matter of relevance to planning, for the avoidance of doubt, the ASA accepted that more than 50% of the appeal site would be able to support wildlife. This constitutes a nature reserve (26.2%), other water wildlife (13.3%) and incidental areas (15.2%).

**Site area**

3.10 The figures explaining the areas that the proposed development would comprise and provided by the appellant are correct and refer to the relevant planning application boundary within which the appeal proposals sit. These are provided in the Design and Access Statement and the Planning Statement. Therefore, Mr Field’s arbitrary calculations displaying revised areas that categorise the composition of the proposed development, as set out in his Table 2, are incorrect and inappropriate. Furthermore, regardless of incorrect area calculations, I disagree with Mr Field’s contention that the shaded areas, namely the residential development, marina, restaurant and other water wildlife areas, provide a negative impact. The evidence provided by me, David Allen and Ben van Bruggen highlights that the reverse is true and that the proposals will have a positive impact on the area.

4. **‘Very Special’ Circumstances**

4.1 In his summary at paragraphs 1.23 to 1.26 and then in his section 8, Mr Field addresses very special circumstances. I have set out in some detail in my Evidence the clear benefits delivered by the appeal scheme that together make up the very special circumstances in support the inclusion of the two aspects of the development that are perceived as ‘inappropriate’ development in MOL policy terms. I reiterate
those and do not propose to revisit those here, I do however reiterate that the benefits I have highlighted in my evidence were welcomed and supported by RBKT Officers and the GLA.

4.2 I note that there are aspects of Mr Field’s Evidence in these sections that contain a number of factual and legal inaccuracies. The legal points will be the subject of separate submissions made at the planning inquiry. However, it is my opinion that from a planning perspective, it is wrong to suggest as Mr Field does that because something is policy compliant it simply ‘should be done’, and if it is done then it does not represent a benefit. It is often the case that planning policies set out aspirations for delivering benefits or priorities and that these are not simply ‘givens’, so that when that can be delivered they offer significant benefit. This is the case with the appeal proposals. Mr Field also makes reference to (although does not provide any full and detailed conclusions) in relation to enabling development, housing provision and affordable housing that are not part of the reason for refusal and have been accepted by RBKT in the SoCG. I will address these below.

**Enabling development**

4.3 Mr Field questions the basis of the enabling development case made by the appellant. This raises both planning and legal issues. In terms of the latter, I am aware that this will be the subject of separate legal submissions. I address the planning points below.

4.4 The basis of the enabling development case is not cited as part of the reason for refusal. Furthermore, RBKT specifically accepted the statement at paragraph 7.2 of the Statement of Common Ground that they ‘…agree with the viability assessment and enabling case made…’.

4.5 Mr Field helpfully highlights the English Heritage guide to enabling development that I also refer to in my evidence. Without repeating the 5 bullet points set out at Mr Field’s paragraph 8.8, I consider that each are responded to positively by the appeal proposals as follows:

- it will secure the long term and sustainable future of the site for the benefit of all the community, serving many requirements including significantly enhanced open space provision and public access, nature conservation,
ecological and biodiversity enhancement, heritage preservation and education, and leisure and recreation;

- it will resolve the inherent problems arising for the needs of the site, including halting its declining ecological status, providing safe and sustainable public access and preserving key aspects of the industrial heritage;
- it will be self funding both now and in the future and deliver benefits that clearly can not be funded from other credible and sustainable sources;
- it will rely on only the minimum amount of enabling development necessary, a point accepted by RBKT in the SoCG and previously by its independently appointed consultants; and
- it will provide public benefits that I have set out clearly in my Proof of Evidence that far outweigh any perceived disbenefits that could arise from the proposals.

4.6 Mr Field suggests at his paragraph 8.10 that it is for the appellant to demonstrate that there are no alternatives available for delivering the benefits arising. I disagree and consider that the case has been well made for the proposals that are the subject of this appeal. Notwithstanding this, the site had been vacant and deteriorating for some time before it was acquired by the appellants. No credible alternative approach for securing its long term future or the significant public benefits that are now proposed emerged over this time. Through a lengthy pre and post planning application consultation process, both RBKT Officers and the GLA, together with all statutory consultees and many in the local community agreed that the proposals were acceptable for the site.

Technology patent

4.7 At paragraph 8.44, Mr Field makes passing reference that NGM Sustainable Developments is in dispute against Hydro Properties, but then makes no clear point on the subject. This is not a planning matter and is irrelevant to the appeal proposals.

Housing

4.8 In his paragraphs 8.62 to 8.66, Mr Field considers housing need in the Borough. The appeal proposals have not been promoted on the basis of a shortage in housing in
the Borough. Rather, as already stated, the housing is provided as enabling development in order to deliver the benefits of the scheme. This has been accepted by RBKT and does not form part of the reason for refusal.

4.9 That said, whilst the Council is able to demonstrate a 5-year housing supply, London as a whole is in need of significant additional residential development. The proposals will assist in meeting this demand, by providing 64 new homes, which in itself is a benefit as I have set out in my Proof of Evidence.

**Affordable Housing**

4.10 Mr Field seeks to make much of the lack of affordable housing within the scheme; however, again this is not cited within the reason for refusal. He has failed to grasp the principle of the enabling development case that was been accepted by RBKT and the GLA. The SoCG clearly states at paragraph 7.6 that it is agreed because of the specific nature of the proposals it would not be appropriate to include affordable housing on site in this instance, therefore an off-site contribution in lieu of provision on site is a suitable way forward in relation to the appeal scheme.

4.11 Mr Field seeks to suggest that affordable housing cannot be provided because of the increased costs of the floating home technology. However, this conclusion is not right and does not accord with RBKT’s assessment of the appeal proposals. In fact, the careful design of the residential pontoon facilitates the development of the site in the sensitive manner proposed and the delivery of the significant number of benefits that respond directly to the policy requirements for the site. The level of enabling development has been kept to the minimum. To increase affordable housing provision would either have necessitated a larger development or the reduction in the number of other benefits arising. This would fail to strike the right balance towards the delivery of the long term and sustainable use of the site that is proposed and that was accepted by RBKT Officers and the GLA.

4.12 What was agreed with RBKT was that it was appropriate to make a contribution towards affordable housing in the Borough, which together with the other contributions towards education and highways improvements, offer further benefits that arise from the appeal proposals. These matters have been accepted by RBKT and are not set out in the reason for refusal. The GLA were also satisfied that the approach taken was appropriate in the circumstances. Again, Mr Field adopts a
stance that contradicts the opinion of all the other planning professionals who have given careful consideration to the appeal proposals to date.

4.13 It should be noted that the Council and the Appellant have also agreed the terms of a viability review mechanism in the section 106 legal agreement further to the Council's report to Committee to provide a further affordable housing contribution as appropriate.
Appendix A
Table 1: The appeal proposals – tests of inappropriateness
(Format from Jeff Field Proof of Evidence)

*Please note – where there are differences between evidence/assessment of Patrick Grincell and the evidence/assessment of Jeff Field his response is depicted with a strikethrough and my opinion is provided below. The columns highlighted in green are my additions

| Exceptions to inappropriate development within the Green Belt/MOL (Appropriate Development) | Appeal Proposals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 64 x residential homes | 92-berth marina and lock gate | Restaurant | Car-parking | Decked landscaped car park | 7 x residential moorings | Nature Reserve | Heritage and education centre | Riverside walk | Flood storage cell | New Open Space | Preservation of Heritage Assets | River Ferry Crossing |
| Buildings for agriculture and forestry | X | X | X | X | X | X | X | X | X | N/A | N/A | N/A |
| Provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. | X | X | X | X | X | X | X | X | X | X | X | X | X |
| The extension or alteration of a building provided that it does not result in the disproportionate additions over and above the size of the original building. | X | X | X | X | X | X | X | X | X | X | X | X | X | X |

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