

SUPPLEMENTARY REPORT

Application Ref:	23/00412/OUT and 23/00400/OUT
Proposal:	<p>23/00412/OUT: Outline permission for up to 650 dwellings with associated open space and infrastructure, with access secured and all other matters (appearance, landscaping, layout and scale) reserved. Including demolition of all buildings</p> <p>23/00400/OUT: Outline permission for construction up to 850 dwellings, care village (up to 3.27 hec gross), up to 20,300 sq m of Class E [Class E (a), (b), (c), (d), (e),(g) (i)] and F1 floorspace of which: 1. Not more than 1000 sq m of floor space being Class E (a); 2. Not more than 1000 sq m being Sui Generis drinking establishment / drinking establishment with expanded food provision; bed hotel (up to 250 bed), car parking / servicing, 2 FE primary school, associated open space & infrastructure. Demolition of all buildings except for Arena and barn. All matters reserved save for access. This application is accompanied by an Environmental Statement.</p>
Site:	East of England Showground, Oundle Road, Alwalton, Peterborough PE2 6XE
Applicant:	AEPR Ltd & East of England Agricultural Society
Agent:	n/a
Site visit:	Numerous throughout 2023 and 2024
Referred by:	Executive Director – Place and Economy
Reason:	Significant public interest
Case officer:	Phil Moore
E-Mail:	phil.moore2@peterborough.gov.uk
Recommendation:	<p>23/00412/OUT REFUSE</p> <p>23/00400/OUT REFUSE</p>

1 Background
Proposed Development

Both of these related applications -23/00412/OUT (Land A) and 23/00400/OUT (Land B), taken together propose an urban extension including residential development of up to 1500 dwellings, leisure facilities, a hotel, primary school and a care village.

Both applications were submitted by joint applicants AEPR (a wholly owned subsidiary of AEPG) and the East of England Agricultural Society (EEAS) on 14 August 2023.

The land is wholly owned by the EEAS although AEPG have a lease (understood to have 20 years remaining) on a significant portion of the site. It is understood that both parties had entered into a promotion agreement in which AEPG would promote the site and prepare the planning application, whilst EEAS would effectively be a “silent partner” in the process.

Planning and Environmental Protection Committee 15 October 2024

Both applications were originally considered by the Planning and Environmental Protection Committee (PEPC) on 15th October 2024 having been recommended for approval by Officers. Committee resolved to approve 23/00400/OUT (Land B) in line with the officer recommendation below:

APPROVE subject to the conditions outlined in this report and completion of a S106 legal agreement, and resolution of outstanding highways issues to the satisfaction of the Local Highways Authority. Final wording of conditions and section 106 agreement to be delegated to officers, subject to broad accordance with the schedule of conditions and Section 106 HOTs outlined above.

If either the required Section 106 legal agreement has not been completed or the outstanding highways issues have not been fully resolved within 6 months from the date of the committee meeting, and there are no extenuating circumstances which would justify a further extension of time, then the Committee delegates the issuing of a notice of refusal to the Executive Director of Place and Economy on the grounds that the development has failed to adequately mitigate its impacts.

and to refuse 23/00412/OUT (land A) (contrary to officer recommendation) on the following grounds:

By virtue of the loss of the showground and speedway track, together with a quantum of dwellings which cumulatively would significantly exceed the allocated 650 dwellings on the showground site, the proposed development is contrary to Policies LP30 and LP36 and para 103 of the NPPF, and there are no other material considerations, including the NPPF “tilted balance” that carry such weight as to outweigh the conflict with the Development Plan

Call in

However, a request was subsequently made under Section 2.6.4 of the Council’s Constitution to call in the refused application – 23/00412/OUT (Land A) - to be determined by the Appeals and Planning Review Committee (APRC). The request was signed by 40% of those Members present at the Committee and reasons given. The reasons given related to “lack of planning Reasons”, “Outdated policies”, “Inaccurate Figures” and “No consideration of benefits”.

The Executive Director of Place and Economy, having sought Counsel advice and in conjunction with the Monitoring Officer, confirmed that this call in request met the relevant criteria and was valid in accordance with paragraph 2.6.4.6 of the Planning & Environmental Protection Committee's terms of reference.

Appeals and Planning Review Committee 13 January 2025

The APRC subsequently resolved to approve 23/00412/OUT (Land A) in line with the officer recommendation below:

APPROVE subject to the conditions outlined below and completion of a S106 legal agreement, and resolution of outstanding highways issues to the satisfaction of the Local Highways Authority. Final wording of conditions and section 106 agreement to be delegated to officers, subject to broad accordance with the schedule of conditions and Section 106 HOTs outlined above.

If either the required Section 106 legal agreement has not been completed or the outstanding highways issues have not been fully resolved within 6 months from the date of the committee meeting, and there are no extenuating circumstances which would justify a further extension of time, then the Committee delegates the issuing of a notice of refusal to the Executive Director of Place and Economy on the grounds that the development has failed to adequately mitigate its impacts.

For the avoidance of doubt, the officer recommendation was the same as that given to the PEPC in October 2024.

2 Section 106 Agreement

Whilst the proposed development was submitted as two separate applications, the officer reports to Committee made clear that should they both be approved, they would be subject to a single Section 106 legal agreement, to ensure that the development would be brought forward as a single master planned development in a coordinated way, and that the necessary infrastructure needed to make it acceptable in planning terms would be delivered in a timely manner. And that the section 106 agreement would be based on the Heads of Terms (HOTs) as set out in the Committee reports. The section 106 agreement has so far been progressed on this basis.

Although the section 106 agreement was not completed within 6 months of the resolutions to grant, as permitted by the Committee resolutions, extensions of time have been granted by officers, firstly to align the deadlines for the two applications, which were approved by Committee on different dates, and also on the grounds that at the time, all parties had been proactively working towards completion and good progress had been made.

The most recent extension was granted by The Executive Director – Place and Economy following the issuing of statement to the applicants on 31st July, that required that if the section 106 agreement was not completed by 12th September 2025, the applications would go back to the 21 October PEPC to consider whether a further extension of time could be justified.

The latest draft of the Section 106 agreement (which is available to view on the Council's website) is broadly in line with the Heads of Terms as set out in the Committee reports, although there remain some areas of detail still to be worked out and it has not yet reached a point where it is ready to be signed.

3 Highways Issues

At the time of both the October 15th 2024 and Jan 13th 2025 Committees, there were a number of outstanding highways issues still to be resolved.

The Local Highways Authority (LHA) had concluded that there was no fundamental objection to the proposal in highway safety or traffic capacity terms, subject to appropriate mitigation to be achieved via conditions and section 106 obligations. The LHA considered that mitigation was achievable. However, at the time of the Committee resolutions to approve, there remained a number of outstanding technical highways issues to be addressed around the design and specification of the proposed mitigation measures, primarily around the proposed upgrade and signalisation of the Oundle Road/ Orton Parkway roundabout and around Linden Gardens.

All of the outstanding highways issues have now been fully resolved to the satisfaction of the LHA, and the details of mitigation agreed. Detailed conditions have been drafted and appropriately worded obligations inserted into the draft section 106 agreement.

4 Update on other matters

Five Year Land Supply (5YLS)

At the time of the 15th October PEPC, the Council was unable to demonstrate a 5YLS, meaning that the NPPF “tilted balance” was engaged. The tilted balance circumstance is a significant material consideration, which 'tilts' the balancing exercise from a neutral balance to one where there must be compelling reasons for planning permission to be withheld, i.e. where the adverse impacts of granting planning permission “would significantly and demonstrably outweigh the benefits. The PEPC made their resolution to approve 23/00400/OUT on that basis.

At the time of the 13th January APRC, the 5YLS situation had changed and the Council were able to demonstrate a 5YLS, meaning that the relevant policies in the Local Plan were deemed up to date and that the “tilted balance” was not engaged. The APRC made their resolution to approve 23/00412/OUT on that basis.

However, the situation has changed again more recently and the Council is again in a position of not being able to demonstrate a 5YLS, meaning that the “tilted balance” is once again engaged where applications for planning permission are being determined and would be a material consideration weighing in favour of both applications if they were to be reconsidered on their merits.

Site context

The site context remains the same and there have been no other planning approvals nearby which would materially affect the assessment of these applications.

Additional Representations

A small number of additional representations have been submitted by members of the public since the previous Committee meetings. All the material issues raised have already been covered in the previous Committee reports.

Other

There have been no other changes since the Committee resolutions which are considered material in that they would have led either the PEPC or the APRC to have reached a different conclusion on the applications.

5 Assessment

The section 106 agreement required by the resolution to grant on each application has not been completed, and these applications are therefore being brought to Committee for a decision as to whether a further extension of time should be granted to enable the section 106 agreement to be negotiated and completed, or whether permission now falls to be refused in line with the previous resolutions, the section 106 agreement being necessary to make the development acceptable in planning terms and not having been completed.

As previously mentioned, both applications were submitted by joint applicants AEPR (a wholly owned subsidiary of AEPG) and the East of England Agricultural Society (EEAS). The applications were assessed on the basis of the plans, Environmental Statement and supporting documents submitted, and recommendations were made accordingly. The section 106 requirements, as set out in the Committee reports and presented to the Committees were established taking into account the requirements of relevant Local Plan policies, including LP5, LP7, LP8, LP9, LP12, LP13, LP14, LP21, LP30, LP36, Section 4 of the NPPF, and the Peterborough Planning Obligations SPD, as well as the expert comments of statutory and other consultees. Officers consider the requirements to be in accordance with regulation 122 of the Community Infrastructure Levy Regulations 2010 i.e.

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development

Both the PEPC and the APRC made their resolutions to approve based on the section 106 requirements as presented to them.

At no point up to the Committee decisions did either set of applicants fundamentally question the section 106 requirements.

More recently however, it is understood that the promotion agreement between AEPG and EEAS was not continued beyond March 2025. EEAS have since taken a more active role in the applications as the section 106 has progressed, and it has become apparent that there is disagreement between the applicants on the HOTs as carried through into the draft section 106 agreement.

EEAS have proposed a number of amendments to the provisions within the section 106 agreement which would deviate significantly from those which were included and assessed in the officers report presented to the PEPC and APRC, and on the basis of which the resolutions to grant were made, as well as requests that AEPG do not sign the Section 106. These include:

- Significant amendments to the phasing so that the leisure/community elements are delivered in later stages
- That EEAS be the only signatories
- Use of a confirmatory deed relating to the leasehold land
- Reducing the overall contributions on viability grounds

Having taken legal advice, the Council's position is that these are significant material changes to what was proposed and which formed part of the assessment presented to PEPC and APRC and on which the resolutions to grant were based. Taking each in turn:

- Significant amendments to the phasing – as a master planned mixed use development, the leisure and community facilities were significant in tipping the planning balance towards approval, given the conflict with policy due to the loss of the showground. During the early stages of assessment of the application, it was clear that phasing which left the leisure and community facilities to the final phases, as initially proposed by the applicants, would not be acceptable in planning terms. As set out in the reports to the PEPC and APRC, it was necessary to ensure that leisure and community facilities were delivered in a timely manner and that they would have to proceed more or less in tandem and be started at a fairly early stage of development. This approach was supported by AEPG who set out an acceptable delivery approach during section 106 negotiations and was not challenged by EEAS until recently.
- That EEAS be the only signatories – whilst it is technically possible, it is not advisable and our strong legal advice is that all parties with an interest in the land should sign.
- Use of a confirmatory deed relating to the leasehold land – again whilst technically possible, government guidance is that this approach should only be used in exceptional circumstances where there is evidence that the delivery of the development would be at serious risk – such as particularly complex development with multiple landowners. It is not considered that exceptional circumstances exist in this case.
- Reducing the overall contributions on viability grounds – at no point has a viability assessment been submitted with the applications, to demonstrate that the full Section 106 obligations would make the development unviable, and the applications have been assessed on that basis. In fact the full 30% affordable housing was put forward by the applicants as a benefit of the proposal. The HOTs in the draft Section 106 agreement are those presented to and approved by Committee.

The Council issued a final Position Statement on 26th October 2025, setting out the above, and requiring both sets of applicants to confirm by 03rd October 2025, whether or not they would agree to work towards signing the section 106 agreement on the basis of the HOTs agreed by Committee. It was made clear that agreement of those terms would result in a recommendation to Committee that a further extension of time be granted to complete the section 106 agreement. And that failure to agree those terms would result in a recommendation to refuse both applications.

AEPG responded that they were in agreement. EEAS on the other hand responded requesting a further month to negotiate an agreed position, proposing the following:

- The inclusion of a viability mechanism to test the quantum of affordable housing that the scheme can sustain alongside the s.106 contributions.
- To permit up to 375 dwellings within the first phase of development to enable sufficient funds to undertake off-site infrastructure.
- A phasing plan that allows the Blue Land (land that is leased by AEPG and where the leisure/community facilities are proposed) to be delivered when the either the lease has been surrendered, or acceptable terms have been agreed with the East of England Showground Services that can be approved under the Charities Act.

Taking each in turn:

Viability mechanism - at no point has a viability assessment been submitted with the applications, to demonstrate that the full Section 106 obligations would make the development unviable, and the applications have been assessed on that basis. In any case, the HOTs in the draft Section 106 agreement are those presented to and approved by Committee and this proposal would significantly deviate away from the agreed HOTs. As mentioned earlier in the report, the full quota of 30% affordable housing was put forward as a positive benefit by the applicant, and any reduction in any of the section 106 obligations would also change the planning balance.

375 dwellings – this appears to be a request to delay section 106 financial contributions until that point. Whilst there is scope for negotiation on the exact trigger point, this would significantly delay the mitigation that is required to make the proposal acceptable in planning terms, resulting in unacceptable (albeit temporary) impacts.

Phasing plan – any lease arrangement, commercial deal, or requirements of the Charities Act are not material planning considerations and cannot be factored into the terms of the section 106 agreement. Furthermore as a master planned mixed use development, timely delivery of the leisure and community facilities was significant in tipping the planning balance towards approval, given the conflict with policy due to the loss of the showground. It was and remains officers' strong view that development of both the residential element and the leisure/community element must proceed more or less in tandem to make the

development acceptable in planning terms. It is acceptable for the first phase to be residential but the leisure /community element must begin relatively early in the development of the site.

All of these proposals deviate significantly from the HOTS which were before PEPC and APRC when they resolved that planning permission should be granted on the applications, as well as from the master planned phased approach which would see the residential and leisure/community facilities delivered in tandem and in a timely manner. This phased approach as well as the provision of the whole quota of infrastructure (including affordable housing) to make the development acceptable in planning terms was a significant factor in the planning balance where the positive benefits of the development were considered to outweigh the conflict with Local Plan policies LP30 and LP36. Furthermore they seek to introduce factors which are related to a commercial land deal and other legislation, which is not material and cannot be taken into account.

Whilst the draft section 106 is at a fairly advanced state of preparation, it is accepted that completion based on the agreed HOTS would still need some additional time to finalise the detailed wording. However EEAS, as joint applicants and landowners (and therefore signatories to the section 106 agreement) have not accepted the fundamental HOTS agreed by Committee and are seeking to introduce clauses which significantly deviate from them or are not material. The Council's position has been set out clearly and Officers do not consider that there is scope for further negotiation on these fundamental issues and therefore that there are no extenuating circumstances which justify a further extension of time.

Officers are therefore recommending refusal of both applications, in line with the original PEPC and APRC resolutions, on the grounds that the development would not provide the necessary infrastructure required by policy to make it acceptable in planning terms, due to failure to accept the fundamental terms of the draft section 106 agreement.

Recommendation 1. 23/00412/OUT – REFUSE

The development would not provide the necessary infrastructure to make it acceptable in planning terms, contrary to Local Plan Policy LP14 and Section 4 of the NPPF

Recommendation 2. 23/00400/OUT – REFUSE

The development would not provide the necessary infrastructure to make it acceptable in planning terms, contrary to Local Plan Policy LP14 and Section 4 of the NPPF

Appendix 1: 23/00400/OUT - Officer report to PEPC 15 October 2024

Appendix 2: 23/00412/OUT and 23/00400/OUT - Officer Update Report to PEPC 15 October 2024

Appendix 3: 23/00400/OUT - Officer report to APRC 13 January 2025

Appendix 4: 23/00400/OUT - Officer Update Report to PEPC 15 October 2024

Copies to Councillors – Councillor Nicola Day

Councillor Kirsty Knight

Councillor Julie Stevenson

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