

# EPSOM HOSPITAL SITE, DORKING ROAD, EPSOM, KT18 7EG

Rebuttal Proof of Evidence:

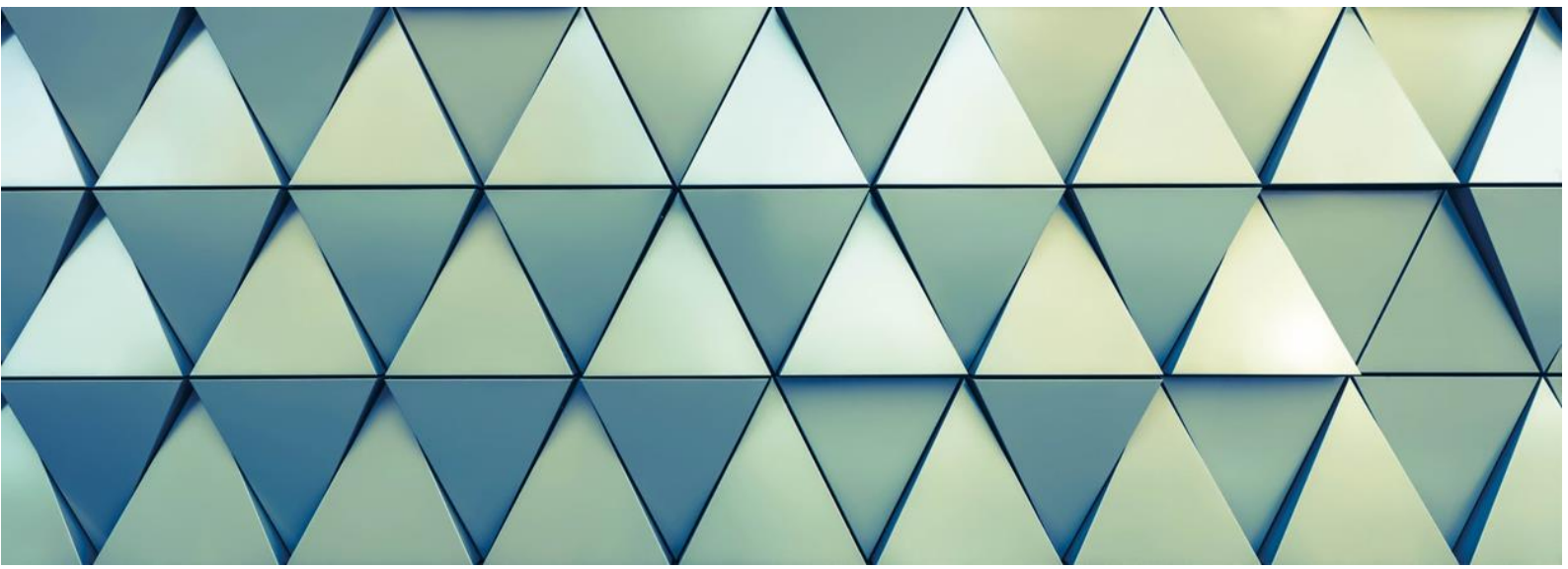
Tim Spencer

Town and Country Planning Act 1990  
Planning and Compulsory Purchase Act 2004

References:

- [Appeal A](#)  
Epsom & Ewell Borough Council: 19/01722/FUL  
Planning Inspectorate: APP/P3610/W/21/3272074
- [Appeal B](#)  
Epsom & Ewell Borough Council: 21/00252/FUL  
Planning Inspectorate: APP/P3610/W/21/3276483

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## 1.0 Introduction

1.1 This Rebuttal Proof of Evidence is prepared in response to the evidence set out in the Proof of Evidence of Mr Kiely, on behalf of Epsom & Ewell Borough Council. I do not seek to repeat matters set out in my main Proof of Evidence. The absence of comment on any matters not dealt with within this Rebuttal should not be construed as agreement on statements made by Mr Kiely.

## 2.0 Updates to the NPPF (Paragraphs 3.1 to 3.13)

2.1 The Heading above paragraph 3.4 of Mr Kiely's proof refers to the 2019 NPPF; however, the sub paragraphs to "NPPF 2019 Policy" refer to the 2021 NPPF.

2.2 Mr Kiely states in his paragraph 3.2 that the changes to the NPPF introduced on 20 July 2021 are critical to the determination of this Appeal. It is the Appellant's opinion, for the reasons set out below, that the revisions do not materially affect any of the key judgments that the Inspector will need to make in this case.

2.3.1 Under Paragraph 8, the definitions to the social and environmental objectives of sustainable development have been revised. The social objective has introduced a requirement to create 'beautiful and safe places'. This objective is reinforced through the revisions to paragraph 126. As evidenced in the Appeal documentation the proposal has progressed in consultation with the LPA to deliver a high quality scheme that is considered to enhance the appearance of the local area and contributes to the delivery of the revised NPPF objectives. The Appellant notes that no definition of 'beautiful' is provided within the NPPF and this is therefore a subjective rather than an objective judgment.

2.3.2 The environmental objective wording has also been strengthened with a requirement to 'protect and enhance' the environment and to 'improve biodiversity' (where the requirement was previously to 'contribute to' protection and 'helping to improve' biodiversity). As set out in the Appeal documentation, the Proposed Development will protect and enhance the environment and will offer clear improvements to

biodiversity through the introduction of new landscaping on a site that is currently predominantly occupied by built form and hardstanding. In support of the added emphasis of the NPPF and to confirm the biodiversity enhancements of the Proposed Development, the Appellant has provided Biodiversity Net Gain Calculations, which demonstrates that the Appeal Schemes will deliver a significant Biodiversity Net Gain of 88%, (these calculations are attached at APP/R01 – Biodiversity Net Gain Calculations).

2.3.3 Paragraph 131 introduced a new paragraph which emphasises the importance of trees to the character of an area and the quality of environments and it includes a requirement for new streets to be tree-lined. The Proposed Development will be an exemplar in meeting this objective with the proposed landscaping approach with the tree planting along Woodcote Green Road, being enhanced in quality and number of street trees. The central pedestrian route through the Appeal Site is similarly in accordance with new Paragraph 131 with significant new trees. The communal and private outdoor spaces are also improved with new tree planting. The Applicant has worked with the LPA's tree officers to agree appropriate tree species for the Appeal Site.

2.3.4 Paragraph 134 is a reworded paragraph which places 'significant weight' on development which reflects local design policies, government guidance and outstanding or innovative design which promotes high levels of sustainability 'or helps raise the standard of design more generally in an area.' The Council does not have detailed design guidance and has not prepared the Design Quality SPD, which is referred to under Policy DM10 (which notes that the Design Quality SPD was to be published for initial consultation in Summer 2013). Similarly, the LPA has not prepared a design code. The Proposed Development has been designed to meet government guidance and is considered to meet this policy objective. A full analysis of the Appeal Scheme against each of the Council's design policies is provided in Chapters 3.0 and 4.0

of the Planning Proof of Evidence (CD8.4), Planning Statements (CD1.5.2 and CD2.2.23) and Design and Access Statements (CD2.2.10 and CD2.2.10).

3.1 Mr Kiely’s paragraph 3.11 states that the Development Management Plan is “in line with the policies in the NPPF when read as a whole”. This is inconsistent with the position taken by the LPA in their ‘**Making Efficient Use of Land - Optimising Housing Delivery**’ (Core Document CD 4.3), which confirms that Policy DM11 which is relied upon by the LPA, as well as DM13 are inconsistent with the Framework and has an inhibiting effect on making efficient use of land. It is further noted, (see paragraph 2.4 of the attached Heritage Rebuttal) that policy DM8 both pre-dates and is inconsistent with the requirements of the NPPF. Other areas where the Council’s policies are out of date or inconsistent with the Framework are set out in Chapter 3.0 and 4.0 of the Planning Proof of Evidence.

### 3.0 Heights, Separation Distances and Areas

3.2 Throughout Mr Kiely’s Proof of Evidence, reference is made to various building heights, separation distances, elevation distances and areas. There are several discrepancies in the figures cited by Mr Kiely; while some of these errors are not substantial, there are several significant inaccuracies. The Appellant has provided a drawing showing the key separation distances, which is attached as APP/R02 – Drawing with Separation Distances. The Appellant intends to liaise with the LPA to agree the various measurements prior to the inquiry.

3.3 The table below provides reference to the applicable paragraph number, the measurement taken from Mr Kiely’s evidence and the Appellant’s correct measurements.

Paragraph	LPA Figure	Appellant Figure
5.5	21.43 m	22.04 (79.95 m OAD)
5.5	7.78 m	7.79 (87.74 m OAD)
5.5	29.21 m	29.83 (87.74 m OAD)
5.6	3.69 m	4.11 m
5.6	5.57 m	5.625 m
5.6	2.21 m	2.165 m

<b>6.9</b>	Woodcote Lodge: 10 metres in height	10.19 m to eaves height 12.72 m to ridge height
<b>6.9</b>	Rowan House: 16 metres in height	15.42 to eaves height 19.89 m to ridge height
<b>6.12</b>	Appeal A height: 3 – 9 storeys	2 – 9 storeys
<b>6.12</b>	Appeal B height: 3 – 9 storeys	2 – 8 storeys
<b>6.12</b>	Appeal A height: 32.9 m	33.94 m
<b>6.12</b>	Appeal B height: 27 m	27.665 m
<b>6.12</b>	Appeal B height reduction: 5.9 m	Building A Height reduction: 6.015 m Building B Height reduction: 6.275 m
<b>6.29</b>	Building comes to <u>within</u> 6 metres of the site boundaries <u>at several points</u>	Building comes to 6.3 m of the site boundary at a single point. 6.7 m at another pinch point, increasing to 23 m from the boundary
<b>6.31</b>	Car park with 59 m long elevation	Car park elevation is 41m long
<b>6.32</b>	West building setback is around 10 metres	West building setback is around 16 metres
<b>6.54</b>	Building B Elevation length: 153 m	34 m (8/9 storey element and 16 m (4 storey element)
<b>6.55</b>	The west building has a 165 m long mass	The west building is 112 m long

3.4 There are several errors in the table of distances set out under Mr Kiely’s paragraph 6.49; the table below provides the Appellant’s correct measurements.

Property	Distance to lower (4 or 5 storey) part of building		Distance to higher (8/9 storey) part of building	
	LPA measurement	Appellant measurement	LPA measurement	Appellant measurement
<b>40 Woodcote Green Road</b>	11	11.2 m	17 m	16.7 m
<b>46 Woodcote Green Road</b>	7	6.3 m	22 m	22 m
<b>14 to 16 Digdens Rise</b>	19	20.5 m	48 m	49.1 m

<b>18 to 20 Digdens Rise</b>	20	23.2 m	40 m	47.6 m
<b>22 to 24 Digdens Rise</b>	6	6.7 m	23 m	24.5 m
<b>26 to 28 Digdens Rise</b>	9	10.5 m	26 m	28.1m

3.5 In addition, paragraph 5.6 relates the Schemes for Appeal A and Appeal B to different parts of the Wells Building, with Mr Kiely relating Appeal A to the tallest part of the Wells Building, including the inset upper levels. Mr Kiely then in respect of Appeal B rather relates the proposed building to the main roof height and not the upper inset level. For consistency, the table below relates the taller elements of the Appeal Schemes to both the top of the inset upper levels (excluding the attached telecommunications devices) as well as the main roof height.

<b>Appeal Scheme</b>	<b>Height in relation to Main Roof Level (79.95 m OAD)</b>	<b>Height in relation to Upper Inset Levels (87.74 m OAD)</b>
<b>Appeal A (91.85m AOD)</b>	11.9 m	4.11 m
<b>Appeal B (85.575m AOD)</b>	5.625 m	-2.165 m

3.6 It is incorrect as stated by Mr Kiely at paragraph 6.30 that the Schemes provide only 1,760 m<sup>2</sup> of amenity space for all occupiers. The Schemes provide 6,178 m<sup>2</sup> of ground level landscaped areas, plus the generous roof garden areas, which measure 1,265 m<sup>2</sup>. (Drawings indicating the areas of the landscaped and access spaces are attached as APP/R03A and APP/R03B).

3.7 The reference to the external elevation length in paragraph 6.34 is contrived and of no practical benefit in considering the overall size of the proposed buildings. The building is C-shaped, with three primary elevations facing north, east and south. It is misleading to provide the sum of all the external elevations, particularly as this building comprises lower and taller elements of significantly



different height. It is not correct as stated by Mr Kiely that the elevations adjacent to the eastern boundary are full height, as the building steps down to four storeys adjacent to Woodcote Green Road.

- 3.8 The reference by Mr Kiely in paragraph 6.46 to an elevational façade length of 165 metres is also contrived and of no meaningful benefit. The west building has elements of heights from 2, 4 and 8 storeys (Appeal B) and 2, 4, 5 and 9 storeys (Appeal A), and with taller elements occupying smaller and narrower areas of the lower buildings. Similarly reference to a visual length of building is unusual, and the method employed in determining this dimension is not explained, and again this dimension is of questionable value. Paragraph 6.47 appears to refer to the misleading building lengths in paragraph 6.46, the elevational length of taller L-shaped element is 60 m by 79 m.
- 3.9 Paragraph 6.48 states that the northern edge of the western building rises to 8/9 storeys, this is incorrect an 18 metre long part along the northern edge of the western building is four storeys in height. The southern part of the southern projection falls away to 4 storeys in respect of Appeal B and not 5 storeys.
- 3.10 In Paragraph 6.59 Mr Kiely refers to the "Council's recommended separation distance" of 24 m. It is noted that this "recommended distance" is between windows of two storey developments, and is contained within Guidance dated 2003 and which is titled "Single Plot and other types of residential infill SPD". This guidance is not considered to be applicable to the Appeal Schemes, which are not developments relating to a single plot or a residential infill site. Accordingly, the Appellant has had regard to the explanatory text contained within paragraph 3.20 of the LPA's the Development Management policies Document that encourages new developments to provide a distance of at least 21 metres of separation between opposing properties. Other measures, such as obscured glazing may also be appropriate.
- 3.11 Paragraph 6.61 refers to the setback of the roof garden from the rear boundary of 40 Woodcote Green Road. The LPA refers to the 1 m high parapet, however

has not considered the 1.5 m high planted screen, which both increases the setback but also prevents direct overlooking.

3.12 Paragraph 6.63 states that the garden of 46 Woodcote Green Road is overlooked by the sensory garden, this is incorrect, the sensory garden has a recessed planted screen, which increases the setback and prevents direct overlooking.

3.13 The sketches under paragraph 6.51 and references to the height of the Schemes relative to the adjacent properties in paragraph 6.65 do not take into account topography.

#### **4.0 Affordable Housing (Paragraphs 6.70 to 6.86)**

4.1 Mr Kiely states in paragraph 6.80 that there is no good planning reason to revisit the Viability Assessment in respect of Appeal A. The Appellant does not agree; due to the reductions in the size of the Scheme, including reduced unit numbers and due to the passage of time, it is considered reasonable to update the Viability Assessment to reflect current market conditions, updated build costs and profit to be adjusted to reflect the reduced unit numbers. The Appellant has undertaken a full update of the Viability Assessment as per planning guidance. The Viability Assessment has been provided to the LPA.

4.2 In relation to paragraph 6.82, the Appellant has confirmed their position that the financial Affordable Housing Offer, which has been made, and accepted, at the date of the determination of the planning application, has remained unchanged.

4.3 In respect of paragraph 6.84, for consistency in the conjoined appeals, it was deemed reasonable to also update the Viability Assessment in respect of Appeal B. The updated Viability Assessment for Appeal B has been provided to the LPA and based on the conclusions of the Viability Assessment; the Appellant has not amended its Affordable Housing offer, which was acceptable to the LPA when the planning application for Appeal B was determined.

## 5.0 Heritage (Paragraphs 1.96 6.24 and 6.87 to 6.91, 6.110)

- 5.1 The Appellant's heritage consultants have provided a rebuttal to the heritage matters of Mr Kiely's proof of evidence, which is attached as (APP/R04 – Heritage Rebuttal). I will not repeat information set out in the Heritage Rebuttal, but will draw attention to the areas where the LPA has erred in their approach; set out in their evidence, in relation to the effects on heritage assets and in respect of impacts on key views.
- 5.2 Mr Kiely's states that that Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('The Act') is engaged in this Appeal. This is incorrect; section 72 is concerned with conservation areas and requires that 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'. The Section 72 duty does not extend to the setting or surroundings of Conservation Areas and is concerned only with the land and features within a designated conservation area. The Appeal Site does not fall within a designated conservation area.
- 5.3 Mr Kiely states that the Appeal Schemes are inconsistent with DM8 and CS5, however both of these policies pre-date and are inconsistent with the requirements of the NPPF, accordingly reduced weight should be ascribed to compliance with DM8 and CS5.
- 5.4 The methodology employed by Mr Kiely in identifying affected heritage assets is inconsistent with Historic England's Good practice Advice in Planning Note 3, insofar as he has not clearly identified exactly which assets are affected, the relative contribution made by each asset's setting to its significance. Many of the statements made by Mr Kiely appear to have been made on generalised or assumed information or reliance on Google Street View. Mr Kiely has relied on the Council's Conservation Area Appraisals in considering the significance of heritage assets, however the correct approach is to provide a detailed assessment of the significance of the asset and its setting, as has been provided by the Appellant.

- 5.5 In paragraph 6.89 Mr Kiely refers to the buildings and areas where he alleges harm as a result of the development proposals. The Appellant does not agree with the LPA that there is harm to all of the heritage assets identified by Mr Kiely and does not agree with the degree of harm arising as a consequence of the Appeal Schemes. The Appellant's position in respect of the affected heritage assets and the related effects of the Appeal Schemes is set out in the submitted HTVIAs.
- 5.6 It is incorrect, as Mr Kiely asserts in paragraphs 5.16 to 5.22 that the Appellant's heritage consultant has not considered the correct Conservation Area boundaries. The Conservation Area boundaries referred to by Mr Kiely are in fact proposed and not adopted boundaries. Furthermore, impacts on heritage assets within the proposed extended boundaries were considered within the Appellants HTVIAs.
- 5.7 Mr Kiely suggests in paragraph 5.19 that the view from the green space adjacent to St Margaret Drive, although outside of the conservation area, provides a "significant view" into it. It is noted that this view was not identified by the LPA's specialist officers, its significance is not substantiated by the Conservation Area Appraisal's 'views or vistas of note'. The position of the Appeal Site, beyond the extensive bulk and intervening visual intrusion of the hospital buildings does not make any notable contribution to the Woodcote Conservation area.
- 5.8 The statement made under paragraph 5.16 of Mr Kiely's proof that the HTVIA has not identified all of the listed buildings in the conservation area, and has ignored the listed buildings in the extension is incorrect, the HTVIA confirms that all of the listed buildings noted in the Council's Conservation Area Appraisal have been considered.
- 5.9 Mr Kiely, at paragraph 5.38 suggests that the impact of the Appeal Schemes on the listed buildings at the junction of Woodcote Road, Madans Walk, Chalk Lane and Woodcote Green Road has an effect on the "collective historic character in the conservation area". This approach, to extend the effect on a number of listed buildings on the edge of a Conservation Area to the conservation area as a whole, is incorrect. There is demonstrably no impact on most of the listed buildings within the Chalk Lane Conservation area due to the lack of association, visual or

functional relationship with the Appeal Site. It would appear to be this amplification of impact from listed buildings to the conservation area, which leads to the LPA's conclusion that there is harm at the medium end (level) of the less than substantial harm scale.

5.10 The Heritage Rebuttal notes the considerable change to the Chalk Lane Conservation Area. In this regard, the permitted scheme is now under construction for Development of 98 apartments/dwellings, including conversion of the Grade II\* Listed Woodcote Grove and Grade II Listed Stable Block at Woodcote Grove Ashley Road Epsom Surrey KT18 5BW (Application Ref: 19/00999/FUL). Further details provided within Core Document CDXX.

## **6.0 Landscaping (Paragraphs 6.38 to 6.40)**

6.1 Mr Kiely states at paragraph 6.38 that most of the Appeal Site, not occupied by the buildings is allocated to functional access and car parking purposes. This is incorrect. The bulk of the car parking is provided within the proposed western building, with only 25 surface level car parking spaces provided. The area used for parking and access is around 1822 m<sup>2</sup>. This is a significant reduction in the amount of existing surface level car parking, which measures approximately 6583 m<sup>2</sup> (refer APP/R05 – Existing Access and Parking Area Calculations).

6.2. The Appeal Schemes provide approximately 6178 m<sup>2</sup> of surface level landscaping, including the central plaza, landscaping and new public realm to the site frontage, boundary landscaping and private landscape areas to the north and west of the Appeal Site. In addition, some 1265 m<sup>2</sup> of accessible roof gardens are provided as well as around 1377 m<sup>2</sup> of planted green roof.

6.3 Mr Kiely asserts in paragraph 6.39 that the loss of site trees represents a loss of valuable amenity and ecological assets. The trees to be removed are either located within parking areas or are trees of poor condition or poor amenity along the frontage, which will be replaced by trees of improved quality, which will result in an enhancement to the public realm and the streetscape. In response to the suggestion that the Appeal Scheme results in a loss of ecological assets, the

Appellant has provided Biodiversity Net Gain calculations to demonstrate the new landscaping proposed results in a substantial 88% net gain for biodiversity.



**Guild Living, Epsom General Hospital**

**Rebuttal Proof of Evidence of Tim Spencer**

Application on behalf of Senior Living Urban (Epsom) Limited

August 2021