

Public Inquiry Pre-Inquiry Statement of Case
Under Rule 6 Of the Town and Country Planning (Inquiries Procedure) Rules

Appeal by: Derek Warwick Developments Limited

Appeal Site: The Queens Hotel High Street Selborne Alton GU34 3JJ

PINS reference: APP/Y9507/W/21/3289423

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1. This is the “Rule 6” statement of case for Save the Queens, Selborne (“**STQ**”), who object to the proposal for a scheme to convert and extend The Queens, Selborne. For ease of reference, as well as abbreviations, dates and the first appearance of any reference to planning policy are in **bold**.

Introduction

2. STQ comprises a group of residents from Selborne.
3. The appeal is made by Derek Warwick Developments Ltd (the "**Appellant**") against the decision of South Downs National Park Authority (the "**Park Authority**") to refuse a Full planning application under reference SDNP/20/04118/FUL (the "**Application**") for planning permission to convert and extend The Queens, Selborne¹ (the "**Development**"). The Queens is a country inn and public house located at The Queens Hotel, High Street, Selborne, Alton GU34 3JJ (the "**Site**").
4. Selborne is a historic village within the East Hampshire part of the South Downs National Park. It is known for its natural beauty and history. The village was recorded in the Domesday Book (1086) as 'Selesburne' and it has become famous for the 18th-century naturalist Gilbert White (The Natural History and Antiquities of Selborne, 1789). Selborne retains much of its 18th-century features² and its character derives from:

“Many buildings are small cottages that front on to the street or on to the narrow lanes that branch from it. Buildings face on to streets and spaces to enhance their essential public function. Characteristic linear development along the High Street and the narrow lanes is one building deep; buildings back on to the countryside without backland development”.

5. On **9 September 2021** the Park Authority’s Planning Committee considered the Application and refused to grant permission. This was a member overturn of the officer’s recommendation that permission be granted. On **1 October 2021**, the Decision Notice which (necessarily) set out the reasons for refusal was issued (the "**Refusal**"). The Appellant appealed the Refusal. On **6 December 2022** permission was granted on appeal (under ref: APP/Y9507/W/21/3289423). The decision to grant permission was then challenged by way of a statutory review under section 288 of the Town and County Planning Act 1990³ and on **22 February 2024** the appeal decision granting permission was quashed by the High Court (the "**Quashed Permission**").
6. The Appellant took the decision to carry out operational development around the time the Inspector granted permission on 6 December 2022 and continued to do so during the challenge period (i.e. prior to the Quashed Permission). The change of use and operational development

¹ In **2022** this was described as an application “for Conversion and extension of the existing Queens building and barn to form 5no. Aparthotel suites (C1), a Field Study Centre and Tap Room (Mixed Class F.1 and Sui Generis) and 1no. Detached dwelling (C3) within the grounds, with associated parking and landscaping”.

² Richard Hoggart has written: “The jewels in that lovely irregular crown round Farnham are Gilbert White’s Selborne and Jane Austen’s Chawton both of them by some extraordinary good fortune much as they were a couple of hundred years ago.” VDS p.8.

³ Rye v Secretary of State for Levelling Up, Housing and Communities & Ors [2024] EWHC 358 (Admin).

to the site will be a matter of evidence. As relevant background, what follows outlines the key changes to the site since it was acquired by the Appellant in 2015.

7. By **early 2016** The Queens (then a functioning licensed premises with Inn accommodation) was closed by the Appellant. As well as fixtures and fittings, the pub's operational areas were altered/removed including bars, restaurant, kitchen, en-suite letting rooms, and manager accommodation. Some internal partition walls were removed, part of the staircase was taken out, and access to the cellar was blocked. Heras security fencing and screening was placed around the site.
8. From **2022** building work has included:
 - Demolition of a toilet block.
 - Mature hedge and mature tree removal at the rear of the pub.
 - Conversion of rooms into apartments on the 1st and 2nd storeys.
 - Conversion of what was the lounge bar to "The Jubilee Tap" (a taproom that opened in 2023 and sells beer brewed by the Gilbert White Brewery).
 - Partition and fitting of a small kitchen in part of the public bar space.
 - Demolition of the commercial kitchen and food storage areas at the rear of the function Room.
9. Included in the Application is a Field Study Centre (the "**FSC**"). The FSC will be available/used for education and would be available for community rental when not in use by the Gilbert White Museum. There is also The Jubilee Tap open Monday to Saturday from 6pm to 10pm. The Jubilee Tap is currently open for 3.5 hours on Thursday, Friday, and Saturday nights with no food offering. It is said that The Jubilee Tap will include a 'community' shop, although at a meeting of Selborne Parish Council on 17 July 2024 the Appellant confirmed that the application does not include a shop.
10. This Statement, drafted before the Case Management Conference ("**CMC**"), is based on the Application documents which have not been updated, but it is noted that the Appellant in its statement of case (Savills' letter dated 21 May 2024) states that an updated Arboricultural Method Statement & Tree Survey, Tree Protection Plan and Landscape Proposals Plan will be provided.
11. A draft Statement of Common Ground is due four weeks before the inquiry, and it is anticipated that there may be some revisions to this statement of case where those documents are updated (or aspects updated) to show any material change of use or operational development. This is especially so of the landscaping works at the rear of The Queens.
12. STQ will be represented by Michael de Courcy MRTPI and counsel, Piers Reilly-Smith of Kings' Chambers. STQ has been assisted up to the point of the CMC by Richard Buxton solicitors.

Refusal Reasons

13. While the Refusal was a member overturn, the Conservation Officer had identified the negative impact of the loss of the Queens as a community pub (David Boyson, 2 August 2021) and the Landscape Officer objected to the proposal (Ruth Childs, 2 September 2021). It is apparent that the members relied on the views of those specialist officers in identifying and giving

reasons for refusal including articulating why they disagreed with the officer's conclusions. The Refusal Decision Notice records the reasons for refusal as:

Refusal Reason 1:

"It has not been demonstrated that the proposed alternative community facilities to be provided, would be accessible, inclusive and available, and of an equivalent or better quality to those lost and subsequently it has not been demonstrated that there is no market demand for the existing use or an equivalent Community use (in the absence of evidence of a robust marketing campaign of at least 24 months). The proposal is therefore contrary to Policy SD43(2) of the Adopted South Downs Local Plan (2014-2033)."

Refusal Reason 2:

"The proposals, by virtue of the new building, additions, increased parking provision, landscaping and access alterations, would amount to overdevelopment of the site, most notably in relation to Huckers Lane, and would therefore have an unacceptable impact on the landscape character of the area and the Conservation Area. The proposals would therefore be contrary to Policies SD4(1), SD5 and SD15(1) of the Adopted South Downs Local Plan and the NPPF."

STQ Case

Preliminary Matters

14. There seems to have been some divergence between what the Appellant applied for originally and what it has built.
15. If this is correct – and it is hoped the Appellant can provide clarity on this point – then this raises a preliminary issue that has arisen out of the Appellant's decision to both develop the Site despite the permission being under challenge, and then developing out the Site in a materially different way to that which was applied for.
16. The Appellant therefore needs to clarify what it is seeking permission for under the re-determination. Is it seeking permission for what it applied for? If so, then the Inquiry will have to consider if what it has done allows for such a scheme to still be delivered. Alternatively, are the Appellants asking the Inspector to consider retrospectively what it has constructed? If so, then the Appellant needs to address and seek permission to amend its original application at appeal to be considered in line with the principles in Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P&CR 233.
17. Further, STQ does not agree that the proposed aparthotel suites would fall within use class C1 having regard to the layout proposed and the lack of facilities and services normally associated with a C1 use. STQ will call evidence to support this position.

Main Case

Refusal Reason 1

18. Refusal reason 1 concerns **Local Plan Policy SD43(2)**. There are various limbs to Policy SD43(2). In the 2019 Planning Appeal (ref: APP/Y9507/W/19/322374), permission was refused where the marketing process for The Queens was flawed and not robust.
19. The exemption test in SD43(2)(c) can be broken down into the assessment of access, a qualitative comparison, and impact on other community facilities. Evidence could point in one direction and therefore is contextually not limited to a particular part of the assessment. STQ principally relies on the qualitative assessment that what is being provided through the scheme of development is not *equivalent to or better quality to* a functioning licensed pub with inn accommodation. There is only one other pub, The Selborne Arms which was considered, in the previous 2019 Appeal, as catering for different needs to The Queens.
20. From the Appellant's case on the now Quashed Permission, it is possible to glean at least four reasons why it is said that the scheme provides an accessible and equivalent to or better quality community facility to The Queens, Selborne. As part of STQ's case we will test and examine whether these purported benefits would be delivered, and, if so, the weight to be attached to them. This is as well as the wider argument that such reasons do not comply with SD43.

(1) Educational facility

21. The inclusion of the FSC is to provide "*lifelong learning*" through partnering with organisations such as Winchester University and the Natural History Museum (Gilbert White and The Oates Collections, letter to PINS, 26 May 2022). The Appellant contends this expands the education opportunities available to the community and therefore provides a facility that offers educational offering/learning facilities that were not previously available at The Queens.

(2) Multipurpose use

22. Whereas The Queens offered a pub, bar(s), and restaurant, the Appellant will argue that the proposed scheme, although a different community facility, is of equivalent value where the FSC will be available to the community to rent when it is not in use by the Gilbert White Museum. It appears that the Appellant's case is that there is no qualitative difference between a pub and education facility in terms of community use. The Appellant will seek to show that it is a dedicated community space that was not previously provided by The Queens.

(3) Investment/partnering

23. The Appellant relies on a partnering relationship with the Gilbert White Museum to develop and deliver the educational programme proposed for the new FSC (the Museum already owns and operates an existing FSC within its grounds). By relying on the Museum's involvement, the Appellant maintains that "*lifelong learning*" opportunities will be supported long-term, through partnering and funding relationships. This is as good as or better than The Queens which relied on income from hospitality services. Further, these partnering and funding relationships bring additional recognition and indirectly benefit the community. STQ will examine whether it is appropriate and justified for weight to be placed on benefits which are contingent on being delivered by a third party.

(4) *The Jubilee Tap*

24. The Appellant contends that the Jubilee Tap makes it as good as, or even better than a traditional pub/restaurant offering in that it is linked to the Gilbert White Museum's brewery operation and therefore supports local industry and provides a more intimate/community atmosphere. The Appellant says that, taken together with the use of the rest of the site, the Jubilee Tap can be more easily adapted for community activities including out of operating hours. It is said to be more economically sustainable. It is modern and the Appellant contends that it is seen as a more inclusive facility for a wider cross-section of the community, but also operates with fewer hours and therefore avoids the typical disturbances that might be associated with traditional pubs.

STQ's case on Refusal Reason 1

25. The Appellant relies on being in accordance with SD43(2)(c) as a justification for the Appeal proposal (historically there was reliance for previous applications on SD43(2)(a) but there is no attempt to rely on it now). STQ will set out why the Appeal proposal clearly conflicts with SD43(2).
26. The decision letter for the Quashed Permission states at paragraph 16:

"16. I note the Authority's concerns that the proposed operating hours for the tap room, together with its food and drink offer and lack of a garden area, would be notably different than those of the former public house. Consequently, the services to the local community would undoubtedly differ. However, these factors taken together would not necessarily result in a use which could not be of an equivalent quality, or better. When considered in combination with the other facilities proposed, in particular the field study centre, which has potential to serve a wider and more diverse section of the local community, the proposed development could also provide a high quality and valued facility."

27. STQ will advance evidence that there is a reduction in community access compared to The Queens' hospitality spaces and that the catering facilities fail to match what was provided by the pub restaurant and bar, and that what is potentially available through the FSC and the tap room (The Jubilee Tap) does not in fact compensate the community for what is lost in the form of a large traditional pub that was provided through The Queens. Reference will be made to the 2019 Appeal Decision by Inspector Edwards (APP/Y9507/W/19/3229374) which dismissed an appeal by the Appellant to redevelop The Queens. STQ will contend that the Appellant has not undertaken a needs assessment as required by paragraph 4.1 of Appendix.3 of the local plan.
28. STQ will contend that equivalence is the critical question because the correct interpretation of the Local Plan policy is that the baseline means assessing whether any alternative facilities serve the same community need as the facility whose loss is proposed.

"SDLP43 Appendix 3 4.2. Any alternative facilities proposed as meeting the need must be accessible, inclusive and available without causing unreasonable reduction or shortfall in the local service provision. The presence of another facility within the same category in the vicinity will not in itself be enough to meet this requirement; it must be demonstrated that the alternative facility caters, or can be reasonably expected to cater, for the same community need as that served by the facility whose loss is proposed."

29. This means that the new facility must offer community facilities that are accessible, inclusive and equivalent to or better quality to a traditional pub/restaurant without causing a reduction in local service provision. STQ will show that what is proposed is neither accessible/inclusive and available, and nor is it of equivalent or better quality to what will be lost.
30. On the issue of shortfall, STQ will contend it is wrong to conclude as the decision letter to the Quashed Permission did, that:

'Based on the evidence before me, the proposed community uses would be accessible, inclusive and available, and I have no reason to believe that together they could not provide an equivalent or better quality of facility to that lost, albeit through providing different services to the former public house. Neither would the proposal cause an unreasonable reduction or shortfall in the local service provision. Consequently, the appeal scheme would comply with Policy SD43 of the SDLP. It would also comply with the Framework insofar as it relates to local services and facilities in rural communities'.

31. STQ will present evidence to show that the proposed facility would not be accessible, inclusive and available, would not be of equivalent or better quality and would cause an unreasonable reduction in the local service provision. All three of the elements of SD43(2) are not met. Accordingly, it is STQ's case that the Park Authority was right to conclude that the proposal is therefore contrary to Policy SD43(2).

Refusal Reason 2

Landscape character and design affecting conservation areas

32. **Local Plan policy SD1** is relevant in that the policy requires that it refers to the weight that should be attached to development where there is a conflict with the purposes of the National Park where development fails to conserve the landscape, natural beauty and cultural heritage, unless exceptionally the benefits outweigh the great weight attached to those interests and the there is substantial compliance with other relevant policies in the Local Plan.
33. **Local plan policy SD4** is relevant in that it provides development will only be permitted where the proposal will conserve and enhance landscape character. So far as context, design, layout and scale are concerned STQ will advance evidence addressing harm to the landscape and that includes evidence of actual harm in light of the alterations that have been made to the rear of the site, specifically the removal of a mature hedge and a number of mature trees.
34. **Local plan policy SD5** is relevant in that development proposals will only be permitted where they adopt a landscape-led approach and respect the local character through sensitive and high-quality design. Integration with Landscape Character is crucial to ensure proposals are informed by an assessment of the landscape context.
35. **Local plan policy SD12** is relevant as it requires that development proposals only be permitted where they conserve and enhance the historic environment, including through the safeguarding of heritage assets and their setting. This policy is relevant because the property is regarded as a non-designated heritage asset and the site lies within a conservation area.
36. **Local plan policy SD15** is relevant in that development proposals within a conservation area, or within its setting, will only be permitted where they preserve or enhance the special

architectural or historic interest, character, or appearance of the conservation area, and again this includes an assessment of the relationship to the established landscape setting and taking account of the distinctive character of the settlement, including the significant features such as trees and boundary treatments.

37. **Local plan policy SD47** is relevant as part of the appeal site is designated as Local Green Space (LGS8) and the policy seeks to ensure that the land remains protected as Local Green Space for the benefit of the community.
38. **NPPF Ch15 and 16** are relevant and in particular NPPF 182 provides that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. The Planning (Listed Buildings and Conservation Areas) Act 1990 recognises the special architectural or historic interest of conservation areas where their appearance and character should be preserved and enhanced, and this imposes a duty on planning decision makers to ensure that any development within these areas preserves or enhances their special architectural or historic interest.
39. The **Selborne Village Design Statement**, adopted 11 April 2024 (“**VDS**”) recognises the importance of design given the "*historic routes such [that should] be conserved and enhanced to protect their tranquillity and the character of the landscape*" and new development must respect existing footpaths, bridleways, and byways, ensuring they are not adversely affected including by retaining and enhancing existing boundary walls and hedges (VDS p. 27). It provides that lanes should maintain the rural nature and avoid urbanisation (p. 27).
40. **Design Guidelines** which apply protect the Settlement Pattern and Buildings (p. 33) provide that development should respect and positively respond to the village's contours, valley bottom location, and linear settlement pattern and this includes restricting back-land development as it encroaches into the countryside and harms the village's setting and rural character. Design guidelines also provide that "*Parking associated with new development should be designed so that it is located to the rear or to the side of the development to ensure that such areas are shielded from public view, do not impinge upon the street scene and do not cause detriment to the landscape*" (p. 27).

STQ's case on Refusal Reason 2

41. STQ will assert that the Appellant is wrong in its Statement of Case (Savills letter dated 21 May 2024) to assert:

“the newly installed soft landscaping and retained mature trees within the rear of the site will provide an appropriate screen to longer distance views from the west and will preserve the character and appearance of conservation area” and “notwithstanding the tree works that have been undertaken on site, the conclusions of the previous Inspector [not detailed here] remain unfettered and can readily be reached again by the Inspectorate under this re-determination”.

42. The Appellant relied on presence of the mature hedge and a number of mature trees as providing landscape screening and defining the countryside edge, but the same trees were felled in May 2022. The Development, if approved, will also result in the removal of a boundary hedge on Huckers Lane and a new building to be built within the pub garden at the rear of The Queens, alongside Huckers Lane at the start of the Via Canonorum.

43. As above, neither the Park Authority's Landscape Officer nor Conservation Officer were satisfied that the overall scheme was policy compliant at the time of the Refusal. The Conservation Officer raised concerns about the negative impact of the proposal stating "*For the record, I will repeat my earlier comments about the loss of the pub and its negative impact on the character of the Conservation Area*" (Conservation Officer 2 August 2021). The Landscape Officer raised concerns about Huckers Lane access, car parks, boundary treatments, drainage, and soft landscaping concluding, "*It continues to be a landscape objection from me*" (Landscape Officer 2 September 2021). Accordingly, STQ will say that the Appellant is wrong in its Statement of Case to assert:

"Indeed, as detailed in the original Statement of Case the scale, form and massing of the Appeal Proposals were iteratively worked up in close association with the Council's Design, Landscape and Heritage Officers."

44. The Development will replace the publicly accessible pub garden that was landscaped with grass, plants and trees, with new structures, hardstanding and a car park. The Development shifts the parking onto the pub garden being the countryside edge along Huckers Lane. STQ will say that this is contrary to policy where it fundamentally alters the street facing nature of facilities and their "*essential public function*" and it "*detracts from [the] linear character*" causing harm (p. 29). The inclusion of skylights into the roof line of the main building is in conflict with Good Design.
45. STQ will say the Development represents harmful overdevelopment and back-land infilling that does not respect the linear settlement pattern and would harm the landscape character of this part of the village and degrade the character and appearance of the Conservation Area. STQ will contend that the proposal conflicts with the Development Plan taken as a whole given the overlapping issues of Landscape Setting, Design and Settlement Pattern and other guidance set out in the VDS.

Other: Sustainable tourism

46. STQ is not bound by the refusal reasons and has further concerns.
47. **Local Plan Policy SD23** is material, including that "*The proposals will provide opportunities for visitors to increase their awareness, understanding and enjoyment of the special qualities*" (SD23(1)(a)); "*Development proposals will not detract from the experience of visitors or adversely affect the character, historical significance, appearance or amenity of the area.*" (SD23(1)(c)) and "*Development proposals make use of existing buildings, and, if no suitable existing buildings are available, the design of any new buildings are sensitive to the character and setting.*" (SD23(1)(d)).
48. Sustainable tourism also requires that "*Any proposal does not have an adverse impact on the vitality and viability of town or village centres or assets of community value.*" (SD23(1)(f)) and "*Development proposals that would result in the loss of visitor accommodation, visitor attractions and recreation facilities will not be permitted unless the current use or related development harms the special qualities.*" (SD23(2)(b)).

49. Relevant background to the adoption of SD23 was the Park Authority's commissioning of the **Visitor Accommodation Review**.⁴ That explains that the key market for visitor accommodation is for short breaks, including people attending weddings and family parties. That review also recognised that "*the strong performance of pub accommodation indicates a demand for high-quality pub accommodation and boutique inns*" (§.7.3.5). Further, the Park Authority has seen a "*loss of hotels and other visitor accommodations, primarily due to pressure for higher value permanent residential use. This highlights the need to preserve and increase visitor accommodation to meet market demands.*" (§.7.2.14).
50. This background is also reflected in the Park Authority's **Management Plan 2020-2025**. This has assessed tourism in the Park Authority area, concluding that "*the majority are day visitors*" out of 18.8 million visits in 2016. Further, **Local Plan Policy SD43** supports a mix of quality accommodation that responds to market demands and supports a sustainable visitor economy and that requires an assessment of market demand.

STQ's case on Sustainable Tourism

51. Serviced Inn accommodation is being replaced with self-catering apartments that would seem to be of a different use class to those in the description of the application. The self-catered apartments can be considered to be different from C1 and this illustrates the harm and conflict that arises from the proposal and SD23.
52. The Management Plan and Visitor Accommodation Review, which fed into the Sustainable Tourism policy indicated that across the Park Authority area the key demand is for accommodation that offers the convenience of short-term stays, providing easier access for tourists and other transient guests, The proposed accommodation does not respond to this market demand. This was previously met by the accommodation provided by The Queens. It will no longer be met by the provision of C3 self-catered apartments which are being used for longer term occupation. This longer term occupation is at odds with the Management Plan and Visitor Accommodation Review.
53. Further, and to compound things, the Appellant has not demonstrated the need to enlarge the developed site building in the green pub garden such that use cannot be made of existing buildings.
54. Accordingly, STQ will contend, contrary to SD23(1)(a),(c) and (d), that the proposals remove facilities which meet a need, replaces them with accommodation for which there is no need, the proposals do not enhance visitors' awareness and enjoyment - and that they detract from visitor experience and area character and fail to make use of existing buildings. Further, this has an adverse impact on vitality of the village and its other community assets contrary to SD23(f).
55. STQ will contend that the conclusion in the decision letter for the Quashed Permission at para 36 was wrong in that it is not correct that "*apartment style accommodation would comply with Policy SD23 of the SDLP and the Framework insofar as they seek to support sustainable rural tourism*".

⁴ South Downs National Park Visitor Accommodation Review, Hotel Solutions, December 2014 <https://www.southdowns.gov.uk/wp-content/uploads/2015/02/Visitor-Accommodation-Review-Report.pdf>

Conflict with the Development Plan

56. The Appellant's case is that the development accords with the Development Plan taken as a whole. As outlined above, STQ will advance a case that taking the development plan as a whole the proposed scheme does not comply with national policy, nor the local plan which includes the VDS which is a supplementary planning document. STQ will present evidence of how the current use of the site helps to demonstrate that the purported public benefits are not weighty material considerations, contrary to the Appellant's case in 2022.
57. Given that the development conflicts with the Development Plan, and there are no material considerations which justify departing from it, then (per s.38 (6)) the appeal should be refused.

Scope of Redetermination

58. This is a redetermination through a planning inquiry following a successful challenge under section 288 the Town and Country Planning Act 1990 ("**TCPA**"). Under section 284(1) and (3)(b) of the TCPA, decisions on appeals under section 78 can only be challenged under section 288. If a section 288 challenge is successful, the High Court may quash the decision (section 288(5)(b)) and do so on public law grounds that are the same as those in judicial review proceedings.
59. As a matter of statutory interpretation, it is a point of note that the quashing effect under section 288 of the TCPA is distinct from the remedy in section 289 appeals, in that the latter involves the court remitting the matter to the Secretary of State for rehearing and determination in accordance with the court's opinion.
60. It is therefore entirely consistent with the effect of a quashing order following a successful section 288 challenge that quashing the decision renders it a legal nullity, which means all issues are live for redetermination through the inquiry, not just the specific issue that led to the quashing.
61. On 30 April 2024 PINS sent a written statement to the parties inviting representations on the mode of appeal pursuant to the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000. The Appellant and Rule 6 Party addressed the scope of redetermination as an issue in their response to the PINS statement.
62. The Appellant's response is dated 21 May 2024 and contends that the High Court's judgment in Rye, where permission was granted on one ground concerning the Park Authority's second refusal reason, but refused on a second ground that to an extent concerned the Park Authority's first refusal reason, is to limit the scope of redetermination. The Appellant states "*On the basis of the decision of the Upper Tribunal it is the Appellant's case that the Inspectorate's re-determination should, therefore, focus solely on Ground 1 (Trees) and Ground 2 (Community Facility) should not be re-litigated.*"
63. STQ in its letter dated 21 May 2024 wrote:

"Given the legal effect of a quashed decision the re-determination itself is entirely de novo. Support for this is found in Arun District Council v SSCLG and Green Lodge Homes LLP [2013] EWHC 190 (Admin), where the court's decision was predicated on the proposition that the "statutory framework is that the role of the new Inspector is one of redetermination, not one of review" (at. 16). That decision has itself been met

with judicial approval and indeed the PINS guidance we read as in practice following that approach.

As a matter of law, the new Inspector will have to reach an independent and fresh planning judgment on every element of the appeal proposal having regard to factual matters as they stand in 2024 (and not in 2022). Where there have been significant factual and policy changes – including new national policy and new local policy documents – since the previous appeal decision, a public inquiry is the best way to assist the new inspector in reaching that independent assessment.”

64. In response to these representations the Senior Inspector Manager concluded “*the clincher in deciding on an inquiry is a clear difference between the resident’s group and the appellant on the materiality and consequences of the quashed decision (the position of the LPA is not stated) and this will necessitate legal submissions to assist the Inspector.*”
65. While it is understood that the Inspector will want to deal with the question of scope of redetermination as part of the inquiry hearing, and not as a preliminary issue at the CMC, to the extent the Appellant invites the Inspector to decide on scope at the CMC, STQ will rely on the line of authority starting in Kingswood DC v Secretary of State for the Environment (1989) 57 P&CR 153 which is authority for the proposition that after a decision is quashed the Secretary of State must start anew considering the development plan and other material considerations afresh, and more recently in Arun DC v Secretary of State for Communities and Local Government [2013] EWHC 190 (Admin) (cited in STQ’s representations referred to above) as authority for the clear legal position that once a decision is quashed, the new inspector must treat the matter as a redetermination, “*not one of review*” of the previous decision and that that must means that all issues must be redetermined.
66. This is particularly the case where there have been changes in local and national policy and it is highly likely – given the fact this is now a public inquiry – that members of the public will want to attend and give their views and representations on a variety of issues and concerns which will necessitate a fresh planning judgment being reached as to the planning merits of the scheme as a whole.