

Maladministration Complaint at Runnymede Borough Council in relation to the retrospective planning application covering Fairmont Hotel and associated sites (RU.21/2211)

Summary of issues

The failures are so egregious, we believe there is a case for misconduct in public office. It throws into doubt all of the important planning decisions in recent years under the supervision of RBC's current head of planning. The aerial images in Figure 1 illustrate how Runnymede Borough Council has a lot to explain; this is not what protecting the Green Belt looks like.



Figure 1: The site before and after acquisition and development by Arora Group and associated enterprises.

The aerial imagery in Figure 1 shows some of the land owned by the Arora Group at the time of acquisition and then after some development. More development, including the so-called tree houses, and off-road vehicle track and an additional car park, have been added to the site since the photograph on the right was taken.

With regards to the so-called treehouses, there are no very special circumstances to justify building in the Green Belt listed in the exceptions in planning guidelines. This is because the new build is on virgin woodland, a long distance from the stables that have been removed and hence not on a previously built site and because there has been a change of use from stables to hotel. This is agreed. The issue is what novel very special circumstances exist and how they outweigh the harm.

The key issues the Council needs to investigate in relation to RU.21/2211 are:

The guidelines are completely unambiguous in saying that temporary buildings cannot be counted. Despite this, the planning officers have counted mobile field shelters and a wooden caravan on wheels, as well as two other so-called 'cabins' when there is no evidence these even existed. They have given the impression that these were

permanent buildings by referencing an earlier planning permission for cabins, but investigation shows this relates to other buildings not scheduled for removal.

Very special circumstances only exist where the substantial weight that should be given to the harm to the Green Belt is clearly outweighed. As established in law, the benefits must clearly outweigh the harm. In this case, there are no public benefits, aside from the removal of the H-block stables, if this happens. Why have council officers considered the private profit of the applicant above the interests of the public? This is fundamental in planning decisions. Planning policy is clearly supposed to be for the benefit of the public, not individuals. Yet the planning officers give weight to the so-called treehouses being 'of considerable importance to the branding and marketing of the hotel and to its commercial success.' To be clear, the council officers have presented plenty of arguments to suggest that the hotel will be a success without the four extra, so-called treehouses, namely a 2015 report explaining the shortage of hotel rooms in Surrey and an argument that mid-week there aren't enough rooms for business guests. Given they describe a hotel boasting stunning guestrooms and lavish suites, a variety of dining options, luxurious spa and wellness facilities (along with a shortage of hotel rooms in Surrey), why wouldn't people want to stay there? The contradiction between saying there aren't enough hotel rooms on the one hand and the suggestion that the hotel will struggle without a few more rooms is absurd.

Some stables have been demolished at Dell Park and this is said to increase the openness of the Green Belt. Aside from the fact these stables no longer exist, they don't appear on any historic site plans and don't appear to have had planning permission, so it seems they weren't lawful development. Hence, it's not appropriate to count them in a current decision. It's deeply concerning that the planning officers have reported the removal of these stables two years ago as improving the Green Belt, when they have been replaced by a large concrete car park, along with three shipping containers being used as buildings, as tall as the stables they replaced. The stables were wood and could have been home to nesting birds and bats, unlike steel shipping containers. So, the planning officers have made a false claim about openness and have failed to address this unauthorised building and change of use in the Green Belt.

The Government specifically wants intentional unauthorised development in the Green Belt flagged and weight given to this in retrospective planning applications, but the council officers have neglected to do this.

Council officers ignored the fact that the new buildings are 4m higher than the stables that have been demolished (the claimed improvement to the Green Belt) and that, from the outside, they each cover an area 56 per cent larger than their internal floor space. By only counting the much smaller internal floorspace the planning officers are deliberately misleading how much impact these new buildings have. You see a whole building from the outside, not its internal space, and this is surely relevant when considering the openness of the Green Belt and visual amenity.

In planning appeals it's been shown that the volume of buildings should be counted, not just their footprint, which makes sense as a four-story house obviously has greater visual impact than a bungalow of a similar footprint. If the volume of the so-called treehouses is compared to the volume of the buildings removed (ignoring the fact that temporary buildings should not have been counted in the first place), it's obvious that the so-called treehouses are significantly bigger in terms of the space that they occupy within the Green Belt, both in terms of height and volume.

What looks like temporary screening by *Leylandii* (non-native and highly toxic to wildlife) seems to have been taken into account as some kind of benefit, but it should have been explained that these could be cut down as soon as planning permission for the so-called treehouses is granted, alongside any other tree currently unprotected due to a lack of a Woodland TPO for the whole woodland site. Similarly, any screening offered by the remaining trees may not last because the roots have been compromised by the building work, yet this has also been ignored. If the visual openness of the Green Belt can be attained for retrospective planning permission through the use of screening with alien, toxic conifers that can be cut down once permission is granted then what kind of precedent does that set?

During the planning committee meeting, when a councillor complained about the toxic nature of the conifers planted, the chief planning officer made clear that this could not be considered because the applicant did not need planning permission to plant them. Yet when a councillor complained about the mature trees that had been cut down, the same officer appeared to praise the applicant for having planted over 100 trees and explained that these were better than the mature trees that had been removed because they wouldn't lose their leaves in the winter! So, on the one hand it's argued that the damage done by the conifers cannot be counted under planning guidelines, but the planning officers do want to count them as a benefit, even though, the applicant won't need planning permission to remove them in due course either. It did look to the casual observer as if the planning officer was misleading the committee.

The considerable harm done to the trees, some of which had preservation orders, to habitat and wildlife has been ignored by the Council. Even though the damage is already done. Which begs the question why the Council didn't issue an enforcement notice to stop the building when it was first reported by concerned residents? This is an extract from an email sent directly to Ashley Smith by a resident in April 2022:

"We would also like to know why a stop order was not used in the case of the Tree Houses, where we informed you of their construction a good 6 months before they were completed?"

So, rather than Ashley Smith immediately requesting for a stop order at the beginning of the so-called tree house construction, he allowed the continued construction of the tree houses and encouraged the submission of the retrospective planning application.

The Government is clear that it wants to stop this kind of behaviour, harming the Green Belt and environment. Ordinarily, the Forestry Commission should be informed, orders issued to replant trees and this can then be taken into account in the planning decision, but this hasn't been done.

As part of the RU.21/2211 application process, the planning officers seemingly failed to identify a fifth, raised building under construction in the woodland. This only came to light when Cllr Vanda Cunningham undertook a site visit on the day of the planning committee meeting. It begs the question how a councillor can clearly identify additional illegal buildings whilst a planning officer was unable to do this as part of a supposedly thorough site inspection.

Additionally, the planning officers failed to identify and consider the five tennis courts or the off-road driving range that is under construction on the Dell Park site that, conveniently, do not appear on the site plan. There is also another shipping container being used as a building on the site, near the two cabins and buildings that were formally used for equestrian use which the planning officers have not taken into account. Surely these things all need planning permission? They should be shown on site plans as part of the planning application for the four so-called treehouses.

Why was all this ignored by the planning officers as part of their assessment on the impact of development on the openness of Green Belt?

The planning officers have not considered the consequences of granting retrospective planning permission in the Green Belt on the basis of some temporary buildings being removed and allowing a concrete car park to contribute towards the openness of the Green Belt. The NPPF and case law is clear. Structures do not count as 'previously developed land' if they are for agricultural/ forestry use, or temporary (defined as buildings that can easily be moved and that are not built on foundations). In other words, if planning permission was allowed in this case, it would set a clear precedent, enabling additional building on Green Belt, including travellers building permanent houses, temporarily hidden by conifers, in exchange for removing caravans, equivalent to the 'cabins on wheels' the applicant offered to remove. Why haven't the serious ramifications been examined and put to the committee?

Why hasn't the additional 605m² expansion¹ of the hotel compared to the original planning application been taken into account when assessing the openness of the Green Belt? This more than offsets any stables that may have been removed for the time being. The planning officers have chosen a baseline from the past so they can count buildings that no longer exist. It's unclear, but the suggestion is 'buildings' (wooden caravans if they ever existed) were removed soon after the site's acquisition. If they want the baseline to be when the Arora Group purchased the site then the additions as well as the removals should be counted, otherwise there's an asymmetry, otherwise known as having your cake and eating it.

A false comparison has been drawn between the four new, so-called treehouses and the expansion of Legoland rides and hotel accommodation, something Royal Windsor and Maidenhead Council officers asked their planning committee to reject. It appears that the officials were doing their job in this case, so it's baffling why they've even made this comparison and given it weight. Having extra hotel rooms in Windsor does not create a benefit for Runnymede so this shouldn't be used to tip the balance in favour of development and, if they are also some sort of lodge it actually undermines the argument that more are needed.

Council officers clearly don't understand government guidelines on how to assess economic benefits. Jobs cannot be counted, as stated in the Treasury Green Book, aside from exceptional circumstances where an area has serious structural unemployment. Runnymede does not have an unemployment problem and many job remain unfilled, as exemplified by the ongoing difficulty in recruiting staff at Egham Orbit. Spending in one borough as opposed to another isn't a benefit either, it's robbing Peter to pay Paul. Besides which, the hotel offers packages to Legoland and Windsor Castle, so the guests will be spending their money in the neighbouring borough anyway. Officers even claim the so-called treehouses will make the borough more productive when at

¹ it should be noted that the intent was to refurbish the original hotel (originally 7,767m²), in the 2016 application and extend it to 15,455m². A subsequent applicant then asked for more encroachment on Green Belt thus increasing the footprint to 16,060m². Hence the enlargement of the hotel by a further 605m²

least five extra staff are needed just to cater for the occasional guests in these four houses, whilst the hotel sector is suffering from massive job shortages and is having to reduce services on offer.

The applicant and planning officers have offered to demolish the H-block stables as a further gesture towards accepting the planning application. The applicant could rebuild something on this site, such as a sports pavilion for the tennis courts and it would qualify as a special circumstance under planning guidelines. With so many outdoor activities on offer, the site needs a toilet block, at a minimum, to support this level of activity. The same would be true for any other sacrificial buildings; anything rebuilt on the same footprint could be permitted as a very special circumstance. The planning committee needs to know how much confidence can be put on conditions imposed on the applicant, given the track record of repeatedly building without planning permission, no enforcement action by the Council and the likelihood of winning an appeal under very special circumstances to keep such buildings in future.

Overall, we are amazed that the removal of trees with protection orders, the building of four so-called treehouses, five tennis courts, another raised building, a car park, a metal building, two shipping containers being used as buildings in the new car park, another shipping container used as a building on another part of the site, lighting along the road and drive and the construction of an off-road course for Range Rovers hasn't resulted in enforcement action. We are especially surprised because the applicant has a history of doing things without planning consent, for example dumping enormous amounts of building spoil on Oaklands Park with no regard for the environmental consequences, as well as the large neon sign for the hotel, which both required retrospective planning applications after complaints by residents.

The key question for Runnymede Borough Council is, therefore, why have planning officers failed to address these issues? Aside from seemingly turning a blind eye to all the unauthorised development and not issuing enforcement notices, the advice given to the planning committee, in this case, looks like a deliberate attempt to mislead councillors and therefore misconduct in public office, which is a serious offence. To be a crime there has to be harm. Building on the Green Belt by definition is harmful. Creating conditions that makes it easier for others to illegally build in the Green Belt increases the risks of further harm. The only way to avoid harm and hence potential prosecution, if this becomes a police matter, is to put right all the damage done thus far by the applicant. We expect public officials to act in the public interest and not in the sole interests of a private individual.

We would like to know what steps will be taken to re-train all the planning officers so they know how to understand and apply the planning guidelines, how to seek and use evidence and how to do basic analysis.

The rest of this document explains the above points in detail, highlighting serious failings by planning officers in preparing the report and arguments for the planning committee. We present evidence, analysis and legal precedents, all of which were missing from the planning officers' report to the planning committee.

Overview of planning decisions

The government's NPPF states, in relation to courts' consideration of material planning consideration, 'in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations'. In other words, planning is about what is in the public interest and not about the benefits for the owner of a business or an individual. So, what is material in relation to a planning decision should reflect public interest and the weight given to each material consideration should reflect the public and not the private interest.

According to the NPPF, 'the purpose of the planning system is to contribute to the achievement of sustainable development'. To that end the planning system has three overarching objectives: an economic objective, to support growth, innovation and improved productivity; a social objective, to support healthy communities through a range of homes and open spaces, and an environmental objective, to protect the natural environment. Planning should be granted where it is in accordance with these three objectives.

It is therefore important to bear in mind that the duty of public officials is to ensure that decisions are in the public interest and that means planning decisions provide good housing, protect the environment and create economic growth. Sadly, we will show, below, that the actions of Runnymede Borough Council planning officers have departed from these objectives.

Background

Figure 2 illustrates what the old Savill Court hotel and grounds looked like prior to development by the current owners.



Figure 2: Views of the site before development by the current owner. The grounds were a mixture of grass and woodlands.

Now, it has a lot more hard-landscaping, including concrete and tarmacked paths and lighting, which affect the openness of the Green Belt and have a material impact on ecology (Figure 3).



Figure 3: example of the current hard landscaping within the grounds of Fairmont Hotel, including an artificial lake

Since the original application to refurbish and extend an existing hotel, the development footprint of the hotel alone has increased from 7,767m² to 16,060m². The following are key steps in development since the original planning application:

- Demolish the old hotel (revised planning application);
- Build the new hotel 2m taller (revised planning application);
- Build the new hotel 605m² bigger than the original application (revised planning application);
- Increase the basement areas substantially (revised planning application);
- Tip thousands of tonnes of spoil on Oaklands Park fields (retrospective planning application);
- Add a new conservatory (revised planning application);
- Build a lake (planning application);
- Add a large neon sign (retrospective planning application);
- Add lights down the driveway (no planning application);
- Remove trees with preservation orders (no planning application);
- Build four so-called treehouses (retrospective planning application);
- Start construction of a fifth raised building in woodland (no planning application);
- Build five tennis courts (no planning application);
- Add a shipping container for use as a building (no planning application)
- Build an additional car park and erect a metal building and another two shipping containers (no planning application);
- Begin construction of a driving range for Range Rovers (no planning application).

For reference, there have been a large number of planning applications in relation to the Savill Court Hotel site, since 2016, including:

RU.16/0824 - to refurbish the hotel
RU.17/1368 - for complete demolition
RU.17/1490
RU.17/1491
RU.17/1623
RU.17/1531
RU.17/1640
RU.17/1789
RU.18/0228
RU.18/0806
RU.18/0850

RU.18/1239 - variation of planning conditions
RU.18/1883 - discharging planning conditions
RU.18/1042 - retrospective permission for excavated soil (n.b. listed as the Oaklands park site)
RU.19/0114 - tree reduction works at neighbouring Dell park, subsequently counted as part of the Savill court site
RU.19/1472
RU.19/1472 - travel plan
RU.19/0613 - to remove Wellingtonia tree
RU.20/1088 - to remove Wellingtonia tree
RU.21/2210 - extensions and a swimming pool etc at Oaklands Park, counted as part of the Savill court site
RU.21/0336 - drainage (Withdrawn)
RU.21/0111 - plans for wildlife (Withdrawn)
RU.21/0455 - lighting
RU.21/2211 - tree houses (retrospective)
RU.22/0086 - sign
RU.22/063

Intentional unauthorised development

Retrospective applications should be assessed on the planning merits of the scheme, in the same way as other planning applications. However, on 31 August 2015, the Government issued a new Planning Policy Statement relating to unauthorised development. The Statement said that from immediate effect it is to be a new material consideration in the assessment of any planning application if the development was intentionally carried out in advance of obtaining planning consent. This is a justification for refusing a scheme where there has actually been harm as a result of the development, even if it now cannot be mitigated. It's been seven years since this statement was issued so why is it not being applied in Runnymede?

The statement to Parliament says the following:

'My hon. Friend the Minister of State for Housing and Planning has made the following Written Ministerial Statement.

This Statement confirms changes to national planning policy to make intentional unauthorised development a material consideration, and also to provide stronger protection for the Green Belt, as set out in the manifesto.

The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time-consuming enforcement action.

For these reasons, we introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received since 31 August 2015.

The Government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.

For this reason, the Planning Inspectorate will monitor all appeal decisions involving unauthorised development in the Green Belt to enable the Government to assess the implementation of this policy.'

There is no obvious reason why intentional unauthorised development is given no weight by the planning officers and this looks like a serious omission. The Government clearly wants to crack down on the kind of behaviour the Arora Group has engaged in.

The Green Belt

When considering any planning application, the NPPF makes clear that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.

NPPF Paras 147-148: "Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

Very Special Circumstances

NPPF Paragraph 149 (d) states that exceptions to development on Green Belt can be made if

"the replacement of a building, provided a new building is in the same use and not materially larger than the one it replaces"

And for the replacement buildings to "not have a greater impact on the openness of the Green Belt than the existing development"

There is an obvious change of use, from shelter for horses to detached houses for hotel guests so paragraph 149 is not relevant. 149(d) explicitly says the new replacement building 'is in the same use'.

The planning application RU.21/2211 includes "the part change of use of the existing land at Dell Park House for purposes ancillary to the existing hotel use". There is a change of use from equestrian to hotel rooms. So, paragraph 149(d) is not applicable. So, we agree with the planning officers on this point.

NPPF Paragraph 149 (g) provides an additional exception to development on Green Belt:

149. (g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development

Some buildings have been demolished and four, detached houses have been built a long distance (over 115m at the nearest point) from the buildings that have been removed. Previously developed land is defined in annex 1 of the NPPF as 'Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole curtilage should be developed) and any associated fixed surface infrastructure. In common law, the curtilage of a house or dwelling is the land immediately surrounding it, including any closely associated buildings and structures, but excluding any associated open fields beyond. So, the land the so-called tree houses have been built on is not previously developed land.'

Essentially the planning guidelines tell us that if an existing building is replaced on the same site, for example an old stable block is replaced with a new one on the same footprint, then that's a special circumstance, which is reasonable. This case is not remotely like the very special circumstances the guidelines allow for, so we agree with the council officers that no exceptions apply and the development is inappropriate.

Although the guidelines give a clear steer as to what the Government thinks is acceptable in terms of Green Belt development, there is still the option to argue that there are very special circumstances. The expectation is that these will be rare occurrences. The Council and applicant are suggesting that buildings are being removed which add up, in total, to be at least equivalent to the new so-called tree houses and this is a very special circumstance. There are many important issues that need discussion. Each one has to be judged extremely favourably to add up to a case. Let's look at these and then do the maths.

Before we start, it should be noted that the buildings concerned are not 'tree houses' as they have been named. They are raised houses on metal supports, sitting on concrete bases. The houses have not been built on trees, which is what defines a tree house. In fact, many trees appear to have been cut down in order to build these so-called tree houses and the roots of the remaining trees have been compromised because of the concrete foundations and compression of the soil. As the Council notes in its report, it's not even known if the remaining trees will survive the assault they have undergone.

Temporary buildings

The NPPF, in paragraph 149(g), is clear that 'temporary buildings' should not be counted, yet the officers have counted 'field shelters' and 'residential log cabins' towards the square meters used to justify equivalence. Whether a building is temporary relates to its size, permanence and physical attachment to the ground. It appears that the officers have been generous in describing field shelters, presumably open sheds for horses, as permanent buildings. Following on from the logic of the Council presented in this case, one only has to put up a few field shelters for horses in a Green Belt field and then knock them down to be able to build houses in the same field and the Green Belt is just as open. Even a junior planning officer should know that mobile horse shelters are temporary buildings.

To helpfully demonstrate that the field shelters are temporary buildings, the applicant has moved them to the edge of the field (as of June 2022) as can be seen in Figure 4. It is clear by the structures and the fact that they have been so easily moved that these are not built on solid foundations.



Figure 4: The temporary field shelters in their most recent location

The field shelters are said to cover 22.8m² and clearly should not have been counted in any consideration of the planning application and it was disingenuous to do so.

The photograph in Figure 5 is taken from the planning application and shows a 'cabin'. The application claims that two other cabins have already been removed and this cabin will also be removed as some kind of quid-pro-quo for the so-called treehouses. These log cabins are said to be 61.5m² each.



Figure 5: one of the cabins proposed for demolition

The photograph in Figure 6 (taken in June 2022) shows an alternative view of the so-called 'cabin'. It can be seen that it is on wheels. Hence it is a caravan and not a cabin.



Figure 6: close up of the cabin proposed for demolition, showing that this is a temporary caravan on wheels.

It can be noted that in the planning application for Dell Park, RU.19/0114, the site location plan does not show several of the buildings that have been allegedly removed, removed recently or are proposed to be removed as part of the justification for building the so-called treehouses. Could the reason they don't appear on the Dell Park site plan be because they are temporary buildings or wooden mobile caravans on wheels?

RU.99/0115 gave permission for two log cabins for grooms. The planning officers list this as relevant to the planning decision. Unfortunately, the related planning documents are not on the Runnymede planning website. However, it is likely that they are for these two cabins, shown in Figure 7, below, which are close to the old equestrian facilities. These cabins are shown on various site plans and there is no proposal to demolish these at present.



Figure 7: Additional cabins present on site

To further reinforce the evidence that the planning application for two cabins granted in 1999, which the planning officers report says is relevant to this case, the site map in Figure 8 is taken from planning application RU.05/0209 (for the H block stables), which is also referenced by the planning officers. It can be seen that there aren't any cabins, other than the two shown in Figure 7, which are not planned for demolition.



Figure 8: the site map taken from planning application RU.05/0209

So, the planning officers did not notice that the remaining cabin is, in fact, a caravan and didn't ask questions about the two other 'cabins' which allegedly existed, despite there being no evidence they did. They did however, manage to dig out an old planning application (details of which are not online) for two cabins which appear to still be on site, which there are no plans to remove, and imply that they were somehow relevant to the retrospective planning application by listing this old application in the paper for the planning committee. They also haven't noticed the extra shipping container being used as a building next to the two old cabins.

Counting the field shelters and wooden caravans on wheels looks like a deliberate attempt to mislead, especially given the spurious reference to planning permission for two cabins which the applicant intends to keep.

Imagine if this planning application was approved, it would mean that travellers could build houses on a Green Belt field, apply for retrospective planning permission and then offer to remove their old caravans in return. Would the Council look upon that as favourably as they have with this applicant?

Counting non-existent buildings

Given some buildings have already been demolished they weren't of use to the hotel. So how far back can buildings that no longer exist be counted when looking at offsetting new buildings in the Green Belt? The officers haven't addressed this point, but it's important. We have established that the field shelters and wooden caravans cannot be counted, so let's focus on the various stables removed or due to be removed.



Figure 9: photograph of stables that have now been demolished

This image, in Figure 9, taken from the planning application, shows the stables that have already been demolished. The photographs in Figure 10 show the same area in June 2022. Whilst the stables have been

removed, the site has been turned into a car park with at least three metal buildings. It is clear that the visual amenity of the Green Belt has been harmed and it could be argued that this is worse than the stables that were there before. Whilst there may have been some hard standing left when the stables were removed, the car park appears to have cemented over a much larger area.



Figure 10: The area which used to have stables is now a tarmacked carpark with metal buildings

The riding track went in a large loop around the Dell Park field and can be seen in this aerial photograph in Figure 11. The area that is now tarmac runs alongside Wick Lane and this part of the site appeared to be rather green, with trees hiding the stables, in the photograph taken before the hotel development started.



Figure 11: The riding tack was a large loop on natural earth as seen in aerial imagery.

Instead of wooden stables, there is now a car park with a metal building and also two large, metal shipping containers, visible from Wick Lane. Yet the removal of the stables is somehow justified as enhancing the Green Belt to offset the construction of four new, detached, raised houses! How? Did the council officers not visit the site?

In law, the openness of the Green Belt is generally understood to mean the absence of built development and this can apply to a two-dimensional development such as a car park. Is there planning permission for change of use? Were more trees cut down and did any have preservation orders? (Photographs suggest two rows of trees alongside Wick lane, previously). Further investigation should look at whether trees were cut down for the extended car park and other harm done. There were stables and now there's a car park. This is a change of use and the Arora Group should have applied for planning permission. Have they? We cannot find an application. If not, have the planning officers simply ignored what appears to be another breach of planning law?

Furthermore, we cannot find planning permission for the former stables and they do not appear on previous site plans, see this site plan from 2015, for example (Figure 12). What status do they have therefore; are they not buildings which should have been removed anyway? It doesn't seem appropriate to count unlawful buildings that have been removed already in the baseline for decision making.

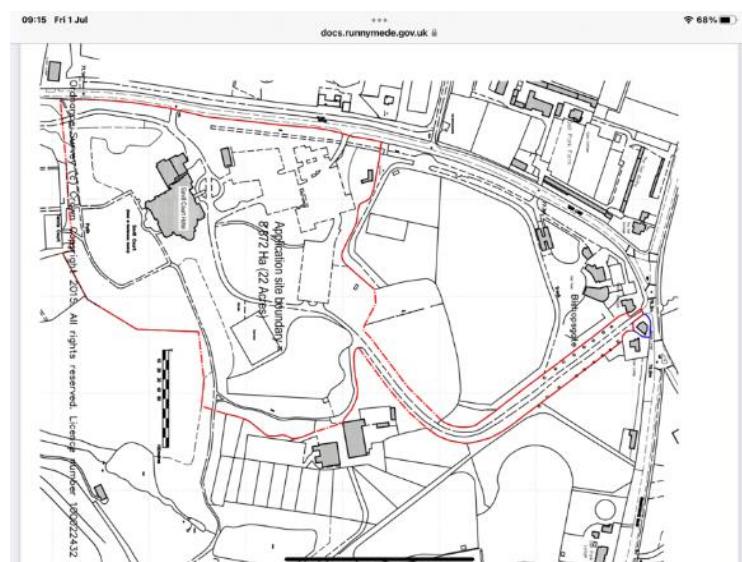


Figure 12: Site plan from 2015

In the last planning application made for Savill Court, before the Arora Group purchased the site, there are no stables, by Wick Road, on the site plan. On the first planning application made by the Arora Group for the Savill

Court Hotel site there are no stables, by Wick Road, on the site plans. On the Land Registry map, there are no stables by Wick Road. On the RU.19/0114 planning application made by the Arora Group in 2019 for tree works at Dell Park, there are no stables on the site plan – see Figure 13. Note, this is before the stables were said to be removed in 2019. We have searched, but can find no evidence that the stables were lawful development, so their removal by the applicant has saved the Council having to take enforcement action and their removal should not be counted as a public benefit to the Green Belt because they should have come down anyway.



Figure 13: Site plan submitted as part of the RU.19/0114 planning application made by the Arora Group in 2019 for tree works at Dell Park. Note the absence of stables near Wick road on the plan.

Counting additions to buildings as well as reductions

If it is possible to count things that have been demolished since the original planning application then surely it should also be possible to count things that have been added to the site that were not part of the original plan, for consistency. In that regard, it should be noted that the intent was to refurbish the original hotel (originally 7,767m²), in the 2016 planning application and extend it to 15,455m². The applicant then asked for more and a subsequent planning application increased the footprint to 16,060m². Hence the enlargement of the hotel by 605m² should surely be counted as a loss for the Green Belt, compared to the original plans, which the removal of the stables shortly thereafter can be compared. Is there an asymmetry in planning guidelines that you can take into account what has been removed historically but not what has been added when assessing a new application? We don't think so, this is not how a baseline is considered in case law.

To put it another way, the planning officers have chosen a baseline for the retrospective planning application based on some point of time in the past when stables, horse shelters and perhaps wooden cabins on wheels were all on the site. Even if such an arbitrary decision is allowed, they haven't said exactly when, they've just said the cabins were removed after the purchase of the site. Without evidence, we should not just take the applicant's word when this happened or if the cabins even existed in the first place. This needs to be established and all planning applications since that time taken into account, in establishing the overall impact of square meters removed and square meters added to the site in order to pursue this line of reasoning.

It's not complicated, it's just counting

So, the very special circumstances are supposed to be that the overall size of the buildings demolished or being demolished are greater than the size of the so-called treehouses added to the site and that the old buildings are more spread out over the site than the so-called treehouses. Everything hinges on this.

The report to the planning committee reads that 'the total gross external floor area of the development is 500 square meters', in referring to the new so-called treehouses. This gives the impression that they cover an area of 500m². Of course, the so-called treehouses cover a much larger area. We'll allow this one as mistaken confusion between internal and external footprint of individual houses, rather than suggest it was meant to mislead, given the so-called tree houses add up to more than this just based on the space each takes up and the development as a whole is much larger. The four so-called tree houses cover a large area. Maybe the size of a football pitch by comparison?

Each so-called treehouse has a floorspace of 125m² (according to the Fairmont's Design and Access Statement). It also has a main deck area adding another 60m² and a front deck area of 13m², all built on a base 3.25m above ground level, on metal girders, supported by concrete. So, each so-called treehouse takes up 198m² (or 792m² in total for four of them), whereas the Council count all three as being 500m², in total. Or put another way, the so-called treehouses are 92m² larger than the 699m² that is claimed has already been demolished plus the H-block stables offered for demolition. (N.B. There is a slight discrepancy between the 699 m² figure reported by the planning officer and the 685 m² figure submitted by the applicant, but we can ignore this too, as it becomes irrelevant compared to all the big 'errors' made.)

If you exclude the horse shelters because they are temporary buildings and exclude the so-called cabins because the only one that still exists is clearly a caravan and there's no evidence the others even existed (and if they did were probably caravans too, to avoid requiring planning permission no doubt) then it's a comparison between an additional 792m², for four so-called treehouses, compared to 295m² for the stables already demolished and 182m² for the remaining H-block stable. And if you exclude the wooden stables which no longer exist because they have been replaced by a car park with metal buildings and they probably were not lawful, then there's nothing to remove aside from one remaining stable of 182m², in return for granting planning permission. So how do the planning officers justify their maths? It looks like a desperate attempt to get the shoe to fit.

Counting has been based on internal floorspace, in the planning documents, not the total footprint of the so-called treehouses. When looking at a site, a normal person would look at the overall impact. In other words, they'd think how big a building was in terms of its length, width and height, not just its internal floorspace. If a bungalow was replaced by a four-storey building with the same footprint you would notice. Volume and height are the actual criteria that should be considered when evaluating impact on the openness of the Green Belt.

The planning report says 'The stilts result in the raising of the structures by some 2.56 metres extending to a maximum height of some 7.55 metres...' It should be noted that both the deck and staircase are integral structural features of the tree houses, built in metal and other non-natural materials. Crucially, the deck is suspended 2.56 metres above the ground and therefore a highly visible and obtrusive structure that detracts from the openness of the Green Belt.

Whatever way you look at it, the so-called treehouses are a great deal bigger than the stables and cabins that have been removed or could be removed. You cannot pretend that a tower-block has the same impact as a bungalow with the same footprint, common sense needs to prevail. Yet again, this looks like a biased and skewed piece of analysis by the planning officers to downplay the impact of the so-called treehouses.

Combining different sites

The original planning application for the hotel and subsequent applications for new plans, retrospective applications for changes made and various applications to discharge conditions of the various planning applications have related to the site known as the Savill Court Hotel. The applicant has purchased additional land adjacent to the Savill Court Hotel, known as Dell Park. It appears that the special circumstances promoted to permit unlawful building on the site known as the Savill Court Hotel are based on the removal of wooden buildings, some of which may be temporary, on the site known as Dell Park. The planning officers should have made it clear if this is permitted in law and clarify if they sought legal advice. Can someone get planning permission, in general, on Green Belt land, based on what happens on a neighbouring site? It should be noted that neighbouring Oaklands Park is also combined with Savill Court in other applications (RU.21/2210). We are not too concerned about this, but feel it needs clarity.

Hear no evil, see no evil, speak no evil

Let us consider a variety of unauthorised development on the site and what impact this has on the Green Belt.

There are clear signs that more trees have been cut down and more raised buildings are under construction. Why has the Council not even mentioned this in its assessment? The two pictures in Figure 14 were taken in June 2022 and show further construction activity. How could this have been missed by the planning officer during their investigations leading up to their RU.21/2211 report? This construction is only a few meters away from the other four so-called tree houses. The Fairmont hotel took this smaller house to the Chelsea show and informed the world, including via Facebook, that it would be taking it back to erect as one of its treehouses. It was hardly a secret.



Figure 14: Photographic evidence of more unlawful construction that was missed by the planning officers.

There are also five new tennis courts which don't feature on the site plans presented by the applicant or Council (Figure 15). Why aren't these shown on the site plans? Who could argue that this doesn't affect the openness of the Green Belt on what used to be a polo field? There is nothing to indicate planning permission was sought. This statement was posted on the Fairmont Hotel Facebook Page: 'Have you tried the UK's fastest growing sport yet? We have just launched our two new padel courts, three tennis courts and an exceptional outdoor gym with training rig, assault bikes, boxing bags, sled track and much more'.





Figure 15: Tennis courts/ outdoor gym equipment with metal and chain-link fencing and floodlights – another highly obtrusive construction on Green Belt, without planning permission.

Nearby residents have reported that paddle tennis is being played on these courts, with bats rather than rackets, so it sounds like a pistol range. The planning officers have ignored the noise impacts of all the developments.

Construction has also begun on what is said to be an off-road course for Range Rovers. Built structures include huge concrete culverts (Figure 16). How large is this going to be and what impact will it have on the Green Belt? Again, no planning permission appears to have been sought.



Figure 16: concrete culvert installed as part of an off-road Range Rover, new play area

There's a new car park, as discussed above, (Figure 17) and various metal buildings and shipping containers being used as buildings. It's not clear to us if more trees were removed along the length of the site near Wick road, for the new car park and behind the new tennis courts.



Figure 17: A new car park, including three metal buildings and a shipping container being used elsewhere on the site as a new building.

Enforcement action should be taken by the Council for the use of the shipping container shown in the photograph, above, as a building, as it does not have planning permission, in addition to the three near Wick lane. It does not appear at this location in the most recent satellite image of the site, which instead shows a row of 12 shipping containers in the main car park. The Council should, therefore, check that the other shipping containers are not now also being used as buildings elsewhere on the site.

There is also new lighting throughout the site, with no thought to the implications to wildlife (Figure 18).

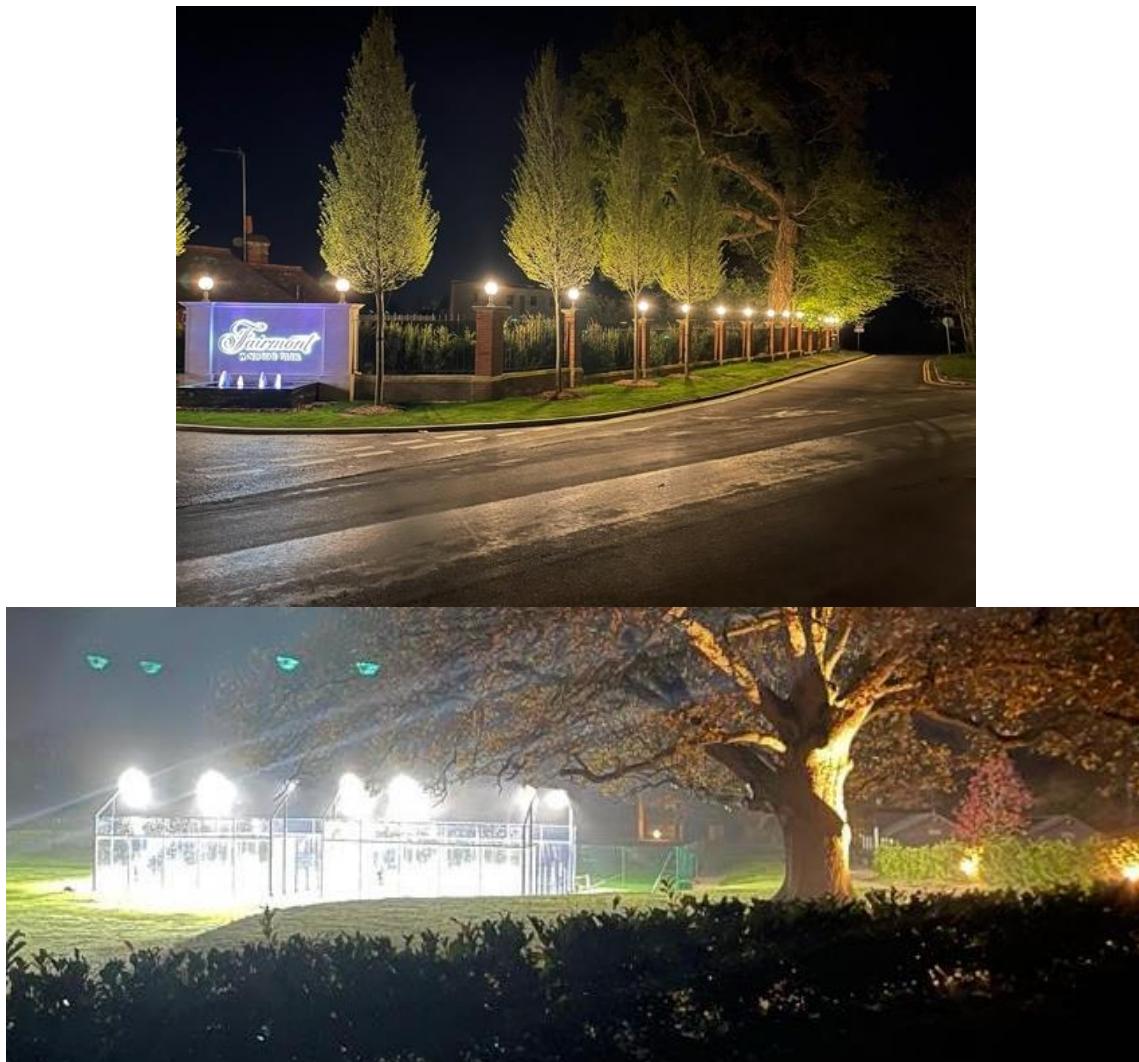


Figure 18: New lighting on the outside of the site, which continues along the driveway to the hotel (N.B. The neon advertising sign and fountain structure was also put up without planning permission). The tennis court also has floodlights and veteran trees (ideal habitat for bats) also have floodlight, creating significant light pollution and harm to nocturnal wildlife.

So, the planning officers failed to inform the planning committee about the removal of all the mature trees, the construction of a car park, five tennis courts with flood lighting, an off-road course for Range Rovers and numerous shipping containers being used as buildings around the site. There has been no enforcement action. Can we anticipate that, in due course, they will claim the removal of the shipping containers is a benefit to the Green Belt to permit the building of a sports pavilion and other buildings that will be needed to support the expanding theme park?

Whilst the above photographs show developments that were known about at the time of the planning committee there has been more building since. It is our understanding that the Council should have issued enforcement notices if the revised retrospective planning application was not submitted within eight weeks of the planning committee. That timeline has been exceeded, the Council has not issued enforcement notices and has sat by while even more development takes place, including a new car park and a new playground with a course surrounded by tyres, presumably for some kind of small motorised vehicles.



Figure 19: The beginnings of yet another car park, September 2022, on the previous polo field on the site formally known as Dell Park

From its location, this looks like a new car park for the tree houses which are slightly to the left of the above photos.





Figure 20: A new playground, September 2022, on the former polo field, with tyres being added alongside the track, it looks like more are needed to complete the course

Visual openness

We have established that the temporary buildings, buildings that have already been removed and unlawful buildings should not be counted, but we can still consider visual openness as if they all existed and could be counted. We do this simply to demonstrate that, even if they could be counted, the judgement of the planning officers is completely skewed, regardless of all the other unauthorised development they've ignored.

Visual openness is a factor in assessing planning applications in the Green Belt. This is a matter of judgement not law, but the planning officers' judgement can be questioned. The issue is whether some scattered, low, wooden stables and cabins, without lighting, make the Green Belt less open than four detached, raised buildings each at a height of 7.55 metres, with associated paths and external lighting. The so-called treehouses are four meters higher than the stables that have been demolished or are due to be demolished, which the planning officers regard as somehow equivalent.

The stables that have been demolished (and replaced with a car park) don't appear on any site plans. Nevertheless, it seems they existed. Visually, they had minimal impact on the site because they were low, wooden and at the edge of the site, backing onto significant trees (Figure 21). This photograph was taken shortly before the Arora Group purchased the site. It includes the two temporary horse shelters that have now been moved to the edge of the field.



Figure 21: aerial photograph showing limited impact of stables and cabins on the visual openness of the Green Belt, as a result of their location on the edge of the site, and surrounded by trees.

The following pictures, (Figures 22 and 23), compare and contrast the view of the Dell Park field with and without the new tennis courts. Some additional trees appear to have been removed too, if you look at the horizon. (We understand that some tree work has been authorised on the site, but have the Council satisfied that other trees haven't been removed too, given the behaviour of the applicant in relation to the woodland?)



Figure 22: The above photograph was taken shortly before the Arora group purchased Dell Park, the metal sculpture on the field has been replaced with five tennis courts, a children's playground, some kind of track surrounded by old types, and a new car park is also under construction on the field.



Figure 23: Before and after, from the same vantage point, showing the impact on the openness of the Green Belt as a result of the illegal construction of the tennis courts. Also note that trees seem to have been felled. (The above photograph was taken before the unauthorised addition of a playground, track and old tyres.)

This aerial photo in Figure 24, also taken shortly before the Arora Group purchased the site, shows the fields with woodland beyond, where there's now evidence that mature trees were cut down and four so-called treehouses built. Other trees have been compromised by having their roots compressed. Looking at the aerial photograph, there were clearly enough trees to build the four houses within the woodland, but all of the trees fronting the fields have been cut down, presumably to provide a good view from the houses. They have been replaced with cheap, non-native Leylandii conifers to shield the houses (Figure 26), presumably only for the short-term, during the retrospective planning application process.



Figure 24: Aerial photograph of the woodland (top of image) prior to the treehouses being built



Figure 25: Views of the woodland, from ground level, shortly before the site was acquired by the Arora Group, before five tennis courts, a playground, track, car park and off-road course were installed

The view from the same side as the above photograph is shown below, in June 2022, which the planning officers think has been improved, compared to mature, native trees because Leylandii don't drop their leaves! They have also ignored the fact these can be removed without planning permission.







Figure 26: Planting of non-native, toxic Leylandii to shield the so-called treehouses and the expanse opened up by the felling of native trees. The row of Leylandii appear to have been planted very close together as a screen.

It's obvious, comparing the photographs in figure 26 with figures 22, 24 and 25, that numerous mature trees have been removed. The earth bank and Leylandii look more like an attempt to temporarily hide the new houses than a five-star luxury experience in the waiting. What kind of designer would see an improvement by replacing a view of mature native trees with conifers? What kind of high-end guest wants to swap a stay at the Savoy to a stay in one of these houses so they can sit on the terrace with a G&T and look out on an earth bank and row of Leylandii? It simply isn't plausible that this is a long-term change to the site, rather than a short-term attempt to hide the development whilst the planning process is completed. The Leylandii will be easy to remove in due course.

At the planning committee meeting, the planning officers were not unduly concerned about the mature trees removed for the unauthorised development. They mentioned five trees being removed, but did not say where this figure came from or if this only referred to those with preservation orders. However, they were enthusiastic about the large number of Leylandii trees that had been replanted on the site, counting more than 100! At certain points in the discussion they talked about the screening provided by the Leylandii trees and that they would be evergreen such that the so-called treehouses could not be seen in the winter. When a councillor raised the point that Leylandii create a sterile environment, the planning officers dismissed this concern and stated that you do not need planning permission to plant conifers. So, on the one hand they suggested there is a net benefit because of the significant number of Leylandii planted and justified openness of the Green Belt because of the screening they provide, whilst also saying councillors cannot comment on the harm they do to the environment because planting Leylandii is not a planning issue and, simultaneously, ignoring the fact you do not need planning permission to remove them either.

Even if you cannot count the harm done by planting Leylandii, it is not appropriate to determine that the Green Belt is open or there is visual amenity as a result of some newly planted Leylandii because there is nothing the planning officers can do to stop the applicant removing them as soon as planning permission is granted.

One tree is not equivalent to another. Achieving net biodiversity benefits is not a bean counting exercise. Replanting native trees with ones that poison the soil and that are toxic to native biodiversity does not result in a biodiversity gain, it reduces it.

This is another example of asymmetry in the planning officers' thinking, otherwise known as having your cake and eating it. To be clear, if the harm from Leylandii can't be counted because it's not a planning issue then the supposed benefit (as a screen maintaining visual amenity and increasing tree numbers) can't be counted either.

The judgement of the planning officers that a pile of earth and a row of Leylandii improves visual amenity is debatable too, especially considering they are replacing native woodland that could be restored. Is planning in Runnymede based on the principle of 'if you can't see it when the application is made it doesn't count'? If all one has to do to get planning permission in the Green Belt is to cut down some trees to build in woodland or plant some conifers around a new development, we could solve the housing crisis. It's a bit like putting bales of hay around a newly built house, but that hasn't been a successful tactic elsewhere.

The so-called tree houses are also visible from the other side (Figure 27).



Figure 27: Photograph showing that the so-called tree houses are clearly visible from outside of the woodland and will be more obvious when the fence comes down. This does not take into account the additional visual impact when deciduous trees do not have leaves from November to March.

The following photographs, in Figure 28, show the so-called treehouses as of June 2022.





Figure 28: Images of the so-called treehouses showing their bulk and impact on the woodland understory, with no tree root protection in evidence.

There is an argument about the extent to which the remaining trees will shield the sight line of the new, so-called treehouses. Specialist reports for the Council indicate that trees have been removed and root damage is likely to have been done to the remaining trees, especially given the house foundations are large concrete blocks and no root protective material was laid down during the construction work. It is also clear that no building inspections were carried as these were built without planning permission. In other words, just because mature trees can be seen there now, does not mean that they could be still present in a few years. Indeed, the majority of trees on the site have been afforded no legal protection, so could be removed at a moment's notice. The openness argument cannot therefore depend on the unknown future of some trees.



Figure 29: Profile rendition of the treehouses

This image, Figure 29, shows the front of one of the so-called trees houses. By contrast, the image below, Figure 30, shows the elevation front and side of one of the horse shelters, which is less than half the height of the so-called tree houses and considerably smaller. That council officers think there is some kind of equivalence between some small, temporary wooden buildings, without lights, and massive, raised, detached houses is difficult to comprehend.

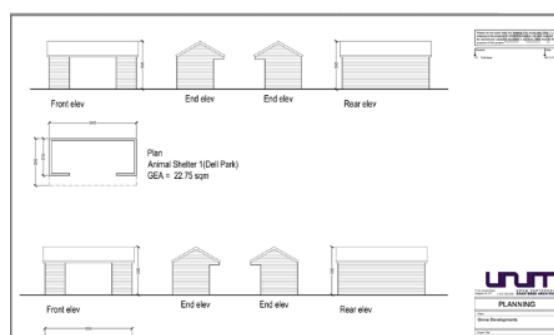


Figure 30: profile rendition of the horse shelters

Each so-called treehouse has an internal floorspace of 125m². It also has a main deck area of 60m² and a front deck area of 13m². So, each so-called treehouse takes up a total footprint of 198m², plus additional landscaping in the form of paths and lighting. However, as explained already, the planning officers have only counted the internal floorspace figure totalling 500m², rather than the 792m² that will be visible. In other words, 292m² of the footprint has been ignored. This is important when considering visual openness, you cannot pretend that people are not able to see decking, 3.25m high steps and 1.2m high balustrades above the decking.

Figure 28, taken from the planning application, shows that the treehouses are, in fact, much larger than shown on the site plan, some 58 per cent larger than illustrated on those diagrams. (N.B. The plans submitted curiously do not show the dimensions of the treehouses, only the dimensions of the stables and temporary buildings due to be demolished.)



Figure 31: plan and artist rendition of one of the so-called treehouses. Note that the steps, air-source heat pump and utilities room at the base of the so-called treehouse and the concrete base have been excluded from the artist's rendition, thereby giving a false impression of visual impact

The site plans in Figure 32, below, shows the smallest possible impression of the so-called treehouses. The wooden caravan and the two temporary horse shelters should be completely disregarded in the site plan shown, for the reasons given. The stables that have been removed should be disregarded because they do not exist, were unlikely to have been lawful buildings and because that area is now a long car park with metal buildings, which it is extremely difficult to argue contributes to the openness of the Green Belt, for obvious reasons. And is not shown on the site plan either! So, the only comparison to be made, in relation to visual openness, is between the new houses, which are larger than the site plan shows and the remaining H-block stables.

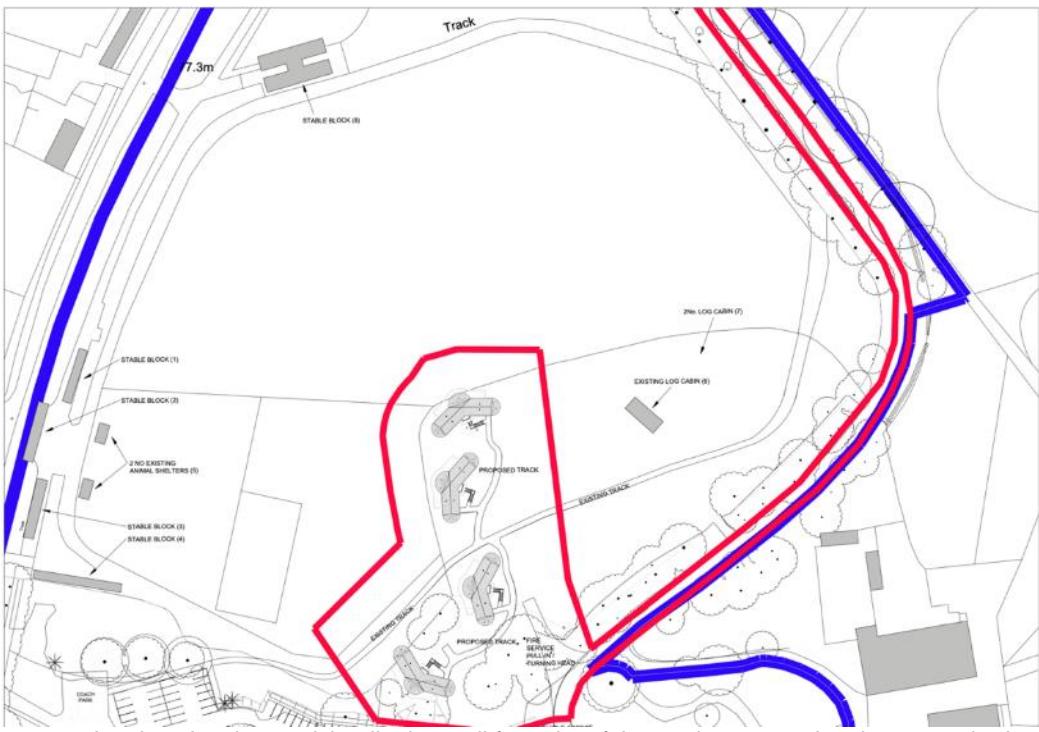


Figure 32: site plan showing a misleadingly small footprint of the treehouses and various unauthorised or temporary buildings

It should also be noted that the site plan has also completely disregarded the five new tennis courts, as well as the off-road Range Rover course, which is already under construction using large concrete culverts. And, as already mentioned, the new car park, plus various shipping containers being used as buildings. It is completely inappropriate that planning officers present a biased site plan which only suits the applicant's interests.

The future?

The H-block stables were built as part of the curtilage of the Apple store. If they were now demolished could something be rebuilt on the same site under permitted development rights or would it probably get permission because it's considered as curtilage? If something was rebuilt by the applicant and retrospective planning permission applied for yet again, would the Arora Group not get it under the special circumstances criteria because in this case it would, in fact, be replacing a previous building? So, removing the H-block stables potentially looks like a short-term gesture that wouldn't prevent re-building a sports pavilion for the tennis courts say. Of course, conditions can be imposed as the planning officers suggest, but what weight would these have if development went ahead and an appeal was subsequently made, given it would be replacing an existing building? Given the history of planning abuses, the planning committee need to fully understand these risks. The fact that no enforcement action has been taken to date on any of the three sites owned by the Arora does not bode well. It wouldn't be surprising if, in future, the H-block stables were replaced with a sports pavilion and toilets. Or if these facilities were built close to where the H-block stables were (if demolished) which could potentially avoid enforcement action based on conditions imposed, but if then counted as curtilage would probably get permission? The planning officers have not informed the planning committee how to prevent the applicant gaming the planning system, which must be expected given past behaviour.

We would like to know if the council officers have checked what is being stored in the wooden buildings the applicant has offered to demolish and if there will be a future application to build more sheds for lawnmowers etc that the Council will then dismiss as de-minimus, as has been done with the new hotel neon sign that was built on Bishopsgate road without planning permission?

It is worth noting that the applicant applied to Surrey County Council in 2021 to move footpaths across adjacent land they own and justified this on the basis of future equestrian activity, including polo. So, the long-term vision for the hotel includes the provision of horses, which begs the question where the horses are going to be stabled. And where all the things currently being stored in the three warehouses that used to be for equestrian use will go if they are used for horses again. One has to ponder where the new stables and field shelters will be built and if this will result in yet another retrospective planning application. Will the council be told and want to believe that it's 'vital' for the hotel that people staying in tree houses can go horse riding too?

The Fairmount hotel website describes the hotel as 'Boasting stunning guestrooms and lavish suites, a variety of dining options, luxurious Spa & Wellness facilities and a wealth of activities within the grounds for you to make

the most of the great outdoors.' What does the 'wealth of activities within the grounds' refer to? What is the applicant planning to do in the grounds next?

We think it is remiss of the planning officers not to look at the pattern of behaviour and advise on what could happen next and how it could be prevented.

The Environment

Very special circumstances to build in the Green Belt depend on the overall balance i.e. good vs. bad or costs vs. benefits, in other words. So, the starting point should be to assess the harm. Harm because it is inappropriate and because of openness and, in this case, also because of environmental damage. The various adjacent sites owned by the applicant in this case are next to Windsor Great Park and were predominantly green woodland and grass. They are clearly important in keeping the character of the Green Belt and for wildlife. The country's wildlife and biodiversity are under serious threat, we should be protecting it and not destroying habitat.

It can be noted that planning application RU.21/0111, at the site, for a variation to planning conditions under RU16/0824, show plans for hedgehog boxes and logs piles for invertebrates, small mammals, reptiles and amphibians in a 'woodland glade'. So, the applicant was clearly aware of the need to make provisions for wildlife on the site, but this application was withdrawn, presumably when the idea for detached houses on concrete bases was thought preferable to a habitat for wildlife.

In addition to the retrospective application for the so-called tree houses, the applicant also recently got permission, via a retrospective planning application, for a large, neon sign that will have damaged the local ecology, which was dismissed by the Council as de minimus. So, the harm to the woodland comes on top of this harm. And it's not the first time the applicant has done things with total disregard for the environment. Or where planning officers have ignored the weight that should be given to unauthorised planning and the harm to nature. For example, spoil was moved from the basement construction of the Fairmont hotel and dumped on Oaklands park, also without planning permission. This must have been equivalent to many Olympic sized swimming pools, again with no thought about the environmental impacts.

The planning officers refer to an Arboricultural Impact Assessment that considers the impact on the existing trees. It's noted some more trees need to be removed (but none of any significance) and that action should be taken to try to remedy the soil compaction. The idea there's been any harm is played down as they report 'It is also not clear whether there was any further tree removal to enable the development.' Why not? It's possible to use aerial imagery and earlier reports, surely, to establish how many trees have been cut down. Why is this harm not one of the offsetting factors considered? The Tree Officer does not object because more trees can be planted around the so-called treehouses. Is it really acceptable, as a planning principle, that someone cuts down a woodland, builds houses and then there's no harm mentioned because of a promise to plant some trees further away? Is that really the precedent the Council wants to establish? Planting saplings is not an immediate ecological offsetting mechanism for the removal of established mature trees. Mature trees take decades if not hundreds of years to accumulate a rich diversity of insects, lichens, fungi and other species – ecological micro-niches not present in tree saplings. There is also a significant probability that many saplings would not survive to maturity.

The report to the planning committee does not explicitly say that trees have been cut down, but implies that some might have been cut down. If only there was some way to tell if mature trees had been removed such as field observations of freshly cut tree logs and stumps (Figure 30).



Figure 33: clear evidence of large mature native trees having been cut down as a result of the so-called treehouse construction.

In relation to harm, the planning officers note that the development 'will add to the overall quality of the area. The development also includes a new high quality soft landscaping scheme to create new areas of planting across the site.' It is debatable how cutting down mature trees and replaced woodland with houses will add to the quality of any area, but there is nothing high quality about Leylandii and they cause actual harm to the environment; they are toxic to the soil biota and are not a useful habitat for British wildlife.

The planning officers say the application is supported by a Preliminary Ecological Appraisal. Even though there is a badger set 30m from the so-called tree houses and there will clearly be human activity and light pollution in the evenings, it is said the development will have no harmful effects on badgers. (It is curious that the badger set is exactly 30m from the new houses, the precise point at which certain planning requirements do not apply.) The applicant has put up a high security fence, for no obvious reason, with spikes along the West side of the Oaklands park site. How is this going to affect the badgers' movement; are they going to be pegged in by security fences on one side and human activity on the other?



Figure 34: Views of the metal spiked fence that will impact paths taken by deer, badgers and foxes

There is discussion of existing trees in the planning officers' report, not the trees that have been removed, and it is stated that 'the PEA considers biodiversity net gain within the application site.' When mature trees are cut down, four large houses built on concrete, the roots of remaining trees damaged, hundreds of non-native, toxic Leylandii planted, and human activity introduced to previously unoccupied woodland, how is a reasonable person supposed to believe that there is a net ecological benefit? Again, the council planning officers risk setting a dangerous precedent in saying that when mature trees have been cut down and large houses built that biodiversity is improved. Even if there is a bit of extra planting here and there around the site, it now contains an enormous hotel, capable of holding over 400 guests who will frequent the grounds, with all the associated cars coming and going, as well as loud music played at events. There are concrete roads, concrete paths, lights, tennis courts etc. No reasonable person could come to the conclusion that the destruction of woodland could result in environmental benefits if some things are planted elsewhere on a site that is becoming overrun with buildings, cars and human activity.

In relation to biodiversity the only mention it gets in the planning officer's report is 'With respect to biodiversity this application is retrospective and has therefore already been carried out on the site and is substantially complete'. In other words, it has been completely ignored, instead of acknowledging that the houses could be removed, the site restored, the badgers could get their woodland back, and the insects, bats and birds could return through careful ecological restoration.

Essentially the approach of the planning officers is to say that trees might have already been cut down, concrete laid, damage to roots done, habitat destroyed etc, but it's already happened so they are not going to worry about it. Yet, when an environmental crime is committed, including felling protected trees then prosecutions should be considered in order to punish the offender and to deter future offences. So, all the environmental harm is completely ignored, yet ecology is a material consideration in planning. According to NPPF paragraph 180. (a) 'if significant harm to biodiversity resulting from a development cannot be avoided... adequately mitigated, or, as a last resort, compensated for, the planning permission should be refused'. The applicant did not provide an up-to-date ecological survey, but there are a number of reports associated with recent, prior applications that highlight the ecological significance of the site. Let us look at some evidence of what has been lost.

The woodland site is strategically located between the Biodiversity Opportunity Areas (BOAs) of Windsor Great Park (TV01) and Runnymede Meadows & Slope (TV02). Biodiversity Opportunity Areas directly meet NPPF for the planning system to contribute to international commitments for halting the overall decline in biodiversity, by establishing coherent ecological networks that are more resilient to current and future pressures (para. 109). BOAs also fulfil NPPF requirements to plan for biodiversity at a landscape-scale by local authorities. The woodland therefore serves as an important 'stepping stone' enabling ecological connectivity between the BOAs of Windsor Great Park and Runnymede Meadows.

The woodland is classified as a 'mixed-deciduous woodland'. The National Environmental Research Council Act S.41 classifies 'mixed deciduous woodland' as a 'Habitats of Principal Importance (Priority habitat)'. Priority habitats are a material consideration when determining planning applications and planning authorities should therefore give appropriate consideration.

A planning officer's report for the 'Redevelopment and refurbishment of the existing hotel, spa and conference facility to provide a 5* facility' (RU.16/0824) states that: 'The invertebrate survey highlighted the importance of some veteran and mature trees, fallen stumps and fallen timber which were considered to be important habitats for some rare and very important species within the site...the survey recommends that existing trees be retained as part of the development proposals. In addition, wider woodland areas within the site were acknowledged as being important features and it is recommended that these wider woodland areas be protected as far as possible'.

The invertebrate survey reports states 'Of the 231 species identified by this survey, 20 (8.7%) are considered here as Key Species. 8.7% is a good proportion of Key Species, and certainly suggestive of an area of high conservation value. Of these, six species have Red Data Book status (2.6%) - a very high figure and although some of these are known to be increasing their distributions, others really are significant... ten species really do merit attention as they are judged still to be of national conservation significance. Some of these, such as *Lymexylon navale*, *Phloiotrya vaudoueri* and *Chrysopilus laetus*, are known from other nearby sites, so the colonies found in Savill Court are likely to be a part of wider populations that add to the viability and significance of these species locally.'

One of the sampling sites was in the woodland where the so-called treehouse are 'Between the south end of the entrance drive and the boundary fence (SU 98238 71814) are several stumps and stacked logs. This area proved particularly productive for saproxylic species with two rare beetles *Hylecoetus dermestoides* and *Lymexylon navale* found on or flying over these stumps... While some of these saproxylic species are well known from the adjacent Windsor Great Park, this is not the case for all (e.g. *Hylecoetus dermestoides*). It cannot be assumed that any species exploiting the dead wood resources at Savill Court have their main populations in Windsor Great Park. The nature of saproxylic insects is that they are often exceedingly local, and can be dependent on a small number of veteran trees. The results of this survey suggest that the veteran and more

mature trees, tree stumps and fallen timber are of sufficient importance that they should not be disturbed or destroy (sic.)'

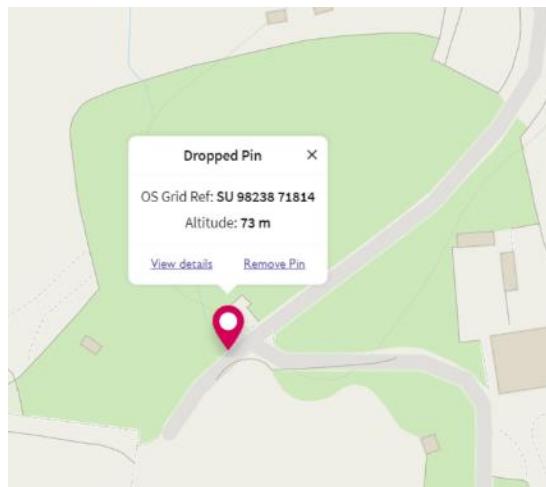


Figure 35: Location of the invertebrate survey carried out as part of the RU.16/0824 planning application

The diagram, above, shows the location of the invertebrate survey within the woodland, just a few metres from the southernmost so-called treehouse. The report goes on to state that 'In the figure below those areas that really should not be destroyed or disturbed are outlined in red. Those areas outlined in blue are complimentary to the red lines, it is desirable that they are retained.' (Figure 36)

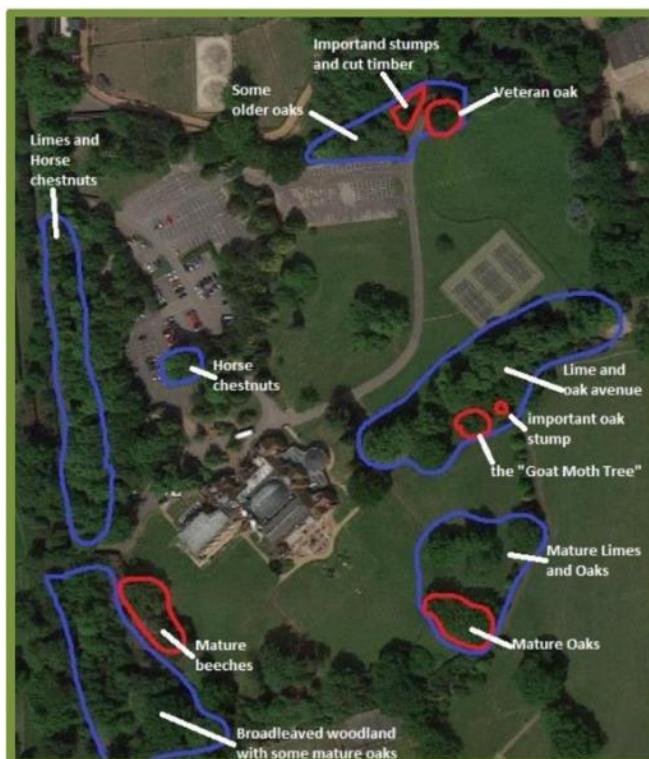


Figure 36: areas identified in the RU.16/0824 invertebrate survey that should be protected. The blue and red boundaries, seen at the top of the image, include the footprint of the southernmost so-called tree house. However, note that the boundary for the RU.16/0824 application did not comprise the whole woodland area.

Not only is the site in the Green Belt it is also designated as a Priority Habitat Inventory.

The report by the council to the planning committee states that 'the application is also seeking permission for the new access and pathways associated with the treehouse lodges', but there is no further mention of these. Why not? Why has the incremental environmental damage not been counted?

It is also worth remembering that the stables and horse shelters were wooden and had no lighting. They could have been home to nesting birds, bats and insects. The so-called tree houses will not be and they will have

lights that interfere with moth and insect populations which has knock-on effects for bats and birds. The applicant has also added lighting throughout the site, without authorisation, that will have impacted on bats.



Figure 37: The drive to the hotel when it was purchased by the Arora Group, on the left, and later after unauthorised lighting had been put all the way along the driveway

It is egregious that the Arora group put up a large neon sign and a huge number of lights without authorisation. What concerns us as much is that the Council has not issued enforcement notices or taken into account the harm that lighting does to habitat and biodiversity. Scientific evidence suggests that artificial light at night has negative and deadly effects on many creatures including amphibians, birds, mammals, insects and plants. Many insects are drawn to light, but artificial lights can create a fatal attraction. Declining insect populations negatively impact all species that rely on insects for food or pollination.

It's clear to any casual observer that a large, green, open space has been significantly degraded by the owners since planning permission was first granted. And that in these circumstances wildlife and nature has been compromised. There is a strong argument against allowing more building work to complete the so-called treehouses and associated paths etc and allowing more human activity in the woodland. Nevertheless, no enforcement notice has been issued and work continues. Yet on reading the planning officers' report one gets the impression that biodiversity and the environment are better since so many mature trees were cut down, large houses built, wooden stables that would have been homes for birds and insects pulled down, a car park built, fields concreted over for tennis courts, toxic Leylandii planted...

The tree houses should be removed and the land restored. It may take time, but the insects, birds, bats and other species will return.

The Economic objective

The officers, in their report for the planning committee, talk about supposed economic benefits, without proper analysis and with flawed thinking.

Specifically, the report for the planning committee states: 'The applicant has confirmed that the treehouses are of considerable importance to the branding and marketing of the hotel and to its commercial success.' And this is given moderate weight. We only have the applicant's word for this. It's important to remind ourselves of the point of planning regulations. Good planning decisions are supposed to be in the public interest and the courts have established that they are not supposed to be made on the basis of personal gain. So, enhancing the profits of the hotel to make the owner richer is not a relevant consideration. Hence, you would have to establish that the business would fail without the treehouses, even under different ownership. It's not the job of a local council to prop up a business if someone else could take over and make it profitable.

The report draws heavily on a 2015 Surrey Hotel Futures Study. Since then we've had Brexit, a pandemic, a war in Europe, the highest inflation in 40 years, falling standards of living and we are about to enter a recession. The council officials have clearly not noticed that the world has changed significantly in seven years. The study is now out of date because of the significant changes and there isn't even any commentary on this. Arguably, no conclusions should be drawn on the basis of an outdated report given significant changes in the economy and the council officials should seek updated market information.

If it is the case that 'further hotel development is vital to support the future growth of the county's economy' as the planning officer's report states (cut and pasted from the 2015 report) then adding four so-called treehouses houses will not address this. In that case, Surrey councils should be looking at where an additional hotel can be sited, not simply a de minimus addition of rooms to an existing facility which already has over 200 rooms. If demand for hotel rooms is that significant then there isn't an argument that the hotel will fail without these four so-called treehouses.

Again, based on the 2015 report, the council officers note that 'many parts of the county are already short of hotel provision to fully meet midweek demand from local companies.' Yet they provide no evidence that companies want their employees to have 'a unique offer for guests seeking exceptionally high standards of accommodation in a natural private setting close to the range of amenities available in the five-star hotel including its extensive spa and wellness centre', as they describe the so-called treehouses in their report to the planning committee. And common sense says this is not the kind of accommodation a business typically wants for employees. The above, again, illustrates the refusal of the council officers to apply logic or analysis, preferring to cut and paste arguments made by the applicant.

Although the planning officers state that the so-called tree houses are vital for the hotel, they have provided no financial analysis. According to the 2021 report and accounts for the Arora Group, it held assets worth £997m and had assets less liabilities of £517m. Turnover for the Group dropped significantly as a result of the pandemic. In the years before Covid it had been around £250m annually, but dropped to £150m in 2020 and £46m in 2021. Now we are living with Covid, travel and hotel occupancy are returning to normal and one can expect the accounts to improve. The planning officers did not present any financial information for the hotel or financial forecasts. It is normally impossible to form an opinion on the viability of an investment without information.

The planning officers want us to simultaneously believe that the 2015 report is still valid, that demand for hotel rooms exceeds supply and hence that the applicant will have a high occupancy rate at the hotel, but at the same time the hotel will fail without the four so-called treehouses. They state that the so-called tree houses are 'vital to its ongoing commercial success' when this runs completely counter their other claims about the buoyant hotel market. The council officers have contradictory positions in the same document.

The Fairmount Hotel website describes the hotel as 'Boasting stunning guestrooms and lavish suites, a variety of dining options, luxurious Spa & Wellness facilities and a wealth of activities within the grounds for you to make the most of the great outdoors.' A stay with lavish suites, a luxurious spa and high-class dining should be sufficient to attract people, surely? The new development does not make a significant contribution to an unmet need given there are over 200 hotel rooms at the site, including 'lavish suites'.

The following is from the Arora Group Facebook page, December 2021: 'We are delighted to announce Arora Group have completed the acquisition of Luton Hoo Hotel, Golf & Spa. The purchase of the 5-star 228 room hotel continues the journey of portfolio diversification for Arora Group and the hotel is well positioned to capture the significant pent-up demand from leisure and corporate travel from domestic and international markets.' In other words, the five-star hotel sector does have a buoyant future, according to the Arora Group. So, there is no economic imperative to build the so-called treehouses.

Decision makers have sometimes been willing to accept arguments about significant economic benefit to an area. The planning officers in this case draw parallels with Legoland in Windsor. It is worth noting that the planning officers recommended the application was refused, it was councillors who decided on the extension of the visitor attraction with extra rides and a holiday village in May 2018. Whilst increased spending in one borough as opposed to another does not help the UK as a whole, something like Legoland arguably brings in tourists from abroad as well and a case could be made for wider economic benefits. This simply doesn't compare with four so-called treehouses in Dell Park. The fact that more hotel rooms are being built at Legoland actually lessens the need for more rooms at the Fairmont hotel, which offers day-trip packages to Legoland!

The creation of new jobs is stated as a benefit. The Government is clear, as set out in the Treasury Green book, that creating new jobs is not a benefit to the UK, nor is losing jobs a loss to the UK. The Green book makes clear that the creation of new jobs is only a benefit to the UK in exceptional circumstances, where it addresses specific problems of structural unemployment in deprived areas. Runnymede has a below average unemployment rate and the Runnymede population has an above average education level. In other words, locals don't need more hotel jobs. Following standard government guidelines on cost-benefit analysis, there is no benefit to more hotel jobs in Runnymede and it should not be stated as such in a planning report.

Whilst 'productivity' is said to be important by the planning officers and it's said significant weight must be attached to it there is no evidence of how this affects productivity in the borough or more widely. Let's consider this. There is no analysis to even show that the so-called treehouses will bring extra people to the hotel. There is a lot of text which sounds like marketing material, but no analysis. Is the primary business of the hotel weddings, for example, in which case guests will simply book a hotel room instead of a tree house? What evidence is there that the so-called treehouses will bring additional guests to the hotel that wouldn't have stayed there otherwise? Regardless of the marketing, this is not a tree-top safari experience, it's just marginally nicer hotel rooms.

Without evidence, it can easily be argued that the so-called tree houses decrease productivity in the area. If it takes at least five more people working in the hotel (as stated in the planning committee report) to service these houses, but the borough doesn't have any more hotel guests as a result (because they would have stayed in the

main hotel otherwise) then manpower and other resources are being wasted. According to Savills Research, 30 per cent of hotel operators have had to reduce service levels because of the excess vacancies in the hotel sector, which currently stand at around 180,000. If a hotel was built with four extra rooms it wouldn't need five extra staff just for those rooms, so adding four extra rooms in the form of detached houses, requiring at least five extra staff, is clearly not helping the Surrey economy, especially during a time of labour shortages. The reduction in the productivity of the borough should have been noted in the officials' report, not false claims to the contrary.

Increased local spending is not a benefit to the UK. The purpose of a good planning framework is to make the UK and its citizens better off, not to persuade someone to shop in one borough or one pub as opposed to one in the next borough. If I buy my shopping in Reading rather than Portsmouth, the UK is no better off. Can one even argue that increased local spending is a benefit to Runnymede? Even if spending is increased in Runnymede does that money stay in Runnymede? If a hotel guest pops into Waitrose in Egham what is the marginal benefit to Runnymede? With most businesses owned by companies headquartered elsewhere, any extra profits will flow outside the borough. Furthermore, the attractions where visitors are likely to spend their money are mainly outside of the borough such as Legoland, Ascot races, Windsor or after a train trip to London. There is no analysis to indicate what level of additional spending might occur in the borough, even if one dubiously counts that as a benefit of planning policy. Clearly the so-called economic benefit to the borough of four additional hotel rooms is de minimus.

The planning officers have selectively quoted from paragraph 81 of the NPPF which says 'decisions should help create the conditions in which business can invest, expand and adapt'. The following sentence that they omit is 'significant weight should be placed on the need to support economic growth and productivity...' They have ignored the essence of this section of the planning guidelines. There is clearly a big difference between a new university building or a semi-conductor factory and four luxury, so-called treehouses for uber-rich hotel guests. And whilst planning decisions are supposed to aid economic growth and productivity, tying up a disproportionate number of people to look after a handful of very rich people at a time of severe labour shortages will, in fact, reduce productivity and could reduce economic growth in the area.

Interestingly there was a pub walking distance from the hotel on Wick Lane (The Sun Inn) which could have benefited from extra business from hotel guests, but the applicant has purchased this and received planning permission to turn the building into staff accommodation.

The council officers note 'It is anticipated that long-standing Fairmont customers used to central London stays at the Savoy may want to progress their city experience into a nature based one within the Fairmont brand.' So instead of arguing that this development is in the broad public interest, the main purpose of planning policy, it seems to be of benefit of extremely rich and arguably mostly foreign nationals. And at the expense of the Savoy, thereby not generating any benefits for the UK, merely pulling some business out of London into Surrey.

So, planning officers have claimed the development makes the economy more productive when it does the opposite, counted jobs as a benefit when they are not and erroneously talked about benefits from increased local spending. Thankfully no weight has been given to these false claims. The concern is the importance given to the extra business that will be enjoyed by the hotel, implying that these so-called tree houses are vital for the hotel, in complete contrast to claims that there aren't enough hotel rooms in Surrey, suggesting that occupancy and success won't be a problem. If weight is given to the notion that four so-called tree houses are vital for the future of the hotel then what happens when the applicant builds another six, as discussed in the marketing for the hotel? If he claims that four weren't sufficient and that ten are essential for the success of the hotel then what? Either the original case for the hotel still stands, there is a shortage of hotels and the new hotel will succeed or there isn't demand for so many hotels in Surrey any more, in which case the business should be sold and the buildings repurposed. From the information presented it seems that the so-called treehouses will simply make the applicant more money and not provide any public benefit and planning decisions are not supposed to be in the interests of an individual.

Furthermore, we cannot understand how more lodges at Legoland Windsor are given weight to the planning decision at this site. How is this a benefit to compensate for the loss of Runnymede's Green Belt? The planning officers are clutching at straws to find things that will tip the balance in favour of the so-called treehouses.

So, the planning officers have made a complete mess of the economic analysis and appear to have made misleading or, at best, contradictory statements about why the so-called treehouses are needed. They certainly haven't done anything to prove they are in the public interest.

The Public

As stated at the outset, the whole point of planning policy is for the public benefit.

It is clear from the submissions that the council officers received that the public was interested in:

- the loss of the Green Belt;

- the loss of woodland;
- the damage to wildlife; and
- repeated breaches of planning law.

The public was not concerned about five extra jobs at the hotel or the small number of extra guests stopping to fill up their cars at the BP garage on the A30 roundabout. The public hadn't noticed any benefit from some stables being replaced by a car park with metal buildings or some horse shelters being removed. The public was not concerned about extra profits for the applicant.

There is no mention in the report of the harm done to local residents from additional noise. The music from the Fairmount hotel can be heard by residents a mile away! Instead, despite Policy EE1 of the Runnymede Local Plan which requires development to have no adverse impacts on the amenities of neighbouring property, they simply state it's not considered to have any harmful impacts. Again, this appears to be an obvious omission.

A legal perspective

The NPPF marked a change from previous Green Belt policy in that it defines all development as inappropriate unless one of the listed exceptions applies. None of the listed exceptions applies, in this case. However, the planning officers argue that there are very special circumstances. If that approach is taken, it's an agreed principle that the significant harm must then be outweighed by very significant benefits. Even if harm is weighed up against benefits, in law, the following are relevant in this case:

- 1) All harms should be counted, not just harm to the Green Belt;
- 2) Temporary buildings should not be counted as buildings;
- 3) Intentional unauthorised development in the Green Belt should be a material consideration;
- 4) Shipping containers should be counted as buildings;
- 5) A car park needs planning permission and a new car should be counted as harmful in reducing the openness of the Green Belt;
- 6) Differences in the height, size and type of the new and old buildings should be taken into account;
- 7) Clarity is required in relation to the timetable for the baseline and what additions to the site have occurred since the stables were removed;
- 8) Evidence is needed that the demolished stables had planning permission and therefore count as buildings, only lawful development should be counted;
- 9) The profit of the hotel is not a benefit and no weight should be given;
- 10) There has been a failure to involve the Forestry Commission and issue a tree replanting order;
- 11) Visual impact and preservation of the openness of the Green Belt should be addressed;
- 12) There has been a failure to investigate and enforce breaches of the planning laws;
- 13) Weight should not be given to what happened elsewhere, as this is not a benefit to the site; and
- 14) There appears to be bias in the planning officer's report

By neglecting all of the above points the approach by the planning officers has been seriously flawed.

The above points are discussed in more detail, below.

Legal general background - Development is inappropriate unless one of the listed exceptions applies.

The interpretation of paragraphs 89 and 90 NPPF, and the exceptions to inappropriate development in the Green Belt was made clear in *Fordent Holdings vs. Secretary of State for Communities and Local Government (2013)*:

'A material change of use of Green Belt land was capable of falling within the scope of paragraph 81 of the National Planning Policy Framework, but would not by definition be appropriate development as a result. Rather, such a change of use would be a material consideration in determining whether there existed very special reasons for permitting otherwise inappropriate development falling outwith the terms of paragraphs 89 and 90 of the NPPF.'

The correct approach to paragraphs 89 and 90 of the NPPF was set out in *R (Timmis) v Gedling Borough Council & Westerleigh Group [2015] EWCA Civ 10* which concerned whether the creation of a cemetery is inappropriate development in the Green Belt. The second appellant, Westerleigh, had applied to the LPA for planning permission for the development of a cemetery and crematorium in the Green Belt. The second respondent AW Lymm (The Family Funeral Service Ltd) had made a competing application for the development of a crematorium, within a cemetery, in the same area. The first respondent Mrs Timmins objected to both. The LPA granted permission on Westerleigh's application but refused that of AW Lymm. Mrs Timmins and AW Lymm brought judicial review proceedings which had been successful at first instance. Dismissing the joint appeals, Richard LJ, giving the leading judgment, remarked that NPPF para.89, as well as para.90, was properly to be read as a closed list. Para. 89 stated the general rule that the construction of new buildings was inappropriate development and set out the only exceptions to that general rule. The NPPF did not give any scope to local

planning authorities to treat development as appropriate if it did not fall within para.89 or para.90. In particular, there was no general test that development would be appropriate provided it preserved the openness of the green belt and did not conflict with the purposes of including land within it. Had such a general test been intended, it would have been spelt out expressly.

The planning officers do not dispute the above. So, we are only discussing very special circumstances in this case.

1) All harms must be counted

The existence of very special circumstances does not make development appropriate. The case depends on the harm to the Green Belt together with other harm being outweighed by other benefits. However, the planning officers have not included all the other harm done by the development. Various benefits are listed and some are given weight. The extra business for the hotel is counted as a benefit, for example. However, none of the additional harms are counted. It's been established, in case law, that all harms should be counted. If you can count any manner of benefits not related to the Green Belt then it has been ruled, logically, you can also count any harm over and above the harm to the Green Belt. Hence the removal of trees with preservation orders, the removal of other trees, habitat and the loss of biodiversity, as well as the damage done by planting Leylandii toxic to wildlife and lighting should all be recognised in the planning decision as forms of harm.

The Court of Appeal ruled that a planning inspector was correct to include harm other than harm to the green belt in the planning balance, when deciding that "very special circumstances" did not exist to justify plans for inappropriate development in the Green Belt. Aviation company Redhill Aerodrome Limited (RAL) submitted plans to Tandridge District Council and Reigate and Banstead Borough Council in July 2012, for the replacement of three grass runways at Redhill Aerodrome in the Surrey Green Belt with a single, hard-surfaced runway. When the plans were rejected, RAL appealed to the Planning Inspectorate. Planning inspector Diane Lewis dismissed RAL's appeal, deciding that the proposals constituted inappropriate development on Green Belt land and that the "very special circumstances" required for the approval of such development under UK government planning policy did not exist. Paragraph 88 of the National Planning Policy Framework (NPPF) says that "very special circumstances ... will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".

In her [decision letter](#) (28-page / 246 KB PDF), Lewis interpreted the words "and any other harm" in paragraph 88 to mean any harm relevant for planning purposes, and included factors unrelated to the green belt in the planning balance against allowing the proposals. This approach accorded with that taken in a [key judgment under previous planning policy](#). The inspector said that she had followed the previous judgment because the wording in the NPPF was "very similar" to that in the superseded policy, and that "this approach is reflected in decisions by the secretary of state since the publication of the NPPF".

A High Court judge [allowed an appeal](#) against the planning inspector's decision, concluding that "it was not right [of Lewis] to take the identified non-Green Belt harms into account". The judge said that there had been "a considerable policy shift" between the superseded policy and the NPPF and that the judgment followed by the planning inspector "was taken in a different policy context where there was greater scope for flexible interpretation".

Lords Justices Sullivan, Tomlinson and Lewison [overturned the High Court judgment](#), deciding that the approach of the planning inspector to the definition of "any other harm" had been correct. In his leading judgment, Lord Justice Sullivan said that the NPPF did not represent a significant change in Green Belt policy, noting that while "the text of the policy has been reorganised ... all of its major characteristics ... remain the same". In relation to paragraph 88 of the NPPF, Lord Justice Sullivan noted that: "Not only are the words 'any other harm' in the second sentence of that paragraph unqualified, they are contained within a paragraph that expressly refers, twice, to 'harm to the green belt.' When the policy wishes to restrict the type of harm to the Green Belt it is careful to say so in terms."

Lord Justice Sullivan was critical of the approach of the High Court judge, who had appeared to say that, while certain non-Green Belt factors could be taken into consideration in a "very special circumstances balancing exercise" when they weighed in favour of the proposed development, they should be ignored if they weighed against it. "I accept the appellants' submission that this imbalance is illogical", said the appeal judge. "If all of the 'other considerations' in favour of granting permission, which will, by definition, be non-Green Belt factors, must go into the weighing exercise, there is no sensible reason why 'any other harm', whether it is Green Belt or non-green belt harm, should not also go into the weighing exercise."

Lord Justice Sullivan rejected RAL's argument that, by taking into account less than severe transport harm in her consideration of whether to refuse the application on Green Belt grounds, the planning inspector had "cheated"

the applicant of the benefit of a policy within the NPPF. Paragraph 32 of the NPPF says that development "should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe". However, the appeal judge said that, regardless of whether or not an individual harm crossed a threshold for refusal on its own grounds, it could be a "material consideration" included in the balance when deciding whether the proposal should be refused due to harm to the Green Belt. Lords Justice Tomlinson and Lewison agreed with Lord Justice Sullivan.

2) Temporary buildings

Common sense says that temporary buildings cannot be counted as buildings otherwise all manner of planning permission would be granted for the removal of caravans etc. There are examples, in law, where people have tried to argue that a house can replace a caravan and failed.

In *John Turner v SSCLG [2015] EWHC 2728*, the court considered the sixth exception, which reads: "limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on openness of the Green Belt and the purpose of including land within it than the existing development." The claimant sought planning permission to replace a mobile home and vehicle storage yard with a three-bedroom bungalow. On appeal, the inspector held that the proposal did not come within the sixth exception because it would have a considerably greater impact on openness. The claimant argued that this conclusion was wrong, because the inspector had failed to assess the relative sizes of the existing and proposed development. The bungalow would be smaller in volume and so could not have a greater impact on openness. The court rejected this argument. Although relative size was material, it was not determinative. The mobile home and trucks were moveable whereas the bungalow was permanent.

3) Intentional unauthorised development

The planning officers should be aware that intentional unauthorised development is a material consideration because of the 2020 judgement in the case between Hughie Sykes and the Secretary of State for Housing, Communities and Local Government and Runnymede Borough Council, in which the ruling stated: 'In balancing these opposing considerations and their respective weight, however, I consider that the Green Belt harm supplemented by the weight arising from the intentional unauthorised nature of the development is not clearly outweighed by the weight of the other considerations. It follows that the very special circumstances necessary to justify a grant of planning permission for the development in the Green Belt do not exist. The development therefore conflicts with LP Policy GB1 and the development plan read as a whole, and with national planning policy.'

4) Shipping containers are buildings

The planning officers should have taken into account *West Lancashire Borough Council v SSCLG [2009] EWHC 3631*. This ruling notes that shipping containers are akin to buildings and have an effect on the openness of the Green Belt. This has been ignored, in this case because of the containers, where once there were stables whose removal is said to enhance the openness of the Green Belt. The ruling also established that if "a proposal has an adverse impact on openness, the 'inevitable conclusion' (see para 22 of the judgment) is that it does not comply with a policy that requires openness to be maintained. A decision maker does not have "any latitude" to find otherwise, based on the extent of the impact. The Judge held that there was no scope for interpreting this policy in a way that would be satisfied by a scheme which would impact on openness, but which could be mitigated by conditions so that the impact would be minimal. The duty to maintain openness, in his Lordships view, was an absolute one. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The most important attribute of Green Belts is their openness. Material changes of the use of land are inappropriate development unless they maintain openness. In other words, the planning officers appear to have erred in ignoring that the car park and shipping containers are, in effect, buildings affecting the openness of the Green Belt and have ignored the change of use of the land from equestrian use.

5) A new car park in the Green Belt requires planning permission

There are many examples of car parks in the Green Belt requiring planning permission and examples of planning being refused. For example: Appeal Decision August 2020 by an inspector appointed by the Secretary of State and Doubletree By Hilton, Bristol South: 'In accordance with Paragraph 143 of the Framework I have determined that the appeal proposal would be inappropriate development and would by definition harm the Green Belt. The proposal would have an adverse effect on openness and in accordance with Paragraph 144 of the Framework I have attributed substantial weight to this harm. The proposal would also amount to harm to the landscape character and appearance of the area.'

6) Changes in size and type

The planning officers regard the removal of some stables, some cabins, which may or may not have existed, sometime in the past, an existing wooden caravan on wheels and two mobile horse shelters as contributing to the openness of the Green Belt and that this constitutes a very special circumstance, along with the removal of the remaining stables. And that this significantly outweighs the harm done to the Green Belt from the construction of four large, detached houses. However, they have failed to take into account the very significant difference in the size and type of buildings. In the appeal by Mrs Peach against the decision of Whychavon District, February 2020, for the erection of three dwellings (bungalows) to replace larger, derelict agricultural buildings and concrete hard standing this was a factor. The ruling stated 'Openness is one of the essential characteristics of the Green Belt. It is the absence of buildings or development. The construction of the dwellings would involve the demolition of existing dilapidated farm buildings, along with removal of concrete hardstanding. This would result in a reduction in the volume of built development on site, and in a linear form. However, by reason of their agricultural design of fairly open construction, the existing larger buildings on site are not comparable in form to the dwellings proposed. The existing concrete shed structure, although more solidly built, is far smaller than the proposed dwellings. Thus, I find that overall that there would be modest harm to openness.'

By similar reasoning, replacing stables with buildings 4 meters higher stretching across a much larger area does cause harm to openness and is a factor. Given the scale and nature of the buildings compared to the horse shelters, cabin and stables it's surely impossible to think otherwise.

To further illustrate that the difference in volume and height between the demolished structures and the tree houses ought to be counted, the inspector's appeal decision in Appeal between Mr C Robinson against the decision of City of York Council makes it clear that volume and height are a material consideration: 'based on the proposed elevations on the submitted plans and from what I observed of the existing dwelling on my site visit, I consider that the approximate volume of the proposal would be materially greater than that of the dwelling to be replaced. Indeed, the Council's delegated report estimates that the proposal would be approximately 11% larger'.

7) Baseline

Often sites have complex histories, so it is not uncommon for a baseline to be established and frequently the applicant and the local authority can have different starting points, depending on what was built when and what past decisions were made. For example, an appeal decision by an inspector in May 2021 in relation to Land at Grundy Fold Farm, Horwich, Bolton. The inspector stated 'Whilst I note the appellants' case in respect of the fallback position and the likelihood of the 2014 permission being built out insofar as it can in the event both appeals fail, a comparative assessment between the effects of the appeal developments and the fallback position is a separate consideration to take account of in assessing whether or not very special circumstances have been demonstrated. This is a matter to which I will return in due course. I must first make an assessment of the effect of the appeal developments against an appropriate baseline. In this instance I find the Council's position that the baseline should be the existing lawful development on the site as set out in the agreed note received on 18 March 2021, more compelling and as such have assessed the appeal developments on that basis.

The conclusion by the inspector that baselines should be existing lawful development on the site seems perfectly reasonable and should be used as a template.

In this case, the planning officers have noted that the stables were removed 'from the site earlier in 2021' and 'two other identical residential log cabins were previously removed from withing the woodland area following acquisition and development of the site by the Arora Group.' If the sensible approach explained above is ignored and the baseline is the acquisition of the site by the Arora Group then the additional 600m² added to the hotel when the planning permission was revised for demolition and rebuild should be counted. The planning officers have not discussed any of the other additions to the site since then, such as the tennis courts, the car park, the containers or the partly constructed off-road course.

8) Lawful development

As noted by the planning inspector in the above case, it seems sensible to only include lawful development in a baseline, the planning officers should demonstrate, therefore, that the stables near Wick Lane had planning permission before they were demolished to build a car park.

9) Private profits aren't a benefit

The planning officers have stated 'The applicant has confirmed that the treehouses are of considerable importance to the branding and marketing of the hotel and to its commercial success.' With the planning officers and the applicant being confident that the 2015 Surrey Hotel Future Study is still valid there can be no question that the original decision to build the hotel was correct. If the hotel was unable to fill its rooms then it either needs to be under new ownership or repurposed as a company HQ etc, it is not the job of the planners to prop up

companies that can't manage a good business successfully when, apparently, there's overwhelming demand for hotel rooms in Surrey.

As stated at the outset of this document, the government's NPPF states, in relation to courts' consideration of material planning consideration, 'in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations.' In other words, planning is about what is in the public interest and not about the benefits to the owner of a business or an individual. So, what is material in relation to a planning decision should reflect public interest and the weight given to each material consideration should reflect the public and not the private interest.

10) Where's the tree replanting order?

Harm has occurred and all harm should be counted against the benefits of the very special circumstances, but the planning officers cannot see any harm, other than the obvious harm to the Green Belt. It's not the way other councils have reacted. In 2019, plans to build 12 homes on a Green Belt site where protected trees were "illegally cleared" have been refused. The application, submitted by developers JP & MJ Gatrell Partnerships, was to build on land next to Catherine Road, Benfleet. Planning officers at Castle Point Council slammed the plans as "inappropriate development" of a Green Belt site which would have an adverse impact on the character of the area. A spokesman for the department said: "The applicant failed to demonstrate any very special circumstances to justify why the proposal might be permitted. "The applicant's assessment of the ecological impact of the development has not taken into account the tree replanting notice issued by the Forestry Commission following the loss of woodland arising from unlicensed tree felling."

The Forestry Commission should have been given an opportunity to issue a tree replanting order and that should have then been taken into account the planning decision. Other councils involve the Forestry Commission and take into account tree planting orders, so why not Runnymede?

11) Visual impact, openness and preserving openness

The planning officers think the four so-called treehouses look like trees because they are clad in wood 'with the vertical supports and stairs all being of wooden appearance like the trees.'... 'It is considered that there will be no greater impact on the openness of the Green Belt.' They don't look like trees to us! The planning officers also state that the so-called treehouses 'are also sited within a small part of a woodland copse which is not publicly visible.' However, they fail to mention that many trees have been cut down and the treehouses are not within a woodland copse, they are currently shielded from sight by some Leylandii conifers which look like they've been put up temporarily to hide the development. And they are visible from the paths on the other side, as shown in the photographs above. The planning officers do not appear to have given proper consideration to the visual impact or the legal definition of the preservation of openness

SSOB v North Yorkshire CC [2018] EWCA Civ 489: '...the advice given to the committee by the officer was defective... in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt... visual impact was a potentially relevant and potentially significant factor in their approach to the effect of the development on the "openness of the Green Belt", and hence to the important question of whether the proposal before them was for "inappropriate" development in the Green Belt – and, indeed, in implying that the opposite was so. She ought to have advised the members that they were entitled to take visual impact into account when determining that issue...'

'To exclude visual impact, as a matter of principle, from a consideration of the likely effects of development on the openness of the Green Belt would be artificial and unrealistic.... A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as the spatial effects. Whether, in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects on the openness of the Green Belt, and, if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.'

In Amanda Boot v Elmbridge Borough Council (2017), a new sports facility caused harm to openness of the GB and so was not appropriate development; it was inappropriate. It is worth noting the following: 'First paragraph 89 of the NPFF permitted less than significant harm to the openness of the Green Belt, it would say so. It does not. To be appropriate, new sports facilities must "preserve the openness of the Green Belt". The ordinary meaning of the word 'preserve' is defined in the OED as meaning, 'to keep safe from injury, harm or destruction' In South Lakeland DC v Secretary of State for the Environment [1992], at 150 Lord Bridge approved the passage from the judgment of Mann LJ in the Court of Appeal that concluded: " The statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved."

12) Failure to take enforcement actions

It appears that the planning officers have failed to take enforcement action in relation to four, large tree houses, a fifth raised building under construction in the woodland, a car park, a metal building and two shipping containers in the new car park, a shipping container near the remaining two cabins, five new tennis courts, various street lights around the site and the construction of a course for Land Rovers.

The revised NPPF was introduced in February 2019. Paragraph 58 of the Framework states that: 'Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate. In addition to the statement made in the NPPF, the Town and Country Planning Act 1990 provides the main legislative background regarding breaches of planning control along with the Planning Practice Guidance document entitled "Ensuring effective enforcement" which was published on 6 March 2014.'

13) What happened somewhere else isn't a benefit

In essence, a decision based on very special circumstances is weighing acknowledged harms against possible benefits. And if the benefits are very significant, which will only happen on rare occasions, then the planning permission can be granted. So, it's curious that the planning officers given moderate weight to 'new specialist hotel accommodation granted at Legoland'. It's curious for several reasons. Firstly, it's clearly not a benefit to Runnymede. Secondly, the planning permission was granted despite advice from planning officers that the very special circumstances were not more important than the harm done. And, also, because more hotel accommodation in neighbouring Windsor lessens the need for it in Englefield Green. Whilst it might be noteworthy, no justification is given for adding this to the good side of the scales to balance the harm to the Green Belt. We would like to see a relevant precedent for this.

14) Bias

In law, consideration can be given to bias by planning officers. We believe there has been conduct which gives the appearance of bias. Our reasons are, inter alia, that the planning officers have simply taken the applicant's word for the importance of the so-called treehouses, without seeking out any supporting evidence and with no analysis. And that, furthermore, their own statements about the need for the so-called treehouses is contradictory, given the emphasis on how the hotel is likely to be financially viable, as per the original planning application, given the buoyancy of the hotel market in Surrey. In addition, it's not appropriate to count private benefits in a planning decision, which appears to be the case here. The removal temporary buildings have been counted as a benefit to the openness of the Green Belt, despite clear references in the planning guidelines that temporary buildings should not be counted. The planning officers have ignored the addition of a metal building and three freight containers, plus a car park when planning decisions have shown these are buildings and hence reduce the openness of the Green Belt. It is obvious that the removal of the stables in 2021 did not increase the openness of the Green Belt because they've been replaced with a car park and metal buildings. Decisions at appeal have also shown that the comparability of buildings matters and this has not been taken into account in terms of design and size. They have ignored how the openness of the Green Belt has also been harmed, on the site, by the addition of five tennis courts, and some kind of assault course for off-road vehicles and another shipping container. Harm has been done by cutting down trees with preservation orders and putting up extensive lighting. The planning officers have ignored this harm and all other environmental harms, and the potential for more noise.

The expectation is that very special circumstances that outweigh all the harm done by building in the Green Belt would be a rarity, as can be seen from planning applications, decisions and appeals. It's not uncommon for people to have green fields with caravans, horse shelters and stables. If their removal becomes a new norm for very special circumstances then no land is safe from development. It is hard to understand why planning officers would ignore so many precedents and the evidence of their own eyes.

Harm vs. benefits

So, let's sum up by looking at the public interest in terms of harm vs. benefits, which is what a planning decision should boil down to.

In terms of the harm from the unauthorised development we have:

Loss of Green Belt from four, large detached houses;
Intentional unauthorised development;
Loss of visual amenity;
Mature trees cuts down;

More trees due to be cut down;
Remaining trees compromised due to root damage;
Environmental damage/ loss of habitat/ damage to soil/ harm to wildlife;
Reduced area for the nearby badger set to use;
Harm to insects/ moths from lots of lighting on roads, paths and from the new detached houses;
Knock-on harm to birds and bats from a lower insect population;
Interference in nocturnal behaviour of wildlife from extensive lighting;
More damage if the extra paths etc are built and there's more human use of the woodland;
A new concrete car park with three metal buildings;
Five new tennis courts, with flood lights;
Planting of conifers etc which provide a sterile environment that may damage wildlife;
A course for Range Rovers under construction;
A further shipping container being used as a building;
Noise from more guests, paddle tennis and an off-road car track;

In terms of benefits, we have:

Two wooden cabins supposedly wheeled off the site;
An offer to wheel an existing wooden cabin off the site;
An offer to remove two mobile horse shelters;
The historic removal of some wooden horse stables, which perhaps were unlawful;
An offer to remove a stable block, over 100m from the development.

In terms of future risk, we have:

Further unlawful development; there is an obvious need for a toilet block at a minimum;
Possible removal of the earth bank and Leylandii currently screening the tree houses;
Unknown development on the adjacent 100 acres, given the applicant requested to move footpaths;
A precedent allowing other landowners to build on the Green Belt, by first using temporary buildings.

Even disregarding the fact it's not appropriate to count caravans and mobile horse shelters (otherwise the planning system could be gamed by anyone), this hardly passes the test that the benefits significantly outweigh all the harm done. Even ignoring the fact that the planning officers haven't counted most of the harm done – the intended unauthorised development, loss of trees, environmental harm, a new car park/ buildings, additional unauthorised development – it's not possible to argue that the benefits of removing the remaining horse stables in anyway compares to four large, detached houses in the Green Belt.

Despite the best efforts of the planning officers to be creative, excluding what doesn't suit their case and counting things they shouldn't, we have exposed the truth which would have been apparent to anyone looking at this application from the outset.

Conclusion

The applicant has engaged in salami tactics with numerous incremental planning applications and retrospective planning applications whilst the Council does not appear to have properly applied planning guidelines designed to protect the Green Belt. The net result is that a once green area, home to wildlife, providing green space next to Windsor Great Park has been trashed. Large buildings, roads, lighting and the planting of conifers and laurel, known to create the most sterile of environments for wildlife, mean this area of Green Belt no longer provides the benefit it once did. The key planning policy objectives of public interest have been largely ignored and further damage is being done to the site. A dangerous precedent has been set. The majority of the public demand answers, want damage reversed and habitat restored. They want to see the Council adopt the processes and procedures that protect the public interest, in line with planning policy. Planning decisions should not solely make certain individuals richer.