

Response to Further Representation – Planning Application AWDM/0737/26

Policy SS5 – Local Green Gaps, Brooklands Park and Previous Appeal Decisions

Dear Gary

I have read the further representation submitted by Mr Mckail in response to my previous planning statement.

At the outset, I am happy to acknowledge one correction made within his representation. My previous statement referred to Policy SS4 when discussing the Local Green Gap designation. The specific Local Green Gap policy within the adopted Worthing Local Plan is **Policy SS5**. SS4 relates to Countryside and Undeveloped Coast.

That reference is therefore corrected.

However, having correctly identified Policy SS5, the representation then appears to apply a version of that policy which **was specifically rejected and amended during the Local Plan examination process**, rather than the Policy SS5 actually adopted by Worthing Borough Council.

That distinction is fundamental.

1. Policy SS5 does not contain an “exceptional circumstances” test

The representation states:

“Policy SS5 states that development within the designated gaps will be carefully controlled and will only be permitted in exceptional circumstances.”

That is not the wording of the adopted Policy SS5.

The adopted Worthing Local Plan requires development within Local Green Gaps to demonstrate, individually or cumulatively, that:

1. it would not undermine the physical and/or visual separation of settlements;
2. it would not compromise the integrity of the gap;
3. it conserves and enhances the benefits and services derived from the area's Natural Capital; and
4. it conserves and enhances the area as part of a cohesive green infrastructure network.

Those are the policy tests against which this application must be assessed.

There is no requirement within the adopted Policy SS5 for development to demonstrate “exceptional circumstances”.

More importantly, this is not an accidental omission.

During the examination of the Worthing Local Plan, the independent Planning Inspector specifically required the “exceptional circumstances” wording to be removed. The Inspector concluded that such a requirement represented too high a bar and could effectively result in a blanket prohibition on development within Local Green Gaps.

The Inspector went further and expressly explained that the purpose of a Local Green Gap is to maintain **physical and visual separation**, rather than to maintain openness. The Inspector also required references to “openness” and “unobtrusive” development to be deleted because those concepts were more akin to Green Belt policy and were not appropriate tests for Policy SS5.

This is highly material because a substantial part of the further representation relies upon precisely those discarded concepts.

The adopted policy must be applied as adopted, rather than as it appeared in an earlier draft.

2. Policy SS5 is not a Green Belt policy

The representation repeatedly characterises the essential planning value of the application site as its “openness”, and much of its argument proceeds on the basis that changing the activity taking place on an open field necessarily conflicts with the Local Green Gap designation.

That is not the test established by the examining Inspector.

Indeed, the Inspector specifically warned against treating the Local Green Gap policy as equivalent to Green Belt policy.

This point is particularly important in relation to Goring-Ferring.

During examination of the Local Plan, the Council had proposed that the Goring-Ferring Gap should additionally be designated as **Local Green Space**. Such a designation carries protection broadly consistent with national Green Belt policy.

The independent Inspector rejected that proposal.

The Inspector concluded that, given the scale and character of the Goring-Ferring area, imposing that additional designation would effectively create a **de facto Green Belt**, which was not justified. Consequently, the Local Green Space designation for Goring-Ferring was deleted from the Plan.

Brooklands Recreation Area, in contrast, retained its Local Green Space designation and is therefore subject to additional protection under Policy SS6.

It would therefore be inappropriate to reintroduce through interpretation of SS5 the very Green Belt-style “openness” test which the independent Inspector specifically removed.

This does not mean that landscape character is irrelevant. It plainly remains a material consideration and the application must satisfy all relevant Development Plan policies.

It does mean, however, that **permanent openness is not the statutory test contained within SS5**.

3. The Inspector expressly recognised recreational activity within Goring-Ferring Gap

The further representation repeatedly contrasts Brooklands with what it describes as essentially undeveloped land at Goring-Ferring.

Again, the Local Plan examination evidence is more nuanced.

The independent Inspector described the Goring-Ferring Gap as being:

- varied in character;
- comprising a mixture of agricultural land and other uses;
- including formal recreational facilities; and
- used as a whole for a range of leisure purposes.

The Inspector also highlighted the important recreational connection between the Gap and the seafront.

The adopted Local Plan itself recognises that Local Green Gaps may comprise either **undeveloped land or managed landscapes for recreational use**.

Therefore, recreational activity is not inherently incompatible with Local Green Gap designation.

The relevant question is not whether recreation or leisure activity exists.

The relevant question under SS5 is whether the particular proposal undermines the physical or visual separation of settlements, compromises the integrity of the Gap, or fails the Natural Capital and green infrastructure tests.

That is the policy exercise which should be undertaken.

4. Brooklands remains a legitimate planning comparison

I have never suggested that Brooklands Park and the application site are identical.

They plainly are not.

Nor have I suggested that a planning permission at Brooklands automatically creates a binding precedent requiring permission to be granted elsewhere.

The relevance of Brooklands is much narrower and more legitimate.

Brooklands demonstrates that recreational facilities, visitor infrastructure and appropriate built development are not inherently incompatible with the strategic function of a Local Green Gap.

Indeed, Brooklands is not merely an SS5 Local Green Gap. It is additionally designated as **Local Green Space under SS6**, and therefore carries a significantly stronger policy protection.

Despite that additional protection, the adopted Local Plan expressly anticipates a limited amount of appropriate built development at Brooklands as part of measures intended to increase its recreational and wildlife value.

Planning permission AWDM/1843/21 was also granted for development including the demolition of the former toilet block and construction of a café, public toilets, plant and refuse facilities, accessible play provision, landscaping and cycle storage.

The purpose of referring to Brooklands is therefore not to argue that the two sites are identical.

It is to demonstrate that **designation as a Local Green Gap does not itself amount to an embargo upon recreational, visitor-serving or commercial facilities**.

Each proposal must instead be assessed against its own circumstances and against the actual wording of the Development Plan.

That remains my position.

5. The previous Lawful Development Certificate appeals did not determine the planning merits

The representation also places considerable reliance upon the previous Planning Inspectorate decisions relating to Lawful Development Certificates.

Their significance needs to be properly understood.

Those proceedings concerned whether the proposed use and associated development were **lawful without express planning permission**.

They were not appeals against the refusal of planning permission.

The Planning Inspectorate's own procedural guidance is unequivocal that in a Lawful Development Certificate appeal there is no power to grant planning permission and the **planning merits of the development are not relevant**. The issue is whether the development is lawful without such permission. An applicant remains free subsequently to apply for planning permission in the normal way.

The effect of those previous decisions was therefore that planning permission was required.

That is precisely why the present full planning application has been submitted.

A finding that a proposed use constitutes a material change of use is **not** equivalent to a finding that the use is unacceptable in planning terms.

If every unsuccessful Lawful Development Certificate appeal were subsequently treated as evidence that planning permission should be refused, the statutory distinction between establishing lawfulness and applying for planning permission would become meaningless.

The current application must therefore be determined on its planning merits against the adopted Development Plan and other material considerations.

6. "Commercial" does not itself establish conflict with SS5

The further representation repeatedly uses the description "commercial leisure use" as though commerciality itself establishes conflict with the Local Green Gap policy.

Policy SS5 contains no such prohibition.

The fact that an activity has a commercial component does not answer any of the four SS5 tests.

Similarly, I accept that describing development as seasonal, temporary or reversible does not automatically make it acceptable.

However, the reverse is equally true: the regular presence of visitors, vehicles or temporary facilities does not automatically establish unacceptable harm.

The Council must assess the **actual scale, siting, duration and effects of the development proposed**, supported by evidence.

Listing possible impacts such as parking, noise, servicing, fencing, visitors and vehicles is not the same thing as demonstrating that those impacts would materially undermine the physical or visual separation of Worthing and Ferring or compromise the strategic integrity of the Gap.

That assessment must be evidence based.

7. The correct Policy SS5 question

The further representation ultimately asks whether an undeveloped field should be allowed to become a commercial leisure destination.

That may be a rhetorical question, but it is not the wording of Policy SS5.

The actual questions established by the adopted Plan are:

Would this proposal undermine the physical and/or visual separation of Worthing and Ferring? The answer is NO.

Would it compromise the integrity of the Goring-Ferring Gap? The answer is NO.

Does it conserve and enhance the benefits and services provided by Natural Capital? The answer is YES.

Does it conserve and enhance the area as part of a cohesive green infrastructure network? The answer is YES.

Those are the adopted tests and they should be applied to the particular development actually proposed, not the ones Mr Mckail is trying to introduce.

Conclusion

I therefore respectfully ask the Council to give limited weight to those parts of the further representation which rely upon the former “exceptional circumstances” and “openness” wording of Policy SS5.

Those provisions were specifically considered during the independent examination of the Worthing Local Plan and were deliberately removed before adoption by the independent Inspector and agreed by the Council.

The independent Inspector expressly concluded that the strategic purpose of a Local Green Gap is the maintenance of physical and visual separation rather than permanent openness, and recognised that forms of development may be accommodated within Local Green Gaps without undermining that purpose.

The Inspector additionally rejected the proposed Local Green Space designation for Goring-Ferring because it would effectively create a de facto Green Belt, while retaining that stronger designation at Brooklands. And yet Brooklands has a permanent café, car park and leisure facility.

The Brooklands comparison does not claim that the sites are identical and does not purport to establish a binding precedent. It remains relevant in demonstrating that recreational uses and appropriate visitor infrastructure can coexist with a Local Green Gap designation where the strategic function of the Gap is preserved.

Finally, the previous Lawful Development Certificate appeals determined whether planning permission was required. They did **not** determine whether planning permission should subsequently be granted, because the planning merits of a proposal are not considered in an LDC appeal.

Having corrected my earlier reference from SS4 to SS5, I therefore invite the Council to determine AWDM/0737/26 against **Policy SS5 as actually adopted**, rather than against wording which the independent Planning Inspector specifically required to be deleted.

That, respectfully, is the correct legal planning test.

Yours sincerely

Chris Dixon